

'Is it time to reform the counter-terrorist financing reporting obligations? A critical and comparative assessment of the counter-terrorist financing reporting obligations in the European Union and the United Kingdom'.

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Abstract

This paper critically considers the effectiveness of the European Union's (EU) counter-terrorist financing (CTF) strategies. In particular, it concentrates on the use of financial intelligence gathered from the submission of suspicious activity reports (SARs) by reporting entities to Member States Financial Intelligence Units (FIU). The paper identifies a series of weaknesses in the United Kingdom's (UK) reporting regime: defensive reporting, increased compliance costs and the definition of suspicion. The paper concludes by making a series of recommendations that are aimed at improving the effectiveness of the EU and UK CTF reporting obligations.

A. Introduction

The European Union is suffering from the second decade of the most intense wave of international terrorism since the 1970s and nation states have been subjected to an increasing number of terrorist attacks. For example, there have been terrorist attacks in France (Toulouse, Montauban, Joué-lès-Tours, Île-de-France, Nice, Saint-Quentin-Fallavier, Oignies, Paris, Saint-Denis, Marseille, Magnanville, Saint-Étienne-du-Rouvray, Orly Airport, Garges-lès-Gonesse, Levallois-Perret, Carcassone and Trèbes), Belgium (Brussels, Zaventem and Charleroi), Germany (Berlin, Hanover, Essen, Würzburg, Ansbach and Hamburg), Sweden (Stockholm), Turkey (Istanbul), the United Kingdom (London and Manchester), Finland (Turku) and Russia (Kizlyar, Saint Petersburg and Moscow). These terrorist attacks have three common themes: evidence of a sophisticated terrorist support network, the use of low capability weapons and cheap acts of terrorism. It is the final theme that this paper concentrates on. The al Qaeda terrorist attacks in September 2001 resulted in the introduction of a wealth of legislative and innovative enforcement provisions designed to tackle terrorism, and its financing. These measures were heavily influenced by the declaration of the 'War on Terrorism' by President George Bush and spearheaded by the UN who introduced several Security Council Resolutions to tackle international acts of terrorism. The terrorist attacks acted as a galvanising factor for both the international community and many nation states who had previously neglected to tackle the threat posed by terrorist financing. Therefore, for the purpose of this paper, the most significant part of the 'War on Terror' is the 'Financial War on Terrorism'.

The paper is divided into three parts. The first part concentrates on the anti-money laundering (AML) legislative measures of the United Nations (UN), the EU and the soft law Recommendations of the Financial Action Task Force (FATF). This section highlights how the AML reporting obligations focused on the proceeds of drug trafficking offences and not terrorism. This approach has been categorised as a 'profit' driven reporting model, which is directed at targeting the 'proceeds' of financial crime. The paper then moves on to highlight the influence that the terrorist attacks on September 11 2001 (9/11) had on extending the 'profit' reporting model to the financing of terrorism. The second part of the paper illustrates that the 'profit' reporting model is inappropriate when applied to the financing of terrorism.

Therefore, this section is divided into two parts. The first part illustrates the extensive array of financial mechanisms that terrorists are able to exploit to fund their activities, thus circumventing the CTF reporting mechanisms. The second part highlights the increasing threat posed by ‘cheap’ acts of terrorism, thus again highlighting the weakness of the CTF reporting obligations. Here, specific reference is made several inexpensive terrorist attacks that have taken place within the EU to illustrate the weaknesses of the reporting obligations. The final part of the paper focuses on the United Kingdom (UK) and critically assesses the effectiveness of its CTF reporting obligations.

I. The US financial war on terror

President George Bush initiated the ‘Financial War on Terrorism’ on September 24 2001,¹ who subsequently declared, “we will starve terrorists of funding, turn them against each other, rout them out of their safe hiding places, and bring them to justice”.² The ‘Financial War on Terrorism’ resulted in a seismic alteration in the financial crime strategies of the international community, who had previously concentrated on money laundering. This approach, as outlined below, was wholly inadequate to deal with how the 9/11 terrorists were financed.³ The National Commission on the Terrorist Attacks upon the United States, noted, “the 19 operatives were funded by al Qaeda, either through wire transfers or cash provided by KSM (Khalid Sheikh Mohammed)”.⁴ The National Commission added that some of the terrorists received wire transfers ranging between “\$5,000 to \$70,000”⁵ and added that KSM “delivered a large amount of cash, perhaps \$120,000, to the plot facilitator Abdul Aziz Ali in Dubai”.⁶ Abdul Aziz Ali sent several bank-to-bank transfers (including transactions for \$10,000, \$20,000 and \$70,000) to the bank accounts of two of the terrorists, Marwan al

¹ President George Bush *President Freezes Terrorist Assets*, THE WHITE HOUSE (Sep. 24, 2001), <http://webcache.googleusercontent.com/search?q=cache:http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010924-4.html>.

² The White House *Fact Sheet on Terrorist Financing Executive Order*, THE WHITE HOUSE (Sep. 24, 2001), <http://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010924-2.html>. It is not the purpose of this article to provide a detailed commentary on the ‘Financial War on Terrorism’. For a more detailed examination see Nicholas Ryder, *THE FINANCIAL WAR ON TERROR: A REVIEW OF COUNTER-TERRORIST FINANCING STRATEGIES SINCE 2001* (2015) 30-62.

³ 9/11 Commission, *THE 9/11 COMMISSION REPORT* (2004) 170. Hereinafter ‘the National Commission’.

⁴ *Ibid.*

⁵ John Roth, Douglas Greenburg Serena Wille, *NATIONAL COMMISSION ON TERRORIST ATTACKS ON TERRORIST ATTACKS UPON THE UNITED STATES MONOGRAPH ON TERRORIST FINANCING* (2004) 53. Hereinafter ‘Monograph’.

⁶ *Ibid.*, at 134.

Shehhi and Muhamad Atta, at Sun Trust Bank in Florida.⁷ The amount of each of these transactions is important because US deposit taking institutions are legally required to complete and submit a Currency Transaction Report (CTR) to the Financial Crime Enforcement Network (FinCEN), for all financial transactions of \$10,000 or more. The Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act, or Bank Secrecy Act 1970 imposes this obligation.⁸ Sun Trust Bank would have submitted the CTRs to FinCEN and if the bank deemed that any of these wire transfers were, suspicious they were required to file a SAR.⁹ However, the National Commission stated that “no financial institution filed a SAR in connection with any transaction of any of the 19 hijackers before 9/11 ... there was nothing ... to indicate that any SAR should have been filed or the hijackers otherwise reported to law enforcement”.¹⁰ It is important to note that the aim of the Bank Secrecy Act 1970 was not to tackle money laundering or terrorist financing but to “build a system to combat organized crime and white-collar crime and to deter and prevent the use of secret foreign bank accounts for tax fraud”.¹¹ Therefore, there is one clear conclusion that has been determined after reviewing how the 9/11 terrorist attacks were financed. The reporting obligations imposed by the Bank Secrecy Act 1970 were designed to tackle money laundering and not terrorist financing.

Prior to the terrorist attacks, terrorist financing had attracted a limited number of academic studies. For example, researchers in the US has concentrated their efforts on analysing its efforts to tackle other types of financial crime including money laundering¹² and fraud.¹³ The evolution of the US literature on money laundering can be traced through the enactment of legislation and presented in chronological order: the Bank Secrecy Act 1970,¹⁴ the Racketeering and Corruption Organisation Act 1970,¹⁵ the Money Laundering Control Act

⁷ The Monograph supra note 5 at 134.

⁸ 31 U.S.C. 5311.

⁹ The obligation to submit a suspicious activity report was introduced by s. 1517(b) of the Annunzio-Wylie Anti-Money Laundering Act 1992 (Pub.L. 102-550, 106 Stat. 3762, 4060).

¹⁰ The National Commission supra note 3.

¹¹ Statement of Eugene T. Rossides Former Assistant Secretary of the Treasury for Enforcement and Operations Senate Hearing on Foreign Bank Secrecy, 9 June 1970.

¹² See generally Mike Levi and Peter Reuter, *Money laundering*, *Crime & Justice*, 34, 289–368 (2006).

¹³ See for example Ellen Podgor, *Criminal fraud*, *American University Law Review*, 48, 729–768 (1999).

¹⁴ See for example Sarah Hughes, *Policing Money Laundering through Funds Transfers: A Critique of Regulation under the Bank Secrecy Act*, *Indiana Law Journal*, 67(2), 283 (1991-1992).

¹⁵ See Barry Tarlow, *RICO revisited*, *Georgia Law Review*, 17, 291–424, (1983).

1986,¹⁶ Annunzio-Wylie Anti-Money Laundering Act 1992¹⁷ and the USA Patriot Act 2001.¹⁸ A similar picture can be presented of the approach adopted by researchers towards the financial crime policies and legislative provisions from the EU. A plethora of research has been published on the EUs AML Directives,¹⁹ the EU's counter-fraud measures under the management of European Anti-Fraud Office,²⁰ market manipulation,²¹ insider dealing²² and market abuse.²³ The terrorist attacks in September 2001 resulted in the publication of numerous interesting studies on the threat posed by the financing of terrorism. For example, commentators began to take an interest in the funding models used by al Qaeda,²⁴ the association between misapplied charitable donations and terrorists,²⁵ the interpretation of the 'Financial War on Terrorism' and the efforts by the international community to tackle terrorist financing.²⁶ More recently, scholars have concentrated on the funding streams of Islamic State of the Iraq and the Levant.²⁷ Whilst the association between the EU and the financing of terrorism has attracted some academic commentary, a large proportion has concentrated on other types of financial crime and there are a small number of studies that have reviewed the EUs stance on terrorist financing.²⁸ Normark and Ranström noted that none of the published research on terrorist financing in the EU has presented a "high-resolution

¹⁶ Joshua Schwartz, *Liability for structured transactions under the Currency and Foreign Transactions Reporting Act: a prelude to the Money Laundering Control Act of 1986*, Annual Review of Banking Law, 6, 315–340 (1987)

¹⁷ Matthew Hall, *An emerging duty to report criminal conduct: banks, money laundering, and the suspicious activity report*, Kentucky Law Journal, 84, 643–683 (1995-1996)

¹⁸ See Andres Rueda, *International money laundering law enforcement and the USA Patriot Act of 2001*, Michigan State University-DCL Journal of International Law Summer, 10, 141-205 (2001).

¹⁹ See Valsamis Mitsilegas and Bill Gilmore, *The EU legislative framework against money laundering and terrorist finance: A critical analysis in light of evolving global standards*, International and Comparative Law Quarterly, 56(1), 119–140 (2007).

²⁰ See the excellent commentary by Xavier Groussot and Zavi Popov, *What's wrong with OLAF? Accountability, due process and criminal justice in European anti-fraud policy*, Common Market Law Review, 47(3), 605-643 (2010).

²¹ Richard Alexander, *INSIDER DEALING AND MONEY LAUNDERING IN THE EU: LAW AND REGULATION* (2007).

²² See Janet Austin, *INSIDER TRADING AND MARKET MANIPULATION: INVESTIGATING AND PROSECUTING ACROSS BORDERS* (2017).

²³ See Jerry Markham, *LAW ENFORCEMENT AND THE HISTORY OF FINANCIAL MARKET MANIPULATION* (2015).

²⁴ See Rohan Gunaratna, *INSIDE AL QAEDA GLOBAL NETWORK OF TERROR* (2002).

²⁵ See Jilly Gurule, *UNFUNDING TERROR – THE LEGAL RESPONSE TO THE FINANCING OF GLOBAL TERRORISM* (2008).

²⁶ Ryder supra note 2.

²⁷ See for example Nicholas Ryder, *OUT WITH THE OLD AND ... IN WITH THE OLD? A CRITICAL REVIEW OF THE FINANCIAL WAR ON TERRORISM ON ISLAMIC STAGE OF IRAQ AND LEVANT*, Studies in Conflict and Terrorism, 41(2), 79-95 (2018).

²⁸ The National Commission supra note 3.

picture of the sources of funding for terrorist plots”.²⁹ Therefore, this study seeks to provide an enhanced understanding of the weaknesses of the EU’s CTF reporting obligations, the continued threat posed by cheap acts of terrorism and the extensive array of sources utilised to fund acts of terrorism.

B. International Financial Crime Legislative Measures: the profit model

I. The Profit Model

Before 9/11, the international financial crime efforts focused on tackling the laundering of the proceeds of the illegal manufacturing, distribution and sale of narcotic substances. The origins of these measures are in the US led ‘War on Drugs’, a term commonly associated with a series of controversial legislative measures that were introduced by President Richard Nixon on the 1970s.³⁰ The UN in the form of the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, or Vienna Convention (1988) adopted these legislative measures. This was followed by the UN Convention against Transnational Organised Crime, or Palermo Convention (2000) and extended by the UN Convention against Corruption (2003).³¹ Similarly, the EU introduced two Money Laundering Directives to tackle the laundering of narcotic substances (1993 and 2001).³² The FATF published its first set of money laundering Recommendations in 1990.³³ Collectively, these measures were described as a “major breakthrough in attacking the benefits derived from drug trafficking activities and [they] are a forceful endorsement of the notion that attacking the profit motive is essential if the struggle against drug trafficking is to be effective”.³⁴ Nelen stated that “by dismantling their organisations financially, criminals must be hit at their supposedly more vulnerable spot:

²⁹ Magnus Normark and Magnus Ranstrop, UNDERSTANDING TERRORIST FINANCE- MODUS OPERANDI AND NATIONAL CTF REGIMES (2015) 8.

³⁰ See generally Dan Baum, SMOKE AND MIRRORS: THE WAR ON DRUGS AND THE POLITICS OF FAILURE (1997).

³¹ For a more detailed discussion of these international anti-money laundering legislative provisions see Nicholas Ryder, MONEY LAUNDERING AN ENDLESS CYCLE? A COMPARATIVE ANALYSIS OF THE ANTI-MONEY LAUNDERING POLICIES IN THE UNITED STATES OF AMERICA, THE UNITED KINGDOM, AUSTRALIA AND CANADA (2012) 8-39.

³² See European Council, Directive on the Prevention of the Use of the Financial System to Launder Money 91/308, 1993 O.J. (L 166) and Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering.

³³ Financial Action Task Force, THE 40 RECOMMENDATIONS (2003).

³⁴ Dennis Sproule and Paul Saint-Denis, *The UN Drug Trafficking Convention: an ambitious step*, Canadian Yearbook of International Law, 27 263, 281–282 (1990).

their assets”.³⁵ However, the ‘profit’ driven model is not appropriate when used towards the financing of terrorism. The financial process adopted by terrorists to accumulate funds is different to that adopted by money launderers. Terrorist financing is more commonly referred to as ‘reverse money laundering’, which is a financial practice that seeks to transform ‘clean’ or ‘legitimate’ money, into ‘dirty’ money that is funnelled to finance acts of terrorism. Conversely, money laundering involves the conversion of ‘dirty’ or ‘illegal’ money into clean money via its laundering through three recognised phases, placement, layering and integration. Therefore, the extension of the ‘profit’ model to tackle the financing of terrorism is inappropriate.

Nonetheless, the profit driven model contains a number of preventative measures that require reporting entities of signatory states to implement a series of pre-placement money laundering reporting obligations. For example, Article 7 of the Palermo Convention provides that each signatory should implement a far-reaching AML regime for a wide range of reporting entities that are vulnerable to money laundering. The scheme should include requirements for customer identification, record keeping and the reporting of suspicious transactions.³⁶ Furthermore, it provides that signatories shall “consider the establishment of a FIU to serve as a national centre for the collection, analysis and dissemination of information regarding potential money laundering”.³⁷ Additionally, the FATF Recommendations outline a number of preventative measures aimed at tackling the threat posed by money laundering.³⁸ For example, Recommendations 10 and 11 relate to customer due diligence and record keeping obligations. Recommendations 12 to 16 provides additional measures for specific customers and activities, which includes a politically exposed person, correspondent banking, money or transfer value services, new technology and wire transfers. Recommendations 17 to 19 deal with reliance, control and financial groups, while Recommendations 20 and 21 deal with the reporting of suspicious transactions and the criminal offence of tipping off.

³⁵ Hans Nelen, *Hit them where it hurts most? The Proceeds of Crime approach in the Netherlands*, *Crime, Law & Social Change*, 41, 517, (2004)

³⁶ UN Convention against Transnational Organised Crime, art 7(1)(a).

³⁷ UN Convention against Transnational Organised Crime, art 7(1)(a). These measures were extended by article 14 of the UN Convention against Corruption

³⁸ Financial Action Task Force, *INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION* (2012) 12-17.

The EU profit-reporting model began in the 1970s when the European Council's European Committee on Crime Problems created a Select Committee to investigate the illegal transfer of the proceeds of crime between member states. The Select Committee made a recommendation that stipulated that banks should ensure that identity checks are undertaken on all clients when an account is opened or money deposited.³⁹ However, this recommendation was not fully implemented. Another set of AML measures were proposed when the European Ministers of Justice asked the European Committee on Crime Problems to create a parallel stance towards proceeds of drug trafficking to that adopted by the UN.⁴⁰ However, it was not until the introduction of the First Money Laundering Directive that there was a co-ordinated effort to impose the profit model on Member States.⁴¹ The Directive contained several important features which included the need to ensure client identification, the examination and reporting of suspicious transactions, indemnities to be given for good faith reporting of suspicious transactions, identification records were to be kept for five years after the client relationship has ended, co-operation with the authorities and adequate internal procedures and training programmes have been adapted.⁴² However, the First Money Laundering Directive concentrated on the combating the laundering of drug proceeds through the financial sector, and not the financing of terrorism. At the start of the new Millennium, it became clear that the scope of the First Directive was too narrow.⁴³ Therefore, the EU introduced a broader Second Money Laundering Directive, which increased the list of predicate offences for which the suspicious transaction reports were compulsory from just drug trafficking offences to all serious criminal offences.

II. The influence of 9/11

The UN in its Declaration to Eliminate International Terrorism in 1994 adopted the term terrorist financing.⁴⁴ Subsequently, a General Assembly Resolution provided that Member States were to "take steps to prevent and counteract, through appropriate domestic

³⁹ Kern Alexander, *Multi-national efforts to combat financial crime and the Financial Action Task Force*, Journal of International Financial Markets, 2(5), 178-192, 182 (2000).

⁴⁰ *Ibid.*

⁴¹ European Council, Directive on the Prevention of the Use of the Financial System to Launder Money 91/308, 1993 O.J. (L 166).

⁴² These are preventative measures based upon the 40 recommendations of the FATF.

⁴³ Mitsilegas and Gilmore supra note 19.

⁴⁴ Annex to Resolution 49/60, Measures to eliminate international terrorism, 9 December 1994, 49/60.

measures, the financing of terrorists and terrorist organizations”.⁴⁵ However, the scope of this Resolution was limited to terrorist bombings and nuclear terrorism. The al-Qaeda bombings of the US embassies in Kenya and Tanzania resulted in a re-think and the passing of Resolutions A/RES/52/165 and A/RES/53/108, which highlighted the need to tackle the financing of terrorism.⁴⁶ Consequently, the International Convention for the Suppression of the Financing of Terrorism 1999 criminalised the collection or distribution of funds for the purposes of supporting an act of terrorism.⁴⁷ Despite the importance of preventing terrorist financing, only 41 UN Member States signed the Convention, and only six ratified it.⁴⁸ Additionally, it is also important to consider UN Security Council Resolution 1267, which created a sanctions regime that targeted individuals and entities associated with al-Qaida, Osama bin Laden and/or the Taliban. Another important measure was UN Security Council Resolution 1269, which asked nation states to implement the UN’s anti-terrorist conventions. Specifically, the Resolution provided that countries should “prevent and suppress in their territories through all lawful means the preparation and financing of any acts of terrorism”⁴⁹. Countries are required to “deny those who plan, finance or commit terrorist acts safe havens by ensuring their apprehension and prosecution or extradition”⁵⁰. Additionally, they must “take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not participated in terrorist acts”⁵¹. Finally, countries should exchange information in accordance with international and domestic law, and cooperate on administrative and judicial.⁵²

⁴⁵ A/RES/51/210, 88th Plenary Meeting of General Assembly, 17th December; also see A/RES/45/121 of 14th December 1990

⁴⁶ A/RES/52/165 15th December 1997, paragraph 3 on pledge to prevent terrorist financing, A/RES/53/108, 8th December 1998, paragraph 11 on a draft International Convention against terrorist financing.

⁴⁷ Article 2(1)(a) and (b), also request under Article 4 for domestic states to criminalise terrorist financing, 1999 United Nations Convention for the Suppression of Terrorist Financing, adopted by UN in Resolution 54/109, 9th December 1999.

⁴⁸ Angela Leong, *Chasing Dirty Money: domestic and international measures against money laundering*, Journal of Money Laundering Control, 10(2), 140-156, 45 (2007).

⁴⁹ United Nations Security Council Resolution 1269, paragraph 4.

⁵⁰ United Nations Security Council Resolution 1269, paragraph 4.

⁵¹ United Nations Security Council Resolution 1269, paragraph 4.

⁵² United Nations Security Council Resolution 1269, paragraph 4.

The terrorist attacks of 9/11, led to a monumental shift in attitudes towards the detection and prevention of terrorist financing. The International Convention served as a precedent for UN Security Council Resolution 1373. This imposes four obligations on members of the UN:⁵³ i) it specifically requires states to thwart and control the financing of terrorism;⁵⁴ ii) it criminalises the collection of terrorist funds in states territory;⁵⁵ iii) it freezes funds, financial assets and economic resources of people who commit or try to commit acts of terrorism;⁵⁶ and, iv) it prevents any nationals from within their territories providing funds, financial assets and economic resources to people who seek to commit acts of terrorism.⁵⁷ This UN Security Council Resolution is the most important international legislative measure that seeks to prevent terrorist financing.⁵⁸ In contrast to the 1999 Convention, all 191 Member States have submitted reports to the UN Security Council Counter-Terrorism Committee on the actions they have taken to suppress international terrorism; including how they have gone about blocking terrorist finances as required by Resolution 1373.⁵⁹ In 2004, the European Commission concluded that it was necessary to introduce a Third Money Laundering Directive,⁶⁰ and to extend the scope of its reporting obligations to include the financing of terrorism.⁶¹ The Third Money Laundering Directive came into force in December 2005 and Member States were required to implement it by December 2007. In June 2017, the Fourth Money Laundering Directive repealed the Third Money Laundering Directive following the publication of a new set of FATF Recommendations in 2012.⁶² The Fourth Directive introduced several important amendments that included an alteration in the risk-based approach, new rules to deal with the threat posed by electronic money, registers for ultimate beneficial owners and an improved sanctions regime. What becomes clear after briefly highlighting the response to the terrorist attacks in September 2001 is that the UN, FATF and

⁵³ See Cabinet Office *The UK and the Campaign against International Terrorism – Progress Report* (2002) 24.

⁵⁴ S.C. Res, 1373, U.N. SCOR, 56th Sess., 4385th Mtg. Article 1(a).

⁵⁵ S.C. Res, 1373, U.N. SCOR, 56th Sess., 4385th Mtg. Article 1(b).

⁵⁶ S.C. Res, 1373, U.N. SCOR, 56th Sess., 4385th Mtg. Article 1(c).

⁵⁷ S.C. Res, 1373, U.N. SCOR, 56th Sess., 4385th Mtg. Article 1(5).

⁵⁸ See Anders Kruse, *Financial and economic sanctions – from a perspective of international law and human rights*, *Journal of Financial Crime*, 12(3), 217-220, 218 (2005).

⁵⁹ The White House, *PROGRESS REPORT ON THE GLOBAL WAR ON TERROR* (2003) 6.

⁶⁰ Directive 2005/60/EC of the European Parliament and of the Council of October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

⁶¹ Richard Alexander, *Reputational issues arising under the EU Third Money Laundering Directive*, *Company Lawyer*, 27(12), 373-375, 373 (2006).

⁶² Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

EU have continued to mistakenly use the 'profit' driven reporting model to tackle the financing of terrorism. The paper has illustrated how this approach failed to prevent the 9/11 terrorists acquiring the necessary finances via several wire transfers. The next section of the paper provides more evidence that the 'profit' reporting model is inappropriate to tackle the financing of terrorism.

C. Sources of Terrorist Financing and Cheap Terrorism

The second part of the paper presents illustrates that the extension of the 'profit' reporting system has failed to tackle the threat posed by the financing of terrorism and is divided into two sections. The first provides a commentary on the extensive number of sources that terrorists are able to exploit to fund their activities. Each of these sources has been designed to avoid using reporting entities. The second part of this section concentrates on the increasing number of terrorist attacks that can be been classified as cheap acts of terrorism.

I. Sources of Terrorist Financing

The prevention of terrorist financing is difficult due to the large number of mechanisms to fund acts of terrorism.⁶³ Traditionally, terrorists have relied on two sources of funding: state and private sponsors.⁶⁴ State sponsored terrorism, is refers to nation states providing logistical and financial support to terrorist organisations.⁶⁵ However, since the terrorist attacks in 2001, state-sponsored acts of terrorism have declined and terrorists will receive funding from private sponsors or donors.⁶⁶ Therefore, terrorist organisations have become self-sufficient, as acknowledge by the official report on the terrorist attacks on London on the 7 July 2005.⁶⁷ Terrorists are able to access funds through a broad spectrum of measures including kidnap for ransom, robbery and drug trading.⁶⁸ Other sources include counterfeiting

⁶³ See Matthew Levitt, *Stemming the follow of terrorist financing: practical and conceptual challenges*, The Fletcher Forum of World Affairs 27(1) 63, 64 (2003).

⁶⁴ Ilias Bantekas, *The international law of terrorist financing*, American Journal of International Law 315 (2003).

⁶⁵ Alison Chase, *Legal mechanisms of the international community and the United States concerning the state sponsorship of terrorism*, Virginia Journal of International Law, 45, 41 (2004).

⁶⁶ See for example Mark Basile, *Going to the source: why al-Qaeda's financial network is likely to withstand the current war on terrorist financing*, Studies in Conflict & Terrorism, 27, 183 (2004).

⁶⁷ House of Commons, REPORT OF THE OFFICIAL ACCOUNT OF THE BOMBINGS IN LONDON ON 7TH JULY 2005(2005) 23.

⁶⁸ Peter Alldridge, MONEY LAUNDERING LAW (2003) 215.

⁶⁹ and the sale of conflict diamonds.⁷⁰ Terrorists have also acquired funding through traditional criminal activities, including benefit and credit card fraud, identity theft, the sale of counterfeit goods and drug trafficking.⁷¹ The wide range of sources available to terrorists is illustrated by the activities of ISIL who have exploited four funding streams: the control of oil reserves, kidnapping for ransom, foreign and private financial benefactors and antiquities. Another terrorist group that has utilised a vast array of sources is Al Shabaab, a Somali-based militant Islamist group, who has obtained funding from the illegal smuggling of ivory.⁷² Al Shabaab have “earned more than \$25m a year from illicit exports of charcoal to Gulf Arab states and from taxing the trucking of charcoal to the Somali ports of Kismayu and Barawe”.⁷³ The UN reported that Al Shabaab receives a majority of its funding via charcoal exports and the illegal importation of contraband sugar.⁷⁴ Another example of a terrorist group that has been able to exploit a wide range of sources of funding are Boko Haram. Boko Haram are funded “through black market dealings, local and international benefactors, and links to al-Qaida and other well-funded groups in the Middle East”.⁷⁵ The Inter-governmental Action Group against Money Laundering in West Africa noted that Boko Haram has partly financed through private donors and misapplied charitable donations.⁷⁶ The FATF provided several examples of how Boko Haram acquires its financing including the sale of goods and other lucrative activities, business profits/logistical support, contributions from members of a terrorist group, begging by vulnerable persons, extortion of civilians by means of intimidation, arms smugglers, cash couriers and financial contributions of political leaders.⁷⁷ The prevention and detection of

⁶⁹ Peter Lowe, *Counterfeiting: links to organised crime and terrorist funding*, *Journal of Financial Crime* 13(2) 255 (2006).

⁷⁰ Global Witness, *BROKEN VOWS – EXPOSING THE LOUPE HOLES IN THE DIAMOND INDUSTRY’S EFFORTS TO PREVENT TRADE IN CONFLICT DIAMONDS* (2003).

⁷¹ Courtney Linn, *How terrorist exploit gaps in US anti-money laundering laws to secrete plunder*, *Journal of Money Laundering Control*, 8(3), 200-214, 200 (2005).

⁷² Vidhi Doshi, *Elephant Campaign: How Africa’s ‘white gold’ funds the al-Shabaab militants*, *THE INDEPENDENT NEWSPAPER* (Feb. 3, 2014), <http://www.independent.co.uk/voices/campaigns/elephant-campaign/elephant-campaign-how-africas-white-gold-funds-the-alshabaab-militants-9102862.html>.

⁷³ William Maclean, *Shabaab finances face squeeze after Kenya attack*, *REUTERS* (Sep. 26, 2013), <http://www.reuters.com/article/2013/09/26/us-kenya-attack-shabaab-funding-idUSBRE98P05Z20130926>.

⁷⁴ United Nations, *REPORT OF THE MONITORING GROUP ON SOMALIA AND ERITREA PURSUANT TO SECURITY RESOLUTION 2060: SOMALIA* (2012).

⁷⁵ Terrence McCoy, *Paying for terrorism: Where does Boko Haram gets its money from?* *THE INDEPENDENT NEWSPAPER* (Jun. 6, 2014), <http://www.independent.co.uk/news/world/africa/paying-for-terrorism-where-does-boko-haram-gets-its-money-from-9503948.html>.

⁷⁶ Inter-governmental Action Group Against Money Laundering in West Africa *Threat assessment of money laundering and terrorist financing in West Africa* (2010) 94.

⁷⁷ Financial Action Task Force supra note 38.

terrorist finances is impossible and is partly due to the ability of terrorists to exploit an extensive array of financial tools used to fund their operations. The extension of the 'profit' driven reporting model is unsuitable for the financing of terrorism because it is aimed at preventing reporting entities accepting deposits of the proceeds of criminal activities. Terrorists, are unlikely to deposit the funds in a heavily regulated and reporting sector in an attempt to avoid detection.

II. Cheap Terrorism

In addition to the array of funding avenues available to terrorists, it is also important to discuss the concept of cheap terrorism. The threat posed by cheap terrorism was identified by HM Treasury who took the view that the "UK experience bears out the relatively low costs required for an effective terrorist attack. The Bishopsgate bomb in the City of London in 1993 caused over £1bn worth of damage to property yet cost only £3,000 to mount".⁷⁸ Other examples of 'cheap terrorism' was the first attack on the World Trade Centre in 1993, in which six people were murdered; over 1,000 were injured at an estimated cost of only \$400. This terrorist attack was "less devastating ... because of the group's limited financial resources".⁷⁹ Two years after the World Trade Centre attack Timothy McVeigh detonated a truck bomb outside Alfred P. Murrah Federal Building in Oklahoma City. In an interview with MSNBC, Timothy McVeigh estimated that the total costs of the attack, including the truck rental, fertilizer, nitro methane and other costs amounted to \$5,000.⁸⁰ The terrorist attacks by Al Shabaab on the Westgate Mall in Kenya "cost less than \$5,000 to execute"⁸¹ and the materials used in the Boston Marathon bombings [in 2013] reportedly cost about \$500.⁸² The two explosive devices used by the bombers, Tamerlan and Dzhokhar Tsarnaev, cost as little of \$100 each.⁸³ In none of these terrorist attacks, was there any evidence of a SAR had been

⁷⁸ HM Treasury, COMBATING THE FINANCING OF TERRORISM – A REPORT ON UK ACTION (2002) 11.

⁷⁹ Thomas Biersteker and Sue Eckert, *The US regulatory approach to terrorist financing*, in COUNTERING THE FINANCING OF TERRORISM (Thomas Biersteker and Sue Eckert EDS, 2008).

⁸⁰ NBC News *The McVeigh Tapes: confessions of an American terrorist* NBC NEWS (Apr, 19, 2010), http://www.nbcnews.com/id/36135258/ns/msnbc_tv/#.VDJpOU10zIU.

⁸¹ Department of Treasury *Remarks of Under Secretary for Terrorism and Financial Intelligence David Cohen before the Center for a New American Security on Confronting New Threats in Terrorist Financing*, US DEPARTMENT OF TREASURY (Mar. 4, 2014) <http://www.treasury.gov/press-center/press-releases/Pages/jl2308.aspx>.

⁸² *Ibid.*

⁸³ Todd Wallack and Beth Healy, *Tsarnaev brothers appeared to have scant finances* THE BOSTON GLOBE (Apr. 24, 2013), <http://www.bostonglobe.com/metro/2013/04/23/tsarnaev-brothers-appeared-have-scant-finances/ZbNBuN2Gcz8IOFddKDIUON/story.html>.

submitted to a FIU by a reporting entity. Furthermore, the terrorist attacks in London on July 7 2005 cost were estimated to have cost between £100 and £200.⁸⁴ Waszak estimated that “the cost of making a suicide bomb can be as low as \$5, while the deployment of a suicide bomber including transportation and reconnaissance, can cost as little as \$200”.⁸⁵ Therefore, if the terrorist or terrorist cell is largely self-sufficient, there is no need for them to be involved in funding activities that could lead to the submission of an SAR by a reporting entity. More recently, there has been an increase in the number of cheap acts of terrorism within Members States of the EU. For example, in August 2017 a terrorist driving a van killed 13 people in Barcelona. In June 2017, one person was killed outside Finsbury Park Mosque in a terrorist attack and terrorists on London Bridge and Borough Market killed eight people. A month before the terrorist attacks in London, 23 people were killed and 59 injured following a terrorist attack by a suicide bomber in Manchester. Further terrorist attacks within the EU occurred in Paris, Stockholm, Berlin, Normandy, Nice and Brussels. Several of these attacks have involved terrorists using a rental vehicle to target pedestrians. Of course, anyone has the financial capability to self-fund the renting of a vehicle, thus providing more evidence that cheap terrorism exploits the loopholes in the profit reporting model. There are two common themes in these terrorist attacks: the use of low capability weapons and cheap terrorism. These two factors illustrate that the extension of the ‘profit’ reporting model is no longer fit for purpose and is unsuitable to tackle the financing of terrorism.

C. The United Kingdom

The UK has a long history of tackling terrorism and has introduced an embarrassment of related legislation. The development of the UK’s terrorist related legislation is associated with the end of the eighteenth and start of the nineteenth century. Such legislative measures included the Explosive Substances Act 1883, the Criminal Law and Procedure (Ireland) Act 1887, the Civil Authorities (Special Powers) Act (Northern Ireland) 1922.⁸⁶ Other terrorist financing related legislation included the Prevention of Terrorism

⁸⁴ See Jeffrey Robinson, *Brown's war just doesn't add up: you can't kill terrorist with a calculator* THE TIMES NEWSPAPER (Feb, 14, 2006), <http://www.thetimes.co.uk/tto/law/columnists/article2049933.ece>.

⁸⁵ John Waszak, *The obstacles to suppressing radical Islamic terrorist financing*, Case Western Reserve Journal of International law, 36, 673-710, 673 (2004).

⁸⁶ Ben Brandon, *Terrorism, human rights and the rule of law: 120 years of the UK's legal response to terrorism*, Criminal Law Review, December, 981-997, at 982 (2004).

(Temporary Provisions) Act 1989 which criminalised terrorist financing,⁸⁷ attempted controls of terrorist financing⁸⁸ and imposing forfeiture and criminal penalties.⁸⁹ The next legislative amendment was the Criminal Justice Act 1993 that brought the terrorist financing provisions in line with the anti-money laundering measures. Additionally, the Criminal Justice (Terrorism and Conspiracy) Act 1998 permitted the courts to forfeit any property connected with proscribed terrorist organisations.⁹⁰ Additionally, the Terrorism Act 2000 created a number of criminal offences relating to the financing of terrorism.⁹¹ These were further extended by the Anti-terrorism, Crime and Security Act 2001, the Terrorism Act 2006, the Counter-Terrorism Act 2008, the Terrorist Asset-Freezing etc. 2010 Act, the Crime and Courts Act 2013, the Serious Crime Act 2015, the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017, the Criminal Finances Act 2017.

I. CTF Reporting Obligations

A key part of the UK's CTF measures has been the reporting requirements on financial institutions where there is a risk of money laundering or terrorist financing. The first money laundering reporting requirements were contained in the Drug Trafficking Offences Act 1986. The Criminal Justice Act 1993 amended the reporting obligations after the introduction of the First Money Laundering Directive. The Proceeds of Crime Act 2002 and the Money Laundering Regulations 2017 have since consolidated these reporting obligations.⁹² The Anti-terrorism, Crime and Security Act 2001 makes it a criminal offence of failure to disclose knowledge or suspicion that another person has committed an offence under the terrorist financing criminal offences under the Terrorism Act 2000.⁹³ This criminal offence is identical to the offence of failing to disclose information under the Proceeds of Crime Act 2002.⁹⁴ An individual or organisation who suspects that an offence has been committed under the Terrorism Act 2000 is legally required to complete a SAR. In addition to the traditional means of gathering

⁸⁷ Prevention of Terrorism (Temporary Provisions) Act 1989 (repealed) s.9.

⁸⁸ Prevention of Terrorism (Temporary Provisions) Act 1989 (repealed) s.9 and 11.

⁸⁹ Prevention of Terrorism (Temporary Provisions) Act 1989 s. 13.

⁹⁰ Criminal Justice (Terrorism and Conspiracy) Act 1998, s. 4(3).

⁹¹ Terrorism Act 2000, ss. 15-19.

⁹² S.I. 2017/692.

⁹³ Anti-terrorism, Crime and Security Act 2001, Schedule 2 Pt III.

⁹⁴ Proceeds of Crime Act 2002 ss.330-332.

financial intelligence via the use of SARs, the Terrorism Act 2000 contained a number of statutory measures that related to financial information orders. For example, Schedule 6 of the Terrorism Act 2000 “deals with orders empowering the police to require financial institutions to supply customer information relevant to terrorist investigation”.⁹⁵ An application for an order can be made by a police officer that could “require a financial institution [to which the order applies] to provide customer information for the purposes of the investigation”.⁹⁶ The order could apply to “(a) all financial institutions, (b) a particular description, or particular descriptions, of financial institutions, or (c) a particular financial institution or particular financial institutions”.⁹⁷ If a financial institution fails to comply with the financial information order it is guilty of a criminal offence.⁹⁸ However, the financial institution does have a defence to breaching the financial information order if they can illustrate that either the “information required was not in the institution’s possession, or (b) that it was not reasonably practicable for the institution to comply with the requirement”.⁹⁹ Additionally, the Terrorism Act 2000 permits the use of account monitoring orders.¹⁰⁰ Leong stated that an account monitoring order “is an order that the financial institution specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to an appropriate officer in the manner, and at or by the time or times, stated in the order”.¹⁰¹ An account monitoring order can be granted by a judge if they are satisfied that “(a) the order is sought for the purposes of a terrorist investigation, (b) the tracing of terrorist property is desirable for the purposes of the investigation, and (c) the order will enhance the effectiveness of the investigation”.¹⁰² Where an application is made for account monitoring, the order must contain information relating to accounts of the person who is subject to the order.¹⁰³

⁹⁵ Omer Elagab, *Control of terrorist funds and the banking system*, *Journal of International Banking Law and Regulation*, 21(1), 38-44, 40 (2006).

⁹⁶ Terrorism Act 2000, Schedule 6, 1(1).

⁹⁷ Terrorism Act 2000, Schedule 6, 1(1)(a).

⁹⁸ Terrorism Act 2000, Schedule 6, 1(3).

⁹⁹ Terrorism Act 2000, Schedule 6, 1(3).

¹⁰⁰ Terrorism Act 2000, Schedule 6A.

¹⁰¹ Angela Leong, *Financial investigation: a key element in the fight against organised crime*, *Company Lawyer*, 27(7), 218-221, 219 (2006).

¹⁰² Terrorism Act 2000, Schedule 6, 2A.

¹⁰³ Terrorism Act 2000, Schedule 6, 2A.

One of the most controversial pieces of CTF legislation is the Counter-Terrorism Act 2008. The Act “has added to those financial provisions in significant ways. The Act implements a new regime of financial directions in Schedule 7 ... the scheme is very wide-ranging in application and effect”.¹⁰⁴ Goldby stated that the Counter-Terrorism Act “provides new anti-money laundering and counter-terrorism financing provisions applicable to the private sector”.¹⁰⁵ Schedule 7 of the 2008 Act provides HM Treasury with the ability to give a direction where the FATF has requested actions to be pursued against a country due the risk it presents of terrorist financing or money laundering. Furthermore, HM Treasury is permitted to impose an action if they reasonably believe that a country poses a significant risk to the UK’s due to terrorist financing or money laundering. Finally, HM Treasury may impose a direction where it believes there is substantial risk to the UK due to the development, manufacturing or facilitation of nuclear, radiological, biological or chemical weapons there, or the facilitation of such development. The second part of Schedule 7 outlines the people who can be subject to the direction and that it may be issued to people working in the financial sector. Schedule 7 of the Counter-Terrorism Act 2008 provides for the requirements of a direction and the obligations that can be imposed. For example, the obligations can be imposed on transactions, business relationships with a person carrying on business in the country, the government of the country, or a person resident or incorporated in the country. Once a direction has been imposed by virtue of Schedule 7 of the Counter-Terrorism Act 2008 the recipient will be required to improve their due diligence measures. Part 5 of Schedule 7 permits the relevant enforcement agency to obtain information and part 6 permits the use of financial sanctions on those who fail to observe the directions. The powers of HM Treasury under Schedule 7 of the Counter-Terrorism Act 2008 were challenged in *Bank Mellat v HM Treasury (No.2)*.¹⁰⁶ Here, the Supreme Court determined that the directions authorised by HM Treasury under Schedule 7 breached Article 6 of the European Convention of Human Rights and the rules of natural justice.

There are a number of other weaknesses that are associated with the reporting of suspicious transactions and the financing of terrorism. For example, one of the most commonly referred

¹⁰⁴ Gareth Rees and Tim Moloney, *The latest efforts to interrupt terrorist supply lines: Schedule 7 to the Counter-Terrorism Act 2008*, *Criminal Law Review*, 127-135, 127 (2010).

¹⁰⁵ Myriam Goldby, *The impact of Schedule 7 of the Counter-Terrorism Act 2008 on banks and their customers*, *Journal of Money Laundering Control*, 13(4), 351-371, 352 (2010).

¹⁰⁶ [2013] UKSC 38 and 39; [2013] 3 W.L.R. 179.

to faults has been the unsatisfactory approach adopted by the courts toward the definition of the term 'suspicion'.¹⁰⁷ Some guidance has been offered by the courts under the money laundering reporting obligations imposed by the Proceeds of Crime Act 2002. For example, in the case of *R v. Da Silva*, the court stated, "it seems to us that the essential element of the word suspect and its affiliates, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice".¹⁰⁸ Further guidance on the interpretation of suspicious activity is offered by the Joint Money Laundering Steering Group who stated that:

"Suspicion has been defined by the courts as being beyond mere speculation and based on some foundation, for example 'a degree of satisfaction and not necessarily amounting to belief but at least extending beyond speculation as to whether an event has occurred or not'; and 'although the creation of suspicion requires a lesser factual basis than the creation of a belief, it must nonetheless be built upon some foundation'.¹⁰⁹

The reporting obligations is that they have created a 'fear factor' among the regulated sector that has seen a dramatic increase in the number of SARs submitted to FIUs. For example, between 1995 and 2002 the number of SARs submitted to the UK's FIU increased from 5,000 to 60,000. More recently, it has been reported that the UK FIU received 210,524 SARs in 2008,¹¹⁰ in 2010 it received 240,582 SARs,¹¹¹ in 2011 the figure increased to 247,601,¹¹² in 2012 the figure was 278,665¹¹³ and in 2013 the figure was 316,527.¹¹⁴ The numbers of SARs

¹⁰⁷ Terrorism Act 2000, s. 19(1)(b).

¹⁰⁸ [2006] EWCA Cro., 1654. Also see *K v. National Westminster Bank, HMRC, SOCA* [2006] EWCA Civ 1039 and *Shah v HSBC* [2010] 3 All E.R. 477.

¹⁰⁹ Joint Money Laundering Steering Group PREVENTION OF MONEY LAUNDERING/COMBATING TERRORIST FINANCING 2011 REVIEW VERSION GUIDNACE FOR THE UK FINANCIAL SECTOR PART 1 (2011) 132.

¹¹⁰ Serious Organised Crime Agency, THE SUSPICIOUS ACTIVITY REPORTS REGIME ANNUAL REPORT 2008 (2008) 15.

¹¹¹ Serious Organised Crime Agency, THE SUSPICIOUS ACTIVITY REPORTS REGIME ANNUAL REPORT 2010 (2011) 4.

¹¹² Serious Organised Crime Agency, THE SUSPICIOUS ACTIVITY REPORTS REGIME ANNUAL REPORT 2011 (2012).

¹¹³ Serious Organised Crime Agency, THE SUSPICIOUS ACTIVITY REPORTS REGIME ANNUAL REPORT 2012 (2013).

¹¹⁴ National Crime Agency, THE SUSPICIOUS ACTIVITY REPORTS REGIME ANNUAL REPORT 2013 (2014) 5.

submitted continued to increase with 354,186 submitted in 2014, 381,882 in 2015 and 643,000 in 2017.¹¹⁵ There are a number of possible for this increase in reports filed. Firstly, the increase is directly attributable to the threat of sanctions by such organisations as the Financial Conduct Authority, which has in the regulated sector adopting a tactic that has been referred to as ‘defensive’ or ‘preventative’ reporting. Secondly, reporting entities have complained about the significant increase in compliance costs,¹¹⁶ which has resulted in suggestions that the CTF reporting requirements could be abandoned and that the resources should be redirected elsewhere.

II. BREXIT

On June 24 2016 the electorate determined that it no longer wanted to UK to be a member of EU. Will this decision have any impact on how the UK complies with the EU AML and CTF obligations? The UK is at the forefront of the international and regional efforts to tackle financial crime. The UK has implemented a number of the international money laundering legislative instruments. For example, it signed the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, or Vienna Convention in December (1988), it was ratified in June 1991.¹¹⁷ The impact of the Vienna Convention is illustrated by the Criminal Justice (International Co-operation) Act (1990), part two of which is entitled the ‘Vienna Convention’. Furthermore, the Vienna Convention has been taken into account by the judiciary on several occasions in relevant money laundering cases. For example, in *R v Montila*,¹¹⁸ *R v Rezvi*,¹¹⁹ *Crown Prosecution Service v Richards*,¹²⁰ *Lodhi v Governor of Brixton Prison (No.2)*,¹²¹ and *R v Hussain*.¹²² The UK signed the UN Convention against Transnational Organised Crime, or Palermo Convention in December 2000, and ratified it in February 2006. Evidence of its influence of, is illustrated by the fact that it is referred to in the Serious Organised Crime and Police Act (2005).¹²³ Furthermore, the UK has fully implemented the UN

¹¹⁵ See National Crime Agency, THE SUSPICIOUS ACTIVITY REPORTS REGIME ANNUAL REPORT 2017 (2018)

¹¹⁶ Home Office, REPORT ON THE OPERATION IN 2004 OF THE TERRORISM ACT 2000 (2004) 19-20.

¹¹⁷ Financial Action Task Force, THIRD MUTUAL EVALUATION REPORT ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM – UNITED KINGDOM (2007) 250.

¹¹⁸ [2005] 1 All ER 113.

¹¹⁹ [2002] 1 All ER 801.

¹²⁰ [2006] EWCA Civ 849.

¹²¹ [2002] EWHC 2029 (Admin).

¹²² [2002] EWCA Crim 6.

¹²³ Serious Organised Crime and Police Act 2005, s. 95.

Convention against Corruption 2003 via the enactment of the Bribery Act 2010. The UK, is obliged to implement several money AML legislative provisions from the EU. For example, the EU introduced the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceed of Crime (1990).¹²⁴ The UK signed the Convention in November 1990, and it was ratified in September 1992. The scope of the 1990 Convention was broadened by the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005).¹²⁵ In addition, the EU has introduced three Money Laundering Directives,¹²⁶ the first of which was published in 1991. The UK implemented the First Money Laundering Directive in 1993.¹²⁷ The Second Money Laundering Directive extended the scope of the UKs AML obligations and it was instigated via the Money Laundering Regulations (2003).¹²⁸ In 2005, the European Commission published the Third Money Laundering Directive, which was implemented Money Laundering Regulations 2007.¹²⁹ Likewise, the UK implemented the Fourth Money Laundering Directive via the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.¹³⁰ The UK has also fully implemented UN Security Council Resolutions 1267 and 1373.¹³¹ The latter of these Security Council Resolutions was introduced by the Terrorism (United Nations Measures) Order 2001,¹³² Terrorism (United Nations Measures) Order 2006¹³³ and the Terrorism (United Nations Measures) Order 2009.¹³⁴ HM Treasury manages the financial sanctions regime by virtue of the Terrorist Asset-Freezing etc. Act 2010.¹³⁵ The UK has adopted a very proactive stance towards implementing the legislative measures of both the UN and EU and it seems highly

¹²⁴ ETS No 141.

¹²⁵ This was adopted in Warsaw in 2005 and entered into force in 2008.

¹²⁶ 91/308/EEC.

¹²⁷ European Council, *Directive on the Prevention of the Use of the Financial System to Launder Money* 91/308, 1993 O.J. (L 166). This Directive was implemented by Money Laundering Regulations 1993, S.I. 1993/1933.

¹²⁸ S.I. 2003/3075.

¹²⁹ S.I. 2007/2157.

¹³⁰ S.I 2017/692.

¹³¹ See Terrorism (United Nations Measures) Order 2001, S.I 2001/3365 the Terrorism (United Nations Measures) Order 2006, S.I. 2006/2657, the Terrorism (United Nations Measures) Order 2009, S.I. 2009/1747 and the Terrorist Asset-Freezing etc. Act 2010.

¹³² S.I. 2001/3365.

¹³³ S.I. 2006/2657.

¹³⁴ S.I. 2009/1747.

¹³⁵ This is also assisted by the directions given under Schedule 7 to the Counter-Terrorism Act 2008, and under Council Regulation (EU) No.833/2014.

unlikely that the UK will falter on guaranteeing its commitment to implementing the financial crime provisions.

D. Conclusions and Recommendations

This paper has been written at an unprecedented era of low financed acts of terrorism in the EU and its Member States. For example, France has experienced a large number of cheap terrorist incidents including the attacks on Charlie Hebdo and the Hyper Cacher that resulted in the death of 17 people. In November 2015, eight terrorists instigated several concurrent acts of terrorism murdering 130 people and injuring 350 at a concert, an international football match and at surrounding restaurants. Additionally, there has been several terrorist attacks in Turkey, which are associated with ISIL and the PKK.¹³⁶ UK citizens have been subjected to terrorist attacks in Sousse in 2015, the attempted murder of two train commuters in December 2015 and the terrorist attacks outlined in the second section of this paper. Therefore, it is essential that the CTF reporting obligations are an effective mechanism to prevent terrorists being able to move and access their funds. However, EUROPOL concluded that “2016 has seen lower amounts of funds moved regularly through the financial sector. These small denomination values sent by [terrorist] supporters and family members are transferred to support [terrorists] and their organisational expenses”.¹³⁷ Therefore, the paper has provided a critical examination of the appropriateness and effectiveness of the use of the ‘profit’ reporting model towards the financing of terrorism. The article has illustrated how the UN, FATF and the EU have all introduced reporting mechanisms on a wide range of deposit taking institutions to prevent money laundering. The differences between money laundering and terrorist financing are clear and the profit model is inappropriate to tackle the financing of terrorism. Therefore, this approach needs to be reconsidered by the international community and nation. The second part of the paper has provided extensive evidence which illustrates that the CTF reporting obligations have done very little to prevent acts of terrorism from being financed. The wide variety of sources used by terrorists suggests that they obtain or transfer finances outside the remit of the CTF reporting obligations. Therefore, the prevention and detection of terrorist finances is therefore extremely difficult if not impossible, due to the extensive financial tools and low costs of terrorist operations. The final

¹³⁶ United States Department of State, COUNTRY REPORTS ON TERRORISM 2015 (2016) 88-89.

¹³⁷ EUROPOL, EUROPEAN UNION TERRORISM SITUATION TREND AND REPORT (2017) 11.

part of the chapter provides a commentary on the UK's efforts to implement the CTF reporting obligations. The UK has fully implemented the international AML and CTF reporting obligations as outlined in the first part of the paper and it is likely Brexit will have a minimal impact. However, the UK has mistakenly adopted the 'profit' or reporting model towards the financing of terrorism. The paper has highlighted several weaknesses in this approach including the inappropriate definition of suspicion, the increased compliance costs, and a fear factor within reporting entities that has resulted in defensive reporting. To tackle the threat posed by terrorist financing it is suggested that reporting entities, FIUs, policy makers and the international community adopt a different and innovative approach. This would involve revisiting the interpretation of suspicion that has been based on money launderers attempting to disguise large sums of illegally obtained finances, which is not appropriate when targeting the movement of funds intended for acts of terrorism. Deposit taking institutions should focus their CTF obligations not on the deposits they receive, but on suspicious withdrawals of money. For example, this could include a bank account being closed with little or no notice, irregular cash withdrawals that are out of the financial character of the account holder or an unexpected use of an overdraft. The CTF reporting obligations must be extended beyond deposit taking institutions and to providers of credit, especially following the use of student loans to finance acts of terrorism in Manchester and Brussels. The extension of the reporting obligations to providers of credit could limit one funding avenue that has been exploited by terrorists. For this to be successful, it would require a closer working relationship between reporting entities and the FIU.