



Project 'ECOLEF'  
The Economic and Legal Effectiveness of  
Anti-Money Laundering and  
Combating Terrorist Financing Policy

Final Delivery to the EU

Project funded by the European Commission  
DG Home Affairs  
JLS/2009/ISEC/AG/087  
February 2013

# **Project 'ECOLEF'**

## **The Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy**

Final Report



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**Project 'ECOLEF'**

# The Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy

Research performed by Utrecht University (NL)



**Universiteit Utrecht**

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## **Preface**

**Anti-Money Laundering and Combating Terrorism Financing Policy is now about 25 years old. Many actors have been involved, many efforts have been made and much money has been invested in this policy area. It seems time to stand still for a moment and to investigate, whether all these efforts and costs have had a positive effect. Have the legal efforts reached their intended goals? And have the investment in police, public prosecution, reporting systems and supervision had a positive impact on combating laundering and terrorist financing? The following study, ECOLEF, the Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorism Financing assesses anti-money laundering policy for the 27 EU Member States.**

**The ECOLEF study also aimed at improving the attention given to the AML/CTF policy in the academic world. Following this study, two PhD researches are underway and one is just published. In December 2012 Joras Ferwerda defended his thesis named ‘The Multidisciplinary Economics of Money Laundering’, which shows what and how an economist can contribute in a multidisciplinary fashion to the research field of money laundering (policy). Ioana Deleanu investigates which information transmission chains enable the efficient cooperation of the FIUs, the law enforcement agencies and the judiciary in the context of the AML repressive policy of the European Union. Her PhD research is due to finish by the end of 2014. Melissa van den Broek is doing a comparative legal study on the effectiveness of supervision and enforcement regimes in the preventive AML/CTF policy within the European Union. The research is expected to be finished by the end of 2014.**

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The information contained in this report was current at 09 December 2012.

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<sup>1</sup> See Annex 0

## Acronyms and Abbreviations

<b>AML/CTF</b>	Anti-money laundering and counter-terrorism financing
<b>ARO</b>	Asset recovery office
<b>CDD</b>	Customer due diligence
<b>CTR</b>	Currency transaction report
<b>Deloitte study</b>	Final Study on the Application of the Anti-Money Laundering Directive (ETD/2009/IM/F2/90)
<b>DNFBPs</b>	Designated non-financial businesses and professions
<b>EC</b>	European Commission
<b>ECJ</b>	European Court of Justice
<b>ECOLEF</b>	Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy (JLS/2009/ISEC/CFP/AG/)
<b>EEA</b>	European Economic Area
<b>EU</b>	European Union
<b>EUROSTAT</b>	The Community statistical authority designated by the Commission to develop, produce and disseminate European statistics (EC Regulation No. 223/2009, OJ L87/164, 31.03.2009)
<b>FATF-GAFI</b>	Financial Action Task Force (Le Groupe d'Action Financière)
<b>FI</b>	Financial institutions
<b>FIU</b>	Financial intelligence unit
<b>Implementing Directive</b>	Commission Directive 2006/70/EC laying down implementing measures for Directive 2005/60/EC (OJ L214/29, 4.8.2006)
<b>IMF</b>	International Monetary Fund
<b>LEA</b>	Law enforcement authority
<b>LPP</b>	Legal (professional) privilege
<b>MER</b>	Mutual evaluation report
<b>ML</b>	Money laundering
<b>MLRO</b>	Money Laundering Reporting Officer
<b>MoF</b>	Ministry of Finance
<b>MoJ</b>	Ministry of Justice
<b>Moi</b>	Ministry of Interior
<b>MONEYVAL</b>	Committee of Experts on the Evaluation on Anti-Money Laundering Measures and the Financing of Terrorism
<b>MS</b>	Member States
<b>PEP</b>	Politically exposed person
<b>PPO</b>	Public Prosecution's Office / Public Prosecutors
<b>RE</b>	Reporting entities
<b>SAR</b>	Suspicious activity reports
<b>STR</b>	Suspicious transaction report
<b>TSCP</b>	Trust and company service providers
<b>TF</b>	Financing of terrorism
<b>Third Directive</b>	Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L309/15, 25.11.2005)
<b>UBO</b>	Ultimate beneficial owner
<b>UTR</b>	Unusual transaction report

## Executive Summary

The ECOLEF project on the **Economic and Legal Effectiveness of Anti-Money Laundering and Combating Terrorist Financing (AML/CTF) Policy** in the 27 EU Member States, commissioned by the EU DG Home Affairs, has been a three year task. An **interdisciplinary team** of administrative and criminal law experts, economists, criminologists and specialists in finance was assembled, mostly located at Utrecht University, the Netherlands, guaranteeing a multi-faceted approach to the study. Where possible, the same team visited every Member State, ensuring comparability between assessments of the Member States.

**In the course of the project, the team examined the threat of money laundering facing each of the EU Member States, and their policy response.** Member States differ in the degree to which they are threatened by money laundering - some with large financial centres, like the UK or the Netherlands, are potential gateways for laundering money, whereas others, like the Southern Member States have large cash economies, presenting different types of threat. Member States also differ in the way in which they respond to these threats. Policy responses to laundering activities and terrorist financing range from the implementation of the Third Directive and the criminalisation of money laundering and terrorist financing, to the enforcement of the AML/CTF policy and prosecution and, ultimately, the conviction of launderers and terrorist financiers. The study therefore comprised five building blocks:

- the threat of laundering;
- the legal implementation of AML/CTF policy;
- the execution of AML/CTF policy;
- the enforcement of AML/CTF policy, including the international environment; and
- a final cost-benefit analysis and effectiveness evaluation.

More in particular, the research process included an analysis of Member States' supervisory architectures, definitions of money laundering and terrorist financing in practice, and the role of Financial Intelligence Units. The key information flows essential to effective repressive enforcement, international cooperation, and the collection of statistics were also examined. Based on these analyses, as thorough a cost-benefit analysis as the availability of data permits was conducted. The legal and economic effectiveness of anti-money laundering and combating terrorist financing policy was evaluated for all the 27 Member States.

For this purpose, the ECOLEF team gathered information as to how, from a legal, economic and practical perspective, this policy works in each Member State. The ECOLEF team studied **publicly available information**. In addition thereto, the team addressed each EU Member State with the aim to (i) receive further data, and (ii) to verify the information that it has gathered itself. To that effect, the team prepared an **online questionnaire**. This questionnaire was directed to relevant actors in the combat of money laundering and terrorist financing at the national level. The responses to the questionnaire were analysed and unresolved matters were discussed in **interviews** locally held with respondents. These interviews were followed by a **Regional Workshop**, in which the first results were discussed. During these workshops, representatives were given the possibility of sharing their views with other participants and with the ECOLEF team. In total the ECOLEF team organised four Regional Workshops and a final Dissemination Conference.

This report builds on, *inter alia*, the substantive work of the FATF, MONEYVAL, the reports of the EU-FIU Platform, the papers of the IMF, the reports of EUROSTAT and the reports of the

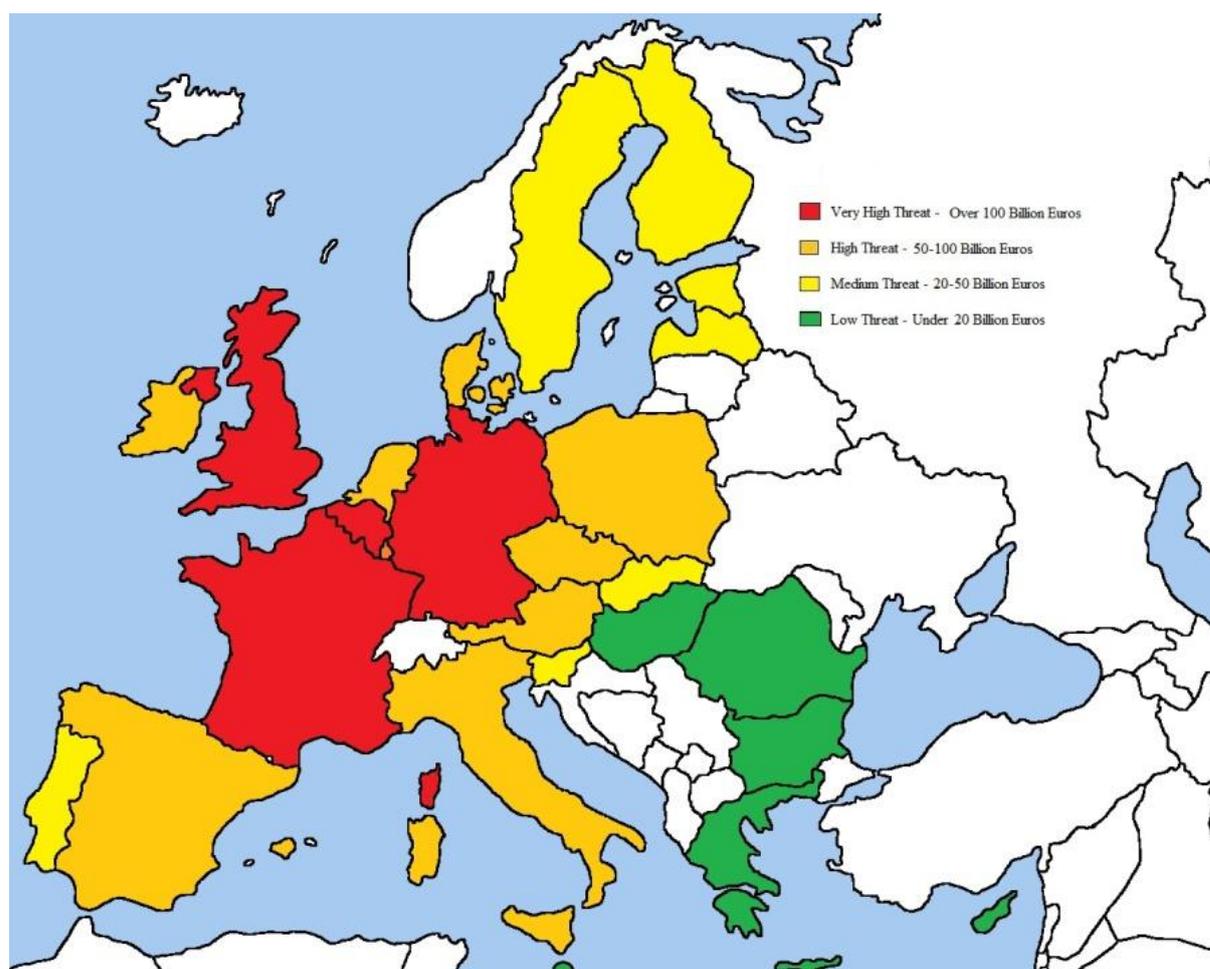
EGMONT Group. It also makes use of the annual reports of the European FIUs and of the reports commissioned by the EU.

### ***Threat of Money Laundering***

Based not only on desk research but also on in-depth surveys and interviews with key officials in Member States, **the study found that various forms of fraud, such as corporate crime, tax frauds, customs and excise, internet fraud and public corruption, and illicit drug trafficking provide the bulk of the proceeds of crime that are laundered in EU Member States.** However, a wide range of other types of crime also contribute to the problem, including human trafficking for prostitution and illegal immigration, illicit arms trafficking, counterfeiting goods (including medicines) and money, theft of artworks and cultural artefacts, and cybercrime.

Using a range of different methods, **we find that the threat of money laundering is greatest in the United Kingdom, Luxembourg and other west-European countries,** as a result of their relatively sophisticated financial markets, their relatively high GDP per capita levels, their trade, as well as cultural links to a wide range of proceeds of crime-generating countries. Hot money will generally flow from eastern Europe to the west, and from the rest of the world to Europe's financial centres, in search of safer havens for investment.

**Figure ES.1: Mapping of Threat in Absolute Amounts**



**The picture changes dramatically, however, when expressed as a percentage of each country's GDP. The threats can be very high - particularly for the smaller countries, such as Estonia, Latvia, Malta and Luxembourg.** These countries are bordering or related to much larger countries that generate large amounts of money potentially available for laundering. They therefore face threats equivalent to a significant proportion of their total GDP, even – in those four countries – greater than their entire GDP. In a very real sense these are the countries at most risk from money laundering, since the countries' economies, governments and social well-being are at stake due to distortions in business, financial markets and government policy. Moreover, it may have the effect of harming a country's reputation and exposure of the public to criminal activity.

### ***Legal Implementation of AML/CTF Policy***

The legal effectiveness of the AML/CTF policy responses of the European Member States has been studied, including the implementation of the substantive norms in the preventive AML/CTF policy, the timeliness of the implementation of the Third Money Laundering Directive by Member States, the AML/CTF supervisory architectures and procedural norms applied in the Member States and, finally, the definitions of money laundering and terrorist financing as applied in practice.

#### **Implementation of substantive norms**

**The ECOLEF study concludes that the substantive norms in the preventive AML/CTF policy are to a large extent harmonised within the European Union.** National variations do exist, but in all Member States' AML/CTF legislation the basic obligations of customer due diligence, reporting, record keeping and internal policy are present. Three aspects which had been under-exposed in previous studies, notably the study done by Deloitte, have also been analysed: the legal privilege-exemption, extensions to the scope of obliged institutions and the different reporting regimes. These aspects have also been implemented in all Member States' AML/CTF legislation, although with considerable differences in the exact wording.

**The legal effectiveness of the preventive AML/CTF policies of the Member States is negatively impacted by both general and country-specific factors.** General factors include the diverging standards from the FATF Recommendations and the EU Directive, and the existence of very general definitions, open norms and interpretation difficulties. Examples are found in the varying definitions of ultimate beneficial ownership, politically exposed persons, trust and company service providers, and tipping-off. Member States also face country-specific factors that impact the legal effectiveness of their preventive AML/CTF policies. Technical legal hindrances are present in virtually all Member States. Fundamental legal hindrances present in more than one Member State concern gaps in the scope of obliged institutions, the impact of limitations to the criminalisation of money laundering, the predicate offences, or terrorist financing; the notions of UBO and PEP and norms concerning the legal privilege-exemption. There is also evidence to suggest a low level of awareness or application of AML/CTF obligations by some types of obliged entities and professionals in various Member States.

#### **Timeliness of implementation**

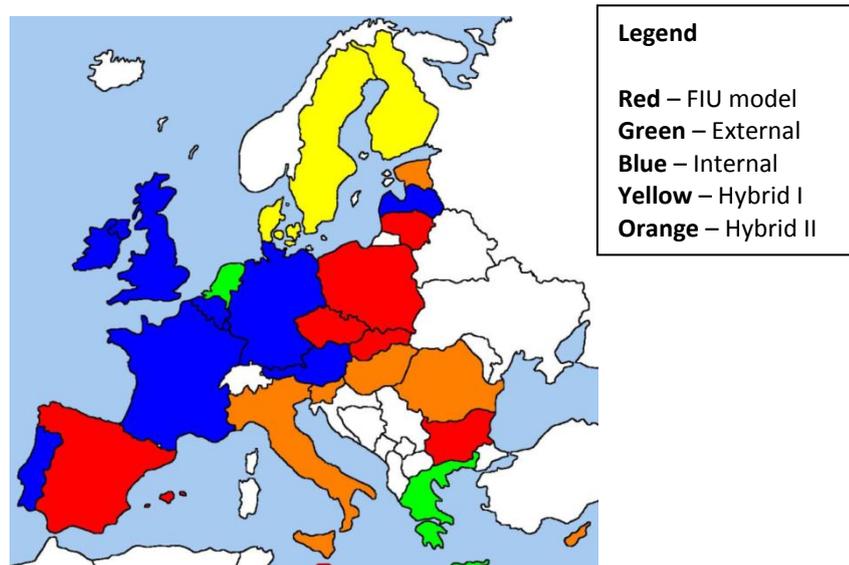
This report finds quite substantial time delays with respect to the implementation of the Third Money Laundering Directive. Notwithstanding, compared to other EU Directives, the

Third Money Laundering Directive could be transposed smoothly. Member States considered the Directive as well-prepared and expected. **Time delays in implementation of the Third Directive mainly seem due to domestic factors, and not to external factors or factors related to the quality of the Directive itself.** The number and type of implementation authorities, and methods of implementation applied, have not appeared to be significant in explaining the non-timeliness of some Member States. **Key findings are that older Member States show statistically significant more delay than newer Member States and that Member States with an internal supervision structure, meaning a large involvement of professional associations, show statistically significantly more delay.**

### AML/CTF supervisory architectures

While the substantive norms have to a large extent become harmonised within the European Union, this report observes the contrary with respect to the procedural norms. This study took a systematic approach to the different AML/CTF supervisory architectures by designing (institutional) models of the supervisory architectures of the Member States. **The study identified four models of AML/CTF supervisory architectures: the FIU Model, the External Model, the Internal Model and the Hybrid Model.** It shows a diversified picture in the European Union and has given a first insight in the institutional differences between the Member States (see figure ES.2). Generally, Eastern and Southern European Member States include the FIU in the AML/CTF supervisory architecture.

Figure ES.2: AML/CTF Supervisory Architectures in the EU



The four different AML/CTF supervisory models all have different inherent strengths and weaknesses. The weaknesses of the Internal model, however, seem to be of a more fundamental nature than those of the other models. **Ultimately, the effectiveness of AML/CTF supervisory architectures can only be established at the national level.** This depends on the Member States' specifics and context, including its national legal system, rather than on the actual model used.

## **Definitions of money laundering and terrorist financing in practice**

Although the FATF 40+9 Recommendations, the Third Directive, and other international conventions all require various essential elements of money laundering and terrorist financing to be criminalised, there remains a considerable divergence between the criminal provisions in the Member States in practice.

**This study reveals numerous significant differences between EU Member States in the definitions of money laundering in practice. The first key area of divergence between the Member States concerns the catalogue of crimes considered to be predicate offences for money laundering. The second key area of difference between Member States is the fact that some Member States have partially (HU) or have not (DE, DK, IT, SE) criminalised self-laundering.**

Seven Member States - Malta, Romania, Slovakia, Spain, Belgium, the UK and Ireland have an all-crimes approach. Bulgaria and Italy have an all-crimes approach, but in Italy it only applies to all crimes committed intentionally and therefore excludes crimes committed by negligence, while in Bulgaria it applies to all crimes except insider trading. France and the Netherlands are examples of Member States that have a serious crimes approach in place, covering all crimes but no misdemeanours or contraventions. Greece and Luxembourg, for example, have opted for a combination of a list of predicate offences and a threshold approach. This shows the variety between Member States. Self-laundering is the situation where the laundering is done by the same person who acquired the proceeds through the commission of a crime. Only a very limited range of acts can be considered money laundering in the Member States which have not or have only partially criminalised self-laundering.

Other factors that influence the differences of money laundering definitions are the following. The mere possession of criminal proceeds is not considered money laundering in most Member States, with Luxembourg and the Netherlands as exceptions (in certain cases). Furthermore, there are interpretation variations between the Member States on what constitutes 'concealment', that is the hiding of the proceeds of crime. The intention, knowledge, or reasonable grounds to suspect that the proceeds stem from criminal activity in case of third-party money laundering is required in all Member States, but the levels of knowledge differ between Member States. Negligent money laundering is criminalised in ten Member States.

**There is less difference in the interpretation and application of the definition of terrorist financing. This may be explained by different reasons, for example the comparatively little experience with terrorist financing cases in Member States, the absence of a history of criminalisation of terrorist financing in the Member States (contrary to money laundering), and the fact that the FATF employs a rather strict terrorist financing definition compared to the money laundering definition.**

All Member States, except for Lithuania, criminalise both the financing of individual terrorists and terrorist organisations. The amount of the funds donated does not matter, except for Germany, where the law requires that the funds must not be not merely insubstantial. There are differences between the Member States on the point of financing a terrorist organisation that uses the funds for daily activities or non-terrorist acts, and the question of whether this is to be considered terrorist financing or not. What matters most is the element of intention that the funds are donated to an individual or terrorist organisation

for terrorism purposes, or knowledge that it would be used for such purposes. The mere receiving of funds intended for terrorism is also terrorist financing according to the definition of the Third Directive, but none of the Member States, except for Bulgaria, indicated this in case studies, which suggests that this is not well known and/or applied by practitioners.

### ***The execution of AML/CTF policy***

#### **The roles and resources of FIUs**

This study builds upon and improved the classification as assigned by the IMF/Egmont, whereby FIUs are categorised into a specific type given their physical and institutional location, access to police data and investigative powers. The four FIU-types identified are: law enforcement, administrative, judicial and hybrid. The majority of EU FIUs are either administrative (BE, BG, CZ, FR, EL, IT, LV, MT, PL, RO, SL, ES, SE) or law enforcement (AT, DK, EE, FI, DE, IE, LT, PT, SK, UK), and only four consider themselves to be of the judicial (CY, LU) or hybrid (HU, NL) types. **We classified the EU FIUs that did not have a previous IMF/Egmont classification and we reclassified those that no longer agree with their previous classification.** This was the case for Denmark, Hungary, Latvia, the Netherlands and Sweden.

**Staffing and budgets vary considerably from country to country, with little relationship with GDP or with the accession year to the EC/EU.** There is also considerable diversity of staff employed by the FIUs with respect to their occupational background. They include:

- Detectives with financial crime and IT crime training
- Detached prosecutors, police, customs and intelligence liaison officers
- Financial analysts, economists, lawyers and tax administration agents.

This study observes that administrative types of FIUs have on average higher staff numbers, which appears related to the fact that they tend to have their own separate premises. The average staff number of an FIU with its own separate premises is close to 52 employees, while those that do not have their own premises have on average 27 employees. Furthermore, we observe that FIUs have more staff in less wealthy Member States, reflecting higher labour intensity where capital is scarce.

In addition to the basic task of receiving, requesting (if permitted), analysing and disseminating disclosures of information which concern potential money laundering or terrorist financing, **some FIUs are expected to perform some or all of the following tasks:**

- Supervise reporting entities
- Propose sanctions
- Train supervisors
- Supervise the application of the International Sanctions Act
- Conduct pre-trial investigations
- Prosecute ML/TF
- Issue guidelines for reporting entities
- Train law enforcement agencies
- Draft AML/CTF legislation
- Research aggregated data on ML/TF
- Be the asset recovery office

- Coordinate national cooperation
- Conduct ML/TF threat analysis
- Start an investigation on own motion

**This study found no significant relationship between staff numbers or budgets and the numbers of tasks the FIU is required to perform.**

#### **Access to Information by FIUs and Feedback**

Access to databases by FIUs is very different between the Member States. Some FIUs have a strong preference for online access whereas other FIUs are still accessing databases manually. Some have direct access to most databases, like France, Greece and Latvia, while others, like Italy, have restricted access and even no access to some databases. The study observes that most administrative FIUs are able to overcome their lack of access to police data by using liaison officers. These liaison officers give FIUs direct and fast access to more information than the FIU normally has access to, and therefore considerably increasing their effectiveness. Liaison officers have also been used by law enforcement FIUs to improve their access – in particular - to tax and customs databases. **Where liaison officers are used by FIUs, these FIUs have, on average, the highest level of access to databases.** Data mining systems are put in place to ensure that unstructured data can be processed quickly, accurately and with optimal results. These systems are diverse across the EU FIUs, as they need to be adapted to national culture, language and the type of information that is available in each Member State. FIUs have recognised the benefits of receiving reports online, and most receive the majority of the reports in electronic format.

**Some arrangements for formal contact and feedback between the FIU and the reporting entities are in place in all countries.** All FIUs meet with the reporting entities at least once a year, mostly through training sessions, and all FIUs publish annual reports to give the reporting entities general feedback, some of which are very comprehensive. Most EU FIUs provide reporting entities with acknowledgments of receipt of information, sometimes automatically by the IT system. **The largest differences lie in the extent of training given by the FIUs, and in the nature of feedback given to the reporting entities.** Some FIUs are able to offer individual feedback, whereas others prefer general feedback.

#### ***The repressive enforcement of AML/CTF policy***

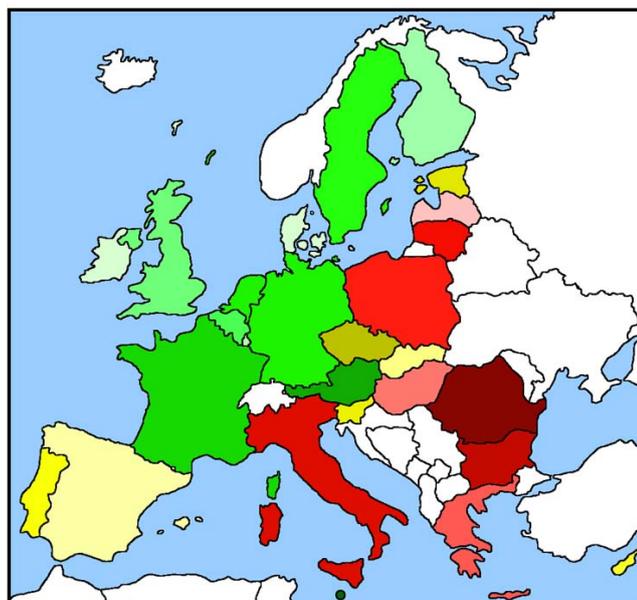
An effective criminal enforcement system is one that enforces criminal penalties in such a way that criminal behaviour is deterred. This study looked at the way criminal enforcement systems function and at the roles of the different institutions composing the system. The role of the public prosecutor is different between the EU Member States. In some countries the public prosecutor also investigates, and can do so in money laundering cases; they may even settle money laundering cases outside court, thereby lowering the workload of the courts and allowing a more effective allocation of court resources. When the prosecution cannot investigate, or has limited powers to investigate, the public prosecutor is dependent on law enforcement authorities with investigative powers to collect the necessary information. The efficiency of the criminal enforcement system therefore depends upon good cooperation between the prosecution and the investigative authorities and an effective system of delegating responsibility.

**The type and severity of punishment that can be expected for ML or TF differs significantly among the Member States.** The average expected punishment for money laundering in Luxembourg is approximately 9 times larger than in Austria, Sweden, Finland and the Netherlands. With respect to terrorist financing, the most stringent imprisonment punishments on average are to be found in Romania (a minimum imprisonment of 15 years), Latvia and the Czech Republic, and the least stringent ones in Sweden, Malta and Austria (with a maximum imprisonment of 5 years); however, none of these have yet registered any convictions on terrorist financing.

The probability that criminal behaviour will be punished in each Member State cannot be found in the statistics, so information theory was used to measure the value of the information chain that is present in each country. Information theory studies suggest that information is power and that there are economic benefits to owning more information than others. Money launderers are aware of the illegality of their actions and as long as this information is not known by the law enforcement entities, money laundering will continue to be profitable. **A successful AML/CTF informational framework, therefore, is one where government institutions can successfully identify money laundering when it occurs and can sanction it accordingly.** Intelligence gathering and effective communication are therefore the key tools for national governments to reduce the information asymmetry. The information flows concerning money laundering cases in each EU Member State were examined, and indices of information flow efficiency and of the repressive capacity of their AML/CTF systems were developed. These are shown in Figures ES.3 and ES.4.

Some information flow chains are found to be more vulnerable because of the way they are constructed. However, there are examples of solutions that can be applied to reduce these inefficiencies/vulnerabilities (e.g. double reporting, institutional/organisational changes, better feedback and usage of liaison officers). **This study finds that double disclosure of the reporting entities can reduce information decay, and that Member States with more effective information flows tend to have more ML prosecutions and convictions.**

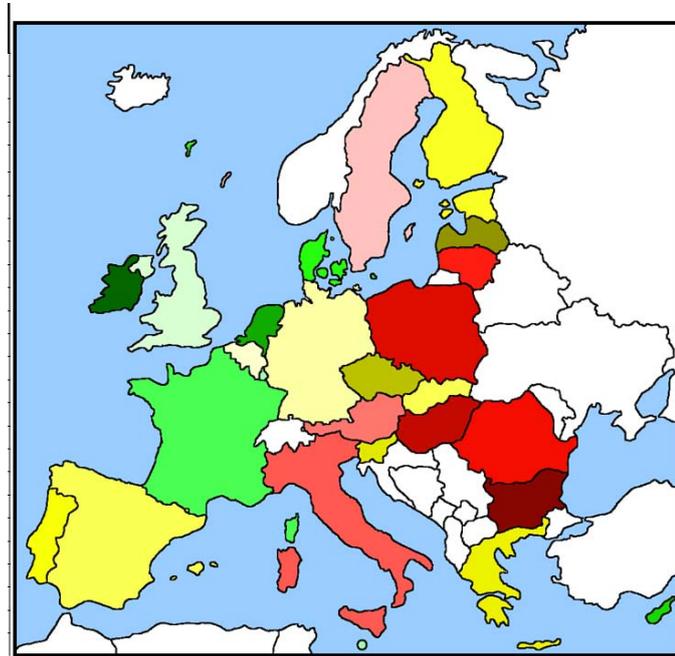
**Figure ES.3: Information flows across the EU**



*Legend: high information value – green spectrum; medium – yellow spectrum; Low– red spectrum.*

The Information Flow Index reveals that **information flows are higher in Western Europe and comparatively lower in Southern and Eastern Europe, leading to a higher expected apprehension rate in those Western European countries than in the South and East.**

**Figure ES.4: Effective repression scores across the EU**



*Legend: high effective repression score – green spectrum; medium – yellow spectrum; Low – red spectrum.*

The Effective Repression Index reveals that **information flows and probable punishments are higher in Western Europe and comparatively lower in Southern and Eastern Europe.** All else equal, these different systems for cooperation and delegation of responsibility between the prosecution and the investigative authorities as well as the different possible punishments may create incentives to shop for punishment across the European Union.

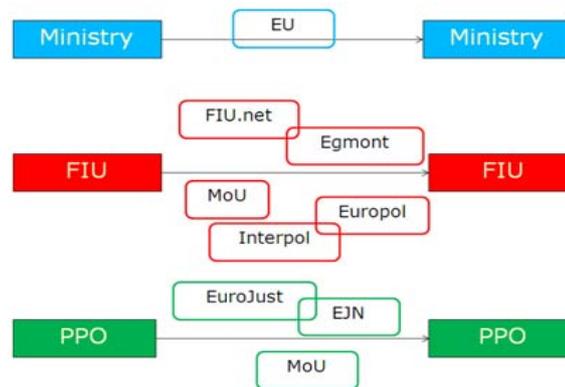
### ***International Cooperation***

In terms of international cooperation, the fact that Member States have not signed, ratified, or fully implemented the relevant international Conventions may be considered a factor that negatively impacts the legal effectiveness of their AML/CTF policies. **Belgium, Portugal and Spain are most legally effective in terms of signing, ratifying and implementing international conventions in the field of AML/CTF policy,** because they have signed and ratified all relevant international conventions and there are no deficiencies in their implementation. On the basis of a simple scoring system, **least effective are Denmark, Lithuania, Germany and the Czech Republic.**

**This study confirms that international cooperation takes place, in general, among homologue institutions.** It is therefore the Ministries that cooperate with other Ministries via various EU platforms, the FIU with other FIUs through the use of various mechanisms, and the law enforcement authorities with their homologues: the police (law enforcement authorities) with police (law enforcement authorities) and public prosecutor’s offices with public prosecutor’s offices. **There is one exception to this rule: in instances where the FIU**

belongs to the judicial or law enforcement model, cooperation from the FIU can be sought through the judicial and/or law enforcement cooperation channels (Europol, Interpol or Eurojust). However, it should be noted that these FIUs, cannot, strictly in their FIU capacity, formally make use of the other channels in international cooperation. These channels are augmented by informal networks of personal contacts and by MOUs and other devices.

**Figure ES.4: International cooperation channels**



*Legend: The figure illustrates a few of the most frequently reported cooperation channels that Ministries, FIUs and PPOs have for international cooperation in the AML/CTF framework. The list is not exhaustive (e.g. EU FIU and CARIN are not illustrated).*

**The most common hindrances to international cooperation appear to be language barriers, time delays, generic information, differences in data protection standards, non-efficient national cooperation, and the lack of a legal basis in all EU Member States' legislation that would allow FIUs to block or freeze suspicious transactions on their own motion.**

The extent of hindrances to international cooperation differs: while Western European Member States indicated that they do not encounter any serious hindrances in international cooperation, most Central and Eastern European Member States indicated that they faced a number of difficulties in international cooperation – particularly language. Time delays seem to be most commonly felt as the main hindrance to international cooperation, more commonly in international judicial cooperation than in international FIU cooperation. The translation of judicial documents, letters rogatory, and documentation that may serve as evidence takes considerable time. This is also why mutual legal assistance (MLA) takes a lot longer than FIU international cooperation. Non-efficient national cooperation in other countries was mentioned by various Member States' representatives as hampering international cooperation. Intra-national cooperation structures, by contrast, were quite often praised.

### **Statistics**

Statistics on AML/CTF policy can be classified into two types: input statistics, which are the resources invested in AML/CTF policy like the budget of the FIU and other relevant institutions, and output statistics, which are the result of the AML/CTF policy, such as the reports disclosed to the FIU, cash declarations at the border, the number of prosecutions and convictions for money laundering and terrorist financing.

**The most widely available statistic on anti-money laundering and combating terrorist financing policy is the number of reports disclosed to the FIU.** The EUROSTAT report 'Money Laundering in Europe' identified the number of reports disclosed to the FIU as its first key indicator. However, it is still very hard to use this statistic as an actual indicator for AML/CTF policy, because an increase in the number of reports can be the result of a greater anti-money laundering effort, a different counting rule, or an increase in the amount of money laundering. Moreover, an increased number of reports does not necessarily lead to better money laundering prevention or more convictions for money laundering, because it can also mean an overloading of the FIU with poor quality information, leading to an actual decrease in effectiveness. Concepts and counting rules are not uniform across the EU.

The most common type of report is the Suspicious Transaction Report. A Suspicious Activity Report differs from a STR by the fact that it may include other activities, such as opening a bank account under suspicious circumstances. An Unusual Transaction Report is also a broader concept than suspicious transactions, in which any unusual activity must be reported. Other standard types of reports include Cash Transaction Reports, Currency Transaction Reports and External Transaction Reports. **An analysis on the different types of reports shows inconsistencies in their usage: sometimes STRs are used for other activities than just transactions, and the practical application of UTRs and STRs is not always as different as might be expected. The names of these reports often do not fully reflect the actual differences between the reports, and in some Member States multiple types of reports are used concurrently.**

The reports used by the European Member States in the prevention of money laundering and terrorist financing are of a very distinct nature on six different aspects:

1. **The type of report** (some reports refer to only cash transactions, while others refer to all transactions; some reports only refer to only transactions, while others refer to any activity)
2. **Subjective grounds of suspicion** (the level of knowledge required when identifying a transaction as suspicious);
3. **Objective grounds of suspicion** (the reporting threshold of the amount of money involved in a transaction for which a report must be filed);
4. **The definition of a transaction** (specifying which activities constitute transactions);
5. **The inclusion of attempt;** and
6. **The data collection methodology** (making a report for each transaction or bundling the transactions of one money laundering operation together).

**At present, the countries' statistics on the number of reports disclosed to FIUs can actually not be compared with each other and cannot be used as an indicator for money laundering or anti-money laundering policy.** The most intuitive solution is to set up uniform legislation such that the notion of a report is a uniform concept in all the countries in the world. This, of course, would require legislative changes, which take time and effort, and political negotiations are involved. Changing the classification schemes of administration might involve other policy fields as well and might be very difficult. Therefore, this policy option might be a long-term solution or even a utopian ambition. Alternatively, a restructuring of the data collection, to measure and compare the amount of money and the number of natural persons involved in the suspicion reports, instead of the number of reports, may be a better option. Clearly there will still be some degrees of freedom of how to interpret money laundering tasks and time devoted to it, but it at least takes away the differences in the data collection method, which is the least transparent characteristic of the current reports sent to the FIU.

Another statistic that seems to be a logical choice when looking for an indicator for the effectiveness of the fight against money laundering is the number of persons prosecuted/convicted for money laundering. One of the main problems with this statistic is that when criminals are convicted for money laundering, they are often also convicted for the predicate crime in the same court case, and the convicted criminal may be registered as being convicted for only the predicate crime or for both. The same holds for the number of prosecutions. In addition, courts in different EU Member States interpret the term money laundering differently, particularly in relation to the criminalisation of self-laundering, although this could be corrected for, since most Member States that have this statistic can differentiate whether the conviction is for self-laundering or third-party laundering.

However, an increase in the number of prosecutions and convictions for money laundering does not necessarily indicate more effective anti-money laundering policies, since the increase could also be caused simply by an increase in money laundering. Even comparing this statistic with the number of STRs to measure the effectiveness of the investigation and prosecution stages might be problematic, for several reasons. Firstly, many reports sent to the FIU could eventually result in only one conviction, and the opposite could also be possible. Secondly, the investigation and prosecution process of a money laundering case could be extremely time-consuming, especially when international cooperation is required, so that reports sent to the FIU in one year could be used to convict money launderers in some later year. Thirdly, a report in one country might lead to a conviction in a different country. Fourthly, convictions can also be the result of regular police work and therefore not originate from the reporting system at all.

However, such statistics do exist, and the study examined the differences between Member States. Why are there so many convictions in the UK, Denmark and the Netherlands and why is the number of convictions in Lithuania and Slovenia so low? **The report finds that the absolute number of convictions for money laundering is positively significantly related to the amount of threat, the corruption index of the World Bank, the number of reports sent to the FIU and the number of prosecutions for money laundering.** The fact that the number of convictions is related to the amount of threat could suggest that it is driven more by the underlying unknown amount of money laundering in the Member States than by the effectiveness of the AML system itself.

The relation between money laundering and corruption has been debated in the literature. **This study finds a positive relation between convictions for money laundering and governance performance against corruption.** Hence, in Member States where corruption is better under control, there are more convictions for money laundering.

Since output statistics of anti-money laundering policy have the problem that an increase in the statistic can originate from an increase in the amount of money laundering or from an improved policy response, it is perhaps better to use input statistics as an indicator for the amount of effort made by Member States to fight money laundering. **This study concludes that the best available input-statistic is the number of personnel in the FIU.** All Member States are able to provide such a statistic, and, on the basis of Member States that can also provide budget data, staff numbers are found also to be a good indicator of budget. **When expressed as numbers of FIU personnel per million inhabitants and FIU costs per population per year, these statistics indicate that FIUs have significant economies of scale, which means that the more inhabitants a country has, the lower the costs per inhabitant are. In this sense, having an FIU is relatively costly for the smaller countries.**

**These data form the basis for a cluster analysis, which shows that in terms of AML policy the 27 EU Member States consist of four groups which have their own distinct characteristics.** This study identifies a group of Member States (AT, DE, DK, FI, IE, SE) that experience or experienced international pressure due to the fact that the international standards did not fit well into their legal system, a group of Member States (BE, EL, ES, FR, IT, PT, UK) in which domestic cooperation might be difficult, a group of relatively small Member States with large transiting financial flows (CY, LU, NL), and a large group with mostly Eastern European Member States that are relatively recent members of the EU.

### ***Threat and corresponding policy responses***

In terms of policy response this study finds that the AML policy response of the Member States can best be analysed next to the actual money laundering threat that each country faces. Knowing what the threat of money laundering is, can call for more or less policy action. It is therefore not surprising that countries with high compliance indicators – like the UK – nevertheless have to continue to improve given their high levels of threat.

The complex nature of the AML policy, however, makes it hard to compose a single policy response variable. For this reason several policy response indicators have been plotted against two measures of money laundering threat:

- money laundering threat expressed in millions of Euro
- money laundering threat expressed as % of national GDP

The policy indicators chosen represent AML policy response and have a logical hierarchy and are furthermore selected based on data availability and cross-country comparability. They are:

- FATF compliance index
- Legal effectiveness score
- Timeliness of implementation
- FIU response score
- Information flow score
- The number of convictions
- International cooperation score

One of the critiques on the FATF mutual evaluations is that they do not take into account to what extent a country is threatened by money laundering. **Our approach shows that most EU Member States are generally on the safe side with an over proportional policy response to threat. None of the Member States is consistently at risk with an under proportional policy.** Although the EU Member States perform relatively well in our analysis, almost all of them can improve on certain indicators. The positive exception here is Denmark that is criticised by the FATF for not criminalising self-laundering, but has – in our analysis – not only relatively low levels of threat, but also relatively good scores for all our policy response indicators.

### ***Cost-benefit analysis***

The costs of AML/CTF policy for a country can include:

- Ongoing policy making costs

- Sanction costs (repressive)
- Costs of FIU
- Costs of Supervision
- Costs for law enforcement agencies and judiciary
- Duties of the private sector
- Reduction in privacy
- Efficiency costs for society and the financial system

The benefits of AML/CTF policy can include:

- Fines (preventive and repressive)
- Confiscated proceeds
- Reduction in the amount of money laundering
- Less predicate crimes
- Reduced damage effect on real economy
- Less risk for the financial sector

**The lack of hard data - even on the costs - makes any country-by-country cost-benefit analysis impossible.** The costs for institutions that are part of the fight against money laundering and terrorist financing are often hard to separate for AML/CTF policy only, since these activities form only part of their workload - the FIU being an exception. In spite of often-repeated claims of the costs burden faced by the private sector, few real statistics are ever provided to support the claims. Measures of the costs imposed by reduction of privacy or inefficient operation of society and the financial system are not available. Even more problematic are estimates of the benefits, since these, too, are more often than not subsumed into more general data or impossible to estimate. This lack of data results in quite sensitive estimations.

By using the estimates that are available, and correcting these estimates for the price level and size of the countries, we were able to estimate almost all cost components and some benefits for each EU Member State. The duties of the private sector are the biggest cost component of AML/CTF policy, followed by the supervision of these obliged entities. **This study estimates that the total costs of the 27 EU Member States are about 2 billion Euros, together with an immeasurable reduction in privacy and some inefficiency in the operation of society.** Since most of the benefits of AML/CTF policy are hard or impossible to estimate, the cost benefit dilemma is basically reduced to the question: Does the EU want to spent about 2 billion Euros to obtain potential benefits, which include an unquantifiable reduction in money laundering, less crime in general, a reduced damage effect on the real economy and less risk for the financial sector? To answer with the words of Whitehouse: “it would be a brave person who steps up to say that it is too high a price to pay for countering terrorism and serious crime.”

### ***Conclusions and policy recommendations***

On the basis of the foregoing findings, the ECOLEF study draws conclusions and makes a number of recommendations.

Member States that are the most threatened by money laundering, and which therefore should have the greatest concern in combating it, are, according to our findings, the **Western and highly developed countries** with high GDP per capita and well developed financial markets, like the UK, Luxembourg and the Netherlands. Cash intense economies,

Southern and some of the Eastern Member States, also face a threat of laundering though less in volume. The main bulk of money laundering in million Euros was identified in the financial and commercial centres of Europe. They **have to make more policy effort to combat laundering** than Eastern and Southern EU countries. The **difference between big financial centres and cash intense economies** implies that the **strategies of how to combat laundering will have to differ** between these two groups. For cash intense economies the reduction of cash payment possibilities seems the most obvious cure.

**For measuring the effectiveness of anti-money laundering policy one has to take into account both the laundering threat a country faces and its policy response.** We find that the **effectiveness of an AML/CTF regime** is multifaceted and is deeply **rooted in the national institutions of the Member States**: their legal system, their administrative system, and their specific way of internal and external communication and information flows. Member States' policy effectiveness varies, depending on which criteria one takes. They all have strengths and weaknesses, and there is no one best and no one worst country. **To put the same criteria on all countries, as the FATF does, tends to underestimate or to misperceive their AML/CTF policy performance.** The European model, as opposed to the US model, was **always based on more variety and difference among institutions.**

With respect to AML/CTF policy, we found **four groups of Member States which share among themselves similar legal or institutional characteristics for anti-money laundering policy.** **The first group of Member States** (Austria, Denmark, Finland, Germany, Ireland and Sweden), are countries that have on average a significantly higher government effectiveness, low corruption, and more prosecutions of laundering in percent of GDP. They almost all have a law enforcement type of FIU, and a very narrowly interpreted money laundering definition. This group of quite rich EU Member States all experience or experienced pressure from the FATF for not having self-laundering criminalised. **Their legal and institutional system does not match with the international standards of FATF AML/CTF policy. One can therefore expect either resistance to the practice of the anti-money laundering law or quite significant follow-up changes in the legal system of these Member States.**

**The second group of Member States** (Belgium, France, Greece, Italy, Portugal, Spain and the UK) have on average a significantly higher GDP and significantly more FIU staff. They almost all have an administrative FIU. Three founding members (Belgium, France and Italy) are among them and there are no newcomers since the Maastricht Treaty in 1992. So, this is also a relatively established group of Member States within the EU. **Domestic cooperation might be more difficult** in this group than in the former, due to the large size of countries (France, Italy, Spain), or to regional differences and to social, religious or economic cleavages (Belgium, Spain, Italy and the UK). So, here anti-money laundering policy might face more internal problems than external problems.

**The third group of Member States** consists of Cyprus, Luxembourg and the Netherlands. They share the fact that they are **small countries with large amounts of criminal money flowing through.** They are usually not affected by the underlying crime, but only have to deal with the proceeds of crime. Their money laundering problem is, hence, not a domestically caused one. Their major concern is to maintain **good international reputation** and to avoid criticism from abroad in order to avoid sanctions.

**The fourth group of Member States** (Bulgaria, Hungary, Romania, Czech Republic, Malta, Poland, Slovakia, Slovenia, Latvia, Estonia, and Lithuania), are all **newcomers to the EU.** They have a lower GDP, most of them face less threat of laundering, have a lower GDP per capita

and face more corruption problems than the other groups. Their government effectiveness indicator also is significantly lower. They have to introduce all sorts of new EU laws, they have to build up institutions, adjust their country to EU norms, and therefore might not consider money laundering combat their first policy priority. **The EU should initiate and financially support more training and meetings of members and diverse actors of this group with other groups in order to facilitate information exchange and policy learning.**

In order to reach true compliance of Member States it seems important to take into account the differences between these four country groups of European AML/CTF policy. **Pressures from abroad, as in the first group, pressures from within the countries, as in the second group, pressures from large proceeds of crime for small Member States, as in the third group, and being a newcomer to the EU, as in the fourth group, might necessitate different policy measures and different ways of the evaluation of progress.**

While FATF Reports on the most important predicate crimes list basically all predicate crimes for all countries, in practice we found different perceptions among Member States as to what anti-money laundering policy stood for. Some countries perceived anti-money laundering policy as anti drug policy, others saw it as a fight against tax evasion and others as a fight against corruption. **The perception of whether the ultimate goal of anti-money laundering policy is to catch drug money, tax evasion money or corruption money clearly also means that policies to reach these goals will (and have to) differ. There remain large differences in what is understood by money laundering in practice.** Even when legal texts are harmonised, law in practice differs between the Member States. Different interpretations of what concealment means, different interpretations of the level of knowledge required, the evidence needed for prosecuting money laundering, the acceptance of the reversal of the burden of proof, all showed us that law in practice still varies. **We found fewer differences in defining and interpreting terrorist financing. Interpretations of money laundering and terrorist financing also can vary along the anti-money laundering chain within the same country.**

The Third EU Directive, whose implementation we studied, was perceived as generally well-prepared and harmonious by the member States, and **can be considered a successful legal norm for anti-money laundering and combating terrorist financing policy.** The **substantive norms** of the Third EU Directive, meaning the obligations of customer due diligence, reporting, record keeping and internal policy **are to a large extent harmonised** in Europe. **However the procedural norms still differ a lot between the Member States.** The Directive only requires that obliged institutions and professionals are subject to adequate regulation and supervision and provides some very minimum requirements. With this, the Directive follows the European principle of national procedural autonomy. Nevertheless, for combating international crime effectively, there can be a trade-off between the need for harmonisation of procedures in order to close loopholes for launderers and the need for maintaining national autonomy. **The EU has to find the right balance here between accepting variety and harmonisation.** From the legal effectiveness point of view, a general point of criticism concerned the conflicting standards between FATF Recommendations and EU norms. Conflicting standards are clearly bad for legal security of countries and citizens, particularly when the FATF criticism and its impact on the reputation of a country can be very costly, since blacklisting can mean serious economic sanctions. **Conflicting standards should either be removed or accepted by both the FATF and the EU.**

Money laundering combat needs the cooperation and compliance of many parties. **The major hindrance in international cooperation is time delays.** A further hindrance identified

concerned conflicting **data protection systems** which do not allow the exchange of information. In addition, some of the international data exchange systems are too costly, especially for small new Member States. The way in which FIU.NET is technically established, is a promising way of **facilitating data exchange and at the same time allowing the users to keep control over access to their information**. **Language still is a great barrier to international cooperation** especially for new Member States. Translation of legal texts and information requirements from other countries can cause delays in international cooperation and are costly.

Fighting money laundering and terrorist financing depends on the acceptance and compliance of governments, ministries, FIUs, the police, public prosecutors, judges, reporting entities like banks, dealers in high value goods, notaries, accountants, lawyers and other groups of the private sector. **To convince all these groups about the necessity and importance of anti-money laundering policy will certainly take time. Good communication, sharing information and feedback** to other entities are essential to reach true compliance. We found that the nature of feedback plays an important role. **Individual feedback** from the FIU is necessary to help reporting entities improving their reporting systems. Individual feedback from the Public Prosecutor to help FIUs to filter out relevant transaction reports as suspicious ones is also important to improve effectiveness. For this it is important to **produce reliable comparative statistics**. Reliable statistics on convictions of launderers, and on confiscated proceeds, will help to demonstrate the success of anti-money laundering policy.

Reliable statistics however need true compliance of Member States, which, for European Member States, is best achieved by a carrot rather than a stick policy approach. Blacklisting as the FATF does it, is a typical stick approach. And more so, this stick is given by an international organisation which is not democratically legitimated and which cannot be sanctioned. The style and way in which anti-money laundering policy is introduced in Europe does not fit the European way of doing politics.

It seems, therefore, important from the very beginning to **avoid the number game** and compliance in the books and to aim at true compliance. **We recommend the collection of both input and output statistics, but to first concentrate on comparing input statistics, including** how much money was invested into the AML/CTF policy, the number of staff employed in this policy field, and the budget for FIUs and law enforcement. **For comparing output statistics, some standardised ways of how to count and collect statistics on reporting and on convictions have to be first developed.** With regard to the AML/CTF policy, the **EU should become a global player**, taking a lead in setting international standards in AML/CTF policy, as it does successfully with environmental policy and food regulation. One way of taking such a lead would be to defend European interests against the FATF, for example with regard to equivalence of EU Member States. The EU could also develop best practice models, a **WHITE LIST** showing Member States' strengths in anti-money laundering policy for creating voluntary and true compliance. Focussing on best practices rather than on failure would help to give the AML/CTF policy more acceptance among the actors and in the Member States.

We are convinced that true compliance for fighting laundering can be reached in Europe with a carrot and not with a stick approach. Harmonising AML/CTF policy in a Europe with diverse institutions will, and should, take time. The right balance between harmonisation and the acceptance of variety seems crucial for fighting international crime and reaching true compliance of the majority of involved actors.

## Chapter 1 INTRODUCTION

The ECOLEF project on the Legal and Economic Effectiveness of Anti-Money Laundering and Combating Terrorist Financing Policy in the 27 EU Member States, commissioned by the EU DG Home Affairs has taken from December 2009 until December 2012. An interdisciplinary team of administrative and criminal law experts, economists, criminologists and specialists in finance mostly located at Utrecht University, the Netherlands, guaranteed both diversity of disciplines and a homogenous group of researchers to compare the countries.

Member States differ in the degree to which they are threatened by money laundering - some with big financial centres like the UK or the Netherlands are gateways for laundering money, whereas others, like the Southern Member States have a large cash economy but are less vulnerable to laundering.

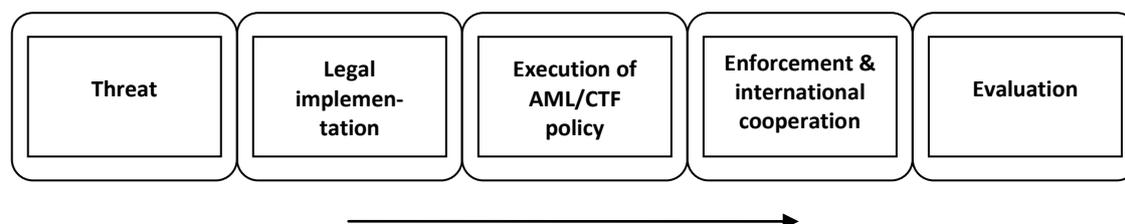
Member States also differ in the way in which they respond to this threat. Policy responses to laundering activities and terrorist financing can range from the implementation of the Third Directive and the criminalisation of money laundering and terrorist financing to the enforcement of the preventive policy and prosecution and ultimately the conviction of money launderers and terrorist financiers.

Our study comprises five steps of anti-money laundering policy starting with the threat of laundering up to the conviction of money launderers and the cost-benefit analysis of the entire policy.

**Figure 1.1: Building blocks of the ECOLEF Study**

**Threat Analysis**

**Cost-Benefit Analysis**



Many hindrances can appear in the long process between drafting the law and finally convicting launderers, potentially affecting the effectiveness of anti-money laundering policy.

Questions relevant for the legal effectiveness study are the following: How well does the EU Directive fit into the national legal system? Which authority in the Member state is responsible for implementing the Third Directive? (*See: Implementation*) How and where is money laundering defined? What is the scope of predicate offences? (*See: Criminalisation*) Which customer due diligence measures are in place? How are the FIUs working? Which reporting obligations exist? (*See: Execution of preventive measures*) Which supervisors exist? What are their supervising and sanctioning powers? (*See: Supervision*). What is the number of suspicious (or unusual) transaction (or activity) reports? What is the number of prosecutions and convictions? (*See: Repressive enforcement*) How well does international cooperation work? Is money laundering an extraditable offence in the country? What are

the possibilities of information exchange, how often is it used, how well does it work? What is the role of feedback in order to reach compliance of law enforcement, the FIUs and the private sector? (*See: International cooperation*)

In order to be able to identify best practices among Member States' policies in combating money laundering and terrorist financing, the ECOLEF team has gathered information as to how, from a legal, economic and practical perspective, this anti-money laundering and combating terrorist financing policy works in each Member State.

The ECOLEF team has prepared a working document consisting of 201 questions to be answered for each Member State, covering the whole anti-money laundering policy process from facing a laundering threat and drafting laws against money laundering and terrorism financing, to the conviction of money launderers and terrorist financiers. In line with this, the project includes a threat analysis (Chapter 2), a study on the implementation of AML/CTF policy (Chapters 3-5), the execution of this policy (Chapters 7 and 8) and its administrative and repressive enforcement (Chapters 6 and 9), including issues of international cooperation (Chapter 10). In addition, we attempted to improve the statistics on anti-money laundering policy as initiated by EUROSTAT (Chapter 11) and in chapter 12 we measure the effectiveness of anti-money laundering and combating terrorism financing policy in the 27 EU Member States. Initial calculations of costs and benefits of anti-money laundering policy are done in chapter 13. We draw all these together in a concluding chapter (Chapter 14).

As a first step, we studied publicly available information from, inter alia, the FATF and MONEYVAL Mutual Evaluation Reports, from the Annual Reports of FIUs and from national legislation. This desk study was used to identify missing information which could only be obtained from the Member States themselves. Those questions that could not be answered by publicly available information have been put into online surveys that were directed to relevant actors in combating of money laundering and terrorist financing at the national level. For this purpose, we have created and circulated five online surveys, one for each type of institution important for AML/CTF policy: Ministry, FIU, Public Prosecutor, Supervisor and Obligated Entities.<sup>2</sup> For further clarification we have also travelled to the Member States and have conducted over a hundred, mostly face-to-face, interviews with officials in these key agencies.<sup>3</sup>

After having done desk studies, online surveys and face-to-face interviews in the countries, we organised four Regional workshops. We have chosen, as far as possible, to focus on Regional groupings of Member States, since available evidence shows that most AML/CTF interaction - and indeed most money laundering - takes place between neighbouring countries. The first and third Regional workshop were held in Vienna in December 2010 and in December 2011, and were organised by our project partner, the Wirtschaftsuniversität Wien. The second workshop was held in Tallinn in May 2011 and the fourth workshop was held in Utrecht in May 2012. We invited FIU, Ministry and Public Prosecution Office (PPO) representatives from all EU Member States. The final dissemination conference took place in conference centre De Bazel, Amsterdam, in December 2012. Member states were given the opportunity to comment on our draft findings. We hope to have included all comments into this final report.

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<sup>2</sup> See Annex 1.1.

<sup>3</sup> See Annex 1.2.

**Figure 1.2: Member States' Participation at the Four Regional ECOLEF Workshops**

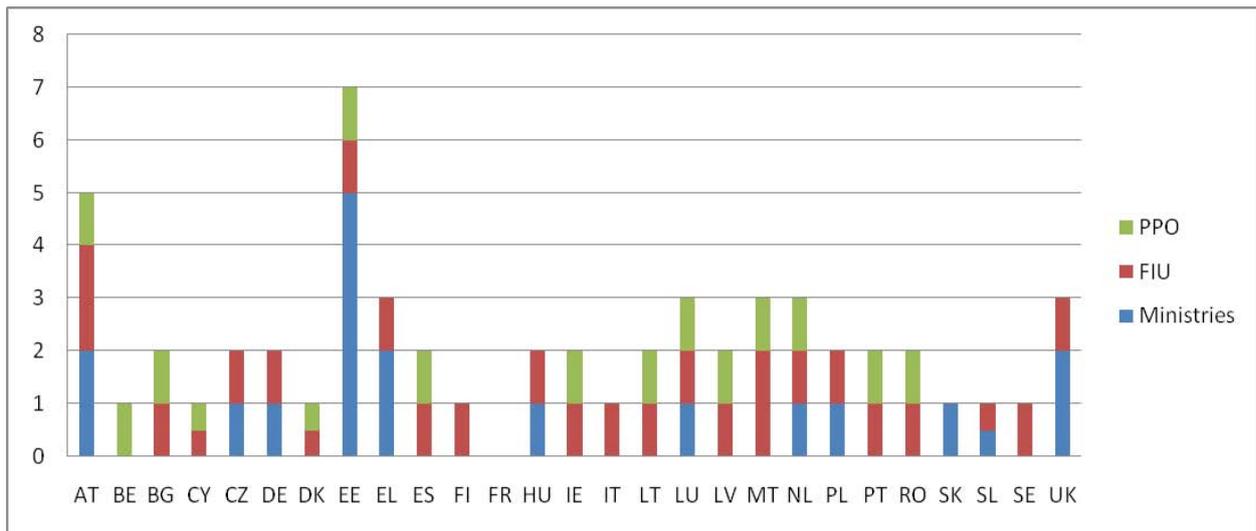
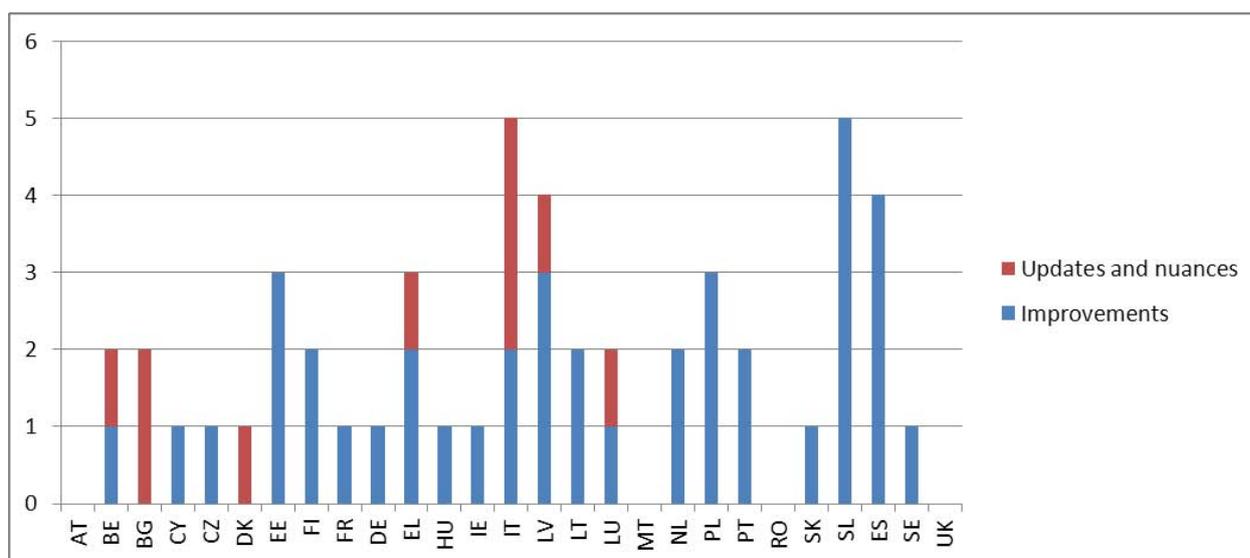


Figure 1.2 shows the participation of Member States in our Regional workshops. With the exception of France, all Member States participated in our Regional workshop. All FIUs, except those from France, Belgium and Slovakia participated. Some Member States, like Estonia and Austria, Luxembourg and the Netherlands participated with all authorities from the anti-money laundering policy chain. Ministries, FIUs and public prosecutors could compare the policy process in their own countries as compared to other countries. This was done in case studies during the workshops. Most Member States sent representatives for at least two of the three authorities invited.

Parallel to our project, two related and very relevant studies have taken place or are ongoing. The first was the Deloitte study on the Application of the Anti-Money Laundering Directive, which covered some of our implementation questions. It was commissioned by the European Commission, DG Internal Market and Services. We have made extensive use of this study, finding that not all results in the Deloitte study are supported, complete or agreed upon by the Member States. For this reason and to avoid repetition with the Deloitte study, we decided to take the Deloitte study as a starting point for parts of the ECOLEF research and to focus on improving, completing, updating and giving nuances to this study. We used the Regional workshops to discuss the country-specific findings of the Deloitte study with the country representatives.<sup>4</sup> The following figure shows for which Member States such improvements and updates have been made.

<sup>4</sup> See Chapter 4.

**Figure 1.3: Improvements, updates and nuances to the Deloitte study**



The second parallel on-going study is a threat analysis done by the IMF. We have invited the IMF to compare and discuss our approaches. What distinguishes our threat assessment is that we explicitly differentiate between threats that are exogenously generated, beyond the control of the country's AML/CTF system, and threats that arise from inadequacies in a country's AML/CTF response. We, therefore, aim at developing a framework which distinguishes between these two parts analytically. The first can be characterised as 'vulnerabilities', and the other inadequacies in policy response, for assessing the extent to which countries are threatened by laundering activities. Vulnerabilities are situational variables, such as the degree of openness or the size of the financial markets, policy response includes problems like loopholes in the law, defects in the reporting system etc. While vulnerabilities are more or less given for a country and cannot be changed easily, policy response consists of policy instruments which can be used and changed in order to combat money laundering and terrorist financing activities.

The variables we use for measuring legal and economic effectiveness are partly collected from the existing literature and partly from the surveys. Our effectiveness study, aside from the FATF evaluations, comprises of a large number of further variables. It thus expands the FATF evaluations and tries to include more variables for law in practice. A factor analysis was done in order to finally rank countries with regard to threat-policy response effectiveness.

For the qualitative legal assessment, the scope will be the good governance perspective, especially the legal effectiveness principle in national, European and international law. This is in line with Addink (2005, 2010), who developed this notion as a parameter for public administration. More details on how we do the legal effectiveness study can be found in Chapter 3.

Some restrictions we faced concern the availability of data. In the several parts of our study we criticise the lack of quality of data and the fact that they are not comparable across countries (e.g. the number of reports). We nevertheless use these data in the empirical part, though we are aware of the fragile database. We, however, make some suggestions for data improvement and managed to improve some of the EUROSTAT Statistics on Anti-Money

Laundering Policy.<sup>5</sup> We also did not deal with matters of asset confiscation, an important part of fighting financial crime, since data collection is being done by the Asset Recovery Organisation Working Group of the EU DG Home. A last restriction is that the last part of the anti-money laundering policy chain, namely judges and the Courts could not be studied. The link between public prosecution and judges would be worth studying in a separate study, since even if the whole anti-money laundering policy chain would fit perfectly and finally reach a judge who does not convict, all the efforts would be deprived of success.

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<sup>5</sup>EUROSTAT (2010), *Money Laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs*, Luxembourg: Publications Office of the European Union.

## Chapter 2 THREAT OF MONEY LAUNDERING

### 2.1 Introduction

According to a recent IMF research report<sup>6</sup>, the “Threat” posed by money laundering “represents the demand for ... money laundering or terrorist financing services”. For this project, we have chosen to interpret this as the amount of money that **could, or might**, be laundered in a country, if there were no barriers to laundering, and no “more attractive” place for the launderer to launder the money.

There are two components to the threat of money laundering in a specific country:

- The proportion of proceeds of crime committed in that country that MIGHT BE laundered, which depends on:
  - Levels and profitability of crime in that country, and
  - That country’s vulnerability to attempts to launder money, including its financial capabilities.
- Proceeds of crime committed in other countries that MIGHT BE laundered in that country, which depends on:
  - Levels and profitability of crime in OTHER countries, and
  - That country’s vulnerability to attempts to launder money, including its GDP per capita, corruption level, financial capabilities, trading, cultural or linguistic links, relative to the other countries.

Table 2.1 provides an assessment of the most prevalent crime types generating launderable proceeds in the twenty seven EU countries, compiled from the comments of workshop participants and confirmed by desk research<sup>7</sup>:

**Table 2.1: Most prevalent crime types generating launderable proceeds**

EU Member State	Crime types most commonly associated with money laundering
<b>Austria*</b>	Theft, drug trafficking and fraud are the main predicate crimes in Austria according to the statistics of convictions and investigations. Authorities also identify human being trafficking, burglaries and smuggling. Austria is considered by EUROPOL as one of the four main destination countries for human being trafficking in the EU.
<b>Belgium**</b>	62,74% of the 671 million euro that were forwarded by the FIU in 2011 came from Misuse of corporate assets, Illegal trade in goods, Serious and organised fiscal fraud, and Bankruptcy fraud. Workshop participants indicated corruption-related flows from central Africa may be significant.
<b>Bulgaria*</b>	Drugs, fraud & financial crime, customs & tax crimes, smuggling goods, illegal immigration & human trafficking.
<b>Cyprus*</b>	Fraud, burglary, theft, drugs (mostly domestic crime).
<b>Czech Republic</b>	Insurance, tax and credit fraud
<b>Denmark</b>	Drug trafficking; economic crimes, particularly VAT and investment frauds; smuggling of goods; intellectual property theft. (Outlaw motorcycle gangs).
<b>Estonia</b>	Internet fraud (phishing, hacking), tax fraud and drug offences. 90% of fraud is via internet; “Grey money” flow from Russia; Alcohol and/or tobacco products, larceny of forest, computer-related fraud, theft, accepting gratuities, bribes; In many cases, predicate offences committed

<sup>6</sup> Dawe, S. and Fleming, M.H. (2009), Apply Risk Management to Anti-Money Laundering at the national and supra-national level, International Monetary Fund, 2009.

<sup>7</sup> Including, for example, Europol’s EU Organised Crime Threat Assessments (annual – most recently, 2011).

	abroad or the victims are abroad (especially concerning Internet fraud cases).
<b>Finland</b>	Organised crime with drug trafficking and manufacturing and prostitution (related to human trafficking – from neighbouring countries). Tax fraud. Criminal groups are reorganised and well established (Finnish citizens).
<b>France*</b>	In terms of the number of convictions, fraud and drug trafficking are the most common predicate • offences
<b>Germany*</b>	Financial Intelligence Unit (FIU) data suggest fraud (including computer fraud and investment fraud) were the predicate offences to ML most frequently recorded by the police (43% of all STRs in 2007). Other predicate offences included, for example, offences relating to the falsification of documents, tax offences, breach of fiduciary duty, drug offences, insolvency offences, illegal employment, theft and smuggling of illegal immigrants (in that order)
<b>Greece*</b>	Illegal prostitution, drugs, cigarette smuggling (€1.6billion in 2000). Corruption and tax crimes. Illegal immigration (mainly from Asia), Counterfeit products.
<b>Ireland*</b>	Narcotics offences provide a substantial source of the proceeds of crime in Ireland; considerable illegal proceeds are also derived from fraud-related offences, tax evasion, the evading of excise duties (taking advantage of price differentials from higher rates of excise duty in Northern Ireland) and criminal activity associated with terrorism. Ireland is a gateway for drugs into Europe.
<b>Italy*</b>	Extortion loan sharking, drugs, cigarette smuggling. Tax evasion, corruption and human trafficking (from Africa).
<b>Hungary*</b>	Illicit narcotics-trafficking, prostitution, trafficking in persons, fraud and organised crime. Other prevalent economic and financial crimes include official corruption, tax evasion, real estate fraud, and identity theft.
<b>Latvia</b>	Tax evasion/fraud; financial fraud; smuggling; public corruption. Russian organised crime is active in Latvia. Note – “phishing” frauds (mainly committed in Germany).
<b>Lithuania</b>	Drug trafficking Note - Lithuania is a transit country; drugs trafficked from Poland via Lithuania to Scandinavia or Russia and vice-versa; smuggling; counterfeit money and securities; trafficking in human beings; car theft; extortion of property, crimes related to VAT (fraud, VAT embezzlement - millions of Litas – mostly with large supply of goods (timber, oil products, metals), but also services).
<b>Luxembourg*</b>	Fraud and drug offences. 80 per cent of cases predicate offences take place outside Luxembourg.
<b>Malta*</b>	Fraud & drug trafficking, illegal immigration & human trafficking. The provision of unlicensed financial services (e.g. loan sharks).
<b>Netherlands*</b>	Estimates indicate that substantial proceeds of crime are generated in the country, mostly stemming from fraud (including tax fraud) and illicit narcotics. Presently the proceeds of domestic crime are estimated at approximately USD14 billion, or 1.8 percent of the GDP. In addition, work done by academics suggests a significant amount of criminal proceeds originating from foreign countries flows into The Netherlands for laundering.
<b>Poland*</b>	The majority of predicate offences are considered to be economic crimes of various kinds (tax fraud, credit fraud, business fraud), customs smuggling, drug trafficking and corruption.
<b>Portugal*</b>	Drugs (transit country), corruption, art & cultural artefacts, extortion, frauds, tax offences, illegal immigration. Cyber crime is now also a major concern; especially phishing. Proceeds of crime often go to China.
<b>Romania*</b>	Drugs, fraud & financial crime, customs & tax crimes, smuggling goods, illegal immigration & human trafficking .
<b>Slovakia*</b>	Trafficking in mineral oils (Ukraine border), VAT frauds, illegal immigration, cigarette smuggling, car theft, drugs, tax crimes.
<b>Slovenia*</b>	Groups from the neighbouring counties (Croatia and Italy) are thought to be involved in predicate criminal offences of abuse of position or trust in business activity and tax fraud, and groups from Hungary, Romania, Bulgaria and Russia are thought to be involved in predicate criminal offences of abuse of position and trust in business activity, fraud and theft.
<b>Spain*</b>	Frauds, tax offences, drugs, terrorism. Corruption should also be mentioned. The predicate crimes are especially drugs trafficking and property crimes. Phishing is a concern also.
<b>Sweden</b>	Drugs, smuggling alcohol/tobacco, theft, frauds, document forgery, receiving proceeds of crime, human trafficking, firearms, bribery, dishonesty to creditors, Companies Act, tax and VAT evasions. Criminal control of building sector. Note - 1998 FATF estimation for Sweden: drug-related money laundering 300 million EUR per year. Tax fraud nearly 1.15 billion (income tax, VAT, total tax).
<b>United Kingdom*</b>	It is estimated that the total quantified organised crime market in the UK is worth about £15 billion per year as follows: drugs (50%); excise fraud (25%); fraud (12%); counterfeiting (7%); organised immigration crime (6%). . Human trafficking is beginning to be more detected

\* Based on Moneyval and other mutual evaluation reports, augmented where necessary by workshop participants' advice. The other countries are based entirely on workshop participants' advice.

\*\* CTIF Activiteitenverslag, 2011

Published data are available that can be used to estimate the annual proceeds of crime in countries around the world for many, but by no means all, types of crime. However, fraud and illicit drug trafficking are regarded as by far the two greatest generators of criminal profits. For this exercise, we have identified the following crime types, and have found estimates for most countries around the world<sup>8</sup>:

- Trafficking in human beings and migrant smuggling
- Illicit trafficking in narcotic drugs and psychotropic substances (including Heroin and Cocaine)
- Illicit arms trafficking
- Environmental Crimes (incl. illegal logging, fishing, dumping, trafficking in flora, fauna)
- Occupational Fraud
- Motor Vehicle Theft
- Robbery & Extortion (incl. piracy, protection rackets etc.)
- Homicide & Threats to Kill (incl. kidnapping for ransom)
- Counterfeit Medicines
- Alcohol & Tobacco Smuggling

Chapter 2 of the "Globalisation of Crime" report<sup>9</sup> provides evidence of US\$3 billion of trafficking in persons to western Europe for sexual exploitation, and US\$6.6 billion of trafficking in illegal migrants from Latin America to north America. This total of US\$9.6 billion in proceeds of crime mostly accrues to the organised crime groups in eastern Europe and Mexico, and these groups launder a proportion of the proceeds in countries that provide attractive destinations for the money.

In the area of illicit drug trafficking, the UNODC has compiled a comprehensive database, with annual time-series data covering almost all countries, a range of key drug types, and an extensive list of data items. From these data, estimates can be derived of the extent of crime in each country, and the profits generated by those crimes. These data provide sufficient information to estimate the supply, demand, price levels, and therefore profits made, in each country<sup>10</sup>.

Chapter 6 of the "Globalisation of Crime" report provides evidence of US\$55 million of Illicit arms trafficking, across the USA-Mexico border and from eastern Europe to conflict zones around the world.

Chapter 7 of the "Globalisation of Crime" report provides evidence of almost US\$4 billion of environmental crimes (incl. US\$75 million in illegal wildlife trades and US\$3.5 billion in illegally harvested timber).

The estimated extent of occupational fraud has been documented by the Association of Certified Fraud Examiners, with an annual global estimate of US\$2.9 trillion, of which the

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<sup>8</sup> Where data are missing for individual countries, we have generated estimates based on equivalent data from similar countries, or on regional averages.

<sup>9</sup> UNODC, 2010, The Globalisation of Crime.

<sup>10</sup> See, for example UNODC (2005), World Drug Report 2005, Vol. 1, Ch. 2., Estimating the Value of Illicit Drug Markets.

category of “financial statement fraud” accounted for only 6.4% of cases but the great majority of the losses, causing a median loss of over €16 million per case in Europe.<sup>11</sup>

Reasonably reliable data on numbers of motor vehicle theft, robbery/extortion (incl. piracy, protection rackets etc.) and homicide/threats to kill (incl. kidnapping for ransom), are available for all European countries via Eurostat, and for many other countries around the world via the UNODC’s Surveys of Crime and Justice.<sup>12</sup> In order to calculate the proceeds from these crimes, we have used Walker’s (2007) estimates of the average amounts laundered per recorded crime.

Pharmaceutical Security Institute data<sup>13</sup> suggest that US\$75 billion of counterfeit medicines were sold around the world in 2009, of which Asian and Latin American countries were most frequently involved. The proceeds of crime mostly accrues to the organised crime groups in those countries, who launder a proportion of it in countries that provide attractive destinations for the money.

Estimates of the annual value of tobacco (US\$29 billion worldwide) and alcohol (US\$3.2 billion worldwide) smuggling – much of it occurring in Europe – have been assembled from a variety of public sources and presented on the HavocScope website<sup>14</sup>. If 60% of this money is available for laundering, this suggests a global total of around US\$20 billion.

Estimates of the global extent of computer software piracy are published by the Business Software Alliance<sup>15</sup>, whose 2010 report suggests that as much as US\$58.8 billion of commercial software was pirated in that year – much of it in the less wealthy countries around the world. The proportion of this that enters the financial systems for laundering is probably quite low, as (the BSA Report suggests) much software is pirated for personal use, for example, by buying a single copy of the software but installing it on multiple machines. In addition, the prices paid for pirated copies will generally be lower than the market value of the genuine software, so the income generated by the crimes falls well short of the software’s face value. On the other hand, the actual costs of copying a software disk are very small, so for those who mass-produce pirated software, the profits are very high. A reasonable set of assumptions may be that the gross proceeds of these crimes amount to half of the face value of the pirated software, and that 40% of the proceeds are laundered, giving a global amount of launderable money of US\$11.7 billion.

Table 2.2 shows estimates of the percentage laundered for a wide range of offence types, based on Australian and Dutch research. For some crime types, there is more than one estimate, and these are frequently quite different, reflecting the uncertainty and lack of hard evidence in this area, as well as probable differences in definitions understood by the respondents. Nevertheless, it shows that the extent to which the proceeds of crime are believed to be laundered varies very widely by crime type, and that the more common crime types, such as burglary and theft which generate only relatively small amounts of money per crime, do not lead to large money laundering amounts. By contrast, offences that generate

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<sup>11</sup> Association of Certified Fraud Examiners, 2010, Report to the Nations on Occupational Fraud and Abuse.

<sup>12</sup> Sources: European countries – Eurostat (2009), other countries – UNODC UN Tenth Survey of Crime and Justice (2003, 2004 data).

<sup>13</sup> Available at: <http://www.psi-inc.org/geographicDistributions.cfm>

<sup>14</sup> Available at : <http://www.havocscope.com/black-market/financial-crime/cigarette-smuggling/>,

<sup>15</sup> Available at: [http://portal.bsa.org/globalpiracy2010/downloads/study\\_pdf/2010\\_BSA\\_Piracy\\_Study-Standard.pdf](http://portal.bsa.org/globalpiracy2010/downloads/study_pdf/2010_BSA_Piracy_Study-Standard.pdf).

proceeds in large amounts per crime, such as major frauds and drug trafficking, are believed to lead to high levels of laundering.

A high percentage of the proceeds of crime is indicated (highlighted in bold type) mostly in those types of crime which are often associated with transnational organised groups – the trafficking or manufacturing of illicit drugs or arms, large-scale frauds, illegal prostitution, counterfeiting (illegal copying) or the trafficking of people. Applying the most commonly accepted estimates of the proportion of proceeds that would be laundered, to the available estimates of the proceeds of crime in EU countries and the rest of the world, gives estimates of the total amounts of money being available for laundering per year around the world. The total of these crime types is over three trillion US Dollars.

**Table 2.2: Estimates of % of Proceeds Laundered, by Crime Type<sup>16</sup>**

<b>Crime Type</b>	<b>% Laundered (Source)</b>
<b>Drug Crime (generally)</b>	<b>83 (**)</b>
<b>Drugs (Heroin, Cocaine, XTC, Cannabis)</b>	<b>80 (***)</b>
<b>Drug Manufacturing</b>	<b>75-90 (**)</b>
<b>Drug Trafficking</b>	<b>75 (**)</b>
Dealing/Trafficking in Drugs	20-30 (*)
Importing/Exporting /Manufacturing/Growing Drugs	15-25 (*)
<b>Fraud (generally)</b>	<b>80 (**), 64,5 (**)</b>
<b>Stock/Equity Market Fraud</b>	<b>90 (**)</b>
<b>Insurance Fraud</b>	<b>90 (*)</b>
<b>ID Fraud</b>	<b>85 (**)</b>
<b>Business Fraud</b>	<b>75-90 (**)</b>
<b>Other Fraud</b>	<b>75 (**)</b>
<b>Excise, Tax Evasion</b>	<b>66,7 (**)</b>
Business Fraud	10-15 (*)
Insurance Fraud	8-15 (*)
Fraud against Business	3-5 (*)
Other Fraud	2-5 (*)
Fraud on Public Sector	1-3 (*)
<b>Homicide</b>	<b>93,3 (**), 10-20 (*)</b>
<b>Prostitution</b>	<b>80 (***)</b>
<b>Illegal Prostitution</b>	<b>74,2 (**)</b>
<b>Illegal Immigration/People Trafficking</b>	<b>73,3 (**)</b>
Illegal Workers	10 (***)
Other crimes against the Person	2-5 (*), 0 (***)
<b>Theft (generally)</b>	<b>62,5 (**), 10 (***)</b>
<b>Fencing</b>	<b>80 (***)</b>
<b>Illegal Copying</b>	<b>80 (***)</b>
<b>Computer Crime</b>	<b>80 (***)</b>
<b>Extortion</b>	<b>73,3 (**)</b>
<b>Computer Crime</b>	<b>67,1 (**)</b>
Robbery & Extortion	20-25 (*)
(Farm) Stock Theft	8-15 (*)
Burglary	10 (***)
Burglary	5-8 (*)
Motor Vehicle Thefts	2-5 (*)
Shoplifting	2-5 (*)
Other Thefts	2-5 (*)
Stealing from Person	1-3 (*)
<b>Environmental Crimes (generally)</b>	<b>83,3 (**)</b>

<sup>16</sup> Walker, J. (1995) Estimates of the extent of money laundering in and throughout Australia, report for the Australian Financial Intelligence Unit AUSTRAC; Walker, J. et al (2007), Unger, B., et al. (2006) op. cit.

<b>Arson/Property Damage</b>	<b>66,7 (**)</b>
Arson/ Property Damage	5-8 (*)
Pollution/Environmental	0-2 (*)
Vandalism	0 (***)
<b>Illegal Gambling</b>	<b>80 (***), 75 (**)</b>
<b>Arms Trading/Trafficking</b>	<b>67,5 (**)</b>

\* Walker, 1995 based on Australian data, \*\* Walker, 2007 based on Australian data, \*\*\* Unger, 2006 based on Dutch data

Table 2.3 presents the results, for all EU countries, of putting together the data on the proceeds of crime, for the crime types listed above, together with estimates of the proportion available for laundering. As most of the input data relate to the year 2009, these results would correspond to estimates of launderable money for 2009.

**Table 2.3: Estimates of Launderable Money in 2009, by Country in which Generated**

Country	Estimate of Launderable Money		
	US\$ million	€ million	Launderable Money as % of GDP
Austria	4.518	3.128	1,18%
Belgium	5.382	3.727	1,14%
Bulgaria	2.121	1.469	4,50%
Cyprus	313	217	1,33%
Czech Republic	2.464	1.706	1,27%
Denmark	3.968	2.747	1,27%
Estonia	566	392	2,96%
Finland	2.846	1.971	1,20%
France	31.037	21.492	1,16%
Germany	42.429	29.381	1,27%
Greece	3.714	2.572	1,12%
Hungary	1.635	1.132	1,26%
Ireland	3.828	2.651	1,68%
Italy	29.998	20.773	1,42%
Latvia	596	413	2,27%
Lithuania	496	344	1,33%
Luxembourg	567	393	1,10%
Malta	118	82	1,49%
Netherlands	8.734	6.048	1,10%
Poland	5.338	3.696	1,24%
Portugal	2.901	2.009	1,27%
Romania	2.241	1.552	1,39%
Slovakia	1.143	792	1,30%
Slovenia	689	477	1,40%
Spain	18.757	12.988	1,28%
Sweden	4.704	3.258	1,16%
United Kingdom	36.100	24.998	1,64%
Other Europe	57.493	50.020	1,86%
E Africa	2.938	2.556	2,18%
N Africa	6.643	5.780	1,14%
Southern Africa	5.436	4.729	1,31%
W&C Africa	7.563	6.580	2,19%
USA/Canada	200.674	174.586	1,29%
Caribbean	4.598	4.000	1,76%
Other N&C America	20.720	18.027	1,80%
South America	44.645	38.841	1,56%
Central Asia and Transcaucasus	3.665	3.189	1,49%
China (inc HK)	70.722	61.528	1,38%
Singapore	1.840	1.600	1,04%
Other E&SE Asia	91.072	79.232	1,19%
United Arab Emirates	2.576	2.241	1,12%
Other Near and Middle East	27.712	24.110	1,79%
South Asia	23.496	20.442	1,69%
Australia	13.493	11.739	1,35%
New Zealand	1.759	1.531	1,49%
Other Oceania	421	366	1,69%

Table 2.3 shows that there are considerable amounts of money generated from crime in EU countries that could pose a money laundering threat. Even greater amounts are generated in other regions of the world, which could, in principle, also be laundered in EU countries. But it is also unrealistic to say that the laundered part of the proceeds of crime could be laundered ANYWHERE in the world. Money launderers are economic actors, and (even if they do not follow the criminal law) they follow the laws of economics, which dictate that they should maximise profits and minimise risks.

Data on major trading partners, languages, religions and distances between capital cities show that:

- Exports decrease with the distance between countries.
- Countries sharing a common language are over twice as likely to be principal export partners than countries with no common language.
- Countries that share principal religious faiths are more likely to be principal export destinations than countries with no common religion.

These characteristics of international trade are, as shown by Walker and Unger (2010), likely to be reflected in money laundering flows, and can be modelled using a “gravity model” formulation. In the gravity model, “distance” between countries acts as a deterrent to trade, even if electronic means are used to transfer the money.

*“Distance is important for trade flows because it is a proxy for transport costs. It also indicates the time elapsed during shipment, the damage or loss of the good which can occur when time elapses (ship sinks in a storm), or when the good spoils. It also can indicate the loss of the market, for example when the purchaser is unable to pay once the merchandise arrives. Distance also stands for communication costs; it is a proxy for the possibility of personal contact between managers, customers, i.e. for informal contacts, which cannot be sent over a wire. Distance can also be seen in a wider perspective as transaction costs, such as the search for trading opportunities or the establishment of trust between partners.*

...

*Though physical distance is less important for money flows, since money cannot perish, and transportation costs are negligible given that money can be sent around the globe at the click of a mouse, the communication costs, transaction costs and cultural barriers might still be important.”<sup>17</sup>*

However, factors such as sharing a common language and colonial links can reduce the influence of distance. *“Two countries that speak the same language will trade twice to three times as much as pairs that do not share a common language”<sup>18</sup>*. Having common borders can certainly facilitate money laundering – particularly where cash is being laundered. *“Trade is about 65% higher if countries share the same border than if they do not have a common border”*. And money launderers may take into account that richer countries tend to trade more. Richer countries attract more money laundering funds from poorer countries<sup>19</sup>.

Money launderers are therefore more likely to launder the money either domestically, where they are best placed to know the risks, or in a neighbouring country, or in a country

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<sup>17</sup> Walker, J. and Unger, B. (2009), Measuring Global Money Laundering: “The Walker Gravity Model”.

<sup>18</sup> Head, K. (2003), ‘Gravity for Beginners’, version prepared for UBC Econ 590a students, Faculty of commerce, University of British Columbia, Vancouver, Canada, February 5; Helliwell, J.F. (2000), Language and Trade, Gravity Modelling of Trade Flows and the Role of Language, The department of Canadian Heritage

<sup>19</sup> Walker, J. (1995), Estimates of the extent of money laundering in and throughout Australia, report for the Australian Financial Intelligence Unit AUSTRAC op. cit.

with some shared characteristic such as trade or a common language or culture. We do not know, a priori, if the secrecy surrounding money laundering transactions results in factors such as common language or culture becoming even more important in determining where the transaction takes place, but it is a real possibility.

A modified Walker-style gravity-type model can be used to express those distance, trade, language and other factors that make some countries more attractive to launderers than other countries, and produce estimates of the proportion of total money available for laundering that MIGHT be laundered in each EU country. In a perfect world, the results of such analysis could be compared with actual data, but such data are not available, and probably never will be. The approach we are forced to take is to assess the credibility of the results, by reference to known facts.

We take advantage of the “GeoDist” country to country distances provided by the *Centre d'Etudes Prospectives et d'Informations Internationales* (CEPII)<sup>20</sup>, which are specifically designed for gravity modelling, and estimate “bilateral distances measured using city-level data to assess the geographic distribution of population inside each nation”. They also provide different calculations of “intra-national distances” (225 countries in the current version of the database). These data replaced the estimates previously based on distances between capital cities, which – in some countries – failed to represent the distances between true “centres of economic activity”. The model retains the capacity to treat countries that share common borders as “special cases” for trade, since – in contrast to “normal” trade, money laundering operations across a common border are likely to be significantly easier to accomplish than between countries that do not share borders.

The Model includes two options for computing the “distances” between countries - see Equation 1 below - the CEPII distances in full, or the “Modified CEPII” distances. If CEPII distances are selected, then every Distance<sub>ij</sub> is the CEPII figure, including the “within-country” Distance<sub>ii</sub>. The “Common Border” and “Internal” variables are ignored. With the Modified CEPII option, distances between countries i and j, can include a correction factor (“Neighbours”) for a common border. This is theoretically supportable, as it is significantly easier to transfer money across a common border than between two separated countries. For the calculation of the “internal” Distance<sub>ii</sub>, the algorithm finds the distance between country i and its closest neighbour, and applies an empirically derived reduction factor <1. This ensures that the internal distance is less than the distance to any other country, making domestic laundering more attractive, ceteris paribus, than sending the money away.

$$\begin{aligned}
 1. D_{ij} &= \text{"Distance" between Country } i \text{ and Country } j \\
 &\quad \text{CEPII}_{ij}, \text{ if CEPII selected} \\
 = &\quad \left. \begin{array}{l} \text{Neighbours} * \text{CEPII}_{ij} \text{ for } i \neq j \\ \text{Internal} * \text{Min}_k(\text{CEPII}_{ik}) \text{ for } i=j \end{array} \right\} \text{ if Walker selected}
 \end{aligned}$$

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<sup>20</sup> See <http://www.cepii.com/anglaisgraph/bdd/distances.htm>, and Mayer and Zignago (2011), Notes on CEPII’s distances measures (GeoDist), CEPII Working Paper 2011-25.

where,

$0 < \text{Neighbours} \leq 1$ , is an empirically determined constant reflecting the notional reduction in distance due to sharing common borders, and  $\text{Neighbours} = 1$  for  $i$  and  $j$  not sharing borders, and

$0 < \text{Internal} \leq 1$ , is an empirically determined constant reflecting the greater ease of transactions within the same country.

This Model can be used, as described earlier, to estimate the total threat posed to each EU country by money launderers around the world.

## 2. Threat posed in Country $i$ =

$$\sum_{ij} [(Total\ Money\ generated\ in\ Country\ j\ for\ Laundering) / [D_{ij}^r * f(exports, language, culture, \frac{GDP}{capita}, Finance\ Services)]]$$

By setting  $D_{ii}$  to 1, all of the money generated for laundering in country  $i$  is part of the money laundering threat to country  $i$ . By setting  $D_{ij}$  to 1, for all countries,  $j$ , which share common borders with country  $i$ , we also include the money generated for laundering in all neighbouring countries as part of the threat to country  $i$ .

The threat posed by other countries is determined by the distance  $D_{ij}$ , which, for all other countries, is calculated from the geographic distance between the countries' key financial centres, and may be reduced by some proportion if:

- a significant percentage of exports from country  $i$  goes to country  $j$ ;
- countries  $i$  and  $j$  share a common language;
- countries  $i$  and  $j$  share a common religion (proxy for culture);
- the GDP per capita in country  $j$  exceeds that of country  $i$ ,
- country  $j$ 's financial services exports, as a percentage of GDP, exceeds that of country  $i$ .

As explained above, there are no data against which it can be judged whether the "right" weights are being applied. This project is breaking new ground in this respect. A process of trial and error, focussing on the sensitivity of the results to changes in the weights applied in the model, resulted in a set of weights that the Study Team judged produced the most credible results. Those weights were:

Distance reduction for Trade Links	0,8
Distance reduction for higher GDP per Capita	0,1
Distance reduction for higher Financial service trade (% of GDP)	0,1
Distance reduction for Language Commonality	0
Distance reduction for Culture Commonality	0

In simple terms, the weight of 0.8 for Trade Links says that the "effective distance"  $D_{ij}$  for a country  $j$ , which takes 100 % of its imports from country  $i$ , will be reduced by 80% compared to the actual geographic distance. If country  $j$  takes 50% of its imports from country  $i$ ,  $D_{ij}$  will be reduced by 40%, and so on.

The weight of 0,1 for GDP/capita says that the "effective distance"  $D_{ij}$  for a country  $j$ , which has a higher GDP/capita than country  $i$ , will be reduced by 10% compared to the actual geographic distance, and the weight of 0,1 for Financial Services says that the "effective distance"  $D_{ij}$  for a country  $j$ , which has a greater financial services share of exports than country  $i$ , will be reduced by 10 % compared to the actual geographic distance. While positive weights for Common Language and Culture Commonality appeared to produce

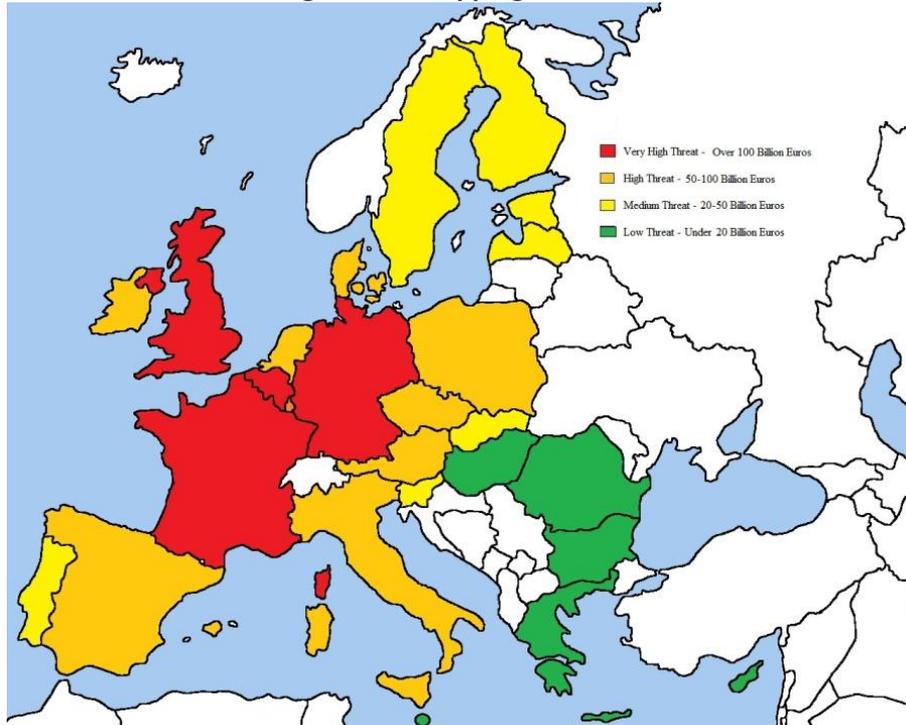
credible results, they differed only in minor ways from a model in which they both were set at zero. Trade theory would suggest that effects of both language and culture may already be implicit in the Trade Links variable.

The relativities between these weights are reasonable. Trading links are extremely important in setting a framework for all international financial transactions, and could be expected to have the strongest impact on “distance”. Of lesser, but still considerable, importance are factors such as the attraction of those countries with greater resources and financial capability than one’s own. On the basis of these weights, Tables 2.4 and 2.5 show estimates of threat obtained for EU countries. The 27 EU Countries are also ranked in the figure below according to the threat they face - in terms of total monetary values.

**Table 2.4: EU Countries by Estimated Threat in 2009**

Rank	Country	Threat (€ Million)
1	United Kingdom	282.004
2	France	151.302
3	Belgium	119.896
4	Germany	108.872
5	Netherlands	94.121
6	Luxembourg	93.765
7	Austria	88.810
8	Italy	73.910
9	Denmark	59.177
10	Spain	56.311
11	Ireland	54.439
12	Poland	53.923
13	Czech Republic	51.193
14	Finland	45.104
15	Portugal	43.015
16	Latvia	42.639
17	Estonia	40.074
18	Slovenia	35.106
19	Sweden	26.206
20	Slovakia	23.557
21	Hungary	19.952
22	Cyprus	19.090
23	Bulgaria	18.513
24	Greece	16.598
25	Romania	14.075
26	Lithuania	12.870
27	Malta	8.325

Figure 2.1: Mapping of threat



So, for example, the high rankings of the United Kingdom, Luxembourg and other west European countries in Table 2.3 make sense in view of their relatively sophisticated financial markets, their relatively high GDP per capita levels, and their proximity and trade, language and cultural links to a wide range of proceeds of crime generating countries. Hot money will generally flow from the east to the west in search of safer havens for investment.

The picture changes dramatically, however, when expressed as a percentage of each country's GDP. The threats can be very high – particularly for the smaller countries, such as Estonia, Latvia, Malta and Luxembourg. These countries, surrounded by much larger countries generating large amounts of money potentially available for laundering, face threats equivalent to a significant proportion of their total GDP, even – in those four countries – greater than their entire GDP. In a very real sense, these are the countries at most risk from money laundering, since *"Money laundering has a corrosive effect on a country's economy, government, and social well-being"*, and *"the practice distorts business decisions, increases the risk of bank failures, takes control of economic policy away from the government, harms a country's reputation, and exposes its people to drug trafficking, smuggling, and other criminal activity"*<sup>21</sup>.

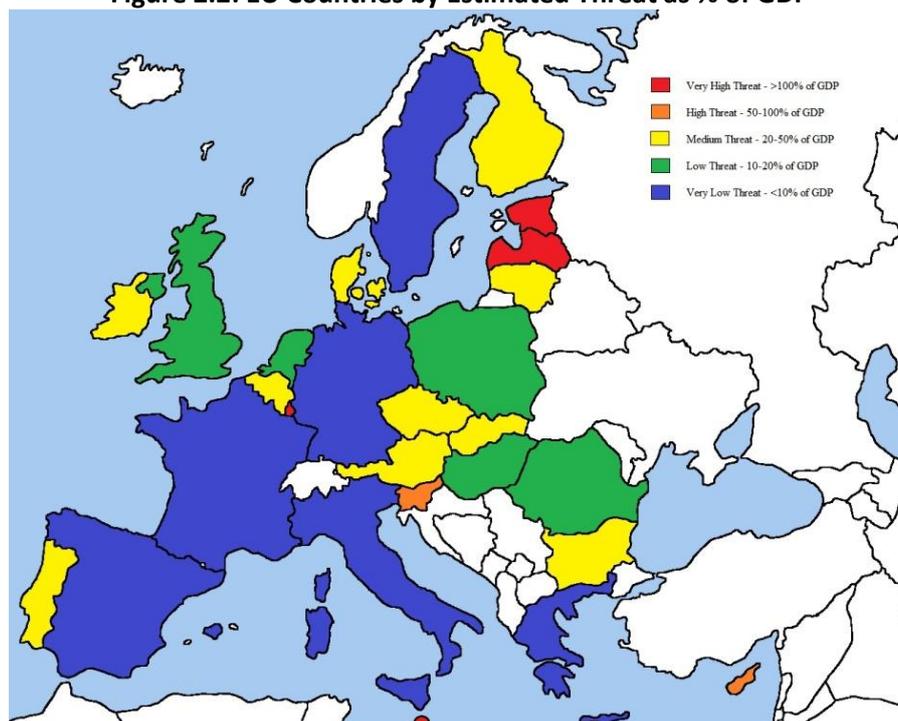
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<sup>21</sup> Available at:  
[www.apgml.org/issues/docs/30/Negative%20Effects%20of%20ML\\_Economic%20Perspectives%20May%202001.pdf](http://www.apgml.org/issues/docs/30/Negative%20Effects%20of%20ML_Economic%20Perspectives%20May%202001.pdf)

**Table 2.5: EU Countries by Estimated Threat as % of GDP in 2009**

Rank	Country	Threat as % of GDP
1	Estonia	207.7%
2	Latvia	163.2%
3	Luxembourg	155.2%
4	Slovenia	75.3%
5	Cyprus	53.6%
6	Bulgaria	40.2%
7	Czech Republic	30.3%
8	Belgium	27.9%
9	Austria	24.6%
10	Portugal	21.2%
11	Slovakia	21.0%
12	Denmark	20.6%
13	Lithuania	19.5%
14	Finland	19.4%
15	Ireland	18.9%
16	Poland	14.5%
17	Netherlands	14.0%
18	United Kingdom	13.3%
19	Hungary	13.1%
20	Malta	11.0%
21	Romania	9.4%
22	France	7.3%
23	Greece	6.1%
24	Sweden	5.8%
25	Spain	5.4%
26	Italy	4.9%
27	Germany	4.7%

**Figure 2.2: EU Countries by Estimated Threat as % of GDP**



## 2.2 Robustness check of threat analysis and alternative approach

The goal of this section is twofold. First we present robustness check of the above introduced the ECOLEF model, which is done via direct comparison of an alternative approach to threat assessment as developed by Brettl and Usov (2011). Secondly we elaborate on another approach to threat assessment which is currently being developed by the IMF.

To the best of our knowledge, the two (the Walker and the Brettl-Usov) are the only existing quantitative threat assessment methods for which results are already available, and hence comparing the two methods with each other is an interesting exercise that allows to compare the inner workings of each model and, since both methods are fundamentally different, to see whether the results obtained are robust. Although the results are not yet available, introducing the threat assessment methodology of the IMF further deepens the understanding of the state-of-the-art ML threat assessments.

Walker's method is based on the application of a gravity model/formula that estimates an amount of criminal proceeds that can potentially be laundered in a jurisdiction of interest. The gravity model is augmented for a number of factors, besides geographical distance, that ought to influence international money laundering flows.

The method developed by Brettl and Usov takes a completely different road when assessing ML threat. The cornerstone of the method is the so called ML Threat Index. The index is computed from Threat Scores assigned to a list of identified money laundering threat variables (or otherwise called vulnerabilities). Hence the result is an index number that signals a level of threat a country has relative to the rest of the sample.

### 2.2.1 The ECOLEF Threat Estimation with a Gravity Model

Here we review the gravity model approach to ML threat assessment, as developed by John Walker for the ECOLEF project, in great depth and elaborate on the main drivers and inner workings of the model. The gravity model perceives money laundering threat as the amount of proceeds of a crime that can potentially be laundered in a particular country. The way of measuring threat is based on the idea of modified gravity model that was originally applied to international trade in economics by Tinbergen (1962) and later applied to ML by Walker (1997), and Walker and Unger (2010). The model assumes money launderers are economic actors who seek to maximise profits and minimise costs. Hence, in a country level setting, proceeds of crime would not be laundered everywhere, but are subject to distance and other constraints. The element of distance serves as a proxy for transportation costs.

The model applied in its basic setting is set as follows:

$$Total\ Threat_i = \sum \left[ \frac{(Threat\ posed\ by\ country_j)}{D_{ij}} \right]$$

Country  $i$ 's threat from country  $j$  thus equals the amount of proceeds of crime available for laundering in country  $j$  adjusted for a distance factor. Subsequently, the Total Threat of country  $i$  is the sum of proceeds of crime from all countries and adjusted for pair specific distance reduction.

The numerator – representing the threat posed by some country – is measured by the proceeds of crime available for laundering. This is estimated from available data on proceeds of crime from the most prevalent crimes and subsequently weighted by the percentage of the proceeds that are in fact going to be laundered. The assumption here is that only a portion of proceeds is laundered as some of the money is ploughed back in order to facilitate the criminal business (it is spent without an attempt to hide its origins).

The denominator is not only represented by simple geographic distance, but also by other factors that play a significant role in making the country of interest more (or less) attractive to money launderers<sup>22</sup>. More specifically, the modified gravity model takes into account whether the two countries share a common border, the degree of common trade, the relative size of their economies, the relative size of trade in financial services, existence of common language and common culture. Clearly, each of these factors makes the country more (or less) attractive in a slightly different way and to a different degree. Thus, Walker applies a system of weights according to relative importance of each factor.

The most significant factor is of the denominator is *sharing of common border*. Should indeed two countries be neighbors all the other factors become obsolete and the country i automatically inherits all of country's j threat. The assumption is that the reduction in transfer costs is so significant that borders no longer play a role – an assumption that may be especially valid inside of the Schengen area. Hence the distance reduction is applied as follows:

$$D_{ij} = \begin{cases} 1, & \text{if common border} \\ d, & \text{otherwise} \end{cases}$$

In the case that the countries do NOT share a common border the distance reduction becomes a product of all the above mentioned elements:

$$d_{ij} = [1 + distance_{ij} * ((\% \text{ of trade that does NOT go to country}_i) * 0.8) * \delta * \phi * \lambda * \eta]$$

Where *distance ij* is represented by geographic distance between the two countries. Next, threat is reduced more the less the two countries trade between each other and weighted by 80%. Further the distance factor is augmented for the following dummies:

$\delta$  is a GDP per capita reduction and is applied as follows:

$$\delta = \begin{cases} 0.1, & \text{if } GDP/cap_i < GDP/cap_j \\ 1, & \text{otherwise} \end{cases}$$

$\phi$  is a reduction for trade in financial services trade:

$$\phi = \begin{cases} 0.1, & \text{if } \%trade \text{ in } fin. \text{ services}_i < \%trade \text{ in } fin. \text{ services}_j \\ 1, & \text{otherwise} \end{cases}$$

$\eta$  is a reduction for common culture:

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<sup>22</sup> Walker, J. , and Unger, B. (2010), "Measuring Global Money Laundering: "The Walker Gravity Model", in: *Review of Law & Economics*, Vol. 5, Issue 2

$$\eta = \begin{cases} 0.2, & \text{if common culture} \\ 1, & \text{otherwise} \end{cases}$$

and finally  $\lambda$  is a reduction for common language which is applied as follows:

$$\lambda = \begin{cases} 0.6, & \text{if common language between } ij \\ 1, & \text{otherwise} \end{cases}$$

Put into words, the higher the GDP of the trade partner, the more attractive the partner is, since it appears that it is easier to “hide” proceeds of crime in a large economy. This same logic applies to trade in financial services: the more open the financial sector of partnering economy is, the more attractive the partner is. Last but not least, common culture and languages increase the attractiveness of the partnering country as these aspects tend to contribute to higher trust and hence to ease of conducting (licit as well as illicit) business.

The weighting system is applied in a way that the higher the weight is the more significant the factor is in reducing the distance factor and as a result in increasing the overall threat.

### *Data*

Data on threat—laundered Proceeds of Crime (PoC)—were obtained from various sources. In general, threat is computed using data on 10 types of crimes that are considered to be the most significant contributors to the generation of PoC (primary sources are mentioned in brackets). These crimes are:

- Trafficking in human beings and migrant smuggling (UNODC and Walker)
- Illicit trafficking in narcotic drugs and psychotropic substances (UNODC and Walker)
- Illicit arms trafficking (UNODC and Walker)
- Environmental Crimes (UNODC and Walker)
- Occupational Fraud (Association of Certified Fraud Examiners and Walker)
- Motor Vehicle Theft (Eurostat, UNODC and Walker)
- Robbery & Extortion (Eurostat, UNODC, Business Software Alliance and Walker)
- Homicide & Threats to Kill (Eurostat, UNODC and Walker)
- Counterfeit Medicines (Pharmaceutical Industry Institute and Walker)
- Alcohol & Tobacco Smuggling (HavocScope and Walker)

The data on PoC from illicit trafficking in narcotics drugs and psychotropic substances were estimated by Walker from the data provided by the UNODC in their World Drug Reports. The data on PoC coming from trafficking in human beings, illicit arms trafficking and environmental crimes comes from the UNODC’s Globalization of Crime Reports and as in the case above further estimated by Walker. Occupational fraud – fraud committed in the process of one’s occupation – estimates are provided by the Association of Certified Fraud Examiners. Data on motor vehicle theft, robbery and extortion, and homicides were taken from Eurostat and UNODC’s Surveys of Criminal Justice. Finally, data on counterfeit medicines are supplied by the Pharmaceutical Industry Institute. PoC are extracted from the data mentioned above by using the procedure as in Walker (2007).

Actually, laundered PoC are obtained by applying a system of weights that are specific to the type of crime involved.<sup>23</sup> Hence, a high percentage of laundered proceeds of crime are

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<sup>23</sup> Unger, B., Siegel, M., Ferwerda, J., de Kruijf, W., Busuioic, M., Wokke, K. and Rawlings, G. (2006), *The Amounts and the Effects of Money Laundering*, Amsterdam: Ministry of Finance, 2006

mostly associated with transnational organised groups such the ones involved in trafficking or manufacturing of illicit drugs or arms, large-scale fraud, illegal prostitution, counterfeiting (illegal copying) or the trafficking of people.

Last but not least, data for the distance reduction factors are obtained from the following sources:

- GDP – Wikipedia
- Trade in financial services – UNCTAD
- Languages – CIA Factbook
- Culture (proxied by religion) – CIA Factbook
- Distance (between capitals) – Google Maps

### 2.2.2 Results

The results obtained by the model were already presented in the section above (table 2.4). The table consists only of countries in the European Union. However, threat for each country is computed from a dataset that contains 223 countries and territories. In other words, the table shows not only threat that EU countries pose on each other, but the results also take into account threat from the rest of the world. The results show that rich western European countries pose the most threat. The bottom of the table is occupied by the newcomers, and smaller and relatively poorer economies.

If one wants to understand the main drivers of the results, one must look into the workings of the model (doing so indeed reveals the elegance of the internal mechanisms of that approach) and the data used for the estimation. The most significant elements of the model are the amounts of proceeds of crime available in the country, the physical distance to other countries and the sharing of a common border. Hence, as Walker argues, countries that have a lot of crime will generate large sums of proceed of crime and, as a result, will generate a lot of threat. According to his dataset, the larger the country, the more proceeds of crime the country generates and subsequently the more threat it generates. Thus by far the largest sources of threat to rich countries are the countries themselves.

The major sources of threat for European countries with relatively smaller economies come from the fact that they share a border (or are very close to) some of the richest countries in the world. Since sharing a common border is not being “discounted”, smaller economies (e.g. Luxemburg, Belgium and Ireland) automatically inherit all of the threat of their neighbors.

The threat that is “inherited” from other, far distant (outside of EU) countries is, in most cases, very heavily discounted by the denominator. This effect is mainly brought up by two elements (due to their relative size and weights of these factors): the physical distance and trade NOT coming to the particular country.

The actual data used for the estimation are, as mentioned earlier, the best available. However, they must be accepted as merely “indicative” estimates as most of the PoC’s are estimated by using simple percentage of for instance GDP. Since, at the moment, there is no way of validating or testing the accuracy of these data the precise value of threat must be

used with caution. However, the ultimate aim of this section is not to prove accuracy of the model in absolute terms, but rather in relative terms via comparison of the relative rankings with another, very different, methodology and use its results as a form of a robustness check for Walker's approach.

### 2.3 The Brettl-Usov Method

The method as developed by Brettl and Usov (2010) is substantially different from the one developed by Walker and thus represents a different perspective on ML threat and is a perfect opportunity for a robustness check of the threat estimations with a gravity model as introduced earlier. Brettl and Usov compute the so called Threat Index that represents a degree of threat for a country to become a target for money launderers relative to the other countries. Hence, threat here is not represented by the volume of criminal money that can be potentially laundered in a given country, but by the size of a computed threat index and a rank relative to the other countries.

The index is computed as follows:

$$Threat\ Index_i = \sum_{k=1}^n (TS_k * w_k)$$

Where the threat index equals the sum of (w) weighted Threat Score (TS). The index assigns scores to identified variables (called threat variables) that contribute to threat and that are weighted according to their relative importance.

#### 2.3.1 Identification and classification of threat variables

The scores are assigned to variables that have been identified by literature and professionals as factors that indeed significantly contribute to (or hinder) attractiveness of a particular country to ML. The authors composed altogether a list of 35 threat variables. The variables range from economic factors such as GDP per capita, trade in services and degree of economic globalization to variables that are under the heading of "special skills and access" and which are common language and history, distance and others. (See Annex 2.1 for complete list)

Threat variables are then sorted into 5 different categories according to ML offences as identified by Reuter and Truman (2004). The table below provides hypotheses about the differences among the five categories of offences in two dimensions most relevant for the study: reliance on cash and quantities of money involved. The idea behind the use of such a classification is that in the same way that ML offences represent the different categories, money launderers themselves are not a homogenous group of actors and as a result different money launderers are attracted to a slightly different set of factors (threat variables).

**Table 2.6: Classification of threat Variables According to ML Offences<sup>24</sup>**

ML Offences:	Drug Distribution	Bribery and Corruption	Other Blue Collar	White Collar	Terrorism
Use of Cash	Exclusively	Mostly	Mix	Sometimes	Mix
Scale	Very Large	Small to Medium	Mix	Large	Small

Major drug traffickers, for example, face a unique problem, which is how to regularly and frequently manage large sums of money, much of it in small bills (Reuter and Truman, 2004). Clearly, such money launderers will, among others, be attracted to countries that allow for easy integration of large sums of cash into their economies.

Even though bribery and corruption could in theory be classified as a white-collar crime, the category is different in terms of actors involved, place of occurrence and the nature of the harm<sup>25</sup>. The majority of bribery and corruption occurs in poorer and undeveloped countries. The reason why corruption is distinctive from white-collar crime is the fact that it mainly involves public officials. Hence, countries with for instance weak rule of law, banking secrecy and low GDP will be among those that are most threatened by such category of money launderers.

The most significant contributors to demand for money laundering from the blue-collar crime include gambling and people smuggling<sup>26</sup>. Such crimes, however, generate substantially smaller revenues than other markets (e.g. drugs). Nevertheless, a country that for example features a developed gambling sector will indeed be more vulnerable than others.

The white-collar crime is a category that includes a rather heterogeneous list of crimes such as embezzlement, fraud and tax evasion<sup>27</sup>. These offences are often closely tied to the financial sector and electronic transfers of money. Thus, countries with, for instance, developed financial systems and developed internet banking services are going to be relatively more threatened than countries without.

Terrorism is distinctive due to the fact that it takes mostly legally generated proceeds and converts them into money that is then used for illicit purposes.

### 2.3.2 Assigning scores and weights to threat variables

Once the threat variables are identified, each country is assigned a score for each variable according to how much threat the particular variable poses. The scores are assigned using the following algorithm:

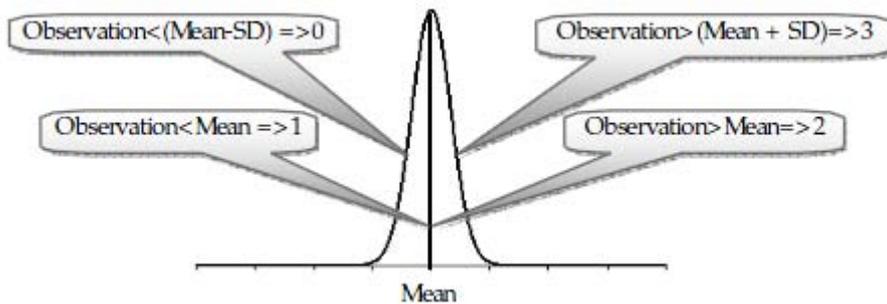
**Figure 2.3: Algorithm of assigning Threat Scores**

<sup>24</sup> Reuter, P, and Truman, E. M. (2004), "Chasing Dirty Money: The Fight Against Money Laundering". Washington DC: Institute for International Economics

<sup>25</sup> Reuter, P, and Truman, E. M. (2004), "Chasing Dirty Money: The Fight Against Money Laundering". Washington DC: Institute for International Economics

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*



Source: Brettl and Usov (2010)

Taking a sample of observations for a particular threat variable and finding its mean effectively splits the sample into two groups - one group with its observations below the mean and the other above the mean. Hence, the group with its observations above the computed mean is relatively more threatened than the group below. Using this logic, scores are assigned as in the diagram above. A further set of scores is assigned for country observations that are above the mean plus the standard deviation of the distribution and mean minus the standard deviation of the distribution. The idea behind this step is that countries that are so far out of the main cluster observations virtually signal to the money launderers that they are particularly attractive relative to the rest of the sample. Similar logic applies for countries whose observations are on the opposite side of the distribution. Those countries are the least attractive. The fact that these countries are assigned score 0 does not, however, mean there is no threat. It rather means that the threat is negligible relative to the sample.

Weights to threat variables are assigned in a very simple fashion. Clearly, as a result of the classification, it is possible that one particular variable is assigned to more than one crime category. Hence, threat variables are assigned weights according to in how many crime categories they appear. For example, the variable GDP per capita is represented in four out of five crime categories. Therefore, GDP per capita will have assigned weight  $4/5$  (0.8). Similarly, a variable that is represented only in one category will have weight  $1/5$  (0.2). The logic here is straightforward. The higher the weight, the more sources or entrance points of ML threat the country has. As a side effect, the overall threat index is then a weighted average of the five ML offence sub-indices. Hence the method not only allows for computation of one overall threat index, but for 5 separate sub-indices according the above identified ML offences.

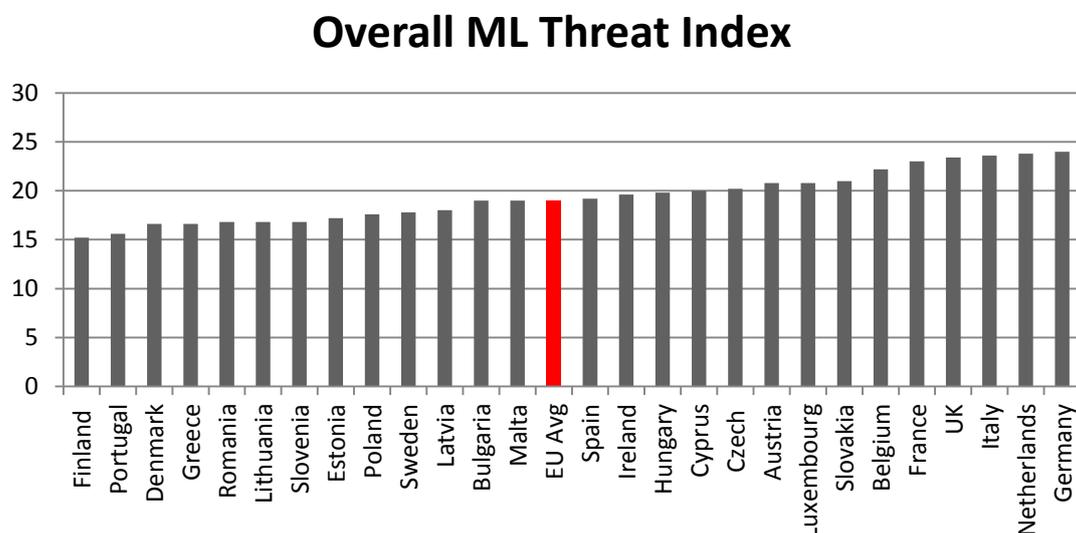
### 2.3.3 Data and Results

The data for the computation of the threat index for all 35 threat variables were taken from various publically available databases such as the World Bank, OECD, Eurostat and others. Due to certain data constraints, some variables were represented by proxies: Transparency International index was a proxy for level of corruption, the number of number of postal access points (Eurostat) was a proxy for postal services, the standard deviation of economic growth was a proxy for economic stability and the number of ATM machines (ECB) was a proxy for the degree of cash intensity.

Due to the rather large number of variables the complete list with descriptions, hypothesised signs, weights and data sources is in the Annex 2.2. The table and chart below

show the results of BrettI-Usov method applied to their dataset collected for the European Union for 2010.

**Figure 2.4: Overall ML Threat Indices for EU 27, 2010**



Source: BrettI and Usov (2010)

**Table 2.7: Overall ML threat indexes of EU 27 for 2010**

ML Threat Index			
Finland	15.2	Spain	19.2
Portugal	15.6	Ireland	19.6
Denmark	16.6	Hungary	19.8
Greece	16.6	Cyprus	20
Romania	16.8	Czech	20.2
Lithuania	16.8	Austria	20.2
Slovenia	16.8	Luxembourg	20.8
Estonia	17.2	Slovakia	21
Poland	17.6	Belgium	22.2
Sweden	17.8	France	23
Latvia	18	UK	23.4
Bulgaria	19	Italy	23.6
Malta	19	Netherlands	23.8
EU Avg	19	Germany	24

Source: BrettI and Usov (2010)

A look at the table reveals some similarities with the threat estimations with a gravity model. Clearly, the richest economies again occupy the front places while Nordic countries and newcomers are at the bottom.

In order to understand the results one must examine the composition of the index. The drivers, here, are threat variables that are the least weighted (the highest weights). According to the authors the least weighted variables are, among others, GDP per capita,

trade in services, size of financial sector and the degree of use of cash in the economy (see Annex 2.2). Hence, the richest countries will obviously be the most threatened. For results of the ML offence specific sub-indices please see Annex 2.3.

#### **2.3.4 Comparison of Walker's Threat Estimations with a Gravity Model and the Brettl-Usov Approach**

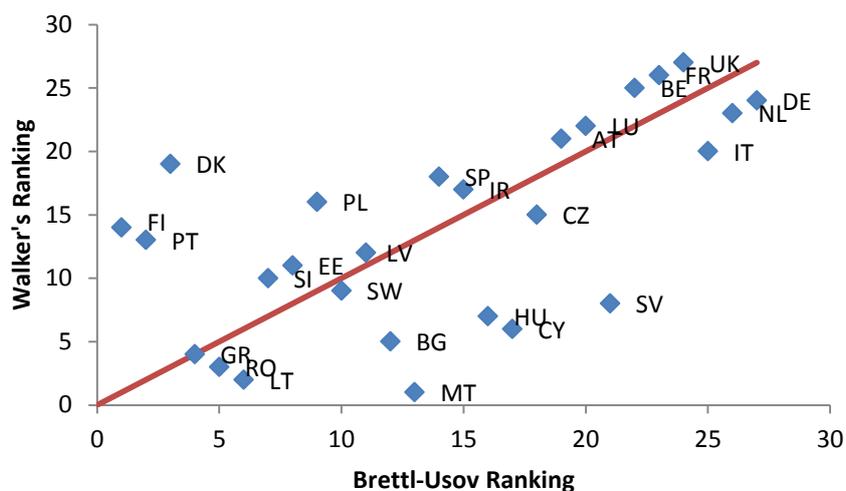
Both approaches offer a different view on how to perceive threat. The elegance of Walker's method lies in the inner workings of the model as it puts higher weight on countries that produce large amounts of threat themselves or are in the vicinity (in terms of physical distance or via trade sharing) of some other large "generator" of threat.

The main strength of Brettl-Usov lies in the fact that it takes into account different types of money launderers – threat indices can be as easily estimated for white-collar or drug crime (see Annex 2.3). Also, the Brettl-Usov method is computationally much simpler and it does not require a world-wide dataset (as in the case of Walker's approach) in order to obtain the results.

The chart below depicts a relationship between results of the two methods. Clearly there is a significant positive relationship between the two: countries ranked high according to one method tend to be ranked high by the other method as well and vice versa. In other words mostly rich western economies are ranked by both methods as the relatively most threatened while the new EU Member States with lower levels of GDP per capita, relatively small financial sectors and lower levels of trade are ranked lower. Even though the model may produce merely rough estimates of dollar value of threat, the actual ranking produced by the model appears to be robust as its results are generally in line with the ones produced by Brettl and Usov.

There are, however, exceptions. Nordic countries, for instance, are ranked higher by Walker. The reason is that Walker argues that those countries have relatively high levels of crime leading to high level of generated proceeds of crime and thus higher "home-grown" threat. The reason behind low rankings of in the Brettl-Usov is that these countries feature rather small financial sectors and strong rule of law – characteristics that, in theory, should limit money laundering demand. Furthermore, one of the key drivers behind the "discrepancies" is the relative cash intensity (Brettl-Usov uses cash intensity, Walker model does not) of the respective economies – countries that were ranked higher by Brettl-Usov, but lower by Walker's model (such as Hungary, Slovakia and Cyprus) tend to be more cash intensive and vice versa.

**Figure 2.5: Comparison of Walker's and Brettli-Usov results**



### 2.3.5 The IMF Money Laundering Threat Assessment Approach

The Financial Integrity Group of the International Monetary Fund (IMF) has also put a considerable effort into developing a methodology that would be able to assess the degree to which a country is prone to become a target for money launderers<sup>28</sup>. Unfortunately, no results are yet available hence we will, in this section, focus merely on the introduction of the method and evaluation of its properties.

The backbone of the method is a risk function that is defined as follows:

$$R = f[(T), (V)] * C$$

Where, R is a jurisdiction's level of ML or FT risk, which is a function of (T) threat and (V) vulnerability, and (C) consequence. Its inspiration is taken from a function that is widely applied in many areas of risk management. The overall level of money laundering or terrorist financing is the net of computed risk above and the effects of specific anti-money laundering controls.

Threat (T) is, according to the IMF and similarly to Walker, the amount of criminal proceeds that contribute to the demand for ML. The fund defines two basic components of threat: "(i) the nature and types of domestic predicate crime that exist and the scale of proceeds that they generate; and (ii) the nature and scale of proceeds generated outside of the jurisdiction that are likely to enter the jurisdiction for laundering."

Vulnerability (V) relates to the intrinsic properties, tools or country characteristics that can potentially be used by money launderers and which are, for instance, certain products, services, distribution channels institutions and so on.

Consequences (C), relate to the final outcomes or effects of money laundering on the local jurisdictions. The IMF, in this point, relies on the lists of potential consequences that have

<sup>28</sup> Dawe S. (2011), Conducting National Money Laundering or Financing of Terrorism Risk Assessment, Handbook of Money Laundering

been identified by the existing literature and which, among others, are enabling of terrorism acts, distortion of consumption, distortion of prices, unfair competition and others.

Next, the method specifies how to obtain the estimates of each of the factors that feed into the risk function – the function of likelihood and its consequences. There are three main circumstances that contribute to the likelihood of ML and which are a combination of threat and vulnerabilities. More specifically these circumstances, centering around the dynamic of the ML process are: “First, the launderer holds illegally obtained assets or terrorist financier holds illegally obtained or legitimate assets that need processing (a threat). Second, the launderer or financier perceives that there are products, services, assets, or other circumstances that can be abused to meet his or her processing needs vulnerability). Third, the launderer or financier perceives that there is little likelihood of being caught by the authorities during the process and, thus, of being sanctioned and losing the assets (due to other vulnerabilities).”

Each of these three building blocks then is subdivided and nested into risk modules that contribute to the overall likelihood of ML occurrence for the particular building block. Up until now, the IMF has identified around 50 of these contributing modules/factors (see Annex 2.4 for the complete list).

These modules are, then, assigned with scores according to the degree of threat they pose, and subsequently aggregated into one simple index score. Consequences of ML are derived mainly using perception surveys and expert judgments.

The final outcome, an index score, of the model is then the product of consequences and the likelihood function and is categorised as follows:

**Table 2.8: Risk level scores**

<b>Risk Level Score</b>	<b>Risk Level Descriptor</b>	<b>Risk Mitigation Priority</b>
> 6-7	Extremely higher risk	Urgent priority
> 5-6	Much higher risk	Much higher priority
> 4-5	Higher risk	Higher priority
> 3-4	Medium risk	Medium priority
> 2-3	Lower risk	Lower priority
> 1-2	Much lower risk	Much lower priority
> 0-1	Very much lower risk	Very much lower priority

*Source: Dawe (2011)*

Clearly, the method takes a somewhat different approach to the modeling of risk in the money laundering risk assessment than the previous two. The method displays a very high degree of rigor (especially in the case of the risk module analysis) and strong methodological approach. It appears that the one who will indeed apply this model to a country/jurisdiction will gain a very deep understanding of the degree of threat in that particular country – especially in comparison with the other two methods. However, its strength is also its biggest weakness. Due to its rigor the method is very hard to apply as the depth of the data it asks for is simply, at this stage of ML research, unobtainable. Hence, at this level of complexity it will take many years before a sample of results is obtained that will allow for a cross country comparison. In that respect the two methods introduced earlier have very significant advantages in comparison with the IMF’s approach.

## 2.4 Conclusion

The section elaborates on recently developed quantitative methods of money laundering threat assessment. One, which is developed by Walker for the ECOLEF project, relies on the use of an augmented gravity model that is applied to ML. The other, developed by Brettl and Usov, is built upon the computation of a so-called ML Threat Index. Both methods choose a different approach to threat, but its results are similar in that both methods rank rich western countries on the top of the list and new EU Member States at the bottom. Some notable exceptions are the Nordic countries that are ranked high by Walker, but low by Brettl and Usov. The reason behind the high ranking by Walker is that, as he argues, Nordic countries have relatively high rates of crime and hence generate a lot of domestic threat, whereas the Brettl-Usov method ranks the countries low, among others, for their relatively small financial systems and strong rule of law. Furthermore, cash intensity appears to be another key driver behind the disagreement of the results of the two methods.

Both approaches have their strengths and weaknesses. Walker's chooses a rather brave approach as he attempts to compute a dollar value of threat. The method is however computationally difficult and requires a dataset that contains reliable data on all the world's countries. Although Brettl-Usov's approach on the first sight produces an ambiguous number, the method itself is simple in its application and distinguishes between different classes of money launderers.

The last method introduced here is the one developed by the IMF and its Financial Integrity Group. The method is based on a risk model that is a function of ML likelihood (consisting of threats and vulnerabilities) and its consequences. The likelihood function is assessed using 50 different risk modules and a score is computed by aggregating scores for these risk factors. Consequences are mainly based on perception surveys. The overall score is a product of likelihood score and consequence. The method, as mentioned above, is built upon very strong methodological foundations of risk management's best practices and is used in a very rigorous manner. The field of ML however is an area that is still very poorly understood and poorly mapped by data. Hence, the method at this point in time is not very usable as it requires very specific data inputs. This is in fact a major advantage of the two methods introduced earlier.

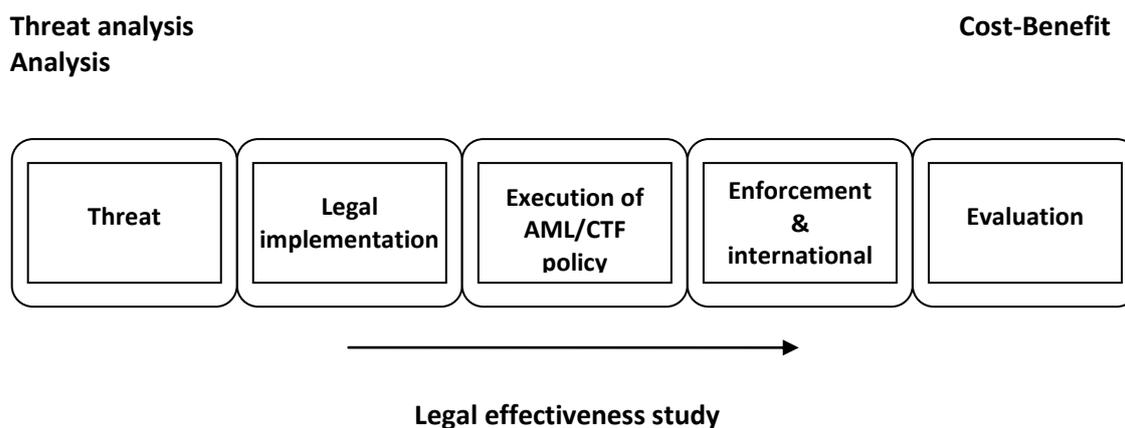
Altogether, the methods introduced certainly bring a new dimension to the world of threat assessments. As such they should not be viewed as competing methodologies, but complements to each other.

## Chapter 3 OPERATIONALISATION OF POLICY RESPONSE

### 3.1 Introduction

The previous chapter dealt with the money laundering threat. It showed that some Member States are economically, socially, politically or for other reasons more attractive to money laundering. Chapters 4 to 10 concern the policy response of the Member States to this threat along the line of five building blocks of this study. Figure 3.1 displays these building blocks.

**Figure 3.1: Building blocks of the ECOLEF Study**

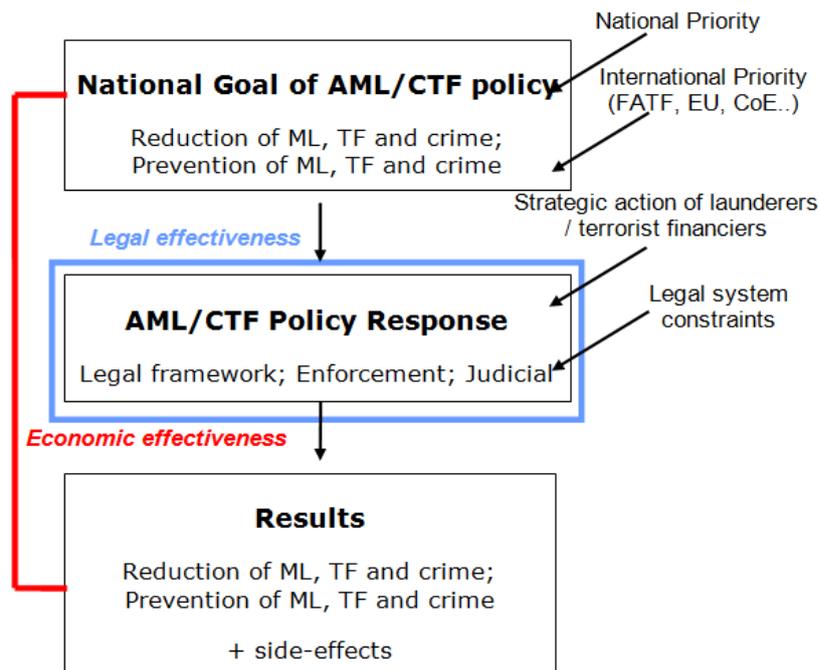


Chapters 4 to 6 deal with the legal implementation of the Third Money Laundering Directive. We focus on the implementation of the substantive norms in chapter 4. Chapter 5 analyses the delays of the Member States in the implementation of the Third Money Laundering Directive. Chapter 6 pays attention to the AML/CTF supervisory architectures, the procedural norms, applicable in the Member States. We deal with the execution of the AML/CTF policy in chapters 7 and 8. Thereby, we focus on two aspects. Chapter 7 concerns the application of the criminalisation of both money laundering and terrorist financing in practice - hence, we speak about definitions. Chapter 8 is about the role and functioning of FIUs, which operate at the heart of the AML/CTF policy. Chapter 9 covers enforcement and pays attention to the information flows present in the AML/CTF policies of the Member States. Finally, chapter 10 addresses international cooperation within the AML/CTF policy.

### 3.2 Operationalisation of legal and economic effectiveness in the ECOLEF Study

The AML/CTF policy responses of the Member States are studied from the perspective of legal and economic effectiveness of the AML/CTF policies of the European Member States. The following figure shows how the legal and economic effectiveness relate to each other. After the figure we explain these concepts briefly and how we aim to operationalise the two.

**Figure 3.2: Visual representation of legal and economic effectiveness**



### 3.2.1 Economic effectiveness

Economic effectiveness of AML/CTF policy means in our study that the goals of the AML/CTF policy – which can be the reduction and prevention of money laundering, terrorist financing, or crime in general– are reached by producing results. Such results can be less money laundering, terrorist financing or crime in general, as well as the prevention of money laundering, terrorist financing or crime in general. The goals of AML/CTF policy can be more or less important in the Member States, depending on international and national priorities. In order to reach the goals, all kind of policy instruments are used. When the goal sare reached with the lowest costs possible, we speak of economic efficiency instead of effectiveness. Chapter 11 and 12 discusses different statistics which could indicate economic effectiveness as well as efficiency. In this study, we test the economic efficiency in chapter 13. This chapter contains a cost-benefit analysis of Member States’ AML/CTF policies using data concerning their AML/CTF policy responses.

### 3.2.2 Legal effectiveness

In the present research, legal effectiveness is understood as follows. Firstly, a policy is legally effective when the norms are applied and obeyed. Legal effectiveness is understood narrowly and as a functionality: if a rule is in force (and applied/obeyed), it functions and therefore a norm is effective.<sup>29</sup> An important element is the meaningfulness of the norms. Legal norms must be meaningful; they should contribute to the goals of the AML/CTF policy.

<sup>29</sup> Navarro, P.E. and Moreso, J.J. (1997), ‘Applicability and effectiveness of legal norms’, in: *Law and Philosophy*, Vol. 16, No. 2, pp. 201-219; G.H. Addink (2010), *Goed bestuur*, Kluwer: Deventer; Utrecht University (2010), *Source Book on Human Rights and Good Governance*, SIM Special no. 34, pp. 80-95.

In general, the main goals<sup>30</sup> of the AML/CTF policy are:

- the prevention of money laundering and terrorist financing and crime in general - by developing systems that make it difficult for potential launderers and financiers of terrorism to actually launder or finance terrorism - and
- the reduction of money laundering, terrorist financing or crime in general.

If a particular norm is not considered meaningful by those who should comply with or enforce it, it is highly likely that the norm is not applied (in full) or adhered to.

Secondly, a broader and more qualitative view of legal effectiveness allows us to go beyond the mere question of non-application or non-adherence to the norms. Under this view, a policy is legally effective when there are no legal hindrances that make reaching the goal more difficult, nor are there other factors with legal consequences that negatively influence the application of the law.<sup>31</sup> Legal hindrances can be that the norms conflict within a policy or that norms conflict with norms belonging to another policy at the same level ('horizontal' conflicts) or that the norms conflict with norms set a different level, for example the international or European level ('vertical' conflicts). One can also think of gaps in legislation or that legislation provides insufficient powers to the authorities that should ultimately enforce the norms. Factors that negatively influence the application of the law can be institutional factors; insufficient resources in obliged institutions, FIUs or supervisors in terms of capacity, money and organisation to comply with or enforce the legal norms in place; insufficient awareness or support in obliged institutions to comply with the legal norms, and insufficient *de facto* cooperation between supervisors or between obliged institutions and supervisors. This framework of legal effectiveness allows us to look at the Member States' law in the books, as well as whether the law is actually applied ('law in action').

### **3.3 Remarks concerning the operationalisation**

#### **3.3.1 Focus of the study and relation to other studies**

In discussing the effectiveness of AML/CTF policies, we have focused on what we found to be interesting and relevant for this purpose. In this sense, we have built on what had been done before – sometimes by correcting other work, if it was fundamental to our research, and otherwise by elaborating on the core message and expanding its field of application – and we have tried to refer to all other relevant research that we do not specifically target in this work. In this report, we have built on the substantive work of the FATF, MONEYVAL, the reports of the EU-FIU Platform, the papers of the IMF, the reports of EUROSTAT and the reports of the EGMONT Group. We have also made use of the annual reports of the EU FIUs and of the reports commissioned by the EU.

Next to this, there is a large body of literature on which we have not built upon, which we have not discussed and that yet, nevertheless, is undoubtedly important in the AML/CTF context. There are several reasons why we have not done so. First of all, other research groups and professionals had already targeted the subject, and, in our view have done consistent research which, given the time and resources we had available, we could not

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<sup>30</sup> Although, as was made clear in section 3.2.1 the goals can be more or less important in the Member States, depending on international and national priorities.

<sup>31</sup> Cf. Stouten, M. (2012), *De witwasmeldplicht: Omvang en handhaving van de Wwft-meldplicht voor juridische en fiscale dienstverleners*, Boom Juridisch Uitgevers: Den Haag, p. 22 et seq.

improve on. Just to name a few, in the matters of asset freezing and confiscation – the work of the national Asset Recovery Offices and of the CARIN group is substantive. We have also left aside matters of mutual legal assistance in judicial matters (including extradition) as the latter are taken up to a great extent by Eurojust and by the European Judicial Network.

### **3.3.2 Cross-country comparability**

The aim of the present study is to compare the economic and legal effectiveness on a cross-country or cross-model basis in order to establish their levels of effectiveness. This is done with respect to various aspects from each of the building blocks shown in figure 3.1, for example the implementation delays, the supervisory models, the money laundering and terrorist financing definitions (as applied in practice), the models of information flows and types of FIUs.

However, sometimes a cross-country comparison cannot be made. This is particularly the case for the substantive norms in the preventive AML/CTF policy. The non-comparability of the (legal) effectiveness in this area is the result of two important factors. Firstly, there is a significant data asymmetry between the Member States. For some Member States there is a lot more information available than exists for other Member States. Additionally, the data sets available suffer from a time lapse. Some information on Member States is more outdated than for other Member States. This is especially the case for data obtained from FATF Third Mutual Evaluation Reports and MONEYVAL Reports on Fourth Assessment Visits. While some Member States were last assessed in full in 2006, other countries were assessed as recently as this year. Moreover, this study progressed in groups of countries. Therefore, interviews with Member States' representatives were held at different times over a period of 1,5 years. Secondly, comparability between Member States is made difficult due to the fact that the legal hindrances identified differ in importance - for which a mere quantitative calculation would not reflect reality - and that the importance that must be attached to it depends on the country-specific context. As to the weight that must be given to the legal hindrances identified, we believe, for example, that gaps in the scope of coverage of obliged institutions are more detrimental to the effectiveness than the fact that the requirement that third parties from third countries on which reliance is placed must be subject to a mandatory registration system and supervision is not implemented in legislation. Where cross-comparability appears impossible, we provide an overview of the state of affairs within the Member States.

## Chapter 4 HARMONISATION OF SUBSTANTIVE NORMS AND THE DELOITTE STUDY

### 4.1 Introduction and the Deloitte study

With respect to the matter of implementation of the Third Money Laundering Directive, the Final Study on the Application of the Anti-Money Laundering Directive (hereafter: the 'Deloitte study') is an important source of information. The Deloitte study, commissioned by the DG Internal Markets of the European Commission, was published in January 2011 when the present study had completed its first year. While it covers only one of the aspects of the present study, namely the implementation of the Third Money Laundering Directive, we have made extensive use of the Deloitte study in order to avoid repetition on this topic.<sup>32</sup>

The overall conclusion of the Deloitte study is that it has not identified important issues, as *"Member States have generally transposed the minimum required provisions of the Directive and the implementing directive related to the issues that are the subject of this report. A number of stricter measures have however been adopted by Member States"*.<sup>33</sup> The present research confirms the conclusion that the substantive norms, meaning the obligations of customer due diligence, reporting, record keeping and internal policy, are to a large extent harmonised in the European Union. The substantive norms can be found in the preventive AML/CTF legislation of all Member States albeit with variations in the modalities thereof.

Since not all results in the Deloitte study were supported, complete or agreed upon by the Member States' representatives, the study has been discussed extensively with them. The present research provides the full results of those discussions in Annex 4.1 that contains a table with improvements, updates and nuances to the results from the Deloitte study per Member State. Below we present a table that shows for which Member States improvements, updates and/or nuances to the results from the Deloitte study have been made, as well as a table with the most frequently involved topics. It appears that for essentially all Member States an improvement, update or nuance was necessary, with the exception of Austria, Malta, Romania and the United Kingdom. The topics that required most improvements, updates or nuances concern the scope of obliged institutions subject to the preventive AML/CTF policy, the definition of money laundering and the matter of supervision.

**Table 4.1: Improvements, updates and nuances to the Deloitte study per Member State**

	Improvements	Updates and nuances
Austria		
Belgium	X	X
Bulgaria		X
Cyprus	X	
Czech Republic	X	
Denmark		X

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<sup>32</sup>In March/April 2011 the ECOLEF team attempted to contact *Deloitte Bedrijfsrevisoren, Enterprise Risk Services* several times to talk about the study. Unfortunately, we were not able to establish contact with the Deloitte research team.

<sup>33</sup>Deloitte (2011), *Final Study on the Application of the Anti-Money Laundering Directive*, Service Contract ETD/2009/IM/F2/90, p. 285.

<b>Estonia</b>	X	
<b>Finland</b>	X	
<b>France</b>	X	
<b>Germany</b>	X	
<b>Greece</b>	X	X
<b>Hungary</b>	X	
<b>Ireland</b>	X	
<b>Italy</b>	X	X
<b>Latvia</b>	X	
<b>Lithuania</b>	X	
<b>Luxembourg</b>	X	X
<b>Malta</b>		
<b>The Netherlands</b>	X	
<b>Poland</b>	X	
<b>Portugal</b>	X	
<b>Romania</b>		
<b>Slovakia</b>	X	
<b>Slovenia</b>	X	
<b>Spain</b>	X	
<b>Sweden</b>	X	
<b>United Kingdom</b>		

**Table 4.2: Improvements, nuances and updates per topic**

<b>Improvements, updates and nuances per topic</b>	<b>Number of MS</b>
Issue 2 - Definition of money laundering	11
Issue 2 - Broader scope of entities	10
Issue 18 – Supervision	9
Issue 16 – Penalties	5
Issue 5 - Cash ban	4
Issue 12 - Third-party reliance	3
Issue 2 - Enhanced CDD	2
Issue 3 (Part IV) - Reporting issues	2
Issue 5 - Cash transaction reporting	1
Issue 8 - Simplified due diligence	1
Issue 9 – PEPs	1
Issue 17 - Member States review of the effectiveness of their AML systems	1

## 4.2 Moving beyond the Deloitte study

The Deloitte study paid significant attention to various implementation aspects and aspects of customer due diligence. However, some other aspects remained under-exposed to our opinion. With respect to three particular areas this present research moves beyond the Deloitte study.

Firstly, this concerns the *scope of obliged institutions* subject to the preventive AML/CTF obligations. Finding that the scope has been an area that required a considerable amount of improvements, updates and nuances, we shed some more light on this topic.

Secondly, we pay attention to the *reporting obligation*. The Deloitte study dealt to some extent with the reporting obligation where it addressed the reporting of cash transactions and postponement of transactions, but did not go into the details of each of the Member States' reporting systems. From the EUROSTAT report it is furthermore known that the Member States use different types of reports and that these are sometimes difficult to compare.<sup>34</sup> A recent study performed by the Australian Institute of Criminology on the regulatory responses in nine countries worldwide, including the United Kingdom, France, Germany and Belgium, also came to the conclusion that “[t]he reporting requirements within each country showed considerable variation. All of the countries required at least some sectors to submit reports of suspicious financial transactions, although the conditions of reporting were quite varied between countries”.<sup>35</sup>

Thirdly, we discuss the matter of *legal professional privilege in the preventive AML/CTF policy* in the Member States. The Deloitte study paid little attention to the matter of legal privilege, only reporting about special exemptions in Germany and Poland.<sup>36</sup> Now that the matter of legal privilege is such a much debated issue both in the academic world and among practitioners, we are of the opinion that more attention needs to be paid to this topic. We compare Member States on the questions which professionals can apply for the legal privilege-exemption under the preventive AML/CTF policy, which type of exemptions are in place in the Member States and whether the AML/CTF legislation contains a crime/fraud-exception.

Both the topics of the reporting obligation and legal privilege confirm the conclusion that Member States have implemented the substantive norms, yet in a very different way. In other words they show the diversity present in the EU Member States' AML/CTF legislation in the preventive sphere.

### 4.2.1 Extensions to the scope of obliged institutions

Although virtually all Member States have implemented the financial and credit institutions and types of designated non-financial businesses and professions (DNFBPs) as required by the Directive, the majority of Member States have opted for extensions to the scope of obliged institutions. These choices have either been prompted:

- by the existence of typical national financial institutions or professions;

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<sup>34</sup> EUROSTAT (2010), Money Laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs, Luxembourg: Publications Office of the European Union.

<sup>35</sup> Australian Institute of Criminology (2011), *Anti-money laundering and counter-terrorism financing across the globe: A comparative study of regulatory action*, AIC Reports Research and Public Policy Series, nr. 113, p. 8-50 and executive summary.

<sup>36</sup> Deloitte study (2011), p. 225.

- because the added categories of financial institutions or DNFBPs were considered to bear a certain risk of money laundering or terrorist financing; or
- for simplification purposes.

The Deloitte study has already described which extensions had been made in each Member State. We have shown above that for ten Member States improvements, updates or nuances to these results of the Deloitte study have been made.<sup>37</sup> From the Deloitte study it could already be seen that Bulgaria, in particular, appears to have extended the scope of application of its AML/CTF legislation to a considerable number of other institutions and professionals, among which are political parties, sports organisations, professional organisations, persons who organise public procurement orders assignments, and State and municipal authorities.

With the complete information now available, we have analysed the applicable legislation in the Member States in detail and discussed the choices with Member States' representatives. The table below shows the Top-10 of most common extensions identified among EU Member States. This table may be well worth considering by the Member States themselves or serve as a source of inspiration in the drafting of the Fourth Money Laundering Directive.

**Table 4.3: Top-10 Extensions to scope of obliged institutions to other high-risk institutions than required by FATF/EU**

	Extensions	Nr of MS
1/2	Institutions other than casinos that provide lottery, gaming and gambling activities	11
	Extension to dealers of categories other than precious stones and metals or a general extension to all dealers of goods when performing cash transactions of 15.000 EUR or more	11
3	No limited activity-based scope for one or more types of legal professionals / an extension of grounds of the activity-based scope	8
4/5/6	Postal service providers that accept or receive money or other valuables	6
	Auctioneers or specific auctioning activities	6
	Pawnshops / pawnbrokers	6
7/8	(Private) Bailiffs and/or court distrainers	4
	Foundations	4
9/10	Non-life insurance companies	3
	Associations	3

Member States have extended the scope of obliged institutions for various reasons. It appears that nearly half of the total of 27 Member States have extended the scope of application of the preventive AML/CTF policy to institutions other than casinos<sup>38</sup> that provide lottery, gaming and gambling activities. The most commonly mentioned reason in this respect is the fact that these institutions are considered to bear a certain risk of money laundering. Secondly, we find that Member States have made extensions to the category 'dealers of precious stones and metals' (FATF terminology) or 'dealers in high-value goods,

<sup>37</sup> As explained Annex 4.1 contains the full description of these improvements, updates or nuances.

<sup>38</sup> Casinos already fall under the scope of the preventive AML/CTF policy.

such as precious stones or metals, or works of art, and auctioneers' (Preamble Third Directive terminology), by adding other categories of dealers to the list. Categories that can be found explicitly in the Member States' AML/CTF legislation are gold, jewels, cars, works of art, tobacco, medicinal products, antiques, weapons, petroleum and oil (products), and items of cultural value or heritage. A second method identified is that Member States have decided to impose the preventive requirements on all dealers of goods when performing cash transactions of 15.000 EUR or more, notwithstanding the item sold. In this case, some Member States representatives' have reported that they considered it as a strict requirement stemming from the Third Money Laundering Directive<sup>39</sup> or that this was done for simplification purposes and not necessarily because there was a high(er) risk of money laundering or terrorist financing. It is also interesting to see that eight Member States have chosen to not apply a limited activity-based scope for one or more types of legal professionals, or that they have implemented more activity grounds for legal and fiscal service providers. A combination of arguments has been reported here as well. Extensions were often included due to a high(er) risk of money laundering and terrorist financing, while the choice not to apply a limited activity-based scope at all was often made either because of an increased risk of money laundering or terrorist financing, or for simplification purposes.

Finally, it is interesting to note that the European Commission in its Application report of April 2012, which can be regarded as a follow-up report of the Deloitte study, considered broadening the scope of the Fourth Money Laundering Directive to the gambling sector in general.<sup>40</sup> In its Feedback statement of July 2012, the Commission stated that there was a strong support for the idea of including and defining gambling, in order to cover both land-based and online gambling activities.<sup>41</sup> It thus seems that the voluntary convergence between Member States on this point, since already eleven Member States had extended the scope to gambling institutions other than casinos, has now been picked up by the European Commission.

#### **4.2.2 Reporting obligation**

Regarding the reporting obligation, article 22 of the Third Money Laundering Directive lays down the obligation to disclose suspicions of money laundering or terrorist financing to the competent authorities. The provision reads as follows:

*Article 22*

1. Member States shall require the institutions and persons covered by this Directive, and where applicable their directors and employees, to cooperate fully:
  - (a) by promptly informing the FIU, on their own initiative, where the institution or person covered by this Directive knows, suspects or has reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted;
  - (b) by promptly furnishing the FIU, at its request, with all necessary information, in accordance with the procedures established by the applicable legislation.

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<sup>39</sup> We have identified interpretation issues between Member States' representatives whether the Third Money Laundering Directive requires to include in the scope **all** dealers of high-value goods, when accepting cash payments of 15.000 EUR or more, or whether the preamble provides an exhaustive list of dealers of high-value goods (albeit using the words 'such as'). Hence, Member States have implemented this category differently into their national legislation.

<sup>40</sup> Report from the Commission to the European Parliament and the Council on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, Brussels, 11.4.2012, COM (2012), 168 final, p. 5. ('Application report')

<sup>41</sup> European Commission, DG Internal Market and Services, Feedback Statement: Summary of comments on the Report of the Commission to the European Parliament and the Council on the application of Directive 2005/60/EC, July 2012, published at: <[http://ec.europa.eu/internal\\_market/](http://ec.europa.eu/internal_market/)>. ('Feedback statement')

2. The information referred to in paragraph 1 shall be forwarded to the FIU of the Member State in whose territory the institution or person forwarding the information is situated.(...)

As was already stated at the beginning of this section, there exists a variety between the reporting requirements in the Member States. In order to be able to identify and capture the most important differences between the reporting systems of the Member States, we have made an inventory on the basis of the following seven points of comparison:

- type of report (STR, SAR, UTR, SAR, etc.)
- substantive threshold for reporting (knowledge, suspicion, reasonable grounds to suspect, unusualness, etc.)
- the moment of reporting (before or after the transaction, maximum time period);
- the objective threshold for reporting (amount of (cash) money involved, other objective factors);
- the definition of transaction (defined in national legislation or not);
- the coverage of attempt;
- the way in which the data is collected (one report is one transaction; one report can contain multiple transactions, etc.).

The following table shows the result based on these seven points:<sup>42</sup>

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<sup>42</sup> The table presented here is a simplified version. In Annex 4.2 you can find the complete table with references to the sources.

**Table 4.4: AML/CTF reporting systems in the EU**

Type of report		Substantive threshold for reporting: level of knowledge	Time of reporting	Objective threshold for reporting	Definition of a transaction	Attempted transactions to be reported?	Data collection
AT	STR	Knowledge (insurance brokers only), suspicion or reasonable grounds to suspect.	Immediately or promptly	n.a.	No definition in AML legislation	Yes, but different expressions used in the different Acts	One STR may contain several individual transactions
	(C)TR	n.a.	Immediately	Only for credit institutions: * the requests are submitted after 30 June 2002; * the customer's identity has not yet been ascertained for the savings deposit (i.e. savings accounts opened before 2002); *the payment is from a savings account which shows a balance of at least 1.000 EUR.			One (C)TR contains one transaction
BE	STR	Knowledge or suspicion , reasonable grounds to suspect	Before transaction takes places, or immediately thereafter	Only for casinos: Purchase of chips amount to 10.000 EUR or more; or 2.500 EUR (when foreign currency)	No definition in AML Act	Yes	One STR may contain several individual transactions
BG	STR	Suspicion	Before transaction takes places, or immediately thereafter	n.a.	No definition in AML Act	n.a.	One STR may contain several individual transactions
	CTR	n.a.	On a monthly basis not later than the 15th day of the month following the month of the information supplied	30.000 BGN (approx. 15.000 EUR) (cash transactions)			One CTR contains one individual transaction

<b>CY</b>	SAR	Knowledge and suspicion	Before transaction takes place, or immediately thereafter	n.a.		No definition in AML Act	Yes	One SAR may contain several individual transactions
<b>CZ</b>	STR	Suspicion	Without undue delay, but no later than 5 days after the transaction	n.a.		"Any interaction of the obliged entity with another person should such interaction lead to handling of the other person's property or providing services to such other person"	Yes	One STR may contain several individual transactions
<b>DK</b>	STR	Suspicion (but only reporting in case of suspicion of a criminal offence punishable by 1 year or more)	Immediately	n.a.		No definition in AML Act	Yes, indirectly	One STR may contain several individual transactions
<b>EE</b>	STR	Knowledge, suspicion or reasonable grounds to suspect	Immediately, but no later than two working days after the transaction	n.a.			Yes	One STR may contain several individual transactions
	CTR	n.a.	No time frame indicated in AML Act	32 000 EUR (cash transactions)		No definition in AML Act	n.a.	One CTR contains one transaction
<b>FI</b>	SAR	Suspicion. For pawnshops: "if a transaction involves a pledge of a significant financial value"	Immediately	Customers related to a State whose AML/CTF system does not meet the international obligations in specific circumstances		No definition in AML Act	Yes, indirectly.	One SAR may contain several individual transactions
<b>FR</b>	STR (suspicion reporting)	Knowledge, suspicion or reasonable grounds to suspect	Prior to the transaction, otherwise without delay	n.a.			Yes	One STR may contain several individual transactions
	STR (systematic reporting)	n.a.	As soon as one of the statutory criteria is established	Various objective grounds (see full table). One of which is the criterion that the identity of the customer or the beneficial owner (...) remains doubtful		No definition in AML legislation	n.a.	One STR may contain several individual transactions

<b>DE</b>	STR	Knowledge ("having established facts which permit the conclusion")	Immediately	n.a.	Any act aimed at or resulting in a transfer of money or a similar movement of assets	Yes	One STR may contain several individual transactions
<b>GR</b>	STR	Knowledge, suspicion, reasonable grounds	Promptly. However, in case of high-risk transactions, the FIU must be notified before the performance of the transactions or simultaneously.	n.a.	No definition in AML Act	Yes	One STR may contain several individual transactions
<b>HU</b>	STR	Suspicion, reasonable grounds to suspect	Without delay	n.a.	No definition in AML Act; but in practice every fact or circumstance that may give rise to a suspicion of money laundering or terrorist financing	No	One STR may contain several individual transactions
<b>IE</b>	STR	Knowledge, suspicion, reasonable grounds	"As soon as practicable after acquiring that knowledge or forming that suspicion"	n.a.	No general definition. There are specific definitions of transactions for professional and legal service providers, casinos and private members' clubs	Yes	One STR may contain several transactions

<b>IT</b>	STR	Knowledge, suspicion, reasonable grounds to suspect	Where possible before transaction, otherwise without delay	n.a.	The transmission or movement of means of payment; for (legal and fiscal service providers), it shall mean a specified or specifiable activity directed towards an objective of a financial or patrimonial nature modifying the existing legal situation, to be carried out by way of a professional service	Yes	One STR may contain several transactions
<b>LV</b>	UTR	n.a.	In principle before the transaction, otherwise without delay	Depends on each category of obliged entities	No definition in AML Act	n.a.	One UTR may contain several individual transactions
	STR	Suspicion		n.a.		Yes	One STR may contain several individual transactions
<b>LT</b>	STR	Suspicion and Unusual	Transactions must be suspended and a notification must be made to the FIU no later than within 3 working hours, irrespective of the amount involved	n.a.	AML Act speaks about 'monetary operations and transactions', but no definition in AML Act.	Yes	One STR may contain several individual transactions
	CTR	n.a.	Immediately and not later than within seven working days following its completion	15.000 EUR (cash transactions)		n.a.	One CTR contains one transaction
<b>LU</b>	STR	Knowledge, suspicion, or reasonable grounds to suspect	Prior to the transaction; otherwise without delay	n.a.	No definition in AML Act	Yes	One STR may contain several individual transactions

<b>MT</b>	STR	Knowledge, suspicion or reasonable grounds to suspect	As soon as is reasonably practicable, but not later than five working days from when the suspicion first arose	n.a.	No definition in AML Act	Yes	One STR may contain several individual transactions
<b>NL</b>	UTR	Unusual	Within 14 days of establishing the unusual nature of the transaction	Depends on each category of obliged entities	Operation or combination of operations by or on behalf of a customer in connection with the procurement or provision of services	Yes	One UTR may contain several individual transactions
	STR	Suspicion, reasonable grounds to suspect	Immediately	n.a.	The performing – on someone’s own or on someone else’s behalf, on someone’s own or someone else’s account: a) deposits and withdrawals (...) b) buying and selling foreign currency, c) transfer of the ownership or asset values, (...) d) a claim for shares a claim for stock swap	Yes	One STR contains one transaction
	SAR						One SAR may contain several individual transactions
	<b>PL</b>	CTR	n.a.	Within 14 days after the end of each calendar month	15.000 EUR (all transactions)	n.a.	One CTR may contain several individual transactions
<b>PT</b>	STR	Knowledge, suspicion or reasonable grounds to suspect	Before transaction takes place, or promptly thereafter.	In the case of transactions related to a jurisdiction subject to EU counter-measures, the supervisors may determine that transactions exceeding 5.000 EUR or more must be reported	No definition in AML Act	Yes	One STR may contain several individual transactions

	STR	Suspicion	Before the transaction or immediately thereafter, but no later than 24 hours after the transaction	n.a.		Yes	One STR may contain several individual transactions
	CTR	n.a.	Within ten working days from the performing of the transactions subject to the reporting obligation	15.000 EUR (cash transactions)	No definition in AML Act	n.a.	One CTR is one transaction
<b>RO</b>	ETR (external transaction reporting)	n.a.	Within ten working days from the performing of the transactions subject to the reporting obligation	15.000 EUR (not limited to cash; coming from or going to accounts outside Romania)		n.a.	One ETR is one transaction
<b>SK</b>	UTR	Unusual	Before the transaction takes place, otherwise without undue delay	n.a.	No definition in AML Act	Yes	One UTR may contain several individual transactions
	STR	Suspicion	Before the transaction takes place, or as soon as is practicable thereafter or immediately when the suspicion raises	n.a.	Any receipt, handover, exchange, safekeeping, disposal or other handling of monies or other property by a person liable	Yes	One STR may contain several individual transactions
<b>SI</b>	CTR	n.a.	Immediately after the transaction is completed and not later than within three working days following its completion	30.000 EUR (cash transactions)		n.a.	One CTR may contain several individual transactions
	STR (suspicion reporting)	Knowledge, suspicion, reasonable grounds to suspect	Before the transaction takes place, otherwise without delay	n.a.		Yes	One STR may contain several individual transactions

<b>ES</b>	CTR (systematic reporting)	n.a.	On a monthly basis	Depends on each category of obliged entities	No definition in AML Act	n.a.	One CTR may contain several individual transactions
<b>SE</b>	STR	Suspicion, reasonable grounds to suspect	Before the transaction takes place, otherwise without delay	n.a.	No definition in AML Act	Yes	One STR may contain several individual transactions
<b>UK</b>	SAR on the basis of 327-329 POCA 2002	Knowledge, suspicion or reasonable grounds to suspect	Before any action is taken; as appropriate consent is required	n.a.	No definition in AML legislation. In practice, transactions are included in the notion of 'activity'	Yes	One consent SAR may contain a number of activities including a transaction
	SAR on the basis of 330 POCA 2002	Knowledge, suspicion or reasonable grounds to suspect	As soon as is practicable after the information or other matter comes to him	n.a.		Yes	One SAR may contain a number of activities, including a number of individual transactions

\*For full table including some additional information, see annex 4.2

Legend: n.a. indicates 'not applicable', e.g. in relation to the objective threshold for reporting this means that there is no threshold for reporting established by law.

From the table it appears that although all Member States have reporting systems in place, the extent and nature differs quite a lot. Regarding the *type of reports* in place, we see that STRs and CTRs are the most commonly used type of reports within the EU. The Netherlands, Slovakia and Latvia only (SK, NL) or partially (LV) have a UTR reporting system, while Cyprus, Finland, Poland, and the UK only (CY, FI, UK) or partially (PL) have a SAR reporting system in place. Interesting are also Austria that has a reporting obligation for credit institutions in relation to saving deposits, and Romania, which has a reporting obligation concerning cross-border transfers. This type of report is called External Transaction Report (ETR).

We furthermore see that although many Member States have STRs in place, the exact requirements differ a lot. Concerning the *substantive threshold for reporting* the following can be seen. We notice that while the German AML Act refers to 'knowledge', the substantive threshold is considerably lower in a large number of Member States which have 'knowledge, suspicion or reasonable grounds to suspect' as their standard. A deviating standard can be found, for example, in the Netherlands where transactions must be reported when they are to be considered 'unusual'. Some Member States also stipulate in their legislation that information that raises the suspicion should come to that person's attention in the course of that person's trade, profession, business or employment. This is for example the case in Cyprus and Ireland.

The *objective threshold of reports*, usually CTRs, also varies considerably. The highest identified threshold is 32.000 EUR for cash transactions in Estonia. Poland is also worth mentioning in this respect, as it requires that *all* transactions, and not only cash transactions, which exceed (an equivalent of) 15.000 EUR must be reported to the FIU. Latvia, the Netherlands and Spain have a mixed approach to the reporting of cash transactions as the amount differs for each category of obliged institution. Finally, some Member States appear to have reporting systems on the basis of other objective factors. For instance, Finland has an enhanced reporting obligation for transactions with customers related to a State whose AML/CTF system does not meet the international obligations in specific circumstances. A similar possibility exists in Portuguese legislation: in the case of transactions related to a specific jurisdiction subject to counter-measures decided by the Council of the EU, the competent supervisors may determine that transactions exceeding 5.000 EUR must be reported. We have not been presented with evidence that use has been made of this possibility so far. Also French legislation contains various subjective grounds for reporting.

The *moment of reporting* also varies between the Member States. In various Member States obliged institutions must report before performing a transaction and, where not possible, immediately after the performance of the transaction. A stronger requirement applies for Consent SARs in the United Kingdom where the FIU needs to provide consent to obliged institutions to perform specified future activities. In that case, reporting can only take place before the performance of the transaction. Some other Member States, however, only require that the information is disclosed to the FIU as soon as becomes practicable after performing the transaction. The terms most commonly used are 'promptly', 'as soon as possible', 'immediately after', 'without (undue) delay', and so on. It is not common, but where Member States impose a maximum period for disclosing the reports this time scale also varies. For example, Romania has a maximum reporting time of 24 hours after the transaction took place, Estonia requires a maximum of two working days after the transaction took place, while the Netherlands has a maximum period of 14 days after establishing the unusual nature of the transaction.

From the table it also appears that some Member States have defined in their AML/CTF legislation *what a transaction* is, while a considerable number of Member States has not done so. We observe that sometimes the definition of transaction is stretched to such an extent that it approaches the notion of 'activity'. Hence, while the reporting system is in some Member States officially called a

suspicious transaction reporting system, the opening of a bank account may actually fall under the notion of transaction.<sup>43</sup>

Finally, we observe that in most cases a report may consist of various transactions. This can range from one transaction to a thousand transactions in one report. On the other hand, some reports clearly relate to a single transaction. Combining this notable difference with the different requirements of reporting systems that formally have the same name obviously has consequences for comparing the Member States on this issue. Chapter 11 on the collection of statistics pays more attention to this matter.

#### 4.2.3 Legal privilege-exemption

Following the case law of the European Court of Justice and subsequent Constitutional Court decisions<sup>44</sup>, legal professional privilege in relation to the prevention of money laundering and terrorist financing has been a heavily debated topic both among practitioners and academia.<sup>45</sup> The Third Money Laundering Directive sets out that Member States may decide not to apply the reporting obligation to “*notaries, independent legal professionals, auditors, external accountants and tax advisors with regard to information they receive from or obtain on one of their clients, in the course of ascertaining the legal position for their client or performing their task of defending or representing that client in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings, whether such information is received or obtained before, during or after such proceedings*”. The table below shows that there is quite some divergence in terms of the scope of privilege that can apply to the legal privilege-exemption, as well as the type of activities that fall under the legal privilege-exemption. Finally, we have also looked at the question whether there is a crime/fraud exception in national AML/CTF legislation.

Some remarks should be made beforehand. Firstly, the starting point for this comparison has been the Third Money Laundering Directive. Case law of the European Court of Justice concerning legal professional privilege in general<sup>46</sup> and the more elaborated common law notion of legal professional privilege<sup>47</sup> go beyond the focus of the present research. Secondly, it should be understood that the table below only provides information in a simplified manner. Differences between the Member States as to the scope of application can be the result of the different tasks the legal and fiscal service providers in a Member State (e.g. whether or not fiscal service providers have litigation competences), the position of the legal and fiscal service providers in society (e.g. public notaries are

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<sup>43</sup> This is for example the case in Czech Republic, Greece, Hungary, Luxembourg, Malta, Portugal and Sweden.

<sup>44</sup> ECJ, Case C-305/05, *Ordre des barreaux francophones et germanophones and Others v Conseil des ministres*, [2007] I-5305; French Conseil d’Etat, Lecture du 10 avril 2008, Nos. 296845,296907 (Conseil National des Barreaux et autres); Belgian Constitutional Court, 23 January 2008 Nr. 10/2008 (case nr. 3064 and 3065); Trybunał Konstytucyjny (Polish Constitutional Court), 2 July 2007, Judgment, 72/7/A/2007;

<sup>45</sup> A selection: Luchtman, M. and van der Hoeven, R. (2009), ‘Case comment to Case C-305/05, *Ordre des barreaux francophones and germanophones & Others v. Conseil des Ministres*’, *Common Market Law Review*, Vol. 46 No. 1, pp. 301-318; Hermelinski, W. (2005), *Money Laundering and the Legal Profession*, Paper presented at the ECBA-conference in Lisbon on 30 April 2005; Komárek, J. (2008), ‘Legal Professional Privilege and the EU’s Fight against Money Laundering’, in: *Civil Justice Quarterly*, vol. 27, No. 1, pp. 13-22; Itzikowitz, A. (2006), Legal professional privilege/intermediary confidentiality: the challenge for anti-money laundering measures’, in: Goredema, C. (2006), *Money Laundering Experiences, ISS Monograph Series*, pp. 73-90 at 73-74; Stouten, M. (2012), *De witwasmeldplicht: Omvang en handhaving van de Wwft-meldplicht voor juridische en fiscale dienstverleners*, Boom Juridisch Uitgevers: Den Haag; Fernández Salas, M. (2005), *The third anti-money laundering directive and the legal profession*, text based on the presentation made by the author on 27 May 2005 in Brussels at a conference organized by the European Association of Lawyers, available at [http://www.antimoneylaundering.org/Sources\\_and\\_Acknowledgments.aspx](http://www.antimoneylaundering.org/Sources_and_Acknowledgments.aspx) (last accessed 5 November 2012).

<sup>46</sup> Case 155/79, *AM & S* [1982] ECR 1575; Case T-30/89 *Hilti* [1990] ECR II-163; Case C-550/07, *Akzo Nobel* [2010] ECR I-08301.

<sup>47</sup> Deloitte (2011), footnote 358.

not present in all Member States), or because the scope of the reporting obligation differs (e.g. tax advice needs (not) to be reported). Thirdly, two terminological explanations have to be made. The table below presents the procedural and legal advice-exemption. By *procedural exemption* we mean that the exemption applies to the situation where information is obtained during confidential communications made for the purpose of providing or obtaining legal advice about proposed or contemplated litigation. The *legal advice exemption* concerns the situation where information is obtained during communications concerning advice matters outside the context of criminal or other court proceedings. The Third Money Laundering Directive here speaks about ascertaining the legal position of a client.

The table presented below is highly simplified. The full table including special remarks on the legal privilege-exemptions in the Member States can be found in Annex 4.3.

**Table 4.5: Legal privilege-exemptions in Member States' AML/CTF legislation**

	Scope of application						Type of privilege		Crime/fraud exception
	Lawyers	Notaries (public)	Auditors	External accountants (chartered accountants)	Tax advisors	Other legal professionals	Procedural exemption	Legal advice exemption	
<b>AT</b>	X	X	X	X	X		X	X	Yes
<b>BE</b>	X	X	X	X	X		X	X	Yes
<b>BG</b>	X					X	X	X	No
<b>CY</b>	X	n.a					X		Yes
<b>CZ</b>	X	X	X	X	X	X	X	X	Yes
<b>DK</b>	X	n.a	X	X	X	X	X	X	Yes
<b>EE</b>	X	X					X	X	No
<b>FI</b>	X						X		No
<b>FR</b>	X	X				n.a	X	X	Yes
<b>DE</b>	X	X	X	X	X	X	X	X	Yes
<b>EL</b>	X	X	X	X	X	X	X	X	Yes
<b>HU</b>	X	X					X		No
<b>IE</b>	X	X	X	X	X			X	Yes
<b>IT</b>	X	X	X	X	X	X	X	X	No
<b>LV</b>	X	X	X	X	X	X	X		No
<b>LT</b>	X					X	X	X	No
<b>LU</b>	X						X	X	No
<b>MT</b>	X	X	X	X	X	X	X	X	No
<b>NL</b>	X	X	X	X	X	X	X	X	No

<b>PL</b>	X		X		X	X	X		No
<b>PT</b>	X						X	X	No
<b>RO</b>	X	X	X	X	X	X	X	X	No
<b>SK</b>	X	X	X	X	X		X	X*	No
<b>SI</b>	X	X				X	X	X	No
<b>ES</b>	X						X	X	No
<b>SE</b>	X	n.a	X	X	X	X	X	X	No
<b>UK</b>	X	X	X	X	X	X	X	X	Yes

*Legend: 'X' marks presence. 'n.a.' indicates not applicable.*

The table shows that some Member States like Bulgaria, Finland, and Spain have decided to apply the legal privilege exemption to lawyers only, while other Member States like Denmark, Greece, Italy, Malta, and Romania, allow the full range of legal and fiscal service providers to apply for the legal privilege-exemption. There are various Member States (Cyprus, Finland, Hungary, Latvia, and Poland) that have not implemented one of the two exemption grounds (explicitly) in their national AML/CTF legislation. The crime-fraud exception is an 'exemption to the exemption'. It means that under normal circumstances a particular situation falls under the legal privilege-exemption, but because the institution or professional knows or has reasons to believe that the client abuses the confidentiality for the purpose of money laundering or terrorist financing, the legal privilege-exemption does not apply anymore and the reporting obligation revives. In ten Member States there is (some form of) a crime-fraud exception present in national AML/CTF legislation.<sup>48</sup>

What does not appear directly from this table<sup>49</sup> is that, on the basis of publicly available information and from discussions with Member States' representatives, we observe that there are different interpretations on the procedural and legal advice exemption grounds. One example concerns the notion of judicial proceedings. While in Spain it is stated explicitly that judicial proceedings do not include administrative proceedings, in Poland, the Netherlands, and Sweden administrative proceedings are included, or there are at least discussions whether or not this is included.<sup>50</sup> Mediation proceedings are also a point of debate. A second example concerns legal advice-exemption. For example, in Denmark there is a general understanding of legal advice that it includes the provision of business advice as well, while in the United Kingdom advice from a lawyer on a purely financial, operational, public relations or strategic business issue - i.e. not in the context of obtaining legal advice on related matters - is normally not privileged.<sup>51</sup> Furthermore it is interesting to see that in the Netherlands the legal advice-exemption only applies to the first meeting between the professional and the client.<sup>52</sup> In comparison with the other Member States that have implemented the legal advice-exemption this seems a strict interpretation.

Altogether the implementation of the legal privilege-exemption in the AML/CTF legislation of the EU Member States shows a highly diversified picture. The differences identified in the table and discussions on the basis thereof are also reflected in the Feedback statement of the European Commission of July 2012. Here the Commission addresses the comments with regard to the treatment of lawyers and independent legal professionals under the Third Money Laundering

<sup>48</sup> See the full table in Annex 4.3 where the particularities of the systems are indicated.

<sup>49</sup> But can be found in the full table in Annex 4.3.

<sup>50</sup> See Annex 4.3 for the full table in which this information is specified.

<sup>51</sup> See Annex 4.3 for the full table in which this information is specified.

<sup>52</sup> See Annex 4.3 for the full table in which this information is specified.

Directive. The Feedback statement showed that there are discussions about the coverage of the legal privilege-exemption with respect to advisory communications between lawyer and client, about the scope of the legal privilege-exemption (lawyers only or other legal and fiscal service providers as well) and about the interpretation of judicial proceedings, i.e. the inclusion of administrative, arbitration and mediation proceedings or not.<sup>53</sup> In its Application report and the Feedback statement, the European Commission does not provide any particular considerations with respect to the Fourth Money Laundering Directive.

### **4.3 Legal effectiveness of Member States' preventive AML/CTF legislation**

On the basis of the notion of legal effectiveness that was explained in Chapter 3, we assess the Member States' preventive AML/CTF legislation. For the assessment we used information obtained from surveys, interviews, Regional Workshops and publicly available information. Before coming to a country-by-country analysis of legal effectiveness by looking at identified problems regarding the application and meaningfulness of the legal norms and the legal hindrances per Member State, we first address some general factors that impact the legal effectiveness of the preventive AML/CTF policies of all Member States.

#### **4.3.1 General factors that impact Member States' AML/CTF policies**

Throughout the present research, we have identified two general factors that negatively impact the legal effectiveness of Member States' preventive AML/CTF policies. Firstly, there is the divergence between the international FATF Recommendations and the EU Directive concerning the notion of 'equivalence' as well as the (non)-allowance of full exemptions applicable in case of simplified due diligence. Secondly, there is the widespread presence of open norms, vague definitions and, as a result thereof, application and interpretation difficulties.

#### **4.3.2 Divergence of FATF and EU norms**

The divergence between FATF and EU norms concerns the notion of equivalence and is best illustrated with respect to the aspects of simplified due diligence and third-party reliance.<sup>54</sup> With respect to simplified due diligence there is a second point of discussion, which concerns the full exemption of simplified due diligence as allowed by the Third Money Laundering Directive. This full exemption is criticised by the FATF.

##### *Simplified due diligence*

Under the simplified due diligence regime, there are possibilities both under the FATF Recommendations and the EU Directive for obliged institutions to perform simplified CDD measures. One of the situations for which simplified CDD is allowed is when clients are institutions which themselves are subject to the AML/CTF policy of another country that has an 'equivalent' standard. The fact that an institution comes from an 'equivalent third country', however, only constitutes a refutable presumption that simplified CDD suffices. This does not override the need for obliged institutions to continue to operate the risk-based approach.

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<sup>53</sup> Feedback Statement, July 2012, p. 14.

<sup>54</sup> Van den Broek, M. (2011), 'Gelijkwaardigheid in the anti-witwasbeleid: de FATF en de EU', in: *SEW Tijdschrift voor Europees en economisch recht*, October 2011; EBA, ESMA and EIOPA (2012), *Report on the legal and regulatory provisions and supervisory expectations across EU Member States of Simplified Due Diligence requirements where the customers are credit and financial institutions under the Third Money Laundering Directive [2005/60/EC]*, JC/2011/097 and AMLTF/2011/07.

Within the European Union, the equivalence is interpreted in that all Member States' AML/CTF policies are considered equivalent automatically. This stems from the mutual recognition that all Member States apply the same minimum norms namely those stemming from the Third Money Laundering Directive. As regards third countries, being countries that do not belong to the European Union, EU Member States have jointly concluded a Common Understanding in which they list 'equivalent third countries'. Since June 2012 the list includes Australia, Brazil, Canada, Hong Kong, India, Japan, South Korea, Mexico, Singapore, Switzerland, South Africa, and the United States of America.<sup>55</sup> Third countries are considered equivalent, because they are a Member of the FATF and they have obtained a good rating score in the last country evaluations by the FATF or FATF-style bodies.<sup>56</sup> The Common Understanding is drafted by Member States' representatives themselves and is formally non-binding in nature. However, in practice the national equivalence-lists are a copy-paste of the Common Understanding.

Although the FATF Recommendations do not contain substantive requirements on the notion of equivalence, it seems that the FATF opposes the approach taken by the Member States. With respect to the automatic acknowledgement of equivalence between EU Member States through *de jure* mutual recognition, the FATF considered that *"there is no presumption by the FATF that the treatment of all EU Member States as being equivalent is appropriate in terms of a country fulfilling the requirements of the FATF Recommendations"*.<sup>57</sup> Regarding the fact that Member States jointly decide on which third countries can be considered equivalent, the FATF takes the position that such approach is not consistent with the FATF Recommendations. Firstly, the fact that countries fulfil the Recommendations cannot lead to a presumption of equivalence.<sup>58</sup> Secondly, the FATF Recommendations presume individual responsibility of each of the Member States to assess which other countries can be considered equivalent to the own national AML/CTF policy, taking into account the specific national risks on money laundering and terrorist financing. In its Mutual Evaluation on the Netherlands the FATF considered that *"[t]he Dutch authorities have not undertaken an independent and autonomous risk assessment of the countries on the list, although they have participated in the joint assessment of such countries undertaken at the EU-level"*.<sup>59</sup> The FATF came to similar conclusions in its evaluation of Germany and in follow up reports on France, Sweden and the United Kingdom.<sup>60</sup> A similar consideration can also be found in the MONEYVAL Fourth Assessment Visit Report on Cyprus.<sup>61</sup>

The European Commission considered in its Application report of April 2012 whether an equivalence regime is still needed in the Fourth Money Laundering Directive and whether there is a role to be played at EU level.<sup>62</sup> The Feedback statement it released in July 2012 showed that the majority of respondents stressed the usefulness of the exercise and suggested that the Committee for the Prevention for Money Laundering and Terrorist Financing (CPMLTF) should be considered as a

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<sup>55</sup> Common Understanding between Member States on third country equivalence under the Anti-Money Laundering Directive (Directive 2005/60/EC), June 2012, available at: [http://ec.europa.eu/internal\\_market/company/docs/financial-crime/3rd-country-equivalence-list\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/financial-crime/3rd-country-equivalence-list_en.pdf).

<sup>56</sup> FATF (2011), *Third Mutual Evaluation on the Netherlands*, p. 128-129: 'According to the understanding, any FATF member that receives a Partially Compliant (PC) or above on FATF Recommendations 1, 4, 5, 10, 13, 17, 23, 29, 30 and 40 and Special Recommendations II and IV is considered 'equivalent'.

<sup>57</sup> FATF (2011), *Third Mutual Evaluation on the Netherlands*, p. 128.

<sup>58</sup> FATF (2010), *Third Mutual Evaluation on Germany*, p. 132.

<sup>59</sup> FATF (2011), *Third Mutual Evaluation on the Netherlands*, p. 129.

<sup>60</sup> FATF (2010), *Third Mutual Evaluation on Germany*, p. 133, 139-141; FATF (2011), *Third Mutual Evaluation on France*, p. 276-277; FATF (2010), *Fourth Follow Up Report on Sweden*, p. 10; FATF (2009), *Fourth Follow Up Report on the United Kingdom*, p. 9.

<sup>61</sup> MONEYVAL (2011), *Fourth Assessment Visit on Cyprus*, p. 72.

<sup>62</sup> Application report, April 2012, p. 13-14.

permanent forum for equivalence assessments.<sup>63</sup> If the European Commission acts in line with the feedback in the drafting of the Fourth Money Laundering Directive, it seems unlikely that the divergence between FATF and the EU will be solved on this point.

In addition to the discussion concerning equivalence and simplified due diligence, the FATF also disagrees with the fact that the Third Directive allows a full exemption from the scope of due diligence where a customer or a certain product meets the requirements for simplified due diligence. Various Member States have implemented this provision directly into their national legislation. As various FATF and MONEYVAL reports show the FATF considers that a full exemption to customer due diligence does not mean that obliged institutions apply reduced or simplified CDD measures as suggested by the FATF Recommendations, although some form of CDD has been performed by obliged institutions in order to establish whether the customer or product qualifies for simplified due diligence.<sup>64</sup> This may change in the near future as the European Commission considered in its Application report to clarify in the Fourth Money Laundering Directive that simplified due diligence is not a full exemption from CDD.<sup>65</sup> This suggestion was supported by around 60% of the respondents, according to the Commission's Feedback statement.<sup>66</sup>

### *Third-party reliance*

The diverging views on equivalence also appear in the context of third-party reliance. In its evaluation on the Netherlands, the FATF evaluates the Netherlands non-compliant on this point. One of the reasons for the negative evaluation is that the Dutch AML Act (automatically) presupposes that all EU and EEA-Member States have an equivalent AML/CTF policy and, consequently, that institutions from these countries can act as a third party.<sup>67</sup> Again, the FATF seems to be of the view that Member States should decide, taking into account the specific national risks, which other countries can be considered equivalent to the own national AML/CTF policy. A general presumption that EU/EEA Member States have an equivalent policy conflicts with this individual responsibility. The FATF came to similar conclusions in its follow up reports on Denmark and the United Kingdom.<sup>68</sup>

### *Summary*

Altogether, at the heart of the moot points between the EU Member States and the FATF one can find the automatic acknowledgement of equivalence between EU (and EEA) Member States and the allowability of a joint European approach in deciding which third countries have an equivalent AML/CTF policy compared to the 'European' policy. As the Mutual Evaluation on the Netherlands shows, a strict implementation of the Third Money Laundering Directive can lead to a (partial) negative FATF evaluation. The difference in approach by the FATF and the EU obviously lowers the legal effectiveness of Member States' AML/CTF policies, as Member States have to make a choice between the conflicting standards set at international and European level. There is the risk that Member States make different choices or interpret or apply norms in a different way. It is, therefore,

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<sup>63</sup> Feedback statement, July 2012, p. 12.

<sup>64</sup> For example: FATF (2011), Third Mutual Evaluation on the Netherlands, p. 129; FATF (2007), Third Mutual Evaluation on Finland, p. 97; FATF (2006), Third Mutual Evaluation on Portugal, p. 78; FATF (2007), Third Mutual Evaluation on Greece, p. 88; MONEYVAL (2011), Fourth Assessment Visit Report on Slovakia, p. 88; MONEYVAL (2012), Fourth Assessment Visit Report on Malta, p. 88.

<sup>65</sup> Application report, April 2012, p. 6-7.

<sup>66</sup> Feedback Statement, July 2012, p. 7.

<sup>67</sup> FATF (2011), Third Mutual Evaluation on the Netherlands, p. 152-153.

<sup>68</sup> FATF (2010), Third Follow Up Report on Denmark, p. 23; FATF (2009), Fourth Follow Up Report on the United Kingdom, p. 10.

advisable that the FATF and EU work together to solve this discrepancy and ensure that there are no tensions between the standards set at international and European level.

### 4.3.3 Open norms, application and interpretation difficulties

A second element that lowers the legal effectiveness of all Member States' AML/CTF policies concerns the open definitions of ultimate beneficial ownership, politically exposed persons, trust and company service providers, and the different interpretations with respect to the notion of tipping-off. The open definitions on the one hand ensure that Member States can implement the elements in their national legislation thereby using their national terminology and systems, but can on the other hand result in diverging interpretations and differences in the application of the norms.

With respect to diverging interpretations and difficulties in the application of norms it is important from the perspective of legal effectiveness that the differences and difficulties do not undermine the AML/CTF policies of the Member States by creating legal gaps or loopholes or by causing hindrances in the application of the norms. There is also a risk that due to the open nature, interpretation and application difficulties, norms cannot be said to contribute to the overall objectives of the AML/CTF policy. The risk that norms are no longer applied or applied wrongly should be prevented.

#### *UBO, PEP, TSCP*

With respect to the implementation of the definitions and application difficulties that Member States face in relation to the concepts of ultimate beneficial ownership, politically exposed persons and trust and company service providers, reference is made to the earlier mentioned studies devoted to these topics.<sup>69</sup> In general, Deloitte points out the differences in definitions, and to the lack of public reference databases in the application of norms on UBOs and PEPs. Regarding UBOs, the Joint Committee of the European Supervisory Authorities' Sub-Committee on Anti-Money Laundering has expressed its concerns that differences in ways Member States have implemented obligations for obliged institutions to identify ultimate beneficial owners may create gaps or loopholes in the European AML/CTF policy.<sup>70</sup> It noted that the difference seems mostly to be the result of lack of clarity as to the minimum requirements in relation to beneficial owners.<sup>71</sup>

#### *Simplified CDD*

There is a high risk of variations in the way in which Member States have implemented the concept of simplified customer due diligence in the respective national AML/CTF policies. A recent report from the Joint Committee of the European Supervisory Authorities' Sub-Committee on Anti-Money Laundering concluded that Member States have adopted different approaches with regard to the matter of simplified due diligence. The differences concern both the scope of simplified due diligence, meaning the extent to which institutions are exempt from the application of the full CDD elements, and the degree of freedom of judgment for the institutions in assessing whether

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<sup>69</sup> Deloitte study (2011), p. 35, 50-70 (UBO) and 35, 86-95 (PEP), and 219-220 (TCSP); World Bank (2010), *Politically Exposed Persons: Preventive Measures for the Banking Sector*, Washington DC, in particular Chapter 2 and 4; EBA, ESMA and EIOPA (2012), *Report on the legal, regulatory and supervisory implementation across EU Member States in relation to the Beneficial Owners Customer Due Diligence requirements under the Third Money Laundering Directive [2005/60/EC]*, JC/2011/096 and AMLTF/2011/05.

<sup>70</sup> EBA, ESMA and EIOPA (2012), p. 5-6.

<sup>71</sup> EBA, ESMA and EIOPA (2012), p. 6.

simplified customer due diligence can be applied in individual circumstances.<sup>72</sup> There are clearly implementation and interpretation differences, which could potentially negatively affect the Member States' AML/CTF policies.

From anecdotal information obtained in various Member States it furthermore appears that in order to avoid liability issues or because of cost-related reasons, obliged institutions avoid making use of simplified due diligence measures. Although the information obtained from the private sector in this respect is scarce and could not be cross-checked throughout all Member States in the present research, it seems that we deal here with a more general issue. This has also come forward in the Deloitte study, where the following was stated: *"Some stakeholders did comment that simplified customer due diligence adds a level of complexity to their operations as they have to ascertain if a person falls within the simplified CDD regime. To avoid this added cost, they generally apply normal CDD to all their customers. Others have however stated that the categories are sufficiently clear to allow an efficient and cost effective application"*.<sup>73</sup>

The key rationale of the risk-based approach is that AML/CTF efforts should be proportionate to the risks involved and that stakeholders need to respond to ML/TF threats in ways that are proportionate to the risks involved. In other words: resources must be devoted to those areas where risks are highest. The risk-based approach was intended to *"address the problems inherent in prescriptive regulatory approaches: over-regulation leading to excessive compliance costs, inflexibility and consequent poor regulatory performance, and a focus on legalism rather than regulatory effectiveness"*.<sup>74</sup> Simplified due diligence was incorporated as a means to 'ease the lives' of the obliged institutions by allowing them to devote most of their resources to the high-risk situations in order to prevent money laundering and terrorist financing more effectively. The fact that there is evidence which suggests that the simplified due diligence regime is not or not fully applied because it actually adds a layer of complexity and additional costs for obliged institutions could lead to the conclusion that this is a factor which lowers the legal effectiveness of all Member States' AML/CTF policies.

#### *Prohibition of tipping-off*

The prohibition of disclosure (tipping-off) is a norm that aims to prevent obliged institutions informing their clients or third parties about the fact they have disclosed a suspicion report or any information in relation to the report to the competent authorities or that an investigation is being, or will be, performed on the client and the transaction. The rationale is simple: if a client becomes aware of the fact that he is suspected by the institution of money laundering or terrorist financing, the client could potentially flee or act to frustrate any further action taken by the obliged institution or competent authorities. It has been said that in practice the tipping-off prohibition interferes with the ordinary conduct of obliged institutions and that it potentially harms relationships with clients and customers. To mitigate these potential consequences, the FATF Recommendations and the Third Money Laundering Directive allow a number of detailed exceptions to this prohibition. At the same

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<sup>72</sup> EBA, ESMA and EIOPA (2012-2), Report on the legal and regulatory provisions and supervisory expectations across EU Member States of Simplified Due Diligence requirements where the customers are credit and financial institutions under the Third Money Laundering Directive [2005/60/EC], JC/2011/097 and AMLTF/2011/07, p. 4.

<sup>73</sup> Deloitte study (2011), p. 84.

<sup>74</sup> Ross, S. and Hannan, M. (2007), 'Money laundering regulation and risk-based decision-making', in: *Journal of Money Laundering Control*, Vol. 10, Issue 1, pp. 106 – 115 at 107; Takáts, E. (2007), *A Theory of 'Crying Wolf': The Economics of Money Laundering Enforcement*, IMF Working Paper, WP/07/81; Unger, B. and Van Waarden, F. (2009). 'How to dodge drowning in data? rule- and risk-based anti-money laundering policies compared', in: *Review of Law and Economics*, 5(2), p. 953-985.

time, these exceptions are accompanied by some guarantees. Article 28 of the Third Money Laundering Directive reads as follows:

*Article 28*

1. The institutions and persons covered by this Directive and their directors and employees shall not disclose to the customer concerned or to other third persons the fact that information has been transmitted in accordance with Articles 22 and 23 or that a money laundering or terrorist financing investigation is being or may be carried out.
2. The prohibition laid down in paragraph 1 shall not include disclosure to the competent authorities referred to in Article 37, including the self-regulatory bodies, or disclosure for law enforcement purposes.
3. The prohibition laid down in paragraph 1 shall not prevent disclosure between institutions from Member States, or from third countries provided that they meet the conditions laid down in Article 11(1), belonging to the same group as defined by Article 2(12) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate.
4. The prohibition laid down in paragraph 1 shall not prevent disclosure between persons referred to in Article 2(1)(3)(a) and (b) from Member States, or from third countries which impose requirements equivalent to those laid down in this Directive, who perform their professional activities, whether as employees or not, within the same legal person or a network. For the purposes of this Article, a 'network' means the larger structure to which the person belongs and which shares common ownership, management or compliance control.
5. For institutions or persons referred to in Article 2(1)(1), (2) and (3)(a) and (b) in cases related to the same customer and the same transaction involving two or more institutions or persons, the prohibition laid down in paragraph 1 shall not prevent disclosure between the relevant institutions or persons provided that they are situated in a Member State, or in a third country which imposes requirements equivalent to those laid down in this Directive, and that they are from the same professional category and are subject to equivalent obligations as regards professional secrecy and personal data protection. The information exchanged shall be used exclusively for the purposes of the prevention of money laundering and terrorist financing.
6. Where the persons referred to in Article 2(1)(3)(a) and (b) seek to dissuade a client from engaging in illegal activity, this shall not constitute a disclosure within the meaning of the paragraph 1.
7. The Member States shall inform each other and the Commission of cases where they consider that a third country meets the conditions laid down in paragraphs 3, 4 or 5.

The present research discovered practices in some Member States where obliged institutions inform each other of suspicious persons - not necessarily clients - or the possibility of suspicious transactions on a rather frequent basis. It appeared that especially paragraphs 4 and 5 of Article 28 are interpreted differently in the Member States.

Article 28, fourth paragraph, of the Directive regulates that auditors, external accountants, tax advisors, notaries and other independent legal professionals are allowed to disclose information about suspected clients or transactions as long as they belong to the same network<sup>75</sup> or work within the same legal person. Therefore, in principle it is not allowed to disclose information to similar institutions or professionals outside the scope of the conglomerate or network. There is one exception provided by Article 28, fifth paragraph of the Directive. This provision states that the financial institutions and professionals are allowed to disclose information to their counterparts not belonging to the conglomerate or network only in cases related to the *same customer* and the *same transaction*. There are three accompanying guarantees. Institutions or professionals must be from the same professional category and subject to equivalent obligations as regards professional secrecy and personal data protection. Furthermore the information may only be used for the purpose of the prevention of money laundering and terrorist financing.<sup>76</sup>

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<sup>75</sup> Network means the larger structure to which the person belongs and which shares common ownership, management or compliance control.

<sup>76</sup> EU FIUs' Platform (2008), Report on Confidentiality and Data Protection in the Activity of FIUs, Brussels, p. 14.

The difference in interpretation is best demonstrated by a hypothetical case.<sup>77</sup> The case concerns Mr. X who goes to a tax advisor in a Member State. He asks for advice about a certain financial construction that he wants to use in the future. The tax advisor has reasonable grounds to suspect that this construction may be part of a larger money laundering scheme. The laundering as such has not yet taken place. The tax advisor therefore refuses to start a business relationship with this person. The tax advisor is worried that Mr. X might go to other tax advisors in the region in order to obtain advice and he wants to warn them (prevent 'shopping'). It appears that in most Member States this is allowed. In some of the Member States the name of the refused client can be mentioned, while in others the name of the refused client cannot be mentioned as this would be considered tipping-off. In that situation, the person must be described by his characteristics, the advice requested and other relevant information.

However, a small group of Member States' representatives argued that in the underlying hypothetical case the requirements of paragraph 5 of Article 28 of the Directive were not fulfilled.<sup>78</sup> After all, there was no client, as the tax advisor had refused Mr. X as his client in the first place. And in the second place, no transaction had taken place. Due to this interpretation of paragraph 5 of the Third Money Laundering Directive - as implemented in the national AML/CTF legislation, the tax advisor would not be allowed to warn his colleagues outside the network in some Member States. Theoretically the situation could even become more complicated in cases where more than one type of professional can provide the same type of service: can these professionals be considered counterparts or not? This means that, for example, Mr. X could not only go to tax advisors to ask for advice about a certain financial construction, but also to accountants or lawyers.

What we observe is that in one Member State the financial and fiscal service providers are more restricted than in other Member States when it comes to 'warning' other professionals about potential money launderers or suspicious transactions. It has not been researched in full detail what the reasons for this difference of interpretation are, but most likely this is the result of a balancing difference between, on the one hand, the objective to fight launderers and terrorist financiers and prevent money laundering and terrorist financing in a most effective way, and on the other hand the right to privacy of the clients or persons involved.

The fact that there are interpretation differences and different practices of application between the Member States concerning the prohibition of tipping-off should be considered a legal hindrance that lowers the legal effectiveness of the overall European AML/CTF policy and, hence, that of the Member States.

#### **4.4 Country-specific factors that impact legal effectiveness of Member States' preventive AML/CTF policies**

Besides the existence of general factors that lower the legal effectiveness of Member States' preventive AML/CTF policies, there can also be legal hindrances in national AML/CTF legislation. We have analysed the preventive policies of the Member States on the basis of the requirements

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<sup>77</sup> Although the matter of tipping-off has been a point of attention in individual meetings with Member States' representatives, only the Member States' representatives of the Third Regional Workshop have discussed this hypothetical case in full. In the Fourth Regional Workshop representatives have answered the questions related to the hypothetical case, but these have not been discussed with them.

<sup>78</sup> One comment to the draft report also concerned this matter.

stemming from the Third Money Laundering Directive<sup>79</sup>. For the reasons mentioned in Chapter 3, we only provide an oversight of country-specific factors that impact the legal effectiveness of the Member States' preventive AML/CTF policies.

**Table 4.6: Legal hindrances of substantive norms in preventive AML/CTF policy**

	<b>Norms applied or considered meaningful?</b>	<b>Legal or factual hindrances to (application of) the law?</b>
<b>AT</b>	<ul style="list-style-type: none"> <li>* In practice access to information covered by the banking secrecy is limited when the information is required in the course of criminal proceedings (restrictive application)</li> <li>* In practice low level of application of CDD requirements by accountants, real estate agents, dealers in goods, and management consultants</li> <li>* Limited resources both of the private sector and of public authorities create difficulties in implementing and applying the AML Directive</li> </ul>	<ul style="list-style-type: none"> <li>* No full coverage of trust and company service providers under the AML/CTF policy</li> <li>* The Austrian legislation establishes for lawyers and notaries that in case of non-face-to-face transactions, they must take additional appropriate and conclusive measures to establish the identity of the party in a reliable way. There is no further elaboration as to what are considered 'appropriate' measures are</li> <li>* The subjective threshold grounds for disclosing a suspicion report to the FIU differ (suspects, reasonable grounds to suspect) in the different pieces of Austrian AML legislation.</li> <li>* Limitations concerning the criminalisation of predicate offences to ML limit the scope of the reporting obligation (piracy, counterfeiting)</li> <li>* No legal requirement to report attempted transactions for casinos</li> <li>* No reporting requirement for internet casinos</li> <li>* There is no legal requirement for casinos to maintain records of all transactions</li> </ul>
<b>BE</b>	<ul style="list-style-type: none"> <li>* The exemption to exclude legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or terrorist financing is transposed in Belgium, but cannot be applied as the regulation has not been issued yet</li> <li>* Very low number of suspicion reports by lawyers. This is a clear indication that the AML/CTF norms are not or insufficiently applied.</li> </ul>	<ul style="list-style-type: none"> <li>* Dealers in specific materials other than diamonds (e.g. gold, copper, zinc, used metals) are not required to register and are not subject to the preventive AML policy although they are considered at risk to be abused for AML/CTF purposes</li> <li>* No legal obligation to perform enhanced CDD for situations where the ultimate beneficial owner is a PEP</li> <li>* The FIU has no right to take the initiative to a new case<sup>80</sup></li> </ul>
<b>BG</b>	<ul style="list-style-type: none"> <li>* Very low reporting level of DNFBPs. This is a clear indication that the AML/CTF norms are not or insufficiently applied.</li> </ul>	<ul style="list-style-type: none"> <li>* Limitations concerning the criminalisation of the predicate offences to ML (market abuse and insider trading) limit the scope of the reporting obligation</li> <li>* The FIU can only handle reported cases and has no right to take the initiative to a new case<sup>81</sup></li> </ul>
<b>CY</b>	<ul style="list-style-type: none"> <li>* The insurance sector has never reported to the Cypriot FIU; very low number of reports</li> </ul>	<ul style="list-style-type: none"> <li>* No full coverage of trust and company service providers and accountancy activities, as well as traders in goods</li> </ul>

<sup>79</sup> Not on the basis of the FATF Recommendations, since these differ from the Third Money Laundering Directive in some respects. See Chapter 4.3.1.1. For the analysis, the legislation as it was in effect on 1 August 2012 is used. Changes in legislation after that date have not been included.

<sup>80</sup> Belgian representatives stated that the FIU can start an analysis only if it received an STR from one of the obliged entities under the AML Act. In addition, it can start an analysis on the following grounds: 1) information concerning suspicious transactions from the control authorities; 2) information transmitted from the Federal Public Prosecutor's Office as part of judicial or preliminary inquiry on terrorist financing, and information from the European Anti-Fraud Office as part of an investigation of fraud (...); 3) information transmitted by officials of the administrative services of the State, trustees in a bankruptcy and temporary administrators (...) who (...) discover facts that they know or suspect to be related to money laundering or terrorist financing; 4) copies of cash declaration reports or reports from Customs (...); or 5) foreign FIU requests.

<sup>81</sup> Bulgarian representatives wish to clarify that the sources of information for the Bulgarian FIU to open a case are STRs, as well as information from other state authorities (those being obliged persons as well as any other state authority where money laundering or terrorist financing is suspected), and information received through international exchange.

	<p>by DNFBP sector. This is a clear indication that the AML/CTF norms are not or insufficiently applied.</p> <ul style="list-style-type: none"> <li>* Low level of awareness on CDD issues and the application of the UBO identification process in most DNFBP sectors</li> <li>* There appears to be a large backlog of updating at the Register of Companies, which may negatively affect customer due diligence activities in practice</li> </ul>	<p>where payment exceeds 15.000 EUR in cash</p> <ul style="list-style-type: none"> <li>* Interpretation differences to the question whether the verification of the identity of the client and the UBO can be completed after a business relationship has been established</li> <li>* Third-party reliance provisions are unclear: divergence between AML Act and directives issued under the Act.</li> <li>* There are two legal bases of reporting which diverge in terminology on the matter of reporting (attempted) suspicious transactions. This may result in different interpretations concerning the reporting requirements.</li> </ul>
<b>CZ</b>	<ul style="list-style-type: none"> <li>* Little to no reporting by legal and fiscal service providers (highest nr of reports in 2009: 3). Lawyers have not reported in the past four years - or at least the Chamber has not forwarded reports to the FIU. This is a clear indication that the AML/CTF norms are not or insufficiently applied.</li> </ul>	<ul style="list-style-type: none"> <li>* Interpretation differences to the question whether the verification of the identity of the client and the UBO can be completed after a business relationship has been established</li> <li>* The definition of ultimate beneficial owner is too narrowly formulated as it excludes natural persons that act as UBOs</li> <li>* CDD obligation does not include the verification of the identity of a UBO (only identification)</li> <li>* Lack of clarity regarding the type of measures and extent of enhanced due diligence measures: all that the Czech AML Act currently states is that in case of doubt or higher risk situations simplified CDD may not be applied</li> <li>* There is no clear requirement in the AML Act to pay special attention to all complex, unusual large transactions, or unusual pattern of transactions, that have apparent or visible economic or lawful purpose</li> <li>* The way in which the list of suspicious transactions provided by the Czech AML Act is provided suggests it is an exhaustive list (although authorities argue that this is not the case)</li> <li>* No obligation under the Czech AML Act for dealers in high value goods to have in place internal policies</li> </ul>
<b>DK</b>	<ul style="list-style-type: none"> <li>* In principle a transaction must be suspended when a suspicion of ML arises, but in practice the majority of STRs are sent following the transaction. Institutions apply the exception more than the rule, which could lead to the conclusion that the norm is not considered meaningful</li> </ul>	<ul style="list-style-type: none"> <li>* Execution difficulties with respect to the clarification of a customer's ownership and control structure and the providing of beneficial owners' proof of identity.</li> <li>* There is a misalignment between the criminalisation of money laundering and the reporting obligation which leads to a somewhat limited scope of the reporting obligation</li> <li>* There is a broad understanding of 'legal advice', as it includes all legal advice given to business clients ('business advice'). As a result virtually all legal advice given falls under the legal privilege-exemption. This goes beyond the norms stemming from the Third EU Money Laundering Directive</li> </ul>
<b>EE</b>		<ul style="list-style-type: none"> <li>* Estonian AML Act does not require that the third party on which is relied is subject to supervision</li> </ul>
<b>FI</b>	<ul style="list-style-type: none"> <li>* There is a lack of national cooperation / exchange of information between competent authorities in practice</li> </ul>	<ul style="list-style-type: none"> <li>* Where lawyers in a particular situation fall under the legal privilege-exemption, this results in a full non-application of the AML Act to them. This goes beyond the norms stemming from the Third EU Money Laundering Directive</li> <li>* Limitations concerning the criminalisation of TF limit the scope of the reporting obligation</li> </ul>
<b>FR</b>	<ul style="list-style-type: none"> <li>* Low level of awareness on AML/CTF obligations in most DNFBP sectors</li> </ul>	<ul style="list-style-type: none"> <li>* The French AML legislation does not require obliged institutions to verify whether third parties on which they rely are subject to a mandatory registration system and supervision</li> <li>* No legal obligation to perform enhanced CDD for situations where the ultimate beneficial owner is a PEP</li> </ul>

		<ul style="list-style-type: none"> <li>* Where lawyers in a particular situation fall under the legal privilege-exemption, this results also in the non-application of customer due diligence requirements. This goes beyond the norms stemming from the Third EU Money Laundering Directive.</li> <li>* The FIU has no right to take the initiative to a new case<sup>82</sup></li> </ul>
DE	<ul style="list-style-type: none"> <li>* The exemption to exclude legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or terrorist financing is transposed in Germany, but cannot be applied as the regulation has not been issued yet</li> <li>* Real estate agents do not always comply with AML/CTF obligations because they do not see the need for it (as they do not handle client money and notaries are always involved in the transactions)</li> <li>* Indications that simplified due diligence measures are not always applied by financial institutions</li> </ul>	<ul style="list-style-type: none"> <li>* Gap in coverage of definition of ultimate beneficial owner in relation to trusts: exclusion of identity of the settler or any other parties than the trustee and beneficiaries of the trust that are involvement in the arrangement</li> <li>* Different interpretations and practices concerning the means to identify the UBO</li> <li>* Limitations concerning the criminalisation of ML (predicate offences) and TF limit the scope of the reporting obligation</li> <li>* Lack of clarity as regards the subjective standard that triggers the reporting obligation: interpretation differences with respect to the phrase 'having established facts which permit the conclusion that'</li> <li>* Different and generally very extensive interpretations concerning the scope of legal privilege; the term 'legal advice' goes beyond the term ascertaining the legal position of a client</li> <li>* No obligation in German AML Act for financial institutions to provide AML/CTF training to all staff</li> <li>* No specific requirements have been imposed on DNFBPs to obtain senior management approval for establishing business relationships with a PEP</li> </ul>
EL	<ul style="list-style-type: none"> <li>* Very low reporting standard by DNFBPs. This is a clear indication that the AML/CTF norms are not or insufficiently applied</li> </ul>	<ul style="list-style-type: none"> <li>* Incomplete definition of PEP: technically immediate family members and persons known to be close associates are not included in the definition, although they are mentioned in the law</li> <li>* The application of standard due diligence measures to politically exposed persons resident in Greece is too restrictive; the level of due diligence should be determined on the basis of the risk presented and not be standard due diligence in all circumstances</li> <li>* The Greek AML Act does not require explicitly that obliged institutions must verify whether third parties are subject to a mandatory registration system and supervision (although required in regulations of the competent supervisors)</li> </ul>
HU	<ul style="list-style-type: none"> <li>* Legal privilege has been reported a big problem with regard to lawyers and notaries</li> </ul>	<ul style="list-style-type: none"> <li>* Interpretation differences to the question whether the verification of the identity of the client and the UBO can be completed after a business relationship has been established</li> <li>* In a situation of LPP, lawyers and notaries are not only exempted from reporting obligations but also entirely from all other preventive requirements (CDD, record keeping, internal policies, training and so on)</li> <li>* There is no clear requirement in the Hungarian AML Act to verify that a person acting on behalf of a client is authorised to do so</li> <li>* Reporting obligation does not explicitly cover the reporting of attempted transactions</li> <li>* Limitations concerning the criminalisation of ML and TF limit the scope of the reporting obligation</li> </ul>

<sup>82</sup> French representatives have stated that article L- 561-23 of the Monetary and Financial Code explicitly states the kinds of information on the basis of which our FIU can start an investigation.

		<ul style="list-style-type: none"> <li>* The FIU can only handle reported cases and has no right to take the initiative to a new case</li> <li>* FIU's competences are limited. The FIU can only disseminate the information it receives from STRs when there is a connection with any of the eight crimes stipulated in Article 26 AML/CTF Act. Some important predicate offences are not included (e.g. corruption, drug abuse, smuggling). This limits the FIU in its analytical functions and international cooperation.</li> <li>* No record-keeping obligation with respect to business correspondence</li> </ul>
IE		<ul style="list-style-type: none"> <li>* No explicit legal obligation to perform enhanced CDD monitoring in case of politically exposed persons</li> <li>* No legal obligation to perform enhanced CDD in situations which by their nature can present a higher risk of money laundering or terrorist financing (Cf. Section 39 'nothing shall prevent')</li> <li>* No explicit legal obligation to keep information obtained from the application of customer due diligence up to date</li> </ul>
IT	* Low reporting level of DNFbps. This is a clear indication that the AML/CTF norms are not or insufficiently applied.	* The Italian FIU is limited in performing its legal tasks, as it does not have access to law enforcement agency databases for domestic cases
LV		<ul style="list-style-type: none"> <li>* The Latvian AML Act does not require obliged institutions to verify whether third parties on which they rely are subject to a mandatory registration system and supervision</li> <li>* The Latvian AML Act does not contain the obligation to perform customer due diligence when carrying out occasional transactions amounting to EUR 15 000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked. In that case it only requires that the client is identified (cf. Articles 11 and 16 AML Act)</li> <li>* The requirement to identify and verify the identity of the ultimate beneficial owner seems to be formulated too narrowly as it is only required for customers, legal persons, to which enhanced customer due diligence shall apply; and for all customers <i>where it is known or there is a suspicion</i> that the transaction is executed in the interest or on order of another person.</li> <li>* Legal privilege-exemption in Latvia also applies to elements of customer due diligence. This goes beyond the norms stemming from the Third EU Money Laundering Directive.</li> <li>* The Latvian AML Act allows obliged institutions to notify the customer of the fact that they refrained from executing a transaction and notified FIU to this effect, as well as notify the customer of the orders issued by the FIU. If not contrasting in the first place, this provision at least undermines the idea behind the prohibition of tipping-off.</li> <li>* The FIU can only handle reported cases and has no right to take the initiative to a new case</li> </ul>

LT	<p>* <i>De facto</i> no suspicion reports from currency exchange offices, insurance companies, lawyers, and accountants/auditors. This is a clear indication that the AML/CTF norms are not or insufficiently applied.</p>	<ul style="list-style-type: none"> <li>* Lithuanian AML Act does not require that the third party on which is relied is subject to supervision</li> <li>* Very broad exemptions on the suspension of transactions and record keeping for notaries or the persons authorised to perform notarial actions, advocates or advocates' assistants and bailiffs or the persons authorised to perform the actions of bailiffs in the Lithuanian AML Act</li> <li>* Obligated institutions are not required to maintain records of account files and business correspondence</li> </ul>
LU		<ul style="list-style-type: none"> <li>* No explicit legal obligation to keep information obtained from the application of customer due diligence up to date</li> <li>* Legal privilege-exemption in Luxembourg also applies to elements of customer due diligence. This goes beyond the norms stemming from the Third EU Money Laundering Directive. (cf. Article 7 refers to Article 3(4)(5) – these paragraphs concern elements of CDD)</li> <li>* No legal requirement for the Bar Association to forward the information 'promptly and unfiltered' to the FIU</li> </ul>
MT	<p>* Indications that simplified due diligence measures are not always applied by financial institutions for cost-related reasons and reputation of the institution</p>	
NL	<p>* Indications that simplified due diligence measures are not always applied by financial institutions</p> <p>* The maximum time frame of the reporting obligation (maximum 14 days) cannot be considered meaningful in reaching the objectives of the AML/CTF policy</p>	<ul style="list-style-type: none"> <li>* There is uncertainty whether bailiffs fall under the scope of the Dutch AML Act: clarification is needed</li> <li>* There is uncertainty whether the provision of fiscal advice, advice and assistance concerning the voluntary tax disclosure systems ('inkeerregeling'), forensic accountancy and due diligence-services are services that fall under the scope of the Dutch AML Act</li> <li>* Too narrow definition of ultimate beneficial owner in Dutch AML Act</li> <li>* Lack of clarity regarding the scope of the reporting duty under the Dutch AML Act (i.e. definition of 'transaction' and interpretation of the courts)</li> <li>* The Dutch AML Act contains no explicit provisions on internal controls, compliance or audit and only limited provisions on training; other legislation does not apply uniformly to all obliged institutions</li> <li>* There is no clear requirement in the Dutch AML Act to verify that a person acting on behalf of a client is authorised to do so</li> <li>* The Dutch AML Act does not require obliged institutions to verify whether third parties on which they rely are subject to a mandatory registration system and supervision</li> <li>* There is no provision in the AML Act that states that ultimate responsibility for CDD rests with the relying party; this can only be inferred from the Explanatory Memorandum to the Act.</li> <li>* The Dutch AML Act does not require enhanced CDD for non-face-to-face-transactions in all circumstances</li> <li>* It is not clear whether and to what extent auditors and accountants fall under the legal-privilege exemption of the Dutch AML Act</li> <li>* Limitations concerning the criminalisation of TF limit the scope of the reporting obligation</li> <li>* There is no legal obligation or possibility in the Dutch AML Act to suspend a transaction when a report to the FIU is considered</li> <li>* The Dutch AML Act requires record-keeping only for documents in relation to a transaction that has been</li> </ul>

		reported; it does not extend to transactions about which there has been no disclosure. Other legislation does not solve this issue uniformly: record-keeping norms conflict.
PL	* FIU is overwhelmed with threshold transactions	<ul style="list-style-type: none"> <li>* Polish AML Act does not require that the third party on which is relied is subject to a mandatory registration and to supervision</li> <li>* Lawyers, legal advisers or foreign lawyers are not required to perform certain standard CDD measures (e.g. identify UBO, ongoing monitoring), enhanced CDD measures and are not required to have an internal written policy.</li> <li>* Limitations concerning the criminalisation of terrorist financing limit the scope of the reporting obligation</li> <li>* Transactions exceeding (an equivalent of) 15.000 EUR do not have to be recorded by companies operating within real estate brokerage, -money institutions, foreign divisions of e-money institutions, cash pool leaders, attorneys, legal advisers and foreign lawyers, and also auditors and tax consultants. As a result, these obliged institutions do not have to report such transactions. This seems a gap, especially in relation to e-money institutions, foreign divisions thereof and cash pool leaders.</li> </ul>
PT	* DNFBP sector does <i>de facto</i> hardly report (until mid-2011 no STRs from lawyers, <i>solicitadores</i> , real estate agents, chartered accountants, auditors, and tax advisors). This is a clear indication that the AML/CTF norms are not or insufficiently applied	<ul style="list-style-type: none"> <li>* The Portuguese AML Act does not require that the third party on which is relied is subject to a mandatory registration and to supervision</li> <li>* The exemption for tipping-off for DNFBPs is too broadly formulated in the Portuguese AML Act as it does not require (explicitly) that the exemption only applies where the institutions involved are from the same professional category</li> </ul>
RO	* The DNFBP sector in general is not aware of their obligations arising from the AML Act	<ul style="list-style-type: none"> <li>* The Romanian AML Act is too strict in that it obliges obliged institutions to apply simplified CDD ('shall apply')</li> <li>* There is no legal obligation in the AML Act to perform CDD on an on-going basis</li> <li>* Tipping-off prohibition is formulated narrowly in the Romanian AML Act as it only refers to the fact that a suspicion report was disclosed to the FIU and not about the fact that a money laundering or terrorist financing investigation is being or may be carried out</li> <li>* The reporting obligation for obliged institutions laid down in Article 3(1) of the AML Act only refers to attempted transactions ('transaction to be performed')</li> <li>* The legal privilege exemption in the Romanian AML Act refers to the defence and representation in 'certain legal procedures', without specifying which kind</li> </ul>
SK	* The DNFBP sector in general is not at all aware of their obligations arising from the AML Act, especially real estate agents, lawyers, notaries, other independent legal professionals and accountants do not seem to apply the AML obligations in practice	<ul style="list-style-type: none"> <li>* The Slovakian AML Act does not require obliged institutions to verify whether third parties on which they rely are subject to a mandatory registration system and supervision</li> <li>* There is no requirement in the AML Act to determine whether the beneficial owner of a customer is a PEP</li> <li>* There is no requirement in the Slovak AML Act to document the respective AML/CTF responsibilities of each institution in case of cross-border correspondent banking</li> <li>* Limitations concerning the criminalisation TF limit the scope of the reporting obligation</li> <li>* Obligated institutions are not obliged to maintain records of the account files and business correspondence</li> </ul>

<p><b>SI</b></p>	<p>* The exemption to exclude legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or terrorist financing is transposed in Slovenia, but cannot (yet) be applied as due to the low interest of the obliged institutions shown in the process of the public consultation, the regulation has not been issued yet.</p>	<ul style="list-style-type: none"> <li>* There is no clear requirement in the Slovenian AML Act to verify that a person acting on behalf of a client is authorised to do so</li> <li>* Slovenian AML Act does not require explicitly that obliged institutions must verify whether third parties are subject to a mandatory registration system and supervision</li> <li>* Very different interpretations to the question whether the verification of the identity of the client and the UBO be completed after a business relationship has been established</li> <li>* The definition of PEP is not sufficiently broad to include all categories of senior government officials</li> <li>* There is no requirement in the AML Act to determine whether the beneficial owner of a customer is a PEP</li> <li>* The FIU can only handle reported cases and has no right to take the initiative to a new case<sup>83</sup></li> <li>* Financial institutions are not explicitly required to maintain records of the account files and business correspondence</li> </ul>
<p><b>ES</b></p>		<ul style="list-style-type: none"> <li>* Absence of Royal Decree pursuant to the AML Act of 2010 (former Royal Decree is still in force until the new one enters into force);</li> <li>* Spanish AML Act does not require obliged institutions to verify whether third parties on which they rely are subject to a mandatory registration system and supervision</li> <li>* Conflicting norms between the broader concept of legal professional privilege (contained in higher hierarchical norms) and the legal privilege exemption concerning lawyers in the AML Act: the LPP of lawyers covers all facts or information which comes into their possession by <i>whatever kind of professional activity</i>; the latter is restricted to judicial proceedings and advice necessary to ascertain the client's legal position only.</li> <li>* Norms with respect to external experts not sufficiently clear in legislation; need of clarification for requirements to be an external expert and introduction of obligation to forward reports automatically to FIU</li> </ul>
<p><b>SE</b></p>	<p>* <b>No</b> STR reporting by tax advisors, pension funds and some other obliged institutions in the years 2009-2011. This is a clear indication that the AML/CTF norms are not or insufficiently applied</p>	<ul style="list-style-type: none"> <li>* There are no corresponding requirements for correspondent relationships in EEA countries</li> <li>* Interpretation variations concerning the prohibition to perform a transaction when disclosing a report to the FIU</li> <li>* The FIU can only handle reported cases and has no right to take the initiative to a new case</li> </ul>
<p><b>UK</b></p>	<p>* Wide variation on the quality of customer due diligence (ongoing) monitoring carried out by banks</p>	<ul style="list-style-type: none"> <li>* There is no requirement for obliged institutions to record internal policies (in writing).</li> </ul>

The table shows a wide variety in types of legal hindrances. Sometimes these are of a mere technical nature, while other legal hindrances are of a more fundamental nature. By technical hindrances were mean deficiencies that can be resolved relatively easily by implementing a specific provision in the AML/CTF Act or requiring so in secondary regulations.

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<sup>83</sup> According to Slovenian representatives this will be changed in the near future when amendments to the AML Act are made.

The first fundamental legal hindrance that is present in more than one Member State is the fact that there are gaps in the scope of coverage of obliged institutions. This we identified for Austria, Belgium, and Cyprus. Where there are gaps in coverage, these institutions may be more vulnerable to money laundering or terrorist financing.

The second fundamental legal hindrance we identified is the fact that deficiencies in the criminal legislation, in particular the criminalisation of the offence of money laundering, the predicate offences thereto or the definition of terrorist financing, have a negative and limiting effect on the reporting obligation. The table above shows that this is the case in Austria, Bulgaria, Denmark, Finland, Germany, Hungary, the Netherlands, Poland, and Slovakia.

A third fundamental legal hindrance was already outlined above under general factors, namely the open definitions of ultimate beneficial owners and politically exposed persons. A glance at the table above shows that at least 14 Member States have to some extent legal problems in relation to these notions. The exact modalities of the legal hindrances, however, vary; sometimes it concerns the definitions themselves, while other times the legislation does not prescribe enhanced procedures required.

The last fundamental legal hindrance we identified concerns the legal privilege-exemption. We have identified five situations where we believe the legal privilege-exemptions go beyond the Third Money Laundering Directive. This is the case in Finland, France, Hungary, Latvia and Luxembourg. In these Member States the applicable AML legislation states that when lawyers (FI, FR, HU, LV, LU), notaries (FR, HU, LV) and other legal and fiscal service providers (LV) fall under the legal privilege-exemption, *“the obligations prescribed in this (part of the) Act shall not apply”* or that the *“Act does not apply”*. In some situations this comes down to a full exemption of application of the AML/CTF Act to these legal and fiscal service providers, including an exemption to perform customer due diligence and to keep records. In other situations this means an exemption to fulfill (elements of) customer due diligence requirements. We believe this goes beyond an exemption to the reporting obligation as allowed by the Third Money Laundering Directive. Unless there is other professional legislation that contains similar customer due diligence and record keeping obligations, we believe that the exemptions in the AML/CTF legislation are too broadly formulated.

Technical deficiencies are present in virtually all Member States. Examples are:

- no legislation concerning the requirement that third parties from third countries on which reliance is placed must be subject to a mandatory registration system and supervision (identified in Estonia, France, Greece, Lithuania, Latvia, the Netherlands, Poland, Portugal, Slovakia, Slovenia and Spain),
- the requirement that special attention must be paid to all complex, unusual large transactions, or unusual pattern of transactions, that have apparent or visible economic or lawful purpose, the requirement to have internal policies in relation to AML/CTF in place, and the requirement for obliged institutions to provide AML/CTF training to all staff.

Finally, it is of concern that in quite some Member States there is a very low level of application or awareness of AML/CTF obligations among certain types of obliged institutions and professionals. For Romania, France and Slovakia a low level of awareness on AML/CTF obligations was identified among DNFBPs. For Austria, Cyprus, and Germany a low level of application of CDD measures by one or more types of obliged institutions and professionals was identified. Low reporting levels for one or more types of obliged institutions and professionals were identified in Belgium, Bulgaria, Cyprus, Czech Republic, Greece, Italy, Latvia, Portugal and Sweden. This is a clear indication that obliged institutions do not or not sufficiently apply the AML/CTF norms.

## 4.5 Conclusions

The substantive norms in the preventive AML/CTF policy are to large extent harmonised within the European Union. National variations do exist, but in all Member States' AML/CTF legislation the basic obligations of customer due diligence, reporting, record keeping and internal policy are present. The Deloitte study was an important source of information with respect to the implementation of the Third Money Laundering Directive, but required improvements, updates or nuances for 23 Member States. Three particular areas for which this was done are the extensions made to the scope of obliged institutions, the definition of money laundering and the matter of supervision. Three aspects which have remained under-exposed in the Deloitte study have been analysed: extensions to the scope of obliged institutions, the reporting obligation and the legal privilege-exemption. These aspects once again showed that Member States have generally implemented the substantive norms, although with considerable differences in the exact wording.

The preventive AML/CTF policies of the Member States suffer from both general and country-specific factors that impact the legal effectiveness in a negative way. The general factors concern the diverging norms from the FATF Recommendations and the EU Directive, as well as the existence of very general definitions, open norms and interpretation difficulties. Examples are the notions of ultimate beneficial owner, politically exposed persons, trust and company service providers and tipping-off. Furthermore, an overview of the country-specific factors has been presented. Technical legal hindrances are present in virtually all Member States. Fundamental legal hindrances present in more than one Member State concern gaps in the scope of obliged institutions; the impact of limitations to the criminalisation of money laundering, the predicate offences, or terrorist financing; the notions of UBO and PEP and norms on the legal privilege-exemption. There is also evidence to suggest a low level of awareness or application of AML/CTF obligations by one or more types of obliged institutions and professionals in various Member States.

## Chapter 5 TIME DELAYS IN IMPLEMENTING THE THIRD DIRECTIVE

### 5.1 Introduction

Several studies in the social sciences have analysed ways and problems of implementing EU Directives in the EU Member States. Prominent ones are by Treib and Holzleithner (2008), Falkner, Treib, Hartlapp and Leiber (2005), Versluis (2004), Haveland and Romeijn (2006), and Boerzel (2001). Several hundred EU Directives have been studied in order to find out under which conditions Directives can be implemented smoothly (in the social sciences, this is referred to as ‘transposed’ as opposed to ‘implementation’, used by lawyers).

These studies see several deficits in implementing EU Directives and in particular stress the difference between complying in the books and complying in practice. One important issue is the level of acceptance of Directives by the Member countries. Areas studied are food regulation, transport regulation and social policy regulation – areas in which there are a lot of conflicting interests and, therefore, potential resistance in implementation. An important variable that measures ‘resistance’ according to these studies is time delay. Opposing forces in a country will resist the implementation and this will lead to delays in implementing the Directive, runs the argument.

Kaeding (2007), who studied regulation in transport, lists the following reasons for delay of implementation: the time constraints set for the implementation, whether it is a Commission or legislative Directive (the latter taking more time), problems of discretion, number of recitals, level of inter-institutional agreement and whether it is an amending or a new Directive. Apart from these more technical areas, a wide range of constitutional, legal and political factors play a role.

Variables affecting the implementation process are numerous and can be country-based, sector-wide or policy-specific.<sup>84</sup> The delays are never caused by a single factor but rather by combinations of “several constitutional, legal, political and factual factors”, which should be considered in relation to the national systems.<sup>85</sup>

Berglund, Gange and van Waarden (2005) did a meta study on transposition studies and tried to filter out the most important variables for time delays presented in a large variety of these transposition studies<sup>86</sup>. According to their findings it is in particular the effectiveness of governments and the rules of law which explain the timeliness of transposition of EU Directives in a variety of policy areas such as utilities and food regulation.

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<sup>84</sup> See for a useful inventory of factors and description of theories: Steunenberg, B. (2004), *EU policy, domestic interests, and the transposition of directives*, available at: <http://repub.eur.nl/res/pub/1747/NIG1-08.pdf>.

<sup>85</sup> Steunenberg, B. and Voermans, W. (2006), *The Transposition of EC Directives: A Comparative Study of Instruments, Techniques and Processes in Six Member States*, available at: [https://openaccess.leidenuniv.nl/bitstream/handle/1887/4933/5\\_360\\_361.pdf?sequence=1](https://openaccess.leidenuniv.nl/bitstream/handle/1887/4933/5_360_361.pdf?sequence=1).

<sup>86</sup> Berglund, S.K., Gange, I and van Waarden, F. (2005), *Paper presented at the Joint Sessions of Workshops, European Consortium for Political Research Granada, April 14-19, 2005, the Workshop on ‘Making EU policy work: national strategies for implementing, postponing and evading EU legislation’, organised by Marco Guiliani and Bernard Steunenberg*

## 5.2 Time delays for Third Directive

Anti-money laundering policy is a policy area which depends on the compliance of very many actors (governments, the executive, the judiciary, the private sector), but has no direct lobby. While the regulation of ingredients that are allowed in beer clearly affects beer brewers and helps beer drinkers, and regulation of health warnings on cigarettes clearly affects the tobacco industry and helps non-smokers, anti-money laundering regulations do not directly affect anybody. It only indirectly affects the private sector, since it increases costs in the process of establishing a reporting system, in particular for the financial sector. Secondly, it indirectly affects notaries and lawyers, who come under reporting duty and might fear for their legal privilege, possibly leading to some resistance there. It does however not have promoters from the private sector who push *in favour* of it. It is governments who have to implement the Directive due to mostly international pressure. It is governments who have to balance the international need for cooperation and the national pressure for low costs of reporting and other duties related to anti-money laundering policy. Anti-money laundering policy helps to prevent the abuse of the financial sector by criminals and therefore helps to maintain the reputation of banks. This in turn lowers the resistance against the directive from this group. Overall, resistance will be weaker towards anti-money laundering policy regulation compared to areas that affect health and safety or income distribution, which have clear groups within the private sector competing over regulation.

Nevertheless, when one looks at the process of implementation of the Third Money Laundering Directive, one notices quite substantial time delays. As the graph below shows, only Denmark, Hungary, Italy, Slovenia and the United Kingdom formally managed to implement the Directive on time, before the deadline of the December 15, 2007.

As the above mentioned studies on implementing EU Directives show, the UK is special as it frequently implements Directives on time. Berglund, Gange and van Waarden (2005, p. 21) explain this by the political process in the UK:

*“Typical for the British procedure is the early involvement of both Houses of Parliament, still during the negotiations in Brussels. Both the House of Commons and the House of Lords have committees (the Select Committee on European Legislation in the Commons and the European Union Committee in the House of Lords) that consider any EU-document still in the drafting stage, such as draft proposals submitted to the European Council of the Council of Ministers, or a draft text for a Commission directive, and form an opinion about its consequences for British policy and law. They can forward it for further investigation to one of three European Standing Committees. These can draft a resolution regarding the European document, which then are voted on the House floor. Furthermore, the Commons in 1990 and the Lords in 1999 issued resolutions forbidding the government to agree on any proposal in the Council in Brussels before their European Committees had been able to form an opinion on the issue.<sup>87</sup> Thus Parliament de facto binds the hands of the negotiating British minister in the Council, limiting his room for maneuver considerably. This can be seen as an expression of the great distrust of the Brits as against Brussels and its legislative activity, and as an attempt to maintain the British supremacy of parliament. The counter side is that once a directive has been enacted in Brussels, the British parliament is not only well informed about the directive*

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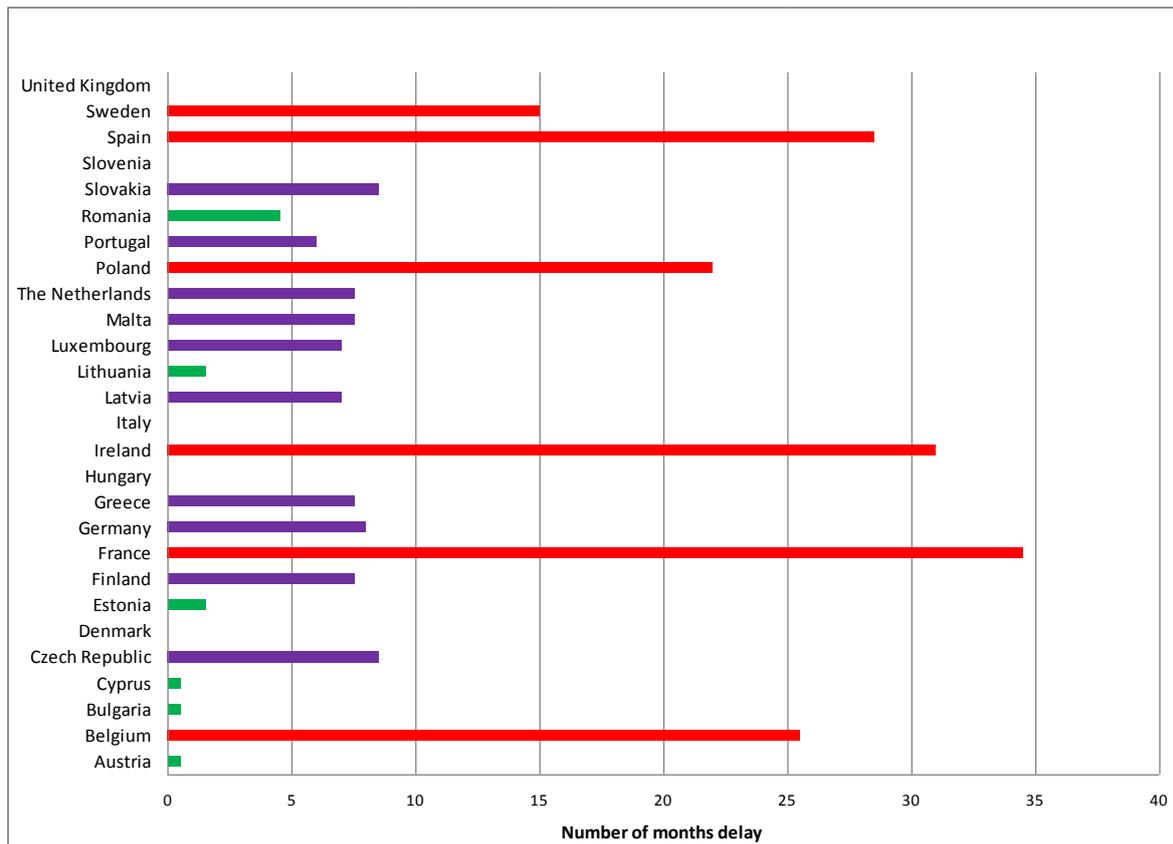
<sup>87</sup> Vervloet, K.A.E. (2000), Transposition of EC Directives in the United Kingdom and in the Netherlands, thesis, Utrecht University Law Department, p.16-17

*and its consequences for British law and policy, but has been also committed to the result, thus facilitating swift transposition even more”*

Furthermore, the British Parliament has given itself a constraint to ensure speedy decision-making. A Bill - a draft text for a law - has to get accepted and acquire ‘Royal Ascent’ (the signature of the queen, elevating a Bill to an Act of Parliament) in the same Parliamentary session in which it got its first reading. That is, Parliament has less than a year to discuss, modify, and accept a draft. Otherwise it has to start all over again<sup>88</sup>. This is a general legislative institution of the country, but it applies also to transposition, when that has to be done through an Act of Parliament<sup>89</sup>

Apart from the five Member States which implemented the EU Directive on anti-money laundering policy and combating terrorism financing on time, there is quite some variation in the delays among the Member States. Countries like Austria had a minor two weeks delay, whereas France is the last Member State to fully implement the Directive, almost three years later with a delay of 34.5 months. The Member States which are indicated in red have an implementation delay of more than one year. Member States indicated in purple have an implementation delay between half a year and a year. Member States indicated in green have an implementation delay of less than half a year.

**Figure 5.1: Implementation delays**



<sup>88</sup> Vervloet, K.A.E. (2000), *Transposition of EC Directives in the United Kingdom and in the Netherlands*, thesis, Utrecht University Law Department, p.16

<sup>89</sup> Berglund, S.K., Gange I. and van Waarden, F. (2005), *Taking Institutions Seriously. A Sociological-Institutionalist Approach to Explaining Transposition Delays of European Food Safety and Utilities Directives* Paper presented at the Joint Sessions of Workshops, European Consortium for Political Research Granada, April 14-19, 2005, the Workshop on ‘Making EU policy work: national strategies for implementing, postponing and evading EU legislation’, organised by Marco Guilianì and Bernard Steunenberg; Vervloet, K.A.E. (2000) *Transposition of EC Directives in the United Kingdom and in the Netherlands*, thesis, Utrecht University Law Department, p.16

### 5.3 Reasons for delay in implementation of Third Directive

Reasons given for delay of implementation by Member States were mostly domestic ones and varied. Kaeding (2007) classifies reasons for delay in the number of transposition packages, number of actors involved, number of implementation measures, political priorities and election time. We opted for a slightly different classification and grouped the reasons country gave us for delay into four categories, namely into legal, social, political and factual difficulties. Examples of legal difficulties mentioned were that the system of the Directive does not fit into the national legal system of common law (Ireland), the UK, though also having a common law system did not face this problem, because Irish criminal law does not accommodate administrative sanctions while the British does. Social difficulties mentioned were the opposition of legal professions (Belgium, France, Poland). An example of political difficulties mentioned was that there was no government (Belgium). Other difficulties were included the long parliamentary procedure (France).

The table below presents an inventory of implementation difficulties.

**Table 5.1: Implementation and execution difficulties reported by Member States’ representatives**

<b>Legal difficulties</b>	System of the Directive does not fit into the national legal system
	Some legal definitions are open and, therefore, unclear (e.g. UBO, PEP, TCSP)
	Appointment of supervisory authorities for the purpose of AML/CTF policy
	Implementation required amendments to very many different pieces of legislation
	Opposition of legal professionals to aspects of AML policy due to legal privilege
<b>Social difficulties</b>	Role of secrecy in a Member State
	Opposition of legal professionals to aspects of AML policy due to legal privilege
	Low trust in supervisors to actually enforce AML/CTF policy
<b>Political difficulties</b>	Change in Government (combined with constitutional law principle of discontinuance)
	Ongoing instable political situation in Member State
	Federal structure of a Member State (competences)
	Formal responsibility of more than one authority for the implementation (division of responsibilities)
<b>Factual difficulties</b>	Extensive consultation procedures
	Lengthy Parliamentary procedures
	Limited resources available at the authority or authorities responsible for the implementation
	Relatively high costs of compliance for small firms and one-person practices

### 5.4 Statistical tests for reasons of delays of implementation of Third directive

Apart from collecting the explanations Member States gave for implementation delays, we also tried to test whether there was a relationship between the implementation delays and the authorities formally and de facto responsible for the implementation of the Directive. Earlier research on implementation delays has shown that the need for inter-ministerial coordination is a factor strongly

associated with implementation delays.<sup>90</sup> Also, where responsibility for the implementation of Directives is ambiguous and not transparent, this affects the duration of implementation in a negative way.<sup>91</sup> The following table illustrates for all EU Member States which authorities have been formally and *de facto* responsible for the implementation of the Third Money Laundering Directive.

**Table 5.2: Implementation authorities**

	FORMAL RESPONSIBILITY				DE FACTO IMPLEMENTATION	
	MoF	MoJ	MoI	Other	FIU	Other
<b>Austria</b>	Yes	Yes	No	Ministry of Economy, Family and Youth	No	MoI, supervisors and more
<b>Belgium</b>	Yes	Yes	No	No	Yes	No
<b>Bulgaria</b>	Yes	No	No	No	Yes	Public Prosecutor's Office
<b>Cyprus</b>	No	No	No	Council of Ministers	Yes	Central Bank of Cyprus, MoF, MoFA, other supervisors and more via Advisory Authority
<b>Czech Republic</b>	Yes	No	No	No	Yes	No
<b>Denmark</b>	No	No	No	Danish Financial Services Authority	No	Danish Commerce and Companies Agency
<b>Estonia</b>	Yes	No	No	No	No	No
<b>Finland</b>	No	No	Yes	No	No	MoF, MoJ, MoFA
<b>France</b>	No	No	No	Ministry of Economy	No	Other Ministries through interministerial project
<b>Germany</b>	No	No	Yes	No	No	FMoJ, FMoF, Federal Ministry of Economy and Technology, and BaFin
<b>Greece</b>	Yes	Yes	No	No	No	Other Ministries, supervisors, professional associations, and judiciary
<b>Hungary</b>	Yes	Yes	No	No	Yes	Prosecution Service, judiciary, FIU, supervisors through Interministerial Committee
<b>Ireland</b>	Yes	Yes	No	Garda Síochána and Central Bank of Ireland	No	No
<b>Italy</b>	Yes	Yes	Yes	MoFA, FIU, Law enforcement authorities, Bank of Italy, ISVAB, CONSOB and Anti-Mafia Investigation Body	Yes	No
<b>Latvia</b>	Yes	No	No	No	Yes	Financial and Capital Market Commission, FIU supervisors and others via Working Group
<b>Lithuania</b>	No	No	Yes	No	Yes	MoF, MoJ and supervisors
<b>Luxembourg</b>	Yes	Yes	No	No	No	No
<b>Malta</b>	Yes	No	No	No	Yes	No
<b>The Netherlands</b>	Yes	Yes	No	DNB and other supervisors	No	No

<sup>90</sup> Bekkers, V., Bonnes, J., De Moor-van Vugt, A., Schoneveld, P. and Voermans, W. (1993), 'Succes- en faalfactoren bij de uitvoering van EG-beleid, in: *Bestuurskunde*, No. 4, pp. 192-200; Haverland, M. and Romeijn, M. (2007), 'Do Member States make European policies work? Analysing the EU transposition deficit', in: *Public Administration*, Vol. 85, No. 3, 2007, pp. 757-778; Mastenbroek, E. (2003), 'Surviving the Deadline: The Transposition of EU Directives in the Netherlands', in: *European Union Politics*, Vol. 4, No. 4, pp. 371-395 at 378; Steunenberg, B. (2006), 'Turning Swift-Policy Making into Deadlock and Delay: National Policy Coordination and the Transposition of EU Directives', in: *European Union Politics*, Vol. 7, No. 3, pp. 293-319.

<sup>91</sup> Steunenberg and Voermans (2006), p. 59-60.

<b>Poland</b>	Yes	No	No	No	Yes	No
<b>Portugal</b>	Yes	Yes	No	No	Yes	Supervisors, MoJ, FIU and more through Interministerial Working Group
<b>Romania</b>	No	Yes	No	No	Yes	No
<b>Slovakia</b>	Yes	Yes	Yes	No	Yes	Prosecutor General's Office
<b>Slovenia</b>	Yes	No	No	No	Yes	No
<b>Spain</b>	Yes	No	No	No	Yes	MoI, Supervisors, Prosecution Service and more through Commission for the Prevention of Money Laundering and Monetary Offences
<b>Sweden</b>	Yes	No	No	No	No	MoJ, MoFA
<b>United Kingdom</b>	Yes	No	No	No	No	Home Office

From the table one can see that in the Member States there are many authorities involved in the implementation processes. In 20 Member States the Ministry of Finance is the authority with *formal* implementation responsibility, whether or not jointly with the Ministry of Justice. In some Member States the Ministry of Interior (also) has full or shared responsibility. Italy seems an outlier in the respect that its representatives have indicated that there are at least ten authorities with formal responsibility for the implementation of the Third Money Laundering Directive. With regard to the *de facto* involvement of authorities in the implementation process, little more than half of the Member States have indicated close involvement of the FIU in the drafting process. There is anecdotal evidence however that the extent to which the FIUs played a role in the implementation process has been different. In some Member States the FIU has been the authority that actually drafted the AML/CTF legislation, while in other Member States the FIU was only involved because it was part of or subordinate to the authority formally responsible for the implementation of the Directive. On the basis of statistical analyses, it appears that no relationship can be identified between the number and type of implementation authorities and the implementation delays.<sup>92</sup>

We also tried to relate the implementation delays with the methods applied for implementing the Directive.<sup>93</sup> Two ways have been identified in which the Third Money Laundering Directive has been implemented into national laws. The method applied by the majority of the Member States (19 out of 27) is the repeal of previous legislation and adoption of a new single AML/CTF Act to implement the provisions stemming from the Directive. Eight Member States have applied another implementation method by implementing the provisions of the Directive through amendments to existing legislation: Austria, Belgium, Bulgaria, France, Lithuania, Luxembourg, Poland, and Romania.<sup>94</sup> The method of implementation by reference, which means that the national implementation legislation makes reference to the Directive without reproducing its content in any further provision in national legislation and regulations, is not identified in any of the Member States.

<sup>92</sup> The statistical calculations have been done using 'pairwise correlations' between implementation delays and the type and number of authorities involved in the implementation process. None of the correlations were significantly different from 0 with a 95% confidence interval. All calculation results can be requested by contacting the ECOLEF research team.

<sup>93</sup> It should be pointed out that there are very many ways to implement EU Directives into national law, and that both scholars and practitioners tend to use many different terms and points of comparison to indicate the methods of implementation. Commonly heard terms are integration, segregation, reference, copy-paste, elaboration, executive implementation, implementation by primary legislation, and so on. See for an inventory of variables that play a role in the implementation method: European Parliament - DG Internal Policies of the Union (2007), *Comparative Study on the Transposition of EC Law in the Member States*, PE378.294. See also: Prechal, S. and Van den Brink, T. (2010), *Methoden van omzetting van EU-recht in het Nederlandse recht: onderzoeksrapport ten behoeve van de Raad van State*, available at: [http://www.raadvanstate.nl/publicaties/publicaties/pdf/rvs\\_methoden\\_omzetting.pdf](http://www.raadvanstate.nl/publicaties/publicaties/pdf/rvs_methoden_omzetting.pdf).

In the present research the decisive criterion is whether Member States have opted to draft entirely new legislation or decided to build on previous legislation.

<sup>94</sup> See table on implementation methods in the Annex to this report.

On the basis of a statistical analysis, it appears that no relationship can be identified between the method of implementation and the implementation delays.<sup>95</sup>

Since neither of these two important factors could explain implementation delays, the question remains which other factor or factors have influenced the non-timeliness of Member States in their implementation of the Third Money Laundering Directive. We have statistically analysed the implementation delays against various country characteristics, more than thirty variables in total. Variables that have been included are, for example, the population of a country, the GDP of a country, the GDP per capita, the Transparency International perception on Corruption (2010), and the years of EU Membership.<sup>96</sup> We were able to relate the implementation delays to two variables. It appears that years of EU-Membership are significantly related to the implementation delays: the longer a country is an EU Member State, the more delay a Member State has experienced in implementing the Third Money Laundering Directive.<sup>97</sup> The other significant relation we found relates to the supervisory architectures<sup>98</sup> of Member States: Member States that can be categorised under the 'Internal model' appear to have more implementation delays than Member States that have other supervisory architectures.<sup>99</sup>

The fact that older Member States on average took longer to implement the EU Directive than younger Member States could be explained by path dependency. Many old member states already had some sort of anti-money laundering policy implemented, even if it was called differently. Questions of how to deal with proceeds from stolen goods and how to deal with financial fraud were already regulated, as were the processes of enforcement and prosecution. This path dependency makes it more difficult for older than for younger member states to change laws and implement the Directive. Younger Member States might have a higher need for anti-money laundering regulation in the absence of already existing regulation.

Apart from the statistically significant relation between age of membership and time delay of implementation we found a second statistically explanation for time delay: the way in which member states supervise anti-money laundering policy. Countries with internal supervision, which means that supervision is partly delegated to professional organisations, have a longer delay than countries with other forms of supervision. One explanation might be that countries with established professional institutions to which some of the state's responsibilities have been delegated (some being a thousand years old and stemming from the medieval guilds) need more consultation before a Directive can pass. It might also indicate some resistance from certain groups, like the Bar Association of Lawyers or Notaries, who saw problems with regard to legal privilege. More empirical research is needed in order to find a statistical relationship here.

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<sup>95</sup> The statistical analysis has been done using 'pairwise correlations' between implementation delays and the type method of implementation (new Act or amendments to existing legislation). The correlation was not significantly different from 0 with a 95% confidence interval. All calculation results can be requested by contacting the ECOLEF research team.

<sup>96</sup> All variables included in the statistical analysis can be requested by contacting the ECOLEF research team.

<sup>97</sup> The correlation value between implementation delay and year of EU Membership is -0.3963, with a P-value of 0.0407.

<sup>98</sup> See: e.g. Lumpkin, S. (2002), *Supervision of Financial services in the OECD Area*, OECD Working paper; Goodhart, C.A.E., Hartmann, Ph., Llewellyn, D., Rojas-Suaréz, Weisbrod (1998), *Financial Regulation: Why, how and where now?*, London: Routledge; De Bos, A. and Slagter, W.J. (2008), *Financieel recht: vanuit economisch en juridisch perspectief*, Kluwer: Deventer; Group of Thirty (G30), *The structure of financial supervision: Approaches and challenges in a global marketplace*, October 2008. In the field of AML/CTF policy modelling has been done in relation to Financial Intelligence Units: IMF (2004), *Financial Intelligence Units: An Overview*, Washington DC; Thony, J.F. (1996), 'Processing Financial Information in Money Laundering Matters, The Financial Intelligence Units', in: *European Journal of Crime, Criminal Law and Criminal Justice*, pp. 257–282.

<sup>99</sup> The correlation value between implementation delay and Internal supervisory model is 0.4983, with a P-value of 0.0082.

## 5.5 Conclusion

Compared to other EU Directives, the Anti-Money Laundering and Combating Terrorist Financing Directive could be transposed smoothly. The Member States considered the Directive as well prepared and expected. There were some minor problems, such as how to interpret Ultimate Beneficial Ownership, but altogether the Third Directive can be seen as a smoothly implementable (transposable) Directive.

Time delays in implementation mainly seem due to domestic factors and not to external factors or factors related to the quality of the Directive itself. The number and type of implementation authorities and methods of implementation applied have not appeared to be significant in explaining the non-timeliness of some Member States. Among more than thirty explanatory variables tested, only two turned out to be significant.

- Old member states show statistically significant more delay than new member states;
- Member states with internal supervision (professional organisations) show statistically significant more delay.

## Chapter 6 SUPERVISORY ARCHITECTURES

### 6.1 Introduction

While we concluded in Chapter 4 that the substantive norms have to a large extent become harmonised within the European Union, we observe the contrary with respect to the procedural norms. With regard to the legal norms that regulate the supervision of obliged institutions and the sanctioning in case of non-compliance ('enforcement') with the preventive AML/CTF obligations, the Third Money Laundering Directive essentially only requires Member States to ensure that obliged institutions and professionals are subject to adequate regulation and supervision. For this reason, supervisors must be provided with some minimum supervisory powers, such as compelling the production of any information that is relevant to monitoring compliance and the possibility of imposing 'effective, proportionate and dissuasive' sanctions for failure of compliance.<sup>100</sup>

From an EU perspective the limited influence on procedural matters in the preventive AML/CTF policy is not surprising. European Union law is implemented, applied and enforced within the framework of the national laws of the Member States, which means that national rules of procedure apply. The power of Member States to determine the competent authorities and the applicable procedural norms is referred to as the principle of national procedural autonomy.<sup>101</sup> The principle has the effect of causing differences between the Member States, because their procedures concerning the application and enforcement of European substantive norms are different.<sup>102</sup> In turn, these differences potentially create difficulties in supervision and enforcement in cross-border situations where businesses and professionals operate in more than one Member State.<sup>103</sup>

The fact that the current Directive only requires the minimum in relation to the procedural norms in the preventive AML/CTF policy, has fairly recently been a point of attention for the European Commission. In its Application report of April 2012 the European Commission stated that, for the drafting of the Fourth Money Laundering Directive, it is considering to provide further clarifications in the Directive with regard to supervision in cross-border situations and "*[c]onsideration could be given to following an approach similar to the one set out in the Commission's Communication 'Reinforcing sanctioning regimes in the financial sector', which would involve a greater harmonisation of the sanctioning regime by proposing a set of minimum common rules to be applied to key aspects of the sanctioning regime*" [emphasis added].<sup>104</sup> In July 2012 the Commission released a feedback statement in which both considerations were said to be supported by respondents.<sup>105</sup> Furthermore, the European Commission considered "*whether self-regulatory bodies*

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<sup>100</sup> Articles 36, 37 and 39 Third Money Laundering Directive.

<sup>101</sup> Jans, J.H., De Lange, R., Prechal, S. and Widdershoven, R.J.G.M. (2008), *Europeanisation of Public Law*, Europa Law Publishing, p. 40-42.

<sup>102</sup> The principle of procedural autonomy is limited by two preconditions, which have been introduced by the European Court of Justice in its case law, namely the principle of equivalence that requires that rules that govern a dispute with an EU law dimension may not be less favourable than those governing similar domestic disputes and the principle of effectiveness. This principle implies that the exercise of rights conferred by the Union legal order may not be rendered virtually impossible or excessively difficult by rules of national procedural law. See: ECJ, Case 33/76, *Rewe* [1976] ECR-1989; ECJ, Case 45/76, *Comet* [1976] ECR-2043.

<sup>103</sup> See on the matter of allocation of supervisory responsibilities and reporting to the FIU in cross-border situations: Commission Staff Working Paper on Anti-money laundering supervision of and reporting by payment institutions in various cross-border situations, SEC(2011) 1178 Final, 4 October 2011.

<sup>104</sup> Report from the Commission to the European Parliament and the Council on the application of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, COM(2012) 168 final, 11 April 2012, p. 14. ('Application report')

<sup>105</sup> European Commission, DG Internal Market and Services, Feedback Statement: summary of comments of the Report from the Commission to the European Parliament and the Council on the application of Directive 2005/60/EC, July 2012, published at: <[http://ec.europa.eu/internal\\_market/](http://ec.europa.eu/internal_market/)>. ('Feedback statement')

should continue to be tasked with ensuring compliance with AML standards, or whether their role needs to be further defined (..)” and “to extend the Directive’s provisions to allow professional bodies in the real estate sector to also take on responsibilities for monitoring and ensuring compliance (...)”.<sup>106</sup>

## 6.2 Hypothesis

From the observation that the procedural norms have not converged, we know that EU Member States’ preventive policies diverge on the matter of supervision and enforcement. None of the Member States regulates its supervision and enforcement in exactly the same manner as such systems are fashioned through a process influenced by factors like politics, culture, legal tradition, economy and finances. A patchwork of AML/CTF supervisory architectures exists in the EU.<sup>107</sup> We hypothesise that this difference in procedure may explain the different levels of (legal) effectiveness of the preventive AML/CTF policies.

## 6.3 Models of AML/CTF supervisory architectures

In order to get an understanding of the national AML/CTF supervisory and enforcement architectures in the European Union, we decided to design (institutional) models of the supervisory architectures of the Member States.<sup>108</sup> With this exercise we aim to draw a more systematic approach to the different AML/CTF supervisory architectures than has been done before. We also want to show in a more abstract fashion the main commonalities and differences throughout the European Union. This helps to illuminate differences of the supervisory architectures for those stakeholders working in the AML/CTF area and contributes to a dialogue on the key matters of the prevention of money laundering and terrorist financing.<sup>109</sup> The construction of the models is of a descriptive nature and does not provide explanations for the institutional choices made by Member States.

As the starting point for building the models we took the formal legislative texts of the EU Member States in the field of the prevention of money laundering and terrorist financing, as this was information available for all 27 EU Member States.<sup>110</sup> We applied two criteria for comparison. Firstly,

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<sup>106</sup> Application report, April 2012, p. 13.

<sup>107</sup> Van den Broek, M. (2010), ‘The EU’s preventive AML/CFT policy: asymmetrical harmonisation’, in: *Journal of Money Laundering Control*, vol. 14, issue 2, pp. 170-182. Please note that the notion ‘supervisory architecture’ used in this report refers to the legal norms that regulate the supervision of obliged institutions and the sanctioning in case of non-compliance (enforcement).

<sup>108</sup> This is new exercise for the preventive AML/CTF policy. However, modelling of supervisory architectures is a topic that has been given attention in financial law and regulation before. For the modelling in the present research, inspiration was drawn from, e.g.: Lumpkin, S. (2002), *Supervision of Financial services in the OECD Area*, OECD Working paper; Goodhart, C.A.E., Hartmann, Ph., Llewellyn, D., Rojas-Suaréz, Weisbrod (1998), *Financial Regulation: Why, how and where now?*, London: Routledge; De Bos, A. and Slagter, W.J. (2008), *Financieel recht: vanuit economisch en juridisch perspectief*, Kluwer: Deventer; Group of Thirty (G30), *The structure of financial supervision: Approaches and challenges in a global marketplace*, October 2008. In the field of AML/CTF policy modelling has been done in relation to Financial Intelligence Units: IMF (2004), *Financial Intelligence Units: An Overview*, Washington DC; Thony, J.F. (1996), ‘Processing Financial Information in Money Laundering Matters, The Financial Intelligence Units’, in: *European Journal of Crime, Criminal Law and Criminal Justice*, pp. 257–282.

<sup>109</sup> While the focus is on AML/CTF supervisory architectures of the Member States, no further attention is paid to cross-border situations in this chapter. This topic is worth a study in itself. Cf. Commission Staff Working Paper on Anti-money laundering supervision of and reporting by payment institutions in various cross-border situations, SEC(2011) 1178 Final, 4 October 2011.

<sup>110</sup> Legislative changes that have taken place after August 2012 have not been included in this study.

we used the level of concentration of AML/CTF supervision in a particular Member State. For this we looked at the total number of supervisory authorities involved in supervision of the preventive AML/CTF policy. We related this number to the end-responsibility for AML/CTF supervision, which means that we looked at the question whether end-responsibility for the AML/CTF supervision is given to one supervisory authority or is shared among the total number of supervisory authorities.

Secondly, we used as a criterion the nature of the supervisory authorities. The criterion is whether supervision is performed by external supervisors or by internal supervisors. External supervisors can be defined as those authorities that perform AML/CTF supervision but which have no direct, professional relationship with their supervisees. Often these are public administrative or government authorities. This is in contrast to the internal supervisors, which are often professional associations that have a strong professional relationship with the members that they oversee. This criterion is of particular relevance to AML/CTF supervision in relation to many designated non-financial businesses and persons that fall within the ambit of the preventive AML/CTF policy.

On the basis of these two criteria, we have identified four models of AML/CTF supervisory architectures that we name: the FIU Model, the External Model, the Internal Model and the Hybrid Model.<sup>111</sup> The models are presented in the following subsections, followed by a comparison between the models on the presented criteria and a categorisation of the Member States in the models.<sup>112</sup>

### 6.3.1 The FIU Model

We call the first supervisory model the FIU model. It has as its main characteristic that the Financial Intelligence Unit (FIU) is the national authority with end-responsibility for AML/CTF supervision. In principle FIUs are (part of) national authorities that have responsibility for receiving, analysing and disseminating financial intelligence submitted through suspicion reports by obliged institutions or persons. The institutional embedding of FIUs differs from country to country.<sup>113</sup> Under the FIU model, supervisory end-responsibility for verifying compliance with the preventive AML/CTF obligations is centralised with one supervisory authority, namely the FIU. Where an FIU has the end-responsibility for verifying compliance with AML/CTF requirements, this does not necessarily mean that no other supervisory authorities are involved at all. In practice, the involvement of other supervisory authorities is based on legislation or secondary regulations or on the basis of agreements concluded by the FIU and other authorities.<sup>114</sup> Decisive, however, is the fact that the end-responsibility for the proper carrying out of the supervision by other supervisory authorities in respect of the preventive AML/CTF policy remains with the FIU. Because of the original functions of an FIU, it does not have direct, professional relationships with any of the obliged institutions or persons. Therefore, the FIU is an external supervisor.

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<sup>111</sup> The names of the models are indicative only; the models as such are wider in their content. Therefore, one needs to read the description of the models to fully understand the models.

<sup>112</sup> The actual description of Member States' AML/CTF supervisory architectures can be found in Annex 6.1.

<sup>113</sup> Generally four models of FIUs can be distinguished: the administrative FIU, the law enforcement FIU, the judicial FIU and hybrid FIU. The comparative elements are most importantly the institutional embedding of the FIU and of lesser importance the functions of the FIU and the staff that works at the FIU. See: Egmont (2004), *Information Paper on Financial Intelligence Units and the Egmont Group*; IMF (2004), *Financial Intelligence Units: An Overview*, Washington DC; Thony, J.F. (1996), 'Processing Financial Information in Money Laundering Matters, The Financial Intelligence Units', in: *European Journal of Crime, Criminal Law and Criminal Justice*, pp. 257–282.

<sup>114</sup> See for instance the descriptions of Malta and Spain in Annex 6.1.

### 6.3.2 The External Model

We call the second model the External model. As explained, the term external is used to indicate that there is no direct, professional relationship between the supervisory authority and the supervisees. External supervisors are public administrative or Government authorities. Under this model end-responsibility for AML/CTF supervision is shared among a number of external supervisors. The AML/CTF legislation or regulations drafted pursuant to the legislation appoint the supervisory authorities.

The main characteristic of this model is that generally existing supervisory structures are used and that authorities designated for AML/CTF supervision usually already had some supervisory tasks, possibly, but not necessarily, in the preventive AML/CTF policy. A second characteristic is because of the nature of external supervisors there is a certain distance between the supervisors and the supervisees, by which we mean that there is no direct, professional relationship between the two.

This general outline of the model does not disregard the fact that in practice supervision and/or the sanctioning of legal professionals can also be (partially) performed by professional associations. This is either on the basis of AML/CTF legislation<sup>115</sup> or on the basis of supervision agreements between the external supervisors and the professional associations<sup>116</sup>. These agreements concern the situation that professional associations take over supervisory and/or sanctioning tasks from the external supervisor and perform AML/CTF supervision or sanction on behalf of the external supervisor or do so on a complementary basis. Under these supervision agreements external supervisors can perform some kind of oversight supervision on the internal supervisors, but they remain to have the right to perform AML/CTF supervision themselves.

### 6.3.3 The Internal Model

The third model we call the Internal model. Apart from supervision on financial and credit institutions and casinos, AML/CTF supervision is mainly performed by professional associations. The principle of this model is that where supervision *can* be performed by internal supervisors, these will be the designated AML/CTF supervisors. This principle is usually prompted by the national legislators' belief that professional associations are better capable of performing AML/CTF supervision. Only where the professional associations have no jurisdiction, for example for unregistered professionals or dealers in goods, may other (external) authorities have supervisory competences. A characteristic of the Internal model is that there are comparatively many supervisory authorities, while each category of professionals has its own professional body. Sometimes this is even further divided due to specialisations within the profession or because of territorial competences.<sup>117</sup> Under this model, all external and internal supervisors share end-responsibility for AML/CTF supervision.

In practice this means that it will never be the case that an AML/CTF supervisory architecture is solely composed of internal supervisors. Decisive in order to be placed under this model is the *extent* of the presence of internal supervisors in a particular architecture. This is expressed either in scope, for the type of professionals, or in the factual number of internal supervisors. For example, due to the federal or decentralised structure of a Member State there can be relatively many external supervisors compared to internal supervisors. Alternatively, due to the high level of self-regulation in a Member State, there can be a very high number of internal supervisors. Although both systems are

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<sup>115</sup> See the description of Greece in Annex 6.1.

<sup>116</sup> See the description of The Netherlands in Annex 6.1.

<sup>117</sup> See the descriptions of Ireland and the United Kingdom in Annex 6.1.

different in their design, both can express the underlying idea of the Internal model: where possible, internal supervisors are designated as AML/CTF supervisors in relation to their members.

Professional associations have close links to the professionals, because the professionals are members of these associations. In general terms professional associations have as the main objectives to further a particular profession as a whole, to protect the individual professionals, as well as to protect society, i.e. the public interest. There is a tension in the relationship between professions and society, which has been called the 'society-profession nexus'<sup>118</sup>: the professions' pursuit of autonomy versus society's demand for accountability. In this context, Frankel has stated that "[b]ecause the professions affect the interests and well-being of individuals who depend on professional services and also exert influence on key social institutions that pursue the common good, society has every right to evaluate professional performance in the light of a moral as well as technical dimension".<sup>119</sup> Professional ethical norms play an important role in reconciling the three aforementioned objectives and are often embodied in professions' ethics codes. Information obtained during interviews and from publicly available information show that where professional associations perform AML/CTF supervision, the AML/CTF obligations for the professionals are often (implicitly) incorporated in the professional norms, or these obligations are at least referred to in the professions' codes. Also, AML/CTF supervision mostly becomes part of broader supervision programmes that concern the quality of the profession and the integrity of the professional.

#### 6.3.4 The Hybrid Model

The fourth model - the Hybrid Model - combines elements of the three models mentioned before. The exact combination of the models differs per case, but we were able to identify two streams within the Hybrid model.<sup>120</sup>

The first stream concerns a combination of both internal and external supervisory authorities. In relation to the internal model, the difference is the extent to which internal supervisory authorities are involved in AML/CTF supervision of designated non-financial businesses and professions. Under the Hybrid model there is generally only one professional association involved in AML/CTF supervision, although many legal and fiscal service providers are member of a professional association. In the Member States that apply this model, the professional association that is competent in performing AML/CTF supervision is the bar association with respect to lawyers.<sup>121</sup> Other professionals are supervised by external supervisors. End-responsibility for AML/CTF supervision is shared among the supervisors involved.

The second stream we have identified concerns a mixture of the three models. Here end-responsibility for AML/CTF supervision is shared between external and internal supervisors, and the FIU. Characteristic for this stream is the position of the FIU: it either serves as a so-called 'default' supervisor for those professions or businesses that originally have no or a very weak supervisor or it performs AML/CTF supervision on the entire range of obliged institutions and professions but with limitations to the scope of its supervisory activities. By this we mean that the FIU can perform AML/CTF supervision on a particular obligation only, for example the reporting obligation, and that

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<sup>118</sup> Frankel, M.S. (1989), 'Professional Codes: Why, How and with What Impact?', in: *Journal of Business Ethics*, vol. 8, pp. 109-115 at 109.

<sup>119</sup> *Ibid.*

<sup>120</sup> Of course, this does not do away with the fact that in the future other forms of the Hybrid model may appear.

<sup>121</sup> See the descriptions of Denmark, Finland and Sweden in Annex 6.1.

the obliged institutions also deal with AML/CTF supervisory authorities that verify compliance with the other AML/CTF obligations.<sup>122</sup>

### 6.3.5 The position of the four models

On the basis of the two criteria used for comparison and the description of the models, namely the number of authorities with end-responsibility for AML/CTF supervision and the nature of the supervisory authorities, we come to the following illustration of the supervisory architectures.

**Table 6.1: AML/CTF supervisory architectures illustrated**

	Number of authorities with end-responsibility for AML/CTF supervision (one or more)	Nature of the supervisory authorities: Internal, External or Mixed
<b>Model 1: FIU</b>	1	External
<b>Model 2: External</b>	> 1	External
<b>Model 3: Internal</b>	> 1	Internal
<b>Model 4: Hybrid</b>	> 1	Mixed

The table shows that the models are different from each other. The FIU model is different from the three other models, because there is only one authority with end-responsibility for AML/CTF supervision. Regarding the nature of the supervisors we can see three variations: the FIU Model and External Model comprise of so-called external supervisors, while the Internal model is dominated by internal supervisors<sup>123</sup>. Under the Hybrid model both internal and external supervisors are mixed and their level of involvement varies from country to country. That is why the nature of supervisory authorities under this model is described as ‘mixed’.

### 6.3.6 Categorisation of Member States

The Member States that we categorise in the FIU model are: Bulgaria, Czech Republic, Lithuania, Malta, Poland, Slovakia and Spain. We identified Greece and the Netherlands as countries that belong to the External model. The Member States that we bring under the Internal model are: Austria, Belgium, France, Germany, Ireland, Latvia, Luxembourg, Portugal and the United Kingdom. As explained, the Hybrid Model can be distinguished into two streams. The first stream is Hybrid I, for those Member States that have designated internal and external supervisors as AML/CTF supervisors. We categorise the Scandinavian Member States here: Denmark, Finland and Sweden. The second stream is Hybrid II in which all types of supervisors are mixed: external, internal and the FIU. Member States that we categorise under this group are: Cyprus, Estonia, Hungary, Italy, Romania, and Slovenia. Annex 6.1 contains the full description of the supervisory architectures in the Member States.

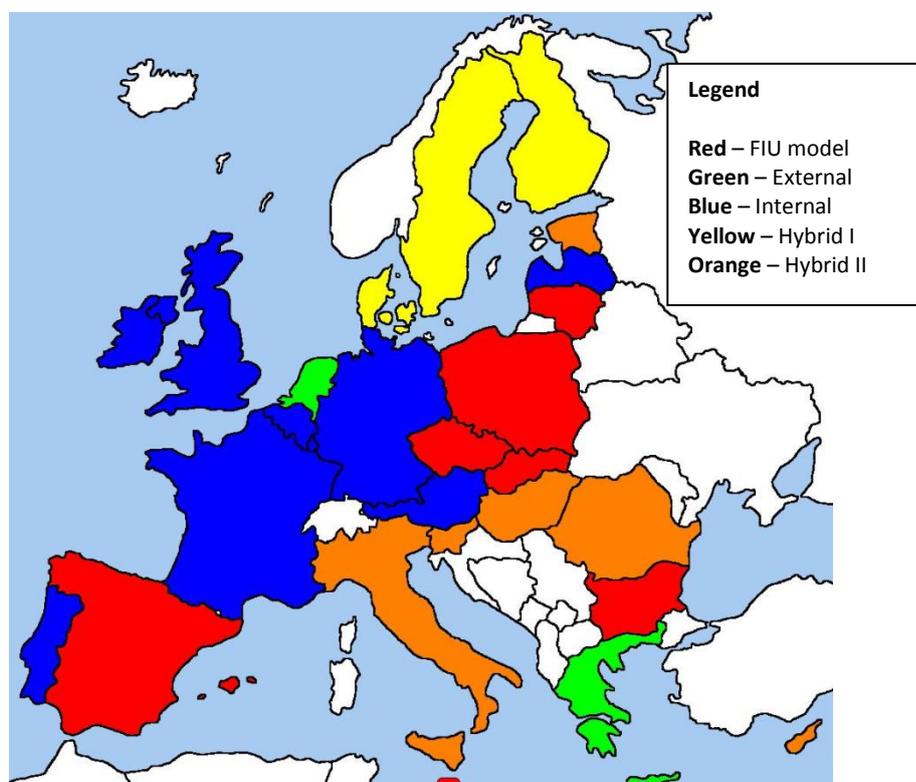
Bringing the information together in a figure, the formal supervisory architectures of the Member States look as follows. The red colour represents the FIU model, the green colour represents the

<sup>122</sup> See the description of Italy in Annex 6.1.

<sup>123</sup> As explained, the Internal Model will never only exist of internal supervisors.

External model, and the blue colour represents the Internal model. In this figure, the Hybrid model is divided into the two streams. Hybrid I is shown in yellow. Hybrid II is shown in orange.

**Figure 6.1: AML/CTF Supervisory Architectures in the EU**



*Stylised facts*

From this figure one can observe that generally all the Eastern and Southern European Member States include the FIU in the AML/CTF supervisory architecture, either as the end-responsible authority for AML/CTF supervision or as a default supervisor under the Hybrid model. Exceptions to this observation are Latvia, Portugal (Internal Model) and Greece (External Model). By contrast, Northern and Western European Member States are inclined to use existing institutions as AML/CTF supervisors, either public administrative or Government authorities alone or in combination with professional associations.

Explanations provided in Eastern and Southern Member States regarding the choice to include the FIU as a supervisor in the preventive AML/CTF policy vary.<sup>124</sup> Generally, we have identified three explanations for the involvement of FIUs. A first explanation is that the FIU became involved in supervision of those obliged entities that did not have any existing supervisory authorities. This is often the case for unregulated professions in countries. A second explanation concerns the fact that in some Member States there is a low level of trust in the existing supervisors or professional associations. Therefore, these were not considered suitable by the legislator to perform AML/CTF supervision. A third explanation is the fact that the FIU, being the central authority in the fight against money laundering and terrorist financing, is considered most knowledgeable about the preventive AML/CTF system and is therefore better capable of verifying non-compliance with the

<sup>124</sup> Explanations were provided during interviews or at Regional Workshops.

obligations than external (sectoral) supervisors or professional associations. This was a decisive factor in some Member States in providing the FIU end-responsibility of AML/CTF supervision or for designing a joint supervisory system with external supervisors - that can also make use of information obtained from sectoral supervision. Both the first and second explanation only applies to the involvement of the FIU under the Hybrid Model. The third explanation applies both to the FIU and Hybrid models.

#### 6.4 Legal effectiveness of the AML/CTF supervisory models

The previous section presented the four models of AML/CTF supervisory architectures that we identified within the EU. We now attempt to give an insight into the legal effectiveness of the models by presenting the potential strengths and weaknesses of the models. It must be made clear that although we discuss the potential strengths and weaknesses under a certain model, this does not mean that these strengths or weaknesses are not at all present in Member States that fall under another model.<sup>125</sup> The aim of this exercise at this stage is to find out whether there is one most effective model *in abstracto*. Of course it may ultimately appear that a particular model functions well in one Member State and poorly in another Member State. This has to do with the Member State's specifics and context, including its national legal system, in which the model is applied. At this point, however, we do not go into the question of whether the Member States' supervisory architectures are effective or not.

As a more specific elaboration of the notion of legal effectiveness in the context of supervision and enforcement, the models are assessed according to requirements stemming from the concept of 'effective enforcement'. In the analysis of legal, regulatory and economic literature, as well as case law of the European Court of Justice (ECJ), one can identify a core set of requirements that must be present in a supervisory architecture in order for supervision and enforcement to be effective.<sup>126</sup> In summary, the criteria can be distinguished into three types of requirements: legislative requirements, institutional requirements and requirements and conditions with respect to the competences of supervisory authorities and the application thereof. This means, firstly, that legislation must be clear, precise, foreseeable, predictable and enforceable. In institutional terms

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<sup>125</sup> For example: We pay attention to the matter of resources under the FIU-model, while anecdotal evidence shows us that also other external supervisors and, seldom, even internal supervisors in various Member States face this problem. The same holds for the discussion of availability of sufficient supervisory and sanctioning powers under the External model. While this is especially prominent for external supervisors, there is some evidence that suggests that in Member States professional associations do not have sufficient powers. FIUs, also being external supervisors, occasionally face this problem as well.

<sup>126</sup> A selection of literature that has been used in determining the requirements of effective enforcement: Hampton Review (2005), *Reducing Administrative Burdens: Effective Supervision and Enforcement*, at 43; The Dutch market supervisors consultation forum, *Effectief markttoezicht: bijdrage voor de herziening van de Kaderstellende Visie op Toezicht* (Effective market supervision: for the revision of the Framework Vision on Supervision), 5 September 2011; Ottow, A. (2006), *Telecommunicatietoezicht: De invloed van het Europese en Nederlandse bestuurs(proces)recht*, Sdu Uitgevers, at 77; Macrory Review (2006), *Regulatory Justice: Making Sanctions Effective*, Final Report; Quintyn, M. and Taylor, M.W. (2003), 'Regulatory and supervisory independence and financial stability', in: CESifo, *Economic Studies*, vol. 49, pp. 259-294; Verhey, L.F.M. and Verheij, N. (2005), 'Markttoezicht in constitutioneel perspectief', in: Preadvies NJV, *Toezicht*, Kluwer, pp. 139-332; Voermans, W. (2005), 'De communautarisering van toezicht en handhaving', in: Barkhuysen, T., Den Ouden, W. and Polak, M., *Recht realiseren: Bijdragen rond het thema adequate naleving van rechtsregels*, Kluwer: Deventer, pp. 69-88; Demmke, C. (2001), *Towards Effective Environmental Regulation: Innovative Approaches in Implementing and Enforcing European Environmental Law and Policy*, Jean Monnet Working Paper 5/01; Harding, C. (1997), 'Member State Enforcement of European community Measures: The Chimera of 'Effective Enforcement, in: *Maastricht Journal for European and Comparative Law*, vol. 4, issue 5, pp. 5-24; Jans, J.H., De Lange, R., Prechal, S. and Widdershoven, R.J.G.M. (2007), *Europeanisation of public law*, Europa Law Publishing: Groningen; Stouten, M. (2012), Stouten, M. (2012), *De witwasmeldplicht: Omvang en handhaving van de Wwft-meldplicht voor juridische en fiscale dienstverleners*, Boom Juridisch Uitgevers: Den Haag.

supervisory authorities must have a high degree of independence in their day-to-day activities both vis-à-vis Parliament and the private sector.

Furthermore, supervisors must be accountable for their actions and be transparent. They must also have sufficient resources to actually perform their supervisory tasks. With respect to competences and the application thereof, literature acknowledges the importance of adequate supervisory, enforcement and cooperation powers and a dissuasive and proportionate application thereof. In this light, supervisors must have in place enforcement policies and annual supervision plans that give an insight into the way in which supervisors make use of enforcement powers and supervisory actions (planned).

This section is primarily based on interviews held in the context of the ECOLEF Project and discussions with representatives that have taken place at various Regional Workshops. Where possible, data obtained by means of surveys and gathered from publicly available literature is used as a means of illustration. It should be reminded that the strengths and weaknesses of the models are not necessarily present, but are sometimes of a more theoretical nature as well.

#### **6.4.1 Strengths and weaknesses of the FIU Model**

As explained, the FIU Model is an AML/CTF supervisory architecture in which the FIU has end-responsibility for AML/CTF supervision. It is generally competent to perform AML/CTF supervision on all obliged institutions, but it may allow on the basis of legislation or supervisory agreements (memoranda of understanding) that supervision is performed by other authorities.

#### **6.4.2 Strengths**

##### *Focus*

One of the strengths mentioned various times by representatives of different Member States is that when the FIU is the single authority with end-responsibility for AML/CTF supervision there is a clear focus on AML/CTF supervision. As FIUs are generally considered to exercise their tasks at the heart of the AML/CTF policy there is a large presence of specific AML/CTF knowledge in terms of trends, typologies and risks. This way, verification of compliance with the preventive obligations receives full attention throughout the supervisory process. This can be different where financial regulators are competent performing AML/CTF supervision alongside their other supervisory tasks. For a large part, AML/CTF supervision is included in the general prudential or conduct-of-business supervision programmes. Professional associations also tend to include AML/CTF compliance in their broader disciplinary standards and controls. The AML/CTF obligations are in these circumstances not always (sufficiently) included in supervision.<sup>127</sup>

##### *Cross-over analytical and supervisory functions of the FIU*

A second strong aspect reported is that information that FIUs gather from disclosed suspicions can help in the supervisory process. The information contained in a disclosure of a suspicion of money laundering or terrorist financing can indicate the level of internal measures adopted by an obliged institution. There is a clear link between the function of the FIU as a central receiving authority of suspicions of money laundering and terrorist financing and the tasks related to supervision. Supervision can benefit from information available in the STR databases of FIUs. In Malta

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<sup>127</sup> Compare for example, FATF (2010), Third Follow Up Report on Denmark, p. 14-15 and FATF (2011), Third Mutual Evaluation on the Netherlands, p. 211.

representatives explained that delays in reporting, a lack of cooperation with the FIU or a lack of adequate supporting documentation in the reporting process can trigger a compliance visit.<sup>128</sup> Spanish representatives have confirmed that the STR database is used as a source for the risk-based annual inspection plans.<sup>129</sup> During the Regional Workshops representatives of various FIUs have praised the possibility of cross-checking names and data from the STR databases for supervisory purposes. Various representatives stated that they are of the opinion that a cross-over between the analytical and supervisory functions of the FIU is possible, unless legislation prohibits it. There is no evidence that in any Member State an FIU is prohibited from using data obtained under its analytical functions for supervisory purposes.

#### *Comprehensive overview of compliance*

A strong point from model follows from the two foregoing strengths: when (end-responsibility of) AML/CTF supervision is centralised with an FIU there is a good and complete overview of compliance by the obliged institutions and professionals. The FIU has end-responsibility of supervision and should thus be aware of the compliance level for all obliged institutions. The compliance information is not fragmented between (too) many authorities.

#### **6.4.2 Weaknesses**

##### *Resource issues*

The most commonly reported weakness is that the supervisory tasks distract FIUs from the core tasks, which are *“the receiving (and to the extent permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of information which concern potential money laundering, potential terrorist financing (...)”*.<sup>130</sup> As many FIUs already have quite a broad range of tasks<sup>131</sup> and often have limited resources available, there is also a likelihood of staff capacity and resources problems in relation to supervision. This has been reported in Bulgaria, Spain<sup>132</sup>, Malta<sup>133</sup>, Czech Republic<sup>134</sup>, Poland<sup>135</sup> and Slovakia<sup>136</sup>. For some Member States it has been reported that supervision for certain categories of professionals may only be deemed as theoretical or that a particular category of professionals had not (yet) received any supervisory controls.

The tension between FIU resources devoted to supervision in terms of number of staff and population to be (partially) supervised by FIUs is illustrated by the table below:

**Table 6.2: Resource tensions for FIUs**

	Number of supervisory staff at FIU (FTE)	Number of institutions and professionals to be supervised by FIU
<b>Spain</b>	10 (in 2011) <sup>137</sup>	19.322 (in 2010) <sup>138</sup>

<sup>128</sup> Interviews with Maltese representatives.

<sup>129</sup> Interviews with Spanish representatives.

<sup>130</sup> Article 21, second paragraph, Third Money Laundering Directive.

<sup>131</sup> See Chapter 8 on the Role of the FIUs.

<sup>132</sup> Interviews with Spanish representatives; FATF (2010), *Fourth Follow Up Report on Spain*, p. 17-18.

<sup>133</sup> MONEYVAL (2012), Report on Fourth Assessment Visit on Malta, p. 76-77.

<sup>134</sup> MONEYVAL (2011), Report on Fourth Assessment Visit on Czech Republic, p. 146.

<sup>135</sup> MONEYVAL (2007), Third Mutual Evaluation Report on Poland, p. 119-121.

<sup>136</sup> MONEYVAL (2011), Report on Fourth Assessment Visit on Slovakia, p. 143.

<sup>137</sup> With extra support of another 17 people within SEPBLAC that do have other primary functions within the FIU. FATF (2010), *Fourth Follow Up Report on Spain*, p. 17-18. Information provided through survey and interviews.

<b>Malta</b>	3 (in 2011) - <i>intention to raise to 4 in 2012</i> <sup>139</sup>	900 (in 2012) <sup>140</sup>
<b>Poland</b>	7 (in 2011) <sup>141</sup>	54.145 (in 2007) <sup>142</sup>
<b>Czech Republic</b>	5 (in 2011) <sup>143</sup>	141.346 (in 2012) <sup>144</sup>
<b>Slovakia</b>	7 (in 2011) <sup>145</sup>	39.971 (in 2011) <sup>146</sup>

In order to diminish these resource tensions, FIUs and legislators have been seeking additional supervisory tools, for example by entering into supervisory agreements with financial regulators and other supervisory authorities to exercise AML/CTF supervision on their behalf. For Malta, it was considered that “(...) in view of the arrangements entered into by the FIAU with other supervisory authorities for on-site visits to be carried out on its behalf by officers of the supervisory authorities, compliance monitoring for AML/CFT purposes is being conducted by a sufficient number of officers working within the FIAU, the MFSA and the LGA”.<sup>147</sup> Similar considerations can be found in the MONEYVAL report for the Czech Republic and were also mentioned in the FATF evaluation on Spain.<sup>148</sup> In Slovakia, AML/CTF supervision can also be performed by the National Bank of Slovakia and the Ministry of Finance and in the Czech Republic by the Czech National Bank, the Czech Trade Inspection and some professional associations. In Bulgaria the financial regulators should include AML/CTF supervision in their wider supervisory responsibilities. Resource tensions of the FIU are in Poland mitigated by the AML Act, which states that supervision may also be performed by a number of other authorities.<sup>149</sup> That these structures are very important is demonstrated by the Polish Annual FIU reports that show that the number of inspections performed by other supervisory authorities (on behalf of the FIU) outweighs by far the number of FIU inspections.<sup>150</sup>

A second supervisory tool identified is the obligation to submit annual compliance reports to the FIU. In Spain, considering that the Spanish FIU has sole end-responsibility for AML/CTF supervision but cannot perform supervision on all obliged institutions and professionals in practice, legislation requires that in principle all obliged institutions and professionals must have their internal policies assessed annually by an ‘external expert’. Pursuant to Article 26 of the Spanish AML Act and Order EHA/2444/2007, these external experts must notify themselves to the Spanish FIU and make available their annual assessments. The board of directors or the director of the obliged institutions is obliged to adopt necessary measures to solve identified deficiencies. The Spanish FIU may decide, on the basis of the external report, to perform an on-site inspection or to require corrective measures.<sup>151</sup> In Malta a similar system applies, though annual compliance reports do not have to be

<sup>138</sup> Source: Website SEPBLAC, Statistics for the year 2010, <www.sepblac.es>

<sup>139</sup> Information provided in interview by Maltese FIU.

<sup>140</sup> Information provided by Maltese FIU.

<sup>141</sup> Information provided by Polish FIU.

<sup>142</sup> MONEYVAL (2007), *Third Mutual Evaluation on Poland*, p. 17-19. Unfortunately, no more recent numbers could be provided.

<sup>143</sup> Information provided through interviews. MONEYVAL (2011), *Report on Fourth Assessment Visit on Czech Republic*, p. 134 indicated a number of 4 FTE for supervision for the year 2010.

<sup>144</sup> Information provided by the Czech FIU. However, it should be noted that a considerable number of DNFBPs is not included, because there are no official statistics concerning the number of these institutions and professions (e.g. pawn shops, dealers in (high-value) goods, real estate agents).

<sup>145</sup> MONEYVAL (2011), *Report on Fourth Assessment Visit on Slovakia*, p. 123.

<sup>146</sup> Combination of data from MONEYVAL (2006), *Third Mutual Evaluation on Slovakia*, p. 23-24 and MONEYVAL (2011), *Fourth Assessment Visit on Slovakia*, p. 21-22.

<sup>147</sup> MONEYVAL (2012), *Report on Fourth Assessment Visit on Malta*, p. 122.

<sup>148</sup> MONEYVAL (2011), *Report on Fourth Assessment Visit on Czech Republic*, p. 190-192; FATF (2010), *Fourth Follow Up Report on Spain*, p. 15-16.

<sup>149</sup> Article 21(3) Polish AML Act.

<sup>150</sup> See, cf.: Polish FIU, *Report of the General Inspector of Financial Information on the implementation of the Act of 16 November 2000 on counteracting money laundering and terrorism financing in 2011*, p. 25-26.

<sup>151</sup> FATF (2010), *Fourth Follow Up Report on Spain*, p. 18.

submitted to the Maltese FIU by external experts but by the money laundering reporting officers (MLRO) of the obliged institutions themselves.<sup>152</sup> The Implementing Procedures introduced this obligation for MLROs. The Implementing Procedures are guidance drafted by the Maltese FIU pursuant to the Prevention of Money Laundering and Funding of Terrorism Regulations. The Implementing Procedures of the FIU are legally binding and sanctionable where an obliged institution does not comply with it.<sup>153</sup> These annual compliance reports assist the FIU in deciding on its supervisory activities.<sup>154</sup>

#### *Lack of sectoral knowledge*

Another reported weakness is the fact that some sectors or professions require specialised knowledge or expertise about the sector or profession as such. For various Member States this has been the reason to establish the bar association as the competent supervisory authority for lawyers. The argument is that bar associations are better capable of balancing the professional legal privilege with the reporting obligation. An FIU, which is exactly the authority to which reports must be submitted<sup>155</sup>, may be more biased in this respect and will not have sufficient knowledge in determining whether a particular situation is privileged or not. More importantly, privilege is already breached if the information is submitted to the FIU in the first place. For this reason, supervisory cooperation may be found with other sectoral supervisory authorities who can provide the FIU with the necessary expertise.

#### **6.4.3 Strengths and weaknesses of the External model<sup>156</sup>**

Under the External model, responsibility for AML/CTF supervision is formally shared between public administrative and/or Government authorities. In practice, however, internal supervisors may play an indirect role in supervising and enforcing AML/CTF obligations.

#### **6.4.4 Strengths**

##### *Sectoral knowledge*

Because of the fact that external supervisors often - though not necessarily - have supervisory experience with the group institutions or professionals, they are knowledgeable on the specifics of the sector, the latest developments, the risks, vulnerabilities and so on. This potential strength was reported by various representatives during Regional Workshops.

For the Netherlands, the Dutch financial regulators already have knowledge about the respective sectors and also Bureau Financial Supervision had already been competent for years in the sphere of financial supervision of notaries and bailiffs. The Tax and Customs Administration clearly has supervisory powers in the field of Revenue, although representatives explained that functionally the Netherlands Tax and Customs Administration and Unit MOT are separate. Unit MOT operates independently and receives information from Revenue, but does not forward information to it. In Greece, the three financial regulators all have previous supervisory experience with their

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<sup>152</sup> MONEYVAL (2012), Report on Fourth Assessment Visit on Malta, p. 122.

<sup>153</sup> Regulation 17 Maltese AML/CTF Regulations.

<sup>154</sup> Interviews with Maltese FIU representatives. See also FIU Malta's website: <[www.fiumalta.org](http://www.fiumalta.org)>

<sup>155</sup> If Member States have not decided to make use of indirect reporting through SROs, see Deloitte (2011), p. 245-246.

<sup>156</sup> In theory some of the reported strengths (e.g. suitability) and weaknesses (e.g. lack of supervisory powers) may also apply to the FIU model as well, since the FIU is also an external supervisor; although Member States' representatives have not mentioned this during interviews and/or Regional Workshops. The other strengths and weaknesses reported for the FIU model mentioned above seem therefore to be more important for that model.

supervisees. Furthermore, the Accounting and Auditing Supervisory Commission was established in 2003 by virtue of Law 3148/2003 and its role was further enhanced in 2008 with the adoption into Greek law 3693/2008 of Directive 2006/43/EC, and has since that day had the task to perform public oversight over the accounting profession. Also the Gambling Control Commission has had years of supervisory experience. The Ministry of Economy and Finance, specifically the General Directorate for Tax Audits, has transferred the supervisory responsibilities to local tax offices that have supervisory experience in the field of taxation and revenue. The Ministries of Justice and Development were also reported to have previous supervisory experience.

#### *External supervisors more suitable for AML/CTF supervision*

A characteristic of this model that was mentioned before is the fact that external supervisors do not have any direct, professional relationship with their supervisees. This leads to a certain distance between the supervisory authorities and the supervisees. Because there is no professional relationship to be maintained between the two, the supervisor does not need to 'satisfy' the wishes of its members. As a result, a supervisory authority has a more independent position in relation to the supervisees and it can act more strictly in case of non-compliance. Another argument that can be used in reasoning that external supervision is more suitable in the fight against money laundering and terrorist financing is that fighting money laundering is a prerogative of the State. It is the State which has the primary interest in combating these phenomena. The AML/CTF policy is, after all, pursued for the public interest. While external supervisors act either directly or indirectly on behalf of the State they can be said to provide a more adequate type of supervision necessary for the AML/CTF policy. In contrast, professional associations have as their main task to keep a high level of integrity of the profession as a whole for which a workable and continuous relationship between the two is required.<sup>157</sup>

#### **6.4.5 Weaknesses**

##### *Lack of supervisory powers or difficulties in applying those powers*

Comparatively, the risk of problems with the use of supervisory powers may be higher than for internal supervisors. Internal supervisors can generally rely on their internal norms, powers and procedures. Especially due to fundamental rights' protection, it may be that an external supervisor encounters more difficulties in performing an on-site inspection than internal supervisors. This is the case in the Netherlands, where the Bureau Financial Supervision does not have access to lawyers' and notaries' records and can thus not perform on-site inspections. For notaries this lack in supervisory powers is remedied by other legislation.<sup>158</sup> Dutch representatives have informed that as of 1 January 2013, the amendments to the Dutch Notaries Act (*Wet op het Notarisambt*) and AML Act enter into force, which provide Bureau Financial Supervision with the power to access notaries records, including client files. Legal privilege is reported to have been set aside explicitly. For lawyers this issue has currently not been remedied. BFT used to have a supervisory agreement with the Bar Association, the *Orde van Advocaten*, which included that the Bar Association would perform a number of AML/CTF inspections annually. The Bureau Financial Supervision would still have its own supervisory authority, but would oversee this supervision on a systematic basis. However, this supervisory agreement was terminated due to the impression on the side of BFS that the audits performed by the Bar Association did not contain a sufficient investigation into the compliance with

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<sup>157</sup> See section 6.3.3.

<sup>158</sup> Faure, M.G., Nelen, H., Fernhout, F.J., Philipsen, N.J. (2009), *Evaluatie tuchtrechtelijke handhaving Wwft*, p. 81

AML/CTF legislation. The fact that BFT cannot perform supervision itself clearly diminishes the effectiveness of BFT's supervision on lawyers.

Another matter that also gave rise to attention during the FATF evaluation of the Netherlands in 2010 is the fact that the Dutch financial regulators explained that they rely mostly on their powers under the Act on Financial Supervision (*Wet financieel toezicht, Wft*), because some substantive provisions are lacking in the Dutch AML/CTF Act (like the obligation to have internal procedures, policies controls, compliance monitoring, internal audit, employee training and screening in place) and because they have more extensive powers under this piece of legislation than under the Dutch AML/CTF Act: *"the view of the authorities is that provisions in the Wft, relating to internal controls (relevant to Recommendation 15) and the supervisory powers and sanctions (relevant to Recommendations 17, 23 and 29) and supervisory cooperation powers (Recommendation 40) can be used to monitor and enforce WWTF obligations"*.<sup>159</sup> FATF assessors provided various reasons on the basis of which this interpretation could be challenged in courts, but ultimately accepted this view.<sup>160</sup>

### *Knowledge of the supervisees*

A second potential weakness relates to the supervisors' knowledge as to who it should supervise. Contrary to internal supervisors that generally supervise their members, and thus know who they are, external supervisors may encounter difficulties in discovering who they should supervise. Especially where a profession is not regulated and thus no or limited licensing or registration systems apply, it is difficult for the supervisor to know whom it should supervise exactly. As a consequence, it will also have more difficulties in understanding and recognising the risks in the sector and understanding the general level of compliance by the institutions or professionals with the norms in place. Where a sector or profession is entirely unregulated this weakness can be limited where there are registration requirements for these institutions or professionals in place. If there is no (central) register either, then even a more considerable effort must be made by the supervisor to find out which institutions or professionals fall under its supervision and, subsequently, to formulate a proper risk-based supervision programme.

Representatives from the Netherlands and Greece mentioned this problem in relation to supervisory authorities that supervise dealers in (high value) goods and real estate agents.<sup>161</sup> In the Netherlands, representatives explained that strategies were in place to enable the supervisor to focus on the most risky institutions or professionals. The supervisory authority has also sought cooperation with professional associations, where possible. In Greece, real estate agents and dealers in high-value goods are required to register with the tax authorities.<sup>162</sup> From interviews with Greek representatives it appeared there is no database on the number of institutions falling under the AML/CTF supervision of the Ministry of Finance, DG Tax Audits, but that local tax authorities which carry out the actual on-site inspections use the so-called 'Taxed Persons Database' to check who works as an obliged entity in their area of competence. In practical terms, however, it seems that this obligation is not strictly enforced. The FATF mentioned in relation to real estate agents that *"more than half are not registered and are not members of the national association of real estate agents (OMASE)"* and that *"real estate agents are generally not subject to any supervision or oversight (...)"*.<sup>163</sup>

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<sup>159</sup> FATF (2011), *Third Mutual Evaluation on the Netherlands*, p. 184.

<sup>160</sup> FATF (2011), *Third Mutual Evaluation on the Netherlands*, p. 185-187.

<sup>161</sup> The Netherlands: Tax and Customs Administration, Unit MOT; Greece: Ministry of Finance, General Directorate of Tax Audits.

<sup>162</sup> FATF (2007), *Third Mutual Evaluation on Greece*, p. 23.

<sup>163</sup> FATF (2007), *Third Mutual Evaluation on Greece*, p. 23.

In some Member States, the AML/CTF legislation specifically designs a registration system for the purpose of AML/CTF supervision for the unregulated professions and institutions. This is, for example, the case in the United Kingdom. Under the Money Laundering Regulations 2007, Her Majesty's Revenue and Customs is assigned the duty to maintain registers.<sup>164</sup> Pursuant to Regulation 25 HMRC must maintain registers of high value dealers, money service businesses for which it is the supervisory authority and trust or company service providers for which it is the supervisory authority. A similar register is also obliged for bill payment service providers and telecommunication, digital and IT payment service providers, for which HMRC is the supervisory authority.<sup>165</sup> HMRC may keep the register in any form it thinks fit and may publish or make available for public inspection all or part of the register maintained under Regulation 25.<sup>166</sup> While Regulation 25 is concerned with the duty for the supervisory authority to maintain registers, Regulation 26 obliges the aforementioned institutions and persons to be registered. If these do not register themselves, they are not allowed to act as such.<sup>167</sup> Two other external supervisors in the United Kingdom, namely the Financial Services Authority and Office of Fair Trading have been given the possibility to maintain such AML register under Regulation 32 MLR 2007 in relation to the institutions and professionals that they supervise. Another example with a different kind of registration system is Sweden. Here, dealers in precious metals and stones and other professional traders in goods, providers of other bookkeeping or auditing services than those subject to supervision by the Supervisory Board of Public Accountants and other independent legal professionals and trust and company service providers, are subject to supervision of the County Administrative Boards. Pursuant to Chapter 6, section 16, of the Swedish AML/CTF Act these institutions and professionals are required to notify the Swedish Companies Registration Office (*Bolagsverket*) that keeps a register for companies subject to supervision. County Administrative Boards have access to this register and can find out who they should supervise.

AML registration systems may appear very helpful for those institutions and professionals that are not regulated elsewhere and thus enable supervisory authorities to devote their time and resources to actually perform AML/CTF supervision. This way, a potential weakness of appointing external supervisors as AML/CTF supervisors can be overcome.

#### *AML/CTF supervision entirely integrated in general supervision*

A third potential weakness might be that AML/CTF supervision becomes entirely integrated in the overall supervision performed by the external supervisor, with the risk that insufficient attention is paid to AML/CTF matters or that the specific AML/CTF risks are not recognised. This was, for example, reported for the Authority Financial Markets in the Netherlands, where the FATF stated: “[t]he mission was concerned that this approach may result in too low a priority being given to AML/CTF matters” by the AFM.<sup>168</sup> It has also been reported for some external supervisors in other Member States, for example for the ISA in Finland and the FSA in Denmark, which both fall under the Hybrid model.<sup>169</sup>

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<sup>164</sup> HMRC is a default supervisor because it essentially supervises all businesses and persons that fall outside the scope of any of the other ML Supervisory bodies. It supervises high-value dealers, money services businesses, trust and company service providers, but for example also accountants that are not a member of any of the professional associations. See: Regulation 21(1)(d) MLR 2007.

<sup>165</sup> Insertion of subparagraphs, inserted by SE 2009/209, Regulation 126, Schedule 6, point 2, paragraph 6(e).

<sup>166</sup> Regulations 25(2) and 25(3) MLR 2007.

<sup>167</sup> Regulation 26(1) MLR 2007.

<sup>168</sup> FATF (2011), *Third Mutual Evaluation on the Netherlands*, p. 217.

<sup>169</sup> FATF (2007), *Third Mutual Evaluation on Finland*, p. 137 and p. 138; FATF (2006), *Third Mutual Evaluation on Denmark*, p. 127, 132 and 143. See also: FATF (2010), *Third Follow Up Report on Denmark*, p. 14-15.

#### 6.4.6 Strengths and weaknesses of the Internal model

The Internal model is characterised by a large presence of internal supervisors. As explained, the principle is that, where possible, professional associations are responsible for AML/CTF supervision in relation to their members.

#### 6.4.7 Strengths

##### *Dialogue with obliged institutions to stimulate compliance*

The Internal model can be found in a considerable number of EU Member States though the exact appearance varies from country to country. And, at first sight, a theoretical strength of AML/CTF supervision performed by internal supervisors is that professional associations have close relationships with their supervisees and that a culture of dialogue could stimulate compliance within the professional sector. In regulatory literature this style of enforcement is known as the compliance style, conciliatory style, co-operative or horizontal style. It concerns the prevention of violations, remedying underlying problems, and interaction with the private sector through advice, negotiations, meetings, or seminars.<sup>170</sup> Under this style, supervisors tend to turn to informal processes in striving for compliance. The imposition of sanctions is useful as a threat, but only used as last resort.<sup>171</sup> This enforcement style presumes that non-compliance is also the consequence of incompetence or unawareness on the side of the violator.<sup>172</sup> This fits very much with the close relationship that professional associations wish to maintain with their members. A prerequisite for the success of the Internal model and this potential strength in particular is, however, that both the professional associations and the professionals must be convinced of the need to combat money laundering and terrorist financing, that they find this policy important and that they are willing to apply the corresponding policy.

Although we have not received a sufficient set of data from professional associations performing AML/CTF supervision to work with, Member States' representatives have stated that the internal supervisors generally spend a considerable effort in creating awareness by means of guidance and training, and sometimes by giving members a chance to correct behaviour before imposing a sanction. In the UK this was noted by HM Treasury: “[s]upervisors seek to promote compliant behaviour, which generally means that members who are found to be non-compliant are given an opportunity to correct their behaviour before sanctions are imposed”.<sup>173</sup> Another example is the Latvian Association of Certified Auditors, which indicated that it spends half of its time designated for AML/CTF supervision on creating awareness, guidance and training.<sup>174</sup> The mentioned strength for external supervisors that they can impose more severe sanctions rightly because they are distanced from their supervisees, may not even be necessary or less applicable under this model.<sup>175</sup> However, this strength remains of a theoretical nature and cannot be confirmed at this moment.

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<sup>170</sup> Hawkins, K. and Thomas, J. M. (1984), *Enforcing Regulation*, Kluwer Boston, p. 13.

<sup>171</sup> *Ibid.*, p. 13.

<sup>172</sup> Kagan, R.A. and Scholz, J.T. (1984), ‘The “Criminology of the Corporation” and Regulatory Enforcement Strategies’, in: Hawkins and Thomas, *Enforcing Regulation*, Kluwer: Boston, pp. 68-95, at 80 et seq.

<sup>173</sup> HM Treasury, *Supervision Report 2010-2011*, November 2011, p. 11.

<sup>174</sup> Information obtained from survey.

<sup>175</sup> Cf. HM Treasury, *Supervision Report 2010-2011*, November 2011, p. 11: “(...) There is, however, evidence that some Supervisors have taken robust action where necessary. For example, Supervisors have struck businesses off their membership list for breaching their AML /CTF obligations. Others have taken decisions to suspend members for up to five years.”

### *Professional knowledge*

Another potential strength is that professional associations in some Member States already have experience with supervision and monitoring, though not specifically with AML/CTF obligations.<sup>176</sup> Due to the experience with supervision and the fact that professional associations have as their main objective to further the profession as a whole and to represent the interests of the individual professionals, there is expert knowledge on the side of professional organisations about the nature of the profession, the risks and vulnerabilities present, and about ongoing developments.<sup>177</sup> It goes without saying that this does not necessarily mean that the professional associations have expertise in AML/CTF matters in relation to their professionals. This strong point is more directed to the knowledge of the profession as a whole.

### *Sufficient resources*

A third strength is that professional associations are unlikely to have resource problems.<sup>178</sup> In a considerable group of Member States, external supervisors - including FIUs<sup>179</sup> - are often funded through the State budget. Professional associations, however, are funded through fees paid by their members. Professional associations can raise their fees according to the tasks they perform. This potential strength was reported by various country representatives during interviews.

In the United Kingdom, for example, members of accountancy professional associations must generally apply for AML supervision. Members pay an additional fee to be supervised for compliance with the Money Laundering Regulations 2007. One example is the ICAEW, the professional association for chartered accountants in England and Wales, which indicates that *“a sole practitioner should expect to pay no less than £300 (plus VAT) per year. Fees for larger firms will depend on the information provided at the time of application, including the firm's size, complexity and risk-profile”*.<sup>180</sup> Another example comes from the Association of Accounting Technicians, that applies a *“money laundering supervision fee of £80 and a reduced fee of £20, payable by each sole trader and principal of a firm (except principals providing only administrative support) regulated by AAT”*.<sup>181</sup>

In Germany and Latvia, some professional associations indicated that they are independent from Government in terms of their budget. Also the Danish, Finnish and Hungarian Bar Associations have indicated that they are independent from Government and self-funded. There is, unfortunately, no information on how fees for AML/CTF supervision are calculated, and whether and how this is integrated in the annual contributions.

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<sup>176</sup> Admittedly, this was also mentioned under the External model for those supervisors that already had other supervisory competences with respect their supervisees before becoming an AML/CTF supervisor as well. See section 4.2.

<sup>177</sup> HM Treasury, *Supervision Report 2010-2011*, November 2011, p. 6: *“... [t]heir enhanced understanding of the way business operate ...”*.

<sup>178</sup> This does not mean that professional associations do not face any resource problems at all.

<sup>179</sup> See Chapter 8 on the Role of the FIUs.

<sup>180</sup> Website the Institute of Chartered Accountants in England and Wales (ICAEW, UK) Available at: <http://www.icaew.com/en/technical/legal-and-regulatory/money-laundering/anti-money-laundering-supervision/applying-for-anti-money-laundering-supervision>

<sup>181</sup> Website Association of Accounting Technicians (UK), Available at: [http://www.aat.org.uk/sites/default/files/assets/Money\\_Laundering\\_Supervision\\_Factsheet.pdf](http://www.aat.org.uk/sites/default/files/assets/Money_Laundering_Supervision_Factsheet.pdf).

## 6.4.8 Weaknesses

### *Conflict of interests*

In literature it has been said that despite the fact that professional associations often have supervisory experience, that the nature of that kind of supervision is different from what is needed for verifying compliance with the AML/CTF obligations.<sup>182</sup> As explained, professional associations tend to base their supervision on quality checks of professional standards thereby verifying the quality of professional in order to maintain the quality and reputability of the profession as a whole. The cooperative supervisory style is thereby important in order to maintain a good professional relationship between the professional organisation and the members.

This, however, may not always be in line with the type of supervision needed for compliance supervision under the preventive AML/CTF policy. In fact, sometimes the two may be incompatible with each other. In the wider setting of professional self-regulation, Frankel summarises the conflict of interests as follows: “[s]hielding members from outside knowledge of their deviance also shields the profession from embarrassment, with its potential for precipitating a decline in public trust”.<sup>183</sup> Let us illustrate this with an example. While non-compliance with AML/CTF obligations sometimes requires robust action due to the severity of the breaches and to show other professionals that the professional association is taking the matter seriously, a high number of sanctions imposed by the professional association could lead to the impression that the professionals do not maintain a high quality standard. This, in turn, may lead to a decreased level of trust in the profession as a whole. Obviously this goes against to what the professional associations stand for, which is to further the quality of the profession. It may therefore not always be favourable for the professional associations themselves to actively verify compliance with AML/CTF obligations and impose sanctions.

This becomes especially problematic where the professional associations are not convinced of the need and importance of combating money laundering and terrorist financing and, hence, where they consider their other main objectives more important. Dutch research on the involvement of professional associations in enforcing AML/CTF obligations through disciplinary law has shown that in the Netherlands professional associations hardly impose sanctions or refer cases to disciplinary courts for the imposition of sanctions in relation to AML/CTF norms, and that the disciplinary sanctions ultimately imposed are often very mild compared to the administrative sanctions.<sup>184</sup> In addition, disciplinary procedures following non-compliance of AML/CTF obligations also tend to be very long.<sup>185</sup>

At Regional Workshops and during various interviews it became clear that this is a point of concern in various Member States.

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<sup>182</sup> Cf. Stouten (2012) who is of the opinion that internal supervision in the AML/CTF policy is only possible when it is backed by a form of external supervision.

<sup>183</sup> Frankel, M.S. (1989), ‘Professional Codes: Why, How and with What Impact?’, in: *Journal of Business Ethics*, vol. 8, pp. 109-115 at 113.

<sup>184</sup> Stouten, M. (2012), *De witwasmeldplicht: Omvang en handhaving van de Wwft-meldplicht voor juridische en fiscale dienstverleners*, Boom Juridische Uitgevers: Den Haag, p. 467-469; Faure, M.G., Nelen, H., Fernhout, F.J., Philipsen, N.J. (2009), *Evaluatie tuchtrechtelijke handhaving Wwft*, Boom Juridische Uitgevers: Den Haag, p. 152-153.

<sup>185</sup> Faure, M.G., Nelen, H., Fernhout, F.J., Philipsen, N.J. (2009), *Evaluatie tuchtrechtelijke handhaving Wwft*, Boom Juridische Uitgevers: Den Haag, p. 152-153.

### *Independence of the supervisor*

There can furthermore be doubts about the actual independence of the internal supervisor and about its possibility to be really critical vis-à-vis its supervisees. Independence requires that the supervisors' day-to-day activities should not be subject to external direction or be influenced in any way, either by Government or Parliament (political independence) or the private sector (market independence). In legal literature independence of the supervisor is seen as a precondition of effective supervision and enforcement.<sup>186</sup> In some Member States supervisors working at professional associations are generally also professionals. Generally, they tend to be less critical of their colleagues than an external supervisor would be. Hence, while the close relationship between professional associations and professionals was above considered a potential strength where dialogue may stimulate compliance; at the downside it may be that professional associations are being influenced too much by the desire of its members and are not, or insufficiently, in the position to take their own decisions in relation to their supervisory activities.

### *Cooperation and consistency of supervisory practice*

A special point of attention in the Internal model is cooperation and consistency of supervisory practice. In some Member States that fall under the Internal model there are many professional associations due to the fact that one profession has various professional associations or because of a territorial limitation for professional associations. In some Member States, this may be further complicated, because actual supervision is performed by the regional associations, which, in turn, fall under the umbrella of the national professional association.<sup>187</sup> The two outliers in the European Union are the United Kingdom with 22 professional associations and Ireland, with 11 professional associations supervising AML/CTF compliance.<sup>188</sup>

As an aside, it must be stressed that cooperation between supervisors concerning their AML/CTF supervision is very important notwithstanding the supervisory architecture that is in place. In all Member States we identified forms of cooperation between supervisors, although we have observed that the extent and intensity of the cooperation differs. In all Member States cooperation between supervisors is reported to take place through informal and means, and in the large majority of Member States through a combination of informal and formal means. The most commonly identified formal tool for cooperation is the conclusion of Memoranda of Understanding between two or more supervisory authorities. This has been reported in - *inter alia* - Cyprus, Estonia, Ireland, Italy, Lithuania, Luxembourg, Malta, Spain, and the United Kingdom. Some Member States have also reported the existence of formalised cooperation platforms, either exclusively for AML/CTF supervisors or with a broader range of institutions. Examples of specialised AML/CTF supervisors' platforms can be found in the UK (the Anti-Money Laundering Supervisors' Forum) and in Sweden (the Coordination Body<sup>189</sup>). Wider cooperation platforms in which AML/CTF supervisors participate

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<sup>186</sup>Cf. Ottow, A. (2006), *Telecommunicatietoezicht: De invloed van het Europese en Nederlandse bestuurs(proces)recht*, Sdu Uitgevers.

<sup>187</sup> This is for instance the case in Germany and was also reported by the Hungarian Bar Association (though Hungary falls under the Hybrid Model).

<sup>188</sup> See section 3.6.

<sup>189</sup> The Coordination Body in Sweden was established in June 2009 pursuant to Section 15 of the AML/CTF Regulation. The Swedish FSA, Finansinspektionen, is the responsible authority for the coordinating body. There is a specific budget for the coordinating body. All AML/CTF supervisors participate in this body. The Swedish Bar Association is officially not obliged to participate, because it is a self-regulatory body and not a governmental agency, but in practice it has participated from the beginning. Meetings take place about once a month. According to Swedish representatives, the coordinating body ensures a coherent and consistent approach among the various AML/CTF supervisors. There are discussions about the interpretation or application of certain provisions of the AML Act, as well as about practical difficulties that supervisors encounter.

or in which AML/CTF supervision is considered a part are - *inter alia* - reported in Cyprus (Advisory Authority<sup>190</sup>), Denmark (Hvidvaskforum<sup>191</sup>), the Netherlands (Toezichhoudersoverleg<sup>192</sup>), and Portugal (Conselho Nacional de Supervisores Financeiros<sup>193</sup>). The importance of informal cooperation has been stressed by all Member States' representatives. Informal cooperation is reported to take place through ad hoc meetings, telephone calls, the exchange of supervisory information and the publication of information.

Under the Internal Model, however, cooperation is even more important because the professional category must be supervised in a consistent and equivalent way, notwithstanding the professional association. Hence, cooperation efforts cannot solely focus on general legal or policy issues, general supervisory issues and so on, but must focus on the day to day practice of professional associations to ensure that throughout the same professional category, professionals are supervised in an equivalent manner. It must be ensured that the methodology of supervision and the level of sanctions imposed is more or less the same. This in combination with the presence of a large(r) number of internal supervisors designated as AML/CTF supervisor makes it more challenging to ensure proper coordination and coherence of supervisory practice. This has been mentioned by some representatives during interviews and was recognised by representatives at the various Regional Workshops.

#### *AML/CTF supervision entirely integrated in general supervision*

As for external supervisors, a potential weakness of the Internal model might be that AML/CTF supervision is entirely integrated in the overall supervision performed by the internal supervisor with the risk that insufficient attention is paid to AML/CTF matters or that the specific AML/CTF risks are insufficiently recognised. Various professional associations from different Member States have stated that they include the verification of compliance with AML/CTF obligations in wider supervisory programmes, like Quality Assurance Programmes. For example, the German *Wirtschaftsprüferkammer* (the accountants and auditors' chamber), referred to its disciplinary oversight and quality assurance system and stated that compliance with AML/CTF requirements is seen as a professional duty. The integration of AML/CTF supervision in general supervision may lead to situations where professional associations perform insufficient AML/CTF supervision.

Although the data are not representative due to the small number of replies from professional associations to the survey, the fact that they estimate their time spent on AML/CTF supervision between 1 and 10% only provides an indication of this potential weakness.

#### **6.4.9 Strengths and weaknesses of the Hybrid model**

It goes without saying that in the Hybrid model the strengths and weaknesses of the three described models above can be found. Some examples follow hereafter.

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<sup>190</sup> Section 56 Cypriot AML Act.

<sup>191</sup> HvidvaskForum is a cooperation effort between authorities responsible for performing tasks within the money laundering and financial sanctions area. The cooperation is based on a Memorandum of Understanding.

<sup>192</sup> In the Wwft Coordination meeting AML/CTF supervisors *and the FIU* meet every two months to share information and views.

<sup>193</sup> The National Council of Financial Supervisors is by Decree law 228/2000 and has been an integral part of the supervisory system aimed at institutionalizing and organising co-operation among the three supervisors. It aims to provide consistency where issues affect all areas of supervision, which includes Money Laundering and Terrorist Financing issues.

With regard to stream Hybrid I (external and internal supervisors) some strengths and weaknesses of the External model are present. The possible weakness of a lack of supervisory powers has been identified in Denmark, Finland and Sweden. In Denmark it has been stated that there are no powers for the Danish FSA to revoke a license or registration for non-compliance with the AML/CTF Act, and that it has no on-site inspection powers in relation to insurance brokers. In its 2007 evaluation, the FATF recommended Finland to clarify sanctioning provisions for the external (financial) supervisors in relation to natural persons, because these were said to be unclear which could hinder the effective application thereof.<sup>194</sup> From interviews it became apparent that in Sweden there are some legal problems concerning the supervisory powers for the Estate Agents Authority - previously known as the Board of Supervision of Estate Agents.<sup>195</sup> This has to do with the fact that AML/CTF legislation refers to the Estate Agents Act and that the supervisor obtains its supervisory powers from the latter Act. Due to the terminology used in the Estate Agents Act, the Board of Supervision of Estate Agents cannot perform on-site inspections.<sup>196</sup> Obviously this hinders the Authority in performing its task effectively in relation to the prevention of money laundering and terrorist financing, because with off-site inspections the Authority must always rely on the information provided by the supervisees. The potential weakness that supervision may be too integrated in the sectoral supervisory activities of external supervisors is present in this Hybrid model. As already explained, both in Finland and Denmark remarks have been made about the integration of AML/CTF supervision in broader supervisory programmes, which resulted in a too low priority for AML/CTF in inspections.<sup>197</sup>

Regarding the second stream (external and internal supervisors and FIU) it is self-evident that the strengths named in the context of the FIU model apply here as well. FIUs have a special AML/CTF focus. Obviously, under the Hybrid model this strength is limited to the institutions or professionals for which they have supervisory responsibilities. Also, with respect to its supervisees the FIU can use data present in the 'STR database' in the process of supervision and for designing the risk-based supervisory programme. Hungarian representatives explicitly mentioned these points as reasons for designing the FIU as the 'default' supervisor in Hungary. In Romania, the supervisory department of the FIU has its own analytical tool (Mainset 2), but there is indeed a clear link between the analytical functions of the FIU and the supervisory activities.<sup>198</sup> Previously in Italy the FIU had overall supervisory responsibility.<sup>199</sup> Now each sector has its own supervisory authority, but the FIU has retained supervisory powers in relation to verifying compliance with the reporting obligation. In Italy in particular the access to the STR database has played a role in coming to this decision. For Italy the FATF also noted that the current supervisory authorities already had supervisory responsibilities over their supervisees under different legislation.<sup>200</sup> This supervisory experience was mentioned earlier under the External model ('sectoral knowledge') and Internal model. Also in Hungary the experience of supervisory authorities, both internal and external, was praised.<sup>201</sup>

Some earlier mentioned weaknesses apply under this stream as well. For example, in Slovenia the FIU lacks the power to perform on-site inspections.<sup>202</sup> This gap in the FIU's supervisory powers obviously affects the effectiveness of AML/CTF supervision in a negative way. Resource problems have also been reported for FIUs as AML/CTF supervisors for specific categories of institutions and

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<sup>194</sup> FATF (2007), Third Mutual Evaluation on Finland, p. 136.

<sup>195</sup> See the website: <[www.fmi.se](http://www.fmi.se)>.

<sup>196</sup> Interview with Swedish representatives.

<sup>197</sup> Cf. Subsection 6.4.2.2.

<sup>198</sup> MONEYVAL (2011), Second Follow Up Report on Romania, p. 21.

<sup>199</sup> FATF (2009), Third Follow Up Report on Italy, p. 10.

<sup>200</sup> FATF (2009), Third Follow Up Report on Italy, p. 13.

<sup>201</sup> MONEYVAL (2010), Report on Fourth Assessment Visit on Hungary, p. 138.

<sup>202</sup> Interview with Slovenian FIU; MONEYVAL (2011), *Report on Fourth Assessment Visit on Slovenia*, p. 113.

professionals, for example in Cyprus (no on-site inspections performed on real estate agents and dealers in high-value goods<sup>203</sup> and FIU has 2 supervisory staff<sup>204</sup>) and Slovenia (no on-site inspections and FIU has 4 staff<sup>205</sup>). This weakness, however, is limited because the FIUs have a more limited supervisory role than under the FIU Model. For Cyprus, it was also mentioned that the FIU had no supervisory experience at all, and that they were being trained by experienced staff from the Bank of Cyprus.<sup>206</sup> In Estonia, the number of on-site and off-site inspections has decreased tremendously. From 208 (on-site) and 227 (off-site) inspections in 2007, to 34 and 32 in 2011 respectively.<sup>207</sup> This is a decrease of approximately 85%. The annual report 2011 reports that this has to do with a shift to risk-based supervision. Yet such a large decrease may also suggest that there are some resource issues here as well. Also in Romania there is an action plan that aims, among other things, to include the control capacity of the supervisory authorities, including the Romanian FIU *“having regard to its quality of supervision authority for categories of reporting entities which are not under supervision of other authorities”*.<sup>208</sup> This focus came after MONEYVAL experts’ recommendations on the necessity to increase the human resources of the Romanian FIU, in particular in the fields of analysis and supervision.

## 6.5 Analysis

The analysis of effectiveness of the models under the notion of effective enforcement concerns the (potential) strengths and weaknesses of the models in light of the institutional requirements and requirements concerning the competences of supervisors and the application thereof.<sup>209</sup>

The strengths and weaknesses mentioned in 6.4 are brought together in a table. With regard to the Hybrid Model, however, we only refer to the fact that the potential strengths and weaknesses are a combination of the strengths and weaknesses mentioned for the other three models. While we have identified two streams *in abstracto* (see subsection 6.3.4) it still remains a mixed system depending very much on the exact choices made by national legislatures. While the Hybrid Model may take numerous forms, its strengths and weaknesses depend on the exact form it takes in a Member State. These can, therefore, not be established at an abstract level. For this reason, the Hybrid Model is also not referred to in the analysis of the table.

Bringing the aforementioned information together, the strengths and weaknesses of the FIU, External and Internal models look as follows:

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<sup>203</sup> MONEYVAL (2011), Report on Fourth Assessment Visit on Cyprus, p. 144.

<sup>204</sup> Interview representatives Cypriot FIU.

<sup>205</sup> Interview representatives Slovenian FIU.

<sup>206</sup> MONEYVAL (2011), Report on Fourth Assessment Visit on Cyprus, p. 144.

<sup>207</sup> Estonian FIU, *Annual Report 2011*, p. 17.

<sup>208</sup> MONEYVAL (2011), Second Follow Up Report on Romania, p. 16.

<sup>209</sup> The legislative requirements are not used in this comparison. The fact that legislation must clear, precise, foreseeable, predictable and enforceable is not something that can be established at an abstract level. This all depends on the legislation in force in the respective Member States.

**Table 6.3: Strengths and weaknesses of the supervisory models**

	Institutional	Competences & application
<b>FIU Model</b>		
+	* Comprehensive overview of compliance (no fragmentation) <sup>210</sup>	* Cross-over analytical functions * Specific focus on AML <sup>211</sup>
-	* No adequate resources * Lack of sectoral knowledge <sup>212</sup>	
<b>External Model</b>		
+	* Suitability (independence) * Sectoral knowledge <sup>213</sup>	
-	* Difficulties in establishing who to supervise (in case of non-regulated professions) <sup>214</sup>	* Lack of supervisory powers or difficulties in application * No specific focus on AML (integration) <sup>215</sup>
<b>Internal Model</b>		
+	* Adequate resources * Professional knowledge <sup>216</sup>	* Enforcement style; dialogue to stimulate compliance
-	* Conflict of interest * Insufficient independence	* Cooperation / consistency * No specific focus on AML (integration) <sup>217</sup>
<b>Hybrid Model</b>		
+ / -	Combination of the foregoing – <i>depends on the exact design of the national supervisory architecture</i>	Combination of the foregoing – <i>depends on the exact design of the national supervisory architecture</i>

The table shows that the models all have strengths and weaknesses with respect to the *institutional requirements*. The weaknesses outweigh the strengths under the FIU model, while for the External model this is the other way around as only one potential weakness was identified. For the Internal model two strengths and two weaknesses were mentioned. It seems that the External model is most legally effective in this respect, followed by the Internal model and the FIU model. Regarding *requirements on the competences and the application* thereof, we could not identify any potential

<sup>210</sup> Both the institutional and competences & application requirements play a role in this potential strength. Because of the fact that the FIU is the only designated authority with end-responsibility for AML/CTF supervision - which seems more to be related with the institutional position of the supervisor - we have decided to place it under the institutional requirements.

<sup>211</sup> Both the institutional and competences & application requirements play a role in this potential strength. The specific AML focus seems to mainly come forward from the competences FIUs have both as a supervisor and as the central receiving authorities for ML/TF suspicion reports and how these can be applied. For this reason we categorise this strength under the competences & application requirements.

<sup>212</sup> The lack of sectoral knowledge is a potential weakness due to the FIU's institutional position. For this reason we place this under the institutional requirements.

<sup>213</sup> For consistency reasons vis-à-vis the FIU model, we place the potential strength of sectoral knowledge under the institutional requirements.

<sup>214</sup> The difficulties in establishing who to supervise is the result of the institutional setting of external supervisors (no direct professional relationship with supervisees).

<sup>215</sup> For consistency reasons vis-à-vis the FIU model, the lack of specific AML focus is placed under the competences & application requirements.

<sup>216</sup> Professional knowledge is the result of the institutional position of internal supervisors. For this reason we place it under the institutional requirements.

<sup>217</sup> For consistency reasons vis-à-vis the FIU model and External model, the lack of specific AML focus is placed under the competences & application requirements.

strength for the External model. To the contrary, we could not identify any potential weaknesses for the FIU model here. The Internal model shows both strengths and weaknesses, although more weaknesses have been identified. This seems to lead to the opposite conclusion: the FIU model could be considered most legally effective, followed by the Internal model and the External model. Complicating factors in deciding on the (legal) effectiveness of the models are the fact that on an abstract level we cannot compare the Hybrid model with the other three models. In addition, we cannot take into account how the models are applied in practice on the Member States' level. On the basis of this information, we cannot say that there is one supervisory model which is *in abstracto* more legally effective than the other models.

We do, however, observe that the potential weaknesses under the Internal model seem to be of a more fundamental nature than those of the other models. It concerns the discussion on the suitability of internal supervisors as such, their relationship with the supervisees and the potential conflicting relationship with other tasks that they have. This becomes especially problematic where professional associations are not convinced of the need and importance of combating money laundering and terrorist financing. The potential weaknesses of the other models addressed seem to be of a more practical nature. For example, a potential weakness of the FIU model was the lack of resources. This can be solved by providing more resources to the FIU, or allowing to conclude supervisory agreements with other authorities. A second example is that that external supervisors are reported to have difficulties establishing who they must supervise in case the professions are not (well) regulated. This could be overcome by introducing registration requirements through law or (lower) regulations, or by regulating the profession.

We once again wish to emphasise that with this abstract analysis we have not delved into the question of how the models are applied on the Member States' level. We are of the opinion that ultimately the legal effectiveness of supervisory architectures in the preventive AML/CTF policy depends on how the models are given shape by and applied in the Member States. To us, countries' specifics like the size of the country and the particular threats a country faces, and the context in which the supervisory models are given shape and applied, like the national legal system, the tradition with self-regulation, the quality and maturity of the legislation, the resources available for the AML/CTF policy, the willingness of actors to comply and the supervisory practice, seem to be factors that will play an important role in deciding whether a particular supervisory architecture is truly effective or not. In order to come to such a conclusion further empirical legal research on the application of the models in the Member States is required.

## 6.6 Conclusions

Unlike the substantive norms, the procedural norms are only minimally harmonised. As a result there exists a patchwork of supervisory architectures within the European Union. Four different models of AML/CTF supervisory architectures can be distinguished: the FIU model, External model, Internal model and the Hybrid model. The present research shows a diversified picture in the EU and has given a first insight in the institutional differences between the Member States. Generally, Eastern and Southern European Member States include the FIU in the AML/CTF supervisory architecture.

On an abstract level no model is most legally effective. Each model has its own (potential) strengths and weaknesses. The weaknesses of the Internal model, however, seem to be of a more fundamental nature than those of the other models. Ultimately, the effectiveness of AML/CTF supervisory architectures can only be established at the national level. This depends on the Member States' specifics and context, including its national legal system.

## Chapter 7 DEFINITIONS OF MONEY LAUNDERING AND TERRORIST FINANCING IN PRACTICE

### 7.1 Introduction

Our research revealed that although the FATF 40+9 Recommendations, the EU Directive and various international conventions<sup>218</sup> require various essential elements of money laundering and terrorist financing to be criminalised, there remains a considerable divergence between the criminal provisions in the Member States.

#### Hypothesis

Because many countries already had (something similar to) money laundering in their legal system, the criminalisation of money laundering was harder and done in more diverse forms than the criminalisation of terrorist financing

During the Regional Workshops, participants have been asked to work on a case study, containing various situations that potentially involved money laundering or terrorist financing (see annex 7.1 for an exact version of the case study received by the participants). For each situation, they were asked to stipulate whether it would be considered money laundering or terrorist financing in their countries. Analysis of their responses follows the presentation of these hypothetical cases below. It should be stressed that the answers are based on the practical experience of participants and that they are not official statements of the represented countries. The criminal provisions of money laundering and terrorist financing can be found in annexes 7.2 and 7.3 to this report.

### 7.2 Money Laundering

Would this be considered money laundering?

- Mr. X robs a bank and gets caught red-handed with the proceeds in his bag
- Mr. X robs a bank and hides the proceeds at home
- Mr. X robs a bank and puts the proceeds bit by bit on his own bank account
- Mr. X robs a bank and starts a business with the proceeds
- Mr. X robs a bank and buys a car for Ms. Y. Money laundering for Mr. X and/or Ms Y?
- Mr. X robs a bank and travels from country A to country B without declaring the money
- Mr. X abuses inside business information and sells his securities at a very convenient moment ('insider trading'). He uses his proceeds to buy a house

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<sup>218</sup> E.g. the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention), the 2000 United Nations Convention Against Transnational Organized Crime (the Palermo Convention), the 1990 and 2005 Council of Europe Conventions on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

**Table 7.1: Results case study 1 – Money laundering**

	Robber gets caught red-handed	Robber hides proceeds at home	Smurfing (small amounts on own bank account)	Starts a business with proceeds	Buys car for Ms. Y, ML for Mr. X?	Buys car for Ms. Y, ML for Ms. Y? (knowledge of origin)	Cross-border without declaring	Insider trading
<b>AT</b>	No	No	Yes	Yes	Yes	Yes	Yes	Yes
<b>BE</b>	No	No	Yes	Yes	Yes	Yes	Yes	Yes
<b>BG</b>	No	Yes	Yes	Yes	Yes	Yes	Yes	No <sup>=</sup>
<b>CY</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>CZ</b>	No	No	Yes	Yes	Yes	Yes	Yes*	No
<b>DE</b>	No	No	No	No	No	Yes	No	No
<b>DK</b>	No	No	No	No	No	Yes	No	No
<b>EE</b>	No	No	No	Yes	Yes	Yes	No	No <sup>+</sup>
<b>EL</b>	No	No	Yes	Yes	Yes	Yes	Yes	Yes
<b>ES</b>	No	No	Yes	Yes	Yes	Yes	Yes	Yes
<b>FR</b>	?	?	?	?	?	?	?	?
<b>FI</b>	No	No	No	No	No	Yes	No	No
<b>HU</b>	No	No	Yes	Yes	Yes	Yes	No	Yes
<b>IE</b>	No	No	No <sup>#</sup>	No <sup>#</sup>	No <sup>#</sup>	Yes	No <sup>#</sup>	No <sup>#</sup>
<b>IT</b>	No	No	No	No	No	Yes	No	No
<b>LV</b>	No	No	Yes	Yes	Yes	Yes	Yes	Yes
<b>LT</b>	No	No	No	Yes	Yes	Yes	No	Yes
<b>LU</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>MT</b>	No	No	Yes	Yes	Yes	Yes	Yes	Yes
<b>NL</b>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>PL</b>	No	No	Yes	Yes	Yes	Yes	Yes	Yes
<b>PT</b>	No	No	Yes	Yes	Yes	Yes	No <sup>-</sup>	No
<b>RO</b>	No	No	Yes	Yes	Yes	Yes	Yes*	Yes
<b>SK</b>	No	No	Yes	Yes	Yes	Yes	No	Yes
<b>SI</b>	No	No	Yes	Yes	Yes	Yes	Yes	No
<b>SE</b>	No	No	No	No	No	Yes	No	No
<b>UK</b>	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Source: made by the authors based on case study 1 discussed at regional workshop 2, 3 and 4. The same case study has been sent to the countries of regional workshop 1. The countries that have not criminalised self-laundering have their country name in grey instead of black. All the answers “yes” are marked light grey for visual purposes.

\* Remark made by representatives: Only if Mr. X. has the intention to conceal the illicit origin of the money abroad.

<sup>+</sup> There was no consensus among Estonian representatives. In general, insider trading is a predicate offence to money laundering. However, according to most representatives, by buying a house for himself, Mr. X is not actually hiding the money – which is a prerequisite for money laundering.

<sup>-</sup> If Mr. X stays within the EU.

<sup>=</sup> In Bulgaria there is a provision similar to insider trading, but not exactly. MONEYVAL evaluated this and advised to change this legislation, because it was found not to be in line with the FATF Recommendations. That is why in this example the Bulgarian answer is no.

*# Although it is possible to prosecute this for money laundering in Ireland, in practice it won't be done, because it is easier to prove only the robbery (since that has to be proven also for money laundering) and adding money laundering to the case does not increase the penalty.*

*France was not able to attend our regional workshop and we therefore have no answers from them on this case study. We asked them to fill in the case study by e-mailing it to them. We did not receive an answer yet.*

### **7.2.1 Analysis of the answers**

There is a clear pattern in the answers when one distinguishes the countries that have not criminalised self-laundering (DE, DK, FI, IT and SE)<sup>219</sup>. All these countries clearly indicated that all our examples are not considered money laundering, because it is done by the same person who acquired the proceeds by committing a crime. All Member States indicated that third-party laundering, the situation where Ms. Y enjoys the proceeds of the crime committed by Mr. X, would be considered money laundering. Because there is such a uniformity of the answers of these countries, they will not be mentioned in the analysis below.

In practice, we could add Ireland to the list of countries that have not criminalised self-laundering.<sup>220</sup> Although Ireland has criminalised self-laundering in law, in practice this is hardly ever prosecuted. The reason for this lies in the pragmatic approach of the prosecutors; the goal of prosecution is to get the offender a penalty (as high as possible), the label for which crime the offender gets this penalty is not so important. In Ireland it is quite hard to prove money laundering; basically the predicate offence has to be proven and if money laundering is also proven (along with the predicate offence), this would not increase the penalty. So in practice, it is only necessary to prove the predicate offence, because adding a prosecution for money laundering only complicates the case needlessly. It is therefore that, in practice, self-laundering is hardly ever prosecuted in Ireland.

The cases are designed to reflect a very wide definition of money laundering to a narrower definition where certain standards of proof are being met. With a very wide definition we mean that the money laundering definition is very broadly interpreted so that it includes many acts that might not constitute money laundering in other countries, vice versa for a narrower definition. The analysis will follow the line of questioning.

Firstly, being caught with the unused proceeds does not constitute money laundering in most Member States. The minimum requirement is that the origin of the illegally obtained goods is concealed. Therefore, when being caught red handed after robbing a bank, the person will be prosecuted for robbery and not for (attempted) money laundering. Even in countries that have criminalised self-laundering it is doubtful whether this is a true form of concealment. Representatives of the Member States have explained that in their countries the mere possession of the proceeds of crime (at home) is not considered as 'hiding the proceeds'. Rather, it is seen as the by-product of being in possession of the proceeds after committing the robbery. What is furthermore mentioned a lacking element, is the intention of the principal offender to launder the proceeds. In Belgium there is a saying, which takes away confusion of which crime should be prosecuted in a case such as we presented: 'de steler is geen heler.' Although this is of course not legally binding, it does reflect the prosecutor's idea in practice. 'De steler is geen heler' basically means that the thief is not the one trading with criminal goods, so as long as the offender is seen as

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<sup>219</sup> Sweden will amend their law to criminalise self-laundering. These amendments will come into force after the publication of this report (on the 1st of July, 2013 <http://www.regeringen.se/sb/d/16005/a/188405>) and are therefore not taken into account.

<sup>220</sup> Please note that this conclusion is based on the case study results presented above in table 7.1 and that it is not based on analysis of the law, jurisprudence and/or case law in the different countries.

only a thief, one should not consider him or her a money launderer. Exceptions to the analysis above are the Netherlands and Luxembourg. These two countries have indicated that even when a robber gets caught red-handed, this can be considered money laundering as well. Representatives from Luxembourg indicated that their main reason would be the extraterritorial application of the money laundering offence. When the robbery took place outside Luxembourg, the Prosecution Service could still prosecute the principal offender for money laundering in Luxembourg.<sup>221</sup> In the Netherlands the wide definition of money laundering is applied in court; the mere possession of money from a crime is considered money laundering. Because this makes it relatively easy to prove money laundering in court, it is often easier to prosecute for money laundering than the predicate offence.<sup>222</sup> This makes the Netherlands the opposite of Ireland, where the predicate offence is in practice easier to prove than money laundering.

As a small side-step from the case study, we would like to point out that there are differences within the European Union with respect to the criminalisation of negligent money laundering. The following countries have criminalised negligent money laundering: Cyprus, Czech Republic, Finland, Germany, Latvia, the Netherlands<sup>223</sup>, Slovakia, Slovenia, Spain and Sweden, while the following countries have not: Austria, Bulgaria, Belgium<sup>224</sup>, Estonia, France<sup>225</sup>, Greece, Italy, Lithuania, Luxembourg<sup>226</sup>, Malta, Portugal, United Kingdom<sup>227</sup> and Romania.<sup>228</sup> Ireland has not criminalised negligent money laundering, but refers in its legislation to the standard of 'recklessness'.<sup>229</sup>

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<sup>221</sup> Although we did not indicate in our case study that any international aspect was relevant, Luxembourg is often confronted with the international dimension when prosecuting money laundering and therefore seems to also answer in this light.

<sup>222</sup> The Dutch representatives said that when a robber gets caught red-handed the predicate offence (robbery) is also very easy to prove, so in this case the prosecutor might just as easily prosecute for the robbery, but as soon as there might be any doubt on whether the robbery can be proven, money laundering would be the crime the robber will be prosecuted for. It should be reported that established case law by the Supreme Court of the Netherlands contradicts this approach, because it indicated that in certain circumstances the mere possession of proceeds from a crime could not be considered money laundering. (e.g. HR (april 2012: <http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=BW1481>). Quote from the case, which is unfortunately only available in Dutch: "3.2.2 - In een geval als het onderhavige, waarin het gaat om een verdachte die geldbedragen voorhanden heeft als bedoeld in art. 420bis Sr en waarvan vaststaat dat die afkomstig zijn uit een (mede) door hemzelf begaan misdrijf, kan het enkele voorhanden hebben van die geldbedragen niet worden aangemerkt als witwassen indien die gedraging niet kan hebben bijgedragen aan het verbergen of verhullen van de criminele herkomst van die geldbedragen (vgl. HR 26 oktober 2010, LJN BM4440, NJ 2010/655, rov. 2.4.2).")

<sup>223</sup> Article 420quater Dutch Penal Code refers to 'should have known'.

<sup>224</sup> FATF (2005), Third Mutual Evaluation on Belgium, p. 38.

<sup>225</sup> There are some discussions in France whether or not negligent money laundering is criminalised, but during the parliamentary discussions on the original passing of the Act in 1996, it was made clear that money laundering is an intentional crime, or at least a crime committed knowingly. See: FATF (2011), *Third Mutual Evaluation on France*, p. 102.

<sup>226</sup> Article 506-1 of the Luxembourg Penal Code refers to 'knowingly engage'.

<sup>227</sup> FATF (2007), Third Mutual Evaluation on the United Kingdom, p. 135: "The three money laundering offences of sections 327-329 of POCA are all offences for which intent is required. Hence these offences apply to persons who knowingly engaged in the conduct in question." A UK representative indicated that this statement of the FATF is not legally correct.

Smurfing on the other hand can constitute sufficient grounds for concealment.<sup>230</sup> The fact that it is not considered money laundering in Estonia is due to a recent Supreme Court decision.<sup>231</sup> In this case, a person had committed theft and had built a summer cottage from the proceeds. The Supreme Court decided that this could not be considered money laundering. Estonian stakeholders indicated that a similar line of reasoning should be followed for the placement of the money on one's own bank account: placing the money on one's own account cannot be considered 'concealment'.

Starting a business with the proceeds constitutes money laundering in practice in all the countries that have criminalised self-laundering (except Ireland, as explained above). This means that it is also considered money laundering in the countries that did not consider the deposit of the money to be money laundering: Lithuania and Estonia. In Lithuania, according to Article 216(1) the money is being used in a commercial activity for the purpose of concealing the proceeds, hence it is considered money laundering.

When Mr. X buys a car for Ms. Y there is a transfer of property between a party that has committed the predicate offence and another party not involved in the criminal act. Mr. X. can still not be prosecuted for ML in countries that do not criminalise self-laundering. With respect to the question whether Ms. Y has committed money laundering, all representatives stated that it is considered money laundering as long as it is possible to prove her intent to conceal, and knowledge, reasonable grounds or suspicion (or, for countries that have negligent money laundering, (gross) negligence) that the car was bought with stolen money.

The situation where a person would rob a bank and travel from country A to country B without declaring the money gave quite different answers for different reasons. The majority of countries

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<sup>228</sup> In Finland, chapter 32 contains provisions about negligent receiving (section 5) and negligent money laundering (section 9). In Germany there is a similar provision in article 261, fifth paragraph, of the Criminal Code, which provides for "criminal liability of negligent ML if the perpetrator —recklessly did not know that the objects in question stem from the commission of a predicate offence". (FATF (2010), *Third Mutual Evaluation on Germany*, p. 55) In Czech Republic, negligent money laundering is criminalised via article 252 of the Criminal Code. (MONEYVAL (2007), *Third Mutual Evaluation on Czech Republic*, p. 63-64.) Sweden also has forms of negligent money laundering in its criminal legislation. (Sections 7 (2), 7(3) and 7a (2) Swedish Criminal Code; see FATF (2006), *Third Mutual Evaluation on Sweden*, p.30) Negligent money laundering is furthermore criminalised in article 245, fifth paragraph, of the Slovenian Criminal Code. (MONEYVAL (2010), *Report on Fourth Assessment Visit to Slovenia*, p.26.) Also in Latvia, prosecutors can prosecute for negligent money laundering, the 2009 progress report states: "Prosecutors do not have to prove intent or wilful blindness to prosecute money laundering, i.e. unintentional (negligent) money laundering also can be prosecuted". (MONEYVAL (2009), *Second Progress Report on Latvia*, p. 6.) Cyprus has criminalised negligent money laundering. (MONEYVAL (2006), *Third Mutual Evaluation on Cyprus*, p. 47.) Slovakia has criminalised negligent money laundering in article 232 of the Criminal Code. Spain has a form of negligent money laundering. Chapter XIV of the Spanish Criminal Code on Money Laundering contains, after amendments made by Organic Law 5/2010 of 22 June 2010, in paragraph 3 the provision that "[i]f the events can be classed as criminal negligence, the punishment will be a prison term of six months to two years and a fine of three times the amount involved." (FATF (2010), *Third Mutual Evaluation on Germany*, p. 55.) Lithuania, Estonia, Austria, Romania and Italy have not criminalised negligent money laundering; in these countries the offence is applicable only to persons who knowingly engage in money laundering. It seems that Bulgaria and Greece have also not criminalised negligent money laundering. (MONEYVAL (2008), *Third Mutual Evaluation on Bulgaria*, p. 50 stipulates "[t]he mental element for natural persons is knowledge or assumption that property is acquired through crime or another act that is dangerous for the public. "Assumption" is equated with subjective suspicion." Furthermore article 2, paragraph 2, of the Greek AML Law does not give any indication on the criminalisation of negligent money laundering.) Also in Malta and Portugal, negligent money laundering is not explicitly covered. However, in both countries there exist concepts such as 'wilful blindness' or 'dolus eventual' that may be interpreted – in theory – in a way that they cover money laundering by negligence. So far, in both countries this has not happened in practice. (Information on the basis of interviews held with representatives.)

<sup>229</sup> Section 7 Irish AML Act. This seems in the line with the concepts of 'wilful blindness' and 'dolus eventual' as outlined for Malta and Portugal, see previous footnote.

<sup>230</sup> This is mentioned explicitly by the Czech, Latvian and Slovenian representatives

<sup>231</sup> The case of this Supreme Court decision has to be confirmed.

consider this money laundering, although some (Czech Republic and Romania) note that it can only be considered money laundering when the intent can be proven. Six countries would not consider this money laundering: Estonia, Hungary, Ireland, Latvia, Portugal and Slovakia. Portugal indicated that this would not be considered money laundering as long as country A and B are both member of the EU. Estonia mentioned that also here the case of the Supreme Court (as already discussed above in the case of smurfing) makes them consider that travelling with proceeds without declaring would not be considered money laundering. The representatives explained that in Hungary only when the act endangers another subject (e.g. the due course of business) self-laundering is criminally punishable, therefore the mere transportation of one's own proceeds would not be considered money laundering. It should be mentioned that we only asked whether not declaring the transportation of proceeds would be considered money laundering. Representatives indicated to us that even when it is not considered money laundering, non-declaring the money could still be a criminal or administrative offence.

Apparently, insider trading is not a predicate offence in all the EU Member States. In Bulgaria there is a provision similar to insider trading, but not exactly. MONEYVAL has not accepted this provision and advised Bulgaria to change this piece of legislation. That is why in this example the Bulgarian representatives had to answer that insider trading is not considered a predicate offence for money laundering. In Portugal the following approach to predicate offences exists: some crimes are described exhaustively as predicate offences and then there is a general 'catch-all' clause with a rule that all crimes that are punished with more than 5 years of imprisonment are predicate offences for money laundering. Stock market crimes in Portugal are sanctioned very lightly, which means that an offence as insider trading is not considered a predicate offence for money laundering. Representatives of some countries indicated that this act would not be considered money laundering because in our case the money derived from insider trading was only used to buy a house. According to the Estonian representatives this would not be considered money laundering due to the aforementioned decision of the Supreme Court. According to the Czech representatives, the concealment of the origin of the illicit funds is a precondition for money laundering. Buying a house does not seem a reasonable proof of concealment. The Slovenian representatives indicated that their answer would be different if the person had bought a house for somebody else.

To elaborate further on which offences are predicate crimes for money laundering, we list here the predicate crimes of the countries of the third and fourth regional workshop.<sup>232</sup> For seven countries the list is simple and clear; Malta, Romania, Slovakia, Spain, Belgium<sup>233</sup>, UK<sup>234</sup> and Ireland<sup>235</sup> have an all crimes approach. This means that all acts that are considered a crime in these countries are predicate offences for money laundering. Although Bulgaria and Italy have an all crimes approach there are some small exceptions. In Italy it only applies to all crimes committed intentionally and therefore excludes the crimes by negligence, while in Bulgaria it applies to all crimes except insider trading. France is said to have a serious crimes approach, covering all crimes (the most serious offences) and offences, but not the contraventions (summary offences).<sup>236</sup> Greece and Luxembourg have opted for a combination of a list of predicate offences and a threshold approach. In Greece, certain categories of offences that were designated by the FATF to be covered as predicate offences are still not specifically included in their AML law (e.g. illicit arms trafficking, environmental crime not involving radiation, fraud, etc.). In Luxembourg the list of predicate offences covers all serious offences, and is in line with the range of offences as designated by the FATF.<sup>237</sup> Portugal uses a

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<sup>232</sup> We will extend this list to all the EU member states in the final report.

<sup>233</sup> FATF (2005), *Third Mutual Evaluation on Belgium*, p. 37.

<sup>234</sup> FATF (2007), *Third Mutual Evaluation on the United Kingdom*, p. 33

<sup>235</sup> FATF (2006), *Third Mutual Evaluation on Ireland*, p. 34.

<sup>236</sup> FATF (2011), *Third Mutual Evaluation on France*, p. 94-97.

<sup>237</sup> FATF (2010), *Executive Summary of Third Mutual Evaluation on Luxembourg*, p. 4.

mixed criterion based both on a catalogue of offences in association with the criterion of the threshold of the applicable sanction of the predicate offence. The threshold for predicate offences, where the minimum penalty is described, is a minimum penalty of more than six months imprisonment (regardless of the maximum limit), or where a maximum penalty is described, a maximum penalty of more than five years imprisonment.<sup>238</sup> The Netherlands follows a threshold approach in defining predicate offences for ML, which in practice comes down to a serious crimes approach (excluding misdemeanours).<sup>239</sup>

All in all, the following factors seem to influence the different outcomes mostly:

- Where self-laundering is not criminalised, almost all questions are answered negatively
- Where self-laundering is criminalised, the mere possession of criminal proceeds is not considered money laundering in most Member States, with Luxembourg and the Netherlands (in certain cases) as exceptions
- There are large interpretation variations in what should be considered ‘concealment’ (hiding the proceeds)
- The intention to hide and the knowledge, and/or reasonable grounds (and (gross) negligence) of the fact that the proceeds come from criminal activity in case of third-party money laundering is required in all Member States.
- Insider trading is not a predicate offence for money laundering in all Member States.

We can, based on the answers given in our regional workshops, classify the 27 EU Member States on how broad their money laundering definitions in practice is, as shown in the table below.

**Table 7.2: Definitions of Money Laundering**

Definition of ML	Nr.	Countries
<b>Very narrowly interpreted</b>	6	Germany, Denmark, Finland, Ireland, Italy and Sweden
<b>Narrowly interpreted</b>	2	Estonia and Lithuania
<b>Normal</b>	13	Austria, Belgium, Czech Republic, Greece, Spain, Hungary, Latvia, Malta, Poland, Portugal, Romania, Slovakia and Slovenia
<b>Broadly interpreted</b>	2	Bulgaria and UK
<b>Very broadly interpreted</b>	3	Cyprus, Luxemburg and the Netherlands

*Note: France is not classified because they did not participate in the regional workshops*

In the third and fourth regional workshop we added an extra case to see whether this is indeed a controversial topic.<sup>240</sup> The case was stipulated as follows:

Would this be considered money laundering?

- Mr. X is a Dutch coffee shop owner and receives his income by selling marihuana. He visits your country for a holiday. He pays the hotel bill (from his income).
  - Will Mr. X be prosecuted for money laundering your country?
  - Is it likely that Mr. X will be convicted for money laundering in your country?

<sup>238</sup> FATF (2006), *Third Mutual Evaluation on Portugal*, p. 34-35.

<sup>239</sup> FATF (2011), *Third Mutual Evaluation on the Netherlands*, p. 49-50.

<sup>240</sup> We owe this example to dr. Janusz Bojarski, Faculty of Law, Nicolaus Copernicus University, Torun, Poland.

The interesting aspect of this hypothetical case is that Mr. X has a profession which is not legal in the Netherlands, but it is not prosecuted either. There is a tolerance policy which basically allows it to happen in practice in the Netherlands, while this is not the case in all the other countries in the EU. All the representatives of the third and fourth regional workshop, except Luxembourg, indicated that Mr. X will not be convicted for money laundering in their country, but the reasons that were given for this answer differed. The majority (BE, BG, EL, IE PT, SK, RO and UK) indicated that because it is not considered a crime in the Netherlands<sup>241</sup>, it would not be considered money laundering in their country (dual criminality), some (ES and MT) indicated that Mr. X has no intention to launder money and one country (CY) indicated that it is very unlikely that they will ever find this out. Two countries indicated that Mr. X might be prosecuted in their country (ES and MT), because it does not matter where the crime is committed (extra-territorial application), but that conviction is unlikely because of the lack of intent. Luxembourg indicated that it will try to prosecute and convict him, because it technically is still a crime in the Netherlands. The question now is whether it is interesting to delve further into this issue and collect the answers for all 27 EU Member States. On the one hand, it seems to give us an indication on difficulties that can arise when countries have different concepts of what constitutes a crime and the differences on the topics of extra-territorial application and dual criminality. On the other hand, it seems that it is a hypothetical case on which they have no experience and it is unlikely that they will ever have to make such a decision, simply because they won't encounter such a case. This raises the question of how important the different opinions on whether this case should be considered money laundering are and whether this actually matters for the effectiveness of the AML policies.

### 7.3 Terrorist Financing

Would this be considered terrorist financing?

- Mr. X transfers € 50 to a person Z, who after six months commits a terrorist act. There was no intention or knowledge on the part of Mr. X that the money would be used for a terrorist act.
  - What would your answer be if it were € 50.000 that was transferred?
  - What would your answer be if Mr. X had the intention or knowledge?
- Mr. X transfers € 50 to IRA/ETA. This organisation subsequently buys a car for € 10.000.
  - What would your answer be if it were € 50.000 that was transferred?
- Mr. X transfers € 50 to IRA/ETA. After six months the organisation places bombs in various metro stations in Great-Britain. There was no intention or knowledge on the part of Mr. X that the money would be used in a terrorist act.
  - What would your answer be if it were € 50.000 that was transferred?
  - What would your answer be if Mr. X had the intention or knowledge?

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<sup>241</sup> Please note that, as mentioned earlier, it actually is a crime in the Netherlands, but it is tolerated and not prosecuted. Regarding the answers given, the country representatives in the Third Regional Workshop were apparently not aware of this important difference. The country representatives in the Fourth Regional Workshop (where the Netherlands itself was present) were aware of this difference, because it was discussed plenary during the case study. Since this difference in knowledge might change the answers, we should be careful when comparing them.

**Table 7.3: Results of case study 1 – terrorist financing**

	€50 without knowledge to individual	€50.000 without knowledge to individual	€50 with intention/knowledge	€50 to terrorist organisation that buys car for €10.000	€50.000 to terrorist organisation that buys car for €10.000	€50 to terrorist organisation that commits terrorist attack	€50.000 to terrorist organisation that commits terrorist attack	€50 with intention/knowledge to terrorist organisation that commits terrorist attack
AT	No	No	Yes	Yes	Yes	No	No	Yes
BE	No	No	Yes	No	No	No	No	Yes
BG	Yes <sup>~</sup>	Yes <sup>~</sup>	Yes	Yes	Yes	Yes	Yes	Yes
CY	No	No	Yes	Yes	Yes	Yes	Yes	Yes
CZ	No	No	Yes	Yes*	Yes*	No	No	Yes
DE	No	No	No <sup>+</sup>	No <sup>+</sup>	Yes	No <sup>+</sup>	Yes	No <sup>+</sup>
DK	No	No	Yes	Yes	Yes	Yes	Yes	Yes
EE	No	No	Yes	Yes	Yes	Yes	Yes	Yes
EL	No	No	Yes	Yes	Yes	Yes	Yes	Yes
ES	No	No	Yes	Yes	Yes	No	No	Yes
FI	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
FR	?	?	?	?	?	?	?	?
HU	No	No	Yes	Yes	Yes	Yes	Yes	Yes
IE	No	No	Yes	Yes	Yes	Yes	Yes	Yes
IT	No	No	Yes	Yes	Yes	Yes	Yes	Yes
LU	No	No	Yes	Yes	Yes	Yes	Yes	Yes
LV	No	No	Yes	Yes	Yes	No	No	Yes
LT	No	No	No	Yes	Yes	No	No	Yes
MT	No	No	Yes	Yes	Yes	Yes	Yes	Yes
NL	No	Yes	Yes	Yes	Yes	No	No	Yes
PL	No	No	Yes	No	No	No	No	Yes
PT	No	No	Yes	Yes	Yes	Yes	Yes	Yes
RO	No	No	Yes	Yes	Yes	Yes	Yes	Yes
SK	No	No	Yes	Yes	Yes	Yes	Yes	Yes
SI	No	No	Yes	Yes	Yes	Yes	Yes	Yes
SE	No	No	Yes	No	Yes <sup>0</sup>	No	No	Yes
UK	No	No	Yes	Yes	Yes	Yes	Yes	Yes

Source: made by the authors based on case study 1 discussed at regional workshop 2, 3 and 4. The same case study has been sent to representatives in regional workshop 1.

\* Czech representatives added to their answers that it depends on the intention.

+ German law requires that the funds are “not merely insubstantial”. It can be assumed that 50 EUR would be considered such. See FATF (2010), Third Round Mutual Evaluation Report on Germany, p. 67<sup>0</sup> Swedish representatives stated that it would depend on what the car is used for; if the car is used for a serious crime or terrorist offence. Only in that case it can be considered terrorist financing.

<sup>~</sup> In Bulgaria, the terrorist financing definition is not only aimed at those who provide the money, but also those who gather the money, which can be the terrorist himself. So in this case, person Z can be convicted for terrorist financing. Mr X cannot be convicted for terrorist financing, as in the other EU Member States, because there is no intention or knowledge.

### 7.3.1 Analysis of the answers

The case study contains various elements that are of importance for the criminalisation of terrorist financing. Beforehand, it should once again be stressed that most Member States have nil or very little experience with terrorist financing cases. This may to a certain extent influence the outcome of their answers (uncertainty, no unanimity etc.). It seems that the answers do not differ as much as with the case study on money laundering. A possible reason for this might be that the FATF recommendations are very strict in the definition of terrorist financing, while they leave some room to manoeuvre to the countries with respect to the definition of money laundering. Another possible explanation can be that most countries do not really have a history on criminalising terrorist financing, while some countries already had the criminalisation of some sort of money laundering, like the criminalisation of fencing. This adaptation of already existing legislation can have had its implications on the final definition of money laundering in different countries.

One can clearly see from table 7 that the intention/knowledge is crucial for an act to be considered terrorist financing. In the first two hypothetical situations where it is explicitly mentioned that there is no intention/knowledge from the provider of the money all Member States indicated that this is not considered terrorist financing, except Finland, Bulgaria and the Netherlands. Surprisingly enough, Bulgaria does not consider Mr. X, the provider of the funds, to be committing terrorist financing, but person Z, who receives the money. The Bulgarian representative pointed out that also receiving money that is later used for terrorism (either by the receiver or any other person) is considered terrorist financing, not only in Bulgarian law, but also in the definition stipulated in the 9 Special Recommendations of the FATF and the United Nations International Convention for the Suppression of the Financing of Terrorism (1999). The Dutch representative mentioned that when someone donates 50.000 euro to an organisation, this person should have made an effort to look into that organisation before donating such a sum of money. It is possible to confront Mr. X with that in court and it can therefore be tried to prosecute him. The representative of Finland did not indicate a reason.

In general, it can be seen that the Member States have criminalised the financing of an individual terrorist. This is only different in Lithuania; the law only refers to “group of accomplices” or “organised groups”. The amount of the funds plays no role, except in Germany where the funds must be of a substantial value.

The representatives of all Member States - except Sweden - consider the funding of a terrorist organisation, even where no terrorist attack took place, as terrorist financing. However, as can be seen in the table, there are also difficulties in Hungary and Poland. In Sweden the car must be used for a serious crime or terrorist offence for it to be considered terrorist financing. This seems rather ineffective, because it would require a terrorist attack to take place for this being considered as terrorist financing; while the aim of the whole legislative framework is to prevent terrorist financing taking place. The fact that the money is not entirely used does not play a role in any of the Member States analysed.

Interestingly, the most significant variations arise in the situation where someone would finance a terrorist organisation that subsequently commits a terrorist attack. The difference lies mostly in the intention/knowledge-requirement. According to most stakeholders that have indicated “no”, it is essential to prove that the person providing the funds knew that the funds would be used for terrorism purposes or had this intention. When there is such intention or knowledge, it is considered terrorist financing. The other stakeholders stated that the mere fact that the funds are donated to a (known) terrorist organisation is sufficient.

All in all, the following conclusions can be drawn:

- All Member States, except for Lithuania, criminalise both the financing of individual terrorists and terrorist organisations
- The amount of the funds donated does not matter, except for Germany
- There are differences between the Member States on the point of financing a terrorist organisation that uses funds for day-to-day activities / non-terrorist acts and the question of whether this is to be considered terrorist financing or not.
- What matters most is the element of intention that the funds are donated to an individual or terrorist organisation for terrorism purposes or knowledge that it would be used for such purposes.
- The mere receiving of funds intended for terrorism is also terrorist financing according to the definition of the Third Directive, but none of the countries (except Bulgaria) indicated this in our case study, which suggests that this is not well known and/or applied by practitioners.

## Chapter 8 THE ROLE OF FIUs

### 8.1 Introduction

In this chapter we address several questions about the role of the FIU in the AML/CFT national policy. We depart from the existing literature on Financial Intelligence Unit, namely the overview proposed by the IMF in 2004 which was later used by the Egmont Group<sup>242</sup>. We then update this list in light of the reorganisation processes that took place in the EU Member States in the meantime, and expand it, such that it encompasses all Member States.

According to the Egmont Group, when establishing an FIU, a country is asked to give consideration to, among others, the core duties of the FIU, any additional duties and the resources for it to be able to perform all these tasks. Further, countries were asked to ensure that FIUs have operational autonomy and adequate resources (staff and budget) to be able to handle the incoming flow of reports. Having these recommendations in mind, we attempted to investigate to what extent consideration was given to these aspects in the formation, organisation and administration of the EU's 27 FIUs. We therefore examined the organisation of the EU Member States' FIUs – their staff composition, location and budgetary independence. This helped us explain some patterns of organisation across the EU.

FIUs are a relatively new addition to the crime prevention systems of the EU Member States. We saw that they take different shapes and roles and are assigned diverse tasks in order to better fit the national institutional culture. Consequently, we looked at which additional tasks the FIUs have, in what context they were assigned these tasks, and to what extent they can, given their resource constraints, address them, alongside their core tasks.

In the EU, the FIUs have been assigned primarily a filtering task by the Third EU Directive. Given the scope of this project we therefore examined to what extent the FIUs are prepared to undertake this assignment in an effective way. We therefore looked at which databases the FIUs have access to – and to what extent – in a direct and speedy way, and whether FIUs are bound to investigate only on the basis of received reports or also on the basis of its own motion. We also examined the ways the FIUs receive information from the obliged entities. We further asked to what extent the FIUs have and make use of data mining systems to conduct preliminary analyses on the received suspicious reports.

Finally, given the position that the FIUs have towards the reporting entities we examined the extent to which the FIUs motivate the obliged institutions to report – more and/or better. We looked into what type of feedback the FIUs provide – generic, through annual reports, or on a case-by-case basis.

### 8.2 FIU typologies

The IMF (2004) has recognised the wide diversity of FIUs ever since 2004. That report already pointed to the fact that despite all FIUs sharing the same core duties – receiving, analysing and disseminating suspicious reports – these institutions were substantially different. As a result, the IMF (2004) began classifying the FIUs into quasi-strict typologies – namely administrative, law enforcement, judicial and hybrid. When setting up an FIU later on, countries were advised on the pros and cons that each typology of FIU brings, and on the type of FIU that would best suit the

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<sup>242</sup> IMF (2004), Financial Intelligence Units: An Overview, Washington DC

national legal and institutional framework. This classification has therefore been actively used after 2004 in setting up new FIUs across the world and has been primarily enforced by the Egmont Committee.

The Egmont Committee serves as the consultation and coordination mechanism. Its primary functions include assisting the Egmont Group in a range of activities, from internal coordination and administration, to representation at other international fora. The Egmont Group had 94 members in 2004 and in 2012 it has over 130 members, an expansion that has been documented in the 2011 Egmont Census. All EU FIUs belong to the Egmont group and hence are familiar with the four FIU classifications presented above.

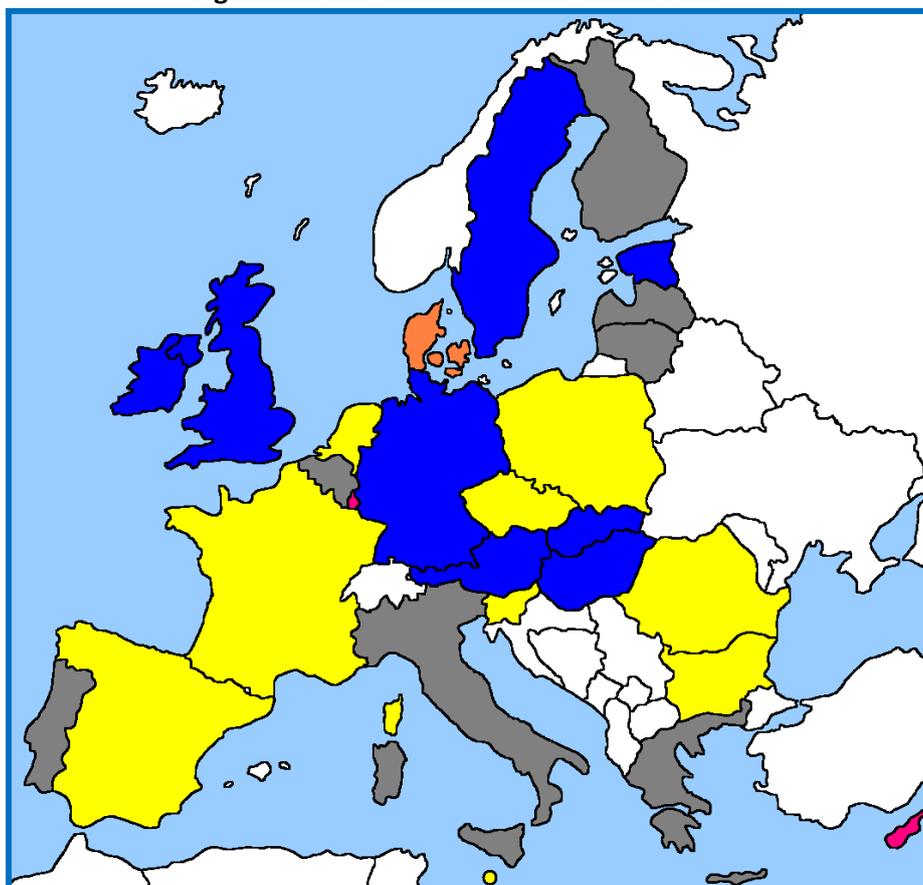
### Hypotheses

The EU FIUs have the same classification as assigned by the IMF (2004).

The EU contains a balanced mix of FIUs – law enforcement, administrative, judicial and hybrid.

According to the IMF (2004) categorisation, all four types of FIUs can be observed in the pool of EU FIUs. FIUs are allocated into a specific type given their location, access to police data and investigative powers. Our analysis of these classifications revealed that there are some updates to take into account.

Figure 8.1: IMF classification of the EU FIUs<sup>243</sup>



<sup>243</sup> IMF (2004), Financial Intelligence Units: An Overview, Washington DC

Legend: Administrative FIUs are coloured in yellow, law enforcement FIUs in blue, Hybrid FIUs in orange, Judicial FIUs in fuchsia and the ones that are not classified are marked with grey.

Figure 8.1 shows that several EU FIUs did not have a classification in 2004. We therefore attempted to give a complete and comprehensive inventory of the 27 EU Member States' FIUs and to classify all of them into one of the typologies of the IMF/Egmont.<sup>244</sup> Table 8.1 documents this exercise.

**Table 8.1: IMF/Egmont classification**

Country	IMF*/Egmont Classification	They consider themselves
Austria	Law enforcement*	Law enforcement
Belgium	Administrative	Administrative
Bulgaria	Administrative*	Administrative
Cyprus	Judicial*	Judicial
Czech Republic	Administrative*	Administrative
Denmark	<b>Hybrid *</b>	<b>Law enforcement</b>
Estonia	Law enforcement*	Law enforcement
Finland	Law enforcement	Law enforcement
France	Administrative*	Administrative
Germany	Law enforcement*	Law enforcement
Greece	<b>Hybrid</b>	<b>Administrative</b>
Hungary	<b>Law enforcement*</b>	<b>Hybrid</b>
Ireland	Law enforcement*	Law enforcement
Italy	Administrative	Administrative
Latvia	<b>Judicial</b>	<b>Administrative</b>
Lithuania	Law enforcement	Law enforcement
Luxembourg	Judicial*	Judicial
Malta	Administrative*	Administrative
Netherlands	<b>Administrative*</b>	<b>Hybrid</b>
Poland	Administrative *	Administrative
Portugal	Law enforcement	Law enforcement
Romania	Administrative*	Administrative
Slovakia	Law enforcement*	Law enforcement
Slovenia	Administrative *	Administrative
Spain	Administrative*	Administrative
Sweden	Law enforcement *	Administrative
UK	Law enforcement*	Law enforcement

\*These FIUs have been quoted as typical cases by the IMF (IMF, FIUs: An Overview (2004))

In Table 8.1, in the left column we present the official classification of the FIUs according to the IMF (2004) report. The examples quoted in the report are marked with an asterisk. Further, based on the Egmont classification (which is actually based on that of the IMF, but is more flexible) we tried to classify the remaining FIUs into what could have been their typology.

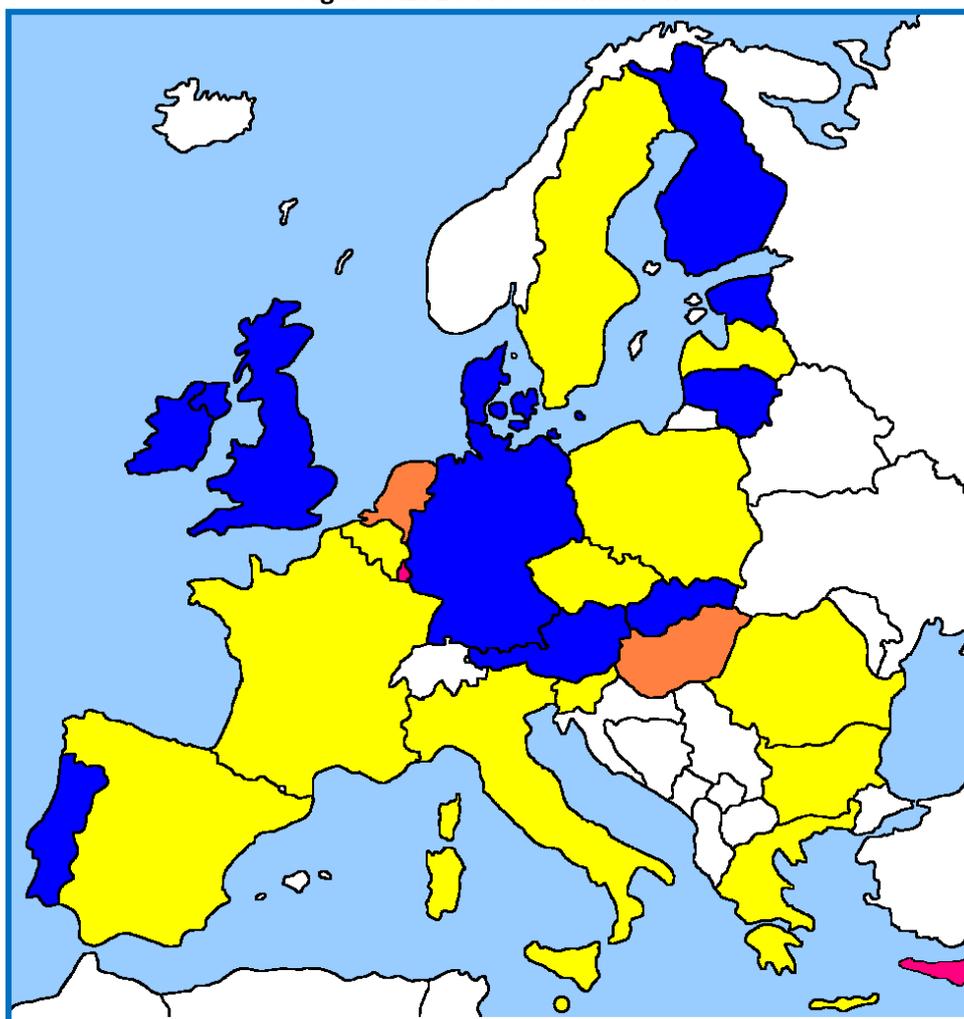
This is also introduced in the left column of Table 8.1 and is not marked with an asterisk. Consequently, we asked the FIUs whether they agree with this classification, and found out that with the exception of 5 FIUs this classification was still very much agreed upon. Moreover, a careful look at the table above shows that only 3 of the 20 EU FIUs that were classified in the IMF (2004) report no longer agreed with their classification, and, as we will see below, this has to do with reorganisations that took place in the meantime.

<sup>244</sup> Such a census of the FIU typologies has already been done mid 2011 by the Egmont Group, but due to confidentiality reasons, this report was not made publicly available (Egmont E-newsletter, April 2011). A report on the Census can nevertheless be found on the Egmont website [www.egmontgroup.org](http://www.egmontgroup.org). This report is anonymised, and contains statistics on the characteristics of all the Egmont FIUs (within and outside the EU). Further, given the anonymous character and the response rate, to the census survey, Table 8.1 has substantial additional value.

By again looking at Table 8.1 we see that according to the expressed opinions of the FIU representatives, the most common FIUs in the EU are the administrative and the law enforcement. They account for two thirds of the FIUs in the EU. Further, there are only two judicial and two hybrid FIUs.

### 8.2.1 Updates and nuances

Figure 8.2: EU FIU classification



*Legend: Administrative FIUs are marked in yellow, law enforcement FIUs in blue, hybrid FIUs in orange and judicial FIUs in fuchsia.*

In Egmont terms, FIU **NL** could be considered to be an administrative FIU. However, since it is located within the Dutch police (KLPD) and has partially administrative powers only - where the first analysis of the UTRs is performed, the FIU considers itself to be hybrid. Thereby the hybrid structure of the FIU-NL, with the combination of administration on the one hand and detection / enforcement on the other hand, has been praised and recommended to the other EU Member States<sup>245</sup>.

The **Greek** FIU belongs to an atypical structure. The AML/CTF/SFI Authority consists of three independent Units with separate responsibilities, staff and infrastructure. These 3 units are the FIU, the Financial Sanctioning Unit (FSU, which deals with asset freezing, implementing EU/UN Council

<sup>245</sup>FIU Netherlands (2010), *Annual report*, p. 19

Resolutions), and the Source of Funds Investigation Unit (SFIU, that receives and analyses source of funds and wealth declarations of the obliged persons)<sup>246</sup>. FIU staff are allocated by detachment from a wide array of institutions that are stakeholders in the AML/CTF and anti-corruption fight. Finally, with respect to the investigation powers of the FIU staff, according to the Greek representative, the FIU had before March 2011 the right to carry out preliminary investigations and to interrogate witnesses. These rights have been taken away<sup>247</sup> on the grounds that that they created legal conflicts of interest. Therefore, the Greek FIU could be considered hybrid due to the diversity of its personnel (lawyers, prosecutors, police agents, financial experts), and given the mixed nature of the institution the FIU belongs to. However, given the strict separation of duties between the FIU, SFI and the FSU, and strictly looking at the duties of the FIU agents, the Greek representatives have argued that it could better be seen as an administrative type of FIU.

According to the Egmont classification, the Latvian FIU could be considered a judicial type of FIU. The **Latvian** representative however has argued that Latvia has an administrative FIU. Despite its location within the Public Prosecutor's Office, it has an independent status and its own budget and it performs tasks specific to an administrative FIU. The only additional benefit, according to the Latvian representative is that the FIU has the power to suspend transactions and freeze accounts upon suspicion of money laundering.

Among the countries that have established "hybrid" FIUs are Denmark, Jersey, Guernsey, and Norway.<sup>248</sup> The **Danish** FIU is located as a unit within Section 3 under the State Prosecutor for Serious Economic Crime (SØK). In the FATF MER 2006 it was stated that the decision to establish the FIU within the Prosecutor's office was purely a matter of resources and size of the country. The FIU considers itself to be a law enforcement type of FIU, as FIU staff are composed of prosecutors or police officers with law enforcement powers.

**Hungary** used to have a law enforcement type of FIU, according to the official Egmont division, but this has changed recently in 2007. The Hungarian representatives, with its comparatively new FIU Office<sup>249</sup> wish to stress that although its Office is located within the Central Criminal Investigation Bureau of the Hungarian customs authority, it can only conduct administrative investigations. In that respect, Hungarian representatives consider the Hungarian FIU to be a hybrid model. Moneyval (2010) confirms this – as they describe the HFIU as an administrative type of FIU according to its functions but as a law-enforcement type of FIU given its location within a law enforcement authority with investigation powers.<sup>250</sup>

In 2008 the **Bulgarian** FIU was transferred from the Ministry of Finance to the Bulgarian State Agency for National Security, which is a law enforcement agency. Despite this, the FIU continues to consider itself an administrative type of FIU. The latter has been confirmed by several Bulgarian representatives.

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<sup>246</sup> The 3691/2008 law as amended by laws 3875/2010, 3932/2011 and 3994/2011 – articles 7a, 7b and 7c.

<sup>247</sup> AML Act amendment 3932 of 10 March 2011.

<sup>248</sup> IMF (2004), Fiscal Intelligence Units: An Overview, p. 17

<sup>249</sup> Originally the FIU was established in 1995 as part of the Hungarian National Police (HNP). Due to the amendment of the Government Decree on the organisation of the Hungarian Customs and Finance Guard (no. 314/2006), the FIU activities were transferred in 2007 to the CCIB within the customs authority. Thereafter the FIU was located within the National Customs and Tax Administration once the separate authorities merged into one structure.

<sup>250</sup> Moneyval (2010) Report on Fourth Assessment Visit Report of Hungary

Having seen this, we can therefore conclude that, to a large extent, countries agree with the typology assigned to their FIUs. Only a handful of FIUs consider themselves to be of a different typology. In some countries where organisational reforms took place, the type of FIU has changed accordingly – see Hungary and the Netherlands. Furthermore, looking at the distribution of typologies we can conclude that this is balanced only to a certain extent. The vast majority of EU FIUs are either administrative or law enforcement and only four consider themselves to be of the judicial or hybrid types. Finally, the Egmont Group has conducted a census on its FIU members and has also researched into the typologies to which every FIU considers itself to belong to. However, the results of the census were not published and we could not compare our findings with those of the Egmont Group.

### 8.3 FIU institutional and organisational matters

The current sub-chapter provides an overview of the patterns according to which EU FIUs are organised. We have looked at the various ways to fund an FIU, at the location independence of the FIUs as well as at the size and diversity of staff that the EU FIUs employ. Further, based on these parameters, we have tested seven hypotheses – which were either collected from the institutional literature or from anecdotal evidence given to us by the Member States representatives.

#### Hypotheses

Administrative types of FIUs have more employees than the other types of FIUs.

FIUs that have own premises have more staff.

Larger FIUs in terms of staff can be found in less wealthier Member States.

The level of wealth of a country explains the size of the budget of its FIU.

Old Member States have higher budgets than new Member States.

EU FIUs employ different types of staff given their typology.

Obligated entities are less reluctant to disclose suspicious information to FIUs who do not employ law enforcement staff.

The first hypothesis was introduced by means of anecdotal evidence. Administrative FIUs were said to employ more staff on average and to be more bureaucratic. Having no means of testing the level of FIU bureaucracy we have content ourselves with testing whether indeed administrative FIUs have more staff than the others. The size of staff, however, can be influenced by many factors. First of all, some FIUs might have more additional duties or more duties that are human capital intensive. This in itself would explain why in particular those FIUs need more staff. Next to this, given the overall level of capital intensity in a country, capital might also be replaced with human labour. In other words, when labour is relatively cheap to capital, it makes sense to employ more staff in order to analyse more reports than to install a more sophisticated IT system. Finally, more staff are needed when the FIU has its own premises, simply because the externalities can no longer be shared among departments.

Another hypothesis that originated from anecdotal evidence was the fact that rich countries have more money to spend on fighting crime and therefore the budgets of their FIUs are higher. If this hypothesis is confirmed we expect that FIUs belonging to older EU Member States have also higher budgets, on average.

Finally, having regard to the previous classification of the FIUs, it is possible that the type of FIU has an effect on the type of employees working there. In law enforcement types of FIUs most, if not all, employees are trained police officers while the administrative type of FIUs seem to have primarily employees with a background in academia, especially law and economics. During this research we came across, quite frequently, the hypothesis that this difference in staff background has implications for the ultimate goals of the FIU. This meant that law enforcement FIUs focus more on fighting crime, while administrative FIUs focus more on the analysis of financial data necessary to identify unusual patterns of behaviour.

Finally, due to this difference in staff, it is expected that some financial entities are reluctant to provide information to some of the FIUs. The latter hypothesis was brought to our attention through the numerous pieces of anecdotal evidence we were presented with by the country representatives.

### **8.3.1 Organisational patterns of the EU FIUs**

We looked at the following aspects: FIU budgetary independence, staff numbers, background of staff, and also at whether the FIU has its own location or not. In respect to the staff of the FIU, we have observed large differences, as can be seen from Table 8.2.

Some EU FIUs have their own budget that is negotiated every year and that is allocated directly from the State budget (see second column of table 8.2). The advantage of such an arrangement is that the FIU has a clear overview of its budget for the entire year and that it can plan ahead its expenditures and its cuts. Other FIUs are paid from the overall budget of a larger institution, which can be the Police, the Secret Services, the Public Prosecutor's office, the Ministry of Finance or the Ministry of Justice (see the third column of table 8.2). In the face of fiscal shocks (i.e. budget cuts to budget mid-year recalculations), the FIUs with an independent budget are less vulnerable. In case of a budget restructuring, the impact on the FIU budget depends on the priority this department has in the larger 'parent institution' and on its capacity to negotiate its position.

Table 8.2 presents an overview of where in the organisational tiers of the budget providing institution, one can find the FIU. We see that in four member states, the FIU holds a low position in the overall hierarchy of the budget providing institution. Noting that a separate budget line would protect from hierarchical struggles, the third column of table 8.2 does not include such organisational aspects for those FIUs that have an independent own budget.

**Table 8.2: FIU budget size, independence and vulnerability to fiscal shocks**

	Budget size in Euros	Own independent budget	Place of the FIU in the organisation of the budget providing institution	Budget vulnerability to fiscal shocks
AT	975.000*	No	BKA>Economic Crime>Financial Fraud>FIU	Large
BE	4,257,645	Yes		Minimal
BG		No	SANS>FIU	Medium
CY		No	AGO>FIU	Medium
CZ	1.429.473 (without IT)*	No	MoF> Audit, Finance and Operations Section>FIU	Medium
DK		No	MoJ>State Prosecutor for Serious Economic Crime>FIU	Medium
EE		No	PBGB>FIU	Medium
FI	1,565,000	Yes		Minimal
FR	4,981,688	Yes		Minimal
DE		No	BKA>Serious Crime>FIU	Medium
EL	1,500,000	Yes		Minimal
HU <sup>251</sup>	1.000.000*		NTCA>Criminal Affairs>FIU	Medium
IE		No	Garda>National support services> Bureau of fraud investigation>FIU	Large
IT	207.000 (only expenses)	No <sup>252</sup>	Bol>FIU	Minimal
LV	341,490	Yes		Minimal
LT		No	FCIS>Analysis and prevention board> FIU	Medium
LU		No		Minimal
MT	330,107	Yes		Minimal
NL	4,800,000	Yes		Minimal
PL		No	MoF> Under-secretary of state Inspector General>FIU	Medium
PT		No	Judicial police> FIU	Medium
RO		Yes		Minimal
SK <sup>253</sup>		No		
SL	691,000	Yes		Minimal
ES	11,000,000	Yes		Minimal
SE	1.400.000*	No	NPB>NBI>Criminal intelligence and Investigations Division>FIU	Large
UK		No	SOCA>Strategy& prevention> Information>FIU	Large

*Legend: in the table above the following acronyms have been used: SOCA –Serious Organised Crime Agency, NPB -National Police Board, NBI – National Bureau of Investigation, MoF – Ministry of Finance, MoI – Ministry of Interior Affairs, FCIS – Financial Crime Investigation Service, Garda – An Garda Siochana (Irish Police force), NTCA – National Tax and Customs Administration, Bol – Bank of Italy, BKA – Federal Criminal Police, AGO – Attorney General Office, SANS – State Agency for National Security, PBGB – Police and Border Guard Board; further, ‘\*’ marks an approximation of the budget of the FIU and ‘>’ marks the passage to a lower level of*

<sup>251</sup> We were not able to collect this information from the national representatives.

<sup>252</sup> Despite the FIU’s budget being allocated by the Bank of Italy, the vulnerability to fiscal shocks is minimal, as the Bank itself is not considered to be subject to fiscal shocks.

<sup>253</sup> We were not able to collect this information from the national representatives..

*hierarchy – such that the institution to the left of the ‘>’ sign is the larger department. A more detailed description of the budget vulnerability and organisational matters can be found in annex 8.1.*

The budget independence of the FIUs is a hot topic. All member states’ representatives have argued that their FIUs are budgetary autonomous. This means that the FIUs can decide autonomously on how to spend their budget. This added certainty over the FIU’s planned expenses is higher when its budget is also independent. When FIU budgets are nevertheless part of the budget of larger institution, aspects of redistribution can significantly impact this budgetary autonomy. When the budget of the FIU belongs to that of the ‘parent institution’, decisions such as adding new staff, acquiring new IT support, increasing the operational expenditures, need to be approved/countersigned by the hierarchy of the ‘parent institution’. In times of fiscal fitness this can cause no problem, but in times of fiscal contraction, when there are budget cuts or during mid-year budget recalculations, budgetary dependence can impact the budgetary autonomy of the FIUs. Table 8.2 illustrates the position of the non-independent FIUs within the hierarchy of the budget providing institution. Having regard to this line of argument, we have classified the budgets of their potential vulnerability to fiscal shocks into – largely vulnerable, vulnerable and rather non vulnerable.

In terms of the staff numbers of the FIU we observe large differences across the EU FIUs. The outliers are Italy with over 100 staff and Malta and Ireland who counted less than a dozen employees. Table 8.3 offers an overview of the FIU staff numbers and composition. The second column illustrates the diversity of staff employed by the FIUs with respect to their occupational background. The third column of table 8.3 introduces a brief description of the FIU premises – and refers mainly to whether the FIU is physically located within the ‘parent institution’ or whether it has own geographically separate premises.

**Table 8.3: FIU staff size, staff composition and FIU location premises**

	FIU staff (in fte)	Staff composition	FIU premises
<b>AT</b>	13 (in 2010)	Detectives with financial crime and IT crime training	Within the BKA-Austria
<b>BE</b>	45 (in 2012)	Detached prosecutors, police, customs and intelligence liaison officers, financial analysts	Own premises
<b>BG</b>	32 (in 2011)	Law enforcement agents with legal, economic and international relations specialization	Within SANS
<b>CY</b>	21 (in 2011)	prosecutors, detached custom officers, police officers, financial analysts	Own premises
<b>CZ</b>	35 (in 2011)	Economists, police agents, lawyers	Own premises
<b>DK</b>	18 (in 2011)	Prosecutors, police, tax administration agents	Within the Office of Public Prosecution for Serious Economic Crime
<b>EE</b>	16 (in 2011)	Police agents (with tax and finance background)	Within the Police and Border Guard Board
<b>FI</b>	24 (in 2011)	Police agents (with economic crime experience)	Within the Criminal Intelligence Division of NBI
<b>FR</b>	73 (in 2009)	Financial analysts, liaison officers, detached prosecutor	Own premises
<b>DE</b>	17 (in 2010)	Police officers and other staff of BKA or Mol	Within the National Criminal Police
<b>EL</b>	29 (in 2011)	Head prosecutor, officials (Ministry representatives) and detached personnel	Within the AML/CTF SFI Authority

<b>HU</b> <sup>254</sup>	30 (in 2010)	lawyers, economists, customs agents	
<b>IE</b>	11 (in 2011)	Police agents	Within Garda Siochana Fraud Office
<b>IT</b>	104 (in 2011)	Lawyers and economists	Within the Bank of Italy
<b>LV</b>	17 (in 2011)	Police, public prosecutors, finance background	PPO office Latvia (but expected to change)
<b>LT</b>	10 (in 2011)	Police officers	Within the FCIS
<b>LU</b>	14 (in 2012)	Prosecutors, financial analysts, police liaison officers	Within the Luxembourg Prosecution Office*
<b>MT</b>	10 (in 2011)	lawyers, financial analysts	Own premises
<b>NL</b>	56 (in 2010)	Police liaison, financial analysts	Own premises
<b>PL</b>	45 (in 2008)	Lawyers, economists, IT experts	Within the MoF
<b>PT</b>	30 (in 2011)	Police officers, tax liaisons	Within the Judicial Police
<b>RO</b>	96 (in 2011)	Financial analysts, lawyers, international relations officers	Own premises
<b>SK</b>	30 (in 2011)	Police officers	Within the Bureau of Combating Organised Crime
<b>SL</b>	18 (in 2010)	Academics – law and economics background	Within the MoF premises
<b>ES</b>	79 (in 2011)	Financial and legal experts, detached police agents, tax and customs liaison officers	Own premises
<b>SE</b>	27 (in 2009)	Police, financial analysts	Within the National Criminal Police
<b>UK</b>	60 (in 2012)	Police officers, financial analysts	Within the SOCA premises

*Legend: the following acronyms have been used BKA – Federal Criminal Police, SANS – State Agency for National Security, NBI -National Bureau of Investigation, MoF – Ministry of Finance, SOCA – Serious Organised Crime Agency , FCIS – Financial Crime Investigation Service, AML/CTF SFI Authority –Hellenic Anti-Money Laundering, Counter Terrorist Financing and Source of Funds Investigation Authority. For a more detailed description of FIU location independence and staff composition, please turn to annex 8.1.*

Using econometrics analysis we have tried to see whether there is any significant relationship between the size of the EU FIU budgets and the wealth of a country or the year it accessed to the EU. We see that there is not statistically significant correlation, hence we cannot confirm that wealthier Member States have allocated higher budgets to their FIUs. Furthermore, this is consistent with the fact that new Member States do not have lower budgets for FIUs, all else equal. We would still wonder if budgets are not driven by the number of staff employed and further by the number of tasks that the FIUs are allocated.

We observe that administrative types of FIUs have on average higher staff. This leads us to wonder whether administrative FIUs are more bureaucratic on average. A closer look at table 8.3 however points to another explanation. Some FIUs have their own separate premises. In general, these are the administrative FIUs, as has also been pointed out in the IMF (2004) classification. Table 8.3 shows that administrative types of FIUs (with the exception of Bulgaria, Italy and Poland) have their own separate premises, whereas law enforcement types, on average, don't – since they are located within their parent institution. Judicial and hybrid FIUs are somewhat mixed.

Table 8.3 shows that the average staff numbers of an FIU with its own (separate) premises is close to 52 employees. Similarly, FIUs that do not have their own premises have on average 27 employees. This significant drop suggests that premises matter and that separate premises are matched on average with more staff. The organisational literature argues that firms chose to locate close to each

<sup>254</sup>We were not able to collect this information from the national representatives.

other in order to benefit from the others' spillovers<sup>255</sup>. This supports our findings, since an FIU that is located close to another department could make use of shared facilities and staff and this would lower its costs. Finally, since most administrative FIUs have their own premises and all the law enforcement FIUs are located within the budget providing institution, administrative FIUs will have more staff but this is most likely due to location matters and not to efficiency or bureaucracy.

Further, we observe that FIUs have more staff in less wealthy Member States. This confirms the economic literature<sup>256</sup>. The latter argues that when capital is scarce, it becomes expensive relative to other factors of production, such as labour. Capital will therefore be replaced with labour in the production of goods and services. Similarly, least wealthy Member States are the least capital intensive states, and therefore labour intensity is higher because it also replaces missing capital. Comparing across member states, it is therefore not surprising that FIUs have more staff in less wealthy member states, if we assume different levels of capital intensity per FIU. The latter will be discussed later, when we show the differences in IT capacity and infrastructure across the EU FIUs.

Further, we observe that most FIUs employ a wide array of staff – academics, lawyers, economist, financial analysts, police officers, prosecutors, international relations officers, customs and tax officers and more. Starting from the IMF (2004) classification, we could expect that, since most FIUs in the EU consider themselves administrative type, most FIUs employ financial staff only. Table 8.3 disproves this hypothesis. We actually observe that most FIUs have a mixed background staff.

We argue that administrative FIUs have addressed the need to have access to law enforcement data and to be better informed about the subsequent steps in the investigation. They have done so by means of employing detached officers, liaison officers and by appointment of former law enforcement agents to head the FIUs. The law enforcement and judicial FIUs seem to have also seen a need to address the AML/CTF investigations from several points of view – thereby making more use of financial analysts and liaison officers in combination with the police and prosecution agents that they already employ.

We also looked at whether the type of staff that the FIU employs has an impact on the behaviour of the obliged entities. We observe a positive and significant relationship between the number of reports sent to an FIU and whether the latter employs mostly staff having a financial background. This finding seems to support<sup>257</sup> the hypothesis that obliged entities may report differently to FIUs employing mostly financial staff than to FIUs employing mostly law enforcement staff. Finally, there exists also a positive significant relationship between the number of reports and the type of FIU. The latter points to the fact that, all else equal, hybrid FIUs have received more reports from the obliged entities than other types of FIUs. This result should be treated with caution as it says nothing about the quality of reports forwarded by the reporting entities.

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<sup>255</sup> Ellison, G. and Glaeser, E.L. (1999), 'The Geographic Concentration of Industry: Does Natural Advantage Explain Agglomeration?', in: *The American Economic Review*, Vol. 89, No. 2, pp. 311-316

<sup>256</sup> Sinn, H-W. (2003) *The New Systems Competition*. Blackwell Publishing, UK

<sup>257</sup> We did not find a negative significant correlation between the number of reports sent to an FIU and whether the latter employs mostly law enforcement staff.

## 8.4 Definition of tasks and responsibilities

Article 21 of the Third EU Directive<sup>258</sup> offers the following definition of an FIU:

*“[The] FIU shall be established as a central national unit. It shall be responsible for receiving (and to the extent permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of information which concern potential money laundering, potential terrorist financing or are required by national legislation or regulation. It shall be provided with adequate resources in order to fulfil its tasks.”*

All EU Member States have transposed this definition into their national legislation. However, a different interpretation of the definition and of the role attributed to the FIU can be seen in each Member State. Table 8.4 reveals for each country which additional duties the FIUs have, compared to the general definition of the Third EU Directive.

### Hypotheses

FIUs with more additional tasks are being given, on average, more resources to address them – both staff and budget.

Institutional change at an FIU level, induces the attribution of additional duties to the new structure. New Member States have given their FIUs, on average, fewer additional tasks.

The first hypothesis was born out of the numerous pieces of anecdotal evidence we were presented with. Some FIUs had reported to be sufficiently staffed to undertake all their duties, whereas others commented on the fact that additional duties had been placed upon their shoulders and were not matched with additional resources. Despite recognizing that not all tasks are similar, we looked into which EU FIUs have more additional tasks than others. The institutional literature argues that institutions that have changed organisation retain some characteristics from their old organisational setting. This persistence led us to hypothesise that FIUs that had originally been placed under another structure have retained some of their old tasks and have therefore more additional tasks on average. Finally, we hypothesise, for the same reason, that older EU FIUs have more additional tasks, than the new EU Member States that only had to implement the Third EU Directive.

Table 8.4 offers an overview on some of the most common additional tasks that FIUs have. For exposition purposes we have left out several singular additional tasks that some FIUs have. We nevertheless take stock of these rare additional duties - (i.e. environmental crime as is the case in Sweden, giving recommendations on property seizure, as is the case on Poland and Latvia etc.) in our analysis. The description of the additional tasks in table 8.4 is very brief and does not account for the national variations. For example, two FIUs that perform supervision of the obliged entities may in effect be performing these tasks differently and to a different extent (see Chapter 6 on the ‘Supervisory architectures’).

Table 8.4 shows that the average EU FIU is given 4,3 additional tasks, and some of the most common additional tasks are drafting AML/CTF legislation, issuing guidelines for the reporting entities on how to report, supervising the reporting entities (either with respect to the AML/CTF obligations or more extensively) and proposing sanctions when noticing irregularities during the supervision controls.

Besides this, a handful of FIUs are in charge of coordinating national cooperation in AML matters and some also fill in the role of an asset recovery office. Furthermore, almost half of the FIUs use their

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<sup>258</sup> The text of the Directive is available at:  
[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l\\_309/l\\_30920051125en00150036.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_309/l_30920051125en00150036.pdf)

position as an informational node to research aggregate data that could possibly be related to money laundering and terrorist financing and to assess the AML/CTF threat of the member state.

Trainings organised by the FIU for the reporting institutions as well as for the law enforcement and prosecution authorities reaffirm the FIU's position as a key player in the AML/CTF fight. The broad consensus to give this additional task to the FIU would also point to a concentration of expertise within this institution as well as to the pivotal role the FIU has, whereby its connection to and communication with all other institutions involved in the AML/CTF fight is vital.

**Table 8.4: Additional tasks of the FIU**

Additional duty	AT	BE	BG	CY	CZ	DK	EE	FI	FR	DE	EL	HU	IE	IT	LV	LT	LU	MT	NL	PL	PT	RO	SK	SL	ES	SE	UK
Supervise REs			X	X	X		X					X		X		X		X		X		X	X	X	X		
Propose sanctions			X		X		X					X		X		X		X		X		X	X	X			
Train supervisors	i	i	l												X				X		i	X					
Supervise the application of the International Sanctions Act					X		X				i	X		X						X		X					
Conduct pre-trial investigations	X			X		X		i		i						X	X						X				
Prosecute ML/TF				X		X											X										
Issue guidelines for REs	X		X	X	i						X	i		X				X		l		X	X	X	i		
Train LEAs	i			X		X	X			X									X	l		X	X	i			
Draft AML/CTF legislation		X	l	X	X				i					X	X	X	X	X		X		X	i	X	X		
Research ML/TF aggregate data	X		l							X	i			X					i		X		X		X		
ARO				X							i										i		X			X	X
Coordinate national cooperation		X	l	X																		X					X
Conduct ML/TF threat analysis		X	l																	X							X
<b>Total (including rare additional duties)</b>	<b>5</b>	<b>4</b>	<b>8</b>	<b>8</b>	<b>5</b>	<b>3</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>3</b>	<b>4</b>	<b>4</b>	<b>0</b>	<b>7</b>	<b>3</b>	<b>4</b>	<b>3</b>	<b>4</b>	<b>4</b>	<b>7</b>	<b>2</b>	<b>8</b>	<b>8</b>	<b>5</b>	<b>4</b>	<b>3</b>	<b>3</b>

Legend: "X" designates an additional task being legally imposed on the FIU, "i" marks the indirect imposition of an additional task onto the FIU. For a more detailed description of the additional tasks that national FIU have, see annex 8.2.

In table 8.5 we present some of the FIUs that have undergone major organisational changes in the past decade. Some changes have been fundamental – the case of the Hungarian and Bulgarian FIUs. The Hungarian FIU has passed from the police administration to the civil administration and the Bulgarian FIU has done the reverse. Others have been more moderate – the case of the Greek and Spanish FIUs that have become independent structures.

**Table 8.5: FIUs that have undergone a significant organisational change**

Country	Original institution	Current institution
Bulgaria	Ministry of Finance	SANS
Greece	Ministry of Finance	Independent
Hungary	National Police	National Tax and Customs Administration
Lithuania	Tax department	Criminal police
Slovakia	Financial police	Organised crime police
Spain	Bank of Spain	Independent
Netherlands	National Police	Ministry of Finance and Ministry of Security and Justice
Italy	Foreign Exchange Office	Bank of Italy

#### 8.4.1 Discussion

When assessing the extent to which an FIU is burdened by these additional tasks, one has to agree however that counting tasks is not the most efficient measurement. National representatives agree that some additional tasks are more resource intensive than others, which is why we expect there not to be a linear relationship between the number of additional tasks and the size of the budget. We therefore content ourselves with looking at the correlation between the number of additional tasks and the size of the FIU budget and the size of the FIU staff. We find no significant pairwise correlation between the number of additional tasks and the resources – both staff and budgetary – that an FIU disposes of. This finding seems to support the claim that more additional tasks are not matched with additional resources. This is also confirmed by the numerous complaints on the limited nature of resources, which were presented to us especially by representatives of FIUs most charged with additional tasks. Noting how tasks are so different, we did not explore this hypothesis further, and we advise the reader to keep this limitation in mind when interpreting the results.

Table 8.5 depicts the FIUs that have, in recent years, undergone significant organisational changes. These FIUs have on average 5,4 additional tasks and this is significantly higher than the EU FIU average (of 4,3 additional tasks). This observation seems to confirm the hypothesis brought forward by the institutional literature, namely that FIUs take some additional tasks from their former organisational structure (since they have the knowledge) and that they are given some extra in the new organisational structure.

Further, there seems to be no connection between the type of FIU and the number of additional tasks. New EU Member States also do not have significantly more or fewer additional tasks than older Member States. It therefore seems that organisational changes and the national context are the only two indicators that can explain why some FIUs have more additional duties than others.

## 8.5 Access to data and processing capacity

Although the different types of FIU seem to give a rather good description of the institutional location of the FIU and its capabilities, one aspect might be even more important: the access to information. It seems that for a substantial and conclusive analysis of reports, information is a key factor. There are also more types of data which are relevant. Moreover, the speed with which this information is acquired and analysed seems also to be of relevance in the overall investigation process.

### Hypotheses

All FIUs have the same access to databases.

Administrative FIUs do not have access to police data.

Both hypotheses are born out of the literature on the FIUs (IMF, 2004). We expect to see a difference in access to databases of the different FIUs and to see that administrative FIUs do not have access to police and other law enforcement databases.

Table 8.6 shows the type of access that the EU FIUs have to a basic pool of databases. Indirect access is marked with 'request'. For the purpose of comparison, we have chosen a set of databases to which we consider access to be of relevance. Databases differ per country and FIUs certainly will have access to broader pools of databases than is illustrated in table 8.6. Nevertheless, pooling these different national databases into seven categories allows for a cross country comparison. Table 8.6 is constructed on the basis of interviews and workshop contributions of the national representatives.

Access to a database can be direct or indirect. Indirect access implies an intermediated access to a database, in contrast with direct access which can be seen as non-intermediated. Direct access is preferred to indirect access since it allows for FIU members to better use the resources present in such a database. Direct access therefore allows the FIU to be flexible in using the information present in the database. Otherwise, intermediated access implies that the FIU asks a question to a third party, not knowing what to expect in terms of answer. Information loss therefore increases twofold: the FIU must ask the right question to get the right answer and the FIU does not know what the best answer to its question could have been. With respect to the way the FIU has access to a database this can be online or not. The latter only reflects the speed with which the FIU can collect the information. Direct access, just as indirect access can be both online or not.

On the issue of the direct or indirect nature of the access to a database, we assume (in light of the interviews we have conducted) that liaison officers and detached officers ensure direct access for the FIU to these databases. The reason for this is that liaison officers can be assumed to be part of the FIU team and therefore would be able to reduce the information loss by allowing the FIU to know what the databases contain and what the best answer to the FIU analysts' questions are.

**Table 8.6: EU FIU access to police, real estate, bank, social security, customs, tax and commercial databases**

	Police data	Real estate	Bank data	Social security	Customs	Tax	Commercial register
<b>AT</b>	Online direct*	Online Direct	Request	Online direct	Request	Request	Online direct
<b>BE</b>	Online direct (*liaison)	Direct	Request	Direct	Online direct (liaison)	Request	Direct
<b>BG</b>	Request	Online Direct	Request	Online Direct	Direct	Online Direct	Online Direct
<b>CY</b>	Online direct*	Online request	Request	Direct (liaison)	Online direct (liaison)	Direct (liaison)	Online direct
<b>CZ</b>	Request (online)	Request (online)	Request	Online direct	Direct (liaison)	Request	Online direct
<b>DK</b>	Direct*	Direct	Request	Direct	Request	Direct	Direct
<b>EE</b>	Online direct*	Online direct	Request	Online direct	Request	Online direct	Online direct
<b>FI</b>	Direct*	Direct	Request	Direct	Direct	Direct (liaison)	Direct
<b>FR</b>	Online direct (*liaison)	Direct	Request	Direct	Direct	Direct	Direct
<b>DE</b>	Direct*		Request	Direct			Online direct
<b>EL</b>	Direct * (restricted)	Request	Request	Request	Direct (liaison)	Direct (liaison)	Direct
<b>HU</b>	Direct	Direct	Request	Direct	Direct	Direct	Direct
<b>IE</b>	Online direct*	Direct	Request	Request	No	No	Direct
<b>IT</b>	No	No	Direct	no	Request	Request	Direct
<b>LV</b>	Online direct*	Online direct	Request	Online direct	Online direct	Online direct	Online direct
<b>LT</b>	Direct*	Direct	Request	Direct	Direct	Request	Request
<b>LU</b>	Online direct (*liaison)	Direct	Request	Online direct	Online direct	Request	Direct
<b>MT</b>	Direct* (liaison)	Request	Request	Request	Direct	Request	Direct
<b>NL</b>	Online direct (*liaison)	Direct	Request	Direct	Request	Request	Direct
<b>PL</b>	Online direct		Request	Direct	Request	Online direct	Online direct
<b>PT</b>	Online direct (*DCIAP)	Request	Request	Request	Online direct (liaison)	Online direct (liaison)	Online direct
<b>RO</b>	Direct	Direct	Request	Direct	Direct	Request	Direct
<b>SK</b>	Direct*	Direct	Request	Direct	Direct	Direct	Direct
<b>SL</b>	Direct	Direct	Direct	Direct	Request	Request	Direct
<b>ES</b>	Request*	Direct	Request	Request	Request	Request	Online direct
<b>SE</b>	Direct*	Direct	Request	Direct		Request	Direct
<b>UK</b>	Direct*	Direct	Request	Request	Request	Request	Request

*Legend: In this table the ‘\*\*’ under the ‘Police data’ column marks access by the FIU to a wider pool of police data than criminal records (i.e. criminal intelligence, list of arrested persons, on-going undercover investigations, on-going pre-trial investigation) that the FIU can have access to. Social security database includes among others population register and registered state paid benefits. Customs database refers to customs intelligence (i.e. list of people crossing borders and criminal incident database). Tax database refers to recorded tax disclosures – payments and privileges for registered property. Commercial register refers to companies register where legal persons disclose their area of activity, financial statements etc. For a more detailed description of the available databases as well as the way national FIUs can access them, see annex 8.3.*

From table 8.6 we can conclude that access to databases is very different across EU FIUs. Some have a strong preference for online access whereas others are still manually accessing most databases. Some have direct access to most databases – i.e. France, Greece and Latvia – and others have restricted access and even no access to some databases – i.e. Italy.

We also observe that administrative FIUs have managed to overcome their lack of access to police data by using liaison officers. This gives them access to more than criminal records and therefore considerably increases the effectiveness of the FIUs. Moreover, liaison officers have also been used by law enforcement FIUs to improve their access – in particular to tax and customs databases. We note as well that liaison officers are employed by many of the EU FIUs and that these FIUs have, on average, the highest access to database.

## 8.6 Capacity to request information on its own

Table 8.7 shows which FIUs can start an analysis or an investigation on the basis of reports from the obliged entities, an own motion and/or another FIU request. All EU FIUs can start an investigation based on reports from the obliged entities, but some can also start an investigation on own motion.

**Table 8.7: FIU starts an analysis/investigation based on reports, own motion, foreign FIU requests**

	Reports	Own motion	FIU request
Austria	X	X	X
Belgium	X	X	X
Bulgaria	X		X
Cyprus	X	X	X
Czech Republic	X	X	X
Denmark	X		X
Estonia	X	X	X
Finland	X	X	X
France	X		X
Germany	X	X	X
Greece	X	?	X
Hungary	X		X
Ireland	X	X	X
Italy	X	X	X
Latvia	X		X

<b>Lithuania</b>	X	X	X
<b>Luxembourg</b>	X	X	X
<b>Malta</b>	X	X	X
<b>The Netherlands</b> <sup>259</sup>	X	?	X
<b>Poland</b>	X	X	X
<b>Portugal</b>	X	?	X
<b>Romania</b>	X	X	X
<b>Slovenia</b>	X		X
<b>Slovakia</b>	X	?	X
<b>Spain</b>	X	X	X
<b>Sweden</b>	X	?	X
<b>United Kingdom</b>	X	X	X

*Legend: 'x' marks the capacity to start an investigation/analysis on the basis of the respective information and '?' marks the absence of such information from the part of the national representatives.*

In the following we present the responses of the national representatives on whether they can investigate on own motion and how often this has occurred in the recent past. Some national representatives have yet to answer.

The FIU **Austria** (A-FIU) is part of the Austrian Criminal Intelligence Service. Beside the basic function as an FIU, the A-FIU is enabled to start, coordinate and lead criminal investigations based on the Austrian legislation. According to the Austrian legislation and its principles, Austrian law enforcement authorities are obliged to initiate investigations, whenever a criminal offence becomes known to the authority. The source of information is not relevant. As the analysis of information is a part of this task, A-FIU is also empowered to conduct analysis on its own. The FIU does not however have statistics on the number of analyses done on its own initiative.

The **Belgian** FIU can start an analysis/investigation only if it received an STR from one of the obliged entities under the AML Act. In addition, it can start an analysis on the following grounds: 1) information concerning suspicious transactions from one of the control authorities; 2) information transmitted from the Federal Public Prosecutor's Office as part of judicial inquiry or preliminary inquiry on terrorist financing, as well as when information is transmitted by the European Anti-Fraud Office of the EC as part of an investigation of fraud affecting the financial interests of the EEA; 3) when information is transmitted by officials of the administrative services of the State, the trustees in a bankruptcy and the temporary administrators (...) who, in the course of their duties or in the course of their professional activities, discover facts that they know or suspect to be related to money laundering or terrorist financing; 4) when receiving copies of cash declaration reports or reports from Customs in the absence of such declarations, or ML/TF suspicions; or 5) when receiving a formal request for assistance from a foreign counterpart.

The **Bulgarian** FIU cannot start analysis on its own initiative, but it can on the basis of information received from all other state authorities. It can also start an investigation on the basis of foreign requests. The FIU has conducted several analyses on the basis of information provided by the Customs

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<sup>259</sup>We were not able to collect this information from the national representatives.

(more than 70 cases for 2008 – 2012), the Tax authorities (more than 80 cases for 2008 – 2012) and the general supervisors (more than 10 cases for 2008 – 2012).

MOKAS can investigate on all sources of information mentioned in table 8.7. The FIU does not have statistics, however, the number of analyses of investigations appears to be very small. Similarly, the **Czech** FIU can start an analysis on all accounts. According to the Czech representative, the number of cases on own initiative varies between 2 and 33 in 2009 -2010. For the Estonian FIU, the number of cases based on own information range between 10 and 25 per year since 2008.

The **French** FIU cannot start an investigation on its own initiative. The Article L- 561-23 of the Monetary and Financial Code explicitly states the kinds of information on the basis of which our FIU can start an investigation. This article also refers to other articles of the Code.

The **Finnish**, the **Irish**, the **Lithuanian**, the **UK** and the **German** FIUs have replied that on this account they do not have statistics, but that the FIUs can start an investigation on the sources of information mentioned in table 8.7. The Irish FIU approximates 10-15 cases per year are started on own motion. The Lithuanian FIU approximates that 10% of all investigations have started from an own motion.

The **Italian** AML law provides for a wide set of sources of information that can lead to the financial analysis of the FIU, also by means of inspections (not only STRs, but also suspicious transactions that have not been reported but of which the Unit is aware on the basis of data and information contained in its own files archives or on the basis of information received from the investigative bodies, from the sector supervisory authorities, from professional associations and from financial intelligence units abroad). The FIU cannot provide the number of analyses on our initiative, and any estimation will be inaccurate. Certainly the vast majority of the financial analysis stems from STRs.

The **Luxembourg**, the **Spanish** and the **Maltese** FIUs can start an investigation on all accounts mentioned in Table 8.7. The Luxembourg FIU has started 36 investigations in 2009, 42 in 2010 and 103 in 2011 on own motion. The Maltese FIU has started 13 analyses in 2009, 8 in 2010 and 11 in 2011 on own motion. The Spanish FIU started 48 analyses in 2009, 81 in 2010 and 87 in 2011 on own motion. The Polish FIU also argued that investigations on own motion are allowed (on the basis of article 4.1(1) of the AML/CTF Act) but did not provide statistics on the basis of own motion investigations.

In **Slovenia**, the FIU does not have the authority to start an analysis or investigation without a report at the basis. This will be changed when amendments to the AML Act are made.

Since not all representatives have replied to our question, table 8.7 does not give an encompassing overall picture and it is difficult to draw final conclusions. We can nevertheless observe that not all EU FIUs can start an investigation on own motion.

## **8.7 FIU capacity to filter fast**

The Egmont group has already emphasised, in its 2010 E-newsletter, the importance of IT solutions for increasing the effectiveness of the FIUs. Acknowledging this, the Egmont Group has even put in place a system of self-evaluation (FIU IT System Maturity Model) to help FIUs evaluate their stand point in terms of IT performance and their trajectory should they wish to improve their IT systems. The identified key domains in the FISMM include the collection of reports, processing of reports for analysis, information management and exchange of information.

Data mining systems are put in place to best ensure that unstructured data can be processed fast, with little error and with optimal results. According to the Egmont working group, these systems are diverse across the EU FIUs and for good reasons – they need to adapt to national culture, language and type of information that is available in each Member State.

### Hypotheses

Large countries FIUs have installed data mining systems.

Only small countries receive suspicion reports on paper

Reporting entities in countries with high IT usage scores prefer electronic reporting.

One hypothesis we were introduced to during this research is that reporting is done manually in small countries, because implementing an electronic reporting system would be too costly and not needed due to the small country size. Another hypothesis is that large countries have installed data mining systems to process the comparatively large numbers of incoming reports more efficiently. Finally, our third hypothesis is that online reporting and electronic reporting takes place with prevalence in countries with a high IT intensity. This means that when most reporting entities do not have internet access, FIUs will receive a large proportion of their reports manually.

Table 8.8 shows the different ways the FIUs receive reports from the obliged entities. To the extent possible, the national representatives have approximated in the left column the percentage of incoming requests that are received electronically. Where such estimation was not possible, we simply depicted the ways that the FIU receives reports. Furthermore, the right column points to the presence of a data-mining system. To the extent possible we have tried to nominate the system. Where this was not possible, we denoted the presence of a data mining system by ‘own system’.

We further do not delve into the properties of different data mining systems, nor do we attempt to classify them according to their information processing power, user friendliness etc. We assume that the readers are aware of the more common data mining systems – i.e. GoAML, I2, MoneyWeb and iBase, and therefore do not provide an overview on the latter. For the national data mining systems, such overview was, moreover, not available.

Finally, one needs to account for the fact that some IT tools are more comprehensive than others (i.e. are able to perform the initial analysis of a suspicious report). The more basic data mining systems merely assign red flags to each suspicious report. Classifying these tools according to their analytical power, especially when so many of them are own products that are custom made for national markets, was well outside the scope of our study. This is nevertheless one improvement to be undertaken in further research.

**Table 8.8: FIU receipt of reports and first analysis**

Country	Ways to receive reports	First analysis tool
AT	Electronically and in hard copy	No data mining system
BE	70% electronically, 30% in hard copy	No data mining system in place
BG	80% manually, 20% electronically	Own system
CY	Mostly manually (soon also electronically)	I2
CZ	90% electronically, 10% in hard copy	I2, Moneyveb, ELO
DK	Mostly in hard copy	GoAML
EE	Electronically	RABIS
FI	Electronically	GoAML
FR	Electronically and in hard copy	STARTRAC
DE	Most electronically, few in hard copy	Own (BKA) system
EL	Electronically and hard copy	Own system
HU	Electronically	HUFO
IE	70% electronically, 30% in hard copy	Own system
IT	Electronically and mail	RADAR
LV	Electronically and hard copy	?
LT	Electronically and hard copy	?
LU	Electronically, fax, mail, delivery in person	No data mining system in place, but considering installing a data-mining system
MT	Manually (delivery in person)	I2
NL	100% electronically	GoAML
PL	99% electronically	Own system
PT	Electronically only	Own system
RO	Mostly electronically, few in hard copy	Own system
SK	Manually or Electronically	I2
SL	Manually	No data mining system
ES	Most electronically, few in hard copy	Own system
SE	Mostly electronically, few in hard copy	iBase, Analyst Notebook
UK	98% Electronically and 2% in hard copy	ARENA

*Source: Own made on the basis of ECOLEF collected information. For a more detailed overview of the data mining systems and on the national FIUs capacity to filter fast, see annex 8.4*

Using econometric analysis we try to see whether there is a significant relationship between the size of a country and the IT intensity, and we observe that there is no significant correlation. We cannot therefore say that small countries can generally receive reports manually – i.e. Luxembourg. Contrary to what we had expected, we see no correlation between the employment of data mining software and the number of reports received by the FIUs. Furthermore, whether or not FIUs use data mining systems does not depend on the type of FIUs.

Finally, when looking at table 8.8 we see that the EU FIUs have also recognised the benefits of receiving these reports online, and we can see that most of them receive the vast majority of the reports in electronic format. There also seems to be a general recognition of the need to support the work of the FIU with adequate data mining software. Supporting the latter claim, most FIUs have put in place a data mining system. Given the diversity of these systems in terms of the analytical possibilities they give to the financial analysts of the FIU as well as the general trend towards higher reliance of IT filtering systems, we argue that an in-depth comparison at the EU level would be beneficial.

## **8.8 Feedback to the reporting entities**

Vital sources of information for all FIUs are the reporting entities. Following the behavioural economics literature, motivating the obliged entities can improve reporting. In the following we explore the ways FIUs communicate their knowledge to the obliged entities and the extent to which the FIU positions itself as a trusting cooperative partner in the fight against ML and TF or as a coercive superior agent that will ultimately constrain obliged institutions to report according to the law, or both.

Table 8.19 depicts the interaction between the FIU representatives and the reporting entities across a few parameters. First of all, in order to ensure that the reporting entities can report effectively, a standard reporting form should be provided to them. We note that such a form is present in almost all EU Member States. Further, we looked at whether, after reporting, the FIUs give a confirmation of receipt to the reporting entity. This confirmation should acknowledge the receipt in good order of the report, and should also set parameters for future correspondence between the reporting entity and the FIU. For every report sent, the reporting entity gets at least an identification number to use for future reference and the name of the contact person for the specific case. Further, the third column of table 8.9 depicts the amounts of training and seminars organised by the FIU or where they participated in order to increase awareness among reporting entities or to train them on typologies, risks and ways to report effectively. Finally, we asked Member State representatives to classify the type of feedback they give to the reporting entities – a general feedback (by means of annual reports, trainings and guidelines provided on the FIU website), or an individual – case-by-case feedback (by means of feedback and discussion on specific cases, the outcome of their investigations, the contribution of the reporting entity etc.).

**Table 8.9: FIU feedback to the reporting entities**

	Standard reporting form	Confirmation of receipt	No of trainings and workshops	Case by case feedback
<b>AT</b>	x	Yes	49 (in 2011)	?
<b>BE</b>	x	Yes	mostly outsourced	yes
<b>BG</b>	x	Yes	16 (in 2011)	yes
<b>CY</b>		Yes	44 (2008, 2009)	yes
<b>CZ</b>	x	?	?	yes
<b>DK</b>	x	?	?	yes
<b>EE</b>	x	Yes	17 (2011)	yes
<b>FI</b>	x	Yes	?	yes
<b>FR</b>	x	Yes		yes
<b>DE</b>	x	Yes	35 (in 2010)	yes
<b>EL</b>	x	Yes	?	no
<b>HU</b>	x	Yes	?	no
<b>IE</b>	x	No	20	yes
<b>IT</b>	x	Yes	Numerous	no
<b>LV</b>		?	Many	yes
<b>LT</b>	x	?	12 (2011)	?
<b>LU</b>	x	Yes	20 (2011)	yes
<b>MT</b>	x	Yes	23 (2011)	yes
<b>NL</b>	x	Yes	Extensive	no
<b>PL</b>	x	Yes	30 (in 2011)	yes
<b>PT</b>	x	Yes	Many	yes
<b>RO</b>	x	Yes	Many	no
<b>SK</b>		Yes	?	yes
<b>SL</b>	x	?	30 (in 2010)	no
<b>ES</b>	x	No	many	no
<b>SE</b>	x	Yes	many	?
<b>UK</b>	x	Yes	many	yes*

*Legend: 'x' marks the presence of a standard reporting format and '?' marks the absence of information. For a more detailed description of how the national FIUs offer feedback to the obliged entities, see annex 8.5.*

Table 8.9 and annex 8.5 show that formal contacts between the FIU and the reporting entities are in place in all countries. All FIUs meet with the reporting entities at least once a year, mostly through training sessions. Moreover, all FIUs publish annual reports to give the reporting entities general feedback. Some annual reports are more scarce in information – i.e. Ireland and Bulgaria – as they are part of the larger annual reports of the parent institution, and some are very comprehensive. It seems that most EU FIUs provide reporting entities with acknowledgments of receipt upon opening the disclosure of information. Sometimes this is automatically done by the IT system. The largest differences lie in the extent of training given by the FIUs and in the nature of feedback given to the reporting entities. Some countries are inclined to offer individual feedback, whereas others prefer general feedback.

Furthermore, we observe no relationship between the size of the member state and the type of feedback reporting entities receive. We also see no connection between the type of FIU and the type of feedback the FIUs give to the reporting entities. Given the large prevalence of case-by-case

feedback in table 8.9 we assume that there is a general trend to increase individual feedback, and that country differences in matters of feedback will therefore disappear.

## 8.9 Conclusion

Most Member States seem to agree with the original typology assigned to their FIUs. Only a handful of FIUs have changed typology. The vast majority are either administrative or law enforcement and only four consider themselves to be of the judicial or hybrid types.

The size of the FIU budget does not seem to be correlated with GDP or with the accession year to the EU. Instead the size of the FIU budget and the size of the FIU staff are significantly higher when the FIU has its own separate premises. Since administrative FIUs have, in general, separate premises these are also found to have on average higher budgets and larger staffs. This finding is consistent with the economics and geography literature which emphasizes the spillover effects which come with geographic agglomeration. Further, we find that FIUs with a larger staff are located in less wealthy Member States. This finding is consistent with the economic literature which argues that when capital is scarce, it becomes expensive relative to other factors of production, such as labour, and is replaced with the latter.

We find that most FIUs have a mixed background staff and that the staff composition is not related to the type of FIU. We argue that this is because heterogeneous staff is better able to access and analyze more databases in a shorter time span. We observe that FIU access to databases is very different across the EU. Administrative FIUs have therefore addressed the need to have access to law enforcement data by means of employing inter alia former law enforcement agents wither as liaison officers or in a leading position in the FIU. Consequently, the law enforcement and judicial FIUs seem to have also seen a need to address the AML/CTF investigations from a financial point of view – thereby making more use of financial analysts, tax and customs liaison officers. We note that liaison officers are employed by many of the EU FIUs, and these FIUs have, on average, the more access to databases.

We find that most EU FIUs have additional tasks and that the number of additional duties increases once an FIU undergoes significant organizational changes. We find no evidence that some types of FIUs are more burdened with additional tasks than the others. Further, we find no evidence that the number of additional tasks is matched with additional resources. However, since additional tasks are not equally resource intensive, we cannot support the claim that the FIU having more additional tasks are more burdened than the rest, either.

FIUs can start an analysis or an investigation on the basis of the reports received from the obliged entities, on the basis of an own motion and/or of another FIU request. All EU FIUs can start an investigation based on reports from the obliged entities and from another FIU but not all EU FIUs can start an investigation on own motion.

EU FIUs have also recognised the benefits of receiving reports online, and there seems to be a trend for receiving these reports in an electronic format. There also seems to be a general recognition of the need to support the work of the FIU with adequate data mining software. Supporting the latter claim, most FIUs have put in place a data mining system.

We also find that there is a general recognition of the importance of feedback. Formal contacts between the FIU and the reporting entities are in place in all countries. All FIUs meet with the reporting entities at least once a year and publish annual reports to give the reporting entities general feedback. The largest differences however lie in the extent of in-house training given by the FIUs and in the nature of feedback given to the reporting entities. Some FIUs are inclined to offer

individual feedback, whereas others prefer general feedback. This does not seem to be related with the type of FIU or with the size of the country.

Finally, it seems that obliged entities may report more to FIUs employing mostly financial staff than to FIUs employing mostly law enforcement staff. It seems that, all else equal, hybrid FIUs have received more reports from the obliged entities than other types of FIUs.

## **Chapter 9 INFORMATION FLOWS AND REPRESSIVE ENFORCEMENT**

### **9.1 Introduction**

Knowing which factors influence the effectiveness of the criminal law enforcement gives us the ability to enhance the effectiveness of criminal law enforcement system. We take the view that an effective criminal enforcement system is one that effectively enforces criminal penalties such that it deters criminal behaviour. We therefore look at the way criminal enforcement systems work and at the roles of the different institutions composing this system. In the previous chapter we have reported on the role of the FIU – both in its core functions as well as the ones that have been additionally assigned to the FIU in each Member State. Next, we explore the roles of the prosecution services – with a particular interest in their interaction with other national law enforcement agencies and with the FIU.

### **9.2 The role of public prosecutor in the AML/CTF policy**

The main task of any public prosecutor is the enforcement of the law, including AML/CTF law. The public prosecutor does so by prosecuting cases where the offences of money laundering and terrorism financing took place.

Information is the key to a successful prosecution in any money laundering case. In general, information on suspicious transactions (as well as other information relevant to money laundering case) can be used in several instances. It can be used to detect money laundering, to investigate a money laundering case, to build a case file against a suspect, and finally it can be used to deliver evidence and proof to the courts. On the basis of information it collects, the FIU can look for patterns of unusual transactions and therefore detect money laundering. Further, information on suspicious transactions provided by the FIU must be cross checked with other information (i.e. tax records, police data, real estate records etc.) to confirm the suspicion of money laundering. All this information will thereafter be compiled into a case file against the suspect. At this stage the public prosecutor comes in and decides whether or not to prosecute on the basis of the dossier. Then the case file is placed in court and if the court takes the case the trial procedures may commence.

The prosecutor is thus dependent on information effectively reaching them. This information can pass through many entities before reaching the public prosecutor. At a national level, the prosecutor usually depends on information filtered by the FIU and on information gathered by the investigative authorities. The tax authorities, the financial supervisory authorities and the secret services are also important sources of information for the public prosecutor.

#### **9.2.1 The principle of legality and the expediency principle**

According to the legality principle, each case which comes to the knowledge of the public prosecutor should be prosecuted. This implies no discretion over the prosecutorial decision. In practice, there are exemptions that make this principle also economically feasible. By contrast, according to the expediency principle, the public prosecutor has a discretionary power to prosecute. In practice, the expediency principle allows for the creation of a prosecution policy whereby the public prosecutor has guidelines in order to prioritise the prosecution in certain cases that are in the public interest.

Depending on the principles governing each Member State the newly criminalised money laundering offence or predicate crime will be taken at some point for prosecution. Under the legality principle this offence will be prosecuted immediately and under the expediency principle the effective

prosecution depends on subsequent guidelines of the prosecutor's office that prioritise prosecution with respect to the money laundering offence. This is particularly interesting when considering the relationship between the national administration and the prosecution services in each country.

### **9.2.2 The organisation of the public prosecutor's office**

#### *A monopoly in national prosecution*

There are several models to be found in Europe. Some countries are governed by the ex-officio principle whereby the public prosecutor possesses a monopoly on the prosecution decision. In others (i.e. Belgium and France) the public prosecutor prosecutes, but victims of the crime can initiate or even start a prosecution as well. Finally, the public prosecutor can also share the responsibility of prosecution with another authority, such as the police or another specialised law enforcement authority (the tax office, the customs authority etc.).

On the issue of the enhancement of the effectiveness of the criminal law enforcement system, knowing who can prosecute in each member state is crucial. If the prosecutor possesses a monopoly, then the focus should be on the public prosecutor and on increasing their capacity. If the prosecution shares this responsibility with another authority, then the focus should lie on increasing the effectiveness of the prosecution and of the other specialised law enforcement bodies that can take prosecution decisions.

#### *Specialised public prosecutors on money laundering offences*

In general, public prosecutors have to be able to prosecute any offence. However, different crimes impose different degrees of specialisation and some cases of money laundering might require special training and expertise. In some countries, public prosecutors must prosecute any money laundering cases coming their way. Expertise is thus spread across prosecutors. In others, there exist specialised prosecutorial units that handle the more complicated, the more resource intensive or the more sensitive cases of money laundering. Expertise is therefore concentrated.

#### *The relationship between the public prosecutor and the (other) investigation services*

There are large differences among the EU Member States. In some countries the public prosecutor also investigates and can also investigate money laundering cases. Furthermore, in some jurisdictions, the prosecution can also settle money laundering cases outside court. This is one solution to lower the workload of the courts and to allow a more effective allocation of court resources.

When the prosecution cannot investigate or has limited powers to investigate, the public prosecutor is dependent on law enforcement authorities with investigative powers to collect the needed information in a complete form that could be of use to the public prosecutor. Improving the efficiency of the criminal enforcement system therefore requires good cooperation between the prosecution and the investigative authorities as well as an efficient system of delegating responsibility.

### **9.2.3 Increasing the efficiency of the criminal repressive system**

Having overviewed the main differences in the organisation of the public prosecution and prosecutorial procedures, we argue that there are a few things that can help improve the efficiency of the criminal law enforcement system. A necessary condition in that prosecuting money laundering cases has priority. Then, sufficient resources should be allocated to the entities that are primarily

charged with the enforcement of the criminal system with respect to money laundering and terrorist financing.

Furthermore, the public prosecutor plays in most cases a central role in the criminal law system, but depends on other authorities in the enforcement of the money laundering offences, namely the police and other specialised law enforcement authorities. If the latter have other priorities or do not have sufficient resources then the public prosecutor lacks information, and is unable to perform its work efficiently. On the practical level it is therefore crucial to improve the cooperation between the public prosecutor and other criminal law enforcement authorities and to improve the selection and analysis of information and its distribution among law enforcement entities and the public prosecutor. These aspects are further elaborated in section 9.2 and a particular focus is placed on the information sharing between the prosecution, the law enforcement authorities and the FIU in each Member State.<sup>260</sup>

### 9.3 Model information flows concerning the repressive system

In the previous chapters we have looked mostly at the preventive side of the AML/CTF chain. For the purpose of complete coverage of the AML/CTF system one needs to also look at the repressive side of the chain. The efficiency of the preventive system depends on the efficiency of the repressive system and vice versa. As Nobel Prize winner, Gary Becker, described in his seminal work on 'crime and punishment'<sup>261</sup> – a criminal will take into account the size and frequency of punishment before deciding whether to commit the crime. This view is particularly applicable to the cluster of financially profitable crimes that money laundering, to a great extent, is based on and belongs to. Effective repression therefore ensures that the punishment is severe enough and frequent enough to deter criminal behaviour, whereas effective prevention ensures that the perceived frequency of the punishment is high enough to deter criminal behaviour. The two – prevention and repression – are therefore complementary: prevention can be efficient only if repression is also marginally efficient and repression is more efficient once prevention is also efficient.

#### 9.3.1 Estimating the efficiency of the repressive system

Based on our current effectiveness definition<sup>262</sup>, a repressive system and a preventive system are effective if they deter criminal behaviour. Similarly, a repressive system is effective if it can punish and it does so frequently enough that it is sufficiently deterrent. Taking this departure point, we look at every national repressive system and describe the way it works. We will therefore ask the following questions:

1. What type of punishment can be expected for deviant behaviour in ML or TF?
2. What is the probability that punishment will be imposed?

In attempting to answer the first question, we take the legal provisions mentioned in the Criminal Code of each Member State. As the probability that criminal behaviour will be punished in each Member State cannot be found in the statistics we construct a proxy<sup>263</sup> – namely, the value of the information chain that is present in each country. The probability that a criminal will get caught and

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<sup>260</sup> In the following analysis we focus almost exclusively on the cooperation between the various institutions that are able to effectively contribute to the repression of money laundering and terrorism financing.

<sup>261</sup> Becker, G. (1968) "Crime and Punishment: An Economic Approach", The Journal of Political Economy, Vol. 76, p. 169-217

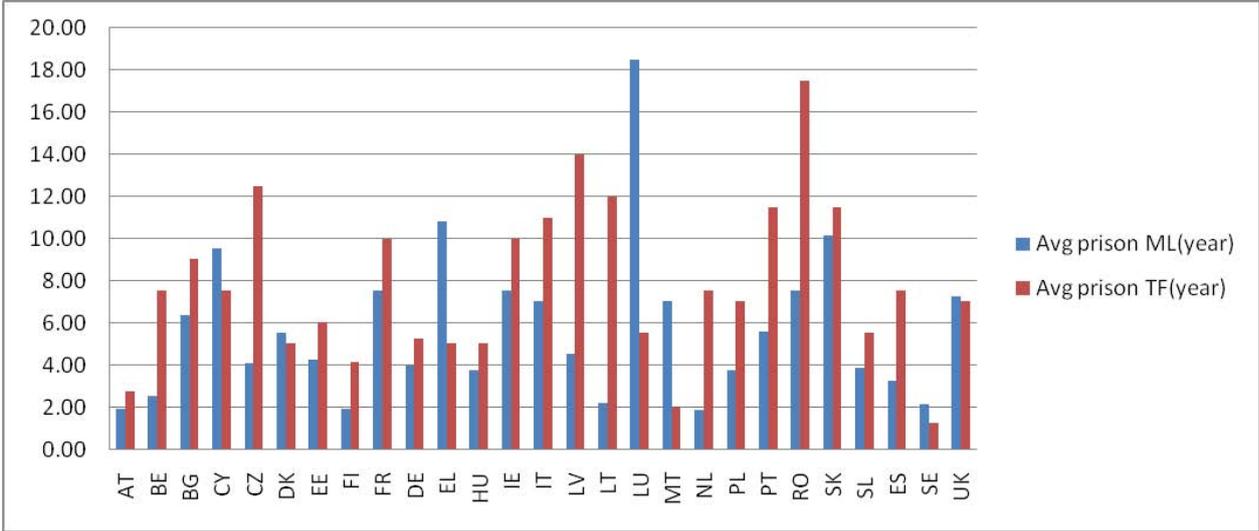
<sup>262</sup> See Chapter 3 of the current study.

<sup>263</sup> Using a proxy implies the indirect measurement of something that cannot be measured directly.

punished once he commits money laundering or terrorist financing is therefore proxied by the probability that financial information from the reporting entities (and others) effectively reaches the organisation(s) in charge of imposing the punishment. By ‘information effectively reaching the relevant organisations’ we assume that this information reaches them in due time, and in such a way that it can be used for punishment (as discussed in section 9.1).

In Figure 9.1 we have depicted the average punishments that have come out of our desk study, with respect to money laundering and terrorist financing<sup>264</sup>. They are depicted in blue and red respectively. In constructing these simple averages we have used different national legal texts that criminalise and impose punishments for these two crimes (i.e. the Criminal Code, the Code of Criminal Procedure and the AML/CTF Act). For each member state we were thus able to calculate<sup>265</sup> an average punishment for money laundering and terrorist financing by taking into account the different degrees of seriousness of the offence, as well as the possible imposition of financial punishments in addition to imprisonment<sup>266</sup>. Alternatively, we could have taken the average imposed punishments on cases involving money laundering and terrorist financing in each EU Member State. This second option was not applied here due to data asymmetry and lack of data.

**Figure 9.1: Punishments imposed in each MS in relationship to ML and TF in years of prison detention**



Source: National legal texts imposing financial punishments and imprisonment for the offences of money laundering and terrorist financing.

Figure 9.1 shows that the average imprisonment punishment for money laundering differs significantly among states. Similarly this is also the case for terrorism financing. If one criminal could therefore shop for punishments, Austria, Sweden, Finland and the Netherlands would be the most reasonable destinations for committing money laundering. Similarly, one would be most discouraged to commit money laundering in Luxembourg, as the average expected punishment here is approximately 9 times larger than in the first four examples. With respect to terrorism financing, the most stringent imprisonment punishments on average are to be found in Romania, Latvia and the

<sup>264</sup> In constructing this measure of punishments for money laundering and terrorist financing we did not take into account the expected financial loss due to the confiscation of assets involved in committing the crime. We owe this point to Prof. Ernesto Savona.

<sup>265</sup> Annexes 9.2 and 9.3 give an overview of the punishments that can be imposed in the case of money laundering and terrorist financing, when these are simple and/or aggravated offences.

<sup>266</sup> In constructing a single measurement of punishment for money laundering and for terrorist financing we used the transformation proposed by the Innocence Project <http://www.innocenceproject.org/> namely that one year in prison is worth 50,000 Euros.

Czech Republic, which according to our data, have not registered any convictions on terrorism financing. The least stringent ones can be found in Sweden, Malta and Austria, which again, have not registered any convictions on terrorism financing.

The literature on crime prevention continues to grow on the effects of expected punishment on criminal behaviour (Rauhut and Junker (2009), Harbaugh, Mocan and Visser (2011) to name some of the more recent). Experiments have shown that punishments do deter crime, but that many other factors play a role and that this deterrence is not straightforward or linear. The probability that criminals attach to being apprehended plays a significant role. All else being equal, this depends on the capacity of the repressive system to detect criminal behaviour and the latter is subject to discussion in the following subchapters.

## **9.4 Information flow chains**

Information theory studies the decisions making process that underlines transactions where one party has more or better information than the other.<sup>267</sup> The current global AML/CTF system is characterised by asymmetric information. In this setting, the national state agencies have imperfect information on the issue of the nature of the financial transactions they oversee nationally and internationally. The money launderers are aware of the illegality of their actions and have an incentive to hide this information from the national law enforcement units. In a successful informational framework therefore, the government institutions could precisely identify money laundering and could sanction it accordingly. By contrast, an AML/CTF system is fully inefficient when the law enforcement agencies cannot trace the ML/TF financial transactions happening in their own financial system. If that is the case, money laundering and terrorism financing related transactions yield more benefits than legal financial transactions; and if we assume rational profit maximizing financial persons, the illegal transactions would multiply and eventually the legal transfers would no longer exist.

Intelligence gathering is therefore the key to reducing this asymmetry. Furthermore, since information has to ultimately reach the entity with the capacity (i.e. resources, expertise etc.) and authority to react accordingly, intelligence communication is a necessary condition to effectively reduce this information asymmetry.

### **9.4.1 Benefits of analysing the information flow chains**

Drawing the information chain allows us to easily identify who is in charge of repression in the AML/CTF chain, which institutions help build repression, and how they connect to each other. A simple way to trace who knows what and how much in the AML/CTF setting is to look at that country's information chain. Information flow charts are virtual maps that reflect the communication that takes place between different entities within a system. They are used in understanding the nature and the frequency of the interactions between the different.<sup>268</sup> Concurrently, they allow a better understanding of what type of information distribution is mostly used in the AML/CTF setting.

In the current European AML/CTF systems one can observe several typologies of flows of information. In general the literature (e.g. Schott (2004), Gilmore (1999)) recognises that the reporting entities hold precious, first-hand information about their customers and are therefore best able to distinguish

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<sup>267</sup> Akerlof, G.A. (1970), 'The Market for 'Lemons': Quality Uncertainty and the Market Mechanism', in: Quarterly Journal of Economics, Vol. 84 (3), pp. 488–500

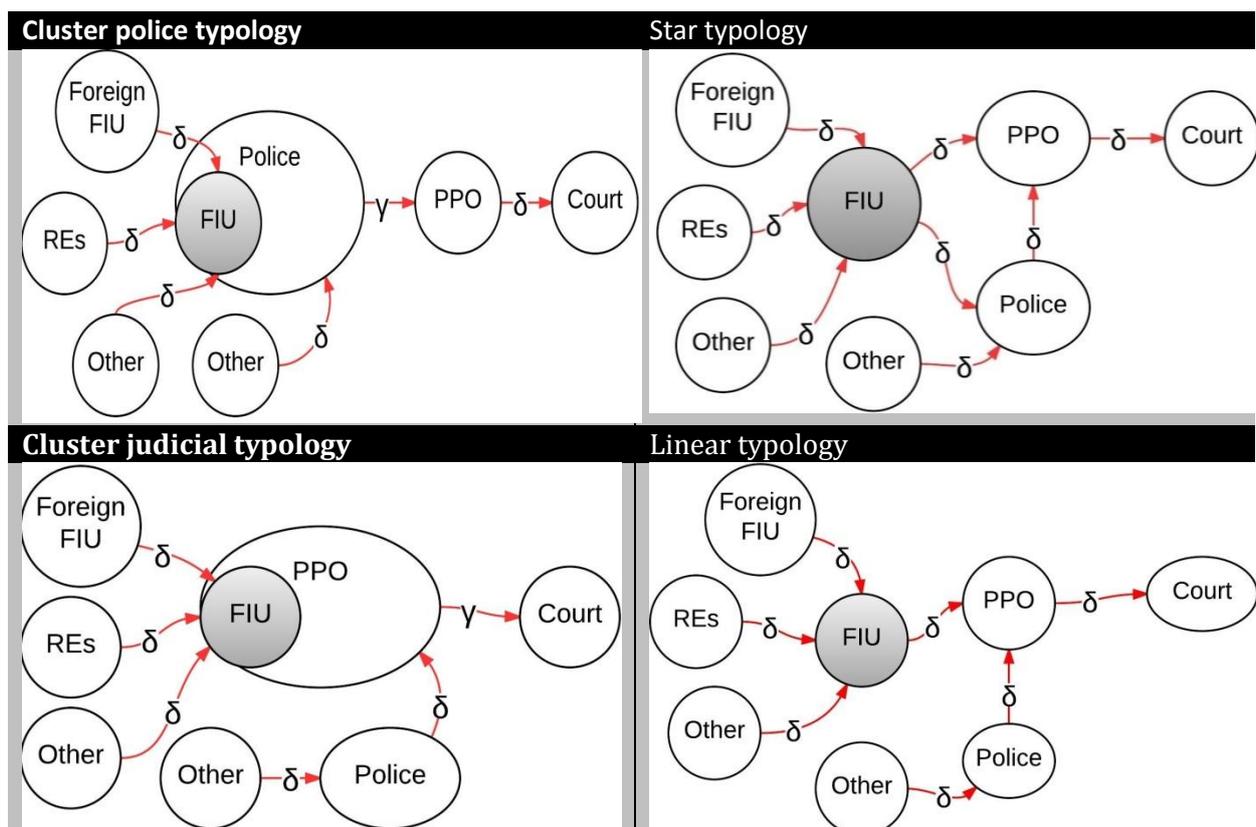
<sup>268</sup> Bruza, P. D., Van der Weide, Th. P. (1993), 'The Semantics of Data Flow Diagrams', University of Nijmegen

the unusual transactions that their clients might perform. Similarly, the law enforcement agencies have their own sources that supply information and possibly intelligence over a wide array of crimes, inter alia money laundering or terrorist financing.

Information about money laundering or terrorist financing offences therefore enters the AML/CTF informational chain through different points of access. The purpose of the Third EU AML/CTF Directive was to support the development and the expansion of the financial gates, as can be also seen from the articles justifying the Directive<sup>269</sup>: “In addition to the criminal law approach, a preventive effort via the financial system can produce results.” Information can also come from police informants or from other sources available to the law enforcement authorities. The latter, however, lies outside of the scope of the Directive, since the EU has only limited competence in criminal law matters.

Once the intelligence reaches the first relevant actors – the FIU and/or another law enforcement agency –the information asymmetry between the criminals and the repressive system is reduced and follow-up measures to investigate and/or correct behaviour can be applied. The information asymmetry thereafter needs to be further reduced such that the authorities in charge with repression can effectively apply the punishment. Figure 9.2 depicts in a simplified way the main actors in the AML/CTF setting and possible interaction patterns among them – in four types of information flow chains.

**Figure 9.2: Information flow chains – 4 main typologies**



Source: own made based on the analysis of the main information flows patterns that occur in the EU member states

<sup>269</sup> The text of the Directive can be downloaded at [http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l\\_309/l\\_30920051125en00150036.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_309/l_30920051125en00150036.pdf)

In the above-mentioned four types of information flow chains (also referred as typologies of information transmission) there exist, for simplicity purposes, three main sources of information for the FIU. On the left hand side of each chart these are drawn as bullets 'Foreign FIU', 'REs' and "Other". Each of these bullets symbolically stands for: the foreign FIUs – source of transnational information; for the obliged entities – source of mostly financial information; and respectively for the state institutions and other non-obliged entities who uncover facts of ML or TF. The bullet 'Other' can be seen depicted twice in the graphs. This is due to the fact that differentiating between the informal information sources of the police and of the FIUs is difficult and un-necessary for the purpose of this analysis. Here we assume that these informal informants are active and that they contribute as much as the reporting entities and the foreign FIUs to the AML/CTF information chain.

For simplicity purposes we have also depicted police and prosecution as two separate bullets without including the many organisational and institutional differences that can occur in the organisation of the two institutions (i.e. specialised investigative units handling ML and TF, and other prosecutorial bodies that deal with ML in connection with a specific criminal offence). The same differences (courts of different instances, criminal and administrative courts etc.) are not depicted in the court system – and for this matter the court system is depicted with one single bullet to which ultimately information is transmitted for the purpose of a final decision.

For the analysis we are going to perform, the numbers of bullets informing the FIU are not relevant as long as one type of information chain does not have more informants than the others. The graphs differ on the issue of the position of the FIU. Together with the way the FIU shares this information, the information flows alter significantly.

Drawing the information flows between the agents in this information chain, we can easily see how information is distributed among agents, and whether there are any bottlenecks; how big the informational distance between the criminal and the repressor is; and given two types of information decay what is the chance that the repressor punishes/apprehends the criminal.

We assume that the level of knowledge among reporting entities is the same. That means that each entity in this AML/CTF system has their own knowledge, and this can be quantified, for simplicity reasons, to a unit 1. We assume that all entities contribute with the same level of knowledge to the AML/CTF system – an assumption that is made only for simplicity reasons.

#### 9.4.2 Information flows when information decays

When information is transmitted unilaterally from entity A to entity B, entity A retains their knowledge (as knowledge is non-rivalrous and non-exclusive<sup>270</sup>) and B gets an extra unit of knowledge, reduced by the proportion lost or not transmitted, or (purposefully) transmitted erroneously. Any form of loss of information in these models is called information decay or information loss. There are several types of information decay – and for every flow of information in Figure 9.2, the type is denoted on top of the arrow with  $\delta$  or  $\gamma$ .

*Information value*  $_{Entity B} = \sum_i [(information\ decay) * (knowledge\ received\ from\ connection;)] + own\ unit\ of\ knowledge$

In this model we assume two types of information decay factors:

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<sup>270</sup> For a description of the characteristics of public goods in Microeconomic theory, please see: Mas-Colell, A., Whinston, M.D., and Green, J.R. (1995), *Microeconomic Theory*, Oxford University Press

### 1. *Limited interaction and a unilateral exchange of ideas only (depicted hereafter with coefficient $\delta$ )*

When a person knows what his interaction partners (i.e. other persons, organisations etc.) think or what their values and value systems are, that person can anticipate the future reaction of his interaction partners. Knowing what to expect of others increases trust and willingness to cooperate.<sup>271</sup> Imperfect information or no information will, on the other hand, create power imbalances and distort markets that otherwise could have been efficient.<sup>272</sup>

Correctly anticipating how others will behave depends on how much information one has on them. The underlying assumption here is that, the amount of information one holds on the others is directly influenced by how connected one is with them. The literature shows that interaction patterns determine how ideas circulate among members of a network. Ideas are not distributed easily because people are uncertain of whether these ideas are beneficial to them or not. Two people who are connected will therefore be able to better circulate ideas and share information than two people who are not connected.<sup>273</sup> Consequently, Goyal (2007) shows that correctly anticipating how others will behave depends on how connected one is with the others.

Depending on the institutional setting governing the relations between two organisations (i.e. organisation A and organisation B) the size of the coefficient can change accordingly. We argue that the information transmitted by organisation A to organisation B has a low informative power ( $\delta \rightarrow 0.1$ ) when A has no knowledge of B's interests, field of work etc. and does not interact with B. Similarly the informative power increases ( $\delta \rightarrow 0.5$ ) once A receives periodic feedback from B on the use of this information by B at a later stage. Finally, there is no information loss ( $\delta \rightarrow 1$ ) when organisations A and B are one, or when members of organisation A work within organisation B in a liaison/detachment setting. When looking at the information flow chains we take a reverse-mechanism approach and elaborate on the possible behaviour patterns that one entity has depending on their position in an information chain. The position in the chain is supplemented by some information on the frequency and nature of interaction. It is not a perfect measure of idea dispersion and of expected behaviour but it can offer significant insights into the efficiency of intelligence dispersion in the AML/CTF setting in each country.

### 2. *Deviant interests (depicted hereafter with coefficient $\gamma$ )*

When entities have deviant interests information can be lost to a great extent. This is because pressure groups – such as lobby groups and other corrupting entities – might be able to impede the transmission of information when this does not serve their interests. When weakness towards such 'corrupt practices' is a persistent factor of the national setting, one can imagine no institution is safe<sup>274</sup>.

The concept of using checks and balances (as originally introduced by Montesquieu) has long been recognised by the UNODC and the World Bank as a fundamental mechanism to improve governance, contain corruption and improve accountability<sup>275</sup>. The underlying idea is that corrupt practices take place easier within 'closed doors' than otherwise. This means that concentrating power in the hands of too few allows for more deviant interests to go un-noticed.<sup>276</sup> In the following, we structure the information flow decay along the spectrum of presence of corruption and checks and balance mechanisms, and we expect a high information decay ( $\gamma \rightarrow 0.1$ ) when corruption and lobby groups are

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<sup>271</sup> Nooteboom, B. (2002), *Trust: Forms, Foundations, Functions, Failures and Figures*, Edward Elgar Publications

<sup>272</sup> Wilson, C. (2008), 'Adverse selection', in: *The New Palgrave Dictionary of Economics*, 2nd Edition

<sup>273</sup> Goyal, S. (2007), *Connections: an introduction to the economics of networks*, Princeton University Press

<sup>274</sup> See Annex 9.2 for a list of indices for each Member State.

<sup>275</sup> Available at : <http://go.worldbank.org/2GQCH3X4C0>

<sup>276</sup> For a similar discussion on checks and balances and the credibility of the central bank in financial markets, please see Keefer, P. and Stasavage, D. (2002) *International Organisation*, Vol. 56, No. 4, *The Political Economy of Monetary Institutions*, pp. 751-774

powerful and no checks and balances are put in place. Similarly, we expect a low information decay ( $\gamma \rightarrow 1$ ) when corruption is low and checks and balances are in place.

Finally, we assume that the two information decay factors occur independently of each other and have an additive effect. Furthermore, in this prime comparison of the models we do not make use of any numerical representation to rank the efficiency of the information flows. This is done for each country in particular in section 9.4.

**9.4.3 Quantifying the analysis**

With the help of this categorisation of information decay we can construct a measure for the probability of a criminal being apprehended in the AML/CTF system.

*In the Linear typology:* the FIU receives information from the reporting entities and from other FIUs, and transmits it further to the PPO. Similarly, the police are informed from their own sources (informants, on-going investigations etc.) and forward this information as well to the prosecution. Without proper feedback, this information flow chain is highly vulnerable to the information loss due to the limited interaction and unilateral exchange of ideas.

$$\text{Value of the network}_{Linear} = 8 + 7\delta + 6\delta^2 + 4\delta^3$$

*In the Star typology:* the FIU receives information from the reporting entities and from other FIUs and transmits it further to the LEAs. The FIU pools the data filtered in a database that all LEAs can access. The FIU is therefore able to transmit this information directly to all LEAs in a star-network distribution system. This information flow chain is also vulnerable to the limited interaction information decay factor, but less than in the linear cluster because a star distribution implies an inherent feedback.

$$\text{Value of the network}_{Star} = 8 + 8\delta + 10\delta^2 + 8\delta^3 + 3\delta^4$$

*In the cluster judicial typology:* the FIU is part of the prosecution. Whatever information it receives from the reporting entities it keeps internally. Here information has no limited interaction decay as the FIU knows exactly what the other prosecutors need and should receive from them. However, in a case where deviant interests can affect information flows (i.e. high levels of corruption in the country) there will be information loss within the PPO as cases that are not ‘wanted’ to be pursued can be retained within the PPO. The lack of checks and balances makes this deviant interests factor larger in countries where corruption is evident than otherwise.

$$\begin{aligned} \text{Value of the network}_{Cluster\ judicial} &= 9 + 10\delta + 5\delta^2 + \delta^3 && \text{(without corruption)} \\ \text{Value of the network}_{Cluster\ judicial} &= 9 + 8\delta + 2\gamma + 4\gamma\delta + \delta^2(1+\gamma) && \text{(with corruption)} \end{aligned}$$

*In the Cluster Police typology:* the FIU is part of the police. Whatever information it receives from the reporting entities it keeps internally and sends to the PPO at a later stage. Once again, information has no limited interaction decay as the FIU knows exactly what the other police officers need and should receive from them. However, in a case where deviant interests can affect information flows (i.e. high levels of corruption in the country) there will be information loss within the police. The lack of checks and balances makes this deviant interests factor be larger in countries where corruption is poignant than otherwise.

$$\begin{aligned} \text{Value of the network}_{Cluster\ police} &= 9 + 10\delta + 6\delta^2 + 4\delta^3 && \text{(without corruption)} \\ \text{Value of the network}_{Cluster\ police} &= 9 + 8\delta + 2\gamma + 6\gamma\delta + 4\gamma\delta^2 && \text{(with corruption)} \end{aligned}$$

Table 9.1 compares the mean informational value of the network for two practical reasons. Comparing the aggregate value of the network would allow for an artificial increase in value by adding more entities. Second, the aggregate value reveals the capacity of the AML/CTF system to transform information in intelligence on the issue of ML and TF, as otherwise, looking only at the information that reaches the prosecution or the courts, the system would no longer be able to distinguish between police and FIU input. A detailed description of the calculations leading to table 9.1 is provided in annex 9.1.

**Table 9.1: Comparing information flow chain types in terms of the network information values**

WITHOUT CORRUPTION		$S-P = 3\delta^4 + 4\delta^3 + 4\delta^2 - 2\delta - 1$
Parameter values	Information chain values	Ranks
$0.55 < \delta \leq 1$	Value of the network <sub>Star</sub> > Value of the network <sub>Cluster police</sub>	$S > P > J > A$
$0 \leq \delta < 0.55$	Value of the network <sub>Star</sub> < Value of the network <sub>Cluster police</sub>	$P > S, J > A$
WITH CORRUPTION		$S-P = 3\delta^4 + 8\delta^3 + 10\delta^2 - 1 - \gamma(4\delta^2 + 6\delta + 2)$
Parameter values	Information chain values	Ranks
$0.55 < \delta \leq 1$	Value of the network <sub>Star</sub> > Value of the network <sub>Cluster police</sub>	$S > P > J > A$
$0 \leq \delta < 0.55, \gamma$ very small	Value of the network <sub>Star</sub> > Value of the network <sub>Cluster police</sub>	$S > P > J > A$
$0 \leq \delta < 0.55, \gamma$ close to $\delta$	Value of the network <sub>Star</sub> < Value of the network <sub>Cluster police</sub>	$P > S, J > A$
Extreme values		
Value of the network <sub>Star</sub> > Value of the network <sub>Linear</sub>		
Value of the network <sub>Cluster police</sub> > Value of the network <sub>Cluster judicial</sub>		

*Legend: The comparison of information flow chains efficiency is only mathematically possible within certain intervals for the information flow decay factors. The left column shows the intervals for which the comparisons hold.*

Table 9.1 shows that the Star typology (where information is shared at a wider scale) outperforms most models. The cluster-police model can also perform best if we assume high information decays and no corruption. However, when corruption is present the cluster-police model is performing less than the star model. Furthermore, the linear model underperforms at all times. The reason for this ranking lies in the fact that it assumes away the use of feedback strategies, pooling of information and the use of detached officers to improve flows of information. However, some countries have put in place different mechanisms of additional checks and balances that might help increase information dispersion, and therefore increase the probability of efficient repression.

From a theoretical point of view, we can therefore conclude that when corruption is present and expected to be large, the star information transmission model outperforms all others. When corruption is not present and the information decay is high the cluster police information flow model outperforms all others. The linear information flow model without any feedback performs least well. Finally, all models can work equally well if information decay is reduced – i.e. if knowledge flows bi-directionally among interacting entities and if the right checks and balances are in place.

## 9.5 Information flow diagrams of the 27 EU Member States

We look at the information flows of each of the 27 EU Member States - at where the FIU is located, at which institutions it interacts with, and in what type of setting. We also look at whether the FIU communicates with the other law enforcement agencies and whether the FIU is in a position to take a pro-active approach to its interaction partners. In some cases, cooperation is facilitated by means of an institutional setting, and in others this is done by means of feedback and by means of employing liaison officers - detached officers from other key players in the AML/CTF repressive system.

We therefore try to relate the AML/CTF information flow effectiveness to the output of the repressive system – namely the prosecutions and the convictions of money laundering and terrorist financing. If the theoretical models we have discussed earlier are correct, we expect that information flows together with the repressive measures that are taken upon conviction on ML or TF are a good means of explaining why some countries are deterring crime better than others.

Our **hypotheses** to test for this section are the following:

Countries with effective information flow systems have more money laundering and terrorist financing convictions and prosecutions.

Countries that have a broader money laundering definition are better able to discourage criminal behaviour, given the information system they have in place.

Double reporting obligation reduces information decay.

Countries of the same penal law background will have the same punishment systems and information flow systems.

Information flow systems where prosecution is more specialised in ML are more efficient in producing ML cases terms.

Country adaptations can point to a perfect model of information flow that could be exported to other Member States as well.

If countries have in place systems of information flows which facilitate information dispersion and the reduction of information asymmetry between the money launderers and terrorist financiers, and the law enforcement authorities, then, all else equal, these countries should have been best able to prosecute and convict on these charges. Similarly, we expect that countries having more specialisation on ML, or where money laundering is specifically targeted by a select group of prosecutors, are able to produce more prosecutions and convictions. This hypothesis tests the question – what type of specialisation is most efficient – should specialised prosecutors be clustered together and therefore be exposed to increased learning from each other, or should specialised prosecutors be spread geographically (therefore not constituting a focus group) since they are therefore better able to connect with the local realities and would benefit from the experience of handling other types of criminal offences. The latter argument would hold especially when considering that money laundering is often a crime connected to another predicate crime.

Furthermore, we expect that countries that have adopted a broad definition of money laundering (as defined in chapter 7) have more effective information flows. This has to do with the fact that ineffective networks underperform most (and vice versa – effective networks perform better than the others) when there is much information to process. For example, if we think of information flows where there is a bottleneck, problems will only occur when the bottleneck is too narrow to allow for information passage. Furthermore, we expect double reporting to be used where FIUs are the main sources of decay in order to increase economic effectiveness.

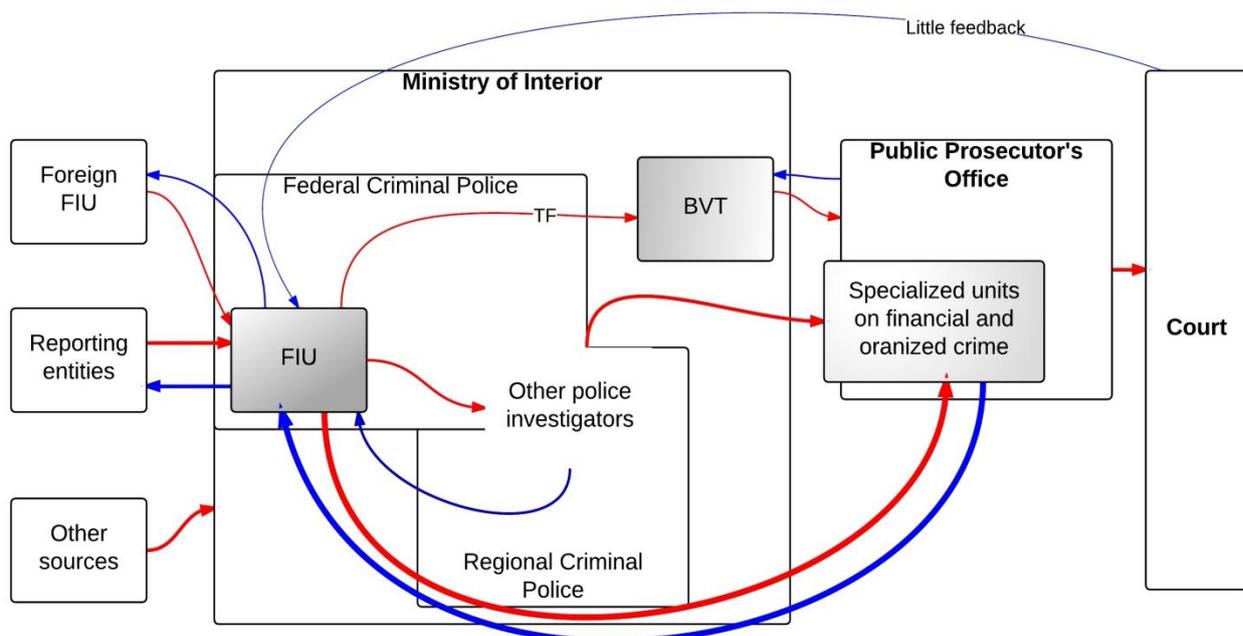
We hypothesise as well that the punishment given to the money laundering and terrorist financing offences is highly correlated with the type of criminal law system that countries have in place. Countries that share penal origins are likely to have chosen similar criminalisations for money laundering and terrorist financing. And finally, we argue that convergence of best practices can be seen on the issue of the improvement of national cooperation and information transmission.

### 9.5.1 Austria

When the Austrian FIU receives an STR related to ML it will analyse it and – depending on the result of analysis – it will conduct a criminal investigation under the supervision of the competent public prosecutor or it will forward it to other departments or organisational units of the Federal Police for investigation<sup>277</sup>. In most cases, the FIU conducts the investigation, but depending on its competence and on the territorial competence of the police, the FIU can forward the investigation to other units of the Federal Criminal Police or to the local police<sup>278</sup>. According to the FATF (2009), the Austrian FIU’s ML investigations are divided into 3 areas: ML through the use of offshore, ML through frauds, and ML related to, or associated with, former Member States of the USSR<sup>279</sup>.

The reception of an STR implies the beginning of a police or judicial investigation. When the reporting entities indicate that the STR is related to FT, the FIU immediately forwards it to the BVT (Austrian Federal Agency for State Protection and Counter-Terrorism). The BVT (Austrian Federal Agency for State Protection and Counter-Terrorism) is a law enforcement authority, established within the Ministry of Interior which is responsible for investigating cases related to FT, that originate from an STR (and are thereby forwarded by the A-FIU) or from its own sources<sup>280</sup>. The BVT has 9 regional departments and conducts its criminal investigation under the supervision of the PPO. According to the FATF (2009), the BVT regularly uses financial investigations with the purpose of understanding the structure of the terrorist groups<sup>281</sup>.

**Figure 9.3: AML/CTF Information flows in Austria**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

<sup>277</sup> FIU Austria (2011), *Annual report*, p. 11

<sup>278</sup> FATF(2009), *Third Mutual Evaluation Report on Austria*, p. 75

<sup>279</sup> *Ibid.*, p. 81

<sup>280</sup> FATF (2009) *Third Mutual Evaluation Report on Austria*, p.81

<sup>281</sup> *Ibid.*, p. 82

Austrian law enforcement authorities must ensure that all ML and FT offences are properly investigated<sup>282</sup>. In Austria prosecutors prosecute ex officio all criminal acts which come to their knowledge and are not prosecuted only on demand of the victim or other interested parties. ML and FT are therefore prosecuted mandatorily<sup>283</sup>.

According to the Austrian representative, there are 17 prosecution offices competent to prosecute ML and TF. Competence is divided geographically and each prosecution authority is competent for a specific region. This is laid down in the Criminal Procedure Code. The PPO has a general responsibility to prosecute all criminal acts, including ML and FT. According to the FATF (2009) Austrian law “does not specifically provide for the establishment of special sections in charge of financial crimes and organised crime within the public prosecutor’s office”. Nevertheless, according to the Austrian representative, there are groups of prosecutors in the larger Prosecution offices in Austria which only deal with economic and organised crime, and Vienna has such a group of 10 specialised prosecutors. Furthermore, the FATF (2009) reports that out of 300 prosecutors operating in Austria, approximately 10% were specialised in ML and in investigating financial crimes.

According to the Austrian representative, during the investigation, the PPO and the FIU are in close contact and once the prosecutor takes the case to court, the FIU receives feedback from the court when the case is dropped (when there is no conviction). The FIU does not receive feedback when the accused is sentenced unless they formally request this information. On the issue of ML, the Austrian representative argued that approximately 60% of indictments originate from the FIU reports and 40% from other police sources. Similarly, approximately 85% of convictions on ML can be traced back to FIU reports.

### 9.5.2 Belgium

When the Belgian FIU has declared that a specific STR or a ‘dossier’ is suspicious, the case will be forwarded to the competent public prosecutor. Usually, this means the PPO where the transaction took place (geographical location). It is possible that the FIU intentionally forwards it to another district PPO once it has reasons to believe that this will be more convenient for the success of the prosecution. However, in the latter case the FIU does not inform the prosecutor where the predicate offence and the laundering took place.

In Belgium, there exists no centralised database with all information that the FIU forwarded to the prosecuting authorities. This means that a prosecutor does not know whether other possibly relevant STRs have already been forwarded by the FIU to another PPO. Currently the issue is being addressed and the project ‘Gegevens database’ whereby such a database will be constructed is in progress<sup>284</sup>.

The FIU is well connected to the police and to the public prosecution’s offices. The FIU’s liaison officers provide access to police databases, but also take care of the contacts between FIU and the police. Also, the head of the FIU is a prosecutor detached to the FIU to ensure efficient flows of information to the prosecutors. Furthermore, since 2011 the FIU has ‘contact magistrates’ for each district prosecution office<sup>285</sup>. These contacts are the entry points of information in the respective PPO. The contact magistrates have experience with financial crime but do not have to prosecute all the cases received from the FIU themselves. According to a Belgian representative one needs to consider

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<sup>282</sup> Article 34 (1) of the Austrian Criminal Procedural Code (StPO)

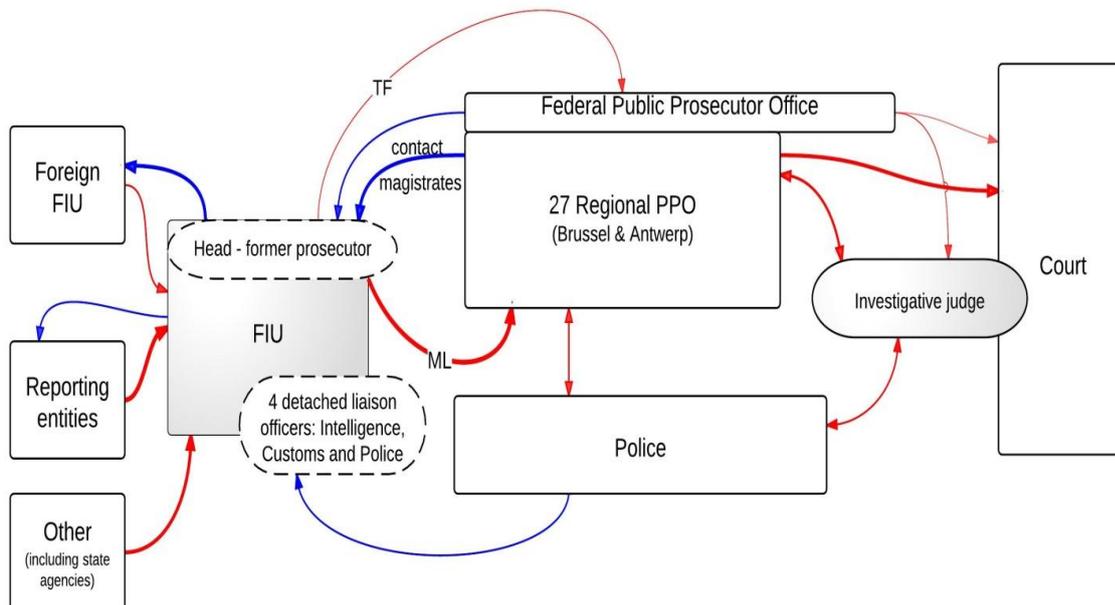
<sup>283</sup> FATF (2009) *Third Mutual Evaluation Report on Austria*, p.80

<sup>284</sup> FATF (2011) *Third Follow-up Report on Belgium*, p. 126

<sup>285</sup> *Ibid.*

increasing the financial and human resources allocated to the prosecuting authorities such that these can effectively process all the information delivered to them by the FIU.

**Figure 9.4: AML/CTF Information flows in Belgium**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

In Belgium the public prosecutor leads the criminal investigation. When the FIU has forwarded a case to the competent public prosecutor, the latter has essentially four options: to drop the case immediately; to forward the case to the police to investigate some more details (when additional evidence is necessary); to appoint an investigative judge who can, for a certain period of time, take the lead of the criminal investigation; or to prosecute the case immediately on the sole basis of FIU information. According to Belgian representatives, an investigation judge is generally involved when special investigative techniques need to be used, or when coercive measures need to be imposed. Investigations led by an investigative judge generally take longer (4 to 5 months). With respect to prosecutorial specialisation, the Federal Prosecutor in Belgium is (mainly) responsible for taking up terrorism and terrorist financing cases. Only seldom will it prosecute ML cases as ML is generally handled by the local prosecutors. The federal prosecutor has nationwide competence to prosecute whereas district prosecutors have local jurisdiction.

The FIU receives feedback from the public prosecutor or police when a case is terminated or brought before the court and a final judgment is given. This feedback is given annually, but on a case-specific basis. The information that the FIU supplies to the public prosecutor is either used as a starting point of a case (i.e. the information from the FIU itself can be sufficient reason for a public prosecutor to go to court), or as additional information to an on-going law enforcement investigation. In judgments, the value of FIU reports on STRs is generally not mentioned. However, typologies or indicators have been mentioned in various judgments, for example the fact that a person had no economic activity but was in the possession of expensive cars and houses which could not be explained.

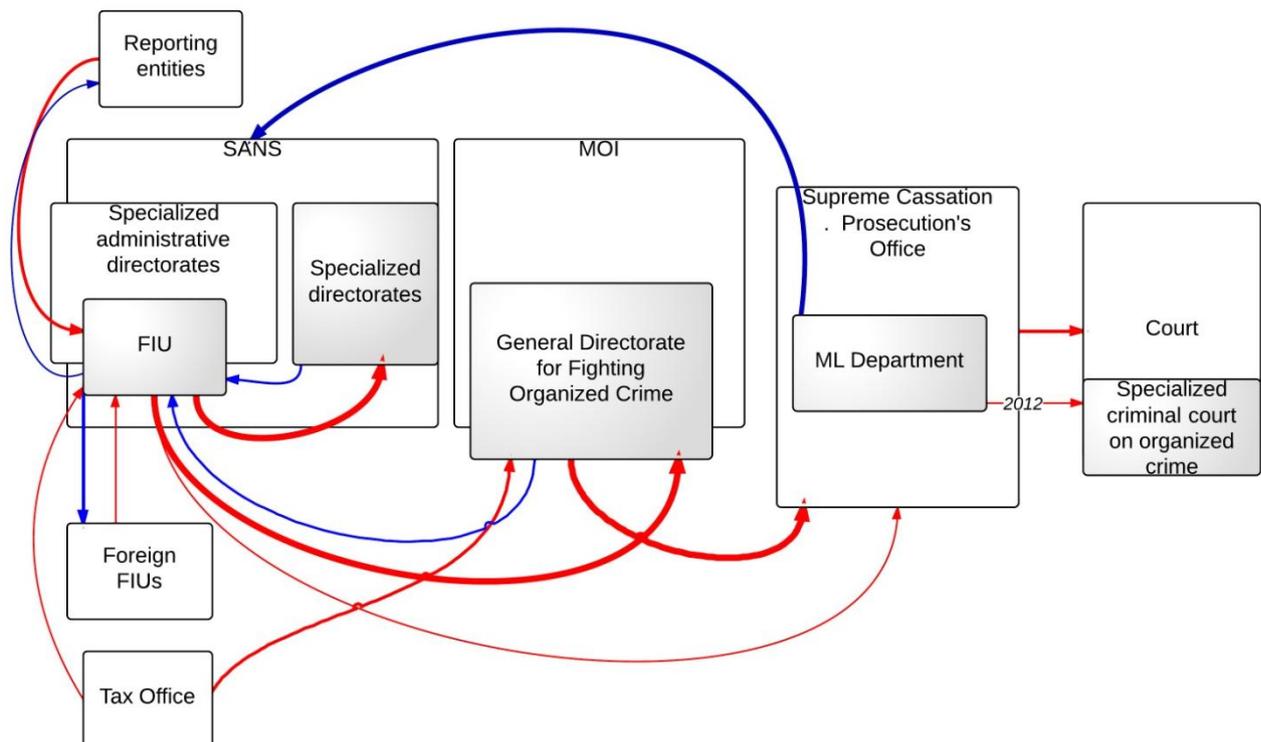
### 9.5.3 Bulgaria

In Bulgaria, upon the receipt of an STR, the FIU performs a financial analysis and forwards its conclusions further<sup>286</sup>. The Bulgarian authorities mentioned that the Tax Office is also sending reports to the FIU for further investigation.

According to the FIU representatives, the FIU has disclosed a large proportion of the results of its analyses to the competent directorates of SANS for further checks in regard to potential money laundering. A significantly smaller number of disclosures have been made also in relation with potential terrorist financing cases that the FIU suspected. The FIU representatives stated that during 2008-2012 almost half of the disclosures made by the FIU were sent to the special directorates of SANS. Another large share of these disclosures was reportedly sent to the specialised directorates of the Ministry of Interior Affairs. Further the FIU also sent the information directly to the PPO when there is enough information to immediately undertake pre-trial investigation or prosecution.

These operative entities supplement the analysis of the FIU with non-financial information that positions the suspect in a possibly criminal environment. These officers can during their analysis request the assistance of the PPO. Finally, when a case contains sufficient information, the operative officers forward their case to the PPO and a criminal investigation is started. At this point, police investigators under the supervision of investigative magistrates start a pre-trial investigation.

**Figure 9.5: AML/CTF Information flows in Bulgaria**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

<sup>286</sup> However, the provisions of article 12.4 of the Law for the Measures Against Money Laundering do not specify the required destinations of the information analysed by the FIU. The FIU provides the information to the security and public order services by its own discretion.

The law enforcement entities are not obliged to automatically send feedback to the FIU in regard to the outcome (initiated pre-trial proceedings or prosecution) of the disclosures sent to them. However, the FIU authorities argue that the FIU receives feedback in other ways. Annually, the FIU receives approximately 300 requests from the competent law enforcement structures (including SANS, the Ministry of Interior and the prosecution services) for cross checks with the FIU database. These requests are also taken into account when analysing future STRs. The interests of the law enforcement authorities are therefore incorporated into the future work of the FIU. In addition to this, the Bulgarian authorities argue that the LEAs usually revert back to the FIU after receiving a disclosure, in order to work on identifying further information on links or to ensure a proper financial analysis of the case and of the persons involved in the offence. Annually, the FIU seems to receive approximately 300 such inquiries.

Furthermore, the FIU representative mentions that on the more important cases, cooperation between the FIU and the LEAs is very good. This is supported by the Bulgarian PPO representative, who argues that the PPO takes a serious position in assisting and in giving feedback to the FIU and to the operative agents of the SANS and of the Ministry of Interior. This is due to the fact that the PPO recognises the importance of the preventive investigations in what later constitutes the prosecution's work. However, there is no requirement for the PPO to guide the FIU on this matter.

With respect to specialisation, in Bulgaria, within the Supreme Cassation Prosecution's Office there is a special AML department that deals with the most complex money laundering cases and, given the hierarchical structure of the Bulgarian prosecution system, is also in charge of giving support to district prosecution offices and magistrates in dealing with money laundering cases. In 2012 a Specialised Criminal Court will be inaugurated where, according to the Bulgarian representatives ML and TF cases will be able to better be investigated and tried<sup>287</sup>. There will also be a specialised PPO for organised crime that will investigate money laundering and terrorist financing.

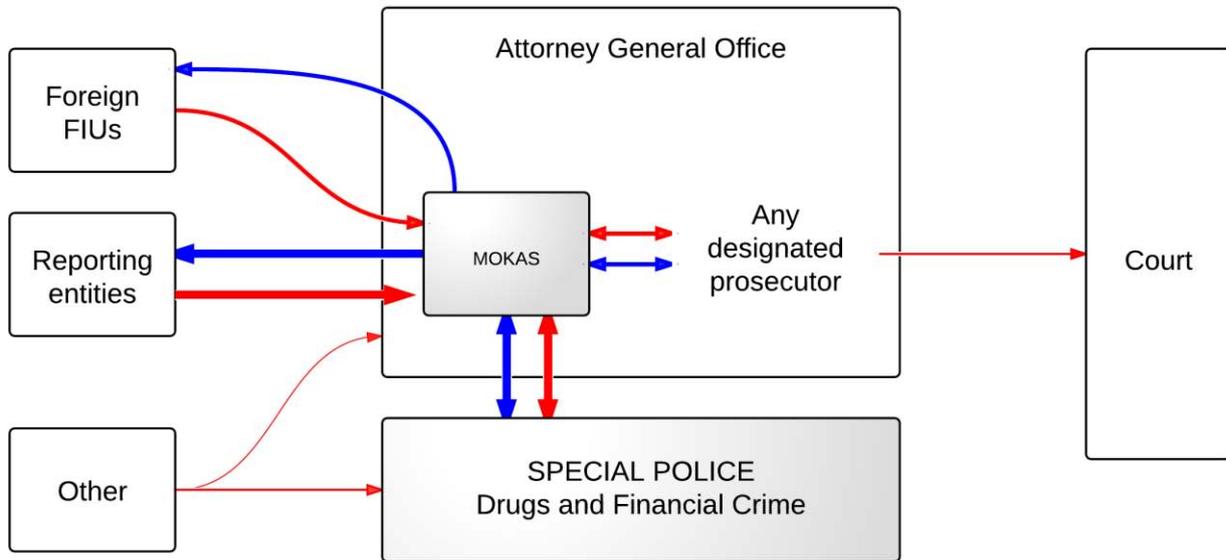
#### **9.5.4 Cyprus**

In Cyprus, the head of the FIU is the first filter of the reports that reach the FIU. Based on the profile of the SAR, on the background of the investigators and on the number of cases that they are working on at that time, the head decides on who will be the investigator of the SAR. The head can designate one or more investigators (a team) depending on the size of the case. The FIU performs the analysis of the STR but also performs the criminal investigation. All members of MOKAS have investigative powers; that is, they have the possibility to interrogate, take witness statements and travel abroad to receive information, and more. Further, the FIU usually cooperates with the other LEAs in Cyprus during their investigation.

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<sup>287</sup> This is a project still to be undergone, hence a further investigation into the nature and scope of this specialised unit will follow at a later stage of the ECOLEF project.

**Figure 9.6: AML/CTF Information flows in Cyprus**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

The Cypriot representative argues that the FIU works closely with the police and in particular with the financial crime department and the drugs law enforcement department of the police. The FIU can and does request the assistance of these police officers in their investigation and to clarify whether some cases could be connected to drugs-related offences or not. Also, the police can request assistance in cases where the expertise of MOKAS can be useful.

When confronted with a case under police investigation which also involves money laundering, the investigation is prepared by the police and by their experts, while the FIU adds their investigation on money laundering to the police report. Further, the prosecutors of MOKAS offer legal assistance to their counterparts of the Attorney General’s Office (AGO) in cases involving money laundering and terrorist financing. They are also responsible for the confiscation of assets and goods once a conviction has been achieved.

With respect to feedback and specialisation, the FIU seems to be the leading authority in AML/CTF matters, involved in all the stages of the preventive and repressive enforcement.

### 9.5.5 Czech Republic

If the Czech FIU (also known as the Financial Analytical Unit - FAU) finds facts suggesting that a crime had been committed, it shall lodge a criminal complaint under the Code of Criminal Procedure and provide the law enforcement authority with all the information that the Ministry had found in the course of its investigation.<sup>288</sup> The Czech representatives argued that this provision allows the law enforcement authorities better access to cases that are in the public interest. Moreover, the FAU

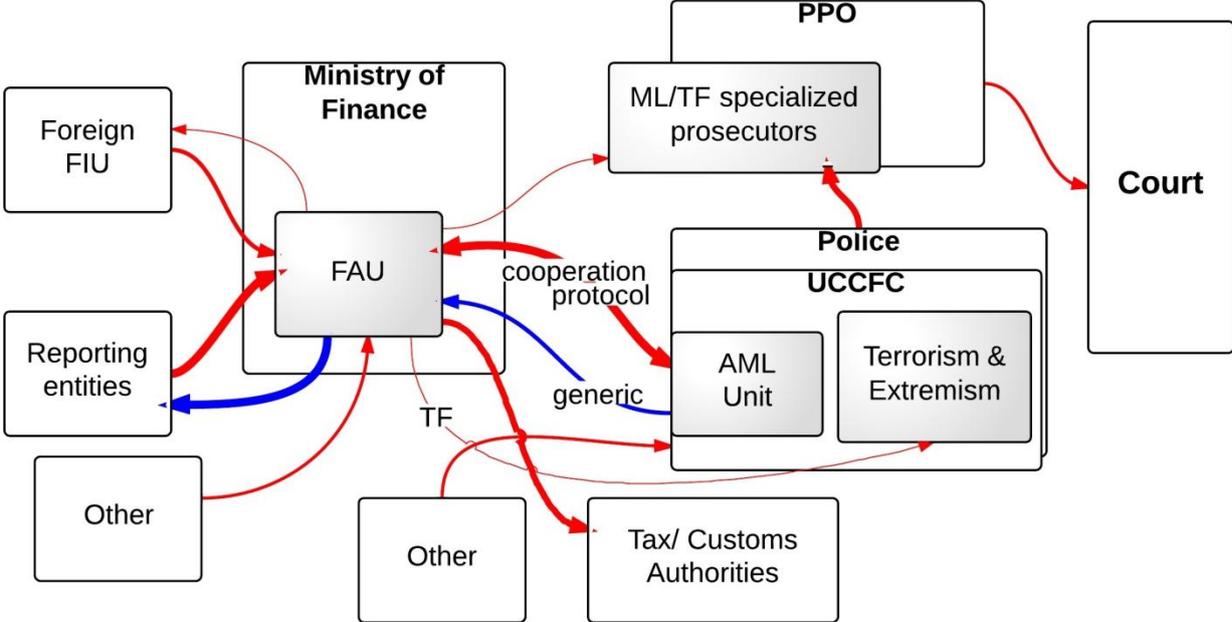
<sup>288</sup> Section 32 paragraph 1 of the new AML/CFT Law

reports suspicion without necessarily looking for evidence, given the administrative nature of the Czech FIU<sup>289</sup>.

According to Moneyval (2011) the FAU forwards its “criminal complaints” to the Anti-Money Laundering Division of the “Unit for Combating Corruption and Financial Crime” (UCCFC) of the Police which investigates the cases. Moreover, since 2008 the FAU has sent almost the same number of reports to the Tax Administration for further investigation<sup>290</sup>. The FAU information is used to initiate a case. The report from the FAU is used as a starting point for a police investigation, and perhaps later during the investigation of the prosecutor. It is therefore not used as documentary information.

For every criminal complaint it filed, the FAU used to send a copy to the High Prosecutor’s office as well. This was meant to increase the co-operation between the competent authorities and in particular to follow-up the police forces’ activity<sup>291</sup>. According to a Czech representative, this system has been changed and in 2012 the FAU also informs a responsible officer of the prosecutor’s office if it considers it appropriate in the given case.

**Figure 9.7: AML/CTF Information flows in the Czech Republic**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

According to Moneyval (2011), the law enforcement authority designated to receive the criminal complaint from the FAU is the “AML Division” of the “Unit for Combating Corruption and Financial Crime” of the Czech Police. The FAU also cooperates with the Organised Crime Unit of the Czech Police, in particular with the “Terrorism and Extremism” specialised Unit to whom it forwards the reports on terrorism finance. The Unit for Combating Corruption and Financial Crime of the Czech Police is responsible for the investigations of ML, TF and other related crimes. The unit of 12 police

<sup>289</sup> Moneyval (2011), *Fourth Mutual Evaluation Report on the Czech Republic*, p 71

<sup>290</sup> Moneyval (2011), *Fourth Mutual Evaluation Report on the Czech Republic*, p 71-72

<sup>291</sup> *Ibid.*, p. 76

officers, is supervised by the High Public Prosecutor's office. Within the Unit for Combating Corruption and Financial Crime, there are a few specialised units – namely the “Anti-Drug Unit” and the “Organised Crime Unit” – that investigate the most complex ML cases. The less complex ML cases are investigated by the regional specialists<sup>292</sup>. The Czech representative argued that the police forces handling the ML and TF investigations are professionals but that they are too few to handle the work volume.

According to the Czech representative, the prosecution service has a centralised structure. There are 4 levels of prosecution – district, regional and national level and there are also specialised prosecutors who only deal with serious crimes – crimes that are of special interest in the EU context (i.e. serious corruption crimes, serious financial crimes). The most serious ML cases and the TF cases certainly are prosecuted by these specialised prosecutors, whereas the less serious ML cases can also be prosecuted by the lower level prosecutors, even by the district prosecutors. The system is constructed as such not to overload the specialised prosecutors and to allow them to concentrate their resources on the more complex cases.

The cooperation between the FAU and the AML Division of the Czech Police is regulated by a protocol signed by the Ministry of Finance and the Ministry of Interior. On the basis of this protocol, the FAU and the AML Police can exchange intelligence and consult on individual cases. Furthermore, the FAU can obtain police intelligence that goes beyond criminal records – i.e. indictments, persons that have been or are under investigation<sup>293</sup>.

During the Moneyval visit in 2011, the current Director of the FAU came from the law enforcement side and was trying to enhance co-operation between the FAU and law enforcement. The quality of the reports of the FIU was reported by the Czech representatives. Moneyval (2011) also mentioned that the FAU has quite a proactive approach and provides the LEAs with more than a financial analysis<sup>294</sup>. Moneyval (2011) also points to the fact that the FAU often asks for assistance from the Police and for additional information from the reporting entities and asks for little assistance from its foreign counterparts<sup>295</sup>.

According to the Czech representative, the FAU gets feedback from the police alone. Moneyval (2011) reports that the feedback the police give to the FAU is generic and does not help the FAU in performing its tasks.<sup>296</sup> Moreover, Moneyval (2011) argued that the ML reports were merged with the predicate offence investigation at a later stage, and pursued on the latter grounds. This made keeping accurate statistics difficult as well as de-motivating FAU staff<sup>297</sup>.

### 9.5.6 Denmark

In Denmark, the FIU upon receiving an STR will start an investigation. According to the Danish representative, if from the STR the FIU cannot directly see that a crime was committed, they forward the STR to the tax authorities, the FSA or the Danish Commerce and Companies Agency. Depending on the nature of the case and its complexity the FIU will forward a report to the Office of Prosecution for Serious Economic Crimes or to the police for further criminal investigation. The law enforcement agencies lead the pre-trial criminal investigation and, only if the case turns out to be very complicated does a prosecutor lead the case.

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<sup>292</sup> Moneyval (2011), *Fourth Mutual Evaluation Report on the Czech Republic*, p. 79-80

<sup>293</sup> *Ibid.*, p. 76

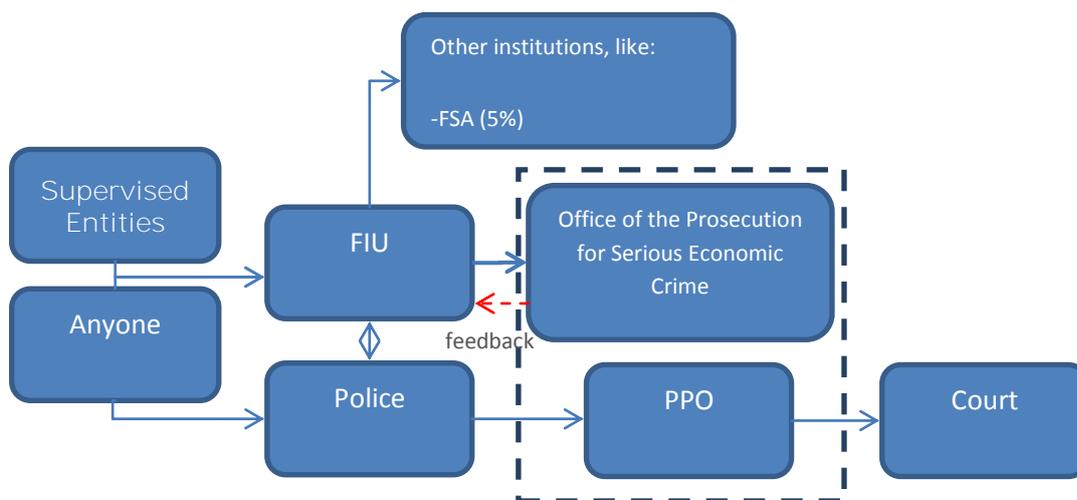
<sup>294</sup> *Ibid.*, p. 77

<sup>295</sup> *Ibid.*, p. 77

<sup>296</sup> *Ibid.*, p. 85

<sup>297</sup> *Ibid.*, p. 76

**Figure 9.8: AML/CTF Information flows in Denmark<sup>298</sup>**

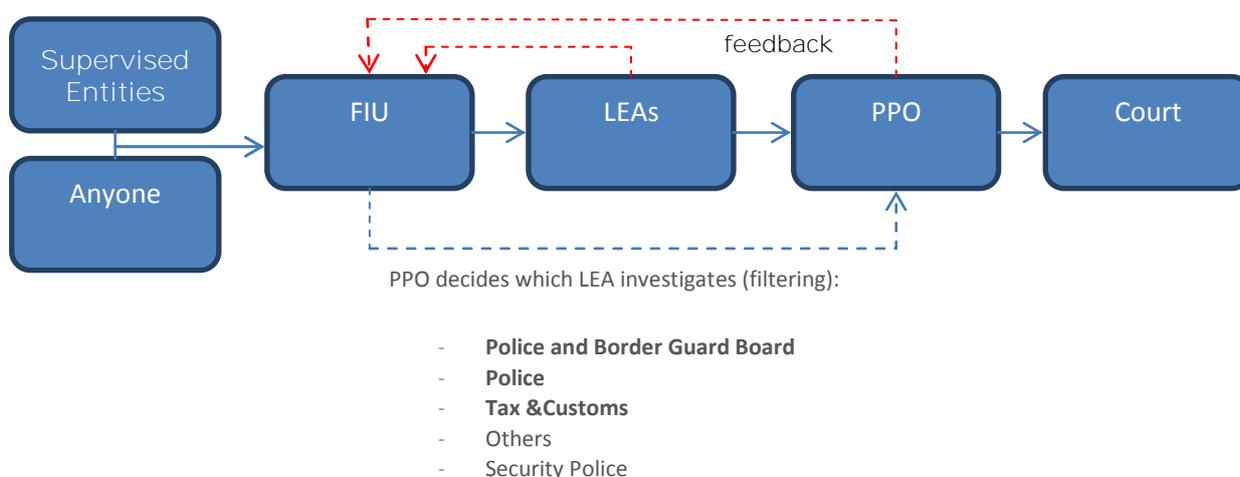


*Legend: The blue arrows represent the information that flows from one agency to another (normally that is a report/case unless it is specified that it only concerns a copy) and the red dotted arrow illustrate supervision and case specific feedback. We have only looked at feedback directed to the FIU, and therefore this chart does not include all other feedback i.e. between court and prosecution.*

### 9.5.7 Estonia

In Estonia, the FIU forwards the information to the investigative bodies after a full analysis is done on the report. The FIU decides which authority to forward it to. According to the Estonian representative, a good cooperation and communication exists between the FIU and the prosecution's office. The FIU receives both feedback from the PPO and police. There is a database in which the FIU can check for itself what is the status of a case. In every case, the PPO and/or police should inform the FIU about when they open an investigation or decide not to follow up on the report of the FIU.

**Figure 9.9: AML/CTF Information flows in Estonia**



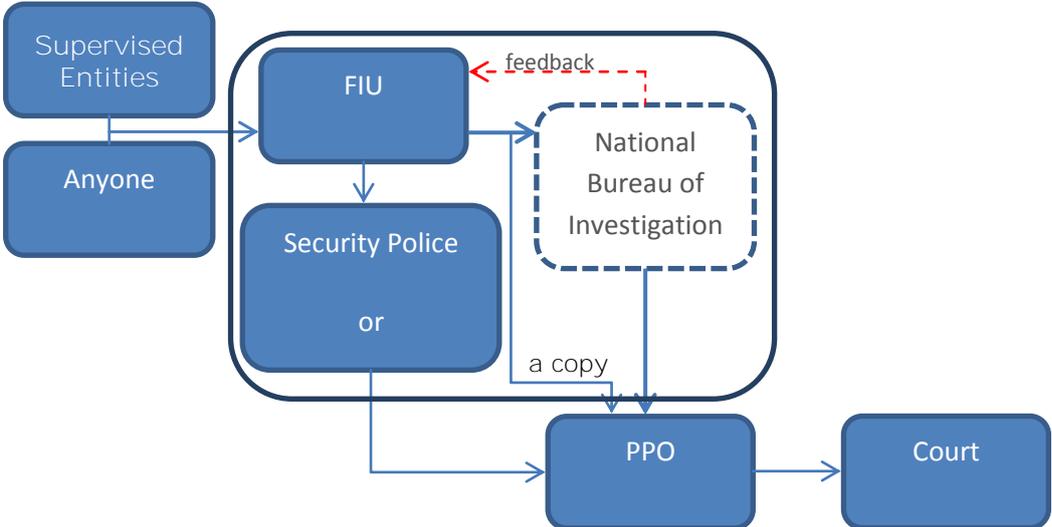
<sup>298</sup> The information flow diagram reflects the information available at the time the research was conducted each Member State. As more detailed information gradually became available, we transitioned to a more detailed information flow diagram styles. However, the analysis was not redone for the Member States examined in the earlier stages of the project.

Legend: The blue arrows represent the information that flows from one agency to another (normally that is a report/case unless it is specified that it only concerns a copy) and the red dotted arrows illustrate supervision and case specific feedback. We have only looked at feedback directed to the FIU, and therefore this chart does excludes all other feedback i.e. between court and prosecution.

**9.5.8 Finland**

In Finland, the FIU sends the reports to the National Bureau of Investigation and to the local police. At the same time, a copy of the files is send to the prosecution’s office for consideration. According to the Finnish representative, the PPO is normally not involved and copies of the files forwarded by the FIU to the police are only handed over to the prosecution in cases of suspicion of terrorist financing. Furthermore, here the PPO has very little contact with the FIU, but this is also due to the limited role of the PPO in Finnish criminal law. This statement is confirmed from the Finnish prosecution representative.

**Figure 9.10: AML/CTF Information flows in Finland**



Legend: The blue arrows represent the information that flows from one agency to another (normally that is a report/case unless it is specified that it only concerns a copy) and the red dotted arrows illustrate supervision and case specific feedback. We have only looked at feedback directed to the FIU, and therefore this chart does excludes all other feedback i.e. between court and prosecution.

**9.5.9 France**

The FIU discourages an automatic declaration of STRs based on set principles – unless these are obvious. The reporting entities are encouraged to perform their own analysis on the complexity and the nature of the transaction and to report it to the FIU as long as there is a reasonable (based on their experience) suspicion that this could have an illegal foundation.

TRACFIN can initiate an investigation based on information received regularly from all sources (reporting entities, information provided by the courts, financial courts, state authorities, supervisory authorities or foreign FIUs). The prohibition of self-referral remains in the order of January 2009 – i.e. the service cannot work any longer on the basis of evidence brought to its attention by natural or legal persons who are not covered by Article L. 561-2.

Upon receipt, the FIU systematically tries to match the STR to information it has in its databases. If suspicion of ML/TF or any crime or offence under Article 40 of the Code of Criminal Procedure is maintained, the FIU will make an informative note, which will have to be signed by its director and finalised by the delegate magistrate that is assigned to work with the FIU, and thereafter forwarded to the law enforcement authorities<sup>299</sup>.

TRACFIN has also other legal opportunities for the distribution of financial information<sup>300</sup>. Transmissions to the customs administration, the judicial police, the tax administration and the intelligence services ensure that when, in the absence of a reasonable body of evidence to support the presumption of a criminal offence, investigations of TRACFIN nevertheless reveal information that is most likely exploitable by these services. The financial information provided by TRACFIN to these authorities is not the same as that sent to the prosecutor. In this sense it is a less documented information note.

If the analysis of the FIU reveals that there is suspicion of tax evasion, the FIU shall notify the Directorate General of Public Finances (DGFIP), who thereafter according to section 1741 of the Tax Code is allowed to use this information to perform its own duties. Moreover, when the DGFIP observes that there is ML with tax evasion as predicate crime, they will forward the information further to the PPO. For a more effective treatment of the STRs concerning fiscal fraud, TRACFIN has built up a hub of staff recruited from DGFIP that works within its premises and focuses only on these specific STRs.

In the cases related to TF, the FIU will notify the French Intelligence Services. This is done to ensure that information is spread rapidly for operational use. If the investigation of the Intelligence services reveals a crime, then the Intelligence Services will notify the PPO.

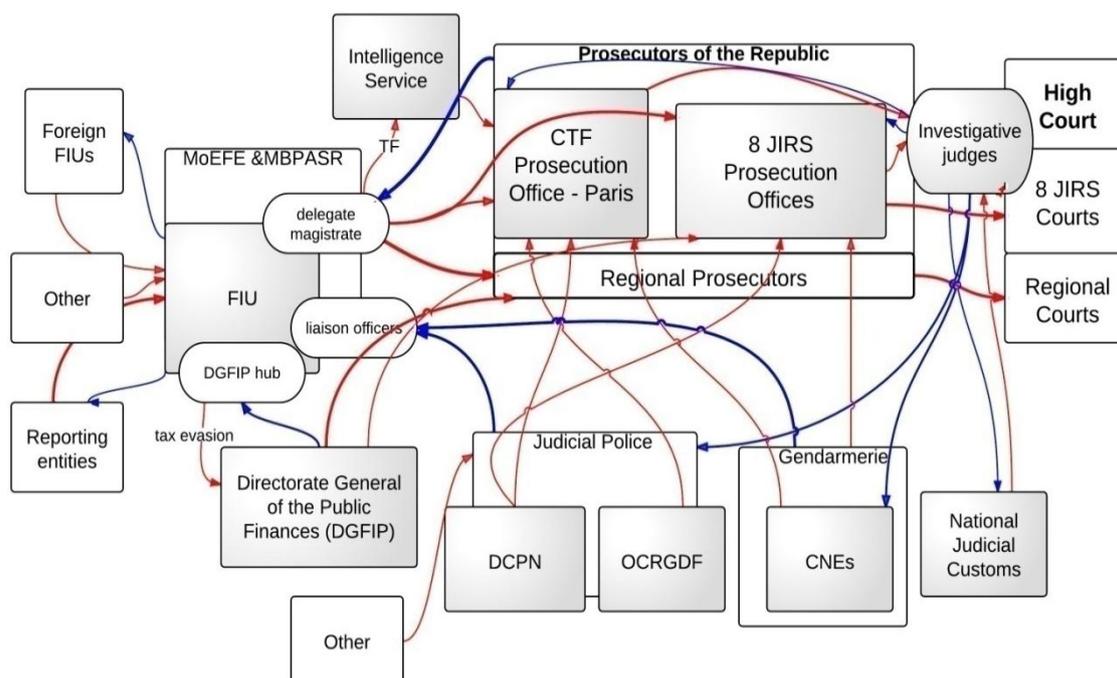
On the matter of feedback, the order of January 30, 2009 requires the prosecutor to inform TRACFIN on the start-up judicial proceedings, on the non-follow-up, and on the decisions imposed by a criminal court, in cases where an information note from TRACFIN was employed. During the interviews, the FIU representatives argued that since a magistrate is delegated to the FIU, feedback is received through this magistrate. Furthermore this ensures that the information notes of the FIU can match the legal requirements in order to be effectively used in the consequent judicial procedures.

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<sup>299</sup>ArticleL.561-23CMF

<sup>300</sup>ArticleL.561-29 of the CMF

**Figure 9.11: AML/CTF Information flows in France**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

### *Specialised investigative authorities*

The Directorate General of the Judicial Police (DCPN) has two central offices that have national competence and are investigating ML: The Central Office for the Repression of the Major Financial Crimes (OCRGDF) – that handles money laundering, scams and serious fraud – and the National Financial Investigation Division - with expertise in corporate criminal law, public procurement and corruption. The OCRGDF centralises and analyses the information it receives from the regional police, from the gendarmerie and the Customs, and coordinates their actions. The OCRGDF translates this information into operational and strategic data relevant to criminal investigations conducted both nationally and internationally.

Within the police headquarters in Paris there are also specialised services in economic and financial matters i.e. the Financial Guard (competent in criminal law cases), the brigade fighting economic crime (competence in investigating corruption and public procurement), and the Research and Financial Investigations brigade (competent in investigating counterfeiting and money laundering).

As part of the most serious cases, the Gendarmerie occasionally puts in place national investigation teams (CNEs). These teams are particular to the Gendarmerie and bring together, on the same case, investigators belonging to different research units.

The National Judicial Customs (SNDJ) has jurisdiction<sup>301</sup> to investigate and detect crimes of money laundering<sup>302</sup>. The judicial customs officers are authorised to conduct criminal investigations at the request of the prosecutor or commission of the investigating judge over the whole national territory.

<sup>301</sup> Act of March 9(2004)

### *Specialised prosecution and courts*

The only prosecuting authority in France is the 'Procureur de la République'. The division of competence among the prosecutors is based on the court to which the prosecutor is appointed (High Court, Appeal Court, Inter-regional Specialised Jurisdiction etc.). The ML competence is based on geographical criteria – i.e. where the offence is committed, where the criminal lives or where the victim lives. There is only one exception - for the TF offence and its preparatory and/or ancillary offences, the prosecutor from the Anti-terrorism section of the Court of Paris has national competence<sup>303</sup>.

A special feature of the French legal system to fight against economic and financial crime is the superposition of several levels of competence. Within the judiciary, Paris holds a special place. This is due to the financial importance of this hub within the French economy. Furthermore, in France, there is a hierarchy of courts and prosecutors attached to them. France has created 8 specialised interregional courts (JIRS) in economic and financial matters. These 8 courts are competent to deal with complex cases. The JIRS are located in the largest economic centres of France (Paris, Bordeaux, Lille, Marseille, Nancy, Fort-de-France, Rennes and Lyon).

### *Investigative judge*

In France, an investigative judge is a magistrate to conduct effective criminal investigations. It may not take up office and may not carry out investigation unless referred to by the PPO. The investigative judge is the investigator who has the most powers in France. It can hear any witness, summon witnesses by the police, issue warrants, hear plaintiffs and accused, appoint experts, conduct searches and seizures, order wiretaps, etc. The investigative judge conducts its investigation in consultation with the prosecutor and police or forensic teams, and appraises the applications for acts of the defence counsel or the prosecution. If the investigation leads to sufficient charges on some counts of prosecution, the investigative judge makes an order for referral to the criminal courts. Otherwise, he will make an order of dismissal.

The investigative judge is also a sitting judge. He can impose measures which are judicial, and that no investigator can impose. The judge may for instance indict a person but since 2001, he cannot imprison. The investigative judge is a specificity of the French legal system. Despite this, the role attributed to the investigative judge has been constantly decreased, and currently only 5% of cases are directed by the investigative judge. Nevertheless, these are some of the most complicated cases. Despite the several discussions on the abolition of this position, the independent<sup>304</sup> nature of the investigative judge makes him an integral and needed part of the French legal system.

### **9.5.10 Germany**

In Germany, the Federal Criminal Police work in partnership with the police forces of the Federation and the States and coordinate crime fighting at national and international level. According to the German representatives, the State Police units are responsible for repressive enforcement within the State's jurisdiction and can conduct ML and TF investigations under the direction of the prosecution.

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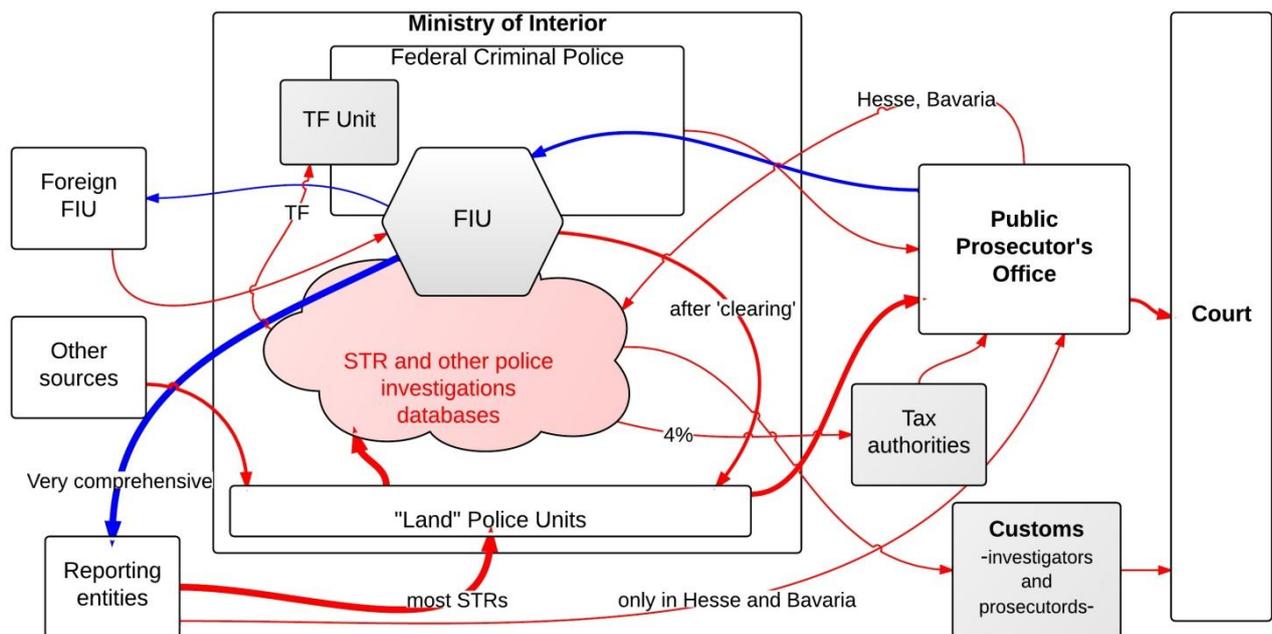
<sup>302</sup> Article 415 Customs offence of money laundering of the Customs Code and money laundering offences under ordinary law, Articles 324-1 to 324-9 of the Criminal Code.

<sup>303</sup> Articles 43, 52, 706-16 -706-73 of the Penal Procedural Code

<sup>304</sup> Like every other judge, the investigative judge is independent, hence does not fall under the authority of the Executive.

Article 11 of the AML Act states that regardless of the amount involved, “institutions and persons covered by the Act who have reason to believe that an offence under Section 261 of the Criminal Code or that terrorist financing has been or will be committed or attempted shall immediately inform the competent law enforcement agency orally, in writing or via electronic data transmission, with a copy to the Federal Criminal Police Office –Financial Intelligence Unit”. According to FATF (2010) the Land Police Offices are the primary recipients of the STRs in 14 states whereas the PPO is the primary recipient in Hesse and Bavaria. If a transaction involves two or more states, the reporting entities inform the LEAs of the two states as well as the FIU<sup>305</sup>.

**Figure 9.12: AML/CTF Information flows in Germany**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases. Pink clouds designate the ML/TF database simultaneously available to multiple agencies (law enforcement and FIU) that is commonly used as departing point for ML/TF criminal investigations.*

In Germany confirming and elaborating suspicions of ML or terrorism financing, and determining whether a report should be disseminated to law enforcement bodies for investigation and prosecution, is done in collaboration (FIU and LEA). This is because of the more elaborate data access system that the federal and the state police units have. Once the STRs have reached the local LEAs, the latter add the newly acquired information to the STR database, and here data mining systems cross check it with other available intelligence. The FIU can cross check with other national and international databases<sup>306</sup> and if a match is found, the FIU can coordinate the works of the criminal police that will investigate further<sup>307</sup>. Furthermore, the FIU’s expertise can be used for evidential

<sup>305</sup> FATF (2010) *Third Mutual Evaluation Report on Germany*, p. 98

<sup>306</sup> This is to assess whether the STR relates to an offence under Section 261 of the German Criminal Code.

<sup>307</sup> FATF (2010) *Third Mutual Evaluation Report on Germany*, p. 100

purposes: the FIU has to “provide identification reports and forensic expert opinions for penal proceedings” if requested by police services, public prosecutor’s offices and courts<sup>308</sup>.

The first analysis of the STR is called ‘clearing process’ and depending on the outcome, the intelligence will be forwarded to one or more State police units under the supervision of the local PPO, to the Customs investigation offices, to the BKA (when it concerns TF) or to the Tax administration.

According to FATF (2010), as soon as an STR could be important for the tax authorities to initiate or conduct tax assessment or tax-related criminal proceedings, the FIU shall notify them. The FIU also forwards all TF related STRs to the specialised Terrorist Financing Unit of the BKA. Furthermore, to avoid delays, the FIU database is also available to three TF investigators<sup>309</sup>. According to FATF (2010), customs investigation officers are investigating officers of the PPO and have the same rights and duties as police officers. They are the competent criminal prosecution offices when investigating and prosecuting “internationally-organised ML and related criminal offences to the extent that these are connected to the movement of goods from and to external territories”.

According to article 11 of the AML act, the competent PPO shall inform the FIU of the commencement of public legal proceedings and of the outcome of the proceedings, in cases where the criminal investigation was started from an FIU report or where ML was collaterally investigated. This shall take the form of sending a copy of the indictment, the reason for dismissal or the verdict<sup>310</sup>. However, feedback only seldom contains explanatory information or information of typological relevance. According to the FIU annual report, it was often not possible to establish if the proceedings were dropped in relation to the suspicion of money laundering, but continued in relation to the predicate offence.

#### 9.5.11 Greece

The Greek FIU receives information from the reporting entities and from other national agencies via the AML/CTF/SFI Authority. The Chairman decides which of the three units will handle the report and therefore these flows of information are mediated, because in effect the Chairman can determine the course of the information flows and whether they reach the FIU or not. With respect to the Foreign FIUs the information is no longer filtered as it naturally has reached the best institution to handle it. After receiving an STR the FIU investigates and the case is either archived or transmitted to the competent PPO. According to the FIU representatives, the Greek FIU compiles very good reports of analysis to the PPO and this is confirmed by the fact that the PPO rarely returns to the FIU for more information and by the fact that almost all of the reports which are passed on to the PPO are prosecuted further<sup>311</sup>. Following the nature of the case, it will be investigated by a first instance PPO or by higher level PPOs. Accordingly, it can be investigated by the newly formed Specialised Financial Crime prosecution offices<sup>312</sup>. Investigative judges can be employed in the investigation of more complicated cases.

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<sup>308</sup> Section 2(7) of the German Criminal Police Act

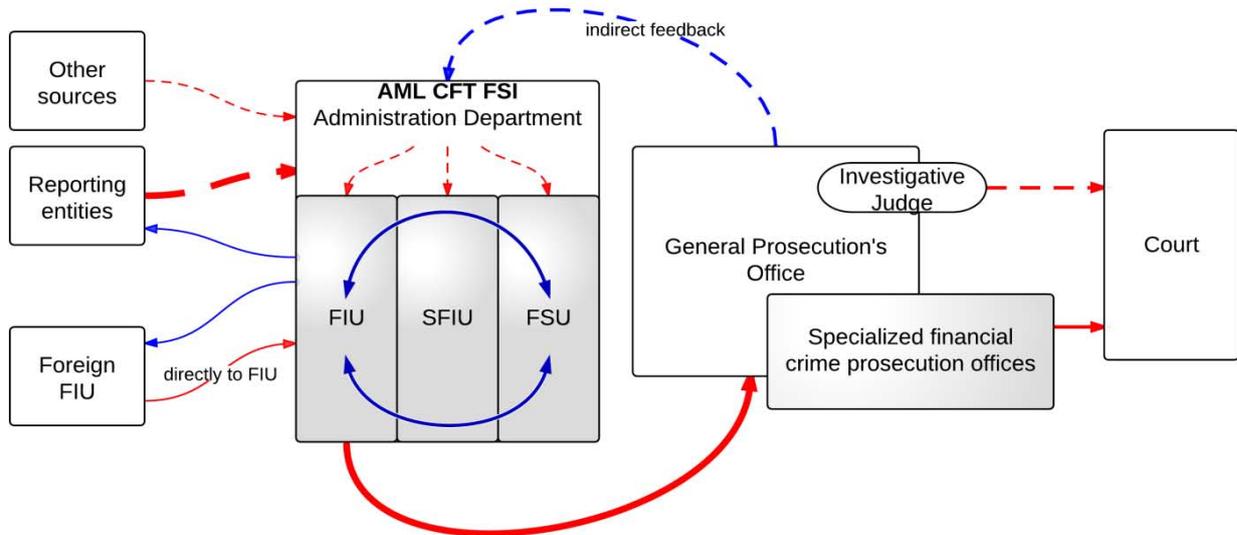
<sup>309</sup> FATF (2010) *Third Mutual Evaluation Report on Germany*, p. 100

<sup>310</sup> FIU Germany (2010) *Annual report*, p. 20

<sup>311</sup> This is despite the fact that the prosecution is governed by the principle of legality. Section 43(2) of the CPC allows the PPO to refrain from prosecuting cases when the documents presented to him/her do not satisfy minimum requirements to ensure the success of the case.

<sup>312</sup> According to the Greek FIU representative there are newly formed specialised groups of PPOs in Athens and Thessaloniki exclusively dealing with financial crimes cases. This has yet to be confirmed by a prosecution representative.

**Figure 9.13: AML/CTF information flows in Greece**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; dotted arrows mark intermediated flows (feedback); the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

With respect to feedback, the FIU receives its feedback from the PPO mostly – but this is an intermediated flow of information. The head of the Authority, being an active Prosecutor, remains informed of the developments of the cases started by the FIU as well as on the possible shortcomings of the investigation; hence in terms of feedback the FIU agents receive direct feedback from their head. According to the Greek representatives, the new structure of the FIU ensures that every member of the staff learns from his/her colleagues. The feedback flows in the Greek case could best be described as diffuse and centred at the melting pot that is the Authority.

With respect to specialisation, the highest degree of specialisation could be seen within the Authority and the Financial Crimes Prosecution Services. With respect to the AML/CTF/SFI Authority, it is doubtful whether employing staff by detachment for short periods of time could ensure the degree of specialisation that persistence and consistency usually ensure. Given the novelty of this organisation, it is impossible to investigate into this consideration further.

Having described the Cypriot model previously, one can see the scope of the similarities between the two. The new Greek FIU has been designed with a clear look at the Cypriot MOKAS. The rest of the information flow dissimilarities between the information flow charts are therefore due to the different legal systems of the two countries.

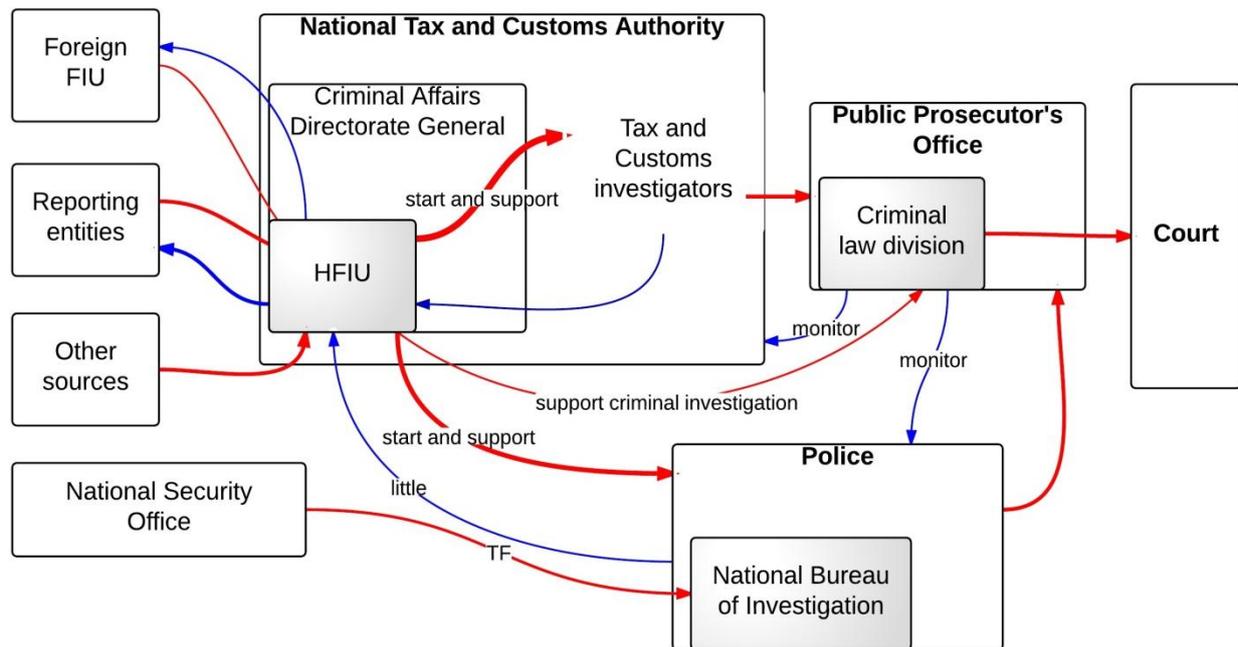
### 9.5.12 Hungary

The Hungarian FIU is an independent Directorate within the Criminal Directorate General of the National Tax and Customs Administration (NTCA), as a result of the merger between the Hungarian Tax and Customs. Information on TF can also surface from the National Security Office – the

Hungarian specialised intelligence agency that monitors persons capable of threatening the financial and economic security of Hungary<sup>313</sup>.

Upon receiving a report, the HFIU initiates an administrative investigation. The HFIU can disseminate financial information obtained under the AML/CTF Act to other investigating authorities – i.e. the public prosecutor, the national security service or an authority operating as a foreign FIU<sup>314</sup>. Furthermore, the information disseminated by the HFIU can be used in ML/TF investigations but also for the purpose of investigating tax fraud, embezzlement, fraud and misappropriation of funds. At the time of the Moneyval (2010) visit, issues were raised with regard to the limited decision capacity of the HFIU to decide to which LEA to disseminate information to – when it deemed necessary. These concerns may have been addressed since.<sup>315</sup>

**Figure 9.14: AML/CTF Information flows in Hungary**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

The competence for money laundering is shared between the NTCA, the Prosecution Office for Criminal Investigation and the Police. The NTCA holds primary competence and the Police investigate cases of ML where investigations were originally started on other crimes. When ML is committed by persons with legal immunity or by persons with international legal status, members of the court or of the prosecution, notaries or any other law enforcement authority, the investigation falls under the competence of the Prosecutorial Office for Criminal Investigations<sup>316</sup>. Furthermore, cases of terrorism financing are handled by the National Bureau of Investigation<sup>317</sup>.

<sup>313</sup> MONEYVAL(2010), *Third Assessment Report on Hungary*, p. 21

<sup>314</sup> According to Section 26 of the Hungarian AML/CFT Act

<sup>315</sup> Moneyval (2010) *Fourth Mutual evaluation Report on Hungary*, p. 57

<sup>316</sup> Moneyval (2010) *Fourth Mutual Evaluation report on Hungary*, p. 21

<sup>317</sup> Section 261 of Act IV of 1978 of the HCC

The investigating authorities can coordinate their actions as long as the heads of the investigation authorities and the prosecution admit the need and agree to such coordination<sup>318</sup>. Moneyval (2010) however notes that until 2010 such joint task forces had not been registered in money laundering investigations.<sup>319</sup>

After this criminal investigation, it can be decided to forward the case to the PPO. It seems therefore that there is no direct connection between the FIU and PPO. Moreover, the HFIU is reported to lack feedback from law enforcement authorities regarding the STRs disseminated either for supporting ongoing investigations, for initiating covert investigation or for supporting covert investigation. Moneyval (2010) noted that such statistics were not gathered on a constant basis.<sup>320</sup>

The prosecution service is headed by the General Prosecutor's Office and is organised on a geographical level into regional appellate prosecutors, county prosecutors and local prosecutors. Of particular interest is that within the General Prosecutor's Office, there exists a Criminal Law Division which includes amongst others a Department for the Supervision of Investigations and a department for special cases. According to Moneyval (2010), this Department was set up on 1 July 2001 and is supervised by the Deputy Prosecutor General. The department is allowed to monitor special cases of interest – among which money laundering and terrorism financing cases. The county prosecution offices have an office for criminal investigations, a division for supervising investigations and a division for court proceedings. It is however unclear whether these prosecutorial structures are specialised prosecutorial structures that handle cases of money laundering and terrorism financing. Moneyval reports that in 2010 approximately 8% of the Hungarian prosecutors dealt with economic crimes.<sup>321</sup> Furthermore, courts and prosecutors are reported to have had extensive training in money laundering techniques but that further training is needed.<sup>322</sup>

### 9.5.13 Ireland

In Ireland the Act 2010 stipulates that STRs must be submitted to both FIU and the Revenue Commissioners. Both authorities receive STRs at the same time. The Revenue Commissioners take a special interest in tax evasion matters, and views STRs from this perspective. If it is believed that proceeds can be confiscated in a civil litigation, the Revenue Commissioners will take action. About 95% of the STRs are dealt with from a civil perspective. Both FIU and The Revenue Commissioners have an STR database. Furthermore, the Irish representatives mention the existence of a Memorandum of Understanding between the Revenue Commissioners and the UK's HMRC for the exchange of STR information. This is said to be a unique construction.

The FIU and the Revenue Commissioners meet every six to eight weeks in which it is discussed which STRs will be picked up by the FIU and which ones can be passed to the Revenue Commissioners. In principle the FIU takes the lead in deciding whether it will proceed with an STR or whether it should be passed to the Revenue Commissioners. However, the contrary also happens: if the Revenue Commissioners think that an STR contains information that the police should further investigate, the STR is passed on to the FIU. Hence, in early stages FIU and the Revenue Commissioners will work together to make sure that there is no overlap in the analysis and actions taken on the basis of an STR.

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<sup>318</sup> Section 37(3) of the Hungarian Code of Criminal Procedure

<sup>319</sup> Moneyval (2010) *Fourth Mutual evaluation Report on Hungary*, p. 149

<sup>320</sup> *Ibid.*, p 66

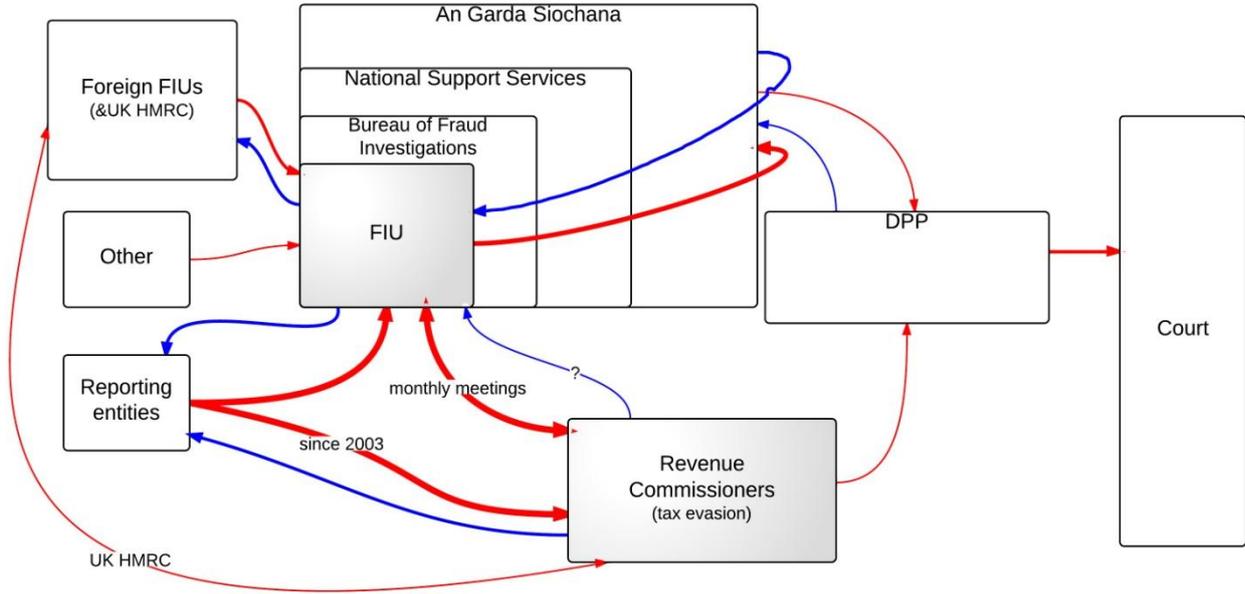
<sup>321</sup> *Ibid.*, p 174

<sup>322</sup> *Ibid.*, p 33

The FIU in Ireland is a small subsection of An Garda Síochána, the Irish police force. The FIU falls under the National Support Services, under the Bureau of Fraud Investigations, and works in close contact with two police investigative units that also fall under An Garda Síochána. Once the FIU receives an STR it will conduct a preliminary analysis and given the nature of the case it will forward it to the most appropriate investigative units within the An Garda Síochána. The advantage of a small police force, according to the Irish representatives, is that there is less bureaucracy. Furthermore, this means that the FIU receives good feedback from the investigative authorities it forwards its cases to.

The An Garda Síochána does the investigation independently from the Office of the Director of Public Prosecutions (DPP). The DPP is involved as advisors at the request of the police. The latter however is not standard. The ‘regular’ procedure, according to the Irish representatives, is that the An Garda Síochána first performs its criminal investigation, after which the case file is sent to DPP. The DPP decides thereafter whether to prosecute or not.

**Figure 9.15: AML/CTF Information flows in Ireland**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

The Irish prosecution system has strong common law origins that have given it its current shape. Historically, before the 18<sup>th</sup> century criminal prosecution in Ireland was brought by individuals in a similar way civil actions were taken. The victim therefore was most likely the prosecutor. In the course of the 20<sup>th</sup> century statutes were created by the Irish legislator to solely empower the Office of the District Public Prosecutions with the prosecution of indictments – i.e. trials before a judge and jury. Accordingly the notion of independent and permanent prosecutors was born.

Finally, as a result of this late development of the prosecution system and as of the still present mixture of common law and statute law, in Ireland there currently exists a broad spectrum of public

and private prosecutors that act independently of each other, and there is a large degree of separation between the investigation, prosecution and trial stages of a criminal process<sup>323</sup>.

A number of public authorities with statutory competence are empowered to independently initiate prosecutions and in practice many of them do so. However, no trial on indictment can proceed without the consent of the Director of Public Prosecutions. Private persons may in theory still initiate criminal prosecutions for summary offence trials, however, in practice it is unheard of in the modern era.

In Ireland there are summary and indictable offences, a distinction that corresponds to the continental crimes and misdemeanours. Summary offences are dealt with by a judge sitting without a jury, and are trialled in the District Courts. Indictable offences should be tried before a judge and jury – i.e. in the Circuit Courts. Whether a crime is considered a summary offence or an indictable offence is a case-by-case decision, but the different prosecutors meet regularly to ensure that a consistent policy is maintained. The Circuit Court is usually the competent court in ML cases. Terrorist offences are tried and dealt with by a Special Criminal Court before three judges (without a jury), which is exceptional.

Regulatory offences under the AML Act 2010 are ‘hybrid offences’, in that these can be summary or indictable offences. The penalty for indictable offences under the AML Act 2010 is set at five years, which means that arrest warrants may be used. Supervisory authorities observing ML/TF breaches are under the duty to report to the DPP. The DPP decides whether it is a summary or indictable offence. If it is an indictable offence, DPP takes up the prosecution. If it is a summary offence then administrative sanctions can be imposed.

On the matter of ML/TF specialisation, this is generally done by learning by doing, as the historical developments of the prosecution system in Ireland do not seem to have allowed for the formation of specialist prosecutors or of prosecutors responsible for particular crimes.

#### **9.5.14 Italy**

In Italy, the FIU analyses the STRs and then transmits them, together with the financial analyses to a special task force of the Financial Police<sup>324</sup> and to the Bureau of Anti-mafia Investigation (DIA). The FIU does not make any choice as to which agency the STRs should be forwarded. The FIU can close an STR as irrelevant, pursuant to internal regulations and procedures. The Italian authorities argued that, in fact, all STRs received by FIU are transmitted to both DIA and to NSPV. Further, the National Anti-mafia Directorate is informed by these two agencies, when the STR concerns organised crime<sup>325</sup>.

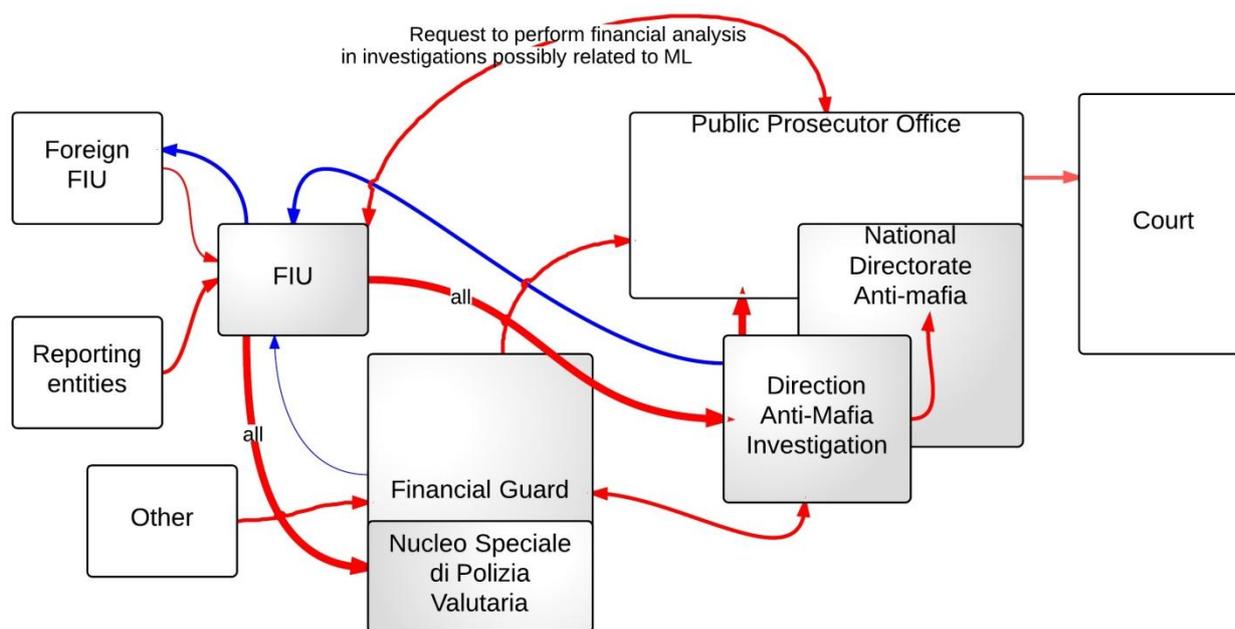
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<sup>323</sup> EuroJustice - research on the prosecution systems in the European Union (available at:[http://www.euro-justice.com/member\\_states/ireland/country\\_report/443/](http://www.euro-justice.com/member_states/ireland/country_report/443/))

<sup>324</sup> FIU Italy Reports to the NucleoSpeciale di PoliziaValutaria (NSPV) of the Guardia di Finanza (Finance Police).

<sup>325</sup> Article 47.1 d), of the 231/2007 Law states “[...]the Bureau of Antimafia Investigation and the Special Foreign Exchange Unit of the Finance Police[...] will inform the National Antimafia Prosecutor, whenever it relates to organized crime.”

**Figure 9.16: AML/CTF Information flows in Italy**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

Italy exhibits a wide array of specialised units handling the prevention and repression of AML/CTF cases. Special attention is given here to tax fraud and to mafia-related money laundering and terrorist financing investigations. The Financial Police is a law enforcement body specialised in preventing and repressing economic and financial crimes. The Anti-Mafia Investigative Directorate is a specific branch of the Department of Public Security within the Ministry of Home Affairs, with members from the State Police, the Financial Police and the National Police. The NSPV is a specialised body within the Financial Police dedicated to the investigation of STRs, following the initial analysis and dissemination by the FIU. With respect to the prosecution service, there is a special prosecution body that handles Mafia related cases – the National Directorate Anti-Mafia (NDA). Cases investigated by the DIA are supervised by the NDA and cases investigated by the GdF are supervised by the National prosecution service.

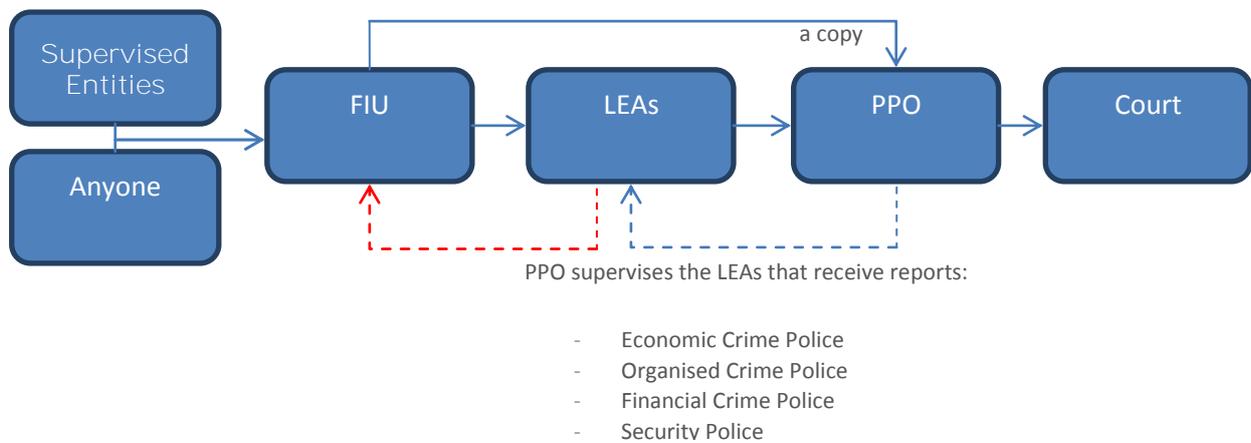
According to Italian authorities, the PPO usually requests information from the FIU in relation to other criminal investigations where there is an additional suspicion on money laundering. In this sense, the collaboration between the FIU and the PPO has increased as the flows of information between them have doubled in the past years<sup>326</sup>. However, Italian authorities argued that the PPO does not provide feedback to the FIU on the relevance of the information it provided with respect to the later stage prosecution. Furthermore, the FIU receives very little feedback from the LEAs on the reports that have not been further investigated.

<sup>326</sup> FIU Italy (2010), *Annual report*, p. 7.

### 9.5.15 Latvia

In Latvia, the FIU on its own initiative can disseminate information to pre-trial investigation authorities and courts when it has reasonable suspicion that a criminal offence including ML and TF has been committed. According to the Latvian representative, the FIU forwards the STR and the FIU analysis to the police and a copy to the PPO. The PPO will supervise the actual criminal investigation but not give further feedback. The police give feedback to the FIU when they initiate a case. Upon receiving this feedback the FIU informs the reporting entity its report will be investigated by the police. According to the Latvian FIU, feedback is not useful to construct typologies because the information needed for that is already available to this law enforcement FIU. The FIU needs the feedback for its own administration and to understand how useful the information that the FIU provided the police actually was.

**Figure 9.17: AML/CTF Information flows in Latvia**

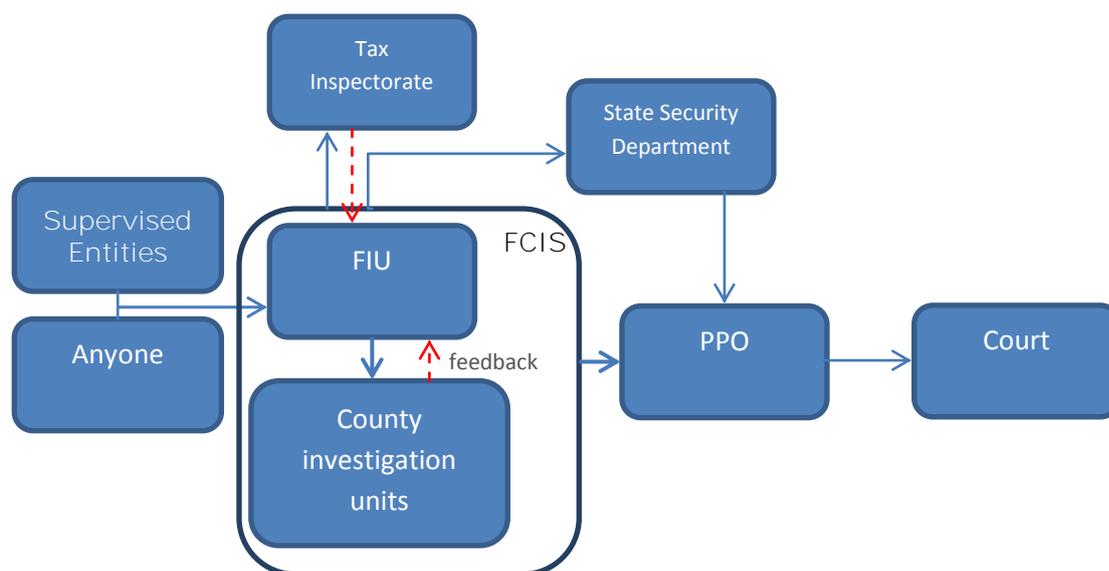


*Legend: The blue arrows represent the information that flows from one agency to another (normally that is a report/case unless it is specified that it only concerns a copy) and the red dotted arrows illustrate supervision and case specific feedback. We have only looked at feedback directed to the FIU, and therefore this chart excludes all other feedback i.e. between court and prosecution.*

### 9.5.16 Lithuania

The Lithuanian FIU upon completing the report will forward it to the respective territorial FCIS unit which decides whether to start a criminal investigation or not. With respect to TF the cases are forwarded by the FCIS to the State Security Department. According to the Lithuanian representative, the FIU always requires feedback when a report is forwarded to the police or tax authority. The criminal investigation is under the control of the PPO, which is not assumed to give feedback.

**Figure 9.18: AML/CTF Information flows in Lithuania**



*Legend: The blue arrows represent the information that flows from one agency to another (normally that is a report/case unless it is specified that it only concerns a copy) and the red dotted arrows illustrate supervision and case specific feedback. We have only looked at feedback directed to the FIU, and therefore this chart does excludes all other feedback i.e. between court and prosecution.*

### 9.5.17 Luxembourg

The Prosecutor General (PG) oversees the Prosecutor's office of Luxembourg (PL) and the Prosecutor's office of Diekirch (PD). The latter two are district prosecutorial offices. Money laundering and terrorist financing can only be tried by prosecutors of the PL. They have national competence in the entire territory of Luxembourg. The FIU is located within the Economic Crime Department of the PL.

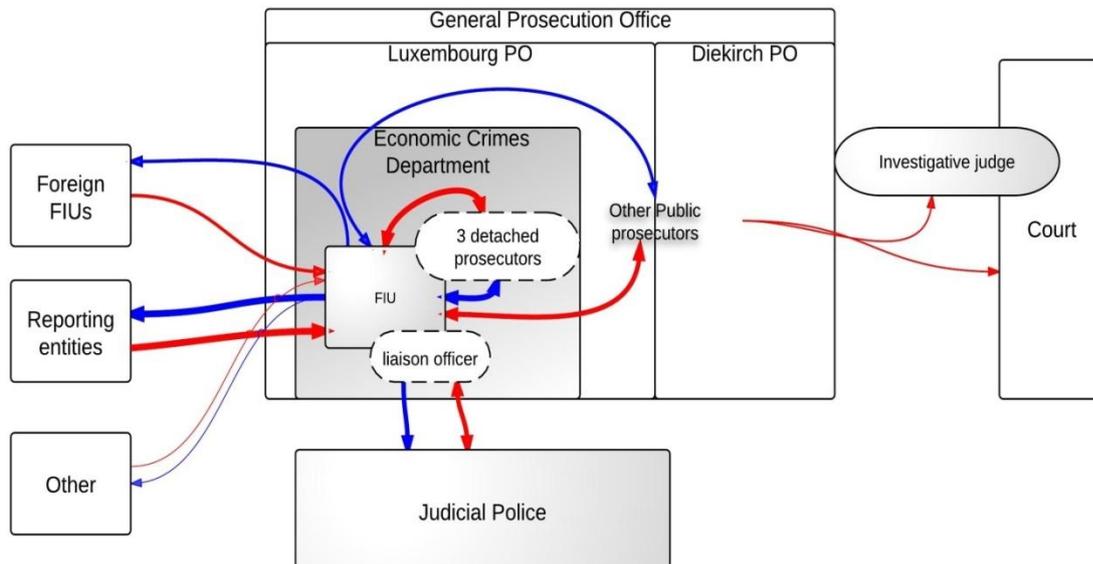
The FIU receives information from the reporting entities, from other FIUs, from other judicial authorities uncovering money laundering or terrorist financing in the course of their investigations, and from the state agencies (i.e. the secret service). The FIU provides feedback to all these institutions. FIU Luxembourg also employs a liaison officer to the judicial police. The liaison officer helps the FIU find out whether there is police intelligence related to their case in Luxembourg or internationally (via Interpol).

The FIU Luxembourg investigates an STR and conducts an intelligence analysis. It thereafter forwards the FIU analysis report to the competent prosecutor. At present, the FIU is not helped in its intelligence operations by any complex IT system. This problem is understood by the authorities and according to the Luxembourg representative, a special team has been put in place to develop such an IT platform for the FIU such that they are able to undertake automatic analyses.

In Luxembourg, the prosecution can be conducted by the prosecution office or by the investigative judge. If the prosecutor decides that in the specific case coercive measures against the suspect must be used, the judicial dossier is forwarded to an investigative judge who will lead the financial investigation further. When an STR reveals information that could also lead to the prosecution of the predicate offence, the FIU can forward all of this information to the other prosecutors of the PL or PD.

They will try to prosecute in parallel for the predicate offence. Similarly the other prosecutors will forward cases to the FIU where ML is revealed in the course of the investigation.

**Figure 9.19: AML/CTF Information flows in Luxembourg**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

On the matter of feedback, since the FIU is of a judicial nature, it goes without saying that the FIU is well informed on the outcome of its analysis. On the matter of ML specialisation, the FIU is such a specialised unit. Furthermore, prosecutors of the Economic Crimes department as well as the investigative judges working together with the FIU are reported to have extensive experience with prosecuting financial crimes.

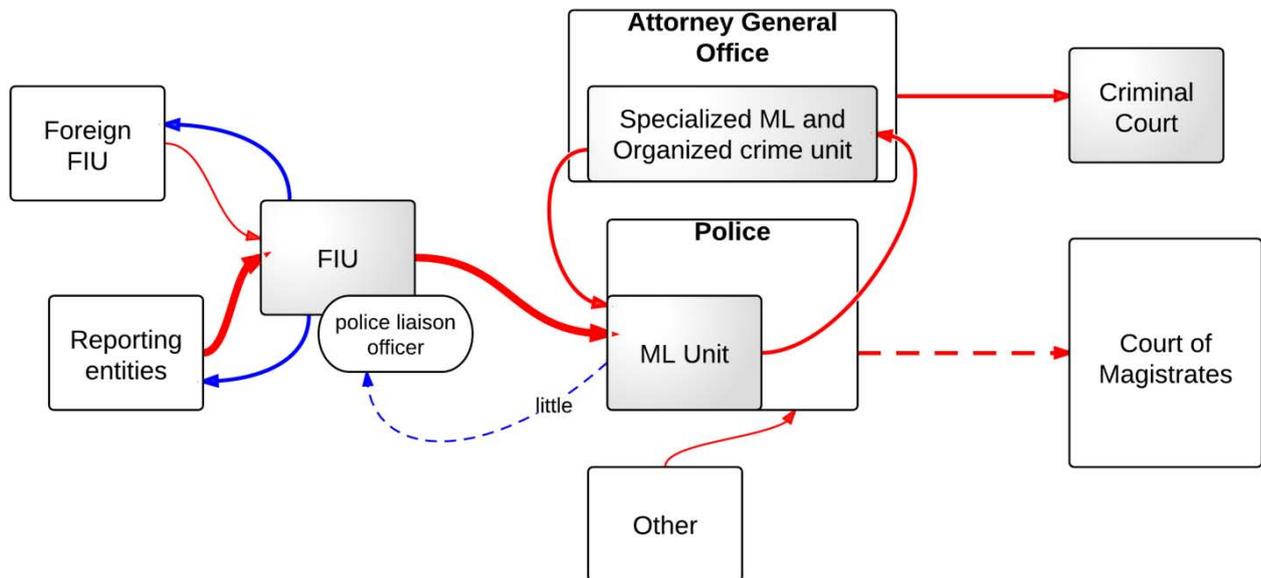
In Luxembourg, the Investigative Judge is empowered to make use of special investigative techniques and other coercive measures against the suspect during the investigation. It is therefore the more complex and complicated cases that are transferred to an investigative judge, because in general in the more complicated cases there is a need for coercive measures. If the prosecutor sees no need to use coercive measures, he/she can prosecute the case. In Luxembourg there are approximately three or four investigative judges out of a total complement of thirteen investigative judges that are de facto specialised on ML. They are however not assigned by law to deal with ML cases, but receive the ML cases due to their extensive experience in this field.

As was explained to us during the interviews, one of the historical and institutional reasons for the usage of an investigative judge in Luxembourg is that, essentially, the prosecution is not seen as an impartial assessor of the situation in which the suspect is involved. The prosecution and the legal team of the defence are situated at the same level in court and have conflicting interests. The Judge however has to be fair and impartial and has to investigate solely on the facts and search all elements in favour or disfavour of the suspect. Therefore, while the investigative judge has the power to introduce coercive measures in the course of a pre-trial investigation, he/she is considered to be impartial and independent. According to the Luxembourg representatives, this means that there is no discussion about abolishing this position in the judiciary.

### 9.5.18 Malta

The FIU receives most of its STRs from the reporting entities and after the analysis forwards them to the Money Laundering Unit within the Police. The FIU does not forward any of its reports directly to the AGO, as seen below.

**Figure 9.20: AML/CTF Information flow in Malta**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; dotted arrows mark intermediated flows (feedback); the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

The pre-trial investigation and prosecution in Malta are done by the police forces. Within the Police there exists a specialised unit for investigating ML cases. The Unit is made up of two Investigating Teams, each staffed with one inspector and two constables. Money Laundering investigations are initiated by the Money Laundering Unit following a suspicious transaction report from the FIU or from other sources, such as the general public, the Attorney General or other police sources. Following the initial investigations, where the investigators see that there is a prima facie case of money laundering, the police send a request to the Attorney General. If the latter considers that there are sufficient grounds for suspicion, he files a request in the Criminal Court before a Judge. The Judge decrees and issues the investigation order and/or the attachment order as the case may be.

The Attorney General's Office has assigned money laundering cases, organised crime and international co-operation in criminal matters to a unit which provides for specialisation in these fields. The Unit is made up of a Senior Counsel to the Republic and a lawyer. Both the Police and the AGO can prosecute. If the Police prosecute the case, the case will be tried before the Court of Magistrates. Otherwise, if the AGO prosecutes, then the case can also be tried in front of a specialised Criminal Court if the AG deems so necessary and otherwise it will be tried before the lower court.

The FIU receives feedback from the police on the cases it forwards to them. The Maltese representatives argue this is an informal discussion that is not always mediated by the police liaison

officer. However, the police liaison officer does take an active role in advising the FIU on investigative techniques and on LEA-related issues<sup>327</sup>. There is no formal channel of discussion with the PPO. The FIU deems feedback important and would like to see more feedback from the police and from the prosecution units – especially with respect to the outcomes of the cases investigated by the FIU. This, according to the Maltese representatives, is very important for boosting the morale of the FIU agents and increasing their dedication to fighting money laundering and terrorist financing cases.

#### 9.5.19 the Netherlands

The FIU-NL receives UTRs from the reporting institutions. The analysis of UTRs consists mainly of matching the UTR information with other information the FIU has access to. Where the FIU finds evidence of suspicion, the UTR is classified as STR and loaded into the second database – the STR database. The latter can be accessed by law enforcement authorities for criminal investigations concerning any crime, not only ML/FT. The FIU mostly re-labels the UTR STR once it finds a match of the UTR in the police database (called VROS). Alternatively, the FIU can transform an UTR into an STR if suspicion arises once a foreign FIU makes an inquiry that matches the UTR database. Finally, according to the PPO representative, if the police in the course of another investigation have reasons to suspect that a person has been laundering funds, they can notify the National Prosecution Officer (NPO) for ML and request financial information on the suspect. The NPO has to evaluate this claim and if it deems it justifiable, it will ask the FIU to check their databases for other information related to this person. The FIU will then have to check their UTR database and transform the possible existing UTRs on the suspect into STRs.

The authorities explained that the rationale of the process for the substantiation of a UTR into an STR is to determine whether the transaction-related information is “relevant” for law enforcement authorities and to establish a link between the UTR and any criminal activity<sup>328</sup>. After authorisation, competent authorities have digital access to the information in the STRs database, through an Internet Portal (IVT). According to the FIU representative, this is how the FIU-NL disseminates information<sup>329</sup>.

The Dutch prosecutors have an independent position. They do not fall under the authority of the Ministry of Justice with respect to prosecution policy. The General Prosecution Office (hereafter the OM) is the only structure that can order prosecutors to prosecute. The National Prosecution's Office (hereafter LP), the Financial, environmental and food safety offences Prosecution Office (hereafter the FP) and the Regional Prosecution's Offices (hereafter the APs) are under the subordination of OM. There is no formal hierarchy between the LP, the FP and the APs. However, there is an informal hierarchy when it comes to specific crimes. The NPO formulates instructions on handling ML cases: 'aanwijzing witwassen'. These are sent to the OM who thereafter issues instructions on handling ML cases that have to be implemented by the prosecutors at the APs. Nevertheless, every AP has to prosecute ML cases should they encounter them.

The NPO attends weekly meetings at the FIU where matters concerning the STR database are discussed. On the issue of feedback, the prosecution cannot disclose case by case information to the FIU on how their information has been later used in the criminal investigation. Feedback nevertheless is given on the issue of typologies, the usefulness of STRs, whether they were complete etc. According to the FP representative, feedback is generally given in an informal way and cooperation

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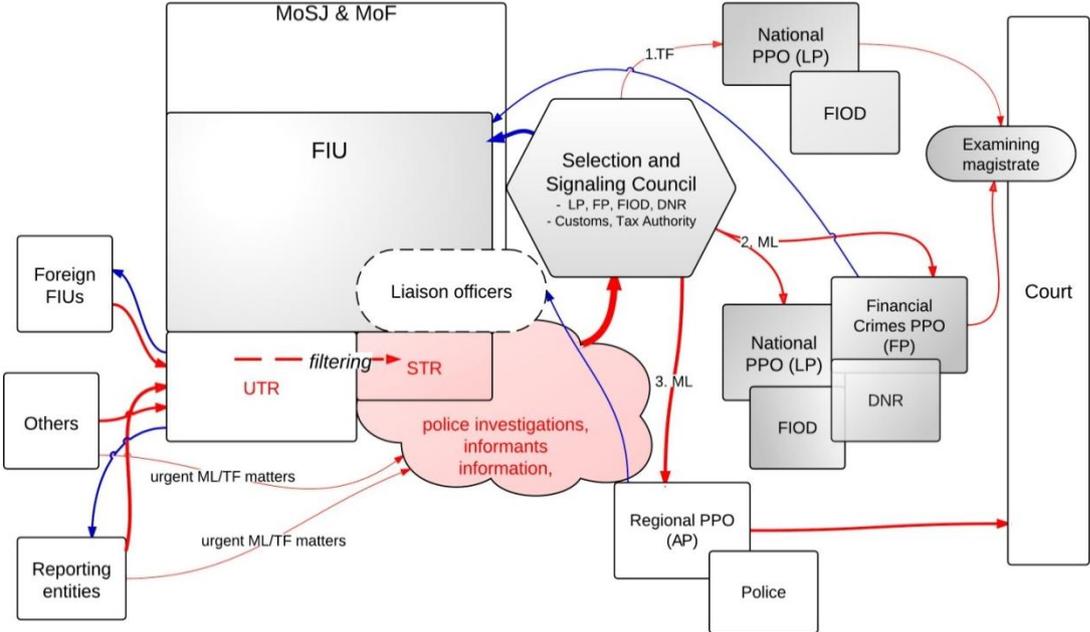
<sup>327</sup> FIU Malta, available at: [www.fiumalta.org](http://www.fiumalta.org).

<sup>328</sup> FATF (2011), Third Mutual Evaluation on the Netherlands, p. 91

<sup>329</sup> *ibid.*

between the FIU and the FP is very good. Furthermore, the FIU also receives feedback from the specialised investigation authorities and from the police through the liaison officers it employs.

**Figure 9.21: AML/CTF Information flows in the Netherlands**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases. Pink clouds designate the ML/TF database simultaneously available to multiple agencies (law enforcement and FIU) that is commonly used as departing point for ML/TF criminal investigations.*

In the Netherlands there are several specialised investigative authorities: the FIOD is a subdivision of the Tax and Customs Administration and focuses on fraud, organised crime and the financing of terrorism. The National Crime squad (DNR) is a unit of the national police force and is responsible for combating organised crime and serious crime. DNR carries out all its investigations under the authority of the LP or of the FP<sup>330</sup>.

The FP, LP, FIOD and NR work together on ML cases. All parties have earmarked capacity for ML cases. Members of all parties sit together in a Selection and Signaling Council 'S&S overleg' (hereafter the S&S council). The role of the S&S Council is to scan through all sources of information (the STR database, cash/drugs police confiscations, MLA requests, information provided by the tax authorities etc) and to detect possible ML cases. According to the FP representative, the financial analysts sitting in this council are often capable of detecting complicated financial structures and transform many STRs into successful prosecutions. Additionally, another important role of the S&S Council is to distribute ML cases to the most competent authorities, given the nature of the cases.

According to the LP representative, APs do not receive their information from the S&S Council. Furthermore, not all criminal investigations in the Netherlands have an STR at their basis. Informants are a valuable source of information on which the prosecution can build a criminal investigation.

<sup>330</sup> FATF (2011), Third Mutual Evaluation on the Netherlands, p. 39

In general, the APs prosecute the ML offence as well as the predicate offence. The LP and the FP however focus on more specific crimes. According to the LP representative, the LP handles the investigations involving large drug cartels and human trafficking and the financing of terrorism. The FP however focuses on financial and economic crimes. With respect to ML, both the LP and the FP focus only on the ML prosecution, so in this sense are specialised units to handle ML cases. There are eight teams (approximately 140 detectives) working only on ML cases under the supervision of the LP and of the FP. The DNR has a dynamic team focusing on underground finances, and two focusing on large drug cases. The FIOD has among others a team handling drugs at the largest airport, Schiphol, and teams that do not focus only on ML cases. Furthermore, there are COMBI teams where the DNR and the FIOD work together that mainly are targeted at investigating and prosecuting facilitators.

On the issue of the way ML specialisation of the judiciary, this is mostly done in a learning-by-doing manner. Prosecutors and judges can also attend courses on financial investigations, where ML is also discussed. According to the FP representative, in the Netherlands, every prosecutor should be able to prosecute ML cases. A financial background is useful in understanding financial sheets but is not a requirement once there is competent complementary financial advice, i.e. as long as the financial experts can make the book keeping investigations.

The approval of an examining magistrate ('rechtercommissaris') is required if the prosecution wants to make use of certain special investigative techniques: questioning of witnesses that do not want to give a statement to the police, recording confidential information, investigating telecommunications and gathering information covered by professional secrecy from notaries and lawyers. Cooperation with examining magistrates is, according to the FP representative, easy and fast. Examining magistrates are not specialised on ML matters, but in general have financial crime expertise.

## 9.5.20 Poland

The Polish AML/CTF system is composed of the reporting entities, the FIU and the cooperating units – including the supervisory authorities and the law enforcement authorities.<sup>331</sup> According to the AML/CTF Act, the obliged entities and the cooperating units must inform the FIU when suspecting money laundering or terrorist financing. The FIU thereafter checks these reports through the databases it has access to, and if suspicion is confirmed, the FIU forwards the case to the PPO. The law enforcement authorities can submit a report to the FIU in relation to another crime under investigation if they consider that there could be a connection to ML or TF.<sup>332</sup> When the FIU considers that the report was correctly submitted it will try to provide the respective LEA with additional information to support its investigation. After the FIU has conducted its investigation, it will therefore forward the case to:

- 1) the PPO, when it finds the suspicion of money laundering or terrorist financing is justified
- 2) the LEA, when it has information about other criminal offences in connection to money laundering that need further investigation (i.e. Police, Border guards, fiscal control, anti corruption bureau etc.)
- 3)

According to the Polish representative, in 2009 the FIU forwarded 180 cases to the PPO and 246 cases to the LEA. Furthermore, in 2010 the FIU forwarded 195 cases to the fiscal control offices, 122 cases to the police (including the Central Bureau of Investigation), 89 cases to the Internal Security

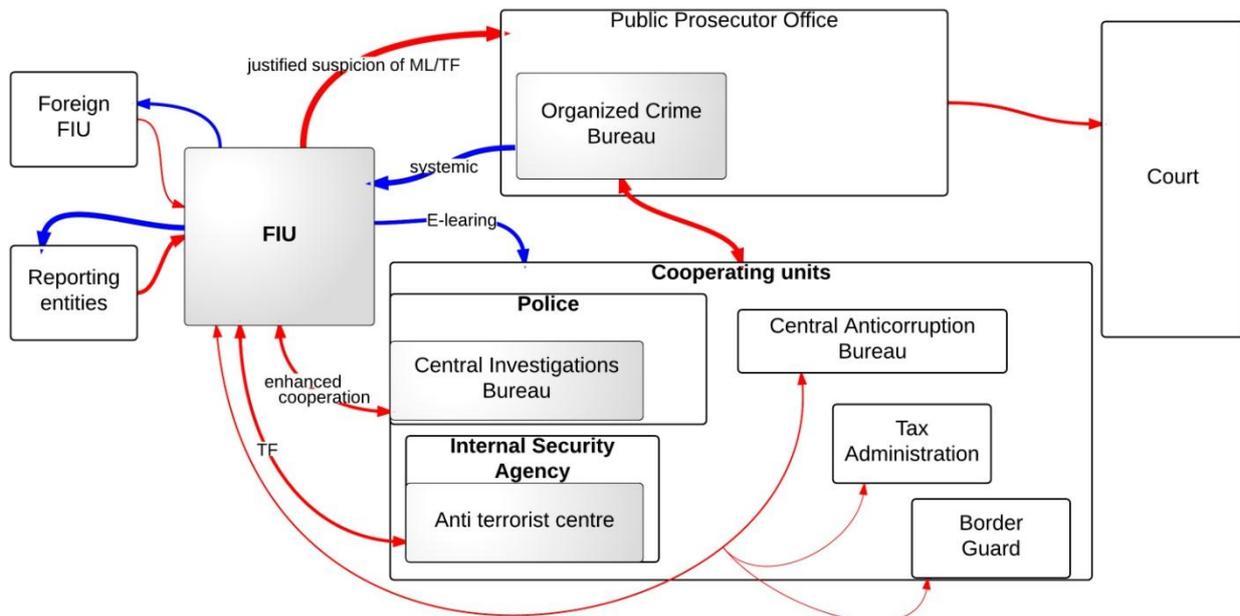
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<sup>331</sup> A simple yet clear and well-structured picture of the AML/CTF system is provided on the website of the Ministry of Finance at [www.mf.gov.pl/en/ministry-of-finance/aml-ctf/system](http://www.mf.gov.pl/en/ministry-of-finance/aml-ctf/system).

<sup>332</sup> Articles 31-33 of the Polish AML/CTF Act

Agency (including the Anti-Terrorist Centre), 7 cases to Border Guards, 6 cases to the Central Anticorruption Bureau, and 1 case to the tax authorities.<sup>333</sup>

**Figure 9.22: AML/CTF information flows in Poland**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

In terms of feedback, the PPO and the law enforcement authorities are required by the AML/CTF Act to advise the GIFI on all cases where they suspect money laundering or terrorism financing. Moreover, the PPO and the law enforcement authorities must also inform the FIU on the initiation and completion of investigations of money laundering or terrorism financing crimes and on the imposed charges, even when these investigations did not start from information provided by the FIU.<sup>334</sup> According to the Polish representative, this provision for cooperation between the FIU and the LEAs is remarkable in the case of an administrative FIU. Together with the systematic feedback it receives, the FIU seems well connected to the other key players in the Polish AML/CTF system.

In general, investigations are initiated and carried out by the police and other entitled bodies but the public prosecutor has the power to take over the proceedings. In general, the PPO supervises the investigation of the police. The public prosecutor must conduct investigations by himself only, when the suspect is a member of the law enforcement authorities or of the judiciary (a judge, a public prosecutor, a police officer etc.).<sup>335</sup> According to Moneyval (2006) money laundering and financing of terrorism cases are investigated by the Central Investigations Bureau of the General Headquarters of the Police. There is no specialised ML unit within the police.

The Polish prosecution is organised in Appellant, Regional and District Prosecution Offices. According to the Polish representative, ML/TF cases can be investigated by the District Prosecutor's Offices. If a given investigation turns out to be of a complex character (e.g. large number of entities involved, sophisticated methods of money laundering, transnational criminal scheme) the case is handed over

<sup>333</sup> FIU Poland (2010) *Annual report*, p. 10-11

<sup>334</sup> Articles 4 (3) and 14.2 of the Polish AML/CTF Act

<sup>335</sup> Euro-Justice Report 2010, p.603

to Regional Prosecutor's Offices. When a linkage between the ML/TF case and organised crime is found, the case is investigated by the Appellate Prosecutor's Offices. This division of competences has been laid down in the Ordinance of the Minister of Justice of 24 March 2010 on internal activities of the units of prosecution service.

According to Moneyval (2008) since 2007 the Organised Crime Bureau of the National PPO was divided into a Central Unit and 11 Local departments. The departments conduct investigations into the more serious crimes – terrorist financing, organised crime, money laundering, corruption in the governing bodies and the judiciary. The Central Unit is responsible with the coordination of the local departments in their AML/CTF investigations as well as with the issuing of statistics on these matters.<sup>336</sup>

The prosecution can use FIU data in building a case file. The PPO can request information from the FIU when this supports the investigation in course. Furthermore, the FIU seems to be a central source for ML and TF financing information, as the Polish representative estimates that approximately 60% of all ML/TF prosecutions and approximately 80% of all ML/TF convictions can be traced back to FIU reports.

#### **9.5.21 Portugal**

A peculiarity of the information flow system in Portugal is the double reporting of the obliged entities. These entities have to report to the FIU and to the DCIAP at the same time and they also receive feedback from both institutions, as mentioned also in the FATF MER.

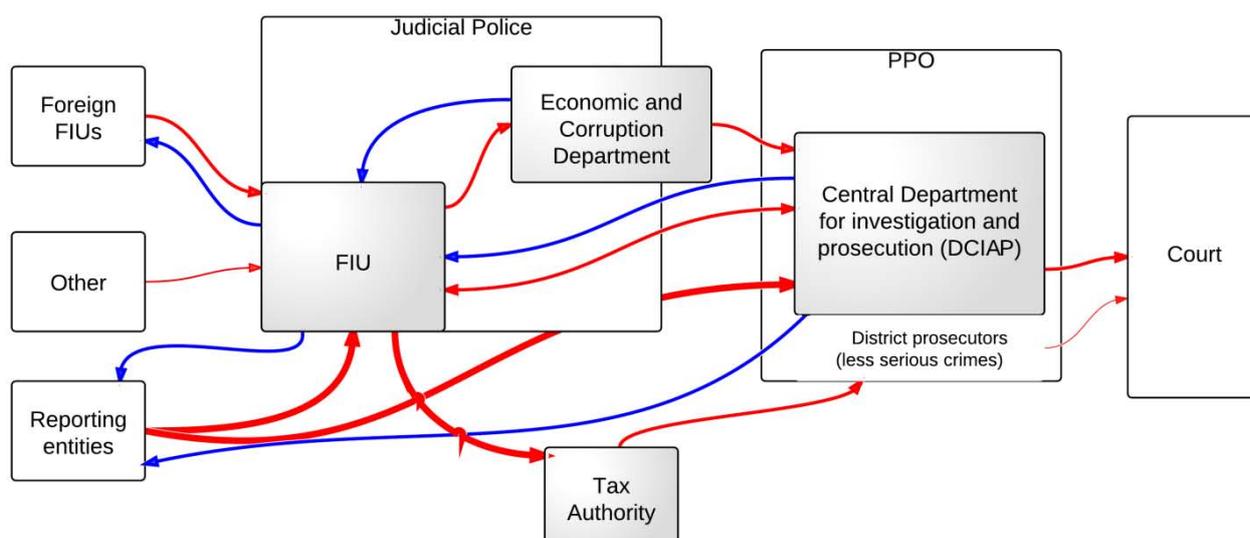
The PPO does not necessarily start a formal criminal/judicial analysis upon the receipt of the reports, but they cross-check their own databases ('administrative procedure'). The DCIAP therefore can provide the FIU with information on already existing formal inquiries, such as possible ongoing investigations. At the same time, the FIU conducts its own preventive investigation and forwards the outcome of its analysis to the DCIAP, as well as to the police competent investigating drug-related crimes, the Tax authorities concerning tax-related crimes (main receiver of FIU reports) or the Economic and Corruption department within the Judicial Police (when the predicate offence is not known). The FIU always forwards the report to the DCIAP once they have confirmed the suspicion presented in the STR. When there is no confirmation of suspicion, DCIAP is not notified and the case is archived in the FIU database<sup>337</sup>.

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<sup>336</sup> Moneyval (2008) *First follow-up report on Poland*, p.9

<sup>337</sup> FATF (2008), *Follow Up Report on Portugal*, p. 66.

**Figure 9.23: AML/CTF Information flows in Portugal**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

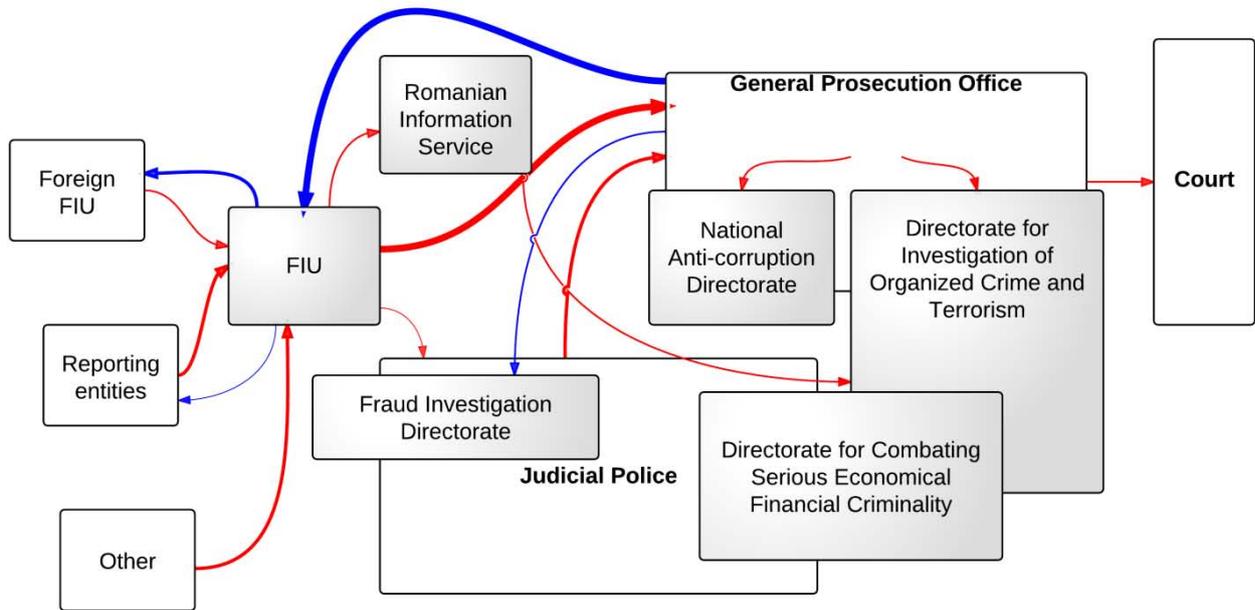
According to the Portuguese representatives, the Portuguese AML/CTF system is in line with the EU models, despite the double reporting system. There is a specialised unit for money laundering in the Police service which receives the FIU reports and a specialised unit within the PPO that handles the receipt of STRs and that ensures prosecution of ML and TF cases. According to the Portuguese representatives, the DCIAP handles the more serious money laundering crimes (i.e. the big fraud cases and the transnational organised crime as they are generally related to the big ML cases). The DCIAP staff has had specific training to handle the most complex money laundering cases.

With respect to feedback, according to the Portuguese representatives, the double reporting ensures that the obliged entities receive more feedback. Furthermore, it allows for a continuous cooperation between the FIU and the DCIAP which implies that the FIU receives sufficient feedback from the prosecution. As part of the Judicial Police, the FIU reported good feedback from the specialised police units it collaborates with.

### 9.5.22 Romania

The Romanian FIU forwards its reports to the PPO and could also forward them to the Judicial Police. The information of the FIU is generally taken as a starting point in the criminal investigation as the FIU is an administrative FIU. According to the Romanian representative, the PPO usually asks for additional information from the FIU, such as supplementary analysis on transactions involving a suspicion on money laundering as well as information on criminal investigations on money laundering that do not originate from an FIU report. In Romania, the competence for prosecuting ML is divided between three prosecution units – the Directorate for Investigating Organised Crime and Terrorism (DIOCT), the National Anticorruption Directorate (NAD) and other national prosecution offices - depending on the predicate offence. DIOCT is the main specialised prosecution unit dealing with AML/CTF matters. Both the DIOCT and the NAD work with specialised police forces from within the Ministry of Interior affairs.

**Figure 9.24: AML/CTF information flows in Romania**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

The FIU receives good feedback from the PPO, although it would like to see this intensified. Having regard to the importance of the cooperative relationships between law enforcement authorities and the FIU, in the beginning of 2009, a Cooperation Protocol was concluded between the General Prosecutor’s Office by the High Court of Cassation and Justice (GPOHCCJ) and the FIU on the implementation of the Romanian National Action Plan. The Romanian representatives argue that the feedback reflects good work on behalf of the FIU in terms of the documentation it provides to the investigative authorities. Feedback from the judicial police is limited, but the FIU representatives did not seem discontent as long as the PPOs would provide additional feedback.

### 9.5.23 Slovenia

Slovenia has opted for the administrative type of the FIU, which does not have police competences, but has a special role in detection and prevention of money laundering and terrorist financing. According to the Slovenian representative, the advantage of such FIUs is the ability to develop trust and cooperation between the FIU and the financial institutions. The OMLP is the administrative office within the Ministry of Finance and acts as a clearing house between the reporting entities and the law enforcement authorities. The OMLP analyses the STRs sent by the obliged entities and if it establishes the reasons for the suspicion of money laundering, terrorist financing or other criminal offences, it forwards the gathered data as notification or information to the Police or to the State Prosecutor Office for further investigation. OMLP notifications are intelligence data containing sensitive financial data, and not criminal reports in the sense of the Criminal Procedure Act.<sup>338</sup>

<sup>338</sup> FIU Slovenia(2010), *Annual report*, p. 2-3

Among concluded cases, the OPML forwards to the Criminal Police Directorate of the Ministry of Interior and/or to State Prosecutor's Office cases that were suspected to be connected with the criminal offence of money laundering, together with documentation on the basis of Article 61 of the Slovenian AML/CTF Act. Written information is also sent to the Tax Office and to the Criminal Police Directorate of the Ministry of Interior with respect to a suspicion on tax fraud and on the "abuse of position or trust at performing economic activities".

In 2010 the FIU has mainly cooperated with the Criminal Police Directorate of the Ministry of Interior (Police), with the Special Group of Prosecutors for the Fight Against Organised Crime at the Supreme State Prosecutor's Office, with the Tax Office, the Customs and with the Slovenian Intelligence and Security Agency.<sup>339</sup> Moneyval (2010) also mentions that cooperation between the FIU and the Police is very close in AML matters and that, on the basis of a cooperation agreement that the two institutions have signed, they can have regular meetings and cooperate on a case-by-case basis. Coordination is arranged especially between the FIU, Police and Public Prosecution when more significant cases of money laundering are dealt with.<sup>340</sup>

The State PPO and other state authorities (Criminal Police, Tax Administration, Customs, Slovenia Intelligence and Security Agency) are obliged by law to forward to the FIU all statistics and data on the information provided by the FIU<sup>341</sup>. This is to ensure the centralization and the analysis of criminal data on the offences of money laundering and terrorist financing. The FIU therefore receives annual feedback from the authorities it cooperates with on their findings on the cases forwarded to them by the FIU. Feedback represents the important parameter of efficiency of the OMLP and Police. For instance, on the basis of the feedback received from the Tax Office, the OPML can conclude that it also has played an important role in the field of detection of criminal offences of tax evasion, especially of VAT evasion.<sup>342</sup>

Prior to 2007, the Police provided the OPML with feedback informally on the basis of the agreement. After 2007 this obligation was formally stipulated by the new AML/CTF Act. In addition, the prosecutors and the courts forward twice a year statistics on the details of the natural and legal persons that have been investigated/tried and convicted, the nature of the criminal offence, and the amounts that have been forfeited or confiscated.<sup>343</sup>

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<sup>339</sup> FIU Slovenia(2010), *Annual report*, p. 11-12

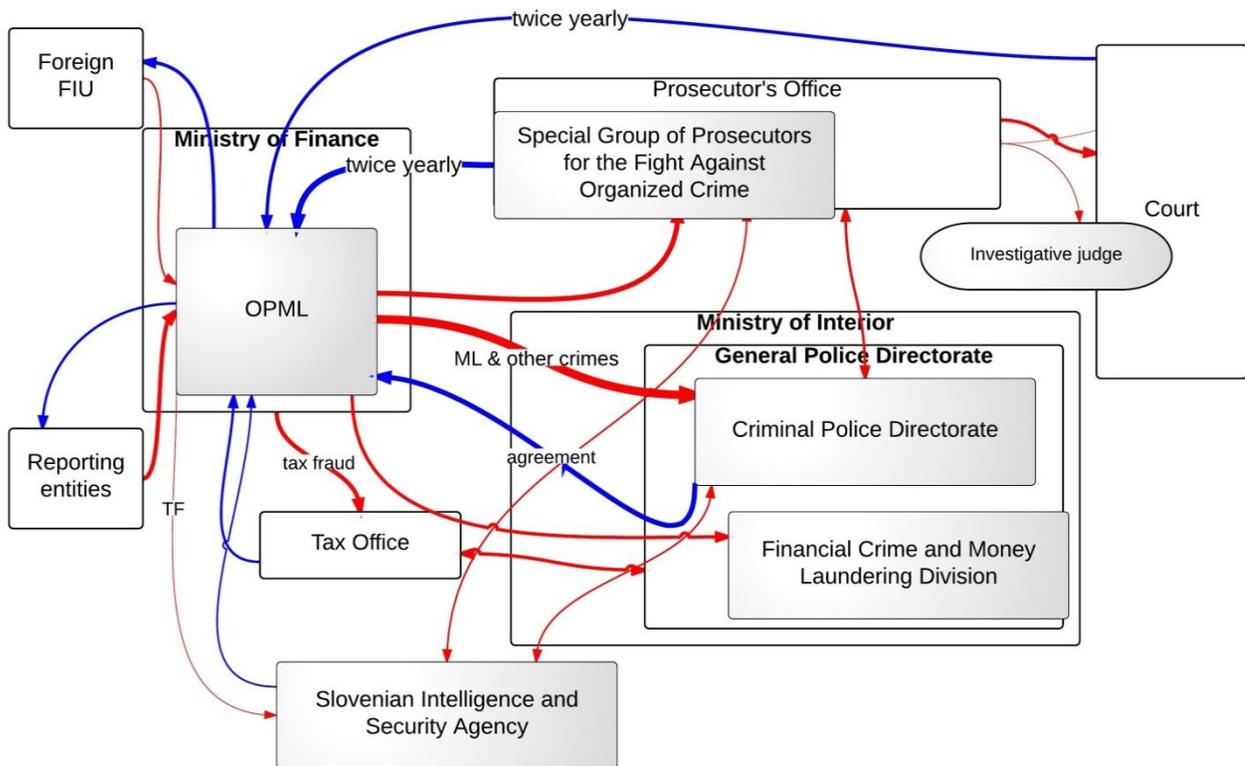
<sup>340</sup> MONEYVAL (2010), *Fourth Assessment Visit Report on Slovakia*, P 61

<sup>341</sup> Article 75 of the Slovenian AML/CTF law

<sup>342</sup> FIU Slovenia (2010), *Annual report*, p. 10

<sup>343</sup> MONEYVAL (2010), *Fourth Assessment Visit Report on Slovakia*, P 51

**Figure 9.25: AML/CTF information flows in Slovenia**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

The Slovenian criminal procedure developed from the so-called mixed (inquisitorial-accusatorial) criminal procedure systems. According to Moneyval (2010) the Slovenian Criminal Procedure Act was adopted by the National Assembly in September 1994 and has already been amended nine times since then, mostly in the adversarial direction.<sup>344</sup>

According to the Criminal Procedure Act, the Police are the competent authority for the detection of criminal offences (including money laundering), and the State Prosecutor's Office is competent for prosecution of criminal offences. The Criminal Procedures Act allows for the State Prosecutor, in serious cases of economic crime, organised crime and corruption, to establish a special investigative group with other competent institutions from the field of customs, taxes, financial activities, securities, protection of competition, prevention of money laundering, prevention of corruption and illegal drug trafficking. This is mainly to ensure the rapid identification of the criminal offence and perpetrator and to support the work of the prosecution.<sup>345</sup>

According to Moneyval (2010), an Economic Crime Section has been created under the General Police Directorate, within the Criminal Investigation Police. This section includes the Financial Crime and Money Laundering Division, which is primarily responsible for conducting preliminary investigations in money laundering cases as well as in other economic crimes. Within the General Police Directorate an officer co-ordinates the investigations of money laundering cases of various

<sup>344</sup> MONEYVAL (2010), Fourth Assessment Visit Report on Slovakia, P 58

<sup>345</sup> *Ibid.*, p. 45

Police units at a national and regional level. This officer is placed in the Division for Financial Crime and Money Laundering and cooperates directly with the FIU. Two more officers are appointed at each regional police directorate to conduct all financial investigations. The coordinator at the General Police Directorate receives all the notifications of suspicions of money laundering from the FIU. Moreover, on January 1, 2009 the Serious Economic Crime Section was launched within the Police Criminal Directorate. The section has national competence for investigating serious crimes in the field of economic crime, corruption and money laundering.<sup>346</sup>

On the issue of the financing of terrorism, there is a Counter Terrorism and Extreme Violence Division within the Organised Crime Section of the General Criminal Police Directorate that has national competence in the prevention, detection and investigation of terrorist criminal offences (including terrorist financing).<sup>347</sup>

State Prosecutors/investigating judges: The State Prosecutors are competent for the prosecution of perpetrators and also have the authority to file a 'motion for conducting the investigation' to the investigating judge. The investigating judge of the court of jurisdiction conducts the investigation. The investigating judge may entrust the execution of certain acts of investigation to the police.

Based on Article 19 of the Criminal Procedure Act, the state prosecutor is the authorised prosecutor in cases involving offences liable to prosecution ex officio, among which are cases of money laundering and terrorist financing. The state prosecutor directs and supervises the police investigation. The directions the prosecution gives to the police are binding and have to be executed. The role of the state prosecutor is crucial especially in the most difficult and complicated cases, when according to Moneyval (2010), he/she can significantly affect the legality and success of the police work.<sup>348</sup>

Moneyval (2010) noted the pro-active attitude of the OPML but argued that efforts on the part of the police in proactively pursuing money laundering have to increase. Moneyval (2010) argued that law enforcement authorities might face capacity issues as it pursued few of the cases put forward by the OPML on the money laundering offence. The police and the prosecution pursued, instead, the other criminal offences in the cases forwarded by the OPML. The reason quoted by Moneyval (2010) was a general reluctance to investigate money laundering with insufficient evidence on the predicate offence. This impediment could, however, be overcome by means of new case law.<sup>349</sup>

#### 9.5.24 Slovakia

The Slovakian FIU receives most of the UTRs from national reporting entities. It disseminates its analysis to the corresponding LEAs in accordance with the provisions of the AML/CTF Act (sections 26 and 28). Most reports are forwarded to various police units, under the Presidium of the Police Force. If the information that the FIU possesses could be used to initiate tax proceedings, the FIU forwards its reports to the Tax Directorate or to the Customs Directorate. In 2010, less than 9% of the reports forwarded by the FIU contained sufficient information to start a criminal investigation, but the vast majority of the reports had still to be investigated by these police units, who would ultimately decide whether the evidence would support the commencement of a criminal procedure or not.<sup>350</sup>

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<sup>346</sup> MONEYVAL (2010), Fourth Assessment Visit Report on Slovakia, p. 59

<sup>347</sup> *Ibid.*, p. 60

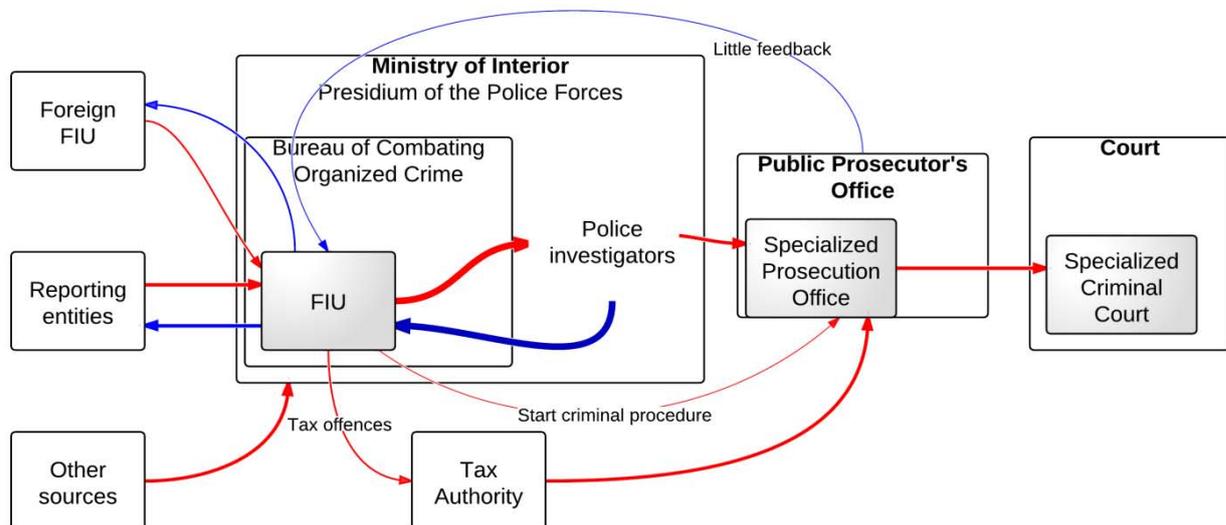
<sup>348</sup> MONEYVAL (2010), Fourth Assessment Visit Report on Slovakia, p. 61

<sup>349</sup> *Ibid.*, p. 62

<sup>350</sup> FIU Slovakia (2010), *Annual report*, p.14.

When the evidence is sound, the FIU can propose the commencement of criminal investigations in a money laundering case and has to notify the PPO of doing so. Furthermore, in its capacity as ARO the FIU has to provide further assistance to the LEAs with respect to the confiscation of proceeds related to a ML/TF investigation.

**Figure 9.26: AML/CTF information flows in the Slovak Republic**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

With respect to feedback, the police units to which the FIU forwards its reports are said to report promptly on the efficiency of such information<sup>351</sup>. The Slovak FIU meets several times a year with the Director of the Criminal Unit of the General Prosecutor's Office to inform them on the newest AML/CTF trends. From the 2010 FIU report it may be concluded that the FIU is the leading authority in the AML/CTF policy, and that a closer collaboration between the PPO and the FIU would be beneficial for both institutions from a learning point of view. Unfortunately, according to the Slovakian representative as well as to the Moneyval Fourth Round Assessment Visit, the feedback the PPO provides to the FIU is mostly concentrated on statistics, rather than on the background of the prosecutions that were started on the basis of the information provided by the FIU.<sup>352</sup>

With respect to specialisation, it seems that Slovakia has introduced specialised agencies at all levels of the repressive enforcement chain. There is a prosecution department handling the most complex money laundering cases as well as a Specialised Criminal Court for more serious crimes<sup>353</sup>.

### 9.5.25 Spain

In Spain, upon receipt of an STR, the administration decides whether the STR pertains to ML or TF. If there are no antecedents on the person, nor is there a clear indication of the predicate offence, SEPBLAC - through its liaison officers from the National Police and the Civil Guard – sends the ML

<sup>351</sup> FIU Slovakia (2010), *Annual report*, p. 13.

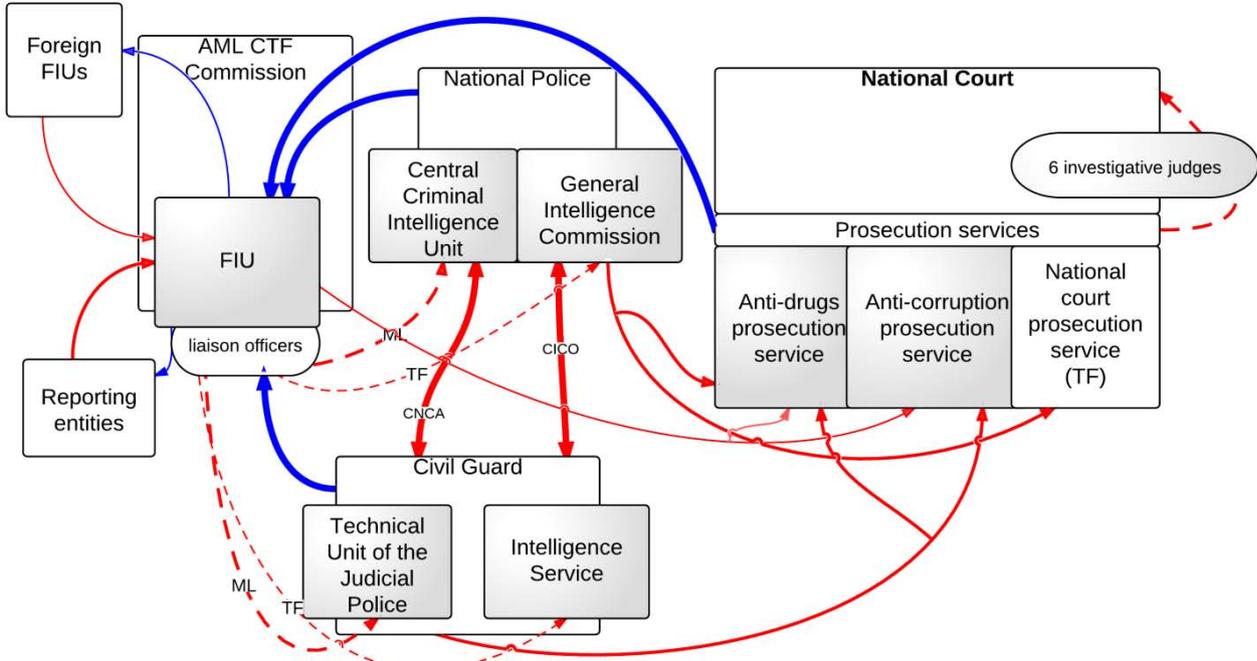
<sup>352</sup> MONEYVAL (2011), *Fourth Assessment Visit Report on Slovakia*, p. 68.

<sup>353</sup> *Ibid.*, p. 74

reports to the specialised departments of the National Police (UCIC: Central Criminal Intelligence Unit) or of the Civil Guard (UTPJ: The Technical Unit of the Financial Police). If the case is related to the financing of terrorism it is given to other specialised departments of the National Police (CGI: The General Intelligence Commission) and of the Civil Guard (SI: The Intelligence Service). Should the SEPBLAC notice a clear offence in its investigation it will send the information to the competent public prosecutor on Anti-Corruption or on Anti-Drugs. This, however, happens seldom.

In Spain, terrorist financing is more often investigated than other EU MS due to the presence of recognised terrorist factions within its territory. It is therefore no coincidence that both ML and TF are investigated and prosecuted by specialised units that essentially work independently as well as with one another. There are two centralised points for the police, which decide whether there is an overlap regarding the investigation, and decide who is going to perform the final investigation, the National Police or the Civil Guard. These points are mentioned in the Information flow chart as CICO – Centre for Organised Crime Intelligence and CNCA – National Centre for Anti-terrorist Coordination.

**Figure 9.27: AML/CTF Information flows in Spain**



*Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; dotted arrows mark intermediated flows (feedback); the thickness of the arrows reflects the intensity of the information flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases.*

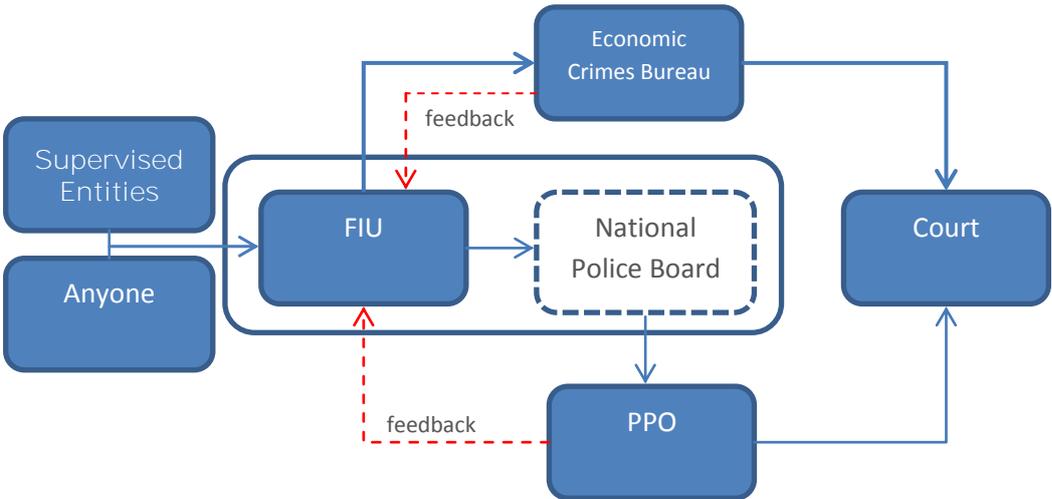
In Spain, the Prosecution service operates directly under the National Court ('Audiencia Nacional') and there are three specialised prosecution services: The National Court Prosecution Service handles TF cases, the Anti-drugs Prosecution Service is a specialised prosecution on drug crimes that has a long tradition, and the Anti-corruption Prosecution Service works on the repression of corruption-related offences.

With respect to feedback the FIU is content with the feedback it receives both from the specialised prosecution services as well as from the specialised investigation units it works with. Both the Spanish FIU and PPO representatives argued the cooperation between the two is effective.

**9.5.26 Sweden**

In Sweden, the FIU is an independent unit of the National Police Board. The FIU can choose to forward its cases to the Swedish National Prosecution Authority or to the ECB. The decision of the FIU whether to forward an intelligence report to the local police office or to the ECB depends on the size/importance of the case. In Sweden, it is the Prosecutor General who decides if the ECB or the National Prosecution Authority will eventually prosecute the case and, in general, major pre-trial investigations are led by a public prosecutor. In terms of feedback, according to the Swedish representative, the FIU really has to push for feedback. Currently, the FIU is working with the police and PPO on this matter.

**Figure 9.28: AML/CTF Information flows in Sweden**



*Legend: The blue arrows represent the information that flows from one agency to another (normally that is a report/case unless it is specified that it only concerns a copy) and the red dotted arrows illustrate supervision and case specific feedback. We have only looked at feedback directed to the FIU, and therefore this chart does excludes all other feedback i.e. between court and prosecution.*

**9.5.27 United Kingdom**

In 2013 SOCA is expected to be merged into the National Crime Agency (NCA). The UK authorities stated that the NCA is working through the issues of structure and the decisions on structure and design are being clarified. It is still uncertain which other law enforcement agencies will be merged into the National Crime Agency. UKFIU will most likely be positioned in the so-called ‘information hub’ foreseen in the planned NCA structure. Having in mind these changes, Figure 9.28 is likely to need significant correction.

The UKFIU receives SARs and consent SARs from the reporting entities and from other entities. From the day the FIU receives a Consent SAR it has seven working days to analyse it and to decide upon its consent. There is a special Consent SARs Team within UKFIU that analyses the Consent SARs. In the seven-working-day period they may consult other law enforcement agencies for additional information and help in the decision whether or not to grant consent.

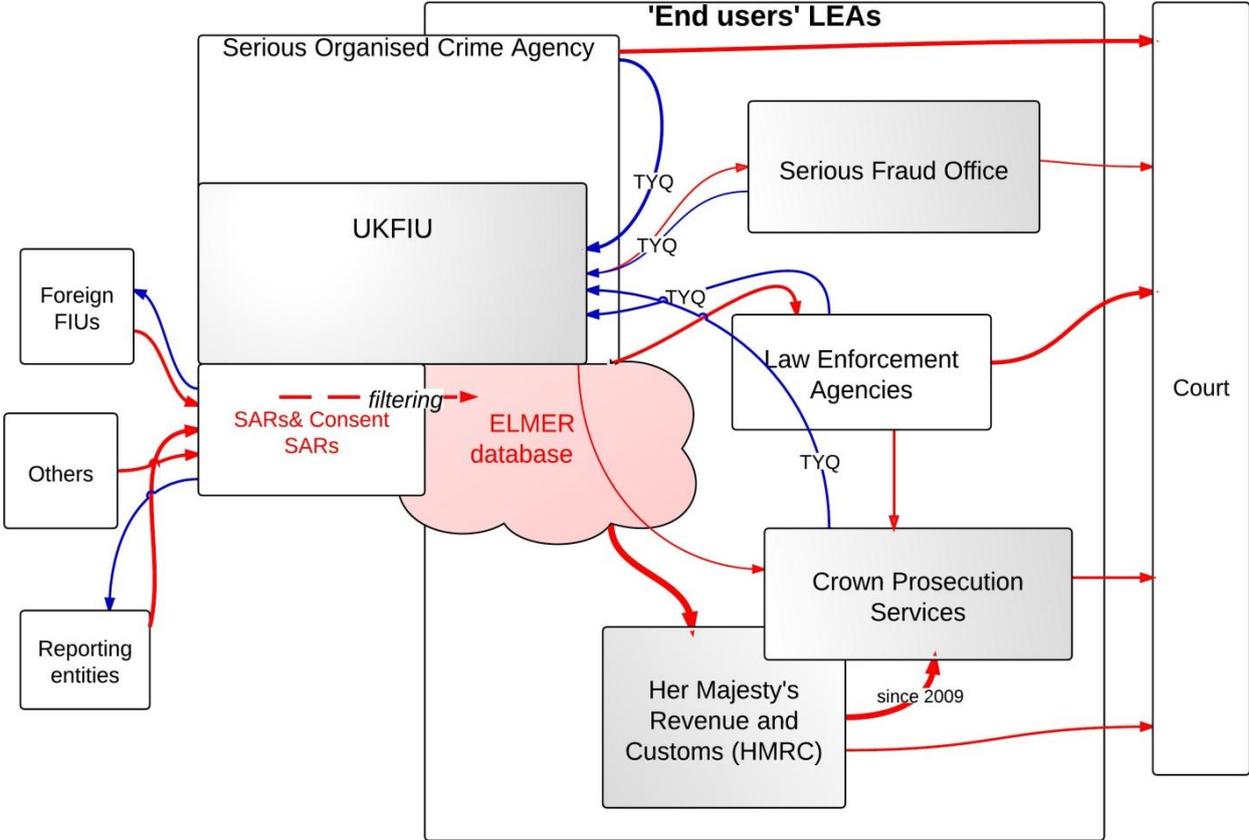
In addition to the SARs that are analysed by specific teams (e.g. on PEPs, terrorist financing or on corruption) the other regular SARs are not actively analysed and only made available in their entirety

in the SARs database (ELMER). This database is widely accessible by approximately 80 law enforcement agencies ('end users')<sup>354</sup>. LEA financial investigators can cross-check data from their investigations with the SARs database. They have full access to the SARs. According to the UK authorities, the UKFIU has developed criteria that need to be met by LEAs to obtain access to the SARs database. The access criteria are strict and organisations and individuals that can make use of the ELMER database have to sign an agreement to abide by the user criteria.

The authorities decided to provide full access to the LEAs to the ELMER database because UKFIU could not manage with the resources it had and currently has, to deal with so many SARs. By providing LEA direct access, the chance that the SARs are actually used and can contribute to an investigation is increased. Also, SARs can pop up various times in different investigations and can thus be 'reused'.

On the issue of feedback and cooperation with the LEAs and the reporting entities, the UKFIU representatives mention that the FIU has a special team that maintains relations with the industry and is responsible for creating awareness of the tasks and functions of UKFIU and the value of the SARs Regime: the Dialogue Team. The Dialogue team also goes to law enforcement authorities and ML supervisors to maintain relations with these authorities and to discuss 'hot topics' with them. Furthermore, the UKFIU has a specific contact person at each of the 'end users' of the SARs database. These designated LEA staff are the point of contact for the Twice-Yearly Questionnaire and are likely to be contacted if UKFIU seeks contact with a particular law enforcement agency.

**Figure 9.29: AML/CTF Information flows in the United Kingdom**



Legend: In the figure above the red arrows show the ML/TF flows of information; blue arrows represent the feedback given and received by the FIU; the thickness of the arrows reflects the intensity of the information

<sup>354</sup> As the picture ran the risk to be overcrowded not all names of 'end users' have been included in the Figure 6.

flows – both in terms of quantity and quality; shaded boxes are used to designate those departments/offices/institutions that have a higher level of specialisation in dealing with ML/TF cases. Pink clouds designate the ML/TF database simultaneously available to multiple agencies (law enforcement and FIU) that is commonly used as departing point for ML/TF criminal investigations.

#### *Investigative offices and prosecution services handling ML/TF cases*

In the common law system of the UK, public prosecutors do not head an investigation by police or other law enforcement authorities. Investigators are independent and are not instructed by public prosecutors. However, where a case gets more complex or serious (the type of offence), investigators tend to ask prosecutors from the outset of a criminal investigation for advice. This way, Crown Prosecution Services (CPS) is involved almost from the outset of a financial investigation. Investigations can take several years if financial investigative tools are used, due to the complexity of such cases - often various interim measures must be requested to courts and mutual legal assistance may be necessary. For this, investigators need the prosecutors to obtain the relevant orders.

The police are divided into 43 local police forces. London has two police forces: London City Police and London Metropolitan Police. The most important law enforcement agencies in the field of AML/CTF policy are SOCA and Her Majesty's Revenue and Customs (HMRC). Smaller cases are investigated by local police and also tried by local CPS prosecutors. The more serious cases are usually investigated by SOCA and taken up by CPS HQ Central Divisions.

The CPS used to have 42 local CPS areas that coincided with the police forces' division, but this has recently been reduced to twelve regional teams. Furthermore, CPS has taken over the prosecution functions from DEFRA.<sup>355</sup> In general, there is a move towards positioning the CPS as the single prosecution authority in England and Wales. Until two years ago, CPS only prosecuted cases that were investigated by the police forces. Since CPS merged with HM Revenue and Customs (prosecution branch), it also takes up prosecutions originally investigated by HMRC – including the ML prosecutions.<sup>356</sup> There is another prosecution body in the field of AML/CTF policy, which is the Serious Fraud Office. This is a very small prosecutorial body, which only deals with very serious fraud cases where a value of 1 million GBP or more is involved. The SFO has its own financial investigators.

#### **9.5.28 Information flow efficiency and repression capacity of AML/CTF systems – a look on Europe**

Having overviewed the way information flows across institutions that carry an active role in the effective enforcement of the repressive system in each Member State, we can calculate the information flow system efficiency as well as the expected effective repression score of each Member State.

We further need to take into account the control of corruption and the government effectiveness context indicators that the World Bank has compiled for the EU. These indicators are presented in annex 9.4. We use the government effectiveness indicator<sup>357</sup> to approximate, per Member State, the propensity that information is lost, all else equal, when one government institution shares information to another governmental institution, in the absence of deviant interests.

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<sup>355</sup> Department for Environment, Food and Rural Affairs. See for the announcement that CPS would take over the prosecution functions of DEFRA Available at: <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110712/wmstext/110712m0001.htm>.

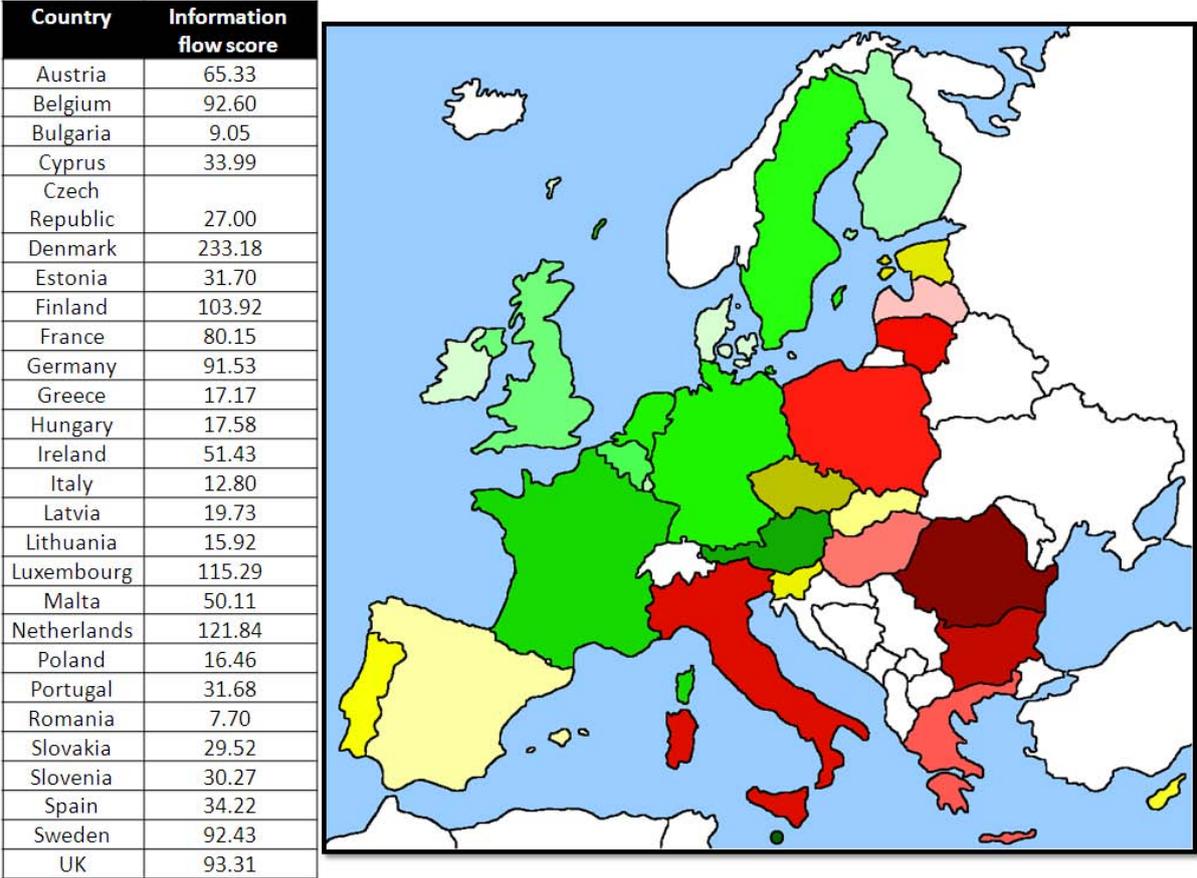
<sup>356</sup> Available at: [http://www.cps.gov.uk/your\\_cps/our\\_organisation/cfg/the\\_group/our\\_history.html](http://www.cps.gov.uk/your_cps/our_organisation/cfg/the_group/our_history.html)

<sup>357</sup> The Government Effectiveness indicator captures the “perceptions of the quality of public services, the quality of the civil service [...], the quality of policy formulation and implementation and the credibility of the government’s commitment to such policies.” (Kaufmann, Kraay and Mastruzzi, 2010)

Further, we use the control of corruption<sup>358</sup> context indicator to approximate the loss of information, per Member State, all else equal, when two governmental institutions share information in the presence of deviant interests.<sup>359</sup>

The values we calculated for the information flow efficiency and for the effective repression systems are presented in Figures 9.30 and 9.31 below.

**Figure 9.30: Information flows across the EU**



Legend: high information value – green spectrum; medium information value – yellow spectrum; Low information value– red spectrum; the values in the tables correspond to the shadings of the figure

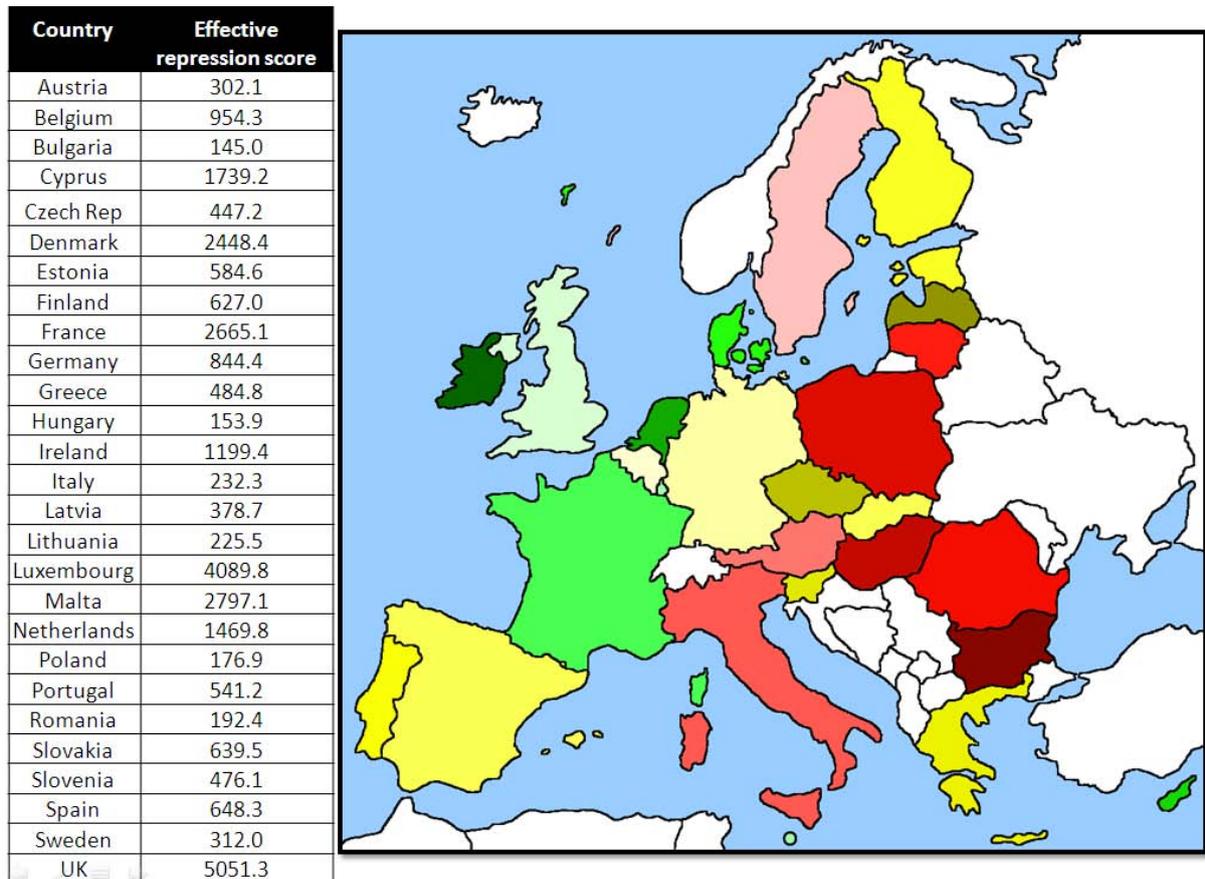
Figure 9.30 shows the information flow scores that came out of our analysis of information flow efficiency in the AML/CTF context. For exposition purposes we separated the EU Member States in three groups – high, medium and low information value systems, matched with three colours.<sup>360</sup> The figure above reveals the fact that information flows are higher in higher in Western Europe and comparatively lower in Southern and Eastern Europe.

<sup>358</sup> The Control of Corruption indicator captures the “perception of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as capture of the state by elites and private interests” Kaufmann, D., Kraay, A. and Mastruzzi, M. (2010) ‘The Worldwide Governance Indicators: Methodology and Analytical Issues’, World Bank Policy Research Working Paper No. 5430.

<sup>359</sup> To avoid temporal fluctuations we use as proxy the average value these context indicators have taken over the period 2008-2011. The proxies are described in the final two columns of the table presented in Annex 9.4.

<sup>360</sup> The color ranking is only for exposition purposes as it is not a linear transformation of the scores provided in the table to the left of Figure 9.29.

**Figure 9.31: Effective repression scores across the EU**



*Legend: high effective repression score – green spectrum; medium effective repression score – yellow spectrum; Low effective repression score – red spectrum; the values in the tables correspond to the shadings of the figure*

Figure 9.31 shows the effective repression scores that came out of our analysis of information flow efficiency in the AML/CTF context. For exposition purposes we separated the EU Member States in three groups – high, medium and low information value systems, matched with three colours.<sup>361</sup> Figure 9.31 reveals a mixed map of Europe.

Following the crime and punishment literature, if countries have in place systems of information flows which facilitate information dispersion and the reduction of information asymmetry between the money launderers and terrorist financiers, and the law enforcement authorities, then, all else equal, these countries should have been best able to prosecute and convict on these charges. Having estimated an information flow score as well as an effective repression score for member state we are able to test this hypothesis. The hypothesis cannot be rejected as there exists a positive significant (95% confidence interval) correlation between the number of average convictions per member state and both the information flow score and the effective repression score of a country. The two scores are also significantly pairwise correlated with the average number of convictions per member state.

<sup>361</sup>The color ranking is only for exposition purposes as it is not a linear transformation of the scores provided in the table to the left of Figure 9.30.

## 9.6 Conclusion and discussion

The FIU is always involved in the criminal investigation stage, if only at the beginning, simply because it does intelligence work and forwards its conclusions to the law enforcement agencies. The FIU can also perform the criminal investigation as part of the specialised law enforcement units, under the supervision of the prosecution. In most Member States the connection between the public prosecutions services, the law enforcement authorities and the public prosecutor is strong. Having regard to information flowing from the FIU to the court, we were mostly interested in the ways – either chosen by the legislator, or imposed through a ministerial collaboration, or developed from the practice side – that help reduce information loss across the repressive system. Having examined the information flows of the 27 EU Member States, we were able to draw some conclusions on the hypotheses we have earlier formulated.

### 9.6.1 Effective information flow exist in countries that have more ML prosecutions and convictions

We first looked at the information flows belonging to each country. Using the method of Goyal (2002)<sup>362</sup> we calculated an estimate of the value of the each network. The results posed underneath the header of each country account for contextual variables and have been normalised and distributed into three categories. We see that some countries have very high value models of information flow transmission and that in combination with the size of the average expected punishment this creates a more or less strong signal of effective repression.

Using econometric methods we see that there is a positive correlation (significant at a 95% confidence level) between the effectiveness of the information flows and the average number of prosecutions and convictions that have been reported in the past 5 years. A similar relationship exists between the effectiveness of a repressive system and the average number of prosecutions and convictions. This finding is in line with the crime and punishment experimental literature.

### 9.6.2 Countries where the legislator chose a broad definition of ML have more effective information flow systems

As argued in section 9.3, the effects of bottlenecks are most visible when more information needs to be processed and therefore more pressure is exerted on the bottlenecks. Countries that have high information flow values are best able to reduce information decay and therefore avoid bottlenecks. Countries which have adopted a broad definition of money laundering are expected to produce more reports from the part of the obliged entities, since the national definition of money laundering is what the reporting entities have in mind when deciding upon reporting an unusual activity or transaction. It is therefore likely that countries with broad definitions of money laundering process more information and have more effective information flow systems. This could however not be confirmed econometrically.

### 9.6.3 Double disclosure of the reporting entities can reduce information decay

With the exception of Ireland, Germany and Portugal all other FIUs are the single national competent authority for receiving disclosures of information (STRs, UTRs or SARs). The Irish FIU shares this duty

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<sup>362</sup> Goyal, S. (2007), *Connections: an introduction to the economics of networks*, Princeton University Press

with a prosecution service, namely the Revenue Commissioners. In Germany, the police (and in two states the prosecution) receive the reports and the FIU receives a copy of the report as well. In Portugal the reporting entities forward their reports to the FIU and to a specialised department within the prosecutor's office.

There are various reasons for this dual reporting. In Portugal this has to do with institutional persistence – as the prosecutors had long received disclosures before the establishment of the FIU and would not accept the loss of information this could have entailed if the FIU were to be the single receiving unit. In Germany the obliged institutions have to double-report due to the different data protection systems that are in place in the federal states. The FIU has access to other databases than the police, and therefore it acts as a distribution centre for information at a federal level. In Ireland the criminal law system has deep common law roots, which means that there are several coexisting prosecuting entities. The Revenue Commissioners use the disclosures of information received from the reporting entities to prosecute in cases where tax evasion was committed.

It can therefore not be concluded that in all circumstances the decision to impose double reporting was done with an eye on avoiding the concentration of information in the hands of only one institution. This was nevertheless a secondary effect. When looking at the national estimates for the control of corruption across member states, double reporting could be argued to have had the largest positive effect in Portugal. The effect should be smaller in Ireland, whose estimated corruption control perception index is very high, and to a lesser extent in Germany where, except for two states, double reporting only disperses information within the same institution: the German Police Force.

#### **9.6.4 Information flow systems and punishments differ less within countries that have the same criminal law origins**

We have first identified the main criminal law systems in Europe to be the French, the Germanic, the Roman/Italian and the Common Law criminal systems. Further, with the help of the participants to the ARO Conference held in Cyprus, in October 2012, we were able to trace the origins of the criminal law systems of all the EU member states to one or more of these main systems (see Annex9.4). We could thereafter observe a significant positive relationship ( $p < 0,05$ ) between the size of the criminal sanctions for money laundering and terrorist financing and the Member States whose criminal law system was of a common law type. Similarly, we observe a negative significant relationship ( $p < 0,05$ ) between the size of the criminal sanctions for terrorism financing and the Member States with a Germanic criminal law system. In other words, Member States that have a common law criminal system have, all else equal, higher criminal punishments for terrorism financing, and Member States that have a Germanic law criminal system have, all else equal, lower criminal punishments for terrorism financing.

There does not seem to be any significant relationship between the type of the criminal law system and the information efficiency of the AML/CTF system. This means that apart from the similarities regarding the criminal punishment of terrorism financing, little of the difference in the effectiveness of the EU AML/CTF repressive systems can be explained by the origins of the criminal systems.

#### **9.6.5 Countries with clusters of prosecutors specialised in money laundering have more money laundering prosecutions and convictions**

We see that 21 of the 27 member states have specialised prosecutorial bodies that handle the more complex money laundering investigations. These groups of specialised prosecutors are generally

located in the largest financial pole of the country and bring together highly experienced prosecutors with financial and organised crime backgrounds. The benefits of such groups are not questioned with this hypothesis. Here we only wish to see whether these specialised groups also have a significant effect on the numbers of prosecutions and convictions on money laundering, as the latter is only one part of the financial and organised crime related crimes they investigate. However, when we correlate the presence of such specialised clusters of prosecutors with the number of prosecutions on money laundering or on terrorist financing as well as with the number of convictions on these two predicate offences, we do not get any significant results. It seems therefore, that it may be too early to judge whether these clusters add significant positive value to the overall output of the AML/CTF repressive chain.

#### *Use of investigative magistrates*

In 7 of the 27 EU member states (Belgium, Bulgaria, France, Luxembourg, Greece, Slovenia and Spain), the prosecution can forward the case to an investigative magistrate. One must also account for the fact that investigative magistrates are a feature of civil law systems and therefore the fraction presented above is not relevant in terms of how frequently magistrates are used in money laundering or terrorist financing investigations across the EU. In general, investigative magistrates (judges) have national competences and have a wider array of investigative tools which they can use during the pre-trial investigation<sup>363</sup>. In France there are ongoing debates to remove the investigative judge from the French judicial system, but given the fact that the prosecution service is falling under the Ministry of Justice, the independence of the investigative judge from the executive powers is a solid point pro maintaining it. Despite its removal not being brought up in the other member states, one can wonder whether in the current setting of information flows, few investigative magistrates handling the most complicated cases does not or will not lead to bottlenecks.

### **9.6.6 Country adaptations could point us to a best fit model**

#### *FIUs need and want feedback*

During our research we found abundant evidence to support the importance of feedback. First of all, feedback was reported to be crucial in improving the inputs that the FIU has to offer to the investigative authorities and in helping collecting the relevant information in due time such that prosecution is successful. Moreover, fine tuning of information received from the FIU is assumed to reduce eventual investigation bottlenecks and possible overloading of other investigative agencies. Finally, feedback is a great tool to ensure that agents that have an intermediate role in producing an outcome share the joy of reaching the outcome – feedback can motivate the FIU agents if it makes them feel they have contributed to the successful repression of a ‘social bad’.

Another interesting fact we uncovered during this research is that most FIUs are pleased to receive feedback on their analyses. Following the institutional literature this would show that they are ready to take a leading position in the AML/CTF fight and to anticipate what is needed from them at a later stage in the investigation. All FIUs that did not have feedback from the PPO wished to receive it. The others were content with the current state of affairs and were looking forward to improving collaboration and to receiving more feedback from the specialised police forces.

Finally, there are three ways to ensure feedback: first, horizontal cooperation – through joint investigation teams or liaison officers, and second, vertical coordination – when feedback is given

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<sup>363</sup>According to the Bulgarian Penal Procedure Code, investigative magistrates do not have different investigative tools but investigate different types of crime (Article 194 of the Penal Procedure Code).

after an action has been taken by the FIU with a view on potential future similar cases. The first form of feedback is most likely to increase the learning of the FIU whereas the latter is the least resource intensive on behalf of the law enforcement entities (no detached officer needs to be paid for) and is less likely to conflict with national data protection principles. Finally, there is also the insider cooperation – when the head of the FIU is appointed from the ranks of the police or of the prosecution to ensure that cooperation increases in the future.

#### *Introducing checks and balances to reduce the concentration of information within a single structure*

In some inquisitorial systems, the prosecution makes use of investigative magistrates to avoid being seen as a partial assessor of the situation in which a suspect is involved. Investigative magistrates may have more investigative powers than prosecutors and are there to ensure an impartial judgement. Further, double reporting imposed on the obliged entities can ensure the dissemination of information related to suspicious transactions across institutions. Regardless of the perceptions over the degree of control of corruption in the country, this can help increase transparency and effectiveness of the information flow system. Finally, when bottlenecks are predicted at the level of an institution, automatic data transfers can be put in place to avoid them. This is detrimental to the filter function of the institution but can help improve the overall information effectiveness.

#### *A general convergence to these best practices*

We observe that all of the 27 EU member states have introduced one or more of these methods to increase national cooperation among the key actors in the AML/CTF system. Feedback is given either directly or indirectly to all FIUs. However, all the other mechanisms are not equally distributed among member states.

### **9.6.7 Future research**

A lot more could be done with the use of this method of decomposition of what goes on in the law enforcement black box. The issue of information transmission effectiveness could be further elaborated by looking at the changes in information sharing patterns that have occurred over time when institutional factors have changed. One could also inquire into what type of feedback is more desirable and in which context – i.e. the horizontal feedback obtained by means of liaison officers and joint investigation teams or the vertical feedback obtained by meetings where agents higher-up in the hierarchy instruct the FIU members on how to best filter the suspicious reports they gather. Furthermore, it could be interesting to see which other factors contribute to information decay in these networks – i.e. priority is given to other crimes, limited resources that do not allow the governmental entities to actually conduct their work, limited political support for a functioning AML/CTF system, data protection systems that do not allow for information sharing etc. However, given the pioneer nature of our project, these aspects could not have been examined in detail, and remain subject to potential further studies.

## Chapter 10 INTERNATIONAL COOPERATION

### 10.1 Introduction

This chapter deals with international cooperation within the AML/CTF policy. Although we assess the national AML/CTF policies of the Member States, we cannot disregard the fact that international cooperation affects these national policies. International cooperation is a topic that has particularly been addressed during the ECOLEF Regional Workshops.

#### Hypotheses

With respect to both international FIU cooperation and international judicial cooperation in AML/CTF policy, we address four underlying topics. Firstly, we show the level of legal effectiveness of Member States in relation to relevant international conventions. As was addressed in Chapter 4, legal effectiveness requires that no legal hindrances are in place. Non-signature, non-ratification or less than full implementation leads to gaps in the AML/CTF policy and, hence, a lowered legal effectiveness of Member States' AML/CTF policies.

Secondly, we examine the issue of how international cooperation within the AML/CTF policy takes place. Our hypothesis is that this only takes place between homologue institutions.

Thirdly, we examine international cooperation within the EU and outside the EU. Obviously, there are a lot of international cooperation channels available to European counterparts with the aim of strengthening European cooperation. We hypothesise that for international FIU cooperation, cooperation between EU FIUs is easier than with third country FIUs. The criterion we use for testing this hypothesis is the speed of information exchange.

Fourthly, we hypothesise that international cooperation takes place mostly with neighbours. This will again be tested for international FIU cooperation.

### 10.2 International Conventions

In terms of international cooperation, we consider the fact that Member States have not signed, ratified, or fully implemented the relevant international Conventions a factor that negatively impacts the legal effectiveness of Member States' AML/CTF policies. Relevant international conventions are the main international conventions addressing money laundering and terrorist financing, and referred to in the evaluations of the FATF and MONEYVAL. These are:

- UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna);
- UN Terrorist Financing Convention 1999;
- UN Convention on Transnational Organised Crime 2000 (Palermo);
- UN Convention against Corruption 2005 (Merida)
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990; and
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 2005 (Warsaw).

The Table below indicates for each Member State whether the relevant international Conventions have been signed, ratified, and fully implemented. The question of full implementation is addressed

only in relation to the UN Conventions of Vienna and Palermo, and the UN Terrorist Financing Convention.

**Table 10.1: Principal international Conventions**

	UN Vienna Convention 1988			CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990		UN Terrorist Financing Convention 1999			UN Palermo Convention 2000			UN Convention against Corruption (Merida) 2005		CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 2005 (Warsaw)	
	S	R	Fully Implemented (FI)	S	R	S	R	FI	S	R	FI	S	R	S	R
<b>AT</b>	X	X	Absence of criminalisation of self-laundering	X	X	X	X	No coverage of direction and organisation of others and the contribution of a group of persons acting with a common purpose, when organisation/direction is solely for FT and when the group of persons has only FT as a common purpose	X	X	X	X	X	X	
<b>BE</b>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
<b>BG</b>	X	X	X	X	X	X	X	Liability of legal persons is limited to administrative liability	X	X	Concerns regarding the confiscation of indirect proceeds of crime and third party confiscation; market manipulation and insider trading are not predicate offences to money	X	X	X	

											laundering				
<b>CY</b>	X	X	Potential issue with the criminalisation of the money laundering offence	X	X	X	X	The financing of terrorism constitutes an incomplete predicate offence for money laundering. Deficiencies in criminalisation of FT may also limit the ability to freeze and confiscate and to provide mutual legal assistance in instances where dual criminality is required	X	X	Shortcomings in respect of seizure and confiscation, customer due diligence, STR reporting regime, international co-operation	X	X	X	X
<b>CZ</b>		X*	Criminalisation needs to be brought in line with Vienna Convention, e.g. in respect of the conversion and transfer as well as the possession of property	X	X	X	X	No full implementation because of lack of corporate liability and lack of a definition of "funds" in the relevant legislation.	X			X			
<b>DK</b>	X	X	Vienna, Palermo and Terrorist Financing Conventions have not been extended to the Faroe Islands and Greenland.	X	X	X	X	Vienna, Palermo and Terrorist Financing Conventions have not been extended to the Faroe Islands and Greenland.	X	X	Vienna, Palermo and Terrorist Financing Conventions have not been extended to the Faroe Islands and Greenland.	X	X		
<b>EE</b>		X**	X	X	X	X	X	X	X	X	X		X	*	



			acquisition, possession or use of property with knowledge, at the time of receipt, that such property represents the proceeds of crime is covered in French law by the offence of receiving stolen goods which is more restrictive than money laundering								the acquisition, possession or use of property with knowledge, at the time of receipt, that such property represents the proceeds of crime is covered in French law by the offence of receiving stolen goods which is more restrictive than money laundering				
<b>DE</b>	X	X	X	X	X	X	X	The definition of 'serious violent act endangering the state' is not fully consistent with the CFT Convention; the definition of the term 'funds' is not fully in line either	X	X	Significant gaps still remain, e.g. insider trading, market manipulation and counterfeiting are not predicate offences	X			
<b>EL</b>	X	X	X	X	X	X	X	Liability of legal persons is limited to administrative liability	X	X	Penalties are not sufficiently dissuasive and there are doubts about their effectiveness	X	X	X	
<b>HU</b>	X	X	Various deficiencies exist, e.g. self-laundering only partially covered	X	X	X	X	No definition of "funds", the requirement of "benefit" seems to go beyond what is required	X	X	Various deficiencies exist, e.g. self-laundering only partially covered	X	X	X	X
<b>IE</b>	X	X	X	X	X	X	X	X	X	X	X	X	X		
<b>IT</b>	X	X	X	X	X	X	X	The terrorist financing offence does not extend to individual acts; no definition of financing in the Penal Code	X	X	X	X	X	X	

<b>LV</b>		X**	No definition of property in the criminal law or criminal procedural law	X	X	X	X	X	X	X	No definition of property in the criminal - or criminal procedural law	X	X	X	X
<b>LT</b>		X**	Lack of criminalisation of conversion, transfer of property or concealment, disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, if such conduct is carried out outside of a financial operation, conclusion of an agreement, an economic or commercial activity, or by means of a fraudulent declaration	X	X		X*	No separate offence of terrorist financing, independently from the provision that deals with terrorist activities involving criminal groups.	X	X	Lack of criminalisation of conversion, transfer of property or concealment, disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, if such conduct is carried out outside of a financial operation, conclusion of an agreement, an economic or commercial activity, or by means of a fraudulent declaration	X	X		
<b>LU</b>	X	X	The offence of money laundering does not seem to cover the case of disguise; the confiscation and freezing are limited to property used or intended to commit an offence belonging to the convicted; lack of	X	X	X	X	Not all acts of terrorism covered by the Convention are implemented; the offence of terrorist financing does not cover the financing of terrorist individuals or groups outside the commission of a terrorist act; lack of provisional measures	X	X	The offence of money does not cover the case of disguise; no criminal liability of legal persons; the confiscation and freezing are limited to property used or	X	X	X	

			provisional measures and powers to confiscate, seize and freeze assets effectively					and powers to confiscate, seize and freeze assets effectively; no criminal liability for legal persons			intended to commit an offence belonging to the convicted; lack of provisional measures and powers to confiscate, seize and freeze assets effectively					
<b>MT</b>		X**	The confiscation regime is not fully in accordance with the Vienna Convention; the limited period of time to 30 days for the attachment order is also problematic in light of the Convention	X	X	X	X	X	X	X	X	X	X	X	X	
<b>NL</b>	X	X	X	X	X	X	X	The financing of terrorist acts and individual terrorists is not criminalised in all cases and the financing of terrorist organisations is not fully in line with the requirements under the CFT Convention	X	X	X	X	X	X	X	
<b>PL</b>	X	X	X	X	X	X	X	A minor deficiency with respect to TF Convention (e.g. linkage Polish Penal Code and TF Convention Annex Offences); The non-self-executing provisions of the TF and Palermo Conventions should be incorporated into Polish law	X	X	The non-self-executing provisions of the TF and Palermo Conventions should be incorporated into Polish law	X	X	X	X	
<b>PT</b>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	

<b>RO</b>	X**	The offences do not cover the full scope of offences as foreseen by the Vienna and Palermo Conventions	X	X	X	X	Deficiencies with respect to terrorist financing offence, e.g. lack of coverage of legitimate funds; flaws in definition of 'funds'; no clarity regarding the fact that knowledge can be inferred from objective factual circumstances	X	X	The offences do not cover the full scope of offences as foreseen by the Vienna and Palermo Conventions	X	X	X	X
<b>SK</b>	X*	Any act committed by the offender himself with knowledge of the criminal source but without intent to conceal is not covered as ML in Slovakian legislation, which restricts the scope of application; deficiencies with respect to the rights of bona fide third parties; the acts of possession or use are not covered by any provision of the Criminal Code when committed with knowledge of the criminal source of the property	X	X	X	X	Financing of some of the Acts defined in the treaties appearing in the Annex to the TF Convention are not criminalised as terrorist financing offences	X	X	Any act committed by the offender himself with knowledge of the criminal source but without intent to conceal is not covered as ML in Slovakian legislation, which restricts the scope of application; deficiencies with respect to the rights of bona fide third parties	X	X	X	X
<b>SI</b>	X*	Lack of a strong confiscation regime gives rise to concerns	X	X	X	X	Not all of the CDD requirements set out in Article 18 of the TFC in respect of DNFBPs are implemented	X	X	Lack of a strong confiscation regime gives rise to concerns and reservations about full implementation of the supervisory regime for DNFBPs		X*	X	X

<b>ES</b>	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
											Self-laundering is not criminalised, but this cannot be justified on the basis of its being contrary to the Swedish fundamental law				
<b>SE</b>	X	X	X	X	X	X	X	X	X	X		X	X	X	
<b>UK</b>	X	X	X	X	X	X	X	X	X	X	X	X	X		

*\* through succession, X\* through accession, \*\* through accession. References can be requested at the ECOLEF team. Declarations, reservations, and territorial restrictions have not been incorporated in this table. These can be found on the websites of the UN and CoE.*

In terms of signature, the table shows that a sizable group of Member States has not yet signed and/or ratified the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of Proceeds from Crime and on the Financing of Terrorism 2005 (Warsaw Convention). Only 12 Member States have signed and ratified the Convention. Apart from this Convention, it seems that with regard to the international Conventions there are no ratification problems in the Member States. An exception is the Czech Republic, which is reported to still not have ratified the Palermo Convention and the Merida Convention.<sup>364</sup> A second exception is Germany, which is reported to not have ratified the Merida Convention. The table also shows that the international Conventions have not been fully implemented in law in the majority of the Member States, with the exception of Belgium, Estonia, Ireland, Portugal, Spain and the United Kingdom. The types of gaps are various, e.g. from the absence of self-laundering to fact that the financing of terrorism constitutes an incomplete predicate offence for money laundering, the lack of a strong confiscation regime, and so on. The table indicates the (main) legal hindrances.

Because they have signed and ratified all relevant international conventions and there are no deficiencies in their implementation, Belgium, Portugal and Spain are most legally effective when it comes to signing, ratifying and implementing international conventions in the field of AML/CTF policy. In order to identify the Member States that are least legally effective on this point, we applied a simple scoring system.<sup>365</sup> The Member States that were identified as least effective are Denmark, Lithuania, Germany and Czech Republic.<sup>366</sup>

### 10.3 International Cooperation Channels

Our research shows that international cooperation takes place, in general, among homologue institutions. It is therefore the Ministries that cooperate with other Ministries via various EU platforms, the FIU with other FIUs through the use of various mechanisms, and the law enforcement authorities with their homologues: the police (law enforcement authorities) with police (law enforcement authorities) and public prosecutor's offices with public prosecutor's offices. There is one exception to this rule: in instances where the FIU belongs to the judicial or law enforcement model, cooperation from the FIU can be sought through the judicial and/or law enforcement cooperation channels. However, it should be noted that these FIUs, cannot, strictly in their FIU capacity, formally make use of the other channels in international cooperation.

Supporting the claim that international cooperation mainly takes place between homologue agencies, the channels designated for communication help maintain information-sharing among the same types of authorities, as depicted in Figure 10.1.

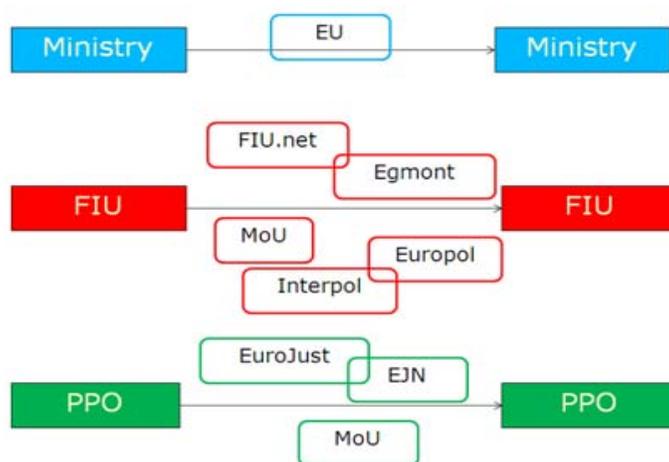
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<sup>364</sup> Czech representatives have indicated that at the time of finalising this report the Czech Republic is in the process of ratifying the Palermo Convention, the Merida Convention and several other Conventions. Because the ratification procedures have not been finalised yet, these developments have not been taken into account in this analysis.

<sup>365</sup> Signature (S) of Conventions is awarded 3 points. Ratification (R) of Conventions is awarded 2 points. The full implementation (FI) of Conventions is awarded 1 point. The full implementation is only analysed for Vienna, the Terrorist Financing and Palermo Conventions. This means that the following scores could be given: Vienna Convention (6), CoE 1990 (5), UN Terrorist Financing Convention (6), Palermo Convention (6), Merida Convention (5) and CoE 2005 (5). The maximum score is 33 points.

<sup>366</sup> BE (33), PT (33), ES (33), MT (32), NL (32), LV (31), PL (31), CY (30), HU (30), IT (30), RO (30), SK (30), SI (30), SE (30), AU (29), BG (29), FR (29), EL (29), EE (28), FI (28), IE (28), LU (28), UK (28), DK (25), LT (25), DE (24), CZ (21).

**Figure 10.1: International cooperation channels**



*Legend: The figure illustrates a few of the most frequently reported cooperation channels that Ministries, FIUs and PPOs have for international cooperation in the AML/CTF framework. The list is not exhaustive (e.g. EU FIU and CARIN are not illustrated).*

During interviews and Regional Workshops, the following channels of cooperation were discussed with national representatives.

#### *EU FIU Platform*

The EU Financial Intelligence Units' Platform is an informal group set up in 2006 by the European Commission, which gathers Financial Intelligence Units from the Member States. The Platform is intended as a forum for discussion on specific aspects related to the application and implementation of the new provisions introduced by the Third Directive, focusing on identifying problems, practical issues and possible solutions.

Recognising the different types of FIUs and the consequent differences in the legal framework that could disrupt the smooth exchange of information, the Platform is therefore intended to serve as a forum to discuss issues related to differences in the operational structures of FIUs in order to explore possibilities of a harmonisation process, particularly in the field of gathering and interpretation of information for statistical purposes.<sup>367</sup> The European Commission participates in the Platform and provides support.

#### *Europol – AWF SUSTRANS and CARIN<sup>368</sup>*

Europol is one of the centres for sharing information within Europe. Its mission is *“to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States,*

<sup>367</sup> This information was provided to us by FIU Cyprus.

<sup>368</sup> Website: <<http://www.assetrecovery.org/kc/node/baf520a5-fe6d-11dd-a6ca-f1120cbf9dd3.0>>

*terrorism and forms of crime which affect a common interest covered by a Union policy.*<sup>369</sup> Its tasks are *“the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States’ competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust”*<sup>370</sup>.

AWF Sustrans [the analytical work file for suspicious transactions] was formed under Article 10 of the Europol Convention, which stated that AWF should be opened for the purpose of analysis defined as the assembly, processing or utilisation of data with the aim of helping a criminal investigation on the issue of suspicious transactions and money laundering. While primarily designed for the police and law enforcement, law enforcement FIUs can directly benefit from this channel of cooperation. Nevertheless, these intelligence databases are also available to administrative FIUs, where they have liaison officers. For example, the French FIU (TRACFIN) has access to the Europol information exchange system (analysis and data on suspicious transactions) through its police liaison officer. Therefore, the liaison officers seconded by the Gendarmerie and police are the interagency contacts with the competent judicial departments and subsequent coordination.

In addition to the Sustrans database, Europol also hosts in their headquarters the permanent secretariat of CARIN, the Camden Asset Recovery Inter-agency Network. This informal network of contacts was set up in 2004 by Austria, Belgium, Germany, Ireland, Netherlands and the UK. It is a global network of practitioners and experts with the intention of enhancing mutual knowledge on methods and techniques in the area of cross border identification, freezing, seizure and confiscation of the proceeds and other property related to crime. Its aim is to improve cooperation of Asset Recovery Offices for the successful deprivation of criminals’ illicit profits. This is a network which reunites representatives of judicial and law enforcement authorities from the Member States, and is open to FIUs that belong to the judicial or the law enforcement system. Law enforcement FIUs can thus have access to this database as well.

### *Eurojust*

Eurojust includes national representatives from all the 27 EU Member States’ public prosecutor’s offices and national magistrates - and sometimes from law enforcement authorities. Eurojust’s mission is to *“support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases (...)”*.<sup>371</sup> Article 85 TFEU describes that tasks of Eurojust may include:

- the initiation of criminal investigations, as well as proposing the initiation of prosecutions, conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;
- the coordination of investigations and prosecutions;
- the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.

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<sup>369</sup> Article 88(1) TFEU.

<sup>370</sup> Article 88(2) TFEU.

<sup>371</sup> Article 85(1) TFEU.

Eurojust is the most commonly used cooperation platform for the prosecution and courts within the European Union. During the Regional Workshops national representatives agreed that Eurojust is a good cooperation tool for judicial cooperation in money laundering and terrorist financing matters as well. Member States' representatives have reported during the Regional Workshops, that they have made use of Eurojust in money laundering or terrorist financing cases, and that it helped strengthening the criminal investigation and prosecution. During case studies discussed, they also made various references to resorting to Eurojust when facing problems in international cooperation at the prosecution stage.

### *Interpol*

Interpol is the world's largest international police organisation and this channel too facilitates cross-border police co-operation, supporting the fight against international crime. This channel is reported to be used by the police and by the law enforcement FIUs, in particular when dealing with countries outside the European Union. The Interpol database provides access to classified intelligence on on-going investigations, known criminals, DNA profiles, etc. Once again, the Interpol channel has been reported to be used actively by various law enforcement FIUs, like the Austrian, German, Luxembourg, Irish and UK FIUs.

### *FIU.NET and ESW*

There are two channels for the exchange of information between FIUs. These are FIU.NET and Egmont Secure Web (ESW).

Irrespective of their types, European FIUs can communicate using FIU.NET. It is a secured and decentralised computer network for the exchange of subject data. FIU.NET is reported to encourage cooperation and enables FIUs to exchange intelligence quickly, securely and effectively.<sup>372</sup> FIU.NET was established in 2000 by France, Italy, Luxembourg, the Netherlands and the United Kingdom and became fully operational in 2002. In 2004 DG MARKT of the European Commission financed the development and expansion of FIU.NET with the aim of intensifying, deepening and professionalising FIU cooperation within the European Union. Currently the Final FIU.NET Project 2011-2013 is running. This project is financed by DG Home Affairs of the European Commission.<sup>373</sup> FIU.NET is currently being embedded in Europol. It is scheduled to be completed before January 2014.

An important principle respected by FIU.NET is that the information stays decentralised.<sup>374</sup> This way, FIUs that transmit the information via FIU.NET remain the owners of their information. FIU.NET employs the Ma<sup>3</sup>tch system, a well-developed technology that - according to FIU.NET Bureau - allows connected FIUs to match their data with other FIUs in an anonymous way. According to the FIU.NET website "*FIUs can detect subjects of their interest in other countries even though they were not aware that the subject was trying to hide his proceeds in other countries*".<sup>375</sup> FIUs may decide not to share information with all FIUs,

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<sup>372</sup> FIU.NET, available at: <<http://www.fiu.net/>>.

<sup>373</sup> FIU.NET, available at: <<http://www.fiu.net/>>.

<sup>374</sup> FIU.NET (2009), The legal aspects of cooperation between FIUs using FIU.NET, The Hague, p. 20-25.

<sup>375</sup> FIU.NET, available at: <<http://www.fiu.net/>>.

but can each time select those FIUs that they find most suitable. The total number of exchanged requests via FIU.NET was 6.369 in the year 2011. This is double compared to 2007, where the total number was 3.133.<sup>376</sup> EU FIUs thus use FIU.NET more and more. This highlights the true potential that the Ma<sup>3</sup>tch system has, and the fact that this potential is increasingly being recognised by the EU FIUs. One can therefore conclude that the Ma<sup>3</sup>tch system has proven a success.

The EU FIUs can also make use of the Egmont Secure Web (ESW). This channel is mostly used for the exchange of information with third country FIUs. ESW is a secure Internet system by which the members of the Egmont Group can *“communicate with one another via secure e-mail, requesting and sharing case information as well as posting and assessing information on typologies, analytical tools and technological developments”*.<sup>377</sup>

ESW is a channel open to all EU FIUs. FIU.NET is currently operational in 25 Member States. It is not used by the Czech and Swedish FIUs. While the Czech Republic is not connected to FIU.NET, the Swedish FIU cannot operationalise FIU.NET due to internal regulations of the Swedish National Police Board – to which the FIU belongs. Under the Swedish Police Data Act 1998:662, the FIU is only allowed to store files when cases are still open.<sup>378</sup> In terms of usage, representatives of various FIUs have described the ESW as an e-mail inbox, while FIU.NET has an intranet and is built in a more sophisticated manner. A problem reported with respect to FIU.NET is the fact that some Member States were temporarily disconnected.

Member States’ representatives at the Regional Workshops have argued that integrating the two platforms would be highly beneficial. While Egmont only mentions that *“(...) meetings will take place between the administrators of the Egmont Secured Web (ESW) and the FIU Bureau to create a work plan on how to improve communications between the Egmont Group and FIU.NET”*<sup>379</sup>, FIU.NET Bureau reported that there already exists a connection between ESW and FIU.NET. Currently, FIU.NET cases can be exported in Egmont files so that the users can exchange FIU.NET cases with FIUs that are not connected to FIU.NET. Furthermore, at this moment the Egmont IT Working Group is doing a feasibility study with the aim of identifying ways that ESW and FIU.NET can further strengthen each other. In this respect, FIU.NET Bureau has reported that they are considering the possibility of integrating ESW mail into FIU.NET, so that FIU.NET users can directly exchange cases with non-FIU.NET FIUs without having to export them to the ESW format. We encourage the steps taken by ESW and FIU.NET to seek further cooperation.

Although both channels are actively used by EU FIUs, a large number of FIUs have indicated that they generally prefer to use FIU.NET for exchanging information with EU FIUs. This channel is considered faster and more user friendly. There are some exceptions. For example, representatives of the Greek FIU have stated they prefer to work with Egmont because that channel has more users.<sup>380</sup> At the Latvian FIU it is left to the discretion of the employees to use Egmont or FIU.NET. However, the Latvian FIU is of the opinion Egmont is more advanced than FIU.NET and easier to use.

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<sup>376</sup> Data provided by FIU.NET Bureau.

<sup>377</sup> Egmont, available at: <http://www.fincen.gov/international/egmont/>

<sup>378</sup> Interview Swedish FIU.

<sup>379</sup> Egmont, *Annual Report 2010-2011*, available at: <http://www.egmontgroup.org/library/annual-reports/>.

<sup>380</sup> Interview Greek FIU.

We have tried to verify the statement that cooperation through FIU.NET is faster, by comparing average time responses for requests from EU FIUs and requests from third-country FIUs.<sup>381</sup> We asked FIUs how long it takes them - on average - to respond to requests coming from EU FIUs and third country FIUs. We were able to obtain data on average response times by FIUs from twenty Member States, of which the Slovenian FIU indicated that no information was available and the Latvian FIU indicated that it depends on the situation.<sup>382</sup>

Of the remaining 18 responses, only three FIUs indicated a time difference between responding to EU FIUs requests and third-country FIU requests. The Cypriot FIU indicated that priority is given to EU FIUs requests over other non-EU FIU requests. The German FIU indicated an average response time of maximum one week for requests from EU FIUs, but indicated that no time timeframe could be provided for answering requests coming from non-EU FIUs. The Luxembourg FIU indicated a response time of 24 hours for EU FIUs and a response time of 24 hours to one week for non-EU FIU requests. At the Regional Workshop, Luxembourg representatives indicated that on average the Luxembourg FIU responds to an FIU request through FIU.NET in 1-2 days and to a request made through ESW within 2-4 days.

The other fifteen FIUs responded that there is no difference in response times. Also the answers on average response time varied a lot. Two FIUs answered between 24 hours and thirty days, and seven Member States indicated ‘within thirty days’. Some Member States were able to provide an average. The Czech FIU indicated that it replies within one week to international FIU requests. The Danish FIU indicated an average response time of three working days. The Dutch FIU’s average response time is five working days<sup>383</sup>, those of Estonia 14 working days<sup>384</sup>, and the Maltese FIU on average replies within six working days<sup>385</sup>. In an interview with the Swedish FIU, representatives indicated that on average the Swedish FIU responds to international exchange requests within three working days. Finally, the UKFIU is reported to respond within an average of 22 working days.<sup>386</sup>

**Table 10.2: Response times indicated by FIUs themselves**

Average response time by FIU ( <i>in working days</i> )	
<b>Czech Republic</b>	5
<b>Denmark</b>	3
<b>Estonia</b>	14
<b>Ireland</b>	3-5
<b>Malta</b>	6
<b>The Netherlands</b>	5
<b>Sweden</b>	3
<b>United Kingdom</b>	22

<sup>381</sup> Although, of course, we are aware of the fact that EU FIUs cooperation may also take place through Egmont.

<sup>382</sup> Interview Latvian FIU.

<sup>383</sup> Although this data was obtained through checks of the ESW exchanges. See: FATF (2011), *Third Mutual Evaluation on the Netherlands*, p. 294.

<sup>384</sup> FIU Estonia (2011), *Annual report*, p. 16.

<sup>385</sup> FIU Malta (2011), *Annual report*, p. 25.

<sup>386</sup> FATF (2007), *Third Mutual Evaluation Report on the United Kingdom*, p. 275.

The Maltese and Swedish FIUs were also able to indicate the average time response from other FIUs to their own requests. For the Maltese FIU this was 37 working days; while the Swedish FIU has to wait 14.3 working days on average to receive a reply to its request. Both numbers are considerably higher than response times indicated by the FIUs.

On the basis of the obtained set of data we cannot confirm that international FIU cooperation between EU FIUs is faster than with non-EU FIUs.

#### *Informal contacts vs. bilateral cooperation projects*

Informal contacts that run via liaison officers or contacts made during international meetings were reported to be very important as well. Both FIU representatives and public prosecutor's offices representatives have reported valuing these personal contacts very much, especially as they helped speed up the process of collecting information. For FIUs it was also reported as a means of receiving more feedback on outstanding requests.

Various FIU representatives have also emphasised the importance of Memoranda of Understanding (MOU) and Twinning Projects. Formally most FIUs do not need MOUs for cooperation, since FIU.NET or EGMONT membership will suffice. MOUs however, have been reported to have an important political and diplomatic function and to provide more security about the confidentiality of the data.<sup>387</sup> They are also considered as signs of permanent and secure cooperation. The Polish FIU has indicated that within the European Union they do not need to sign MOUs with counterparts because Council Decision no. 200/642/JHA, concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information, functions as the basis for cooperation. For cooperation with third country FIUs, however, a Memorandum of Understanding is required. The Polish FIU has signed a total of 63 MOUs.<sup>388</sup>

Besides these forms of international cooperation, another reported form of international cooperation is pilot projects and twinning projects. Under such projects, FIUs visit other FIUs and see how the other FIUs are functioning in order to improve their own performance ('learning curve'). Furthermore, these projects are intended to ease the exchange of larger pieces of information and to cross check databases containing sensitive information in a secure way. An example is provided by the Dutch FIU, which has set-up pilot projects of cooperation with the Swedish FIU and, since 2010, with the Serbian FIU.<sup>389</sup> The Polish FIU reported in its annual report 2011 on the twinning project in place with the Romanian FIU.<sup>390</sup> The Spanish FIU has in place a twinning project with the Albanian FIU.

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<sup>387</sup> CTIF-CFI (2010) *Annual report*, p.105

<sup>388</sup> Polish FIU (2011), *Annual Report*, p. 43.

<sup>389</sup> Dutch FIU (2010) *Annual report*, p. 40

<sup>390</sup> Polish FIU (2011), *Annual report*, p. 43.

#### 10.4 Hindrances to international cooperation

Case studies and discussions that took place during the Regional Workshops revealed five hindrances in international cooperation, both for international FIU and international judicial cooperation. The hindrances to international cooperation covered by the Regional Workshops are language barriers, time delays, generic information, differences in data protection standards, and non-efficient *national* cooperation. Furthermore, later discussions with CARIN representatives allowed us to identify a sixth hindrance – namely, the lack of a legal basis in all EU Member States' legislation that allows FIUs to block or freeze suspicious transactions on their own motion for a certain period of time.

The extent of hindrances to international cooperation differs: while Western European Member States indicated that they do not encounter any serious hindrances in international cooperation, most Central and Eastern European Member States indicated that they faced a number of difficulties in international cooperation. However, since most country representatives here were asked to give an opinion on the extent to which they encounter difficulties in international cooperation – without having to place the source of the problem on their side or on the side of their collaborators – one cannot say that cooperation with Central and Eastern European Member States is more difficult than with Western European Member States.

Eastern European Member States were the only ones to report language barriers as a serious hindrance to international cooperation. In general, however, English is commonly employed as the language for international cooperation. Sometimes, however, there is evidence that Member States cooperate with each other by using their own languages. For instance, the Portuguese and Spanish FIUs have explained that in practice they send each other requests for information exchange and responses to requests in their own languages to each other. They reported that this does not lead to any difficulties in the cooperation between the two FIUs.

Time delays seem to be most commonly felt as the main hindrance to international cooperation. It seems that this problem is more prevalent in international judicial cooperation than in international FIU cooperation. The translation of judicial documents, letters rogatory, and documentation that may serve as evidence takes considerable time. This is also why mutual legal assistance (MLA) takes a lot longer than FIU international cooperation. Whereas above we could see that FIU international cooperation is usually a matter of days, answers obtained through surveys, interviews and during Regional Workshops generally pointed that MLA cooperation is a matter of months - if not years. In any case, both FIU and PPO representatives indicated that the processing time always depends on the complexity of the cases and on the amounts of information that are requested to be gathered.

Generic information sometimes plays a role in international cooperation, although various representatives have stated that this holds especially for cooperation with third countries. Generic information refers to information that is quantitative but not qualitatively significant for the requesting party. Formally, an authority may have replied to a request, while - for whatever reason - it did not really give an answer to the request itself. This problem was seen as the main hindrance to international cooperation by Western European Member States. Our assumption is that the problem of receiving general information is prevented and/or avoided by the use of informal contacts.

Non-efficient national cooperation was mentioned by various Member States’ representatives as hampering international cooperation. This always concerned the non-efficient national cooperation of other Member States. Intra-national cooperation structures were quite often praised.

Data protection is a matter that, according to representatives at various Regional Workshops, receives attention from the cooperation channels outlined above. We received anecdotal evidence in the field of FIU international cooperation on differences with respect to data retention. For example, where record keeping periods between Member States differed, this may result in a situation where no information could be provided to a request. For international FIU cooperation, various representatives have explained that this is why information is only exchanged with FIU.NET or Egmont partners, or with FIUs with which a Memoranda of Understandings have been signed.

The issue of the inability of some EU FIUs to block or freeze suspicious transactions without the prior approval of a judiciary authority has been researched by CARIN since 2010. Members of the network have observed that if all FIUs had the power to block or freeze suspicious transactions on their own motion for a minimum (standard) period of time, then national coordination and international cooperation would significantly improve. The issue is particularly relevant for money flows that only briefly transit a Member State and that are otherwise difficult to seize and confiscate. Based on the data collected by CARIN in 2010, only 14 of the 27 EU FIUs had the power to freeze or block suspicious transaction on their own motion. Moreover, the freezing and blocking periods varied from a couple of days to several months.<sup>391</sup>

### 10.5 International FIU cooperation in perspective

One of the hypotheses we would have liked to test in this chapter is whether international cooperation between FIUs takes place most between neighbouring countries. Table 10.3 provides a systematic grouping of the top cooperation partners that the FIUs have. The table is based on information gathered from FIU annual reports, MONEYVAL and FATF evaluations, interviews and information provided by email. Unfortunately a great deal of data is missing, which makes our results sensitive at this point in time.

**Table 10.3: Countries to which FIUS send most requests and receive most requests from**

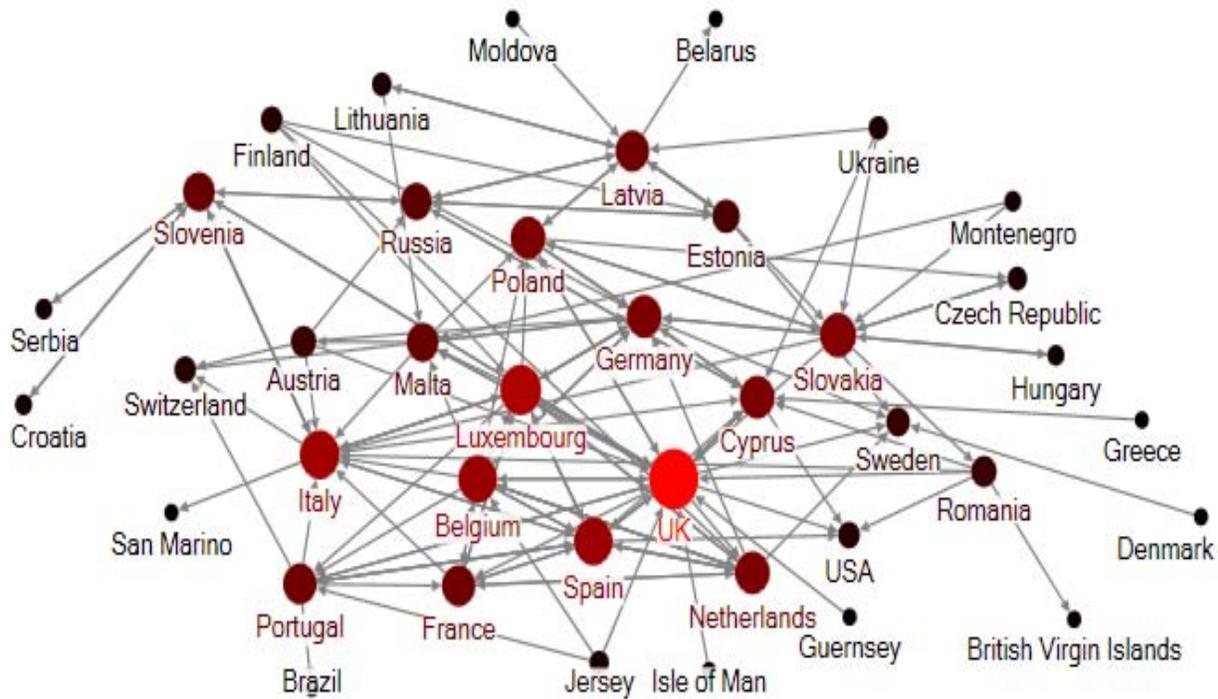
	Top 5 incoming requests	Top 5 outgoing requests
<b>Austria</b>		1. Germany 2. Switzerland 3. Italy 4. UK 5. Russia
<b>Belgium</b>	1. Luxembourg 2. France 3. Netherlands 4. Jersey 5. UK	1. Netherlands 2. France 3. Germany 4. Luxembourg 5. Spain
<b>Bulgaria</b>		

<sup>391</sup>The EU FIUs that could block and freeze suspicious on own motion in 2010 were: Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Poland, Slovak Republic and Slovenia.

<b>Cyprus</b>	1. UK 2. Spain 3. Greece 4. Russia 5. Ukraine	1. UK 2. Russia 3. USA, 4. Germany
<b>Czech Republic</b>		
<b>Denmark</b>		
<b>Estonia</b>	1. <b>Latvia</b> 2. Finland 3. <b>Russia</b>	1. <b>Latvia</b> 2. <b>Russia</b>
<b>Finland</b>		
<b>France</b>		
<b>Germany</b>	1. <b>Luxembourg</b> 2. <b>Belgium</b> 3. Slovakia 4. <b>Switzerland</b> 5. Finland	
<b>Greece</b>		
<b>Hungary</b>		
<b>Ireland</b>		
<b>Italy</b>	1. Luxembourg 2. <b>France</b> 3. Slovakia 4. Belgium 5. <b>Slovenia</b>	1. Luxembourg 2. <b>San Marino</b> 3. Spain 4. Cyprus 5. <b>Switzerland</b>
<b>Latvia</b>	1. Ukraine 2. Moldova 3. <b>Russia</b> 4. <b>Lithuania</b> 5. <b>Estonia</b>	1. <b>Estonia</b> 2. Poland 3. <b>Lithuania</b> 4/5. <b>Belarus/Russia</b>
<b>Lithuania</b>		
<b>Luxembourg</b>	1. <b>Belgium</b> 2. <b>France</b> 3. <b>Germany</b> 4. Spain 5. Finland	1. UK 2. <b>Germany</b> 3. <b>France</b> 4. Italy 5. Spain
<b>Malta</b>	1. Luxembourg 2. UK 3. Belgium 4. Lithuania 5. Montenegro	1. UK 2. Germany 3. Austria 4. Italy 5. Poland
<b>The Netherlands</b>	1. <b>Belgium</b> 2. Finland 3. Luxembourg 4. France 5. Spain	1. <b>Belgium</b> 2. <b>Germany</b> 3. Luxembourg 4. Spain 5. France
<b>Poland</b>	1. Luxembourg 2. Belgium 3. Great Britain 4. <b>Slovakia</b>	1. Great Britain 2. Cyprus 3. Latvia 4. <b>Germany</b> 5. <b>Czech Republic</b>
<b>Portugal</b>	1. Luxembourg 2. Belgium 3. UK 4. Jersey 5. <b>Spain</b>	1. <b>Spain</b> 2. Brazil 3. France 4. UK 5. Italy /Switzerland
<b>Romania</b>		1. Italy 2. Cyprus 3. USA 4. British Virgin Islands 5. UK
<b>Slovakia</b>	1. <b>Czech Republic</b> 2. <b>Hungary</b> 3. <b>Poland</b> 4. <b>Ukraine</b> 5. Estonia /Montenegro	1. Germany 2. <b>Hungary</b> 3. Romania 4. UK 5. <b>Czech Republic</b>
<b>Slovenia</b>	1. <b>Croatia</b> 2. <b>Italy</b> 3. Serbia 4. UK 5. Russia	1. <b>Croatia</b> 2. <b>Italy</b> 3. Serbia 4. UK 5. Russia
<b>Spain</b>	1. UK 2. Belgium 3. <b>France</b> 4. <b>Portugal</b> 5. Luxembourg	1. UK 2. Italy 3. <b>France</b> 4. USA 5. Netherlands
<b>Sweden</b>	1. Netherlands 2. <b>Denmark*</b> 3. Germany 4. Estonia 5. UK	
<b>United Kingdom</b>	1. Luxembourg 2. Jersey 3. Guernsey 4. Isle of Man 5. Belgium	1. Spain 2. Netherlands 3. France 4. USA 5. Gibraltar

In table 10.3 when requests are incoming from or outgoing to a neighbouring FIU, the name of the respective FIU is in bold type. Some countries – in particular Cyprus, Malta and the UK, due to their insular geography, this is not done. The table nevertheless visually shows that neighbours play a very important role in FIU cooperation. Moreover, based on information readily available in this table, we were able to graph the interaction patterns in this network.

**Figure 10.2: Patterns of international cooperation among the EU FIUs**



*Legend: The arrows mark the direction of the FIU requests. The size of the nodes is directly proportional to how connected they are and, the more connected a node is, the closer it gets to the colour red.*

Figure 10.2 graphs the interaction patterns between the EU FIUs and their most prominent foreign cooperation partners. The figure is based on the data made available to us by the country participants, which is also presented in table 10.3. Some countries have not reported their most important cooperation partners (in terms of volumes of sent and received FIU requests for cooperation), so Figure 10.2 could further be subject to change.

In figure 10.2, the UK is by far the country with the highest connectivity – and this means that most other FIUs send requests for cooperation to the UK. Similarly, Luxembourg, Belgium, Italy and Spain are popular cooperation partners for other EU FIUs. Finally, once again, we see that geographical proximity and cultural and historical ties matter – as member states cooperate very closely with their former colonies and with their direct neighbours. This tends to support some of the hypotheses fundamental to the threat model described earlier in this Report.

## 10.6 Conclusions

Overall, most relevant international conventions have been signed and ratified, with the exception of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 2005 (Warsaw). A considerable number of Member States have not signed and/or ratified this Convention. As regards the Vienna, Palermo and Terrorist Financing Conventions most Member States have not fully implemented the Conventions yet. Belgium, Portugal and Spain are most legally effective when it comes to signing, ratifying and implementing international conventions in the field of the AML/CTF policy.

There are various judicial and FIU international cooperation channels in the field of fighting money laundering and terrorist financing. International cooperation takes place between homologues. The only exception is where judicial or law enforcement FIUs seek cooperation with the police (law enforcement authorities) and judicial authorities through Europol, Interpol or Eurojust.

The hypothesis that international FIU cooperation between EU Member States is easier than with third countries could not be confirmed by the data concerning average responses times by FIUs.

Finally, we hypothesise that international cooperation takes place mostly with neighbours. Due to data asymmetry it is hard to draw this conclusion. At this point we argue that neighbours play a significant role in FIU cooperation.

## Chapter 11 COLLECTION OF STATISTICS

### 11.1 Introduction

We classify the statistics on AML/CTF policy into two types. First, we identify what we call output statistics, which are the result of the AML/CTF policy. The main output statistics that we discuss are reports sent to the FIU, cash declarations at the border, the number of prosecutions and the number of convictions for money laundering and terrorist financing. Next to these output statistics we identify input statistics, which are the resources spent for AML/CTF policy, like the budget of the FIU and other relevant institutions. After discussing both types of statistics we will conduct a statistical analysis to classify Member States.

### 11.2 Output statistics: Reports sent to the FIU

The most widely available statistic on anti-money laundering policy seems to be the number of reports sent to the FIU. The EUROSTAT report on Money Laundering in Europe<sup>392</sup> is basically the only report with a reasonable amount of statistical cross-country information on anti-money laundering policy indicators. This EUROSTAT report identifies the number of reports sent to the FIU as their first key indicator. However, at the moment it is still very hard to use this statistic as an actual indicator for anti-money laundering policy. An increase in the number of STRs can be the result of a greater anti-money laundering effort, a different counting rule, or an increase in the amount of money laundering. Moreover, an increased number of reports does not lead per se to better money laundering prevention or more convictions for money laundering, because it can also mean an overloading of the FIU with diluted useless information, leading to an actual decrease in effectiveness.<sup>393</sup> Also the EUROSTAT report mentions “the figures reported vary greatly, even allowing for the different sizes of the respective financial markets, with extremely high figures reported by some countries (NL, LV and UK). This is because concepts and counting rules are not uniform across the EU. FIUs tend to process transactions received in STRs as cases. Relevant cases are sent to the Law Enforcement Authorities. Some FIUs record all related STRs as one case, while others only count the first case-opening STR. For some Member States (CY, FI, UK) the concept is interpreted as a Suspicious Activity Report (SAR), which may include activities, not related to any particular monetary transaction, but to e.g. the opening of a bank account, restructuring a company, providing insurance products etc. One Member State (NL) records Unusual Transaction Reports (UTR) which, if found to be suspicious, may be sent to the law enforcement authorities.” Although SARs are only used explicitly in some EU Member States, it is also possible to report activities like opening a bank account in many other Member States (e.g. MT, IT and PT).

Section 4.2.2 shows that the reports used by various European countries in the prevention of money laundering and terrorist financing are of a very distinct nature on six different aspects: 1. The type of

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<sup>392</sup> EUROSTAT (2010) *Money Laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs*, by Cynthia Tavares, Geoffrey Thomas (Eurostat) and Mickaël Roudaut (DG Home Affairs), Eurostat Methodologies and Working papers, ISSN 1977-0375

<sup>393</sup> Takats, E. (2007) A theory of Crying Wolf: the Economics of Money Laundering Enforcement, IMF Working paper 07/81

report (some reports refer to only cash transactions, while others refer to all transactions; some reports only refer to only transactions, while others refer to any activity) 2. subjective grounds of suspicion (the level of necessary knowledge when defining a transaction as suspicious); 3. objective grounds of suspicion (the reporting threshold of the amount of money involved in a transaction, for which a report must be filed); 4. the definition of a transaction (specifying which activities constitute transactions); 5. the inclusion of attempt (including the attempt of a transaction even when stopped) and 6. the data collection methodology (making a report for each transaction or bundling the transactions of one money laundering operation together). This would support the conclusion that at the moment the countries' statistics on the number of reports disclosed to FIUs can actually not be compared with each other and cannot be used as an indicator for money laundering or anti-money laundering policy. Before showing examples of unfair comparisons by the FATF, we want to illustrate the diversity in this statistic by showing which statistics we collected in the table below.

**Table 11.1: Average number of reports per year sent to the FIU**

	STR	SAR	UTR	CTR	Separate TF reports?	TF reports
<b>Austria</b>	1.055				Yes	31
<b>Belgium</b>	14.052	773			No	
<b>Bulgaria</b>	737			248.636	Yes	1
<b>Cyprus</b>		262			Yes	1
<b>Czech Republic</b>	2.184					
<b>Denmark</b>	1.440				No	
<b>Estonia</b>	4.452			9.124	Yes	1.357
<b>Finland</b>		13.356			Yes	0
<b>France</b>						
<b>Germany</b>	8.753				Yes	83
<b>Greece</b>	1.655				No	
<b>Hungary</b>	9.243				Yes	6
<b>Ireland</b>	12.500					
<b>Italy</b>	17.485				Yes	354
<b>Latvia</b>	22.031			14.962	Yes	13
<b>Lithuania</b>	198				Yes	0
<b>Luxembourg</b>		1.402			Yes	23
<b>Malta</b>	69				Yes	1
<b>Netherlands</b>			224.615			
<b>Poland</b>	46.992	1.836		25.746.538	Yes	898
<b>Portugal</b>	989			1.3944	Yes	0
<b>Romania</b>	2.217					
<b>Slovakia</b>			2.017		Yes	28
<b>Slovenia</b>	182			3.1643		

<b>Spain</b>	2.906		
<b>Sweden</b>	9.408	No	
<b>United Kingdom</b>	224.799	Yes	662

Source: own database, which is a collection of data collected by online surveys, interviews and desk research on mutual evaluation reports, annual reports of relevant institutions and the Eurostat report<sup>394</sup>. For visibility reasons the numbers reported are the averages over the statistics available in the period 2005-2010.<sup>395</sup> Annex 11.1 reports all statistics for all years for all the countries. STR = suspicious transaction report, SAR = suspicious activity report, UTR = unusual transaction report, CTR = currency transaction report and TF reports refer to reports specifically for reporting terrorist financing.

Although also the FATF seems to be aware of the problems with this statistic, we still see that they use this statistic to compare countries with each other and use it as an indicator for the effectiveness of their anti-money laundering policy (see the examples below).

#### Example 1: STRs in Denmark and Hungary

In the Third Mutual Evaluation Round on the Kingdom of Denmark, the FATF compared the Danish level of STR reporting on the basis of statistics with a great number of other European and non-European countries. The FATF mentioned the fact that a comparison on absolute numbers only would not provide a good comparative basis, but still undertook this comparison.<sup>396</sup> The FATF concluded that the number of reports was significantly lower in Denmark than in the compared countries. Although the statistics were not a conclusive factor, the FATF noted the low level of STR reporting as a deficiency to Recommendation 13 that consequently lowered the compliance rate.

Denmark was for instance compared with Hungary. While the number of reports in 2004 for Hungary was 14.120, the Danish number of reports was 413. Although this divergence is considerable indeed and cannot be fully explained, it is not too surprising when looking at the definition of STRs in those two countries. While in Denmark the level of knowledge for reporting was based on a suspicion of money laundering in connection with criminal offence punishable by criminal offence of one year or more<sup>397</sup>, the

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<sup>394</sup> EUROSTAT (2010) *Money Laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs*, by Cynthia Tavares, Geoffrey Thomas (Eurostat) and Mickaël Roudaut (DG Home Affairs), Eurostat Methodologies and Working papers, ISSN 1977-0375

<sup>395</sup> This is a rather crude calculation method to increase data availability. To give some additional insight to our calculation method, let us use two examples. If we have statistics for a certain country available only for the year 2008 (like Greece), then we present that number in the table. If a country has statistics for the years 2007, 2008 and 2009, then we take the average over those three years and present that average in the table. A potential drawback of this calculation method is that some statistics might be somewhat biased for comparability purposes, because the statistics represent different years. If, for instance, the numbers are rising over time throughout Europe, then the countries with data available only in later years are biased upwards while countries with data available only in the early years are biased downwards. Due to data unavailability it is hard to identify whether such a trend is present.

<sup>396</sup> In fact, it then continued comparing the number of STRs by commercial banks, arguing that those institutions would be defined similarly across the countries and have more experience with AML/CTF reporting. See FATF (2006), *Third Mutual Evaluation Report on the Kingdom of Denmark*, p. 116-117.

<sup>397</sup> FATF (2006), *Third Mutual Evaluation Report on the Kingdom of Denmark*, p. 116.

applicable AML/CTF Act at that time in Hungary spoke about “any data, facts or circumstances indicating money laundering”, thus setting a lower threshold of suspicion than in Denmark.<sup>398</sup>

This may have been one of the reasons that explain the different reporting numbers and shows that the absolute number of reports only cannot be compared.

#### *Example 2: German STRs and UK SARs*

In the German FATF evaluation of 2010, the FATF expressed its concerns about the effectiveness of the German reporting system.<sup>399</sup> It compared the absolute number of reports with those in France, Italy, the United Kingdom and Canada. These countries were chosen because they are “FATF member countries with a substantial financial sector”.<sup>400</sup> However, the table in the report showed that the number of reports in the United Kingdom diverged considerably from the number of reports in Germany (in 2008 210.524 reports in the UK against 7.312 reports in Germany).<sup>401</sup>

This difference can be explained by various factors, as indicated in table 4.4. For example, one sees that the level of knowledge required for disclosing a report to the competent authorities is actually somewhat higher in Germany. Moreover, in the United Kingdom activity has to be reported, while the reporting obligation in Germany is confined to transactions.

Moreover, what does not become directly clear from the table but which is an interesting difference with the reporting obligation in Germany, is that in the United Kingdom the basis for reporting lies in several provisions of the Proceeds of Crime Act (POCA), hence criminal law. From the four applicable provisions (Sections 327-330 POCA), the first three relate to all people and not only to the institutions subject to the Money Laundering Regulations 2007. Therefore, the scope of application is a considerably wider one in the UK than in Germany, where only institutions subject to the AML/CTF Act have to (send a copy of the) report to the FIU.

Also here, it can be concluded that due to the various differences of the reporting systems in Germany and the United Kingdom, the absolute number of reports cannot be compared with each other. The FATF indeed considered the fact that variation in reporting levels is due to differences in the regime design and methods used to count STRs, but it concluded that the German number of reports was so low that assessors found it difficult to conclude that the German system was adequate.<sup>402</sup>

#### *Example 3: UTRs*

In the Netherlands the type of report used is called Unusual Transaction Reports (UTRs). Only after analysis of the Financial Intelligence Unit, may these reports be declared suspicious. The unusual

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<sup>398</sup> See MONEYVAL (2005), *Third Round Report on Hungary*, p. 42. The definition in the current AML/CTF Act has remained unchanged in this respect.f6a

<sup>399</sup> FATF (2010), *Third Round Mutual Evaluation Report on Germany*, p. 170.

<sup>400</sup> *Ibid.*

<sup>401</sup> *Ibid.*

<sup>402</sup> *Ibid.*,p. 171.

character of a transaction generally has a lower threshold of knowledge or suspicion of money laundering than applies for STRs used in other European countries (see table 4.4). Moreover, while STRs in most countries are merely based on subjective suspicion, the Dutch UTR may also be disclosed in case of objective thresholds. To make it even more interesting, the objective thresholds differ per category of institutions. For example, money transfers offices must disclose a UTR to the FIU in case of cash transactions of €2.000 or more, while sellers of high-value goods have to report to the FIU in cases of transactions where vehicles, vessels, art objects, precious metals, gems and jewellery are paid in total or partially by means of cash money, where the amount to be paid is € 25.000 or more.<sup>403</sup>

Another country that uses UTRs is Latvia. Both UTRs and STRs have to be reported to the FIU. However, the meaning of UTRs in Latvia is entirely different from the meaning of UTRs in the Netherlands. In Latvia, UTRs are only disclosed in case of objective indicators (thresholds).<sup>404</sup> And as in the Netherlands, the thresholds vary according to the category of institutions.<sup>405</sup> For example, the (cash) threshold for the sale or purchase of precious metals, precious stones and articles is 10.000 LATs (approximately 12.000 EUR). Money transfer offices must disclose a UTR to the FIU in case of cash transactions of 25.000 LATs or more (approximately 30.000 EUR).<sup>406</sup> When comparing the thresholds with the thresholds set by the Dutch legislator for similar categories of entities, one will notice that they diverge considerably.

All in all, comparing UTRs with STRs in absolute numbers only is thus impossible. In the first place because the level of knowledge is considerably lower in the case of UTRs and in the second place because UTRs are not limited to subjective suspicion only, but may relate to threshold reporting as well. Likewise, a comparison of the number of UTRs in the Netherlands with the number of UTRs in Latvia would also not reflect the real situation, because the thresholds set differ considerably and in the Netherlands UTRs are also based on a subjective suspicion.

#### *Example 4: Polish STRs and SARs, UK SARs*

Poland has a rather unique AML/CTF reporting system concerning the type of reports used. Besides STRs, SARs (Suspicious Activity Reports) also form part of the system. Seemingly, the only difference between the two types of reports is the number of transactions involved in the report. If a report concerns a suspicion of money laundering in the case of a specific transaction, the format of STR is used. When a suspicion of money laundering arises only after a series of transactions, the format SAR is used.

While STRs relate to one suspicious transaction only, a comparison of Polish STRs with STRs in other countries would not provide the full picture, because in other countries an STR may contain several individual transactions.

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<sup>403</sup> Annex to Implementing Decree of the Dutch AML/CTF Act (Uitvoeringsbesluit Wet ter voorkoming van witwassen en financieren van terrorisme, Stb. 2008, 305).

<sup>404</sup> In that respect, for comparative purposes it would have been more convenient to call them cash transactions reports.

<sup>405</sup> Cabinet of Ministers Regulation No. 1071 On the List of Indicators of Unusual Transactions and the Procedure according to which Reports on Unusual and Suspicious Transactions shall be made, approved by the Cabinet of Ministers on December 22, 2008

<sup>406</sup> Financial and Capital Market Commission, *Combating Money Laundering in Latvia*, June 2010, p. 15.

With respect to the SARs, table 4.4 indicates that there are no similarities whatsoever with the SAR as is used in the United Kingdom. As explained above, the SAR reporting system in the United Kingdom is entirely based on criminal law. Therefore, not only the persons that are subject to the Money Laundering Regulations have an obligation to report, but all people should report in case they want to have a defence against any of the principal money laundering offences stipulated in Sections 327-329 POCA.

Hence, a direct comparison on absolute numbers of SARs between these countries would not be possible.

#### *Example 5: Polish and Slovenian threshold reports*

Poland also has a threshold reporting in place. All transactions above the equivalence of 15.000 EUR and 1.000 EUR in the case of some categories of institutions must be reported to the FIU. This low threshold combined with the fact that it is not only about cash transactions, means that the Polish FIU received information on about 31 million transactions contained in no less than 82.000 threshold reports in 2009.<sup>407</sup> This is considerably different from the threshold reporting system in Slovenia. In this country, cash transactions exceeding the amount of 30.000 EUR have to be disclosed to the Slovenian FIU. Up until 2008 the threshold was an equivalent to 21.000 EUR, but the Slovenian legislator raised the threshold after consultation with the obliged institutions to lower their burden.<sup>408</sup> In 2009, 16.846 cash transactions were reported to the FIU.<sup>409</sup> Once again the incomparability of absolute numbers becomes clear: the 16.846 cash transactions reported in Slovenia are in no proportion to the 31 million transactions reported in Poland.

#### *Last remark on the number of reports*

As a last remark on this statistic, we have to report that during our research we discovered that the EUROSTAT report<sup>410</sup> had the number of STRs in Hungary wrong. In table 15, EUROSTAT reports that the amount of STRs in 2007 is 13 and in 2008 it is 62. This is, according to the Hungarian representatives, probably the number of cases forwarded by the FIU to the LEAs. The actual number of STRs received by the Hungarian FIU is 9480 in 2007, 9940 in 2008 and 5440 in 2009.

### **11.3 The way forward: how to make these statistics cross-country comparable?**

The most intuitive solution is to push for a uniform legislation such that the notion of a report is a uniform concept in all the countries in the world. This of course needs to be done by means of legislative changes, which takes time and effort, and political negotiations are involved. Changing the classification

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<sup>407</sup> General Inspektor of Financial Information on implementation of the Act of 16 November 2000 on counteracting money laundering and terrorism financing in 2009 (FIU (2009), Annual Report, at § 1.2).

<sup>408</sup> Indicated by several stakeholders during interviews held in the course of the ECOLEF project.

<sup>409</sup> Office for Money Laundering Prevention, Data from the report on activities of the Office for Money Laundering Prevention of the Republic of Slovenia for the year 2009, at § 2.1.

<sup>410</sup> Eurostat (2010) Money Laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs, by Cynthia Tavares, Geoffrey Thomas (Eurostat) and Mickaël Roudaut (DG Home Affairs), Eurostat Methodologies and Working papers, ISSN 1977-0375

schemes of administration might involve other policy fields as well and might be very difficult. Therefore, this policy option might be a long-term solution or even a utopian ambition.

Alternatively, we propose a restructuring of the current units of measurement such that they are better comparable across countries, more specifically, to measure and compare the amount of money and the number of natural persons involved in the suspicion reports, instead of the number of reports. Clearly there will still be some degrees of freedom of how to interpret money laundering tasks and time devoted to it, but it at least takes away the differences in the data collection method, which is the least transparent characteristic of the current reports sent to the FIU.

We made a start by taking stock of which countries already have statistics on the numbers of people and the amount of money involved in the number of reports. The table below shows these statistics.

**Table 11.2: Number of persons and amount of money related to the reports sent to the FIU**

	Number of persons in reports sent to FIU						Amount of money in reports sent to the FIU (in mln euro)					
	2005	2006	2007	2008	2009	2010	2005	2006	2007	2008	2009	2010
Austria												
Belgium												
Bulgaria							308	199	260	213	394	490
Cyprus												
Czech Rep.												
Denmark												
Estonia					17000	20000					6130	253
Finland												
France												
Germany	15621	18735	19012	13490	15543							
Greece												
Hungary												
Ireland												
Italy												
Latvia												
Lithuania												
Luxembourg	1653	1452	2275	2191	3154	6660	1868	752	982	425	1738	1611
Malta	103	122	91	111	68	112						
Netherlands												
Poland												
Portugal	1680	2340	2880	2570	3550	4100						
Romania												
Slovakia												5790
Slovenia	143	229	196	247	226	193	23	75	37	57	348	168
Spain												
Sweden												
UK												

Source: own database, which is a collection of data collected by online surveys, interviews and desk research on mutual evaluation reports and annual reports of relevant institutions. The "amount of money in reports" in Bulgaria

represents the amounts as per newly initiated cases by the FIU for each year on the basis of the reports. These amounts only roughly coincide with the actual amount per STR.

#### Output statistics: Cash Declarations at the Border

Apart from these reports sent to the FIU by reporting entities, we also have statistics on the number of cash declarations at the border. Moreover we have statistics on the number of false cash declarations, i.e. where (more) cash is detected, which might be an even better indication of money laundering. The advantage is that the thresholds and definitions of these reports are uniform across Europe, which means that the drawbacks of the reports sent to the FIU by reporting entities are not present for these reports. This makes the statistics on cash declaration reports much more comparable across countries, but we should remember that these statistics do not represent any money laundering activities per se and are therefore mere indications. The table below shows these statistics.

**Table 11.3: Number of (false) cash declarations and the amount of money involved.**

	Cash Declarations				False/Detected Cash Declarations			
	Total	Entering	Leaving	Million €	Total	Entering	Leaving	Million €
<b>Austria</b>	4589	1404	3185	5.632	4	12	16	1,39
<b>Belgium</b>	995	653	342	53	23	13	36	2,75
<b>Bulgaria</b>	4636	2870	1766	304	12	41	53	5,38
<b>Cyprus</b>	1240	935	305	48	14	20	34	0,87
<b>Czech Rep.</b>	1227	762	465	420	2	0	2	0,04
<b>Denmark</b>	435	70	365	17	3	276	279	7,58
<b>Estonia</b>	1769	79	1690	1.092	5	3	8	0,23
<b>Finland</b>	520	233	287	82	36	12	48	1,25
<b>France</b>	23339	10373	12966	1.936	1572	984	2556	221,04
<b>Germany</b>	45303	26239	19064	55.775	3272	1938	5210	996,99
<b>Greece</b>	3695	3550	145	123	2	8	10	1,24
<b>Hungary</b>	1380	1145	235	78	11	10	21	0,49
<b>Ireland</b>	24	9	15	1	4	12	16	0,34
<b>Italy</b>	40194	22531	17663	8.745	796	801	1597	258,24
<b>Latvia</b>	369	123	246	85	4	0	4	0,94
<b>Lithuania</b>	8046	6302	1744	214	0	2	2	0,02
<b>Luxembourg</b>	15	7	8	1	0	0	0	0,00
<b>Malta</b>	369	291	78	17	2	0	2	0,06
<b>Netherlands</b>	3776	2321	1455	162	264	453	717	23,04
<b>Poland</b>	6636	4943	1693	243	40	35	75	5,21
<b>Portugal</b>	2588	1932	656	213	324	179	503	31,51
<b>Romania</b>	1729	1362	367	161	0	5	5	0,03
<b>Slovakia</b>	51	50	1	2	0	0	0	0,00
<b>Slovenia</b>	1750	1167	583	3.028	50	10	60	3,60
<b>Spain</b>	16766	9273	7493	1.254	33	454	487	37,83
<b>Sweden</b>	1015	158	857	33	11	0	11	0,43
<b>UK</b>	5895	3042	2853	204	341	926	1267	31,85

Source: Cash Control Report<sup>411</sup>. The reported statistics are a total for the period Q3-2007 until Q2-2009. The total amount of (false) cash declarations is the simple addition of the amount made when entering the country and leaving the country. The last column shows how much money was involved with the total of these (false) cash declarations.

#### *Output statistics: Number of prosecutions and convictions*

Another statistic that seems to be a logical choice when looking for an indicator for the effectiveness of the fight against money laundering is the number of persons prosecuted/convicted for money laundering. One of the main problems with this statistic is that when criminals are convicted for money laundering, they are often also convicted for the predicate crime in the same court case. The question then arises whether the convicted criminal will be registered as being convicted for only the predicate crime or also for money laundering. The same holds for the number of prosecutions. Another issue with this statistic is that courts in different EU Member States interpret the term money laundering differently, as already pointed out in this report in Chapter 7. The major difference in this respect is of course the criminalisation of self-laundering, which could be corrected for; since most Member States that have this statistic can differentiate whether the conviction is for self-laundering or third-party laundering (13 of the 17 countries were able to differentiate<sup>412</sup>). Moreover, an increase in the number of prosecutions and convictions for money laundering does not have to be the result of more effective anti-money laundering policies, since the increase could also be caused simply by an increase in money laundering. Nevertheless, one could still compare this statistic with the number of STRs to measure the effectiveness of the investigation and prosecution stages in the fight against money laundering. This was also the general idea of EUROSTAT when they started to collect these statistics.

Representatives of the Member States have indicated to us that we should be extremely cautious to do this comparison for several reasons. First of all, many reports sent to the FIU could eventually result in only one conviction, while also the opposite could be possible: one report could lead to many convictions. Statistics on how many reports led to how many convictions are rare among the EU Member States. Second, the investigation and prosecution process of a money laundering case could be extremely time-consuming, especially when international cooperation is required. This means that one can still not conclude how many reports that were sent to the FIU in e.g. 2007 were used to convict money launderers, since some reports might still be under investigation or the case might still be pending in court. Third, a report in a certain country might not lead to a conviction in the same country. It could be that a certain country received a report and did great (resource-consuming) investigation work which eventually resulted in the money launderer being convicted in another country. Fourth, convictions can also be the result of regular police work and therefore not originate from the reporting system.

With all these remarks in the back of our heads, we show in the table below how many prosecutions and convictions for money laundering and terrorist financing occurred in the EU. Additionally we report the

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<sup>411</sup> European Commission (2010) Report from the Commission to the European Parliament on the application of Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community pursuant to article 10 of this Regulation

<sup>412</sup> See table 9 of Eurostat (2010) Money Laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs, by Cynthia Tavares, Geoffrey Thomas (Eurostat) and Mickaël Roudaut (DG Home Affairs), Eurostat Methodologies and Working papers, ISSN 1977-0375

percentages of numbers of prosecutions compared to the number of reports sent to the FIU, and how the number of convictions relate to the number of prosecutions.

**Table 11.4: Average number of prosecutions and convictions for money laundering and terrorist financing**

	ML prosecutions	ML convictions	TF prosecutions	TF convictions	MLprosecutions /reports * 100%	ML convictions /MLprosecutions * 100%
Austria	17	10	0	0	1,57	60,24
Belgium	1.374				9,60	
Bulgaria	129	12	0		17,45	9,49
Cyprus	43	24			16,44	56,74
Czech Republic	8	27		0	0,35	348,39
Denmark	532	503			36,95	94,49
Estonia	17	6		0	0,01	1200,00
Finland	54	14			0,40	25,00
France	186	186	4	3	0,80	99,73
Germany	10.173	381			116,22	3,75
Greece	42	34	0	0	2,54	80,95
Hungary	5	4	3		0,05	91,07
Ireland	9	5		0	0,04	55,55
Italy						
Latvia	15	25		0	0,07	171,19
Lithuania	2	1	0		0,89	71,43
Luxembourg	48	2		0	3,42	4,58
Malta	5	2	0	0	6,92	31,25
Netherlands	592	486	0	0	0,26	82,20
Poland	87	35	0		0,34	39,85
Portugal	107	7			10,79	6,33
Romania	27	7			1,22	24,07
Slovakia	60	10	1	0	2,96	17,28
Slovenia	13	1		0	6,89	4,00
Spain	104				3,56	
Sweden	94	36			1,00	38,03
UK	2.169	1.003		1	0,96	46,24

Source: own database, which is a collection of data collected by online surveys, interviews and desk research on mutual evaluation reports, annual reports of relevant institutions and the Eurostat report<sup>413</sup>. For visibility reasons the numbers reported are the averages over the statistics available in the period 2005-2010.<sup>414</sup> Annex 11.1 reports all statistics for all years for all the countries. The reports statistic that is used is the aggregate of the number of STRs, SARs and UTRs. CTRs are not included because of their (even more) distinct nature.

We can easily conclude from table 11.4 that prosecutions and convictions for terrorist financing are rare in the EU. Furthermore, we can see that the number of prosecutions in Germany is extremely high. A German representative explained us that this has to do with the fact that prosecutors have the obligation to prosecute any suspicion in cases brought to their attention (principle of compulsory prosecution). This is also visible when looking at the comparison of the number of reports with the number of prosecutions. According to this statistic, there are more prosecutions in Germany than there are reports on suspicions of money laundering. This probably has to do with the remark mentioned above, that prosecutions and convictions can be the result of regular police work and therefore not originate from a report sent to the FIU. We also see such extreme statistics (more than 100%) for certain countries when comparing the number of prosecutions with the number of convictions. This could be due to the above mentioned remark that convictions might happen in a different year than the prosecution.<sup>415</sup>

As a remark on the side, we have to report that during our research we found out that the EUROSTAT report<sup>416</sup> had the number of convictions for Czech Republic wrong. In Table 9 EUROSTAT reports that the number of convictions in the Czech Republic is more than 600 each year, while Table 10 mentions that the total number of sentences is between 21 and 31. The Czech representatives indicated that more than 600 convictions a year is definitely not correct, and that the total amount of sentences seems to be the correct statistic. This would mean that the numbers of convictions in the Czech Republic are 21 in 2003, 26 in 2004, 31 in 2005, 29 in 2006 and 21 in 2007.

Now that we have the statistics on the amount of convictions, the question rises whether we are able to explain the differences between Member States. Why are there so many convictions in the UK, Denmark and the Netherlands and why is the number of convictions in Lithuania and Slovenia so low? The first idea that comes to mind is of course that bigger countries have more crime in absolute terms and that they therefore have more convictions in absolute terms. Something else that comes to mind is that the

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<sup>413</sup> EUROSTAT (2010) *Money Laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs*, by Cynthia Tavares, Geoffrey Thomas (Eurostat) and Mickaël Roudaut (DG Home Affairs), Eurostat Methodologies and Working papers, ISSN 1977-0375

<sup>414</sup> This is a rather crude calculation method to increase data availability. To give some additional insight in our calculation method, let us use two examples. If we have statistics for a certain country available only for the year 2008 (like Greece), then we present that number in the table. If a country has statistics for the years 2007, 2008 and 2009, then we take the average over those three years and present that average in the table. A potential drawback of this calculation method is that some statistics might be somewhat biased for comparability purposes, because the statistics represent different years. If, for instance, the numbers are rising over time throughout Europe, then the countries with data available only in later years are biased upwards while countries with data available only in the early years are biased downwards. Due to data unavailability it is hard to identify whether such a trend is present.

<sup>415</sup> Note that we use averages to calculate these statistics, so the years from which we use data might differ not only from country to country but can also differ between certain statistics within a country.

<sup>416</sup> Eurostat (2010) *Money Laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs*, by Cynthia Tavares, Geoffrey Thomas (Eurostat) and Mickaël Roudaut (DG Home Affairs), Eurostat Methodologies and Working papers, ISSN 1977-0375

money laundering definition is interpreted differently in different Member States (see Chapter 7) and that countries with a broader definition probably have, all else equal, on average more ML convictions.

### Hypotheses

The number of convictions for money laundering is related to the size of the country

The number of convictions for money laundering is related to the broadness of the money laundering definition

To verify these hypotheses, we composed the table below where we show the number of convictions related to the size of the country and the size of the FIU and classified by the broadness of the money laundering interpretation.

**Table 11.5: The conviction rates classified by broadness of the ML definition**

Country	ML convictions	ML convictions per FIU employee	ML convictions per million inhabitants
France*	185,75	2,54	2,87
<b>Very tight money laundering definition</b>			
Denmark	502,67	27,93	91,14
Finland	13,50	0,56	2,57
Germany	381,00	22,41	4,67
Ireland			
Italy			
Sweden	35,75	1,32	3,94
<b>Tight money laundering definition</b>			
Estonia	6,00	0,38	4,64
Lithuania	1,25	0,13	0,35
<b>Normal money laundering definition</b>			
Austria	10,00	0,77	1,22
Belgium			
Czech Republic	27,00	0,77	2,65
Greece	34,00	1,17	3,16
Hungary	4,25	0,14	0,43
Latvia	25,25	1,49	11,38
Malta	1,50	0,15	3,69
Poland	34,75	0,77	0,90
Portugal	6,75	0,23	0,63

Romania	6,50	0,07	0,30
Slovakia	10,33	0,34	1,89
Slovenia	0,50	0,03	0,25
Spain			
<b>Broad money laundering definition</b>			
Bulgaria	12,20	0,38	1,71
UK	1003,00	16,72	16,09
<b>Very broad money laundering definition</b>			
Cyprus	24,40	1,16	22,13
Luxembourg	2,20	0,16	4,42
Netherlands	486,40	8,69	28,98

Source: own database, which is a collection of data collected by online surveys, interviews and desk research on mutual evaluation reports, annual reports of relevant institutions and the Eurostat report<sup>417</sup>. For visibility reasons the numbers reported are the averages over the statistics available in the period 2005-2010.<sup>418</sup> Annex 11.1 reports the conviction statistics for all years for all the countries. The broadness of the money laundering definition comes from our own research described in Chapter 7 (\* France is not classified).<sup>419</sup>

We can see from table 11.5 that indeed the big difference in the number of money laundering convictions diminishes when taking into account the size of the country (measured in FIU staff or the number of inhabitants). While the difference between the lowest and the highest absolute number of money laundering convictions is of a factor around 2000, for the relative conviction statistics this difference is of a factor around 1000 and 400, respectively in relation to the number of FIU staff and the number of inhabitants. This hypothesis is also supported by a statistical analysis with pair-wise correlations that show very significant positive relations between the absolute number of money laundering convictions and GDP and population statistics.<sup>420</sup>

The idea that the differences in convictions for money laundering are related to the broadness of the money laundering definition is not confirmed by Table 11.5. Although the number 2 (NL), 3 (CY) and 4 (UK) in terms of relative number of convictions have a broad or very broad money laundering definition,

<sup>417</sup> EUROSTAT (2010) *Money Laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs*, by Cynthia Tavares, Geoffrey Thomas (Eurostat) and Mickaël Roudaut (DG Home Affairs), Eurostat Methodologies and Working papers, ISSN 1977-0375

<sup>418</sup> This is a rather crude calculation method to increase data availability. To give some additional insight in our calculation method, let us use two examples. If we have statistics for a certain country available only for the year 2008 (like Greece), then we present that number in the table. If a country has statistics for the years 2007, 2008 and 2009, then we take the average over those three years and present that average in the table. A potential drawback of this calculation method is that some statistics might be somewhat biased for comparability purposes, because the statistics represent different years. If, for instance, the numbers are rising over time throughout Europe, then the countries with data available only in later years are biased upwards while countries with data available only in the early years are biased downwards. Due to data unavailability it is hard to identify whether such a trend is present.

<sup>419</sup> The population statistics that are used are from Heston, A., R. Summers and B. Aten (2011), *Penn World Table Version 7.0*, Center for International Comparisons of Production, Income and Prices at the University of Pennsylvania.

<sup>420</sup> The correlation between the number of convictions and GDP is 0.6066 with P-value 0.0008. The correlation between the number of convictions and population is 0.5238 with P-value 0.0050.

the contrary is true for the number 1 (DK). Actually, Table 11.5 shows that the countries with a tight money laundering definition have, in both absolute and relative terms, quite a high number of money laundering convictions. Also a statistical analysis with pair-wise correlations shows that the broadness of the money laundering definition does not really explain the differences in conviction statistics.<sup>421</sup>

This leaves us with the question of what else can explain why the number of money laundering convictions is high in certain countries and low in other countries. We therefore conduct a statistical analysis with pair-wise correlations between the number of convictions for money laundering and all other statistics that we gathered in this project (over 200 variables). We report here the most interesting results. The absolute number of convictions for money laundering is positively significantly related to the amount of threat, the corruption index of the World Bank, the number of suspicion reports sent to the FIU<sup>422</sup> and the number of prosecutions for money laundering.<sup>423</sup>

The fact that the number of convictions is related to the amount of threat confirms the consideration above that this statistic might not per se say something about the effectiveness of the AML system, but could also be related to the underlying unknown amount of money laundering in the country.

The relation between money laundering and corruption has been a debated in the literature. Walker<sup>424</sup> assumes that criminals do not like (excessively) corrupt countries, because corruption increases the costs of laundering due to necessary side payments and bribes. On the other hand, a very low corruption level might make it difficult to find facilitators for laundering, increasing the transaction costs of laundering. The corruption–laundering literature is ambiguous about the relation. Chaikin and Sharman (2009)<sup>425</sup> give an overview over the various theoretical links between corruption and money laundering. Dreher and Schneider (2010)<sup>426</sup> find this ambiguity for the shadow economy also empirically: corruption reduces the shadow economy in high-income countries, but increases it in low-income countries.<sup>427</sup> Our empirical results in this project suggest that there is a positive relation between convictions for money laundering and governance performance against corruption. Hence, in countries where corruption is better under control, the number of convictions is higher. We could come up with different reasons why this would be

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<sup>421</sup> The absolute number of convictions is only significantly related with the dummy variable for a broad money laundering definition (coefficient of 0.4914 with a P-value of 0.0092) and not with the other 4 dummies for categories of the broadness of the money laundering definition.

<sup>422</sup> The reports statistic that is used is the aggregate of the number of STRs, SARs and UTRs. CTRs are not included because of their (even more) distinct nature.

<sup>423</sup> Relation with threat is 0.5051 with a P-value of 0.0072, with corruption is 0.4246 with a P-value of 0.0273 (note that a higher score for corruption, means better governance performance against corruption), with the average number of reports (STR+SAR+UTR) for the years available is 0.7955 with a P-value of 0.0000 and with the number of prosecutions is 0.4211 with a P-value of 0.0287. When we correct the number of convictions for money laundering for the size of the country by dividing the number by population the correlation with threat becomes 0.1281 with P-value 0.5242 (hence insignificant), with corruption becomes 0.4574 with P-value 0.0165.

<sup>424</sup> Walker, J. (1995) Estimates of the extent of money laundering in and throughout Australia, report for the Australian Financial Intelligence Unit AUSTRAC and Walker, J. (1999) How big is global money laundering?, *Journal of Money Laundering Control* 3, 25-37.

<sup>425</sup> Chaikin, D. and J.C. Sharman (2009) *Corruption and money laundering: a symbiotic relationship*, Palgrave Macmillan.

<sup>426</sup> Dreher, A. and F. Schneider (2010) Corruption and the shadow economy: an empirical analysis, *Public Choice* 144, 215-238.

<sup>427</sup> Ferwerda, J. M. Kattenberg, H. Chang, B. Unger, L. Groot and J. Bikker (forthcoming) Gravity Models of Trade-Based Money Laundering, *Applied Economics*, accepted on May 29, 2012

the case. Probably the most intuitive reason is that when the government has better control over corruption, it probably also has better control over money laundering. Alternatively, one could argue that in countries with more corruption, money launderers might be able to bribe the police officer who is about to catch them.

The initial idea of Eurostat when drafting their report<sup>428</sup> was to show statistically the chain of how reports lead to prosecutions and how many of these prosecutions lead to conviction. This approach has been opposed very often by representatives of the countries we visited (see also the introduction of this section on the number of prosecutions and convictions for money laundering). Our statistical analysis suggests that these statistics are related when we do not correct for the size of the country. When we do correct for the size of the country – by dividing all three statistics by population – the number of reports are not significantly related anymore with the number of convictions, which seems to support the idea of many representatives, that one cannot simply compare the number of reports with the number of convictions. The number of prosecutions and the number of convictions for money laundering stays significantly related when corrected for size.<sup>429</sup>

EUROSTAT (2010)<sup>430</sup> also collected statistics on the number of prosecutions and convictions for money laundering. We were able to improve these statistics in two ways. First, we have more recent statistics. Second, we also have the number of prosecutions for Austria, Denmark, France, Greece, Hungary, Ireland and United Kingdom and the number of convictions for Denmark, Greece, the Netherlands and Slovakia that were missing in the statistics of EUROSTAT.

**Conclusion:** the big differences between the number of convictions for money laundering in different Member States can be explained by the size of the country, but not by the broadness of the money laundering definition, as was expected. Moreover, our statistical analysis shows that countries more threatened by money laundering have more convictions for money laundering, which could indicate an appropriate response to this threat. Our statistical analysis also shows that less corrupt countries have more money laundering convictions, which indicates that countries more able to fight corruption adequately are also more able to fight money laundering adequately.

#### 11.4 Input statistics: Staff and budget of the FIU

Since output statistics of anti-money laundering policy (like the number of reports sent to the FIU or the number of prosecutions and convictions for money laundering) always have the problem that an increase in the statistic can come from an increase in the amount of money laundering or from an improved

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<sup>428</sup> EUROSTAT (2010) *Money Laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs*, by Cynthia Tavares, Geoffrey Thomas (Eurostat) and Mickaël Roudaut (DG Home Affairs), Eurostat Methodologies and Working papers, ISSN 1977-0375

<sup>429</sup> The correlation between prosecutions / population and convictions / population is 0.4368 with P-value 0.0227.

<sup>430</sup> Eurostat (2010) *Money Laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs*, by Cynthia Tavares, Geoffrey Thomas (Eurostat) and Mickaël Roudaut (DG Home Affairs), Eurostat Methodologies and Working papers, ISSN 1977-0375

policy response<sup>431</sup>, it is perhaps better to use input statistics (like resources spent to fight money laundering) as an indicator for the amount of effort made by Member States to fight money laundering. In the ECOLEF-project we have tried to gather the following input-statistics:

- AML/CTF budget of the responsible Ministry/Ministries
- Budget FIU
- Personnel FIU
- Budget Law Enforcement Agencies (LEAs) to fight ML/TF
- Personnel LEA's to fight ML/TF
- Budget for judiciary spent on AML/CTF
- Personnel in judiciary for AML/CTF
- Reporting costs for obliged entities
- Training and compliance costs for obliged entities
- Budget supervisory institutions for AML/CTF
- Personnel in supervisory institutions for AML/CTF

(Note that these statistics are also gathered for the cost-benefit analysis.)

We conclude that the best available input-statistic is the amount of personnel in the FIU. All countries are able to provide such a statistic. As can be seen in Table 11.6 some countries were able to provide us also with the budget of the FIU.

**Table 11.6: Number of staff and budget of the FIU**

Country	Staff (in fte)	Budget (in euros)
Austria	13 (in 2010)	
Belgium	45 (in 2012)	4.257.645
Bulgaria	32 (in 2011)	
Cyprus	21 (in 2011)	
Czech Republic	35 (in 2011)	1.429.473 (without IT)
Denmark	18 (in 2011)	No budget
Estonia	16 (in 2011)	
Finland	24 (in 2011)	1.565.000
France	73 (in 2009)	4.981.688
Germany	17 (in 2010)	
Greece	29 (in 2011)	1.500.000
Hungary	30 (in 2010)	1.000.000***
Ireland	11 (in 2011)	
Italy	104 (in 2011)	207.000 (only expenses)
Latvia	17 (in 2011)	341.490

<sup>431</sup>This is a common problem with crime statistics in general.

<b>Lithuania</b>	10 (in 2011)	
<b>Luxembourg</b>	14 (in 2012)	
<b>Malta</b>	10 (in 2011)	330.107
<b>Netherlands</b>	56 (in 2010)	4.800.000
<b>Poland</b>	45 (in 2008)	
<b>Portugal</b>	30 (in 2011)	
<b>Romania</b>	96 (in 2011)	
<b>Slovakia</b>	30 (in 2011)	
<b>Slovenia</b>	18 (in 2010)	691.000
<b>Spain</b>	79 (in 2011)	11.000.000
<b>Sweden</b>	*27 (in 2009)	1.400.000**
<b>UK</b>	60 (in 2012)	

Source: statistics collected by the ECOLEF-project, via interviews, online questionnaires and regional workshops, except: \*=FATF Mutual Evaluation Report Sweden 2009 and \*\*= FATF Mutual Evaluation Report Sweden 2006. \*\*\*=this figure is estimated using the overall budget of the CCIB; representatives of the Hungarian Ministry of Finance and the Hungarian FIU said that it seems to be a reasonable estimation. Note that in Ireland the number of staff in the FIU does not contain the 7 police officers that work alongside the FIU in what is called the Money Laundering Investigation Unit (MLUI). Fte=full time equivalent.

Although not all countries were able to provide us with statistics regarding the budget of the FIUs, we can make an estimate based on the number of employees. During our first Regional Workshop we agreed with the country representatives that most of the budget is spent on personnel costs, as in other intelligence-based institutions such as universities. Let us assume that 80 % of the budget of each FIU is spent on personnel costs. Furthermore, let us use Eurostat statistics on the average gross monthly earnings of legislators in every EU Member State<sup>432</sup> to correct for the differences in salaries in the different Member States. Then we can calculate that for the 11 countries on which we have budget statistics, that on average the annual budget per employee is about 15 times the gross monthly earnings of a legislator. If we assume that this average relation applies also to the countries for which we do not have budget statistics we can calculate an estimated budget for these countries. The statistics gathered and the results of our estimations are shown in the table below.

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<sup>432</sup> See Table 7.1 in Eurostat Pocketbooks (2009) *Labour Market Statistics* for the gross monthly earnings by occupation in Euro in 2006.

**Table 11.7: Budget FIU**

Country	Staff	Budget	Monthly legislator earnings	Staff budget / legislator earnings	Total budget estimate
Austria	13		5642		1.375.238
Belgium	45	4.257.645	5740	13,2	4.843.125
Bulgaria	32		459		275.400
Cyprus	21		4327		1.703.756
Czech Rep.	35		1499		983.719
Denmark	18		5928		2.000.700
Estonia	16		1209		362.700
Finland	24	1.565.000	4881	10,7	2.196.450
France	73	4.981.688	4767	11,5	6.524.831
Germany	17		5876		1.872.975
Greece	29	1.500.000	3334	12,4	1.812.863
Hungary	30	1.000.000	1265	21,1	711.563
Ireland	11		4804		990.825
Italy	104		5637		10.992.150
Latvia	17	341.490	832	19,3	265.200
Lithuania	10		842		157.875
Luxembourg	14		7419		1.947.488
Malta	10	330.107	2146	12,3	402.375
Netherlands	56	4.800.000	4025	17,0	4.226.250
Poland	45		1527		1.288.406
Portugal	30		3225		1.814.063
Romania	96		913		1.643.400
Slovakia	30		1235		694.688
Slovenia	18	691.000	2961	10,4	999.338
Spain	79	11.000.000	4011	27,8	5.941.294
Sweden	27	1.400.000	4728	8,8	2.393.550
UK	60		5373		6.044.625

Source: Statistics collected by the ECOLEF-project, via interviews, online questionnaires, regional workshops and mutual evaluation reports. The monthly earnings for legislators are labour market statistics from Eurostat.<sup>433</sup> All values are in euro, except the number of staff of course. Note that the staff statistics come from different years, as stipulated in Table 11.6. With the first 3 columns (Staff (a), Budget (b) and Monthly legislator earnings (c)) one can

<sup>433</sup> See Table 7.1 in Eurostat Pocketbooks (2009) *Labour Market Statistics* for the gross monthly earnings by occupation in Euro in 2006.

calculate the last two columns (staff budget / legislator earnings ( $b*0.8/a/c$ ) and total budget estimate ( $c*15*a*1,25$ ))

Our estimations suggest that the costs of having a FIU are probably the highest in Italy with its high number of employees and its relatively high wage level. Unfortunately we do not have statistics on the number of prosecutions and convictions in Italy to see whether this leads to economies of scale or is due to the inefficiency of the FIU.

EUROSTAT (2010)<sup>434</sup> also collected statistics on the number of staff in the FIU. We were able to improve these statistics in two ways. First, we have more recent statistics. Second, we also have the number of staff for Austria, Belgium, Hungary, Ireland, Italy and Poland that were missing in the statistics of EUROSTAT.

To make the statistics better comparable across countries of very different size, we also show the amount of FIU personnel per million inhabitants and how much the FIU costs for each inhabitant on average per year. These statistics seem to indicate that FIUs have so-called economies of scale, which means that the more inhabitants a country has, the lower the costs per inhabitant are. In this sense, having an FIU is relatively costly for the smaller countries. The five EU Member States with the least inhabitants (Cyprus, Estonia, Luxembourg, Malta and Slovenia) have the highest number of FIU staff per million inhabitants.

**Table 11.8: Number of staff and budget of the FIU**

Country	Staff (in fte)	Budget (in euros)	Staff (per mln ppl)	Price for FIU (per person per year)	Corrected price for FIU (per person per year)
Austria	13		1,6		
Belgium	45	4.257.645	4,1	€ 0,39	€ 0,44
Bulgaria	32		4,4		
Cyprus	21		19,4		
Czech Republic	35	1.429.473 (without IT)	3,4		
Denmark	18	No budget	3,3		
Estonia	16		12,3		
Finland	24	1.565.000	4,6	€ 0,30	€ 0,37
France	73	4.981.688	1,1	€ 0,08	€ 0,09
Germany	17		0,2		
Greece	29	1.500.000	2,7	€ 0,14	€ 0,14
Hungary	30	1.000.000***	3,0	€ 0,10	€ 0,07
Ireland	11		2,6		
Italy	104	207.000 (only	1,7		

<sup>434</sup> Eurostat (2010) *Money Laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs*, by Cynthia Tavares, Geoffrey Thomas (Eurostat) and Mickaël Roudaut (DG Home Affairs), Eurostat Methodologies and Working papers, ISSN 1977-0375

		expenses)			
<b>Latvia</b>	17	341.490	7,6	€ 0,15	€ 0,11
<b>Lithuania</b>	10		2,8		
<b>Luxembourg</b>	14		28,5		
<b>Malta</b>	10	330.107	24,7	€ 0,82	€ 0,67
<b>Netherlands</b>	56	4.800.000	3,4	€ 0,29	€ 0,32
<b>Poland</b>	45		1,2		
<b>Portugal</b>	30		2,8		
<b>Romania</b>	96		4,4		
<b>Slovakia</b>	30		5,6		
<b>Slovenia</b>	18	691.000	9,0	€ 0,34	€ 0,28
<b>Spain</b>	79	11.000.000	1,7	€ 0,24	€ 0,24
<b>Sweden</b>	27	1.400.000**	3,0	€ 0,15	€ 0,19
<b>UK</b>	60		1,0		

Source: statistics collected by the ECOLEF-project, via interviews, online questionnaires and regional workshops, except: \*=FATF Mutual Evaluation Report Sweden 2009 and \*\*= FATF Mutual Evaluation Report Sweden 2006. \*\*\*=this figure is estimated using the overall budget of the CCIB; representatives of the Hungarian Ministry of Finance and the Hungarian FIU said that it seems to be a reasonable estimation. Note that the staff statistics come from different years, as stipulated in Table 11.6 Fte=full time equivalent, per mln ppl= per million inhabitants, corrected price for FIU is calculated with price level statistics in 2010 (p, US is the benchmark with 100)<sup>435</sup>.

Since price levels differ among EU Member States, it would be unfair to look only at the absolute FIU budgets. It is more expensive in Sweden to fight money laundering simply because everything is more expensive than, for example, in Poland. We therefore correct for these differences in price levels by using the price level statistics of World Penn Table.<sup>436</sup>

We have found it hard to collect the other input statistics mentioned above. Most institutions (Ministries, LEAs, Judiciary and Supervisors) have many more tasks and do not have a separate budget for AML/CTF and are unable to make any reasonable estimation for it. For obliged entities these statistics might even be kept secret, because it could be sensitive information for competitors. Annex 11.1 shows which statistics we were able to collect so far.

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435 The population statistics that are used are from Heston, A., R. Summers and B. Aten (2011), Penn World Table Version 7.0, Center for International Comparisons of Production, Income and Prices at the University of Pennsylvania. We use the most recent population statistics that were available from this source, which is from 2009. Also the most recent price level statistics of Penn World Table are used, which are from 2010.

<sup>436</sup>Heston, A., R. Summers and B. Aten (2011), Penn World Table Version 7.0, Center for International Comparisons of Production, Income and Prices at the University of Pennsylvania

## 11.5 Cluster analysis

In this section we want to find out whether we could cluster countries based on the statistics we gathered. The statistical method that we choose for this clustering is hierarchical agglomerative cluster analysis with Ward's algorithm. Hierarchical agglomerative cluster analysis is the dominant method in clustering and results usually are stable according to Leschke (2005).<sup>437</sup> In comparison to other algorithms Ward's proved to generate very good results in most cases.<sup>438</sup> The Ward's method is designed to optimise the minimum variance within clusters by making use of the error sum of squares or within group sum of squares<sup>439</sup>. Those cases that result in the minimum increase in the error sum of squares are joined in a cluster. This method leads to relatively homogenous clusters.<sup>440</sup> The 29 variables listed with their characteristics in Table 11.9 are the basis for the cluster analysis.<sup>441</sup>

**Table 11.9: The selected variables for cluster analysis**

Variable	Obs	Mean	Std. Dev.	Min	Max
GDP (in million US\$)	27	609175.7	911378.9	7955	3353000
Threat estimation Walker	27	6.588.889	410.884	15	156
WB-index Government Effectiveness	27	1.159.767	.617317	-.2190219	2.246.964
WB-index Corruption	27	1.026.053	.8175407	-.2003449	2.421.083
FATF compliance score	27	5.771.581	486.711	4.558.465	7.268.007
Number of suspicion reports / GDP	27	.070859	.1665722	.0019848	.8392635
Cash declarations (in €) / GDP	27	6.735.738	15729.29	2.988.389	61512.86
Detected cash declarations (in €) / GDP	27	3.892.524	6.566.886	0	2.973.413
Prosecutions / suspicion reports	27	.0901902	.2287483	.0001376	1.162.177
Convictions / prosecutions	27	127.371	2.605.056	.0374521	1.272.727
EU founder	27	.2222222	.4236593	0	1
EU-member in 1990	27	.4444444	.5063697	0	1
EU-member in 1995	27	.5555556	.5063697	0	1

<sup>437</sup> Leschke (2005) Is it useful to cluster countries? Analysis on the example of unemployment insurance coverage of non-standard employed, online available at:

[http://www.siswo.uva.nl/tlm/confbuda/papers/papers\\_files/WP8%20Janine%20Leschke%20-%20Is%20it%20useful%20to%20cluster%20countries.pdf](http://www.siswo.uva.nl/tlm/confbuda/papers/papers_files/WP8%20Janine%20Leschke%20-%20Is%20it%20useful%20to%20cluster%20countries.pdf)

<sup>438</sup> Aldenderfer, M. S. and R. K. Blashfield (1984): *Cluster Analysis*, vol. 44, edited by J. L. Sullivan and R. G. Niemi, Beverly Hills, London, New Delhi: Sage Publications. p. 60-61 and Backhaus, K. / B. Erichson / W. Plinke and R. Weiber (2000): *Clusteranalyse*, in: *Multivariate Analysemethoden. Eine anwendungsorientierte Einführung*: Springer, p. 366

<sup>439</sup> Aldenderfer, M. S. and R. K. Blashfield (1984): *Cluster Analysis*, vol. 44, edited by J. L. Sullivan and R. G. Niemi, Beverly Hills, London, New Delhi: Sage Publications. p. 42-43

<sup>440</sup> Leschke (2005), *Is it useful to cluster countries? Analysis on the example of unemployment insurance coverage of non-standard employed*, online available at:

[http://www.siswo.uva.nl/tlm/confbuda/papers/papers\\_files/WP8%20Janine%20Leschke%20-%20Is%20it%20useful%20to%20cluster%20countries.pdf](http://www.siswo.uva.nl/tlm/confbuda/papers/papers_files/WP8%20Janine%20Leschke%20-%20Is%20it%20useful%20to%20cluster%20countries.pdf)

<sup>441</sup> We selected primarily ratios and classifications to prevent that big countries have high values for all the variables and are therefore always automatically grouped.

EU-member in 2004	27	.9259259	.2668803	0	1
Supervision model FIU	27	.2962963	.4653216	0	1
Supervision model Internal	27	.1851852	.3958474	0	1
Supervision model External	27	.0740741	.2668803	0	1
Supervision model Hybrid I	27	.1851852	.3958474	0	1
Supervision model Hybrid II	27	.2592593	.4465761	0	1
FIU-staff	27	3.555.556	2.628.151	10	104
Administrative FIU	27	.5185185	.5091751	0	1
Law Enforcement FIU	27	.3333333	.4803845	0	1
Judicial FIU	27	.0740741	.2668803	0	1
Hybrid FIU	27	.0740741	.2668803	0	1
ML definition very narrowly interpreted	27	.2222222	.4236593	0	1
ML definition narrowly interpreted	27	.0740741	.2668803	0	1
Normal ML definition	27	.5185185	.5091751	0	1
ML definition broadly interpreted	27	.0740741	.2668803	0	1
ML definition very broadly interpreted	27	.1111111	.3202563	0	1

Source: own database, which is a collection of data collected by online surveys, interviews and desk research on mutual evaluation reports, annual reports of relevant institutions and the Eurostat report or otherwise the source listed here.<sup>442</sup> <sup>443</sup> GDP statistic comes from World Penn Table<sup>444</sup>. WB stands for World Bank. Government Effectiveness and Corruption are the Worldwide Governance Indicators from the World Bank.<sup>445</sup> The reports statistic that is used is the aggregate of the number of STRs, SARs and UTRs. CTRs are not included because of their (even more) distinct nature. Obs stands for the number of observations (in this cases countries), Std. Dev. stands for standard deviation, Min stands for the minimum value and Max stands for the maximum value.

All variables are standardised to z-scores with mean zero and standard deviation one, such that all variables have equal importance in the cluster analysis. The result of the cluster analysis is shown in a dendrogram, which is shown in Figure 11.1.

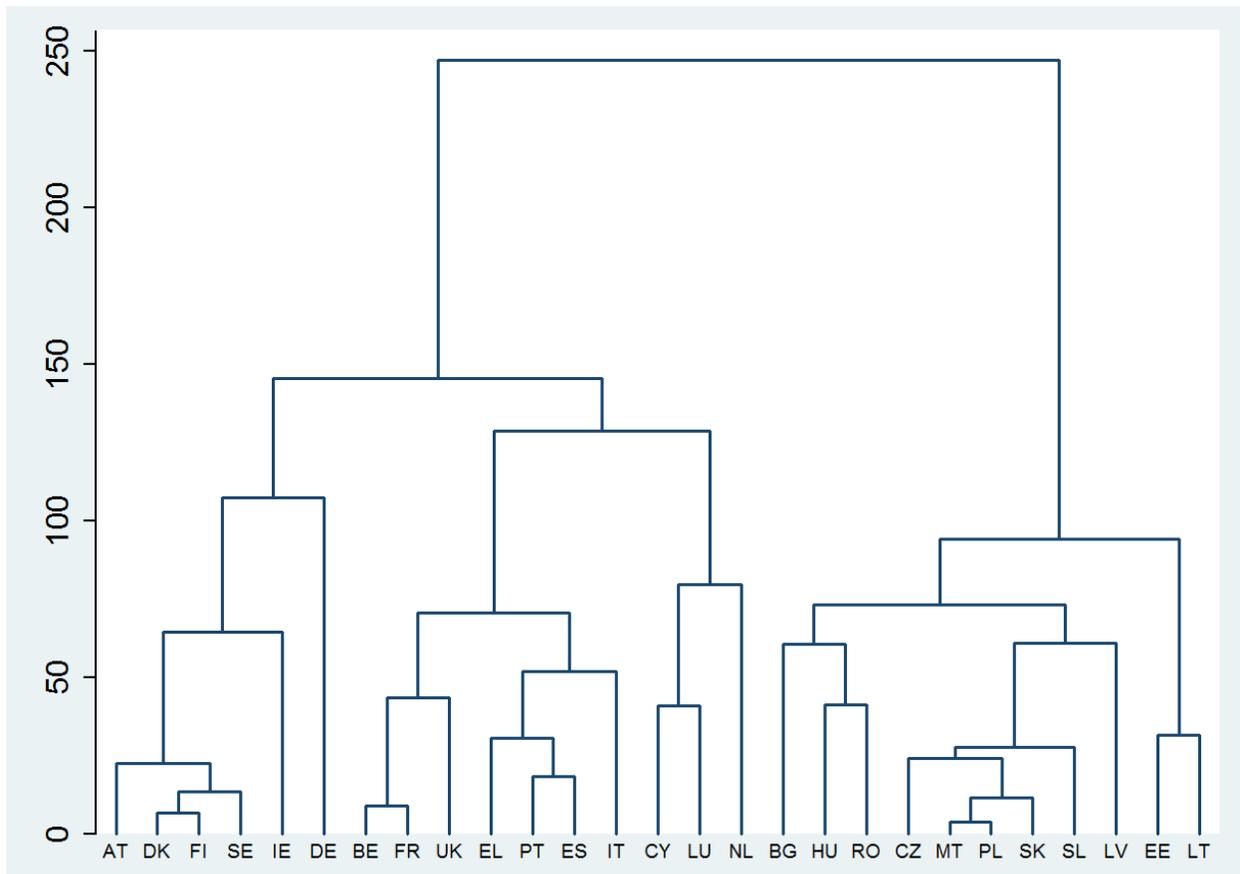
<sup>442</sup> UNODC (2011), *Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organised Crimes*.

<sup>443</sup> Cluster analysis needs a full dataset. We therefore had to interpolate some missing values. The following interpolation has been done: France gets a normal ML definition (not broad not tight); France gets 23420 reports (STR+UTR+SAR), the average of the other 26 countries; Italy gets 229 prosecutions, the average of the 25 other countries (Germany is left out this average calculation, because it is such an outlier for this statistic); Italy, Spain and Belgium get 112 convictions, the average of the 24 other countries.

<sup>444</sup> Heston, A., R. Summers and B. Aten (2011), Penn World Table Version 7.0, Center for International Comparisons of Production, Income and Prices at the University of Pennsylvania

<sup>445</sup> Online available at: <http://info.worldbank.org/governance/wgi/index.asp>

**Figure 11.1: The result of the cluster analysis depicted in a dendrogram**



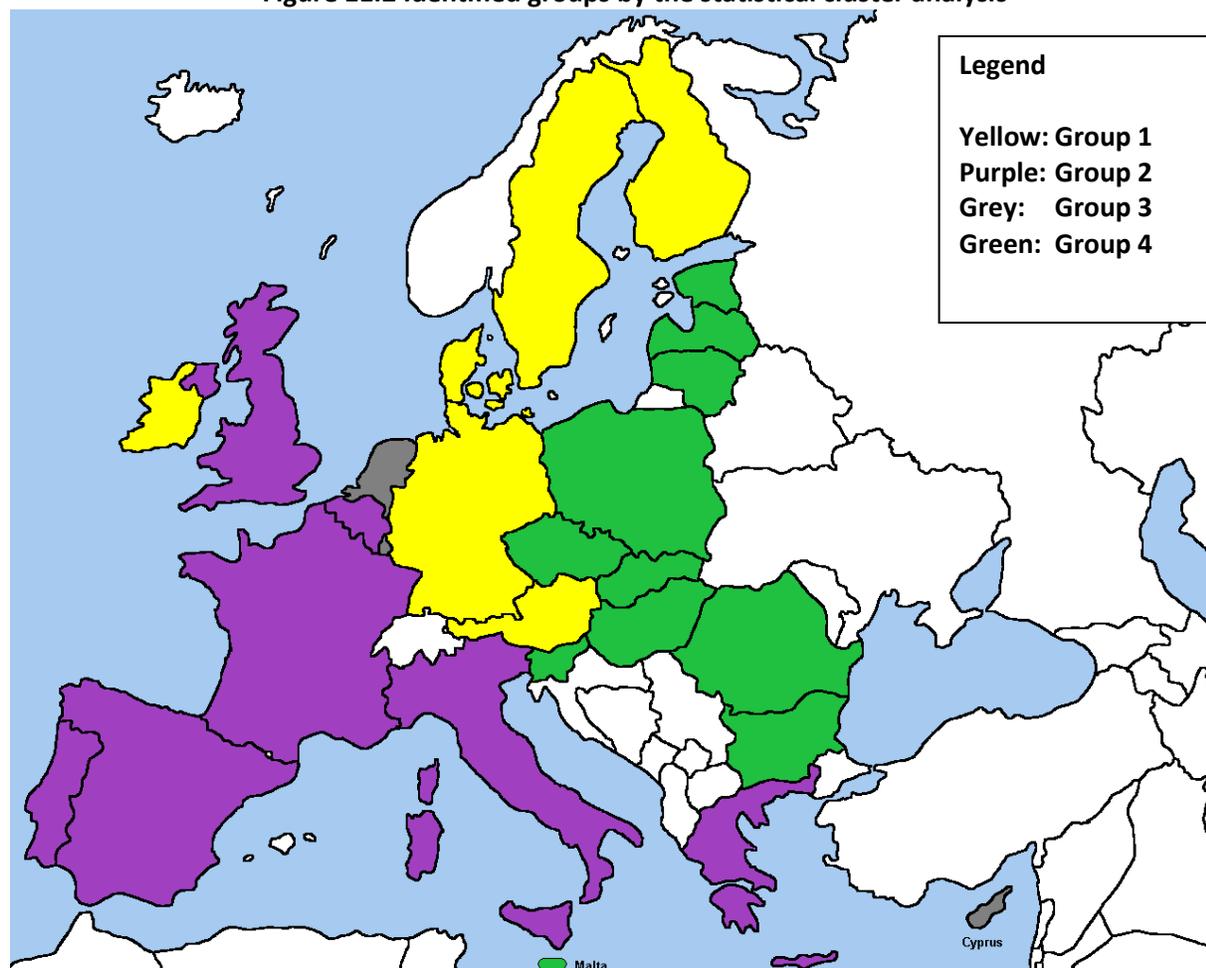
Source: Made with Stata 10.0, based on the 29 variables listed in Table 11.9. The X-axis lists the countries with 2-digit iso country-codes, the Y-axis shows the L2-squared dissimilarity measure.

A dendrogram can be read as follows. At the top of the figure, the countries are clustered into two groups indicated by the two lines. When going down, more and more groups are formed, indicated by dispersing lines. At the bottom of the figure we can identify 26 groups: 25 countries alone and Malta and Poland in a group. This means that Malta and Poland are, apparently, statistically the closest in the EU. Note that this is a purely statistical classification based on the 29 variables that are used. It is up to the researcher to decide what the appropriate number of groups is. We chose to select four groups, in line with the number of supervision models and FIU types. The resulting groups are listed in Table 11.10 and shown in Figure 11.2.

**Table 11.10: Identified groups by the statistical cluster analysis**

Group	Countries
1	Austria, Denmark, Finland, Germany, Ireland and Sweden
2	Belgium, France, Greece, Italy, Portugal, Spain and the United Kingdom
3	Cyprus, Luxembourg and the Netherlands
4	Bulgaria, Hungary, Romania, Czech Republic, Malta, Poland, Slovakia, Slovenia, Latvia, Estonia, Lithuania

Figure 11.2 Identified groups by the statistical cluster analysis



To get a feeling of the heterogeneity within the groups, we now show the clusters with their classifications for the dummy-variables used in the cluster analysis. For the other variables we use correlations to find out whether the countries within each group are homogenous on that aspect. The countries in group 1 have on average a significantly higher government effectiveness index, a significantly higher corruption control index and significantly more prosecutions/GDP.<sup>446</sup> The countries in group 2 have on average a significantly higher GDP and significantly more FIU staff.<sup>447</sup> The countries in group 3 have no significant correlation with any of the variables, probably due to the limited number of countries. The countries in group 4 have on average a significantly lower GDP, a significantly lower government effectiveness index, a significantly lower corruption control index and significantly less money laundering threat.<sup>448</sup>

<sup>446</sup> The correlation of group 1 with government effectiveness index is 0.5934 with P-value 0.0011, with corruption control index is 0.5874 with P-value 0.0013 and with Prosecutions/GDP is 0.4051 with P-value 0.0361.

<sup>447</sup> The correlation of group 2 with GDP is 0.4920 with P-value 0.0091 and with FIU staff is 0.5607 with P-value 0.0023.

<sup>448</sup> The correlation of group 4 with GDP is -0.4644 with P-value 0.0147 with government effectiveness index is -0.6211 with P-value 0.0005, with corruption control index is -0.6530 with P-value 0.0002 and with Threat is -0.6530 with P-value 0.0002.

**Table 11.11: Characteristics of the countries within the groups**

<b>Group 1</b>	<b>EU member since</b>	<b>Supervision model</b>	<b>ML definition</b>	<b>FIU type</b>
Austria	1995	Hybrid II	normal	Law Enforcement
Denmark	1973	Hybrid II	very tight	Law Enforcement
Finland	1995	Hybrid II	very tight	Law Enforcement
Germany	1957	Hybrid II	very tight	Law Enforcement
Ireland	1973	Internal	very tight	Law Enforcement
Sweden	1995	Hybrid II	very tight	Administrative
<b>Group 2</b>	<b>EU member since</b>	<b>Supervision model</b>	<b>ML definition</b>	<b>FIU type</b>
Belgium	1957	Internal	normal	Administrative
France	1957	Internal	normal	Administrative
Greece	1981	External	normal	Administrative
Italy	1957	Hybrid I	very tight	Administrative
Portugal	1986	Hybrid II	normal	Administrative
Spain	1968	FIU	normal	Administrative
United Kingdom	1973	Internal	broad	Law Enforcement
<b>Group 3</b>	<b>EU member since</b>	<b>Supervision model</b>	<b>ML definition</b>	<b>FIU type</b>
Cyprus	2004	Hybrid I	very broad	Judicial
Luxembourg	1957	Internal	very broad	Judicial
Netherlands	1957	External	very broad	Hybrid
<b>Group 4</b>	<b>EU member since</b>	<b>Supervision model</b>	<b>ML definition</b>	<b>FIU type</b>
Bulgaria	2007	FIU	broad	Administrative
Czech Republic	2004	FIU	normal	Administrative
Estonia	2004	Hybrid I	tight	Law Enforcement
Hungary	2004	Hybrid I	normal	Hybrid
Latvia	2004	Hybrid II	normal	Administrative
Lithuania	2004	FIU	tight	Law Enforcement
Malta	2004	FIU	normal	Administrative
Poland	2004	FIU	normal	Administrative
Romania	2007	Hybrid I	normal	Administrative
Slovakia	2004	FIU	normal	Law Enforcem
Slovenia	2004	FIU	normal	Administrative

The clear homogeneity that we can see in group 1 is that almost all of the countries have a law enforcement type FIU, a very tight money laundering definition and the Hybrid II supervision model. The countries in group 2 were all members of the EU when the Maastricht Treaty was signed in 1992 and almost all have a normal money laundering definition and an administrative type FIU. The countries in

group 3 all have a very broad money laundering definition. The countries in group 4 are all so-called new members of the EU and have mostly a normal money laundering definition.

Apart from these characteristics we identify more similarities within certain groups. The countries in group 1 all experience or experienced pressure from the FATF for not having self-laundering criminalised. Apparently, the international standards for money laundering policy do not fit well within their legal system. In some countries in group 2 domestic cooperation might be harder due to the size of the country (like ES, FR and IT) and/or distinct regions within the country (like BE, ES, IT and UK). In group 3 are relatively small countries with large financial flows going through. Group 4 are mostly Eastern European countries that are relatively recent members of the EU and might therefore have pressure on their institutions to implement and deal with a lot of new international laws and regulations on all kinds of topics (food, health, environment, child labor, etc.). Apparently, these diverse contexts in which countries deal with their own challenges show up in different statistics to such an extent that a purely statistical analysis groups countries accordingly.

## 11.6 Conclusion

Although there are quite a lot of statistics available on AML/CTF policy, their cross-country comparability is questionable. The number of reports sent to the FIU is one of the best available indicators, but there are many factors that have to be taken into account when trying to compare these statistics across countries. We identified differences on six aspects, namely the type of reports (STRs, UTRs, etc.), the subjective grounds of suspicion (level of knowledge), the objective grounds of suspicion (threshold), the definition of a transaction (narrow or broad), the inclusion of attempt and the data collection methodology of these reports.

Another important indicator is the number of prosecutions and convictions for money laundering. Because these numbers differ greatly between countries, we tried to find out what can explain these differences. As expected, larger countries have more prosecutions and convictions, but to our surprise how broad the money laundering definition is interpreted is not related to the number of prosecutions and convictions. Moreover, our statistical analysis shows that countries more threatened by money laundering have more convictions for money laundering, which could indicate an appropriate response to this threat. Our statistical analysis also shows that less corrupt countries have more money laundering convictions, which indicates that countries better able to fight corruption are also better able to fight money laundering.

What might be a better indicator for AML/CTF effort in the countries is how much money is spent on AML/CTF. The main indicator in this category (mainly because of its availability) seems to be the budget and personnel of the FIU. We were able to gather statistics on the number of personnel working at the FIU for all 27 EU Member States. We were able to collect the budget of the FIU for 11 countries and used this information to make an estimation of the FIU budget in all 27 EU Member States. According to our estimations, Italy should have the highest budget due to their high number of employees with a relatively high wage. We showed that there are certain economies of scale for having a FIU, and that therefore a FIU is relatively costly for smaller countries, like Cyprus, Estonia, Luxembourg, Malta and Slovenia.

In this chapter we tried to improve the Eurostat statistics<sup>449</sup>. We were successful in three ways. First, we were able to collect more recent statistics. Second, we also have the number of prosecutions for Austria, Denmark, France, Greece, Hungary, Ireland and United Kingdom and the number of convictions for Denmark, Greece, the Netherlands and Slovakia that were missing in the statistics of EUROSTAT. We also have the number of staff for Austria, Belgium, Hungary, Ireland, Italy and Poland that were missing in the statistics of EUROSTAT. Third, we corrected the number of STRs in Hungary and the number of convictions for money laundering in the Czech Republic that were incorrect in the EUROSTAT report.

We use the statistics we collected during this project to conduct a cluster analysis. Our cluster analysis shows that in terms of AML policy the 27 EU Member States consist of four groups which have their own distinct characteristics. We identify a group of countries (AT, DE, DK, FI, IE, SE) that experience or experienced international pressure due to the fact that they were unable to transpose the international standards adequately into their legal system, a group of countries (BE, EL, ES, FR, IT, PT, UK) in which domestic cooperation might be harder, a group of relatively small countries with large financial flows going through (CY, LU, NL) and a big group with mostly Eastern European countries that are relatively recent members of the EU. Apparently, these diverse contexts in which countries deal with their own challenges show up in different statistics to such an extent that a purely statistical analysis groups countries accordingly.

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<sup>449</sup> Eurostat (2010) *Money Laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs*, by Cynthia Tavares, Geoffrey Thomas (Eurostat) and Mickaël Roudaut (DG Home Affairs), Eurostat Methodologies and Working papers, ISSN 1977-0375

## Chapter 12 EFFECTIVENESS: THREAT AND CORRESPONDING POLICY RESPONSE

### 12.1 Introduction

The preceding Chapters 4 until 11 describe different aspects of AML/CTF policy in detail. These chapters show that AML/CTF policy has quite a lot of different important elements that together, represent the total policy response. In this chapter we try to bring all this information together in order to explore to what extent the policy response towards money laundering is effective in relation to the money laundering threat the country is facing, which was calculated in Chapter 2.<sup>450</sup>

### 12.2 Methodological approach

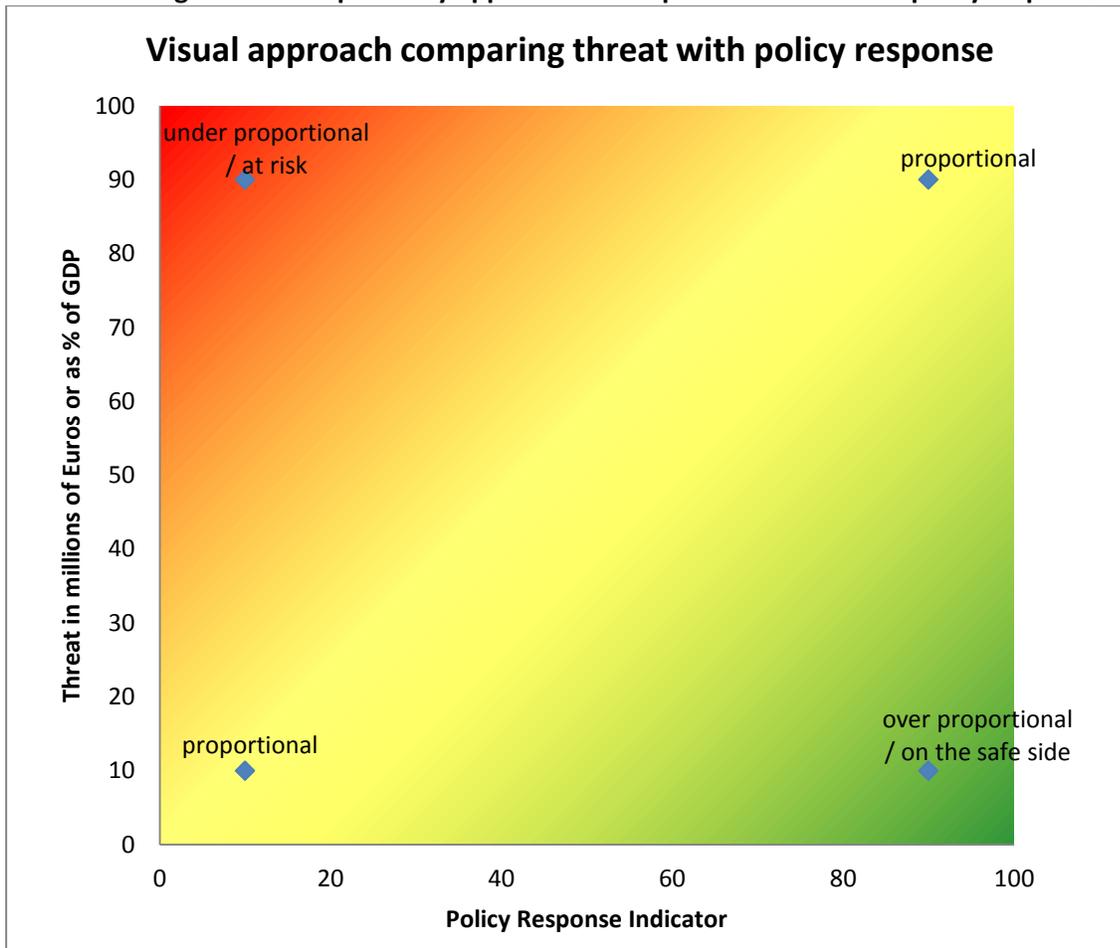
Since AML policy has such multiple and varied dimensions which cannot be encompassed into a single measurement of policy response without great loss of accuracy, we select the most suitable indicators for a good policy response. We therefore plot these indicators, one by one, next to the ML threat to explore how these two variables relate. The suitable indicators analysed in this chapter represent AML policy and have a logical hierarchy and are furthermore selected based on data availability and cross-country comparability. It is conceptually hard to compare an indicator for AML policy with a threat estimation because the units of measurement are by definition completely different. The visual exploratory approach we use in this chapter can indicate whether the policy response is proportional, but cannot be seen as an exact measurement.<sup>451</sup> The exploratory analysis is based on the figure below, where we consider the yellow (diagonal) area an appropriate policy response in the sense that a country in this area has a policy response that is more or less proportional to the threat it is facing. Member States that are plotted in the green (bottom-right corner) are on the safe side, since their policy response is more than proportional to the threat they are facing. We consider countries plotted in the red zone (top-left corner) to be at risk by having an under proportional policy response.

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<sup>450</sup> Note that we focus our analysis here on money laundering only. The data on terrorist financing is lacking to perform a similar analysis for terrorist financing at this point. However, the same methodology could be applied in the future when more data on terrorist financing policy is available and when we have more insight on what determines the threat of terrorist financing in the different EU Member States.

<sup>451</sup> The results of our analysis are for instance sensitive to the scaling of the axes and are primarily a relative score. We therefore made all indicators for AML policy response only positive with the characteristic that more is always better and have (0,0) in the origin (bottom-left corner) of the graphs.

Figure 12.1: Exploratory approach to compare ML threat with policy response



Source: made by the authors. Our visual exploratory approach compares the threat of money laundering (here measured in % of GDP) with the different indicators for AML policy. It is of course always better to have less threat; we construct the policy response indicators in such a way that more is always better. The countries in the red zone (in the top-left corner) have an under proportional policy response and we therefore consider them at risk. Countries that end up in the yellow zone have a more or less proportional policy response, while countries in the green zone (in the bottom-right corner) are on the safe side with their over proportional policy response.

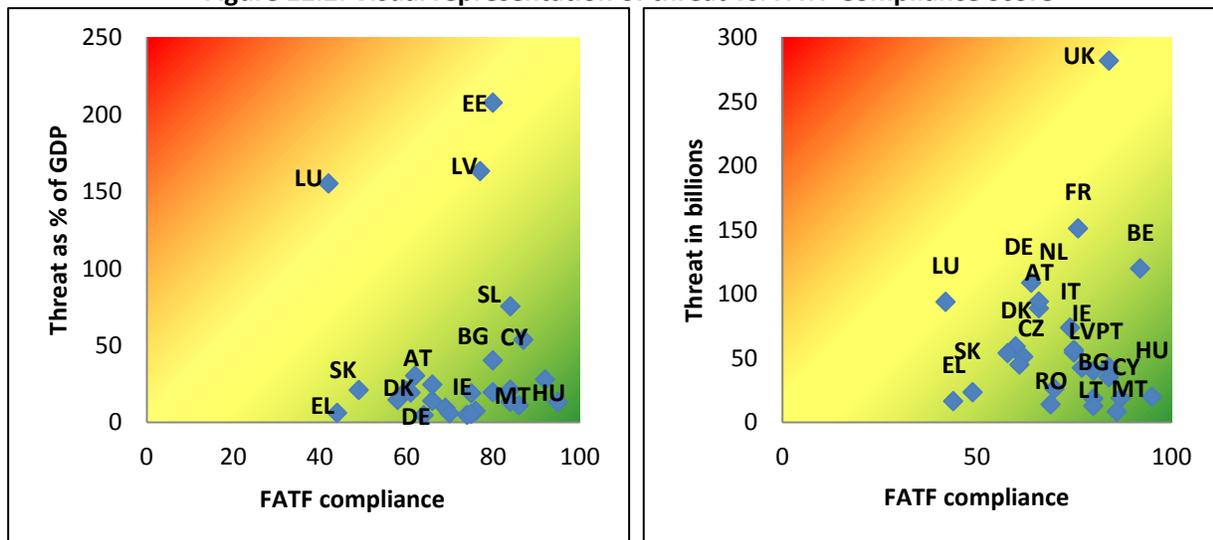
### 12.3 The selected indicators for policy response

We selected the following variables to represent the policy response: FATF compliance score, legal effectiveness score, timeliness of implementation, FIU response score, international cooperation score, information flow score and the number of convictions for money laundering. We give a small overview on these indicators, which elements of AML policy they cover, on how they are measured and on what are their downsides and merits.

### FATF compliance score

Our first indicator for policy response is an FATF compliance score, because these recommendations were actually the starting point of our research. The FATF/ MONEYVAL evaluate all countries on to what extent they are compliant with each of the forty FATF Recommendations. In constructing the FATF compliance measure we simply added up the scores for each recommendation (by giving 3 points when a country is fully compliant, 2 when it is largely compliant, 1 when partially compliant and 0 when non-compliant) in the latest Mutual Evaluation Report of each country. The advantage of using the compliancy scores of the FATF is that they are available for all Member States and that all Member States are scored on the same basis. The downsides of this measure are that the national scores come from different time periods (some are almost ten years old), are being given by different teams, offer mainly a measure of ‘law in the books compliance’ and not of ‘law in action compliance’, are not completely cross-country comparable,<sup>452</sup> and assume that every recommendation is of equal importance for having an effective AML policy - which is obviously not the case. The FATF does not take into account to what extent the country is threatened by money laundering.

**Figure 12.2: Visual representation of threat vs. FATF Compliance Score**



Source: made by the authors based the following data, for the threat estimations see Chapter 2 of this report; the FATF compliance score is a simple addition of the compliancy scores given by the FATF for the different Recommendations. To make this addition possible we transformed the scores into numbers. Fully compliant was changed into 3, largely compliant into 2, partially compliant into 1, non-compliant into 0 and not applicable into 3 (because N/A is usually given where the recommendation is not necessary, for example as in countries where trusts are not permitted, there is no need to comply with Recommendation 34, legal arrangements beneficial owners, so it is as good as fully compliant). Annex 12.2 lists the exact scores for all Member States.

<sup>452</sup> A member of a FATF evaluation team has indicated that the situation of the country (like the state of its economy) is considered when giving the compliance score. This would mean that a poor country can get a rating of largely compliant for a certain recommendation, while a richer country with the exact same policy gets only a rating of partly compliant.

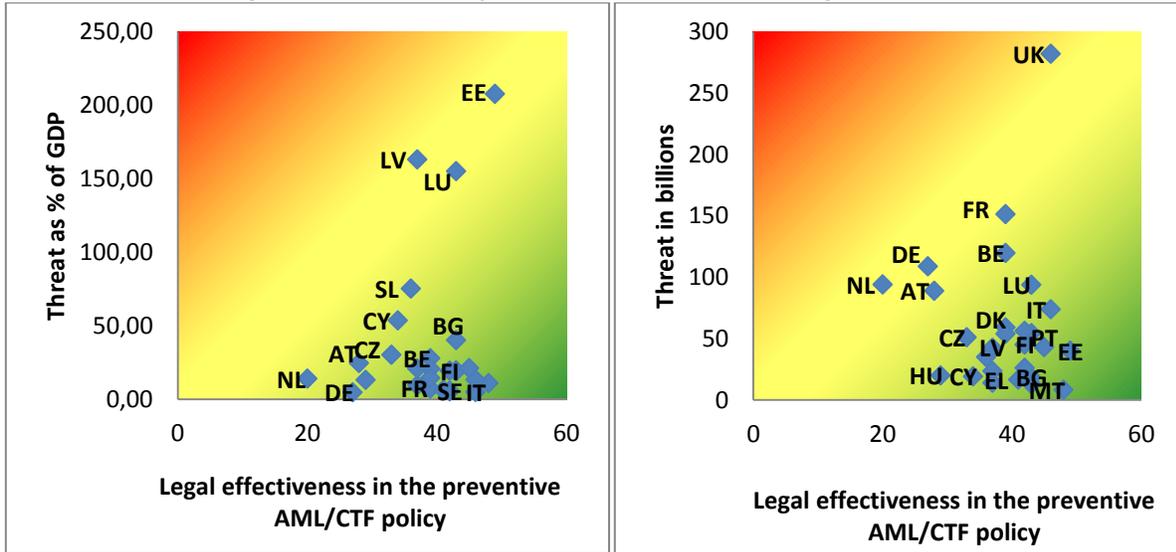
When a country would be fully compliant with all the forty recommendations of the FATF, it would receive a FATF compliance score of 120 (40 times 3). The 27 EU Member States receive scores between 42 (for Luxembourg) and 95 (for Hungary). When compared with threat in our graphs (see figure 12.2) none of the EU Member States are in the red zone (at risk). Only Luxembourg, due to their bad compliance score, is in the yellow zone, no matter whether threat is measured as a % of GDP or in millions. Latvia and Estonia have a relative high amount of threat (if calculated as % of GDP), but are nonetheless in the yellow zone due to their relatively good compliance score. The same holds for UK when threat is measured in millions.

#### *Legal effectiveness in preventive AML policy*

Our next indicator is a measure of legal effectiveness of the substantive norms in the preventive AML policy. This indicator is based on the analysis of Chapter 4 in this report. In Chapter 4 we identified, besides the general factors that negatively influence the legal effectiveness of Member States' AML/CTF policies, per Member State a number of potential legal hindrances to the preventive AML policy. We constructed an index of legal hindrances for every country using the following weights: 1 for technical hindrances, 3 for fundamental hindrances and 2 for other hindrances. We thereafter were able to create a scale of legal hindrances across the European Union using this indicator. The scale was proven not to be overly sensitive to the chosen weights. As a last step, we took the inverse of this legal hindrance measure to obtain the legal effectiveness measure presented in Figure 12.3 and in Annex 12.2.

The advantage of using such a measure is that it is easily constructed once one has identified the legal hindrances present in the preventive AML policy of the Member States. The disadvantages are that it is a crude exercise of translating qualitative into quantitative information, the weights attached to each of the hindrances can be discussed and also that the categorisation of hindrances has a direct effect on the index as well as an indirect effect on the country rankings. Furthermore, there is a lot of data asymmetry between the Member States. Firstly, for some Member States there is a lot more information available to the ECOLEF Project team than for other Member States. Secondly, for some Member States the information available to the ECOLEF Project team was far more outdated than for other Member States. For example, some FATF or MONEYVAL evaluations date from 2006. The Member States for which more and more recent information is available, we also know more hindrances. This generally means they get a lower legal effectiveness score. We acknowledge this methodological issue.

**Figure 12.3: Visual representation of threat vs. Legal effectiveness**



Source: made by the authors based the following data, for the threat estimations see Chapter 2 of this report; the legal effectiveness score is based on the findings of Chapter 4. For each country, the legal hindrances were identified and classified into: technical, fundamental and other. After performing a robustness analysis it became clear that a robust ranking of Member States according to their hindrances can be obtained by assigning the following weights to each hindrance: 1 for technical hindrances, 3 for fundamental and 2 for other hindrances that are not fundamental or technical in nature. The inverse of this measure of legal hindrances is presented in the graphs above as legal effectiveness to make sure that we apply a consistent methodology with on the x-axis a policy response indicator for which holds that more is better. Annex 12.2 lists the exact scores for all Member States.

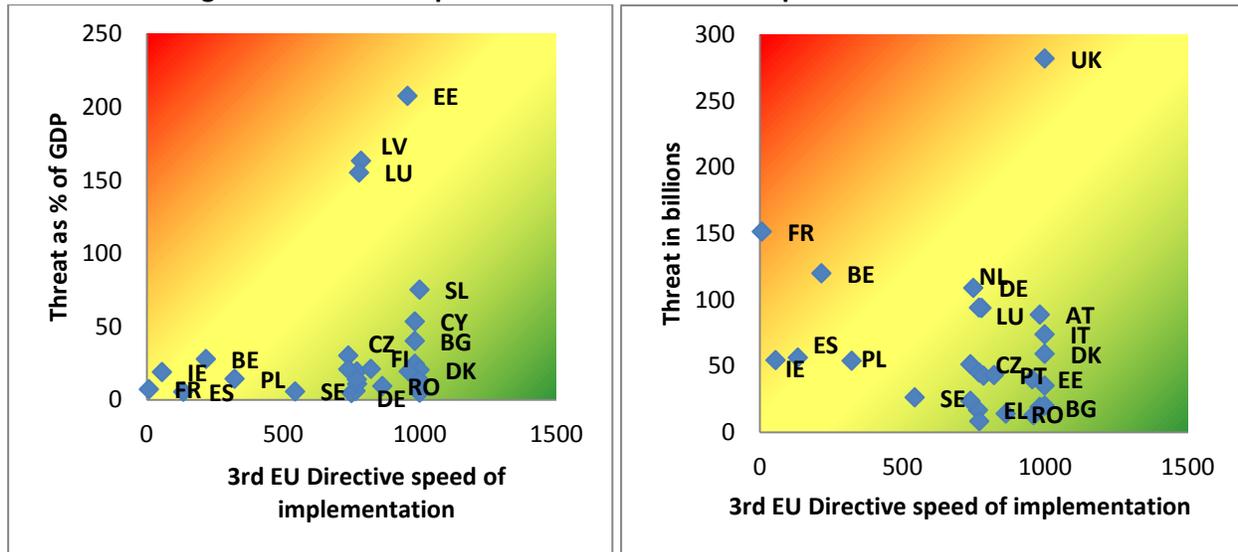
The Member State with the least legal hindrances identified was Estonia that obtained a score of 49 out of a maximum of 50. Having had a very recent FATF evaluation, the Netherlands was the Member State where we were able to identify most legal hindrances. The Netherlands received a score of 20. We took into account that there could be many more hindrances that were overlooked which is why the Netherlands is not considered to be a country with a nul legal effectiveness policy indicator (see figure 12.3). When compared to our measures of threat, we see that despite having a potentially excellent preventive legal framework, Estonia’s policy response is only proportionate to the threat of money laundering when seen as % of GDP. Similarly, Luxembourg and Latvia seem to have a proportional policy response whereas all other Member State have taken more than proportional measures to ensure the legal effectiveness of their preventive AML policy given the threat of money laundering they face as % of their GDP. Figure 12.3 also shows that Member States with a strong legalistic background have proportional and somewhat under proportional policy responses when looking at threat in billions. This has to do with the fact that these countries also are the most threatened economies.

### *Third EU Directive Implementation timeliness*

Our next indicator is to what extent the Third EU Directive was implemented on time. Chapter 5 discusses the implementation delays in detail, here we use this information as an indicator for AML policy response.

The advantage of this indicator are that they are easily obtainable, easy to calculate and available for all 27 EU Member States. The disadvantage is that the implementation delays do not have to represent any resistance or inefficiency from a certain country, but could have quite basic and pragmatic causes, like delays caused by a change in parliament.

**Figure 12.4: Visual representation of threat vs. Implementation timeliness**



Source: made by the authors based on the following data, for the threat estimations see Chapter 2 of this report; the speed of implementation is calculated by subtracting the implementation delays shown in figure 5.1 of this report from 1000. The subtraction is done to make sure the x-axis represents a policy response indicator for which holds that more is better; the subtraction from 1000 is done to make all scores positive (the maximum delay in the EU is 991 days for France) and therefore being able to have (0,0) in the origin (bottom-left corner). Annex 12.2 lists the exact scores for all Member States.

Figure 12.4 shows that France is most at risk (in the red zone) for this indicator, mostly due to the fact that it has the highest implementation delay in the EU: 991 days. The small Member States with a relatively high amount of threat (when measured as % of GDP: EE, LV, LU) were relatively fast with the implementation, which is a proportional policy response in our figure 12.4. Next to France, Belgium is the only country that also has an under proportional policy response, mainly due to their relative high implementation delay of more than two years.

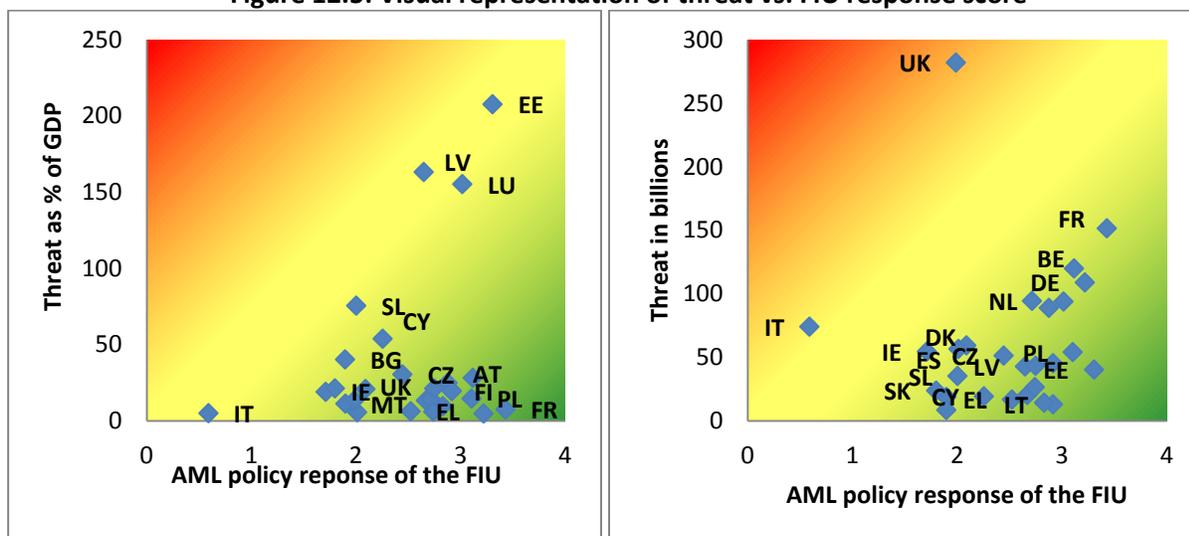
#### AML FIU policy response

In constructing the AML policy response of the FIU we made use of a factor analysis using several indicators described in Chapter 8 of this report: the FIU independence score, the FIU data access score, the FIU feedback score and the STR receiving and processing score. The FIU independence score is based on the budget independence of the FIU as well as on the place of the FIU in the organisation to which it is accountable to, or from where it receives its budget (see table 8.2.). The data access score is constructed on the basis of the type of access that FIUs have to several databases: direct or on request, online or not (see table 8.6). The STR receiving and processing score is based on the way reports are received and analysed by the FIUs – with mostly electronic means or mostly manually, and with or without the help of

data mining systems (see table 8.8). The feedback score of the FIU is based on whether FIUs provide standard reporting forms to the reporting entities, have helpful websites with readily accessible annual reports where reporting entities can report online, give regular trainings and workshops and confirm the receipt of a suspicion report (see table 8.9).

These indices are the results of crude exercises of translating qualitative information into quantitative data and are also subject to data asymmetry between the Member States. In order to reduce these disadvantages, we used a factor analysis method to construct a general measure of FIU AML response. A description of the factor analysis can be found in Annex 12.1. The advantages of this method are, that it takes away some of the variation in these indices which could be due to either index construction or data availability, and that it allows for a cross country comparability across all of the FIUs of the European Union.

**Figure 12.5: Visual representation of threat vs. FIU response score**



Source: made by the authors based the following data, for the threat estimations see Chapter 2 of this report; the AML policy response of the FIU is based on a factor analysis on 4 ECOLEF constructed indices that were introduced in Chapter 8. Annex 12.1 describes the factor analysis. The AML policy response of the FIU measure ranges from -2 to +2, but is transposed to vary from 0 to 4, so that we have, consistent with the other graphs, (0,0) in the origin (bottom left corner). Annex 12.2 lists the exact scores for all Member States.

According to this factor analysis the Italian FIU has the lowest policy response which means that it has a proportional policy response if threat is measured as % of GDP and under proportional policy response when threat is measured in billions. Similarly, the UK FIU has an under proportional FIU response, although this is mostly due to the high threat its economy faces.

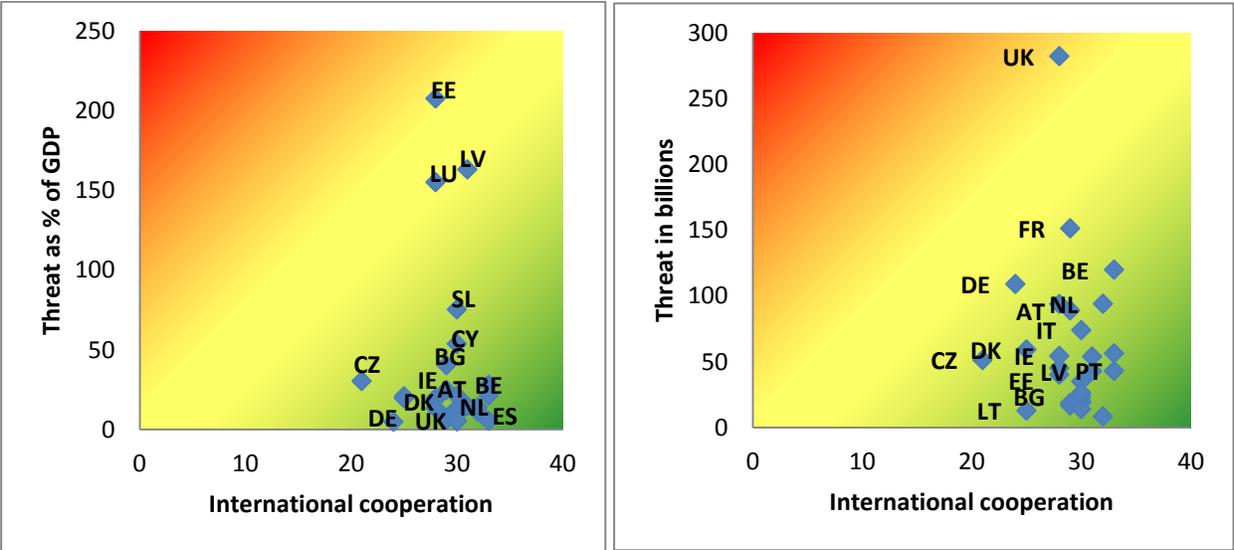
#### *International cooperation score*

Money laundering is mostly an international crime, which makes international cooperation in the fight against money laundering an important element. Chapter 10 of this report analyses the international cooperation of the 27 EU Member States by hand of the signature, ratification and implementation of

the principal international conventions in the AML/CTF field. This overview is the basis for the construction of the policy indicator for international cooperation that we analyse here. Signature of a convention is awarded with 3 points, ratification with 2 points and full implementation with 1 point. The total maximum score is 33 points, based on 6 points for the Vienna Convention, UN Terrorist Financing Convention and Palermo Convention and 5 points for CoE 1990, the Merida Convention and CoE 2005 (NB: the full implementation is only analysed for Vienna, the Terrorist Financing and Palermo Conventions).

This indicator is available for all Member States and has a straightforward calculation, but the disadvantage of this indicator is that it only shows ‘compliance in the books’, which might be quite different from the actual performance in international cooperation.

**Figure 12.6: Visual representation of threat vs. International cooperation**



Source: made by the authors based the following data, for the threat estimations see Chapter 2 of this report; for the international cooperation score see Chapter 10 of this report. Annex 12.2 lists the exact scores for all Member States.

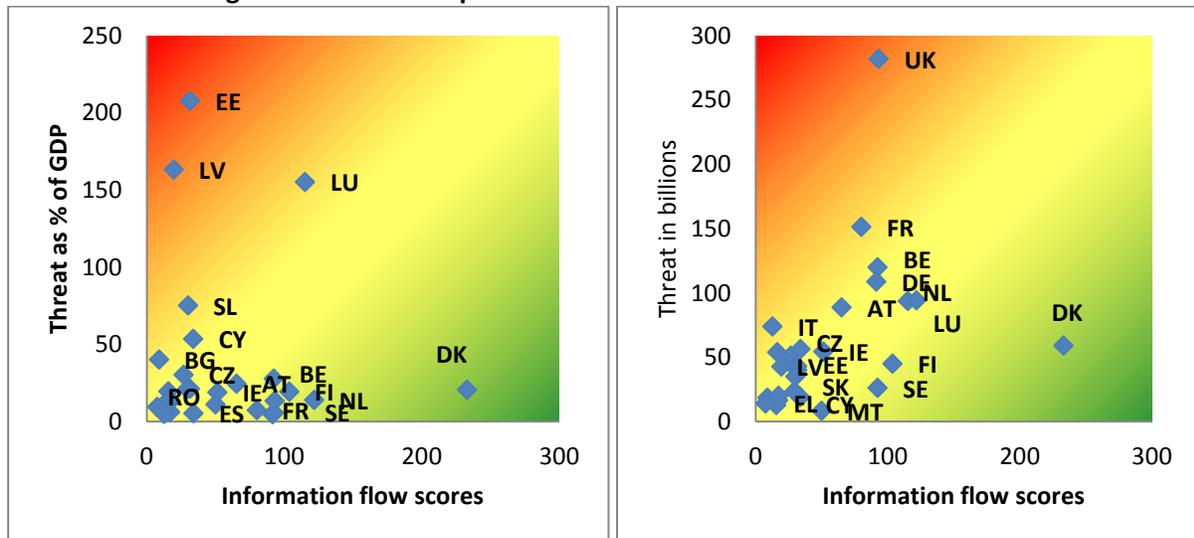
Due to the relatively high scores for international cooperation by the EU Member States, most countries are in the green zone, hence, on the right side. Only Estonia, Luxembourg and the UK are in the yellow zone due to their relatively high levels of threat (either measured as % of GDP or in billions).

*AML Information flow scores*

In constructing the information flow score, we could not base ourselves too much on statistics, as there are virtually no such statistics available across the EU. This measure was constructed on the basis of the four types of information transmission chains that were identified in each country in Chapter 9, correcting for additional information transmission mechanisms (such as double reporting and liaison officers). We further used government effectiveness and corruption perception indicators available for all the EU Member States as proxies for the two types of identified information loss described in the value of the network calculations – limited interaction and deviant interests respectively.

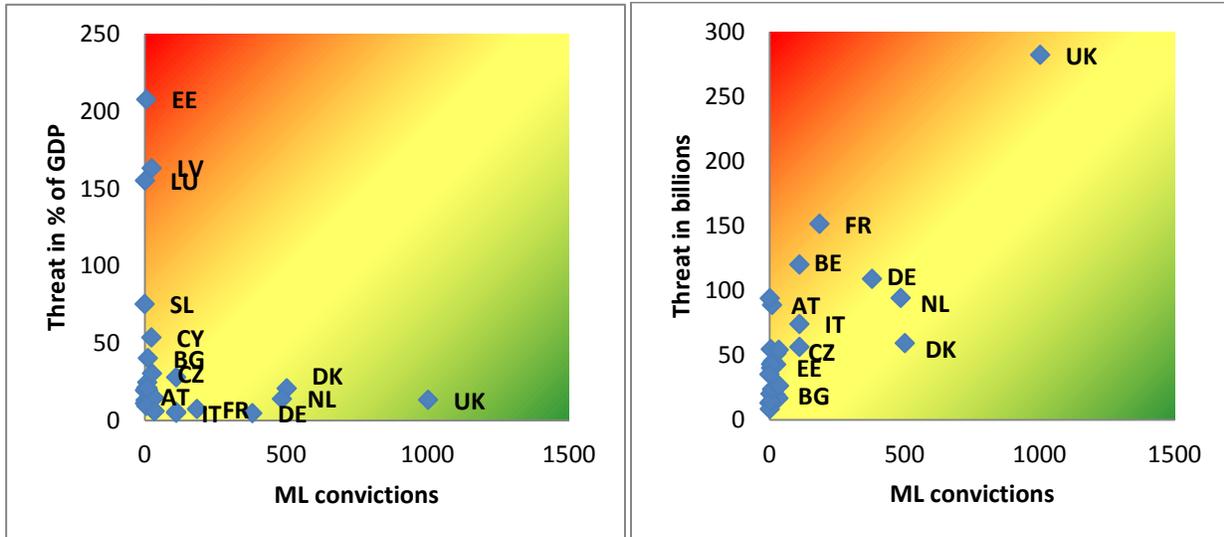
The advantages of this policy response indicator are the cross-country comparability and the identification of best practices in information transmission within a country. The disadvantages are that there is a great deal of data asymmetry across the Member States, that the proxies used for information decay may not reflect the different information decay that may occur when investigative agents cooperate and that these models are overly simplified and do not take into account other types of barriers to criminal apprehension (such as resources, priorities of the law enforcement entities).

**Figure 12.7: Visual representation of threat vs. Information flow score**



indicators measuring the result of anti-money laundering repression policy, even though the cross-country comparability is still dubious, as mentioned extensively in Chapter 11.

**Figure 12.8: Visual representation of threat vs. Number of ML convictions**



Source: made by the authors based the following data, for the threat estimations see Chapter 2 of this report; the data to calculate the average number of money laundering convictions per year in the period 2005-2010 is specified in Chapter 11. Annex 12.2 lists the exact scores for all Member States.

Denmark has a relatively high amount of money laundering convictions per year and relatively low levels of threat (both measured in billions and as % of GDP) and is therewith the only country that is on the safe side (in the green zone) in both graphs. Although the UK has by far the most convictions per year, when compared with the threat it is facing (measured in billions) this policy response is only proportional.

## 12.4 Results

When plotting all Member States and analysing the results of our visual exploratory approach for all our selected indicators for the policy response, we can identify for each country whether their policy response is either over proportional (green), proportional (yellow) or under proportional (red) for each part of the policy response. These results are shown in the table below.

**Table 12.1: Overview of the extent to which the policy response of EU Member States is proportional to the threat**

	Threat as % of GDP vs. FATF compliance score	Threat in millions vs. FATF compliance score	Threat as % of GDP vs. Legal effectiveness	Threat in millions vs. Legal effectiveness	Threat as % of GDP vs. Implementation timeliness	Threat in millions vs. Implementation timeliness	Threat as % of GDP vs. FIU response score	Threat in millions vs. FIU response score	Threat as % of GDP vs. Information flow score	Threat in millions vs. Information flow score	Threat as % of GDP vs. International cooperation	Threat in millions vs. International cooperation	Threat as % of GDP vs. Number of convictions	Threat in millions vs. Number of convictions
AT	G	G	G	Y	G	G	G	G	Y	Y	G	G	Y	R
BE	G	G	G	G	Y	R	G	G	Y	Y	Y	G	Y	R
BG	G	G	G	G	G	G	G	G	Y	Y	G	G	Y	Y
CY	G	G	G	G	G	G	G	G	Y	Y	G	G	R	Y
CZ	G	G	G	G	G	G	G	G	Y	Y	G	G	Y	Y
DK	G	G	G	G	G	G	G	G	G	G	G	G	G	G
EE	Y	G	Y	G	Y	G	Y	G	R	Y	G	G	R	Y
FI	G	G	G	G	G	G	G	G	Y	Y	G	G	Y	Y
FR	G	Y	G	Y	Y	R	G	G	Y	Y	G	G	Y	R
DE	G	Y	G	Y	G	G	G	G	Y	Y	G	G	Y	Y
EL	G	G	G	G	G	G	G	G	Y	Y	G	G	Y	Y
HU	G	G	G	G	G	G	G	G	Y	Y	G	G	Y	Y
IE	G	G	G	G	Y	Y	G	Y	Y	Y	G	G	Y	Y
IT	G	G	G	G	G	G	Y	Y	Y	R	G	G	Y	Y
LV	Y	G	Y	G	Y	G	Y	G	R	Y	G	G	R	Y
LT	G	G	G	G	G	G	G	G	Y	Y	G	G	Y	Y
LU	Y	Y	Y	G	Y	G	Y	G	Y	Y	Y	G	R	R
MT	G	G	G	G	G	G	G	G	Y	Y	G	G	Y	Y
NL	G	G	Y	Y	G	G	G	G	G	Y	G	G	G	Y
PL	G	G	G	G	Y	Y	G	G	Y	Y	G	G	Y	Y
PT	G	G	G	G	G	G	G	G	Y	Y	G	G	Y	Y
RO	G	G	G	G	G	G	G	G	Y	Y	G	G	Y	Y
SK	G	G	G	G	G	G	G	G	Y	Y	G	G	Y	Y
SL	G	G	G	G	G	G	Y	G	Y	Y	G	G	R	Y
ES	G	G	G	G	Y	Y	G	G	Y	Y	G	G	Y	Y
SE	G	G	G	G	G	G	G	G	Y	Y	G	G	Y	Y
UK	G	Y	G	Y	G	Y	G	R	Y	R	G	Y	G	Y

Source: made by the authors, based on indicators developed in the ECOLEF project. See Annex 12.2 for a description on how we establish each ranking. G=the green zone, which indicates that the country is on the safe side by having an over proportional policy response to the threat it is facing, Y=the yellow zone, which indicates that the policy

*response is more or less proportional to the threat and R=the red zone, which indicates that the Member State might be at risk due to having a under proportional policy response to the threat it is facing.*

As can be seen from the table, Denmark is the only Member State that is fully in the green zone – hence, on the safe side – for all the indicators of policy response both in relation to threat measured as % of GDP and measured in millions. Not only does Denmark have a relatively low amount of threat, it also scores quite well for all the indicators we selected. Remarkable though, is the fact that Denmark has been criticised by the FATF that self-laundering is not criminalised. Our analysis does not indicate that this severely limits their ability to fight money laundering.

For the rest of the Member States we see in general quite a mixed picture with most countries ending up in the yellow zone for some indicators, while being on the safe side (in the green zone) for most of the indicators. None of the Member States ended up consistently in the red zone. Actually, the Member States that ended up most in the red zone did so only twice (out of the fourteen). Estonia ended up least in the green zone, simply because – according to our estimations – the country is so much threatened by money laundering, especially when measured as % of their GDP. This is the result of a relatively small country (Estonia) being located next to a very big country with a significant amount of crime and, therefore, criminal proceeds (Russia).

## **12.5 Conclusion**

One of the critiques on the FATF mutual evaluations is that they do not take into account to what extent a country is threatened by money laundering. In this chapter we explore to what extent the policy response of the EU Member States relates to the amount of money laundering threat it faces. To do so, we mapped all Member States in a graph with threat and a policy response indicator on the axes. In our analysis, countries with high levels of threat and a relatively weak policy response end up in the red zone, which we typify as being at risk, because the policy response is under proportional. The countries with low levels of threat and a relatively strong policy response end up in the green zone, which we typify as being on the safe side, because the policy response is over proportional. When the policy response is more or less proportional to the threat, countries end up in the yellow zone. This visual exploratory approach shows that most EU Member States are generally on the safe side (in the green area), with only some Member States ever ending up in the red zone. Although the EU Member States perform relatively well in our analysis, almost all of them can improve on certain indicators. The positive exception here is Denmark that is criticised by the FATF for not criminalising self-laundering, but that has in our analysis not only relatively low levels of threat, but also relatively good scores for all our policy response indicators.

**13.1 Introduction**

Although a cost-benefit analysis is a standard way to evaluate current and new policies in almost all policy fields, in the area of anti-money laundering policy it is extremely rare to find one.<sup>454</sup> Whitehouse<sup>455</sup> concludes that “The cost of compliance is increasing rapidly but it would be a brave person who steps up to say that it is too high a price to pay for countering terrorism and serious crime.”

In this research project we tried to gather statistics to do a cost-benefit analysis for the countries in the EU-27 for their AML/CTF policy. Unfortunately it turned out to be hard to gather these statistics or to make reasonable estimates for them. For most components we were able to gather statistics for only several countries and the countries for which we could find statistics differed from component to component. Because this would mean that we cannot perform a cost-benefit analysis at all, we decided to make a cost-benefit analysis for a hypothetical country which combines the information that we gathered for the 27 EU Member States. To correct the statistics for size and price level, we decided that our hypothetical country has a population of 10 million people and a price level of 100. The average population in the EU-27 is around 18,5 million, but since a number of countries have a population around 10 million (BE, CZ, EL, HU and PT)<sup>456</sup>, we choose this nicely rounded number for our hypothetical country. The international price level statistics normally take the level of the US as 100. The simple average in the EU-27 is only about 5% lower. Bulgaria has the lowest price level in the EU with 53, while Denmark is the highest with 146. The price level of Greece is the closest to the price level of our hypothetical country with 98,5.<sup>457</sup> What we will do is take all the possible statistics we have for every component of the cost-benefit analysis and correct them to match the size and price level of our hypothetical country. Annex 13.1 shows these correction factors for each Member State. Consequently, we take the average of the statistics available as our best estimate and use the lowest and highest statistics to indicate the bandwidth of the estimations. Although such a procedure does not meet the standards for a cost-benefit analysis<sup>458</sup>, it allows us to illustrate the order of magnitude of the different statistics and makes it easily visible for which component we do not have statistics at all.

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<sup>454</sup>Gill, M. and G. Taylor (2002) Tackling Money Laundering: The Experiences and Perspectives of the UK Financial Sector, a report by the Scarman Centre, University of Leicester, p.44

<sup>455</sup>Whitehouse (2003) A Brave New World: The Impact of Domestic and International Regulation on Money Laundering Prevention in the UK, *Journal of Financial Regulations and Compliance*, Vol. 11, No. 2, p. 144

<sup>456</sup>Population statistic from 2010 from Heston, A., R. Summers and B. Aten (2011), *Penn World Table Version 7.0*, Center for International Comparisons of Production, Income and Prices at the University of Pennsylvania. The values are also listed in Annex 13.1.

<sup>457</sup>Price level statistic (p) from 2010 from Heston, A., R. Summers and B. Aten (2011), *Penn World Table Version 7.0*, Center for International Comparisons of Production, Income and Prices at the University of Pennsylvania. The values are also listed in Annex 13.1.

<sup>458</sup>The results can for instance be biased when certain costs or benefits are not proportional to population (because of fixed costs or economies of scale for example) or when the countries that provided data are not representative for the EU-27.

Before starting to identify the components and its associated data, we should identify what we want to assess exactly. We can calculate how much it has cost to set up AML/CTF policy and compare that with how much we benefitted from it (let us call this the ‘historical approach’), but we can also assess which costs we would save if we now stop with the current AML/CTF policy and what benefits we would lose consequently (let us call this the ‘current approach’). Although these two methods both measure the costs and benefits of AML/CTF policy and although they seem to be quite the same, there is one important difference: With the ‘historical approach’ we would include the set up costs of the policy, while we would not include these costs in the ‘current approach’. These set up costs consist not only of the work of the FATF to come up with the international policy but could be quite substantial since it also includes costs like setting up a FIU in every country in the world, implementing new laws into the legal system, training personnel in law enforcement agencies as well as reporting institutions and many more efforts. The ‘historical approach’ would tell us whether starting AML/CTF policy has been a good idea, while the ‘current approach’ considers whether we should continue the current efforts. Geiger and Wuensch<sup>459</sup> conclude that anti-money laundering regulation is extended instead of being thought over, and ask themselves why a review does not take place. In this light it seems most fruitful to concentrate on the ‘current approach’ for now, since it is more policy relevant.

Based on a literature research, the conducted interviews and discussions during the regional workshops, we identify the following components for the cost-benefit analysis:

**Table 13.1: The components of a cost-benefit analysis for AML**

<b>Costs</b>	<b>Benefits</b>
<b>Ongoing policy making</b>	Fines (preventive and repressive)
<b>Sanction costs (repressive)</b>	Confiscated proceeds
<b>FIU</b>	Reduction in the amount of ML
<b>Supervision</b>	Less predicate crimes
<b>Law enforcement and judiciary</b>	Reduced damage effect on real economy
<b>Duties of the private sector</b>	Less risk for the financial sector
<b>Reduction in privacy</b>	
<b>Efficiency costs for society and the financial system</b>	

*Source: made by the authors. The goal of this table is to report the most important components on the country level.*

Although there is still very little information on the costs and benefits of anti-money laundering policy<sup>460</sup>, let us discuss each component shortly and report what we do know. Note that this cost-benefit analysis is at the country level and not at the level of the particular institutions involved. It is also interesting to

<sup>459</sup> On page 100 of Geiger and Wuensch (2007) The fight against money laundering, An economic analysis of a cost-benefit paradoxon, Journal of Money Laundering Control, Vol. 10, No. 1, p. 91-105

<sup>460</sup> Gill, M. and G. Taylor (2002) Tackling Money Laundering: The Experiences and Perspectives of the UK Financial Sector, a report by the Scarman Centre, University of Leicester, p.44

look at the costs and benefits of anti-money laundering policy for individual institutions, because this might determine their incentive to cooperate, for such analyses see the work of Takáts<sup>461</sup> and Harvey<sup>462</sup>.

### **13.2 The costs of AML/CTF policy**

#### *On-going policy making*

Since we leave out the set up costs (see discussion above), we only consider the on-going policy making costs. Normally this constitutes of only some policy staff at the relevant ministry. Estimations of these costs are often hindered by the fact that the policy staff are not responsible for anti-money laundering policy only, which makes an estimation necessary of their time spent on anti-money laundering policy.

To find out the level of these costs in the 27 Member States, we asked the relevant ministry or ministries the following questions in an online survey and in a personal interview if the online survey was not answered.

What is the overall budget for the year 2010 at your Ministry (and other ministries, if applicable) for AML/CTF policy? (please provide the overall budget which includes personnel and specify the currency, in case you do not have a statistic, please estimate the amount and indicate this with an asterisk (\*) behind the number)

What is the number of staff dedicated full time (or full-time equivalent) on money laundering and terrorist financing matters at your Ministry (and other Ministries, if applicable)?

The responses of the countries are shown in the table below.

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<sup>461</sup> Takáts, E. (2007) A theory of Crying Wolf: the Economics of Money Laundering Enforcement, IMF Working paper 07/81

<sup>462</sup> Harvey, J. (2004) Compliance and Reporting Issues Arising for Financial Institutions from Money Laundering Regulations: A Preliminary Cost Benefit Study, Journal of Money Laundering Control, Vol. 7, No. 4

**Table 13.2: Budget and staff of the relevant ministry or ministries**

	AML/CTF Budget Ministry	AML/CTF Staff Ministry
Austria		
Belgium		
Bulgaria		
Cyprus		
Czech Republic		
Denmark		4
Estonia	75.000	2
Finland		
France		
Germany		
Greece		
Hungary		3
Ireland	980.000*	15
Italy	11.168.506 <sup>#</sup>	128 <sup>#</sup>
Latvia		
Lithuania		
Luxembourg		
Malta		
Netherlands		5
Poland		
Portugal		3
Romania		
Slovakia		
Slovenia		16
Spain		
Sweden	131.194	1,2
UK		6

*# The figures for Italy on the budget of and staff in the Ministry are for a department that is also responsible for policy against usury, corruption, financial embargoes and the international cooperation for these.*

Our initial idea was to estimate the budget with the data on the number of staff for the last couple of countries that were not able to answer this question. For an idea of how this would work, see the estimations for the budget of the FIU explained in Chapter 11. Unfortunately, the data we gathered here falls far short of what is necessary to make such estimations. Since the Italian answer is not directly usable, we are left with three relevant answers that can be used to estimate the ongoing policy making

costs for our hypothetical country. Hence, our best estimate for ongoing policy costs for our hypothetical country is 896.754 euro with a bandwidth of 116.762 – 1.813.000 euro.<sup>463</sup>

## FIU

Every country in the world has set up an FIU to receive reports on money laundering and terrorist financing suspicions from banks and other reporting institutes. Since the whole FIU is normally focused on AML/CTF, we should count all costs of the FIU and can therefore have a good estimation of these costs based on the budget of the FIU, which is sometimes even publicly available. As already reported in Chapter 11 and also shown in Table 13.3 below, we have data on the budget of the FIU for 11 countries and estimated a budget based on the number of employees for the remaining 16 countries. Since we reduce this data to one best estimate, there is no need to use the estimated budgets.

**Table 13.3: Statistics collected on the number of staff and the budget of FIU**

Country	Staff (in fte)	Budget (in euros)
Austria	13 (in 2010)	
Belgium	45 (in 2012)	4.257.645
Bulgaria	32 (in 2011)	
Cyprus	21 (in 2011)	
Czech Republic	35 (in 2011)	1.429.473 (without IT)
Denmark	18 (in 2011)	No budget
Estonia	16 (in 2011)	
Finland	24 (in 2011)	1.565.000
France	73 (in 2009)	4.981.688
Germany	17 (in 2010)	
Greece	29 (in 2011)	1.500.000
Hungary	30 (in 2010)	1.000.000***
Ireland	11 (in 2011)	
Italy	104 (in 2011)	207.000 (only expenses)
Latvia	17 (in 2011)	341.490
Lithuania	10 (in 2011)	
Luxembourg	14 (in 2012)	
Malta	10 (in 2011)	330.107

<sup>463</sup> Calculation example of how these numbers are calculated: first the three relevant budgets are multiplied by the overall correction factors mentioned in Annex 13.1. This means we have 3 estimates of this budget: 760.500 ; 1.813.000 and 116.762. The average of these three numbers is 896.754, which is our best estimate. The lowest (116.762) and highest (1.813.000) estimates indicate the bandwidth.

<b>Netherlands</b>	56 (in 2010)	4.800.000
<b>Poland</b>	45 (in 2008)	
<b>Portugal</b>	30 (in 2011)	
<b>Romania</b>	96 (in 2011)	
<b>Slovakia</b>	30 (in 2011)	
<b>Slovenia</b>	18 (in 2010)	691.000
<b>Spain</b>	79 (in 2011)	11.000.000
<b>Sweden</b>	*27 (in 2009)	1.400.000**
<b>UK</b>	60 (in 2012)	

Source: statistics collected by the ECOLEF-project, via interviews, online questionnaires and regional workshops, except: \*=FATF Mutual Evaluation Report Sweden 2009 and \*\*= FATF Mutual Evaluation Report Sweden 2006. \*\*\*=this figure is estimated using the overall budget of the CCIB; representatives of the Hungarian Ministry of Finance and the Hungarian FIU said that it seems to be a reasonable estimation. Fte=full time equivalent.

Hence, after correcting for the size and price level of our hypothetical country, our best estimate for FIU costs for our hypothetical country is 2.892.349 euro with a bandwidth of 685.460 – 9.860.636 euro.

### *Supervision*

The supervision costs for AML/CTF policy are rather difficult, because each supervisor has AML/CTF normally as just one of their supervision tasks. Moreover, the supervision of the AML/CTF duties of the private sector is normally fragmented over different supervisory authorities based on the type of the institutions under supervision. This would normally not be a problem if we were able to get data for all the supervisory institutions. Unfortunately this is not the case. We asked all supervisors in all 27 EU Member States the following two questions via an online survey and sometimes also in a face-to-face interview.

What is the annual overall budget at your authority for supervising AML/CTF regulations? (please provide the overall budget which includes personnel and specify the currency, in case you do not have a statistic, please estimate the amount and indicate this with an asterisk (\*) behind the number)

How many persons work in your organisation in total in full time equivalence (so two half time employees count as one full time employee)?

The responses of the countries are shown in the table below.

**Table 13.4: Statistics collected on the number of employees and the budget of supervisors**

Country	Budget Supervisor	Staff Supervisor	Number of Supervisors <sup>464</sup>
Austria			7
Belgium	GC: 12.000.000	GC: 2	11
Bulgaria			4
Cyprus			7
Czech Republic	CTA:30.000	CTA: <1, FIU:5*	7
Denmark		BLS: 1	4
Estonia	FSA:50.000 – 75.000*	FSA: 3*	4
Finland			9
France	ACP: 2.700.000	ACP: 14 control + 51 monitoring	11
Germany		CPA:<1	5
Greece		BoG: 13, HCMC: 4, PISC: 3	8
Hungary		TLO:<1	8
Ireland			13
Italy		Bol: 348*	7
Latvia	LGSI:20.500	FCMC:4, CSA:<1, LGSI:<1, SIHP:5*	9
Lithuania			9
Luxembourg		CSSF: 5	8
Malta		FIU: 3, MFSA: 38	3
Netherlands	BFT:2,2mln, BHM:1,5mln	BFT: 15, BHM: 26	4
Poland	FSA:250.000	FSA:6, FIU:7	7
Portugal			11
Romania			7
Slovakia			3
Slovenia		SMA:5	10
Spain		FIU: 10 full time + 17 part-timers	4
Sweden	BSEA:54.664*	BSEA:<1, GB:<1	6
UK	OFT:1,4mln, ICB:61.896	GC: 0,2, AIA: 0,2	28

Note: In France, the ACP has a designated 14 staff working exclusively on AML/CTF control and another 51 staff supervising and directing the on-site staff<sup>465</sup>. CTA=Chamber of Tax Advisors, BLS=Bar and Law Society, FSA=Financial Services Authority, CPA=Chamber of Patent Attorneys, TLO=Trade Licensing Office, FCMC=Financial and Capital Market Commission, CSA=Council of Sworn Advocates, LGSI=Lotteries and Gambling Supervisory Inspection, SIHP=State Inspection for Heritage Protection, SMA=Securities Market Agency, BSEA=Board of Supervision of Estate Agents, GB=Gaming Board, BoG=Bank of Greece, HCMC= Hellenic Capital Market Commission, PISC=Private Insurance Supervision Committee, BoC=Bank of Cyprus (not to confuse with the Central Bank of Cyprus), Bol=Bank of Italy, MFSA=Malta Financial Services Authority, BFT=Bureau Financieel Toezicht, GC=Gambling Commission, AIA=Association International Accountants, OFT=Office of Fair Trading, ICB=Institute of Certified Bookkeepers, CSSF=

<sup>464</sup> The number of supervisors is based on the specifications in the relevant law, inaccuracies can arise because of unspecified, regional and unclear grouped supervisors.

<sup>465</sup> FATF (2011) Third Mutual Evaluation Report on France, p 420 (footnote)

*Commission de Surveillance du Secteur Financier. All budgets are (calculated) in euros. All staff measured in full time equivalence. \* indicates an estimation.*

Because there is not a single country for which we have data for all the supervisors, we have to devise a way to make an estimation for all the supervisors in total. If we had a good way of knowing the size of the different supervisors in each country, then we would be able to estimate the share of a single supervisor for the overall supervision costs. The staff would be a good indicator for this, but also this information is not available for a single country for all supervisors. We therefore assume that all supervisors are of equal size and expect that, because we use an overall average, the extreme values counter each other out. This would also be indicated by an increased bandwidth. After calculating the supervision costs for nine countries corrected for the number of supervisors and the price level and population of our hypothetical country, our best estimate for supervision costs is 14.332.941 euro with a bandwidth of 291.906 – 112.200.000 euro.

### *Law enforcement and judiciary*

Although the total budget of law enforcement agencies and the judiciary is often public, separating the specific AML costs is hard. Many investigations and court cases have money laundering as just one of the crimes. The question then is, if money laundering was left out of the package of crimes that are investigated/prosecuted how much money would be saved? Such a question seems to be impossible to answer. In the hope that some countries collect statistics on this, we asked the following questions via an online survey and sometimes in face-to-face interviews:

What is the overall budget for the year 2010 for law enforcement in general (public prosecutor, police and other investigating authorities) in your country? *(please provide the overall budget which includes personnel and specify the currency, in case you do not have a statistic, please estimate the amount and indicate this with an asterisk (\*) behind the number)*

Which share of the annual overall budget of law enforcement is spent on AML/CTF? *(please provide us with an estimate of the percentage, and specify for different law enforcement authorities in case you think their share differs)*

What is the number of staff dedicated full time (or full-time equivalent) to money laundering and terrorist financing in law enforcement agencies?

What is the overall budget for the year 2010 for the judiciary in general in your country? *(please provide the overall budget which includes personnel and specify the currency, in case you do not have a statistic, please estimate the amount and indicate this with an asterisk (\*) behind the number. In case you have difficulties to estimate this, keep in mind that the percentage of time the staff spends on AML/CTF might be a good benchmark)*

Which share of the annual overall budget of the judiciary is spent on AML/CTF? *(please provide us with an estimate of the percentage. In case you have difficulties to estimate this, keep in mind that the percentage of time the staff spends on AML/CTF might be a good benchmark)*

What is the number of staff dedicated full time (or full-time equivalent) to money laundering and terrorist financing in the judiciary?

The responses of the countries are shown in the table below.

**Table 13.5: Statistics collected on the number of employees and budget for LEAs and Judiciary**

Country	Budget LEA	AML/CTF Budget LEA	Staff LEA	Budget Judiciary	AML/CTF budget Judiciary	Staff Judiciary
Austria						
Belgium						
Bulgaria						
Cyprus						
Czech Republic						
Denmark						
Estonia	194.778.068			25.035.612		
Finland						
France						
Germany						
Greece						
Hungary	880.270.081	ML police: 658.664 TF police: 220.675		247.494.010		
Ireland	1.485.805.000			134.000.000		
Italy						
Latvia						
Lithuania						
Luxembourg						
Malta						
Netherlands	3.616.600.000			315.800.000		
Poland						
Portugal						
Romania						
Slovakia			31			
Slovenia						
Spain						
Sweden	4.162.982.320			578.191.989		
UK						

Source: collected in the ECOLEF project.<sup>466</sup>

Although we have the overall budget for LEA and judiciary for some countries, in none of them do we have a statistic on the amount spent on AML/CTF. In Hungary we know how much is spent by the police, which is quite useful, but the amount spent by the public prosecutor's office is missing. We therefore

<sup>466</sup> We might be able to get the overall budget statistics for many more countries with an extensive desk study, but since there is no way yet to use them to come up with a reasonable estimate for the budget spent on AML/CTF, such an endeavour is rather fruitless.

assume that the amount spent on AML/CTF is proportional to the overall spending of the police and the public prosecutor. In Hungary 7,57 times more is spent by the police than by the PPO. Using this proportion, we would have an estimate for our hypothetical country on the amount spent by LEAs to fight money laundering and terrorist financing of 1.423.565 euro. If we use, with the same reasoning, the fact that the amount spent by the judiciary is about 28% of the spending by LEAs, our estimate for the amount spent by the judiciary on AML/CTF is 400.245 euro.

#### *Sanction costs (repressive)*

AML policy has two types of sanctioning: in the preventive and repressive part of the policy. The sanctions in the preventive part of the policy are the sanctions against banks and other reporting institutions for not performing their AML duties appropriately. Since this is normally done by the supervisors of these reporting institutions, these costs are not considered here to prevent double counting. The sanctions in repressive policy are the sanctions against the money launderers. The main costs here are probably the prison costs for locking up the money launderers, but we can also consider costs for going after money launderers to pay their fines for example, although we can expect that these costs are relatively low.

To have at least a basis for estimation, we asked the following questions via an online survey and sometimes in face-to-face interviews:

What is the average imprisonment duration regarding sanctions for natural persons for the offence of money laundering in practice? *Please estimate if you do not have statistics and indicate this with an asterisk (\*) after the number.*

- Suspended imprisonment
- Unsuspended imprisonment

What is the average imprisonment duration regarding sanctions for natural persons for the offence of terrorist financing in practice? *Please estimate if you do not have statistics and indicate this with an asterisk (\*) after the number.*

- Suspended imprisonment
- Unsuspended imprisonment

The responses of the countries are shown in the table below.

**Table 13.6: Statistics collected on the average imprisonment for money laundering and terrorist financing**

Country	Suspended imprisonment ML	Unsuspending imprisonment ML	Suspended imprisonment TF	Unsuspending imprisonment TF
Austria	6 months*	12 months*	0 years*	3 years*
Belgium	2 years*	2 years*		
Bulgaria				
Cyprus				
Czech Republic				
Denmark				
Estonia	3,8 year*	3,8 year*		
Finland				
France				
Germany				
Greece				
Hungary				
Ireland	1 year*	3 year*		
Italy				
Latvia				
Lithuania				
Luxembourg				
Malta				
Netherlands				
Poland				
Portugal				
Romania				
Slovakia				
Slovenia				
Spain				
Sweden				
UK	40 months*	40 months*		

*Note: Belgium, Estonia and UK did not differentiate between suspended and unsuspended in their answers.*

Of course, only the unsuspended imprisonment is relevant for our estimation of the prison costs. We can have an estimate of the costs for having a criminal in prison for a day, but the important question here is: Would this criminal also be in prison if he or she was not convicted for money laundering? This question seems to be impossible to answer, because money laundering is often only one of the offences for which the defendant is prosecuted. In Ireland the representatives indicated to us that they normally do not add money laundering to a prosecution which also involves the predicate crime because this complicates the case needlessly. Also in countries where self-laundering is not criminalised we would expect that money laundering prosecutions and convictions do not include the predicate crime. But unfortunately, none of these countries were able to answer our questions on the average duration of imprisonment. We

therefore only have the Irish estimate to work with. According to the Irish Prison Service<sup>467</sup> the average annual cost to incarcerate a person in a prison in 2009 was 77.222 euro, which means a money laundering conviction costs on average 231.666 euro. The average number of convictions in Ireland is five per year in the period 2005-2010. This means that the annual prison costs for Ireland would be estimated at 1.158.330 euro, which means the estimate for our hypothetical country is 2.142.911 euro with an unknown bandwidth.

### *Duties of the private sector*

This component comprises all the costs reporting institutions have to make to fulfil the duties as described in the Third EU Money Laundering directive. These costs seem to receive most attention in the literature. Alexander<sup>468</sup> says about this component that these duties for the private sector comprise “those tangible operational costs that relate to investments that institutions will make in the form of physical and human capital required to carry out the compliance function. This is a task based on the assumption that laundering activity will be evidenced via some unusual account transaction that the banks will be able to detect through their ‘inside knowledge’ of all financial transactions. It is without a doubt an immense task to pick out the illegal from the multitude of legitimate financial transactions that pass through the system.” Harvey<sup>469</sup> mentions that “many costs of compliance are not additional but are part of due diligence activity”. A PWC report<sup>470</sup> notes that “the costs of AML to a firm will vary enormously between different industry sectors”.

We identified and tried three ways to estimate these costs. Our first intuitive approach is in line with how we calculate most of the component for this cost-benefit analysis. We asked a number of reporting institutions in every Member State to answer the following two questions.

How much does it cost, on average, to file one report to the FIU? *(This figure should include all possible costs related to filing a report, like personnel, material etc. Please specify per type of report, the currency and in case you do not have a statistic, please estimate the amount and indicate this with an asterisk (\*) behind the number)*

How much do you spend annually on total training costs (and compliance systems, if applicable) for AML/CTF policy? *(Please specify the currency and in case you do not have a statistic, please estimate the amount and indicate this with an asterisk (\*) behind the number)*

The responses of the countries are shown in the table below.

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<sup>467</sup> Irish Prison Service (2010) Annual report, Dublin, p.4

<sup>468</sup> Alexander, K. (2000) The international Anti-Money Laundering Regime: The Role of the Financial Action Task Force, Financial Crime Review, Autumn, No. 1, p. 9-27

<sup>469</sup> Harvey, J. (2004) Compliance and Reporting Issues Arising for Financial Institutions from Money Laundering Regulations: A Preliminary Cost Benefit Study, Journal of Money Laundering Control, Vol. 7, No. 4, p.341

<sup>470</sup> PriceWaterhouseCoopers LLP (2003) Anti-Money Laundering Current Customer Review Cost Benefit Analysis, report prepared for the FSA

**Table 13.7: Statistics collected on the institutional costs of AML/CTF**

	Filing a report, OE	Training costs, OE
AT		
BE		
BG		
CY	450*	BoC: 90.000
CZ		
DE		Warburg: 20.000
DK		
EE		
EL		
ES		
FR		
FI		
HU		
IE		
IT		
LV	50-100*	
LT		Snoras: 110.000*
LU		
MT		
NL		
PL		
PT		
RO		
SK		
SL		
SE		
UK		

*Note: BoC=Bank of Cyprus (not to confuse with the Central Bank of Cyprus), All budgets are (calculated) in euros. All staff measured in full time equivalence. \* indicates an estimation.*

There are several reasons why it is hard to use these answers to derive an estimation of these costs. First of all, the response rate is very low, although this could have been expected.<sup>471</sup> Second, countries have a clear incentive to overestimate the amount. Third, it is hard to extrapolate from the costs for one institution to an estimate for the whole sector, and even more complicated to come to an estimate for all reporting entities in a certain country. We therefore explored a second approach in which we use earlier estimates from a cost-benefit analysis in the UK. This cost benefit analysis was attached to the Money Laundering Regulations 1993 and consisted of only the costs and benefits for the reporting institutions. The results of this cost-benefit analysis are estimates for the total amount of costs for different type of companies: a large building society, a large unit trust and PEP plan management

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<sup>471</sup> To make a similar type of estimate for a cost benefit analysis as the Annex of UK's Money Laundering Regulations 1993, the HM Treasury sent out 1.000 requests, of which only 60 responded and of which only one respondent attempted to quantify these costs.

company, a large life assurance/pensions company and a medium sized motor finance house. Unfortunately, these different types of companies come not even close to covering all reporting entities in the UK or any other Member State. Moreover, there is no precise description of the characteristics of these types of companies, which makes it hard to classify companies in a certain country accordingly. We therefore tried to find a reasonable estimate based on a literature research and found a report that estimated the total costs for reporting entities in the Netherlands for their reporting and identification duties at 40,1 million euro in 2007.<sup>472</sup> Since we lack other opportunities for estimation, we correct this estimate for our hypothetical country to have an estimate of 22.055.000 euro for the duties of the private sector.<sup>473</sup>

### *Reduction in privacy*

The screening of all financial transactions to filter the ones related to money laundering and the additional customer due diligence that is required for reporting entities is, at least in theory, a reduction in privacy, which we could see as a social cost of AML policy. Whether this reduction in privacy is severe and how much it matters is extremely difficult to measure or estimate. Geiger and Wunsch<sup>474</sup> also mention a reduction in privacy as a cost of AML policy.

### *Efficiency costs for society and the financial system*

The AML policy that is executed by banks and other reporting entities focuses on criminals, but harms the legitimate users/customers in more or less the same way. The increased customer due diligence, for instance, is needed for all customers. Moreover, the financial transactions of criminals can be delayed for further analysis, but also other people might have their transaction delayed inadvertently. One could argue that the costs of the AML duties of reporting entities are passed on onto their customer by higher prices, but we exclude this here because we already mentioned above these costs of AML duties for reporting entities. The efficiency costs for society due to AML policy can be quite substantial, but will be very hard to measure or estimate. The delay of a financial transaction can have very severe effects (like stopping an important business deal), but can also be completely harmless (as when transferring money from a checking account to a savings account). The same holds for the intensified identification duties. It

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<sup>472</sup> Brief van de Algemene Rekenkamer, Bestrijden witwassen en terrorismefinanciering, Tweede Kamer der Staten-Generaal, vergaderjaar 2007-2008, 31 477 nr. 1. This letter reports the estimate and cites another source, namely Financiën (2007) Vaststelling van de begrotingsstaten van het Ministerie van Financiën (IXB) voor het jaar 2008. Tweede Kamer, vergaderjaar 2007–2008, 31 200 IXB, nr. 2. Den Haag: Sdu in which we were unable to find the cited estimate.

<sup>473</sup> This estimate is probably an underestimation, since Institut der deutschen Wirtschaft Köln, Consult GmbH (2006) Bürokratiekosten in der Kreditwirtschaft, p. 9 estimates the costs for AML for the financial sector in Germany at 775 million euro (the estimate for our hypothetical country would be 93 million). Unfortunately, this report focusses on the financial sector only and since there is no estimate for the other reporting institutions in Germany, we could not use this report directly for an estimation on our component 'duties of the private sector'.

<sup>474</sup> On page 98 of Geiger and Wuensch (2007) The fight against money laundering, An economic analysis of a cost-benefit paradoxon, Journal of Money Laundering Control, Vol. 10, No. 1, p. 91-105

could for instance hamper financial inclusion in Africa – because banking with a mobile phone now first needs an identification – while it could also be completely harmless if identification would be needed anyway (for instance when doing a real estate transaction at a notary). Also other scholars mention these costs, but none has been able to estimate it in any way<sup>475</sup>, except the study by Transcrime that estimated it for a small part of AML/CTF policy, namely the transparency requirements in the company/corporate field and banking sector.<sup>476</sup>

### 13.3 The benefits of AML/CTF policy

#### *Fines (repressive)*

There are two types of fines in AML/CTF policy. One in the preventive policy, which are fines for reporting entities that do not comply with their duties, and one in the repressive part of the policy, which are fines for money launderers and terrorist financiers that are caught. According to Harvey<sup>477</sup> reporting institutions mainly get fined for a lack of compliance and not for the presence of money laundering. The fines are benefits in the AML/CTF framework, but they are at the same time costs for the reporting entities. Since we consider both components, they will always counter each other out, no matter the size. Therefore there is no need to estimate these benefits. Hence, in this section we only consider the fines in the repressive part of the AML/CTF policy; the fines that money launderers and terrorist financiers have to pay.

On the fines for money launderers and terrorist financiers, we asked the following questions via an online survey and sometimes in face-to-face interviews.

What is the average height regarding (criminal) fines for natural persons for the offence of money laundering and terrorist financing (separated) in practice? Please estimate if you do not have statistics and indicate this with an asterisk (\*) after the number.

Does there exist corporate criminal liability, that is: the criminal sanctioning of legal persons, with regard to the offences of money laundering and terrorist financing? If YES: What are the corresponding minimum and/or maximum of criminal fines?

What is the number of administrative sanctions for money laundering and terrorist financing (separated) on an annual basis between 2005-2010 (specified per year), and what is the number of natural persons

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<sup>475</sup> See for example Masciandaro, D. (1998) Crime, Money Laundering and Regulation: The Microeconomics, *Journal of Financial Crime*, Vol. 8, No. 2, p. 103-112 and Geiger and Wuensch (2007) The fight against money laundering, An economic analysis of a cost-benefit paradoxon, *Journal of Money Laundering Control*, Vol. 10, No. 1, p. 91-105

<sup>476</sup> Transcrime (2007) Cost Benefit Analysis of Transparency Requirements in the Company / Corporate Field and Banking Sector Relevant for the Fight Against Money Laundering and Other Financial Crime, a study financed by the European Commission – DG JLS (contract no. DG.JLS/D2/2005/01 30-CE-0073549/00-93)

<sup>477</sup> Harvey, J. (2004) Compliance and Reporting Issues Arising for Financial Institutions from Money Laundering Regulations: A Preliminary Cost Benefit Study, *Journal of Money Laundering Control*, Vol. 7, No. 4, p.338

and the value involved? Please estimate if you do not have statistics and indicate this with an asterisk (\*) after the number.

**Table 13.8: Fines for money launderers and terrorist financiers**

Country	Average number of criminal fines imposed per year <sup>478</sup>	Average height of criminal fines	Min/max criminal fines for corporate criminal liability	Administrative law sanctions
Austria	0,75	ML: 100 daily rates <sup>479</sup> , TF: 0		
Belgium				
Bulgaria	10			
Cyprus	0			
Czech Republic	7			
Denmark				
Estonia	0,33			
Finland	1,67			
France	6,67			
Germany	288,75			
Greece				
Hungary	1			
Ireland				
Italy				
Latvia	2,75			
Lithuania	0			
Luxembourg				
Malta	2			
Netherlands				
Poland	0,33			
Portugal	0,25			
Romania				
Slovakia	1			
Slovenia	0,5			
Spain				
Sweden	4,25			
UK	81			

<sup>478</sup> The average is over the period 2005-2010 for the years for which statistics are available. The statistics for Hungary are the answers from our online survey, the other statistics come from EUROSTAT (2010) *Money Laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs*, by Cynthia Tavares, Geoffrey Thomas (Eurostat) and Mickaël Roudaut (DG Home Affairs), Eurostat Methodologies and Working papers, ISSN 1977-0375

<sup>479</sup> The daily rate differs from defendant to defendant and is for natural persons 360<sup>th</sup> of the yearly proceeds, reduced or augmented up to 30 percent taking into consideration its overall economic situation. Source: IMF (2009) Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism

The table shows that we do know for many countries how often criminal fines are imposed, but since we do not have any information on the (average) height (amount), we do not have enough information to make an estimate here. For criminal fines for corporate criminal liability and administrative law sanctions our data availability is the worst; we did not get a single statistic for these. It should be noted that even if we had more statistics here on the amount of the fines imposed, that these numbers are not necessarily benefits for our analysis, because we do not know whether these fines are actually paid.

### *Confiscated proceeds*

Once a money launderer is caught, he faces the risk of having his proceeds confiscated. This is an important measure in the fight against money laundering, and crime in general, because it could take away the incentive of the criminal and at the same time could generate income for the state.

Regarding the confiscation of proceeds, we asked the following questions via an online survey and sometimes in face-to-face interviews.

What is the average height regarding confiscation of proceeds for natural persons for the offence of money laundering and terrorist financing (separated) in practice? Please estimate if you do not have statistics and indicate this with an asterisk (\*) after the number.<sup>480</sup>

How many money laundering prosecutions have led to a conviction on an annual basis between 2005-2010 (separated per year), in how many convictions was confiscation of proceeds imposed and what was the total value? Please estimate if you do not have statistics and indicate this with an asterisk (\*) after the number

The responses of the countries are shown in the table below.

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<sup>480</sup> Initially the idea was to use this statistic in combination with the number of conviction to get a reasonable estimate for the total amount confiscated per year. It turned out that this question was only answered by the countries that had exact statistics on confiscation, which are publicly available. Since there is no need to make an estimate when exact statistics are available, eventually the answers for this question were not used in our research.

**Table 13.9: Confiscation statistics for ML and TF**

Country	Average confiscation ML	Average confiscation TF
Austria		
Belgium		
Bulgaria	2.870.200 <sup>481</sup>	0
Cyprus	3.106.267 <sup>482</sup>	
Czech Republic		
Denmark		
Estonia		0
Finland		
France		
Germany		
Greece		0
Hungary		
Ireland		0
Italy		
Latvia	2.849.213 <sup>483</sup>	0
Lithuania		
Luxembourg		0
Malta		
Netherlands		
Poland		0
Portugal		
Romania		
Slovakia		
Slovenia		
Spain		
Sweden		
UK		

It is apparent from the table that the statistic on the amount confiscated for terrorist financing is more often available for the simple reason that many countries do not have any prosecutions/convictions for terrorist financing and therefore don't need any data collection to know that the total value is zero. We have three countries for which we have statistics on the amount confiscated for money laundering. These statistics show that the amounts differ greatly from year to year, but since we took the average for the period 2005-2010, these extreme values are not shown in the table. The main question now is to

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<sup>481</sup> The amount changes considerably per year: 350.000 in 2006, 415.000 in 2007, 286.000 in 2008, 5.700.000 in 2009 and 7.600.000 in 2010, retrieved from Moneyval (2011) Mutual Evaluation Report Bulgaria, p. 77-79

<sup>482</sup> The amount changes considerably per year: 5.605 in 2005, 2.645.039 in 2006, 7.388.602 in 2007, 34.853 in 2008, 5.457.236 in 2009, the data comes from our online survey.

<sup>483</sup> The amount changes considerably per year: 174.000 in 2005, 17.676 in 2006, 3.130.383 in 2007 and 8.074.795 in 2008, retrieved from Moneyval (2009) Second Progress Report Latvia, p. 67-68.

what extent the proceeds would be confiscated if there would have been no AML/CTF policy. Most of the convictions in these three countries are for self-laundering, which means that these proceeds might also be confiscated based on a conviction for the predicate crime. We therefore adjust these statistics to take this into account by multiplying the statistics with the share of convictions for third party money laundering.<sup>484</sup> After also correcting for the size and price level of our hypothetical country, our best estimate for the annual amount of confiscated proceeds is 474.294 with a bandwidth of 14.715 – 1.039.896.

#### *Reduction in the amount of money laundering and terrorism*

Harvey<sup>485</sup> concludes that “there is presumed to be an inverse relationship between the degree of regulation and the amount of money laundering taking place. While there is theoretical support for this approach, it has not been empirically tested on a wide scale, nor has account been taken of changes in money laundering behaviour resulting from changes in regulatory requirements.” Also Geiger and Wuensch<sup>486</sup> conclude that “whilst this deterrence mechanism sounds logically reasonable, its effectiveness and efficiency for fighting predicate crime is doubtful”. We are also unable to estimate to what extent this goal of AML policy is reached. Basically the same holds for CTF policy, for which we were unable to find estimates to which extent this reduced terrorist attacks.

#### *Effects of money laundering: Fewer predicate crimes, reduced damage effect on real economy and less risk for the financial sector*

The literature on money laundering mentions many indirect effects. A comprehensive literature review yields 25 effects that money laundering can have on the real economy and the financial sector, shown in Table 13.10. Money laundering can affect the real economy by distorting consumption, savings, investment, inflation, competition, trade and employment. Furthermore, money laundering can affect the financial sector with an increased risk on the solvency, liquidity, reputation and integrity of the sector. On the other hand, money laundering could also be good for the economy, e.g. because it increases the profits for the financial sector and leads to a greater availability of credit. The literature is

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<sup>484</sup> The amount confiscated then becomes for Bulgaria 175.000 in 2006, 207.500 in 2007, 11.400 in 2008, for Cyprus 0 in 2005, 0 in 2006, 0 in 2007, 1.584 in 2008 and for Latvia 58.000 in 2005, 4.419 in 2006, 0 in 2007 and 0 in 2008. Shares of convictions for third party money laundering are calculated from EUROSTAT (2010) *Money Laundering in Europe, Report of work carried out by Eurostat and DG Home Affairs*, by Cynthia Tavares, Geoffrey Thomas (Eurostat) and Mickaël Roudaut (DG Home Affairs), Eurostat Methodologies and Working papers, ISSN 1977-0375, when it is not possible to distinguish the conviction statistics between self-laundering and third party laundering, we assume a 50-50 division between self-laundering and third party laundering.

<sup>485</sup> Harvey, J. (2004) Compliance and Reporting Issues Arising for Financial Institutions from Money Laundering Regulations: A Preliminary Cost Benefit Study, *Journal of Money Laundering Control*, Vol. 7, No. 4, p.343

<sup>486</sup> On page 92 of Geiger and Wuensch (2007) The fight against money laundering, An economic analysis of a cost-benefit paradoxon, *Journal of Money Laundering Control*, Vol. 10, No. 1, p. 91-105

therefore still uncertain whether money laundering would have a net positive or negative effect on the economy in the long run.

Table 13.10 mentions only the effects of money laundering and not the effects of fighting terrorist financing. The clear goal and presumption of counter terrorist financing policy is, of course, that it prevents terrorist attacks or at least make them harder to organise financially or with a greater probability to get caught.

**Table 13.10: The effects of money laundering as mentioned in the literature**

Effect	Source(s)
1. Law enforcement gets a second chance	Levi (2002) p.182, Levi and Reuter (2006) p.292 and 349
2. Distortion of consumption	Bartlett (2002), Mackrell (1997), Walker (1995)
3. Distortion of investment and savings	Aninat et al. (2002), Bartlett (2002) p.19, Camdessus (1998), Mackrell (1997), McDonnell (1998) p.10-11, McDowell (2001), Quirk (1997), Tanzi (1997) p.95-96, Walker (1995)
4. Artificial increase in prices	Keh (1996) p.5, Alldridge (2002) p.314, FATF (2007)
5. Unfair competition	Mackrell (1997), McDowell (2001), Walker (1995)
6. Changes in imports and exports	Baker (1999) p.33, Baker (2005), Bartlett (2002) p.18-20, Walker (1995), Zdanowicz (2004b)
7. More (or less) economic growth	Aninat et al. (2002), Bartlett (2002) p.18-20, Camdessus (1998), Ferwerda and Bosma (2005), McDonnell (1998) p.10, McDowell (2001), Quirk (1997), Tanzi (1997) p.92-96
8. Change in output income and employment	Bartlett (2002) p.18, Boorman and Ingves (2001) p.8, McDowell (2001), Quirk (1997), Tanzi (1997)
9. Lower revenues for the public sector	Alldridge (2002) p.135, Boorman and Ingves (2001) p.9, Mackrell (1997), McDonnell (1998) p.10, McDowell (2001), Quirk (1997)
10. Threatens privatisation	McDowell (2001), Keh (1996) p.11
11. Changes in the demand for money, interest and exchange rates	Bartlett (2002), p.18, Boorman and Ingves (2001), Camdessus (1998), FATF (2002), McDonnell (1998) p.10, McDowell (2001), Quirk (1997), Tanzi (1997) p.97
12. Increase in the volatility of interest and exchange rates	Tanzi (1997) p.8, McDonnell (1998) p.10, Camdessus (1998) p.2, FATF (2002) p.3, Boorman and Ingves (2001) p.9
13. Greater availability of credit	Tanzi (1997) p.6, Levi (2002) p.183-184
14. Higher capital inflows	Baker (2005), Gnutzmann et al. (2010), Keh (1996) p.4, Tanzi (1997) p.6, Unger and Rawlings (2008), Levi (2002) p.183-184
15. Changes in foreign direct investment	Baker (2005), Boorman and Ingves (2001) p.9, FATF (2002), Walker (1995)
16. Risk for the financial sector, solvability and liquidity	Alldridge (2002) p.310, Aninat et al. (2002), Boorman and Ingves (2001) p.9-11, Camdessus (1998), FATF (2002), McDonnell (1998) p.10, McDowell (2001), Tanzi (1997) p.98, Levi (2002) p.183-184
17. Profits for the financial sector	Alldridge (2002) p.310, Takáts (2007), Levi (2002) p.183-184
18. Reputation of the financial sector	Aninat et al. (2002) p.19, Bartlett (2002), Boorman and Ingves (2001) p.9-11, Camdessus (1998), FATF (2002), Levi (2002) p.184, McDonnell (1998) p.9, McDowell (2001), Quirk (1997), Tanzi (1997)

	p.92-98, Walker 1995)
19. Illegal business contaminates legal business	Alldrige (2002) p.315, Camdessus (1998), FATF (2002), Levi (2002) p.184, McDonell (1998) p.11, Quirk (1997)
20. Distorting of economic statistics	Alldrige (2002) p.306, McDonell (1998) p.10, Quirk (1997), Tanzi (1997) p.96, Zdanowicz (2004b)
21. Corruption and bribery	Alldrige (2002) p.308, Bartlett (2002) p.18-19, Camdessus (1998), FATF (2002), Keh (1996) p.11, McDowell (2001), Tanzi (1997) p.92-99, Quirk (1997) p.19, Walker (1995), Levi (2002) p.183-184
22. Increase in crime	Bartlett (2002) p.18-22, FATF (2002), Ferwerda (2009), Levi (2002) p.183, Mackrell (1997), Masciandaro (2004) p.137, McDonell (1998) p.9, McDowell (2001), Quirk (1997) p.19, Levi (2002) p.183
23. Undermines political institutions	Camdessus (1998), FATF (2002), Mackrell (1997), McDonell (1998) p.9, McDowell (2001), Tanzi (1997) p.92-99
24. Undermines foreign policy goals	Baker (1999) p.38-39, Baker (2005)
25. Increase in terrorism	Masciandaro (2004) p.131

*Not in all sources it is clear whether the effects of money laundering are described, or also (or only) the effect of anti-money laundering policy.<sup>487</sup>*

Hardly any of the effects listed in Table 13.10 have empirical support. Most of them are theorised and some even seem to have no traceable source at all. Bartlett<sup>488</sup> might be a good example of this with explanations like ‘it is clear from available evidence’, without ever mentioning this evidence. Empirical research on the effects of money laundering is mainly hampered by the lack of a reliable estimate of the amount of money laundering in every country in every year.<sup>489</sup> Unger et al.<sup>490</sup> conclude that ‘most literature on money laundering effects is pure speculation [...] one source refers to the other source, without much of an empirical solid back up’. Geiger and Wuensch<sup>491</sup> conclude, based on research of Baker<sup>492</sup>, Cuellar<sup>493</sup> and Bolle<sup>494</sup>, that the empirical evidence suggests that the relationship between detecting money laundering and an increased change of detecting the predicate crime is only weak, if verifiable at all. All these effects of money laundering are in need of empirical testing and at this stage it is impossible to make any reasonable estimate for the size of these effects for our hypothetical country.

<sup>487</sup>Although this literature overview is based on an extensive literature research, its completeness can, of course, not be guaranteed. This overview is an updated version of the literature overview that has been published in Unger (2007) *The Scale and Impacts of Money Laundering*, Edward Elgar, p.110-113 and Ferwerda (2012) *The Multidisciplinary Economics of Money Laundering*, PhD-dissertation, Tjalling C. Koopmans Research Institute, Utrecht University School of Economics, No. 007.

<sup>488</sup>Bartlett, B.L. (2002) *The negative effects of money laundering on economic development*, *Platypus Magazine*, Vol. 77, p.18-23

<sup>489</sup>Levi, M. and P. Reuter (2006) *Money Laundering*, University of Chicago Crime and Justice, p.294

<sup>490</sup>Unger, B., Rawlings, G., Siegel, M., Ferwerda, J., de Kruijf, W., Busuioc, E.M. and Wokke, K. (2006) *The Amounts and Effects of Money Laundering*, Dutch Ministry of Finance report

<sup>491</sup>On page 94 of Geiger and Wunsch (2007) *The fight against money laundering, An economic analysis of a cost-benefit paradoxon*, *Journal of Money Laundering Control*, Vol. 10, No. 1, p. 91-105

<sup>492</sup>Baker, R.W. (2005) *Capitalism’s Achilles heel, dirty money and how to renew the free-market system*, Hoboken, New Jersey: John Wiley, p. 173-174

<sup>493</sup>Cuellar, M.F. (2003) *The Tenuous Relationship between the Fight against Money Laundering and the Disruption of Criminal Finance*, *The Journal of Criminal Law & Criminology*, Vol. 93, Nos. 2/3, p. 311-465

<sup>494</sup>Bolle, A. (2004) *Le Blanchiment des Capitaux de la Criminalite Organisee*, in: Francois, L., Chaigneau, P. and Chesney, M. (eds) *Blanchiment et Financement du Terrorisme*, Sentinel, Paris

### 13.4 Conclusion

The table below summarises our estimates for the annual costs and benefits in our hypothetical country. As can be seen from this table, most of the costs are possible to estimate, but hardly any of the benefits are. This would mean that the cost-benefit dilemma for AML/CTF policy is reduced to the question: Are we willing to spend almost 44 million euro with a reduction in privacy and efficiency costs for unknown benefits? To answer with the words of Whitehouse<sup>495</sup>: “it would be a brave person who steps up to say that it is too high a price to pay for countering terrorism and serious crime.”

**Table 13.11: Estimates for the annual costs and benefits of AML/CTF policy**

Costs	Best estimate (Bandwidth)	Benefits	Best estimate (Bandwidth)
Ongoing policy making	896.754 (116.762 – 1.813.000)	Fines	Unknown
FIU	2.892.349 (685.460 – 9.860.636)	Confiscated proceeds	474.294 (14.715 – 1.039.896)
Supervision	14.332.941 (291.906 – 112.200.000)	Reduction in the amount of ML	Unknown
Law enforcement	1.423.565 (single estimate)	Less predicate crimes	Unknown
Judiciary	400.245 (single estimate)	Reduced damage effect on real economy	Unknown
Sanction costs (repressive)	2.142.911 (single estimate)	Less risk for the financial sector	Unknown
Duties of the private sector	22.055.000 (single estimate)		
Reduction in privacy	Moral cost		
Efficiency costs for society and the financial system	Unknown		
<b>Total cost estimate</b>	<b>44.143.765 + 2 unknown</b>	<b>Total benefit estimate</b>	<b>474.294 + 5 unknown</b>

*Note: these are estimations for a hypothetical country with 10 million people and a price level equal to the US. The numbers are for illustration purposes only, since all estimates are very sensible to many possible biases and estimation procedures.*

Apart from the actual estimation of costs and benefits, this exercise also shows that the main costs of AML/CTF policy seem to be the duties of the reporting sector and its supervision. In our estimation these two components are responsible for 84% of all the costs that could be estimated. Furthermore, we can conclude that the information available for a cost-benefit analysis is very limited (illustrated by the many components that are based on single estimates) and very diverse (illustrated by the wide bandwidths for certain components).

With the correction factors (reported in Annex 13.1) that we used to correct the national data to the size and price level of our hypothetical country we can estimate the costs and benefits for each country in the

<sup>495</sup>Whitehouse (2003), A Brave New World: The Impact of Domestic and International Regulation on Money Laundering Prevention in the UK, Journal of Financial Regulations and Compliance, Vol. 11, No. 2, p. 144

EU-27 and for the EU as a whole, as shown in Table 13.12. It should be noted that extrapolation of already sensitive estimates increases the sensitivity even more.

**Table 13.12: Estimates for the annual costs and benefits of AML/CTF policy for each country and the whole EU**

Country	Estimated costs of AML/CTF	Estimated benefits of AML/CTF
Austria	39.331.650 + 2 unknown	422.591 + 5 unknown
Belgium	52.109.975 + 2 unknown	559.885 + 5 unknown
Bulgaria	16.697.035 + 2 unknown	179.398 + 5 unknown
Cyprus	4.749.348 + 2 unknown	51.028 + 5 unknown
Czech Republic	34.239.484 + 2 unknown	367.879 + 5 unknown
Denmark	35.545.389 + 2 unknown	381.910 + 5 unknown
Estonia	4.355.149 + 2 unknown	46.793 + 5 unknown
Finland	28.707.338 + 2 unknown	308.440 + 5 unknown
France	320.821.916 + 2 unknown	3.447.008 + 5 unknown
Germany	378.177.540 + 2 unknown	4.063.254 + 5 unknown
Greece	46.737.736 + 2 unknown	502.164 + 5 unknown
Hungary	30.925.483 + 2 unknown	332.273 + 5 unknown
Ireland	23.870.414 + 2 unknown	256.471 + 5 unknown
Italy	286.270.198 + 2 unknown	3.075.774 + 5 unknown
Latvia	7.480.286 + 2 unknown	80.370 + 5 unknown
Lithuania	10.304.206 + 2 unknown	110.712 + 5 unknown
Luxembourg	2.517.861 + 2 unknown	27.053 + 5 unknown
Malta	1.477.812 + 2 unknown	15.878 + 5 unknown
Netherlands	80.858.428 + 2 unknown	868.767 + 5 unknown
Poland	109.126.093 + 2 unknown	1.172.484 + 5 unknown
Portugal	44.676.164 + 2 unknown	480.014 + 5 unknown
Romania	60.662.875 + 2 unknown	651.780 + 5 unknown
Slovakia	18.516.679 + 2 unknown	198.949 + 5 unknown
Slovenia	7.404.790 + 2 unknown	79.559 + 5 unknown
Spain	201.599.523 + 2 unknown	2.166.046 + 5 unknown
Sweden	49.501.570 + 2 unknown	531.860 + 5 unknown
UK	260.394.648 + 2 unknown	2.797.759 + 5 unknown
<b>EU-27</b>	<b>2.157.059.590 + 2 unknown</b>	<b>23.176.102 + 5 unknown</b>

## Chapter 14 CONCLUSIONS AND POLICY RECOMMENDATIONS

The ECOLEF team has identified in a three year intensive study, done by an interdisciplinary but homogenous team, the strengths and weaknesses of anti-money laundering and combating terrorist financing policy of the 27 EU Member States. We studied the effectiveness of the AML/CTF process from implementing the Third EU Directive to the conviction of money launderers or terrorist financiers, and conclude with some policy recommendations.

Member States that are the most threatened by money laundering, and which therefore should have the greatest concern in combating it, are, according to our findings, the **Western and highly developed countries** with high GDP per capita and well developed financial markets, like the UK, Luxembourg, the Netherlands. Cash intense economies, Southern and some of the Eastern Member States, also face a threat of laundering though less in volume. The main bulk of money laundering in million Euros was identified in the financial and commercial centers of Europe. This means that they **have to make more policy effort to combat laundering** than Eastern and Southern EU countries.

In order to take into account differences in country size, we measured the threat of laundering in two ways. Firstly, we measured it in absolute volume (threat in million Euros). Secondly, we corrected for the size of the country (threat in percentage of GDP). It is especially the smaller EU Member States that are surrounded by much larger countries generating large amounts of money potentially available for laundering, that are threatened to be overwhelmed by criminal money (e.g. Estonia and Latvia by Russian money, Malta and Luxembourg), while it is the medium sized and large Member States that face the highest volume of laundered money - see Chapter 2.

The **difference between big financial centers and cash intense economies** also implies that the **strategies of how to combat laundering will have to differ** between these two groups. For cash intense economies the reduction of cash payment possibilities seems the most obvious cure. In this regard Estonia with its focus on electronic payment and electronic storage of documents ('e-government') is an example of a country which managed to reduce cash payments very substantially. Also efforts in Belgium, Bulgaria, Greece and Italy which introduced or sharpened cash bans have to be mentioned here.

**For measuring the effectiveness of anti-money laundering policy one has to take into account both the laundering threat a country faces and its policy response.** This study took as a point of departure the existing FATF measures for the compliance of countries with regard to the forty (and nine) FATF recommendations. We think that these compliance measures are a good start, but have still two weaknesses. Firstly, they do not relate the policy effort of a country to the threat it faces. We think it is important to not only measure the compliance of countries with FATF standards, but to set this in relation to the special threat the country faces. When doing so, we see that some small EU Member States (Estonia, Latvia and Luxembourg) that are highly threatened to be flooded by criminal money from abroad are close to what we define the endangered red zone (see Chapter 12). These small Member States have to cope with huge amounts of criminal proceeds from abroad, which can quickly overburden them, even though they are highly compliant with FATF standards. With regard to large EU Member States one can see that the UK is the only country close to the endangered zone. The UK is a highly compliant country, but faces an enormous threat of laundering (see Chapter 12). Member States that are

often in the news for not sufficient compliance with FATF standards like Austria, Hungary, and Romania are nevertheless in the green zone. Compared to the threat they face, they do not as badly as indicated by FATF compliance numbers alone. Secondly, in this study we also tried to refine FATF compliance measures. We think that the **effectiveness of an AML/CTF regime** is multifaceted and is deeply **rooted in the national institutions of the Member States**: their legal system, their administrative system, and their specific way of internal and external communication and information flows. In Chapter 12 we showed that Member States' policy effectiveness varies, depending on which criteria one takes. They all have strengths and weaknesses, and there is no one best and no one worst country. **To put the same criteria on all countries, as the FATF does, tends to underestimate or to misperceive their AML/CTF policy performance.** Asking the same standards as the US standards for all European Member States can mean quite different tasks and costs to the Member States because of their variety of institutions. Europe is characterised by a variety of institutions and this is a cultural inheritance of Europe. For true compliance it is important to understand this variety of European institutions as Europe's strength.

**The European model, as opposed to the US model, was always based on more variety and difference among institutions.** There are historically settled institutions such as the diverse legal systems. Some institutions are a thousand years old, such as the chamber system which dates back to the medieval guilds. Some bar associations date back to the 1850s (and are still called chambers in some countries). In the internal and hybrid supervision models, some of these traditional professional associations are involved in anti-money laundering supervision because of their close relationship with their members. Notably different languages and history distinguish Europe from a one-size-fits-all US model.

With respect to AML/CTF policy, we performed a cluster analysis and found 'four Europes', **four groups of Member States which share among themselves similar legal or institutional characteristics for anti-money laundering policy.** **The first group of Member States** (Austria, Denmark, Finland, Germany, Ireland and Sweden), are countries that have on average a significantly higher government effectiveness, low corruption, and more prosecutions of laundering in percent of GDP. They almost all have a law enforcement type of FIU, a very narrowly interpreted money laundering definition. This group of quite rich EU Member States all experience or experienced pressure from the FATF for not having self-laundering criminalised. **Their legal and institutional system does not match with the international standards of FATF AML/CTF policy.** For them the FATF pressure can mean a serious threat to the existing national set of legal and economic institutions. In particular the smaller Member States have given in to FATF pressure and criminalised self-laundering lately recently. But especially in legal systems, double punishment (one for the crime, one for the proceeds of crime) is considered a violation of a criminal principle. Abandoning self-laundering can therefore mean an enormous change in the entire legal system. **One can therefore expect either resistance to the practice of the anti-money laundering law or quite significant follow-up changes in the legal system of these Member States.** And whether the first or the latter occurs still might have to do with different cultures and attitudes towards Europe in these countries. Germany, as the only large Member State in this group seems to face a double load: it is in group 1 which faces particular legal problems with international AML standards, and it is a big country with a federal system where AML policy is 'Ländersache' (regulated at the regional level), which shares domestic coordination problems with the second group of countries.

**The second group of Member States** (Belgium, France, Greece, Italy, Portugal, Spain and the UK) have on average a significantly higher GDP and significantly more FIU staff. They almost all have an administrative

FIU. Three founding members (Belgium, France and Italy) are among them and there are no newcomers since the Maastricht Treaty in 1992. So, this is also a relatively established group of Member States within the EU. **Domestic cooperation might be more difficult** in this group than in the former, due to the large size of countries (France, Italy, Spain), or to regional differences and to social, religious or economic cleavages (Belgium, Spain, Italy and the UK). So, here anti-money laundering policy might face more internal problems than external problems.

**The third group of Member States** consists of Cyprus, Luxembourg and the Netherlands. They share the fact that they are **small countries with large amounts of criminal money flowing through**. They are usually not affected by the underlying crime, but only have to deal with the proceeds of crime. Their money laundering problem is, hence, not a domestically caused one. Their major concern is to maintain **good international reputation** and to avoid criticism from abroad in order to avoid sanctions.

**The fourth group of Member States** (Bulgaria, Hungary, Romania, Czech Republic, Malta, Poland, Slovakia, Slovenia, Latvia, Estonia, and Lithuania), are all **newcomers to the EU**. They have a lower GDP, most of them face less threat of laundering, have a lower GDP per capita and face more corruption problems than the other groups. Their government effectiveness indicator also is significantly lower. They have to introduce all sorts of new EU laws, they have to build up institutions, adjust their country to EU norms, and therefore **might not consider money laundering combat their first policy priority**. The EU should initiate and financially support more training and meetings of members and diverse actors of this group with other groups in order to facilitate information exchange and policy learning.

In order to reach true compliance of Member States it seems important to take into account the differences between these four country groups of European AML/CTF policy. **Pressures from abroad, as in the first group, pressures from within the countries, as in the second group, pressures from large proceeds of crime for small Member States, as in the third group, and being a newcomer to the EU, as in the fourth group, might necessitate different policy measures and different ways of the evaluation of progress.**

When studying the FATF Reports with regard to the most important predicate crimes that Member States combat with anti-money laundering policy, they list basically all predicate crimes for all countries. However, in practice we found different perceptions among Member States as to what anti-money laundering policy stood for. The own understanding of what FIUs should do differed substantially. Some countries perceived anti-money laundering policy as anti drug policy, others saw it as a fight against tax evasion and others as a fight against corruption. **The perception of whether the ultimate goal of anti-money laundering policy is to catch drug money, tax evasion money or corruption money clearly also means that policies to reach these goals will (and have to) differ.**

**There also remain large differences in what is understood by money laundering in practice.** Even when legal texts are harmonised, law in practice differs between the Member States. Different interpretations of what concealment means, different interpretations of the level of knowledge required, the evidence needed for prosecuting money laundering, the acceptance of the reversal of the burden of proof, all showed us that law in practice still varies. **We found less differences in defining and interpreting terrorist financing.** Nevertheless, the amount of funds donated, the knowledge and the intention to commit a terrorist act can play a role in interpreting the same event differently in some Member States

(see Chapter 7 ). **Interpretations of money laundering and terrorist financing also can vary along the anti-money laundering chain within the same country.** The legislator might not have the same interpretation as the FIU, public prosecutor or the judge. The AML prosecution would result in no conviction if the judge does not accept the reversal of burden of proof, to give an example.

The Third EU Directive, whose implementation we studied, was perceived as well-prepared and harmonious by the member States. Some definitions like the Ultimate Beneficial Owner appeared to be too broad and had to be specified later. Some norms, such as simplified due diligence, turned out to be too expensive for the private sector and are hardly ever, or never, applied. Some extensions to scope, especially for gambling institutions other than casinos, were made by a large majority of Member States. From a legal effectiveness point of view they could, therefore, better have been included in the Directive. Notwithstanding these issues and considerable time delays in the implementation in some Member States, the **Third EU Directive as such can be considered a successful legal norm for anti-money laundering and combating terrorist financing policy.**

The **substantive norms** of the Third EU Directive, meaning the obligations of customer due diligence, reporting, record keeping and internal policy **are to a large extent harmonised** in Europe - see Chapter 4. **However the procedural norms still differ a lot between the Member States.** The legal norms that regulate the supervision of obliged institutions and the sanctioning in case of non-compliance with the preventive AML/CTF obligations in the Directive are minimal. The Directive only requires that obliged institutions and professionals are subject to adequate regulation and supervision and provides some very minimum requirements. With this, the Directive follows the European principle of national procedural autonomy (see Chapter 6). Nevertheless, for combating international crime effectively, there can be a trade-off between the need for harmonisation of procedures in order to close loopholes for launderers and the need for maintaining national autonomy. **The EU has to find the right balance here between accepting variety and harmonisation.**

From the legal effectiveness point of view, a general point of criticism concerned the conflicting standards between FATF Recommendations and EU norms. Member States that closely follow the text of the EU Directive can, therefore, nevertheless be criticised by the FATF for not fulfilling its soft law recommendations, for example with regard to which countries are suitable for third party reliance. While the FATF Recommendations require that each country individually establishes whether other countries have an equivalent AML/CTF policy; the European Directive makes clear that EU Member States should be considered to have equivalent AML/CTF policies - after all, every EU MS implemented the Third EU Directive - and allows that the matter of third-country equivalence is determined at EU level by representatives of the different EU Member States, and not on the national level. Conflicting standards are clearly bad for legal security of countries and citizens. In particular, when the FATF criticism and its impact on the reputation of a country can be very costly since blacklisting can mean serious economic sanctions, for example if no US bank is allowed to do business with the country. Conflicting standards should either be removed or accepted by both the FATF and the EU.

Money laundering combat needs the cooperation and compliance of many parties. **The major hindrance in international cooperation is time delays.** Fifteen out of 27 member states have experienced this is the major difficulty in international cooperation. A further hindrance identified concerned conflicting **data protection systems** which do not allow the exchange of information. In addition, some of the

international data exchange systems are too costly, especially for small new Member States. We think that the way in which FIU.NET is technically established, is a promising way of **facilitating data exchange and at the same time allowing the users to keep control over access to their information**. From our regional workshops it also became clear that **language still is a great barrier to international cooperation** especially for new Member States (group 4 of our 'four Europes'). Contrary to the US, Europe does not have a common language. Translation of legal texts and information requirements from other countries can cause delays in international cooperation and are costly.

Both at an international and domestic level, fighting money laundering and terrorist financing depends on the acceptance and compliance of many actors. Governments, ministries, FIUs, the police, public prosecutors, judges, reporting entities like banks, dealers in high value goods, notaries, accountants, lawyers and other groups of the private sector all have to comply in order to identify and catch money launderers and terrorist financiers. **To convince all these groups about the necessity and importance of anti-money laundering policy will certainly take time. Good communication, sharing information and feedback** to other entities are essential to reach true compliance. We found that the nature of feedback plays an important role. **Individual feedback** from the FIU is necessary to help reporting entities improving their reporting systems. Individual feedback from the Public Prosecutor to help FIUs to filter out relevant transaction reports as suspicious ones is also important to improve effectiveness.

An important way to convince actors that anti-money laundering policy is meaningful is to show the success of anti-money laundering policy. For this it is important to **produce reliable comparative statistics**. Reliable statistics on convictions of launderers, and on confiscated proceeds, will help to demonstrate the success of anti-money laundering policy.

Reliable statistics however need true compliance of Member States. European Member States are more used to a carrot than to a stick policy approach. This means that in many European countries compliance among actors is reached by convincing them about the necessity of the policy rather than threatening them with punishment. Blacklisting as the FATF does it, is a typical stick approach. And more so, this stick is given by an international organisation which is not democratically legitimated and which cannot be sanctioned. The style and way in which anti-money laundering policy is introduced in Europe does not fit the European way of doing politics.

The reaction of EU Member States to this strange and unusual policy style can, and most likely will, be passive resistance. In comparing the effectiveness of Member States' anti-money laundering policy there is the danger that numbers are inflated. In principle, due to the diverse ways of archiving numbers, of compiling police files, of defining suspicious transactions and of collecting data, all Member States have the possibility to produce higher numbers and better outcomes on paper without changing their policy. We warn about the danger of inflated numbers, which might happen when Member States have to produce statistics without being convinced about the necessity of doing so. We have shown in our study how easily one could produce an increase of suspicious transaction reports just by making banks report each transaction separately rather than in bundles, to give an example. It seems, therefore, important from the very beginning to **avoid the number game** and compliance in the books and to aim at true compliance.

**We recommend to collect input and output statistics, but to first concentrate on comparing input statistics.** That means we should start interpreting numbers on how much money was invested into the AML/CTF policy, such as the number of staff employed in this policy field, the budget for FIUs and law enforcement. These numbers are easier to compare and (less easy to manipulate) than output statistics, which measure the outcome of the AML/CTF policy, such as the number of suspicious transaction reports or the number of convictions. **For comparing output statistics, some standardised ways of how to count and collect statistics on reporting and on convictions have to be first developed.**

We think that with regard to the AML/CTF policy, the **EU should become what political scientists call a global player**: it should take a lead in setting international standards in AML/CTF policy, as it does successfully with environmental policy and food regulation. But contrary to these policy fields, where EU standards are much stricter than international standards, AML/CTF policy does not need stricter standards. It needs standards which allow EU Member States to adjust to these standards within their own institutional frameworks and which can be implemented according to a European policy style.

One way of taking such a global player lead would be to defend European interests against the FATF, for example with regard to equivalence of EU Member States. The EU could also develop best practice models, a **WHITE LIST** showing Member States' strengths in anti-money laundering policy for creating voluntary and true compliance. Focussing on best practices rather than on failure would help to give the AML/CTF policy more acceptance among the actors and in the Member States.

We are convinced that true compliance for fighting laundering can be reached in Europe with a carrot and not with a stick approach. Harmonising AML/CTF policy in a Europe with diverse institutions will, and should take time. The right balance between harmonisation and the acceptance of variety seems crucial for fighting international crime and reaching true compliance of the majority of involved actors.

We hope that this report contributes to this end.

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## **Glossary**

### **AML/CTF**

Commonly used abbreviation that stands for anti-money laundering and combating terrorism financing

### **Cash declarations**

Reports lodged to competent national authorities concerning the movement of physical currency across national borders, usually above a nominated threshold

### **Confiscation**

Penalty or measure following proceedings in relation to a criminal offence or criminal offence resulting in the final deprivation of property

### **Credit institution**

Undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account, including place of business which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions

### **Crime**

Every criminal offence of whatever category of criminal law (broad sense)

### **Currency Transaction Report (CTR)**

A report made to an FIU, by a party having an obligation to disclose based on a threshold established by national legislation

### **Designated Non-Financial Businesses and Professions**

Businesses, outside of financial and credit institutions, identified by AML/CTF legislation as exposed to risks of money laundering and the financing of terrorism. The DNFBPs identified by FATF are: casinos; real estate agents; dealers in precious metals; dealers in precious stones; legal practitioners, notaries, other legal professionals and accountants providing services to external clients; and trust and company service providers

### **Enforcement**

In the preventive policy, enforcement refers to the sanctioning in the case of non-compliance. In the repressive policy, enforcement refers to the prosecution and sanctioning of criminals

### **FATF Recommendations**

International standards on combating money laundering and the financing of terrorism & proliferation

### **Financial institution**

An undertaking other than a credit institution which carries out one or more of the operations included in points 2 to 12 and 14 of Annex I to Directive 2000/12/EC, including the activities of currency exchange offices (bureaux de change) and of money transmission or remittance offices; an insurance company duly authorised in accordance with Directive 2002/83/EC of the European Parliament and of the Council of 5

November 2002 concerning life assurance, insofar as it carries out activities covered by that Directive; an investment firm as defined in point 1 of Article 4(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments; a collective investment undertaking marketing its units or shares; an insurance intermediary as defined in Article 2(5) of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, with the exception of intermediaries as mentioned in Article 2(7) of that Directive, when they act in respect of life insurance and other investment related services; branches, when located in the Community, of financial institutions as referred to in points (a) to (e), whose head offices are inside or outside the Community.

### **Financial Intelligence Unit (FIU)**

A central authority responsible for receiving (and to the extent permitted, requesting), analysing and disseminating disclosures of financial information concerning suspected proceeds of crime and potential financing of terrorism; or required by national legislation or regulation in order to combat money laundering and terrorist financing

### **Freezing or seizure**

Temporarily prohibiting the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by court or other competent authority.

### **Implementation**

The process of transposition of a European Directive or international regulations into national law

### **Implementation measures**

Texts that are officially adopted by the authorities of a Member State to transpose the provisions of a Directive or/and international regulations into national law or regulations

### **Implementing Directive**

Commission Directive 2006/70/EC laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (OJ L214/29, 4.8.2006). Also: PEP Directive.

### **Information flow chart**

A virtual map that reflects communication that takes place between different agents within a system

### **Member State**

Countries that have signed and ratified the Treaties of the European Union (EU) and that have taken the privileges and obligations resulting from EU Membership.

### **Money launderer**

Any person who, or any institution which:

- Converts or transfers property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
- conceals or disguises the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;
- acquires, possesses or uses property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;
- participates in, associates to commit or attempts to commit and aids, abets, facilitates and counsels the commission of any of the actions mentioned above.

### **Obligated institutions**

Businesses, including financial and credit institutions, designated non-financial businesses and professions with AML/CTF obligations under respective regulatory regimes. Also: reporting entities.

### **Politically exposed person (PEP)**

A natural person who is or has been entrusted with prominent public functions, and immediate family members, or persons known to be close associates, of such a person

### **Predicate offences**

Criminal offences that generate funds which can be laundered

### **Preventive AML/CTF policy**

The policy aimed at the prevention of money laundering and terrorist financing by introducing obligations for designated groups of institutions and/or professionals. Also: preventive policy

### **Proceeds of crime**

Any economic advantage from criminal offences. Also: criminal proceeds.

### **Repressive AML/CTF policy**

The policy aimed at the investigation, prosecution and sanctioning incriminal procedures against money launderers and terrorist financiers. Also: repressive policy

### **Supervision**

The activity whereby competent national authorities verify compliance with the obligations stemming from the preventive AML/CTF policy

### **Supervisory architectures**

The set of legal norms regulating supervision and enforcement at national level

### **Suspicious Transaction Report (STR)**

A report made to an FIU by an obliged institution having an obligation to disclose based on any type of suspicion (knowledge, suspicion, reasonable grounds to suspect).

**Third Directive**

Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L309/15, 25.11.2005). Also: Third Money Laundering Directive.

**Terrorist financing**

The provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used, or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism

**Threat**

The amount of money that could, or might, be laundered in a country, if there were no barriers to laundering, and no more attractive place for the launderer to launder the money

**Ultimate beneficial owner**

The natural person(s) who ultimately own(s) or control(s) the customer and/or the natural person on whose behalf a transaction or activity is being conducted

**Unusual transaction report (UTR)**

A report made to an FIU, by a professional with an obligation to disclose based on unusual behaviour in the customer's profile

## **Annex 0      PROGRAM FINAL CONFERENCE**

### **29th of November 2012**

- 08.30 – 09.00 Coffee
- 09.00 – 09.30 **Brigitte Unger** (ECOLEF) – Opening word
- 09.30 – 10.00 **Michael Levi** (Univ of Cardiff) – Threat Analysis
- 10.00 – 10.45 **John Walker** (ECOLEF) – Threat Analysis of the 27 EU-member States
- 10.45 – 11.10 Discussion
- 11.10 – 11.30 Coffee Break
- 11.30 – 12.00 **Sebastiano Tiné** (EU) – Visions of DG Home on future policy of the EU on financial crime
- 12.00 – 12.20 **Burkhard Mühl** (Europol) – Asset recovery within the EU
- 12.20 – 12.50 **Melissa vd Broek** (ECOLEF) – Implementing the Third Directive: The Deloitte Study
- 12.50 – 14.30 LUNCH
- 14.30 – 15.00 **Vladimir Jizdny** (Europol) – The role of the FIUs
- 15.00 – 15.45 **Ioana Deleanu** (ECOLEF) – Information flows around the FIUs
- 15.45 – 16.30 **Henk Addink & Melissa vd Broek** (ECOLEF) – The Role of Supervision
- 16.30 – 17.00 Coffee Break
- 17.00 – 18.00 Discussion & Conclusions first day – Discussion and Conclusions First Day
- 18.00            Dinner (if registered)

### **30th of November**

- 09.00 – 09.45 **Francois Kristen** (Utrecht University) – The Role of the Public Prosecutor
- 09.45 – 10.15 **Ioana Deleanu** (ECOLEF) – ECOLEF: Information Flows around the PPO
- 10.15 – 10.45 Discussion
- 10.45 – 11.15 Coffee Break
- 11.15 – 11.45 **Peter Reuter** (University of Maryland) – Examining the Foundations of the Global AML System
- 11.45 – 12.15 **Ernesto Savona** (Università Cattolica, Milan) – Discussing the risk-based approach: does it work?
- 12.15 – 12.45 **Joras Ferwerda** (ECOLEF) – Cost Benefit Analysis of AML
- 12.45 – 14.15 LUNCH
- 14.15 – 15.00 **Friedrich Schneider** (University of Linz) – Tax Evasion – an Issue for AML Policy?
- 15.00 – 15.30 **Jan van Koningsveld** (offshore Knowledge Center) – Offshore Centers within Europe?
- 15.30 – 15.50 Coffee Break
- 15.50 – 16.50 General Discussion
- 16.50 – 17.20 **Brigitte Unger** (ECOLEF) – Final remarks
- 17.20            Informal reception



## Annex 1.1 SURVEYS

**Table A1.1: Surveys answered for the ECOLEF project**

Date	Answered by	Affiliated Institute	Country	Filled in the survey
05-12-2010	Wolfgang Pekel	Ministry of Justice	Austria	Ministry
28-10-2010	Paul Pitnik	Ministry of Finance	Austria	Ministry
05-12-2010	Wolfgang Pekel	Prosecutor General's Office	Austria	Public Prosecutor
05-10-2010	Karin Zartl	Financial Market Authority	Austria	Supervisors
15-03-2012	Jean-Claude Delepière	FIU	Belgium	FIU
05-03-2012	Olivier Coene	Public Prosecutor's Office Brussels	Belgium	Public Prosecutor
06-04-2012	No name provided	Financial Services and Markets Authority	Belgium	Supervisors
12-03-2012	Hayen Jo	Gaming Commission	Belgium	Supervisors
10-10-2011	Vania Nestorova	Supreme Cassation Prosecutor's Office	Bulgaria	Public Prosecutor
18-10-2011	Kiril Uzunov	FIU	Bulgaria	FIU
12-09-2011	Michalis Stylianou	Central Bank of Cyprus	Cyprus	Supervisors
06-10-2011	Dinos Kalopsidiotis	Insurance Companies Control Service	Cyprus	Supervisors
30-09-2011	Charalambos Anastasiades	Bank of Cyprus	Cyprus	Obligated Entities
13-07-2011	Marios Xenides	Cooperative Central Bank Ltd	Cyprus	Obligated Entities
22-10-2010	Jiri Tvrdy	FIU, Ministry of Finance	Czech Republic	Ministry
26-03-2011	Svetlana Klouckova	Supreme Public Prosecutor's Office	Czech Republic	Public Prosecutor
03-11-2010	Jiri Tvrdy	FIU, Ministry of Finance	Czech Republic	Supervisors
27-10-2010	Vladimir Sefl	Chamber of Tax Advisers	Czech Republic	Supervisors
25-10-2010	Radim Neubauer	Notarial Chamber	Czech Republic	Supervisors
15-03-2011	Michaela Hladka	Financial Analytical Unit (FIU)	Czech Republic	Supervisors
14-04-2011	MarieLouise Staehelin	The Money Laundering Secretariat	Denmark	FIU
01-04-2011	Karina Hansen	Danish FSA <sup>496</sup>	Denmark	Ministry
03-05-2011	MarieLouise Staehlin	State Prosecutor Serious Economic Crime	Denmark	Public Prosecutor
23-03-2011	Palle Mose	Commerce and Companies Agency	Denmark	Supervisors
15-03-2011	Martin Korp Jensen	Bar & Law Society	Denmark	Supervisors
13-03-2011	Kerly Krillo	FIU	Estonia	FIU
18-03-2011	Sören Meius	Ministry of Finance	Estonia	Ministry
17-03-2011	Andres Palumaa	Financial Supervision Authority	Estonia	Supervisors

<sup>496</sup>The FSA implemented the Third AML EU Directive in Denmark and therefore answered our survey on implementation that we normally send to Ministries.

26-04-2011	Laura Niemi	FIU	Finland	FIU
10-03-2011	Tuija Nevalainen	Financial Supervision Authority	Finland	Supervisors
25-03-2011	Markku Ylönen	Bar Association	Finland	Supervisors
24-11-2010	Detlef Rasch	FIU Germany	Germany	FIU
16-03-2012	Gaëtan Viallard	Prudential Supervision Authority (ACP)	France	Supervisors
10-03-2012	Rodolphe Uguen-Laithier	Ministry of Justice	France	Public Prosecutor
10-11-2010	Uta Zentes	Commerzbank AG	Germany	Obligated Entities
05-11-2010	Ingrid Kindsmüller	M.M.Warburg Bank	Germany	Obligated Entities
27-10-2010	Susanne Wagner	Chamber of Patent Attorneys	Germany	Supervisors
26-10-2010	Ferdinand Goltz	Wirtschaftsprüferkammer	Germany	Supervisors
08-09-2011	Angelos Tzermiadianos	Bank of Greece	Greece	Supervisors
22-09-2011	Mari Charalambous Kliriotou	Department of Customs & Excise	Greece	Supervisors
09-09-2011	Eva Rossidou-Papakyriacou	MOKAS, FIU	Greece	FIU
23-09-2011	Kyriakos Tolias	FIU	Greece	FIU
27-09-2011	Panagiotis Nikoloudis	FIU	Greece	FIU
20-10-2010	Arpad Szentes	FIU	Hungary	FIU
29-10-2010	Zsófia Papp	Ministry for National Economy	Hungary	Ministry
09-11-2010	Judit Bors Kövesiné	Trade Licensing Office	Hungary	Supervisors
28-10-2010	Arpad Szentes	FIU	Hungary	Supervisors
21-10-2010	Istvan Horvath	Bar Association	Hungary	Supervisors
21-03-2012	Brendan Nagle	Central Bank of Ireland	Ireland	Supervisors
14-03-2012	Cait Carmody	Institute of Certified Public Accountants in Ireland	Ireland	Supervisors
14-03-2012	Suzanne Shaw	Institute of Certified Public Accountants in Ireland	Ireland	Supervisors
22-02-2012	Liam Roche	Property Services Regulatory Authority	Ireland	Supervisors
02-09-2011	Anna Maria Tarantola	Bank of Italy	Italy	Supervisors
07-11-2011	Paolo Costanzo	Unità di Informazione Finanziaria	Italy	FIU
16-03-2011	Viesturs Burkans	FIU	Latvia	FIU
25-03-2011	Daina Vasermane	Financial and Capital Market Commission	Latvia	Ministry
14-03-2011	Guna Kaminska	Council of Sworn advocates	Latvia	Supervisors
09-03-2011	Irina Saksaganska	Association Certified Auditors	Latvia	Supervisors
18-03-2011	Vivita Macina	State Inspection for Heritage Protection	Latvia	Supervisors
29-03-2011	Signe Birne	Lotteries and Gambling Inspection	Latvia	Supervisors
18-03-2011	Vilius Peckaitis	Financial Crime Investigation Service	Lithuania	FIU

17-04-2011	Simonas Slapsinskas	Prosecutor General's Office	Lithuania	Public Prosecutor
15-04-2011	Ugnius Vyčinas	Prosecutor General's Office	Lithuania	Public Prosecutor
15-03-2011	Jekaterina Govina	Insurance Supervisory Commission	Lithuania	Supervisors
24-03-2011	Justina Bertulyte	Cultural Heritage, Ministry of Culture	Lithuania	Supervisors
04-04-2011	Sandra Vencloviene	Chamber of Notaries	Lithuania	Supervisors
14-03-2011	Jurgita Raulickiene	AB bank SNORAS	Lithuania	Obligated Entities
29-03-2012	Jean-François Boulot	Parquet de Luxembourg	Luxembourg	Public Prosecutor
28-03-2012	Jean-François Boulot	FIU	Luxembourg	FIU
29-03-2012	Katia Kremer	Ministry of Justice	Luxembourg	Ministry
08-03-2012	Jean-Luc Kamphaus	Ministry of Finance	Luxembourg	Ministry
21-03-2012	Solange Krieger	Commissariat aux Assurances	Luxembourg	Supervisors
17-03-2012	Nadine Holtzmer	Commission de Surveillance du Secteur Financier (CSSF)	Luxembourg	Supervisors
14-09-2011	Michael Stellini	FIU	Malta	FIU
13-10-2011	Donatella Frendo Dimech	Attorney General's Office	Malta	Public Prosecutor
20-07-2011	George Gusman	Lombard Bank Malta plc	Malta	Obligated Entities
27-04-2012	Casper Holl and Saskia Dirkwager <sup>497</sup>	Ministry of Finance	The Netherlands	Ministry
04-06-2012	Peter Speekenbrink <sup>498</sup>	FIU - Nederland	The Netherlands	FIU
21-03-2012	Ruud Vaneman <sup>499</sup>	Belastingdienst Holland-Midden, Unit MOT	The Netherlands	Supervisors
17-03-2012	Maud Bökkerink <sup>500</sup>	De Nederlandsche Bank	The Netherlands	Supervisors
04-06-2012	Folkert Winkel <sup>501</sup>	Bureau Financial Supervision	The Netherlands	Supervisors
15-10-2010	Dorota Krasieńska	FIU, Ministry of Finance	Poland	FIU
12-11-2010	Dorota Krasieńska	FIU, Ministry of Finance	Poland	Ministry
16-11-2010	Jacek Łazarowicz	Prosecutor General's Office	Poland	Public Prosecutor
29-10-2010	Dorota Krasieńska	FIU, Ministry of Finance	Poland	Supervisors
22-10-2010	Radoslaw Obczynski	Financial Supervision Authority	Poland	Supervisors
22-10-2010	Dorota Krasieńska	FIU, Ministry of Finance	Poland	Supervisors
31-10-2011	Ricardo Lemos	Bank of Portugal	Portugal	Supervisors
01-11-2011	Antonio Gageiro	The Securities and Market Commission	Portugal	Supervisors
01-11-2011	Rita Lopes Tavares	Portuguese Insurance and Pension Funds Supervisory Authority	Portugal	Supervisors

<sup>497</sup>The survey was pre-answered by the ECOLEF team, after which representatives had the opportunity to comment or make amendments. For this survey approval has been obtained.

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19-09-2011	Fernando Jordão	FIU	Portugal	FIU
27-09-2011	António Folgado	Directorate General for Justice Policy	Portugal	Ministry
19-09-2011	Marius Bogdan Bulancea	Prosecutor's Office Attached to the High Court of Cassation and Justice	Romania	Public Prosecutor
21-10-2010	Leo Pongracic	FIU	Slovenia	FIU
22-10-2010	Maja Cvetkovski	FIU	Slovenia	Ministry
04-11-2010	Andrej Plaustejner	FIU	Slovenia	Supervisors
05-11-2010	Franc Babič	General Tax Office	Slovenia	Supervisors
29-10-2010	Gorazd Cibej	Insurance Supervision Agency	Slovenia	Supervisors
29-10-2010	Andrejka Grlič	Market Inspectorate	Slovenia	Supervisors
21-10-2010	Borut Strazisar	Securities Market Agency	Slovenia	Supervisors
03-08-2011	Conchita Cornejo	Ministry of Economy and Finance	Spain	Supervisors
06-10-2011	Francisco Porta Ugalde	SEPBLAC, FIU	Spain	FIU
04-10-2011	Jorge Fernández-Ordás	Ministry of Economy and Finance	Spain	Ministry
26-09-2011	Paloma Conde-Pumpido Garcia	Antidrug Prosecution Office	Spain	Public Prosecutor
06-10-2011	Elena Lorente	Special Office Against Corruption and Organised Crime	Spain	Public Prosecutor
16-04-2011	Jonas Olsson	Ministry of Finance	Sweden	Ministry
01-04-2011	Monica Poom	Board of Supervision of Estate Agents	Sweden	Supervisors
22-03-2011	David Engstrand	Gaming Board	Sweden	Supervisors
19-03-2011	Cecilia Wolrath Ekenbäck	Financial Supervision Authority	Sweden	Supervisors
10-03-2011	Johan Sangborn	Bar Association	Sweden	Supervisors
16-03-2012	Jeremy Rawlins	Crown Prosecution Service	United Kingdom	Public Prosecutor
29-05-2012	Michael Lyttle	HM Revenue and Customs	United Kingdom	Supervisors
13-04-2012	Garry Carter	Institute of Certified Bookkeepers	United Kingdom	Supervisors
20-03-2012	Mark Skinner	The Gambling Commission	United Kingdom	Supervisors
16-03-2012	Mary-Anne Cook	International Association of Bookkeepers	United Kingdom	Supervisors
16-03-2012	Emma Oettinger	Law Society of England and Wales	United Kingdom	Supervisors
16-03-2012	Tim Pinkney	Association of International Accountants	United Kingdom	Supervisors
29-02-2012	Martin Nimmo	The Institute of Financial Accountants	United Kingdom	Supervisors
22-02-2012	Susan Edwards	Office of Fair Trading	United Kingdom	Supervisors
27-03-2012	Ami Chandarana	HM Treasury	United Kingdom	Ministry

## Annex 1.2 INTERVIEWS

**Table A1.2: Interviews conducted for the ECOLEF project**

Date	Interviewed	Institute	Country	Interviewed by
22-1-2010	Hennie Kusters	FIU	Netherlands	Addink, Broek, Ferwerda, Tilleman
22-1-2010	Peter Speekenbrink	FIU	Netherlands	Addink, Broek, Ferwerda, Tilleman
10-3-2010	Marcus Wagemakers	AFM (supervisor)	Netherlands	Addink, Broek, Ferwerda, Tilleman
28-4-2010	Brigitte Slot	Ministry of Finance	Netherlands	Addink, Broek, Ferwerda, Tilleman
28-4-2010	Coos Santing	Ministry of Finance	Netherlands	Broek, Ferwerda, Unger
28-4-2010	Erik van Andel	Ministry of Finance	Netherlands	Broek, Ferwerda, Unger
28-4-2010	Folkert Winkel	BFT (supervisor, Bureau Financial Supervision )	Netherlands	Addink, Broek, Ferwerda, Unger
4-6-2010	Maud Bökkerink	DNB (supervisor, Dutch National Bank)	Netherlands	Broek, Ferwerda, Unger
2-7-2010	Elisabeth Ottawa	Ministry of Finance	Austria	Unger
2-7-2010	Alfred Leiszig	Ministry of Finance	Austria	Unger
6-7-2010	Bieb van Trigt	Belastingdienst (supervisor, Dutch Tax Authority)	Netherlands	Broek, Ferwerda
6-7-2010	Ruud Vaneman	Belastingdienst (supervisor, Dutch Tax Authority)	Netherlands	Broek, Ferwerda
13-8-2010	Rudolf Unterkoeﬂer	Ministry of Interior	Austria	Unger
13-8-2010	Joseph Mahr	FIU	Austria	Unger
4-10-2010	Karin Zartl	FMA (Supervisor)	Austria	Unger
2-11-2010	Árpád Szentes	FIU	Hungary	Broek, Ferwerda
3-11-2010	Zsófia Papp	Ministry for National Economy	Hungary	Broek, Ferwerda
3-11-2010	Béla Pataki	Ministry for National Economy	Hungary	Broek, Ferwerda
5-11-2010	Michael Findeisen	Ministry of Finance	Germany	Unger
18-11-2010	Artur Kołaczek	FIU	Poland	Broek, Ferwerda
18-11-2010	Dorota Krasinska	Ministry of Finance	Poland	Broek, Ferwerda
30-11-2010	Mário Tuchscher	UniCredit Bank (former FIU)	Slovakia	Broek, Deleanu, Ferwerda
30-11-2010	Vladimír Šimoňak	University Lecturer	Slovakia	Broek, Deleanu, Ferwerda
1-12-2010	Andrej Plausteiner	FIU, Ministry of Finance	Slovenia	Broek, Ferwerda
1-12-2010	Detlef Rasch	FIU	Germany	Broek, Deleanu, Unger
17-3-2011	Trindade Rocha	FIU	Portugal	Addink, Broek, Deleanu, Ferwerda, Unger
29-3-2011	Michaela Kolarova	FIU/Ministry	Czech Republic	Broek
29-3-2011	Jiri Trvdý	FIU/Ministry	Czech Republic	Broek
29-3-2011	Michaela Hladka	FIU/Ministry	Czech Republic	Broek

1-4-2011	Svetlana Klouckova	Public Prosecutor's Office	Czech Republic	Deleanu (by phone)
4-4-2011	Raul Vahtra	FIU	Estonia	Ferwerda, Unger
5-4-2011	Sören Meius	Ministry of Finance	Estonia	Ferwerda, Unger
5-4-2011	Kadri Siibak	Ministry of Finance	Estonia	Ferwerda, Unger
5-4-2011	Linda Lelumees	Ministry of Finance	Estonia	Ferwerda, Unger
5-4-2011	Tuuli Ploom	Ministry of Justice	Estonia	Ferwerda, Unger
7-4-2011	Daina Vasermane	Financial and Capital Market Commission (supervisor and appointed working group on implementation)	Latvia	Ferwerda
8-4-2011	Viesturs Burkans	FIU	Latvia	Broek, Ferwerda
8-4-2011	Elga Jonikane	Prosecutor's Office	Latvia	Broek, Ferwerda (with translator)
18-4-2011	Rikard Henriksson	FIU	Sweden	Broek, Deleanu
19-4-2011	Jonas Olssen	Ministry of Finance	Sweden	Broek, Deleanu
19-4-2011	Johan Modin	Ministry of Justice	Sweden	Broek, Deleanu
19-4-2011	Tomas Färndahl	Ministry of Justice	Sweden	Broek, Deleanu
20-04-2011	Cecilia Ekenbäck	Finansinspektionen (FSA, supervisor)	Sweden	Broek
20-04-2011	Anna-Lena Järvstrand	Board of Supervision of Estate Agents (supervisor)	Sweden	Broek
20-04-2011	Diego Ortíz del Gaiso	Board of Supervision of Estate Agents (supervisor)	Sweden	Broek
29-4-2011	Laura Niemi	FIU	Finland	Ferwerda
29-4-2011	Jukka Korkiatupa	FIU	Finland	Ferwerda
29-4-2011	MarieLouise Staehlin	FIU / State Prosecutor Serious Economic Crime	Denmark	Broek
29-4-2011	Per Fiig	FIU	Denmark	Broek
4-5-2011	Vilius Peckaitis	FIU	Lithuania	Deleanu, Unger
4-5-2011	Sigitas Sileikis	Financial Crime Investigation Service (FCIS)	Lithuania	Deleanu, Unger
5-5-2011	Ugnius Vyčinas	Prosecutor General's Office	Lithuania	Deleanu, Unger (with translator)
6-6-2011	Malene Baadsgaard Nissen	Finanstilsynet (FSA, supervisor)	Denmark	Broek (by phone)
6-6-2011	Michael Landberg	Finanstilsynet (FSA, supervisor)	Denmark	Broek (by phone)
12-10-2011	Kiril Uzunov	FIU	Bulgaria	Deleanu, Unger
12-10-2011	Evgeni Evgeniev	FIU	Bulgaria	Deleanu, Unger
13-10-2011	Vania Nestorova	Supreme Cassation Prosecution's Office	Bulgaria	Deleanu, Unger
14-10-2011	Adrian Cucu	FIU	Romania	Deleanu, Unger
14-10-2011	Laura Lica-Banu	FIU	Romania	Deleanu, Unger
17-10-2011	Marius Bulancea	Public Prosecutor's Office	Romania	Deleanu, Unger
25-10-2011	Anton Bartolo	MFSa and FIU	Malta	Broek, Unger
25-10-2011	Stephen Galea	MFSa (supervisor)	Malta	Broek, Unger
25-10-2011	George Gusman	Lombard Bank	Malta	Broek, Unger

25-10-2011	Jackie Aquilina	Lombard Bank	Malta	Broek, Unger
26-10-2011	Manfred Galdes	FIU	Malta	Broek, Unger
26-10-2011	Michael Stellini	FIU	Malta	Broek, Unger
28-10-2011	Jorge Fernández-Ordás Llamas	Ministry of Finance	Spain	Broek
28-10-2011	Andrés Martínez Calvo	Ministry of Finance	Spain	Broek
31-10-2011	Francisco de Asís Porta	SEPBLAC (FIU)	Spain	Broek
30-11-2011	Pilar Cruz Guzman	SEPBLAC (FIU)	Spain	Broek
02-11-2011	Paloma Conde-Pumpido	Fiscalía Antidroga (PPO)	Spain	Broek
02-11-2011	Elena Lorente	Fiscalía Anticorrupción (PPO)	Spain	Broek
03-11-2011	Sílvia Pedrosa	FIU	Portugal	Broek, Deleanu
03-11-2011	Fernando Jordão	FIU	Portugal	Broek, Deleanu
03-11-2011	Luis Barbosa	FIU	Portugal	Broek, Deleanu
03-11-2011	José Nunes Pereira	Banco de Portugal (supervisor)	Portugal	Broek, Deleanu
03-11-2011	Carlos Lopes	Banco de Portugal (supervisor)	Portugal	Broek, Deleanu
03-11-2011	Carlos Lourenço	Caixa Bank	Portugal	Broek, Deleanu
03-11-2011	Carlos Pinto	Caixa Bank	Portugal	Broek, Deleanu
04-11-2011	António Folgado	Ministry of Justice	Portugal	Broek, Deleanu
04-11-2011	Joana Gomes Ferreira	Attorney General's Office (PPO)	Portugal	Broek, Deleanu
04-11-2011	João Melo	Attorney General's Office (PPO)	Portugal	Broek, Deleanu
10-11-2011	Michaelis Styliano	Central Bank of Cyprus (supervisor)	Cyprus	Deleanu, Ferwerda
10-11-2011	Maria Themistocleous Strothou	Central Bank of Cyprus (supervisor)	Cyprus	Deleanu, Ferwerda
11-11-2011	Michael Iacovos	FIU	Cyprus	Deleanu, Ferwerda
11-11-2011	Theodoros Stavrou	FIU	Cyprus	Deleanu, Ferwerda
11-11-2011	Eva Rossidou Papakyriacou	FIU	Cyprus	Deleanu, Ferwerda
14-11-2011	Paolo Costanzo	FIU	Italy	Deleanu, Ferwerda
14-11-2011	Marcellino Fiorellino	FIU	Italy	Deleanu, Ferwerda
15-11-2011	Isabella Fontana	Ministry of Economy and Finance	Italy	Deleanu, Ferwerda
15-11-2011	Guisseppina Pellicanò	Ministry of Economy and Finance	Italy	Deleanu, Ferwerda
15-11-2011	Kaylan Olsen	Ministry of Economy and Finance	Italy	Deleanu, Ferwerda
06-12-2011	Harald Koppe	FIU.NET	Netherlands	Deleanu, Broek, Ferwerda, Unger
06-12-2011	Udo Kroon	FIU.NET	Netherlands	Deleanu, Broek, Ferwerda, Unger
06-12-2011	Gonnie de Graaf	FIU.NET	Netherlands	Deleanu, Broek, Ferwerda, Unger
05-04-2012	Marc Penna	FIU	Belgium	Broek, Deleanu

16-04-2012	Jeremy Rawlins	Crown Prosecution Service (PPO)	United Kingdom	Addink, Broek
17-04-2012	Susan Edwards	The Office of Fair Trading (SUP)	United Kingdom	Broek
18-04-2012	Jody Ketteringham	Financial Services Authority (SUP)	United Kingdom	Addink, Broek
18-04-2012	Kate Higginson	Financial Services Authority (SUP)	United Kingdom	Addink, Broek
19-04-2012	Samantha Ashurst	HM Treasury (MIN)	United Kingdom	Addink, Broek
19-04-2012	Louise Morgan	HM Treasury (MIN)	United Kingdom	Addink, Broek
19-04-2012	Stephen Goadby	Home Office (MIN)	United Kingdom	Addink, Broek
19-04-2012	Birol Mehmet	Home Office (MIN)	United Kingdom	Addink, Broek
19-04-2012	James Mitra	UK-FIU	United Kingdom	Addink, Broek
20-04-2012	Emma Oettinger	Law Society England and Wales	United Kingdom	Addink, Broek
16-05-2012	Felicity Banks	Institute for Chartered Accountants in England and Wales (ICAEW) (SUP)	United Kingdom	Broek
23-04-2012	Bruno Nicoulaud	FIU	France	Deleanu, Unger
23-04-2012	Rodolphe Uguen-Laithier	Ministry of Justice (PPO)	France	Deleanu, Unger
26-04-2012	Henry Matthews	DPP (PPO)	Ireland	Broek, Ferwerda
26-04-2012	Ciaran McNamara	DPP (PPO)	Ireland	Broek, Ferwerda
26-04-2012	David Dowling	Garda Bureau of Fraud Investigation (FIU)	Ireland	Broek, Ferwerda
26-04-2012	Colm Featherstone	Garda Bureau of Fraud Investigation (FIU)	Ireland	Broek, Ferwerda
26-04-2012	Maureen McGrath	Garda Bureau of Fraud Investigation (FIU)	Ireland	Broek, Ferwerda
26-04-2012	Dermot O'Connor	Revenue Commission	Ireland	Broek, Ferwerda
26-04-2012	Brendan Nagle	Central Bank of Ireland (SUP)	Ireland	Broek, Ferwerda
26-04-2012	Shane Martin	Central Bank of Ireland (SUP)	Ireland	Broek, Ferwerda
26-04-2012	Kieran McNamee	Department of Finance	Ireland	Broek, Ferwerda
26-04-2012	Godfrey Craig	Department of Finance	Ireland	Broek, Ferwerda
26-04-2012	Philip Burke	Department of Finance	Ireland	Broek, Ferwerda
26-04-2012	Kevin Condon	Department of Justice and Equality (AMLCU)	Ireland	Broek, Ferwerda
26-04-2012	Anne Farrell	Department of Justice and Equality (Mutual Assistance and Extradition Division)	Ireland	Broek, Ferwerda
26-04-2012	Anne Vaughan	Department of Justice and Equality (Mutual Assistance and Extradition Division)	Ireland	Broek, Ferwerda
26-04-2012	Andrew Munro	Department of Justice and Equality (Criminal Law Reform)	Ireland	Broek, Ferwerda
26-04-2012	Una Murphy	Department of Justice and Equality (Criminal Law Reform)	Ireland	Broek, Ferwerda

02-05-2012	Pit Reckinger	Lawyer	Luxembourg	Deleanu, Ferwerda
02-05-2012	Andre Hoffmann	Lawyer	Luxembourg	Deleanu, Ferwerda
02-05-2012	Jean-Francois Boulot	FIU/PPO	Luxembourg	Deleanu, Ferwerda
02-05-2012	Jeannot Nies	FIU/PPO	Luxembourg	Deleanu, Ferwerda
03-05-2012	Katia Kremer	Ministry of Justice (MIN)	Luxembourg	Deleanu, Ferwerda
07-05-2012	Anita van Dis	PPO	Netherlands	Deleanu

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*Note: Interviews with the Netherlands and Portugal (Trindade Rocha) were of an informal nature and aimed to get a general understanding of AML/CTF policy. All interviews are used as input for the ECOLEF-project, but are not official statements of the represented countries. All the interviews listed above are face-to-face interviews, except the ones where in the column 'interviewed by' it is mentioned that the interview went by phone.*

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## Annex 1.3 PARTICIPANTS

Table A1.3: List of Participants at the Regional ECOLEF workshops

### First Regional Workshop in Vienna, Austria, 1-3 December 2010:

Name	Institution	Country
Elisabeth Ottawa	Ministry of Finance	Austria
Paul Pitnik	Ministry of Finance	Austria
Rudolf Unterkoefer	FIU	Austria
Mayr-Hassler*	FIU	Austria
Hannes Sedlak	FIU	Austria
Joseph Mahr	FIU	Austria
Wolfgang Pekel	Public Prosecutor's Office	Austria
Michael Findeisen*	Ministry of Finance	Germany
Detlef Rasch	FIU	Germany
Zsófia Papp	Ministry for National Economy	Hungary
Arpad Szentes	FIU	Hungary
Lajos Korona*	Public Prosecutor's Office	Hungary
Dorota Krasnińska	FIU/ Ministry of Finance	Poland
Izabela Jakubowska	FIU/ Ministry of Finance	Poland
Jacek Lazarowicz*	Public Prosecutor's Office	Poland
Andrej Plaustejner	FIU/ Ministry of Finance	Slovenia
Brigitte Unger	ECOLEF, Utrecht University	Austria
John Walker	ECOLEF	Australia
Joras Ferwerda	ECOLEF, Utrecht University	The Netherlands
Ioana Deleanu	ECOLEF, Utrecht University	Romania
Melissa van den Broek	ECOLEF, Utrecht University	The Netherlands

\* Cancelled at the last moment

### Second Regional Workshop in Tallinn, Estonia, 24-26 May 2011:

Name	Institution	Country
Michaela Hladká	Ministry of Finance / FIU	Czech Republic
Michaela Kolarova	Ministry of Finance / FIU	Czech Republic
Piret Paukštys	Public Prosecutors' Office	Estonia
Tia Olveti	FIU	Estonia
Sören Meius	Ministry of Finance	Estonia
Linda Lelumees	Ministry of Finance	Estonia
Kadri Siibak	Ministry of Finance	Estonia
Mati Omblar	Police and Border Guard Board	Estonia
Kaari Tehver	Police and Border Guard Board	Estonia
Viesturs Burkans	FIU	Latvia
Elga Jonikanen	Public Prosecutors' Office	Latvia
Rikard Henriksson	FIU	Sweden
Marie-Louise Staehelin	FIU / Prosecution	Denmark
Mika Broms	FIU	Finland
Vilius Peckaitis	Ministry of Interior / FIU	Lithuania
Ugnius Vyčinas	Public Prosecutors' Office	Lithuania
Brigitte Unger	ECOLEF, Utrecht University	Austria
John Walker	ECOLEF	Australia
Henk Addink	ECOLEF, Utrecht University	The Netherlands
Joras Ferwerda	ECOLEF, Utrecht University	The Netherlands
Ioana Deleanu	ECOLEF, Utrecht University	Romania

Melissa van den Broek

ECOLEF, Utrecht University

The Netherlands

### Third Regional Workshop in Vienna, Austria, 30 November – 2 December 2011:

Name	Institution	Country
Petar Todorov	FIU	Bulgaria
Vania Nestorova	Public Prosecutor's Office	Bulgaria
Michael Iacovos	FIU	Cyprus
Maria Stantzou	Ministry of Finance	Greece
Maria-Cristina Loi	Ministry of Finance	Greece
Stella Lambropoulou	FIU	Greece
Katia Bucaioni	FIU	Italy
Manfred Galdes	FIU	Malta
Michael Stellini	FIU	Malta
Jason Grima	Public Prosecutor's Office	Malta
Luís Barbosa	FIU	Portugal
Antonieta Borges	Public Prosecutor's Office	Portugal
Adriana Ion	FIU	Romania
Marius Bogdan Balucea	Public Prosecutor's Office	Romania
Rene Baran	Ministry of Interior	Slovakia
Elena Lorente	Public Prosecutor's Office	Spain
Pilar Cruz-Guzmán	FIU	Spain
Brigitte Unger	ECOLEF, Utrecht University	Austria
John Walker	ECOLEF	Australia
Joras Ferwerda	ECOLEF, Utrecht University	The Netherlands
Ioana Deleanu	ECOLEF, Utrecht University	Romania
Melissa van den Broek	ECOLEF, Utrecht University	The Netherlands

### Fourth Regional Workshop in Utrecht, The Netherlands, 9-11 May 2012:

Name	Institution	Country
Olivier Coene	Public Prosecutor's Office	Belgium
Maureen McGrath	FIU	Ireland
Ciaran McNamara	Public Prosecutor's Office	Ireland
Jean-Francois Boulot	FIU	Luxembourg
Carlos Zeyen	Eurojust	Luxembourg
Jean-Luc Kamphaus	Ministry of Finance	Luxembourg
Desiree de Vrugt	Ministry of Security & Justice	The Netherlands
Saskia Dirkzwager	Ministry of Finance	The Netherlands
Samantha Ashurst	HM Treasury	United Kingdom
Ami Chandarana	HM Treasury	United Kingdom
Phil Atkinson	FIU	United Kingdom
Henk Addink	ECOLEF, Utrecht University	The Netherlands
Brigitte Unger	ECOLEF, Utrecht University	Austria
John Walker	ECOLEF, University of Wollongong	Australia
Joras Ferwerda	ECOLEF, Utrecht University	The Netherlands
Ioana Deleanu	ECOLEF, Utrecht University	Romania
Melissa van den Broek	ECOLEF, Utrecht University	The Netherlands

## Annex 2.1 CLASSIFICATION OF THREAT VARIABLES

**Table A2.1: Classification of threat variables**

	Threat Variable	Drugs	White collar	Other blue collar	Bribery	Terrorism
<b>Economic factors</b>	GDP per Capita	X	X	X		X
	Stable economy		X			
	Developed trade in services	X	X		X	
	Developed financial sector		X			
	Population	X				
	Economic globalisation	X	X			X
<b>Government conditions</b>	Corruption	X			X	
	Government attitude	X	X	X	X	X
<b>Law enforcement and legal environment</b>	EMU member	X	X			X
	Rule of law	X	X	X	X	X
	Bearer security		X			
	Banking secrecy	X	X			X
	Exchange rate controls	X	X			X
<b>Social or technological change</b>	Social globalisation	X		X	X	X
<b>Criminal environment</b>	Drugs	X				
	Organised crime hub	X				X
	Global peace index	X	X		X	
	Theft			X		
	Terrorism					X
<b>Special skills or access</b>	Postal services	X		X		X
	Large borders					
	Number of large companies	X	X			
	History and culture			X	X	X
	Offshore centre	X	X			X
	Use of cash	X		X	X	X
	Electronic banking			X		X
	Gambling/Casinos			X		
	Prevalence of specific sectors	X				
	Prepaid or gift cards					
	Number of banks	X	X			
	Geographical distance	X				
	Language					
	Political globalization				X	
	Hawalla	X	X			X



## Annex 2.2 DESCRIPTION, SOURCES AND SIGNS OF THREAT VARIABLES

Threat Variable:	Sign	Weight	Comment on the variable	Source in Literature:
GDP per capita <i>Data Source: Eurostat</i>	+	0.8	Flows of financial and tangible assets are more frequent in rich countries what gives money launderers a better opportunity to hide the illegal proceeds remaining undetected.	(Walker, Unger, 2009)
Corruption <i>Data Source: Transparency international</i>	+	0.4	Centralized/monopolistic corruption regime increases the certainty of a successful money laundering operation through public officials	(Campos and Lien, 1999)
Large Borders <i>Data Source: Google Maps</i>	+	0.2	The larger the borders are the harder it is for the particular country to prevent criminals to smuggle money in to the state.	(Walker, Unger, 2009)
Developed Financial sector <i>Data Source: UNCTAD</i>	+	0.2	Large financial centers tend to provide money lauders with a wider spectrum of ways to laundry the illicit proceeds what increases the chances of not being caught.	(Walker, Unger, 2009)
History and Culture <i>Data Source: CIA World Factbook</i>	+	0.6	Countries which share their culture with the rest of the world mostly tend to attract money laundering, as sharing the same culture decreases the "distance" between the nations.	(Walker, Unger, 2009)
Banking secrecy <i>Data Source: www.financialsecrecyindex.com</i>	+	0.6	Banks with high secrecy levels protect the identity of their clients and by that attract criminal organizations.	(A. P. Logan, 2005) and (Blum et al, 1998)
Government Attitude <i>Data Source: World Bank Development Database</i>	-	1	National government that has a benevolent attitude towards ML. will certainly be more vulnerable than a country whose government actively fights ML.	(Walker, Unger, 2009)
Global Peace Index <i>Data Source: www.visionofhumanity.org</i>	+	0.6	Lauderers prefer to invest money in countries with low conflict levels to lower the chance of loosing their laundered proceeds.	(Walker, Unger, 2009)

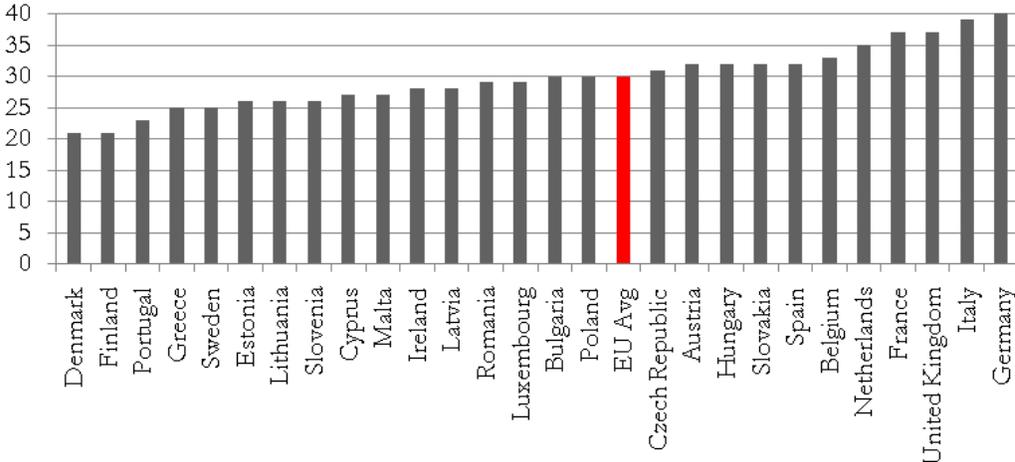
Tax haven/Offshore centre <i>Data Source: INCB - Money Laundering and Financial Crimes</i>	+	0.6	The presence of the offshore centers gives a leeway for criminals to launder the money through the financial system. While poor tax havens, lacking the credible reputation, will deliberately try to attract illicit proceeds to maintain their competitiveness.	(Schwarz,2010) and (Komisar,2003)
Stable economies & low risk <i>Data Source: Eurostat</i>	+	0.2	Financially stable countries reduce the risk for money launderers of losing the laundered proceeds.	(Walker, Unger,2009)
Rule of law <i>Data Source: The World Justice Project</i>	-	1	A well functioning legal system is important in explaining a countries' propensity to adopt more rigid regulation standards in money laundering.	(Schwarz,2010)
Terrorism <i>Data Source: Global Terrorism Database</i>	+	0.2	The presence of Terrorist organizations in the Country will certainly increase its threat towards Terrorism Financing.	(Gurule, 2008)
Drugs <i>Data Source: UN Treaty Survey of Crime and Justice</i>	+	0.2	A country where drug crime is very developed will certainly be more vulnerable towards ML since the drug dealers and smugglers need to legalize their proceeds.	(Schwarz,2010)
Organized Crime Hub <i>Data Source: OCTA</i>	+	0.4	According to OCTA, should a country be identified as a OCH the more vulnerable the country will be towards ML.	(OCTA, 2009)
Cash as main medium for transactions <i>Data Source: European Central Bank</i>	+	0.8	The more frequently cash operations take place in the economy the easier it will be for the offenders who mainly deal with cash to launder the illegal proceeds.	(Reuter & Truman,2004)
Electronic banking <i>Data Source: Eurostat</i>	+	0.4	Developed internet banking systems can be used to sell and buy assets more frequently without face to face contact, thus keeping the identity of the launderer anonymous.	(A. P. Logan,2005)
Gambling/Casinos <i>Data Source: Eurostat member Associations &amp; European Commission</i>	+	0.2	Casinos operate on heavily cash-based revenues. Criminals can use the illegally obtained proceeds to buy chips in the casino, pay a few games and cash out the remaining chips.	(Logan,2005)

Bearer security <i>Data Source: Sejifo dice &amp; OECD</i>	+	0.2	Bearer securities do not include owner names when issued and for ownership transfer only physical transfer of the security is required, thus giving the holder unanimity and flexibility in disposal of the security. Country which allows for bearer shares will certainly be more vulnerable towards ML.	(Levi & Reuter, 2006)
Population <i>Data Source: Eurostat</i>	+	0.2	Large population creates opportunity to distribute the illicit proceeds between the citizens without reaching the security threshold of 10000 EU.	(Andelman, 1994)
Prevalence of specific sectors attractive for laundering (real estate, diamonds, gold...) <i>Data Source: European Central Bank</i>	+	0.2	Recently money laundering has shifted to non financial sectors, like real estate, as they are less regulated against money laundering. Thus countries with large real estate sector will attract money laundering.	(Logan, 2005)
Developed trade in services <i>Data Source: Eurostat</i>	+	0.6	Countries with developed service sector are vulnerable towards ML. as purchased services are intangible assets and are difficult to track down.	(Blum et al., 1998)
Number and size of companies in the country <i>Data Source: Financial Times</i>	+	0.4	Enterprises are used for layering the illicit proceeds, thus the higher the number of enterprises the lower the risk of being detected.	(Schneider, 2008)
Economic Globalization <i>Data Source: Prof. Dr. Axel Dreher</i>	+	0.6	The higher the degree of economic globalization, in respect that the flow of assets is high, the harder it is for a particular country to filter the flow of illicit proceeds.	(Wechsler, 2001)
EMU member <i>Data Source: European Commission</i>	+	0.6	Laundering the illegal proceeds coming from one EMU member in another EMU member who shares the same currency makes it easier to hide the proceeds due to avoidance of the exchange controls.	(Blum et al., 1998)
Exchange controls <i>Data Source: No data</i>	-	0.6	The proceeds which are used for the criminal activities are sometimes sent abroad to offshore banks or criminal organizations. With tight exchange controls money could not easily be converted to foreign currency and transferred abroad.	(Blum et al., 1998)

Prepaid or gift cards are used as a way of laundering money. <i>Data Source: No data</i>	+	0.2	Prepaid and gift cards are recently used by drug traffickers and blue-collar criminals to launder money as they do not include holder names and are easily disposed.	(Ross, 2007)
Hawala like schemes <i>Data Source: No data</i>	+	0.4	The system can be used to translate modest amounts of cash to any part of the world instantly. It requires minimum amounts of documents to accomplish a transfer thus keeps launders identity unanimous.	(Logan,2005) and (Ballard,2006) and (Jost, 2000)
Number of banks <i>Source:uniquizedLam</i>	+	0.4	Banks are required to file a report of the deposits exceeding 10000 euros or dollars. Higher number of banks gives opportunity for criminals to hide the proceeds in different banks without exceeding the threshold of reporting	(Andelmand, 1994)
Postal services <i>Data Source: Eurostat</i>	+	0.6	Monetary postal services are commonly used by drug traffickers to launder money.	(Moad, 2001)
Geographical distance <i>Source: Walker</i>	-	0.2	Two entities (states) tend to launder more money between each other the closer they are together.	(Walker, Unger, 2009)
Language <i>Data Source: CIA World Fact Book</i>	+	0.6	Countries which share their national language with the rest of the world mostly tend to attract money laundering, as sharing the same language decreases the "distance" between the nations.	(Walker, Unger, 2009)
Theft <i>Data Source: Eurostat</i>	+	0.2	Launders can use the stolen credit cards to launder the illicit proceeds, thus higher level of theft of credit cards gives an opportunity to launder the proceeds.	(Levi, 2006)
Political globalization <i>Data Source: Prof. Dr. Axel Dreher</i>	-	0.2	Political globalization stimulates efficient functioning of the governmental institutions and legislation, what increases the efficiency of fight against crimes(Money Laundering, theft, corruption, etc)	(Hung-En, Chu, 2003)
Social globalization <i>Data Source: Prof. Dr. Axel Dreher</i>	+	0.8	Higher levels of Social globalization create new opportunities/ways of laundering illicit proceeds.	(Albanese,2004)
FATF compliance index <i>Data source: World Bank 2010</i>	-		Officially they are not cross-country comparable because the wealth of the country is taken into account. The assessments are done in different years (this leads to different scores). It measures law in the books and not law in action.	(Fetwerda, 2009)

**Annex 2.3 CALCULATED BRETTL-USOV THREAT SUB-INDICES ACCORDING TO ML OFFENCES**

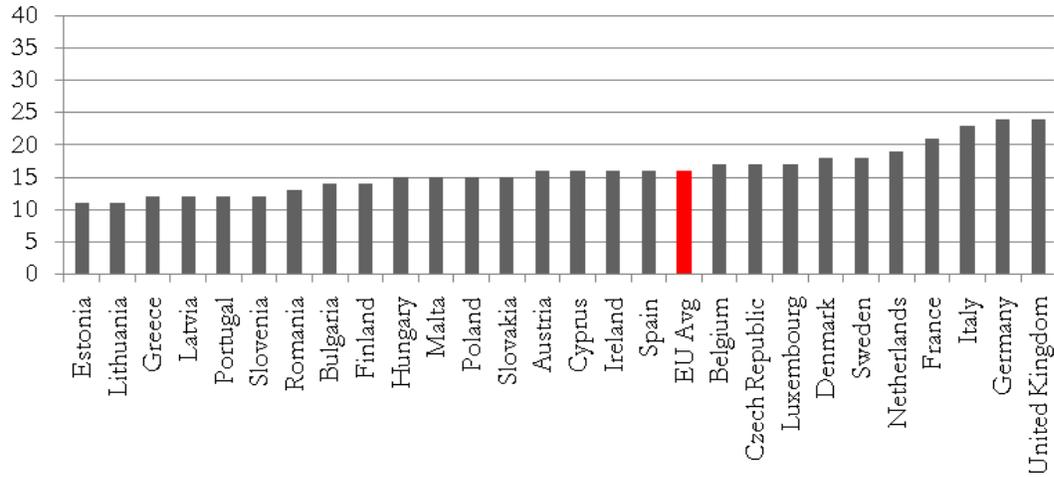
**Figure A.2.3.1: Calculated Brettl-Usov ML threat index for drug crimes**



**Table A.2.3.1: Calculated Brettl-Usov ML threat index for drug crimes**

Country	Threat Index	Country	Threat Index
Denmark	21	Bulgaria	30
Finland	21	Poland	30
Portugal	23	EU Avg	30
Greece	25	Czech Rep	31
Sweden	25	Austria	32
Estonia	26	Hungary	32
Lithuania	26	Slovakia	32
Slovenia	26	Spain	32
Cyprus	27	Belgium	33
Malta	27	Netherlands	35
Ireland	28	France	37
Latvia	28	UK	37
Romania	29	Italy	39
Luxembourg	29	Germany	40

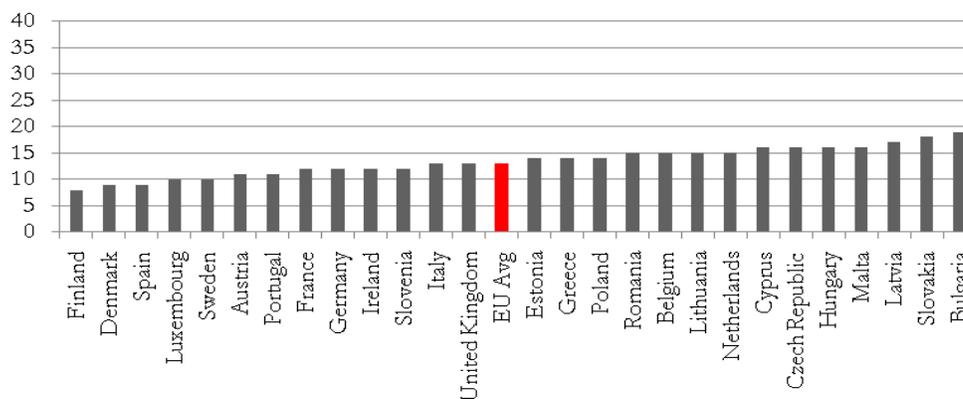
**Figure A.2.3.2: Calculated Brettl-Usov ML threat index for other blue collar crimes**



**Table A.2.3.2: Calculated Brettl-Usov ML threat index for other blue collar crimes**

Country	Threat Index	Country	Threat Index
Estonia	11	Cyprus	16
Lithuania	11	Ireland	16
Greece	12	Spain	16
Latvia	12	EU Avg	16
Portugal	12	Belgium	17
Slovenia	12	Czech Rep	17
Romania	13	Luxembourg	17
Bulgaria	14	Denmark	18
Finland	14	Sweden	18
Hungary	15	Netherlands	19
Malta	15	France	21
Poland	15	Italy	23
Slovakia	15	Germany	24
Austria	16	UK	24

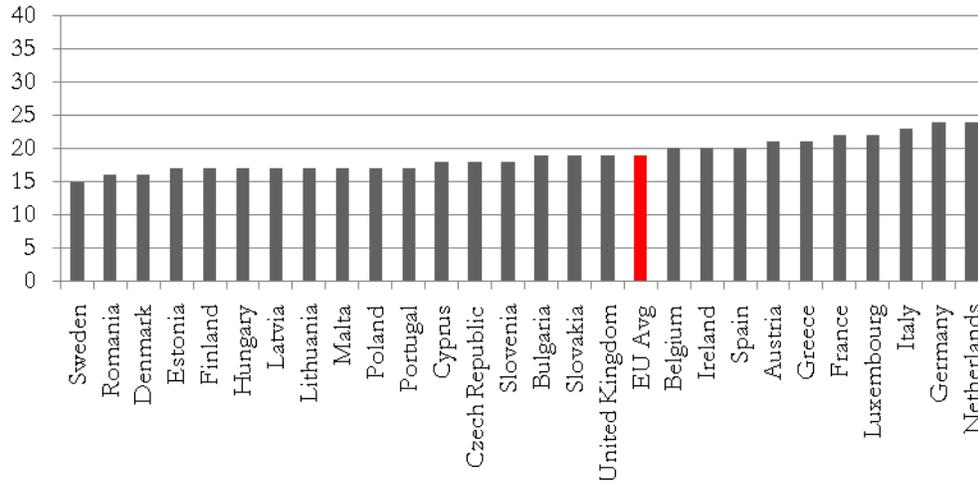
**Figure A.2.3.3: Calculated Brettl-Usov ML threat index for bribery and corruption**



**Table A.2.3.3: Calculated Brettl-Usov ML threat index for bribery and corruption**

Country	Threat Index	Country	Threat Index
Finland	8	Estonia	14
Denmark	9	Greece	14
Spain	9	Poland	14
Luxembourg	10	Romania	15
Sweden	10	Belgium	15
Austria	11	Lithuania	15
Portugal	11	Netherlands	15
France	12	Cyprus	16
Germany	12	Czech Rep	16
Ireland	12	Hungary	16
Slovenia	12	Malta	16
Italy	13	Latvia	17
UK	13	Slovakia	18
EU Avg	13	Bulgaria	19

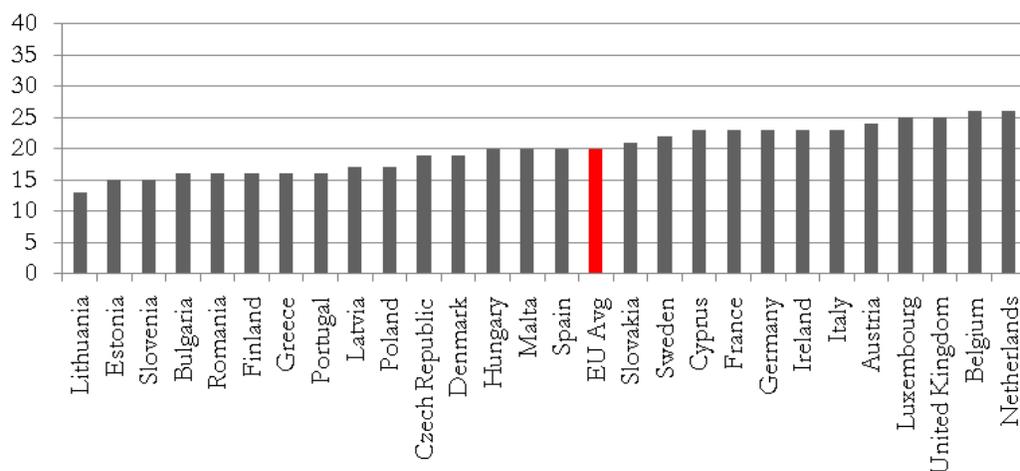
**Figure A.2.3.4: Calculated Brettli-Usov ML threat index for white collar crimes**



**Table A.2.3.4: Calculated Brettli-Usov ML threat index for white collar crimes**

Country	Threat Index	Country	Threat Index
Estonia	11	Cyprus	16
Lithuania	11	Ireland	16
Greece	12	Spain	16
Latvia	12	EU Avg	16
Portugal	12	Belgium	17
Slovenia	12	Czech Rep	17
Romania	13	Luxembourg	17
Bulgaria	14	Denmark	18
Finland	14	Sweden	18
Hungary	15	Netherlands	19
Malta	15	France	21
Poland	15	Italy	23
Slovakia	15	Germany	24
Austria	16	UK	24

**Figure A.2.3.5: Calculated Brettli-Usov ML threat index for terrorism**



**Table A.2.3.5: Calculated Brettli-Usov ML threat index for terrorism**

Country	Threat Index	Country	Threat Index
Lithuania	13	Spain	20
Estonia	15	EU Avg	20
Slovenia	15	Slovakia	21
Bulgaria	16	Sweden	22
Romania	16	Cyprus	23
Finland	16	France	23
Greece	16	Germany	23
Portugal	16	Ireland	23
Latvia	17	Italy	23
Poland	17	Austria	24
Czech Rep	19	Luxembourg	25
Denmark	19	UK	25
Hungary	20	Belgium	26
Malta	20	Netherlands	26

## Annex 2.4 IMF TA RISK MODULES

**Table A.2.4: Preliminary risk modules of the ML threat assessment of the IMF**

<b>Risk event (that might happen) (1) ML or FT activity will be attempted:</b>			
<b>(because of) contributing risk events</b>	<b>(due to) threats (t) or vulnerabilities (v) that increase the likelihood of occurrence</b>	<b>Area(s) to analyse (modules of risk factors)</b>	<b>Further broken down by: (factors, and sub-factors)</b>
(1a) Domestic proceeds being generated or available.	(t) Presence of domestic proceeds.	(A) Amount of domestic proceeds generated or available. <sup>(a)</sup>	Crime type; Cash, financial, and physical assets; Organised and other crime.
	(v) Inadequate suppression of domestic predicate crime.	(B1) LEA (general efforts to suppress crime). <sup>(b)</sup>	Powers, Resources, Effectiveness. <sup>(c)</sup>
(1b) Foreign proceeds entering the jurisdiction.	(t) Presence of foreign proceeds.	(C) Amount of foreign proceeds entering the jurisdiction. <sup>(a)</sup>	Jurisdiction of origin, and same factors as for domestic POC
	(v) Existence of cross-border products, services, assets, and circumstances that can be abused to meet ML's importing and exporting needs.	(D) Cross-border products, services, assets, circumstances. <sup>(d)</sup>	Unique cross-border aspects of all areas to analyse. <sup>(e)</sup>
	(v) Cross-border scrutiny does not suppress cross-border ML activity.	(E) Border security measures and scrutiny, including cooperation.	Currency, Financial transactions, Physical assets, People.
(1c) Abuse of jurisdiction's products, services, assets, or other circumstances for ML activity	(v) Jurisdiction and its institutions providing goods, services, assets, and other circumstances that can be abused to meet the ML's needs.	(F) General jurisdiction environment	Economy, Legal system & rule of law, Business environment & Regulatory quality, Political environment, Culture & integrity, AML/CFT commitment
		(G) Products, services, assets, and circumstances offered <sup>(f)</sup>	Sectors, Institution types, Scale, Customer base, Delivery channels, General mitigants.
(1d) Corruption to facilitate ML occurring	(v) Corruption in LEA, cross-border scrutiny, institutions.	(H1) Corruption <sup>(g)</sup>	

Risk event (that might happen) (2) that, if attempted, the perpetrator(s) of the ML or FT activity will not be caught (because of) contributing risk events	(due to) threats (t) or vulnerabilities (v) that increase the likelihood of occurrence	Area(s) to analyse (modules of risk factors)	Further broken down by: (factors, and sub-factors)	
(2a) if attempted, ML activity not being detected by the authorities	(v) LEAs do not detect ML activity directly.	(v) LEAs only investigate predicate crime (v) LEAs not told of foreign enquires or don't treat as ML leads	(B2) LEA (specific efforts to identify ML) Effectiveness focuses on ML, Domestic cooperation	
	(v) LEAs or other investigating authorities do not receive quality information on ML activity from the FIU	(v) FIU does not receive sufficient quality reports on ML activity from institutions due to: (v) Insufficient reporting. (v) Poor quality, including over-, reporting. (v) Inadequate monitoring of transactions (v) Inadequate information about customers	(I) STR Reporting system	Requirements, Volumes, Quality Sectors, Institution type <sup>(h)</sup>
		(v) Institution incapacity	(J) Transaction & Account Monitoring	Requirements, Effectiveness. <sup>(i)</sup>
		(v) Inadequate supervision of reporting entities	(K) Customer Identification, profiling, ongoing, and enhanced due diligence.	Requirements, Effectiveness
		(v) Inadequate processing of reports by the FIU	(L) Capacity and competence of institutions	Systems & controls, Resources, Guidance received,
		(v) Ineffective processing of reports by the FIU	(M) Supervision	Effectiveness, especially when deficiencies identified.
		(v) Ineffective processing of reports by the FIU	(N) FIU	Effectiveness of analysis, dissemination
(2b) if detected, ML activity not being investigated adequately by the authorities	(v) LEA ineffective at conducting POC/ML investigations	(B3) LEA (specific efforts to suppress ML)	Effectiveness of investigations.	
	(v) LEA POC/ML investigators cannot obtain leads or evidence.	(v) Poor access to or records in reporting entities	(O) Record-keeping & secrecy	Requirements, effectiveness, secrecy.
		(v) Inability to obtain beneficial ownership information	(P) Transparency of ownership <sup>(i)</sup>	Entity and asset types, Register requirements, powers to obtain information.
(v) Inability to obtain information and evidence from foreign jurisdictions	(E2) Cross-border cooperation	Effectiveness of administrative cooperation, MLA <sup>(k)</sup> , and extradition to obtain evidence		
(2c) if investigated,	(v) Perpetrators are	Inability to extradite or		

perpetrators of ML activity not being prosecuted	outside jurisdiction.	prosecute in absentia (v)		and people.
	(v) Prosecutor not pursuing ML charge		(R1) CJS (Prosecution & Judiciary)	Prosecution and convictions, ML & predicate crimes. CJS priorities, constitution, law, & jurisprudence.
	(v) Prosecutor not pursuing any charge			
(v) Inefficient or ineffective CJS or court system				
(2d) if prosecuted, perpetrators of ML activity not being convicted	(v) Ineffective prosecution			
	(v) Incompetent judiciary (v)			
	(v) Inadequate wording of criminal laws.		(R2) CJS (Laws) <sup>(f)</sup>	Adequacy of laws
(2e) Corruption to facilitate ML occurring	(v) Corruption in LEAs, FIU, CJS, institutions and the authorities supervising or monitoring institutions.		(H2) Corruption <sup>(g)</sup>	

Source: Dawe, 2011

<b>Risk event (that might happen) (3) that, once caught, the perpetrator(s) of ML activity are not sanctioned adequately.</b>				
(because of) contributing risk events	(due to) threats (t) or vulnerabilities (v) that increase the likelihood of occurrence	Area(s) to analyse (modules of risk factors)	Further broken down by: (factors, and sub-factors)	
(3a) Convicted perpetrator(s) of ML activity not being punished adequately	(v) Inadequate sanctions	(v) Inadequate prison terms being imposed	(R3) CJS (Laws, Policy, Jurisprudence, Prosecution & Judiciary)	Powers, Sanctions imposed. <sup>(m)</sup>
		(v) Inadequate fines or other sanctions imposed		
	(v) Ineffective system for implementing sanctions	(v) Ineffective prison system	(R4) CJS (Sanctioning)	Length and average of prison terms served.
		(v) Ineffective systems for collecting fines		Amount and average of fines collected
(3b) Convicted perpetrator(s) of ML activity not being deprived of their assets	(v) Inadequate confiscation orders being made		(R5) CJS (Asset confiscation)	Powers, Policy, Sanctions imposed, Effectiveness focus on assets confiscated. <sup>(m)</sup>
	(v) Inadequate recovery of assets	(v) Inadequate resources for asset recovery		
		(v) Inability to recover assets from foreign jurisdictions	(E3) Cross-border cooperation	Effectiveness of administrative cooperation, MLA to recover assets.
		(v) Ineffective use of provisional measures	(B4) LEA – specific aspects of ML	Assets seized or frozen
(3c) Corruption to facilitate ML occurring	(v) Corruption within the authorities		(H3) Corruption <sup>(f)</sup>	
<b>Notes</b>				
(a) This involves identifying all proceeds generating offences even if laundering those proceeds is not a domestic criminal offence. It is unlikely that a figure for proceeds entering the jurisdiction can be estimated accurately. However, the size of this threat for any jurisdiction is a function of the world proceeds (which for most countries is a constant omnipresent threat), the jurisdiction's cross-border vulnerabilities, and the other general issues impacting on domestic ML activity. The actual amount that eventuates, and hence the overall risk, is also a function of the capacity of the jurisdiction to absorb ML activity (i.e., process transactions and store assets that are in the process of being, or that have been, laundered.).				
(b) Emphasis on and success for proceeds generating crimes (i.e., powers, resources, and reported crime clearance rates).				
(c) All modules that look at AML/CFT agencies look at each agency's powers, resources, and effectiveness (output and performance). Thus, the rest of the agency entries in this column list only what the effectiveness aspect focuses on.				
(d) Cross border products and services facilitate the transfer or proceeds from one jurisdiction to another or allow a launderer based in one jurisdiction to control proceeds in another. Domestic criminals who export proceeds may also use them.				
(e) This module analyses and scores factors that differentiate cross-border ML activity from domestic ML activity. General issues relating to the jurisdiction apply to domestic and cross-border ML activity. However, there are some factors that only impact on cross-border ML activity. A higher "score" in this module would reflect a higher chance that the jurisdiction will attract ML activity from other jurisdictions, facilitate the exporting of ML activity from domestic sources, or both, thus increasing the amount of ML activity that occurs in the jurisdiction. The level of actual ML activity that occurs will be constrained by the capacity of the jurisdiction to process and store ML assets. That capacity will also be affected by any actions or limitations on cross-border financial flows. Examples of factors that uniquely facilitate cross-border ML activity include: geographical location, language, trade and cultural ties, ease of currency convertibility, ability of non-residents to operate domestic accounts and residents to operate foreign accounts, treatment of foreign PEPs, whether foreign predicate crimes are recognised as predicates for domestic ML, ability of jurisdiction to carry out international cooperation (e.g., extradition) etc.				
(f) The first prototype of this module mainly identifies the existence of higher risk products and services. Subsequent				

development will broaden the analysis to take account of the potential volume of activity that could be conducted.
(g) Corruption influences all of the ML process, giving launderers the potential to override all controls. It can also be a source of proceeds. For this reason, the existence of corruption is treated as a separate contributing risk event.
(h) Modules that analyse preventive measures imposed on institutions break the analysis down by sector and institution type.
(i) Effectiveness analysis include in relation to feedback and guidelines from the authorities. Effectiveness would also look at technical issues such as whether the institution can monitor transactions across accounts, across its full network, monitor for unique identifiers, monitor using fuzzy logic for identifiers, monitor for cumulative transactions and other patterns etc.
(j) Also relevant for risk events 1c and 2a
(k) Mutual Legal Assistance
(l) Also relevant for and taken into account for the investigation and prosecution stages
(m) For ML and predicate crimes. Sanctions may be less critical than the chance of being caught, and that incarcerating members of criminal groups without confiscating assets may lead to higher levels of organised crime and corruption (See Eide, 2000, and Buscaglia, 2008).

## Annex 4.1 IMPROVEMENTS, UPDATES AND NUANCES TO THE DELOITTE STUDY (PER MS)

**Table A.4.1: Improvements, updates and nuances to the Deloitte Study**

Improvements, updates and nuances to the Deloitte study on the Implementation of the Third Money Laundering Directive (Service Contract ETD/2009/IM/F2/90)	
<b>Austria</b>	No remarks
<b>Belgium</b>	<ul style="list-style-type: none"> <li>• Issue 2 - Broader scope of entities: the inclusion of bailiffs under the scope of the AML/CTF Act is not mentioned as an extension to the scope of entities, while Deloitte does mention so for some other Member States. See Article 3 AML/CTF Act (as amended).</li> <li>• Issue 5 - Cash ban: as stated correctly in the Deloitte study, there is a cash ban in place in Belgium. However, the amount has been reduced to 5.000 EUR in any circumstance. In addition to the cash ban applicable under the Belgian AML/CTF Act, the Belgian Government announced in its action plan against fraud to prohibit the payment of salaries in cash. According to Belgian representatives this can be considered a specific cash ban.</li> </ul>
<b>Bulgaria</b>	<ul style="list-style-type: none"> <li>• Issue 2 - Broader scope of entities: In 2011 the following entities were also brought under the scope of the AML Act: persons that by way of business provide accountancy services and private bailiffs. With respect to persons that by way of business provide accountancy services, it is not certain whether this is to be understood as a broadening of the scope or whether it ensures that Bulgarian legislation includes the group “(…), external accountants (...)”, as listed in article 2(3)(a) of the Third Money Laundering Directive. The text of the AML Act seems to suggest that notaries fall under the scope of the AML Act, notwithstanding the activity they perform. While the Act does refer to the activities-based scope with respect to “persons providing legal advice in the line of business”, this is not done for notaries. (Article 3 of the Bulgarian AML Act, as amended by issue 57/2011)</li> <li>• Issue 5 - Cash ban: In February 2011 the Bulgarian legislator passed the Act on the Limitation of Cash Payments, introducing a cash ban on payments exceeding 15 000 BGN (approximately 7600 EUR). According to Bulgarian representatives, the cash ban does not apply to operations of customers of their bank accounts.</li> </ul>
<b>Cyprus</b>	<ul style="list-style-type: none"> <li>• Issue 2- Definition of money laundering: In the Deloitte study only Hungary is mentioned as having a stricter money laundering definition due to the criminalisation of negligent money laundering. However, in Cyprus negligent money laundering is also criminalised.</li> </ul>
<b>Czech Republic</b>	<ul style="list-style-type: none"> <li>• Issue 2- Definition of money laundering: In the Deloitte study only Hungary is mentioned as having a stricter money laundering definition due to the criminalisation of negligent money laundering. However, in Czech Republic negligent money laundering is also criminalised. See: Article 252 of the Criminal Code.</li> </ul>
<b>Denmark</b>	<ul style="list-style-type: none"> <li>• Issue 16 – Penalties: Danish representatives have indicated that the Danish FSA is obliged since January 2011 to publish all important sanctions or decisions that have been made for non-compliance with the MLA Act (‘naming and shaming’). With this obligation, it falls in the same category as Italy, which was taken in the Deloitte study as an example for publication of sanctions for the most serious infringements only.</li> </ul>

<p><b>Estonia</b></p>	<ul style="list-style-type: none"> <li>• Issue 2 – Definition of money laundering: It is unclear why Estonia is mentioned. The fact that Estonia has an ‘all crimes approach’ may be considered stricter than what is required by the Third Directive. It is, however, unclear why no other Member States have been mentioned in this respect, as it is by now quite common that Member States have an ‘all crimes approach’. Estonian representatives argue that either Estonia should not be mentioned as having a wider money laundering definition, or that other Member States should be mentioned in this respect as well.</li> <li>• Issue 2 – Broader scope of entities: The Estonian AML Act also includes pawnbrokers, and providers of services of alternative means of payment (like e-gold or e-silver). This has not been mentioned in the Deloitte study.</li> <li>• Issue 2 – Enhanced CDD: Estonian representatives have indicated that they do not understand why the country is listed as having stricter enhanced CDD measures, as they have closely followed the provisions of the Third Directive in this respect. Because of the fact that the Deloitte study does not describe why Estonia is listed, representatives are of the opinion that Estonia should not be mentioned here.</li> </ul>
<p><b>Finland</b></p>	<ul style="list-style-type: none"> <li>• Issue 2- Definition of money laundering: In the Deloitte study only Hungary is mentioned as having a stricter money laundering definition due to the criminalisation of negligent money laundering. However, in Finland negligent money laundering is also criminalised. (Chapter 32 contains provisions about negligent receiving (section 5) and negligent money laundering (section 9) Finnish AML Act)</li> <li>• Issue 18 – Supervision: In the list of supervisors of Finland the Deloitte Study does not mention the Government of Åland in respect of gaming operators falling under the regional legislation and the Board of Chartered Public Finance Auditing in respect of chartered public finance auditors (CPFAs) and chartered public finance auditing corporations (CPFA corporations) referred to in the Act on Chartered Public Finance Auditors.</li> </ul>
<p><b>France*</b></p>	<ul style="list-style-type: none"> <li>• Issue 2 - Broader scope of entities: the Deloitte study does not mention bailiffs, judicial auctioneers and court appointed administrators as an extension to the scope of entities.</li> </ul>
<p><b>Germany</b></p>	<ul style="list-style-type: none"> <li>• Issue 2- Definition of money laundering: In the Deloitte study only Hungary is mentioned as having a stricter money laundering definition due to the criminalisation of negligent money laundering. However, in Germany negligent money laundering is also criminalised. See Article 261 (5) German Criminal Code.</li> </ul>
<p><b>Greece</b></p>	<ul style="list-style-type: none"> <li>• Issue 2 - Broader scope of entities: Greece was not mentioned in the Deloitte study as a Member State that had extended the scope of application of its AML/CTF Act to other businesses or professions. However, various extensions can be identified in the Act itself. In the first place, it can be seen that postal companies fall under the scope of the law to the extent they act as intermediaries in funds transfers. Admittedly, in Greece these are brought under the definition of ‘financial institution’, while various other Member States have listed this category separately. Furthermore, the Greek AML/CTF Act seems to have broadened the scope of obliged institutions also to: auction houses and auctioneers, pawnbrokers and - apart from casinos – “other public or private sector enterprises, organisations and other bodies that organise and/or conduct gambling and related agencies and agents”. With respect to tax advisors, auditors, and real estate agents, not only the natural persons are brought under the scope of the Greek AML Act, but also the firms for which they work are explicitly mentioned. (Article 5 of the Greek AML Act (consolidated version))</li> <li>• Issue 5 - Cash ban: Since 1 January 2011 every transaction above 1.500 EUR between natural persons and businesses, or between businesses, is considered illegal if it is done in cash.</li> <li>• Issue 18 – Supervision: The Deloitte study mentions that in Greece trust and company service providers are supervised by the Accounting and Auditing Supervisory Commission. According to the Greek AML Act the Ministry of Development is the responsible AML supervisor for this group.</li> </ul>
<p><b>Hungary</b></p>	<ul style="list-style-type: none"> <li>• Issue 2 – Broader scope of entities: For Hungary the following institutions have not been mentioned as an extension to the scope of the AML Act: postal financial intermediation services, postal money transfer, accepting and delivering domestic and international postal money orders. See article 1(1)(e) Hungarian AML Act.</li> </ul>

Ireland	<ul style="list-style-type: none"> <li>• Issue 18 - supervision: For Ireland the supervisor of real estate agents is not mentioned in the Deloitte study. Real estate agents in Ireland fall under the AML/CTF supervisory responsibility of the Anti-Money Laundering Compliance Unit of the Ministry of Justice and Equality. In practice, this supervision is performed by the Property Service Regulatory Authority.</li> </ul>
Italy	<ul style="list-style-type: none"> <li>• Issue 2 - Broader scope of entities: there have been some legislative amendments which have led to an extension of the application of the AML/CTF Act to subjects in charge of mediation activities (Article 10, paragraph 2, letter e)5-bis of Legislative Decree no. 218/2010 – active collaboration), as well as to operators that offer gambling and betting services, through the Internet and other means of telecommunications, apart from Lotto and lotteries (Article 14, paragraph 1, letter e) and e bis)). By means of Legislative Decree no. 11/2010 the scope of the AML/CTF Act was broadened to include payment institutions and non-bank entities authorised to provide payment services within the EU. Representatives have also stated that the list of financial intermediaries (article 11 of Legislative Decree no. 231/2007) has been updated in the light of amendments of another Legislative Decree with respect to the Banking Act.</li> <li>• Issue 5 - Cash ban: the threshold in Italy was lowered from 5.000 EUR to 2.500 EUR, and more recently it has been lowered (as part of emergency austerity measures taken by Italian government) to the amount to 1,000 EUR. See: Decree Law no. 201 of 6 December 2011.</li> <li>• Issue 8 - Simplified due diligence: The Deloitte study indicated that the grounds ‘other financial institutions’ (article 3(2) Implementing Directive) and ‘other low risk products’ (article 3(3) Implementing Directive) have not been implemented. Representatives stated that this has changed and that, currently, Article 25 provides for an extension to ‘company or other listed body whose financial instruments are eligible to be negotiated in the regulated market’. Article 26 furthermore provides for the possibility to authorise the total or partial simplified due diligence to persons or products representing a low risk of ML/TF through a decree issued by the Minister of Economy and Finance, on the basis of the criteria set forth by the technical annex. Formally, the grounds as such have thus been implemented and should be marked in the table, although the Italian Minister of Economy and Finance has not (yet) issued such decree.</li> <li>• Issue 3 (Part IV) - Reporting issues: Italy should be added to the list of Member States in which legal and/or fiscal service providers are allowed to report through their professional organisations. Pursuant to article 43 of the Italian AML Act, professional organisations may function as receiving authorities when they are listed by the Ministry of Economy and Finance in a decree. Currently, the National Council of Notaries and the National Council of Labour Consultants are listed in the decrees. The Italian FIU has signed a memorandum of understanding with each of the said associations in order to establish the electronic exchange of information on STRs.</li> <li>• Issue 18 – Supervision: The Deloitte study does not mention that in Italy, two law enforcement authorities are also competent in verifying compliance with the preventive measures: the DIA (<i>Direzione Investigativa Antimafia</i>) and the Special Foreign Exchange Unit of the <i>Guardia di Finanza</i>.</li> </ul>

<p><b>Latvia</b></p>	<ul style="list-style-type: none"> <li>• Issue 2- Definition of money laundering: In the Deloitte study only Hungary is mentioned as having a stricter money laundering definition due to the criminalisation of negligent money laundering. However, in Latvia negligent money laundering is also criminalised.</li> <li>• Issue 2 – Broader scope of entities: For Latvia the following extensions have not been mentioned: legal or natural persons involved or acting as intermediary in trading, real estate, transport vehicles and items of cultural heritage and other goods where the payment is made in cash in LAT or another currency in the amount equivalent to or exceeding 15 000 EURO. See article 3(1)(9) Latvian AML Act. Furthermore, the Latvian AML Act stipulates that “in order to prevent the activities related to laundering the proceeds from criminal activity (money laundering) and terrorist financing, the persons not indicated (....), including public institutions, derived public persons and institutions thereof shall also have a duty to comply with the requirements of this Law as to reporting unusual or suspicious transactions. Legal defense mechanisms applied to the persons subject to this Law shall apply to the persons indicated in that Paragraph”. (See: Article 3(4) Latvian AML Act). This last ground basically comes down to an obligation for every Latvian natural or legal person to report suspicions of money laundering and terrorist financing to the FIU and can be considered a considerable extension of scope though, admittedly, this extension only applies to the reporting obligation under the AML/CTF Act.</li> <li>• Issue 16 – Penalties: Latvian representatives have indicated that there is a possibility for criminal sanctions for non-compliance with preventive AML/CTF obligations. Latvian stakeholders have indicated that there is a relevant provision in the Latvian Criminal Code. Article 315 of the Criminal Code is a general provision that criminalises the failing to inform, where it is known with certainty that preparation for or commission of a serious or especially serious crime is taking place. Serious crimes are considered to be crimes with a punishment of five years or more. Aggravated money laundering would fall under this definition. Hence, although not tailor-made for non-reporting of money laundering, and according to Latvian representatives never applied in practice in relation to money laundering, this provision is of relevance. The maximum sentence for this crime is 4 years of imprisonment, custodial arrest, or community service, or a fine not exceeding sixty times the minimum monthly wage.</li> <li>• Issue 17 - Member States review of the effectiveness of their AML systems: Regarding the availability of annual reports of FIUs, Deloitte implies that annual reports of the FIU are not publicly available in Latvia. However, Latvian stakeholders indicated that this is not correct. Until 2006 FIU reports were not publicly available, but since then they are. The reports are, however, only available in Latvian.</li> </ul>
<p><b>Lithuania</b></p>	<ul style="list-style-type: none"> <li>• Issue 2 – Enhanced CDD: Lithuanian representatives have indicated that they do not understand why the country is listed as having stricter enhanced CDD measures, as they have closely followed the provisions of the Third Directive in this respect. Because of the fact that the Deloitte study does not describe why Lithuania is listed, representatives are of the opinion that Lithuania should not be mentioned here.</li> <li>• Issue 12 – Third-party reliance: Lithuania does have a formal list on equivalent third countries.</li> </ul>
<p><b>Luxembourg</b></p>	<ul style="list-style-type: none"> <li>• Issue 18 - supervision: For Luxembourg the supervisor of real estate agents is not mentioned in the Deloitte study. The Land Registration and Estates Department, Luxembourg’s indirect tax authority, supervises real estate agents for the purpose of verifying compliance with AML/CTF obligations.</li> <li>• Issue 12 – Third party reliance: The Luxembourg representatives wish to clarify that although there is currently no official list of equivalent third countries, there is such list available. The Luxembourg financial regulator (Commission du Surveillance du Secteur Financier) controls this list.</li> </ul>
<p><b>Malta</b></p>	<p>No remarks</p>

<p><b>The Netherlands</b></p>	<ul style="list-style-type: none"> <li>• Issue 2- Definition of money laundering: In the Deloitte study only Hungary is mentioned as having a stricter money laundering definition due to the criminalisation of negligent money laundering. However, in the Netherlands negligent money laundering is also criminalised.</li> <li>• Issue 18 - Supervision: For the Netherlands as the Authority of Financial Markets (AFM) is not mentioned as an AML/CTF supervisor, while Dutch legislation stipulates the AFM as the AML/CTF supervisor for investment firms, collective investment schemes and financial service provider insofar this provider acts as broker in respect of life insurances (see Article 1, under a) of Ministerial Decision FM 2008-01794 M on the appointment of supervisors under the Dutch AML/CTF Act).</li> </ul>
<p><b>Poland</b></p>	<ul style="list-style-type: none"> <li>• Issue 2 – Broader scope of entities: For Poland the following extensions have not been mentioned: public postal operators, entrepreneurs engaged in: (...), antique shops and business factoring the National Bank of Poland, and the National Depository for Securities – which is a separate and independent joint stock company, with the State Treasury, as represented by the Minister of the State Treasury, the Warsaw Stock Exchange and the National Bank of Poland each holding 1/3 of shares.</li> <li>• Issue 3 (Part IV) – Reporting issues: In dealing with the case law concerning legal professional privilege, the Deloitte study makes no mention of the ruling of the Polish Constitutional Court. (Trybunał Konstytucyjny, 2 July 2007, Judgment, 72/7/A/2007) In Poland the Bar Association challenged the consistency of the Polish AML Act with the Constitution of Poland. On 2 July 2007 the Constitutional Court declared that lawyers were allowed to refrain from notifying the relevant authorities of suspicious transactions when providing legal assistance to, or determining the legal status of a client.</li> <li>• Issue 18 – Supervision. The Polish AML Act lists a number of institutions that may perform AML supervision as well. The following are not mentioned in the Deloitte study: the President of the National Bank of Poland (in relation to currency exchange operators); the competent heads of custom offices (in relation to operators organizing and exercising games of chance, mutual bets, and operations involving automatic machine games and automatic machine games of low prizes); presidents of appeal courts (in relation to notaries public); the National Savings and Credit Cooperative Union; competent voivods and governors (in relation to associations) and tax audit authorities. The professional associations that the Deloitte study lists are not mentioned as possible AML supervisors.</li> </ul>
<p><b>Portugal</b></p>	<ul style="list-style-type: none"> <li>• Issue 16 - Penalties: In the Deloitte study Portugal is listed in the category of Member States where criminal sanctions apply for non-compliance with preventive AML/CTF obligations. However, the Portuguese AML/CTF Act speaks about administrative offences, whereby the applicable sanctions are fines, temporary prohibitions to exercise the profession, temporary prohibitions to be members of management or auditing boards as well as from holding chief executive, senior management, or management and supervisory posts in legal persons subject to the Portuguese AML/CTF Act, and publicity of the final decision (article 54 and 55 of Portuguese AML Act). Further to that, some provisions deal with disciplinary penalties in relation to lawyers and ‘solicitadores’ (article 58 and 59 AML Act). No mention whatsoever is made to the possibility of applying criminal sanctions in the case of non-compliance with provisions from the AML/CTF Act, or for non-reporting and tipping-off. Portugal should be de-listed in this respect.</li> <li>• Issue 18 – Supervision: The Deloitte study does not mention the Economy and Food Safety Authority (ASEA) as AML supervisor. Pursuant to the Portuguese AML Act, it supervises dealers in goods and functions as a default supervisor for all other DNFBPs that are otherwise not supervised</li> </ul>
<p><b>Romania</b></p>	<p>No remarks</p>
<p><b>Slovakia</b></p>	<ul style="list-style-type: none"> <li>• Issue 2- Definition of money laundering: In the Deloitte study only Hungary is mentioned as having a stricter money laundering definition due to the criminalisation of negligent money laundering. However, in Slovakia negligent money laundering is also criminalised. See: Article 232 of the Criminal Code.</li> </ul>

<p><b>Slovenia</b></p>	<ul style="list-style-type: none"> <li>• Issue 2- Definition of money laundering: In the Deloitte study only Hungary is mentioned as having a stricter money laundering definition due to the criminalisation of negligent money laundering. However, in Slovenia negligent money laundering is also criminalised. See: Article 245(5) Slovenian Criminal Code.</li> <li>• Issue 2 – Broader scope of entities: For Slovenia the following extensions have not been mentioned: postal service providers, organisers regularly offering sport wagers, organisers and concessionaires offering games of chance via the Internet or other telecommunications means, and pawnbroker shops. See Article 4, paragraph 1, sub 4, 13, 14, and 15 of the Slovenian AML Act</li> <li>• Issue 12 – Third-party reliance: In the Deloitte study it is indicated that Slovenia has not implemented the requirements that a third party from a third country is subject to mandatory registration and supervision (Article 16 Third Directive). According to Slovenian representatives, this information is not correct. Although mandatory registration and supervision are not explicitly mentioned in the AML/CFT Act, according to Articles 24-27 of the Act only institutions that are licensed and strongly regulated (listed in Article 25) are allowed as third parties. So the fact that Slovenia has a somewhat different approach in this respect, the conclusion that the requirements are not implemented in Slovenian legislation is not correct.</li> <li>• Issue 16 – Penalties: There are possibilities for the publication of sanctions in Slovenia. Slovenian representatives have stated that information on imposed penalties can be published, but that this should be done without personal data.</li> <li>• Issue 18 – Supervision: The Deloitte study lists the Agency for Public Oversight of Auditing as one of the two supervisors with respect to auditors, while this agency is not mentioned in the Slovenian AML Act. The Slovenian AML Act also includes the Tax Administration of the Republic of Slovenia as a supervisor, while this authority is not mentioned in the Deloitte study.</li> </ul>
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<p><b>Spain</b></p>	<ul style="list-style-type: none"> <li>• Issue 2- Definition of money laundering: In the Deloitte study only Hungary is mentioned as having a stricter money laundering definition due to the criminalisation of negligent money laundering. However, in Spain negligent money laundering is also criminalised.</li> <li>• Issue 5 - Cash transaction reporting: the grounds ‘no threshold for wire transfers’ and ‘no threshold for transactions involving auditors, accountants, tax advisors, lawyers and notaries’ are not grounds for reporting cash transactions, but rather grounds for the application of CDD for occasional transactions. The cash reporting system applies in Spain only to financial institutions and to legal or natural persons engaging in currency exchange activities or the management of money transfers. The thresholds for (automatic) cash reporting for financial institutions are laid down in article 7 of Royal Decree 925/1995, in the absence of a new Royal Decree. Two grounds are listed correctly in the Deloitte study, namely (i) cash transactions exceeding 30.000 EUR or the equivalent in foreign currency, with the exception of those credited or debited to the account of a customer for financial institutions, and (ii) money exchange transactions exceeding 3.000 EUR or the equivalent in foreign currency. The third ground that needs to be added are transactions of or with natural or legal persons resident, or acting for residents, in/from non-equivalent or non-cooperative third countries or territories (‘territorios de riesgo’), as well as transactions entailing the transfer of funds to or from such countries or territories, whatever the country of residence of the parties involved, whenever the amount of such transactions exceeds 30.000 EUR or the equivalent in foreign currency</li> <li>• Issue 9 – PEPs: While domestic PEPs are not in the definition of PEP as such, article 14 of Act 10/2010 also introduces provisions concerning domestic PEPs. Article 14, third paragraph stipulates that when a suspicion of money laundering or terrorist financing arises and a special review is necessary, obliged institutions must take the appropriate measures to assess the possible participation in the act or transaction of any person who holds or has held during the previous two years a representative public office or senior position in the Spanish government, or of their immediate family members, or persons known to be their close associates. This goes somewhat further than the situation in other Member States, where it is often explained that domestic PEPs can be subject to enhanced measures as a result of the risk-based approach. This is not mentioned in the Deloitte study, according to Spanish representatives.</li> <li>• Issue 16 - Penalties: In the Deloitte study Spain is listed in the category of Member States where criminal sanctions apply for non-compliance with preventive AML/CTF obligations. However, the offences for non-compliance with the obligations of that Act are considered administrative offences. Also articles 56-58, which deal with the applicable penalties for the different categories of offences, show that the sanctions applicable are administrative in nature. Article 62, third paragraph, says that if during the administrative punitive proceedings it appears that facts may constitute a criminal offence, the circumstances shall be report to the Public Prosecutor's Office, requesting evidence of the actions taken to this effect and shall agree to suspension of the proceedings until the notice described under the first subparagraph of the next paragraph is received or until a final verdict is delivered. Non-reporting and breaching the prohibition of disclosure are considered (very) serious offences.</li> </ul>
<p><b>Sweden</b></p>	<ul style="list-style-type: none"> <li>• Issue 2- Definition of money laundering: In the Deloitte study only Hungary is mentioned as having a stricter money laundering definition due to the criminalisation of negligent money laundering. However, in Sweden negligent money laundering is also criminalised.</li> </ul>
<p><b>United Kingdom</b></p>	<p>No remarks</p>

## Annex 4.2 FULL TABLE ON AML/CTF REPORTING SYSTEMS IN THE EU

Table A.4.2: Full table on AML/CTF reporting systems in the EU

	Type of report	Substantive threshold for reporting: level of knowledge	Time of reporting	Objective threshold for reporting	Definition of a transaction	Attempted transactions to be reported?	Data collection	Additional information
	STR	Knowledge (insurance brokers only), suspicion or reasonable grounds to suspect.	Immediately or promptly	n.a.			One STR may contain several individual transactions	
AT	(C)TR	n.a.	Immediately (Article 41(1a) Banking Act)	Only for credit institutions: * the requests are submitted after 30 June 2002; * the customer's identity has not yet been ascertained for the savings deposit (i.e. savings accounts opened before 2002); * the payment is from a savings account which shows a balance of at least 1.000 EUR. (Article 41(1a) Banking Act)	No definition in AML legislation	Yes, but different expressions used in the different Acts	One (C)TR contains one transaction	

<b>BE</b>	STR	Knowledge or suspicion , reasonable grounds to suspect	Before transaction takes places, or immediately thereafter	Only for casinos: Purchase of chips amount to 10.000 EUR or more; or 2.500 EUR (when foreign currency)	No definition in AML Act	Yes	One STR may contain several individual transactions	
	STR	Suspicion (Article 11(1) AML Act)	Before transaction takes places, or immediately thereafter (Article 11(1) and 11(2) AML Act)	n.a.		Yes	One STR may contain several individual transactions	
<b>BG</b>	CTR	n.a.	On a monthly basis not later than the 15th day of the month following the month of the information supplied (Article 16 RILMML)	30.000 BGN (approx. 15.000 EUR) (cash transactions) (Article 11a(1) AML Act)	No definition in AML Act	n.a.	One CTR contains one individual transaction	
<b>CY</b>	SAR	Knowledge and suspicion("proves this fact or creates such a suspicion" - Article 69 AML Act)	Before transaction takes place, or immediately thereafter (Article 70 AML Act)	n.a.	No definition in AML Act	Yes (Article 69 AML Act)	One SAR may contain several individual transactions	* The information should come to the attention in the course of that person's trade, profession, business or employment. * Two reporting bases with different legal regimes: Article 27 and Article 69.

<b>CZ</b>	STR	Suspicion (Article 6 and 18 AML Act)	Without undue delay, but no later than 5 days after the transaction (Article 18 AML Act)	n.a.	Any interaction of the obliged entity with another person should such interaction lead to handling of the other person's property or providing services to such other person	Yes	One STR may contain several individual transactions	Legislation lists transactions that are in any case considered to be suspicious (Article 6 AML Act)	
<b>DK</b>	STR	Suspicion (but only reporting in case of suspicion of a criminal offence punishable by 1 year or more)	Immediately (Article 7(1) AML Act)	n.a.	No definition in AML Act	Yes, indirectly	One STR may contain several individual transactions		
<b>EE</b>	STR	Knowledge, suspicion or reasonable grounds to suspect (Article 32 AML Act)	Immediately, but no later than two working days after the transaction (Article 32 (1) AML Act)	n.a.	No definition in AML Act	Yes (Article 32(2) in conjunction with Article 27(6)(1-2) AML Act)	One STR may contain several individual transactions		The obligation to disclose CTR does not apply to credit institutions except in the case of currency exchange transactions exceeding the amount stipulated with persons with whom the institution does not have a business relationship.
	CTR	n.a.	No time frame indicated in AML Act (Article 32(3) AML Act)	32 000 EUR (cash transactions)		n.a.	One CTR contains one transaction	CTR is not mentioned as a different type of report in Estonian AML/CTF legislation. In its annual reports, the Estonian FIU makes a distinction between STRs and CTRs.	



				561-15, V MFC)					
<b>DE</b>	STR	Knowledge ("having established facts which permit the conclusion")	Immediately(Article 11(1) AML Act)	n.a.	Any act aimed at or resulting in a transfer of money or a similar movement of assets	Yes(Article 11(1) AML Act)	One STR may contain several individual transactions		
<b>EL</b>	STR	Knowledge, suspicion, reasonable grounds	Promptly. However in case of high-risk transactions, the FIU must be notified before the performance of the transactions or simultaneously. (Art.26/27 AML Act)	n.a.	No definition in AML Act	Yes(Article 26 AML Act)	One STR may contain several individual transactions		

<b>HU</b>	STR	Suspicion, reasonable grounds to suspect	Without delay(Article 23(2) AML Act)	n.a.	No definition in AML Act; but in practice every fact or circumstance that may give rise to a suspicion of money laundering or terrorist financing	No	One STR may contain several individual transactions		
<b>IE</b>	STR	Knowledge, suspicion, reasonable grounds(Article 42(1) AML Act)	"As soon as practicable after acquiring that knowledge or forming that suspicion" (Article 42(2) AML Act)	n.a.	No general definition. There are specific definitions of transactions for professional and legal service providers, casinos and private members' clubs (Article 24 AML Act)	Yes(Article 7(2) AML Act in conjunction with Article 42 AML Act)	One STR may contain several transactions		
<b>IT</b>	STR	Knowledge, suspicion, reasonable grounds to suspect(Article 41(1) AML Decree)	Where possible before transaction, otherwise without delay(Article 41(4-5) AML Decree)	n.a.	The transmission or movement of means of payment; for (legal and fiscal service providers), it shall mean a specified or specifiable activity directed towards an objective of a financial or	Yes(Article 41(1) AML Decree)	One STR may contain several transactions		

					patrimonial nature modifying the existing legal situation, to be carried out by way of a professional service(Article 1(2)(l) AML Decree)				
	UTR	n.a.	In principle before the transaction, otherwise without delay (Article 30 and 32 AML Act)	Depends on each category of obliged entities (CoM Regulation No. 1071 )		n.a.	One UTR may contain several individual transactions	UTRs are partially CTRs and based on different thresholds (CoM Regulation No. 1071)	
<b>LV</b>	STR	Suspicion		n.a.	No definition in AML Act	Yes	One STR may contain several individual transactions		
	STR	Suspicion and Unusual	Transactions must be suspended and a notification must be made to the FIU no later than within 3 working hours, irrespective of the amount involved	n.a.	AML Act speaks about 'monetary operations and transactions', but no definition in AML Act.	Yes	One STR may contain several individual transactions		

<b>LT</b>	CTR	n.a.	Immediately and not later than within seven working days following its completion(Article 17 AML Act)	15.000 EUR (cash transactions)		n.a.	One CTR contains one transaction		
<b>LU</b>	STR	Knowledge, suspicion, or reasonable grounds to suspect(Article 5(1)(a) AML Act)	Prior to the transaction; otherwise without delay(Article 17 AML Act)	n.a.	No definition in AML Act	Yes(Article 5(1)(a) AML Act)	One STR may contain several individual transactions		
<b>MT</b>	STR	Knowledge, suspicion or reasonable grounds to suspect(Regulation 15(6) )	As soon as is reasonably practicable, but not later than five working days from when the suspicion first arose(Regulation 15(6) )	n.a.	No definition in AML Act	Yes(Regulation 15(6) )	One STR may contain several individual transactions		
<b>NL</b>	UTR	Unusual	Within 14 days of establishing the unusual nature of the transaction(Article 16(1) AML Act)	Depends on each category of obliged entities(Annex to Implementing Decree of Dutch AML Act)	Operation or combination of operations by or on behalf of a customer in connection with the procurement or provision of services	Yes	One UTR may contain several individual transactions	UTRs are forwarded to the FIU. The FIU actually decides whether a reported transaction is suspicious. There is a separate database for UTRs and STRs.	The definition of transaction was dealt with by the Administrative High Court for Trade and Industry (CBB 23 november 2009, nr. A WB 08/288, LJN BK 4209)
	STR	Suspicion, reasonable grounds to suspect	Immediately	n.a.	The performing – on someone’s own or on someone else’s behalf, on	Yes	One STR contains one transaction	The distinction between STR and SAR reporting is not made in the AML Act as such	

					someone's own or someone else's account: a) deposits and withdrawals (...) b) buying and selling foreign currency, c) transfer of the ownership or asset values, (...) d) a claim for shares a claim for stock swap				
	SAR						One SAR may contain several individual transactions		
PL	CTR	n.a.	Within 14 days after the end of each calendar month (Article 12(2) AML Act)	15.000 EUR (all transactions)		n.a.	One CTR may contain several individual transactions	Some groups of obliged institutions are exempted (e.g. lawyers, real estate agents)	
PT	STR	Knowledge, suspicion or reasonable grounds to suspect (Article 16 AML Act)	Before transaction takes place (Article 16 AML Act), or promptly thereafter (Article 17 AML Act)	In the case of transactions related to a jurisdiction subject to EU counter-measures, the supervisors may determine that transactions exceeding 5.000 EUR or more must be reported (Article 27 AML Act)	No definition in AML Act	Yes (Article 16 AML Act)	One STR may contain several individual transactions	With the 2008 AML Act the reports are sent to the FIU and the Attorney-General of the Portuguese Republic at the same time. Both authorities perform an initial analysis of the submitted reports.	According to the latest information none of the competent supervisors has applied Article 27 AML Act (Annual Report FIU shows no evidence)
	STR	Suspicion (Article 3 AML Act)	Before the transaction or immediately thereafter, but no later than 24 hours	n.a.		Yes (Article 3 AML Act)	One STR may contain several individual transactions		

			after the transaction( Articles 3 and 4 AML Act)						
	CTR	n.a.	Within ten working days from the performing of the transactions subject to the reporting obligation(Article 3(6) AML Act)	15.000 EUR (cash transactions)(Article 3(6) AML Act)	No definition in AML Act	n.a.	One CTR is one transaction		
RO	ETR (external transactions reporting)	n.a.	Within ten working days from the performing of the transactions subject to the reporting obligation(Article 3(7) AML Act)	15.000 EUR (not limited to cash; coming from or going to accounts outside Romania)	No definition in AML Act	n.a.	One ETR is one transaction	External Transactions are defined in Romanian AML legislation as: "external transfers in and from accounts means cross-border transfers, (...), as well as payment and receipt operations carried out between resident and non-resident persons on the Romanian territory"	

<b>SK</b>	UTR	Unusual	Before the transaction takes place (Article 16 AML Act), otherwise without undue delay (Article 17 AML Act)	n.a.	No definition in AML Act	Yes (Article 17 AML Act)	One UTR may contain several individual transactions	EUROSTAT categorised Slovakia's reporting system as an STR system. UTRs are forwarded to the FIU. It is the FIU that decides whether a reported transaction is suspicious.	AML Act lists on a non-exhaustive basis transactions that can be considered unusual (Article 4 AML Act)
<b>SI</b>	STR	Suspicion	Before the transaction takes place, or as soon as is practicable thereafter or immediately when the suspicion raises (Article 38(3) and 38(6) AML Act)	n.a.	Any receipt, handover, exchange, safekeeping, disposal or other handling of monies or other property by a person liable (Article 3(19) AML Act)	Yes (Article 38(4) AML Act)	One STR may contain several individual transactions		
	CTR	n.a.	Immediately after the transaction is completed and not later than within three working days following its completion (Article 38(1) AML Act)	30.000 EUR (cash transactions)		n.a.	One CTR may contain several individual transactions	The reporting obligation concerning cash transactions does not apply to auditing firms, independent auditors, and legal entities and natural persons performing accounting or tax advisory services	

	STR (suspicion reporting)	Knowledge, suspicion, reasonable grounds to suspect	Before the transaction takes place (Article 19 AML Act), otherwise without delay (Article 18(2) AML Act)	n.a.		Yes(Article 18(1) AML Act)	One STR may contain several individual transactions		
ES	CTR (systematic reporting)	n.a.	On a monthly basis(Article 7 of RD 925/1995)	Depends on each category of obliged entities. Financial institutions (30.000 EUR, article 7.2. of Royal Decree 925/1995); money remittance and foreign exchange offices (3.000 EUR).	No definition in AML Act	n.a.	One CTR may contain several individual transactions	Certain categories of institutions and persons covered by the AML Act may be exempted from the obligation to systematically report on transactions.	
SE	STR	Suspicion, reasonable grounds to suspect(Chap.3, Article 1(A) AML Act)	Before the transaction takes place, otherwise without delay(Chap. 3, Article 1(A) AML Act)	n.a.	No definition in AML Act	Yes	One STR may contain several individual transactions		

UK	SAR on the basis of 327-329 POCA 2002	Knowledge, suspicion or reasonable grounds to suspect ( <i>Shah v HSBC</i> [2012] EWHC 1283 (QB.))	Before any action is taken; as appropriate consent is required	n.a.	No definition in AML legislation. In practice, transactions are included in the notion of 'activity'	Yes	One consent SAR may contain a number of activities including a transaction	The consent regime in the UK follows from the reporting possibility pursuant to Articles 327-329 POCA. It is not an obligation, but a voluntary regime. It is not the result of the implementation of the international norms or European Directives.	Approximately 5.5 % of the total number of SARs concerns consent SARs (data year 2011). In terms of workload for the UK-FIU, unlike 'regular' SARs, consent SARs are always analysed by the FIU.
	SAR on the basis of 330 POCA 2002	Knowledge, suspicion or reasonable grounds to suspect	As soon as is practicable after the information or other matter comes to him	n.a.		Yes	One SAR may contain several individual transactions	In the case <i>R v DaSilva</i> the notion of suspicion was clarified. The court required a suspicion "that is more than fanciful" in order for an offence money laundering, or assistance, to be present.	

Legend: n.a. indicates 'not applicable', e.g. in relation to the objective threshold for reporting this means that there is no threshold for reporting established by law

**Annex 4.3 FULL TABLE ON LEGAL PRIVILEGE-EXEMPTIONS IN MS' AML/CTF LEGISLATION**

	Scope of application						Type of privilege		Crime /fraud exception	Special remarks
	Lawyers	Notaries (public)	Auditors	External accountants (chartered accountants)	Tax advisors	Other legal professionals	Procedural exemption	Legal advice exemption		
AT	X	X	X	X	X		X	X	Yes	
BE	X	X	X	X	X		X	X	Yes	
BG	X					X	X	X	No	The Bulgarian law speaks about "persons providing legal advice". Notaries are considered a different category and thus seem to be excluded from the LPP.
CY	X	n.a					X		Yes	The Cypriot law speaks about "privileged information"
CZ	X	X	X	X	X	X	X	X	Yes**	* Licensed executor ** It seems that the fraud-exception does not apply to lawyers and notaries, as it is only incorporated in Article 26 AML Act
DK	X	n.a	X	X	X	X	X	X*	Yes	* Authorised estate agents, and undertakings and persons that otherwise commercially supply the same services as the groups of persons [that have LPP], including tax advisors and external accountants ** In Denmark a broad interpretation of legal advice applies: as all legal advice by lawyers to business clients in general is brought under the scope of the privilege
EE	X	X					X	X	No	
FI	X						X		No	A LPP situation in Finland results not only in an exemption to report; but also to the other obligations: the Act does not apply in these circumstances.
FR	X*	X				n.a**	X	X	Yes***	A LPP situation results not only in an exemption to report, but to an exemption to perform CDD. * <i>Avocats</i> and <i>procureur</i> are both included in this category. ** Because only qualified legal and fiscal service providers are allowed to give legal and/or fiscal advice *** Supposedly only in relation to the legal advice exemption. It is not yet certain whether the crime-fraud exemption also applies in the context of proceedings.
DE	X	X	X	X	X	X	X	X*	Yes***	* Legal advisers who are members of a chamber of lawyers and registered persons as defined in Section 10 of the Legal Services Act, and patent lawyers ** German AML Act speaks about 'legal advice', which goes beyond ascertaining one's legal position *** The crime/fraud exception only applies where

										there legal or fiscal service provider <i>knows</i> that the client is seeking advice for the purpose of ML/TF.
EL	X	X	X	X	X	X*	X	X	Yes	* Audit firms and tax consulting firms
HU	X	X					X*	**	No	A LPP situation under the AML Act results not only in an exemption to report, but also to the other obligations (including CDD). * The text of the Hungarian AML Act only speaks about legal advice in relation to the opening of proceedings, which suggests that legal advice outside the context of proceedings is not covered under legal privilege. ** For notaries, the exemption also applies in relation to non-judicial proceedings.
IE	X*	X	X	X	X		**	X	Yes	Irish law speaks about "relevant professional adviser". * Both solicitors and barristers are categorised under "advocates in this table" ** The procedural exemption cannot be found directly in the text of the AML Act, but it may be that it is interpreted as part of 'ascertaining the legal position' of the client
IT	X	X	X	X	X	X	X	X	No	
LV	X	X	X	X	X	X	X	*	No	A LPP situation under the AML Act also applies to elements of customer due diligence. * The text of the Latvian AML Act only speaks about legal advice in relation to the opening of proceedings, which suggests that legal advice outside the context of proceedings is not covered under legal privilege.
LT	X					X	X	X	No	* Advocates' assistants
LU	X						X	X	No	
MT	X	X	X	X	X	X	X	X	No	
NL	X	X	X*	X*	X	X	X**	X* *	No	* There are discussions in the Netherlands whether the legal privilege exemption applies to auditors and accountants. ** There are discussions whether notices of objection in administrative proceedings should fall under the LP exemption *** The legal advice-exemption is interpreted narrowly and only applies to information that comes to the professional's attention during the first introductory meeting.
PL	X		X		X	X	X**	** *	No	* Legal advisers and foreign lawyers ** The Polish AML Act makes reference to 'proceedings'; not limited to judicial proceedings *** The text of the Polish AML Act only speaks about legal advice in relation to the opening of proceedings, which suggests that legal advice outside the context of proceedings is not covered under legal privilege.
PT	X*						X	X	No	* This category includes advocates and <i>solicitadores</i>
RO	X	X	X	X	X	X	X	X	No	
SK	X	X	X	X	X		X	X*	No	* Legal advice exemption only applies in relation to advocates; for the other professionals it is

										necessary that the advice relates to proceedings
SI	X	X				X*	X	X	No	* Law firms
ES	X						X*	X*	No	* The broader concept of legal professional privilege applies to lawyers with respect to all facts or information which come into their possession <i>by whatever kind of professional activity</i> (legal and extra-legal proceedings, but also in advisory or mediating role); while the legal-privilege exemption in the AML Act only concerns judicial proceedings (excluding administrative proceedings) and advice in the context of establishing the client's legal position. The LPP can be limited; but is laid down in higher-ranked legislation than AML Act (hierarchy of norms).
SE	X	n.a	X	X	X	X	X**	X* **	No****	* Associates at law firms and other independent legal professionals ** There are interpretation discussions as regards the term "judicial proceedings": it is not clear whether administrative proceedings or mediation fall under this definition. Arbitration proceedings are considered to fall under the definition. *** It should solely concern a "legal assessment" mandate. If that is the case information received from both the client and third parties falls under the legal privilege exemption. Financial advice or general legal advice which is not linked to a specific situation is not covered by the exemption. **** There is no provision as such in the AML Act, but in the Explanation to the Act it is stated that legal privilege does not apply in circumstances where the professional knows or has reasons to suspect that the client is seeking advice for the purpose of money laundering or terrorist financing.
UK	X*	X	X* *	X**	X* *	X****	X	X* ** *	Yes	UK law speaks about "professional legal adviser", "relevant professional adviser" and "privileged circumstances". * Both solicitors and barristers are categorised under "advocates" in this table. ** UK law distinguishes legal professional privilege that applies to solicitors, their employees, barristers and in-house lawyers (and notaries) and legal privilege-exemption that also applies to relevant professional advisers such as auditors, accountants and tax advisers. LPP is a wider concept than the legal privilege-exemption *** Junior employees at law firms and in-house solicitors **** The exemption does not apply to information received from third parties. Advice from a lawyer on a purely financial, operational, public relations or strategic business issue is normally not privileged, i.e. if it is not provided in the context of obtaining legal advice on related matters.

## Annex 6.1 DESCRIPTIONS OF AML/CTF SUPERVISORY ARCHITECTURES PER MEMBER STATE

### Austria

In Austria, (AML/CTF) supervision for the financial sector is the responsibility of the Financial Market Authority (FMA).<sup>502</sup> In practice, however, off-site monitoring and on-site supervision on banks is (also) performed by the Austrian National Bank upon the mandate of the FMA.<sup>503</sup> Financial supervision is shared with local district authorities for those insurance intermediaries and domestic financial institutions which are regulated by the Insurance Supervision Act. Casinos and lotteries are supervised by the Federal Ministry of Finance.<sup>504</sup>

The Austrian Bar Association supervises lawyers, while notaries are supervised by the regional Chambers of Civil Law Notaries together with presidents of courts of first-instance and second-instance.<sup>505</sup> The Chamber of Chartered Public Accountants and Tax Consultants supervises chartered public accountants and tax consultants. For other accountancy service providers (not registered), the competent supervisory authority is the Parity Commission for the Accountancy Professions, which is an external body falling under the Ministry of Economy.<sup>506</sup> Finally, real estate agents, dealers and management consultants are supervised by the respective local district authorities who are responsible for the licensing and prudential supervision of activities performed under the Trade Act.<sup>507</sup> There 120 local district authorities.<sup>508</sup>

In Austria it seems that the idea is that where it is possible, AML/CTF supervision is placed with internal supervisors. This is the case for lawyers, notaries and chartered public accountants and tax consultants. For this, reason Austria is placed under the Internal model.

### Belgium

In Belgium, a considerable number of professional associations is involved in the supervision of compliance with AML/CTF obligations: the National Chamber of Notaries, the National Chamber of Bailiffs, the Institute of Auditors, the Institute of Accountants and Tax Advisors, the Bar Association of French and German-speaking Advocates (*l'Ordre des Barreaux francophones et germanophone*) and the Flemish Bar Association all have competences in relation to the preventive AML/CTF policy. The Ministry of Economy functions as the supervisor for real estate agents and dealer in high-value goods and the Ministry of Interior Affairs supervises security companies.<sup>509</sup> The financial and credit institutions are supervised by the financial regulators: the FSMA (*Financial Services and Markets Authority*) and the Belgian Central Bank. The Belgian Gambling Commission supervises casinos.

Belgian representatives have explained that reliance is as much as possible placed with (the supervisory activities of) the professional associations. This coincides with the description of the

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<sup>502</sup> The applicable legal framework in relation to the financial market consists of the following sectoral acts: Financial Market Authority Act (*Finanzmarktaufsichtsbehördengesetz*); Banking Act (*Bankwesengesetz*) with respect to banks; Insurance Supervision Act (*Versicherungsaufsichtsgesetz*) with respect to insurance undertakings and the Securities Supervision Act (*Wertpapieraufsichtsgesetz*) with respect to investment (services) companies.

<sup>503</sup> FATF (2009), Third Mutual Evaluation on Austria, p. 150-151.

<sup>504</sup> Article 19 Gambling Law (*Glücksspielgesetz*) for lotteries and Article 31 Gambling Law for Casinos.

<sup>505</sup> The Federal Ministry of Justice has ultimate authority to supervise the notarial system in Austria.

<sup>506</sup> FATF (2009), Third Mutual Evaluation on Austria, p. 208.

<sup>507</sup> Article 333(1) Trade Act (*Gewerbeordnung*).

<sup>508</sup> FATF (2009), Third Mutual Evaluation on Austria, p. 206.

<sup>509</sup> Article 39 of the Belgian AML/CTF Act 2010.

Internal model. The fact that a considerable number of professional associations acts as a supervisory authority under the AML/CTF Act confirms this categorisation.

### **Bulgaria**

Article 17 of the Bulgarian AML Act stipulates that control of the implementation of this Act is assigned to the Minister of Finance and the Chairperson of the State Agency for National Security, under whose authority the Bulgarian FIU operates.<sup>510</sup> The FIU has directly been given the power to perform on-site inspections in Article 17, paragraph 3, of the Bulgarian AML Act.<sup>511</sup> This shows that the Bulgarian FIU is the authority with end-responsibility for AML/CTF supervision. For the financial and credit institutions listed in Article 3, subs 2 and 3, of the Bulgarian AML Act the financial regulators (i.e. the Financial Supervision Commission, the Bulgarian National Bank and National Revenue Agency) must carry out checks for the implementation of the AML measures within their regular inspections and report to the FIU any infringements identified.<sup>512</sup>

### **Cyprus**

Article 59, first paragraph, of the Cypriot AML/CFT Act designates the Central Bank of Cyprus (CBC), the Authority for the Supervision and Development of Cooperative Societies (ASDCS), the Cyprus Securities and Exchange Commission (CYSEC), and the Insurance Companies Control Service (ICCS) as the supervisory authorities for financial and credit institutions. Other supervisory authorities are the Council of the Institute of Certified Public Accountants of Cyprus (ICPAC) for the professional activities of auditors and external accountants and tax advisors, as well as companies carrying the said activities<sup>513</sup>; the Council of the Cyprus Bar Association with respect to independent legal professionals and the Cypriot FIU for real estate agents and dealers in precious metals and stones. Each of the supervisory authorities is obliged to monitor, assess and supervise the implementation of the preventive measures of the AML/CTF Act and has the power to impose sanctions in case of non-compliance (Article 59(6) AML/CTF Act). In Cyprus, hence, there exists a shared supervisory responsibility between external and internal supervisors, and the FIU.

### **Czech Republic**

Article 35 of the Czech AML/CTF Act lays down that administrative supervision is to be performed by the Czech FIU<sup>514</sup>, as well as by the Czech National Bank in respect of persons subject to its supervision, administrative authorities with powers to supervise the compliance with the legislation regulating lotteries and other similar games and in respect of holders of licences to operate betting games, and the Czech Trade Inspection in respect of dealers in goods with cultural value or used goods.

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<sup>510</sup> Law on the Measures Against Money Laundering, published in the Darjaven Vestnik, issue 85 of 24 July 1998, last amended by version 57 of 2011.

<sup>511</sup> And not indirectly through the State Agency for National Security. Article 17, paragraph 3, refers to 'the bodies of supervision of the *Financial Intelligence Directorate of the State Agency for National Security*'.

<sup>512</sup> Although somewhat outdated: MONEYVAL (2008), *Third Round Assessment Report on Bulgaria*, p. 121-125 and 146-147.

<sup>513</sup> Although the Cypriot AML/CTF Act is silent on the possibility for AML/CTF supervisory authorities to outsource their tasks, ICPAC has outsourced its supervisory functions (quality control function of accountancy firms, including verification with AML/CTF obligations) to the Association of Chartered Certified Accounts of the United Kingdom (ACCA). MONEYVAL has expressed its doubts in this respect: MONEYVAL (2011), *Report on Fourth Assessment Visit on Cyprus*, p. 143.

<sup>514</sup> The text of the AML Act states 'Ministry of Finance', but the Czech FIU is located within the Ministry of Finance and has been assigned the task to actually perform the supervision.

Czech representatives have explained this provision in that the FIU is ultimately responsible for AML/CTF supervision.<sup>515</sup> Notwithstanding the fact that the other administrative supervisory authorities have powers to perform supervision, the FIU has the right to supervise all authorities, except the legal professions. For the lawyer, public notaries, auditors, licensed executors and tax advisors, the FIU can, however, oblige professional associations to perform AML/CTF supervision and let the FIU know the result within the deadline specified by it.<sup>516</sup>

The FIU is also the authority that ultimately imposes administrative sanctions for non-compliance with AML/CTF obligations, except for those professionals supervised by their professional associations.<sup>517</sup> To that effect, where other supervisory authorities perform AML/CTF supervision, they should report to the FIU in case they detect a breach of the preventive obligations and explain why they think a sanction must be imposed. The FIU analyses the case file and decides if, and if so which, sanction should be imposed. From interviews it appeared that the FIU has made arrangements with the Czech National Bank on the matter of AML/CTF supervision and that for the financial institutions subject to CNB's supervision it generally relies on CNB's supervisory activity. It does not seem that Czech legislation or any agreements foresee in joint inspections.<sup>518</sup>

### Denmark

In Denmark AML/CTF supervision is carried out by four supervisory institutions, namely the Danish Financial Services Authority in relation to financial and credit institutions, the Danish Bar and Law Society in relation to lawyers, the Ministry of Justice (*de facto* the police) in respect of casinos and Danish Commerce and Companies Agency regarding all other obliged institutions varying from auditors to real estate agents, and from trust and company service providers to money remitters.<sup>519</sup> The FSA and DCCA are both public authorities acting with operational independence under the responsibility of the Minister for Economic and Business Affairs.<sup>520</sup> The Bar and Law Society is an internal supervisor. Denmark thus has a mixed system with both internal and external supervisors.

### Estonia

Chapter 5 of the Estonian AML/CTF Act deals with the matter of supervision. Article 47, first paragraph, stipulates that the Estonian FIU exercises supervision over the fulfillment of the requirements arising from the AML/CTF Act and legislation adopted on the basis thereof by the obliged institutions persons, *unless otherwise provided*. This means that in Estonia the FIU functions as a 'default' supervisor, a view that has been confirmed in interviews. The FIU is responsible for AML/CTF supervision on auditors, external accountants, trust or company service providers, real estate agents, other legal independent professionals that are not registered with the Estonian Bar Association or Chamber of Notaries. The other supervisory authorities are Financial Supervision Authority, the Estonian Bar Association, and the Ministry of Justice - which delegated its powers to the Chamber of Notaries. Article 47, fifth paragraph, obliges the supervisory authorities to cooperate with each other, which confirms the shared end-responsibility for supervision under the AML/CTF Act. The Police Board - including the FIU, the Estonian FSA and the Estonian Prosecutors' Office have

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<sup>515</sup> Cf. MONEYVAL (2011), *Report on Fourth Assessment Visit on Czech Republic*, p. 131. Interview with Czech FIU.

<sup>516</sup> Article 37(2) Czech AML/CTF Act.

<sup>517</sup> Interview with Czech FIU. See also: MONEYVAL (2011), *Report on Fourth Assessment Visit on Czech Republic*, p. 132.

<sup>518</sup> Cf. MONEYVAL (2011), *Report on Fourth Assessment Visit on Czech Republic*, p. 177.

<sup>519</sup> See articles 32-34a of the Danish Act on Measures to Prevent Money Laundering and Financing of Terrorism.

<sup>520</sup> FATF (2006), *Third Mutual Evaluation on Denmark*, p. 130-133.

signed an agreement that is reported to describe in more detail “*instruments of cooperation in the field AML/CTF supervision and exchange of information*”.<sup>521</sup>

### **Finland**

Chapter 5 of the Finnish AML/CTF Act is concerned with the matter of supervision. Article 31 lays down that compliance with the obligations arising from that Act is supervised by the Finnish Financial Supervisory Authority in respect of credit and financial institutions; the Ministry of Interior in respect of gaming operators and the regional Government of Åland in respect of gaming operators operating under the regional legislation; the Auditing Board of the Central Chamber of Commerce and the Auditing Committees of the Chambers of Commerce in respect of auditors and audit firms that are to be supervised by them under the Auditing Act; the Board of Chartered Public Finance Auditing in respect of chartered public finance auditors and chartered public finance auditing corporations; the Bar Association in respect of lawyers; the State Provincial Office of Southern Finland in relation to pawnshops, money remittance offices and trust and company service providers and last, the State Provincial Office<sup>522</sup> in respect of the financial institutions not supervised by the FSA, real estate agents, tax advisors, businesses or professions performing external accounting functions, independent legal professionals, and dealers in high-value goods when they accept cash payments exceeding 15.000 EUR or more.

Except for the Bar Association all supervisory institutions are public authorities, hence, external supervisors. Because of the formal involvement of the Bar Association, Finland is categorised under the Hybrid model.

### **France**

In France, Article L. 561-36 of the French Financial and Monetary Code establishes that the *Autorité de Control Prudentielle* (ACP) is responsible for ensuring compliance by financial institutions with their AML/CTF obligations, except for investment firms, portfolio management firms, financial advisors and traders which are supervised by the Authority for the Financial Markets (AFM). Article L. 561-36, paragraphs 4-8 and 11, make clear that lawyers, accountants, notaries, and bailiffs are supervised by their respective professional associations.<sup>523</sup> Real estate agents are supervised by the General Directorate for Competition Policy, Consumer Affairs and Fraud Control (DGCRG). Casinos are supervised by the Central Direction of the Judicial Police (DCPJ) and providers of online gaming by ARJEL: *L’Autorité de régulation des jeux en ligne*. Dealers in high-value goods are not supervised in France, because the maximum payment they can receive in cash is 15.000 EUR.<sup>524</sup>

The basic rule in the French supervisory architecture in the AML/CTF policy seems to be that reliance is firstly placed with professionals associations and only where this is not possible, to have supervision performed by an external supervisor. Due to the considerable involvement of professional associations in AML/CTF supervision, France is categorised under the Internal model.

### **Germany**

In Germany, Article 16 of the AML Act deals with the matter of supervision. Due to its federal structure, the AML supervisory architecture is somewhat more complex than in other Member States.

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<sup>521</sup> MONEYVAL (2011), Second Follow Report on Estonia, p.13.

<sup>522</sup> In Finland, State Provincial Offices are regional authorities directed by seven Ministries. See: FATF (2007), *Third Mutual Evaluation on Finland*, p.123.

<sup>523</sup> FATF (2011), Third Mutual Evaluation on France, p. 515-516.

<sup>524</sup> FATF (2011), Third Mutual Evaluation on France, p. 515-516.

The Federal Ministry of Finance supervises the Development Loan Corporation. Virtually all other financial and credit institutions are supervised by the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* - BAFin). BAFin is the German financial regulator. It is an autonomous public-law institution and is subject to the legal and technical oversight of the Federal Ministry of Finance. Lawyers and legal advisers that are member of the Chamber of Lawyers fall under the supervision of the German Federal Bar and the competent bar associations on state (*Länder*) level.<sup>525</sup> Also auditors, chartered accountants, patent lawyers, and tax advisors are supervised by their respective Federal Chambers.<sup>526</sup> Notaries are supervised by the Presidents of the Regional Courts of the region in which the notaries are based.<sup>527</sup> It shows that in Germany as much as possible reliance is placed on existing internal supervisory structures. There is a high level of involvement of internal supervisors.

Article 16 stipulates that “for all others”, supervision is to be performed by the authority responsible under federal or state (Land) law. This is the case for casinos, real estate agents, dealers in (high-value) goods when they accept cash payments exceeding 15.000 EUR or more and trust and company service providers. Where *Länder* legislation applies, each Land is responsible for designating an authority as a competent supervisory authority for verifying compliance with the preventive AML obligations.<sup>528</sup> The type and nature of these supervisory authorities and responsibility for these supervisors varies considerably.<sup>529</sup>

### Greece

Article 6, paragraph 2, of the Greek AML/CTF Act provides supervisory responsibilities for verifying compliance with the preventive AML/CTF obligations to the Bank of Greece, Hellenic Capital Market Commission and Private Insurance Supervisory Committee with respect to the financial and credit institutions. The supervisory authorities for the DNFBP sector described in the AML/CTF Act are the Accounting and Auditing Supervisory Commission, the Ministry of Economy and Finance (General Directorate for Tax Audits), the Gambling Control Commission, the Ministry of Justice and Ministry of Development.<sup>530</sup> The supervisory powers assigned to the GD Tax Audits in the AML/CTF Act are delegated to the local tax authorities.<sup>531</sup> The third paragraph of Article 6 of the AML/CTF Act lays down precisely which tasks and powers the supervisors have. From interviews it became clear that none of these authorities have any kind of professional relationship with their supervisees and can be considered external supervisors. During the regional workshop, Greek representatives agreed with their classification in the External model.

Pursuant to Article 52 of the AML/CTF Act the competent authorities that supervise obliged institutions and persons can, when obliged institutions or persons fail to comply with their obligations under the AML/CTF Act or related legislation or regulatory decisions pursuant to the Act, cumulatively or alternatively, oblige those institutions or persons to take concrete corrective measures within a specific time period or impose an administrative sanction. Article 52(4) of the

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<sup>525</sup> Article 16 AML Act, in conjunction with Articles 60 and 61 of the Federal Statute on Attorneys (BRAO).

<sup>526</sup> Patent lawyers: Article 53 of the Federal Statute on Patent Lawyers (PatAnwO). Auditors and chartered accountants: Article 57 (2) no. 17 of the Federal Statute on Auditors (WiPrO). Tax advisors: Article 76 of the Act on Tax Advising (StBerG).

<sup>527</sup> Article 92(1) of the Federal Statute on Notaries (BNotO).

<sup>528</sup> FATF (2010), *FATF Report on Germany*, p. 230 and further.

<sup>529</sup> FATF (2010), *FATF Report on Germany*, p. 230 and further.

<sup>530</sup> Article 6 of Law 3691/2008 of 5 August 2008, as amended by Law 3875/2010, Law 3932/2011 and Law3994/2011.

<sup>531</sup> Interviews with Greek representatives.

Greek AML/CTF Act stipulates that where an obliged natural person breaches its obligations under the provisions of the AML/CTF Act and the relevant regulatory decisions, “*if disciplinary control is exercised according to the provisions in force by a special disciplinary body*”, the competent authority shall refer the obliged natural person to the said body, transmitting to it all the details of such breach. The disciplinary body, most likely a professional association, consequently imposes a sanction.

### **Hungary**

In Hungary supervisory responsibilities under the AML/CTF Act rests with various authorities. Article 5 of the Hungarian AML/CTF Act lists the supervisory authorities for the purpose of that Act, namely the Hungarian Financial Supervisory Authority, the Magyar Nemzeti Bank (the Hungarian National Bank), the State Tax Authority, the Chamber of Hungarian Auditors, the regional Bar Associations, the regional branches of the Notary Chamber, the Authority of Trade and Commerce, and the Hungarian FIU. These supervisors have the task, pursuant to Article 34, first paragraph, to monitor the compliance of the obliged institutions with the provisions of the Act. Article 34 of the AML/CTF Act also stipulates that all supervisory bodies must carry out their supervisory functions in accordance with other Acts applicable to them. In Hungary, the FIU functions as a ‘default’ supervisor. It supervises real estate agents’, accountants’ and tax advisors’ compliance with the preventive AML/CTF obligations. It derives its powers from the AML/CTF Act.

### **Ireland**

Chapter 8 of the Irish AML/CTF Act deals with the matter of supervision.<sup>532</sup> In Ireland, financial and credit institutions are supervised by the Irish Central Bank.<sup>533</sup> There are no casinos in Ireland. The DNFBP sector is, where possible, supervised by the professional associations: the Law Society of Ireland, the General Council of the Bar of Ireland, or one of the nine professional accountancy bodies<sup>534 535</sup>. In total there are eleven internal supervisors. The Ministry of Justice and Equality, more specifically the Anti-Money Laundering Compliance Unit (AMLCU) is set as the default supervisor for trust and company service providers, dealers in high-value goods when they accept payments in cash above 15.000 EUR, private members’ gaming clubs, as well as tax advisors and accountants that are not a member of a professional accountancy body. Real estate agents (property service providers) *de jure* fall under the supervisory responsibility of the AMLCU, but in practice this supervision is performed by the recently established Property Service Regulatory Authority.<sup>536</sup>

With the high presence of internal supervisors - 11 out of a total of 13 supervisory authorities<sup>537</sup>, Ireland is to be categorised under the Internal model. Authorities, however, reported on developments which may affect Ireland’s categorisation in the future.<sup>538</sup>

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<sup>532</sup> Criminal Justice (Money Laundering and Terrorism Financing) Act 2010.

<sup>533</sup> Article 60(2)(a) Irish AML/CTF Act.

<sup>534</sup> These are: ACCA - Association of Chartered Certified Accountants; AIA - Association of International Accountants; CIMA - Chartered Institute of Management Accountants; CIPFA - Chartered Institute of Public Finance & Accountancy; ICAEW - Institute of Chartered Accountants in England & Wales; ICAI - Institute of Chartered Accountants in Ireland; ICAS - Institute of Chartered Accountants of Scotland; ICPAI - Institute of Certified Public Accountants in Ireland; and IIPA - Institute of Incorporated Public Accountants.

<sup>535</sup> See Article 60(1) of the Irish AML/CTF Act that states: “Subject to *section 61*, a reference in this Part to the competent authority for a designated person is a reference to the competent authority prescribed for the class of designated persons to which the designated person belongs”.

<sup>536</sup> The Property Services Regulatory Authority was officially established on 3 April 2012. See website: <[www.npsra.ie](http://www.npsra.ie)>.

<sup>537</sup> Or 14 if one counts the Property Service Regulatory Authority as well.

## Italy

Italy has a rather complex supervisory architecture and, although categorised under the Hybrid model, is to be considered quite unique within the European Union. Many authorities are involved in verifying compliance with the preventive AML/CTF measures by the obliged institutions and persons including law enforcement authorities. During interviews it was reported that domestic cooperation is one of the spearheads of the Italian AML/CTF policy.<sup>539</sup>

Article 5 of Legislative Decree 231/2007 stipulates that the Italian Ministry of Economy and Finance has (end-) responsibility for AML/CTF supervision.<sup>540</sup> It does not carry out AML/CTF supervision itself, however. The financial sector is supervised by the Bank of Italy, the *Commissione Nazionale per le Società e la Borsa* (Consob) and ISVAP, the *Istituto Superiore di Vigilanza sulle Assicurazioni Private e di Interesse collettivo*.<sup>541</sup> The DNFBP sector is entirely supervised by designated professional associations that, in turn, are supervised by the Ministry of Justice.<sup>542</sup> Casinos are, in principle, supervised by the sectoral supervisory bodies.<sup>543</sup> Interestingly, in the Italian supervisory architecture two law enforcement authorities are also competent in verifying compliance with the preventive measures: the DIA (*Direzione Investigativa Antimafia*) and the Special Foreign Exchange Unit of the *Guardia di Finanza*. The latter has performed inspections on financial intermediaries, bureaux de change, money remitters and loan and financial brokers.<sup>544</sup> It can, without prejudice to AML/CTF supervision performed by professional associations on their members, also supervise bookkeepers, chartered accountants, notaries and lawyers.<sup>545</sup> Article 9(6) of the Legislative Decree establishes the obligation for the financial supervisors, relevant administrative bodies and professional associations to inform the FIU of possible violations of the provisions of this Decree that could be connected with money laundering or terrorist financing found against persons subject to the preventive AML/CTF requirements.

Article 53 of the Legislative Decree states that besides the financial supervisors, the internal supervisors and law enforcement authorities, the FIU is also competent to perform AML/CTF inspections. It can perform controls on the entire scope of institutions and persons under the AML/CTF Act, but its controls are limited to the reporting obligation alone – i.e. the failure to report suspicious transactions. Representatives have explained that supervision by the FIU is aimed, on the one hand, towards the analysis of STRs and towards those obliged institutions from which it learned from other sources that reporting has been omitted, and on the other hand towards verifying compliance with the obligation to report suspicious operations from a primarily preventive standpoint.

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<sup>538</sup> A reform is being prepared with respect to the Legal Services Regulation Act, which will affect the supervisory authorities as well. Currently these are the Law Society (solicitors) and Bar Council (barristers). A new external supervisory body is to be designed. Most likely this body will take over AML/CTF supervision as well, although no definitive decisions have been made yet. See for more information: <<http://www.justice.ie/en/JELR/Pages/PR11000190>> (last visited: 23 July 2012).

<sup>539</sup> Cf. Article 9 Legislative Decree 231/2007 and FATF (2006), *Third Mutual Evaluation on Italy*, p. 64.

<sup>540</sup> Legislative Decree 231/2007 concerning the Implementation of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and of Directive 2006/70/EC laying down implementing measures for Directive 2005/06/EC, published in *Gazzetta Ufficiale* no. 290 of 14 December 2007-Ordinary Supplement no. 268/L.

<sup>541</sup> Article 7 LD 231/2007.

<sup>542</sup> Deloitte (2011), p. 149 ; Article 8 LD 231/2007.

<sup>543</sup> E.g. Ministry of Economy and Finance and Independent Administration of State Monopolies.

<sup>544</sup> FATF (2009), *Follow Up Report on Italy*, p. 13. See Article 53(2) for the authorities for which the *Guardia di Finanza* is primary supervisor.

<sup>545</sup> Article 53(3) LD 231/2007.

## Latvia

In Latvia there are nine supervisory authorities that verify compliance with the preventive AML/CTF obligations.<sup>546</sup> The Latvian AML/CTF Act designates the Financial Capital Market Commission as the supervisor for financial and credit institutions. The Bank of Latvia is the competent supervisory authority for money exchange offices. The Ministry of Transport is the competent for supervising the Latvian Post Company<sup>547</sup>, while the Lotteries and Gambling Supervisory Inspection is so for organisers of lotteries and casinos. The State Inspection for Heritage Protection is involved as a supervisory authority where it concerns transactions with the items included in the list of state protected cultural heritage monuments.

Sworn advocates and notaries, and certified auditors are all supervised by their respective professional associations. There are professional associations for tax advisors in Latvia, but they do not have supervisory responsibilities in the AML/CTF sphere.<sup>548</sup> Rather, tax advisors are supervised by the State Revenue Service which is further set as the default supervisor. Besides tax advisors, State Revenue Service supervises external accountants, independent legal professionals, legal or natural persons trading in real estate, transport vehicles and other articles when they accept 15.000 EUR (or an equivalent thereof) in cash or more; and dealers in precious metals, precious stones and gems and items made from these materials.<sup>549</sup>

Latvia does not entirely fit within the description of the Internal Model, nor with the description of the Hybrid model. Despite the fact that not all professional associations have obtained AML/CTF supervisory powers, due to the presence of internal supervisors for at least three categories of DNFBPs (lawyers, notaries and auditors), Latvia is placed under the Internal Model.

## Lithuania

Pursuant to Article 5(2) of the Lithuanian AML Act, the Lithuanian FIU is assigned supervisory responsibilities for verifying compliance with the preventive AML/CTF obligations. According to Lithuanian representatives, the FIU has in fact overall end-responsibility to do so. Although the FIU has the right to perform supervision on all obliged institutions and persons, it has signed - pursuant to Article 5(6) of the AML Act - memoranda of understanding with all competent state institutions responsible for implementation of the measures of prevention of money laundering and terrorist financing in 2009 and 2010.<sup>550</sup> According to information presented to MONEYVAL, *"[t]he aim of mentioned agreements is to avoid duplication of inspection activities of entities, to ensure cooperation and exchange of available information, the rational use of human and material resources, to provide methodological assistance subject to the verification activities in specific subjects. Both the FCIS and other institutions inform each other about the planned or intended the AML/CFT inspections, as well as their results within the deadlines, and appoint individuals who will organise implementation of the commitments set out in the agreements and communication between the authorities and the FCIS"*.<sup>551</sup> In practice, the Lithuanian FIU supervises those institutions and persons that are not supervised otherwise and performs random inspections at the other institutions and

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<sup>546</sup> Article 46 of Law on the Prevention of Laundering the Proceeds from Criminal Activity (Money Laundering) and of Terrorist Financing stipulates the range of tasks of the supervisory authorities.

<sup>547</sup> During interviews it was reported that in the near future the banking activities of the Latvian Post will be separated from the postal activities; the banking activities will be supervised by the Financial and Capital Market Commission. The Ministry of Transport will consequently disappear as a supervisor under the AML/CTF policy.

<sup>548</sup> For example, the Latvian Tax Consultant Association.

<sup>549</sup> Article 45 Latvian AML/CTF Act; cf. Deloitte (2011), p. 150.

<sup>550</sup> MONEYVAL (2010), Second Follow Up Report on Lithuania, p. 9-10.

<sup>551</sup> MONEYVAL (2010), Second Follow Up Report on Lithuania, p. 10.

persons. Where other supervisory authorities perform AML/CTF supervision, they must forward their reports to the FIU. The FIU can decide to demand corrective action or forward the case to the court. In Lithuania, administrative sanctions are to be imposed and enforced by courts.<sup>552</sup>

### Luxembourg

In Luxembourg, the *Commission de Surveillance du secteur Financier* is the competent authority for the whole financial sector, with the exception of insurance companies. Its supervisory tasks include the prevention of money laundering and terrorist financing. The *Commissariat aux Assurances* is the competent supervisory authority for the insurance sector also with respect to verifying compliance with the AML/CTF obligations. The principle for supervision on DNFBPs in Luxembourg's AML/CTF Act is that where possible, professional associations should perform this supervision. For auditors this is the Institute for Auditors, for lawyers the Bar Association of Luxembourg and Diekirch, for notaries the Chamber of Notaries and for accountants the Association of Chartered Accountants. The default supervisor, which was recently established in Luxembourg, is the Luxembourg Land Registration and Estates Department.<sup>553</sup> Pursuant to the AML Act it supervises real estate agents, accounting professionals who do not meet the professional qualifications of an accountant; professional engaged in tax advising and economic advising; professionals engaged in providing trust and company services and dealers of high-value goods where they receive payments in cash exceeding 15.000 EUR. Casinos are supervised by the Ministry of Justice, in practice by the police. This supervisory architecture fits the description of the Internal model.

### Malta

In Malta, Article 16, first paragraph, sub c) of the AML Act the function of supervision is assigned to the Maltese FIU. It stipulates that the Maltese FIU shall have the function: *"to monitor compliance by subject persons and to cooperate and liaise with supervisory authorities to ensure such compliance"*.<sup>554</sup> Article 26, first paragraph, of the AML Act states that the Maltese FIU is responsible to ensure that subject persons comply with the provisions of this Act and any regulations made there under in so far as these are applicable to them. For this purpose it must cooperate with the supervisory authorities to ensure that the financial and other systems are not used for criminal purposes and thus safeguard their integrity. Regulation 2 of the AML Regulations, drafted pursuant to the AML Act, lists the supervisory authorities.<sup>555</sup>

Maltese representatives have explained that the aforementioned provisions give the FIU three supervisory options: it can decide to carry out all the supervisory visits itself; it can decide to carry out the supervisory visits jointly with the prudential supervisory authority; or it can fully rely on supervisory visits by the prudential supervisory authority, who then act as an agent on behalf of the FIU and report the findings to the FIU (Regulation 26(5)).<sup>556</sup> From interviews held, it appeared that the Maltese FIU intends to keep the burden on supervised institutions as low as possible. Therefore it relies on existing supervisory structures, in particular in the financial sector. The MFSA is the national financial services regulator and *"[a]ll types of financial institutions require a license from the MFSA to*

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<sup>552</sup> Cf. MONEYVAL (2006), Third Mutual Evaluation Report on Lithuania, p. 110.

<sup>553</sup> Article 26 of the Luxembourg AML/CTF Act. Website of the Land Registration and Estates Department: <http://www.aed.public.lu/actualites/2010/11/loi-27-octobre-2010-lutte-contre-blanchiment-contre-financement-terrorisme/index.html>

<sup>554</sup> Prevention of Money Laundering Act as last amended by Act VII of 2010, Cap. 373.

<sup>555</sup> Subsidiary Legislation 373.1, Prevention of Money Laundering and Funding of Terrorism Regulations, Legal Notice 180 of 2008, as amended by Legal Notice 328 of 2009.

<sup>556</sup> Interviews held with representatives in Malta.

conduct their business in Malta and are subject to prudential supervision by the MFSA, in addition to the AML/CTF compliance oversight by the FIAU".<sup>557</sup> Because of the close involvement of MFSA, the Maltese FIU and MFSA discuss their annual supervision plans beforehand. Where MFSA includes AML/CTF supervision in its prudential supervision programme and identifies breaches, it reports on those matters to the Maltese FIU. The FIU reviews the report and decides on the follow-up action to be taken. The MFSA and FIU also perform joint inspections. The joint inspections programme has been developed in the past two years and is still under construction. The aim is to establish a systematic approach to the matter of joint inspections. Besides the MFSA, the FIU also conducts joint inspections with the Lotteries and Gaming Authority.<sup>558</sup>

### The Netherlands

Supervision for compliance with obligations from the Dutch AML/CTF Act is exercised by four supervisory authorities that already had supervisory powers on the basis of other legislation.<sup>559</sup> On the basis of Article 24, first paragraph, of the Dutch AML/CTF Act the Minister of Finance and the Minister of Justice have appointed the following supervisors by means of a general administrative order: the Dutch Central Bank (DNB), the Authority for the Financial Markets (AFM), Bureau Financial Supervision (*Bureau Financieel Toezicht*) and the Dutch Tax and Customs Authority Holland/Midden Unit MOT (*Belastingdienst Holland/Midden, Unit-MOT*).<sup>560</sup> The DNB and AFM are responsible for AML/CTF supervision in the field of financial and credit institutions, casinos and credit card companies; Bureau Financial Supervision supervises lawyers, (junior) public notaries, external accounts, external accounting consultants and tax advisors. The Tax and Customs Authority Unit MOT is the supervisory authority of real-estate agents and traders in high-value goods when they perform cash transactions of 15.000 EUR or more.

In practice, however, professional associations are indirectly involved in the AML/CTF supervision for the legal and fiscal service providers - e.g. those professionals that are formally under the supervision of Bureau Financial Supervision. On the basis of supervisory agreements with BFS, notaries' disciplinary courts and the professional associations of public notaries<sup>561</sup> and accountants perform indirect supervision and enforcement of the AML/CTF obligations.<sup>562</sup> At the time of enactment of the AML/CTF legislation, the Dutch legislator considered that AML/CTF obligations were already embedded in the broader professional standards and that applying an administrative enforcement system to those professionals subject to disciplinary law could possibly lead to a concurrence between administrative and disciplinary enforcement, resulting in that different courts would have to

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<sup>557</sup> MONEYVAL (2012), Report on Fourth Assessment Visit Report on Malta, p.121.

<sup>558</sup> FIAU (2010), *Annual Report on 2010*, Table 8, p. 26.; FIAU (2011), *Annual Report on 2011*, Chart 7, p. 30.

<sup>559</sup> Minister of Finance during deliberations in Parliament, Parliamentary proceedings II, no. 86, 21 May 2008, p. 6084.

<sup>560</sup> Wet ter voorkoming van Witwassen en Financieringen van Terrorisme (AML/CTF Act), Stb. 2008, 303; Besluit aanwijzing toezichthouders Wet ter voorkoming van witwassen en financieringen van terrorisme, Stcrt. 2008 142/19.

<sup>561</sup> The supervisory agreement with the Royal Dutch Notary Society has been terminated, yet the Royal Dutch Notary Society still performs peer reviews in which the obligations of the AML are reviewed. As of 1 January 2013, Bureau Financial Supervision becomes the supervisor on notaries for all professional behaviour of notaries. Thus not only for financial matters and the prevention of money laundering and terrorist financing, but also for quality and integrity matters. On 8 October 2012, BFS and the Royal Dutch Notary Society have signed a new supervisory agreement. This document contains, among others, agreements on the exchange of information that both authorities have obtained during the exercise of their respective supervisory and audit functions.

<sup>562</sup> Cf. FATF (2011), *Third Mutual Evaluation on the Netherlands*, p. 245-246. In the past, BFS indeed concluded a supervisory agreement with the Dutch Bar Association. This agreement was terminated due to the impression on the side of BFS that the audits performed by the Bar Association did not contain a sufficient investigation into the compliance with AML/CTF legislation.

adjudicate on the same matter.<sup>563</sup> The formal supervisory authority of legal and fiscal service providers, the Bureau Financial Supervision, is of the opinion that the internal supervisors should in principle be the first gatekeeper.<sup>564</sup> The Dutch legislator, however, has recently brought forward a new legislative proposal that aims to amend the provisions and to diminish the role of indirect enforcement through disciplinary law in the field of the prevention of money laundering and terrorist financing.<sup>565</sup>

## Poland

Article 21, first paragraph, of the Polish AML Act states that the supervision of compliance with the preventive AML/CTF measures by obliged institutions and persons must be exercised by the Polish FIU.<sup>566</sup> This supervision can be carried out by the staff of the FIU, whom are called ‘inspectors’. However, the third paragraph of Article 21 states that this supervision *may* also be carried out by the President of the National Bank of Poland in relation to currency exchange operators, the Polish FSA, the competent heads of customs offices in relation to gambling operators<sup>567</sup>, presidents of appeal courts in relation to public notaries, the National Savings and Credit Cooperative Union, competent voivods<sup>568</sup> and governors in relation to associations and tax audit authorities. These supervisory authorities must submit their schedules of controls to the Polish FIU within two weeks following their completion and must also forward a written report on their findings within 14 days after completion of the supervisory activity. The imposition of sanctions remains a responsibility of the Polish FIU.<sup>569</sup> From the formulation of Article 21 it is inferred that end-responsibility for AML/CTF supervision rests with the FIU. For this reason, Poland is categorised under this model.

## Portugal

Article 38 of the Portuguese AML/CTF Act lays down the competent authorities for supervising compliance with the preventive obligations.<sup>570</sup> The authorities listed in that provisions are the three financial regulators: the Bank of Portugal, the Portuguese Insurance Institute, and the Portuguese Securities Market Commission (altogether they supervise the financial and credit institutions), as well as the Service for the Gambling Inspectorate (casinos, betting and lottery organisers), the National Institute for Construction and Real Estate (real estate agents and construction companies selling real estate) and the Economy and Food Safety Authority (ASEA)<sup>571</sup>.

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<sup>563</sup> Parliamentary Papers II, 2004-2005, 29 990, nr. 3, p. 9. Other arguments and presumptions can be found in: Faure, M.G., Nelen, H., Fernhout, F.J, and Philipsen, N.J. (2009), *Evaluatie tuchtrechtelijke handhaving Wwft*, p. 42-43.

<sup>564</sup> FATF (2011), Third Mutual Evaluation on the Netherlands, p. 245.

<sup>565</sup> Legislative proposal to amend the legal profession (*Wetsvoorstel herziening advocatuur*), forwarded to Parliament on 23 July 2012.

<sup>566</sup> Act of 16<sup>th</sup> November of 2010 on counteracting money laundering and terrorism financing, as last amended (Journal of Laws 2010, No 46, item 27603.153.1505).

<sup>567</sup> The unofficial translation speaks of: ‘operators organizing and exercising games of chance, mutual bets, and operations involving automatic machine games and automatic machine games of low prizes’.

<sup>568</sup> A voivod is a military commander of a voivodeship, which is more or less the same as a province (territory).

<sup>569</sup> Article 21(3a) Polish AML/CTF Act.

<sup>570</sup> Law No. 25/2008 of 5 June, as amended in 2009, establishing the preventive and repressive measures for the combat against the laundering of benefits of illicit origin and terrorism financing, transposing into the domestic legal system Directive 2005/60/EC of the European Parliament and Council, of 26 October 2005, and Directive 2006/70/EC, of the Commission, of 01 August 2006, relating to the prevention of the use of the financial system and of the specially designated activities and professions for purposes of money laundering and terrorism financing, first amendment to Law No. 52/2003 of 22 August, and revoking Law No. 11/2004, of 27 March.

<sup>571</sup> Competent in supervising external auditors, legal advisors, company and legal arrangements service providers, and other independent professionals which are not subject to monitoring by another competent authority.

Representatives have explained that for the cooperation between the financial regulators, the National Council of Financial Supervisors (*Conselho Nacional de Supervisores Financeiros*) plays an important role in adjusting and harmonising supervision, also in the sphere of the prevention of money laundering and terrorist financing.<sup>572</sup> What became clear during interviews and what can be considered quite unique according to Portuguese representatives, is that ASEA is considered an 'administrative police' authority. This means that it is an administrative authority, but that it has certain law enforcement powers.

As regards the DNFBP sector, it seems that the rule is that where possible, professional associations should perform AML/CTF supervision. A number of internal supervisors is listed in Article 38 of the Portuguese AML/CTF Act, namely: the Bar Association (with regard to lawyers), the Chamber of Solicitadores, the Chamber of Chartered Accountants, the Order of Statutory Auditors and the Institute for Registrars and Notaries.

### **Romania**

Article 17 of the Romanian AML Act<sup>573</sup> in conjunction with Governmental Decision 1599/2008 for the approval of the Regulations for the Organisation and Functioning of the National Office for Prevention and Control of Money Laundering stipulates in article 5, sub 1, under I) that the Romanian FIU is the supervisory authority for categories of reporting institutions which are not under supervision of other authorities. This means that the FIU is a default supervisor: it only supervises those obliged institutions and persons for compliance with AML/CTF obligations that have no other supervisory authority. On the basis of Article 17 of the AML Act, it seems that this is the case for auditors, external accountants, tax advisors, trust or company service providers, real estate agents and casinos. For notaries and lawyers, there is a joint responsibility for the FIU with the National Union for Public Notaries in Romania and the National Union of Bars from Romania and other legal independent professionals. Furthermore, the FIU is responsible for supervision of non-banking financial institutions registered in the General Evidence Registers. Other financial and credit institutions are supervised by the National Bank of Romania, the Insurance Supervision Commission, the National Securities Commission and the National Commission for Supervision of Private Pensions Funds in Romania.<sup>574</sup> Romanian representatives have confirmed the existence of a shared responsibility for verifying compliance with AML/CTF obligations between external supervisors, the professional associations for notaries and lawyers (internal supervisors) and the FIU as a default supervisor.<sup>575</sup>

### **Slovakia**

Article 29, first paragraph, of the Slovakian AML/CTF Act states that control of compliance to obligations of obliged institutions laid down by this Act shall be performed by the Financial Intelligence Unit.<sup>576</sup> Article 29, third paragraph, of the Act also gives responsibility for AML/CTF supervision to the National Bank of Slovakia - being the financial regulator - with respect to the financial and credit institutions, and the Ministry of Finance regarding gambling operators. All

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<sup>572</sup> Interviews with representatives; Cf. Deloitte (2011), p. 152-153.

<sup>573</sup> Law No. 656/2002 on prevention and sanctioning money laundering, as well as for setting up some measures for prevention and combating terrorism financing, as amended by Government Emergency Ordinance 26/2010. The consolidated version of the Act can be found on the website of the Romanian FIU:

<<http://www.onpcsb.ro/html/english.php?section=4>>.

<sup>574</sup> Deloitte study (2011), p. 153.

<sup>575</sup> ECOLEF Third Regional Workshop, December 2011, Vienna.

<sup>576</sup> Act of 2 July 2008 on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing and on Amendments and Supplements to Certain Acts as amended by the acts No. 445/2008 and No. 186/2009.

DNFBPs are supervised by the FIU. Article 29, fourth paragraph, of the Act states that the latter two supervisory authorities must inform the FIU when they are about to inspect an obliged institution, as well as of the results thereof and the measures taken. Joint inspections between FIU and NBS or the Ministry can be performed.<sup>577</sup>

Due to the formulation of Article 29, fourth paragraph, of the Slovakian AML Act, the evaluation team of MONEYVAL Fourth Assessment Visit was in 2011 of the opinion that the FIU has the end-responsibility for AML/CTF supervision.<sup>578</sup> The ECOLEF team shares this opinion and Slovakia is therefore categorised under the FIU model although the Slovakian system differs slightly from, for example, the Maltese, Polish and Spanish systems.<sup>579</sup>

### Slovenia

Article 85, first paragraph, of the Slovenian AML/CTF Act lays down that the following supervisory authorities are competent to supervise on compliance with AML/CTF obligations: the Slovenian FIU, the Bank of Slovenia, the Securities Market Agency of the Republic of Slovenia, the Insurance Supervision Agency, the Office of the Republic of Slovenia for Gaming Supervision, the Tax Administration of the Republic of Slovenia, the Market Inspectorate of the Republic of Slovenia, the Slovenian Audit Institute, the Bar Association of Slovenia and the Chamber of Notaries of Slovenia. Each of the supervisory authorities acts within the remit of the AML/CTF Act and other sectoral or professional legislation exercise supervision over the implementation of the provisions of the AML Act for those institutions and persons that it normally supervises.<sup>580</sup> According to representatives, the FIU is the responsible supervisory authority for those institutions and persons that are not supervised otherwise, like external accountants, real estate agents, trust company and service providers and dealers in high value goods.<sup>581</sup>

These supervisory bodies are called 'primary supervisors'.<sup>582</sup> During interviews it was observed by representatives that the FIU is considered a 'secondary supervisor'. This seems to imply that end-responsibility for AML/CTF supervision rests with the FIU. Although this comes close to the FIU model, the legislation does not seem to support this suggestion. After all, the FIU is simply one of the many supervisory authorities listed in Article 85. A second argument for not categorising Slovenia in the FIU model but in the Hybrid model, is that the supervisory authorities - upon detection of a breach - can decide to take a measure or impose a sanction pursuant to the AML/CTF Act themselves. They are required to forward their supervision reports to the FIU, but this seems more for reasons of centralising the supervision data to enable the FIU to gather statistics and of providing possible suspicious information to the FIU from a supervision perspective, which can analyse and further disseminate those data.

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<sup>577</sup> MONEYVAL (2011), Report on Fourth Assessment Visit on Slovak Republic, p. 121-122.

<sup>578</sup> MONEYVAL (2011), *Report on Fourth Assessment Visit on Slovak Republic*, p. 123. In the words of the evaluation team the FIU was the 'central organ' in the AML/CTF supervision.

<sup>579</sup> The difference mostly lies in the fact that in Slovakia the other supervisory authorities can decide themselves which sanctioning measures to take in case of non-compliance with the AML/CTF obligations. This is different from the Maltese, Polish and Spanish situation where supervisory authorities must also report on their findings, but where the FIUs are in charge of the decision which follow-up measures or sanctioning measures have to be taken.

<sup>580</sup> Article 87 of the Slovenian AML/CTF Act.

<sup>581</sup> However, MONEYVAL commented on the lack of inspection powers: MONEYVAL (2011), *Report on Fourth Assessment Visit on Slovenia*, p. 138.

<sup>582</sup> Interview with Slovenian FIU.

## Spain

In Spain, supervision for the purpose of verifying compliance with the AML/CTF obligations is placed with the Financial Intelligence Unit. This means that according to the law the Spanish FIU, the *Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias (SEPBLAC)*, has the overall responsibility for AML/CTF supervision with respect to the entire scope of institutions and professionals that fall under Act 10/2010.<sup>583</sup> However, the Spanish AML/CTF Act leaves open the possibility to conclude agreements with the financial regulators. Pursuant to Article 44, second paragraph under m) of the Spanish AML Act the Commission for the Prevention of Money Laundering and Monetary Offences<sup>584</sup> is competent to sign memoranda with each of the three financial prudential regulators in Spain: the Bank of Spain (*Banco de España*), the National Securities Market Commission (*Comisión Nacional del Mercado de Valores, CNMV*), and the Directorate General of Insurance and Pension Funds (*Dirección General de Seguros y Fondos de Pensiones*), with the aim of coordinating and harmonising their AML/CTF inspections and supervisory activities with those carried out by the Spanish FIU. The Commission has made use of this possibility. It concluded a memorandum with CNMV on 18 June 2003; the Memorandum with the DGSFP dates from 21 October 2004 and the Memorandum with the Bank of Spain was updated on 29 February 2008. None of the Memoranda are publicly available and their content can thus not be consulted.<sup>585</sup> During interviews Spanish representatives explained that the Memoranda contain agreements that the financial regulators include the verification of compliance with AML/CTF obligations in their prudential supervisory programmes. The Spanish FIU, however, will remain ultimately responsible for this supervision. It may be the case that joint inspections are undertaken with inspectors from both the financial regulator and SEPBLAC. Spanish representatives have explained that the Spanish FIU has performed various joint inspections with CNMV and DGS and one joint inspection with the Bank of Spain. The performance of joint inspections is of a recent nature and the FIU and prudential supervisors are currently in the process of writing a standard methodology for the performance of joint inspections. Yet, interviews have made clear that in general it will be the case that financial regulators include AML/CTF supervision in their general supervision programme and send their supervision reports to the Spanish FIU in case they identify any breaches.

## Sweden

With the implementation of the Third EU Money Laundering Directive, the Swedish Government considered the possibility and feasibility of one AML/CTF supervisor for all obliged institutions and persons under the AML/CTF Act. Ultimately, it was chosen to keep in place the supervisory authorities that already had responsibilities under the previous legal regime and that the institutions that would become subject with the implementation of the Directive supervision was to be exercised by the County Administrative Boards in Stockholm, Västra Götaland, and Skåne.<sup>586</sup>

The following supervisory authorities exercise AML/CTF supervision in Sweden: the Swedish FSA (*Finansinspektionen*) in relation to all financial and credit institutions; the Gaming Board in relation to casinos; the Swedish Bar Association in relation to lawyers; the Supervisory Board of Public Accountants supervises authorised auditors and accountants and the Swedish Estate Agents

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<sup>583</sup> Article 45 Act 10/2010 (Spanish AML Act).

<sup>584</sup> Under whose authority the Spanish FIU functions as a so-called support body: see article 45 of the Spanish AML/CTF Act.

<sup>585</sup> Although FATF (2010), *Fourth Follow Up Report on Spain*, p. 15-16 contains some information about the Memorandum between the Commission and the Bank of Spain.

<sup>586</sup> Statskontoret (2008), *The Third Money Laundering Directive: compliance supervision and organisation in Sweden (2008:2), Summary of publication Tredje penningtvättsdirektivet – tillsyn och organisation*, available at: <<http://www.statskontoret.se/in-english/publications/2008/the-third-money-laundering-directive-compliance-supervision-and-organisation-in-sweden/>>.

Authority supervises authorised real estate agents. As explained, the three County Administrative Boards perform supervision on all other institutions, like dealers in high-value goods, trust and company service providers and other legal service providers (e.g. tax advisors, accountants).<sup>587</sup>

Both the FSA and the Gaming Board are public authorities under the Swedish Ministry of Finance; the Supervisory Board of Public Accountants is a public authority under the Swedish Ministry of Justice, and the Swedish Estate Agents Authority falls under the responsibility of the Ministry of Agriculture, Food and Consumer Affairs.<sup>588</sup> The County Administrative Boards are headed by County Governors, who are appointed directly by Government. The only internal supervisor in the Swedish supervisory architecture is the Swedish Bar Association.

### United Kingdom

In the United Kingdom there are, in comparison to other EU Member States, many AML supervisors: 28 in total. There are six Public Bodies which have supervisory responsibilities in the preventive AML/CTF policy. Pursuant to Regulation 23 of the Money Laundering Regulations 2007 these are the Financial Services Authority, the Office of Fair Trading, the Gambling Commission, Her Majesty's Revenue and Customs, Department of Enterprise, Trade and Investment in Northern Ireland and the Secretary of State (in practice the Insolvency Service<sup>589</sup>). The underlying principle in the UK preventive policy is that where possible, professional associations and trade associations include the verification of compliance with the Money Laundering Regulations in their overall supervisory efforts. Schedule 3 to the Money Laundering Regulations 2007 lists all of the professional and trade associations with supervisory competences in the preventive AML/CTF policy.<sup>590</sup> Although there obviously is a role for external supervisors in this policy, due to the high presence of professional associations the United Kingdom is categorised under the Internal model.<sup>591</sup>

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<sup>587</sup> The legislation concerning supervision is very fragmented in Sweden. Chapter 6, Article 1 of the Act on Measures against Money Laundering and Terrorist Financing; SFS 2009:62 stipulates "*Provisions on the supervision of other activities as referred to in Chapter 1, Section 2 are contained in the acts governing these parties engaged in activities.*". For the FSA these are the relevant provisions from the Banking and Finance Act and Obligation to Notify Certain Financial Operations Act and Deposit Taking Operations Act. The other applicable acts are: Casino Act (Article 14), Estate Agents Act (Articles 4a, 5, 7 and 8), Auditors Act, and AML/CTF Ordinance 2009:92 pursuant to the Swedish AML/CTF Act (Article 16). For the Bar Association the applicable legislation is the Code of Judicial Procedure (Chapter 8, Article 4, paragraph 1) and the Charter of the Bar Association (Article 34).

<sup>588</sup> See: FATF (2010), *Fourth Follow Up Report on Sweden*, p. 27-31. See also the following websites: <[www.finansinspektionen.se](http://www.finansinspektionen.se)> and <[www.lansstyrelsen.se](http://www.lansstyrelsen.se)>.

<sup>589</sup> See: HM Treasury, *Anti-Money Laundering and Counter Terrorist Finance Supervision Report 2010-11*, List of Supervisors, Annex A.

<sup>590</sup> See also: Deloitte (2011), p. 157-158.

<sup>591</sup> At the fourth Regional Workshop, UK representatives stated that the government bodies supervise a larger volume of obliged institutions than the many professional bodies altogether. This is certainly a valid argument, but for the reasons mentioned in the text, the ECOLEF Team has decided to leave the UK in this category.

## Annex 7.1 CASE STUDIES

### CASE STUDY I<sup>592</sup>

Respondent's name:
Country:

#### DEFINITION OF MONEY LAUNDERING

*Would this be considered money laundering in your country?*

Yes      No

Mr. X robs a bank and gets caught red-handed with the proceeds in his bag           

If no, explanation:
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Mr. X robs a bank and hides the proceeds at home           

If no, explanation:
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Mr. X robs a bank and puts the proceeds bit by bit on his own bank account           

If no, explanation:
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Mr. X robs a bank and starts a business with the proceeds           

If no, explanation:
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Mr. X robs a bank and buys a car for Ms. Y  
- Mr. X?              
- Ms. Y?           

If no, explanation:
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<sup>592</sup> With respect to the Member States present at the Regional Workshop, the questions regarding terrorist financing contained references to either IRA or ETA.

Mr. X robs a bank and travels from country A to country B without declaring the money

If no, explanation:

Mr. X abuses inside business information and sells his securities at a very convenient moment ('insider trading'). He uses his proceeds to buy a house

If no, explanation:

Mr. X is a Dutch coffeeshop owner and receives his income by selling marihuana. He visits your country for a holiday. He pays the hotel bill (from his income).

If no, explanation:

Will Mr. X be prosecuted for money laundering your country?

If no, explanation:

Is it likely that Mr. X. will be convicted for money laundering in your country?

If no, explanation:

## DEFINITION OF TERRORIST FINANCING

*Would this be considered terrorist financing in your country?*

Yes      No

Mr. X transfers € 50 to a person Z, who after six months commits a terrorist act. There was no intention or knowledge on the part of Mr. X that the money would be used for a terrorist act.

What would your answer be if it were € 50.000 that was transferred?

What would your answer be if Mr. X had the intention or knowledge?

Explanation of your answer(s):

Mr. X transfers € 50 to IRA/ETA. This organisation subsequently buys a car for € 10.000.

What would your answer be if it were € 50.000 that was transferred?

Explanation of your answer(s):

Mr. X transfers € 50 to IRA/ETA. After six months the organisation places bombs in various metro stations in Great-Britain. There was no intention or knowledge on the part of Mr. X that the money would be used in a terrorist act.

What would your answer be if it were € 50.000 that was transferred?

What would your answer be if Mr. X had the intention or knowledge?

Explanation of your answer(s):

Mr. X delivers five laptops to the address of person Z, who is suspected of being member of IRA/ETA. There is no invoice, nor any evidence that the laptops have been paid.

Explanation of your answer(s):

## Annex 7.2 CRIMINALISATION OF MONEY LAUNDERING (UNOFFICIAL TRANSLATION)

<b>CRIMINALISATION OF MONEY LAUNDERING</b>	
<b>Austria</b>	<p><b>Article 165 of the Criminal Code</b><sup>593</sup></p> <p>(1) Whoever conceals property items that derive from the crime of another person, from such an offence under sections 168c, 168d, 223, 224, 225, 229, 230, 269, 278, 278d, 288, 289, 293, 295 or 304 to 308, or from such a tax offence of smuggling or evasion of import or export taxes (insofar as these fall within the competence of the courts), or disguises the origin thereof, particularly by giving in legal relations false information regarding the origin or true nature of those property items, the ownership of or other rights to them, the right to dispose of them, their transfer or their location, shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding 360 daily rates.</p> <p>(2) Whoever knowingly acquires such property items, holds them in custody, invests, administers, converts, realises, or transfers them to a third party, shall be liable in the same way.</p> <p>(3) Whoever commits the offence involving items worth more than 50,000 Euro or as the member of a criminal group associated for the purpose of continuous money laundering shall be liable to imprisonment for a term of six months to five years.</p> <p>(4) A property item shall be deemed to derive from an offence when the perpetrator of the crime has obtained it through that offence or received it for the commission of that offence, or when it represents the value of the originally obtained or received property item.</p> <p>(5) Whoever knowingly, acting on behalf or in the interest of a criminal organisation (sect. 278a) or of a terrorist group (sect. 278b), acquires property items of that organisation or group, holds them in custody, invests, administers, converts, realises, or transfers them to a third party, shall be liable to imprisonment for a term not exceeding three years; whoever commits the offence involving items worth more than 50,000 Euro, to imprisonment for a term from six months to five years.</p>
<b>Belgium</b>	<p><b>Article 505 of the Penal Code</b><sup>594</sup> (unofficial translation – applicable as of 1 September 2007)</p> <p>A penalty of 15 days to 5 years imprisonment and/or a fine of 26 to 100.000 francs shall be imposed on the following individuals:</p> <ol style="list-style-type: none"> <li>1. Those who have unlawfully received some or all of the items taken, diverted, or obtained by means of a crime or other offence;</li> <li>2. Those who have purchased, received in exchange or free of cost, held in their possession or custody, or managed the items referred to in Article 42(3), when at the time these conducts were initiated they knew or should have known their</li> </ol>

<sup>593</sup> FATF (2009), Third Mutual Evaluation on Austria, p. 284-285.

<sup>594</sup> Source: Website Belgian, FIU [www.ctif-cfi.be](http://www.ctif-cfi.be).

origin;

3. Those who have converted or transferred the items referred to in Article 42(3), in order to conceal or disguise their illicit origin or to help anyone involved in the commission of an offence, from which the items are derived, to avoid the legal consequences of his actions;

4. Those who have concealed or disguised the nature, origin, location, use, movement, or ownership of the items referred to in Article 42(3), when at the time these conducts were initiated they knew or should have known their origin.

The offences referred to in section 1, (3) and (4) exist even if the perpetrator is also the perpetrator, accomplice, or an accessory to an offence from which the items referred to in Article 42(3) are derived. The offences referred to in section 1, (1) and (2) exist even if the perpetrator is also the perpetrator, accomplice or an accessory to an offence from which the items referred to in Article 42(3) are derived, when this offence is committed abroad and cannot be prosecuted in Belgium.

Except with regard to the perpetrator, accomplice or accessory to the offence that yielded the items referred to in Article 42(3), the offences mentioned in section 1, (2) and (4) relate, in fiscal matters, only to acts committed in the framework of serious and organised fraud setting in motion complex mechanisms or procedures with an international dimension.

The institutions and individuals mentioned in the articles 2, 2bis and 2ter of the Law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorism financing may invoke the previous section with regard to the facts in question, in so far as they have complied with the obligation formulated in article 14quinquies of the law of 11 January 1993 relating to the manner of reporting to the Financial Intelligence Processing Unit (CTIF-CFI).

The items referred to in section 1, (1) of this Article are the object of the offence referred to in this provision, within the meaning assigned by Article 42(1)3, and shall be confiscated, even though the property does not belong to the person convicted, provided however this sanction does not prejudice the rights of third parties to property that may be subject to confiscation.

The items referred to in section 1, (3) and (4) are the object of the offences referred to in these provisions, within the meaning assigned by Article 42(1), and shall be confiscated vis-à-vis each perpetrator, accomplice or accessory to those offences, even though the property does not belong to the person convicted, provided however this sanction does not prejudice the rights of third parties to property that may be subject to confiscation. If those items cannot be found in the assets of the convicted person, the judge evaluates their monetary value and the confiscation consists of an equivalent amount of money. However in this case the judge may reduce the amount in order not to submit the convicted person to an unreasonably high punishment.

	<p>The items referred to in section 1, (2) are the object of the offence referred to in these provisions, within the meaning assigned by Article 42(1), and shall be confiscated vis-à-vis each perpetrator, accomplice or accessory to those offences, even though the property does not belong to the person convicted. This sanction must not prejudice the rights of third parties to property that may be subject to confiscation. If those items cannot be found in the assets of the convicted person, the judge evaluates their monetary value and the confiscation consists of an amount of money proportionate to the convicted person's level of participation in the offence.</p> <p>The penalty for attempting to commit the offences referred to in Article 2, 3 and 4 of this Article shall be 8 days to 3 years in prison and/or a fine of 26 to 50.000 francs.</p> <p>Persons punished under these provisions may, in addition, come within the prohibition specified in Article 33</p>
<p><b>Bulgaria</b></p>	<p><b>Article 253 of the Criminal Code</b></p> <p>(1) The one who concludes a financial operation or property transaction or conceals the origin, location, movement or the actual rights in the property, which is known or assumed to be acquired through crime or another act that is dangerous for the public, shall be punished for money laundering by deprivation of liberty from one to six years and a fine of BGN three thousand to five thousand.</p> <p>(2) The punishment under paragraph 1 shall also be imposed on the one who acquires, receives, holds, uses, transforms or assists, in any way whatsoever, the transformation of property, which is known or assumed, as of its receipt, to have been acquired through crime or another act that is dangerous for the public.</p> <p>(3) The punishment shall be deprivation of liberty for one to eight years and a fine of BGN five thousand to twenty thousand, if the act under paras 1 and 2 has been committed:</p> <ol style="list-style-type: none"> <li>1. by two or more individuals, who have reached preliminary agreement, or by an individual who acts on the orders of or executes a decision of an organised criminal group;</li> <li>2. two or more times;</li> <li>3. by an official within the sphere of his office;</li> <li>4. through opening or maintaining an account with a financial institution, under a false name or the name of an individual who has given consent to this effect.</li> </ol> <p>(4) The punishment shall be deprivation of liberty from three to twelve years and a fine from BGN 20,000 to BGN 200,000 where the act under Paragraphs (1) and (2) has been committed by the use of funds or property which the perpetrator knew or supposed to have been acquired through a serious crime of intent.</p> <p>(5) Where the funds or property are in extremely large amounts and the case is extremely grave, the punishment shall be deprivation of liberty for five to fifteen years and a fine of BGN 10,000 to BGN 30,000, and the court shall suspend the rights of the guilty person under Items 6 and 7 of Article 37 (1).</p>

	<p>(6) The object of crime or the property into which it has been transformed shall be forfeited to the benefit of the state, and where absent or alienated, its equivalent shall be awarded.</p> <p>(7) Provisions of paras 1 through 6 shall also apply where the crime through which property has been acquired falls outside the criminal jurisdiction of the Republic of Bulgaria.</p> <p><b>Article 253a</b></p> <p>(1) Preparations toward money laundering or any association to this goal shall be punishable by deprivation of liberty of up to two years or a fine from BGN five thousand to ten thousand.</p> <p>(2) The same punishment shall also be imposed on the one who incites another to commit money laundering.</p> <p>(3) Property destined for money laundering shall be forfeited to the benefit of the state and where absent or alienated, its equivalent shall be awarded.</p> <p>(4) The member of an association under paragraph 1 who, before money laundering is completed, puts an end to participation therein and notifies the authorities thereof, shall not be punished.</p>
<p><b>Czech Republic</b></p>	<p><b>Articles 251, 252 and 252a of the Criminal Code<sup>595</sup></b></p> <p><b>Article 251</b></p> <p>(1) Whoever conceals, transfers to him/herself or to another or uses</p> <p>a) a thing or other property value which was acquired through a criminal offence committed in the Czech Republic or abroad by another person or as a reward for it or</p> <p>b) a thing or other property value which was procured for a thing or other property value specified in letter a</p> <p>shall be sentenced to imprisonment for up to four years or to a pecuniary punishment or to forfeiture of a thing or other property value or to a ban on activity; if, however, he/she commits an offence in relation to a thing or other property value originating from a criminal offence for which this Code provides for a lesser sentence, he/she shall be sentenced to such lesser punishment.</p> <p>(2) The offender shall be sentenced to imprisonment for six months up to five years or to forfeiture of property</p> <p>a) if he/she commits an offence specified in paragraph 1 as a member of an organised group</p> <p>b) if he/she commits such offence in relation to a thing or other property of significant value, or</p> <p>c) if he/she acquires through such offence a significant benefit for him/herself or for another.</p> <p>(3) The offender shall be sentenced to imprisonment for two years up to eight years or to forfeiture of property</p> <p>a) if he/she commits an offence specified in paragraph 1 in relation to a thing or other property value originating from an especially serious criminal offence</p>

<sup>595</sup> MONEYVAL (2009), First Progress Report on Czech Republic, p. 73-74.

b) if he/she commits such offence in relation to a thing or other property of considerable value, or

c) if he/she acquires through such offence a considerable benefit for him/herself or for another.

(4) The offender shall be sentenced to imprisonment for three years up to ten years or to forfeiture of property

a) if he/she commits an offence specified in paragraph 1 in relation to a thing or other property value of very large value, or

b) if he/she acquires through such offence a benefit of very large value for him/herself or for another.

#### **Article 252**

(1) Whoever conceals or transfers to him/herself or to another by negligence a thing or other property of significant value which was acquired through a criminal offence committed in the Czech Republic or abroad or as a reward for it, shall be sentenced to imprisonment for up to one year or to a pecuniary punishment or to forfeiture of a thing or other property value or to ban on activity.

(2) Same punishment shall be imposed on whosoever enables another person by negligence to conceal the origin of a thing or ascertaining the origin of a thing or other property value acquired through a criminal offence committed in the Czech Republic or abroad or as a reward for it.

(3) The offender shall be sentenced to imprisonment for up to three years

a) if he/she commits an offence specified in paragraphs 1 or 2 because he/she has breached an important obligation arising from his/her employment, occupation, position or function or has been imposed upon him/her by law, or

b) if he/she acquires through such offence a significant benefit for him/herself or for another.

(4) The offender shall be sentenced to imprisonment for one year up to five years

a) if he/she commits an offence specified in paragraphs 1 or 2 in relation to a thing or other property value originating from an especially serious criminal offence, or

b) if he/she acquires through such offence a very large benefit for himself/herself or for another.

#### **Article 252a**

(1) Whoever conceals the origin or strives otherwise to seriously hamper or render impossible the identification of the origin

a) of a thing or other property value acquired through a criminal offence committed in the Czech Republic or abroad or as a reward for it, or

b) a thing or other property value which was procured for a thing or other property value specified in letter a) with the aim of giving the impression that this thing or other property value was acquired in accordance with the law, shall be sentenced to imprisonment for up to four years or to a pecuniary punishment or to forfeiture of a thing or other property value or to a ban on activity.

(2) Whoever enables another to commit an offence specified in paragraph 1 shall receive the same punishment.

	<p>(3) The offender shall be sentenced to imprisonment for six months up to five years or to a pecuniary punishment or to a ban on activity</p> <p>a) if he/she commits an offence specified in paragraphs 1 or 2 as a member of an organised group</p> <p>b) if he/she commits such offence in relation to a thing or other property of significant value</p> <p>c) if he/she acquires through such offence a significant benefit for him/herself or for another.</p> <p>(4) The offender shall be sentenced to imprisonment for two years up to eight years or to forfeiture of property</p> <p>a) if he/she commits an offence specified in paragraphs 1 or 2 in relation to a thing or other property value originating from an especially serious criminal offence</p> <p>b) if he/she commits such offence in relation to a thing or other property of considerable value</p> <p>c) if he/she acquires a considerable benefit through such offence for him/herself or for another, or</p> <p>d) if in the commission of such offence he/she abuses his/her position in employment or his/her function.</p> <p>(5) The offender shall be sentenced to imprisonment for three years up to ten years or to forfeiture of property</p> <p>a) if he/she commits an offence specified in paragraphs 1 or 2 in connection with an organised group operating in a number of states,</p> <p>b) if he/she commits such offence in relation to a thing or other property of very large value, or</p> <p>c) if he/she acquires through such offence a very large benefit for him/herself or for another.</p>
<p><b>Cyprus</b></p>	<p><b>Article 4 AML/CTF Act<sup>596</sup></b></p> <p>4.-(1) Every person who (a) knows or b) at the material time ought to have known that any kind of property constitutes proceeds from the commission of a predicate offence, carries out the following activities:</p> <p>(i) converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting in any way any person who is involved in the commission of the predicate offence to carry out any of the above actions or acts in any other way in order to evade the legal consequences of his actions;</p> <p>(ii) conceals or disguises the true nature, the source, location, disposition, movement of and rights in relation to, property or ownership of this property;</p> <p>(iii) acquires, possesses or uses such property;</p> <p>(iv) participates in, associates, co-operates, conspires to commit, or attempts to commit and aids and abets and provides counseling or advice for the commission of any of the offences referred to above;</p> <p>(v) provides information in relation to investigations that are carried out for laundering offences for the purpose of enabling the person who acquired a</p>

<sup>596</sup> MONEYVAL (2011), Report on Fourth Assessment Visit on Cyprus: Annexes, p. 19-20.

	<p>benefit from the commission of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence, commits an offence punishable by fourteen years' imprisonment or by a pecuniary penalty of up to Euro 500.000 or by both of these penalties in the case of (a) above and by five years' imprisonment or by a pecuniary penalty of up to Euro 50.000 or by both in the case of (b) above.</p> <p>(2) For the purposes of subsection (1)-</p> <p>(a) it shall not matter whether the predicate offence is subject to the jurisdiction of the Cyprus Courts or not;</p> <p>(b) a laundering offence may be committed by the offenders of a predicate offence as well;</p> <p>(c) the knowledge, intention or purpose which are required as elements of the offences referred to in subsection (1) may be inferred from objective and factual circumstances.</p>
<b>Denmark</b>	<p><b>Article 290 of the Criminal Code</b><sup>597</sup></p> <p>(1) Any person who unlawfully accepts or acquires for himself or others a share in profits, which are obtained by a punishable violation of the law, and any person who unlawfully by concealing, keeping, transporting, assisting in disposal or in a similar manner subsequently serves to ensure, for the benefit of another person, the profits of a punishable violation of the law, shall be guilty of receiving of stolen goods and liable to a fine or imprisonment for any term not exceeding one year and six months.</p> <p>(2) When the receiving of stolen goods is of a particularly aggravated nature, especially because of the commercial character of the offence, or in consequence of the amount of the gain obtained or intended to be obtained, or where a large number of offences have been committed, the penalty may be increased to imprisonment for any term not exceeding six years.</p> <p>(3) Punishment pursuant to this provision can not be imposed on a person, who accepts profits as an ordinary subsistence from family members or cohabiter, or any person who accepts profits as a normal payment for ordinary consumer goods, articles for everyday use, or services.</p> <p><b>Article 303 of the Criminal Code</b></p> <p>"Under section 303 of the Criminal Code, persons guilty of gross negligence "in acquiring by purchase or in receiving in any other similar manner objects acquired through an acquisitive offence" are criminally liable"<sup>598</sup></p>
<b>Estonia</b>	<p><b>Article 394 of the Criminal Code</b><sup>599</sup></p> <p>1) Money laundering is punishable by a pecuniary punishment or up to 5 years' imprisonment.</p>

<sup>597</sup> FATF (2006), Third Mutual Evaluation on Denmark, p. 239.

<sup>598</sup> FATF (2006), Third Mutual Evaluation on Denmark, p. 45-46.

<sup>599</sup> MONEYVAL (2008), Third Mutual Evaluation on Estonia, p. 262

	<p>(2) The same act, if committed:  1) by a group;  2) at least twice;  3) on a large-scale basis, or  4) by a criminal organisation,  is punishable by 2 to 10 years' imprisonment.  (3) An act provided for in subsection (1) of this section, if committed by a legal person, is punishable by a pecuniary punishment.  (4) An act provided for in subsection (2) of this section, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.  (5) A court may, pursuant to the provisions of § 83 of this Code, apply confiscation of an property which was the direct object of the commission of an offence provided for in this section.  (6) For the criminal offence provided in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83<sup>2</sup> of this Code.</p>
<p><b>France</b></p>	<p><u>Money laundering related to drugs</u></p> <p><b>Article 222-38 of the Criminal Code</b>  (Act no. 1992-1336 of 16 December 1992 Articles 354 and 373 Official Journal of 23 December 1992 into force 1 March 1994)  (Act no. 1996-392 of 13 May 1996 Article 2 Official Journal of 14 May 1996)  (Ordinance No. 2000-916 of 19 September 2000 Article 3 Official Journal of 22 September into force 1 January 2002)  A penalty of ten years' imprisonment and a fine of €750,000 is incurred by the act of facilitating by any means the false justification of the origin of the assets or income of the perpetrator of one of the offences specified by articles 222-34 to 222-37, and by providing assistance for the investment, concealment or conversion of the fruits of one of these offences. The fine may be increased to half the value of the assets or funds involved in the money-laundering operation.  Where an offence concerns assets or funds proceeding from one of the offences specified in articles 222-34, 222-35 and 222-36, second paragraph, the perpetrator is liable to the penalties applicable to the offences of which he was aware.  The first two paragraphs of article 132-23 governing the safety period are applicable to the offences set out under the present article.</p> <p><u>Money laundering – simple and aggravated laundering</u></p> <p><b>Article 324-1 of the Criminal Code</b>  (Act no. 96-392 of 13th May 1996 Article 1 Official Journal of 14th May 1996)  (Ordinance no. 2000-916 of 19 September 2000 Article 3 Official Journal of 22 September 2000 in force 1 January 2002)  Money laundering is facilitating by any means the false justification of the origin of the property or income of the perpetrator of a felony or misdemeanour which has brought him a direct or indirect benefit.</p>

Money laundering also comprises assistance in investing, concealing or converting the direct or indirect products of a felony or misdemeanour. Money laundering is punished by five years' imprisonment and a fine of €375,000.

**Article 324-2 of the Criminal Code**

(Act no. 96-392 of 13th May 1996 Article 1 Official Journal of 14th May 1996)  
(Ordinance no. 2000-916 of 19 September 2000 Article 3 Official Journal of 22 September 2000 in force 1 January 2002)

Money laundering is punished by ten years' imprisonment and a fine of €750,000:

1. where it was committed habitually or by using the facilities offered by the exercise of a professional activity;
2. where it was committed by an organised gang.

**Article 324-3 of the Criminal Code**

(Inserted by Act no. 96-392 of 13th May 1996 Article 1 Official Journal of 14th May 1996)

The fines referred to under articles 324-1 and 324-2 may be raised to amount to half the value of the property or funds in respect of which the money laundering operations were carried out.

**Article 324-4 of the Criminal Code**

(Inserted by Act no. 96-392 of 13th May 1996 Article 1 Official Journal of 14th May 1996)

Where the felony or misdemeanour which produced the property or funds for which the money-laundering operations were carried out is punishable by a custodial sentence higher than that incurred under articles 324-1 or 324-2, the offence of money-laundering is punished by the penalties applicable to the offence the money-launderer knew about, and if this offence was accompanied by aggravating circumstances, by such penalties as relate exclusively to the circumstances of which he was aware.

**Article 324-5 of the Criminal Code**

(Inserted by Act no. 96-392 of 13th May 1996 Article 1 Official Journal of 14th May 1996)

As regards recidivism, money laundering is assimilated to the offence for which the money laundering operations were performed.

**Article 324-6 of the Criminal Code**

(Inserted by Act no. 96-392 of 13th May 1996 Article 1 Official Journal of 14th May 1996)

Attempt to commit the misdemeanours referred to under the present Section is subject to the same penalties.

Additional penalties applicable to natural persons and liability of legal persons

**Article 324-7 of the Criminal Code**

(Act no. 96-392 of 13th May 1996 Article 1 Official Journal of 14th May 1996)

(Act no. 2001-420 of 15th May 2001 Article 47 Official Journal of 16th May 2001)  
Natural persons convicted of any of the offences provided for under articles 324-1 and 324-2 also incur the following additional penalties:

1° prohibition, pursuant to the conditions set out under article 131-27, to hold public office or to undertake the social or professional activity in the course of which or on the occasion of the performance of which the offence was committed, this prohibition being permanent or temporary in the case referred to under article 324-2, and limited to five years in the case referred to under article 324-1.

2° prohibition to hold or carry a weapon requiring a licence, for a maximum period of five years;

3° prohibition to draw cheques, except those allowing the withdrawal of funds by the drawer from the drawee or certified cheques, and the prohibition to use payment cards, for a maximum period of five years;

4° suspension of the driving licence for a maximum period of five years; this suspension may be limited to driving outside professional activity;

5° cancellation of the driving licence accompanied by a prohibition, for a maximum period of five years, to apply for the issue of a new licence;

6° confiscation of one or more vehicles belonging to the person convicted;

7° confiscation of one or more weapons belonging to the convicted person or which he has freely available to him;

8° confiscation of the thing which was used or intended for the commission of the offence, or of the thing which is the product of it, with the exception of articles subject to restitution;

9° forfeiture of civic, civil and family rights, pursuant to the conditions set out under article 131-26;

10° area banishment, pursuant to the conditions set out under article 131-31;

11° prohibition to leave the territory of the Republic for a maximum period of five years;

12° confiscation of some or all of the property of the convicted person, of whatever type, movable or immovable, whether jointly or separately owned.

**Article 324-8 of the Criminal Code**

(Inserted by Act no. 96-392 of 13th May 1996 Article 1 Official Journal of 14th May 1996)

Any alien convicted of any of the offences referred to under articles 324-1 to 324-2 may be banished from French territory either permanently or for a maximum period of ten years, in accordance with the conditions laid down under article 131-10.

**Article 324-9 of the Criminal Code**

(Inserted by Act no. 96-392 of 13th May 1996 Article 1 Official Journal of 14th May 1996)

Legal persons may incur criminal liability for the offences set out under articles 324-1 and 324-2, pursuant to the conditions set out under article 121-2.

The penalties incurred by legal persons are:

1° a fine, pursuant to the conditions set out under article 131-38;

2° the penalties referred to under article 131-39.

The prohibition referred to under 2° of article 131-39 applies to the activity in

	the course of which or on the occasion of the performance of which the offence was committed.
<b>Finland</b>	<p><b>Chapter 32, sections 6-10 of the Criminal Code<sup>600</sup></b></p> <p>Section 6 – Money laundering  (1) A person who  (1) receives, uses, converts, conveys, transfers or transmits property acquired through an offence, the proceeds of crime or property replacing such property in order to conceal or obliterate the illegal origin of such proceeds or property or in order to assist the offender in evading the legal consequences of the offence or  (2) conceals or obliterates the true nature, origin, location or disposition of, or rights to, property acquired through an offence, the proceeds of an offence or property replacing such property or assists another in such concealment or obliteration,  shall be sentenced for money laundering to a fine or to imprisonment for at most two years.  (2) An attempt is punishable.</p> <p>Section 7 - Aggravated money laundering  (1) If in the money laundering  (1) the property acquired through the offence has been very valuable or  (2) the offence is committed in a particularly intentional manner, and the money laundering is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated money laundering to imprisonment for at least four months and at most six years.  (2) An attempt is punishable.</p> <p>Section 8 – Conspiracy for the commission of aggravated money laundering  A person who agrees with another on the commission of aggravated money laundering directed at the proceeds of the giving of a bribe, the acceptance of a bribe, or aggravated tax fraud or aggravated subsidy fraud directed at the tax referred to in chapter 29, section 9, subsection 1(2), or at property replacing such proceeds, shall be sentenced for conspiracy for the commission of aggravated money laundering to a fine or to imprisonment for at most one year.</p> <p>Section 9 – Negligent money laundering  A person who through gross negligence undertakes the actions referred to in section 6 shall be sentenced for negligent money laundering to a fine or to imprisonment for at most two years.</p> <p>Section 10 - Money laundering violation  If the money laundering or the negligent money laundering, taking into</p>

<sup>600</sup> <http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>

	<p>consideration the value of the property or the other circumstances connected with the offence, is petty when assessed as a whole, the offender shall be sentenced for a money laundering violation to a fine.</p>
<p><b>Germany</b></p>	<p><b>Article 261 Criminal Code<sup>601</sup></b></p> <p>(1) Whoever hides an object which is derived from an unlawful act named in sentence 2, conceals its origin or obstructs or endangers the investigation of its origin, its being found, its forfeiture, its confiscation or its being taken into custody, shall be punished with imprisonment from three months to five years. Unlawful acts within the meaning of sentence 1 shall be:</p> <ol style="list-style-type: none"> <li>1. serious criminal offences;</li> <li>2. less serious criminal offences under: a) Section 332 subsection (1), also in conjunction with subsection (3), and Section 334; b) Section 29 subsection (1), sent. 1, no. 1, of the Narcotics Law and Section 29 subsection (1), no. 1, of the Precursors Control Law;</li> <li>3. less serious criminal offences under Section 373 and, if the perpetrator acted professionally, under Section 374 of the Fiscal Code, and also in conjunction with Section 12 subsection (1), of the Law to Implement the Common Market Organisations respectively;</li> <li>4. less serious criminal offences: a) under Sections 180b, 181a, 242, 246, 253, 259, 263 to 264, 266, 267, 269, 284, 326 subsections (1), 2 and 4, and 328 subsections (1), 2 and 4; b) under Section 92a of the Aliens Law and Section 84 of the Asylum Procedure Law, which were committed professionally or by a member of a gang which has combined for the continued commission of such acts; and</li> <li>5. less serious criminal offences committed by a member of a criminal organisation (Section 129). In cases under sentence 1, number 3, sentence 1 shall also apply to an object in relation to which fiscal charges have been evaded.</li> </ol> <p>(2) Whoever:</p> <ol style="list-style-type: none"> <li>1. procures an object indicated in subsection (1) for himself or a third person; or</li> <li>2. keeps an object indicated in subsection (1) in his custody or uses it for himself or a third person, shall be similarly punished.</li> </ol> <p>(3) An attempt shall be punishable.</p> <p>(4) In especially serious cases the punishment shall be imprisonment from six months to ten years. An especially serious case exists, as a rule, if the perpetrator acts professionally or as a member of a gang, which has combined for the continued commission of money laundering.</p> <p>(5) Whoever, in cases under subsections (1) or (2), is recklessly unaware, that the object is derived from an unlawful act named in subsection (1), shall be punished with imprisonment for not more than two years or a fine.</p> <p>(6) The act shall not be punishable under subsection (2), if a third person previously acquired the object without having thereby committed a crime.</p> <p>(7) Objects to which the crime relates may be confiscated. Section 74a shall be applicable. Sections 43a, 73d shall be applicable if the perpetrator acts as a</p>

<sup>601</sup> Translation of the German Criminal Code provided by Prof. Dr. Michael Bohlander, 2010.

	<p>member of a gang which has combined for the continued commission of money laundering. Section 73d shall also be applicable if the perpetrator acts professionally.</p> <p>(8) Objects which are derived from an act of the type indicated in subsection (1) committed overseas shall be the equivalent of the objects indicated in subsections (1),2, and 5, if the act is also punishable at the place of commission of the act.</p> <p>(9) Whoever:</p> <ol style="list-style-type: none"> <li>1. voluntarily reports the act to the competent public authority or voluntarily causes such a report to be made, if the act was not already discovered in whole or in part at the time and the perpetrator knew this or should have taken this into account upon a reasonable evaluation of the factual situation; and</li> <li>2. in cases under subsections (1) or (2) under the prerequisites named in number 1, causes the object to which the crime relates to be taken into custody, shall not be punished under subsections (1) to (5). Whoever is punishable because of participation in the antecedent act shall also not be punished under subsections (1) to (5). (10) The court in its discretion may mitigate the punishment (Section 49 subsection (2)) in cases under subsections (1) to (5) or dispense with punishment under these provisions, if the perpetrator through voluntary disclosure of his knowledge has substantially contributed, so that the act, beyond his own contribution thereto, or an unlawful act of another named in subsection (1), could be uncovered.</li> </ol>
<p><b>Greece</b></p>	<p><b>Article 2, paragraph 2 of the Greek AML/CTF Act<sup>602</sup></b></p> <ol style="list-style-type: none"> <li>1. (...)</li> <li>2. The following conduct shall be regarded as money laundering, i.e. legalisation of proceeds from the criminal activities listed in Article 3: <ol style="list-style-type: none"> <li>a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person involved in the commission of such activity to evade the legal consequences of his action;</li> <li>b) the concealment or disguise of the truth, with any manner or means, as it concerns the disposition, movement, use or the place where the property was acquired or is at present, or the ownership of the property or rights with respect to it, knowing that such property is derived from criminal activity or from an act of participation in such activity;</li> <li>c) the acquisition, possession, administration or use of property, knowing, at the time of receipt or administration, that such property was derived from criminal activity or from an act of participation in such activity;</li> <li>d) the utilization of the financial sector by placing therein or moving through it proceeds from criminal activities for the purpose of lending false legitimacy to such proceeds;</li> <li>e) the setting up of organisation or group comprising two persons at least, for</li> </ol> </li> </ol>

<sup>602</sup> Law 3691/2008 Prevention and suppression of money laundering and terrorist financing and other provisions as amended by L. 3875/2010, L.3932/2011 and L.3994/2011 (Greek AML/CTF Act).

	<p>committing one or more of the acts defined above under a to d and the participation in such organisation or group.</p> <p>3. Money laundering shall be regarded as such even where the activities which generated the property to be laundered were carried out in the territory of another country, provided that they would be a predicate offence if committed in Greece and are punishable according to the law of such other country.</p>
<p><b>Hungary</b></p>	<p><b>Articles 303 and 303/A of the Criminal Code</b><sup>603</sup></p> <p><b>Section 303</b></p> <p>(1) Any person who, in order to conceal the true origin of a thing obtained from criminal activities committed by others, that is punishable by imprisonment:</p> <ul style="list-style-type: none"> <li>a) converts or transfers the thing in question, or uses in his business activities;</li> <li>b) conceals or suppresses any right attached to the thing or any changes in this right, or conceals or suppresses the place where thing can be found;</li> <li>c) performs any financial transaction or receives any financial service in connection with the thing</li> </ul> <p>is guilty of felony punishable by imprisonment of up to five years.</p> <p>(2) The punishment in accordance with Subsection (1) shall also be imposed upon any person who, in connection with a thing obtained from criminal activities, that is punishable by imprisonment, committed by others:</p> <ul style="list-style-type: none"> <li>a) obtains the thing for himself or for a third person;</li> <li>b) safeguards, handles, uses or consumes the thing, or obtains other financial assets by way of or in exchange of the thing, or by using the consideration received for the thing if being aware of the true origin of the thing at the time of commission.</li> </ul> <p>(3) The punishment in accordance with Subsection (1) shall also be imposed upon any person who, in order to conceal the true origin of a thing that was obtained from criminal activities that is punishable by imprisonment:</p> <ul style="list-style-type: none"> <li>a) uses the thing in his business activities;</li> <li>b) performs any financial transaction or receives any financial service in connection with the thing.</li> </ul> <p>(4) The punishment shall be imprisonment between two to eight years if the money laundering specified under Subsections (1)-(3):</p> <ul style="list-style-type: none"> <li>a) is committed in a pattern of business operation;</li> <li>b) involves a substantial or greater amount of money;</li> <li>c) is committed by an officer or employee of a financial institution, insurance company, investment firm, commodities broker, investment fund manager, venture capital fund manager, exchange market, clearing house, central depository, voluntary mutual insurance fund or a private pension fund, or an organisation engaged in the operation of gambling activities;</li> <li>d) is committed by a public official in an official capacity;</li> <li>e) is committed by an attorney-at-law.</li> </ul> <p>(5) Any person who collaborates in the commission of money laundering as</p>

<sup>603</sup> MONEYVAL (2010), Report on Fourth Assessment Visit to Hungary, p. 25-26.

	<p>specified under Subsections (1)-(4) is guilty of misdemeanor punishable by imprisonment of up to two years.</p> <p>(6) The person who voluntarily reports to the authorities or initiates such a report shall not be liable for prosecution for money laundering as specified under Subsections (1)-(5), provided that the act has not yet been revealed, or it has been revealed only partially.</p> <p><b>Section 303/A</b></p> <p>(1) Any person who, in connection with a thing obtained from criminal activities, that is punishable by imprisonment, committed by others:</p> <p>a) uses the thing in his business activities;</p> <p>b) performs any financial transaction or receives any financial service in connection with the thing, and is negligently unaware of the true origin of the thing is guilty of misdemeanor punishable by imprisonment of up to two years, community service work, or a fine.</p> <p>(2) The punishment shall be imprisonment for misdemeanor for up to three years if the act defined in Subsection (1):</p> <p>a) involves a substantial or greater amount of money;</p> <p>b) is committed by an officer or employee of a financial institution, insurance company, investment firm, commodities broker, investment fund manager, venture capital fund manager, exchange market, clearing house, central depository, voluntary mutual insurance fund or a private pension fund, or an organisation engaged in the operation of gambling activities;</p> <p>c) is committed by a public official in an official capacity.</p> <p>(3) The person who voluntarily reports to the authorities or initiates such a report shall not be liable for prosecution for money laundering as specified under Subsections (1) and (2), provided that the act has not yet been revealed, or it has been revealed only partially.</p>
<p><b>Ireland</b></p>	<p><b>Article 6 and 7 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010</b></p> <p><b>6.—</b>In this Part—  “criminal conduct” means—  (a) conduct that constitutes an offence, or  (b) conduct occurring in a place outside the State that constitutes an offence under the law of the place and would constitute an offence if it were to occur in the State;  “proceeds of criminal conduct” means any property that is derived from or obtained through criminal conduct, whether directly or indirectly, or in whole or in part, and whether that criminal conduct occurs before, on or after the commencement of this Part.</p> <p><b>7.—</b>(1) A person commits an offence if—  (a) the person engages in any of the following acts in relation to property that is the proceeds of criminal conduct:  (i) concealing or disguising the true nature, source, location, disposition,</p>

	<p>movement or ownership of the property, or any rights relating to the property;</p> <p>(ii) converting, transferring, handling, acquiring, possessing or using the property;</p> <p>(iii) removing the property from, or bringing the property into, the State, and</p> <p>(b) the person knows or believes (or is reckless as to whether or not) the property is the proceeds of criminal conduct.</p> <p>(2) A person who attempts to commit an offence under <i>subsection(1)</i> commits an offence.</p> <p>(3) A person who commits an offence under this section is liable—</p> <p>(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or</p> <p>(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 14 years (or both).</p> <p>(4) A reference in this section to knowing or believing that property is the proceeds of criminal conduct includes a reference to knowing or believing that the property probably comprises the proceeds of criminal conduct.</p> <p>(5) For the purposes of <i>subsections (1) and (2)</i>, a person is reckless as to whether or not property is the proceeds of criminal conduct if the person disregards, in relation to property, a risk of such a nature and degree that, considering the circumstances in which the person carries out any act referred to in <i>subsection (1) or (2)</i>, the disregard of that risk involves culpability of a high degree.</p> <p>(6) For the purposes of <i>subsections (1) and (2)</i>, a person handles property if the person—</p> <p>(a) receives, or arranges to receive, the property, or</p> <p>(b) retains, removes, disposes of or realises the property, or arranges to do any of those things, for the benefit of another person.</p> <p>(7) A person does not commit an offence under this section in relation to the doing of any thing in relation to property that is the proceeds of criminal conduct so long as—</p> <p>(a) the person does the thing in accordance with a direction, order or authorisation given under <i>Part 3</i>, or</p> <p>(b) without prejudice to the generality of <i>paragraph (a)</i>, the person is a designated person, within the meaning of <i>Part4</i>, who makes a report in relation to the property, and does the thing, in accordance with <i>section 42</i>.</p>
Italy	<p><b>Article 648 of the Criminal Code (Receiving)<sup>604</sup></b></p> <p>Apart from cases of complicity in the offence, anyone who, for the purpose of procuring a benefit for himself or others, acquires, receives or conceals money or property derived from any crime whatever, or in any way participates in causing it to be acquired, received or concealed, shall be punished by imprisonment for a period from two to eight years and by a fine from 1 to 20 million lire.</p> <p>The punishment shall be imprisonment up to six years and a fine up to 1 million lire if the act was of negligible significance.</p>

<sup>604</sup> FATF (2006), Third Mutual Evaluation on Italy: Annexes, p. 1-2

	<p>The provision of this Article shall be applicable even when the principal perpetrator of the crime from which the money or property derives is not responsible or is not punishable or when one of the conditions for starting procedure against such a crime is not fulfilled.</p> <p><b>Article 648-bis of the Criminal Code</b><i>(Money laundering)</i>  Apart from cases of complicity in the offence, anyone who replaces or transfers money, property or other benefits derived from a malicious crime or carries out any other operation aimed at preventing the tracing of its illicit provenance, shall be punished by imprisonment for a period from 4 to 12 years and a fine from 2 to 30 million lire.  The punishment shall be increased whenever the crime is committed in the exercise of a professional activity.  The punishment shall be reduced whenever the money, the property or the other benefits derive from a crime which is punished by a maximum prison term of five years.  The last paragraph of Article 648 shall apply.</p> <p><b>Article 648-ter of the Criminal Code</b><i>(Use of money, property or benefits of illegal provenance)</i>  Apart from cases of complicity in the offence and in those cases falling within the range of application of Articles 648 and 648-bis, anyone who uses in economic or financial activities money, property or other benefits derived from crime, shall be punished by imprisonment for a period from 4 to 12 years and a fine from 2 to 30 million lire.  The punishment shall be increased whenever the crime is committed in the exercise of a professional activity.  The punishment shall be reduced whenever the second paragraph of Art. 648 is applicable.  The last paragraph of Art. 648 shall apply.</p>
<p><b>Latvia</b></p>	<p><b>Article 195 of the Criminal Code</b><sup>605</sup></p> <p>(1) For a person who commits laundering of criminally acquired financial resources or other property, the applicable sentence is deprivation of liberty for a term not exceeding three years, or a fine not exceeding one hundred times the minimum monthly wage, with or without confiscation of property.</p> <p>(2) For a person who commits the same acts, if commission thereof is repeated, or by a group of persons pursuant to the prior agreement, the applicable sentence is deprivation of liberty for a term of not less than three and not exceeding eight years, with confiscation of property.</p> <p>(3) For a person who commits the acts provided for in Paragraphs one or two of this section, if commission thereof is on a large scale or if commission thereof is in an organised group, the applicable sentence is deprivation of liberty for a term of not less than five and not exceeding twelve years, with confiscation of property.</p>

<sup>605</sup> MONEYVAL (2007), Third Mutual Evaluation on Latvia, p. 35.

<p><b>Lithuania</b></p>	<p><b>Article 216 of the Criminal Code<sup>606</sup></b></p> <p>(1) Any person who carries out financial operations with his own or another person's money or property or with part of them knowing that such money or property acquired in a criminal way, concludes the agreements, uses them in an economic way or commercial activity, or makes a fraudulent declaration that they are derived from legal activity, for the purposes of concealing or legitimising these proceeds shall be punished by imprisonment for a term of up to 7 years.</p> <p>(2) Legal persons shall also be held liable for the acts specified in paragraph 1 of this Article.</p> <p><b>Article 189 of the Criminal Code</b></p> <p>(1) Any person who acquired, used or realised property knowing that this property was obtained in a criminal way, shall be punished by fine or restriction of liberty or arrest or imprisonment for a term up to 2 years.</p> <p>(2) Any person who acquired, used or realised property of great value knowing that this property was obtained in a criminal way, shall be punished by fine or arrest or imprisonment for a term up to 4 years.</p> <p>(3) Any person who acquired, used or realised property of small value knowing that this property was obtained in a criminal way, committed a criminal offence and shall be punished by public tasks or fine or arrest.</p>
<p><b>Luxembourg</b></p>	<p><b>Art. 506-1. (L. 12 Aug. 2003)</b></p> <p>A penalty of imprisonment of one to five years and a fine of 1,250 euros to 1,250,000 euros, or one of those penalties: (L. October 27, 2010) those who knowingly facilitated, by any means, false justification the nature, origin, location, disposition, movement or ownership of property described in section 32-1, first paragraph, sub 1), forming the object or product, direct or indirect,</p> <ul style="list-style-type: none"> <li>- (L. 27 October 2010) of an offence under section 112-1, 135-1 to 135-6 and 135-9 of the Penal Code;</li> <li>- Of crimes or offences under or in connection with an organisation under section 322 to 324b of the Penal Code;</li> <li>- (L. 13 March 2009) of an offence under sections 368-370, 379, 379bis, 382-1 and 382-2 of the Code criminal;</li> <li>- (L. 12 November 2004) of an offence under section 496-1 to 496-4 of the Penal Code,</li> <li>- An offence of bribery;</li> <li>- A violation of the laws on arms and ammunition;</li> <li>- (L. 17 July 2008) of an offence under sections 184, 187, 187-1, 191 and 309 of the Penal Code;</li> <li>- (L. 17 July 2008) an offence under section 463 or 464 of the Penal Code;</li> <li>- (L. 17 July 2008) of an offence under sections 489-496 of the Penal Code;</li> <li>- (L. 17 July 2008) an offence under section 10 of the Act of 21 March 1966 on a)</li> </ul>

606 MONEYVAL (2006), *Third Mutual Evaluation on Lithuania*, p. 34-35.

excavations of historic, prehistoric, paleontological or other scientific, b) protection of movable cultural heritage;

- (L. 17 July 2008) an offence under section 5 of the Act of January 11, 1989 setting the marketing of chemical substances with therapeutic activity;
- (L. 17 July 2008) an offence under section 18 of the Act of November 25, 1982 setting the removal of substances of human origin;
- (L. 13 March 2009) of an offence under section 143 of the Act of August 29 on the free movement of persons and immigration;
- (L. 17 July 2008) of an offence under sections 82-85 of the Act of 18 April 2001 on the right copyright;
- (L. 17 July 2008) an offence under section 64 of the amended law of 19 January 2004 on the Conservation and Natural Resources
- (L. 17 July 2008) an offence under section 9 of the amended Law of 21 June 1976 on combating against pollution of the atmosphere
- (L. 17 July 2008) an offence under section 25 of the Law of 10 June 1999 on classified establishments
- (L. 17 July 2008) an offence under section 26 of the Act of 29 July 1993 concerning the protection and water management;
- (L. 17 July 2008) an offence under section 35 of the Law of 17 June 1994 on the prevention and waste management; - (L. 17 July 2008) of an offence under sections 220 and 231 of the General Law on Customs and excise;
- (L. 17 July 2008) an offence under section 32 of the Act of 9 May 2006 on abuse of market
- (L. 17 July 2008) of any other offence punishable by imprisonment for a minimum greater than 6 months; or constituting a pecuniary benefit from any one or more such offences;

2) (L. October 27, 2010) those who knowingly assisted in an operation invest, conceal, disguise, convert or transfer of property referred to in Article 32-1, first paragraph, sub a), forming the object or product, direct or indirect violations listed in point 1) of this article or constituting a pecuniary benefit from any of a or more such offences;

3) (L. March 13, 2009) who have acquired, held or used property referred to in Article 32-1, paragraph first, under 1), forming the object or product, direct or indirect, of the offences listed in point 1) of this article or constituting a pecuniary benefit from any one or more of these offences, knowing, when they received them, they came from one or more of offences referred to in point 1) or participation in one or more such offences. (L. 27 October 2010)

4) The attempt of the offences referred to in points 1 to 3 above shall incur the same penalties.

**Art. 506-2. (L. 11 Aug. 1998)**

The authors of offences under article 506-1 may, again, be sentenced to the prohibition, in accordance with Article 24.

**Art. 506-3. (L. 11 Aug. 1998)**

All offences under article 506-1 is also punishable when the primary offence was committed abroad. However, with the exception of offences for which the law allows the prosecution even if they are not punishable in the State where it was committed, the offence must be punishable in State where it was committed.

	<p><b>Art. 506-4. (L. 11 Aug. 1998)</b> The offences referred to in Article 506-1 are punishable when the author is also the author or accomplice of the primary offence.</p> <p><b>Art. 506-5. (L. 11 Aug. 1998)</b> The offences referred to in Article 506-1 shall be punishable by a imprisonment of fifteen to twenty years and a fine of 1,250 euros to 1,250,000 euros or a of these penalties, if they are acts of participation in the principal activity or accessory to an association or organisation.</p> <p><b>Art. 506-6. (L. 11 Aug. 1998)</b> The association or conspiracy to commit offences under Article 506-1 is punishable by the same penalty as the completed offence.</p> <p><b>Art. 506-7. (L. 11 Aug. 1998)</b> For a second offence within five years after conviction the head of an offence under section 506-1, the penalties will be doubled. Final sentences passed abroad are taken into account in of establishing recidivism provided that the offences giving rise to these convictions are also punishable under section 506-1.</p>
<p><b>Malta</b></p>	<p><b>Article 3 PMLA in conjunction with article 2 PMLA</b></p> <p><b>2. (...)</b> "money laundering" means -</p> <ul style="list-style-type: none"> <li>(i) the conversion or transfer of property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;</li> <li>(ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;</li> <li>(iii) the acquisition, possession or use of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;</li> <li>(iv) retention without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;</li> <li>(v) attempting any of the matters or activities defined in the above foregoing sub-paragraphs</li> <li>(i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code;</li> <li>(vi) acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub- paragraphs (i), (ii), (iii), (iv) and (v)</li> </ul>

	<p><b>3.</b> (1) Any person committing any act of money laundering shall be guilty of an offence and shall, on conviction, be liable to a fine (<i>multa</i>) not exceeding two million and three hundred and twenty-nine thousand and three hundred and seventy-three euro and forty cents (2,329,373.40), or to imprisonment for a period not exceeding fourteen years, or to both such fine and imprisonment. (.....)</p> <p>Specific money laundering provisions:</p> <ul style="list-style-type: none"> <li>- <b>S.22 (1) (c) of the Dangerous Drugs Ordinance 1939</b></li> <li>- <b>S.120 A (1) (ID) Medical and Kindred Professions Ordinance</b></li> </ul>
<p><b>The Netherlands</b></p>	<p><b>Article 420bis WvSr</b>  1. Anyone who:  a. conceals or disguises the true nature, source, location, disposition or movement of an object, or conceals or disguises who has title to the object or has it in his possession, knowing that the object derives directly or indirectly from a serious offence;  b. acquires, has in his possession, transfers or converts, or makes use of an object knowing that the object derives directly or indirectly from a serious offence  shall be guilty of money laundering and liable to a term of imprisonment not exceeding four years or a fifth-category fine.  2. An object shall be understood to be any good or property right.</p> <p><b>Article 420ter WvSr:</b>  Anyone who makes a habit of money laundering shall be liable to a term of imprisonment not exceeding six years or a fifth-category fine.</p> <p><b>Article 420quater WvSr:</b>  1. Anyone who:  a. conceals or disguises the true nature, source, location, disposition or movement of an object, or conceals or disguises who has title to the object or has it in his possession, while he might reasonably have suspected that the object derives directly or indirectly from a serious offence;  b. acquires, has in his possession, transfers, converts or makes use of an object, while he might reasonably have suspected that the object derives directly or indirectly from a serious offence shall be guilty of negligent money laundering and liable to a term of imprisonment not exceeding one year or a fifth-category fine.  2. An object shall be understood to be any good or property right.</p>
<p><b>Portugal</b></p>	<p><b>Article 368-A Criminal Code</b>  1 – For the purposes of the provisions set forth in the following paragraphs, the assets arising from the commission, under any form of participation, of the typical unlawful acts of pandering, child sexual abuse or dependant minors sexual abuse, extortion, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in weapons, illicit trade in human organs and tissue, illicit trafficking in protected species, tax fraud, trading in influence, corruption</p>

	<p>and other offences mentioned in paragraph 1 of Law No 36/94, of September 29, as well as of typical unlawful acts punishable with a minimum term of imprisonment over six months or with a maximum term of imprisonment of over five years, as well as the assets which are obtained there from, are considered as economic advantages.</p> <p>2 – Whoever converts, transfers, aids or abets any operation of conversion or transfer of economic advantages, obtained by him or another, whether directly or indirectly, for the purpose of concealing their illicit origin, or of avoiding that the perpetrator or participant in such offences be prosecuted or subjected to a criminal reaction, is punished with imprisonment from two to twelve years.</p> <p>3 – The same penalty applies to whoever conceals or disguises the true nature, source, location, disposition, movement or ownership of the advantages or of the rights with respect thereto.</p> <p>4 – Punishment for the criminal offences provided for in paragraphs 2 and 3 occurs even if the acts which constitute the predicate offence have been committed outside the national territory, or even if the place where the act was committed or the identity of the perpetrators remain unknown.</p> <p>5 – The act is not punishable whenever prosecution in relation to the typical unlawful acts from which the economic advantages arise depends upon complaint and such complaint has not been lodged in due time.</p> <p>6 – The penalty provided for in paragraphs 2 and 3 is aggravated by one third if the offender commits the conduct in a customarily way.</p> <p>7 – Upon full compensation for the damage caused to the victim on account of the unlawful typical act from which economic advantages arise, until the beginning of the trial hearing at first instance and without and unlawful damage to a third party, the penalty is specially mitigated.</p> <p>8 – Upon fulfilment of the requirements foreseen in the preceding paragraph, the penalty may be specially mitigated should the compensation be partial.</p> <p>9 – The penalty may be specially mitigated if the offender gives concrete assistance in the collection of decisive evidence leading to the identification or arrest of the person responsible for the commission of the typical unlawful acts from which the advantages derive.</p> <p>10- The penalty applied pursuant to the preceding paragraph may not exceed the maximum limit of the most severe penalty amongst those applied to the typical unlawful acts from which the advantages arise.</p>
<p><b>Poland</b></p>	<p><b>Article 299 Criminal Code</b><sup>607</sup></p> <p>(1) A person who accepts, transfers or takes abroad the instruments of payment, securities or other foreign exchange, property rights, movable or immovable property, originated from the benefits related to the committed crime, helps to transfer their owner or undertakes other activities that foil or substantially obstruct the ascertainment of their criminal origin, the place they have been stored, their detection, seizure or forfeiture decision, shall be subject to imprisonment from 6 months to 8 years.</p>

<sup>607</sup> MONEYVAL (2007), *Third Mutual Evaluation on Poland*, p. 26-27; Please note that MONEYVAL (2009), *Second Progress Report on Poland*, contains some draft amendments to this provision.

	<p>(2) An employee of a bank, financial institution or other entity legally obliged to record the transactions and persons carrying out the transactions who accepts, against legal regulations, money or other foreign exchange in cash, executes their transfer or conversion or accepts them in the circumstances implying justified suspicion that they have originated from the crime referred to in (1), or who renders other services aimed to conceal their criminal origin or services rendered in order to prevent them from being seized, shall be subject to penalty referred to in (1).</p> <p>(3) In case a person who, as an employee of a bank, financial institution or credit institution, assumed the obligation to inform the management board or other authority for financial supervision about the execution of a financial transaction, does not fulfil the obligation immediately in the form provided for in legal regulations, despite the fact that the circumstances accompanying the execution of the transaction excite a justified suspicion that they are related to the source of the origin referred to in (1), shall be subject to imprisonment up to 3 years.</p> <p>(4) A person who, as an employee of a bank, financial institution or credit institution, is responsible for appointing the person authorised to receive the information referred to in (3), does not comply with binding regulations, shall be subject to punishment referred to in (3).</p> <p>(5) If the perpetrator, acting in conspiracy with other persons, commits an illegal act specified in (1) or (2), he shall be subject to imprisonment from 1 to 10 years</p> <p>(6) A perpetrator who acquires a property-related benefit of considerable value while committing the crime specified in (1) or (2) shall be subject to punishment referred to in (5).</p> <p>(7) In case of sentencing a person for the crime specified in (1) or (2), the court decrees a forfeiture of implements derived directly or indirectly from the crime and a forfeiture of the benefits gained as a result of the crime or their equivalent, even if they do not belong to the perpetrator himself. Forfeiture shall not be decreed in part or in whole in case a given implement, benefit or its equivalent shall be returned to the wronged person or other entity.</p> <p>(8) A person who voluntarily disclosed the information relating to the persons committing the crime and the circumstances of the crime to an authority appointed for penal prosecution shall not be subject to a punishment defined in (1)-(4), provided that the disclosure prevented the commitment of another crime; the court shall apply an extraordinary mitigation of punishment if the perpetrator has undertaken attempts aiming at disclosing the information and circumstances of the crime.</p>
<p><b>Romania</b></p>	<p><b>Article 23 of the AML/CTF Act<sup>608</sup></b></p> <p>(1) The following deeds represent offence of money laundering and it is punished with prison from 3 to 12 years</p> <p>(a) the conversion or transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of property or of assisting any person who is involved in the committing of such activity to evade the prosecution, trial and punishment execution;</p>

<sup>608</sup> MONEYVAL (2008), Third Mutual Evaluation on Romania, p. 48

	<p>(b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity;</p> <p>(c) the acquisition, possession or use of property, knowing, that such property is derived from any criminal activity;</p> <p>(3) The attempt is punished.</p>
<p><b>Slovakia</b></p>	<p><b>Article 231 of the Criminal Code (sharing)<sup>609</sup></b></p> <p>(1) Any person who conceals, transfers to himself or another, leases or accepts as a deposit</p> <p>a) a thing obtained through a criminal offence committed by another person, or</p> <p>b) anything procured in exchange for such a thing, shall be liable to a term of imprisonment of up to three years.</p> <p>(2) The offender shall be liable to a term of imprisonment of three to eight years if he commits the offence referred to in paragraph 1,</p> <p>a) and obtains larger benefit for himself or another through its commission,</p> <p>b) by reason of specific motivation, or</p> <p>c) uses such thing for his own business purposes.</p> <p>(3) The offender shall be liable to a term of imprisonment of seven to twelve years if he commits the offence referred to in paragraph 1,</p> <p>a) and obtains substantial benefit for himself or another through its commission, or</p> <p>b) acting in a more serious manner.</p> <p>(4) The offender shall be liable to a term of imprisonment of twelve to twenty years if he commits the offence referred to in paragraph 1,</p> <p>a) and obtains large-scale benefit for himself or another through its commission, or</p> <p>b) as a member of a dangerous grouping.</p> <p><b>Article 232 of the Criminal Code (negligent ML)</b></p> <p><b>Article 233 of the Criminal Code (legalization of proceeds of crime)<sup>610</sup></b></p> <p>1) Any person who performs any of the following with regard to income or other property obtained by crime with the intention to conceal such income or thing, disguise their criminal origin, conceal their intended or actual use for committing a criminal offence, frustrate their seizure for the purposes of criminal proceedings or forfeiture or confiscation: transfers to himself or another, lends, borrows, transfers in a bank or a subsidiary of a foreign bank, imports, transits, delivers, transfers, leases or otherwise procures for himself or another, or holds, hides, conceals, uses, consumes, destroys, alters or damages, shall be liable to a term of imprisonment of two to five years.</p> <p>(2) The offender shall be liable to a term of imprisonment of three to eight years if he commits the offence referred to in paragraph 1</p> <p>a) by reason of specific motivation, or</p>

<sup>609</sup> MONEYVAL (2011), Report on Fourth Assessment Visit to Slovakia, p. 26-27.

<sup>610</sup> MONEYVAL (2011), Report on Fourth Assessment Visit to Slovakia, p. 27-28.

	<p>b) and obtains larger benefit for himself or another through its commission.  (3) The offender shall be liable to a term of imprisonment of seven to twelve years if he commits the offence referred to in paragraph 1</p> <p>a) as a public figure,  b) and obtains substantial benefit for himself through its commission, or  c) acting in a more serious manner.</p> <p>(4) The offender shall be liable to a term of imprisonment of twelve to twenty years if he commits the offence referred to in paragraph 1,  a) and obtains large-scale benefit for himself or another through its commission,  b) with respect to things originated from the trafficking in narcotics, psychotropic, nuclear or high risk chemical substances, weapons and human beings or from another particularly serious felony, or  c) as a member of a dangerous grouping.</p>
<b>Slovenia</b>	<p><b>Article 245 of the Criminal Code</b><sup>611</sup></p> <p>(1) Whoever accepts, exchanges, stores, disposes, uses in an economic activity or in any other manner determined by the act governing the prevention of money laundering, conceals or attempts to conceal by laundering the origin of money or property that was, to his knowledge, acquired through the commission of a criminal offence, shall be punished by imprisonment of up to five years.</p> <p>(2) Whoever commits the offence under the preceding paragraph, and is simultaneously the perpetrator of or participate in the criminal offence with which the money or property under the preceding paragraph were acquired, shall be punished to the same extent.</p> <p>(3) If the money or property under paragraphs 1 or 2 of this Article is of high value, the perpetrator shall be punished by imprisonment of up to eight years and by a fine.</p> <p>(4) If an offence referred to in the above paragraphs was committed within a criminal association for the commission of such criminal offences, the perpetrator shall be punished by imprisonment of one up to ten years and by a fine.</p> <p>(5) Whoever should and could have known that the money or property had been acquired through a criminal offence, and who commits the offences from paragraphs 1 or 3 of this Article, shall be punished by imprisonment of up to two years.</p> <p>(6) The money and property referred to in the preceding paragraphs shall be confiscated.</p>
<b>Spain</b>	<p><b>Article 301 Criminal Code</b><sup>612</sup></p> <p>(1) Any person who acquires, possesses, uses, converts or transfers property</p>

<sup>611</sup> MONEYVAL (2010), Report on Fourth Assessment Visit to Slovenia, p. 25-26.

<sup>612</sup> FATF (2010), Fourth Follow Up Report on Spain, p. 37-38.

knowing that its origin is an illicit activity, committed by him or by any third person, or performs any other act to conceal or disguise its illicit origin, or to help another person who may have participated in the breach or breaches of the law to avoid the legal consequences of such actions will be punished with a prison term of between six months and six years and fined an amount equivalent to three times the value of the goods in question. In these cases, the judges or tribunals, taking into account the seriousness of the offence and the personal circumstances of the delinquent can also impose on the delinquent, the special punishment of prohibition from exercising the profession or industry for a period of between one to three years and to order the temporary or permanent closure of the establishment or premises. If closure is temporary it cannot exceed more than five years.

The punishment will be imposed in its upper half when the goods have their origin in any one of the crimes related to drug trafficking, dealing in narcotics or psychotropic substances described in articles 368 to 372 of this Code. In these cases, the provisions laid down in article 374 of this Code will be applied.

The punishment will be also imposed in its upper half when the goods have their origin in any one of the crimes covered in Chapters V, VI, VII, VIII, IX and X of Title XIX or any of the crimes of Chapter I of Title XVI.

2. These same sanctions will be applied, according to the case, to concealment or collusion regarding the true nature, origin, location, destination, movements or rights over the goods or ownership of said, knowing that they proceed from one of the crimes described in the preceding paragraph or from an action of participating in such crimes.

3. If the events can be classed as criminal negligence, the punishment will be a prison term of six months to two years and a fine of three times the amount involved.

4. The guilty party will equally be punished even though the crime that gave rise to the proceeds or the actions punishable according to the preceding paragraphs may have been committed partially or totally in a foreign country.

5. If the guilty party has obtained profits, they will be confiscated according to the rules of articles 127 of this Code.

#### **Article 302**

—1. In the cases provided for in the preceding article, prison terms will be imposed in the upper half of the scale to those persons who belong to an organisation dedicated to the purposes mentioned, and the maximum sentence to the managers, administrators, or foremen of the organisations referred to.

2. -In these cases, when in accordance with Article 31 bis a legal person is responsible, it will impose the following penalties:

a)—Fine of two to five years, if the offence committed by the natural person brings with more than five years prison penalty.

b) -Fine of six months to two years in the remaining cases.

In light of the rules laid down in Article 66a, judges and courts may also impose the penalties set out in subparagraphs b) to g) of paragraph 7 of Article 33. "

Additional amendments have been included with regards to money laundering related to tax crimes.

<p><b>Sweden</b></p>	<p><b>Articles 6-7a of the Criminal Code<sup>613</sup></b></p> <p><b>Section 6</b>  A person who</p> <ol style="list-style-type: none"> <li>1. takes possession of something of which another has been dispossessed by a crime, and does so in such a manner that the nature thereof renders its restitution difficult.</li> <li>2. procures an improper gain from another's proceeds of crime, or</li> <li>3. by a demand, transfer or other similar means asserts a claim arising from a crime, shall be sentenced for <i>receiving</i> to imprisonment for at most two years.</li> </ol> <p>A person who, in business activities or as a part of business activities which are conducted habitually or otherwise on a large scale, acquires or receives something which may reasonably be assumed to have been misappropriated from another person by a crime, and does so in such a manner that the nature thereof renders its restitution difficult, shall be similarly sentenced for receiving.</p> <p>If the crime referred to in the first or second paragraph is gross, imprisonment for at least six months and at most six years shall be imposed.</p> <p><b>Section 6 a</b>  A person who</p> <ol style="list-style-type: none"> <li>1. improperly promotes the opportunity for another person to take advantage of property emanating from criminal acquisition, or the value of such property, or</li> <li>2. participates in removing, transferring, conveying or taking other such measure with property emanating from criminal acquisition with the intent of concealing the origin of property shall be sentenced for <i>money receiving</i> to imprisonment for at most two years.</li> </ol> <p>A person who, in cases other than those mentioned in the first paragraph, improperly participates in removing, transferring, conveying or taking other such measure with property with the intention to conceal that another person has enriched himself or herself through a criminal act, shall also be sentenced for money receiving.</p> <p>If the crime referred to in the first or second paragraph is gross, imprisonment for at least six months and at most six years shall be imposed.</p> <p><b>Section 7</b>  If a crime under Section 6 is considered to be petty, imprisonment for a most six months or a fine shall be imposed for <i>petty receiving</i>.</p> <p>A sentence for petty receiving shall also be imposed on a person who</p>
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<sup>613</sup> FATF (2006), Third Mutual Evaluation on Sweden, p. 184-185.

	<p>1. in a case other than that provided for in Section 6, second paragraph, acquires or receives something, which may reasonably be assumed to have been misappropriated from another person by a crime, in such a manner that the nature thereof renders restitution difficult,</p> <p>2. in a case as provided for in Section 6, first paragraph, did not realise, but had reasonable cause to assume that a crime was involved, or</p> <p>3. in a manner as provided for in Section 6, first paragraph, point 1, participated in the crime whereby property was misappropriated from another and did not realise, but had reasonable cause to assume, that a crime had been committed.</p> <p><b>Section 7 a</b> If a crime under Section 6a is considered to be petty, imprisonment for at most six months or a fine shall be imposed for <i>petty money receiving</i>.</p> <p>A sentence for petty money receiving shall also be imposed on a person who</p> <p>1. in a case as provided for in Section 6 a, first paragraph, did not realise, but had reasonable cause to assume that a crime was involved, or</p> <p>2. in a case provided for in Section 6 a, second paragraph, did not realise, but had reasonable cause to assume that another person had enriched himself or herself through a criminal act.</p>
<p><b>UK</b></p>	<p><b>Part 7 Proceeds of Crime Act – Money Laundering<sup>614</sup></b></p> <p><b>327 Concealing etc</b></p> <p>(1)A person commits an offence if he—</p> <p>(a)conceals criminal property;</p> <p>(b)disguises criminal property;</p> <p>(c)converts criminal property;</p> <p>(d)transfers criminal property;</p> <p>(e)removes criminal property from England and Wales or from Scotland or from Northern Ireland.</p> <p>(2)But a person does not commit such an offence if—</p> <p>(a)he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;</p> <p>(b)he intended to make such a disclosure but had a reasonable excuse for not doing so;</p> <p>(c)the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.</p> <p>(3)Concealing or disguising criminal property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.</p>

<sup>614</sup> Website UK Government, <<http://www.legislation.gov.uk/ukpga/2002/29/part/7>>

**328 Arrangements**

(1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person.

(2) But a person does not commit such an offence if—

(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

**329 Acquisition, use and possession**

(1) A person commits an offence if he—

(a) acquires criminal property;

(b) uses criminal property;

(c) has possession of criminal property.

(2) But a person does not commit such an offence if—

(a) he makes an authorised disclosure under section 338 and (if the disclosure is made before he does the act mentioned in subsection (1)) he has the appropriate consent;

(b) he intended to make such a disclosure but had a reasonable excuse for not doing so;

(c) he acquired or used or had possession of the property for adequate consideration;

(d) the act he does is done in carrying out a function he has relating to the enforcement of any provision of this Act or of any other enactment relating to criminal conduct or benefit from criminal conduct.

(3) For the purposes of this section—

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property;

(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the use or possession;

(c) the provision by a person of goods or services which he knows or suspects may help another to carry out criminal conduct is not consideration.

**334 Penalties**

(1) A person guilty of an offence under section 327, 328 or 329 is liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine or to both.

(2) [.....]

## Annex 7.3 CRIMINALISATION OF TERRORIST FINANCING (UNOFFICIAL TRANSLATIONS)

CRIMINALISATION OF TERRORIST FINANCING	
<b>AT</b>	<p><b>Article 278d Criminal Code</b><sup>615</sup></p> <p>—(1) A person who provides for assets or collects them with the intent that they are used for the commitment:</p> <ol style="list-style-type: none"> <li>1. of a hijacking (Article 185) or an intentional danger to the safety of aviation (Article 186);</li> <li>2. of an extortionate kidnapping (Article 102), or the threat with it;</li> <li>3. of an attack on life and limb or the freedom of a person protected by international law or a violent attack on an apartment, the official premises or the means of transportation of such a person which is appropriate to expose this person to a danger to life and limb or freedom or a threat with it;</li> <li>4. of an intentional endangering by nuclear energy or ionised radiation (Article 171) or a threat with it, of a unlawful use of nuclear materials or radioactive substances (Section 177b), of any other criminal offence to obtain nuclear materials or radioactive substances or of the threat to commit a theft or robbery of nuclear materials or radioactive substances aiming to force another person to an action, permission or omission;</li> <li>5. of a considerable attack on life and limb of another person on an airport serving the international civil aviation, of an destruction or considerable damaging of such an airport or a civil aircraft being on it or an interruption of the services on the airport, so far as the offence is committed by the use of a weapon or other device and is appropriate to endanger the security of the airport;</li> <li>6. of a criminal offence committed in a way mentioned in Arts. 185 or 186 against a vessel or a fixed platform, against a person being on board of a vessel or a fixed platform or against the cargo loaded on a ship or an equipment of the ship;</li> <li>7. of the transportation of a blasting composition or another deadly device in a public place, to a governmental or public institution or a public traffic system or services of supply or of the operation of these means aiming to cause the death or a grievous bodily injury of another person or the destruction of the place, institution or system to a high degree, as far as the destruction is appropriate to bring about a considerable economic damage;</li> <li>8. of a criminal offence which shall effect the death or a grievous bodily injury of a civil person or another person not being actively involved in the hostilities of an armed conflict if this act is aimed by the reason of its nature and the circumstances at threatening a group of the population or forcing a government or an international organisation to an action or omission; is to be sentenced to imprisonment from six months to five years. But the nature and extent of the sentence must not be severer than the penalty provided for the financed offence.</li> </ol> <p>(2) The offender shall not be punished under paragraph 1 if the offence is subject to a severer penalty under another provision.</p>
<b>BE</b>	<p><b>Article 140 of the Penal Code</b></p>

<sup>615</sup> FATF (2009), Third Mutual Evaluation on Austria, p. 47-48.

	<p>§ 1. Anyone who participates in an activity of a terrorist group, including the provision of information or material resources to the terrorist group, or any form of funding for any terrorist group, with knowledge that such participation contributes to commit a felony or a misdemeanor of the terrorist group, shall be punished with imprisonment from five to ten years and a fine of one hundred to five thousand euros.</p> <p>§ 2. Any leader of the terrorist group is punishable by imprisonment of fifteen to twenty years and a fine of one thousand euros to two hundred thousand euros.</p> <p><b>Article 141 of the Penal Code</b></p> <p>Whoever, except as provided in section 140, provides material resources, including financial assistance, in order to commit a terrorist offence referred to Article 137 shall be punished with imprisonment from five to ten years and a fine of one hundred to five thousand euros.</p>
<b>BG</b>	<p><b>Article 108a of the Criminal Code (New, SG No. 92/2002)</b></p> <p>(1) Anyone who, in view of causing disturbance or fear among the population or of threatening, or forcing a competent authority, a representative of a public institution or of a foreign state or international organisation to perform or omit part of his/her duties, commits a crime under art. 115, 128, art. 142, par. 1, art. 216, par. 1, art. 326, art. 330, par. 1, art. 333, art. 334, par. 1, art. 337, par. 1, art. 339, par. 1, art. 340, paras. 1 and 2, art. 341a, paras. 1 - 3, art. 341b, par. 1, art. 344, art. 347, par. 1, art. 348, art. 349, paras. 1 and 3, art. 350, par. 1, art. 352, par. 1, art. 354, par. 1, art. 356f, par. 1, art. 356h, shall be punished for terrorism by deprivation of liberty from five to fifteen years, and where death has been caused - by deprivation of liberty of up to thirty years, to life imprisonment or to life imprisonment less substitution.</p> <p>(2) Anyone who, regardless of the specific mode of operation, directly or indirectly collects or provides means for accomplishing acts under par. 1, in full knowledge or based on the assumption these would be utilised to the above purposes, shall be punished by deprivation of liberty of three to fifteen years and a fine of up to BGN thirty thousand (30,000).</p> <p>(3) The object under par. 2 above, that has been the focus of crime, shall be expropriated to the benefit of the State, and where this object may not be found or has been disposed of, payment of the equivalent sum in cash shall be ruled.</p>
<b>CY</b>	<p><b>Article 4 of the law to ratify the international convention for the suppression of the financing of terrorism</b></p> <p>(1) The offences referred to in article 2 of the Convention are punishable by imprisonment up to fifteen years or with a fine of one million Cyprus pounds or both such imprisonment and fine: Provided that in any criminal procedure in relation to any of the fore-mentioned offences, the Court may, following a request on behalf of the prosecution, issue an order, temporary, restrictive or imperative, that could be issued by virtue of the provisions of any Law.</p> <p><b>Article 2 of the International Convention for the Suppression of the Financing of Terrorism</b></p> <p>1. Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with</p>

	<p>the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:</p> <p>(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or</p> <p>(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act.</p> <p>2. (a) On depositing its instrument of ratification, acceptance, approval or accession, a State Party which is not a party to a treaty listed in the annex may declare that, in the application of this Convention to the State Party, the treaty shall be deemed not to be included in the annex referred to in paragraph 1, subparagraph (a). The declaration shall cease to have effect as soon as the treaty enters into force for the State Party, which shall notify the depositary of this fact;</p> <p>(b) When a State Party ceases to be a party to a treaty listed in the annex, it may make a declaration as provided for in this article, with respect to that treaty.</p> <p>3. For an act to constitute an offence set forth in paragraph 1, it shall not be necessary that the funds were actually used to carry out an offence referred to in paragraph 1, subparagraphs (a) or (b).</p> <p>4. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of this article.</p> <p>5. Any person also commits an offence if that person:</p> <p>(a) Participates as an accomplice in an offence as set forth in paragraph 1 or 4 of this article;</p> <p>(b) Organises or directs others to commit an offence as set forth in paragraph 1 or 4 of this article;</p> <p>(c) Contributes to the commission of one or more offences as set forth in paragraphs 1 or 4 of this article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:</p> <p>(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of this article; or</p> <p>(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of this article.</p>
<p><b>CZ</b></p>	<p><b>Article 309(2) of the Criminal Code</b><sup>616</sup></p> <p>(1) A person who, with the intention to damage the Czech Republic's constitutional system or defence capability, to undermine or destroy fundamental political, economic or social structures of the Czech Republic or of an international organisation, to seriously intimidate the population or to unlawfully compel the government or other body or an international organisation to perform, to abstain from performing or to tolerate a certain action,</p> <p>a) commits an attack against the life or health of a person with the intention to cause death or serious bodily harm;</p> <p>b) takes hostages or commit an abduction;</p> <p>c) destroys or seriously damages public utilities, transport or telecommunications systems,</p>

<sup>616</sup> MONEYVAL (2009), First Progress Report on Czech Republic, p. 15 and 75.

	<p>including information systems, fixed platforms on continental shelf, electric energy and water supply, health service or other important facilities, public sites or public property with the intention to endanger human lives, safety of the facilities, systems or sites or to expose property to the risk of major damage;</p> <p>d) disrupts or stops the supply of water, electric energy or other basic natural resources with the intention to endanger human lives or to expose property to the risk of major damage;</p> <p>e) seizes or controls an aircraft, vessel or other means of passenger or freight transport, and/or destroys, seriously damages or extensively interferes in the operation of navigations systems or facilities; or provides false information on important facts, thus endangering human lives and health, safety of the means of transport or exposing property to the risk of major damage;</p> <p>f) without due authorization, manufactures or otherwise acquires, stores, imports, transports, exports or otherwise delivers or uses explosives, nuclear, biological, chemical or other weapons with mass destructive effects; and/or engages in unauthorised research and development of nuclear, biological, chemical or other weapons or combat means or explosives prohibited by law or by an international treaty; or</p> <p>g) exposes human beings to danger of death or serious bodily harm, or exposes property of other persons to the risk of major damage by causing a fire or flood or to the harmful effects of explosives, gas, electricity or similarly dangerous substances or forces; or commits a similarly dangerous act; or aggravates the imminent danger or obstructs the efforts to counter or alleviate it,</p> <p>shall be sentenced to a term of imprisonment of five to fifteen years and/or forfeiture of property.</p> <p>(2) The same sentence shall be imposed on a person who threatens to commit a terrorist under the paragraph 1, or who such an act, terrorist or member of terrorist group financially, materially or otherwise supports.</p> <p>(3-4) (...)</p>
<p><b>DK</b></p>	<p><b>Articles 114, 114a, 114b (21 and 23) Criminal Code.</b><sup>617</sup></p> <p><b>Article 114.</b></p> <p>(1) Any person is liable to imprisonment for any term up to life imprisonment if he commits one or more of the following offences with the intent seriously to intimidate a population or unlawfully to compel Danish or foreign public authorities or an international organisation to do or to abstain from doing any act or to destabilise or destroy the fundamental political, constitutional, economic or social structures of a country or an international organisation, provided that the offence may inflict serious harm on a country or an international organisation by virtue of its nature or the context in which it is committed:</p> <ol style="list-style-type: none"> <li>1) Homicide under Section 237.</li> <li>2) Assault under Section 245 or 246.</li> <li>3) Deprivation of liberty under Section 261.</li> <li>4) Impairment of the safe operation of means of transport under Section 184 (1), unlawful disturbances in the operation of public means of communication, etc., under Section 193</li> </ol>

<sup>617</sup> FATF (2006), Third Mutual Evaluation on Denmark, p. 240.

	<p>(1) or very serious damage to property under Section 291 (2), where such offences are committed in a manner likely to endanger human lives or cause considerable economic loss.</p> <p>5) Unlawful seizure of public means of transport under Section 183a.</p> <p>6) Serious violations of the arms legislation under Section 192a or under Section 10 (2) of the Act on Weapons and Explosives.</p> <p>7) Arson under Section 180, explosion, spreading of noxious gases, floods, shipwreck or any railway or other traffic accident under Section 183 (1) and (2), injurious pollution of the water supply under Section 186 (1), injurious poisoning or pollution of products intended for general use, etc., under Section 187 (1).</p> <p>(2) The same penalty shall apply to any person who transports weapons or explosives with the intent as referred to in Subsection (1) hereof.</p> <p>(3) The same penalty shall also apply to any person who threatens to commit one of the offences listed in Subsections (1) and (2) hereof with the intent as referred to in Subsection (1) hereof.</p> <p><b>Article 14a</b></p> <p>Any person is liable to imprisonment for any term not exceeding 10 years if he:</p> <ol style="list-style-type: none"> <li>1) directly or indirectly grants financial support to;</li> <li>2) directly or indirectly provides or collects funds for; or</li> <li>3) directly or indirectly makes money, other financial assets or financial or other similar services available to a person, a group of persons or an association that commits or intends to commit terrorist acts comprised by Section 114.</li> </ol> <p><b>Article 114b</b></p> <p>Any person is liable to imprisonment for any term not exceeding six years if he otherwise contributes by instigation, advice or action to furthering the criminal activity or the common purpose of a group of persons or an association which commits one or more of the offences comprised by Section 114 or Section 114a, no. 1) or 2), where such activity or purpose involves the commission of one or more offences of such nature.</p> <p>Also relevant: articles 21 (attempt) and 23 (conspiracy) Criminal Code.</p>
EE	<p><b>Article 237<sup>3</sup> Criminal Code<sup>618</sup></b></p> <p>(1) Financing or supporting a criminal offence provided in §§ 237, 237<sup>1</sup>, 237<sup>2</sup> of this Code in another manner is punishable by 2 to 10 years' imprisonment.</p> <p>(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.</p> <p>(3) For the criminal offence provided in this section, the court shall impose extended confiscation of assets or property acquired by the criminal offence pursuant to the provisions of § 83<sup>2</sup> of this Code.</p>
FR	<p><b>Article 421-1 of the Penal code</b></p> <p><i>(Act no. 96-647 of 22 July 1996 Article 1 Official Journal 23 July 1996; Act no. 98-348 of 11</i></p>

<sup>618</sup><http://legislationline.org/download/action/download/id/1280/file/4d16963509db70c09d23e52cb8df.htm/preview>

*May 1998 Article 37 Official Journal 12 May 1998)*

*(Act no. 2001-1062 of 15 November 2001 Article 33 Official Journal 16 November 2001)*

The following offences constitute acts of terrorism where they are committed intentionally in connection with an individual or collective undertaking the purpose of which is seriously to disturb public order through intimidation or terror:

1° willful attacks on life, willful attacks on the physical integrity of persons, abduction and unlawful detention and also as the hijacking of planes, vessels or any other means of transport, defined by Book II of the present Code;

2° theft, extortion, destruction, defacement and damage, and also computer offences, as defined under Book III of the present Code;

3° offences committed by combat organisations and disbanded movements as defined under articles 431-13 to 431-17, and the offences set out under articles 434-6, 441-2 to 441-5;

4° the production or keeping of machines, dangerous or explosive devices, set out under article 3 of the Act of 19 June 1871 which repealed the Decree of 4 September 1870 on the production of military grade weapons;

- the production, sale, import or export of explosive substances as defined by article 6 of the Act no. 70-575 of 3 July 1970 amending the regulations governing explosive powders and substances;

- the purchase, keeping, transport or unlawful carrying of explosive substances or of devices made with such explosive substances, as defined by article 38 of the Ordinance of 18 April 1939 defining the regulations governing military equipment, weapons and ammunition;

- the detention, carrying, and transport of weapons and ammunition falling under the first and fourth categories defined by articles 4, 28, 31 and 32 of the aforementioned Ordinance;

- the offences defined by articles 1 and 4 of the Act no. 72-467 of 9 June 1972 forbidding the designing, production, keeping, stocking, purchase or sale of biological or toxin-based weapons;

- the offences referred to under articles 58 to 63 of the Act no. 98-467 of 17 June 1998 on the application of the Convention of the 13 January 1993 on the prohibition of developing, producing, stocking and use of chemical weapons and on their destruction;

5° receiving the product of one of the offences set out in paragraphs 1 to 4 above;

6° the money laundering offences set out in Chapter IV of title II of Book III of the present Code;

7° the insider trading offences set out in article L.465-1 of the Financial and Monetary Code.

#### **Article 421-2**

*(Act no. 1996-647 of 22 July 1996 Article 2 Official Journal 23 July 1996)*

*(Act no. 2004-204 of 9 March 2004 article 8 Official Journal of 10 March 2004)*

The introduction into the atmosphere, on the ground, in the soil, in foodstuff or its ingredients, or in waters, including territorial waters, of any substance liable to imperil human or animal health or the natural environment is an act of terrorism where it is committed intentionally in connection with an individual or collective undertaking whose aim is to seriously disturb public order through intimidation or terror.

#### **Article 421-2-1**

*(Inserted by Act no. 96-647 of 22 July 1996 Article 2 Official Journal 23 July 1996)*

The participation in any group formed or association established with a view to the preparation, marked by one or more material actions, of any of the acts of terrorism provided for under the previous articles shall in addition be an act of terrorism.

**Article 421-2-2**

*(Inserted by Act no. 2001-1062 of 15 November 2001 art. 33 Official Journal 16 November 2001)*

It also constitutes an act of terrorism to finance a terrorist organisation by providing, collecting or managing funds, securities or property of any kind, or by giving advice for this purpose, intending that such funds, security or property be used, or knowing that they are intended to be used, in whole or in part, for the commission of any of the acts of terrorism listed in the present chapter, irrespective of whether such an act takes place.

**Article 421-2-3**

*(Inserted by Act no. 2003-239 of 18 March 2003 Art. 45 Official Journal of 19 March 2003)*

Being unable to account for resources corresponding to one's lifestyle when habitually in close contact with a person or persons who engage in one or more of the activities provided for by articles 421-1 to 421-2-2 is punishable by 7 years' imprisonment and by a fine of €100,000.

**Article 421-3**

The maximum custodial sentence incurred for the offences provided for under article 421-1 is increased as follows where those offences constitute acts of terrorism:

1° it is raised to criminal imprisonment for life where the offence is punished by thirty years' criminal imprisonment;

2° it is raised to thirty years' criminal imprisonment where the offence is punished by twenty years' criminal imprisonment;

3° it is raised to twenty years' criminal imprisonment where the offence is punished by fifteen years' criminal imprisonment;

4° it is raised to fifteen years' criminal imprisonment where the offence is punished by ten years' imprisonment;

5° it is raised to ten years' imprisonment where the offence is punished by seven years' imprisonment;

6° it is raised to seven years' imprisonment where the offence is punished by five years' imprisonment;

7° it is raised to twice the sentence incurred where the offence is punished by a maximum of three years' imprisonment.

The first two paragraphs of article 132-23 governing the safety period are applicable to the felonies referred to under the present article, and also to the misdemeanours punished by ten years' imprisonment

**Article 421-4**

*(Ordinance no. 2000-916 of 19 September 2000 Article 3 Official Journal of 22 September 2000 in force 1 January 2002)*

*(Act no. 2002-1138 of 9 September 2002 Article 46 Official Journal of 10 September 2002)*

The act of terrorism set out under article 421-2 is punished by twenty years' criminal imprisonment and a fine of €350,000.

Where this offence causes the death of one or more persons, it is punished by criminal imprisonment for life and a fine of €750,000.  
The first two paragraphs of article 132-23 governing the safety period are applicable to the felony referred to under the present article.

**Article 421-5**

*(Act no. 96-647 of 22 July 1996 Article 5 Official Journal 23 July)*

*(Act no. 2001-1062 of 15 November 2001 Article 33 Official Journal of 16 November 2001)*

*(Ordinance no. 2000-916 of 19 September 2000 Article 3 Official Journal of 22 September 2000 in force 1 January 2002)*

*(Act no. 2004-204 of 9 March 2004 article 6 XI Official Journal of 10 March 2004)*

The acts of terrorism defined by articles 421-2-1 and 421-2-2 are punished by ten years' imprisonment and a fine of €225,000.

Leading or organising [the type of] group or association provided for under article 421-2-1 is punished by twenty years' imprisonment and a fine of €500,000.

Attempt to commit the misdemeanour set out under article 421-2-2 is subject to the same penalties.

The first two paragraphs of article 132-23 governing the safety period are applicable to the offences referred to under the present article.

**Article 422-1**

Any person who has attempted to commit an act of terrorism is exempted from punishment where, having informed the judicial or administrative authorities, he makes it possible to prevent the offence taking place and, where relevant, to identify the other offenders.

**Article 422-2**

The custodial sentence incurred by the perpetrator or the accomplice to an act of terrorism is reduced by half where, having informed the judicial or administrative authorities, he has made it possible for the criminal behaviour to be stopped or for loss of life or permanent injuries resulting from the offence to be avoided, and, where relevant, the other offenders to be identified.

Where the penalty incurred is criminal imprisonment for life, this penalty is reduced to twenty years' imprisonment.

**Article 422-3**

Natural persons convicted of any of the offences provided for under the present title also incur the following additional penalties:

1° forfeiture of civic, civil and family rights, pursuant to the conditions set out under article 131-26. However, the maximum period of the forfeiture is raised to fifteen years in the event of a felony, and to ten years in the event of a misdemeanour;

2° prohibition, pursuant to the conditions set out under article 131-27, to hold public office or to undertake the social or professional activity in the course of which or on the occasion of the performance of which the offence was committed. However, the maximum temporary prohibition is increased to ten years;

3° area banishment, pursuant to the conditions set out under article 131-31. However, the maximum period of the banishment is raised to fifteen years in the event of a felony, and to ten years in the event of a misdemeanour.

	<p><b>Article422-4</b>  <i>(Act no. 93-1027 of 24 August 93 Article 33 Official Journal 29 August 1993)</i>  <i>(Act no. 98-468 of 17 July 1998 Article 37 Official Journal 12 May 1998)</i>  <i>(Act no. 2003-1119 of 26 November 2003 Article 78 III Official Journal of 27 November 2003)</i></p> <p>Any alien convicted of any of the offences referred to under the present title may be banished from French territory either permanently or for a maximum of ten years in accordance with the conditions laid down under article 131-30.</p> <p><b>Article422-5</b>  Legal persons may incur criminal liability for acts of terrorisms set out under under the present title, pursuant to the conditions set out under article 121-2.  The penalties incurred by legal persons are:  1° a fine, pursuant to the conditions set out under article 131-38;  2° the penalties referred to under article 131-39.  The prohibition referred to under 2° of article 131-39 applies to the activity in the course of which or on the occasion of the performance of which the offence was committed.</p> <p><b>Article422-6</b>  <i>(Inserted by Act no. 2001-1062 of 15 November 2001 Article 33 Official Journal of 16 November 2001)</i></p> <p>Natural and legal persons convicted of act of terrorism shall in addition incur the complementary penalty of confiscation of all or part of their property, whatever its nature, movable or immovable, severally or jointly owned.</p> <p><b>Article422-7</b>  <i>(Inserted by Act no. 2001-1062 of 15 November 2001 Article 33 Official Journal of 16 November 2001)</i></p> <p>The product of a financial or property sanction imposed on a person convicted of an act of terrorism is allocated to the contingency fund for victims of acts of terrorism and other offences.</p>
<p><b>FI</b></p>	<p><b>Chapter 34 a, Section 5 Criminal Code</b><sup>619</sup></p> <p>(1) A person who directly or indirectly provides or collects funds in order to finance, or aware that these shall finance</p> <p>(1) the taking of a hostage or hijacking,  (2) sabotage, aggravated sabotage or preparation of an offence of general endangerment that is to be deemed an offence referred to in the International Convention for the Suppression of Terrorist Bombing (Treaty Series 60/2002),  (3) sabotage, traffic sabotage, aggravated sabotage or the preparation of an offence of general endangerment that is to be deemed an offence referred to in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Treaty Series</p>

<sup>619</sup> <http://www.finlex.fi/pdf/saadkaan/E8890039.PDF>

	<p>56/1973), the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (Treaty Series 43/1998), the Convention for the Suppression of Unlawful Act Against the Safety of Maritime Navigation (Treaty Series 11/1999) or the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Treaty Series 44/2000),</p> <p>(4) a nuclear explosives offence, endangerment of health, aggravated endangerment of health, a nuclear energy use offence or other criminalised offence directed at a nuclear weapon or committed through the use of nuclear material, that is to be deemed an offence referred to in the Convention on the Physical Protection of Nuclear Material (Treaty Series 72/1989), or</p> <p>(5) murder, homicide, killing, aggravated assault, deprivation of liberty, aggravated deprivation of liberty, kidnapping, taking of a hostage or aggravated disturbance of public peace or the threat of such an offence, when the act is directed against a person who is referred to in the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (Treaty Series 63/1978), shall be sentenced for the <i>financing of terrorism</i> to imprisonment for at least four months and at most eight years.</p> <p>(2) Also a person who directly or indirectly provides or collects funds in order to finance or aware that they are used to finance the offences referred to in section 1 shall be sentenced for the financing of terrorism.</p> <p>(3) An attempt is punishable.</p> <p>(4) What is provided in the foregoing in this section does not apply if the offence is punishable as an offence referred to in paragraph 1, subparagraphs 1 through 5 or an attempt of such an offence or complicity in such an offence or, according to sections 1 or two or elsewhere in law a more severe sentence is provided for it.</p>
<p><b>DE</b></p>	<p><b>Section 89a Criminal Code<sup>620</sup></b></p> <p>(1) Whosoever prepares a serious violent act endangering the state shall be liable to imprisonment from six months to ten years. A serious violent act endangering the state is a criminal offence against life within the meaning of section 211 or section 212, or against personal freedom within the meaning of section 239a or section 239b, which under the circumstances is intended and apt to interfere with the existence or security of a state or an international organisation or to do away with, suspend the application of or undermine the constitutional principles of the Federal Republic of Germany.</p> <p>(2) Subs. 1 shall apply only if the offender prepares a serious violent act endangering the state by</p> <ol style="list-style-type: none"> <li>1. instructing another person or receiving instructions regarding the manufacture or use of firearms, explosives, explosive or incendiary devices, nuclear fuel or other radioactive substances, substances containing or capable of producing poison, other substances harmful to health, or special equipment necessary to carry out the act, or in other skills serving to commit one of the criminal offences referred to in (1) above,</li> <li>2. manufacturing, procuring for himself or another, storing or making available to another weapons, substances or equipment of a type referred to in number 1 above,</li> <li>3. procuring or storing items or substances crucial to the manufacture of weapons,</li> </ol>

<sup>620</sup> FATF (2010), Third Mutual Evaluation on Germany, p. 332-333.

	<p>substances or equipment of the type referred to in number 1 above,  4. collecting, accepting or making available not merely insubstantial assets for their commission.  (3-7) (....)</p>
<b>EL</b>	<p><b>Article 53.1 of the AML law (2008) (which replaces para. 6 of Article 187A of the Penal Code)</b></p> <p>Whoever provides information or materials or receives, collects, provides or manages in any way funds within the meaning of paragraph 1 of Article 1 of Law 3034/2002 (Government Gazette 168A) with the aim of facilitating or supporting the execution of terrorist activities according to paragraphs 1, 3 and 4 either by a criminal organisation or group or an individual terrorist shall be punished with a sentence of up to ten years</p>
<b>HU</b>	<p><b>Article 261(4) Criminal Code</b><sup>621</sup></p> <p>any person who instigates, suggests, offers, undertakes to participate in the commission, or agrees on joint perpetration of any of the criminal acts defined under Subsection (1) or (2), or in order to promote the commission of the offence ensures the conditions required therefore or facilitating that, or provides or collects funds to promote the commission of the offence is guilty of felony punishable by imprisonment from two to eight years.</p>
<b>IE</b>	<p><b>Section 13 of the Criminal Justice (Terrorist Offences) Act 2005</b></p> <p>13.—(1) Subject to subsections (6) and (7), a person is guilty of an offence if, in or outside the State, the person by any means, directly or indirectly, unlawfully and wilfully provides, collects or receives funds intending that they be used or knowing that they will be used, in whole or in part in order to carry out—</p> <p>(a) an act that constitutes an offence under the law of the State and within the scope of, and as defined in, any treaty that is listed in the annex to the Terrorist Financing Convention, or</p> <p>(b) an act (other than one referred to in paragraph (a))—</p> <p>(i) that is intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, and</p> <p>(ii) the purpose of which is, by its nature or context, to intimidate a population or to compel a government or an international organisation to do or abstain from doing any act.</p> <p>(2) Subject to subsections (6) and (7), a person who attempts to commit an offence under subsection (1) is guilty of an offence.</p> <p>(3) A person is guilty of an offence if the person by any means, directly or indirectly, unlawfully and wilfully provides, collects or receives funds intending that they be used or knowing that they will be used, in whole or in part—</p> <p>(a) for the benefit or purposes of a terrorist group as defined in section 4, or</p> <p>(b) in order to carry out an act (other than one referred to in paragraph (a) or (b) of subsection (1)) that is an offence under section 6.</p> <p>(4) A person who attempts to commit an offence under subsection (3) is guilty of an</p>

<sup>621</sup> MONEYVAL (2010), Report on Fourth Assessment Visit to Hungary, p. 34.

	<p>offence.</p> <p>(5) An offence may be committed under subsection (1) or (3) whether or not the funds are used to carry out an act referred to in subsection (1) or (3)(b), as the case may be.</p> <p>(6) Subsections (1) and (2) apply to an act committed outside the State if the act—</p> <p>(a) is committed on board an Irish ship,</p> <p>(b) is committed on an aircraft registered in or operated by the State,</p> <p>(c) is committed by a citizen of Ireland or by a stateless person habitually resident in the State,</p> <p>(d) is directed towards or results in the carrying out of an act referred to in subsection (1) in the State or against a citizen of Ireland,</p> <p>(e) is directed towards or results in the carrying out of an act referred to in subsection (1) against a State or Government facility of the State abroad, including an embassy or other diplomatic or consular premises of the State, or</p> <p>(f) is directed towards or results in the carrying out of an act referred to in subsection (1) in an attempt to compel the State to do or abstain from doing any act.</p> <p>(7) Subsections (1) and (2) apply also to an act committed outside the State in circumstances other than those referred to in subsection (6), but in that case the Director of Public Prosecutions may not take, or consent to the taking of, proceedings referred to in section 43(2) for an offence in respect of that act except as authorised by section 43(3).</p> <p>(8) A person guilty of an offence under this section is liable—</p> <p>(a) on summary conviction, to a fine not exceeding \3,000 or imprisonment for a term not exceeding 12 months or both, or</p> <p>(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 20 years or both.</p>
<p><b>IT</b></p>	<p><b>Article 1(1)a of Decree 109/2007</b></p> <p>“Terrorist financing” is understood as: “Any activity that aims, through any means, to collect, supply, mediate, deposit, hold or disburse funds or economic resources, in any way undertaken, wholly or in part, for the purpose of committing one or more criminal acts of terrorism or favour the commission of one or more criminal acts of terrorism covered by Italy’s Criminal Code, regardless of whether such funds or economic resources were actually used to commit said criminal acts”</p>
<p><b>LV</b></p>	<p><b>Article 88.1 Criminal Code<sup>622</sup></b></p> <p>(1) For a person who commits the direct or indirect collection or transfer of any type of acquired funds or other property for the purposes of utilising such or knowing that such will be fully or partially utilised in order to commit one or several acts of terror or in order to transfer such to the disposal of terrorist groups or individual terrorists (financing of terrorism), the applicable sentence is life imprisonment or deprivation of liberty for a term of not less than eight and not exceeding twenty years, with confiscation of property.</p> <p>(2) For a person who commits the financing of terrorism if commission thereof is by a</p>

<sup>622</sup><http://www.legislationline.org/documents/section/criminal-codes> (Criminal code of the Republic of Latvia (in English), updated until 16 June 2009.)

	<p>group of persons pursuant to previous agreement or it committed on large scale, the applicable sentence is life imprisonment or deprivation of liberty for a term of not less than fifteen and not exceeding twenty years, with confiscation of property.</p>
<b>LT</b>	<p><b>Article 250 Criminal Code</b><sup>623</sup></p> <p>1. Any person who placed explosives in the place of residence or work, or in a public place intending to cause explosion, caused explosion or set fire, shall be punished by imprisonment of up to ten years.</p> <p>2. Any person who committed the acts indicated in the part 1 thereof resulting in health impairment of the victim or destruction or damage of means of transport or building, or equipment inside of the building, shall be punished by imprisonment from three to twelve years.</p> <p>3. Any person, who bombed, set afire a building or equipment or destroyed it in some other way which resulted in danger to lives or health of many people, or in spreading of radioactive, biological or chemical hazardous substances, preparations or micro-organisms, shall be punished by imprisonment from five to fifteen years.</p> <p>4. Any person who committed the acts provided for in the part 3 thereof against an object of strategic importance thus causing serious consequences, shall be punished by imprisonment from ten to twenty years or by life imprisonment.</p> <p>5. Any person who formed a group of accomplices or an organised group for conducting acts provided for herein or participated in the activities of such a group, or financed it, or provided it with material or any other support, shall be punished by imprisonment from four to ten years.</p> <p>6. Any person who formed a terrorist group which by the acts provided herein is aimed at threatening people or demanding illegitimately the State, its institution or international organisation to perform certain acts or refrain from performing them, or participated in the activities of such group or financed it or provided it with material or any other support, shall be punished by imprisonment from ten to twenty years.</p> <p>7. Legal persons shall also be liable for the acts indicated herein.</p>
<b>LU</b>	<p><b>Article 135-1 (L. 12 Aug. 2003)</b></p> <p>Constitutes an act of terrorism all felony and misdemeanor punishable by imprisonment for a maximum of three years or a heavier penalty which by its nature or its context, may seriously damage a country, organisation or international agency and committed intentionally in order to:</p> <ul style="list-style-type: none"> <li>▪ Seriously intimidating a population,</li> <li>▪ Unduly compelling a government, organisation or an international body do or abstain from doing any act, or</li> <li>▪ Seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country, organisation or an international organisation.</li> </ul>

623 [http://www.coe.int/t/dlapil/codexter/4\\_theme\\_files/Lithuania.pdf](http://www.coe.int/t/dlapil/codexter/4_theme_files/Lithuania.pdf)

**Article 135-2 (L. October 27, 2010)**

He who has committed an act of terrorism under section precedent is punished by imprisonment of fifteen to twenty years.

It is punished by life imprisonment if the act resulted in the death of one or more persons.

**Article 135-3 (L. October 27, 2010)**

It is a terrorist group, structured association of at least two persons, established over time, to commit a concerted one or more of acts of terrorism under Articles 112-1, 135-1, 135-2, 135-5, 135-6, 135-9 and 442-1.

**Article 135-4 (L. 12 Aug. 2003)**

(1) Any person who willfully and knowingly, actively part of a terrorist group, is punished with imprisonment of one to eight years and a fine of 2,500 euros to 12,500 euros, or one of these penalties, even if it does not intend to commit an offence under this group or to join it as a perpetrator or accomplice.

(2) Any person who participates in the preparation or conduct of any lawful activity of this terrorist group, when she knows that her participation contributes to the goals of the latter, as are provided in the preceding article, shall be punished by imprisonment of one to eight years and a fine of 2,500 euros to 12,500 euros, or one of these penalties.

(3) Any person who participates in any decision making in the activities of a group terrorist, so she knows their participation contributes to the goals of the latter, as provided in the preceding article, shall be punished with imprisonment from five to ten years and a fine of 12,500 euros to 25,000 euros or one of these penalties.

(4) Any officer of the terrorist group is punished with imprisonment from ten to fifteen years and a fine of 25,000 euros to 50,000 euros or one of these penalties.

(5) The conduct referred to in points 1 to 4 of this Article that have occurred in the territory National continued under Luxembourg law regardless of where the terrorist group is based or operates.

**Article 135-5 (L. October 27, 2010)**

Constitutes an act of terrorism financing from providing or collection by any means whatsoever, directly or indirectly, unlawfully and deliberately, funds, securities or property of any kind, with the intention of seeing them used or knowing that they will be used, in whole or in part, to commit or attempt to commit one or more offences under Articles 112-1, 135-1 to 135-4, 135-9, and 442-1, even if they were not actually used to commit or attempt to commit any of these offences, or if they are not tied to a specific terrorist act.

Included in the term "fund", goods of any kind, whether tangible or intangible, movable or immovable, however acquired whatsoever, and any documents or instruments legal in any form whatsoever, including electronic or digital, evidencing ownership or interest in such property and bank credits, checks travel, bank checks, money orders, shares, securities, bonds, drafts and letters of credit, without this list being limiting.

**Article 135-6 (L. October 27, 2010)**

	<p>He who has committed an act of terrorism financing provided the previous article is the same penalties as those provided by Articles 112-1, 135-1 to 135 -4, 135-9 and 442-1, and following the distinctions established therein.</p> <p><b>Article 135-7 (L. October 27, 2010)</b>  Is exempt from punishment one who, before attempting to offences in Articles 112-1, 135-1, 135-2, 135-5, 135-6 and 135-9 and before any proceedings commenced, will be revealed to the authority that acts intended to prepare the commission of offences to the same items or the identity of persons who asked these acts. In the same cases, sentences of imprisonment are reduced to the extent determined by Article 52 and after graduation predicted y with respect to one who, after the commencement of prosecution, has revealed to the authorities the identity of the perpetrators remain unknown.</p> <p><b>Article 135-8 (L. October 27, 2010)</b>  Is exempt from punishment the guilty to participating in a group terrorist, before attempting to acts of terrorism covered by the group and before all prosecutions commenced, will be revealed to authority the existence of this group and the names of its commanders orsuborder.</p>
<p><b>MT</b></p>	<p><b>Article 328 A (1) of the Criminal Code</b>  An act of “terrorism” is any act listed in sub-article 2 (see below) committed wilfully, which may seriously damage a country or an international organisation where committed with the aim of:</p> <ul style="list-style-type: none"> <li>(a) seriously intimidating a population or</li> <li>(b) unduly compelling a Government or international organisation to perform or abstain from performing any act, or</li> <li>(c) seriously destabilising or destroying the fundamental political, constitutional, economic, or social structures of a country or an international organisation.</li> </ul> <p><b>Article 328 A (2) of the Criminal Code</b></p> <ul style="list-style-type: none"> <li>(a) taking away of the life or liberty of a person;</li> <li>(b) endangering the life of a person by bodily harm;</li> <li>(c) bodily harm;</li> <li>(d) causing extensive destruction to a state or government facility, a public transportation system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger the life or to cause serious injury to the property of any other person or to result in serious economic loss;</li> <li>(e) seizure of aircraft, ships or other means of public or goods transport;</li> <li>(f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons;</li> <li>(g) research into or development of biological and chemical weapons;</li> <li>(h) release of dangerous substances, or causing fires, floods or explosions endangering the life of any person;</li> <li>(i) interfering with or disrupting the supply of water, power or any other fundamental natural resource endangering the life of any person;</li> </ul>

	<p><i>(j) threatening to commit any of the acts in paragraphs (a) to (i).</i></p> <p><b>Article 328 A (3) of the Criminal Code</b>  Whosoever commits an act of terrorism shall be guilty of an offence and shall be liable on conviction to the punishment of imprisonment from five years to life.</p> <p><b>Article 328D of the Criminal Code</b>  Whosoever incites, aids or abets any offence under the foregoing articles of this subtitle shall be guilty of an offence and shall be liable on conviction to the punishment laid down for the offence incited, aided or abetted.</p> <p><b>Article 328B (3) of the Criminal Code</b>  Whosoever promotes, constitutes, organises, directs, finances... a terrorist group knowing that such participation or involvement will contribute towards the criminal activities of the terrorist group shall be liable –  (a) where the said participation or involvement consists in directing the terrorist group, to the punishment of imprisonment not exceeding thirty years:  Provided that where the activity of the terrorist group consists only of the acts mentioned in article 328A(2)(j)22 the punishment shall be that of imprisonment for a period not exceeding eight years;  (c) in any other case, to the punishment of imprisonment not exceeding eight years.</p> <p><b>Article 328F of the Criminal Code</b>  (1) Whosoever receives, provides or invites another person to provide, money or other property intending it to be used, or which he has reasonable cause to suspect that it may be used, for the purposes of terrorism shall, on conviction, and unless the fact constitutes a more serious offence under any other provision of this Code or of any other law, be liable to the punishment of imprisonment for a term not exceeding four years or to a fine (multa) not exceeding five thousand Liri or to both such fine and imprisonment.  (2) In this article a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether for consideration or not.</p> <p><b>Article 328E(1) of the Criminal Code</b>  "terrorist property" is defined as -  (a) money or other property which is likely to be used for the purposes of terrorism, including any resources of a terrorist group,  (b) proceeds of the commission of acts of terrorism, and  (c) proceeds of acts carried out for the purposes of terrorism.</p>
<p><b>NL</b></p>	<p><b>Article 46 WvSr:</b></p> <p>1. The preparation of a serious offence carrying a statutory term of imprisonment of eight years or more shall be punishable if the perpetrator intentionally acquires, manufactures, imports, conveys in transit, exports or has in his possession objects, substances, information carriers, premises or vehicles to be used in the commission of that offence.</p> <p>2. The penalty for the preparation of a serious offence is half the maximum principal penalty for the offence itself.</p>

	<p>3. Where the serious offence itself is punishable by life imprisonment, a term of imprisonment not exceeding fifteen years shall be imposed for its preparation.</p> <p>4. The additional penalties for preparation shall be the same as those for the completed serious offence.</p> <p>5. An object shall be understood to be any good or property right.</p> <p><b>Article 140a WvSr:</b></p> <p>1. Any person who participates in an organisation whose aim is to commit terrorist offences shall be liable to a term of imprisonment not exceeding fifteen years or a fifth-category fine.</p> <p>2. Founders, leaders and directors of such an organisation shall be liable to life imprisonment or a determinate term of imprisonment not exceeding thirty years or a fifth-category fine.</p> <p>3. Article 140, paragraph 4 applies mutatis mutandis.</p> <p><b>Article 140 WvSr:</b></p> <p>1. Any person who participates in an organisation whose aim is to commit serious offences shall be liable to a term of imprisonment not exceeding six years or a fifth-category fine.</p> <p>2. Any person who participates in the continuation of the activities of an organisation which has been prohibited by a final and unappealable decision of a court or by operation of law, or in respect of which an unappealable declaration by a court has been made as referred to in section 5a, subsection 1 of the Corporations (Conflict of Laws) Act shall be liable to a term of imprisonment not exceeding one year or a third-category fine.</p> <p>3. For founders, leaders or directors of such an organisation, the term of imprisonment may be increased by one third.</p> <p>4. Participation as defined in paragraph 1 shall include lending monetary or other material support as well as raising funds or recruiting persons for the benefit of such an organisation.</p>
<p><b>PL</b></p>	<p><b>Article 165a Criminal Code</b><sup>624</sup></p> <p>Anyone who collects, transfers or offers instruments of payment, securities or other foreign exchange, property rights, movable or immovable property, in order to finance an offence of a terrorist character shall be subject to imprisonment for 2 to 12 years.</p> <p>Also relevant: article 115(20) Criminal Code.</p>
<p><b>PT</b></p>	<p><b>Article 5-A Law No. 52/2003 of 22nd August On combating terrorism</b> (in compliance with council Framework Decision no. 2002/475/JHA, of 13 June) as amended by Law n° 59/2007 of 4th September and Law no. 25/2008, of 5th June</p> <p><b>Terrorism financing</b></p> <p>1- Whoever, by any means, directly or indirectly, provides, collects or holds funds or assets of any type, as well as products or rights liable of being transformed into funds, with the intention that they should be used or in the knowledge that they may be used, in full or</p>

<sup>624</sup>MONEYVAL (2009), Second Progress Report on Poland, p. 6.

	<p>in part, in the planning, preparation or commission of the set out in paragraph 1 of Article 2, or whoever commits these facts with the intention referred to in paragraph 1 of Article 3 or in paragraph 1 of Article 4, shall be punishable with a penalty of 8 up to 15 years.</p> <p>2 - For an act to constitute the offence set forth in the preceding paragraph, it shall not be necessary that funds originate from a third party, or have been transferred to whom they were destined, or have actually been used to commit the facts therein mentioned.</p> <p>3 - The penalty shall be specially reduced or not take place where the offender voluntarily renounces his activity, prevents or mitigates the danger caused by him/her or actually helps in a concrete manner to collect conclusive evidence for the identification or arrest of other persons responsible.”</p> <p><b>Article 11 - Revocation</b> Articles 300 and 301 of the Penal Code are hereby revoked.</p>
<p><b>RO</b></p>	<p><b>Article 38 of Law no. 535/2004</b></p> <p>(1) It shall be a crime and shall be punished by imprisonment from 15 to 20 years and interdiction of certain rights the followings: making available, achieving, providing or collecting of funds and logistical resources in every way, directly or indirectly, with the aim of supporting or committing terrorist acts, as well as any financial and/or banking operations made for or on behalf of natural or legal persons who are subjects of international sanctions or are listed in the national list for preventing and combating terrorism.</p> <p>(2) Logistical resources and funds made available, achieved, provided or collected with the aim of supporting or committing terrorist acts, shall be confiscated, and if they cannot be found, the convicted shall be obliged to the payment of their equivalent in money</p> <p>(3) Attempt shall be punished.</p> <p>(4) The production or acquisition of means or instruments, and the taking of measures in view of committing the offences in para. (1) shall be considered attempt.”</p>
<p><b>SK</b></p>	<p><b>Section 3 of the AML/CTF Act</b> Terrorist Financing</p> <p>(1) Terrorist financing shall be for the purposes of this Act understood the provision or collection of funds with the intention of using them or knowing that they are to be used, in whole or in part, to commit:</p> <p>a) the criminal offence of establishing, contriving and supporting a terrorist group or the criminal offence of terrorism or</p> <p>b) the criminal offence of theft, the criminal offence of extortion or the criminal offence of counterfeiting and altering a public document, official stamp, official seal, official die, official sign and official mark or of instigating, aiding or inciting a person to commit such a criminal offence or his attempt aimed to Collection of Laws No. 297/2008 commit a criminal offence of establishing, contriving and supporting a terrorist group or the criminal offence of terrorism.</p> <p>(2) Knowledge, intention or purpose required in actions referred to in subsection 1 may result from objective factual circumstances, especially from the nature of an unusual transaction.</p> <p>(3) Terrorist financing is prohibited.</p>

	<p><b>Section 129 Criminal Code</b> Group of persons and organisation [...]</p> <p>(5) For the purposes of this Act, terrorist group means a structured group of at least three individuals which does exist for certain period of time with the objective of committing terror crime or criminal act of terrorism.</p> <p>(6) Activity carried out in favor of a terrorist group or of criminal group means intentional participation in such a group or any other intentional acting for the purpose of</p> <p>a) maintaining the existence of a such group or b) committing by such group of criminal acts mentioned in the par. 3 or 4.</p> <p>(7) Supporting criminal group or terrorist group means intentional acting consisting in providing means, services, cooperation or creating any other conditions for the purpose of</p> <p>a) the establishing or maintaining existence of such group, or b) committing by such a group of criminal acts mentioned in the par. 3 or 4.</p> <p><b>Section 297 Criminal Code</b> Establishing, plotting and supporting of a terrorist group Any one shall be sentenced to deprivation of liberty within the term of eight up to fifteen years who establishes or plots a terrorist group, is a member of it or is acting in its favor or is supporting it.</p>
SI	<p><b>Article 109 Criminal Code</b><sup>625</sup></p> <p>(1) Whoever provides or collects money or property in order to partly or wholly finance the committing of offences under Article 108 of this Penal Code shall be sentenced to imprisonment between one and ten years.</p> <p>(2) Whoever commits an offence from the preceding paragraph shall be subject to the same penalty even if the money or property provided or collected was not used for committing the criminal offences specified in the preceding paragraph.</p> <p>(3) If an offence from the preceding paragraphs was committed within a terrorist organisation or group to commit terrorist acts, the perpetrator shall be sentenced to imprisonment between three and fifteen years.</p> <p>(4) Money and property from the preceding paragraphs shall be seized.</p>

<sup>625</sup> Annex IV to MONEYVAL (2010), Report on Fourth Assessment Visit on Slovenia.

<p><b>ES</b></p>	<p><b>Article 576 [Collaboration]</b></p> <p>1. Any person who carries out or facilitates any act of collaboration with the activities or aims of an armed group, organisation, association or terrorist group will be punished by a prison term of five to ten years and a special sanction of suspension of rights between eighteen and twenty four months.</p> <p>2. Acts of collaboration are understood to include providing information or surveillance of people, property or installations, the construction, fitting out, cession or use of housing or deposits, the concealment or transfer of people linked to armed groups, organisations or terrorist groups, as well as the organisation of training practices, attendance at same and in general, any other equivalent way of cooperating, helping, or mediating either financially or in any other fashion with the activities of said armed groups, organisations, associations, or terrorist groups.</p> <p>When the information or surveillance of the people mentioned in the preceding paragraph endangers the life, physical integrity, freedom or wealth of said persons, the punishment provided for in section 1, will be imposed at its upper half. If the risk foreseen materialises, the event will be punished as a co-perpetrator or accomplice according to the circumstances.</p> <p><b>Article 576 bis</b></p> <p>1. Any person who, by any means, directly or indirectly provides or collects funds with the intention that they should be used, or in the knowledge that they are to be used, in full or in part, to commit the offences included in this Chapter or to make them available to a terrorist organisation or group, will be punished by prison term of five to ten years and special sanction of suspension of rights between eighteen to twenty-four months.</p> <p>If the funds are eventually used for the commission of specific terrorist acts, the conduct will be sanctioned as co-perpetrator or accomplice, as appropriate, provided that it entails a more serious punishment.</p> <p>2.— Any person who, being specifically obliged by law to collaborate with the authorities in the prevention of the financing terrorism activities, and that because of serious negligence in the fulfilling of the above mentioned obligations, will cause that any of the described conducts in subsection one of this section will not be detected or stopped, will be punished with the sanction therein established inferior in one or two grades.</p> <p>3. When, according to the provisions of article 31 bis of this Penal Code, a legal person will be responsible for the crimes included in this article, the following sanctions will be applied:</p> <p>a)— Fine of two to five years, if the crime committed by the natural person brings with more than five years prison penalty.</p> <p>b)— Fine of one to three years if the offence committed by a natural person brings with more than two years prison penalty not included in the former subsection.</p>
<p><b>SE</b></p>	<p><b>Section 3 Act on Criminal Responsibility for the Financing of Particularly Serious Crime in</b></p>

	<p><b>some cases, etc. (2002:444)<sup>626</sup></b></p> <p>A person who collects, provides or receives funds or other assets with the intention that they should be used or in the knowledge that they are to be used in order to commit particularly serious crime shall be sentenced to imprisonment for at most two years.</p> <p>If the offence under the first paragraph is regarded as gross, imprisonment for at least six months and at most six years shall be imposed. In assessing whether the offence is gross, special consideration shall be given to whether the offence was part of an activity carried out on a large scale or otherwise was of a particularly dangerous kind.</p> <p>Punishment shall not be imposed in petty cases.</p>
<p><b>UK</b></p>	<p><b>Terrorism Act 2000 - Part III<sup>627</sup></b></p> <p><b>15 Fund-raising.</b></p> <p>(1) A person commits an offence if he—</p> <p>(a) invites another to provide money or other property, and</p> <p>(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.</p> <p>(2) A person commits an offence if he—</p> <p>(a) receives money or other property, and</p> <p>(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.</p> <p>(3) A person commits an offence if he—</p> <p>(a) provides money or other property, and</p> <p>(b) knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.</p> <p>(4) In this section a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether or not for consideration.</p> <p><b>16 Use and possession.</b></p> <p>(1) A person commits an offence if he uses money or other property for the purposes of terrorism.</p> <p>(2) A person commits an offence if he—</p> <p>(a) possesses money or other property, and</p> <p>(b) intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.</p> <p><b>17 Funding arrangements.</b></p> <p>A person commits an offence if—</p> <p>(a) he enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and</p> <p>(b) he knows or has reasonable cause to suspect that it will or may be used for the</p>

<sup>626</sup> FATF (2006), Third Mutual Evaluation on Sweden, p. 186.

<sup>627</sup> Website UK Government, <<http://www.legislation.gov.uk/ukpga/2000/11/part/III>> and <http://www.legislation.gov.uk/ukpga/2000/11/part/VI>.

purposes of terrorism.

**18 Money laundering.**

(1) A person commits an offence if he enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property—

- (a) by concealment,
- (b) by removal from the jurisdiction,
- (c) by transfer to nominees, or
- (d) in any other way.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

**Terrorism Act 2000 - Part VI**

**63 Terrorist finance: jurisdiction.**

(1) If—

- (a) a person does anything outside the United Kingdom, and
  - (b) his action would have constituted the commission of an offence under any of sections 15 to 18 if it had been done in the United Kingdom,
- he shall be guilty of the offence.

(2) For the purposes of subsection (1)(b), section 18(1)(b) shall be read as if for “the jurisdiction” there were substituted “ a jurisdiction ”.

## Annex 8.1 ORGANISATIONAL PATTERNS OF THE EU FIUS

The **Austrian** FIU is set up as an organisational unit of the Federal Criminal Police (BKA) and charged with money laundering and financing of terrorism investigations. The FIU is an organisational unit of the Federal Ministry of the Interior and in 2010, in the wake of internal restructurings of the BKA it became part of the newly created department handling white collar crime, of the Structural Department dealing with Organised Crime<sup>628</sup>. According to the Austrian representative, the FIU is autonomous but belongs to the Federal Criminal Intelligence Service, within the Ministry of the Interior, where it also gets 100% of its budget from. It therefore is not budget independent from the Federal Criminal Intelligence Service. Furthermore, the FIU is subject to the directives of the Minister of Interior. With respect to the staff employed in the FIU, there is no distinction of responsibilities between staff in charge of the FIU and staff in charge of the police or criminal investigations. FIU members of staff are detectives originally trained for drugs crime, with added specialisation in investigating white collar crimes and mutual legal assistance.<sup>629</sup>

The **Belgian** FIU has an independent location and falls under the authority of the Ministry of Justice and of the Ministry of Finance. In order to ensure its independence, the Belgian FIU has been given legal personality. As legal person, the FIU can dispose of its budget freely. The two aforementioned Ministries are responsible for setting a ceiling for the budget allocated to the FIU<sup>630</sup>. The Belgian FIU is funded by the reporting entities, whose contributions are directly proportional to their annual turnover, except for some DNFBPs who pay a fixed amount<sup>631</sup>. A similar funding structure is also used for the National Bank of Belgium and the FSMA. At the operational level the FIU is independent. The President of the Belgian FIU, as well as his deputy, are prosecutors that have been detached full time to head the FIU. The Head of the Belgian FIU is appointed in this position by the King and no longer has prosecutorial powers.<sup>632</sup>

In **Bulgaria**, the State Agency for National Security (SANS) was established in 2008.<sup>633</sup> In SANS there are two types of units: specialised directorates and specialised administrative directorates. The former are the sole units responsible for carrying out operative activities (i.e. detecting and preventing or stopping crimes using law enforcement methods). The FIU is now one of the 9 Specialised administrative directorates of the SANS and according to the Bulgarian representative is officially called the Specialised Administrative Directorate Financial Intelligence. Following the move of the FIU from the Ministry of Finance to the SANS in 2008, the Bulgarian representatives argued that cooperation with the law enforcement agencies has increased. The SANS (and accordingly the FIU) is accountable to the Council of Ministers. According to the Bulgarian representative, the FIU is an independent administrative entity that has its own budget, within that of the SANS. On the basis of the formulated priorities, basic goals and tasks, each operational unit has to plan the conduct of operations and investigations. The officials at the intermediate level in SANS

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<sup>628</sup> FIU Austria (2011), *Annual Report*, p.6

<sup>629</sup> FATF (2009), *Mutual Evaluation Report on Austria*, p. 77

<sup>630</sup> FATF (2005), *Third Mutual Evaluation Report on Belgium*, p. 62

<sup>631</sup> Royal decree of 11 June 1993

<sup>632</sup> Article 22(3) of the Belgian AML/CTF law

<sup>633</sup> The State Agency for National Security Act was promulgated in the State Gazette no 109/20.12.2007, effective as 01.01.2008, amended SG No. 69/05.08.2008, 94/31.10.2008, supplemented SG No. 22/24.03.2009, amended SG No. 35/12.05.2009, amended and supplemented SG No. 42/05.06.2009, amended SG No. 82/16.10.2009, amended and supplemented SG No. 93/24.11.2009, amended SG No. 16/26.02.2010.

have to plan on the one hand the distribution and use of the available resources (employees, secret agents, quotas on the use of the technical intelligence resources, technical equipment and financial means), and on the other hand they have to reformulate the requirements which the available resources have to meet.<sup>634</sup>

The **Cypriot** FIU is an independent body within the Attorney General's Office. The FIU was designed as a multidisciplinary office grouping representatives of the institutions that were stakeholders in the AML/CTF fight. All the members of the FIU are detached from their original institutions. This was initially conceived as a temporary solution. Given the specific knowledge that this office developed over time, as well as the wide array of tasks that the office was entrusted with, the solution became permanent and the detachment of the officers was extended indefinitely. Although not having an independent budgetary line, the representatives of MOKAS indicated that they are able to undertake all functions with the currently resources.<sup>635</sup>

In the **Czech Republic**, the FIU is one department of the Ministry of Finance and has its own premises. The tutelage of the FIU is reflected in the staff composition of the FIU, since most of the staff have an economic background. According to the same source some of the FIU agents also have a police and legal specialisation. On the issue of the independence of the FIU some doubt arise. According to Moneyval (2011), the Ministry must authorise any recruitment of additional staff<sup>636</sup>. Moreover, despite a differentiated budget for software and hardware purchase, the budget of the FIU is included in that of the Ministry of Finance. Complaints about resource scarcity have been registered both in the 2006 and the 2011 Moneyval reports.

In **Denmark**, the FIU is the Money Laundering Secretariat of the Office of Public Prosecution for Serious Economic Crime. The FIU staff enjoys complete independence in their work, a fact confirmed by the Director of the Office of Public Prosecution for Serious Economic Crime<sup>637</sup>. The staff of the FIU consists of prosecutors, police officers and members of the tax administration. The FIU does not have an independent budget. Nevertheless, here the understaffing problem caused by an increase in its additional tasks the FIU was assigned, has been met by an increase in staff as well as by a new IT system. According to the Danish representative, the new IT system was expected to decrease the labour costs associated with the registering of STRs, whereas additional staff would accommodate the larger volume of investigated STRs.

In **Estonia**, the FIU is an independent bureau inside the Police and Border Guard Board. From 1st January 2010 the FIU is an autonomous structural unit of the Police and Border Guard Board, which was established by joining the Police Board, Central Criminal Police, Personal Protection Service, Border Guard Administration and the Citizenship and Migration Board. Access to criminal data was given specific consideration when locating the FIU within the police. The FIU is not independent in terms of budget and all of its analysts have a police background. The FIU receives its budget from the Police and Border Guard Board. Besides the analysts, the FIU is also staffed with customs officers that have financial and tax backgrounds, and with IT experts.<sup>638</sup>

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<sup>634</sup> Concept of the organisation and management of the SANS, p 13 (Available at: <http://www.dans.bg/images/stories/Concept/concepcia-091021-en.pdf>)

<sup>635</sup> MONEYVAL (2011), *Report on Fourth Assessment Visit on Cyprus*, p. 56

<sup>636</sup> MONEYVAL (2011) *Fourth Mutual Evaluation Report on the Czech Republic*, p. 73

<sup>637</sup> FATF (2009), *Third Mutual Evaluation Report on Denmark*, p 72

<sup>638</sup> MONEYVAL(2008), *Third Round Assessment Report on Estonia*, p. 82

In **Finland**, the FIU is located within the Criminal Intelligence Division of the National Bureau of Investigation of the Finnish police. The FIU has full budgetary independence and is accountable to the Chief of the National Bureau of Investigation and to the Ministry of Interior. The staff of the FIU reflects once again its core duties as well as its additional task of conducting pre-trial investigations. The majority of the staff consists of police officers with experience in investigating financial and economic crimes that also have work experience either within the financial sector, the prosecuting authorities or tax and custom authorities.<sup>639</sup>

The **French** FIU (TRACFIN) has its own separate location and, according to the FIU representatives, the FIU has operational independence. The budget is reviewed and approved by the two Ministries (the Ministry of the Economy, Finance and Employment and the Ministry for the Budget, Public Accounts and State Reform). Nevertheless, the Executive cannot influence the flows of information being initiated by the FIU. Furthermore, these authorities seem to recognise the expansion of its scope of activities of the FIU and have therefore repeatedly increased its budget<sup>640</sup>.

According to the **German** representatives, the FIU enjoys full autonomy despite being part of the Federal Criminal Police (BKA). Its operations are not subject to outside direction. According to FATF (2010), the FIU does not have its own separate budget. Its resources are provided by the BKA, and consist mostly of salaries and operational and IT costs. The budgets are set through a process of request, consultation, and negotiation. FIU staff is recruited from members of the BKA or of the Ministry of the Interior. The Head of the FIU can choose the new staff members, but the final decision belongs to the Human Resources department of the BKA<sup>641</sup>.

In 2003, in **Greece**, for the purpose of fighting corruption, a new category of obliged entities entitled 'the obliged persons category' was designed<sup>642</sup>. Legal and natural persons falling under this category have to declare their funds to the General Public Prosecutor (PPO). However, soon after the law was passed, it became clear that the PPO did not have the means to analyse them and so the Greek authorities decided that the most efficient way to make the system of obliged wealth declarations work was to use the AML/CTF mechanisms. According to the Greek representative, the FIU was located within the Ministry of Finance during 1997 to 2004. Afterwards it was supervised by the Ministry of Finance but for independence purposes it was ultimately placed under a newly formed AML/CTF/SFI Authority. The FIU reports to the Parliament and to several Ministries<sup>643</sup> and has an independent budget provided by the Ministry of Finance. The FIU staffing is also somewhat atypical as the FIU has no permanent staff – all members are detached from their original institution (police, prosecution, customs, tax authorities, etc.). It is the Chairman of the AML/CTF/SFI Authority that proposes to the Ministry of Finance which persons the FIU needs for which unit.

The **Hungarian** FIU was formerly part of the Hungarian National Police and thereafter became part of the Customs department, within Customs Criminal Investigations Bureau. When the Tax and Customs organisations were united in 2011, the FIU became an independent Directorate within the Criminal Directorate General of the National Tax and Customs Administration. The reasons for these changes were of a political nature. The Hungarian authorities considered that the economic offences were already being investigated by customs authorities. The former employees of the FIU from within police staffed the new asset recovery department. As no staff from the previous (police) FIU joined

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<sup>639</sup> FATF (2007), *Third Mutual Evaluation Report on Finland*, p. 65

<sup>640</sup> TRACFIN (2010), *Annual report*, p.5

<sup>641</sup> FATF (2008), *Third Mutual Evaluation Report on Austria*, p.101

<sup>642</sup> Law 3213/2003.

<sup>643</sup> Ministry of Finance and Ministry of Justice, Transparency and Human rights, and Citizen Protection

the new FIU, in order to make it operational, customs officers were commanded as support staff. Members of the FIU have varied backgrounds and skills (lawyers, economists, accounting experts, officers with mid-level education)<sup>644</sup>. Some of them are customs officers with investigative or administrative backgrounds, some of them came from the central administration or other authorities, and new entrants were also hired. In the course of the 2010 Moneyval evaluation, the HFIU's independence and autonomy were questioned. This is because the head of the FIU was appointed and could be dismissed by the Commissioner of the FIU's 'parent institution', because the FIU did not have its own budget and furthermore could not decide without the approval of the Commissioner on the spending of the budget or on the appointment of new staff. In light of the new organisational reforms that the FIU was subject to, it could be that these aspects were taken into consideration.

**Ireland** has one police force, the An Garda Síochána (thereafter Garda) that falls under the overall National Support Services. The National Support Services incorporate more agencies among which are the Immigration Office and the Criminal Assets Bureau<sup>645</sup>. The FIU is a small part of Garda and works in close contact with two police investigative units that also fall under Garda. According to the Irish representative, the FIU is staffed with police agents only. The FIU is physically located in the direct vicinity of these investigative units. According to the FIU representative, the budget is part of the entire budget of the Irish police. In this sense there is no budgetary independence.

The **Italian** FIU had, prior to its establishment within the Bank of Italy in 2008<sup>646</sup>, been located within the Italian Foreign Exchange Office (UIC). The FIU is an autonomous and independent body within the Bank of Italy, and it is governed by a Bank of Italy regulation<sup>647</sup>. With respect to its resources, the FIU uses human, technical and financial resources and instrumental goods provided by the Bank of Italy.<sup>648</sup>

According to the **Latvian** representative, the FIU reports directly to police and a copy of the report is sent to the Prosecutor's Office. The Prosecutor's Office is therefore not overseeing the reports of the FIU anymore, but only the criminal investigation. The Latvian representative considers the organisational and budgetary independence of the FIU as very important. The FIU has its own separate budget. As to physical location of the FIU, this does not seem to have been planned ahead in Latvia. A choice had to be made between locating it within the Central Bank or the Prosecutor's Office and the latter was the voted outcome in Government. The mixed staff composition of the Latvian FIU seems to support this statement, as staff includes police officers, prosecutors and financial experts.<sup>649</sup>

In **Lithuania**, the Money Laundering Prevention Division (MLPD) of the Analysis and Prevention Board is the main unit within the Financial Crime Investigation Service (FCIS) that is responsible for the prevention and analysis of money laundering and terrorist financing. The MLPD is the Lithuanian FIU. The Lithuanian representative agreed that the original settlement of the FIU within the tax office allows the FIU to handle tax fraud better. Currently, the staff of the FIU have police backgrounds. According to the Lithuanian representative, the budgetary dependence on the FCIS does not pose any operational problems, nor does the accountability of the FIU to the FCIS.

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<sup>644</sup> MONEYVAL(2010), *Fourth Assessment Report on Hungary*, p. 62

<sup>645</sup> Website of An Garda Síochána (available at: <http://www.garda.ie/Controller.aspx?Page=29&Lang=1>)

<sup>646</sup> The FIU was located at the Bank of Italy pursuant to the Legislative Decree 231/2007 (the AML Law)

<sup>647</sup> Available at: <http://www.bancaditalia.it/UIF/regolamento-UIF.pdf>

<sup>648</sup> Available at: <http://www.bancaditalia.it/UIF>

<sup>649</sup> MONEYVAL(2006), *Third Round Assessment Report*, p. 59

At the 2009-2010 FATF evaluation, one of the conclusions of the FATF was that the **FIU Luxembourg** was understaffed. The FIU was also considered to be under-diversified and to overly focus on prosecution<sup>650</sup>. As a result the FIU has considered expanding its staff and also becoming more heterogeneous. During the interviews, the FIU representatives made it clear that currently the FIU Luxembourg has, in addition to administrative staff, full time analysts and prosecutors that are exercising all of their prosecutorial duties and are specialised in the fight against financial crime more broadly. The prosecutors working at the FIU are assigned from the Economic Crime Department of the Prosecutor's Office of Luxembourg. The prosecutors working part-time for the FIU are also assigned to prosecute all other types of economic crimes and work in parallel with the ML/TF specialised prosecutors. According to the FIU representative, the FIU is currently focusing more on the analysis of suspicion of ML/TF (on the financial intelligence) than generally assigned to FIUs. FIU-Luxembourg holds one floor within the Prosecution's Office in Luxembourg (PL). It is a secured premise in which the FIU was located in 2008. The FIU has in the meantime been assigned a secured and independent location that is geographically close to the PL, which according to the representatives is expected to be operational in 2012 – 2013. The Luxembourg FIU does not have an independent budget. Its budget is part of the budget of the Judiciary, which, in turn, is part of the general budget of the State. The FIU is, nevertheless, according to the Luxembourg representatives, financially well endowed. The FIU has an open financial line for its funding. If there is a financial need the FIU has to request additional funds and the Prosecutor's General Office will forward this demand to the budgetary authorities with its approval. The PG and the FIU are currently working on defining an independent FIU budget. When it comes to operational autonomy, the FIU is fully independent. Despite the fact that for finances the FIU is part of the general budget of the Judiciary, both the Prosecutor General (hereafter PG) and the PL have no competence in influencing the FIU on operational matters. The PG cannot give an order of non-prosecution to the FIU/PL. It can however give an order to prosecute, but this is seldom.

The **Maltese** FIU was set up in 2002 under the Prevention of Money Laundering Act.<sup>651</sup> Although the FIU falls within the structure of the Ministry of Finance, the Economy and Investment, it is an independent agency and enjoys full autonomy in its operational activities. The FIU staff is composed mostly of financial analysts and legal experts. Despite having a police liaison officer, this officer does not belong to the FIU staff and does not have an office within the premises of the FIU.

The **Dutch** FIU has undergone significant changes in its organisation. With a view to enhancing the use of financial information by the law enforcement community, the Netherlands has placed the FIU-NL within the Dutch Police Agency (KLPD) under the Ministry of Interior and with the aim of creating a new structure, the FIU-NL<sup>652</sup>. The Minister of Justice maintained the legal responsibility for the overall management, organisation and administration of the FIU-NL, but delegated it to the Minister of Interior. The new structure was meant to operate in a "test phase" but the situation developed into a status quo<sup>653</sup>. Since 2010 the Ministry of Interior is no longer involved, and it is formally the Ministry of Security and Justice and the Ministry of Finance who are responsible for the Dutch FIU. The FIU governance model is quite complex. Nevertheless, the responsibility to decide whether an UTR should be classified as an STR is clearly and solely of the head of the FIU-NL, without any interference. Furthermore, the head of the FIU is appointed, suspended and discharged by Royal Decree, on the recommendation of the Minister of Security and Justice, in agreement with the

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<sup>650</sup> FATF (2010), *Executive Summary of the Third Mutual Evaluation of Luxembourg*, p. 3

<sup>651</sup> Chapter 373 of the Laws of Malta

<sup>652</sup> The order of the Minister of Justice of December 13, 2006

<sup>653</sup> FATF (2011), *Third Mutual Evaluation on the Netherlands*, p. 86-87

Minister of Finance<sup>654</sup>. On budgetary independence however, there are still difficulties. Financial resources are made available to the FIU-NL by the Ministry of Justice and are partly supplemented by the Ministry of Finance. The budget is set in accordance with Article 12 (5) WWFT, according to which “the Minister of Justice shall determine the budget of the FIU, in agreement with the Minister of Finance.” The Head of the FIU takes part in the negotiations<sup>655</sup>.

The **Polish** FIU is located within the Ministry of Finance. The General Inspector of Financial Information (GIFI) performs its duties through the Department of Financial Information, an organisational unit established to that end within the structure of the Ministry of Finance. Together, they constitute the Polish FIU.<sup>656</sup> The staff of the FIU have legal, economic or information technology education<sup>657</sup>. The FIU is not financially independent as its budget is part of that of the Ministry of Finance. According to the Polish representative the recent increase in tasks – i.e. supervision, including sanctioning and drafting of legislation – has not been met by an expansion in resources, which leaves the FIU understaffed and struggling to meet its obligations.

The **Portuguese** FIU is currently characterised in Law No. 37/2008 of 6 August, approving the new organisation of the Criminal Police, as a service of the National Directorship, enjoying all the guarantees for its necessary functional autonomy. According to the Portuguese representatives, the Ministry of Justice provides the budget of the Judicial Police, and the FIU’s budget is part of the latter.

The **Romanian** FIU is established<sup>658</sup> as an independent autonomous body under the supervision of the Government of Romania. It has an independent budget, adopted under the state budget law. According to the Romanian representative, the budget is sufficient to ensure the efficiency of the FIU, as long as it is very well managed.

In **Slovakia** the FIU was originally incorporated in the financial police under the Bureau of the Financial Police. Following several reorganisations of the Slovak police forces the FIU now is one of the central units of the Bureau of Combating Organised Crime – under the Presidium of the Police Force. The FIU therefore is a department of a specialised police force and therefore belongs to the Slovak Ministry of Interior to which it also accountable. The Slovakian FIU’s budget is part of the Police Force budget, but the FIU has the authority to propose the execution of its planned budget and so far these propositions were accepted.<sup>659</sup>

The **Slovenian** FIU was established in December 1994 as one of the 6 constituent bodies of the Ministry of Finance. Moreover, “while the FIU is a part of the Ministry of Finance, it appears to be sufficiently independent. It has its own decisive authority, and it is not under undue influence from the Ministry of Finance or other authorities”<sup>660</sup>. The FIU has to therefore report to the Government yearly on its progress and work<sup>661</sup>. According to the Slovenian representative, the budget the FIU

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<sup>654</sup> Article 12 (4) of the July 2008 AML/CTF Dutch law (WWFT)

<sup>655</sup> FATF (2011), *Third Mutual Evaluation on the Netherlands*, p. 100

<sup>656</sup> FIU Poland (2010), *Annual Report*, p.3

<sup>657</sup> MONEYVAL(2006) Third Round Assessment Report on Poland, p. 50

<sup>658</sup> The FIU is regulated in the Law No. 656/2002, the Governmental Decision no. 594/2008 on the approval of the Regulation for the application of the provisions of the Law no. 656/2002 and Governmental Decision no. 1599/2008 on the approval of the Regulations for the Organisation and Functioning of the National Office for Prevention and Control of Money Laundering.

<sup>659</sup> MONEYVAL (2011), *Fourth Round Assessment Visit Report on Slovakia*, p. 64.

<sup>660</sup> MONEYVAL (2005), *Third Round Assessment Report on Slovenia*, p. 55

<sup>661</sup> Article 72 of the Slovenian AML/CTF law

receives is more or less sufficient, but there is of course always more to do, for which the FIU doesn't have the money. The budget is decreasing (due to financial crisis and such) while the FIU's tasks don't, so the pressure increases. Nevertheless, the Slovenian representative argues it is good to have an independent budget. To perform this supplementary task one additional post was established and therefore the staff of the FIU increased to 16 members.

In **Spain**, the FIU (hereafter SEPBLAC) was formerly an integral part of the National Bank of Spain. At present SEPBLAC falls under the Commission for the Prevention of Money Laundering and Monetary Offences, a body to which the FIU is also accountable to. In order to ensure SEPBLAC's independence in the performance of its tasks, its budget is integrated into the Bank of Spain as an independent one. It is thus the Bank of Spain that has powers relating to the economic, budgetary and hiring regime of the Spanish FIU.<sup>662</sup>

In **Sweden**, the FIU is located within the Criminal Police Unit of the National Criminal Police. The National Criminal Police also includes other centrally located resources such as the National Counter Terrorism Unit and the IT Crime Section.<sup>663</sup> According to the Swedish representative the FIU has operational independence but no budgetary independence. Its budget is part of the overall budget of the National Criminal Police and this is distributed to each police unit by the National Police Board. The head of the FIU is responsible for the internal handling of the budget<sup>664</sup>, though there are government guidelines on how the budget should be used. Nevertheless, in 2009 the FIU's additional training and asset recovery tasks had not been met by a budgetary increase, which has led the FIU to refuse assistance even in prioritised cases<sup>665</sup>. The staff of the FIU reflects its core attributions as well as its additional tasks. All agents have police training, and some additional financial and IT training.

On 1 April 2006, the Serious Organised Crime and Police Act 2005 (SOCPA) created the U.K.'s Serious Organised Crime Agency (SOCA). The UK FIU is now within SOCA, and SOCA is responsible for performance management of this unit. According to the FATF Report<sup>666</sup>, POCA 2002 (as amended by section 104 of SOCPA 2005) and the Terrorism Act (TACT) 2000 (as amended by the TACT 2006) require persons within the regulated sector to make disclosures in the form of suspicious activity reports (SARs) to SOCA when they know or suspect, or have reasonable grounds to know or suspect, that another is engaged in money laundering or terrorist financing. A specific operational division, the Proceeds of Crime Department, has been set up within SOCA to take this forward; the UK FIU sat within the Proceeds of Crime Department and has thereafter moved within the Strategy and Information Department within SOCA. While the law indicates that SARs come to SOCA in general, internal policies and procedures ensure that they come directly to UK FIU, and are processed, analysed and disseminated solely by UK FIU staff. Finally, the Serious Organised Crime Agency, which includes the UK financial intelligence unit, will transition to the National Crime Agency in October 2013.

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<sup>662</sup> Section 45 (3) of the AML Act

<sup>663</sup> Available at:

[http://www.polisen.se/Global/www%20och%20Intrapolis/Informationsmaterial/01%20Polisen%20nationellt/Engelskt%20i%20Informationsmaterial/RKP%20presentation\\_en\\_2012\\_03\\_cybercrime.pdf](http://www.polisen.se/Global/www%20och%20Intrapolis/Informationsmaterial/01%20Polisen%20nationellt/Engelskt%20i%20Informationsmaterial/RKP%20presentation_en_2012_03_cybercrime.pdf)

<sup>664</sup> FATF (2006), *Mutual Evaluation Report*, p. 55

<sup>665</sup> FIU Sweden (2009), *Annual report*, p. 6

<sup>666</sup> FATF (2007), *Third Mutual Evaluation on the United Kingdom*, p 78

## Annex 8.2 ADDITIONAL TASKS OF THE FIUS

According to the **Austrian** representative, the additional roles of the FIU are conducting independent research of ML/FT techniques and developments, alongside members of the academia, and conducting pre-trial investigations. The Austrian FIU, starting 2011, is charged with offering lectures for the Federal Ministry of Finance, with a focus on the problem of offshore companies that are operating in Austria. These trainings have been praised for their capacity to increase interdepartmental cooperation also in the matters of tax evasion and to expand the knowledge base of other institutions in the field of money laundering<sup>667</sup>. The Austrian FIU is also active in training the local police services in matters of ML and TF<sup>668</sup>.

The **Belgian** FIU does not directly give training to the reporting entities or to the supervisory authorities as there exist other specialised institutions that are accredited to do so. Nevertheless the FIU attends meetings and actively contributes to the knowledge basis of the supervisory authorities. According to the Belgian representative, the FIU is the competent authority to give advice to ‘the King’ (in practice the Ministry of Finance and Ministry of Justice) on matters concerning money laundering and terrorist financing. Supporting this declaration, it was the FIU that made the first draft of the 2010 amendments to the 1993 AML/CTF Act. Furthermore, according to its representative, the Belgian FIU is currently running a project on performing the first national threat assessment. The Belgian FIU is furthermore the responsible authority for national cooperation<sup>669</sup>. During the interviews it became clear that there is no national ‘body’ or ‘committee’ in Belgium which reunites all stakeholders in a formalised way and on a regular basis. It is therefore the FIU which organises meetings with all stakeholders when necessary. This was the case when the 2010 amendments to the AML/CTF Act were proposed. Such a platform for cooperation is foreseen to take shape before the end of 2012. This is expected to relieve the FIU from this additional task.

In **Bulgaria**, the FIU’s tasks and organisation are defined in the Rules on Implementation of the Law on the State Agency for National Security Act.<sup>670</sup> One of the tasks of SANS is to “*detect and prevent corruption and bribery in international trade transactions*”, but this is not an additional task for the FIU. According to the AML law<sup>671</sup> the FIU is required to conduct on-site inspections on the reporting entities in connection with the AML/CTF fight and it is required to apply the measures to prevent the use of the financial system for money laundering purposes. According to the Bulgarian representative, the sanctions that the FIU imposes are administrative fines. Furthermore, the FIU is responsible for drafting a set of guidelines for the reporting entities. Furthermore, the FIU has only coordinating function in regard to corruption and bribery in international trade transactions, and only in regard to the money laundering and terrorist financing aspects of these.

In **Cyprus**, the Unit for Combating Money Laundering (MOKAS) is responsible for issuing guidance directives and providing training to financial institutions, the police and to other professionals.<sup>672</sup>

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<sup>667</sup> FIU Austria (2011), *Annual report*, p. 20-21

<sup>668</sup> FATF (2009), *Mutual Evaluation report on Austria*, p. 86

<sup>669</sup> Article 22 Belgian AML/CTF Act

<sup>670</sup> The State Agency for National Security Act was promulgated in the State Gazette no 109/20.12.2007, effective as 01.01.2008, amended SG No. 69/05.08.2008, 94/31.10.2008, supplemented SG No. 22/24.03.2009, amended SG No. 35/12.05.2009, amended and supplemented SG No. 42/05.06.2009, amended SG No. 82/16.10.2009, amended and supplemented SG No. 93/24.11.2009, amended SG No. 16/26.02.2010.

<sup>671</sup> The Law on the Measures Against Money Laundering – article 17(3) (*version incorporating the 2011 amendments*)

<sup>672</sup> Available at: [http://www.law.gov.cy/law/mokas/mokas.nsf/dtttheunit\\_en/dtttheunit\\_en?OpenDocument](http://www.law.gov.cy/law/mokas/mokas.nsf/dtttheunit_en/dtttheunit_en?OpenDocument)

Furthermore, FIU staff have retained their *judicial and police powers* and therefore the FIU has investigative powers and can prosecute for asset confiscation and offer legal assistance in money laundering prosecutions and terrorist financing. Furthermore, MOKAS has also been designated by the Council of Ministers on 18 March 2009, as the *Cypriot Asset Recovery Office*. According to the Cypriot representatives, there was no budget to create a separate ARO and since the duties of the FIU were almost in line with those of an ARO, placing the ARO within MOKAS was considered the most efficient solution. This additional task is not seen as burdening as at the time of the interview there were not many more requests from other AROs. The FIU is also involved in the *drafting of new AML/CTF legislation* and as such, the FIU chairs the meetings of the "Advisory Authority for Combating Money Laundering and Terrorist Financing"<sup>673</sup>. Finally, as far as *supervision* is concerned, the Cypriot representatives argue that MOKAS does little supervision. The obliged entities that fall under the supervision of the FIU are considered by the Cypriot representative having a low risk for ML. MOKAS also does not organise on-site visits for its supervised entities yet, although it plans to do so soon. With respect to the management of the additional tasks given the set budget, according to Cypriot representative, the FIU is overburdened and would need for more staff. However, given the current allocation of tasks and the staffing the representatives believe the FIU is effective.

In the **Czech Republic**, the FIU is a supervisory authority in charge with the verification of AML/CTF compliance (Section 35 of the AML/CTF law), reviewing the internal procedures of the financial institutions (Section 21 AML/CFT Law) and with proposing sanctions to non-compliance to the AML regulations (Section 36 of the AML/CFT Law). Next to this, according to the AML/CTF law, the FIU must also oblige professional chambers to carry out inspections to verify compliance with the AML/CTF law. Furthermore, according to the Rules of Organisation of the Ministry of Finance, the FIU shall draft and revise legislation on AML/CTF matters and shall provide training on AML/CTF matters. Moreover, according to the Czech FIU representative, since 2007-2008 the FIU is also charged with supervising the application of the measures specified in the International Sanctions Act<sup>674</sup>. Finally, according to the Moneyval (2011), the new AML/CFT Law does not require the FIU to provide the reporting entities with specific guidance on how to report. Nevertheless, the FIU has issued guidelines and has posted it on their website. The FIU has also posted a standard reporting form on its website.<sup>675</sup> In light of these numerous additional tasks, Moneyval (2011) noted that the FIU "*does not have sufficient resources to perform sufficient on-site inspections, supervision and monitoring*"<sup>676</sup>.

According to the **Danish** representative, the FIU has no additional responsibilities, and despite the fact that it is located within the Prosecution service, the FIU does not conduct pre-trial investigations. Instead the FIU forwards the cases to the local police or other responsible authorities for further (criminal) investigation. Nevertheless, the prosecutors working in the FIU also prosecute the AML/CTF cases brought before them, and as of 2010 there is a shift in responsibility over the investigation of cases from the police to the FIU<sup>677</sup>. Furthermore, the FIU gives training to obliged entities and to law enforcement agencies<sup>678</sup>.

In **Estonia**, the FIU is defined and regulated in the AML/CTF act alone. Its additional functions are supervising obliged entities, applying sanctions (upon observing non-performance of the obligation to register and store data or failure to apply internal security measures), and tracing criminal

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<sup>673</sup> Available at: [http://www.law.gov.cy/law/mokas/mokas.nsf/dtttheunit\\_en/dtttheunit\\_en?OpenDocument](http://www.law.gov.cy/law/mokas/mokas.nsf/dtttheunit_en/dtttheunit_en?OpenDocument)

<sup>674</sup> Act No. 69/2006 Coll. On Carrying out of International Sanctions

<sup>675</sup> MONEYVAL (2011), *Fourth Mutual Evaluation Report on the Czech Republic*, p 70

<sup>676</sup> FATF (2011), *Fourth Mutual Evaluation Report on the Czech Republic*, p. 198

<sup>677</sup> FATF (2010), *Third Mutual Evaluation Report on Denmark*, p. 32

<sup>678</sup> *Ibid.*, p.33

proceeds and thereby applying the enforcement powers of the state. According to the FIU representative, despite there being a separate ARO office in Estonia, the FIU can trace proceeds of crime, when these are related to money laundering. The FIU is also charged with supervising the application of the measures specified in clauses 3.1, 3.3, 3.4 and 3.5 of the International Sanctions Act in Estonia<sup>679</sup>. Furthermore, it is responsible with training obliged entities, investigative bodies, prosecutors and judges and to this effect organises several training sessions per year.

In **Finland** the FIU is regulated in the AML/CTF act, in the Finnish Police Act and in the Pre-trial investigation Act. Additional responsibilities of the FIU include conducting pre-trial investigations and implicitly forwarding to the prosecution for consideration of the charges. According to the Finnish representative, the FIU has the choice between own pre-trial investigations and forwarding the case to local police units. However, in practice, the FIU does not conduct pre-trial investigations very often.

According to the FATF 2011 Report on **France**, TRACFIN is also responsible for the development of AML norms for the reporting entities as well as for the permanent communication with the supervisory authorities. However, it is unclear to what extent this cooperation implies an additional task for the FIU to actually provide training to the supervisory authorities. TRACFIN makes use of its website to provide guidance to the reporting entities.

In **Germany**, the AML/CTF Law, section 10 (1) establishes the FIU as an element within the National Police with the mandate of a central agency within the meaning of Section 2(1) of the Federal Criminal Police Act and states that it —shall support the Federal and Local police forces in the prevention and prosecution of money laundering and terrorism financing. The latter could not be interpreted as an additional duty, however a closer inspection of Section 2(6) of the Federal Criminal Police Act, reveals what can be considered as additional tasks: “compile criminal police analyses and statistics, including the crime statistics, and, to this end, observe the developments in crime”, “research and develop police methods and law-enforcement techniques” and “conduct basic and advanced training courses in special fields of criminal police work”. Furthermore, the authorities stated that, since the FIU is a police unit, it can sometimes, though seldom, be called upon to participate in an investigation. To the extent that this happens, the FIU is subject to the direction of a prosecutor and subject to the principle of mandatory prosecution.

The **Greek** FIU is part of the Anti-Money Laundering, Counter Terrorist Financing and Source of Funding Authority (AML/CTF/SFI Authority) which is the national authority designated by law to fight ML and TF.<sup>680</sup> According to the Greek representatives, the design of the FIU was heavily influenced by the recognition by the Greek authorities of the need to fight the widespread (high level) corruption. Therefore, the goals of the Greek FIU were only tangent to those of the EU Directive at the point where corruption is related to ML and TF. According to the literature this tangency is large, but of course there are more sources of money laundering than (through) corruption. The Chairman of the Authority is an acting Public Prosecutor to the Supreme Court. According to the Greek representatives, the AML/CTF/SFI Authority consists of three independent Units with separate responsibilities, staff and infrastructure. These three subunits do not interact unless the Chairman decides that members of two units should work together on a specific case. This strict separation of duties could explain why the FIU is being given almost no additional tasks. Moreover, when asked

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<sup>679</sup> Functions of the Estonian Financial Intelligence Unit (available at: <http://www.politsei.ee/en/organisatsioon/rahapesu-andmeburoo/functions-of-fiu/>)

<sup>680</sup> The 3691/2008 law as amended by laws 3875/2010, 3932/2011 and 3994/2011 – article 7.

about the financial needs of the FIU, the Greek representative expressed content with the size of the FIU and with the allocated budget, arguing there was no need for additional staff.

In **Hungary**, the additional tasks of the FIU are: the supervision of real estate agents, tax advisors and consultants and accountants and book-keepers<sup>681</sup>, and the supervision of the application of the International Sanctions Act in Hungary<sup>682</sup>. On the issue of issuing guidelines, this seems to be indirectly imposed onto the FIU - the latter releasing model rules for accountants, tax advisors, tax consultants and the real estate sector.<sup>683</sup>

In **Ireland** the FIU does not have any additional tasks. This is because the Irish FIU is only a small part of the An Garda Síochána, with a recognised small capacity and with a straightforward operational orientation. According to the Irish FIU representative, the directive has imposed extra duties on the financial supervisors instead of on the FIU itself.

In **Italy**, the FIU is responsible for drafting AML/CTF legislation and with supervising reporting entities and proposing sanctions for non-compliance with the duty to report suspicious transactions. The FIU is additionally responsible for the analysis of financial flows and with carrying out statistical analyses of aggregate financial data transmitted on a monthly basis by the obliged entities.<sup>684</sup> The FIU looks at anonymous aggregate data sent monthly by banks in order to observe the patterns of transactions and to observe any particularities/anomalies in these flows.<sup>685</sup> The FIU notifies the reporting intermediaries on the anomalies found. *The FIU performs statistical controls on the Aggregate Anti-Money-Laundering Reports, to identify anomalies which it then brings to the reporting intermediary's attention. In turn, intermediaries check their own records to verify whether the anomaly is ascribable to reporting errors, to actual anomalies of individual transactions or to specific characteristics of the business of the intermediary or the intermediary's customer.*<sup>686</sup> The controls therefore not only constitute an instrument for improving the quality of the data but also provide support for identifying transactions to be assessed for the purpose of reporting suspicious transactions. Furthermore, the FIU is responsible for receiving and analysing, in addition to STRs, flows of financial information concerning the activities related to persons involved in commercialising pseudo-pornographic materials.<sup>687</sup> Given the singularity of the latter additional task, it was not depicted in table 8.4. Finally, the Italian FIU also supervises the Application of the International Sanctions Act<sup>688</sup>.

In **Latvia** the FIU is regulated in the AML/CTF act – article 27, and in its own charter - the Control Service. According to the FIU representative, the FIU has several additional functions, such as giving recommendations on what should be done in the sense of arrest of property and giving recommendations to supervisory authorities. According to the same source, the FIU also governs the Latvian working groups drafting AML/CTF related legislation and in this capacity has to report to the

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<sup>681</sup> MONEYVAL (2010), *Fourth Assessment Visit Report on Hungary*, p. 19

<sup>682</sup> Hungarian FIU website, available at: [http://www.vam.gov.hu/pio/pages/eng/pio\\_eng\\_6\\_2.html](http://www.vam.gov.hu/pio/pages/eng/pio_eng_6_2.html)

<sup>683</sup> MONEYVAL (2010), *Fourth Mutual Evaluation Report on Hungary*, p. 53

<sup>684</sup> Banks, post offices, financial intermediaries and auditing firms are required by law<sup>684</sup> to send data to the FIU via the financial transactions database (ArchivioUnicoInformatico). This data is referred to as S.AR.A Reports – Aggregate Anti-Money-Laundering Reports.

<sup>685</sup> Banks, post offices, financial intermediaries and auditing firms are required by article 40 of Legislative Decree 231/2007 to send data to the FIU via the financial transactions database (ArchivioUnicoInformatico). This data is referred to as S.AR.A Reports – Aggregate Anti-Money-Laundering Reports.

<sup>686</sup> Available at: <http://www.bancaditalia.it/UIF/prev-ricic/sara>

<sup>687</sup> Law 38/2006.

<sup>688</sup> Article 7d of Lgs 109/2007

Latvian Parliament and recommend possible changes. Additionally, the FIU gives training to bank compliance officers, to lawyers and other reporting entities, and to journalists.

In **Lithuania**, the FIU is regulated in the AML/CTF Act Article 5 and in the Law on the Financial Crime Investigation Service (FCIS), the authority in which the FIU is located. The role attributed to the FIU is considerably broader<sup>689</sup> and prompts additional questions over the action specificity of the FIU – what their role is in practice and to what extent is this separate from the role of the FCIS. As the Lithuanian representative explained, the FIU is only one unit within FCIS and the broad powers that it has according to the both pieces of legislation do not reflect only its core responsibilities, but also the broader responsibilities of the FCIS. In essence, the FIU is an intelligence division which does not conduct pre-trial investigations in practice. With respect to its additional responsibilities, these are training of obliged institutions on the AML procedures and the supervision of the activities of the financial institutions and other entities – which do not fall under the scope of the other supervisory authorities<sup>690</sup>. Furthermore, as of 2009, the FCIS has drafted Government resolutions regulating the implementation of the AML Act<sup>691</sup>. According to the Lithuanian representative, the FIU has participated in the drafting process.

**Luxembourg's** FIU has the typical additional tasks that correspond to its structure – namely a prosecutorial/judicial type of FIU. The FIU consists of trained prosecutors and investigators that actually conduct pre-trial investigations and prosecute cases of ML and TF. According to its representative, the FIU Luxembourg does not prosecute alone all ML and TF offences, but shares this duty with the Economic Department of the Luxembourg Prosecutor's Office. Training of the repressive enforcement units is also part of the additional duties of such a type of FIU, and the FIU Luxembourg performs this thoroughly.

The **Maltese** FIU is required to monitor compliance of the subject entities and it is also responsible for imposing sanctions on the non-complaint reporting entities<sup>692</sup>. According to the Maltese representatives, the FIU is also responsible for advising the Minister of Finance on all AML/CTF matters and for issuing guidelines for the reporting entities. In 2011 various guidance documents were published on its website. According to the Maltese representatives, not all tasks are equally resource intensive. They argued that supervision of financial entities sits at the top of the list with the most resource costly additional tasks. Despite the relatively few additional tasks the FIU representatives would welcome an increase in the budget. It is unclear whether this has to do with the fact that the FIU analysts are not yet assisted by a comprehensive IT system or whether the tasks allocated to the FIU are already the most resource consuming ones.

The **Dutch** FIU representative argued that FIU-NL conducts, in addition to operational analysis of reports, strategic analysis that it later uses to inform (or train) the supervisory authorities, the law

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<sup>689</sup> Law on the FCIS (2002), article 7 – “The FCIS shall protect the state financial system from criminal influences, detect and investigate crimes, other violations of law against financial system and them related crimes and other violations of law, prevent crimes and other violations of law against financial system and them related violations of law [...]” (unofficial translation).

The duties of the FCIS are also described in the AML/CTF act, article 5.4 – “ The FCIS shall have competence [...] to conduct pre-trial investigation of legalization of the money and assets from crime”.

<sup>690</sup> MONEYVAL(2010), *Progress Report on Lithuania*, p.9

<sup>691</sup> MONEYVAL (2011), *Fourth Assessment Visit Report on Slovakia*, p. 68.

2010 Progress Report, p. 6

<sup>692</sup> The FIU “receives reports from supervisory authorities conducting on-site examinations on its behalf and co-operates with them on remedial action” (available at: [www.fiumalta.org](http://www.fiumalta.org)).

enforcement agencies and, to the extent permitted, the reporting authorities.<sup>693</sup> This involves the systematic analysis of money flows cross-border-wise as well as country and region-wise, giving an overview of the unusual and suspicious flows between the Netherlands and the countries where the Netherlands maintain police liaison officers. The analysis of regional flows leads to the so-called “financial weather reports,” which contain sanitised data with respect to geographic “hot spots” – i.e. regional indicators of potential AML problems which may not be spotted by the police regional investigations. A similar pro-active analysis is done also with regard to the financing of terrorism<sup>694</sup>.

In **Poland**, the FIU is regulated in the Article 3 of the AML/CTF Act and it seems to have been given several additional tasks: the supervision and sanctioning of non-compliance with AML/CTF provisions and the drafting of AML/CTF legislation. The FIU shares the supervision of the obliged entities with other supervisory bodies but is the only entity responsible with imposing pecuniary sanctions for non-compliance<sup>695</sup>. The FIU has actively participated in legislative processes concerning amendments of the AML/CTF Act and other pieces of legislation that would have an impact in the AML/CTF fight<sup>696</sup>. Moreover, the AML Act requires that the FIU must adjudicate on the release of frozen assets and it must train the reporting entities. Furthermore, the FIU is responsible with the application of the International Sanctions Regime, in particular with the national designation of persons suspected of terrorist activity and with the releasing of frozen assets following humanitarian exemptions. Finally, the Polish representative argues that the FIU also issues guidelines for the reporting entities – which it publishes on its website. In 2009 the FIU released a new version its guide entitled “Counteracting money laundering and terrorism financing”, addressed to official use for obliged institutions and cooperating units.<sup>697</sup> Given the fact that the cooperating units (including the law enforcement authorities and supervisors) must report on the suspicion of a money laundering or a terrorist financing activity, the FIU was actually required to train these categories as well. The most efficient way to do so, given the wide variety of reporting entities seems to have been building an e-learning platform (accompanied by a manual) and allowing the obliged entities, the supervisors and the law enforcement authorities access. According to the Polish representative this means that all these users have access to explained definitions on AML/CTF matters, typologies and risks, to explanations of the law, on how to file a report, on how the FIU exchange information with LEAs etc. Moneyval reported that the e-learning platform had approximately 50.000 users in 2009.

Another additional task that the **Portuguese** FIU holds is the competence to collect information on serious tax-related offences. Despite it being a somewhat atypical competence, the Portuguese representatives argue it is a very important tool to achieve the intended purposes. Furthermore, as the Portuguese ARO will be located within the Judicial Police, until this body starts functioning, the FIU took the responsibility of participating to the ARO meetings and being the contact point in CARIN. The FIU does not provide written guidelines to the reporting institutions, but they do provide extensive support to the obliged entities via training. This is something for each of the supervisors as they have more sector-specific knowledge.

The **Romanian** FIU is required by law<sup>698</sup> to perform risk-based supervision on those entities that do not have a general prudential supervisor, to make proposals to the Government and other public administration bodies for adopting AML/CTF measures and - for this purpose - to endorse the

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<sup>693</sup> Article 13 of the WWFT (Dutch AML/CTF Act)

<sup>694</sup> FATF (2011), Third Mutual Evaluation on the Netherlands, p. 98

<sup>695</sup> FIU Poland (2009), *Annual report*, p. 16

<sup>696</sup> *Ibid.*, p. 30

<sup>697</sup> *Ibid.*, p. 35

<sup>698</sup> Article 5 f) of the Governmental Decision no. 1599/2008 and Article 17(1) d) of the Law no.656/2002

drafting of normative acts related to money laundering or terrorist financing. According to the Romanian representative, the FIU can administer sanctions when observing non-compliance by the entities it supervises. Furthermore, the FIU is the competent authority for implementing the International Sanctions Regime in Romania and is responsible for the coordination of national cooperation in the field of AML/CTF matters. Finally, according to the Romanian representative, there are two types of guidelines issued by the FIU – those published in the Official Gazette and those that are internally distributed directly to the reporting institutions. The ones published in The Official Gazette are annual reports, methodologies and norms.

The **Slovakian** FIU<sup>699</sup> is responsible for the supervision of entities covered by the AML/CTF law. Furthermore it can impose administrative sanctions in case of non-compliance with the AML/CTF obligations and in the case of tipping-off, and it can initiate procedures for administering sanctions in cases of aggravated non-compliance. The FIU is also responsible for the issuance of guidelines on the methods of recognizing unusual transactions for the reporting entities and as of 2011 has also been given the duties of an Asset Recovery Office. The latter is performed by the Property Check-up Department. The Slovakian FIU also has responsibilities in relation to the training of other competent units of the Police Force and can consult the state authorities in the AML/CTF field.<sup>700</sup> Unfortunately, no FIU representative could confirm whether this implies an active involvement of the FIU in the AML/CTF drafting of legislation or whether this refers to consulting other law enforcement agencies. Furthermore, the AML/CTF Act requires the FIU, as part of the police force, to forward to LEAs all cases that could be related to any criminal activity (not only money laundering or terrorist financing).<sup>701</sup> This means that the FIU will collect and analyse a large pool of data (not necessarily related to money laundering or terrorist financing) and forward this to the LEAs. Finally, given the abundance of additional tasks it has been placed with, it comes as no surprise that the Slovak FIU was reported to be understaffed despite having a constant increase in its budget. Out of these additional duties, it seems that supervision of the reporting entities and performing the tasks of an ARO are the most resource intensive ones.<sup>702</sup>

In **Slovenia**, article 70(3) of the AML/CTF Act requires the FIU draw up and issue recommendations or guidelines for uniform implementation of the provisions of the AML/CTF Act<sup>703</sup>. After the implementation of this act the FIU conducts the administrative proceedings by itself and hence becomes in charge of ruling on administrative offences under an expedited procedure<sup>704</sup>. Furthermore, since 2005 the FIU has been providing training for prosecutors, judges and the Police<sup>705</sup>.

In **Spain**, SEPBLAC, or the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences, is the body that acts as the Spanish Financial Intelligence Unit. SEPBLAC is required to render the necessary assistance to the judicial bodies, the Public Prosecutor's Office, the criminal police and the competent administrative bodies<sup>706</sup> and submit to these bodies and institutions actions with reasonable indications of a crime or, where appropriate, breach of administrative law. Falling under the Commission for the Prevention of Money Laundering and Monetary Offences, it should execute its orders and follow the guidelines given by this Commission

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<sup>699</sup> The Slovakian FIU is regulated in Article 26 of the 297/2008 Act (AML/CTF law).

<sup>700</sup> FIU Slovakia (2010), *Annual report*, p. 4.

<sup>701</sup> MONEYVAL (2011), *Fourth Round Assessment Visit on Slovakia*, p. 69.

<sup>702</sup> MONEYVAL (2011), *Fourth Round Assessment Visit on Slovakia*, p. 149.

<sup>703</sup> Available at: <http://www.uppd.gov.si/en/issues/tasks/>

<sup>704</sup> MONEYVAL (2010) *Fourth Round Assessment Visit on Slovenia*, p. 7

<sup>705</sup> MONEYVAL (2010) *Fourth Round Assessment Visit on Slovenia*, p. 44

<sup>706</sup> Section 45(4) (a) of the AML/CTF Act

or its Standing Committee. Furthermore, SEPBLAC also has as its task the supervision of fulfilment of the obligations by the reporting entities<sup>707</sup>, making proposals to the Standing Committee on AML/CTF requirements for the reporting entities, and reporting on the precautionary assessment of acquisitions and increases in shareholdings in the financial sector, i.e. research on aggregate data.

In **Sweden** the role of the FIU is not described in the AML/CTF Act. According to the FIU representative the FIU is regulated internally. Despite this non-publicly available regulation, the responsibilities of the FIU can be deduced from its organisation and from its stated fields of operation. Accordingly, the FIU Annual report 2009 states that the FIU has five main fields of operation: Money Laundering, Terrorist Financing, Asset recovery, environmental crime and national contact point for counterfeit cash and credit cards, cheques and other means of payment. The latter two obligations have once again not been depicted in table 8.5 for reasons of exposition.

According to the UK representative, the **UK** FIU has input into the national AML/CTF threat assessment. In addition to this, the Asset Recovery Office is a virtual intelligence hub located within the UK-FIU. This is also an additional duty for the FIU. UK FIU does not give training currently, but according to the FIU representative this might change in the future.

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<sup>707</sup> Section 45(4) (e, f, g) AML/CTF Act

## Annex 8.3 EU FIUs ACCES TO DATA IN DETAIL

The **Austrian** FIU is a police FIU. This is seen by the Austrian representatives as a big advantage, because the officers working in the FIU have full investigative and executive power and have access to all Police databases. Located within the Criminal Intelligence Service Austria, the FIU can immediately cooperate with all other departments and sub-departments within the Headquarters and can give instructions to all subordinated police offices. According to the FIU representative, it has direct access to the land registry, commercial registry and the social security registry. It can request information from the rest. With respect to the financial information however, the FIU needs to be authorised with judicial admission when requesting information on bank accounts and bank operations.

According to the FIU representative, a Royal Decree setting up the Central Bank Account Registry in **Belgium** has been adopted, but the entire project still needs to be operationalised. The FIU has access to EURO DB (a commercial database), which contains information on all companies in Belgium. It has the same information as the Belgian public companies register, but a better search engine. The Belgian FIU has four liaison officers; one from the Belgian Intelligence Service, one from the Customs and two police liaison officers. These provide direct access to the respective databases.

As the **Bulgarian** FIU did not specifically disclose information as to which databases the FIU has access to, the information presented in table 8.6 is based solely on the comments of the Bulgarian representatives. The FIU is therefore said to have direct access to the Customs Database and for the rest of the abovementioned databases it can have access upon request.

**MOKAS** has access to the ongoing investigations database of the police, hence not only to the criminal records. Further, the FIU has access to a law-enforcement database. Here it can see which agencies of the police or other investigating authorities are investigating or have information on the suspect. The FIU has access to a centralised real estate register, and the authorities mentioned this to be a very good digital register. The FIU uses liaison officers to look into the files of the Social Insurance database and into the Tax database. Furthermore, all the relevant stakeholders in the AML/CTF fight have centralised databases in Nicosia, which makes it easy for the investigators of the FIU to reach the specific institution and receive the information in person. Since Cyprus is a small country, requesting information and receiving it be done quite easily and fast.

In the **Czech Republic** the FAU is connected to the Police and to the major banks through a system called 'MoneyWeb'. According to the Czech representatives this encrypted system is very efficient. Moreover, according to the Czech representative, the FIU has broader access to databases than the police, who usually request its assistance. The FIU can request information from the Police, from the Intelligence Services and from the Tax authorities and Customs<sup>708</sup>. Through MoneyWeb, the FAU can access specific and detailed information from the Central Register of inhabitants and foreigners, in electronic format. There is no central bank register, but the FIU is currently developing a Central Register of Accounts. According to the Moneyval (2011), the FIU "requests information from the police relating to criminal records, convictions, current investigations, individuals under supervision and judicial control and/or under investigation but not convicted, as well as making foreign police requests for assistance where necessary. In urgent cases, the FIU analysts may request and obtain

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<sup>708</sup> Section 30 of the Czech AML/CFT Law

information from the domestic Police within 24 hours”.<sup>709</sup> The Czech representative confirms that information can be collected within deadlines set by the FIU and if it is urgent the FIU can send a staff member on site to collect it.

In **Denmark**, at present each database is manually accessed. The Danish FIU makes no formal distinction between the analytical stage and the subsequent investigation stage, because it is all done within the FIU/SOK. According to the Danish representative, the FIU has direct access to approximately 17 different databases. There is no central bank register in Denmark. This information as well as custom data is available upon request. To accommodate the fact that the FIU does not have direct access to the tax database, three employees of the Central Tax Administration have been assigned to the FIU. They conduct the preliminary analysis of the reports where the tax databases need exploration.

The **Estonian** FIU has access to data subject to banking and tax secrecy. In practice the FIU has direct access to surveillance and other law enforcement information through police information systems/databases and to various state and local government databases<sup>710</sup>. According to the Estonian representative, the FIU also has online access to the tax database, via the police database. In Estonia there is no central bank register, but, according to the Estonian representative this would be very beneficial. The FIU has direct online access to: the commercial register, inhabitants register, real estate, social security and vehicle register. Using the internet it can access more databases, and it can use the police intranet for criminal records. The FIU has powerful IT-facilities which can link the information of these databases. Surprisingly though, despite being located within the Police and Border Guard Board, it does not have direct access to the customs database.

In **Finland**, the FIU has direct access to all the above mentioned databases, and employs a liaison officer from the tax authority for speedy access to this database. It is not often that the FIU requests further information from the financial sector. Nevertheless, information is obtained from the financial sector within a few days of the receipt of the initial request for information<sup>711</sup>. This is supported by the Finnish representative, who mentions that a central bank account register is not available in Finland.

The Monetary and Financial Codes give **TRACFIN** the right to access all information held by public authorities. TRACFIN has therefore direct access to among others a central bank accounts register (FICOBA), to the tax database (ADONIS), the commercial database (BNTP) and the customs database. Furthermore, through its liaison officers, TRACFIN has access to police databases, to judicial databases (through the detached prosecutor) and internationally to EUROPOL and SIS. Despite being an administrative FIU, TRACFIN has therefore access to police intelligence beyond the criminal records (FNA) database<sup>712</sup>.

According to FATF (2010), the **German** FIU has direct access to law enforcement information as well as timely, direct, usually on-line, access to a number of governmental and non-governmental information sources, including person's registries, drivers' license and motor vehicle registries. The FIU may also access commercially or publicly available databases, normally online, as well as information from Interpol, Europol, liaison officers of the Federal Criminal Police abroad and foreign

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<sup>709</sup> MONEYVAL (2011), *Fourth Mutual Evaluation report on the Czech Republic*, pp. 70-71

<sup>710</sup> MONEYVAL (2008), *Third Mutual Evaluation report on Estonia*, p. 71

<sup>711</sup> FATF (2007), *Third Mutual Evaluation Report on Finland*, p. 62

<sup>712</sup> FATF (2011), *Third Mutual Evaluation on France*, p. 187

FIUs (FIU.NET and Egmont)<sup>713</sup>. If relevant information is found in those checks it is communicated to the relevant Land police – who sometimes do not have access. The particularity of the German system is that the analysis of the STR is in done by more agencies due to the very different data access capacities: the Land Police offices and FIU. The FIU takes a coordinative role and complements with intelligence from foreign contacts.

The **Greek** FIU has access to a number of databases in a speedy manner due to the fact that its staff is employed by detachment from a wide pool of institutions involved in the AML/CTF fight and due to the fact that it has access to the database of the AML/CTF/SFI Authority. As previously mentioned this authority comprises of several agencies performing the tasks of AROs, supervision of financial entities and of PEPs and more. The Greek FIU's organisation is similar to that of Portugal and of Cyprus in the wide use of liaison officers to work together with the FIU and therefore grant it speedy and reliable access to information from as many databases as possible.

The **Hungarian** FIU has restricted direct access to the police database (which contains all ongoing investigations concerning criminal offences or contraventions investigated by the Hungarian Police). However, if the FIU identifies any match in the Police database during its analytical work, the FIU can obtain more information by reference to the police via phone or officially in written form. Although the FIU has direct access to most of the relevant databases, they would benefit from unrestricted direct online access to all police databases.<sup>714</sup> Furthermore, the HFIU has, among others, direct access to the national criminal records, to the customs investigating database, to the company register and to the land register. Finally, the HFIU has access to bank account data upon request<sup>715</sup> and since the merger of the Customs and Tax Authorities, the HFIU has access to the Hungarian Tax Authority database.

In **Ireland** the Act 2010 stipulates that STRs must be submitted to both FIU and the Revenue Commissioners. The FIU and the Revenue Commissioners meet every six to eight weeks in which it is discussed which STRs will be processed by the FIU and which ones can be passed to the Revenue Commissioners. According to the FIU representative, the Irish FIU has direct access to real estate and indirect access to taxation, through a new police act, which allows fast information exchanges, especially during investigations<sup>716</sup>. The Customs are part of the Revenue Commissioners. The Revenue Commissioners forwards these Cash Declarations to the FIU. The FIU therefore has indirect access to the Custom's database. The FIU Unit has direct access to STR database and Garda databases (criminal records, on-going criminal investigations). The FIU also has direct access to commercial databases, of which World Check is the most prominent. The FIU does not have direct access to e.g. the social security database, but they can inquire if needed. These databases are usually checked during the criminal investigation stage by the investigation units of the Garda, and not by the FIU in the first analytical stage. The Revenue Commissioners have direct access to their own databases, and keep their own STR database. There is no Central Bank Account Registry in Ireland and there are currently no legislative drafts under way.

In **Italy** the FIU forwards almost all of the STRs to the LEAs because it has no access to LEA databases for domestic cases, as well as no access to the real estate and social security databases. This seems to be an issue of interpretation of the AML Law because there is no specific provision in it requiring this to happen. The lack of access of the FIU to these databases is a strange particularity of the Italian

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<sup>713</sup> FATF (2010), *Mutual Evaluation report on Germany*, p. 100

<sup>714</sup> FATF (2010), *Mutual Evaluation Report on Hungary*, p. 54

<sup>715</sup> MONEYVAL (2010), *Fourth Mutual Evaluation Report on Hungary*, pp. 54-55

<sup>716</sup> The police act we were referred to could not yet be confirmed.

FIU and was reported as a considerable problem vis-à-vis EU and International Standards. The second particularity is that this restriction does not apply to requests from foreign FIUs. The FIU can obtain law enforcement information when this is needed to respond to requests from foreign FIUs, as required by relevant international and EU provisions.<sup>717</sup>

The **Latvian** FIU has online access to 78 databases<sup>718</sup>. According to the Latvian representative, extra information can be requested from any state institution in writing or electronically and this information is to be provided within 7 days. The time for response for the obliged entities has been halved as of 2007<sup>719</sup>. With respect to bank information, there exists a central account register of legal persons since 2007, but no centralised register for accounts of natural persons.

In **Lithuania** the FIU has to request access to the tax database and to the commercial register. Mutual agreements are in place between the FIU and the State Tax Inspectorate such that the FIU receives electronic information on natural/legal person's accounts and returns under the suspicion of ML or TF<sup>720</sup>. According to the Lithuanian representative, the FIU can ask directly (and without the permission of investigative authorities) for access to banking, financial and commercial databases, whereas other investigative authorities cannot require banks to provide them with the same information.

The **Luxembourg** FIU has direct desk access to the PPO database. This contains information on all reports of crime and all incoming MLA requests. Furthermore, the FIU can access on the desk the commercial database and the company register. Access to other databases is must be requested<sup>721</sup>. The FIU does not have direct access to the tax database, but after analysis, a prosecutor can access it on request. Thus the FIU cannot reply to international requests for tax information only. Since all civil servants in Luxembourg have a legal duty to report suspicion of ML/TF to the FIU<sup>722</sup>, it is possible that the tax office files a report to the FIU. The FIU has access to police intelligence via a liaison officer that is detached from the police forces to work part time at the FIU. The FIU has a secured online communication channel with this liaison officer. In Luxembourg there is currently no central bank account register. However, the FIU can issue a circular letter requesting from the banks in Luxembourg (or any obliged entity under ML/TF law) information if a person holds, has a proxy or is beneficial owner of an account. According to the FIU representative, access to real estate information is not an issue as this is public information.

The representatives of the **Maltese** FIU observed that direct access to police databases would facilitate the process of obtaining law enforcement information for analytical purposes. However, the possibility of obtaining direct access to such databases is remote in view of the fact that the FIU is an administrative unit. Therefore the solution of employing a police liaison officer was used. Being a small country, the FIU representatives argue they have not experienced problems in obtaining information through requests (nationally), their difficulties in this sense being obtaining information from the international community.

The **Dutch** FIU has access to financial, administrative and law enforcement information. With respect to police data, it can access the VROS – a police database which contains arrests, criminal records,

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<sup>717</sup> Article 9, par. 3, of Legislative Decree 231/2007

<sup>718</sup> MONEYVAL (2006), *Third Round Assessment Report on Latvia*, p. 56

<sup>719</sup> MONEYVAL (2009), *Second Third Round Progress Report on Latvia*, p. 6

<sup>720</sup> MONEYVAL (2009), *Second Progress Report on Latvia*, p. 10

<sup>721</sup> Article 48-24 of June 2009 gives an overview of all databases to which the FIU has access to.

<sup>722</sup> Article 23(2) du Code d'instruction Criminelle Luxembourgeois

and criminal intelligence files – and the “Blueview” – which allows it access to enforcement updates and investigation information. Furthermore, the FIU-NL has access to inter alia tax, income, assets, turnover of companies, and imported/exported goods databases through its liaison officers of FIOD. Finally, the FIU has also signed several agreements with the Tax and Customs administration, and with FIOD-ECD, the Real Estate Information Centre for the exchange of information<sup>723</sup>. However, access to Customs information related to the cross-border transportation of cash is not entirely adequate. The FIU only receives the data from the hand-written cross border declarations. The FIU reports frequent errors<sup>724</sup>.

The **Polish** FIU is an administrative FIU that has an online direct access to the national crime register of the Police. When conducting the analysis of an STR, the Polish representative argued that the FIU will check the STRs database, the police database, tax/customs database, register of companies and internet and other publicly available information. The FIU is given online access to several databases according to Article 19 of the Criminal Information Act.<sup>725</sup> Data of the Prosecutor’s office and other Police operational databases can be accessed upon request by the FIU.

The **Portuguese** FIU belongs to the Judicial Police. However, according to the FIU representatives, the Judicial Police have no access to on-going criminal proceedings where they are not competent. In this case the PPO and not the Judicial Police could access the information available on the on-going investigations. Furthermore, the FIU employs liaison officers (in a Liaison Standing Group – LSG) from the tax and customs office in order to increase its access to these databases. According to the Portuguese representative, the FIU still does not have a liaison from Social Security within the LSG, as was indicated in the Annual Report 2010. The FIU would like access to their database but there are several issues of personal privacy that are at stake.

The **Romanian** FIU has direct access to police data, but not to all police records. Romania has a CBAR. This is reported to be a useful tool, as it identifies the account and the bank where the account is open in Romania. The FIU can directly contact the specific bank for more information on the account.

The **Slovak** FIU has direct access to the Information systems of the Ministry of Interior and of the Police Force, which includes among others the registry of population, the registry of vehicles, criminal records registry, information on ongoing criminal investigations/prosecutions and more. The real estate registry and the commercial registry are open sources of information. The Slovak FIU has indirect access to bank information, as it has to hand a written request to banks asking for information on an ongoing investigation. According to the FIU representative the Tax and Customs registries are also directly available to the FIU.

In **Slovenia**, the FIU has direct access to the police database (only to criminal records). According to the Slovenian representative, the OMLP has direct access to the central bank accounts registry. This allows the FIU to instantly find out whether someone has a bank account and at which bank. This applies both to residents and non-residents of Slovenia. Further, the OMLP has direct access to commercial registries and to the real estate registries. According to the Slovenian representative, an improvement would be direct access to the CTR database of the tax authority, but there are still a lot of open issues to make this possible. Furthermore, under a written request, the OMLP has indirect

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<sup>723</sup>FATF (2011), *Third Mutual Evaluation on the Netherlands*, p. 89

<sup>724</sup>*Ibid.*, p. 90

<sup>725</sup>MONEYVAL (2006) *Third Round Assessment Report on Poland*, p. 53

access to the databases of the Tax Administration, the Customs, the Supervision Agencies, and the Slovenian Intelligence and Security Agency.<sup>726</sup>

In **Sweden** there exists no central bank account register and the FIU currently requests information from all the banks in Sweden. During an ongoing criminal investigation the investigating unit has access to financial information according to the criminal investigation regulation<sup>727</sup>. According to the Swedish representative, the FIU has an integrated IT system which gives it direct access to 11 databases: police, real estate, social security commercial registrar, passport register and more.

The **Spanish** FIU, SEPBLAC, has access to various police databases, tax and customs authorities. This is done via the liaison officers working within SEPBLAC. These officers can provide analysts with all relevant criminal data. With the exception of the Real Estate and the Commercial Register, the FIU can only access other databases on the basis of a request.

According to the FIU representative, **UK FIU** has direct access to the land registry (i.e. real estate). For the customs and tax registries UK FIU has specific gateways that are reliable and fast. The UK does not have a central bank account registry and the FIU does not see a need for such a registry, as this would yield an immense database due to the financial flows passing through the UK. Issues related to the security of such an aggregate database would arise and finally the benefits for the FIU would not be sufficient to justify it. As part of SOCA, the UK FIU has *direct* access to a number of domestic law enforcement sources, in particular: two other SOCA intelligence databases, the Police National Computer (*effectively a database of all criminal convictions in the UK*), JARD (*the asset recovery database*), and the Egmont Secure Web (ESW). There are no time constraints in relation to the FIUs utilisation of these sources<sup>728</sup>. The UK FIU also has access to the Police National Database (PND) which delivers and integrated, effective, national, regional and local information sharing and intelligence capability, which will improve the ability for the police and partner agencies to proactively use information for intelligence purposes.

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<sup>726</sup> MONEYVAL (2010), *Fourth Assessment Visit in Poland*, pp. 40-41

<sup>727</sup> FATF (2006), *Third Mutual Evaluation Report on Sweden*, p. 53

<sup>728</sup> FATF (2007), *Third Mutual Evaluation on the United Kingdom*, p. 83



## Annex 8.4 DATA MINING SYSTEM AND FIU CAPACITY TO FILTER FAST IN DETAIL

In **Austria**, reports are sent both by e-mail, fax, post and courier. All reports are manually integrated into the FIU database. The Austrian FIU is a law enforcement unit and this means that it has to systematically start criminal proceedings for each piece of information received from a reporting entity which meets the requirements of an STR in order to clarify the suspicion of a criminal act. Receiving and analysing STRs is relatively hard to compare in Austria, as an investigation is started for almost all STRs received.<sup>729</sup> The FIU has no own analytical tool in the sense of data mining. Moreover, the Austrian representatives did not consider data mining tools very helpful.

In practice, the **Belgian** FIU receives 70% of the STRs electronically and 30% in writing. The electronic system through which reports are submitted to the FIU is a system that FIU Belgium has developed itself. The Belgian FIU has introduced since 2006 a system of online reporting. Institutions or professionals that want to report electronically can ask the FIU for a login code and password. The electronic reporting system contains a certain format that the reporting entities must fill in. The STRs that are received in writing mostly come from the non-financial sector. Finally, the entire analytical process is done manually, meaning that there is no preliminary 'red-flags' or automatic system that already filters out STRs that are not further analysed. Hence, there is no automatic pre-analysis available to the Belgian FIU.

In **Bulgaria**, the STRs can be forwarded by the reporting entities online<sup>730</sup>, but according to the FIU representatives, this is currently done manually – by post.<sup>731</sup> The reporting entities must make use of a standard reporting form, which has been approved by the director of the FIU. The analysis of reports is done for one part manually and for another electronically, but given the increase in the reports received from the obliged entities the FIU is planning to invest further in an IT support platform for their analysis. According to the FIU representative, the Bulgarian FIU already uses several visualisation software and document management systems, and its own system has certain data mining properties.

According to the **Cypriot** representative, the FIU receives the SARs by post, or manually. However, the FIU has just finished organising a digital reporting system which they have already connected to the servers of the three largest banks in Cyprus. They plan to expand this to all other banks. For data mining, MOKAS uses an I2 IT system. The system was reported to be user friendly and helpful in revealing red flags among the suspicious patterns of financial transactions and in allowing the investigators to visualise the flows of money and thereby to easily identify the more complicated ML financial constructions.

In the **Czech Republic**, the FIU analysts use the I2 analytical software, the ELO Document Management system and MoneyWeb as well as their own analytical system. This helps the analysts “assess the information requested for the analysis, to trace the movement of funds and to determine the profile of the persons (both natural and legal) involved in the STR”.<sup>732</sup> According to the Czech representative, these IT systems accommodate almost all STRs, especially since 90% of the STRs are electronically submitted. The remaining 10% of STRs reach the FIU via a letter or fax. These are submitted in general by smaller practices and entities that do not often report.

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<sup>729</sup> FATF(2009), *Third Mutual Evaluation Report Austria*, p. 73

<sup>730</sup> Available at: <http://www.dans.bg/en/msip-091209-menu-en/reporting-11a-31012011-mitem-en.html>

<sup>731</sup> Available at: [http://www.dans.bg/images/stories/FID/guidelines\\_reporting\\_lmml\\_lmft-02082012.pdf](http://www.dans.bg/images/stories/FID/guidelines_reporting_lmml_lmft-02082012.pdf)

<sup>732</sup> FATF (2011), *Fourth Mutual Evaluation Report on the Czech Republic*, p 68

The **Danish** FIU usually receives the reports by fax. According to the Danish representative, Denmark is in the process of a change, because GoAML should have started working at the end of August 2011. It was then expected that the majority of reports will be disclosed electronically. Moreover, with GoAML there will be an initial automatic analysis, which makes a pre-selection of interesting cases. Only then would inspectors proceed with the analysis and subsequent criminal investigation. It is unclear whether online/electronic reporting has been put in place in the meantime. The website of the FIU does not allow for online reporting.

In **Estonia**, since January 2008 the reporting entities are able to send a notification to the FIU electronically by using the digital format on the website of the Financial Intelligence Unit. According to the Estonian representative, the RABIT IT system the FIU has in place allows the automatic analysis of the STRs but does not perform an automatic analysis. The staff of the FIU will therefore analyse all reports. If there is no further suspicion, the STRs are archived.<sup>733</sup>

Finland's FIU's database was created as a part of the criminal intelligence database of the **Finnish** Police. This in turn was problematic because it was not created to support the analysis of STRs and these had to be registered and analysed manually<sup>734</sup>. According to the Finnish representative, the situation has changed. Reports are currently mostly handed in electronically, by e-mail and in April 2011 the Finnish FIU is currently using the GoAML system.

The incoming French STRs are analysed by the members of the analysis department of TRACFIN with the help of a complex and powerful data mining system - STARTRAC. Reporting entities can report electronically or by mail or by fax. Since June 2012 TRACFIN opened a telecommunications service ERMES statement. This remote procedure should facilitate the reporting of professionals subject to the FIU. Nevertheless, the FIU representatives mentioned that information is not lost if transmitted by mail/post. Due to the geographical size of France, the latter simply takes longer, which is why TRACFIN encourages the usage of electronic reporting.

In **Germany**, the FIU reports that approximately 99% of STRs are submitted electronically or by fax. STRs that are received in hard copy are digitised and also captured as electronic documents in the FIU database.<sup>735</sup> Furthermore, according to FATF (2010), when a new STR is entered (by the FIU or the Land Police unit) into the STR database, there exists an automatic data mining system that cross checks the information with other STRs existing in the database and with all police databases to which the introducing agency has access to<sup>736</sup>.

In **Greece**, an STR from a Bank is sent to the AML/CTF/SFI Authority. The Chairman of the Authority decides which of the three subordinated units receives the report. This is not mutually exclusive and the ML/TF cases are forwarded to the FIU. Until recently the receiving of STRs was done manually and at present 60% of the credit institutions report electronically, as the Greek representatives suggested. The FIU offers the possibility to report online through a secured connection.

In **Hungary**, the FIU appears to be adequately funded and provided with sufficient technical and other resources to fully and effectively perform its functions. The AML/CTF Act requires obliged entities to report electronically and this prompted some discussion on whether not allowing any paper reporting would not create disincentives for DNFBPs. The Hungarian authorities argued this

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<sup>733</sup> MONEYVAL (2008), *Third Mutual Evaluation Estonia*, p. 71

<sup>734</sup> FATF(2007), *Third Mutual Evaluation Report on Finland*, p. 66

<sup>735</sup> FATF (2010), *Third Mutual Evaluation Report on Germany*, p. 102

<sup>736</sup> FATF (2010), *Mutual Evaluation Report on Germany*, p. 100

was not the case and that electronic tools were tailor made to the needs of the reporting institutions, and that the FIU provides technical support for any party wishing to report.<sup>737</sup> Finally, Moneyval (2011) reported that the HFIU has its own data mining system (HUFO).<sup>738</sup>

In **Ireland** about 70% of STRs are disclosed by means of electronic reporting. The reporting system is developed by the FIU in cooperation with the designated bodies. The smaller reporting institutions are often the ones that report manually, as the electronic system is quite expensive. The Irish FIU representative argues that one would need to do a cost and benefit analysis for the smaller reporting entities and see whether putting in place a secure system for information transmission is cost efficient. Given these reasons, the fact that 30% of reports are submitted on paper is not seen as problematic. Furthermore, the Irish representative reports that the FIU has a data mining system in place.

In **Italy**, the reporting was produced electronically and delivered by post until May 2011. In May 2011 the FIU has introduced a new system for reporting STRs in order to improve the quality and timeliness of reports – called RADAR. The new reporting system introduces a standard reporting form (with clear requirements to detail the description of the transaction as well as the reasons for suspicion) and the possibility to report electronically<sup>739</sup>.

According to the **Latvian** representative, the FIU receives the reports very differently. There is an increase in the number of reports sent electronically. Since 2010 twenty of the largest reporters in Latvia are only reporting electronically. Small practices however, still report by paper. With respect to the analysis, according to the Latvian representative, the FIU database is not linked with other databases. This implies that scanning of reports is done manually by an FIU employee and not automatically, as in Estonia. However, the Latvian IT system provides for additional alerts when an individual involved in the STR is put on the EU watch list.

The **Lithuanian** reporting system is not fully computerised and this was reported to create problems in terms of the deadlines set for the reporting institutions<sup>740</sup>. According to the Lithuanian representative, dealers in precious stones do not report electronically. Nevertheless, banks report electronically using an online matrix next to submitting a written report. This is a considerable improvement as the reports from the banks constitute 95% of the FIUs work. With respect to the analysis of the information received, the FIU has both an IT system and analytical software that are up to the challenge.<sup>741</sup>

All STRs are analysed by the **FIU-Luxembourg**. It receives reports by any means – electronically, by fax and by mail or by personal delivery. The banks which file the most STRs use USB sticks to forward this information to the FIU. The FIU is considering putting in place a more rapid electronic reporting system. The FIU has no data-mining system for its database. Financial information is analysed with tools like Excel and this is done by a financial analyst. The authorities are considering implementing a data mining system. In summary, the authorities are considering creating an electronic system for receiving STRs, putting in place a data mining system and rewriting the IT database system of the FIU.

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<sup>737</sup> MONEYVAL (2010), *Fourth Evaluation Report*, p 53

<sup>738</sup> MONEYVAL (2010), *Fourth Mutual Evaluation report on Hungary*, p 74

<sup>739</sup> FIU Italy (2010), *Annual report*, p. 6

<sup>740</sup> MONEYVAL (2010), *Second Third Round Progress Report on Lithuania*, p.90

<sup>741</sup> MONEYVAL (2010), *Second Third Round Progress Assessment Report on Lithuania*, p. 68

In **Malta**, the reporting is not digital yet. According to the Maltese representative, the FIU prefers receiving the reports in person. This way they are sure STRs do not get lost or that anything impedes them from reaching the FIU. With respect to the IT system, the Maltese representatives tell us that the FIU has developed its own IT software. The FIU has looked into getting more sophisticated software, but this is very costly. It has therefore applied twice to the EU to obtain funds to buy GoAML<sup>742</sup>, but this has been denied twice. It has therefore new plans to acquire the I2 analytical software to enable it to perform network analyses faster.

FIU-NL is currently implementing a new computerised system (GoAML) that will contain both the unusual and suspicious transactions. This system offers many new possibilities on data-examination and analysis. However, due to the slightly different internal nature of the FIU – the mix of administrative staff and police using two databases (UTRs and STRs) – it still needs adjustments<sup>743</sup>. For more than a year, all reports have to be sent electronically to the FIU. Furthermore, the FIU has put in place a web application for reporting entities to safely report. This is fast and secure, according to the FIU representative. The **Dutch** FIU receives the vast majority of UTRs in an electronic format. UTRs can be filed directly to the FIU with protected software that all reporting institutions can use, after registering in the website of the FIU<sup>744</sup>. In addition to the UTRs received from the reporting entities, the FIU also receives information that may be related to money laundering, in the form of requests of information, which are forwarded to the FIU by law enforcement agencies through the office of the public prosecutor<sup>745</sup>. These requests are checked for relevance and the information to be provided is reclassified from UTR to STR and then disclosed to the law enforcement agencies.

The **Polish** FIU is well equipped with technical and information technology facilities. The employees carrying out the strategic analysis of the data are supported by modern IT tools that allow them to create and apply module solutions in their analysis<sup>746</sup>. Furthermore, the FIU seems to make use of its own data mining system – although this is not explicitly mentioned in its annual reports.

The **Portuguese** FIU receives STRs from the obliged entities electronically. They have their own IT system. The FIU also allows for reporting using their website as a platform.

In **Romania**, most STRs are sent electronically, but according to the Romanian representative, the FIU cannot refuse notifications it receives on paper, hence the receipt system can never be fully electronic. The FIU pays a great deal of attention to the IT system supporting the data analysis. The FIU is endowed with an 'own IT system'.

The **Slovak** FIU is responsible for receiving UTRs and it can do so electronically or manually. According to the FIU representative, reports are still mostly received manually. Plans to improve the IT support of the FIU have been approved and will be introduced shortly. In this sense new communication software (MoneyWeb) will be introduced to ensure faster and more reliable communication between the FIU and the obliged entities<sup>747</sup>.

In **Slovenia** reports are sent to the FIU either electronically or in hard copy. According to the Slovenian representative, the FIU does not receive too many STRs, because it has trained the banks to only report the very suspicious transactions (to prevent over-reporting). The FIU receives about

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<sup>742</sup>GoAML available at: <http://goaml.unodc.org/>

<sup>743</sup>As resulting from email correspondence held with the representatives on 07.05.2012.

<sup>744</sup>FATF (2011), *Third Mutual Evaluation on the Netherlands*, p. 97-98

<sup>745</sup>*Ibid.*, p. 98

<sup>746</sup>MONEYVAL(2006), *Third Round Assessment Report on Poland*, p. 56

<sup>747</sup>MONEYVAL (2011), *Fourth Assessment Visit Report on Slovakia*, p. 66.

200 STRs per year and it can open an investigation into each of them. The OPML also does not seem to have an automatic data mining system, but the latter still needs to be confirmed by the country representatives.

In **Spain**, all STRs (whether suspicious or systematic reports) coming from notaries and financial entities are sent digitally to SEPBLAC. SEPBLAC has developed software for this, and basically all institutions send their communications to SEPBLAC this way – in fact they are obliged by law<sup>748</sup>. STRs from DNFBPs are still submitted manually (on paper), but this does not constitute a large fraction of the total inflow of reports. With respect to the further analysis, SEPBLAC has developed its own database and digital system, together with some private companies.

According to the **Swedish** representative all covered entities need to register as a reporting entity with the FIU in advance. Initially, the FIU received different forms of STRs both electronically and in a paper format, but since 2010 STRs are only submitted electronically. The FIU has introduced technical tools and databases for improved analysis of information – i.e. iBase and Analyst Notebook – which allow for an initial digital screening and cross-checking of STRs.<sup>749</sup>

According to the **UK** FIU representative, 98% of SARs are received electronically. Progress continues to be made in reducing the number of SARs submitted on paper (by fax or post) and the UK FIU continues to encourage electronic submission. The UK FIU makes all but the restricted SARs available to UK LEA to read and investigate via the extranet portal MoneyWeb. SARs relating to Consent, Integrity, Terrorism, Counter Proliferation Finance and PEPs are proactively analysed and disseminated by the UK FIU. In their analysis, the UK FIU makes use of various data mining analytical tools<sup>750</sup>.

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<sup>748</sup> Article 18(3) and 20 (2) of the 10/ 2010 law and the Article 13 of the Royal Decree 925/95

<sup>749</sup>FATF (2010), *Fourth Follow-up Report on Sweden*, p. 32

<sup>750</sup>SOCA UK FIU (2011), *SARs Annual Report*, , p. 9-11 and p. 14

## Annex 8.5 FEEDBACK IN DETAIL

In 2011 the representatives of the **Austrian** FIU took part in 49 national and international training events and lectures<sup>751</sup>. The Austrian FIU has created a reporting form for STRs which reporting entities can download from their website and are encouraged to use. This website also includes information on the procedures that have to be followed when reporting<sup>752</sup>. According to the FATF (2009), the reporting entities are given immediate indirect feedback as, upon receiving an STR, the FIU will contact the reporting entity to ask for more information required for its investigation<sup>753</sup>.

The **Belgian** FIU gives a notification of receipt of the STR to the reporting institution. Furthermore, it will inform the reporting institution if it has found no suspicion and the case is archived in the FIU database. The FIU does not provide feedback to a reporting institution that it has forwarded a case to the public prosecutor. It only does so when the public prosecutor immediately decides to terminate the case. Then the reporting institution will be provided with this information. When there is a conviction, the case will be brought to the attention of reporting institution as well. According to the Belgian representative, reporting entities organise training themselves. In Belgium, there are private companies that offer training sessions and the FIU representatives participate in this kind of training. Furthermore, the FIU organises a meeting every year in which the data from the annual report are presented. The FIU also participates in sessions organised by professional associations (e.g. in 2011 in a session organised by the Order of Notaries).

In **Bulgaria**, according to national representative, the FIU meets with the reporting entities at least once a year. Further, the FIU states that it provides the reporting entities with an acknowledgement of receipt on each STR and that it is at the discretion of the Director of the FIU to offer ad-hoc feedback, if it considers this will improve the quality of the reports. However, the FIU considers that feedback is given on a case-by-case basis on a regular basis. The FIU has published one report in English and Bulgarian in 2011 which it made available on its internet page. For the first time, this included money laundering and terrorist financing typologies, and information on trends and activities.

After receiving the SAR the **Cypriot** FIU issues an acknowledgement of receipt to the bank. This is part of the standard procedure and is done immediately. In this preliminary feedback to the reporting entities, MOKAS mentions who will investigate the case. According to the Cypriot representative, the banks sometimes require guidance on how to treat a bank account or a client based on the information/transaction. The FIU is obliged to give such directions to the requesting bank. The FIU also informs the banks upon the termination of the investigation. Feedback is also given to the banks in the course of an investigation. Moreover, MOKAS can provide reporting entities with typologies regarding trends which came out of the investigation, that can help the reporting entities improve their detection. The FIU thinks that it is mostly the financial sector that could be threatened by ML, which could explain why the FIU is so close to the financial institutions. According to the Cypriot representative, MOKAS dedicates considerable efforts to providing training to the reporting entities, between 2008 and 2009 offering 44 training sessions both on a national and at international level

According to the Moneyval (2011), in the **Czech Republic**, the new AML/CFT Law does not require the FAU to provide the reporting entities with specific guidance on how to report. Nevertheless, the FIU

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<sup>751</sup> FIU Austria (2011), *Annual Report*, p.6

<sup>752</sup> FATF (2009), *Mutual Evaluation report on Austria*, p. 74

<sup>753</sup> *Ibid.*, p. 142

has issued guidelines and has posted it on their website. The FIU has a very comprehensive site with guidelines for the reporting entities relating to identification issues, credit cards, PEPs, CDD, reporting obligations, suspension of a transaction, confidentiality, third country equivalence, exemptions, standard reporting forms, and relevant legislation. The Czech representatives argued that the FIU provides regular training sessions, conferences and seminars to the obliged persons. The numbers for 2011 could not be confirmed yet. Moneyval (2011) report that the financial institutions they had interviewed were satisfied with the cooperation and contribution provided by the FIU with respect to staff training and with the typologies the FAU provided them with<sup>754</sup>. They confirmed that the FIU provided them with “clarifications, opinions on issues related to the prohibition on money laundering through various means including verbal advice, letters, E-mail, etc.”<sup>755</sup>

Although there is no standard reporting format, in practice, according to the **Danish** representative, almost all reporting institutions use the reporting format provided by the FIU. It was expected that after the introduction of the new IT-system, reports would be gradually sent electronically. At first, institutions would be given some time to adjust to the new situation, but at a certain moment the AML/CTF Act would be amended to make electronic reporting compulsory. According to the Danish representative, the FIU (due to its position within the SØK) can give both general feedback and specific feedback to reporting institutions. The specific feedback means that the FIU informs, on its own initiative or after request, a reporting institution on the status of a particular case (is the case closed, pursued to court, has there yet been an indictment, is there a judgment, if so, what is the outcome of the judgment etc.) The Danish representative explained that this is really motivating for reporting institutions and it also gives them guidance in the understanding and recognition of atypical transactions. In practice such specific feedback is thus far only given to banks, in one-to-one meetings at the office of the FIU with money laundering reporting officers. In theory, the Danish representative argued that it is also possible to give such specific feedback to other reporting institutions.

In **Estonia** the FIU provides general feedback through the annual reports. According to the Estonian representative, the FIU conducts about 15-20 training sessions per year with reporting entities to help them better identify STRs. There are only 18 banks in Estonia and, according to the Estonian representative, the FIU knows them all personally and has a very good relationship with them. The reporting entities can therefore be provided with a case-by-case feedback. Furthermore, the FIU publishes guidelines for the reporting entities instructing them on how to report.

In **Finland**, the reporting entities can report online, and they are instructed on using a standard reporting format issued by the FIU. This can be downloaded from the FIU website, which at this point only offers information in Finnish on this matter. The FIU provides general feedback to the reporting institutions via its website. The FIU publishes several annual reports with statistics, trends and legislative developments but only a few of them are translated into English. Co-operation with the obliged parties is reported to be one of the priorities of the MLCH. The training it provides to the reporting entities is based on practical examples. Obligated parties also seek the advice of the MLCH on a more ad hoc basis and appear to appreciate the guidance and assistance they are provided. FATF (2007) reports that as part of this ad hoc advice, the MLCH provides feedback to the obliged parties about the quality of the information they disclosed.<sup>756</sup>

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<sup>754</sup> MONEYVAL (2011), *Fourth Mutual Evaluation Report on the Czech Republic*, p 133

<sup>755</sup> *Ibid.*, p. 145

<sup>756</sup> FATF (2007), *Third Mutual Evaluation report on Finland*, p. 60

In the 2011 FATF report it was mentioned that the resources employed by the **French** FIU to conduct analysis are not sufficient to cope with the amount of incoming reports. Furthermore, the absence of quantifiable information concerning the judicial follow-up of TRACFIN cases means that their contribution to AML/CFT investigations cannot be evaluated<sup>757</sup>. This also is reflected in the nature of the feedback the FIU is able to give to the reporting entity. TRACFIN relies on good cooperation with the reporting entities, and in particular on informal contacts that TRACFIN agents have with compliance officers. Despite the difficulty of confirming such informal contacts, TRACFIN representatives state that the feedback they provide to the reporting entities is very good. TRACFIN has created a reporting template that reporting entities can use as guidance when disclosing STRs. In addition to this, TRACFIN issues an acknowledgement of receipt for each received STR. This is automatically done when reporting electronically and otherwise manually upon the receipt of an STR by mail. The FATF evaluation of 2011<sup>758</sup> suggested that TRACFIN does not publish enough detailed, written guidance for non-financial institutions on how to prepare suspicious transaction reports. During the interviews the FIU representatives argued that they successfully tackled this point. According to the FIU 2011 report, the reorganisation of the Unit following the Decree of 7 January 2011 brought about a change in awareness efforts with respect to reporting entities. TRACFIN's actions at the national level have been cut back considerably (to approximately 24 communication actions) to make room for more targeted contacts with individuals.<sup>759</sup> In 2011 TRACFIN has paid specific attention to the DNFBPs (14 communication actions with them alone).

Giving feedback to the REs is required by the **German** AML Act, section 10(1). The FIU informs the REs about emerging ML trends, and new typologies through secured area of its website. According to FATF (2010) the FIU also publishes 7 periodic newsletters, which are intended to inform all reporting entities of current developments in the field of suppressing ML<sup>760</sup>. The FIU receives feedback from the competent PPO on the outcome of investigated or convicted cases to which the FIU contributed in the form of a copy of the indictment and the reason for dismissal or the verdict. The FIU can disclose information hereby acquired with the reporting entities or with the institutions providing the intelligence on which the criminal cases or investigation was based. The FIU will do so at their request<sup>761</sup>, and with the purpose of allowing the reporting parties to improve their reporting. The data have to be destroyed by the reporting entities once no longer useful. Furthermore, AML/CTF compliance officers have access to the password protected secure area of the FIU website. They have access to the STR form together with instructions for use. This ensures a safe online reporting option for AML/CTF compliance officers. Moreover, after wide consultation, the German FIU has developed a standard reporting form, which was published in the Annual Report of 2004. This form has instructions for completing it, but REs are not obliged to use it. According to FATF (2010) only about half of reporting entities use this format and there are no plans to make the standard format mandatory despite the very clear efficiency gains (less time consuming registration of STRs, fewer staff costs, more cumbersome analysis etc.). Finally, the FIU provides presentations and training to specific target groups (reporting entities, law enforcement units, etc.). According to the FIU 2011 report, the number of presentations and the participation in training courses are kept at a high level with the FIU being actively involved in 35 national and international events<sup>762</sup>.

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<sup>757</sup> FATF (2011), *Executive Summary to the Third Mutual Evaluation of France*, p. 6.

<sup>758</sup> *Ibid.*

<sup>759</sup> FIU France (2011), *Annual report*, p. 43. Available at: <http://www.economie.gouv.fr/files/rap%202011%20ang.pdf>

<sup>760</sup> FATF (2010), *Mutual Evaluation report on Germany*, p.103

<sup>761</sup> This will be done in accordance with Section 475 of the German Code of Criminal Procedure.

<sup>762</sup> FIU Germany (2011) *Annual report*, p. 29

The **Greek** FIU rarely gives individual (case-by-case) training to obliged entities. According to the Greek representative, too much emphasis on this could prove counter to its purpose. The FIU however, gives extensive general guidance. It published several models of best practice in the AML/CTF fight in different economic sectors (i.e. the securities sector, the casino sector, the football sector, the real estate sector etc.). Since 2010, the FIU started publishing typologies on ML and TF in its annual reports (although these could not be found online). Furthermore, the FIU has a comprehensive website where reporting entities can report online through a secure connection.

On the manner of reporting, the **Hungarian** FIU is obliged, together with the supervisory authorities, to guide the reporting entities. The HFIU published a detailed technical guide for the reporting entities on its websites and, according to Moneyval (2010), staff are designated to run a helpdesk for the reporting entities. Also, the supervisory authorities have published model rules that lay down typologies on unusual transactions, and the HFIU publishes twice a year a report on its website – with statistics, as well as guidance on typologies.<sup>763</sup> Finally, HFIU provides a feedback of a general nature to reporting entities (including a letter of acknowledgement on each STR)<sup>764</sup>. Besides this general feedback HFIU notifies them on the use of information gathered unless it has the potential to compromise a successful procedure.<sup>765</sup>

In **Ireland**, all reporting institutions receive an acknowledgement from the FIU and the Revenue Commissioners that their STRs have been received. There is a specific format in which STRs must be submitted to the FIU and Revenue Commissioners. According to the Irish representative, the prescribed format is meant as guidance, as it is not an offence to not follow the prescribed format in reporting. If this is the case, FIU and Revenue will simply call the reporting institution requesting for more information or to fill in the form appropriately. The Irish FIU representative states that the FIU does not give feedback to the reporting entities while it is investigating an STR. Feedback is aggregated and given to the reporting entities every six months. In this feedback the status of the case is explained (under criminal investigation – hence done by Garda, or under prosecution etc.) to the reporting institution. The Irish FIU can give such specific feedback, because a large proportion of STRs do not end up in criminal investigation and are either forwarded to the Revenue Commissioners or stored in the STR database. The Revenue Commissioners do not give such individual feedback, but they give generic feedback in their annual meeting with financial institutions (typologies, trends, general results). According to the FIU representative, the annual report of the Irish FIU is part of the annual reports of the An Garda Síochána. This includes data provided by all other sections under the supervision of the Ministry of Justice.

The **Italian** FIU informs the reporting entities only when their reports have been dismissed. However, this cannot be often observed, since the FIU forwards a very large share of the STRs it receives to the corresponding LEAs as it has little or no access to LEA databases. Further, the Italian authorities argued that the FIU gives general feedback and training to the reporting entities to ensure their compliance with the reporting duties. According to the Italian authorities, there are plans to do more targeted training – a risk based training for sectors with which cooperation is more difficult. This seems to have been efficient as the number of STRs that the FIU has received in the past years has increased exponentially. Despite this increase, many of the STRs do not seem to be of satisfactory quality.<sup>766</sup>

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<sup>763</sup> MONEYVAL (2010), *Fourth Mutual Evaluation Report on Hungary*, p 53

<sup>764</sup> FIU Hungary (2011), *Bi-annual report – First report for 2011*, p 5 (translated from Hungarian)

<sup>765</sup> FIU Hungary, (2009), *Bi-annual report – Second report for 2009*, p 13

<sup>766</sup> FIU Italy (2010), *Annual report*, p. 6.

In **Latvia**, the FIU receives extensive feedback from the police on the cases the FIU forwarded to them. Upon receiving feedback from the police (that an investigation has started or that the case has been dropped), the FIU immediately informs the reporting entity. The FIU also gives guidance and feedback to the reporting entities through the annual reports. Historically, the FIU did not make its annual reports public. Annual reports were not made public until 2006 as, up to then, the FIU only reported to the PPO and to the government.

In **Lithuania** the FIU provides guidance and feedback to the reporting entities through its annual reports. The website of the FIU also provides a comprehensive list of laws and guidelines for the reporting entities, and a secured trust phone service.

In terms of feedback, **FIU-Luxembourg** strongly believes in motivating the reporting entities through feedback. The FIU gives a three-layer feedback to the reporting entities: a general feedback in the form of the annual report; an individual annual feedback to the financial institutions and a case-by-case feedback where the FIU acknowledges receipt of the STR and, after the case has been analysed, mentions what has been done with the case – was it shelved, was it further investigated or prosecuted or was it used for intelligence. Yearly, the FIU meets with the bank representatives and makes a report on the STRs received from each bank through the course of the year. For these aggregated STRs the FIU describes the result of the analysis as, for example, the number of cases that have been shelved, the number of cases that were forwarded to further investigation/prosecution for ML or for predicate offence (analysis report disseminated to PPO), the number of international information exchanges, the number of cases that have been put forward for prosecution etc.

The **Maltese** FIU gives good feedback to the reporting entities. This generally refers to the outcome of the STR<sup>767</sup> – whether it was archived in the absence of other information, whether it was forwarded to the LEAs or whether it is still in the process of investigation. Furthermore, the FIU publishes yearly annual reports and make trends and methodologies on money laundering publicly available to reporting entities on their website.

The **Dutch** FIU provides training to the reporting entities: it publishes annual reports with AML/CTF indicators and it prepares and distributes case studies to the obliged entities. The FIU's website contains a section on "reporting", which specifies who is subject to reporting. The FIU provides the reporting entities with software that explains, inter alia, what the reporting procedures are<sup>768</sup>. The FIU provides the reporting entities with a letter stating the acknowledgement of receipt for each report. In order to avoid tipping off, the FIU only informs a reporting institution that a transaction is regarded as suspicious if the supervisor confirms that the reporting institution has its own AML/CTF compliance department that can be relied upon to protect the information. Furthermore, if the UTR is involved in a criminal investigation and then is used in a criminal trial, then the FIU can only report back to the reporting entity with the authorization of the Prosecutor General Office<sup>769</sup>. Despite this, the FATF 2011 report mentions that the interviewed entities did not consider that they had sufficient guidance on what the FIU would wish to see by way of reports from their part<sup>770</sup>. Reporting entities refer to lack of feedback after they are notified that a UTR has been substantiated into an STR. The

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<sup>767</sup> Article 32 of the AML law

<sup>768</sup> FATF (2011), *Third Mutual Evaluation Report on the Netherlands*, p. 89

<sup>769</sup> This dissemination is made under the Article 39f of the Data and Criminal Records Act.

<sup>770</sup> FATF (2011), *Third Mutual Evaluation Report on the Netherlands*, p. 181-182

problem is that the FIU itself, once the information is disseminated to law enforcement has no information of the further course of action undertaken by law enforcement authorities<sup>771</sup>.

According to the **Polish** FIU annual report 2010, the majority of the obliged institutions were given e-learning training and the FIU has given other workshops as well. The training is done so that the FIU can make sure that reporting entities know how to report electronically and what to report and can therefore reduce the workload of the FIU. According to the 2011 FIU annual report, members of the FIU have been involved in giving approximately 30 training sessions and lectures both nationally and internationally. On the issue of case-by-case feedback, this is given in any case where the notification submitted by the FIU to the PPO was based on information provided by the respective institution. The feedback should be given within 90 days from receiving the notification. Moreover, the FIU dedicates part of its website to the solving of problems that reporting obligations might have.

The **Portuguese** FIU meets with the reporting entities in several ways. They organise meetings with every sector, as well as a yearly conference with all the reporting entities. Next to this, the representatives of the FIU suggested that they are in permanent informal contact with the reporting entities as a way to provide them with individual feedback. The FIU provides feedback of the information to the obliged entities on a quarterly basis, as far as the reports are concerned. This feedback includes information on the results, as well as on the destination of the reports.

The **Romanian** FIU does not give case by case feedback to the reporting entities. Feedback has a general nature, whereby reporting entities undergo annual training, can participate in seminars and workshops organised by the FIU, and can read more about the AML/CTF trends and statistics from the publicly available FIU annual reports.

The **Slovakian** FIU is obliged by law<sup>772</sup> to provide obliged entities with information on the efficiency of UTRs and on the procedures following their reporting unless this endangers the FIU analysis. Unfortunately, it was not possible to find out whether this actually is the case in practice, from an FIU representative.

In **Slovenia**, there are several standard reporting formats to be downloaded from the OPML website – a report on cash transactions of great value, a report on suspicious transactions, clients or suspected money laundering activity, a report on criminal reports, a report on criminal offences and administrative offences and a report on cross border transfer of cash and securities. The OMLP is obliged by article 63 of the AML/CTF act to provide feedback to the reporting entities, and it seems it does so, on a general basis by “publicly releasing periodic reports”. The FIU reported giving 7 training sessions in 2009 and in 2010, it provided almost 60 hours of lectures for the purpose of training reporting entities.<sup>773</sup>

General feedback from the **Spanish** FIU is primarily provided by means of an annual report, which is published on its website. These annual reports contain statistical data on the functioning of the FIU and information about technological developments. Secondly, the FIU has thus far drafted three sector-specific guidelines. The guidelines aim to give practical guidance on how to deal with the risks in the specific business sectors, on the interpretation of the legal provisions, and on how to comply with the reporting obligation. Thirdly, the FIU organises meetings and training seminars with representatives from reporting institutions.

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<sup>771</sup> *Ibid.*, p. 99

<sup>772</sup> This obligation is stipulated in Article 26, paragraph 2i of the 297/2008 Act.

<sup>773</sup> FIU Slovenia (2010), *Annual report*, p. 25

According to the **Swedish** FIU, to obtain a higher reporting quality the reporting bodies must receive more feedback from the FIU and participate in the seminars arranged by the supervising bodies and authorities in cooperation with the FIU. The FIU gives feedback through its annual reports. Many of the reporting bodies have requested more detailed feedback regarding their reports. However, legislative stipulations restrict the FIUs ability to divulge the requested information.<sup>774</sup> The annual reports of the FIU contain recent money laundering trends, techniques and money laundering statistics, and information regarding activities conducted by the FIU. The FIU also informs financial institutions if and when STRs resulted in a case being forwarded to law enforcement authority, resulted in a preliminary investigation being opened, or if a sentence is pronounced. Other reporting entities are given a receipt after sending an STR. The formula gives information of the person in charge, phone number and case number.<sup>775</sup>

**UK** FIU sends automatic acknowledgements of receipt to businesses that report via SAR Online and encrypted mail. UK FIU provides general feedback by means of the SARs Annual Report, notices on its website and guidance documents. The feedback to the top ten reporters will be delivered in 2012-2013. UK FIU is currently renegotiating their model of engagement with the financial industry to ensure feedback is provided in a format which is most helpful to them. Another feedback tool is the Twice Yearly Feedback Questionnaire. Here, end-users of the SAR database (i.e. law enforcement agencies) are required to fill in a report on how they have used SARs in their investigations<sup>776</sup>. This way, UK FIU is aware about the status and usefulness of the SARs. It is, however, difficult to share these TYFQs with reporting institutions because some of the case studies are cases that are still being investigated or prosecuted or that contain an obvious link with a specific SAR (and using this would constitute a breach of confidentiality). Overall however, feedback provided is generic. The UK FIU works together with other law enforcement agencies to raise awareness on AML/CTF matters. This is done on a yearly basis<sup>777</sup>. Apart from the specific examples provided above, the FIU considers that it would be impractical to give individual feedback on an estimated 285,000 SARs submitted to the UK FIU in 2012, and therefore would continue to use a model that gives generic feedback.

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<sup>774</sup> FIU Sweden (2009), *Annual report*, p. 5-6

<sup>775</sup> FATF (2006), *Third Mutual Evaluation Report on Sweden*, p. 52-53

<sup>776</sup> SOCA UK FIU (2011), *SARs Annual Report 2011*, p. 21

<sup>777</sup> SOCA UK FIU (2011), *SARs Annual Report 2011*, p. 21

## Annex 9.1 INFORMATION FLOW CALCULATIONS

Table A.9.1.1: Star network

Level of aggregation	Value without corruption
$V_{(Foreign\ FIU)}$	1
$V_{(REs)}$	1
$V_{(Other)}$	1
$V_{(FIU)}$	$1+3\delta$
$V_{(Police)}$	$1+2\delta+3\delta^2$
$V_{(PPO)}$	$1+2\delta+5\delta^2+3\delta^3$
$V_{(Court)}$	$1+\delta+2\delta^2+5\delta^3+3\delta^4$
<b>Value of the network</b> <i>Star</i>	<b><math>8+8\delta+10\delta^2+8\delta^3+3\delta^4</math></b>

Table A.9.1.2: Cluster Judicial network

Level of aggregation	Value without corruption	Value with corruption
$V_{(Foreign\ FIU)}$	1	1
$V_{(REs)}$	1	1
$V_{(Other)}$	1	1
$V_{(FIU)}$	$1+3\delta$	$1+3\delta$
$V_{(Police)}$	$1+\delta$	$1+\delta$
$V_{(PPO)}$	$2+4\delta+\delta^2$	$2+4\delta+\delta^2$
$V_{(Court)}$	$1+2\delta+4\delta^2+\delta^3$	$1+\gamma(2+4\delta+\delta^2)$
<b>Value of the network</b> <i>Cluster judicial</i>	<b><math>9+10\delta+5\delta^2+\delta^3</math></b>	<b><math>9+8\delta+2\gamma+4\gamma\delta+\delta^2(1+\gamma)</math></b>

Table A.9.1.3: Cluster Police network

Level of aggregation	Value without corruption	Value with corruption
$V_{(Foreign\ FIU)}$	1	1
$V_{(REs)}$	1	1
$V_{(Other)}$	1	1
$V_{(FIU)}$	$1+3\delta$	$1+3\delta$
$V_{(Police)}$		$2+4\delta$
$V_{(PPO)}$		$1+2\gamma+4\gamma\delta$
$V_{(Court)}$	$1+\delta+2\delta^2+4\delta^3$	$1+\delta+2\delta\gamma+4\gamma\delta^2$
<b>Value of the network</b> <i>Cluster police</i>	<b><math>9+10\delta+6\delta^2+4\delta^3</math></b>	<b><math>9+8\delta+2\gamma+6\gamma\delta+4\gamma\delta^2</math></b>

Table A.9.1.4: Linear network

Level of aggregation	Value without corruption
$V_{(Foreign\ FIU)}$	1
$V_{(REs)}$	1
$V_{(Other)}$	1
$V_{(FIU)}$	$1+3\delta$
$V_{(Police)}$	$1+\delta$
$V_{(PPO)}$	$1+2\delta+4\delta^2$
$V_{(Court)}$	$1+\delta+2\delta^2+4\delta^3$
<b>Value of the network</b> <i>Linear</i>	<b><math>8+7\delta+6\delta^2+4\delta^3</math></b>

## Annex 9.2 CRIMINAL PUNISHMENTS FOR ML OFFENCES IN THE 27 EU MS

	Simple ML				Aggravated ML1				Description	Aggravated ML2				Description
	Min imp	Max imp	Min fine	Max fine	Min imp	Max imp	Min fine	Max fine		Min imp	Max imp	Min fine	Max fine	
AT	0	2			0.5	5			large sums of money					
BE	0,01	5	1	25 000										
BG	1	6	1 500	2500	1	8	2 500	10 000	organised criminal group; repeated; by officials; false name	3	12	10 000	100 000	serious crime of intend
CY	5	5	50 000	50 000	14	14	500 000	500 000						
CZ	0	4			0.5	5			member organised group; significant value; significant! benefits	2	8			serious criminal offence; considerable value; considerable benefit
DK	0	1.5			0.5	life			commercial character of the offence; many offences					
EE	0	5	409 709	409 709	2	10			criminal organisation					

FI	0	2			0.3	6			committed in an international manner; the offence has been very valuable ;	1	2			Conspiracy; Negligent money laundering;
FR	5	5	375 000	375 000	10	10	750 000	750 000	committed habitually; during a professional activity; organised gang					
DE	0.4	5			0.5	10			perpetrator acts professionally; a member of a gang ;					
EL	0	10	20 000	1000000	5	20	30 000	1500 000	employee of a legal entity	10	life	50 000	2000 000	recidivist, member of criminal organisation, laundering in a professional capacity
HU	0	5			2	8			a pattern of business operation; substantial amount of money; an officer of financial institution; a public official					
IE	1	14	5 000	571 032										
IT	2	8	500	10 329	4	12	100	15493	complicity in the offence, benefits derived from a malicious crime;	4	12		15 493	the exercise of a professional activity

<b>LV</b>	0	3	0	69 088	3	12			a group of persons pursuant to the prior agreement; a person who repeat the same act; organised group					
<b>LT</b>	0	2			0	4			great value	0	7			
<b>LU</b>	1	5	1 250	1250 000	15	20	1250	1250 000	association or organisation	30	40	fine	fine	a second offence within five years after conviction
<b>MT</b>	0	14	2329 000	2329 373										
<b>NL</b>	0	1	0	78 000	0	4		78 000	knowledge	0	6		78 000	habit of money laundering
<b>PL</b>	0.5	8			0	3			an employee of a bank, financial institution or credit institution	1	10			conspiracy with other persons; a property related benefit of considerable value
<b>PT</b>	0.5	5			2	12			any operation of conversion or transfer of economic advantages for the purpose of	2	12			the offender commits the conduct in a customarily way

									concealing their illicit origin					
<b>RO</b>	3	12			3	12								
<b>SK</b>	2	8			7	12			substantial benefit; acting in a more serious manner; a public figure	12	20			large scale of benefit; member of a dangerous group; Traficant
<b>SL</b>	0	5			0	8	fine	fine	significant benefit and value	0	10			criminal association
<b>ES</b>	0.5	6	fine	fine										
<b>SE</b>	0	2			0.5	6			significant benefit and value					
<b>UK</b>	0.5	14	0	571 032										

Source: desk research – Criminal Codes and AML/CTF laws; all punishments of imprisonment are in years and all fines are calculated in Euros

Next to this, a few member states also have more aggravate ML punishments, as depicted below.

Country	Aggravated ML3				Description
	Min imp	Max imp	Min fine	Max fine	
Bulgaria	5	15	2500	7 500	Extreme large amounts
Cyprus	3	10			Extreme large amounts as value or benefits

*Source: desk research – Criminal Codes and AML/CTF laws; all punishments of imprisonment are in years and all fines are calculated in Euros at present 2012 value.*

### Annex 9.3 CRIMINAL PUNISHMENTS FOR TF OFFENCES IN THE 27 EU MS

Country	Min imprisonment (years)	Max Imprisonment (years)	Min fine (Euro)	Max Fine (Euro)
AT	1	5		
BE	5	10	100	5000
BG	3	15		30000
CY	0	15	1 708 601	1 708 601
CZ	5	life		
DK	0	10		
EE	2	10		
FI	0	8		
FR	10	10	225 000	225 000
DE	1	10		
EL	0	10		
HU	2	8		
IE	0	20		3 000
IT	7	15		
LV	8	20		
LT	4	20		
LU	1	10	2 500	25 000
MT	0	4		11 646
NL	0	15		78 000
PL	2	12		
PT	8	15		
RO	15	20		
SK	8	15		
SL	1	10		
ES	5	10		
SE	1	2		
UK	0	14		fine

Source: desk research – Criminal Codes and AML/CTF laws; all punishments of imprisonment are in years and all fines are calculated in Euros; Latvia also has a 15-20 years imprisonment for TF when in an organised group.

## Annex 9.4 CORRUPTION AND GOOD GOVERNANCE COUNTRY INDICES

Table A9.4: Institutional measurements of corruption control and government effectiveness

Country	Gov Eff 2008	Gov Eff 2009	Gov Eff 2010	Gov Eff 2011	Contr Cor 2008	Contr Cor 2009	Contr Cor 2010	Contr Cor 2011	$\delta$	$\gamma$
AT	1.77	1.72	1.88	1.66	1.92	1.79	1.64	1.44	1.76	1.70
BE	1.38	1.59	1.59	1.67	1.32	1.44	1.50	1.58	1.56	1.46
BG	-0.05	0.06	0.01	0.01	-0.30	-0.21	-0.19	-0.17	0.01	-0.22
CY	1.52	1.4	1.5	1.53	1.24	1.01	1.07	0.96	1.49	1.07
CZ	1	0.98	1	1.02	0.27	0.38	0.30	0.32	1.00	0.32
DK	2.23	2.29	2.16	2.17	2.47	2.48	2.38	2.42	2.21	2.44
EE	1.19	1.13	1.22	1.2	0.87	0.93	0.88	0.91	1.19	0.90
FI	2.04	2.23	2.24	2.25	2.41	2.27	2.15	2.19	2.19	2.26
FR	1.58	1.48	1.44	1.36	1.38	1.40	1.42	1.51	1.47	1.43
DE	1.55	1.57	1.55	1.53	1.73	1.70	1.70	1.69	1.55	1.71
EL	0.64	0.58	0.52	0.48	0.10	0.05	-0.12	-0.15	0.56	-0.03
HU	0.76	0.7	0.7	0.71	0.39	0.36	0.27	0.34	0.72	0.34
IE	1.53	1.32	1.31	1.42	1.76	1.74	1.67	1.50	1.40	1.67
IT	0.37	0.49	0.51	0.45	0.18	-0.01	-0.05	-0.01	0.46	0.03
LV	0.56	0.61	0.7	0.68	0.13	0.15	0.14	0.21	0.64	0.16
LT	0.61	0.66	0.72	0.68	0.05	0.16	0.31	0.29	0.67	0.20
LU	1.62	1.75	1.71	1.73	2.02	1.99	2.06	2.17	1.70	2.06
MT	1.28	1.12	1.15	1.16	1.04	0.91	0.92	0.91	1.18	0.95
NL	1.69	1.75	1.73	1.79	2.16	2.14	2.15	2.17	1.74	2.16
PL	0.48	0.59	0.7	0.68	0.35	0.43	0.46	0.51	0.61	0.44
PT	1.01	1.18	1.04	0.97	1.00	1.06	1.03	1.09	1.05	1.05
RO	-0.27	-0.25	-0.15	-0.22	-0.16	-0.27	-0.21	-0.20	-0.22	-0.21
SK	0.87	0.89	0.86	0.86	0.30	0.27	0.27	0.29	0.87	0.28
SL	1.19	1.16	1.03	0.99	0.91	1.05	0.87	0.93	1.09	0.94
ES	0.89	0.93	0.98	1.02	1.10	1.01	1.02	1.06	0.96	1.05
SE	1.99	2.04	2	1.96	2.23	2.27	2.29	2.22	2.00	2.25
UK	1.64	1.5	1.56	1.55	1.67	1.54	1.48	1.54	1.56	1.56

Source: [http://info.worldbank.org/governance/wgi/sc\\_country.asp](http://info.worldbank.org/governance/wgi/sc_country.asp)

## Annex 9.5 ORIGINS OF CRIMINAL LAW IN THE EU MS

Country	Germanic	Roman/ Italian	French	Common law (UK)
AT				
BE				
BG	X	X		
CY				
CZ				
DE	X			
DK				
EE				
EL				
ES			X	
FI				
FR			X	
HU				
IE				
IT		X		
LT			X	
LU				
LV				
MT				
NL				
PL				
PT			X	
RO			X	
SK				
SL				
SE				
UK				X

Source: constructed with the help of the participants to the ARO Conference (Cyprus, October 2012)



## Annex 11.1 STATISTICS

Table A.11.1.1: STRs

	2005	2006	2007	2008	2009	2010	average
<b>Austria</b>		692	1085	1059	1385		1055,25
<b>Belgium</b>	10148	9938	12830	15554	17170	18673	14052,17
<b>Bulgaria</b>	680	374	431	591	883	1460	736,5
<b>Cyprus</b>							
<b>Czech Republic</b>			2048	2320			2184
<b>Denmark</b>	450	876	1349	1553	2095	2316	1439,83
<b>Estonia</b>	1697	2601	5272	5846	6262	5033	4452
<b>Finland</b>							
<b>France</b>							
<b>Germany</b>	8241	10051	9080	7349	9046		8753,4
<b>Greece</b>	1057	1236	1179	1172	2304	2982	1655
<b>Hungary</b>	11382	9999	9475	9928	5433		9243,4
<b>Ireland</b>							12500
<b>Italy</b>	9057	10322	12544	14602	21066	37321	17485,3
<b>Latvia</b>	16234	13934	21137	26437	28439	26003	22030,67
<b>Lithuania</b>	259	153	148	191	213	221	197,5
<b>Luxembourg</b>							
<b>Malta</b>	74	78	62	68	61	73	69,33
<b>Netherlands</b>							
<b>Poland</b>	67087	48436	25454				46992,33
<b>Portugal</b>	578	946	1079	893	957	1480	988,83
<b>Romania</b>			2096	2338			2217
<b>Slovakia</b>							
<b>Slovenia</b>	116	165	192	248	193	175	181,5
<b>Spain</b>			2783	2904	2764	3172	2905,75
<b>Sweden</b>			6040	13048	9137		9408,33
<b>United Kingdom</b>							

**Table A.11.1.2: SARs**

	2005	2006	2007	2008	2009	2010	average
<b>Austria</b>							
<b>Belgium</b>	576	969					772,5
<b>Bulgaria</b>							
<b>Cyprus</b>	154	257	210	259	428		261,6
<b>Czech Republic</b>							
<b>Denmark</b>							
<b>Estonia</b>							
<b>Finland</b>	3495	9742	17433	22752			13355,5
<b>France</b>							
<b>Germany</b>							
<b>Greece</b>							
<b>Hungary</b>							
<b>Ireland</b>							
<b>Italy</b>							
<b>Latvia</b>							
<b>Lithuania</b>							
<b>Luxembourg</b>	491	486	552	736	1308	4838	1401,83
<b>Malta</b>							
<b>Netherlands</b>							
<b>Poland</b>	1526	1898	1920	1815	1862	1997	1836,33
<b>Portugal</b>							
<b>Romania</b>							
<b>Slovakia</b>							
<b>Slovenia</b>							
<b>Spain</b>							
<b>Sweden</b>							
<b>United Kingdom</b>				221466	228131		224798,5

**Table A.11.1.3: UTRs**

	2005	2006	2007	2008	2009	2010	average
Austria							
Belgium							
Bulgaria							
Cyprus							
Czech Republic							
Denmark							
Estonia							
Finland							
France							
Germany							
Greece							
Hungary							
Ireland							
Italy							
Latvia							
Lithuania							
Luxembourg							
Malta							
Netherlands		172865	214040	388842	163933	183395	224615
Poland							
Portugal							
Romania							
Slovakia	1258	1557	1934	2257	2683	2415	2017,33
Slovenia							
Spain							
Sweden							
United Kingdom							

**Table A.11.1.4: CTRs**

	2005	2006	2007	2008	2009	2010	average
<b>Austria</b>							
<b>Belgium</b>							
<b>Bulgaria</b>	145779	225310	301000	344987	241230	233510	248636
<b>Cyprus</b>							
<b>Czech Republic</b>							
<b>Denmark</b>							
<b>Estonia</b>				8015	10736	8622	9124,33
<b>Finland</b>							
<b>France</b>							
<b>Germany</b>							
<b>Greece</b>							
<b>Hungary</b>							
<b>Ireland</b>							
<b>Italy</b>							
<b>Latvia</b>	11526	15800	18732	20514	11987	11213	14962
<b>Lithuania</b>							
<b>Luxembourg</b>							
<b>Malta</b>							
<b>Netherlands</b>							
<b>Poland</b>	20921317	26090973	30227323				25746538
<b>Portugal</b>	15470	11750	21460	13170	7870		13944
<b>Romania</b>							
<b>Slovakia</b>							
<b>Slovenia</b>	42107	49966	44617	24371	16846	11955	31643,67
<b>Spain</b>							
<b>Sweden</b>							
<b>United Kingdom</b>							

**Table A.11.1.5: STRs, SARs, and UTRs together**

	2005	2006	2007	2008	2009	2010	average
<b>Austria</b>		692	1085	1059	1385		1055,25
<b>Belgium</b>	10724	10907	12830	15554	17170	18673	14309,67
<b>Bulgaria</b>	680	374	431	591	883	1460	736,5
<b>Cyprus</b>	154	257	210	259	428		261,6
<b>Czech Republic</b>			2048	2320			2184
<b>Denmark</b>	450	876	1349	1553	2095	2316	1439,83
<b>Estonia</b>	1697	2601	5272	5846	6262	5033	4452
<b>Finland</b>	3495	9742	17433	22752			13355,5
<b>France</b>							
<b>Germany</b>	8241	10051	9080	7349	9046		8753,4
<b>Greece</b>	1057	1236	1179	1172	2304	2982	1655
<b>Hungary</b>	11382	9999	9475	9928	5433		9243,4
<b>Ireland</b>							12500
<b>Italy</b>	9057	10322	12544	14602	21066	37321	17485,3
<b>Latvia</b>	16234	13934	21137	26437	28439	26003	22030,67
<b>Lithuania</b>	259	153	148	191	213	221	197,5
<b>Luxembourg</b>	491	486	552	736	1308	4838	1401,83
<b>Malta</b>	74	78	62	68	61	73	69,33
<b>Netherlands</b>		172865	214040	388842	163933	183395	224615
<b>Poland</b>	68613	50334	27374	1815	1862	1997	25332,5
<b>Portugal</b>	578	946	1079	893	957	1480	988,83
<b>Romania</b>			2096	2338			2217
<b>Slovakia</b>	1258	1557	1934	2257	2683	2415	2017,33
<b>Slovenia</b>	116	165	192	248	193	175	181,5
<b>Spain</b>			2783	2904	2764	3172	2905,75
<b>Sweden</b>			6040	13048	9137		9408,33
<b>United Kingdom</b>				221466	228131		224798,5

**Table A.11.1.6: Reports on Terrorist Financing**

	Statistic of TF reports separate?	2005	2006	2007	2008	2009	2010	average
<b>Austria</b>		20	37	35	23	42		31,4
<b>Belgium</b>	no							
<b>Bulgaria</b>	yes	0	2	1	1	0	3	1,17
<b>Cyprus</b>	yes	0	0	4	3	1	0	1,33
<b>Czech Republic</b>								
<b>Denmark</b>	no							
<b>Estonia</b>	yes				1611	1461	1000	1357,33
<b>Finland</b>	yes	0	0	0	0	0	0	0
<b>France</b>								
<b>Germany</b>	yes	104	59	90	65	98		83,2
<b>Greece</b>	no							
<b>Hungary</b>	yes	3	2	5	12	7		5,8
<b>Ireland</b>								
<b>Italy</b>	yes	478	480	262	316	366	222	354
<b>Latvia</b>	yes	30	6	3	7	20	10	12,67
<b>Lithuania</b>	yes		1	0	0	0		0,25
<b>Luxembourg</b>	yes				16	24	28	22,67
<b>Malta</b>	yes	1	0	1	1	2	0	0,83
<b>Netherlands</b>								
<b>Poland</b>	yes	2083	412	199				898
<b>Portugal</b>	yes	0	0	0	0	0	0	0
<b>Romania</b>								
<b>Slovakia</b>	yes	15	14	10	16	56	55	27,67
<b>Slovenia</b>								
<b>Spain</b>								
<b>Sweden</b>	no							
<b>United Kingdom</b>	yes							662

**Table A.11.1.7: Statistics collected on the institutional costs of AML/CTF**

	Budget Min	Staff Min	Budget LEA	Staff LEA	Budget Judiciary	Staff Judiciary	Filing a report, OE	Training costs, OE
AT								
BE								
BG								
CY							450*	BoC: 90.000
CZ								
DE								Warburg: 20.000
DK		4						
EE	75.000	2						
EL								
ES		16						
FR								
FI								
HU		3	ML police: 658.664 TF police: 220.675					
IE	980.000*	15						
IT	11.168.506 <sup>#</sup>	128 <sup>#</sup>						
LV							50-100*	
LT								Snoras: 110.000*
LU								
MT								
NL		5						
PL								
PT		3						
RO								
SK				31				
SL								
SE	131.194	1,2						
UK		6						

**Table A.11.1.8: Statistics collected on the inputs for AML/CTF policy**

	Budget Supervisor	Staff Supervisor	Budget FIU	Staff FIU
AT			975.000*	13 (in 2010)
BE	GC: 12.000.000	GC: 2	4.257.645	45 (in 2012)
BG				32 (in 2011)
CY				21 (in 2011)
CZ	CTA:30.000	CTA: <1, FIU:5*	1.429.473 (without IT)	35 (in 2011)
DE		CPA:<1		17 (in 2010)
DK		BLS: 1	No budget	18 (in 2011)
EE	FSA:50.000 – 75.000*	FSA: 3*		16 (in 2011)
EL		BoG: 13, HCMC: 4, PISC: 3	1.500.000	29 (in 2011)
ES		FIU: 10 full time + 17 part-timers	11.000.000	79 (in 2011)
FR	ACP: 2.700.000 (2010)	ACP: 14 control + 51 monitoring	4.981.688	73 (in 2009)
FI			1.565.000	24 (in 2011)
HU		TLO:<1	1.000.000*	30 (in 2010)
IE				11 (in 2012)
IT		Bol: 348*	207.000 (only expenses)	104 (in 2011)
LV	LGSI:20.500	FCMC:4, CSA:<1, LGSI:<1, SIHP:5*	341.490	17 (in 2011)
LT				10 (in 2011)
LU		CSSF: 5		14 (in 2012)
MT		FIU: 3, MFSA: 38	330.107	10 (in 2011)
NL	BFT:2,2mln, BHM:1,5mln	BFT: 15, BHM: 26	4.800.000	56 (in 2012)
PL	FSA:250.000	FSA:6, FIU:7		45 (in 2008)
PT				30 (in 2011)
RO				96 (in 2011)
SK				30 (in 2011)
SL		SMA:5	691.000	18 (in 2010)
SE	BSEA:54.664*	BSEA:<1, GB:<1	1.400.000	27 (in 2009)*
UK	OFT:1,4mln, ICB:61.896	GC: 0,2, AIA: 0,2		60 (in 2012)

All figures above are for AML/CTF only. The figures for Sweden on the budget of and staff in the Ministry are for the Ministry of Finance only. The figures for Portugal on the staff in the Ministry are for the Ministry of Justice only. The figures for Italy on the budget of and staff in the Ministry are for a department that is also responsible for policy against usury, corruption, financial embargoes and the international cooperation for these. In the Netherlands 1 person is dedicated solely to AML/CTF in the Ministry of Justice and Security (although some other staff incidentally are involved also), 3 persons from the Ministry of Finance are directly involved and there is 1 coordinator for counterterrorism and security. In France, the ACP has a designated 14 staff working exclusively on AML/CTF control and another 51 staff supervising and directing the on-site staff<sup>778</sup>. Min=Ministry or ministries, LEA=Law Enforcement Agencies, OE=Obliged Entity, CTA=Chamber of Tax Advisors, BLS=Bar and Law Society, FSA=Financial Services Authority, CPA=Chamber of Patent Attorneys, TLO=Trade Licensing Office, FCMC=Financial and Capital Market Commission, CSA=Council of Sworn Advocates, LGSI=Lotteries and Gambling Supervisory Inspection, SIHP=State Inspection for Heritage Protection, SMA=Securities Market Agency, BSEA=Board of Supervision of Estate Agents, GB=Gaming Board, BoG=Bank of Greece, HCMC= Hellenic Capital Market Commission, PISC=Private Insurance Supervision Committee, BoC=Bank of Cyprus (not to confuse with the Central Bank of Cyprus), Bol=Bank of Italy, MFSA=Malta Financial Services Authority, BFT=Bureau Financieel Toezicht, GC=Gambling Commission, AIA=Association International Accountants, OFT=Office of Fair Trading, ICB=Institute of Certified Bookkeepers,

<sup>778</sup> FATF (2011) Third Mutual Evaluation Report on France, p 420 (footnote)

*CSSF= Commission de Surveillance du Secteur Financier. All budgets are (calculated) in euros. All staff measured in full time equivalence. \* = estimation.*

**Table A.11.1.9: Number of Prosecutions for Money Laundering**

	2005	2006	2007	2008	2009	2010	average
<b>Austria</b>	4	14	20	20	25		16,6
<b>Belgium</b>				1374			1374
<b>Bulgaria</b>	58	62	91	142	190	228	128,5
<b>Cyprus</b>	12	108	20	63	12		43
<b>Czech Republic</b>	10	6	4	11			7,75
<b>Denmark</b>			528	506	562		532
<b>Estonia</b>		3	4	13	31	34	17
<b>Finland</b>	23	66	61	66			54
<b>France</b>	156	160	204	225			186,25
<b>Germany</b>	6692	9929	13593	10478			10173
<b>Greece</b>				42			42
<b>Hungary</b>	3	1	10				4,67
<b>Ireland</b>	9	16	11	4	4		8,8
<b>Italy</b>							
<b>Latvia</b>	10	10	27	12			14,75
<b>Lithuania</b>		1	2	2	2		1,75
<b>Luxembourg</b>			13	16	56	107	48
<b>Malta</b>	3	4	6	2	9		4,8
<b>Netherlands</b>	217	397	860	893			591,75
<b>Poland</b>	161	54	82	74	65		87,2
<b>Portugal</b>		84	95	141			106,67
<b>Romania</b>	22	29	21	36			27
<b>Slovakia</b>	71	49	47	54	78		59,8
<b>Slovenia</b>	0	20	19	11			12,5
<b>Spain</b>	102	93	138				103,5
<b>Sweden</b>			94				94
<b>United Kingdom</b>	2379	2318	1828	2441	2721		2169

**Table A.11.1.10: Number of Prosecutions for Terrorist Financing**

	2005	2006	2007	2008	2009	2010	average
Austria	0	0	2	0	0		0,4
Belgium							
Bulgaria	0	0	0	0	0	0	0
Cyprus							
Czech Republic							
Denmark							
Estonia	0	0	0	0	0	0	0
Finland							
France		2	0	9			3,67
Germany							
Greece	0	0	0	0	0		0
Hungary		5	0				2,5
Ireland							
Italy							
Latvia							
Lithuania		0	0	0	0		0
Luxembourg							
Malta	0	0	0	0			0
Netherlands	0	0	0	0	0	0	0
Poland	0	0	0	0	0	0	0
Portugal							
Romania							
Slovakia				1			1
Slovenia							
Spain							
Sweden							
United Kingdom							

**Table A.11.1.11: Number of Persons involved in Money Laundering Prosecutions**

	2005	2006	2007	2008	2009	2010
<b>Austria</b>						
<b>Belgium</b>						
<b>Bulgaria</b>						
<b>Cyprus</b>	14	47	31	54	28	
<b>Czech Republic</b>						
<b>Denmark</b>			528	506	562	
<b>Estonia</b>						
<b>Finland</b>						
<b>France</b>						
<b>Germany</b>						
<b>Greece</b>						
<b>Hungary</b>	10	20	9			
<b>Ireland</b>	9	16	11	4	5	
<b>Italy</b>						
<b>Latvia</b>	14	47	62	29		
<b>Lithuania</b>		1	5	2	2	
<b>Luxembourg</b>					83	182
<b>Malta</b>	3	9	9	3	10	
<b>Netherlands</b>						
<b>Poland</b>		275	288	324	360	
<b>Portugal</b>						
<b>Romania</b>						
<b>Slovakia</b>	57	25	28	22	39	
<b>Slovenia</b>						
<b>Spain</b>						
<b>Sweden</b>						
<b>United Kingdom</b>						

**Table A.11.1.12: Number of Persons involved in Terrorist Financing Prosecutions**

	2005	2006	2007	2008	2009	2010
Austria						
Belgium						
Bulgaria	0	0	0	0	0	0
Cyprus						
Czech Republic						
Denmark						
Estonia						
Finland						
France						
Germany						
Greece	0	0	0	0	0	
Hungary		6	0			
Ireland						
Italy						
Latvia						
Lithuania		0	0	0	0	
Luxembourg						
Malta	0	0	0	0		
Netherlands	0	0	0	0	0	0
Poland	0	0	0	0	0	0
Portugal						
Romania						
Slovakia				1		
Slovenia						
Spain						
Sweden						
United Kingdom						

**Table A.11.1.13: Number of Convictions for Money Laundering**

	2005	2006	2007	2008	2009	2010	average
<b>Austria</b>	5	10	18	7	10		10
<b>Belgium</b>							
<b>Bulgaria</b>		4	9	13	18	17	12,2
<b>Cyprus</b>	2	71	5	41	3		24,4
<b>Czech Republic</b>	31	29	21				27
<b>Denmark</b>			496	478	534		502,67
<b>Estonia</b>	2	1	5	5	10	13	6
<b>Finland</b>	4	7	15	28			13,5
<b>France</b>	154	160	204	225			185,75
<b>Germany</b>	97	216	603	608			381
<b>Greece</b>				34			34
<b>Hungary</b>	1	2	8	6			4,25
<b>Ireland</b>	10	2	5	6	3	4	5
<b>Italy</b>							
<b>Latvia</b>	6	4	62	29			25,25
<b>Lithuania</b>	0	0	4	1			1,25
<b>Luxembourg</b>	0	1	4	1	5		2,2
<b>Malta</b>	0	0	1	2	5	1	1,5
<b>Netherlands</b>	184	302	487	647		812	486,4
<b>Poland</b>		58	36	27	18		34,75
<b>Portugal</b>	2	11	4	10			6,75
<b>Romania</b>	13	2	7	4			6,5
<b>Slovakia</b>	9	10	12	10	8	13	10,33
<b>Slovenia</b>	0	1	0	1			0,5
<b>Spain</b>							
<b>Sweden</b>	15	12	19	97			35,75
<b>United Kingdom</b>	595 <sup>779</sup>				1411		1003

<sup>779</sup> Statistic for England and Wales

**Table A.11.1.13: Number of Convictions for Terrorist Financing**

	2005	2006	2007	2008	2009	2010	average
Austria	0	0	0	0	0	0	0
Belgium							
Bulgaria							
Cyprus							
Czech Republic	0	0	0	0	0	0	0
Denmark							
Estonia	0	0	0	0	0	0	0
Finland							
France		2	0	6			2,67
Germany							
Greece	0	0	0	0	0	0	0
Hungary							
Ireland	0	0	0	0	0	0	0
Italy							
Latvia	0	0	0	0			0
Lithuania							
Luxembourg	0	0	0	0	0	0	0
Malta	0	0	0	0	0	0	0
Netherlands	0	0	0	0	0	0	0
Poland							
Portugal							
Romania							
Slovakia				0			0
Slovenia	0	0	0	0			0
Spain							
Sweden							
United Kingdom	1						1

## Annex 12.1 FACTOR ANALYSIS FOR POLICY RESPONSE TOWARDS MONEY LAUNDERING

Method of choice: factor analysis with principal factors. We select only one factor, trying to make sure it reflects the AML policy response of the FIU, as much as possible.<sup>780</sup> We have only 27 observations (the EU Member States) for each variable, so the amount of variables used in the factor analysis is on purpose rather low.

We select variables based on importance for FIU response (which means we exclude the context variables used in the principal component analysis in chapter 11), expected sign (those with clearly the wrong sign are removed because they apparently are not a suitable indicator for FIU AML policy response (yet)), not used in threat estimation (to keep the comparison between policy response and threat pure) and not indicating size of the country.

We tried to make sure the main factor is about money laundering as much as possible. We had to make some drastic decisions to make sure the size of the country was not interfering. We therefore use indexes and ratio's as much as possible. Especially policy costs with a fixed and variable component were therefore left out of the analysis. Examples of this are the FIU budget and the amount of FIU staff. Every EU Member State needs an FIU with a certain minimum budget and staff to operate. This fixed part means that a FIU is relatively costly for the smaller EU Member States, as we concluded already in Chapter 11. Therefore including the FIU budget as % of GDP would not indicate anything related to AML policy response, but would indicate which countries are small. The same kind of issue arises when including the FIU budget as an absolute amount in the factor analysis, because the variable part of the FIU costs means that the bigger countries have a higher FIU budget.

The variables that were eventually selected for the factor analysis are:

Variable	Scoring coefficient
FIU access to data score	0.314
FIU independence score	0.069
FIU feedback score	0.302
STR receiving and processing score	0.270

*Source: Own calculation. All variables are produced during the ECOLEF-project. Scoring coefficients are regression-based.*

The factor analysis results are quite robust with respect to variable selection, except when including variables where the size of the country plays an important role, such as FIU budget or FIU staff.

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<sup>780</sup> This main factor has an eigenvalue of 3.57979 with a corresponding proportion of 0.2025. The second factor has an eigenvalue of 2.60040 with a corresponding proportion of 0.1471. LR test: independent vs. saturated:  $\chi^2(190) = 1617.06$   
 $\text{Prob} > \chi^2 = 0.0000$

## Annex 12.2 DIMENSIONS OF AML/CTF POLICY RESPONSE

Table A12.1: Dimensions of AML/CTF policy response

	Threat (% of GDP)	Threat in bln	FATF compl iance	Legal effectiv eness	Implementation timeliness	FIU response	Information flow score	International cooperation	ML convictions
AT	24,6	89	66	28	983	2.8	184.6	29	10
BE	27,9	120	92	39	217	3.1	157.4	33	112
BG	40,2	19	80	43	983	1.9	240.9	29	12.2
CY	53,6	19	87	34	983	2.2	216	30	24.4
CZ	30,3	51	62	33	739	2.4	223	21	27
DK	20,6	59	60	39	1000	2	16.8	25	502.6
EE	207,7	40	80	49	956	3.3	218.3	28	6
FI	19,4	45	61	42	770	2.9	146	28	13.5
FR	7,3	151	76	39	9	3.4	169.8	29	185.7
DE	4,7	109	64	27	750	3.2	158.4	24	381
EL	6,1	17	44	41	766	2.5	232.8	29	34
HU	13,1	20	95	29	1000	2.6	232.4	30	4.2
IE	18,9	54	75	43	57	1.7	198.5	28	5
IT	4,9	74	74	46	1000	0.5	237.2	30	112
LV	163,2	43	77	37	785	2.6	230.2	31	25.2
LT	19,5	13	80	43	960	2.9	234	25	1.2
LU	155,2	94	42	43	779	3	134.7	28	2.2
MT	11,0	8	86	48	771	1.9	199.8	32	1.5
NL	14,0	94	66	20	770	2.7	128.1	32	486.4
PL	14,5	54	58	39	323	3.1	233.5	31	34.7
PT	21,2	43	84	45	822	2.7	218.3	33	6.7
RO	9,4	14	69	37	863	2.8	242.3	30	6.5
SK	21,0	24	49	37	739	1.8	220.4	30	10.3
SL	75,3	35	84	36	1000	2	219.7	30	0.5
ES	5,4	56	75	42	135	2	215.7	33	112
SE	5,8	26	70	42	544	2.7	157.5	30	35.7
UK	13,3	282	84	46	1000	1.9	156.6	28	1003

Source: made by the authors, based on previous analyses performed in Chapters 4-11 and on the factor analysis procedure described in Annex 12.1. The way the FATF compliance scores, the Legal effectiveness score, the Implementation timeliness, the information flow score and the international cooperation scores are constructed is explained in Chapter 12.

## Annex 13.1 COST-BENEFIT ANALYSIS

**Table A13.1.1: Correction factors to correct country statistics to our hypothetical country**

	Population	Price level	Population correction	Price level correction	Overall correction
<b>Austria</b>	8.214.160	108,47	1,22	0,92	1,12
<b>Belgium</b>	10.423.493	113,25	0,96	0,88	0,85
<b>Bulgaria</b>	7.148.785	52,91	1,40	1,89	2,64
<b>Cyprus</b>	1.102.677	97,57	9,07	1,02	9,29
<b>Czech Republic</b>	10.201.707	76,03	0,98	1,32	1,29
<b>Denmark</b>	5.515.575	145,99	1,81	0,68	1,24
<b>Estonia</b>	1.291.170	76,41	7,74	1,31	10,14
<b>Finland</b>	5.255.068	123,75	1,90	0,81	1,54
<b>France</b>	64.768.389	112,21	0,15	0,89	0,14
<b>Germany</b>	81.644.454	104,93	0,12	0,95	0,12
<b>Greece</b>	10.749.943	98,49	0,93	1,02	0,94
<b>Hungary</b>	9.992.339	70,11	1,00	1,43	1,43
<b>Ireland</b>	4.622.917	116,97	2,16	0,85	1,85
<b>Italy</b>	60.748.965	106,75	0,16	0,94	0,15
<b>Latvia</b>	2.217.969	76,4	4,51	1,31	5,90
<b>Lithuania</b>	3.545.319	65,84	2,82	1,52	4,28
<b>Luxembourg</b>	497.538	114,64	20,10	0,87	17,53
<b>Malta</b>	406.771	82,3	24,58	1,22	29,87
<b>Netherlands</b>	16.783.092	109,14	0,60	0,92	0,55
<b>Poland</b>	38.463.689	64,27	0,26	1,56	0,40
<b>Portugal</b>	10.735.765	94,27	0,93	1,06	0,99
<b>Romania</b>	21.959.278	62,58	0,46	1,60	0,73
<b>Slovakia</b>	5.470.306	76,68	1,83	1,30	2,38
<b>Slovenia</b>	2.003.136	83,74	4,99	1,19	5,96
<b>Spain</b>	46.505.963	98,2	0,22	1,02	0,22
<b>Sweden</b>	9.074.055	123,58	1,10	0,81	0,89
<b>UK</b>	62.348.447	94,61	0,16	1,06	0,17

Source: Population and price level statistics from 2010 are from Penn World Table.<sup>781</sup>

781Heston, A., R. Summers and B. Aten (2011), Penn World Table Version 7.0, Center for International Comparisons of Production, Income and Prices at the University of Pennsylvania.