Strengthening the EU Legal and Institutional Framework to Combat Transnational Financial Crimes

Dr. Iryna Marchuk

Faculty of Law

University of Copenhagen

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Table of Contents

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After having devoted long and gruelling hours to my PhD research project on the mental element of a crime in international criminal law for two and a half years until October last year, I felt that I was willing to explore the neighbouring field of European criminal law and challenge myself by diverting my attention from genocide, war crimes and crimes against humanity to transnational financial crimes. I am indebted to my supervisor, Professor Jørn Vestergaard, who supported my research idea and recommended to seek external funding from the Ministry's of Justice research fund.

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The views expressed in this report are my own and do not represent the position of the Ministry of Justice.

Purpose

The twofold purpose of this research is to examine the development of the adequate legal tools and practices to combat transnational financial crimes, *inter alia* money laundering, terrorism financing, corruption, transnational financial fraud; and to seek the apposite measures directed at strengthening the overall legal and institutional framework at the regional (EU) and domestic levels. The research project involves the legal analysis of the legislation, jurisprudence and best practices of two selected jurisdictions, in particular the United Kingdom (hereinafter – UK) and Denmark.

The research objective may be deconstructed into the following 'bullets': (i) to test the existing legal toolkit pertinent to combating transnational financial crimes at the regional (EU) and domestic levels (UK and Denmark); (ii) to investigate the efficiency of domestic practices as to the implementation of the EU practices into the domestic legislation; (iii) to explore the challenges hindering the effective cooperation between public and private authorities of the EU Member States; (iv) to look into the preventive responsibilities of the private sector as to the money laundering and other financial crimes; and (v) to make recommendations to strengthen the legal and institutional framework as to combating transnational financial crimes and to conclude with the assessment of the level of harmonization of the domestic legislation and practices (UK and Denmark) with the EU policies.

Methodology

The broad objective of this project - to seek the apposite measures directed at strengthening the EU legal and institutional framework to combat transnational financial crimes – involves the employment of broadly legal (jurisprudential), empirical, comparative methods and method of interviewing. The **broadly jurisprudential method** is relevant to conduct the analysis of both binding and non-binding international, EU and domestic legal instruments along with the relevant practices of law-enforcement and supervisory bodies, and case law of selected jurisdictions. The **comparative method** extends to the analysis of legislation and practices of several jurisdictions, in particular UK and Denmark. The choice of UK is dictated by its role as one of the major international financial hubs, which attracts substantial foreign financial resources and investments in the City and thus becomes particularly vulnerable to the insidious forms of criminality seeking to undermine its financial stability. Though

Denmark is a rather small jurisdiction with a relatively minor number of financial crimes cases according to the latest reports of the Office of the Public Prosecutor for Serious Economic Crime (*Statsadvokaten for Særlig Økonomisk Kriminalitet)* but it has established its excellent reputation in setting up the exemplary cooperation framework with the EU and international institutions. The **method of interviewing** is a sociological method, that becomes a relevant tool to this legal research, for it is of utmost importance to acquire the first hand-on experience of the professionals involved in the combat of transnational financial crimes. I have established a contact with the SØK (Deputy Prosecutor Ms. Marie-Louise Ramin Staehelin and Deputy Prosecutor, Mr. Anders Sejer Pedersen), which gave me a valuable insight into the work of the Office and furnished my knowledge with deeper understanding of the implementation of both international and European legal instruments in Danish law, handling of money laundering and fraud cases, and cooperation with the public and private sectors in Denmark as well as international cooperation.

Origins of transnational financial crimes: introductory remarks

The era of globalization has yielded many fruits to pluck, in particular the existence of more opened financial markets, an emerging network of corporations that do not confine their businesses to the domestic market but spread their wings across borders. However, there are also evident negative tendencies that globalization brought along, such as the apparent lack of practices to regulate the conduct of financial and non-financial institutions operating in various jurisdictions, the existence of abusive practices that elevate to the level of financial crimes and involve enormous substantial losses for the world economy, spill-over of financial crimes over the borders and various jurisdictional challenges as to *how* and *where* such crimes shall be adjudicated.

Financial crimes do not mirror 'crimes' in the classic understanding of the word, for they do not cause any serious injury to life or limb. However, it does not mean that financial crimes pose a minor danger to the society. *A contrario*, money laundering, corruption, terrorist financing, transnational financial fraud – to name just few – affect immensely the state of global economy. It is obvious that multinational corporations are reluctant to operate their businesses in highly corrupted countries and countries with a poor record of confronting financial crimes, given uncertainties as to the protection of businesses and their profitability.

The long-standing fight against financial crimes is no longer a purely domestic matter, but it transcends national boundaries and captures the attention of various regional and international institutions. The international and regional instruments on the prevention and fight against transnational financial crimes have mushroomed over the last decade, *inter alia* the FATF Recommendations against money laundering and terrorist financing, UN Convention against Transnational Organized Crime, UN Convention against Corruption, a string of UN Conventions and Security Council Resolutions directed against terrorist financing,[1] and various EU Directives.[2]

The initial concentrated efforts to confiscate proceeds from a crime and combat money laundering have occurred in the context of organized drug trafficking. The adoption of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) was catalyzed by the rising trend in the criminal phenomenon of the illicit production, demand and traffic in narcotic drugs and psychotropic substances, which did not only pose a serious threat to the health and welfare of society, but was also intimately linked to other organized criminal activities.[3] The generated considerable profits from drug trafficking were also exploited by transnational criminal organizations to corrupt governmental structures, commercial and financial businesses; launder proceeds from the crime and even employ such proceeds for the purpose of terrorism, which convincingly demonstrated larger implications of that crime. However, it is not only profitability of drug trafficking that sparkled spearheading of money laundering offences. The diversification of criminal activities by the organized criminal elements, such as illegal arms trade, human trafficking, fraud, corruption has established new sources of profitability. Such illegal proceeds have been often reintegrated under the 'legitimate' cover via various money laundering schemes.

The sophistication of organized crime calls for the design of much more nuanced legal instruments and greater cooperation across borders. In fact, money-laundering phenomenon has been gradually infiltrated into the legitimate business world, since said financial crimes are often committed by business elements for private gains.[4] The implication of legitimate business actors in money laundering schemes makes it extremely challenging to prosecute such financial crimes, since investigative authorities do not always have the required level of expertise to unfold the chain of illegal financial activities.

The Financial Action Task Force (FATF)

FATF is an inter-governmental body established in response to mounting concern over money laundering at the G-7 Summit in Paris (1989).[5] The organization's main objective is the development and promotion of policies directed at combating money laundering and terrorist financing. Notwithstanding its status as a policy-making body, the FATF has greatly influenced the adoption of both binding and non-binding instruments at the domestic, regional and international levels. The FATF has consistently issued, revised, and adjusted the recommendations as to combating money laundering and terrorist financing. The original set of recommendations against money laundering issued in 1990 was subject to the thorough revision in 2003 in light of new trends and techniques exploited by money launderers, such as an increased use of legal persons to disguise the true ownership and control of illegal proceeds, and increased use of professionals to provide advice and assistance in laundering criminal funds[6]. The recommendations delineate (i) the scope of money laundering, adequate legal sanctions to be imposed upon money launderers either of criminal or non-criminal nature; (ii) preventive measures to be undertaken by financial institutions and non-financial businesses and professions to prevent money laundering and terrorist financing, including *inter alia* customer due diligence, record-keeping, reporting of suspicious transactions and compliance; (iii) measures to be attributed to the countries that do not or insufficiently comply with the FATF Recommendations; (iv) institutional and other measures necessary in systems for combating money laundering and terrorist financing; and (v) international cooperation, including mutual legal assistance and extradition.

The separate list of recommendations against terrorist financing was compiled in the aftermath of tragic 9/11 attacks with the subsequent revision in October 2004. The main objective was to devise a legal framework to detect, prevent and suppress the financing of terrorism.[7] The recommendations speak of immediate steps to ratify and fully implement the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism; criminalization of the financing of terrorism and associated money laundering; freezing and confiscation of terrorist assets; reporting of suspicious transactions related to terrorism and international cooperation.[8] Furthermore, the Recommendations warn against the illegal transmission of financial resources through unauthorized remittance systems and wire transfers that do not contain complete originator information.[9] The countries are also expected to adopt the adequate measures in detecting the physical cross-border

transportation of currency and bearer negotiable instruments, such as a declaration system or other disclosure obligation.[10] The recommendations warn against the exploitation of NGOs for the purpose of terrorist financing.[11]

The FATF ensures that the Recommendations remain up-to-date and correspond to the needs of both financial and non-financial institutions, which are subject to reporting obligations. At the moment, the Organization conducts a thorough review of its Recommendations aimed at maintaining their stability and tackling the loopholes of existing standards. The FATF collaborates with the public and private sectors that are directly affected by the revision of the standards. In fact, it has already conducted a public consultation on the first phase of the review of the FATF standards between October 2010 and January 2011 with the expectations to conclude its work by early 2012. The current revisions process touches upon the most problematic aspects of the compliance with the existing Recommendations, such as the risk-based approach, customer due diligence, wire transfers and politically exposed persons.[12]

The success of the FATF, which does not have any real mechanisms to enforce the implementation of its recommendations, has been truly spectacular. The Recommendations have contributed to the revision of domestic, regional and international instruments in the field of combating money laundering and terrorist financing. The FATF has strongly proved itself as a trendsetter in combating the core financial crimes.

World Bank and International Monetary Fund (IMF)

The FATF collaborates closely with other international institutions in its fight against money laundering and terrorist financing.[13] The World Bank's programs on anti-money laundering and financing of terrorism are integral elements of the organization's development mandate in the financial sector in light of mounting concern over the impact of said activities on the integrity of financial systems, good governance, financial stability and economic development.[14] The objectives of the programme involve (i) enacting anti-money laundering and terrorist financing legislation and regulations in accordance with international standards recommended by the FATF; (ii) creating a Financial Intelligence Unit (hereinafter - FIU); (iii) supervising financial and non-financial institutions with regard to AML/CTF; (iv) training and sensitizing a prosecutorial and judicial system to related issues; (v) garnering support for law enforcement agencies; (vi) maintaining high standards of domestic and international cooperation; and (vii) remaining transparent within the domestic and

global community, while respecting the sensitivity of client countries' financial information. The World Bank has produced some important practical compliance guides for banks as to the prevention of money laundering and terrorist financing. These guidelines reflect the current global financial processes, for they have been adjusted to address the gloomy realities of financial crisis and wobbly recovery period thereafter.[15]

The strong anti-money laundering and combating the financing terrorism oversight mechanisms are deemed critical in protecting the integrity of the financial system and ensuring that financial institutions are not abused by the criminal elements, but they remain sound, sustainable and vigilant.[16] The World Bank has been actively collaborating with the International Monetary Fund while expanding its surveillance and advisory activities in the financial sector. Such cooperation has been crucial in the joint implementation of the Anti-Money Laundering and Combating the Financing of Terrorism mandate.[17]

Other International and EU Organizations (Egmont Group, Europol, Eurojust)

Egmont Group is an informal group fostering the cooperation among the FIU(s) that focuses greatly on the improvement of cooperation in the areas of information exchange, training and sharing of expertise in the field of combating money laundering and terrorist financing. The Organization provides regular trainings to advance the expertise of professionals in this increasingly challenging and dynamic field of law. Furthermore, it fosters international cooperation in regards to the reciprocal exchange of information; coordination and support among the operational divisions of member FIU(s); and promotion of the operational autonomy of FIU(s).[18] The Egmont Group also provides an invaluable support to the governments that are in the process of the implementation of the strong anti-money laundering and terrorist financing measures.[19]

Europol is a law enforcement body of the European Union that has its main objective to achieve a safer Europe by providing support to the law enforcement agencies of the EU Member States in their fight against transnational serious crimes, including terrorism. Having no direct powers to arrest criminals, Europol is an analytical centre of expertise that identifies, assesses emerging threats to the EU, and provides a platform for law enforcement experts from the EU Member States.[20]

Eurojust is a judicial cooperation body established under the EU auspices that is tasked with providing safety within an area of freedom, security and justice.[21] Its main focus is on the

improvement of the fight against serious crime by facilitating the optimal coordination of investigations and prosecutions covering the territory of more than one Member State with full respect for fundamental rights and freedoms.[22] The operation of such body is particularly important with the view of the transnational nature of serious crimes and their effect on the multiple jurisdictions.

Transnational financial crimes in the EU context

The EU practices to combat transnational financial crimes have been shaped as a response to the global campaign which sought to launch an efficient international legal and institutional framework to combat such phenomenon. The EU action is rightly regarded as a means of implementing the adequate wider international recommendations and obligations in the field of transnational financial crimes at the regional level.[23] The EU legal instruments on combating financial crimes have rapidly developed into the fully-fledged legal framework to prevent and combat such crimes. Though the initial focus of the EU was largely concentrated on the protection of economic unity and financial stability of the internal market, it gradually involved more responsibilities in the area of security and justice in the light of amended Treaty of Amsterdam (1997), Treaty of Nice (2001) and Treaty of Lisbon (2007). The series of appalling terrorist attacks such as 2004 Madrid bombings and 2005 London bombing at the backdrop of 9/11 appalling events prompted the EU to develop a concerted regional strategy to prevent and combat terrorism and terrorist financing.

The EU has hitherto adopted various legal instruments in the field of combating financial crimes and terrorist financing.[24] One shall keep in mind the complex hierarchy of various EU legislative acts that have a varying degree of legal consequences to the EU Member States, including acts that have a direct effect on the national legislation or call for the implementation into domestic law. This research is concerned only with the major EU legal instruments in the field of financial crimes and their implementation into the UK and Danish laws.

The development of the area of freedom, security and justice is quintessential for the effective prevention and fight against financial crimes and terrorism financing.[25] Given the significant expansion of the EU and its openness of borders, the EU member states may prove to be particularly vulnerable to the financial crimes that occur and cause loss in multiple EU jurisdictions. As an illustration, the EU jurisdictions have been confronted with the VAT Fraud,

or Missing Trader Intra-Community Fraud (MTIC), which is a form of highly organized and sophisticated tax fraud carried out by criminal elements that exploit the differences in the VAT regimes of various EU Member States. According to the Europol Annual Report the VAT fraud schemes cost EU member states around 60 billion euro annually.[26] The fraud schemes codenamed 'boiler room' have also caused serious losses to the EU economy. These schemes involve unauthorized offshore entities, which allure 'investors' with the promises of considerable increases of profit from shares that turn to be worthless or untradeable once sold.[27] The payment card fraud is a growing criminal phenomenon, which involves the placement of skimming devices into the ATMs (Automatic Teller Machines) that collect customers' data further employed to create so-called cloned counterfeit credit cards. The damage inflicted by skimming alone cost the EU more than 350 million euro in 2009.[28] The corrupted foreign officials have piled up embezzled governmental funds in the European banks and use them to fund their jet-setting lavish lifestyles. In fact, most of proceeds from financial fraud, tax fraud, corruption strive to obtain the legitimacy of their origin through various money laundering schemes. The spearheading of global terrorism is a very realistic threat to the peaceful development of the EU which dictates to exercise particular vigilance not only against the possibility of terrorist attacks but also to implement effective detection schemes of terrorist financing.

For all the aforementioned reasons, it is necessary to strengthen and develop the existing legal and institutional framework to combat transnational financial crimes and diminish their negative effect on the regional level and domestic levels.

Money Laundering: Introductory Remarks

There is a commonly agreed definition of money laundering, which implies that that the dirty proceeds of a crime are given the legitimate appearance. The official term 'money laundering' was originally coined in the US court in regards to the confiscation of laundered Columbian drug proceeds.[29] The contemporary definition of money laundering involves the following three stages:

- **placement**, which involves the introduction of criminal proceeds into the financial system or economy;
- **layering**, which includes activities directed at concealing the criminal origin of funds, i.e conduct of multiple transactions with the purpose to hide such origin.

- **integration** implies the achievement of the appearance of the legitimate origin of funds that may be further channelled into the financial system under the cover of legitimate funds.[30]

Aforesaid stages of 'money laundering' are abstract categories, whereas the practice provides an abundance of various sophisticated money laundering mechanisms. The FATF compiles typologies reports that provide various patterns of money laundering schemes. These reports are of great assistance to the domestic law enforcement and supervisory bodies to detect the potential cases of money laundering and terrorist financing. [31]

Money Laundering and Denmark

The Danish leading authority in the prevention and fight against money laundering is the Money Laundering Act (hereinafter – MLA) that came into force in March 2006 with subsequent amendments in 2008 and 2009.[32] The Act was adopted as a means of the implementation of the EU Third Directive into domestic legislation. The FATF conducted its very first evaluation of the Denmark's compliance with the FATF Recommendations in 2006 before the aforesaid Act entered into force that obviously affected the ratings of Denmark's compliance. Some deficiencies pinpointed in the FATF Mutual Evaluation Report were remedied with the entry into force of the MLA. Given the fact that Danish territory and thus its jurisdiction extend to Greenland and Faroe Islands, it was necessary to harmonize the AML/CFT legislation in the territories concerned. The FATF was satisfied with the progress achieved, though it noted some minor areas where further steps should be undertaken to accomplish the full compliance of Greenland and Faroe Islands with the required AML/CFT regime.[33]

Among the positive aspects mentioned in the report, Denmark provided more guidance to the financial sector by issuing the FSA Guidebook on Measures to Prevent Money Laundering and Financing of Terrorism (2006), DCCA Guidelines for Money Remitters (2007), and DBLS Guidelines for Legal Professionals (2009).[34] However, the FATF noted some compliance deficiencies, in particular the absence of the independent risk-based approach in relation to the exemption rules from proof of identity requirements for specified customers in EU or equivalent countries; and in relation to the simplified due diligence requirements.[35]

Furthermore, the FATF mentioned the poor numbers of submitted STR(s) in stark contrast to other Nordic countries and thus raised the question of the effectiveness of the existing

reporting mechanism, especially for such categories as insurers and investment managers.[36] In regards to the financing of terrorism, the respective Criminal Codes of Greenland and Faroe Islands were amended to incorporate the criminalization of such activities in the same terms as the Danish Criminal Code.[37] Denmark was commended for addressing deficiencies of the terrorist financing regime.[38]

On a separate note, the comprehensive guidance on financial sanctions was issued by the Danish Enterprise and Construction Authority (DEACA) in 2008 that provide for a step-by-step description of the measures that entities implementing freezes are obliged to take, in relation to both terrorism- and third-country sanctions.[39]

In a sum, Denmark has made a significant progress in tackling the deficiencies and loopholes identified in the 2006 FATF Mutual Evaluation Report with some minor areas that still need to be addressed in the nearest future. A more detailed analysis of Danish law is provided in the following sub-Chapters.

Money Laundering and the UK

The greater focus on combating money laundering was channelled into the UK legal terrain through the **Proceeds of Crime Act 2002** (hereinafter - POCA), which was designed to strengthen the criminal law regime in regards to that crime. Broadly, Part 7 of the Act defines what conduct elevates to the money laundering offence. It may take form in **concealing** criminal property;[40] entering in the **arrangement** which facilitates the acquisition, retention, use of control of criminal property by or on behalf of another person;[41] and **acquisition, use** and **possession** of criminal property.[42] The **criminal property** constitutes a person's benefit from criminal conduct or represents such a benefit which must be accompanied by the alleged offender's knowledge or suspicion that it constitutes or represents such a benefit.[43] The term 'property' encompasses money; all forms of property (real or personal, heritable or moveable); things in action and other intangible or incorporeal property.[44] The supporting *mens rea* for the offence of money laundering embraces *knowledge* or *suspicion* that criminal property is involved.

The **failure to disclose** information about suspected money laundering by a person in the course of a business in the regulated sector;[45] **failure to disclose** information about suspected crime by the **nominated**[46] and **other nominated** officers;[47] and **tipping off** in the unauthorized cases[48] equally contribute to the offence within the meaning of the POCA.

Therefore, a person who knows or suspects any money laundering offence is under the obligation to disclose such information to the designated authorities because otherwise he risks being implicated in the offence. Such disclosure shall be made to a constable, a customs officer or a nominated officer in the form and manner prescribed by law.[49] The disclosure is normally expected to take place prior to the prohibited conduct.[50] However, the Act enlists the situations when the disclosure is nonetheless carried in good faith after the commission of the offence of money laundering. Under such circumstances, a person has a good reason for non-disclosure prior to the offence and the subsequent disclosure is made on his own initiative as soon as it is practicable for him to make it.[51]

The required disclosure alone is not sufficient to fulfil requirements under the Act, which also introduces so-called 'consent regime'. Such regime implies that a person who makes an authorized disclosure to the designated authorities also seeks consent to carry out the prohibited act.[52] Hence, a person is fully entitled to carry out such act if he does not receive notice from the designated authorities with the refusal to do so at the end of the notice period of seven working days.[53] If the refusal is not granted, then authorities have the period of 31 days at their disposal to restrain the criminal property.[54]

The anti-money laundering regime in the UK was supplemented by the 2007 Money Laundering Regulations that were adopted in the process of the implementation of the EU Third Directive. However, the stricter anti-money laundering measures embedded in the EU Third Directed had already been employed by the majority of financial firms prior to its official incorporation into the UK legislation. The Directive was regarded to be consistent with the "better regulation" agenda, which dictated that regulation should be proportionate and flexible in a way that minimized the burden on market participants and facilitated delivery of regulatory objectives but did not stifle innovation or disadvantage UK-based businesses.[55]

Upon the conduct of the mutual evaluation of the UK in 2007, the FATF placed the country in a regular follow-up process due to the non- or partial compliance with the requisite standards. The 2009 Follow-Up Report concluded that the UK reached a satisfactory level of compliance with all core Recommendations and key Recommendations.[56] The Report elaborates on the main areas that were addressed by the UK authorities to tackle the loopholes identified in the 2007 Report: the identification and verification of beneficial owners; CDD when there are doubts about the veracity of previously obtained CDD data; obtaining information on the purpose and intended nature of the business relationship; ongoing due diligence and keeping

CDD records up-to-date; enhanced CDD for higher-risk situations; identifying CDD on existing customers based on materiality and risk; and terminating business relationships if CDD cannot be completed.[57] The UK also addressed the issue of the establishment of the appropriate and risk-sensitive AML/CFT policies and procedures to determine whether a customer was a PEP.[58] In a nutshell, the Report was very positive about the appropriate legislative remedies undertaken to cure the major loopholes in the legislation and practices.

EU Legal Toolkit: Money Laundering

There has been the unprecedented development in the field of combating transnational financial crimes, whish can be obviously revealed through a string of the EU instruments. Not only the area of law led to the design of the adequate legal instruments, but also those instruments were rather short-lived and subject to the frequent revision over the past decade. Such frequent revision processes is a testament to the rapid growth of this field of law, which calls for the continuous adjustment and improvement. This report will kick off with the brief analysis of the evolution of the EU instruments in the field, while focusing on the analysis of the most recent EU directive to prevent the financial system from the scourge of financial crimes.

EU First Directive on the prevention of the use of the financial system for the purpose of money laundering

The very first EU Directive, which emphasised on the necessity to protect the financial integrity of the EU, was meant to prevent the use of the financial system for the purpose of money laundering.[59] This instrument, which is no longer in force, was formulated in rather broad terms and did not turn to the specific and concrete measures to protect the system from money launderers, however, it laid down the solid cement for the subsequent developments in the field.

The Preamble sets clearly the reasons pinpointing the importance of the adoption of the instrument and its relevance to the EU Member States. At the outset, the Directive notes that the freedom of capital movement and freedom to supply financial services within the EU integrated financial area may be potentially abused by launderers. This wording accommodates a greater emphasis on the urge to protect the economic/financial stability of the Union rather than on the need to criminalise such illegal activities. The Preamble

elaborates further on the intimate interrelation between money laundering and drug trafficking that was omitted in the subsequent EU Directives. The Directive accentuates on the necessity to combat money laundering by *penal* means and within the international cooperation framework among judicial and law enforcement authorities. However, there is no formal obligation laid on the EU Member States to criminalise money laundering, given the very adoption of the Directive within the 'first pillar' framework with its prevailing focus on economic unity rather than justice. The call for closer international cooperation in the field is substantiated by international nature of money laundering that makes it impossible to tackle it exclusively by the measures adopted at the national level.

The technical definition of money laundering was respectively borrowed from the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances that shaped the definition of that crime in the following fashion:

> • *conversion or transfer of 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,
>
> • *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 or from an act of participation in such activity,
>
> • *acquisition, possession or use of property*, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity,
>
> • participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing paragraphs.[60]

The provided definition embraces the various forms of the material element of the crime ranging broadly from the *conversion* to the *acquisition* of property which is accompanied by *knowledge* on the part of a perpetrator that such property derives from criminal activity or from an act of participation in such activity. The crime of money laundering is obviously an

intent-crime with the *ultimate purpose* to conceal or disguise the illicit origin of the property or assist any person involved to evade the legal consequences of his action. The complicity and attempt to commit a crime are equally punishable.

Article 2 of the Directive lays down the obligation on the EU Member States to ensure the *prohibition* of money laundering, however, it does not specify in what forms such prohibition takes place. The credit and financial institutions are required to ensure *identification of customers* by means of supporting evidence when entering into business relations, opening an account or offering safe custody facilities. There are some exceptions to the rule of the customers' identification in the cases of selected insurance policies, provided that such policies do not contain a surrender clause and they are not used as collateral for a loan.[61] The credit and financial institutions are expected to cooperate with the authorities responsible for combating money laundering by *informing* such authorities of any fact indicative of money laundering and *furnishing* those authorities with all necessary information in accordance to law. However, it is within the discretion of Member States to ensure the extension of the Directive's provisions to other categories of professions which engage in activities to be likely exploited for the money laundering purpose, apart from the credit and financial institutions.[62] The list of such potential professions is not specified. Though the Directive emphasized on the necessity to employ so called 'know your customer' (KYC) rule, however, it provided a great laxity to the EU Member States in determining the scope and boundaries of such requirement.

EU Second Directive on prevention of the use of the financial system for the purpose of money laundering

The limited scope of the First Directive solicited the adoption of the Second Directive on prevention of the use of the financial system for the purpose of money laundering.[63] The Preamble alludes to the need of setting a high standard in protecting the financial sector and other vulnerable activities from the harmful effects of the proceeds of crime.

At the outset of the Directive, the definitions of 'credit institution' and 'financial institution' are given a cosmetic makeover and repaired in a way to meet the burgeoning pressure in the field dealing with combating money laundering. The term 'credit institution' is defined within the premises of Article 1(1) of Directive 2000/12/EC[64] and it also includes branches within

the meaning of Article 1(3) of the same Directive located in the Community of credit institutions having their head offices inside or outside the community.

The updated definition of 'financial institution' was broken into the following categories: (i) an undertaking other than a credit institution whose principal activity is to carry out one or more of the operations included in numbers 2 to 12 and number 14 of the list set out in Annex I to Directive 2000/12/EC, which include the activities of currency exchange offices (bureaux de change) and of money transmission/remittance offices; (ii) an insurance company duly authorised in accordance with Directive 79/267/EEC,[65] (iii) an investment firm as defined in Article 1(2) of Directive 93/22/EEC;[66] and (iv) a collective investment undertaking marketing its units or shares.

Though the very definition of money laundering survived and it did not include any amendments on the substance, the term 'criminal activity' was substantially expanded by embracing any kind of criminal activity in the commission of such serious crimes as:

- any of the drug-related offences defined in Article 3(1)(a) of the Vienna Convention;[67]
- activities of criminal organisations as defined in Article 1 of Joint Action 98/733/JHA;[68]
- fraud, at least serious, as defined in Article 1(1) and Article 2 of the Convention on the protection of the European Communities' financial interests;[69]
- corruption;
- an offence which may generate substantial proceeds and which is punishable by a severe sentence of imprisonment in accordance with the penal law of the Member State.

One of the major achievements of the Second Directive is the expansion of the categories of institutions and professions that may prove to be vulnerable to money laundering. Apart from 'credit' and 'financial' institutions, the Directive extended its reach towards the following legal or natural persons acting in the exercise of their professional activities: auditors, external accountants and tax advisors; real estate agents; notaries and other independent legal professionals;[70] dealers in high-value goods, such as precious stones or metals, or works of art, auctioneers, whenever payment is made in cash, and in an amount of EUR 15 000 or more; and casinos.[71] The contribution of the Directive also lies within the widening scope of 'criminal activity' by means of acknowledging a more extensive range of predicate offences.

Notwithstanding all positive aspects of the amended Directive, it was not capable of accommodating rapid changes in the dynamic field of money laundering and thus it was subject to the revision even before most of the EU Member States could implement it into their national legislation.

EU Third Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing: its implementation in the UK and Denmark

The very last Third Directive was adopted in the aftermath of the traumatic post 9/11 events, which brought along some sweeping changes into the anti-terrorist legislation.[72] The renewed objective was not only to protect the financial system from money laundering, but also to guard the financial stability against terrorist financing. In somehow discordant words, the Directive sets out that "massive flow of dirty money can damage the stability of the financial sector", whereas "terrorism shakes the very foundations of our society".[73] The link between those two crimes does not seem to be too apparent, as well as the objective behind tackling those two very different crimes in the very same Directive.[74] The EU Directive was very much inspired by the revision of the FATF Recommendations, which focused on combating money laundering and terrorist financing.

Criminal conduct

The criminal conduct is delineated in broader terms and implies any kind of involvement in the commission of a serious crime.[75] The list of such crimes encompasses (a) acts as defined in Articles 1 to 4 of Framework Decision 2002/475/JHA;[76] (b) any of the offences defined in Article 3(1)(a) of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; (c) the activities of criminal organisations as defined in Article 1 of Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union; (d) fraud, at least serious, as defined in Article 1(1) and Article 2 of the Convention on the Protection of the European Communities' Financial Interests; (e) corruption; (f) all offences which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, all offences punishable by deprivation of liberty or a detention order for a minimum of more than six months.[77] The list of crimes is reminiscent of the one in the repelled EU

Second Directive, but it also incorporates all terrorist and terrorist-linked offences and elaborates in greater detail on offences which entail deprivation of liberty or detention for a specific term. The *raison d'être* behind such expansion of the list of predicate offences is the enlargement of the scope of the Directive when it concerns the suspicious transactions reporting and strengthening cooperation among the EU Member States at the backdrop of any criminal activity that may involve money laundering or terrorist financing.

Beneficial owner (BO)

The Directive pinpoints the scarceness of legal provisions as to the relevant procedures on the *customer identification obligations* in the prior instruments. It emphasizes upon the need to introduce "more specific and detailed provisions relating to the identification of the customer and of any beneficial owner and verification of their identity".

The definition of 'beneficial owner' is coined in relation to *corporate entities*, and other *legal entities*, *inter alia* foundations, legal arrangements, including trusts, which administer and distribute funds. Broadly, the term 'beneficial owner' means a natural person(s) who *ultimately* owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted[78] Said definition was incorporated verbatim to the Danish Money Laundering Act.[79] There have been numerous grey areas exposed in various EU jurisdictions as to the understanding of such term. Under certain circumstances, it becomes cumbersome to identify and verify a beneficial owner. The notion of 'control' does not appear to be crystal clear and calls for more clarification. The suggestion was put forward by the latest external report commissioned by the EU to lower the threshold from 25% to 20% of the ownership interests or voting rights while defining a beneficial owner.[80] The concerns are also raised regarding the enormous amount of financial resources to identify the BO, especially in the context of complex cross-border structures.[81]

Politically Exposed Persons (PEP)

The term 'politically exposed person' (hereinafter - PEP) was not employed in prior legal instruments concerning money laundering and it had its initial appearance in text of the Third Directive, which defines it as 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 persons".[82] The inclusion of the PEP within the realm of the Directive is a milestone in preventing and combating money laundering offences committed by the privileged political

cliques that enrich themselves through domestic corrupt practices and then attempt to give monies legitimate appearance by channelling them into their off shore bank accounts.

The Danish Money Laundering Act incorporated the PEP definition literally from the text of the Third EU Directive. Denmark has not witnessed any major cases on the implication of the PEP into money laundering activities. Given the strong record of the country in the prevention of corruption in public sector, a relative small size of the jurisdiction and lack of attractiveness in eyes of PEP to store monies in Danish banks, Denmark would unlikely witness the rise of such type of cases in the nearest future. On the contrary, UK boasts a well-established reputation as the major financial hub and draws considerable financial funds into the city. There have been some prominent cases involving PEP of Nigeria and Zambia in the recent years that managed to channel millions of dirty money through UK banking system. As a stark contrast to the UK, Denmark is a country with a very strong transparency record that relies heavily on the centralized register of persons thus diminishing the risk of the possible abuse of the system by corrupted elements.

Among the apparent flaws in the PEP area, one can mention an obvious lack of public available information on PEPs and origins of their funds. The domestic PEPs equally present money launderings risks, notwithstanding the fact that most PEPs explore foreign off shore accounts to hide illegally obtained profits. The definition of "persons known to be close associates" appears to be too broad as well.[83] The rules on PEPs shall be clarified in greater detail at the regional and domestic levels in order to minimize the risks of money laundering activities by the said group of persons.

Customer due diligence (CDD)

The Directive provides in great details when the CDD measures are applicable, and enlists the grounds calling for the applicability of such measures. Firstly, the CDD measures are necessary while establishing a business relationship.[84] The occasional transactions, which amount to EUR 15 000 or more, are subject to the CDD measures, regardless whether such transaction is executed in a single operation or in several linked operations.[85] The CDD measures are applicable to the situations which arise out of suspicion of money laundering or terrorist financing, regardless of any derogation, exemption or threshold,[86] and in the cases of doubts about the veracity or adequacy of previously obtained customer identification data.[87]

The CDD measures may appear in a variety of forms such as (a) identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source; (b) identifying, where applicable, the beneficial owner and taking risk-based and adequate measures to verify his identity (…), taking risk-based and adequate measures to understand the ownership and control structure of the customer; (c) obtaining information on the purpose and intended nature of the business relationship; (d) conducting ongoing monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship (…).[88]

The provisions of Danish Money Laundering Act are very much consonant with the language of the Directive. The law delineates the requirements for establishing a business relationship both with a natural and a legal person; applies the risk-bases approach where applicable; requires the new proof of identity in the case of doubts as to the adequacy and veracity of previously obtained customer identification data; monitors the consistency of transactions in accordance with customer's or customer's business and risk profile.[89] In the case of failure to identify a customer, neither customer/business relationship may be established, nor a transaction may be carried out.[90]

The customer due diligence measures (CDD) provisions in UK law resonate with the respective provisions of the Directive by fully embracing the risk-sensitive approach towards the determination of customer's identity and a beneficial owner in each individual case.[91] The CDD measures are applicable in the cases of (a) establishing a business relationship; (b) carrying out an occasional transaction;[92] (c) suspecting money laundering or terrorist financing, and (d) doubting the veracity of adequacy of documents, data or information previously obtained for the purposes of identification or verification.[93] In the situations of inability to apply the CDD measures, the respective actors within the scope of these Regulations must refrain from carrying out a transaction with or for the customer through a bank account; establishing a business relationship or carrying out an occasional transaction with the customer. Moreover, they shall terminate any existing business relationship with the customer and consider whether they are under obligation to make a disclosure by Part 7 of the Proceeds of Crime Act 2002 or Part 3 of the Terrorism Act 2000.[94]

The proper fulfilment of CDD may prove difficult in the situations when it is challenging to apply know-your-customer requirements for bank institutions in cross-border settings. It is quite unclear what are the expectations laid down on the representatives of legal profession

as to the compliance with the CDD criteria. Likewise, it is vague what CDD measures shall be applicable to growing online betting and gaming industries.[95] The CDD requirements may prove to be costly and time-consuming for non-financial professions. The impediments to comply with the CDD requirements are particular visible in situations where stakeholders are confronted with constructions of an international dimension.[96] The special rules shall be tailored for various actors that abide by the CDD measures according to the law.

Simplified due diligence

The Directive also outlines the situations which do not call for the proper CDD measures and are therefore subject to the simplified customer due diligence. Obviously, derogation rules are inapplicable in the cases of the suspicion of money laundering or terrorist financing. It is within the discretion of the EU Member States whether they wish to impose the CDD measures upon (a) listed companies whose securities are admitted to trading on a regulated market (...) in one or more Member States and listed companies from third countries which are subject to disclosure requirements consistent with Community legislation; (b) beneficial owners of pooled accounts held by notaries and other independent legal professionals from the Member States or third countries provided their compliance with international standards; and (c) domestic public authorities.[97] Apart from aforementioned categories, the simplified due diligence format may be also applicable to some insurance or pension schemes, and electronic money.[98] The main requirement for the simplified customer due diligence is a *low risk* of money laundering or terrorist financing. The institutions and persons covered by the scope of the Directive are bestowed with the responsibility to establish whether the customer in fact qualifies for the applicable simplified due diligence measures.[99]

According to Danish law, the simplified customer due diligence measures are applicable to selected (i) life-assurance and pension contracts; (ii) electronic money; (iii) undertakings with its registered office in the EU, or a country with which the EU entered into financial agreement covered by the Directive, or a country outside the EU subject to combat money laundering and terrorist financing corresponding to the requirements in the Directive; (iv) an undertaking of securities admitted to trading on a regulated market; (v) Danish public authority; and (vi) beneficial owner who has funds in a joint client's account of a notary or a lawyer, provided that such notary or lawyer is subject to regulations corresponding to Danish Money-

Laundering Act. [100] The Danish FSA may remove exemptions applicable to the aforementioned categories on the request of the European Commission.[101]

The UK Money Laundering Regulations provide for an elaborate list of institutions and persons that may be subject to the simplified CDD measures, in particular: (i) **credit or financial institution** which is subject to the requirements of the money laundering directive; or it is situated in a non-EEA state which imposes requirements equivalent to those laid down in the money laundering directive and supervised for compliance with those requirements; (ii) **company** whose securities are listed on a regulated market subject to specified disclosure obligations; (iii) **independent legal professional** with the account product into which monies are pooled, provided the strict adherence to the money laundering and terrorist financing international standards in the non-EEA countries where the pooled accounts are held; and availability of information on the identity of the persons on whose behalf monies are held in the pooled account; (iv) **public authorities** in the UK; and (v) **child trust fund** within the meaning given by section 1(2) of the Child Trust Funds Act 2004. Furthermore, the simplified CDD measures are applicable to the following products: life insurance contracts with the certain annual or single premium […]; insurance contract for the purposes of a pension scheme where the contract contains no surrender clause and cannot be used as collateral; pension, superannuation or similar scheme which provides retirement benefits to employees […], and electronic money […].[102]

Regardless of the compliance of aforementioned jurisdictions with the provisions of the Directive, it is important that the simplified due diligence measures are based on the objective risk-assessment of the specified categories of stakeholders, and do not just mechanically transpose the provisions of the Directive into national legislation.

Enhanced due diligence

Having embraced the risk-assessment strategy towards money laundering and terrorist financing, the Directive sets out the requirements of the enhanced customer due diligence. In fact, the need for the enhanced customer due diligence may be triggered by the fact that the customer has not been present for identification purposes;[103] in respect to cross-frontier correspondent banking relationships with respondent institutions from third countries;[104] in respect to transactions or business relationships with politically exposed persons residing in another Member State or a third country.[105] The Member States are also obliged to prohibit

credit institutions form entering into or continuing relationship with a *shell bank*,[106] which is defined as a "credit institution, or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is unaffiliated with a regulated financial group".[107]

The Danish law mirrors the same requirements on the applicability of enhanced due diligence as stipulated in the Directive. The MLA elaborates in greater detail what adequate measures shall be undertaken by respective institutions and professionals to address the aforementioned scenarios.[108] Likewise, the UK Money Laundering Regulations discuss the enhanced due diligence measures in a similar fashion.[109]

Reporting obligations

The Third Directive covers a wide range of institutions and professionals that are requested to fulfil their reporting obligations on the suspicion of money laundering and terrorist financing to the designated organs and fully comply with the provisions of the Directive such as (1) credit institutions;(2) financial institutions;(3) legal or natural persons acting in the exercise of their professional activities.[110]

The Danish Money Laundering Act fully embraces the scope of the Directive and extends its reach to the following actors: (1) banks; (2) mortgage-credit institutions; (3) investment companies; (4) investment management companies; (5) life assurance companies and lateral pension funds (nationwide occupational pension funds); (6) savings undertakings; (7) electronic money institutions; (8) insurance brokers, when they act in respect to life assurance or other investment-related insurance activities; (9) foreign undertakings' branches in Denmark;[111] (10) investment associations and special purpose associations, collective investment schemes, restricted associations, professional associations and hedge associations; (11) undertakings and persons that commercially carry out activities involving currency exchange; (12) undertakings and persons that commercially carry out one or more activities mentioned in the Annex 1 to this Act; (13) lawyers;[112] (14) lawyers when they carry out a financial transaction or transaction concerning real estate on behalf of their client and at the client's expense; (15) state-authorised public accountants and registered public accountants; (16) authorised state agents; (17) undertakings and persons that otherwise commercially supply the same services as the groups of persons enlisted under paras. 13-16 of this Section, including tax advisors and external accountants; (18) providers of services of

undertakings[113]; (19) Danmarks Nationalbank (Denmark's Central Bank), insofar as it carries out activities corresponding to banks (…).[114] Likewise, retailers and auctioneers are covered by the scope of the Money-Laundering Act pursuant Section 1.[115] The Act stipulates that the Danish FSA may relieve certain categories enlisted in the aforementioned paras. 1-12 from their reporting obligations in accordance with the Article 40 of the EU Third Money Laundering Directive.[116]

While most of the reporting institutions and professionals are easily identifiable, some clarification is needed to specific categories, i.e providers of services, foreign exchange bureaus, money remittance systems (including alternative money remittance systems) etc. The 2009 SØK Report explicates that travel agencies', hotels' and ferries' foreign exchange bureaus are equally covered by the legal provisions of the Act.[117] Said companies falling under the scope of the Danish Money Laundering Act were notified by the Danish Commerce and Companies Agency on their obligation to report in September 2009.[118] Given the spearheading of money transfer systems (beyond Western Union and MoneyGram) along with the alternative remittance systems, the SØK report requires to exercise particular vigilance in such situations in order to avoid prospective abuses.[119]

Likewise, **the Money Laundering Regulations 2007** extend their reach to the number of actors such as credit institutions, financial institutions, auditors, insolvency practitioners, external accountants, tax advisers, independent legal professionals, trust or company service providers, estate agents, high value dealers and casinos.[120] It is apparent that Danish and UK laws diligently follow the requirements of the Directive, but these are the reporting methods and respective monitoring mechanisms of such compliance that embrace the peculiarities of each domestic jurisdiction. There was some notable jurisprudence developed in the UK on the reporting obligations of stakeholders covered by the provisions of POCA and Money Laundering Regulations.

In the case of **Shah v HSBC Private Bank (UK) Limited**, the High Court was concerned on appeal with the provisions of the Proceeds of Crime Act 2002 in regards to the obligations of a bank to notify the authorities if they suspect a customer of money laundering.[121] The appellant, Mr Shah claims damages against his bank for failure to comply with his instructions as to the transfer of his financial funds and alleges other breaches of duty.

Mr Shah, a businessman with interests in (among other places) Zimbabwe, has had an account with the defendant bank in London ("HSBC" or "the bank") for some years since 2002. The

bank refused to follow the client's instructions to transfer his funds to another bank in Geneva and Zimbabwe on the grounds of its "compliance with UK statutory obligations".[122] The Bank complied with its obligations to submit a Suspicious Activity Report (sometimes called an "SAR") disclosing to the statutory authority that they suspected the money was criminal property and asking for permission to perform the transaction.[123] Given the concerns of the bank in Zimbabwe of investigations of money laundering charges in the UK, the client's investments were moved from their then high-yield to low yielding treasury bonds.[124] As a result, Mr Shah issued and served Particulars of Claim against HSBC alleging that, by reason of the bank's failure to execute his instructions and other failures such as the failure to provide information to which he was entitled, he had had his assets seized by RBZ and had lost the equivalent of around $331 million in loss of interest.[125] The respondent served its defence (1) that it suspected that each of the four transactions, which it had failed immediately to effect, constituted money laundering (2) that it had made an authorised disclosure seeking consent to effect them under section 338 of the Act of 2002 and (3) that it would have been illegal for it to effect them any earlier. The respondent also alleged that it could not comply with Mr Shah's instructions any earlier than it did.[126]

The Court ruled that the appellant[127] would have to demonstrate the bank did not act in good faith before civil liability could be entertained. It also dismissed claims for breach of contract and breach of confidentiality on the grounds that banks do not need reasonable grounds before making a suspicious activity report. It substantiated its argument by referring to the earlier jurisprudence, in particular R v Da Silva [2007] 1 WLR 303.[128]

In the case of RCPO and C, the respondent C is a solicitor and equity partner in a firm of solicitors, who was nominated as the firm's nominated anti-money laundering officer. Respectively, it was C's professional obligation to report to the National Criminal Intelligence Service or other appropriate authority any transactions through the firm's client account that gave rise to suspicion of money laundering. The respondent did not submit such reports during the period 2001 to 2004.[129] The prosecution case is that a client of the firm, Amer Munir, committed a VAT acquisition tax fraud using a company which purported to buy and sell £40m pounds worth of mobile telephones in 2001, but did not pay estimated amount of £6.5m VAT.[130] The prosecution asserts that the solicitor's firm was used by the client to launder money fraudulently obtained from the VAT fraud through the firm's client account for the purpose both of acquiring property and of transferring money between companies in

which Munir had an interest.[131] The respondent was charged with the six money laundering offences.[132]

The Court fleshed out the major constitutive elements to be proved in money laundering cases, such as (i) proof that the sums passing through the firm's client account were in fact client's proceeds of crime; (ii) evidence that C was concerned in the arrangements or transactions alleged; and (iii) facts that C knew or suspected that their purpose was to acquire, retain, use or control criminal property by or on behalf of the client.[133] The respondent was cleared of the money laundering charges given the judge's reasoning that a fair trial was not possible due to delays in bringing the prosecution. According to the judge the "undue delay had created incurable prejudice in an examination of the respondent's case'.[134] The prosecution was refused a leave to appeal the trial judge's ruling".[135]

The major significance of the jurisprudence in the UK courts is the provision of guidance to the institutions concerned as to the scope and nature of their reporting obligations. The crucial element to prove in the court of law is the existence of knowledge or suspicion of money laundering activities.

Financial Intelligence Unit (FIU)

The Directive lays down the obligation upon Member States to establish a FIU for the purposes of combating money laundering and terrorist financing.[136] The framework of such establishment is devised in the form of a central national unit, which is responsible for receiving, analysing and disseminating disclosures of information in regards to potential money laundering, potential terrorist financing.[137] To fulfil their obligations, such units are guaranteed direct/indirect access to the requisite financial, administrative and law enforcement information.[138]

The institutions and persons which are covered by the scope of the Directive are obliged to cooperate fully with the designated FIU by (i) promptly informing such unit, on their own initiative, when they know, suspect, or have reasonable grounds to suspect that money laundering or terrorist financing is being committed or attempted; (ii) by promptly furnishing the FIU, at its request, with all necessary information, in accordance with the procedures established by the applicable legislation.[139] The disclosure of such information by the respective institutions and persons does not in any case constitute a breach of any restriction on disclosure of information imposed by contract or any legislative, regulatory or

administrative provision.[140] The fact that the information was communicated to the respective FIU on the suspicion of money laundering or terrorist financing shall not be disclosed to the customer concerned or other third persons.[141]

It is within discretion of the EU Member States whether they impose the aforesaid obligations on notaries, independent legal professional, 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.[142]

The Danish authority handling various cases ranging from tax fraud, investment fraud, corruption, money laundering to terrorist financing is known as the Office of the State Prosecutor for Serious Economic Crime (SØK). The new developments and tendencies in the field of serious organized crime prompted the establishment of the separate section, which encompasses the Money Laundering Secretariat, Economic Crime Intelligence Unit and Asset Recovery Group. The Money Laundering Secretariat, which serves as the Danish Financial Unit, is a fully-fledged unit under the State Prosecutor for Serious Economic Crime since 1993. The Unit is under responsibility to collect, register, transfer and process information involving money laundering and terrorist financing.[143] The 'beauty' of the Danish FIU is that it is a hybrid organ which combines both law enforcement and prosecutorial features. Such organizational structure contributes to more efficient and less time-consuming investigations of cases where there is a reasonable suspicion of money laundering activities or terrorist financing.

The Serious Organised Crime Agency (SOCA) is a relatively young intelligence-led law enforcement agency with harm reduction responsibilities towards individuals, communities, society, and the UK as a whole that are respectively affected by serious organised crime.[144] SOCA assumed its full functions on 1 April 2006 and builds up its work on the five major pillars: (i) continued emphasis on building our knowledge and understanding; (ii) attacking criminal assets at home and overseas; (iii) increasing the risk to organised criminals through proven techniques and using new tools; (iv) collaboration with partners; and (v) building capability to make a difference.[145] The agency's work is not solely limited to the asset confiscation or freezing of criminals' assets, but much work evolves around building

knowledge in the field and fostering greater cooperation with partners domestically as well as internationally.

The SOCA's functions – set out in the Serious Organised Crime and Police Act 2005 (SOCAP) and Serious Crime Act 2007 – incorporate (i) prevention and detection of serious organised crime; (ii) reduction of organized crime in other ways; (iii) mitigation of its consequences, and (iv) collection, storage, analysis, and dissemination of information about organized crime.[146] It is worthy to mention that organised crime is identified in the National Security Strategy as a major threat to the UK with broad estimates of the economic and social costs to the between £20 billion and £40 billion annually.[147]

SOCA is divided into four functional directorates with each specialised in particular aspects of the work:

- **Intelligence**, which gathers and assesses information and uses it to produce the best understanding of organised crime thereby improving options to enable the UK's response in reducing the harm it causes.
- **Enforcement**, which provides a flexible operational response to threats, building high quality criminal cases against key targets and serious organised crime groups and using new tools to undermine criminal businesses.
- **Intervention**, which utilises a wide range of skills and techniques to enhance and support SOCA's capability in the UK and abroad.
- **Corporate Services**, which provides and develops infrastructure for SOCA to maintain and improve operational capability. [148]

Both Danish and UK FIU(s) collaborate with the extensive list of public and private authorities to ensure the full compliance by all stakeholders with the respective legal provisions directed at preventing and combating the money laundering phenomenon. Moreover, said FIU(s) foster greater international cooperation by active contribution to the work of Europol, Eurojust, Egmont Group, FATF etc.

Cooperation with the public and private sectors

The article on the cooperation embedded in the text of the Directive states in rather general terms that the EU Commission shall lend assistance to facilitate coordination, including the exchange of information between FIUs within the Community.[149] The EU Member States seek cooperation at national, regional and international levels. In fact, close cooperation at the

national level is deemed crucial for securing effective results and meeting international obligations in the field.

The Danish Money Laundering Secretariat works cooperates closely with a number of public authorities and institutions, *inter alia* the Danish Financial Supervisory Authority (FSA), Central Tax Administration, Ministry of Justice, Danish Commerce and Companies Agency, Danish Agency for Enterprise and Construction, Danish Bar and Law Society, State Prosecutor for Serious Economic Crime and various police districts.

The **Danish Financial Supervisory Authority** (FSA) is a supervisory body, which administers the Money Laundering Act and monitors institutions and individuals that are subject to the duty to report information.[150] The FSA is an integral part of the Ministry of Economic and Business Affairs, which acts as a secretariat for the Financial Business Council, the Danish Securities Council and the Money and Pension Panel. Its tasks involve not only supervisory functions but also analytical work. Apart from the supervision of compliance with financial legislation by various actors, it also contributes to the preparation of financial legislation and dissemination of knowledge about the financial sector.[151] The **Money Laundering Forum (HvidvaskForum)**, which was established under the FSA auspices, is a venue where public authorities assemble to elaborate on money laundering issues along with the fulfilment of international obligations in the field. Such Forum involves representatives from the Ministry of Foreign Affairs, Ministry of Justice, FSA, Danish Commerce and Companies Agency, Danish Agency for Enterprise and Construction, Central Tax Administration, Danish Bar and Law Society and State Prosecutor for Serious Economic Crime.[152] The Forum promotes closer cooperation among aforementioned authorities, which are responsible for performing tasks within the money laundering area, including measures directed at the prevention of such crime, and financial sanctions area, such as the implementation of the respective UN and EU acts. [153]

The Money Laundering Secretariat collaborates closely with the **Central Tax Administration**, which communicates the suspicion of money laundering and terrorist financing since it administers the extensive financial data concerning individuals as well as business enterprises.[154]

The cooperation with the **Ministry of Justice** is channelled through the money laundering steering group, which was appointed by the Ministry to deal with the issues of general importance in the field and coordinate its interaction with police districts and other bodies.

The cooperation with **police** also involves the direct work of the State Prosecutor for Serious Economic Crime with various **police districts** in the field of money laundering.

The **Danish Bar and Law Society** is an organization that unites under its umbrella around 5,000 legal professionals entitled to practice law in Denmark or abroad.[155] It also acts as a supervisory institution that may communicate reports obtained from legal professionals covered by the provisions of the Money Laundering Act to the Money Laundering Secretariat. Given the fact that **casinos** are not spared from reporting obligations, the Secretariat also collaborates with casinos' public inspectors and supervisory police representatives. [156] The cooperation of the Secretariat is particularly important with the **Danish Agency for Enterprise and Construction**, for the latter administers freezing of funds.

The Money Laundering Secretariat was commended by the FATF for improving the coordination of its national AML/CFT activities by establishing two independent venues, namely Money Laundering Forum and Money Laundering Steering Group that serve as a meeting and debate point for all public authorities involved in the prevention and fight against money laundering.[157]

The Secretariat focuses to a great extent on the cooperation with the private sector, in particular with the financial and bank institutions by participating in the **Money Laundering Group of the Danish Bankers' Association**. The group also attracts the representatives of the FSA, Danish Agency for Enterprise and Construction, which is a debate forum of major obstacles faced by the financial sector in terms of the implementation of required domestic and international standards.[158] The Secretariat may also hold occasional meetings with banks and money remittance companies.[159]

Given the reputation of the UK as one of the major international financial hubs, there have been considerable resources pumped into the prevention and fight against financial crimes. The sophisticated framework of various public authorities has been designed to tackle various forms of financial crime and to build extensive knowledge on handling such types of crimes. It is apparent that the foreign investments can be allured to the City only when the solid reputation of financial security and stability can appeal to prospective investors. Due to the space limitations of this project, it is unfeasible to provide a complete picture of cooperation between various public and private authorities involved in the prevention and fight against financial crime in the UK. The provided overview of cooperation mechanisms shall be rather treated as a sketch, but not as the exhaustive mapping of various cooperation activities.

SOCA, in its capacity as the UK's FIU, cooperates with various UK law supervisory and enforcement partners, notably FSA, The National Fraud Intelligence Bureau (NFIB), UK police forces, HM Revenue and Customs (HMRC), the UK Border Agency (UKBA) etc. It also supports the operation of the Child Exploitation and On-line Protection Unit (CEOP).[160] SOCA fights financial crimes in partnership with the FSA that acts as the main supervisory body in the UK. The FSA has substantially overhauled its supervisory activities since the financial stability of the country was shaken to its core by the 2008 financial crisis. The statutory objectives of the agency are directed at delivering the following major outcomes:

- financial stability and supervision of firms;
- market confidence – maintaining confidence in financial markets;
- consumer protection and education – securing the appropriate degree of protection for consumers; and
- reduction of financial crime – reducing the extent to which it is possible for a business to be used for a purpose connected with financial crime.[161]

The FSA handbook of impressive volume provides a clear guidance to businesses, banks, insurance companies, investment firms, mortgage and home finance firms etc. (the list is not exhaustive) how to comply with the legal rules governing the conduct of their activities in order to avoid any possible abuse of aforementioned institutions for criminal purposes.[162] The SOCA and FSA were praised for excellent cooperation in sharing intelligence and experience in enforcement techniques by the FSA Director of Enforcement and Financial Crime, Margaret Cole.[163] It is noteworthy to mention that those two agencies carried out their first joint operation in March 2010 which led to the arrest of six city professionals on suspicion of their implication in the long-running insider dealing ring. [164]

The National Fraud Intelligence Bureau (NFIB) is the most sophisticated police intelligence systems in the world, which uses fraud reports for the purposes of catching notorious fraudsters and identifying various patterns of fraud. The agency is a national leading institution run by the City of London Police that serves as a repository for all fraud reports.[165] According to the data posted on the NFIB website, fraud has cost the UK economy more than 30 billion pounds.[166] The NFIB works with multiple actors tackling various types of fraud and assisting to build regular patterns of fraudulent behaviour. Most notably, it cooperates with SOCA, FSA, Action Fraud[167], City of London Police, Investment Fraud Bureau, Home Office, Her Majesty's Revenue and Customs (HMRC) etc.[168]

Terrorist financing: Introductory Remarks

The transnational nature of the crime of terrorist financing leads to a great degree of cooperation between the EU and UN bodies directed at preventing the flow of financial resources for the purpose of terrorist financing. In fact, the EU Council Regulations impose a freeze of funds and financial resources of persons associated with Usama bin Laden, the Al-Qaida network and Taliban in compliance with the UN Security Council Resolutions, and other actors associated with terrorism activities.[169] The relevant domestic institutions are requested to check whether any persons listed in the Annex to the respective Regulations maintain any accounts or otherwise hold any funds or economic resources. If such resources are respectively located, the institutions are obliged to freeze such accounts, refrain from dealing with the funds or make them available to such persons.[170]

Terrorism Financing and the UK

The controversial **Terrorism Act 2000** was adopted as the leading authority in the battle against terrorism including terrorist financing. The Act criminalizes any financial activity that contributes to the crime of terrorism. The definition of 'terrorist property' involves money or other property which is likely to be used for the purposes of terrorism (including any resources of a proscribed organisation); proceeds of the commission of acts of terrorism, and proceeds of acts carried out for the purposes of terrorism.[171]

The crime of **fund-raising** may be implemented through a variety of the *actus reus* forms: (a) a person invites another to provide money or other property; (b) a person receives money or other property; and (c) a person provides money or other property. All aforementioned acts must be accompanied by the supporting *mens rea* standard, which implies that a person knows or has reasonable cause to suspect that money or property will or may be used for the purposes of terrorism.[172]

The crime of **use and possession** implies that a person commits an offence if uses/possesses money or other property for the purpose of terrorism, and he intends that it should be used, or has reasonable cause to suspect that it may be used, for the purposes of terrorism.[173] The **funding arrangement** crime means that a person 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 he knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism.[174]

In the context of terrorist financing, the crime of **money laundering** implies that a person 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.[175] The defence may be applicable to the crime of money laundering in the context of terrorist financing if a person did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.[176]

The act also prescribes a **disclosure regime** applicable to any person who believes or suspects that another person committed any of the aforementioned offences and bases his belief or suspicion on information received in the course of a trade, profession, business or in the course of his employment.[177] The exceptions may be relevant to the representatives of the legal profession if such information is obtained in privileged circumstances.[178] The information is deemed to have been obtained in privileged circumstances (a) from a client/client's representative in connection with the provision of legal advice by the adviser to the client; (b) from a person seeking legal advice from the adviser, or from the person's representative, or (c) from any person, for the purpose of actual or contemplated legal proceedings. However, such information shall not come to the knowledge of the legal professional with a view of furthering a criminal purpose.[179]

The anti-terrorism legislation in the UK encompasses a raft of acts which extend, complement the existing regime or introduce the new aspects of the prohibition of terrorism and terrorist financing, *inter alia* Anti-Terrorism, Crime and Security Act 2001, Prevention of Terrorism Act 2005, and Terrorism Act 2006. The controversial Anti-Terrorism, Crime and Security Act 2001 was employed by the UK authorities to freeze assets held in Britain by a troubled Icelandic bank, ***Landsbanki Islands hf***, while Iceland was caught in midst of the world financial turmoil.[180] The Treasury employed the anti-terrorist legislation to take control of the bank's assets with the justification that the bank's collapse was detrimental to the UK economy. In the diplomatic row between the UK and Icelandic governments, the Icelandic Prime Minister accused Britain of performing an "unfriendly act" against his country by using antiterrorist legislation to seize Icelandic accounts.[181] The extension of terrorist laws to the freezing of assets of the troubled bank is a worrying development demonstrating far-reaching consequences of anti-terrorism laws in the democratic society.

Terrorist financing and Denmark

The legal provision on terrorist financing in Danish law is rather extensive as it prohibits any activities committed by "a person who directly or indirectly provides financial support; procures or collects means; places money, other assets of financial or other similar means at the disposal of a person, a group or an association, which commits or intends to commit acts of terrorism as stipulated in the Sections 114 or 114 a of the Danish Criminal Code."[182] The *actus reus* of terrorism is broadly defined in Article 114 of the Criminal Code with a wide spectrum of underlying acts extending to homicide, extreme violence, arson, seizure of transportation means etc.[183] However, the crucial accompanying element of the crime of terrorism is the *mens rea* that involves "intent to frighten a population to a serious degree or to unlawfully coerce Danish or foreign public authorities or an international organization to carry out or omit to carry out an act or to destabilize or destroy a country's or an international organization's fundamental political, constitutional, financial or social structures". It is crystal clear from the definition that the crime of terrorism is a specific intent crime that requires a mental element of a crime going beyond the material elements of a crime.

The Money Laundering Secretariat is in charge of communicating all terror lists to the financial sector institutions. The latter are obliged to report to the Secretariat all cases of the identification of their customers on those terror lists. The Secretariat scrutinizes such reports and determines any possible investigative steps or seizure of such funds.

The SØK annual report mentions the intimate interrelation between money laundering and terrorist financing. The gravity of the crime of terrorist financing prompts the collaboration of the Money Laundering Secretariat with the Danish Security Intelligence Service, Ministry of Foreign Affairs and Danish Agency for Enterprise and Construction. The Secretariat in liaison with the Danish Security Intelligence Service set up a steering group that deals with general matters in regards to the crime of terrorist financing and investigation-related issues.[184]

There have been two major cases on terrorist financing adjudicated in Denmark. Though said cases did not involve substantial financial resources directed at the financing of terrorism, but they are interesting from a legal standpoint of the domestic jurisdiction dealing with the transnational in nature crime. The very first case dealt with the six accused who attempted to provide financial support to the PFLP (Popular Front for the Liberation of Palestine) and FARC (fuerza Armadas Revolucionaria de Colombia) through so-called 'Lovers and Fighters' organization that generated proceeds from the sale of T-shirts.[185] The group managed to

collect a rather minor sum of 25 000 DKK and intended to send those funds to the aforementioned organizations. The media voiced concerns over the costs of the case to the State with the budget of approximately 1 000 000 DKK in comparison with the insignificant amount of collected funds.[186]

All accused were acquitted by the court of the first instance (Københavns Byret), but the High Court (Landsret) revised the verdict and convicted all accused of the various terms of imprisonment ranging from six months to two years. The case was further brought up for the consideration before the Danish Supreme Court (Højesteret). The Supreme comported in its final judgment with the arguments stipulated by the High Court and concluded that acts committed by the six accused were covered by the respective section 114§ b of the Danish Criminal Code (Straffelov).[187]

The Supreme Court adopted a rather bold approach in the analysis surrounding the activities of the PFLP and FARC. It elaborated on the illegal activities of aforesaid organizations that were infamously implicated in the attacks on civilians, kidnapping and extreme violence and ruled that such activities were covered by the respective provisions § 114. The defendants' arguments on the lack of adherence to democratic traditions by the states of Israel and Colombia, which justified in their opinion the existence of the PFLP and FARC, were respectively rejected. Likewise, arguments of the defendants on the status of the PFLP and FARC as state-like entities, that could exercise use of force as reserved for States under international law, were respectively discarded by the Court. Finally, the Supreme Court comported with the qualification of the accused conduct under § 114 of the Danish Criminal Code reached by the High Court and entered just minor modifications of the respective sentences.[188]

Another interesting case on the Danish soil concerned the financing of charities based in the West Bank and Saudi Arabia that were allegedly part of Hamas. The disagreement among six judges who adjudicated the case in the High Court arose in regards to whether said charity organizations had any links to Hamas. Given the equal division of judges' votes on the panel and principle of favouring accused in the case of doubt, the two accused were acquitted on all charges of terrorist financing. The judges did not find any supporting evidence that the collected funds in Denmark were distributed among the families of suicide bombers and incarcerated Hamas militia members.[189]

Financial Fraud: Introductory Remarks

The legal framework to prevent and combat fraudulent activities within the EU was initially drawn under the third pillar, which is no longer existent following the entry into force of the Treaty of Lisbon. The EU legal toolkit involves the Convention on the Protection of the European Communities' Financial Interests[190] and Protocols thereto, but it is not confined only to the aforementioned instruments.[191]

The definition of 'fraud' stipulated in the Convention on the Protection of the EU's financial interests is formulated in relation to expenditure[192] and revenue.[193] Each Member State is under the obligation to take all necessary and appropriate measures to transpose the aforementioned definitions into their national criminal law in such a way that the aforementioned conduct constitutes criminal offences.[194] The participation, instigation or attempt to commit any aforementioned offences shall also be criminalized.[195] The criminal offence of fraud, which can be committed either in the form an act or omission, is accompanied by 'intent' as the requisite *mens rea* standard.[196]

The Convention also outlines the criminal penalties that shall be imposed in serious fraud cases, including deprivation of liberty.[197] The discretion as to the imposition of penalties in minor fraud cases is respectively reserved to Member States.[198] The legal provisions of the Convention do not spare heads of businesses from criminal responsibility on fraud charges, when they are in a position of power to take decisions or exercise control within their business.[199]

The exercise of jurisdiction in serious fraud cases may prove to be particularly tricky when the crime has occurred in a number of competing jurisdictions. Each Member State shall exercise jurisdictions when fraud, participation in fraud or attempted fraud is committed in whole or in part within its territory. The jurisdiction also extends to cases when the benefit from any fraudulent activity was obtained at the territory of the State concerned. A person who is an accomplice to a crime by means of knowing assistance or inducement can also be tried in a Member State when such activities occur. The active nationality principle applies to a person who is a national of the Member State concerned, provided that the law of that Member State may require the conduct to be punishable also in the country where it occurred.[200]

If a Member State does not extradite its own nationals, it is required to establish its jurisdiction over the fraud offences, notwithstanding the commission of a crime by its

nationals outside its own territory.[201] However, a Member State may not refuse extradition in the event of fraud affecting the European Communities' financial interests for the sole reason that it concerns a tax or customs duty offence.[202]

EU Member States are under an obligation to cooperate in the investigation, prosecution and enforcement of penalties, when the fraud offence involves at least two jurisdictions, by means of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another Member State.[203] In the case of competing jurisdictions as to the prosecution of the fraud offence, the Member States shall cooperate in deciding *which* shall prosecute the offender or offenders with a view to centralizing the prosecution in a single Member State where possible.[204]

The First Protocol aims to ensure that criminal laws of EU Member States contribute effectively to the protection of the EU financial interests. It focuses on the achievement of the uniformity of national laws by the criminalization of acts of corruption detrimental to the EU financial interests.[205] The Protocol provides the respective definitions of the active[206] and passive corruption[207] and embraces the legal clause that requires EU Member States to take all necessary measures to ensure the criminalization of aforementioned forms of corruption.[208] The Protocol is equally applicable to the nationals of the EU Member States and Community officials acting in their official capacity.[209] It also stipulates legal provisions on the adequate penalties, exercise of jurisdiction and possible adjudication of any disputes arising out of the provisions of the Protocol in the Court of Justice.[210]

Another Protocol elaborates on the jurisdiction of the Court of Justice to give preliminary rulings on the interpretation of the Convention on the protection of the European Communities' financial interests and the First Protocol thereto.[211] The Protocol stipulates the conditions that enable Member States to submit the declaration on the acceptance of the jurisdiction of the Court as to the interpretation of the respective provisions of the Convention and the First Protocol.[212]

The Second Protocol, which is still subject to the ratification processes in EU Member States, revolves around responsibilities of legal persons for fraud, corruption and money laundering and adequate sanctions.[213] Another important legal clause addresses the necessity of measures to be undertaken by EU Member States in regards to the seizure and the confiscation of the instruments and proceeds of fraud, active and passive corruption and money laundering, or property the value of which corresponds to such proceeds.[214]

In order to boost the effectiveness of the fight against fraud and other illegal activities detrimental to the financial interests of the Communities, the EU Commission established the European Anti-fraud Office (OLAF),[215] which replaced the Task Force for Coordination of Fraud Prevention and take over all its tasks. The Office carries out external administrative investigations for the purpose of strengthening the fight against fraud, corruption and other illegal activities adversely affecting the Community's financial interests. Likewise, the Office performs the internal administrative investigations in the areas of combating aforesaid crimes and investigations thereof. [216]

Financial Fraud and Denmark

Danish Criminal Code encompasses a broad provision of 'fraud' and a more specific one that was tailored to ensure the compliance with the PFI Convention.[217] The general provision criminalizes acts of a person in serious breach of taxation, customs or subsidies legislation committed with a *purpose* to obtain an unlawful gain for himself or other persons.[218]

The supplementary legal provision particularly deals with the criminal offence of fraud against EC's financial interests.[219] The *actus reus* involves (i) providing incorrect or misleading information; (ii) concealing information, including the failure to disclose such information. Said acts must be accompanied by the supporting *mens rea*, in particular *intention* to attain or evade a payment. The offence takes place in the context of decisions regarding payment/repayment of customs, subsidies or other duties from Danish authorities or EU institutions.[220] It implies that the crime occurs when national or EU institutions' funds are involved, or a combination of funds thereof. The tax fraud against national or EU interests does not fall within this Article, but is respectively dealt with in §289. Hence, the VAT fraud, which is widely exploited by various criminal elements within the EU borders, cannot be prosecuted under this provision of the Criminal Code.

Though law does not apply to funds obtained for private use or from public institutions of other countries, such conduct may well fall under § 279 of the Criminal Code.[221] The major difference between the fraud offences in § 279 and § 289a lies in the supporting *mens rea* of a crime. Pursuant § 279 a person exploits deception to achieve the coveted result, which is not required under § 289a.[222] Article § 289a is solely applicable when other legislation does not contain an equivalent prohibition.

The respective §289a also criminalizes any acts of a person who uses illegally obtained benefit from aforementioned payments or uses such payments for other purposes than originally granted for.[223] It is apparent from aforesaid provisions that Danish Criminal Code criminalizes 'fraud' committed in relation to revenue as well as expenditure. The law explicitly states that serious nature of fraud against EC's financial interests is subject to punishment as delineated in § 289.[224] The penalties provided in § 289a are respectively lighter than those in §289. They include the deprivation of liberty for up to one and a half years or a fine. [225]

Though the EU Report on the implementation of the PFI Convention notes the full compliance of Denmark with the requirements of the Convention by means of the criminalization of fraud against EC's financial interests, it is concerned that the compliance may fall short in the form of differences in the offences concerning VAT fraud.[226]

The SØK reports mention few cases of VAT fraud; fraud which involved selling the same apartment to several persons; a case when a person was a victim of fraud and transferred the amount of 700,000 DKK to other EU countries within a short period of time;[227] Nigerian scam fraud[228] etc.

Financial Fraud and the UK

The leading authority on combating fraud is the Fraud Act 2006 that abolished all deception offences prescribed in the Theft Act 1968 and 1978, including the Theft Amendment Act 1996. The recently adopted Act provides for a broad definition of fraud, which encompasses various forms of *actus reus*, and also retains the offence of conspiracy to defraud. Most commentators consider the introduction of a general fraud offence anew as a greater advantage that shifts the focus of the offence from whether a person's deception caused a specific result to whether such conduct was fraudulent *per se*.[229] It was also noted in the Annex to the EU report that provided definition of a general fraud offence harmonizes with the one enshrined in the PFI Convention. [230]

According to the 2006 Act, the offence of fraud may be committed by means of false representation, failing to disclose information and abuse of position.[231] It is argued that such broad formulation of fraud offences was drafted deliberately in order to evade technicalities.[232] The offence of fraud by false representation involves a person who dishonestly makes a false representation, and intends, by making such representation, to make a gain for himself or another, or to cause loss to another or to expose another to a risk of

loss.[233] The 'representation' means any representation as to fact or law, including a representation as to the state of mind of the person making the representation, or any other person.[234] The offence of fraud by failing to disclose information implies that a person dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and intends, by failing to do so, to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.[235] The very last offence of fraud involves a person who occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person. The former dishonestly abuses that position, and intends, by means of the abuse of that position, to make a gain for himself or another, or to cause loss to another or to expose another to a risk of loss.[236]

The Act was amended as to include the offence of participation in fraudulent business carried on by sole trader. A person is guilty to such offence is he is knowingly a party to carrying on of a business by a person who is outside the reach of section 993 of the Companies Act 2006 (offence of fraudulent trading), and with intent to defraud creditors of any person or for any other fraudulent purpose.[237]

The most serious fraud cases are handled by the Serious Fraud Office (hereinafter - SFO), which is an independent Government department investigating and prosecuting serious or complex fraud cases and corruption.[238] The Office provides some hints as to the types of situations that are of major interest to its work, in particular cases involving a loss of over a million pounds, politically sensitive cases and situations with a significant impact on the economy or a high level of complexity. The Office deals with the investigation of the following types of fraud, *inter alia* investment fraud, bribery/corruption, corporate fraud, and legal aid fraud. Notwithstanding that the SFO had a rocky start of its work with a low conviction rate, it has managed to improve its work by revamping its approach to the investigation of serious fraud cases and building stronger cases (91% conviction rate according to the latest report).[239] The SFO secured convictions in some landmark cases, including the one against four BCCI executives and shipping magnate, Abbas Gokal, implicated into £800 million banking fraud; and the case against Peter Clowes who was a mastermind of £17 million investment fraud. [240]

Investment fraud is a sophisticated type of fraud that wrecked havoc worldwide. The most world's notorious fraudster, Bernard Madoff, employed a pyramid Ponzi-scheme to defraud his clients that involved staggering $ 65 billion over the period of twenty years. The scamster

allured victims with unsubstantiated promises of consistently good returns. The SFO's website warns potential investors and refers to the number one rule in investments: "if it looks too good to be true - it probably is."[241] The SFO also warns of 'boiler rooms' fraud schemes that involve selling shares to investors in the sham or largely unsuccessful companies.[242] The FSA submitted to the jurisdiction of the Financial Services and Markets Tribunal in the major 'boiler room' case against the solicitor, Fox Hayes, who exploited the FSA-regulated status to approve promotions from overseas boiler rooms trading US-listed shares with UK investors. The very light fine imposed upon the respondent prompted the FSA to appeal the case. The Court of Appeals recognized the failure on Fox Hayes's part to take reasonable steps to ensure that the promotions by the overseas companies were clear and not misleading, and increased the level of penalty imposed by the Tribunal against the solicitors' firm from £146,000 to £954,770.[243]

The corporate fraud occurs within an organization and involves deliberate dishonesty to deceive the public, investors or lending companies, which results in financial gain to the criminals or organization.[244] The public sector fraud includes significant public funds that are fraudulently obtained by criminal elements.[245] Other less serious cases of fraud are normally handled by the police or designated professional bodies.

Due to the time limitations of this project, it is not feasible to address other types of financial fraud. Hence, the main focus has been on the legal and institutional framework to combat the *most* serious fraud cases.

Corruption: Introductory Remarks

Corruption, which is reminiscent of a contagious disease, has affected the progress of tackling the most pressing global problems nowadays. With the political and public structures implicated in corruption, it is not easy to restore the confidence of customers and businesses in financial markets, win over the voters and deliver credible results as to combating climate change and poverty. The 2010 Corruption Perceptions Index (CPI) does not draw a very rosy picture by showing that staggering three quarters of the 178 countries in the index score below 5 on a scale from ten (very clean) to 0 (highly corrupted).[246] Denmark has traditionally topped up the list as the least corrupted country in the world. The UK, which is also subject to this research project, scored 7,6 out 10 points, which respectively accommodates it at the 20th position.[247] The latest CPI 'shame' list has attracted some criticism in the world media due to

the promotion of 'ethos of wealthy countries', its methodology in carrying out the assessment and absence of the apparent focus on the most serious aspects of corruption along with the adequate means of fighting such phenomenon.[248]

The global fight against corruption has inspired the adoption of numerous legal instruments at the international, regional levels and resulted in the establishment of the adequate institutional framework to monitor the implementation of anti-corruption measures at the domestic level.[249] The leading authority in the fight against corruption is the United Nations Convention against Corruption,[250] which was adopted in the light of negative tendencies such the *transnational* character of corruption with the adverse effect on all societies and economies.[251] The main objective of the Convention is not solely directed at combating corruption, but also extends to the implementation of the adequate preventive measures and greater international cooperation and technical assistance in the fight against corruption.[252] The legal provisions of the Convention are built around the major four pillars, *inter alia* preventive measures to combat corruption both at the public and private sectors; criminalization of corruption; international cooperation framework and asset recovery. The Convention is much more elaborate that its 'sister-Convention' adopted under the EU framework much earlier in time.

The European Convention against Corruption[253] was adopted for the purpose of improving judicial cooperation in criminal matters between Member States in the fight against corruption as a matter of common interest. The instrument provided the respective definitions of 'official', 'community official' and 'national official'.[254] The Convention also distinguishes between 'active' and 'passive' corruption. The term 'active' corruption refers to "deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties."[255] The term 'passive corruption' means "deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties".[256] The member states are obliged to criminalize the aforementioned conduct in their respective criminal laws.[257]

The jurisdiction for corruption is broadly shaped according to the principle of territoriality and nationality.[258] A Member State shall establish its jurisdiction when the offence of corruption is committed against any kind of official or member of one of the European Community institutions by one of its nationals.[259] The jurisdiction extends to the offender, who is a Community official working for a European Community institution or a body set up in accordance with the Treaties establishing the European Communities which has its headquarters in the Member State in question.[260]

If a Member State does not extradite its own nationals, then it is obliged to take necessary measures to establish its jurisdiction over the corruption offences when committed by its own nationals outside its territory.[261] The requesting Member State shall be informed of the prosecution initiated and of its respective outcome.[262] In the cases of corruption offences spilling over the borders, the Member States concerned shall cooperate effectively in the investigation, prosecution and enforcement of penalties by means of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another Member State.[263]

Corruption was highly ranked on the Eurojust agenda in its 2009 Annual Report. The organization received twenty cases of alleged corruption, but it did not disclose any information in its report due to the sensitive data contained therein.[264] The report includes a brief note on the contribution of the Eurojust on the matters of evidence gathering, assistance in the initiation of court proceedings in the corruption case involving the UK and Denmark in 2009.[265]

Corruption and the UK

The UK has introduced its brand-new 2010 Bribery Act, which is an integral part of the country's compliance with the international and regional standards in the field of the fight against corruption. The act has a broad reach in terms of the definition of abuses that elevate to the level of corruption, and jurisdiction over the prohibited conduct. The Bribery Act encompasses the following offences:

- general offences of bribing, when an offender offers, promises or gives a financial or other advantage to another person.[266]
- general offences of being bribed, when an offender requests, agrees to receive or accepts a financial or other advantage for different purposes.[267]

- bribery of foreign public officials, when an offender bribes a foreign public official with the intention to influence the official in his professional capacity.[268]
- failure of commercial organizations to prevent bribery.[269]

Given such extensive coverage of corruption offences and introduction of a separate strict liability crime for commercial organizations, the Bribery Act is regarded as "among the strictest legislation internationally."[270] The organization, which has allegedly failed to prevent bribery, can invoke a defence that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct. Though the legal provision appears to be lucid, but the interpretation of 'adequate measures' may wreak havoc. Pursuant Section 9 of the Act, it is Secretary's of State responsibility to publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing. The alternative and very resourceful guide of such measures is also compiled by the Transparency International (UK) that provides in greater detail on what measures a company may possibly employ to comply with the anti-bribery legislation. The respective guidance has its objective to provide larger companies with a comprehensive overview of what constitutes 'adequate measures' that range from compliance, risk, legal audit, corporate responsibility to ethics departments.[271] The guidelines distinguish between various sized companies and acknowledge that the guidance may vary in the light of the size, resources and needs of a company.[272]

The UK has witnessed some landmark money laundering cases of corrupted foreign officials who stacked illegally gained proceeds in the UK banks. In the notable case of **Zambia v Meer Care & Desai,** the Attorney General of Zambia, on behalf of the Republic of Zambia, sought to establish civil liability on the part of up to twenty individuals and companies, to make good losses suffered by Zambia as a result of corrupt practices during the term of office of the former President, Dr Frederick Chiluba. The primary conspirators to defraud Zambian government were Dr Chiluba himself, Mr X F Chungu, Director-General of the Zambian Security and Intelligence Services (ZSIS) and Mrs Stella Chibanda, a senior official in the Zambian Ministry of Finance.[273] The UK solicitor's firm, Meer Care & Desai, allegedly provided dishonest assistance to the Zambian officials and conspired to misappropriate financial funds of the Zambian government. In the court of the first instance, the judge held that Mr Meer acted dishonestly and was himself a conspirator, albeit only to the extent of the funds passing through his firm's client account.[274] Notwithstanding that Mr Desai was not recognized to be

dishonest or a conspirator, he was held liable on the basis of vicarious responsibility, under section 10 of the Partnership Act 1890, for the acts of his partner.[275]

The two partners of the aforementioned solicitor's firm, Mr Meer and Mr Desai, submitted an appeal denying their involvement in money laundering offences by the corrupt Zambian officials.[276] The judge discarded the standard of an 'honest solicitor' which was applied by the judge in the court of the first instance.[277] Such hypothetical comparator was not deemed appropriate on appeals as the judge pinpointed the failure in the prior instance to give adequate consideration of the possibility that "Mr Meer was honest but not competent, and was not in truth knowledgeable or experienced in relation to the sort of transaction with which he was faced, and in particular did not really understand what was involved in money laundering".[278] The claims against his partner on the basis of vicarious liability were accordingly set aside.

Another prominent case involves General Sani Abacha, a notorious military dictator of Nigeria from November 17 1993 to June 8, 1998, who embezzled and hid billions of dollars in the off shore accounts. The staggering amount of more than USD 3 billion in foreign assets has been traced to Abacha, his family and accomplices.[279] With the Obasanjo's rise to power in Nigeria, the requests for mutual legal assistance were submitted to Liechtenstein, Luxembourg, Switzerland, the UK, and US in order to repatriate stolen assets to Nigeria. In 2001, the UK government agreed to assist Nigeria to trace the funds in the UK banks that was further approved by the High Court.

The FSA launched an investigation into the handling of accounts linked to the late General Sani Abacha and reached the conclusion that "of the twenty-three UK banks investigated because of possible links with Abacha accounts, fifteen were found to have significant money laundering control weaknesses."[280] Furthermore, forty-two personal and corporate account relationships within those banks were linked to the Abacha family and close associates with a total turnover between 1996 and 2000 of US$1.3 billion.[281] The FSA Task Force was set up to co-ordinate the remedial action programmes.[282] As required by law, the FSA passed its full report to the Serious Frauds Office (SFO), which has responsibility for prosecuting financial crimes in the UK. Notwithstanding the seriousness of the allegations, the SFO decided that criminal proceedings for money laundering against the banks and individuals involved in the scandal were not justified.[283]

Regrettably, the UK government refused to formally name the banks, to mount any prosecutions, or to return the full amounts of laundered monies to Nigeria.[284] Nigerian sources named a number of implicated banks including Barclays, HSBC, NatWest, Royal Bank of Scotland as having been under money laundering investigation.[285] In 2003, the UK government repaid rather minor in comparison to overall allegations sum of USD 6 million to Nigeria that were believed to belong to the late General Sani Abacha and frozen by the Foreign Office since 1998.

In another case, the State of Nigeria applied for a summary judgment to recover assets of the Nigerian national who invested his illegally obtained funds in the UK. Mr Alamieyeseigha, who was elected as a State Governor of the state of Bayelsa in Nigeria, was arrested in the UK on charges of money laundering in September 2005. Following his arrest, impeachment proceedings were initiated against him in Bayelsa state that resulted in his dismissal as a State Governor on 9 December 2005. The Federal Republic of Nigeria alleged that during his period in office Mr Alamieyeseigha accumulated assets as a result of the corrupt receipt of bribes and other payments in connection with the award of state government contracts. The estimated value of those assets exceeds £10 million. Some of the assets consist of immovable properties in London, whereas other assets include balances held in bank accounts in the name of Mr Alamieyeseigha, his wife and other corporate entities. [286] The claimant, Federal Republic of Nigeria, applied for a summary judgment to recover said assets with a view to avoid the time-consuming and expensive full-blown trial.[287] After careful consideration of evidence, the judge concluded the Mr Alamieyeseigha deserves the opportunity to "confront his accusers and have his side of the story heard" at a proper trial given the seriousness of corruption allegations. [288]

Corruption and Denmark

Danish Criminal Code incorporates the respective provisions criminalizing both active and passive corruption. Pursuant § 122, any person who unlawfully grants, promises or offers some other person who works in Danish, foreign or international public service, a gift or other favour in order to induce that person to do or abstain from doing something in his professional capacity (active corruption). The offence is committed when the offer is made, regardless whether it is later withdrawn.[289] Said legal provision was transposed into Danish Criminal Code by Law 228 of April 4, 2000 in the fulfilment of Denmark's obligations under

the Protocol I to the PFI Convention, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and European Convention against Corruption. The major achievement of the provided definition is its coverage of persons who work in foreign or international public service.

Another provision of the Criminal Code attributes criminal responsibility to a person, who unlawfully receives, demands, or accepts the promise of a gift or other favour in his professional function in Danish, foreign or international public service.[290] Said provision was incorporated into Danish Criminal Code by the same law as aforementioned offence of active corruption. The scope of passive corruption is equally broad, for it is applicable to persons who are affiliated with foreign and international public institutions. It is necessary to prove the nexus between the 'service' rendered by aforementioned public official and a gift/favour.

Though the Transparency Denmark acknowledges the low level of corruption in the public authorities and unwillingness of Danes to pay bribes, however, it does not imply that corruption, albeit in much weaker form, does not exist. The cases of nepotism and payments 'under the table' to purchase a cooperative apartment (*andelsbolig*) are not that uncommon after all.[291] The investigations of corruption in Denmark can hardly be compared to the cases in the UK. The Commentary to the Danish Criminal Code cites very few and rather insignificant cases of active and passive corruption.[292] A critical piece in Danish media argues that there is lack of understanding what is meant by corruption, even though it apparently exists in the forms of gifts, discounts and other favour to public officials. [293]

CONCLUSIONS

The globalized world is a fertile soil for criminal elements that exploit the existing weaknesses and loopholes of the legal and institutional regimes of various countries, and insufficiency of international efforts to combat transnational crimes. We are not referring to petty crime, but to well-thought and sophisticated criminal networks of money launderers, fraudsters and terrorists. This research project has convincingly demonstrated the possible ramifications of transnational financial crimes in the EU context, if not restrained by the placement of strong legal and cooperation frameworks to combat such phenomenon.

The EU legal toolkit on the prevention and combating money laundering and terrorist financing has revealed the evolution of transnational financial crimes. The fight against such financial crimes requires significant efforts on the part of the EU Member States and regional

bodies to fine-tune their means and methods of investigation to the newest trends and techniques employed by the criminals. The frequent revision of EU legislation over the last decade illustrates the increasing importance of that field of law for the matters of freedom, security and justice. The EU has proven to be abreast of the dynamic developments in the real world of criminality by adjusting its practices accordingly. The adoption and revisions of the EU standards on transnational financial crimes does not only reflect the processes within the EU boundaries, because most legal instruments have been adopted with the consideration of global developments, and work of various international bodies such as the UN, FATF, World Bank, IMF, Egmont Group, etc. The 'non-critical' introduction of the FATF recommendations, which pertains to the domain of 'soft law' through the EU Directives, raised certain questions on the legitimacy of such transposition. As it was pinpointed in this project, the FATF is in the midst of the revision of its current standards that may be adopted in 2012. It will undoubtedly produce a catalyzing effect on the amendment of the EU Third Directive. Such speedy developments in the field make it burdensome for the EU Members States to ensure the swift implementation of any new instruments/amendments and secure the placement of required checks or controls.

Given that the EU Members States are under obligation to criminalize money laundering, fraud, corruption, and terrorist financing, it is quintessential to provide the clear guidance as to the understanding and interpretation of such offences. The required level of expertise in the investigation and prosecution of financial crimes presupposes advanced knowledge of finance and corporate world. Hence, the adequate training of professionals dealing with *most* serious financial crimes is of utmost importance. The meticulous analysis of challenges hindering the enforcement of EU standards and effective cooperation between domestic/regional bodies may potentially reveal the loopholes or insufficiency of such standards. The influence of the EU policy upon the domestic jurisdictions by means of the implementation of the EU legal acts (i.e conventions, protocols, directives) is evident. However, such impact is reciprocal, for the practices of domestic jurisdictions affect the formulation and revision of the EU policies.

This project analyzed the practices of Denmark and UK in dealing with financial crimes and revealed that a great degree of cooperation is required to secure successful investigation and prosecution of such crimes. Both jurisdictions are largely compliant with international and EU standards that is evidenced by various follow-up reports of domestic and international

authorities. Denmark and UK have been very successful in building up and adjusting their institutional framework to combat financial crimes in light of their needs, exposure to such crimes and local peculiarities.

The Danish Money Laundering Secretariat cooperates swiftly with the public and private sectors on the matters of the prevention and fight against money laundering and terrorist financing and disseminates the relevant information among the reporting stakeholders covered by the law. The Danish Criminal Code has also incorporated the definitions of fraud and corruption in accordance with the PFI Convention and Protocols thereto.

The UK legislation was quite advanced in tackling money laundering and terrorism financing prior to the implementation of the Third Directive into domestic law, for its world financial reputation required the placement of strong anti-money laundering measures, and the country was considered prone to the terrorist attacks. The existing legal regime is supplemented by the Money Laundering Regulations that cure deficiencies of the domestic legislation. The newly introduced Serious Fraud Act and Bribery Act ensure that criminal law is up-to-date and provide a comprehensive scheme to combat serious fraud offences and bribery corresponding to the PFI Convention and Protocols thereto. The UK legislation can be said to have been successfully devised in a manner to respond to the insidious forms of criminality that continuously seek to shatter the financial stability of the country and damage its long-standing reputation as the financial capital of the world.

The domestic jurisdictions are advised to focus on the following aspects in the field of financial crimes.

- to ensure that reporting obligations extend to all stakeholders that may potentially be vulnerable to money laundering;
- to disseminate relevant information among all stakeholders on the typologies of money laundering and terrorist financing;
- to assess the applicability of simplified due diligence measures to certain actors on the objective and risk-based criteria.
- to embrace the *sound* risk-assessment strategy in the context of the enhanced due diligence;
- to devise a user-friendly and uniform format of STR(s) that becomes easy to process by the respective FIU(s) and include sufficient and relevant information on the suspicion of money laundering or terrorist financing (The Danish FIU is currently working on the

new format of STR).

- to provide more guidance on the PEP(s) to the stakeholders that may be potentially dealing with such categories of people;
- to have regular meetings with bank institutions and brief them on the applicability of the KYC requirement in cross-border settings and in regards to the PEPs;
- to build up expertise and knowledge through the designated domestic authorities on the investigation of serious fraud cases that involve substantial sums of money and multiple jurisdictions;
- to ensure the investigation and prosecution of potential corruption cases and linked cases of money laundering;
- to ensure the swift measures to freeze the assets of crime, especially in the case of PEPs.
- to foster cooperation with domestic and international authorities on the issues of investigation, prosecution, mutual legal assistance and extradition.
- to accommodate a greater role of financial intelligence and financial investigations in dealings with the offence of terrorist financing;
- to differentiate between the cases of terrorist financing involving substantial funds to breed and expand terrorist network, and modest sums to carry out a local terrorist attack by a suicide bomber.

The list of aforementioned problematic areas is not exhaustive, as it provides an insight into the most intricate aspects of the enforcement of the EU standards in relation to financial crimes. The EU authorities shall be mindful of the enforcement challenges voiced by the EU Member States and ensure that amended or newly introduced legislative measures undertaken at the EU level reflect the difficulties encountered by the public authorities, regulatory, enforcement bodies and other stakeholders.

LIST OF REFERENCES

[1] International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999; International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the General Assembly of the United Nations on 13 April 2005; Security Council Resolutions 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008) and 1904 (2009) directed against Al-Qaida, Usama bin Laden and/or the Taliban.

[2] Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (no longer in force); 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 (no longer in force); Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

[3] Preamble, United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

[4] For more information, consult: Stessens, Guy, Money Laundering: A New International Law Enforcement Model, Cambridge Studies in International and Comparative Law, Cambridge University Press, 2008, p. 13.

[5] For more information, consult: http://www.fatf-gafi.org/pages/0,2987,en_32250379_32235720_1_1_1_1_1,00.html. The organization provides elaborate information on its activities at the website, including mutual evaluations, and updates on the high-risk and non-cooperative jurisdictions.

[6] 40 FATF Recommendations, Introduction.

[7] 9 FATF Recommendations, Introduction.

[8] *Ibid*., I-V.

[9] *Ibid*., VI (Alternative Remittance) and VII (Wire Transfers)

[10] *Ibid*., IX (Cash Couriers)

[11] *Ibid*., (Non-profit organizations)

[12] The FATF posted responses [on the current revision of the FATF standards] to the submissions filed by the financial, non-financial institutions, NGOs and private individuals. For more, consult: Compilation of Responses from the financial sector - Part 1 / Compilation of Responses from the financial sector - Part 2; Compilation of Responses from designated non-financial business and professions; Compilation of Responses from non-government organisations and individuals; FATF Report: The Review of the Standards – Preparations for the Fourth Round of Mutual Evaluations. All documents can be downloaded at http://www.fatf-gafi.org/document/28/0,3746,en_32250379_32236920_46266908_1_1_1_1,00.html.

[13] For more information on the nature of such cooperation between FATF and World Bank, consult the webpage of the World Bank: http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTFINANCIALSECTOR/0,,contentMDK:21996327~menuPK:6110545~pagePK:210058~piPK:210062~theSitePK:282885~isCURL:Y,00.html

[14] *Ibid*., http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTFINANCIALSECTOR/0,,contentMDK:22176523~menuPK:6110545~pagePK:210058~piPK:210062~theSitePK:282885,00.html

[15] Combating money laundering and the financing of terrorism: a comprehensive training guide (Vol. 2 of 7): Legal requirements to meet international standards, World Bank, 2009; Combating money laundering and the financing of terrorism: a comprehensive training guide (Vol. 1 of 7): Effects on economic development and international standards; World Bank, 2009; Combating money laundering and the financing of terrorism: a

comprehensive training guide (Vol. 7 of 7): Investigating money laundering and terrorist financing, World Bank, 2009.

[16] Preventing Money Laundering and Terrorist Financing: A Practical Guide for Bank Supervisors, World Bank Report, 2009, Foreword.

[17] Financial Strategy for the World Bank Group (2007), para. 19. http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/04/03/000020953_20070403101842/Rendered/PDF/39312.pdf

[18] For more information, consult: http://www.egmontgroup.org/about.

[19] For more elaborate analysis of the organization's progress in its 15 years of existence, consult the 2010/2009 Egmont Group Annual Report.

[20] For more information on the objective and mission of Europol, consult: http://www.europol.europa.eu/index.asp?page=facts. Europol regularly hosts strategic meetings on emerging threats to the EU. The very last meeting, organized in the partnership with Eurojust, addressed existing problems in the fight against VAT fraud, the current legal framework and possible measures to prevent and combat this common crime type

[21] Eurojust was set up by the Council of the European Union in February 2002 (Council Decision 2002/187/JHA).

[22] For more background information, consult: http://www.eurojust.europa.eu/about.htm.

[23] Blair, William QC, Brent, Richard, Banks and Financial Crime: The International Law of Tainted Money: The Law of Tainted Money, OUP Oxford, 2008, p. 102.

[24] Joint action 98/733/JHA on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union; Joint action 98/699/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime; Council framework Decision of 28 May 2001 on combating fraud and counterfeiting of non-cash means of payment; Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds; Regulation (EC) No 924/2009 on cross-border payments; Council Decision 2009/1004/CFSP of 22 December 2009 updating the list of persons, groups and entities subject to Article 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism; Council Regulation (EU) n. 1286/2009 of 22 December 2009 amending Regulation (EC) n. 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban; Council Implementing Regulation (EU) No 1285/2009 of 22 December 2009 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Regulation (EC) No 501/2009.

[25] http://europa.eu/lisbon_treaty/glance/index_en.htm.

[26] 2009 Europol Annual Report, p. 33.

[27] *Ibid*., p. 34.

[28] *Ibid*., p. 39.

[29] Stessens, Guy, Money Laundering: A New International Law Enforcement Model, Cambridge Studies in International and Comparative Law, Cambridge University Press, 2008, pp. 82-83.

[30] Provided explanation is a very conventional definition of 'money laundering' that may be found almost in every textbook in the said area of law. See: Blair, William QC, Brent, Richard, Banks and Financial Crime: The International Law of Tainted Money: The Law of Tainted Money, OUP Oxford, 2008, p. 5; Handoll, John, Capital, Payments and Money Laundering in the European Union, OUP Oxford, 2006, p. 107.

[31] As an illustration, consult the FATF report dealing with the money laundering and terrorist financing trends and indicators at http://www.fatf-gafi.org/dataoecd/16/8/35003256.pdf.

[32] The MLA is supplemented by the following domestic regulations: Regulation 712/2008 that exempts certain customers and financial activities from the AML/CFT obligations and provides for a definition of PEPs; Regulation 1197/2008 which sets out provisions on registration of currency exchange providers, money remitters and certain business providers (amended by regulation 420/2010); and a string of Regulations issued since July 2009 which enlist countries and territories considered as high risk, and where enhanced vigilance is required (most recently regulation 990/2010 issued in August). Some aspects of the MLA/CFT regime are also addressed in the Danish Criminal Code, Gambling Casino Act and Customs Act.

[33] Mutual Evaluation, Third Follow-Up Report: Anti-Money Laundering and Combating the Financing of Terrorism, Kingdom of Denmark, 22 October 2010, para. 13, paras. 18-22.

[34] *Ibid*., para. 14.

[35] *Ibid*., para. 35.

[36] *Ibid*., paras. 37-40.
[37] *Ibid*., para. 46. The respective amendments took effect from the 1st January 2010.
[38] *Ibid*., paras. 69, 78. The report noted the inadequacy of the preventive confiscation mechanism embedded in the Danish Criminal Code.
[39] *Ibid*., para. 73.
[40] POCA, Section 327.
[41] *Ibid*., Section 328.
[42] *Ibid*., Section 329.
[43] *Ibid.,* Section 340(3).
[44] *Ibid.,* Section 340(9).
[45] *Ibid*., Section 330.
[46] *Ibid*., Section 331.
[47] *Ibid*., Section 332.
[48] *Ibid*., Section 333.
[49] *Ibid.,* Section 338(1).
[50] *Ibid.,* Section 338(2).
[51] *Ibid.,* Section 338(3).
[52] *Ibid.,* Section 335(1).
[53] *Ibid.,* Section 335(3) and 335(5).
[54] *Ibid.,* Section 335(6).
[55] Katz, Elay, Implementation of the Third Money Laundering Directive: Practitioner Perspectives (Allen and Overy LLP), Law and Financial Markets Review, May 2007, at 207.
[56] Mutual Evaluation, Fourth Follow-Up Report: Anti-Money Laundering and Combating the Financing of Terrorism, United Kingdom, 16 October 2009, para. 8.
[57] *Ibid*., para. 33.
[58] *Ibid*., paras. 34-36.
[59] Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (no longer in force).
[60] United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Article 1.
[61] Directive, Article 3.
[62] *Ibid*., Article 12.
[63] 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 (no longer in force).
[64] Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions. The Directive defines 'credit institution' in the following fashion: an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account. The Directive is currently amended.
[65] The Directive is no longer in force, repealed by 2002/83/EC.
[66] Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (consult also respective amending acts).
[67] The offences encompass (i) the production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention; (ii) The cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drugs contrary to the provisions of the 1961 Convention and the 1961 Convention as amended; (iii) The possession or purchase of any narcotic drug or psychotropic substance for the purpose of any of the activities enumerated in (i) above; (iv) the manufacture, transport or distribution of equipment, materials or of substances […], knowing that they are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances; (v) the organization, management or financing of any of the offences enumerated in (i), (ii), (iii) or (iv) above.
[68] […] a criminal organisation implies a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities.

[69] The offence of fraud is discussed in much greater detail in the following chapter of this project.
[70] Applicable to legal professionals when they participate whether: (a) by assisting in the planning or execution of transactions for their client concerning the (i) buying and selling of real property or business entities; (ii) managing of client money, securities or other assets; (iii) opening or management of bank, savings or securities accounts; (iv) organisation of contributions necessary for the creation, operation or management of companies; (v) creation, operation or management of trusts, companies or similar structures; (b) or by acting on behalf of and for their client in any financial or real estate transaction.
[71] Second Directive, Article 2(a).
[72] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
[73] *Ibid*., Preamble.
[74] Hynes, Paul, Furlong, Richard, Nathaniel, Rudolf, International Money Laundering and Terrorist Financing: a UK Perspective, Sweet and Maxwell, 2009, p. 366.
[75] Third Directive, Article 3(4).
[76] Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism. Articles 1-4 of the said Decision cover all terrorist and terrorist-linked offences.
[77] Third Directive, Article 3(5).
[78] *Ibid*., Article 3(6).
[79] Danish Money Laundering Act, section 3(1)(4).
[80] EC Final Study on the Application of the Anti-Money Laundering Directive (external study by Deloitte), 2011 available on http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm, p. 6.
[81] Report, Meeting with EU Private Stakeholders on Anti-Money Laundering and Counter Terrorist Financing Policy on 1st February 2011, p. 3.
[82] Directive, Article 3(8).
[83] See: Deloitte report, p. 6. Report, Meeting with EU Private Stakeholders on Anti-Money Laundering and Counter Terrorist Financing Policy on 1st February 2011, p. 3.
[84] Directive, Article 7(a).
[85] *Ibid*., Article 7(b).
[86] *Ibid*., Article 7(c).
[87] *Ibid*., Article 7(d).
[88] *Ibid*., Article 8(1).
[89] Danish Money Laundering Act, sections 11 and 12(1). The amount of 15.000 EUR with respect to occasional transactions is somewhat reduced to 200,000 DKK (approximately 13.417 EUR).
[90] Danish Money Laundering Act, sections 13(1)(2). Consult section 13(1)(3) for exceptions applicable to life-assurance companies and pension funds.
[91] Money Laundering Regulations, Section 5.
[92] The amount of such transaction is not specified in the UK legislation in stark contrast to the text of the Third Directive, which explicitly provides that the minimum threshold of 15 000 EUR carried our either in a single or several linked operations (7(b)).
[93] Money Laundering Regulations, Section 7(1).
[94] Money Laundering Regulations, Section 11(1).
[95] For more, consult: report, Meeting with EU Private Stakeholders on Anti-Money Laundering and Counter Terrorist Financing Policy on 1st February 2011, pp. 2-3.
[96] EC Final Study on the Application of the Anti-Money Laundering Directive (external study by Deloitte), 2011 available on http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm, p. 6.
[97] Directive, Article 11(2).
[98] Directive, Article 11(5).
[99] *Ibid*., Article 11(3).
[100] Danish Money-Laundering Act, section 20 (1), section 21(1).
[101] *Ibid*., section 22.
[102] Money Laundering Regulations, section 13.
[103] Directive, Article 13(2).
[104] *Ibid*., Article 13(3).
[105] *Ibid*., Article 13(4).
[106] *Ibid*., Article 13(5).
[107] *Ibid*., Article 3(10).

[108] Danish Money-Laundering Act, section 19 (1).
[109] Money Laundering Regulations, section 14(1)-(4).
[110] The list of such legal and natural persons extends to (a) auditors, external accountants and tax advisors; (b) notaries and other independent legal professionals, when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or execution of transactions for their client concerning the: (i) buying and selling of real property or business entities; (ii) managing of client money, securities or other assets; (iii) opening or management of bank, savings or securities accounts; (iv) organisation of contributions necessary for the creation, operation or management of companies; (v) creation, operation or management of trusts, companies or similar structures; (c) trust or company service providers not already covered under points (a) or (b); (d) real estate agents; (e) other natural or legal persons trading in goods, only to the extent that payments are made in cash in an amount of EUR 15 000 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked;(f) casinos. (Article 2(1)(3)).
[111] Applicable to foreign braches that carry out activities as stipulated in the aforementioned paras. 1-8, 11 and 12.
[112] Applicable to lawyers that assist their clients in the planning and execution of transactions concerning (a) purchase and sale of real property or undertakings; (b) managing their clients' money, securities or other assets; (c) opening or managing bank accounts, savings accounts, or securities accounts; (d) raising the necessary capital for establishment, operation, or management of undertakings; (e) establishing, operating, or managing undertakings, or (f) providing other business advice.
[113] Pursuant Section 3 (para. 5) the term "providers of services for undertakings" shall mean: Any person, legal or natural, that is not covered by section 1(1), nos. 13-15, when said person carries out the following activities on a commercial basis: (a) forming companies; (b) acting as or arranging for another person to act as a member of the management of an undertaking, or as partner of a partnership, or a similar position in relation to other companies; (c) Provides a domicile address or another address, which is similarly suitable as contact address and related services, for an undertaking; (d) acting as or arranging for another person to act as a trustee or administrator of a fund or another similar legal arrangement; (e) acting as or arranging for another person to act as a shareholder for a third party, unless this is an undertaking the ownership interests etc. of which are traded on a regulated market; (6) "politically exposed persons" shall mean: Persons who are or have been entrusted with a prominent public function, members of the immediate family of such persons, or persons who are known to be their close cooperation partners.
[114] Danish Money Laundering Act (MLA), Section 1 (1).
[115] *Ibid.*, Section 1 (2).
[116] *Ibid*., Section 1 (3).
[117] 2009 SØK Report, p. 11.
[118] *Ibid*., p. 11.
[119] *Ibid*.
[120] Money Laundering Regulations, Art. 3(1).
[121] Shah v HSBC Private Bank (UK) Limited, [2010] Lloyd's Rep FC 276, [2010] 3 All ER 477, [2010] EWCA Civ 31.
[122] *Ibid*., paras. 2, 4, 7.
[123] *Ibid*., para. 3.
[124] *Ibid*., para. 5.
[125] *Ibid*., para. 8.
[126] *Ibid*., para. 9.
[127] *Ibid*., para. 20.
[128] *Ibid*., para. 21.
[129] RCPO and C, [2010] EWCA Crim 97, [2010] Lloyd's Rep FC 417, para. 1.
[130] *Ibid*., para. 2.
[131] *Ibid.*, para. 4
[132] *Ibid*., para. 4. According to count 4, the Respondent enabled the client to maintain control of or to use criminal property by allowing the firm's client account to be used to move money to and from accounts held by Danish Electronic and Buss Merton LLP.
[133] *Ibid*., para. 5.
[134] *Ibid*., para. 16.
[135] *Ibid*., para. 18
[136] Directive, Article 21(1).

[137] *Ibid*.
[138] *Ibid*.
[139] *Ibid*., Article 22(1).
[140] *Ibid*., Article 26.
[141] *Ibid*., Article 28(1).
[142] *Ibid*., Article 23(2).
[143] 2008 SØK Report, p. 4; 2009 SØK Report, p. 4.
[144] SOCA Annual Report 2010/2011, p. 4. SOCA is an Executive Non-Departmental Public Body (NDPB) of the Home Office. It is led by a Board with a majority of non-executive members that is responsible for ensuring that SOCA discharges its statutory responsibilities and meets the strategic priorities set under statute by the Home Secretary.
[145] SOCA Annual Report 2010/2011, p. 3.
[146] *Ibid*., p. 7.
[147] *Ibid*., p. 9.
[148] *Ibid*., p. 8.
[149] Directive, Article 38.
[150] 2009 SØK Report, p. 7.
[151] http://www.finanstilsynet.dk/en/Om-os.aspx.
[152] 2009 SØK Report, pp. 7-8.
[153] Hvidvask Forum, Memorandum of Understanding (Introduction). See: http://www.finanstilsynet.dk/upload/Finanstilsynet/Mediafiles/newdoc/Hvidvask/MoU080109.pdf
[154] SØK Report, p. 8.
[155] http://www.advokatsamfundet.dk/Default.aspx?ID=11813.
[156] SØK Report, p. 8.
[157] Mutual Evaluation, Third Follow-Up Report: Anti-Money Laundering and Combating the Financing of Terrorism, Kingdom of Denmark, 22 October 2010, para. 138.
[158] SØK Report, p. 9.
[159] SØK Report, p. 10.
[160] SOCA Report, p. 7. The government announced that it intends to bring forward legislation to assign Non-Departmental Public Body status to the Child Exploitation and Online Protection Centre (CEOP) which has been affiliated to SOCA for the past four years.
[161] FSA Annual Report, pp. 11-12. In 2009/2010 the FSA published 46 fines with a record value of £33.6m; three individuals were convicted of insider dealing as a result of FSA prosecution, receiving custodial sentences of between 12 and 24 months.
[162] http://fsahandbook.info/FSA/html/handbook/.
[163] SOCA Annual Report 2009/2010, p. 25.
[164] Six arrested in FSA and SOCA insider dealing investigation, 23 March 2011. http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/052.shtml
[165] http://www.nfib.police.uk/why-have-an-nfib.html.
[166] http://www.nfib.police.uk/. The most recent warning issued by the NFIB was against bank land banking fraud on March 4, 2011. For more information, consult: http://www.actionfraud.org.uk/land-banking-fraud-mar11.
[167] Action Fraud is the UK's national fraud reporting centre, created by the NFA to avail the public and small businesses of the opportunity to report fraud cases and receive victim support. http://www.actionfraud.org.uk/home.
[168] http://www.nfib.police.uk/our-partners.html.
[169] Council Decision 2009/1004/CFSP of 22 December 2009 updating the list of persons, groups and entities subject to Article 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism; Council Regulation (EU) n. 1286/2009 of 22 December 2009 amending Regulation (EC) n. 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban; Council Implementing Regulation (EU) No 1285/2009 of 22 December 2009 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Regulation (EC) No 501/2009.
[170] *Ibid.*
[171] Terrorism Act 2000, Section 14(1).

[172] *Ibid*., Section 15.
[173] *Ibid*., Section 16.
[174] *Ibid*., Section 17.
[175] *Ibid*., Section 18(1).
[176] *Ibid*., Section 18(2).
[177] *Ibid*., Section 19(1).
[178] *Ibid*., Section 19(5).
[179] *Ibid*., Section 19(6).
[180] http://www.telegraph.co.uk/finance/financetopics/financialcrisis/3165137/Financial-crisis-Icelandic-banks-collapse-threatens-millions-of-taxpayers-money.html#. Around 300,000 customers had up to £4.8 billion invested in online Icesave bank accounts, which were run by Landsbanki. http://www.citywire.co.uk/money/update-uk-govt-launching-legal-action-against-iceland/a316803
[181] http://www.timesonline.co.uk/tol/news/politics/article4916933.ece
[182] Straffeloven, § 114 b.
[183] Straffeloven, § 114.
[184] 2009 SØK Report, p. 8.
[185] http://www.fightersandlovers.org/Fighters-Lovers.
[186] http://politiken.dk/kultur/article568544.ece.
[187] Danish Criminal Code, § 114 b.
[188] The case summary is based on the press release (in Danish) published at the website of the Supreme Court of Denmark. For additional information: consult http://www.domstol.dk/hojesteret/nyheder/pressemeddelelser/Pages/"FightersandLovers-sag".aspx.
[189] The case summary is based on the press release (in Danish) published at the website of the Eastern High Court of Denmark. For additional information: consult http://www.domstol.dk/oestrelandsret/nyheder/Pressemeddelelser/Pages/Pressemeddelelse(Finansieringafterror).aspx.
[190] Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the Protection of the European Communities' financial interests, Official Journal C 316, 27/11/1995 P. 0049 – 0057.
[191] Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests, Official Journal L 312 , 23/12/1995 P. 0001 – 0004; Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities, Official Journal L 292 , 15/11/1996 P. 0002 – 0005 and other more detailed legal instruments as to the sectoral legal bases concerning on-the-spot checks and legislation on notification of irregularities and recovery of sums wrongly paid. For a comprehensive list of the relevant instruments, consult: http://ec.europa.eu/dgs/olaf/legal/index_en.html.
[192] Article 1(1) of the Convention provides for the following definition of fraud: "any intentional act or omission relating to: (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities; (ii) non-disclosure of information in violation of a specific obligation, with the same effect, and (iii) the misapplication of such funds for purposes other than those for which they were originally granted".
[193] Likewise, the aforementioned Article formulates fraud in relation to revenue which involves any intentional act or omission relating to: (i) the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Communities or budgets managed by, or on behalf of, the European Communities; (ii) non-disclosure of information in violation of a specific obligation, with the same effect, and (iii) misapplication of a legally obtained benefit, with the same effect.
[194] *Ibid*., Article 1(2).
[195] *Ibid.,* Article 1(3).
[196] *Ibid.,* Article 1(4).
[197] *Ibid.,* Article 2.
[198] *Ibid.,* Article 2
[199] *Ibid.,* Article 3.
[200] *Ibid.,* Article 4 (1).
[201] *Ibid.,* Article 5 (1).

[202] *Ibid.,* Article 5 (3).
[203] *Ibid.,* Article 6 (1).
[204] Article 6 (2).
[205] Preamble, Protocol I.
[206] Pursuant Article 3(1) 'active' corruption constitutes any deliberate action of whosoever promises or gives, directly or through an intermediary, an advantage of any kind whatsoever to an official for himself or for a third party for him to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests shall constitute active corruption
[207] Article 2(1) of Protocol I provides for the following definition of 'passive' corruption: a deliberate action of an official, who, directly or through an intermediary, requests or receives advantages of any kind whatsoever, for himself or for a third party, or accepts a promise of such an advantage, to act or refrain from acting in accordance with his duty or in the exercise of his functions in breach of his official duties in a way which damages or is likely to damage the European Communities' financial interests.
[208] Protocol I, Article 2(2), Article 3(2).
[209] *Ibid*., Article 4.
[210] *Ibid*., Articles 5, 6 and 8.
[211] Protocol drawn up on the basis of Article K.3 of the Treaty on European Union, on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests, Official Journal C 151, 20/05/1997 P. 0002 – 0014.
[212] *Ibid*., Article 2(2). Broadly, any court or tribunal of a Members State, provided the latter submits the declaration on the acceptance of the jurisdiction of the Court, may request the Court of Justice of the European Communities to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation of the Convention and the first Protocol thereto if that court or tribunal considers that a decision on the matter is necessary to enable it to give judgment.
[213] Second Protocol, drawn up on the basis of Article K.3 of the treaty on European Union, to the Convention on the protection of the European Communities' financial interests, Official Journal C 221, 19/07/1997 P. 0012 – 0022, Articles 3-4.
[214] Ibid., 5.
[215] COMMISSION DECISION of 28 April 1999 establishing the European Anti-fraud Office (OLAF) (notified under document number SEC (1999) 802)(1999/352/EC, ECSC, Euratom).
[216] *Ibid*., Article 2 (1).
[217] Denmark notified the European Commission about the revision of the relevant offences in its Criminal Code in the 2005 annual report under Article 280(5) of the EC Treaty.
[218] Danish Criminal Code, § 289 (1).
[219] Denmark complemented the Criminal Code with the offence of EU fraud by Law No 366 of 24 May 2005.
[220] Danish Criminal Code, § 289 a (1).
[221] Greve, Vagn, Jensen, Asbjørn, Jensen, Poul Dahl, Nielsen, Gorm Toftegaard, Kommenteret straffelov, Speciel del, 9. Omarbejdede udgave, Jurist- og Økonomiforbundets Forlag, 2008, p. 554.
[222] Danish Criminal Code, § 289 a (1).
[223] *Ibid*., § 289 a (2).
[224] *Ibid*., § 289 a (4).
[225] *Ibid.*, § 289 a (1).
[226] Annex to the Second Report of the EU Commission on the Implementation of the PFI Convention and Its Protocols, 2008, p. 23, p. 27.
[227] 2008 SØK Report, p. 24.
[228] 2009 SØK Report, pp. 28-30.
[229] Smith and Hogan, p. 940. For some earlier arguments in favour of a general fraud offence, consult: Sullivan G.R., Framing an Acceptable General Offence of Fraud (1989) 53 J Crim L 92.
[230] Annex to Report,
[231] 2006 Serious Fraud Act, sections 2-4.
[232] Smith and Hogan, p. 941.
[233] Serious Fraud Act, section 2(1).
[234] Serious Fraud Act, section 2(3).
[235] *Ibid*., section 3.

[236] *Ibid*., section 4.
[237] *Ibid*., sections 9(1) and (2)
[238] The Office exercises its jurisdiction in England, Wales and Northern Ireland but not in Scotland, the Isle of Man or the Channel Islands. For more information, consult: http://www.sfo.gov.uk/about-us/who-we-are.aspx.
[239] SFO Annual Report 2009/2010, Letter to the Attorney General from Richard Alderman, Director of the SFO.
[240] For a comprehensive overview of the SFO landmark cases, consult http://www.sfo.gov.uk/our-work/our-cases/historic-cases.aspx.
[241] For a more elaborate typology of fraud, consult http://www.sfo.gov.uk/fraud/what-is-fraud/investment-fraud.aspx. See also: Fisher, Ken, Hoffmans, Lara W., How to Smell a Rat: The Five Signs of Financial Fraud, John Wiley & Sons, 2009, p. 5. The authors enlist five major signs of potential financial fraud: (1) the adviser's custody of your assets; (2) returns are consistently good as if it is almost too good to be true; (3) the investing strategy is murky; (4) the adviser's promotion of benefits such as exclusivity, which do not affect results; and (5) a 'trusted' intermediary did your own due diligence.
[242] For a general description of the operation of 'boiler room' schemes, consult: Davidson, Alexander, How the Global Financial Markets Really Work: The Definitive Guide to Understanding International Investment and Money Flows, Kogan Page, 2009, pp. 120-123.
[243] FSA v Fox Hayes, [2009] EWCA Civ 76, [2009] 1 BCLC 603. The FSA statement on successfully appealing the case is available on http://www.fsa.gov.uk/pages/Library/Communication/Statements/2009/appeal.shtml.
[244] For a typology of corporate fraud, consult: http://www.sfo.gov.uk/fraud/what-is-fraud/corporate-fraud.aspx.
[245] The samples of public sector fraud are available on http://www.sfo.gov.uk/fraud/what-is-fraud/public-sector-fraud.aspx.
[246] 2010 Corruption Perceptions Index, p. 2.
[247] *Ibid*., p. 2.
[248] 'Murk meter: The best-known corruption index may have run its course' in the Economist on 28 October 2010. http://www.economist.com/node/17363752?story_id=17363752.
[249] Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996, the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1997, the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999, the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999,5 and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003.
[250] The Convention entered into force on 14 December 2005, in accordance with its article 68 (1). At the moment, there are 140 signatories and 150 parties.
[251] UN Convention, Preamble.
[252] UN Convention, Article 1.
[253] Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, *Official Journal C 195 , 25/06/1997 P. 0002 – 0011.*
[254] *Ibid.,* Article 1.
[255] *Ibid.,* Article 3(1).
[256] *Ibid.,* Article 2 (1).
[257] *Ibid.,* Article 2(2), Article 3(2).
[258] *Ibid.,* Article 7 (1)(a) and (b).
[259] *Ibid.,* Article 7 (c).
[260] *Ibid.,* Article 7 (d).
[261] *Ibid.,* Article 8(1).
[262] *Ibid.,* Article 8(2).
[263] *Ibid.,* Article 9.
[264] 2009 Annual Eurojust Report, p. 24.
[265] *Ibid.*, p. 25.
[266] The first category of crimes requires 'intention' of the advantage to induce a person to perform improperly a relevant function or activity, or to reward a person for the improper performance of such a function or activity.

The remaining category of criminal offences with calls for 'knowledge or belief that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity'. Bribery Act, Sections 1 (2) and 1 (3).

[267] *Ibid.,* Section 2.
[268] *Ibid.,* Section 6.
[269] *Ibid.,* Section 7.
[270] The 2010 UK Bribery Act Adequate Procedures: Guidance on good practice procedures for corporate anti-bribery programmes, Transparency International, p. 7.
[271] The 2010 UK Bribery Act Adequate Procedures: Guidance on good practice procedures for corporate anti-bribery programmes, Transparency International, p. 5.
[272] *Ibid.*, p. 5.
[273] [2008] EWCA Civ 1007, [2008] Lloyd's Rep PN 21, [2008] Lloyd's Rep FC 587, para. 4.
[274] *Ibid*., para. 11. The judge held that he acted dishonestly and was himself a conspirator, though only to the extent of the funds passing through his firm's client account.
[275] *Ibid*., para. 11.
[276] *Ibid*., para. 13-15 (see: grounds of appeal).
[277] *Ibid*., para. 267, referring to paras. 587-589.
[278] *Ibid*., para. 267.
[279] Efforts in Switzerland to Recover Assets Looted by Sani Abacha of Nigeria, Prepared by Basel Institute on Governance, August 2007, p. 1.
http://www.assetrecovery.org/kc/resources/org.apache.wicket.Application/repo?nid=78488349-a33e-11dc-bf1b-335d0754ba85.
[280] http://www.fsa.gov.uk/pubs/other/money_laundering.pdf. Report, section 3.4.
[281] http://www.fsa.gov.uk/pubs/other/money_laundering.pdf. Report, section 3.4.
[282] http://www.fsa.gov.uk/pubs/annual/ar00_01.pdf. Annual Report 2000/2001, page 22.
[283] http://www.saharareporters.com/news-page/london-games-financial-services-authority-investigation-uk-banks-helping-abacha-launder-mo. London Games: Financial Services Authority Investigation Into UK Banks Helping Abacha Launder Money. 11 October 2010.
[284] http://www.guardian.co.uk/commentisfree/2008/jun/27/1?INTCMP=SRCH. Article 'The Capital of Corporate Corruption', 27 June 2008.
[285] http://www.guardian.co.uk/business/2001/mar/09/4?INTCMP=SRCH , Banks Guilty of Laundering, 9 March 2001.
[286] [2007] EWHC 437 (Ch), para. 1.
[287] *Ibid*., para. 2.
[288] *Ibid*., para. 71.
[289] Greve, Vagn, Jensen, Asbjørn, Jensen, Poul Dahl, Nielsen, Gorm Toftegaard, Kommenteret straffelov, Speciel del, 9. Omarbejdede udgave, Jurist- og Økonomiforbundets Forlag, 2008, p. 68.
[290] Danish Criminal Code, § 144.
[291] For more information, consult:
http://transparency.dk/om_korruption/korruption_i_danmark.php
[292] Greve, Vagn, Jensen, Asbjørn, Jensen, Poul Dahl, Nielsen, Gorm Toftegaard, Kommenteret straffelov, Speciel del, 9. Omarbejdede udgave, Jurist- og Økonomiforbundets Forlag, 2008, pp. 123-124, p. 71.
[293] 'Korruption? Nej, det har vi ikke i Danmark', Newspaper Article in Politiken, by Morten Koch Andersen, dated 9 March 2011. http://politiken.dk/debat/analyse/article1217603.ece.