

## 1 AUTHOR AND CONTRIBUTION INTRODUCTION

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- 1.1 Further to the publication of your Consultation on the renewal of the EU Internal Security Strategy, I am pleased to provide a contribution for your consideration.
- 1.2 This contribution will focus on the nature of the current counter-terror finance (CTF) regime, and will consider the greater role that Financial Intelligence (FININT) could play in the context of the EU's Internal Security Strategy, giving particular note to the five stated 'Objectives of the consultation'.
- 1.3 Furthermore, this contribution also considers two of the key challenges for the security of the EU laid out in the 2010-2014 strategy which continue to be highly relevant, namely the strategic objectives of (1) the disruption of international criminal networks, and (2) the prevention of terrorism and addressing radicalisation and recruitment. This is particularly the case given the extensive (and likely continued) focus being applied to the question of 'foreign fighters' travelling from across Europe to the conflict in Syria and Iraq.
- 1.4 The author recently left a near 20-year career in investment banking. His interest in and experience of counter-terror finance stems from a sabbatical year he spent in 2011/12 studying for a Masters at King's College London and continued, ongoing research and analysis he is conducting. [REDACTED]  
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[REDACTED] and now researches and analyses matters concerning 'Finance & Security'.<sup>1</sup>
- 1.5 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 1.6 The author is writing in a personal capacity and in no way represents any organisation with which he has previously been or is currently involved. The expressed views are thus strictly his own.

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## 2 SURVEYING THE CURRENT CTF LANDSCAPE

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- 2.1 Identifying terrorists' finances within a financial institution is extremely challenging. Flows are normally 'clean' and small (in contrast to the 'dirty' money laundered from the proceeds of crime).<sup>4</sup> In his 2012 testimony before the US House Committee on Homeland Security, [REDACTED] who at the time of 9/11 was the Chief of the FBI's Counter-Terrorist Financing Operations Section noted that 'It is possible to identify terrorist financing, but highly improbable,'<sup>5</sup> and despite the immense amount of regulation developed in the context of CTF and the significant expense incurred by the financial services industry (FSI) in terms of time, increased headcount, and systems upgrades, an extremely limited amount of terrorist financing has been revealed within the FSI.<sup>6</sup>
- 2.2 Within most European countries and at the EU level, ownership of both the CTF policy and enforcement effort appears to be fragmented across a range of Ministries and Agencies, with no obvious 'lead' ensuring that the various rules, regulations, policies, and strategies that are promulgated domestically and internationally are implemented and pursued in an effective manner.
- 2.3 For example, in the United Kingdom, The Independent Reviewer of Terrorism Legislation, David Anderson QC, highlights an example of this issue in his *Third Report on the Operation of The Terrorist Asset-Freezing etc Act 2010*, published in December 2013, noting that '[terrorist] asset-freezing is administered by a different department from other counter-terrorism powers.'<sup>7</sup>
- 2.4 This lack of coordination is also evident in the way in which the FSI is involved by the authorities in CTF efforts. The triennial *KPMG Global AML Survey*<sup>8</sup> in both 2011 and 2014 highlight the core issues: banks desire more guidance from and collaboration with

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<sup>4</sup> For example, according to FATF (2008), the 7/7 bombings are estimated to have cost a mere GBP8,000  
<http://www.fatf-gafi.org/media/fatf/documents/reports/FATF%20Terrorist%20Financing%20Typologies%20Report.pdf>

<sup>5</sup> [REDACTED]

<sup>6</sup> The total assets frozen by HM Treasury as of 30 September 2013 were a mere £82,000 under the Terrorist Asset-Freezing etc Act 2010 and £11,000 under EU Regulation (EC) 2580/2001. HM Treasury (2014), *Operation of the UK's Counter-Terrorist Asset Freezing Regime: 1 October 2013 to 31 December 2013*  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/276397/WMS\\_1\\_October\\_2013\\_to\\_31\\_December\\_2013.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276397/WMS_1_October_2013_to_31_December_2013.pdf)

<sup>7</sup> Anderson, David (2013), *Third Report on the Operation of The Terrorist Asset-Freezing etc Act 2010* para 2.24, p13

<sup>8</sup> KPMG (2011), *Global Anti-Money Laundering Survey: How Banks are Facing Up to the Challenge*  
<https://www.kpmg.com/UK/en/IssuesAndInsights/ArticlesPublications/Documents/PDF/Advisory/global-aml-survey-2011-main-report.pdf> & KPMG (2014), *Global Anti-Money Laundering Survey*  
<http://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/global-anti-money-laundering-survey/Documents/global-anti-money-laundering-survey-v5.pdf>

the authorities in meeting their AML/CTF obligations. The one-way flow of information that currently exists is a counterintuitive and depressing state of affairs given that the authorities are relying on the FSI to be a front line of defence in counter-terrorism.

- 2.5 Richard Barrett, the former co-ordinator of the UN al-Qaeda and Taliban Monitoring Team, has underlined this point, stressing that 'States cannot expect the private sector to have a better idea of what terrorist financing looks like than the states themselves.'<sup>9</sup>
- 2.6 This lack of coordination and failure to leverage the capabilities of the FSI in support of the EU's counter-terrorism effort would seem, at best to be a missed opportunity and at worst a security weakness that needs to be challenged and addressed.
- 2.7 The FSI has highly advanced systems for screening money flows, account usage, and identifying unusual patterns. An everyday example is the way in which credit card issuers often block card usage which is inconsistent with a cardholder's normal habits, calling to confirm whether the owner of the card is aware of this unusual use.
- 2.8 Also instructive and of interest in this regard is the extent to which banks collaborate with the authorities in the fight against human-trafficking in the US, using the financial pictures they are able to develop with their data in conjunction with public agency guidance.<sup>10</sup>

### 3 FINANCING AND *JIHAD*

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- 3.1 The vast majority of funds that are donated in support of groups operating in war zones such as Syria are given in response to the humanitarian tragedy created by these conflicts, and are donated via recognised and respected channels. However this is not always the case.
- 3.2 The global effort to starve al-Qaeda of financing has greatly diminished its ability to provide funding and resources to its affiliates, however its brand of ideology continues to appeal to donors around the world who seek opportunities to perform 'proxy *jihad*' via donating money in support of *jihadi* fighters.

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<sup>9</sup> Barrett, Richard (2012), 'Preventing the Financing of Terrorism' in *Case Western Reserve Journal of International Law* p730, Vol. 44, No. 3

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- 3.3 This concept of '*Tajheez al-Ghazi*' is a form of sponsorship which 'allows those who cannot, or will not, join the *Jihad* physically for whatever reason, to achieve the honour and heavenly reward of waging *Jihad* by proxy.'<sup>11</sup>
- 3.4 The December 2013 US Treasury designation order on Qatari-based Umayr al-Nu'aymi who is alleged to have channelled funding to a range of *jihadi* causes including ordering the transfer of nearly US\$600,000 to al-Qaeda affiliates in Syria,<sup>12</sup> demonstrates that these deep-pocketed donors can, when attracted to a particular cause, gather and deliver significant funds, funds that are often transported into the battlefield by foreign fighters.<sup>13</sup>
- 3.5 It should thus be noted that foreign fighters also play an important cash-courier role as they travel to their chosen *jihadi* battlefield.

#### 4 THE FSI IN THE CONTEXT OF *JIHAD*, FOREIGN FIGHTERS, AND TERRORISM MORE BROADLY

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- 4.1 Countries across the EU are committing considerable time and resource seeking to gain a greater understanding of who is travelling to *jihadi* theatres such as Syria, when they leave/return, and what risk they might pose upon return.
- 4.2 Unpalatable as it may be to acknowledge at a time when data protection is a high profile topic, the FSI holds data that provides significant insight into the habits and movements of its account holders. Consider the way in which online retailers such as Amazon or supermarket loyalty card schemes can anticipate a customer's purchasing interests – and this represents only a portion of an individual's financial transacting.
- 4.3 Clearly data protection and privacy issues are important when considering the use of any form of personal data and indeed the FSI has experienced fines and sanctions as a result of the loss or misuse of personal data. In the context of countering terrorist-financing, the proposed 4<sup>th</sup> *EU Money Laundering Directive*<sup>14</sup> would appear to acknowledge the appropriate use of data held by the FSI in the context of addressing matters linked to AML/CTF stating in the accompanying *Explanatory Memorandum* that

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<sup>11</sup> [REDACTED]

<sup>12</sup> US Treasury (2013), *Treasury Designates Al-Qa'ida Supporters in Qatar and Yemen*  
<http://www.treasury.gov/press-center/press-releases/Pages/jl2249.aspx>

<sup>13</sup> It should be noted that travellers arriving in the EU from a country outside the EU, or leaving the EU to travel directly to a country outside the EU, must declare any cash of EUR10,000 or more (or its equivalent in other currencies). HMRC website: <http://www.hmrc.gov.uk/customs/arriving/declaring-cash.htm>

<sup>14</sup> European Union (2013), *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing*  
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52013PC0045&from=EN>

provisions are being introduced into the Directive 'to clarify the interaction between anti-money laundering/combating terrorist financing and data protection requirements.'<sup>15</sup>

- 4.4 The *Explanatory Memorandum* notes further: 'The processing of personal data should be permitted in order to comply with the obligations laid down in this Directive, including carrying out of customer due diligence, ongoing monitoring, investigation and reporting of unusual and suspicious transactions, identification of the beneficial owner of a legal person or legal arrangement, sharing of information by competent authorities and sharing of information by financial institutions. The personal data collected should be limited to what is strictly necessary for the purpose of complying with the requirements of this Directive...'<sup>16</sup>
- 4.5 An appropriately constructed, intelligence-based public/private partnership with the FSI could thus enhance monitoring capabilities on a standalone basis, or be integrated with any work that may be undertaken using information (for example from 'geo-tagging') gathered from social media sources such as Twitter, Facebook, and YouTube to create a more accurate and refined picture of possible foreign fighter activity.

## 5 A POSSIBLE PARALLEL THAT COULD INFORM A SOLUTION MODEL

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- 5.1 In 2013, the UK Government announced plans to establish a Cyber Security Information Sharing Partnership (CISP) involving both public and private sector actors, and the possible utility of such a formalised forum in enabling collaboration between the FSI and the authorities.
- 5.2 Comments made by the responsible minister seem to offer a structure that could also be applied to enhance the effectiveness of the CTF regime within the EU. In particular he highlighted<sup>17</sup> that 'CISP is all about: Government and industry working together to build a comprehensive picture of the cyber threat and coming up with the best defences' noting that 'The private sector...is the most important line of defence...' and that 'the Prime Minister [had] held an event...for senior executives, to underline the benefits of a real and meaningful partnership between industry and government.' He further noted that 'The government's proposal was this: by building a community of public and private partners, we could all pool our information on cyber threats and increase our visibility of cyber threats for mutual benefit.'

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<sup>15</sup> Ibid. p7

<sup>16</sup> Ibid. p17

<sup>17</sup> Francis Maude (2013), <https://www.gov.uk/government/speeches/cyber-security-information-sharing-programme>

- 5.3 Most succinct and directly applicable to the current lack of partnership between regulatory/security authorities and the FSI was his conclusion: 'This kind of working is the future: government and industry working hand-in-hand to fight a common threat.'

## 6 THE FSI IS AN UNDERUTILISED SECURITY RESOURCE

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- 6.1 **Recommendation:** the FSI is placed in a frontline 'financial border security' role by the authorities yet is an underutilised resource in the context of the EU's Internal Security Strategy. In endeavouring to disrupt international criminal networks, prevent terrorism, cut off terrorists' access to funding and materials, and follow their transactions,<sup>18</sup> EU authorities would (1) benefit from establishing a partnership similar to the CISP that leveraged the significant capabilities of the FSI, and (2) with regards to the specific and immediate topic of foreign fighters, the FSI could also play a valuable role, guided by public sector agencies, in assisting with the identification of 'persons of interest' based on changes in their financial habits.

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<sup>18</sup> European Commission (2014), *The Final Implementation Report of the EU Internal Security Strategy 2010-2014*, P3 & 6 [http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/final\\_implementation\\_report\\_of\\_the\\_eu\\_internal\\_security\\_strategy\\_2010\\_2014\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/final_implementation_report_of_the_eu_internal_security_strategy_2010_2014_en.pdf)