TRANSCRIME
Research Centre on Transnational Crime
University of Trento

Final report of the research project
awarded under the European
Commission
1998 FALCONE ANNUAL PROGRAMME

1998/TFJHA_FAL/116

in co-operation with

CERTI
Institute of Tax Research for Enterprises
Bocconi University, Milan

Erasmus University of Rotterdam
Faculty of Law

general consultant

Professor Michael Levi
(University of Wales, Cardiff, U.K.)

EUROSHORE

Protecting the EU financial system from the exploitation of financial centres and off-shore facilities by organised crime

Final Report

January 2000

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List of Abbreviations

AUSTRAC	Australian Transaction Reports and Analysis Centre
EU	European Union
FATF	Financial Action Task Force
GRECO	Group of States against Corruption
IMF	International Monetary Fund
IOSCO	International Organisation of Securities Commissions
OAS	Organisation of American States
OECD	Organisation for Economic Cooperation and Development
PC-R-EV	Select Committee on the Evaluation of anti-money laundering measures of the Council of Europe
UN	United Nations
UNDCP	United Nations Drug Control Programme

1. Acknowledgements

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- The three research groups are grateful to the General Secretariat of Interpol for its valuable co-operation in distributing the questionnaires to the offshore jurisdictions selected by this research project and in collecting their reactions to the texts developed therefrom;
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2. Foreword

This research is the result of co-operation between three research institutions: TRANSCRIME, the Research Centre on Transnational Crime of the University of Trento (Italy), which co-ordinated the project; CERTI, Bocconi University of Milan (Italy) and the Faculty of Law of Erasmus University of Rotterdam (The Netherlands). Respectively, the three Directors were:

E. U. Savona	(Professor - University of Trento and Director of TRANSCRIME - University of Trento)
V. Uckmar	(Professor - University of Genoa and Bocconi University of Milan and President of CERTI - Bocconi University of Milan)
H. de Doelder	(Professor - Erasmus University of Rotterdam and Dean of The Faculty of Law)

Michael Levi (Professor - University of Wales - Cardiff - UK) acted as General Consultant.

The following persons directly participated in the research:

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As the research and this report are the result of a variety of activities, persons and institutions, responsibilities may be as allocated as follows:

With reference to the country profiles contained in Annex A, the work was divided as follows.

TRANSCRIME:

- gathered the documentation for analysis of objective A (analysis of the infiltration of the countries considered by organised criminal groups) and objective B (comparative analysis of the legislation....) as regards items B1.5 (criminal

law), B1.6 (criminal procedure law), B2 (administrative controls) and B3 (international co-operation);
- conducted analysis of objective A (analysis of the infiltration of the countries considered by organised criminal groups);
- co-operated with the Erasmus University and CERTI in drawing up the questionnaires sent through Interpol to the authorities (police, justice, central bank and financial) in the various jurisdictions covered by the project;
- transformed the information gathered by the questionnaires into the country profiles, in co-operation with the Erasmus University, and incorporated the reactions of the jurisdictions to the country profiles;
- developed additional research for objective C (harmonisation of the differences in standards of transparency between EU and non-EU financial centres and offshore facilities and the planning of remedies and common policies of international co-operation to prevent their use by criminal organisations for illicit purposes);
- edited Annex A.

CERTI:
- gathered the relevant documentation and conducted analysis of objective B (the comparative analysis of the legislation...) as regards items B1.1 (tax law), B1.2 (company law), B1.3 (banking law) and B1.4 (currency law);
- co-operated with the Erasmus University and TRANSCRIME in drawing up the questionnaires sent by Interpol to the various jurisdictions covered by the project.

Erasmus University:
- conducted analysis of objective B (comparative analysis of the legislation...) as regards items B1.5 (criminal law), B1.6 (criminal procedure law), B2 (administrative controls) and B3 (international co-operation);
- co-operated with CERTI and TRANSCRIME in drawing up the questionnaires sent through Interpol to the jurisdictions covered by the project, and maintained contacts with Interpol with regard to these questionnaires;
- transformed the information gathered by the questionnaires into the country profiles, in co-operation with TRANSCRIME.

The work of writing this final report was carried out as follows.

TRANSCRIME conceptualised, organised and wrote a draft report, which was discussed in Brussels on 5 October 1999 at a meeting between the three research institutions and the European Commission, the Council of the European Union and other experts in the field.

Moreover, TRANSCRIME elaborated, in co-operation with CERTI and the Erasmus University, the final recommendations set out in this report. The Erasmus University co-operated with TRANSCRIME in the compiling and analysis of the case-studies and in revising the final recommendations.

This final report, together with Annex C, was written by TRANSCRIME – University of Trento. The authors were: Ernesto U. Savona, Sabrina Adamoli, Andrea Di Nicola and Alessandro Scartezzini. This report has been sent for approval to the participating Institutes and to the General Consultant. Annexes A and B were written jointly by the three research units.

3. Executive summary

This report presents the results of research conducted as part of the Project "*EUROSHORE. Protecting the EU financial system from the exploitation of financial centres and offshore facilities by organised crime*" awarded by the European Commission under Programme Falcone 1998 and carried out by TRANSCRIME, Research Centre of the University of Trento (Italy) in co-operation with CERTI – University Bocconi (Italy) and the Faculty of Law, Erasmus University of Rotterdam (The Netherlands). The project proposal was prepared in August 1998, following Recommendation no. 30 of the EU Action Plan against organised crime of April 1997. In implementation of this recommendation, Member States "should examine how to take action and provide adequate defences against the use by organised crime of financial centres and offshore facilities, in particular when they are located in places subject to their jurisdiction. With respect to those located elsewhere, the Council should develop a common policy, consistent with the policy conducted by Member States internally, with a view to prevent the use thereof by criminal organisations operating within the Union". The aim of the research reported here was to foster the development of the promising path of 'organised crime prevention' that the European Union has undertaken with its Action Plan and the Forum "Towards a European Strategy to Prevent Organised Crime" held in the Hague on 4-5 November 1999. Its rationale is that there is a broad area of regulatory measures that could be used to hamper the growth of organised crime. This action, if properly pursued, would be less costly and more effective in terms of reducing the amount of organised crime than crime control action alone, with which, however, it should be combined. Acting on the regulation of the markets infiltrated and exploited by organised crime requires understanding and explanation of why and how the demand of organised crime is matched by opportunities which facilitate its development. The policy implications of this understanding should be a re-regulation of the mechanisms that produce such opportunities.

The existence of under-regulated and non co-operative financial centres and offshore jurisdictions is the cause of serious concern for international efforts to combat organised crime. The problem has been placed high on the agendas of numerous international organisations (United Nations, FATF, OECD, Council of Europe and European Union) and national governments. This report, with its Annexes A, B and C, intends to furnish a better understanding of the problem and of its policy implications. The seven recommendations set out at the end of the report are suggestions on how the European Union might protect its financial system more effectively against the exploitation of offshore financial centres by organised crime.

The report begins by examining the point at which the demand for financial crime meets the supply of financial services furnished by financial centres and offshore jurisdictions. This is the point at which the facilities provided by these jurisdictions, compared with the other more co-operative and more closely regulated ones, may be exploited by criminals in order to reduce the 'law enforcement risk'. The latter is the sum of the probabilities that members of criminal organisations will be intercepted, arrested and convicted and the proceeds of their crime confiscated, and that the organisation itself will be disrupted. After discussing the rationale for such exploitation by organised crime – and after concluding that the combination of the facilities provided by offshore jurisdictions and the increasing availability of information about them (through the media, Internet and professionals) may heighten the risk of their exploitation by organised criminals – in order to suggest effective remedies, this report seeks to determine and to explain in which jurisdictions and sectors of regulation these financial facilities are to be found, and endeavours to quantify them.

The facilities offered by financial centres and offshore jurisdictions are often, but not always, the result of asymmetries in regulation. These asymmetries may be defined as the differences between a certain type of regulation and the integrity standards established by the international community to protect financial systems.[1] The underlying assumptions on which this research has been based are: (1) the risk of exploitation is a function of asymmetries in regulation, and (2) protection of the EU financial system is a function of the risk of exploitation. Summarising the two functions implies that the protection of the EU financial system depends on the level assumed by asymmetries in regulation between EU countries and offshore jurisdictions.

Given that the risk of exploitation is determined by the asymmetries in regulation and that legislation plays a considerable role in reducing them, and consequently that the level of protection of the EU financial system depends on the level of the risk of exploitation, this report seeks to answer the following questions:

Which group of jurisdictions deviates most markedly from the general integrity standards and in which sector/s?

How substantial are the asymmetries in each of these sectors and in which group of jurisdictions?

[1] As explained in Section 10, this concept has been operationalised as 'integrity standard', which may be defined as the 'optimal level of regulation' in different sectors of law (criminal, administrative, commercial, banking, international co-operation regulations). The 'optimal level of regulation' is that which ensures the optimal integrity of a country's financial system.

What remedies can be suggested to reduce the risk of exploitation and ensure the best protection of the EU financial system?

Three groups of 'financial centres and offshore jurisdictions' were selected according to their level of (geographical, political, economic) 'proximity' to the European Union member states, which were treated as another homogeneous group (Group 0). The four groups selected were:

- *Group 0 - EU member states*
- *Group 1 – European financial centres and offshore jurisdictions* – those that are not member states of the Union but have special geographical, political or economic links with the European Union;
- *Group 2 - Economies in transition* – those jurisdictions belonging to the ex-Soviet Bloc and those located in the Balkan region. Some of these countries are connected with the European Union by Association Agreements and have commenced the process of gaining entry to the European Union;
- *Group 3 - Non-European offshore jurisdictions* – those jurisdictions entirely unconnected with the European Union.

Analysis was then conducted for each jurisdiction of the organised crime activities to which its facilities were vulnerable, followed by detailed description of regulations in the sectors of criminal law and criminal procedure, as well as of administrative, commercial and banking regulations and international co-operation (see Annex A).

A number of primary and secondary sources were used to conduct this analysis.

The primary sources were:

- replies to the questionnaires prepared by the three research units and sent via Interpol to respondents (Police, Justice, Central Bank and Finance authorities) in most of the jurisdictions mentioned (see Annex B to the report for the full text of the questionnaires).
- the reactions by the various jurisdictions to their country profiles (which were sent to each of them), and this enabled the information in Annex A to be checked for accuracy and updated;
- the replies to a questionnaire drawn up by TRANSCRIME - University of Trento on company law regulations and sent to members of the International Organisation of Securities Commissions (IOSCO) in most of the jurisdictions considered.

The secondary sources were: white literature (research reports, scientific and professional journals), police and press reports.

In order to minimise the risk that information might be out-of-date or invalid, the results of the analysis on objectives A) and B) were sent to various jurisdictions to obtain their reactions. Their replies have been incorporated, when possible, in Annex A.

The overall levels of these asymmetries were then quantified for the purpose of comparative analysis. Two comparisons were made: a) among asymmetries representing the distance of the regulatory systems of the three groups from the optimal levels of integrity established by operationalising the concept of standards as adopted by the international community; b) among asymmetries representing the distance of the regulatory systems of the three groups of jurisdictions considered from the levels of integrity set by the European Union members states.

The research provides a detailed analysis of the country profiles, having previously operationalised criteria, indicators and standards. The findings consist of (a) quantification of the deviation by Groups of jurisdictions from the general integrity standards; (b) deviation by Groups of jurisdictions from EU standards.

The general conclusions of this analysis and the consequent policy implications may be summarised as follows.

NOT ONLY OFFSHORE

The distinction between offshore and onshore is losing much of its conventional meaning if construed as the opposition between opacity and transparency. Some offshore jurisdictions are moving towards tougher criminal law legislation and international co-operation, and somewhat more transparency (Group 1 - EU financial centres and offshore jurisdictions and Group 2 - Economies in transition), while others (Group 3 - Non-EU offshore jurisdictions) adhere to their traditions of lenient criminal law, non-cooperation and opacity. At the same time, countries with long traditions as financial centres display the same or lower standards of regulation with respect to those officially termed ‘offshore’.

ASSOCIATION AGREEMENTS WORK : INCOMING MEMBERS TO THE EUROPEAN UNION ARE CHANGING THEIR CRIMINAL LAW AND INTRODUCING FINANCIAL REGULATION

The results of the research show quite clearly that, as offshore and onshore compete to attract capital (and sometime obtain ‘dirty’

capital as well), so countries belonging to Group 2 are tightening their criminal legislation and giving greater transparency to their financial regulations. The influence of the European Union is evident in this process, highlighting the positive role of regional institutions like the European Union in improving the integrity standards of surrounding countries.

ECONOMIC AND POLITICAL PROXIMITY WORKS: THE CLOSER OFFSHORE JURISDICTIONS ARE TO EUROPEAN UNION, THE LESS THEY DEVIATE FROM THE INTEGRITY STANDARDS SET BY THEIR REGULATIONS AND FROM THOSE OF THE EUROPEAN UNION

Not only do Association Agreements work but also proximity with the European Union seems to be beneficial. The results of the research show that offshore jurisdictions belonging to Group 1 (those with geographical, economical and political links with the European Union) deviate less from integrity standards than do other jurisdictions in Group 3 (offshore with no links with the European Union). With the exception of company law, all the other sectors of regulation obtain better results than do equivalent sectors of Group 3.

THE EUROPEAN FINANCIAL SYSTEM SHOULD BECOME MORE TRANSPARENT BEFORE IT CAN CREDIBLY ASK OTHERS TO 'CLEAN UP THEIR ACT'

The first two conclusions assert that a regional approach works, and that when offshore financial centres remain in the political and economical periphery of the European Union greater integrity arises in their standards of regulation, with the consequent reduction of the risk that their financial facilities may be exploited by organised crime. This holds for almost all the regulatory systems analysed by this research project with the exception of one, namely company law. Comparing the score for the deviation by the company law of European member states from the integrity standards shows that EU company law deviates by 0.22 from the general integrity standards, which is slightly less than the deviation by Group 2 (0.30) and significantly less than that by Group 1 (0.46) and Group 3 (0.47) of financial centres and offshore jurisdictions. This signifies that in at least one crucial sector of regulation, the European Union members states have not 'cleaned up their act' before asking others to do so. This 'cleaning-up' process should be accelerated for two reasons. Firstly for the sake of credibility. The European financial system cannot ask others to change their regulatory systems with a view to improving the integrity of their financial systems without itself having done so first. Secondly, because company law regulation is the most essential factor in the transparency of a financial system.

COMPANY LAW EXERTS A 'DOMINO' EFFECT ON THE OPACITY OF OTHER SECTORS OF REGULATION

Company law contributes more than other sectors of regulation to the level of a financial system's transparency/opacity. It sets share capital and regulates the issue of bearer shares by limited liability companies, the possibility that legal entities may act as directors, the requirement of establishing a registered office, and also the obligatory auditing of financial statements in the case of limited liability companies and the keeping of share-holders' registers. According to the type of regulation, company law produces the greater transparency or the greater opacity of a financial system, thereby influencing the other sectors of regulation and determining the effectiveness of police and international judicial co-operation. This is the 'domino' effect of company law: if this type of regulation seeks to maximise anonymity in financial transactions, enabling the creation of shell or shelf companies whose owners remain largely unknown (because other companies own them), such anonymity will be transferred to other sectors of the law. Thus the names of ultimate beneficial owners or the beneficiaries of financial transactions will remain obscure, which thwarts criminal investigation and prosecution. Police co-operation should concentrate on physical persons, not legal entities, and if company law maximises anonymity, then the ineffectiveness of criminal law and police and judicial co-operation is inevitable. The same effect arises in banking law, where bank secrecy becomes a marginal issue owing to the anonymity enjoyed by the companies operating bank accounts under surveillance. The 'domino' effect, therefore, influences the other sectors of regulation, producing much of the opacity surrounding a financial system. Consequently, this research suggests, if asymmetries are greater in this sector than in others, company law is the point from which action to protect financial systems against exploitation by organised crime should begin, both in Europe and elsewhere.

Better understanding of the exploitation of financial and offshore centres by organised crime is afforded by the case studies of 'offshore in action' (drawn from international law enforcement operations) comprised in this report. The data and the case studies point to the policy implication that, since criminal law and criminal procedure law have reduced the distance between the less regulated and the well regulated jurisdictions[2], real changes would be brought about by introducing greater transparency into the rules on the establishment of corporations and their operations. This would enable law enforcement agencies and regulators to identify the physical persons whose interests are being managed. Rules of corporate governance combining efficiency with transparency of ownership should be extended to encompass a

[2] See Group 1.

further kind of transparency: one targeted on the optimal level of integrity. This form of transparency will reduce the risk of the criminal exploitation of financial centres and offshore jurisdictions, rendering international co-operation with law enforcement agencies truly effective. Only in this case will 'following the money trail' yield investigative results that can be used to prosecute criminals and disrupt their organisations. Corporations and governments should be aware that facilitating identification of the physical persons who operate in financial markets will, in the long run, increase the transparency of financial systems without impairing their efficiency. The less it is likely that 'dirty money' can pollute competition among enterprises and infiltrate legitimate enterprises, the less it is likely that illicit operators will proliferate to the advantage of legitimate ones. Partnership among corporations, regulatory and law enforcement authorities and governments would foster this process.

With these results in mind, and following consultations with experts in various fields, this report proposes seven recommendations which suggest three different levels of action by the European Union Institutions to protect its financial system:

- harmonising and raising, when necessary, the level of regulation among EU member states (*harmonisation*);
- exporting the standards thus achieved to financial and offshore centres, the purpose being to reduce the asymmetries between the regulatory systems of financial centres and offshore jurisdictions and those of the EU member states (*active protection - reduction of asymmetries*);
- preventing EU financial mechanisms (financial and non-financial institutions) from receiving financial transactions originating in financial and offshore centres outside the EU unless they meet the level of regulation of the EU member states (*passive protection - exclusion*), the purpose being to prevent pollution of the EU financial system.

Described for each recommendation is its background and rationale, the remedy proposed and its aim. The seven recommendations are outlined on the next page.

THE SEVEN RECOMMENDATIONS BY THE EUROSHORE PROJECT TO THE EUROPEAN UNION

1. The introduction of an 'all crimes' anti-money laundering legislation is recommended, accompanied at the same time by a well-defined list of predicate offences to be included as distinct crimes in each jurisdiction.
2. The enactment in other jurisdictions of money laundering legislation consistent with the standards set by the EU Money Laundering Directive, as amended.
3. The introduction of the liability of corporations, either administrative (short term) or criminal (long term), as a generic sanction on crimes committed by corporations.
4. The requirement that EU financial institutions accepting transactions from countries outside the EU must impose the disclosure – together with the name of the person ordering the transaction – of the names of the director of the corporation and of the trustee, together with those of the ultimate beneficial owner (i.e. main shareholder) of the corporation itself and of the beneficiary and settlor of a trust. If the EU institution fails to require this disclosure, it should be subjected to sanction.
5. Exploration of the feasibility of establishing a system of incentives for credit and financial institutions (from minimum measures of involvement intended to show these institutions the concrete results of their anti-money laundering action, to maximum measures consisting in economic rewards when reporting has been essential for the conviction of criminals and/or confiscation of criminal assets), the purpose being to enhance and give greater effectiveness to co-operation between credit and financial institutions and law enforcement authorities.
6. Examination of the feasibility of eliminating the issuance of bearer shares and of eliminating nominee shareholders; of setting minimum capital requirements for the incorporation of companies; of mandating the drafting and depositing of audited financial statements; of creating public registers of companies. Examination of these possibilities is especially recommended as regards companies located in financial and offshore centres with a view to preventing the use of companies as vehicles for money laundering. This recommendation, if implemented, would assist in ascertaining the real identities of the persons on whose behalf financial transactions are conducted, and it is therefore closely connected with recommendation no. 4.
7. The introduction of certain minimum requirements, such as the registration of trust deeds and disclosure of the identities of the settlor and the beneficiary, for the purpose of enhancing transparency in trust law. This recommendation, if implemented, would assist in ascertaining the identities of the persons on whose behalf transactions are conducted and is therefore closely connected with recommendations no. 4.

4. Introduction

This report sets out the results of the research project entitled "*EUROSHORE. Protecting the EU financial system from the exploitation of financial centres and offshore facilities by organised crime*", awarded by the European Commission under Falcone Programme 1998 (contract no. 1998/TFJHA_FAL/116). The undertaking of the research was suggested by the Italian Minister of Justice at a meeting of the European Council of Ministers held in March 1998.

The project proposal was prepared in August 1998, following Recommendation no. 30 of the EU Action Plan against organised crime of April 1997. To implement this recommendation, Member States "*should examine how to take action and provide adequate defences against the use by organised crime of financial centres and offshore facilities, in particular when they are located in places subject to their jurisdiction. With respect to those located elsewhere, the Council should develop a common policy, consistent with the policy conducted by Member States internally, with a view to prevent the use thereof by criminal organisations operating within the Union*".

The subtitle following the project's acronym "Euroshore" encapsulates this recommendation: *protecting the EU financial system from the exploitation of financial centres and offshore facilities by organised crime*.

The summary presented with the research proposal stated the following:

> *Aim:*
>
> *The project will develop proposals for EU action plans to harmonise differences in transparency standards, which characterise financial centres and offshore facilities with respect to the European Union Member States, and to provide adequate defences against the use by organised crime of these markets.*
>
> *Problem:*
>
> *Due to their role in the international payments system, a number of financial centres and offshore facilities damage the EU financial system by offering services which facilitate money laundering activities and satisfy the need for anonymity among criminal organisations in economic operations. These countries take advantage of special economic and financial relations with the European Union and thus they can be considered as open windows for capital which finds investment opportunities within the Union.*

Solution:

The action plans will highlight deficiencies in legislation and practice with respect to money laundering, indicate the most appropriate effective and feasible initiatives to be adopted by the European Union and its Member States to prevent their exploitation by organised crime groups and suggest ways of incentivating forms of co-operation aimed at resolving existing loopholes.

How:

The project will analyse the most recent trends and changes in money laundering mechanisms, methods and instruments and highlight the legislative characteristics of financial centres and offshore facilities, which make them particularly attractive for criminals. The results of this work could be used to create EU action plans.

This report is organised as follows:

- Executive summary (Section 3);
- Introduction (Section 4);
- How the offshore problem is considered by international institutions and national governments (Section 5);
- How the demand for financial crime meets the supply of financial facilities by financial centres and offshore jurisdictions (Section 6);
- Two assumptions concerning the relationship between regulatory asymmetries, the risk of exploitation of financial centres and offshore jurisdictions by organised crime and protection of the EU financial system (Section 7);
- Methodology and data collection procedures (Section 8);
- Country profiles (Section 9 and Annex A);
- Operational definitions of Criteria, Standards and Indicators for the assessment of asymmetries in regulation (Section 10 and Annex C);
- Analysis (Section 11);
- Case studies on 'offshores in action' (Section 12);
- A proposal for seven EU recommendations (Section 13).

Given that the goal of the research was to analyse the risk of exploitation of financial centres and offshore jurisdictions by organised crime, with a view to suggesting guidelines to the European Union for action in various *fora*, the reading of the present report will be facilitated by the following explanations of key concepts.

Offshore financial centres

A working definition of this concept is essential. Although 'offshore' does not automatically denote illegal or criminal activity, numerous international organisations (UN, FATF, OECD, Council of Europe and European Union) and national governments have pointed out the risk that facilities provided by financial centres and offshore jurisdictions may be exploited by organised crime groups. The offshore problem, indeed, is an important item on their political agendas.

The present report uses the term used by the Financial Action Task Force of "*non-co-operative countries and territories*", integrating it with the practical qualification of these countries as 'under-regulated' jurisdictions now current among professionals. These two concepts are commonly found in the public perception about offshores, which as a concept, is becoming synonymous with 'under-regulated and non-co-operative jurisdictions'[3].

'Under-regulated' signifies that their regulation in one or more of the following areas - financial, tax, company, currency, criminal, administrative laws - falls below the standards of regulation set out in the instruments provided by the international community (Basle principles, FATF recommendations, International Auditing, etc.) to protect the integrity of financial systems (hereinafter 'integrity standards'). On the other hand, the concept of 'non-co-operative' applies to those countries and territories which do not co-operate in principle (by not signing and/or ratifying instruments of international co-operation elaborated by the United Nations, the Council of Europe, the OECD, etc.). In this report the term 'jurisdiction' is used broadly to cover the many geographical, political and economic issues that concern the countries and territories termed 'offshore'. These criteria are perhaps more efficacious than others such as the ratio between deposits by residents and non residents or the ratio between the number of companies and the population. These statistics, when reliable, confirm a self-evident assumption: that these jurisdictions attract money because they are under-regulated and non-co-operative.

Organised crime

The concept of organised crime was given a broad definition for the purpose of this research. The term, in fact, is polysemous.[4] A

[3] This definition has been used in the E.U. Savona's general report "Questions and answers on the nexus between corruption and offshore financial centres" prepared for the *Council of Europe Fourth European Conference of Specialised Services in the Fight against Corruption*, Limassol, Cyprus, 20-21 October 1999

[4] For an analysis of the various definitions of "organised crime" see: S. Adamoli, A. Di Nicola, E.U. Savona, P. Zoffi, *Organised Crime around the World*, report prepared by TRANSCRIME - University of Trento for HEUNI - United Nations, HEUNI Publication Series n. 31, Helsinki, 1998, pp. 4-10; 132-142.

useful working definition is the one used by the Joint Action of 21 December 1998, adopted by the Council of the European Union on the basis of Article K.3 of the Treaty on European Union on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union. Article 1 of this Joint Action states:
"…*A criminal organization shall mean 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.*"

Risk of exploitation

This concept denotes the likelihood that the facilities (criminal, administrative, banking, company) provided by financial centres and offshore jurisdictions may be used for purposes forbidden by law and contrary to integrity standards (see the standards identified in Section 10 of this report).

Protecting EU financial markets

The subtitle of the research project explains its rationale: to contribute to protection of the EU financial system. The grouping of countries according to their 'proximity' to the European Union (see Section 8), the main assumptions, and the perspective from which the recommendations have been drafted are all inspired by this rationale.

This report considers the protection of the EU financial system to be a functional objective achievable through active or passive action *vis-à-vis* countries providing financial facilities which increase their vulnerability to exploitation by organised crime. For present purposes, protection may be defined as the condition which ensures that illicit proceeds do not pollute the legitimate European financial markets and business competition. The term also covers the capacity of the European Union member states to recover the proceeds of crime transferred to financial and offshore centres for laundering.

It should be pointed out that EU financial markets may be involved either in the layering stage of money laundering or in the integration of illicit proceeds as investments in legitimate European markets, after the laundering process has begun, with placement of such proceeds in a financial or offshore centre.

5. Offshores in the political agenda

Among international organisations, the United Nations[5] has been actively engaged in analysis of money laundering in general, and of financial centres and offshore jurisdictions in particular. The report *Financial Havens, Banking Secrecy and Money Laundering*[6], issued by the United Nations Office for Drug Control and Crime Prevention, stresses the potential role of offshore financial centres in money laundering, stating that "*criminal organisations are making wide use of the opportunities offered by financial havens and offshore centres to launder criminal assets, thereby creating roadblocks to criminal investigations. Financial havens offer an extensive array of facilities to foreign investors who are unwilling to disclose the origin of their assets.*[…] *The difficulties for law enforcement agencies are amplified by the fact that, in many cases, financial havens enforce very strict financial secrecy, effectively shielding foreign investors from investigations and prosecutions from their home countries.*"[7]

In 1998 the OECD produced the report *Harmful Tax Competition*[8] which examines harmful tax practices in the form of tax havens and harmful preferential tax regimes in OECD member countries and their dependencies. The report focuses on geographically mobile activities, such as financial and other services. It defines the factors to be used in identification of harmful tax practices and sets out nineteen wide-ranging Recommendations to counteract such practices.[9]

These Recommendations are divided into three categories:[10]

- recommendations concerning domestic legislation;
- recommendations concerning tax treaties;
- recommendations for intensification of international co-operation.

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[5] UN Global Programme Against Money Laundering of 1997 and the UN Anti-money Laundering Programme launched at the special Session of the UN General Assembly on the World Drug problem, 8-10 June 1998, New York.

[6] J. Blum, M. Levi, T. Naylor, P. Williams, *Financial Havens, Banking Secrecy and Money Laundering*, issue 8 of the UNDCP Technical Series, New York, 1998.

[7] J. Blum, M. Levi, T. Naylor, P. Williams, J. Blum, M. Levi, T. Naylor, P. Williams, *op. cit*, p. 1.

[8] OECD, *Harmful Tax Competition. An Emerging Global Issue*, OECD, Paris, 1998.

[9] The factors with which to identify tax havens are:

- whether a jurisdiction imposes no or only nominal taxes and offers itself, or is perceived to offer itself, as a place to be used by non-residents to escape tax in their country of residence;
- laws or administrative practices which prevent the effective exchange of relevant information with other governments on taxpayers benefiting from the low or no tax jurisdiction;
- lack of transparency;
- the absence of a requirement that the activity be substantial, since this would suggest that a jurisdiction may be attempting to attract investment or transactions that are purely tax driven (i.e., these centres are essentially 'booking centres').

Moreover, there are four key factors which identify preferential tax regimes:

- the regime imposes a low or zero effective tax rate on the relevant income;
- the regime is 'ring-fenced';
- the operation of the regime is non-transparent;
- the jurisdiction operating the regime does not effectively exchange information with other countries.

For more extensive information see OECD, *op. cit.*, pp. 22-34.

[10] For more detailed analysis see OECD, *op. cit.*, chapter Three, pp. 37-55.

The Report concludes that "*there is a strong case for intensifying international co-operation when formulating a response to the problem of harmful tax competition, although the counteracting measures themselves will continue to be primarily taken at the national, rather than at the multilateral level. The need for co-ordinated action at the international level is also apparent from the fact that the activities* […] *are highly mobile. In this context, and in the absence of international co-operation, there is little incentive for a country which provides a harmful preferential tax regime to eliminate it since this could merely lead the activity to move to another country which continues to offer a preferential treatment.*"[11]

The Financial Action Task Force on Money Laundering (FATF), the leading international body on anti-money laundering, has also been concerned with the issue. Its latest Annual Report[12] of July 1999 devotes a section to the "*non-cooperative countries or territories*". In order to tackle the problem, FATF has established an *Ad Hoc Group* to discuss future action in detail. The scope of the group's work extends both within and outside FATF membership. The priority task of the *Ad Hoc Group* has been to define the detrimental rules and practices which impair the effectiveness of anti-money laundering systems and to determine criteria for definition of non-co-operative jurisdictions. As a result, FATF has adopted twenty-five criteria, which at the time of writing have not yet been published, but which cover such aspects as loopholes in financial regulations (e.g., inadequate customer identification, inadequacy of rules on financial intermediaries), the obstacles raised by regulatory requirements (e.g., inadequate or no requirement for the registration of business and legal entities and the identification of their beneficial owners), the obstacles to international co-operation at both the administrative and the judicial levels (e.g., existence of laws or practices prohibiting the international exchange of information), and inadequate resources for the prevention and detection of money laundering. In addition, the FATF *Ad Hoc Group* has agreed on a process for identifying non-co-operative countries or territories.

The identification of jurisdictions which fulfil the aforementioned criteria, and definition of action to eliminate detrimental rules and practices, are the next steps for the FATF's work in this area.

[11] OECD, *op. cit.*, p. 38.
[12] FATF, *Annual Report 1998-99*, 2 July 1999, p. 35.

The Council of Europe has always been extremely active in the fight against money laundering. Among the numerous initiatives undertaken by the Council of Europe as regards financial centres and offshore jurisdictions are Resolution no. 1147[13] adopted by the Assembly on 28 January 1998 and the activities of the Select Committee of Experts on the Evaluation of anti-money laundering measures (PC-R-EV). The recent 4th European Conference of Specialized Services in the Fight against Corruption[14] was devoted to the issue of "*international co-operation in the fight against corruption and offshore financial centres*", focusing on obstacles and solutions. The conclusions adopted by the Conference outline the potential role of offshore jurisdictions in money laundering:[15]

"Whereas some offshore jurisdictions offer bank secrecy, confidentiality, anonymity, tax avoidance facilities and fail to provide international co-operation in criminal matters, others have introduced measures of supervision and control that easily match, or on occasion may even exceed, those that can be found in some onshore jurisdictions. The services provided by offshore centres are particularly attractive for individuals and companies involved in corruption transactions, the setting-up of slush funds, the laundering of

[13] Extract from Resolution no. 1147: "*The Assembly calls for new strategies that permit the co-ordination of different financial investigations targeting the assets of organised economic crime. Such initiatives may require quick legal mechanisms to lift banking secrecy and various provisions under which bankers, judiciaries, accountants and lawyers may be compelled by judicial order to suspend their vow of professional confidentiality and produce bank records or other financial statements or, if necessary, give testimony. Consideration should also be given to the possibility for different countries having participated in a law-enforcement operation to share assets recuperated, insofar as they cannot be returned to their rightful owners.*
Special attention should be given to economic crime, money laundering and corruption being undertaken in the rapidly growing field of electronic commerce, as studied particularly within the OECD. Co-operation between the Council of Europe and the OECD should be stepped up to accelerate the shaping of legislation and conventions in this field.
Member states should agree to draw up, within the framework of the Council of Europe, regular reports on the situation in their countries as regards economic crime, money laundering and corruption for joint examination within the Organisation, through a body which could advise countries on ways to improve the situation. Such a body should also be accessible to ordinary citizens in member states who feel affected by these ills. Finally, member states should consider introducing an ombudsman or commissioner at national level (where such a person does not exist already), or within existing regional or international organisations where available.
The Assembly invites member states which have not yet done so to join the Financial Action Task Force on Money Laundering (FATF) or at least to make use of its work. The new body mentioned in paragraph 7 above should also be entrusted with the task of monitoring and evaluating the anti-money laundering policies of all member states.
The Assembly also invites member states to include in their upper secondary school curricula the subject of organised crime and illicit economic activities in order to encourage prevention and offer citizens possible means, including individual means, of defending themselves.
The Assembly welcomes the agreement reached in November 1997 among the member countries of the OECD on a convention on combating bribery in international business transactions, including that of foreign public officials, and calls on all member states of the Council of Europe, including non-OECD members, to sign and ratify this open treaty as soon as possible.
Finally, the Assembly calls for as close a co-ordination as possible between the Council of Europe and the European Union in the fields mentioned, especially in view of future European Union enlargement".
[14] 4th European Conference of Specialized Services in the Fight against Corruption, subject: International Co-operation in the fight against corruption and offshore financial centres: obstacles and solutions, held in Limassol (Cyprus) on 20-22 October, 1999.
[15] 4th European Conference of Specialized Services in the Fight against Corruption, subject: International Co-operation in the fight against corruption and offshore financial centres: obstacles and solutions, Conclusions adopted by the Conference following a proposal by Ernesto U. Savona, General Rapporteur, Limassol (Cyprus), 20-22 October 1999.

proceeds and the creation of shell companies being facilitated by offshore environments. Experience shows that modern corruption schemes often involve the use of shell companies or bank accounts domiciled in offshore centres."

Various impediments against international co-operation are then identified:

- "*differences in company laws and other related regulatory norms, in particular the possibility of setting up shell or letter-box companies lacking any commercial or industrial activity which often do not require minimum capital, audited accounts, annual general meetings or even a locally appointed administrator;*
- *the fact that such shell or letter-box companies are used for operating outside the territory of offshore centres where they have been created, rendering their control difficult or even impossible;*
- *the lack of means to identify the ultimate physical beneficial owner of shell or letter box companies;*
- *the reluctance to sign, ratify or implement treaties on international co-operation in criminal and administrative matters;*
- *insufficient staffing and training of law enforcement personnel;*
- *insufficient knowledge about the patterns and methods of corruption transactions using offshore centres;*
- *the misuse of rules providing for bank secrecy, confidentiality, professional privilege and immunities."*

The concluding document of the Conference proposes measures to be taken at the national[16] and at international level.[17]

The European Union has taken action against money laundering through financial centres and offshore jurisdictions with its Action Plan to Combat Organised Crime adopted by the Council on 28 April 1997 (97/C 251/01). Recommendation no. 30 reads as follows: "*Member States should examine how to take action and provide adequate defences against the use by organised crime of financial centres and offshore facilities in particular where these are located in places subject to their jurisdiction. With respect to those located elsewhere, the Council should develop a common policy, consistent with the policy conducted by Member States internally, with a view to prevent the use thereof by criminal organisations operating within the Union* (see political guideline no. 12)".

[16] These measures envisage action on the following: company law, bank secrecy, identification and reporting of suspicious transactions, law enforcement personnel, professionals.

[17] Some of the proposed measures are:

- international co-operation should be enhanced through the use of available instruments, recommendations and initiatives developed by international organisations;
- in this context it seems necessary to speedily implement the decisions of the recent extraordinary European Council of Tampere to reinforce the fight against serious organised crime, to develop common standards to prevent the use of corporations and entities registered outside the jurisdiction of the Union in the hiding of criminal proceeds and in money laundering, and to provide for arrangements with offshore centres with a view to ensuring efficient and transparent co-operation in mutual legal assistance;
- the launching of the activities of the "Group of States against Corruption – GRECO";
- negotiations should be launched on the drafting of a Protocol to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS n° 141);
- Council of Europe member states which have not ratified the Additional Protocol (ETS n° 99) to the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS n° 30) should be urged to do so without delay, and all Council of Europe member states should be invited to sign and ratify the Civil Law Convention on Corruption (ETS N°174);
- the Council of Europe should be invited to update the European Convention of Mutual Assistance in Criminal Matters, simplifying the procedures of rogatory letters, providing for direct contact between judicial authorities and reducing the grounds for refusals of assistance;
- the Council of Europe should be invited to examine the possibility of drafting a European Convention on tax fraud;
- the Council of Europe should be invited to consider ways of providing for more expeditious and efficient extradition procedures among its member States.

Moreover, the European Commission has monitored the implementation of the EU anti-money laundering Directive 91/308 and is now preparing a new directive to enhance the recommendations to member countries and enlarge the subjects involved. The adoption of this new version of the Directive, together with stronger action towards financial centres and offshore jurisdictions, was recommended by the meeting of the European Council held in Tampere (Finland) on 15-16 October 1999 [18].

National governments, too, have started to consider, and to take action against, the potential illicit use of offshore jurisdictions for money laundering operations. Some relevant examples of such action are the following.

The United States of America are changing their anti-money laundering legislation and considering the introduction of tough measures against offshore centres.

The United Kingdom has paid close attention to the problem, issuing the White Paper on Britain and Overseas Territories of 17 March 1999 and the recent review of the operations of offshore financial centres in its Caribbean dependent territories and Bermuda.[19] In particular, the White Paper clearly states the risk that offshore centres in general, and a significant number of the Overseas Territories (especially those in the Caribbean but also Bermuda and Gibraltar) in particular, may be exploited by criminals for money laundering purposes: "*The international financial services industry has grown dramatically in recent decades.* […] *The success of the Overseas Territories has been built upon by their reputation for sound administration, effective legal systems, political stability and public order, and their association with the UK.* […] *The development of sizeable financial sectors brings risks of abuse. There have already been a number of problems.* […] *As markets develop and techniques for laundering money, fraud, tax evasion and regulatory abuse evolve, so financial regulatory systems must improve, be updated, and be responsive to ever tighter international standards. The Caribbean Overseas Territories in particular are a potential target for money launderers because of their offshore financial business, their proximity to major drug producing and consuming countries and, in some cases, their inadequate standard of regulation and strict confidentiality rules. They are also at risk from attempted fraud. In some cases, the small size of their public sectors makes it difficult to provide adequate regulation, particularly if the*

[18] Recommendations n. 57 and 58 refer to the issue of offshore jurisdictions. Following Recommendation no. 57 "*Common standards should be developed in order to prevent the use of corporations and entities registered outside the jurisdiction of the Union in the hiding of criminal proceeds and in money laundering. The Union and Member States should make arrangements with third country offshore. centres to ensure efficient and transparent co-operation in mutual legal assistance following the recommendations made in this area by the Financial Action Task Force*". Recommendation n. 58 states that "*The Commission is invited to draw up a report identifying provisions in national banking, financial and corporate legislation which obstruct international co-operation. The Council is invited to draw necessary conclusions on the basis of this report* ."

[19] "Operations of Offshore Financial Centres under spotlight", in *The Financial Times*, 21 September 1999.

offshore sector has grown more rapidly than regulatory capacity. International financial crime and regulatory abuse arising in the Overseas Territories is mainly targeted at other countries."[20]

On 25 September 1999 it was reported[21] that France had drawn up nine proposals to crack down on tax havens and money laundering. According to unofficial sources, these proposals include the following:

- an international ban on under-regulated legal entities, such as shield companies and opaque trusts;
- improvement of legislation against money-laundering by extending the scope of indictments and mandatory reports by financial institutions of suspicious transactions to include bribery;
- the enlistment of non-financial agents such as lawyers, real-estate agents and casinos in the fight against money laundering;
- the drawing up a list of non-cooperative states and territories identified by objective criteria, such as their lack of indictments for money-laundering, opaque commercial law which prevents identification of beneficiaries, inadequate or non-existent financial standards and supervision, inadequate prudential and judicial instruments, and non-existent or deficient judicial co-operation with other countries and international bodies;
- persuading these states to adhere to international standards and urging the automatic lifting of bank secrecy rules in investigations and judicial proceedings;
- closer co-operation among anti-money-laundering authorities, possibly through creation of an international alert mechanism;
- to permit the simultaneous freezing of suspects' accounts. (Although a suspect's accounts can be frozen in one jurisdiction, the suspect is more often than not free to move his/her assets around other countries whose legal systems are more cumbersome or whose governments are loath to clamp down on money-laundering);
- closer involvement of international financial institutions (like the IMF and the World Bank) in the fight against corruption and money laundering. This could be achieved through the attachment of conditions when providing financial aid, a bar on public entities in countries benefiting from multilateral support from dealing with offshore centres, and the independent auditing of critical sectors;

[20] *Partnership for Progress and Prosperity. Britain and the Overseas territories*, presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty, March 1999, pp. 22-24. The White Paper is available in full at the web site of Great Britain's Foreign and Commonwealth Office at the following address: http://www.fco.gov.uk/.

[21] In *Dow Jones News*, 25 September 1999.

- the setting up of a separate department within the IMF to attend to governance issues;
- enforcement of the new rules by sanctions, which might also comprise the halting of public financial flows to states and territories which do not comply with the rules or at least make an effort to do so. Also proposed are partial, total, temporary or permanent restrictions on capital flows with non-cooperative or under-regulated offshore centres.

All of these initiatives are important, for they confirm that the problem of financial centres and offshore jurisdictions is one of international public concern. However, this substantial concern is matched by very little action. Numerous economic and political difficulties obstruct effective concerted action. Some countries strive to limit the damage to their tax systems by signing bilateral tax treaties that will probably solve the problem of the country involved, displacing inevitably the distortive effect of tax competition to other countries. The result of this lack of action is that the number of financial centres and offshore jurisdictions grows as competition among different offshores increases, with a proportional exacerbation of the risk that their facilities may be exploited for criminal purposes.

6. Crime goes offshore

This research intends to contribute to the development of the promising path of 'organised crime prevention', which is a recent and challenging perspective considered by only few analyses[22], empirical studies and practical inquiry.[23] The recent joint Forum organised by the European Commission and Europol[24], which has developed a mandate provided by the second section of the European Union Action Plan against Organised Crime of 1997 devoted to organised crime prevention, established a clear framework for development of this theoretical perspective and concrete action. Its rationale is that there is a broad area of regulatory measures that could be used to hamper the growth of organised crime. This action, if properly pursued, would be less costly and more effective in terms of deterring organised crime than crime control action alone, with which, however, it should be combined. Acting on the regulation of the markets infiltrated and exploited by organised crime requires understanding and explanation of why and how the demand of organised crime is matched by opportunities which facilitate its development. The policy implications of this understanding should be re-regulation of the mechanisms that produce such opportunities.

In analysing the risk of exploitation of financial centres and offshore jurisdictions by organised crime this research wants to stress the concept that it is not that the official facilities offered by these centres are criminal *per se* but that those facilities could produce opportunities for organised crime development and enrichment. In this direction this research tries to understand why the demand for financial crime (e.g. fraud, corruption and money laundering) meets the supply of financial services offered by offshore jurisdictions, and how does this happen.

6.1 The demand for laundering the proceeds from crime

The laundering of the proceeds of crime is almost automatic where organised crime groups are concerned. This is the organised crime-money laundering cycle which links criminal activities and their proceeds with the need to launder the latter in order to disguise their criminal origin and enable their

[22] See: E.U. Savona, "La reglementation du marché de la criminalité", in *Revue Internationale de Criminologie et de Police Technique*, vol. XLV, n. 4, 1992, pp. 472-474; P.Williams and E.U. Savona (eds), *United Nations and Transnational Organised Crime*, Frank Cass, London, 1996, pp. 45-48.

[23] Organised Crime Task Force, *Corruption and Racketeering in the New York City Construction Industry*, Final Report to Mario Cuomo, N.Y. 1989 and the report *Organised Crime in the Netherlands* by C. Fijnaut, F. Bovenkerk, G. Bruinsma and H. van de Bunt, mentioned by C. Fijnnaut in his introduction to the European Commission – Europol Forum *Forum Towards a European Strategy to Prevent Organised Crime,* held in The Hague on 4-5 November 1999.

[24] European Commission – Europol, *Forum Towards a European Strategy to Prevent Organised Crime*, The Hague, 4-5 November 1999.

reinvestment in legitimate enterprises.[25] The demand for money laundering is closely connected with the development of organised crime groups, and it is driven by the following factors:[26]

- the amount of funds realised by illegal activities;
- the need for the anonymity in economic operations that certain (not always criminal) business operators and enterprises frequently enjoy, in order to avoid financial regulations and criminal legislation and to conceal funds;
- the need to avoid 'law enforcement risk', or the sum of the various probabilities that members of criminal organisations will be intercepted, arrested and convicted, the proceeds of crime confiscated, and the organisation disrupted;
- the desire to infiltrate legitimate activities as part of a continuous process which channels the actions of organised crime groups into either illegal markets or legitimate businesses.

It is possible to identify a variety of types of criminal offence associated with the offshore sector. Financial crimes such as fraud, tax offences, corruption and money laundering are present in numerous international operations involving financial centres and offshore jurisdictions.[27] The investigation and prosecution of complex cases involving such economic crimes frequently reveals that organised crime groups exploit financial centres and offshore jurisdictions in a variety of locations.

6.2 The supply of financial services at risk of exploitation

Criminals prefer financial centres and offshore jurisdictions because the anonymity guaranteed by their banking, tax and company regulations provides an effective shield against requests for information by law enforcement agencies. Anonymity, in fact, is an essential requisite for the laundering of criminal proceeds and their reinvestment in the legitimate economy without incurring the 'law enforcement risk'. It is possible to argue that the lesser this risk (due to the opacity of the legislation governing the services offered by financial centres and offshore jurisdictions), the greater the probability that organised crime groups will use financial centres and offshore jurisdictions to launder the proceeds of their criminal activities.

The overall hypothesis of the research was that financial centres and offshore jurisdictions provide facilities which reduce the 'law enforcement risk', compared with other non-offshore financial centres and jurisdictions subject to tighter regulation and offering

[25] E.U. Savona, *European Money Trails*, Harwood Academic Press, Amsterdam, 1999, p. 2.
[26] E.U. Savona, *European Money Trails*, *cit.*, p. 5.
[27] See for examples the cases outlined in Section 12 of this report.

closer co-operation, the reason being that they are more easily exploited by criminal organisations.[28]

The importance of this hypothesis is substantiated by the fact that an increasing amount of information about the facilities provided by financial centres and offshore jurisdictions is available in the media and on the Internet. If we add to this information the technical advice provided by professionals, the conclusion that can be drawn is that criminals, whether organised or not, have today, and will have in the future, more low-cost and risk-free information at their disposal than in the past.

Having hypothesised that the criminal demand for financial facilities is met because criminals exploit the facilities offered by offshore financial centres, a further two points require making, given their relevance to the policy implications of the problem.

The first is that the combination of the facilities offered by offshore jurisdictions and the increasing amount of information about them (furnished by the media, Internet and professionals) may heighten the risk of their exploitation by organised criminals. Consequently, since it is impossible to reduce the amount of information available regarding the services offered by offshore financial centres, measures should be devised to reduce the number of those facilities which for criminals constitute an added value for criminal purposes.

The second point concerns the European context (protecting the EU financial system) in which the development of the research was planned. It is clear that the action of criminals is not hindered by the geographical or political borders of the financial markets whose legitimate businesses they intend to infiltrate. Criminals are opportunistic. They go where the opportunities are, and their choice of the European financial system, like others world-wide, is a matter of opportunity rather than political preference. In a global world the preference for the EU financial market may be of relevance only for criminals who operate in Europe, but it will be marginal for the others. So why was the research restricted to the protection of the EU financial system? For two main reasons.

Firstly, the European financial system and market is today a reality which attracts criminal organisations operating in any part of the world, as the United States financial system has done for many years. The introduction of the Euro has accelerated the

[28] We are aware, and this research will show, that not all offshore jurisdictions offer the same facilities in the same areas, that they co-operation with law enforcement authorities to differing extents, and above all that, as many national and international corruption or money laundering operations show, the services provided by offshore jurisdictions may be illegally obtained in co-operative and well-regulated jurisdictions. Corruption and violence may be used to pressure banking or non-banking institutions into satisfying the financial needs of criminal organisations.

integration of national financial systems and markets into a unified European system.

Secondly, protecting the European financial system entails assisting in the protection of the global financial system. The European Union is able to play a crucial role in what has been called a 'three-level response strategy' (national/regional/international) as the only possible globally effective strategy against money laundering. In this strategy the regional level (i.e. Europe) could be used to apply pressure on non-complying nations and to enhance action in the international *fora*. This strategy has been explained elsewhere:[29]

"The process should be managed in terms of progressively achieving more responsible country/regional/international mechanisms. The basic unit of money laundering control is domestic legislation and regulation. However, not every country, for a number of reasons, will move spontaneously toward implementation of effective anti-money laundering policies. When a country does not, a three level response strategy may be implemented. On a bilateral level its neighbors, other countries damaged by the country's lack of a sufficiently tight anti-money laundering mesh, and those most able to influence it culturally and economically, should use education, persuasion, and legitimate forms of pressure to move the deficient country to create or repair its net. At the same time the regional organizations, broadly understood to include not only geographic groupings such as the Organization of American States or Council of Europe, but also political/cultural groupings such as the Commonwealth, should exert peer pressure and leadership to bring their member stated up to a regional minimal standard of anti-money laundering policies. Positive regional experiences such as the E.U. Directive and the O.A.S. Model Regulations should be extended to all regions and should become progressively more binding, that is they should be written to have legal and not only inspirational or exemplary effect. At the international level the existing organizations can reinforce these processes going on at the bilateral and regional levels. A non-complying country which is damaging the international anti-money laundering effort should know that aid is available from friends and neighbors, from regional groupings, and from the international community if it wishes to weave its part of the anti-money laundering net, and that bilateral, regional, and international disapproval and appropriately measured disincentives are inevitable if it chooses not to do so".

Under this strategy, the action of the European Union is not limited to protecting the EU financial system. In fact, the three levels of the strategy are targeted on different Groups of jurisdictions:

[29] E.U. Savona (ed.), *Responding to Money Laundering. An International Perspective*, Harwood Academic Press, Amsterdam, 1997, pp. 65-66.

- the first is targeted on those offshore jurisdictions with close political and geographical proximity to the EU member states and concerning which the European Union could apply pressure on member states;

- the second level concerns those financial centres in central and eastern Europe that have entered into Association Agreements with the European Union which provide the framework also for agreements based on their anti-money laundering legislation;

- the third level is addressed at those financial centres and offshore jurisdictions beyond direct proximity with the European Union and consists in the contribution of the European Union to those international *fora* in which action against money laundering is taken.

This perspective has shaped the criteria used to group the financial centres and offshore jurisdictions considered by this research and the recommendations set out in its conclusions (see Section 8 of this report).

7. Regulatory asymmetries and the risk of exploitation of financial centres and offshore jurisdictions by organised crime: two assumptions and three questions

The increasing availability of a wide range of business opportunities publicised through newspapers, periodicals, leaflets and Internet web sites demonstrates that differences in regulatory systems induce persons and corporations to use financial centres and offshore jurisdictions for their financial transactions. In the context of this research these differences are either in legislation (criminal, criminal procedure and others) or in administrative and banking regulations. The use made of these differences may be legal (i.e. tax avoidance, or more elegantly, tax planning) or illegal/criminal (i.e. tax evasion and tax fraud). These differences may also be exploited to commit frauds, undertake corrupted transactions or launder the proceeds of crime and invest them in legitimate markets. It could be argued that financial centres and offshore jurisdictions exist precisely because of these asymmetries, in that they make financial transactions more rapid and less expensive. Here asymmetries are understood to be the differences in a type of regulation among the various Groups of jurisdictions identified, and among the integrity standards considered. This report defines 'integrity standard' as the optimal level of regulation within a given sector which ensures the integrity of a jurisdiction's financial system and protects it against infiltration by organised crime (the standards identified are described in Section 10 of this report).

The services supplied in the offshore market (i.e. tax level, the types of company offered, the cost of incorporation, the rights and duties of shareholders and the publicity of company information, the level of bank secrecy and confidentiality) vary among jurisdictions and between offshore jurisdictions and more co-operative and better regulated ones, such as the European member states.

Regulatory asymmetries generate competition among offshore jurisdictions because they influence the demand for financial transactions. A potential investor will be attracted by the jurisdiction that provides the financial services needed on the most favourable conditions (reliability and costs in terms of time and money).

A finding of this research to be emphasised is that, independently of evaluations of their efficiency, regulatory asymmetries are of major relevance to the vulnerability of offshore and financial centres to exploitation by organised crime. The main challenge posed for the international community is equalising the efficiency of financial operations in offshore jurisdictions with those

conducted in onshore ones, but without reducing their transparency. Equalising levels of efficiency will reduce the 'harmful tax competition' which is, by definition, legal but harmful (as outlined by the OECD[30]), and it will bolster the integrity standards intended to minimise the risk of exploitation.

It should also be pointed out that modern legislation on corporate governance seeks to combine efficiency with transparency, where transparency is oriented neither towards minimisation of the risk of exploitation by criminals not towards facilitation of co-operation with law enforcement agencies. The current debate on corporate governance perceives transparency as leading to efficiency. In this report, regulatory asymmetries are measured in order to evaluate deviations from those integrity standards that, in the view of the authors, represent the optimal level of regulation, the one at which the risk of exploitation of these jurisdictions by organised crime is minimised.

These aspects can be translated into two main assumptions, from which three research questions spring.

The first assumption is that asymmetries in regulating the transparency of financial transactions between EU countries and other financial centres and offshore jurisdictions heighten the risk that the latter will be exploited by organised crime groups: i.e. the tighter bank secrecy becomes and the greater the anonymity of the ultimate beneficial owner, the more criminals are able to launder the proceeds of crime and return them as investments in Europe, and the more the risk diminishes that proceeds will be traced and confiscated and the criminal organisation disrupted.

This signifies, therefore, that the risk of exploitation is a function of asymmetries in regulation.

The second assumption is that the greater the risk of exploitation of financial centres and offshore jurisdictions, the more vulnerable the EU financial system and other financial systems become to pollution by proceeds of crime which, having passed through financial and offshore centres, enter the EU financial system and distort competition among legitimate EU enterprises.

This signifies that protection of the EU financial system is a function of the risk of exploitation.

Summarising the two functions, one draws the overall conclusion that protection of the EU financial system depends on the level of the regulatory asymmetries existing between EU countries and offshore jurisdictions.

[30] OECD, *op. cit.*

Those just stated are key assumptions for this report, and it was they that guided the research, the aim of which, as said, was to analyse the risk of exploitation of financial centres and offshore jurisdictions in order to provide European Union institutions with guidelines for action in international *fora.*
Considering that the risk of exploitation is determined by regulatory asymmetries, that legislation plays a major role in reducing them, and that consequently the level of the protection afforded to the EU financial system depends on the level assumed by the risk of exploitation, the research project was conducted in order to answer the following questions:

Which group of jurisdictions displays the greatest deviation from the standards and in which sector/s?

How wide are the asymmetries in each of these sectors and in which group of jurisdictions?

What remedies can be suggested to reduce the risk of exploitation and ensure closer protection of the EU financial system?

With this aim in mind, this report moves through the following stages:

- identification of the jurisdictions to be analysed, according to criteria selected in view of the purpose of the research, the objectives analysed, the methodology used and the data collection procedures selected (Section 8);
- comparative analysis of jurisdictions according to the various sectors of law (see Annex A and Findings in Section 9.1) summarised by synoptic tables in Section 9.2;
- definition of criteria, standards and indicators for analysis (Section 10);
- analysis of asymmetries in relation to groups of jurisdictions and sectors of law (Section 11);
- analysis of case-studies concerning law enforcement operations involving offshore jurisdictions, where the latter have been exploited by organised crime (Section 12);
- the drawing up of seven recommendations to the European Union institutions with regard to reducing asymmetries, minimising the risk of exploitation of offshore jurisdictions by organised crime, and affording better protection to the EU financial system (Section 13).

8. Methodology and data collection procedures

8.1 Countries selected

The financial centres and offshore jurisdictions named in this report have been selected and grouped according to their level of 'proximity' (geographical, political, economic) to European Union member states.

Group 0 – European Union member states

Group 1 – European financial centres and offshore jurisdictions

Although these jurisdictions are not member states of the European Union, they are financial centres and offshore jurisdictions with special geographical, political or economic links with the European Union. For this reason, they may feasibly be persuaded to adopt more effective anti-money laundering policies. Using these geographical, political and economic links as selection criteria, the countries and territories considered by the research were the following: Andorra, the British Overseas Territories (which comprise Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Montserrat and the Turks and Caicos Islands), Gibraltar, the Channel Islands (which comprise Guernsey and Jersey), Cyprus, the French West Indies Departments, the Isle of Man, Liechtenstein, Malta, the Caribbean Territories of the Kingdom of the Netherlands (which comprises Aruba and the Netherlands Antilles), the Principality of Monaco, San Marino and Switzerland.

Group 2 – Economies in transition

The concept of a non-EU financial centre, broadly interpreted, may be extended to include a further group of jurisdictions – for instance certain of those which formerly belonged to the Soviet Bloc and those located in the Balkan region – which today raise potentially serious threats against the integrity of the European Union's financial system. Some of them are linked with the European Union by Association Agreements and have embarked on the process of gaining entry to the European Union.[31]

The research therefore considered the following jurisdictions: Albania, Bulgaria, the Czech Republic, the Baltic States (which comprise Estonia, Latvia and Lithuania), Hungary, Moldova,

[31] The Europe Agreements cover trade-related issues, political dialogue, legal approximation and other areas of co-operation, including industry, environment, transport and customs. Of the jurisdictions considered in this research project, besides Malta and Cyprus, ten countries in Central and Eastern Europe have signed an Association Agreement with the European Union: Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. All Association Agreements contain a clause which commits the country to co-operate in the fight against money laundering.

Poland, Romania, the Russian Federation, Slovakia, Slovenia and Ukraine.[32]

Group 3 – Non-European offshore jurisdictions

The non-European offshore jurisdictions considered are the Bahamas, the Barbados, Jamaica and Puerto Rico (these four are connected to the United States by co-operation agreements, including fiscal issues), the Cook Islands, Hong Kong and Macao (China), Malaysia, Nauru, Niue, the Philippines, the Seychelles, Singapore and Vanuatu.

8.2 Objectives analysed and data collected

The research focused on the following objectives, considering the different jurisdictions grouped according to their level of 'proximity' to the European Union:

- Objective A): analysis of the infiltration of financial centres and offshore jurisdictions by organised criminal groups;

- Objective B): comparative analysis of legislation, administrative controls and international co-operation (understanding what and where the asymmetries are);

- Objective C): harmonisation of the differences in integrity standards between EU and non-EU financial centres and offshore facilities and the planning of remedies and common policies of international co-operation to prevent their use by criminal organisations for illicit purposes.

With reference to objective A) and B):

- the primary sources were:
  - replies to the questionnaires prepared by the three research units and sent via Interpol to respondents (Police, Justice, Central Bank and Finance authorities) in most of the jurisdictions mentioned (see Annex B to the report for the full text of the questionnaires). At the time of writing, of the 35 questionnaires sent out[33] (to 48 jurisdictions), 21 replies[34] had been received since July 1999.

[32] Owing to difficult political conditions, it was not possible to develop analysis of the Federal Republic of Yugoslavia.

[33] These jurisdictions are, in alphabetical order: Albania, Andorra, Aruba, the Bahamas, Barbados, the Bermuda, the British Virgin Islands, Bulgaria, the Cayman Islands, Cyprus, the Czech Republic, Estonia, Gibraltar, Hong Kong, Hungary, Jamaica, Latvia, Liechtenstein, Malta, Moldova, Monaco, Montserrat, the Netherlands Antilles, Poland, Puerto Rico, Romania, the Russian Federation, San Marino, the Seychelles, Singapore, Slovakia, Slovenia, Switzerland, the Turks and Caicos Islands and Ukraine.

[34] Replies were received from, in alphabetical order: Andorra, the Bahamas, Barbados, Bulgaria, Cyprus, the Czech Republic, Estonia, Gibraltar, Hungary, Latvia, Lithuania, Moldova, Monaco, Poland, Romania, Russia, Seychelles, Slovakia, Slovenia, Switzerland and Ukraine.

Some jurisdictions failed to receive the questionnaires because they did not have an Interpol central national bureau. Another primary source consisted of the reactions by the various jurisdictions[35] to their country profiles (which were sent to each of them), and this enabled the information in Annex A to be checked for accuracy and updated;

- the replies to a questionnaire drawn up by TRANSCRIME - University of Trento on company law regulations and sent to members of the International Organisation of Securities Commissions (IOSCO) in most of the jurisdictions considered[36].

– the secondary sources were: white literature (research reports, scientific and professional journals), police and press reports.

In order to minimise the risk that information might be out-of-date or invalid, the results of the analysis on objectives A) and B) were sent to various jurisdictions to obtain their reactions. Their replies have been incorporated, when possible, in Annex A.

It should be immediately noted that it was not possible to conduct satisfactory analysis of legislation 'in practice'. Those parts of the questionnaire relating to the implementation of

[35] The jurisdictions which commented on their country profile were, in alphabetical order: Cyprus, Gibraltar, Guernsey, Jersey, Hong Kong, Latvia, Lithuania, Moldova, Montserrat, Poland, the Principality of Monaco, Romania, the Russian Federation, San Marino, Switzerland, the Turks and Caicos Islands and Ukraine.

[36] We thank, in alphabetical order, the following institutions for their co-operation:
- Austrian Securities Authority, Austria;
- Securities Commission of the Bahamas, Bahamas;
- Bermuda Stock Exchange, Bermuda;
- Danish Financial Supervisory Authority, Denmark;
- Danish Commerce and Companies Agency, Denmark;
- *Bundesaufsichtsamt für den Wertpapierhandel*, Germany;
- The Stock Exchange of Hong Kong Limited, Hong Kong;
- Hungarian Banking and Capital Market Supervision, Hungary;
- Budapest Stock Exchange, Hungary;
- Central Bank of Ireland, Ireland;
- Lithuanian Securities Commission, Lithuania;
- *Commission de Surveillance du Secteur Financier*, Luxembourg;
- *Kredit Tilsynet*, The Banking, Insurance and Securities Commission of Norway, Norway;
- Riga Stock Exchange, Latvia;
- Warsaw Stock Exchange, Poland;
- Bucharest Stock Exchange, Romania;
- Monetary Authority of Singapore, Singapore;
- Bolsa de Madrid, Spain;
- *SWX* Swiss Exchange, Switzerland;
- *STE*, Securities Board of The Netherlands, The Netherlands;
- Securities and Stock Market State Commission, Ukraine;
- Financial Services Authority, United Kingdom.

legislation were not filled out in sufficient detail by respondents. The procedure used to select relevant case studies in Section 12 does not substantially change the final conclusions of this report, the main concern of which is to analyse the formal regulatory systems characteristic of the jurisdictions selected. The authors of the report are aware of the lag between regulation and its implementation and that analysis of the law 'in action' produces interesting results that should be added to those from analysis of the law 'in the books'. At the same time, the authors believe that better understanding of the differences among regulatory systems could identify some relevant problems. The enactment of legislation and regulation is the beginning of a process that passes through numerous stages before implementation. This report concentrates on the first stage in that it analyses the asymmetries in regulation characteristic of offshore and onshore jurisdictions.

With reference to objective C):

- The three research units, together with experts in the various fields covered by this report, discussed the general framework of recommendations and jointly drafted feasible recommendations.
- The results of the analysis carried out on objectives A) and B) were incorporated into the country profiles (Annex A to this report) and are set out in Table 1 (see Section 9.2), which collects the results of the analysis in order to display the regulatory asymmetries among different jurisdictions.
- After quantifying these asymmetries, the research considered a number of case studies in which these asymmetries were highlighted (see Section 12).
- The results of the analysis on objective C) have been included in this report. The framework within which recommendations were developed reflected the research design and consisted of: the problems (asymmetries in regulation); the rationale and background; the aim; the three actions; the group of jurisdictions to which the recommendations are addressed; the ways in which EU Institutions may implement them; and the text of the complete recommendation.

9. Findings

9.1 Country Profiles (The detailed analysis of the countries considered by this research is at Annex A)

Annex A to this report contains the complete analysis of the countries selected. In each jurisdiction the following items were considered: existing organised crime activities, present tax laws and regulations, company law and regulations, criminal law and criminal procedure, and the instruments of international co-operation agreed and used.

A number of inferences can be drawn from the analysis.

There is a substantial difference in the extent to which organised crime is present in the various countries considered. Some of them, in particular those in central and eastern Europe, are marked by the presence of tightly organised criminal groups engaged in a variety of criminal activities, one of which is money laundering. The majority of the remaining jurisdictions, however, do not appear to have significant problems with local criminal groups (with the exception of certain groups used to transit drugs being smuggled into the US or the countries of Western Europe).

Criminal organisations are significantly exploiting the vast majority of financial centres and offshore facilities for money laundering purposes. Although the information available on the money laundering activities of criminals is very often meagre, it is nevertheless possible to ascertain that the services provided by these countries (e.g. offshore companies, special tax regimes, low banking scrutiny standards, etc.) are being used by launderers.

With virtually no exception, the information gathered shows that all jurisdictions are highly attractive to criminals, all the more so since the advent of electronic money transactions, which have enormously speeded up money movements. In most financial centres and offshore facilities, banks and other financial institutions have already adopted electronic banking services and Internet web sites, thereby enabling investors to move their capital to these ‘safe’ jurisdictions even more rapidly and easily.

At the same time, the impressively small number of law enforcement operations and cases of money laundering investigated in these countries testifies to their unwillingness ‘to ask too many questions’ about the legitimate origin of the capital concerned.

With reference to the regulation of companies, for instance as regards Group 1 (offshore jurisdictions close the to European Union), the regulation of exempt companies differs significantly among jurisdictions: such companies are not subject to the same

requirements on incorporation and the functions that they may perform, and in which locations.

The integrity standards related to company law are relatively lax in all three Groups. Numerous countries do not require disclosure of the identity of the beneficial owner of a company at the moment of its incorporation. The same applies to shareholders and directors. Moreover, even in those countries in which such disclosure is compulsory, the use of nominee shareholders and directors is allowed. Furthermore, most of the jurisdictions on which we have information permit the issuing of bearer shares, and many of them do not require the filing and publication of financial statements.

Trusts can be easily exploited for money laundering purposes, considering the rules governing them in the countries surveyed. Many jurisdictions, for example, do not require the disclosure of the identity of the beneficiary and of the settlor. Sometimes a trust company acting as a trustee is not even required to obtain a governmental licence to operate, and consequently no control is exerted over the professional integrity of the trust administrator. In some jurisdictions, the trustee is able to move the trust from one jurisdiction to another in the event of criminal investigation ('flee clause').

The same situation of persisting discord among countries is apparent in banking law. Although it seems impossible in many Group 1 jurisdictions to open a bank account without indicating the beneficial owner, it is nevertheless possible to circumvent the rule. In some countries, indeed, for instance Liechtenstein or the Cayman Islands, a declaration of the person opening the account (e.g. a lawyer) stating that he has positively ascertained the identity of his/her client is all that is required. The name of the ultimate beneficial owner is therefore unknown to the institution operating the bank account, a problem exacerbated by bearer shares when the account signatories remain the same. Moreover, large differences among identification requirements still persist.

Most of the countries under consideration, particularly those belonging to Group 1, have no controls on cross-border movements of capital. Nor do they have a central monetary authority to supervise the soundness of their financial systems.

Although money laundering is a criminal offence in most of the countries considered (there are a few exceptions, such as Moldova, which has a draft law), the list of the predicate offences is far from being harmonised.

There exist very significant cases of countries still without mandatory identification requirements (Slovakia and Jamaica), and

no concordance is apparent even in the financial institutions that should be subject to these requirements. The law in Poland or in Montserrat, for example, continues to apply only to the banking sector, while Liechtenstein expressly excludes some kinds of company, namely the *Anstalt* and the *Stiftung*, from the identification and suspicious transactions reporting requirements imposed by its anti-money laundering legislation. The same applies to suspicious transaction reporting, which is not mandatory in all jurisdictions, being only voluntary in the Cayman Islands and in Jamaica, for instance, and entirely lacking in Andorra, Moldova, and the Russian Federation.

International co-operation seems in theory to be possible in all countries, but only for specific offences and often only on a dual criminality basis. Since many offshore jurisdictions do not envisage fiscal offences, foreign requests for co-operation during criminal investigations are often refused.

9.2 Table 1

These findings, which constitute important information on the regulatory structures of financial centres and offshore jurisdictions, have been set out in a synoptic table which summarises the main questions asked by the questionnaires. The replies were extracted by the primary and secondary sources (see Section 8 on methodology and data collection). With reference to company law this information was integrated with data from other sources.[37] It was impossible to introduce this integration in the country profiles provided in Annex A. For this reason, the information contained in this report in the section dedicated to company law is updated in respect to that contained in the Annex A (country reports).

A further disclaimer on the information provided is necessary. Although the analysis was cross-checked, amongst other things by sending the results to the jurisdiction concerned, the information contained in this report with reference to certain items in some

[37] As far as company law is concerned in particular, the following have been key sources of information:

- *Company Law in Europe*, Buttherworths, London, 1999;
- the answers to a questionnaire on company law regulations drawn up by TRANSCRIME and sent to members of the International Organisation of Securities Commissions (IOSCO) in most of the jurisdictions considered;
- cross-checked data from companies offering offshore services on the Internet (Ocra – http://www.ocra.com; Finor Associates Ltd. – http://www.finor.com; International Company Services Limited – http://www.icsl.com, American Offshore Consultants Limited);
- Department of Trade and Industry (DTI), *Modern Company Law for a Competitive Economy*, DTI, London, August 1998;
- Centre for Law and Business, Faculty of Law, University of Manchester, *Company Law in Europe: Recent Developments*, produced for the Department of Trade and Industry, February 1999.

jurisdictions may misrepresent their present situations. If this is the case, the authors apologise to the jurisdiction concerned.

Groups 0, 1, 2 and 3 represent the four groups identified for the purpose of this research project and described in Section 8.

CRIMINAL LAW

1. *Is money laundering punished in your criminal system?*
2. *Does the legislation provide for a list of crimes as predicate offences of money laundering?*
3. *Do predicate offences of money laundering cover all serious crimes?*
4. *Do predicate offences of money laundering cover all crimes?*
5. *Is there a provision allowing confiscation of assets for a money laundering offence?*
6. *Are there any special investigative bodies or any special means of investigation (e.g. electronic surveillance, undercover operations, etc.) in relation to money laundering offences?*

Criminal law – Explanation of questions

Yes*: The answer Yes* has been assigned only for analytical purposes (quantification of asymmetries in Section n. 10 and Annex C). Answers to questions nn. 2, 3 and 4 should be considered as a continuum from the minimum requisite (list of crimes) to the maximum one (all crimes), going through an intermediate option (all serious crimes). This means that the authors have assigned Yes* to the answer of those jurisdictions which have equally been assigned a positive answer in the subsequent question. For instance, if Belgium, Denmark, Finland, Ireland or Sweden have answered 'Yes' to the question regarding the 'all crimes' option, the authors have equally assigned 'Yes*' in the previous boxes, referring respectively to the 'list of crimes' and to 'all serious crimes'. Such decision has been taken although authors are aware that Belgian, Finnish or Swedish legislation could not actually have a 'list of crimes' in their legislation. This option has been necessary in order to allow the conversion of qualitative answers into numbers, using a dichotomic model (Yes=1; No=0). Consequently, Yes* has only an analytical purpose and cannot be used for description of the situation in the jurisdiction considered.

Question 1: An answer was deemed to be 'yes' when the criminal system of the jurisdiction considered punishes money laundering (either as an autonomous crime or not, i.e. "receiving of stolen goods").
Question 2: An answer was deemed to be 'yes' when the criminal system of the jurisdiction considered envisages a list of crimes as predicate offences of money laundering.
Question 3: An answer was deemed to be 'yes' when the criminal system of the jurisdiction considered foresees as a predicate offence of money laundering any crime punished with an imprisonment over a fixed period of time.
Question 5: An answer was deemed to be 'yes' when the criminal system of the jurisdiction considered provides for the confiscation of property laundered, proceeds from, instrumentalities used or intended for use in the commission of any money laundering offence, or property of corresponding value (FATF Recommendation 7).

Group 0	**1 Money laundering punished**	**2 List of crimes**	**3 All serious crimes**	**4 All crimes**	**5 Confiscation**	**6 Existence of a special body or means of investigation**
Austria	Yes	Yes*	Yes	No	Yes	Yes
Belgium	Yes	Yes*	Yes*	Yes	Yes	Yes
Denmark	Yes	Yes*	Yes*	Yes	Yes	Yes
Finland	Yes	Yes*	Yes*	Yes	Yes	Yes
France	Yes	Yes*	Yes*	Yes	Yes	Yes
Germany	Yes	Yes*	Yes	No	Yes	Yes
Greece	Yes	Yes	No	No	Yes	Yes
Ireland	Yes	Yes*	Yes*	Yes	Yes	Yes
Italy	Yes	Yes*	Yes	No	Yes	Yes
Luxembourg	Yes	Yes	No	No	Yes	Yes
The Netherlands	Yes	Yes*	Yes*	Yes	Yes	Yes
Portugal	Yes	Yes	No	No	Yes	Yes
Spain	Yes	Yes*	Yes	No	Yes	Yes
Sweden	Yes	Yes*	Yes*	Yes	Yes	Yes
United Kingdom	Yes	Yes*	Yes	No	Yes	Yes

Group 1	1 Money laundering punished	2 List of crimes	3 All serious crimes	4 All crimes	5 Confiscation	6 Existence of a special body or means of investigation
Andorra	Yes	Yes	No	No	Yes	Yes
Anguilla	No	No	No	No	No	No
Aruba	Yes	Yes*	Yes*	Yes	Yes	Yes
Bermuda	Yes	Yes*	Yes	No	Yes	Yes
BVI	Yes	Yes*	Yes	No	Yes	Yes
Cayman Islands	Yes	Yes*	Yes	No	Yes	No
Cyprus	Yes	Yes	No	No	Yes	Yes
French West Indies	Yes	Yes*	Yes*	Yes	Yes	Yes
Gibraltar	Yes	Yes*	Yes*	Yes	Yes	Yes
Guernsey	Yes	Yes*	Yes*	Yes	Yes	Yes
Isle of Man	Yes	Yes*	Yes*	Yes	Yes	Yes
Jersey	Yes	Yes*	Yes*	Yes	Yes	Yes
Liechtenstein	Yes	Yes*	Yes*	Yes	Yes	-
Malta	Yes	Yes	No	No	Yes	Yes
Montserrat	Yes	Yes	No	No	-	No
Netherlands Antilles	Yes	Yes	Yes	Yes	Yes	-
Monaco	Yes	Yes	No	No	Yes	Yes
San Marino	Yes	Yes	Yes	No	Yes	Yes
Switzerland	Yes	Yes	Yes	Yes	Yes	Yes
Turks & Caicos Islands	Yes	Yes	Yes	Yes	Yes	No

Group 2	1 Money laundering punished	2 List of crimes	3 All serious crimes	4 All crimes	5 Confiscation	6 Existence of a special body or means of investigation
Albania	Yes	-	-	-	-	Yes
Bulgaria	Yes	Yes	Yes	Yes	Yes	Yes
Czech Republic	Yes	Yes	Yes	No	Yes	Yes
Estonia	Yes	Yes	Yes	Yes	Yes	Yes
Hungary	Yes	Yes	Yes	No	Yes	Yes
Latvia	Yes	Yes	Yes	No	Yes	Yes
Lithuania	Yes	Yes	Yes	Yes	Yes	Yes
Moldova	No	No	No	No	No	No
Poland	Yes	Yes	No	No	Yes	Yes
Romania	Yes	Yes	No	No	Yes	Yes
Russian Federation	Yes	Yes	Yes	Yes	Yes	Yes
Slovakia	Yes	Yes	Yes	Yes	Yes	Yes
Slovenia	Yes	Yes	Yes	Yes	Yes	Yes
Ukraine	Yes	Yes	No	No	-	-

Group 3	1 Money laundering punished	2 List of crimes	3 All serious crimes	4 All crimes	5 Confiscation	6 Existence of a special body or means of investigation
Bahamas	Yes	Yes	Yes	No	Yes	Yes
Barbados	Yes	Yes	Yes	No	Yes	Yes
Cook Islands	Yes	Yes	Yes	No	-	-
Hong Kong (China)	Yes	Yes	Yes	No	Yes	-
Jamaica	Yes	Yes	No	No	Yes	-
Macao (China)	Yes	Yes	Yes	No	-	-
Malaysia (Labuan)	No	No	No	No	No	No
Nauru	No	No	No	No	No	No
Niue	No	No	No	No	No	No
Philippines	No	No	No	No	No	No
Puerto Rico	Yes	Yes	Yes	Yes	Yes	Yes
Seychelles	Yes	Yes	Yes	No	Yes	Yes
Singapore	Yes	Yes	No	No	Yes	-
Vanuatu	Yes	Yes	Yes	No	-	-

ADMINISTRATIVE REGULATIONS

1. *Is there an anti-money laundering law in the jurisdiction?*
2. *Are banks covered by the anti-money laundering law?*
3. *Are other financial institutions covered by the anti-money laundering law?*
4. *Are non-financial institutions covered by the anti-money laundering law?*
5. *Are other professions carrying out a financial activity covered by the anti-money laundering law?*
6. *Are there identification requirements for the institutions covered by the anti-money law?*
7. *Is there suspicious transactions reporting?*
8. *Is there a central authority (for instance, a Financial Intelligence Unit) for the collection of suspicious transactions reports?*
9. *Is there any co-operation between banks or other financial institutions and police authorities?*

Administrative regulations – Explanations of questions

Question 1: An answer was deemed to be 'yes' when the jurisdiction considered has specific regulations intended to protect the financial sector from the laundering of illicit proceeds.

Questions 2-3-4-5: An answer was deemed to be 'yes' when in the jurisdiction considered banks/other financial institutions/non-financial institutions/other professions have special obligations under anti-money laundering law. In this context, the term 'other financial institutions' refers to those institutions undertaking one or more of the operations included in numbers 1-12 and 14 of the list annexed to Directive 89/646/EEC, and to those financial activities listed in the Annex to FATF Recommendation 9. The category 'non-financial institutions' refers to those subjects such as jewellers and dealers in precious stones and metals, supermarkets, the real estate sector. 'Other professions' include external accountants and auditors; notaries and other independent legal professions when assisting or representing clients in the: buying and selling of real property or business entities, handling of client money, securities or other assets, opening or managing bank, savings or securities accounts, creation, operation or management of companies, trusts or similar structures, execution of any other financial transactions.

Group 0	**1 Anti-money laundering law**	**2 Banks**	**3 Other Financial**	**4 Non Financial**	**5 Other profes-sions**	**6 Identification requirements**	**7 Repor-ting**	**8 Central authority**	**9 Co-operation**
Austria	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Belgium	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Denmark	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Finland	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
France	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Germany	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Greece	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Ireland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Italy	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Luxembourg	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
The Netherlands	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Portugal	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Spain	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Sweden	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
United Kingdom	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Group 1	1 Anti-money laundering law	2 Banks	3 Financial	4 Non Financial	5 Profes-sional	6 Identification requirements	7 Repor-ting	8 Central authority	9 Co-operation
Andorra	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes
Anguilla	No	No	No	No	No	Yes	-	-	-
Aruba	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Bermuda	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
BVI	Yes	-	-	-	-	Yes	Yes	Yes	Yes
Cayman Islands	Yes	-	-	-	-	No	No	Yes	-
Cyprus	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
French West Indies	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Gibraltar	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-
Guernsey	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Isle of Man	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-
Jersey	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Liechtenstein	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-
Malta	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes
Montserrat	Yes	Yes	No	No	No	Yes	Yes	Yes	-
Netherlands Antilles	Yes	-	-	-	-	Yes	No	Yes	Yes
Monaco	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
San Marino	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
Switzerland	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Turks & Caicos Islands	Yes	Yes	No	No	No	-	Yes	Yes	-

Group 2	1 Anti-money laundering law	2 Banks	3 Other Financial	4 Non Financial	5 Other profes-sions	6 Identification requirements	7 Repor-ting	8 Central authority	9 Co-operation
Albania	No	No	No	No	No	Yes	Yes	No	-
Bulgaria	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Czech Republic	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes
Estonia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Hungary	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
Latvia	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No
Moldova	No	No	No	No	No	No	No	Yes	No
Poland	Yes	Yes	No	No	No	Yes	Yes	No	Yes
Romania	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Russian Federation	No	No	No	No	No	No	No	Yes	Yes
Slovakia	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes
Slovenia	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Ukraine	No	No	No	No	No	Yes	No	No	Yes

Group 3	1 Anti-money laundering law	2 Banks	3 Other Financial	4 Non Financial	5 Other profes-sions	6 Identification requirements	7 Repor-ting	8 Central authority	9 Co-operation
Bahamas	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
Barbados	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
Cook Islands	No	No	No	No	No	No	No	No	No
Hong Kong (China)	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
Jamaica	Yes	-	-	-	-	No	No	No	-
Macao (China)	Yes	Yes	Yes	Yes	No	Yes	Yes	No	-
Malaysia (Labuan)	No	No	No	No	No	Yes	No	No	-
Nauru	No	No	No	No	No	No	No	No	-
Niue	No	No	No	No	No	No	No	No	-
Philippines	No	No	No	No	No	Yes	No	No	No
Puerto Rico	Yes	Yes	Yes	Yes	-	Yes	Yes	Yes	Yes
Seychelles	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Singapore	Yes	Yes	Yes	No	No	Yes	Yes	No	-
Vanuatu	Yes	Yes	Yes	Yes	No	Yes	Yes	-	-

BANKING LAW

1. *Is there a prohibition to open a bank account without indicating the identity of the beneficial owner?*
2. *Are there limits to bank secrecy in case of criminal investigation and prosecution?*

Group 0	**1** **Bank account**	**2** **Bank secrecy**
Austria	No	Yes
Belgium	Yes	Yes
Denmark	Yes	Yes
Finland	Yes	Yes
France	Yes	Yes
Germany	Yes	Yes
Greece	Yes	Yes
Ireland	Yes	Yes
Italy	Yes	Yes
Luxembourg	Yes	Yes
The Netherlands	Yes	Yes
Portugal	Yes	Yes
Spain	Yes	Yes
Sweden	Yes	Yes
United Kingdom	Yes	Yes

Group 1	**1** **Bank account**	**2** **Bank secrecy**
Andorra	Yes	Yes
Anguilla	-	No
Aruba	Yes	No
Bermuda	-	-
BVI	-	Yes
Cayman Islands	-	Yes
Cyprus	Yes	Yes
French West Indies	Yes	Yes
Gibraltar	Yes	Yes
Guernsey	Yes	Yes
Isle of Man	Yes	Yes
Jersey	Yes	Yes
Liechtenstein	-	No
Malta	No	No
Montserrat	-	Yes
Netherlands Antilles	Yes	Yes
Monaco	Yes	Yes
San Marino	Yes	Yes
Switzerland	No	Yes
Turks & Caicos Islands	-	Yes

Group 2	1 Bank account	2 Bank secrecy
Albania	-	-
Bulgaria	Yes	Yes
Czech Republic	No	Yes
Estonia	Yes	Yes
Hungary	No	Yes
Latvia	Yes	Yes
Lithuania	Yes	Yes
Moldova	Yes	Yes
Poland	Yes	Yes
Romania	-	-
Russian Federation	No	Yes
Slovakia	No	No
Slovenia	Yes	Yes
Ukraine	No	Yes

Group 3	1 Bank account	2 Bank secrecy
Bahamas	Yes	Yes
Barbados	-	Yes
Cook Islands	-	-
Hong Kong (China)	Yes	Yes
Jamaica	-	-
Macao (China)	Yes	-
Malaysia (Labuan)	-	-
Nauru	-	-
Niue	-	-
Philippines	No	No
Puerto Rico	Yes	Yes
Seychelles	Yes	Yes
Singapore	-	No
Vanuatu	-	-

COMPANY LAW

1. *Is a minimum share capital of at least 1000 Euro required for limited liability companies?*
2. *Is there a prohibition to issue bearer shares in limited liability companies?*
3. *Is there a prohibition to have legal entities as directors of limited liability companies?*
4. *Does a registered office exist for limited liability companies?*
5. *Is there any form of annual auditing (at least internal) for limited liability companies?*
6. *Does a shareholder register exist for limited liability companies?*

Company law – Explanations of questions

The questions on company law refer to 'limited liability companies'. In each jurisdiction, the researchers considered 'limited liability companies' to be all those corporate legal entities whose shareholders are liable for an amount equalling only their shareholding. It may happen that in a given jurisdiction there is more than one type of limited liability company, each regulated in a different manner. In this case, the researchers answered 'no' to a question when there was at least one type of limited liability company for which the requirement referred to by that question (minimum share capital, prohibition on issuing bearer shares, etc.) was lacking. For instance, if in a given jurisdiction there were two types of limited liability company, one subject to annual auditing and the other not, the answer to question number 5 was 'no'. This was because the researchers assumed that criminals exploit every loophole of the company law in a given jurisdiction (in this case the loophole is the non-transparent type of company), preferring the type of company where one of the requirements (minimum share capital, prohibition of bearer shares, existence of registered office, etc.) referred to by the question is lacking.

The six questions are intended to highlight the level of transparency of limited liability companies. The researchers tried to identify company features that might represent incentives for criminals to use a corporation as a shield for money laundering operations. A 'no' answer identifies a loophole in a jurisdiction's company regulations that might be exploited by criminals.

Question 1: The lower the minimum share capital, the more likely it is that criminals will incorporate companies in order to conceal illicit operations.
Question 2: The presence of bearer shares may facilitate money launderers in two ways. Firstly, they may be used to convert illicit money into negotiable and anonymous instruments. Secondly, they grant anonymity to criminals wishing to incorporate and govern a corporation.
Question 3: The presence of legal entities as directors is a device that enables criminals to determine the policies of a corporation, reducing the possibility of detection.
Question 4: The presence of a registered office links the corporation to a particular location. It is an indication of the seriousness of a corporation and it facilitates financial and law enforcement controls.
Question 5: The presence of an auditing process – at least internal - reduces the risks that criminals will exploit corporations. This answer was deemed to be 'yes' when in the jurisdiction considered there is a specific requirement of (at least) an internal auditing process, and this requirement cannot be eluded with an agreement among the shareholders.
Question 6: The presence of a shareholder register is indicative of the transparency of a corporation because it allows identification of the partners.

Group 0	1 Minimum Capital required	2 Bearer shares prohibited	3 Legal Entities as Directors prohibited	4 Existence of Registered Office	5 Annual (at least internal) Auditing required	6 Existence of Shareholders Register
Austria	Yes	No	Yes	Yes	Yes	Yes
Belgium	Yes	No	No	Yes	Yes	Yes
Denmark	Yes	No	Yes	Yes	Yes	Yes
Finland	Yes	Yes	Yes	Yes	Yes	Yes
France	Yes	Yes	No	Yes	Yes	Yes
Germany	Yes	No	Yes	Yes	Yes	Yes
Greece	Yes	No	No	Yes	Yes	Yes
Ireland	Yes	No	Yes	Yes	Yes	Yes
Italy	Yes	Yes	Yes	Yes	Yes	Yes
Luxembourg	Yes	No	No	Yes	Yes	Yes
The Netherlands	Yes	No	No	Yes	Yes	Yes
Portugal	Yes	No	Yes	Yes	Yes	Yes
Spain	Yes	No	No	Yes	Yes	Yes
Sweden	Yes	Yes	Yes	Yes	Yes	Yes
United Kingdom	No	Yes	No	Yes	Yes	Yes

Group 1	1 Minimum Capital required	2 Bearer shares prohibited	3 Legal Entities as Directors prohibited	4 Existence of Registered Office	5 Annual (at least internal) Auditing required	6 Existence of Shareholders Register
Andorra	-	No	Yes	Yes	No	Yes
Anguilla	No	No	No	Yes	No	Yes
Aruba	Yes	No	No	Yes	-	No
Bermuda	No	Yes	Yes	Yes	No	Yes
BVI	No	No	No	Yes	Yes	Yes
Cayman Islands	No	No	No	Yes	No	Yes
Cyprus	No	Yes	No	Yes	Yes	Yes
French West Indies	Yes	Yes	No	Yes	Yes	Yes
Gibraltar	No	Yes	No	Yes	Yes	Yes
Guernsey	No	Yes	Yes	Yes	No	Yes
Isle of Man	No	Yes	Yes	Yes	Yes	Yes
Jersey	No	Yes	Yes	Yes	No	Yes
Liechtenstein	Yes	No	No	Yes	Yes	Yes
Malta	No	Yes	No	Yes	Yes	Yes
Montserrat	-	No	-	Yes	No	Yes
Netherlands Antilles	Yes	No	No	Yes	No	No
Monaco	Yes	No	No	Yes	Yes	Yes
San Marino	Yes	No	Yes	Yes	No	Yes
Switzerland	Yes	No	No	Yes	Yes	Yes
Turks & Caicos	No	No	No	Yes	No	No

Group 2	1 Minimum Capital required	2 Bearer shares prohibited	3 Legal Entities as Directors prohibited	4 Existence of Registered Office	5 Annual (at least internal) Auditing required	6 Existence of Shareholders Register
Albania	-	-	-	-	No	-
Bulgaria	Yes	No	No	Yes	Yes	Yes
Czech Republic	Yes	No	No	Yes	Yes	Yes
Estonia	No	No	Yes	Yes	Yes	Yes
Hungary	Yes	No	Yes	Yes	Yes	Yes
Latvia	Yes	No	Yes	Yes	Yes	Yes
Lithuania	Yes	No	No	Yes	Yes	Yes
Moldova	Yes	No	-	No	Yes	-
Poland	Yes	Yes	Yes	Yes	Yes	No
Romania	Yes	No	No	Yes	Yes	Yes
Russian Federation	Yes	Yes	No	Yes	Yes	No
Slovakia	Yes	No	Yes	Yes	Yes	Yes
Slovenia	Yes	No	No	Yes	Yes	Yes
Ukraine	Yes	Yes	Yes	No	Yes	Yes

Group 3	1 Minimum Capital required	2 Bearer shares prohibited	3 Legal Entities as Directors prohibited	4 Existence of Registered Office	5 Annual (at least internal) Auditing required	6 Existence of Shareholders Register
Bahamas	No	No	No	Yes	Yes	No
Barbados	No	Yes	-	Yes	Yes	Yes
Cook Islands	Yes	No	No	Yes	No	No
Hong Kong (China)	No	Yes	No	Yes	Yes	Yes
Jamaica	No	No	Yes	Yes	Yes	Yes
Macao (China)	Yes	-	-	Yes	Yes	Yes
Malaysia (Labuan)	No	Yes	No	Yes	No	Yes
Nauru	-	No	-	Yes	-	-
Niue	No	No	No	Yes	No	No
Philippines	Yes	Yes	Yes	Yes	Yes	Yes
Puerto Rico	Yes	Yes	Yes	Yes	Yes	Yes
Seychelles	No	No	No	Yes	No	No
Singapore	No	Yes	Yes	Yes	Yes	Yes
Vanuatu	No	No	No	Yes	No	No

INTERNATIONAL CO-OPERATION

1. *Is there a provision allowing extradition (at least of foreigners) for money laundering offences?*
2. *Is there a provision allowing to provide assistance to foreign law enforcement agencies in the investigation of money laundering cases?*
3. *Is there a provision allowing law enforcement, judicial authorities, the FIU or other governmental departments to respond to a request from a foreign country for financial records (bank records)?*
4. *Is there a provision allowing the sharing of confiscated assets for money laundering offences?*
5. *Has the 1988 UN Convention been ratified?*

*No** means that - notwithstanding a very deep search in the field of international co-operation – it has not been possible to find indications of a positive answer for the jurisdiction considered. A negative answer has been therefore assumed.

Group 0	**1 Extradition of foreigners**	**2 Assistance to foreign law enforcement provided**	**3 Response to requests**	**4 Asset sharing**	**5 Ratification of the 1988 UN Convention**
Austria	Yes	Yes	Yes	Yes	Yes
Belgium	Yes	Yes	Yes	Yes	Yes
Denmark	Yes	Yes	Yes	Yes	Yes
Finland	Yes	Yes	Yes	Yes	Yes
France	Yes	Yes	Yes	Yes	Yes
Germany	Yes	Yes	Yes	Yes	Yes
Greece	Yes	Yes	Yes	-	Yes
Ireland	Yes	Yes	Yes	Yes	Yes
Italy	Yes	Yes	Yes	Yes	Yes
Luxembourg	Yes	-	-	-	Yes
The Netherlands	Yes	Yes	Yes	Yes	Yes
Portugal	Yes	Yes	Yes	Yes	Yes
Spain	Yes	Yes	Yes	No	Yes
Sweden	Yes	Yes	Yes	Yes	Yes
United Kingdom	Yes	Yes	Yes	Yes	Yes

Group 1	1 Extradition of foreigners	2 Assistance to foreign law enforcement provided	3 Response to requests	4 Asset sharing	5 Ratification of the 1988 UN Convention
Andorra	Yes	Yes	Yes	No	Yes
Anguilla	No	Yes	Yes	No	Yes
Aruba	Yes	Yes	No*	No	Yes
Bermuda	No*	Yes	No*	No*	Yes
BVI	Yes	Yes	Yes	No*	Yes
Cayman Islands	Yes	Yes	Yes	No*	Yes
Cyprus	Yes	Yes	Yes	Yes	Yes
French West Indies	Yes	Yes	Yes	Yes	Yes
Gibraltar	Yes	Yes	Yes	No*	Yes
Guernsey	Yes	Yes	Yes	No*	Yes
Isle of Man	Yes	Yes	Yes	No*	No*
Jersey	Yes	Yes	Yes	No*	Yes
Liechtenstein	Yes	Yes	No*	Yes	No
Malta	Yes	Yes	Yes	Yes	Yes
Montserrat	Yes	No*	No*	No*	Yes
Netherlands Antilles	Yes	Yes	Yes	No*	Yes
Monaco	Yes	Yes	Yes	No	Yes
San Marino	Yes	Yes	Yes	No	No
Switzerland	Yes	Yes	Yes	Yes	No
Turks & Caicos	Yes	Yes	Yes	No*	Yes

Group 2	1 Extradition of foreigners	2 Assistance to foreign law enforcement provided	3 Response to requests	4 Asset sharing	5 Ratification of the 1988 UN Convention
Albania	Yes	No*	No*	No*	No
Bulgaria	Yes	Yes	Yes	No	Yes
Czech Republic	Yes	Yes	Yes	No	Yes
Estonia	Yes	Yes	Yes	No*	No
Hungary	Yes	Yes	No	No	Yes
Latvia	Yes	Yes	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes	No	Yes
Moldova	No	No	Yes	No	Yes
Poland	Yes	Yes	Yes	Yes	Yes
Romania	Yes	Yes	Yes	Yes	Yes
Russian Federation	Yes	Yes	Yes	No	Yes
Slovakia	Yes	Yes	No	No	Yes
Slovenia	Yes	Yes	Yes	No	Yes
Ukraine	Yes	Yes	Yes	Yes	Yes

Group 3	1 Extradition of foreigners	2 Assistance to foreign law enforcement provided	3 Response to requests	4 Asset sharing	5 Ratification of the 1988 UN Convention
Bahamas	Yes	Yes	Yes	Yes	Yes
Barbados	Yes	Yes	Yes	Yes	Yes
Cook Islands	No	No*	No*	No*	No
Hong Kong (China)	Yes	Yes	No*	No*	Yes
Jamaica	Yes	Yes	Yes	No*	Yes
Macao (China)	Yes	No*	No*	No*	Yes
Malaysia (Labuan)	No	No*	No*	No	Yes
Nauru	No	No*	No*	No	No
Niue	Yes	Yes	Yes	No	No
Philippines	No	No*	No*	No	Yes
Puerto Rico	Yes	Yes	Yes	Yes	Yes
Seychelles	Yes	Yes	Yes	No	Yes
Singapore	Yes	Yes	No*	No*	Yes
Vanuatu	Yes	Yes	No*	No*	No

10. Operational Definitions of Criteria, Standards and Indicators for assessment of regulatory asymmetries

This section describes the model used to analyse the data collected in relation to the hypothesis considered, and it sets out the analytical conclusions used later for the recommendations. The initial hypothesis was that protection of the EU financial system against the exploitation of offshore jurisdictions by organised crime depends on the level of asymmetries among the criminal, administrative, commercial, banking, international co-operation regulations intended to ensure the financial integrity of their economic systems. The purpose of the model is to show where these asymmetries are (in which jurisdiction and in which sector), to quantify them in order to provide better comparative understanding of where the problems lie, and to indicate the remedies that may be applied and how. The analysis proceeded as follows.

1. *Definition of the integrity standards of regulation, and identification of indicators.* 'Asymmetry' is defined here as the distance from a fixed or standardised entity, which in this case is the integrity of the financial system. Five standards were defined which, if respected, should ensure the optimal integrity of a country's financial system and protect it against infiltration by organised crime (henceforth 'integrity standards'):
   - the criminal and criminal procedure law standard;
   - the administrative regulation standard;
   - the banking law standard;
   - the company law standard;
   - the international co-operation standard.

   For present purposes, 'standard' is defined as the 'optimal level of regulation' *in each of the different sectors of law*. The 'optimal level of regulation' is the one that ensures the optimal integrity of a country's financial system. Each of the standards was defined by a set of indicators, suitably weighted, and corresponding to the questions used in Section 9 to compile Table 1.[38] The 'optimal level' for each sector of regulation was attained when in a given country all the 'indicators' for each

[38] The questions in this analytical part were answered by integrating the information in Annex A with further data from other sources. As far as company law is concerned in particular, the following were used:
- *Company Law in Europe*, Buttherworths, London, 1999;
- the answers to a questionnaire on regulations governing limited liability companies drawn up by TRANSCRIME and sent to Stock Exchange Authorities,
- cross checked data from companies offering offshore services on the Internet (Ocra – http://www.ocra.com; Finor Associates Ltd. – http://www.finor.com; International Company Services Limited – http://www.icsl.com, American Offshore Consultants Limited);
- Department of Trade and Industry (DTI), *Modern Company Law for a Competitive Economy*, DTI, London, August 1998;
- Centre for Law and Business, Faculty of Law, University of Manchester, *Company Law in Europe: Recent Developments*, produced for the Department of Trade and Industry, February 1999.

sector were positive (i.e. the answers to the questions were affirmative).

2. *Quantification of the deviation of Groups 0, 1, 2, 3 from the integrity standards in the five sectors of regulation.* This second phase involved quantification of the levels of deviation from or compliance (the reverse) with the integrity standards displayed by offshore jurisdictions and by EU member states. The hypothesis at this stage was that the various groups identified (Group 0, Group 1, Group 2 and Group 3) would exhibit different levels of deviation from these standards.

   The values 0 or 1 were assigned to each answer by each jurisdiction. 0 denoted non-adherence to the indicator for the standard considered, while 1 denoted adherence. Since the various indicators contributed to the definition of each of the integrity standards to differing extents, they were assigned different weights in the definition of the standard, as explained in detail in the sections on each standard. The problem of unavailable data relative to a certain indicator for a jurisdiction was solved - within each of the Groups considered - by calculating the average score for the replies given by the other jurisdictions in the Group for the same indicator (so that the Group's average score was assigned to the missing datum). By following this procedure, for each Group of jurisdictions, for each sector of law considered, it was possible to calculate a total score – consisting of the average of the scores assigned to each indicator – which represented the level of deviation from a particular standard, or, in other words, compliance with that standard.

3. *Quantification of the deviation by Groups 1, 2, 3 from the EU integrity level.* In this third stage it was possible to determine the difference in deviation from the integrity standards between Groups 1, 2, 3 and Group 0 (EU member states). The differential in scores among the Groups expressed the level of regulatory asymmetry among them. The final phase of recommendations started from the results of this analysis.

   In order to facilitate understanding of the analysis procedure, Annex C has been added to this report. This Annex explains all the methodological steps followed and contains a detailed list of the standards, their indicators and the value assigned to each of them. Here the indicators and the corresponding questions are summarised in the following table.

STANDARDS, INDICATORS AND QUESTIONS

STANDARDS	INDICATORS	QUESTIONS	WEIGHT
Criminal and criminal procedure laws standard	*The existence of the crime of money laundering*	Is money laundering punished in your criminal system?	30%
	Width of money laundering predicate offences	Does the legislation provide for a list of crimes as predicate offences of money laundering?	10%
		Do predicate offences of money laundering cover all serious crimes?	10%
		Do predicate offences of money laundering cover all crimes?	10%
	Possibility of confiscation of criminal proceeds	Is there a provision allowing confiscation of assets for a money laundering offence?	20%
	Existence of special investigative bodies or special means of investigations	Are there any special investigative bodies or any special means of investigation (e.g. electronic surveillance, undercover operations, etc.) in relation to money laundering offences?	20%

STANDARDS	INDICATORS	QUESTIONS	WEIGHT
Administrative regulations standard	*Existence of an anti-money laundering law*	Is there an anti-money laundering law in the jurisdiction?	18%
	Width of the range of institutions covered by the anti-money laundering law	Are banks covered by the anti-money laundering law?	4.50%
		Are other financial institutions covered by the anti-money laundering law?	4.50%
		Are non-financial institutions covered by the anti-money laundering law?	4,50%
		Are other professions carrying out a financial activity covered by the anti-money laundering law?	4.50%
	Existence of identification requirements	Are there identification requirements for the institutions covered by the anti-money legislation?	18%
	Existence of a Central Authority for the collection and analysis of suspicious transactions' reports	Is there a central authority (for Instance, a Financial Intelligence Unit) for the collection of suspicious transactions reports?	18%
	Existence of an obligation to report suspicious transactions	Is there suspicious transactions reporting?	10%
	Possibility of co-operation between financial institutions and police authorities	Is there any co-operation between banks or other financial institutions and police authorities?	18%

STANDARDS	INDICATORS	QUESTIONS	WEIGHT
Banking law standard	*Possibility to open a bank account without indicating the beneficial owner*	Is there a prohibition to open a bank account without indicating the beneficial owner?	60%
	Existence of limits to bank secrecy	Are there limits to bank secrecy in case of criminal investigation and prosecution?	40%

STANDARDS	INDICATORS	QUESTIONS	WEIGHT
Company law standard	*Existence of a minimum share-capital for limited liability companies:*	Is a minimum share capital of at least 1000 Euro required for limited liability companies?	18%
	Non-existence of the possibility to issue bearer shares for limited liability companies	Is there a prohibition to have legal entities as directors of limited liability companies?	18%
	Non-existence of the possibility to have legal entities as directors	Is there a prohibition to have legal entities as directors of limited liability companies?	18%
	Existence of a registered office	Does a registered office exist for limited liability companies?	10%
	Existence of a duty to audit financial statements in limited liability companies	Is there any annual auditing (at least internal) for limited liability companies?	18%
	Existence of a share-holder register	Does a shareholder register exist for limited liability companies?	18%

STANDARDS	INDICATORS	QUESTIONS	WEIGHT
International co-operation standard	*Existence of provisions enabling extradition for money laundering offences*	Is there a provision allowing extradition (at least of foreigners) for money laundering offences?	20%
	Existence of provisions allowing assistance to foreign law enforcement agencies	Is there a provision allowing to provide assistance to foreign law enforcement agencies in the investigation of money laundering cases?	20%
	Existence of provisions allowing assistance to a request for financial records	Is there a provision allowing law enforcement, judicial authorities, the FIU or other governmental departments to respond to a request from a foreign country for financial records (bank records)?	20%
	Existence of the possibility to share confiscated assets	Is there a provision allowing the sharing of confiscated assets for money laundering offences?	20%
	Ratification of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	Has the 1988 UN Convention been ratified?	20%

11. Analysis

This section reports the results obtained by applying the model for assessment of regulatory asymmetries. It conducts comparative analysis of regulation in the various sectors of the jurisdictions considered, grouped according to the criteria outlined in Section 8.1.

The analysis had three main objectives:

- to quantify the level of deviation or the level of compliance (which is the reverse of the level of deviation, since both exhibit the distance between regulatory systems and the standards) displayed by Groups 0, 1, 2 and 3 from and with the integrity standards which operationally represent the regulatory standards set by the international community;

- to quantify the level of deviation by Groups 1, 2 and 3 from the European levels of integrity, which operationally represent the average of regulation by the European Union member states;

- to identify the sectors constituting significant problems for the integrity of financial systems.

The analysis corresponds to the questions set out in Section 7:
- which Group of jurisdictions shows the greatest deviation from the standards and in which sector/s?
- how wide are the asymmetries in each of these sectors and in which group of jurisdictions are they present?
- what remedies can be suggested to reduce the risk of exploitation and ensure closer protection of the EU financial system?

11.1 Deviation of Groups from the integrity standards

The first step of the analysis was quantification of the extent to which the regulation of financial centres and offshore jurisdictions deviates from the standards of integrity set by the international community in order to protect financial systems from exploitation by organised crime.

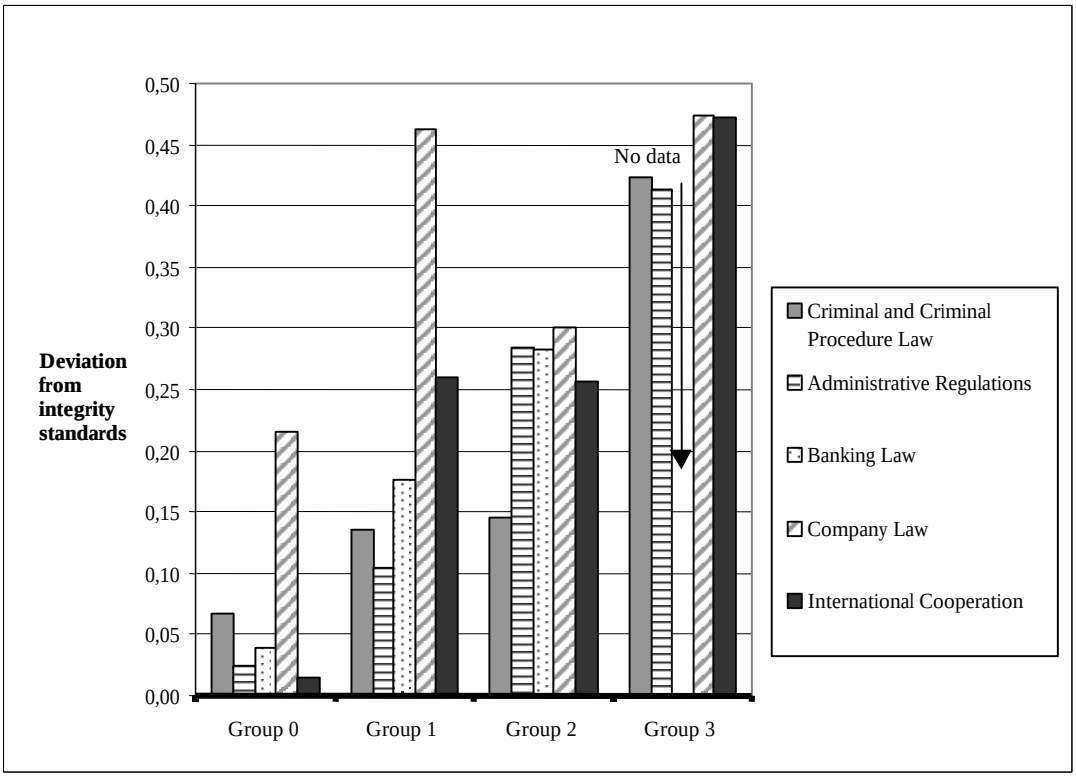
Using the methodology outlined in Section 8 and Annex C, for every sector of regulation scores (from 0 to 1) were assigned to each of the Groups considered. These scores expressed the extent to which the regulatory systems of the Groups deviated from the integrity standards. Table 2 shows the level of each Group's deviation: *the closer the value to 0, the less the regulations deviate from integrity standards.*

Table 2. Level of deviation of Groups from the integrity standards

	Criminal and Criminal Procedure Law Standard	**Administrative Regulations Standard**	**Banking Law Standard**	**Company Law Standard**	**International Co-operation Standard**
Group 0	0.07	0.02	0.04	0.22	0.02
Group 1	0.14	0.10	0.18	0.46	0.26
Group 2	0.15	0.28	0.28	0.30	0.26
Group 3	0.42	0.41	n.a.	0.47	0.47

Figure 1 is a graphical representation of the results set out in Table 2.

Figure 1. Deviation of each Group from the integrity standards in each sector of regulation



The following conclusions can be drawn:

- Group 0, apart from company law, seems to be almost in line with all the integrity standards.
- Group 1 does not display significant deviation from criminal and criminal procedure law and administrative regulations standards, but it does so as far as banking (0.18 deviation), company (0.46 deviation) and international co-operation (0.26 deviation) standards are concerned. Group 1 exhibits, after Group 3, the highest level of deviation from the company law standard (0.46 deviation).
- Group 2 presents what can be considered medium deviation from all the standards. Administrative regulations (0.28 deviation), banking law (0.28 deviation) and company law (0.30 deviation) are the most problematic sectors.
- Group 3 is the one most distant from the integrity standards in each of the sectors of regulation considered, particularly as far as the international co-operation standard is concerned.
- *The company law standard is the one from which all the four Groups (including the European Union) deviate most markedly. After company law, international co-operation is another problematic sector.*

11.2 Deviation of Groups 1, 2 and 3 from the European Union integrity level

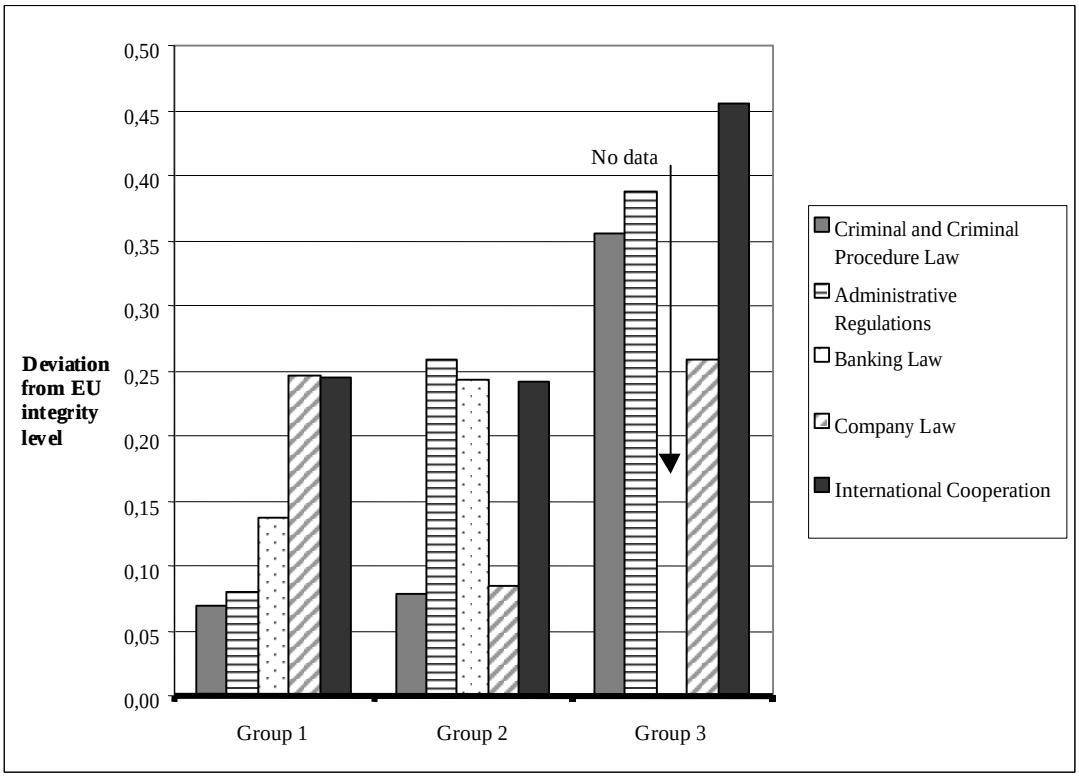
Quantification of the level of deviation of the Groups from the integrity standards also enables quantification of the level of deviation of Groups 1, 2 and 3 from the level achieved by Group 0 (the European Union member states).

Table 3. Level of deviation of Groups 1, 2 and 3 from the European Union integrity level

	Criminal and Criminal Procedure Law	Administrative Regulations	Banking Law	Company Law	International Co-operation
Group 1	0.07	0.08	0.14	0.25	0.24
Group 2	0.08	0.26	0.24	0.08	0.24
Group 3	0.36	0.39	n.a.	0.26	0.46

Figure 2 is a graphical representation of the results set out in Table 3.

Figure 2. Level of deviation of Groups 1, 2 and 3 from the European Union integrity level



The following conclusions can be drawn:

- Group 1 is distant from the EU integrity level as far as banking (0.18 deviation), company (0.25 deviation) and international co-operation standards (0.24) are concerned. In these sectors the situation seems to be highly problematic;
- Group 2 is distant from EU integrity level as far as administrative (0.26 deviation), banking (0.25 deviation), and international co-operation standards (0.24 deviation) are concerned;
- Group 3 is the most problematic, especially as far as administrative (0.39 deviation), company (0.26 deviation) and international co-operation (0.46 deviation) are concerned;
- international co-operation, company law and administrative regulations are the sectors in which Groups 1, 2 and 3 display the greatest deviation from the EU integrity level.

11.3 General conclusions

These data furnish an idea of the distance between the level of regulation of the countries considered and the integrity standards which, if respected, should ensure the integrity of the financial system of a jurisdiction by protecting it against infiltration by organised crime. The data were aggregated by Group of jurisdictions and sectors of regulation, and inspection of these aggregates yields an immediate answer to the question put initially by this research concerning asymmetries among regulatory systems distinctive of the groups of financial centres and offshore jurisdictions selected in respect to integrity standards and those adopted by the European Union. What general conclusions can be drawn from the analysis and what are its policy implications?

NOT ONLY OFFSHORE

The distinction between offshore and onshore is losing much of its traditional meaning if construed as the opposition between opacity and transparency. Competition to attract capital in search of more favourable conditions traverses jurisdictions, with the result that some offshore jurisdictions are moving toward tougher criminal law legislation and international co-operation, and somewhat more transparency (Group 1 and 2), while others (Group 3) adhere to their traditions of lenient criminal law, non-cooperation and opacity. At the same time countries with a long traditions as financial centres display the same or lower standards of regulation in respect to those officially termed ‘offshore’.

The demand for offshore facilities is increasing as a result of stringent controls on the taxation of enterprises and individuals in the jurisdiction of origin. 'Shopping around' jurisdictions for the purposes of tax planning is part of a globalised market just as 'shopping' for lower wages is a strategy adopted by enterprises to reduce their costs. This demand for financial facilities in a global market has created and is developing a trend which appears to have less to do with the label 'offshore/onshore' and more with the different levels of regulation openly offered in the international market of financial services. Moral rhetoric is useless when setting out to solve the problem of competition among regulatory systems. The international community should endeavour to ensure that tax planning does not turn into 'harmful tax competition', just as it should prevent shopping for low wages from turning into exploitation of the need to survive of a large group of countries. The risk of exploitation by organised crime is evident, and this risk grows more serious the more such competition increases. Clear thresholds must be established in all the sectors in which regulation attracts legitimate enterprises but may also attract illicit ones. Who establishes what?

ASSOCIATION AGREEMENTS WORK : INCOMING MEMBERS TO THE EUROPEAN UNION ARE CHANGING THEIR CRIMINAL LEGISLATION AND INTRODUCING FINANCIAL REGULATION.

The European Union has moved in this direction by introducing clearly-stated clauses on financial and criminal legislation into the Association Agreements concluded with countries seeking entry to the European Union.[39]

The results of this research show quite clearly that, as offshore and onshore compete to attract capital (and sometimes obtain 'dirty' capital as well), so jurisdictions belonging to Group 2 are making their criminal legislation tougher and their financial regulations more transparent. The influence of the European Union is evident in this process, highlighting the positive role that a regional institution such as the European Union can play in improving the integrity standards of surrounding countries.

[39] Since the text of the various agreements is nearly identical, the following Article 87 of the Association Agreement with Slovenia is reported as an example:
"Article 87 Prevention of money laundering.
1. The parties agree on the necessity of making every effort and cooperating in order to prevent the use of their financial systems for laundering of proceeds from criminal activities in general and drug offences in particular.
2. Cooperation in this area shall include administrative and technical assistance with the purpose to develop the implementation of regulations and efficient functioning of the suitable standards and mechanisms to combat money laundering equivalent to those adopted by the Community and international fora in this field, in particular the Financial Action Task Force (FATF)".

ECONOMIC AND POLITICAL PROXIMITY WORKS: THE CLOSER OFFSHORE JURISDICTIONS ARE TO EUROPEAN UNION THE LESS THEY DEVIATE FROM THE INTEGRITY STANDARDS AND FROM THOSE OF THE EUROPEAN UNION

Not only do Association Agreements work but also proximity to the European Union seems to be beneficial. The results of the analysis show that offshore jurisdictions belonging to Group 1 (with geographical, economic and political links with the European Union) deviate less from integrity standards than do the jurisdictions in Group 3 (offshore with no links with European Union). With the exception of company law, all the other sectors of regulation obtain better results than equivalent sectors of Group 3. This signifies that proximity to the European Union 'works' and that the measures adopted by such European Union member countries as the United Kingdom and the Netherlands to monitor those financial centres have yielded positive results in terms of their adaptation to the rest of Europe. In areas such as criminal law, criminal procedure and administrative regulation, indeed, they achieve almost the same levels as those of the European member states. This means that more vigorous use of the political and economic links with these countries would facilitate the harmonisation of their laws with integrity standards in general and those of the European Union in particular.

THE EUROPEAN UNION'S FINANCIAL SYSTEM SHOULD BE MORE TRANSPARENT BEFORE IT CAN CREDIBLY ASK OTHERS TO 'CLEAN UP THEIR ACT'

The first two conclusions assert that a regional approach works, and that when offshore financial centres lie in the political and economical periphery of the European Union a better level of integrity is seen in their regulatory systems, with a consequent reduction of the risk that organised crime may exploit their financial facilities. This holds for almost all the regulatory systems analysed, with the exception of one: company law. Comparing the score for the deviation of the company law of European members from the integrity standards reveals that EU company law regulation has a 0.22 deviation from the integrity standards, which is slightly less that the deviation by the Group 2 (0.30) and significantly less than that by Group 1 (0.46) and Group 3 (0.47) of offshore financial centres. Consequently, in at least one crucial sector of regulation, the European Union member states have not 'cleaned up their act' before asking others to do so. This 'cleaning-up' should be accelerated for two reasons. Firstly for the sake of credibility. The European financial system cannot ask others to change their regulation with a view to improving the

integrity of their financial systems without itself having done so first. Secondly, it is necessary because company law regulation is the most essential factor in the transparency of the financial systems.

COMPANY LAW HAS A 'DOMINO' EFFECT INCREASING THE OPACITY OF OTHER SECTORS' REGULATIONS

Company law contributes more than other sectors of regulation to the level of integrity of a financial system. Company law sets the minimum of share capital for limited liability companies and regulates the issue of bearer shares by them, the possibility that legal entities may act as directors, the requirement of establishing a registered office, and also the obligatory auditing of financial statements in the case of limited liability companies and the keeping of share-holder registers. According to the type of regulation, company law produces the greater transparency or the greater opacity of a financial system, thereby influencing the other sectors and determining the effectiveness of police and international judicial co-operation. This is the 'domino' effect of company law: if this type of regulation seeks to maximise anonymity in financial transactions, enabling the creation of shell or shelf companies whose owners remain practically unknown (because other companies own them), such anonymity will be transferred to other sectors of law. Thus the names of the ultimate beneficial owners or the beneficiaries of financial transactions will remain obscure, which thwarts criminal investigation and prosecution. Police co-operation requires physical persons, not legal entities, and if company law maximises anonymity, then the ineffectiveness of criminal law and police and judicial co-operation is inevitable. The same effect arises in banking law, where bank secrecy becomes a marginal issue because of the anonymity of the companies operating bank accounts under scrutiny. The 'domino' effect therefore influences the other sectors, producing much of the opacity surrounding a financial system. Consequently, the analysis suggests, if the asymmetries are greater in this sector than in others, company law is the point from which action to protect financial systems against the risk of exploitation by organised crime should start, both in Europe and elsewhere.

The policy implications of this result is that, whilst criminal law and procedure have reduced the distance between the less regulated and well regulated countries[40], real changes would be brought about by giving greater transparency to the rules on the establishment of corporations and their operations. This would enable law enforcement agencies and regulators to discover the

[40] See Group 1.

identities of the physical persons whose interests are being managed. Rules of corporate governance combining efficiency with transparency of ownership should be extended to encompass a further kind of transparency: one targeted on the optimal level of integrity. This form of transparency will reduce the risk of the criminal exploitation of financial centres and offshore jurisdictions, rendering international co-operation with law enforcement agencies truly effective. Only in this case will 'following the money trail' yield investigative results that can be used to prosecute criminals and disrupt their organisations. Corporations and governments should be aware that facilitating identification of the physical persons who operate in financial markets will, in the long run, increase the transparency of financial systems without impairing their efficiency. The less likely it is that 'dirty money' may pollute competition among enterprises and infiltrate legitimate enterprises, the less it is likely that illicit operators will proliferate, which would be to the advantage of legitimate ones. Partnerships among corporations, regulatory and law enforcement authorities and governments would foster this process.

* * *

The analysis raised a number of points which relate mainly to legislation. Given that a substantial period of time elapses between legislation and its implementation, legislation is the beginning of a process without which solutions to the problems addressed by this research cannot be found. The next section will show how the issue of offshore financial centres have attracted the attention of law enforcement agencies. Only in this way, at the present state of knowledge, is it possible to understand 'offshores in action'. In Section 13 the contents, policy implications and strategies suggested by the analysis, and by the advice of international experts, are translated into recommendations for action by the European Union.

12. Offshores in action: case studies

The analysis carried out in the previous chapter was a mixture of 'law in the books' and 'law in action'. Now, in order to afford a clearer understanding of where the problems lie, and of how financial centres and offshore jurisdictions are exploited by organised crime groups, a number of case studies of international law enforcement operations are presented. These cases studies[41] have been selected in order to highlight the role played by financial centres and offshore jurisdictions in criminal activities by offering facilities vulnerable to exploitation by criminals. This section also points up how those sectors of regulation which display the greatest deviation from the standards considered in section 11 are *de facto* those that are most exploited by criminals.

CASE 1. Operation Dinero: a case of undercover offshore services to launder money[42]

MAIN FEATURES:
Drug criminal organisations; offshore banks; offshore shell companies.

THE CASE:
This case concerns undercover operations conducted in an offshore centre. Law enforcement agents set up fake banks and fake shell corporations in an offshore centre in order to monitor and detect money laundering activities. Without much difficulty, they began servicing drug traffickers.

The operation was called Operation Dinero and began in the DEA Atlanta Division in 1992 when DEA Special Agents penetrated the Cali mafia and were commissioned by the Colombian organised crime groups to arrange money pickups in the United States and Europe. Phase I of the operation focused on undercover money pickups which would reveal the connection between drug trafficking and drug cell money groups in the United States. Phase II focused on the DEA's operation of an offshore private 'Class B' bank which served - at least in appearance - as a legitimate source for laundering drug proceeds by the unwitting Colombian mafia. With the expertise of the IRS, DEA, and the British Government, a private bank was established in Anguilla, British West Indies. Once the bank became operational, the DEA worked undercover to promote the services of the bank within the international criminal community, as well as catering to the Cali mafia in Colombia. By operating the bank,

[41] The following cases have been taken by different sources: investigative files, reports of international organisations, answers given to questionnaires by some of the jurisdictions considered, media news.
[42] U.S. Department of Justice, Drug Enforcement Administration, *Operation Dinero*, Internet address http://www.usdoj.gov/dea/pubs/briefing/4_5.htm

DEA undercover agents gained credibility with the Cali mafia, and in 1994, the bank began servicing drug trafficker accounts.

In addition, a number of undercover corporations were established in different jurisdictions as multi-service 'front' businesses designed to supply 'money laundering' services such as loans, cashiers checks, peso exchanges, wire transfers, or to establish holding companies or shell corporations for the trafficking groups. Ultimately, members of the Cali mafia engaged the bank to sell three paintings: a Picasso, a Reynolds and a Rubens. These paintings were seized by the DEA and IRS in 1994.

Operation Dinero spanned four countries and several U.S. states. It resulted in 88 arrests, the seizure of approximately 9 tons of cocaine, and the confiscation of well over $50 million in cash and other property. The 2-year joint enforcement operation was co-ordinated between the U.S. Drug Enforcement Administration, the Internal Revenue Service, Immigration and Naturalization Service, the Federal Bureau of Investigation, and international law enforcement counterparts in the United Kingdom, Canada, Italy and Spain.

LESSON TO LEARN:
The financial services offered by offshore jurisdictions appear to be well known to organised drug traffickers. International co-operation and intelligence sharing play a paramount role in the fight against money laundering.

CASE 2. The Offshore Banking and U.S. Tax-Fraud Probe[43]

MAIN FEATURES:
Offshore banking; offshore shell companies; tax fraud and money laundering.

THE CASE:
The following was a scam brought to light thanks to information provided by a penitent former Cayman Islands banker, John M. Mathewson, who enabled the U.S. authorities to open an unprecedented window into the offshore-banking world. The revelations of the banker led to a large number of investigations and convictions.

The investigation started when investigators arrested Mathewson, former owner of Guardian Bank & Trust (Cayman) Ltd., a

[43] M. Allen, "Usa: Murky World of Offshore Banking Emerges in U.S. Tax-Fraud Probe", in *Wall Street Journal*, 19 August 1999.

defunct Cayman Islands bank. Mathewson, a U.S. citizen, had been operating from the Caribbean island for more than a decade. Federal agents arrested him at his San Antonio home in 1996 on charges of laundering money for a U.S. ring which was selling illegal cable-TV converter boxes. Mathewson collaborated with the authorities, and as a direct result of his co-operation there are now several dozen ongoing investigations involving money laundering. He gave the investigators a list of all the bank's depositors, numbering more than 1,000, along with the names of the shell corporations that they were hiding behind. He also gave agents a computer listing of bank transactions dating back 14 months, which was a gold mine of data on U.S. citizens using offshore banking facilities, some of them presumably seeking to evade U.S. taxes or break other laws.

Besides Mathewson himself, the U.S. has convicted more than a dozen individuals who banked at Guardian. Mathewson had gone well beyond the bounds of the law in assisting his clients. According to his indictment, he helped the members of the cable-piracy ring to disguise bribes intended for the security agent of a cable-television concern, and set up foreign corporations to 'lend' clients their own money for real-estate purchases. The clients would then repay the loans to themselves, fraudulently taking deductions for mortgage interest payments and not reporting the income. Prosecutors say Mathewson also issued Visa credit cards to depositors in the name of shell corporations, which enabled them to make purchases in the U.S. without leaving a paper trail. Guardian's clientele ranged from hard-core criminals needing to launder money to doctors and businessmen.

The banker aided prosecutors in several cases, including one against Mark Vicini, a New Jersey computer executive, who pleaded guilty in 1997 to evading $2.2 million in taxes. Vicini was sentenced to five months in jail, five months of home detention, and a $60,000 fine, and was also ordered to repay back taxes with interest and penalties. Mathewson also helped in the prosecution of Bartholomew D'Ascoli, a New Jersey orthopaedic surgeon who deposited $394,000 with Guardian. Last August, Dr. D'Ascoli pleaded guilty to tax evasion, and was sentenced to eight months in prison, and a $15,000 fine.

LESSON TO LEARN:
There appear to be offshore banks which are established for the prime purpose of undertaking illegal business. These same offshore banks are able to exploit the low standards of company law to incorporate companies which are subsequently used for illicit purposes. The case suggests that steps should be taken to improve the supervision of banks in offshore countries and to

raise the standards of transparency in corporate law. There is also the option of 'turning' key informants by means of plea negotiations, sanctions and witness protection.

CASE 3. Cross border cash, laundering money through offshore financial institutions[44]

FEATURES:
Drug traffickers; money laundering offshore through financial institutions.

THE CASE:
Three suspicious transaction reports were received concerning transactions at Danish banks in which large amounts of money were deposited in accounts and then withdrawn shortly afterwards as cash. The first report was received in August 1994, and it concerned an account held by Mr. X. Upon initial investigation, the subjects of the reports (X, Y and Z) were not recorded in police databases as connected with drugs or any other criminal activity. However, further investigation revealed that X had imported more than 3 tones of hashish into Denmark over a nine-year period. Y had assisted him on one occasion, whilst Z had assisted in laundering the money. Most of the money was transported by Z as cash from Denmark to Luxembourg, where X and Z held 16 accounts at different banks, or to Spain and subsequently Gibraltar, where they held 25 accounts. The receipts from the Danish banks for the withdrawn money were used as documentation to prove the legal origin of the money when it was deposited at banks in Gibraltar and Luxembourg. It turned out that sometimes the same receipt was being used at several banks so that more cash could be deposited as 'legal' than had actually passed through the Danish bank accounts.

X and Y were arrested, prosecuted and convicted for drug trafficking offences and received sentences of two and six years of imprisonment respectively. A confiscation order for the equivalent of US$ 6 million was made against X. Z was convicted of drug money laundering involving US$ 1.3 million and was sentenced to one year and nine months of imprisonment.

LESSON TO LEARN:
Financial institutions should not treat proof of deposit in a bank account as equivalent to proof of legitimate origin. Secondly, the transporting of illegal proceeds in the form of cash across national borders to certain countries is still a widely used money

[44] Case entirely taken from Annexes to the *1997-1998 FATF Report on Money Laundering Typologies*, Case no. 3

laundering method.

CASE 4. The role of offshore companies in the perpetration of crimes and of offshore banks in laundering money[45]

MAIN FEATURES:
Offshore companies used to commit fraud; professionals involved in money laundering activities through the use of offshore bank systems.

THE CASE:
A large-scale international operation involving law enforcement authorities in New York, Jersey and the British National Crime Squad led to the arrest of a London magistrate and a solicitor involved in a multi-million dollar fraud and international money laundering. The share fraud, which cost investors around the world more than $17m, was believed to be run from New York but involved professionals in London, Jersey, Canada and Liberia. The New York stock promoter accused of the crime set up 19 offshore companies in various financial havens in order to perpetrate the fraud. These companies were supposedly registered in Liberia and owned by a diplomat, who was bribed to sign blank forms. In reality, however, they were managed from London and used to buy stock from small firms. The prices of these stocks was then inflated by fraudsters through a series of cross trades, before being sold to unsuspecting investors who found themselves with over-valued or even worthless shares. Money from the fraud was then deposited by the criminals in bank accounts at financial and offshore centres, namely Jersey and Switzerland, in order to be laundered.

LESSON TO LEARN:
Offshore companies, given the ease with which they can be incorporated and their low standards of transparency, are widely used for criminal purposes. Banks in offshore centres are still used to launder money.

[45] M. Ricks, "International Fraud Squad Arrests London Lawyers", in *The Indipendent (London)*, 28 June 1998.

CASE 5. The role of offshore shell corporations and secretarial companies in the laundering of money[46]

MAIN FEATURES:
Offshore shell corporations exploited to launder money.

THE CASE:
During 1995/96, financial institutions in a certain European country made a number of suspicious transaction reports to its financial intelligence unit. These reports identified large cash deposits made to banks which were then exchanged for bank drafts made payable to a shell corporation based and operated from an Asian jurisdiction. The reports alleged that approximately US$ 1.6 million were being transferred in this manner. The police were simultaneously investigating a group in the country involved in the importing of drugs, and in 1997 managed to arrest several persons in the group, including the principal, who controlled the company located in the Asian jurisdiction. These persons were charged with conspiring to import a large amount of cannabis. A financial investigation revealed that the principal had made sizeable profits, a large percentage of which were traced. A total of approximately US$ 2 million had been sent from the European country to the Asian jurisdiction, and subsequently transferred back to bank accounts in Europe, where it is now restrained.

Two methods were used to launder the money. The principal set up a shell company in the Asian jurisdiction which was operated there by a secretarial company on his instructions. The shell company opened a bank account which was used to receive cashiers orders and bank drafts purchased for cash in the country of origin. The principal was also assisted by another person who controlled (through the same secretarial company) several companies. These companies were operated for both legitimate purposes and otherwise. The accomplice laundered part of the proceeds by sending the funds on to several other jurisdictions, using non-face to face banking (computer instructions from the original country) to do so. Seven persons including the principal are now awaiting trial in the European country on charges of drug trafficking, and the principal and three other persons face money laundering charges.

LESSON TO LEARN:
This case clearly shows how desirable and easy it is for criminals (even if not part of international organised crime) to use corporate entities in other jurisdictions, and to transfer illegal

[46] Case entirely taken from Annexes to the *1997-1998 FATF Report on Money Laundering Typologies*, Case no. 5

proceeds through several further jurisdictions in order to disguise their origins. It also demonstrates the ease with which company incorporation services can be obtained, and shows that many of the companies which sell shelf/shell companies, as well as the secretarial companies that operate them, are not likely to concern themselves about the purpose for which the shell company is used. Thus highlighted is the need for financial institutions to comprise a system which identifies suspicious transactions, not just those performed at the front counter but also non-face to face transactions, such as in this case. The amount of time taken to conduct international financial investigations and to trace the proceeds of crime transferred through several jurisdictions, make the risk that the funds are dissipated concrete.

CASE 6. The drug cartel of Juan Garcia Abrego, and Raul Salinas' money laundering allegations: a case of money laundering through offshore shell companies

MAIN FEATURES:
Drug criminal organisations; money laundering through offshore companies; corruption of banking officials.

THE CASE:
Juan Garcia Abrego, boss of Mexican drug trafficking, was convicted in the United Sates in 1996. This was the first step in uncovering interwoven circuits of corruption and money laundering by Mexican officials.[47] In a few years, Abrego's criminal organisation had amassed more than ten million dollars from the exporting of cocaine and marijuana from Mexico and their delivery to the American markets.[48] Th group profited from a web of contacts with Mexican public officials, from whom it obtained the help necessary to cover the transferring of money abroad to be laundered. Among Abrego's 'special friends' were the brother of the President of the Mexican Republic, Raul Salinas, currently being investigated by the Mexican police, and the Mexican Attorney General Mario Ruiz Massieu. The United States government seized 9 million dollars belonging to Massieu deposited in the Texas Commerce Bank of Houston, maintaining that the money consisted of bribes paid by Abrego.[49] Officials of the American Express Bank International were also investigated on suspicion of involvement in the money laundering operation.

[47] Money Laundering Alert, "Conviction of Drug Lord Aids Salinas Inquiry", November 1996; A. Zarembo, "A verdict at Last – But the Case is Not Closed", in *Newsweek*, Internet address http://newsweekinteractive.org/nw…4_99a/printed/int/wa/ov0604_1.htm.
[48] Case no. H-93-CR-167-SS, So. Dis. Texas.
[49] Money Laundering Alert, "Drug Lord , Now in U.S. Custody, Has Key to Mexican Corruption", February 1996.

Antonio Giraldi, an employee of the bank, has been sentenced to a ten years sentence for money laundering.

Giraldi was responsible for managing the bank accounts of a certain Ricardo Aguirre, who turned out to be a money launderer acting on behalf of Abrego.

The most sensitive aspect of the case was the alleged involvement of Raul Salinas, brother of the Mexican President,[50] by exploiting his position as a public official in a government agency, Salinas apparently took bribes amounting to millions of dollars from entrepreneurs and drug traffickers in exchange for favours which facilitated money laundering and which, obviously, were contrary to his official duties. It seems that Salinas transferred around 100 million dollars between 1992 and 1994 by exploiting a private relationship with Citibank of New York. These illicit funds were transferred from Citibank of Mexico and Citibank of New York to private banking accounts in Citibank, London and Citibank, Switzerland.[51] In order to ensure that this money reached these final destinations, its origin was disguised by various means, including the creation of offshore corporations to be used as shell companies. In order to finalise the scam, Citibank officers:

- used Cititrust (Cayman) to set up an offshore private investment company named Trocca to hold Salinas' assets, and also opened investment accounts at Citibank London and Citibank Switzerland;
- did not adopt the 'know your customer policy' for Salinas although obliged to do so;
- allowed Salinas' wife to use another name to initiate fund transfers in Mexico;
- had funds wired from Citibank Mexico to a Citibank New York concentration account (in which funds from various sources were commingled), before sending them to Trocca's offshore Citibank investment accounts.

To be noted is the role played by Trocca company - a shell company established by Citibank New York in the Cayman Islands. Citibank set up this offshore shell company through Cititrust (Cayman), which had at its disposal several dormant private investment companies to be allocated to clients when necessary. The company was incorporated in the Cayman Islands, the country in which all the documentation linking Salinas to

[50] This case is still under investigation by the U.S. Department of Justice, and by Mexican and Swiss judicial authorities.

[51] The money, transferred to the Swiss bank, is currently frozen by the Swiss authorities while they await proof of its illicit origin (Media Awarness Project, "Switzerland: Wire: $ 132 Million Traced To Swiss In Salinas Case", 25 April 1998, Internet address: http://www.mapinc.org/drugnews/v98.n305.a05.html).

Trocca was held and whose company regulations protect document confidentiality.

Trocca's was therefore set up for reasons of close secrecy and tax advantages. To give Salinas closer protection, Cititrust (Cayman) set up three other shell companies to act as Trocca's board of directors. As part of its private banking relationship with Salinas, Citibank opened two accounts for Trocca (one at Citibank London and one at Citibank Switzerland). According to Citibank officials, Citibank London had no documentation to show that Salinas was Trocca's ultimate beneficial owner.[52]

LESSON TO LEARN:
Offshore companies are exploited as shields to cover the identities of the real beneficial owners of bank transactions. Methods with which to require banks to ascertain the ultimate beneficial owners of transactions should be explored. Corporations located in offshore countries should be carefully monitored. The corporate law of offshore jurisdictions should be adjusted to eliminate low standards of transparency. Attention should be paid to the possible dangers arising from close customer-banker relationships in private banking.

CASE 7. The role of professionals in laundering money offshore: lawyers[53]

MAIN FEATURES:
Professionals laundering money on behalf of their clients; use of professional accounts in offshore centres; use of credit cards to launder money.

THE CASE:
A prominent attorney operated a money laundering network which used sixteen domestic and international financial institutions, many of them located in offshore jurisdictions. The majority of the attorney's clients were law abiding citizens. However, a certain number of them were engaged in various types of fraud and tax evasion, and one client, indeed, had committed an US$ 80 million insurance fraud. The attorney charged his clients a flat fee to launder their money and to set up annuity packages to hide the laundering. In the event of inquiries by regulators or law enforcement officials, the attorney was prepared to give the appearance of legitimacy to withdrawals from

[52] GAO, *Private Banking. Raul Salinas, Citibank, and Alleged money Laundering*, UNGAO, Washington, October 1998.
[53] Case taken in its entirety from Annexes to the *1997-1998 FATF Report on Money Laundering Typologies*, Case no. 4.

the ‘annuities’.

One laundering method used by the attorney was to transfer funds from a client’s account into one of his own general accounts in the Caribbean. This account was linked to the attorney's name only, and he used it to commingle various client funds, before moving portions of the funds accumulated in the general account via wire transfers to accounts in other Caribbean countries. When a client needed funds, the latter could be transferred from these accounts to a U.S. account in the attorney's name or the client's name. The attorney indicated to his clients that they could ‘hide’ behind attorney-client privilege should they ever be investigated.

The attorney also used credit cards to launder funds. He arranged for credit cards in false names to be issued to his clients without the issuer of the cards being aware of the true identities of their recipients. When a client needed funds, s/he could use the credit card to make cash withdrawals at any automated teller machine in the United States. Once a month the Caribbean bank debited the attorney's account for the charges incurred by his clients. The attorney pleaded guilty to money laundering.

LESSON TO LEARN:
Banks and their employees should be alert to ‘layered’ wire transfers with instructions of the type ‘for further credit to’, and especially in the case of the correspondent accounts of ‘offshore banks’. Suspicious transactions can then be identified and reported. It is essential that banks should comply with ‘know your customer’ requirements when issuing credit cards. In the case just described, the banks issued credit cards to the attorney for further issuance to his clients.

CASE 8. The European Bank of Antigua: money launderers going offshore can be defrauded

MAIN FEATURES:
Bank in offshore jurisdiction offering anonymous services with explicitly illegal purposes; incorporation of companies with the aim of money laundering; Internet advertisements.

THE CASE:
This case is a clear example of how offshore facilities lend themselves to use as vehicles for illegal activities. In this specific instance, the individuals who sought to launder their money ended up being defrauded by the bankers. To be noted is that all the bank services offered (on line) by the fraudsters were for the

purpose of laundering money using the coverage (secrecy and law opacity) provided by offshore jurisdictions.

This case was brought to public attention in August 1997 by the collapse of the *European Union Bank (EUB).*[54] Initially registered as an offshore bank (the East European International Bank Ltd.) in the Caribbean island of Antigua on the 8 June 1994, this bank changed its name to European Union Bank Ltd on 18 August 1994. It had been set up by two young Russian citizens already with long criminal records:[55] Alexander Konanykhine, a 30-year-old financier who had escaped from Russia in 1992 under accusation of defrauding eight million dollars from a bank that he had founded, and a wanted person in the United States for violation of the immigration rules; and Mikhail Khodorkovsky, head of a huge financial and industrial empire cited by the American press as one of 200 richest people in the world.

Three years before the bank went on-line with an aggressive advertising campaign. Promoting itself as the first bank in cyberspace, it promised 'excellent interest rates' in a "safe, tax-exempt environment, with the maximum guarantee of privacy". Among the products on offer were one million dollar value certificates of deposit on which the bank promised to pay an interest of 9.91%.[56] The bank's advertisements on the Internet were explicitly designed to attracting tax evaders or money launderers. The bank offered a wide range of services, which were accessible from any country: not only could customers open numbered accounts (the identity of the customer was known only to the bankers) or coded accounts (numbered accounts operating by password rather than by signature), but they could also set up a corporation on-line under Antigua corporate law, which does not require the disclosure of shareholders or beneficial owners.

In 1997, *EUB* began to arouse suspicions, and various authorities (among them the *Bank of England* and the State of *Idaho*) took action to compel it to halt its saving and loan activity. The competent authorities of Antigua officially enacted a *'fraud alert'* in August of the same year. It was too late, however, because at the beginning of the month the two criminals had already shut down the only counter at their small office, fired their five or six employees, and made all their customers' money as well as the

[54] "EUB was all about money laundering and fraud. The bank has no location physically or virtually. It was erased from the universe. It is the first virtual disappearance of a bank", D. Farah, "Antigua Internet Bank Vanishes Into Cyberspace: Suspected of Money Laundering, Firm Closes Web Site, Bilking Patrons of Millions", in *The Washington Post*, 31 August 1997, pp. 30 ss.
[55] J. Gould, "Gangster Bankers: A Young Russian's Run-ins with Organised Crime and Offshore Money Laundering", in *The Village Voice*, 16 September 1997.
[56] "Bank Collapse Illustrates the Dangers of Cyberspace", in *Electronic Payments International*, September 1997.

bank's website disappear. It is known for certain that only 100,000 dollars remained when the bank closed. The island authorities have never revealed the overall amount of the money stolen or made to disappear during the financial collapse, but the most reliable sources put the sum at close to 10 million dollars.[57]

LESSON TO LEARN:
Offshore banks offering financial services on the Internet should be carefully monitored, and anonymous accounts, or accounts for which the names of the beneficial owners need not be disclosed, should not be permitted. Corporate entities in other jurisdictions are used to disguise the origins of illicitly gained money.

CASE 9. Loan back your own money

MAIN FEATURES:
Smuggling drug money; offshore companies; bearer shares.

THE CASE:
A Dutch criminal produced a quantity of the drug XTC and transported it to the United Kingdom to be sold. The proceeds amounted to around a million pounds sterling in the form of low value banknotes. Given the obligation on British banks to report suspicious transactions, the money was smuggled out of the UK to the Netherlands by the same route that had been used to bring the drug XTC into the country. Such a large amount of British pounds would have attracted attention in the Netherlands, and if deposited in a Dutch bank would have led to disclosure of the 'unusual transaction'. For this reason, the money was smuggled to another country in which there was no or hardly any obligation to disclose transactions (a secrecy haven). The money was first taken to a former East European country, where it was exchanged for US dollars, which were paid into the account of a local enterprise with bearer shares bought from an intermediary. A false invoice (mentioning a management fee) was used to wire the money to the account of an offshore Caribbean investment company located in the Netherlands Antilles. The bearer shares of this offshore company were held by an offshore company in Panama, and the bearer shares of the latter company were held by a local attorney at law.

In the meantime, the Dutch criminal had set up a limited company in the Netherlands called Real Estate Investment, of which he was the manager and the only shareholder. The purpose of the company was to acquire money with which to buy and

[57] Others instead report a sum of 6 millions dollars. See M.M. Plunkett, "Internet Banking a Tangled Web for Investors", in *The Palm Beach Post*, 26 October 1997.

manage real estate. The criminal contacted the Caribbean investment company, from which his other company (Real Estate Investment) borrowed a sum of money amounting to around one million British pounds.

Using this money, Real Estate Investment bought a large office building including a house. As the manager of the company, the criminal now manages the office building, lives in the house and drives an expensive company car. The office-building is rented out to businesses, and out of the money paid for the offices the manager draws a huge salary; the rest of the money is used to pay off the loan (the interest on which qualifies for tax deduction). Of course, the criminal is loaning his own (illegal) money and is the beneficial owner of the Caribbean investment company.

LESSON TO LEARN:
The possibility of using offshore companies with bearer shares makes the maintenance of secrecy and the loan-back of money straightforward. Identification of the beneficial owners of offshore companies is important for the deterrence of money laundering.

CASE 10. Using the stock market to launder your money

MAIN FEATURES:
Stock market; Jersey (offshore) limited company; non-credit institutions.

THE CASE:
A company doing business on the Amsterdam Stock Exchange (AEX) had a criminal client. As a 'non-credit institution', the company managed an account opened at the AEX bank – the so called 'Cash Association' (KasAss) – on behalf of its client.

On several occasions, the company paid large amounts of money into the criminal's account at KasAss using a complex method to disguise the money as legally acquired. The company was specialised in transactions which speculated on a fall in stock prices. To make a profit, stocks were sold in the longer term without their actual possession ('going short'). At the end of the term, the stocks were bought just before they were to be sold. The buyer hoped that he could buy the stocks at a price lower than the one stipulated in the agreement and on which basis the stocks could be sold.

Money was laundered by separating the profits and the losses. The company made the separation by selecting the bills used to clear

the stock transactions. When the positions were closed, and if the company had made a profit, the bills were used to justify the criminal money. Thus the money in the criminal's account appeared to be profits from stock transactions.

On the other hand, there were the losses, which had to be off-set. For this purpose, the company used the account of a Jersey limited company. Because of Jersey's secrecy legislation the identities of the beneficial owners of limited companies are hard to discover. This particular Jersey limited company was the largest of the company's clients but performed no profitable business. On several occasions, one of the directors of the company paid large amounts of (criminal) money into its account; money which off-set the losses.

Summarising, in this case the criminal (using other individuals) paid for stock bills and turned a profit.

LESSON TO LEARN:
Without stringent controls, non-credit institutions are vulnerable to criminal exploitation. Careful consideration should be made of the fact that offshore companies can be used to off-set losses with fake profits constituted by criminal assets.

CASE 11. A case involving Andorra: money laundering through financial institutions

MAIN FEATURES:
Drug traffickers; person on whose behalf the transaction is conducted; financial institutions; suspicious transaction reporting.

THE CASE:
In November 1998, information was exchanged with the Spanish police concerning certain drug trafficking and money laundering offences. Co-operation was boosted by contacts with Interpol Washington, and a joint investigation by law enforcement authorities revealed that a Spanish national had been commissioned by a Colombian criminal organisation to launder its cocaine trafficking proceeds. This person contacted the managers of an Andorran firm, who facilitated the opening of accounts in his name by local banks. The Spanish national made payments in cash (USD, Spanish pesetas, German marks, Swiss francs) into the drawing accounts opened and ordered banking transfers to the United States and to Panama.

An Andorran bank filed a suspicious transaction report with the local authorities because it considered the cash transfers to lack

proper justification. Investigations ensued which led to the arrests of the Spanish citizen (on money laundering charges) and of members of the Colombian drug trafficking organisation, and to the confiscation of 200 kg of cocaine. The Andorran bank accounts tied to the crimes were frozen, thereby preventing any further operations. Nevertheless, law enforcement authorities estimated that 500 million pesetas had already been laundered.

LESSON TO LEARN:
It is essential to improve methods for identification of the actual persons on whose behalf bank transactions are conducted.

CASE 12. A case involving Cyprus: money laundering through offshore corporation

MAIN FEATURES:
Offshore companies; money laundering from Western European countries in Cyprus.

THE CASE:
A report to the Cypriot Unit for Combating Money Laundering by the Drug Law Enforcement Unit of the Police alleged suspicious criminal activities involving an offshore company registered in Cyprus, a number of Cypriots, and citizens of a Western European country. The Cypriot authorities were informed by the Customs Department that a Cypriot had imported a large amount of cash in a foreign currency. This information, together with further information concerning possible drug trafficking offences, led to investigations which revealed the use of an offshore company to launder drug proceeds. The Unit for Combating Money Laundering conducted inquiries and obtained court disclosure orders for information, finding that the offshore company was registered in Cyprus and had stated that its main business was “general trade”. In actual fact it was inactive and had never undertaken any real transactions.

The suspects, in co-operation with other persons, transferred large amounts of money in cash from a Western European country to bank accounts in Cyprus. (The origin of this money is not yet clear: apart from some insignificant amounts, the cash has already been transferred abroad through various bank accounts.) Investigations revealed that the money had been transferred to Cyprus from a Western European country, and specifically from companies registered in that country. The case is still under investigation and the authorities of the Western European country, the Cypriot Unit for Combating Money Laundering, and

the Financial Crime Unit of the Police are co-operating closely to trace the source of money.

Although no predicate offence has been discovered, it seems that the money originates from drug trafficking. The Cypriot offshore company used for the laundering has had its licence amended and is currently under surveillance.

LESSON TO LEARN:
Company law in Western European countries and in offshore jurisdictions must be scrutinised to determine the loopholes in transparency liable to criminal exploitation.

CASE 13. A case involving Switzerland: money laundering through banks

MAIN FEATURES:
Beneficial owner of corporations; use of bank accounts.

THE CASE:
A bank received a transfer of funds amounting to CHF 2,000,000 from overseas for one of its customers. Shortly afterwards, the bank was informed by a major foreign bank that it has been the victim of a fraud and that a complaint has been made to the police in the overseas country. The individual named in the complaint was a customer of the Swiss bank, which promptly asked for assistance in gathering information. In the meantime, another transfer of funds had been received, this time amounting to approximately CHF 2,500,000. Some of the first deposit was subsequently withdrawn in cash or transferred out of the account. Shortly after receiving the second payment, the customer instructed the bank to transfer the entire balance in the account to a bank located in the Middle East. Asked as to the origin and source of the money, the customer cited a transaction entirely unconnected with his business. He promised to supply the relevant contract documentation, which was never received by the bank. The bank's suspicions were consequently aroused and it filed a report with the MROS. Inquiries by the latter concerning the customer (a corporate body) at first uncovered little information, but note was made of a beneficial owner who sought to remain in the background. Further inquiries in Switzerland revealed that this individual had already been implicated in a separate money laundering investigation by Interpol. As a result of enquiries sent to various other reporting offices in Europe and elsewhere, it emerged that the individual in question was known to the authorities in several countries and had been suspected of drug trafficking on numerous occasions, but that there had never

been sufficient evidence to bring charges against him. The MROS sent the suspicious transaction report, together with the additional information, to the prosecution authorities. The investigating judge decided to commence a criminal investigation on the basis of article 305*bis* of the penal code. The MROS continues to liaise with the investigating judge in order to utilise information to the best effect.

LESSON TO LEARN:
Efforts should be made to identify the real beneficial owners, when a legal entity opens a bank account or conducts bank transactions.

CASE 14. Three cases involving Hungary: money laundering across borders through corporations

MAIN FEATURES:
Fraud; money laundering through company law schemes; role of corporations in laundering money across borders.

THE CASES:

1. 100,000 USD originating from fraud committed in Riga were deposited in the account of a Latvian company (linked to the perpetrator of the fraud) and then transferred - through corresponding banks - to the account of a Hungarian limited company. The amount was kept in the account for a month. After this the Hungarian manager, with the excuse of a failed contract, transferred it to the account of a third company in Lithuania, not to the account of the first company in Riga.

2. About 2.5 million USD originating from an investment fraud committed in Austria were transferred to the account of a Hungarian financial advising company. The Hungarian managing director entered the sums as ‘capital reserve’ in the company’s books. The Hungarian company made short term deposits with the money and then, after the maturity dates, transferred it to the account of a credit institution, at the same time ordering the bank to facilitate investments on behalf of the company. The money involved was secured during investigations by freezing the accounts of the Hungarian company.

3. The predicate crime in this case was an export subvention fraud. One billion HUF was sent to the account of a company in Liechtenstein as a ‘finder's fee’ or as ‘propaganda expenses’. Investigations found that only 300 million HUF (1.5 million

USD) had been laundered and no information was forthcoming as to the owner of the money.

LESSON TO LEARN:
Corporations are used to launder money in Eastern European countries as well. The behaviour of corporations should be carefully monitored. Required in particular are the close scrutiny of corporate financial statements and the introduction of stringent auditing rules in all jurisdictions.

CASE 15. Two cases involving Poland: corporations as a shield for money laundering; money laundering through financial and non-financial institutions

MAIN FEATURES:
Offshore companies; false invoices; exchange offices.

THE CASES:

1. Use of the bank accounts of a fictitious company. A company was registered on the Registry of Commercial Activities although it did not actually engage in any form of business. It purchased fictitious goods (i.e. electronic equipment) and issued false invoices for payment with dirty money.

2. Use of exchange offices. The owner of an exchange office traded lump sums of foreign currencies without proper bookkeeping. He also overstated the number of daily transactions in order to conceal the criminal origin of money.

LESSON TO LEARN:
In Eastern Europe, too, corporations are used as shields to conceal the real identities of the persons on whose behalf transactions are conducted. Exchange offices should be subjected to the same identification requirements as financial institutions.

13. The Euroshore project's recommendations for EU action

The purpose of the recommendations set out below is to protect the EU financial system against exploitation of financial centres and offshore facilities by organised crime. Resulting directly from the foregoing analysis of the criminal, administrative, banking, company and judicial co-operation regulatory systems of offshore countries, these recommendations spring from asymmetries in the levels of deviation from the integrity standards (general and EU level) intended to protect financial systems against infiltration by organised crime. The recommendations are underpinned by two principal assumptions. Although already discussed in Section 7, these assumptions are stated once again, for they are essential for a proper understanding of the criteria used to draw up the recommendations that follow.

The first assumption is that asymmetries in the transparency of financial transactions between EU countries and other financial centres and offshore jurisdictions heighten the risk that the latter will be exploited by organised crime groups. That is to say, the tighter bank secrecy becomes and the greater the anonymity of the ultimate beneficial owner, the more criminals are able to launder the proceeds of crime and re-invest them in Europe, and the more the risk diminishes that such proceeds will be traced and confiscated, and the criminal organisation concerned disrupted.

Accordingly, the risk of exploitation is a function of asymmetries in regulation.

The integrity standards are the standards set for:
- criminal and criminal procedure laws;
- administrative regulations;
- banking law;
- company law;
- international co-operation.

In other words, the less criminal law and criminal procedure are effectively enforced, the more the customers on whose behalf accounts are opened or transactions conducted enjoy anonymity, the more stringently bank secrecy is applied, the less company law is transparent, and the less international co-operation is afforded by offshore jurisdictions, the greater become the opportunities to launder the proceeds of crime and re-invest them in the EU financial system and the less the likelihood that such proceeds will be traced and confiscated and the criminal organisation concerned disrupted.

The second assumption is that, as the risk of exploitation of financial centres and offshore jurisdictions increases, so the protection of the EU financial system and other financial systems

diminishes; protection, that is, against pollution by the proceeds of crime which pass through financial and offshore centres, enter the EU financial system, and distort competition among legitimate EU enterprises.

This means that protection of the EU financial system is a function of the risk of exploitation.

Combining the two functions yields the overall assumption that protection of the EU financial system is determined by the regulatory asymmetries between the EU countries and offshore jurisdictions.

As a consequence of the two assumptions just stated, and in the light of the results of the analysis reported in section 10, the recommendations that follow are intended to enhance the integrity of EU countries and to reduce the key asymmetries that hamper international co-operation and potentially pollute European financial markets as they now pollute the global financial markets.

It is proposed that the European Union should take action at three different levels in order to protect its financial system:

1. harmonising and raising, when necessary, the level of regulation among EU member states (*harmonisation*);
2. exporting the standards thus achieved by the EU member states to financial and offshore centres (*active protection - reduction of asymmetries*), the purpose being to reduce the asymmetries between the regulatory systems in financial centres and offshore jurisdictions and those in the EU member states;
3. preventing EU financial mechanisms (financial and non-financial institutions) from receiving financial transactions originating from financial and offshore centres outside the EU unless they meet the level of regulation of the EU member states (*passive protection - exclusion*), the purpose being to prevent pollution of the EU financial system.

It is to be understood that action 3 (exclusion) may be implemented when action 2 does not achieve the desired effect (reduction of asymmetries) and may perform the dual function of defending the EU financial system against pollution by dirty money and providing an incentive for financial and offshore centres to adopt the standards of regulation set by the international community. This would also enhance the effect of action 2.

This report's recommendations are as follows:

1. The introduction of an 'all crimes' anti-money laundering legislation is recommended, accompanied at the same time by a well-defined list of predicate offences to be included as distinct crimes in each jurisdiction.
2. The enactment in other jurisdictions of money laundering legislation consistent with the standards set by the EU Money Laundering Directive, as amended.
3. The introduction of the liability of corporations, either administrative (short term) or criminal (long term), as a generic sanction on crimes committed by corporations.
4. The requirement that EU financial institutions accepting transactions from countries outside the EU must impose the disclosure – together with the name of the person ordering the transaction – of the names of the director of the corporation and of the trustee, together with those of the ultimate beneficial owner (i.e. main shareholder) of the corporation itself and of the beneficiary and settlor of a trust. If the EU institution fails to require this disclosure, it should be subjected to sanction.
5. Exploration of the feasibility of establishing a system of incentives for credit and financial institutions (from minimum measures of involvement intended to show these institutions the concrete results of their anti-money laundering action, to maximum measures consisting in economic rewards when reporting has been essential for the conviction of criminals and/or confiscation of criminal assets), the purpose being to enhance and give greater effectiveness to co-operation between credit and financial institutions and law enforcement authorities.
6. Examination of the feasibility of eliminating the issuance of bearer shares and of eliminating nominee shareholders; of setting minimum capital requirements for the incorporation of companies; of mandating the drafting and depositing of audited financial statements; of creating public registers of companies. Examination of these possibilities is especially recommended as regards companies located in financial and offshore centres with a view to preventing the use of companies as vehicles for money laundering. This recommendation, if implemented, would assist in ascertaining the real identities of the persons on whose behalf financial transactions are conducted, and it is therefore closely connected with recommendation no. 4.
7. The introduction of certain minimum requirements, such as the registration of trust deeds and disclosure of the identities of the settlor and the beneficiary, for the purpose of enhancing transparency in trust law. This recommendation, if implemented, would assist in ascertaining the identities of the persons on whose behalf transactions are conducted and is therefore closely connected with recommendations no. 4.

These recommendations are discussed in detail in the following Sections (13.1/2/3) and according to the following criteria, which are arranged in logical sequence:

- the problems: to wit, the asymmetries in regulation analysed by this research;
- the background and rationale (discussion of where and when similar solutions have been already recommended and

explanation of why the recommendations should be implemented);

- the aim;
- the remedy proposed;
- implementation of each of the three forms of action proposed (harmonisation, reduction of the asymmetries and exclusion) for the EU institutions. Practical implementation of these actions is tailored to each of the four groups of countries analysed.

The recommendations have been grouped according to the sector of regulation considered (criminal and criminal procedure law, administrative law, company law, banking law, international co-operation).

13.1 Criminal law asymmetries and connected recommendations

1.

ASYMMETRY

Differences among the types of crime considered to be money laundering predicate offences.

BACKGROUND AND RATIONALE

The international community has introduced provisions with regard to the predicate offences of money laundering. While the Vienna Convention approach was limited to the laundering of the proceeds of drug offences, the trend is towards an ever-wider coverage. The FATF in its Recommendation no. 4[58] and the 'Joint Action adopted by the Council on the basis of art. K.3 of the Treaty on European Union on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime'[59] have pressed for the introduction of 'serious crimes' anti-money laundering legislation, while Council of Europe Convention 1990/141 defines predicate offences as "*any criminal offence as a result of which proceeds were generated*".[60] Even though the above Joint Action defines 'serious offences', differences in national criminal codes mean that the precise coverage of criminal activity will not be the same. One of the reasons for moving to an 'all crimes' approach is therefore the fact that any two countries will tend to have a different conception of what constitutes 'serious crime'. This will lead them to envisage different crimes as money laundering predicate offences, thus making international police and judicial co-operation more difficult, insofar as the application of the principle of dual criminality may give rise to practical difficulties. It is therefore preferable to adopt the option of an 'all crimes' legislation. However, even this does not by itself solve all the problems of international co-operation.

An example could be useful for a better understanding of the problems arising, even under an 'all crimes' approach. One may consider two countries, A and B, both of which have adopted an 'all crimes' legislation. Country A foresees trafficking of human beings as a crime, while country B does not provide for this particular offence in its criminal code. In the event of a request for co-operation, concerning the laundering of proceeds from trafficking of human beings, by country A to country B, the former would most probably see its request rejected. Notwithstanding the fact that both countries have an 'all crimes'

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[58] *"Each country should take such measures as may be necessary, including legislative ones, to enable it to criminalise money laundering as set forth in the Vienna Convention. Each country should extend the offence of drug money laundering to one based on serious offences. Each country would determine which serious offences would be designated as money laundering predicate offences".*

[59] Joint Action of 3 December 1998 on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, 98/699/JHA.

[60] See Articles 1 and 6, Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, n. 141, 1990.

legislation, a difference in the conduct considered as criminal would hamper international co-operation.

Therefore, in order to facilitate and accelerate international judicial co-operation, this recommendation proposes the adoption of an 'all crimes' legislation, but goes beyond this, calling for certain crimes to be included in the criminal systems of all jurisdictions, with the consequence that mutual legal assistance should always be granted for these offences.

AIM

To increase the consistency of anti-money laundering legislation among all jurisdictions, and to improve international police and judicial co-operation in the area of money laundering, thereby avoiding the possibility that co-operation may be refused on the grounds that a crime is not included in the criminal system of the jurisdiction receiving a request for co-operation (assistance or extradition).

REMEDY

The introduction of an 'all crimes' legislation, combined with the condition that a number of criminal offences be foreseen in all jurisdictions. Such criminal conducts should consist of at least those crimes envisaged for inclusion in the forthcoming UN

Convention against Transnational Organized Crime,[61] with the addition of more specific crimes, among which those falling within the category of tax fraud, such as 'falsification of documents for tax purposes'.

[61] According to footnote 3 to article 2 of the draft UN Convention against Transnational Organized Crime, a list of offences (either indicative or exhaustive) could be included either in an annex or in the *travaux preparatoires*. The attachment to the revised draft of the Convention (doc. A/AC.254/4/rev.4) contains the following list of serious crimes proposed by Mexico on behalf of several delegations:

- Illicit traffic in narcotic drugs and psychotropic substances;
- [money laundering];
- traffic in persons, in particular women and children;
- illicit traffic in and transport of migrants;
- counterfeiting currency;
- illicit traffic in or stealing of cultural objects;
- illicit traffic in or stealing of nuclear material, its use or threatening to misuse it;
- acts of terrorism;
- illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related material;
- illicit traffic in or stealing of motor vehicles, their parts and components;
- acts of corruption;
- illicit traffic in human organs;
- illicit access to or illicit use of computer system and electronic equipment, including electronic transfer of funds;
- kidnapping;
- illicit traffic in or stealing of biological and genetic material.

We have added to this list those crimes that seem relevant to this recommendation. A possible list might therefore include the following:

- active and passive corruption and international corruption;
- human smuggling/trafficking;
- embezzlement;
- extortion;
- falsification of documents for tax purposes;
- fraud;
- illegal gambling;
- participation in a criminal organisation;
- racketeering.

	ACTIONS TO BE TAKEN BY EUROPEAN UNION INSTITUTIONS	
	Harmonisation and Reduction of the asymmetries	**Exclusion**
Addressed Group	*Methods of implementation*	*Methods of implementation*
Group 0	Use the framework decision of the EU Treaty as amended (art. 34, 2b).	Not applicable.
Group 1	Assess the use of one or more of the various legal frameworks which connect the European Union with countries in Group 1 (i.e. using part Four of EC Treaty and Annex II to EC Treaty with the Overseas Territories and exploring the feasibility of including this issue in the review of Association Agreements to be made by the Council by February 2000).	
Group 2	Encourage Group 2 countries to adopt an 'all crimes' legislation, accepting the proposal to establish a number of types of conduct as distinct crimes in their criminal system, patterned on those foreseen in Group 0 countries and consider it as a condition for their entry into the European Union.	
Group 3	Use the partnership and co-operation agreements between the EU and third countries (arts. 38 and 24 EU Treaty as amended). Proposal to be also submitted to the international *fora* in which the European Union is represented (FATF, others).	

RECOMMENDATION 1

Considering that:

- **differences in the range and types of activity considered as crimes in financial and offshore centres and in the member states of the European Union hamper international co-operation in the area of criminal law;**

the introduction of an 'all crimes' anti-money laundering legislation is recommended, accompanied at the same time by a well-defined list of predicate offences to be included as distinct crimes in each jurisdiction.

2.

ASYMMETRY

Difference among the types of subjects covered by anti-money laundering legislation (such as identification requirements and suspicious transactions reporting). This asymmetry will increase even further when the proposed amendments to the EU Money Laundering Directive come into force.

BACKGROUND AND RATIONALE

Analysis of cases throughout the world shows that professionals and non-financial institutions are increasingly involved in money laundering operations.[62] Action should be taken to reverse this trend by monitoring the activities of these professionals and institutions. The effectiveness of the new obligations introduced by the amendments to the Directive, however, depends on the sanctions imposed in cases of misconduct (sanctions which, for professionals, are suspension, disqualification, confiscation).

European Directive 91/308 states in Article 12 that Member States may stipulate that professional activities and categories other than credit and financial institutions are subject to the obligations imposed by the Directive, if they conduct business particularly at risk of money laundering.

AIM

To increase the transparency of financial transactions, to prevent the misuse of office/trust accounts (by professionals), and to deter the use of non-financial businesses for money laundering purposes.

REMEDY

Extension of identification and reporting obligations to non-financial businesses and professionals to create a system of sanctions which are deterrent, effective and proportionate for those who do not comply.

[62] Article 2a of the Proposal for an European Directive amending Council Directive 91/308/EEC of 10 June 1991, lists the following professional categories:
- external accountants and auditors;
- real estate agents;
- notaries and other independent legal professionals when assisting or representing clients in respect of the: buying and selling of real property or business entities; handling of client money, securities or other assets; opening or managing bank, savings or securities accounts; creation, operation or management of companies, trusts or similar structures; execution of any other financial transaction;
- dealers in high-value goods, such as precious stones or metals;
- transporters of funds;
- the operators, owners and managers of casinos.

	ACTIONS TO BE TAKEN BY EUROPEAN UNION INSTITUTIONS	
	Harmonisation and reduction of the asymmetries	**Exclusion**
Addressed Group	*Methods of implementation*	*Methods of implementation*
Group 0	Implemented by the amendments to Money Laundering Directive 91/308 presented by the Commission (14.7.99). Assessment of the instruments comprised in the 1st and 3rd pillars as possible administrative and criminal sanctions.	Not applicable.
Group 1	Assessment of the use of one or more of the various legal frameworks which connect the European Union with countries in Group 1 to induce them to adopt the obligations imposed by EU Directive in their own legislative systems.	
Group 2	Encourage Group 2 countries to comply with the EU criteria and consider such compliance as a condition for their entry to the European Union.	
Group 3	Use the partnership and co-operation agreements between the EU and third countries (arts. 38 and 24 EU Treaty as amended). Proposal to be submitted to the international *fora* in which the European Union is represented (FATF, others).	

RECOMMENDATION 2

Considering that:

- **there is an increasing tendency for professionals and non-financial businesses to be used in money laundering operations;**

- **once the amendments to the money laundering Directive have been enacted, the asymmetries already existing between EU member countries and countries outside the Union in relation to the categories to which money laundering obligations are applied will increase in magnitude;**

it is recommended that money laundering legislation consistent with the standards set out in the EU Money Laundering Directive be enacted in other jurisdictions.

3.

ASYMMETRY

Differences among jurisdictions as regards corporate liability.

BACKGROUND AND RATIONALE

International institutions agree that the liability of corporations is an effective means to combat organised crime, money laundering and other economic crimes. The international community, and the European Union in particular, have requested through various international instruments that such liability be introduced. Moreover, the Revised draft UN Convention against Transnational Organized Crime provides for the establishment of corporate liability.[63] Such action, however, has been limited in its scope, insofar as it has been addressed to separate and specific crimes, such as organised crime, money laundering, fraud and active corruption. Furthermore, numerous acts of the European Union envisage the introduction of forms of liability. See, for instance:

- Joint Action of 21 December 1998 (98/733/JHA) adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union. Art. 3 of this Joint Action stipulates: "*Each Member State shall verify that legal persons may be held criminally, or failing that, otherwise liable for offences referred to in Article 2 which are committed by that legal person, in accordance with procedures to be laid down in national law. Such liability of the legal person shall be without prejudice to the criminal liability of the natural persons who were the perpetrators of the offences or their accomplices. Each Member State shall ensure, in particular, that legal persons may be penalised in an effective, proportionate and dissuasive manner and that material and economic sanctions may be imposed on them*". Recommendation no. 3 is not restricted to types of conduct committed by criminal organisations within the meaning of Article 1 of the Joint Action mentioned;
- Joint Action of 24 February 1997 (97/174/JHA) adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children;

[63] Revised draft UN Convention on Transnational Organized Crime, article 5: "*Each State Party shall take such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized crime group and for the offences established in articles 3 and 4 of this Convention. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative. Such liability shall be incurred without prejudice to the criminal liability of the natural persons who have committed the offences. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions*".

- 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.[64] This Recommendation no. 3 goes further than the Protocol, which only obliges Member States to take the measures necessary to ensure that legal persons are made liable for fraud, active corruption and money laundering. The nature of the liability is not prescribed (as either administrative or criminal).
- Art. 14 of the Corpus Juris.[65] This disposition provides for the criminal liability of legal persons found to have committed an offence of fraud against the Community budget as set out in the articles 1 – 8 of the Corpus Juris.

Besides the fact that these instruments leave the decision of whether or not to implement administrative or criminal corporate liability to the individual country concerned, the issue of introducing corporate criminal liability in each jurisdiction has not yet been subject to single and comprehensive action, and therefore warrants particular attention.

Only a certain number of the member states of the European Union have introduced the administrative and/or criminal liability of legal persons: for instance, France, Ireland, the Netherlands and the United Kingdom. By contrast, countries like Greece and Italy do not have the legal means to impose liability on legal persons. Consequently, the criminal and administrative liability of legal persons is admitted not only in the common law countries but also in some of those of the continental legal tradition. Recommendation no. 3 intends to make this obligation binding on all the Member States, at least as regards all the crimes contained in the fixed list, as stated in Recommendation no. 1.

The conclusion to be drawn is that the Recommendation introduces a broader range of criminal offences for which legal persons would be held liable, either administratively or, in the longer term, criminally.

AIM

To increase the responsibility of corporations in regard to money laundering by imposing criminal and/or administrative sanctions on them able to affect their reputations through systems of shaming.

64 Brussels, 19 June 1995.

65 See *Corpus Juris. Introducing Penal Provisions for the Purposes of the Financial Interests of the European Union*, Economica, Paris, 1997.

REMEDY

To introduce the liability of corporations, either administrative (short term) or criminal (long term), as a generic sanction applied in cases of crimes committed by corporations.

	ACTIONS TO BE TAKEN BY EUROPEAN UNION INSTITUTIONS	
	Harmonisation and reduction of the asymmetries	**Exclusion**
Addressed Group	*Methods of implementation*	*Methods of implementation*
Group 0	Use the framework decision of EU Treaty as amended (art. 34, 2b).	Not applicable.
Group 1	Assess the use of one or more of the different legal frameworks which connect the European Union with countries in Group 1 to persuade them to adopt corporate liability, either administrative or criminal, in their legislative systems.	
Group 2	Encourage Group 2 countries to introduce corporate criminal liability in their legislative systems in line with the contents used toward Group 0 countries and consider it a condition for entry to the European Union.	
Group 3	Use the partnership and co-operation agreements between the EU and third countries (arts. 38 and 24 EU Treaty as amended). Push for the adoption of all the international instruments in which corporate liability is foreseen.	

RECOMMENDATION 3

Considering that:

- **corporations are used for criminal purposes (fraud, money laundering, corruption, etc.);**
- **the legislative systems of many countries in the world do not foresee corporate criminal liability;**
- **personal criminal liability does not hold the management and the corporation itself responsible, since responsibility attaches only to a single employee or straw-man;**
- **corporate criminal liability may have a deterrent effect insofar as the criminal sanction imposed on a financial institution damages its reputation and consequently induces the management to feel more accountable for acts committed within the institution;**

it is recommended that corporate liability, either administrative (short term) or criminal (long term), be introduced as a generic sanction applied in the case of crimes committed by a corporation.

13.2 Banking law and administrative regulations asymmetries and connected recommendations

4.

ASYMMETRY

Different levels of effectiveness displayed by the anti-money laundering identification requirements among jurisdictions, in particular when transactions are conducted on behalf of legal entities.

BACKGROUND AND RATIONALE

FATF Recommendation no. 10 states that: *"In order to fulfil identification requirements concerning legal entities, financial institutions should, when necessary, take measures: (i) to verify the legal existence and structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customer's name, legal form, address, directors and provisions regulating the power to bind the entity; (ii) to verify that any person purporting to act on behalf of the customer is so authorised and identify that person"*. Moreover, FATF Recommendation no. 21 adds: *"Financial institutions should give special attention to business relations and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply these Recommendations. Whenever these transactions have no apparent economic or visible lawful purpose, their background and purpose should, as far as possible, be examined, the findings established in writing, and be available to help supervisors, auditors and law enforcement agencies"*.

If doubt arises as to whether a customer is opening an account or carrying out a transaction on his/her own behalf, identification requirements make it possible to ascertain the identity of the person on whose behalf the account is opened or the transaction conducted. In financial and offshore centres, this requirement is often circumvented by the existence of corporate confidentiality. Although the data provided by these countries confirm that, in the vast majority of cases, the law provides for the identification of the person or the entity on whose behalf an account is opened or a transaction conducted, this requirement does not always ensure a sufficient level of transparency. This comes about when transactions are conducted on behalf of certain kinds of corporations or trusts established according to company or trust law, which in many jurisdictions allow a high degree of anonymity for the persons who control them. In this case, it is not possible to disclose the identity of the person on whose behalf an account is opened or a transaction conducted. Consequently, the opacity of company or trust laws may restrict the possibility for disclosure of the real identity of the person on whose behalf an operation is conducted and who effectively controls the corporation or trust.

To prevent this problem from arising, concerted action in the area of banking, company and trust law is required. As regards banking law in particular, identification of the real identity of the person on whose behalf a transaction is conducted is essential, and in the case of a corporation or a trust, also the name/s of the director/s and trustee/s. Only in this way can the 'know your customer' clause be properly applied to financial transactions.

This recommendation is therefore of central importance insofar as it applies not only to banking law but also, and especially, to company and criminal law.

AIM

To improve the tracing of the movements of the proceeds of crime and increase their confiscation by virtue of more straightforward identification of the real owners of criminal assets.

REMEDY

Mandate the furnishing of additional information to EU banks and financial institutions when they receive transactions from banks and financial institutions located in financial/offshore jurisdictions. In particular, recipient banks and financial institutions in EU Member States should require the ordering banks to disclose - together with name of the person ordering the transaction – the name of the director of the corporation/the trustee together with those of the ultimate beneficial owner (i.e. main shareholder) of the corporation itself/the beneficiary of the trust.

	ACTIONS TO BE TAKEN BY EUROPEAN UNION INSTITUTIONS	
	Harmonisation and reduction of the asymmetries	**Exclusion**
Addressed group	*Methods of implementation*	*Methods of implementation*
Group 0		Recipient banks and financial institutions in EU Member States should require ordering banks to disclose – together with name of the person ordering the transaction – the names of the director of the corporation and of the trustee, together with those of the ultimate beneficial owner (i.e. main shareholder) of the corporation itself and of the beneficiary and settlor of a trust. If a EU institution fails to require this disclosure, it should be subject to a sanction. When such disclosure is not forthcoming, the EU institution should not proceed with the transaction. If the transaction is nonetheless performed in the EU jurisdiction, a penalty established by a EU framework decision should be imposed on the EU institution. To facilitate implementation of this provision, the following actions should be considered: - draw up, at the European Union level, a "positive list" of countries for which controls are not necessary; - consider the feasibility of introducing a threshold; - above which disclosure of such information should be mandatory. This procedure could be made more efficient by creating a "negative list" of banks forbidden to operate within the EU.
Group 1		
Group 2		
Group 3		

RECOMMENDATION 4

Considering that:

- **the disclosure of the real identities of the persons on whose behalf transactions are conducted is essential for the tracing and confiscation of the proceeds of crime;**

- **different levels of transparency in bank transactions between countries impede discovery of the real identities of the persons on whose behalf accounts are opened or transactions conducted in certain jurisdictions;**

- **the majority of financial and offshore centres do not require disclosure of the identities of the persons on whose behalf accounts are opened or transactions conducted, so that when accounts are held in the names of corporations, trusts or professionals acting on behalf of their clients, the identities of the ultimate beneficial owners are unknown;**

EU financial institutions accepting transactions from countries outside the EU should require the disclosure - together with the name of the person ordering the transaction - of the name of the director of the corporation and of the trustee, together with those of the ultimate beneficial owner (i.e. main shareholder) of the corporation itself and of the beneficiary and settlor of a trust. If a EU institution fails to require such disclosure, it should be subject to a sanction.

5.

ASYMMETRY

Different levels of co-operation by credit and financial institutions in reporting suspicious transactions.

BACKGROUND AND RATIONALE

The maximum level of co-operation by credit and financial institutions in the reporting of suspicious transactions is essential. This co-operation is frequently not forthcoming, and there is a growing risk of 'ritualism' in anti-money laundering control. The fostering of diligent anti-money laundering action by these institutions would increase the level of mutual trust between them and law enforcement authorities.

AIM

To enhance and give greater effectiveness to co-operation between credit and financial institutions and law enforcement authorities.

REMEDY

Establishment of a system of incentives for credit and financial institutions intended to encourage their co-operation with anti-money laundering operations. These incentives could take various forms:

- measures for the continuing involvement of co-operating agencies in anti-money laundering action and in the prosecutions to which they have contributed;
- economic rewards when the reporting has been essential for the conviction of criminals and/or confiscation of their assets.

	ACTIONS TO BE TAKEN BY EUROPEAN UNION INSTITUTIONS	
	Harmonisation and reduction of the asymmetries	**Exclusion**
Addressed group	*Methods of implementation*	*Methods of implementation*
Group 0	Assess - in the context of the 3rd pillar of the EU Treaty - the feasibility of awarding a percentage of the value of the assets confiscated to the credit and financial institutions which reported as suspicious the transaction which led to the detection and investigation of money laundering and to the final related confiscation. At a lower level, action to encourage the involvement of credit and financial institutions, exploring methods to inform them on the concrete or potential results of their anti-money laundering action.	Not applicable.
Group 1	Assess the use of one or more of the legal frameworks which link the European Union with countries in Group 1 to induce their consideration of the above mentioned proposal on systems of incentives for financial institutions.	
Group 2	Invite Group 2 countries to examine the feasibility of enforcing the above mentioned proposal on systems of incentives for financial institutions and to consider it a condition for entry to the European Union.	
Group 3	Use the partnership and co-operation agreements between the EU and third countries (arts. 38 and 24 EC Treaty). Proposal to be submitted to the international *fora* in which the European Union is represented (FATF, others).	

RECOMMENDATION 5

Considering that:

- **there are different levels of co-operation by credit and financial institutions in the reporting of suspicious transactions;**

- **co-operation by credit and financial institutions is essential for the detection of money laundering and the confiscation of criminal proceeds;**

- **international assets sharing provisions regard mainly law enforcement agencies and exclude financial mechanisms;**

it is recommended that assessment should be made of the feasibility of establishing a system of incentives for credit and financial institutions (from minimum measures of involvement intended to show these institutions the concrete results of their anti-money laundering action to maximum measures consisting in economic rewards when reporting has been essential for the conviction of criminals and/or the confiscation of criminal assets) for the purpose of enhancing and giving greater effectiveness to co-operation between credit and financial institutions and law enforcement authorities.

6.

ASYMMETRY

Differences among EU countries themselves and between EU countries and financial/offshore centres in the criteria applied to the establishment and operation of corporations, among which:

a) the issuing of bearer shares;
b) the allowing of nominee shareholders;
c) the fixing of minimum capital requirements for the incorporation of a company;
d) the drafting and lodging of audited financial statements;
e) the existence of a public register of companies.

BACKGROUND AND RATIONALE

Corporations throughout the world are used to launder money, and the more company law is opaque, the greater the use made of corporations, given that it is almost impossible to identify the person or persons who effectively control them. This is especially the case when a bank account is run by a corporation set up with non-transparent standards. In order to deal with this problem, steps should be taken to harmonise and give the greatest transparency possible to EU company law standards and then to export these standards outside the EU.

This recommendation has an essential bearing on achievement of a global anti-money laundering strategy, for only if a sufficient degree of transparency is achieved in company law will it be possible to accomplish complete identification of the persons conducting financial transactions. In other words, opacity in company law may exert a 'domino' effect on other sectors of regulation geared to overall integrity of a given financial system. In this context, transparency should be understood as that which assists law enforcement activity by furnishing a more easily detectable paper trail. Accomplishing this transparency would also mean increasing the likelihood of better international law enforcement and judicial co-operation.

Substantiating the key significance of this recommendation is the existence of similar ones, for instance FATF Recommendation no. 25, which states more generically: "*Countries should take notice of the potential for abuse of shell corporations by money launderers and should consider whether additional measures are required to prevent unlawful use of such entities*".

Euroshore

AIM

To set up minimum standards of corporate transparency, prevent the use of companies as vehicles for money laundering (in that they shield the identities of real beneficial owners), facilitate the investigation of money laundering cases, and lay a better basis for co-operation among law enforcement/judicial authorities across countries.

REMEDY

Eliminate the possibility of issuing bearer shares; eliminate the possibility of having nominee shareholders; impose minimum capital requirements for the incorporation of companies; require the drafting and depositing of audited financial statements; require the creation of a public register of companies.

	ACTIONS TO BE TAKEN BY EUROPEAN UNION INSTITUTIONS	
	Harmonisation and reduction of the asymmetries	**Exclusion**
Addressed group	*Methods of implementation*	*Methods of implementation*
Group 0	Assess the most effective instruments (i.e. Directives) with which to harmonise, among the EU member states, the criteria regulating the setting up of corporations (among which the impossibility of issuing bearer shares; the impossibility of having nominee shareholders; minimum capital requirements on incorporation of a company; the obligation to draft and deposit audited financial statements).	Assess the feasibility of creating a 'negative list' of countries which do not meet the established EU standards of company law. The European Investment Bank would not grant loans to countries on the list. Assess the feasibility of creating an EU central authority to supervise corporations and a register of corporations operating within the EU financial system which comply with EU requested standards. Only corporations listed on the register would be allowed to do business in the EU. Such action would enhance trust within the EU market and also reduce the risk of fraud.
Group 1	To use the co-operation frameworks developed within the Community in order to apply pressure on Group 1 to bring their company standards into line with the above mentioned criteria.	
Group 2	To make Group 2 countries comply with the above mentioned criteria, persuading them to bring their legislation into line with them as a condition for entry to the Union.	
Group 3	Act through international *fora* or use the partnership and co-operation agreements between the EU and third countries (arts. 38 and 24 EC Treaty).	

RECOMMENDATION 6

Considering that:

- **there are differences among EU countries and financial and offshore centres in the criteria applied to regulate the setting up and operation of corporations and more generally among standards of transparency in company law;**

- **the low standards of transparency in company law in financial and offshore centres render them attractive to money launderers wishing to set up offshore corporations;**

- **it is recommended that assessment should be made of:**
– **the feasibility of eliminating the issuance of bearer shares and the existence of nominee shareholders;**
– **the feasibility of imposing minimum capital requirements for incorporation of a company;**
– **the feasibility of requiring the drafting and depositing of audited financial statements;**
– **the feasibility of creating public registers of companies.**

This assessment is especially recommended in regard to companies located in financial and offshore centres with a view to preventing the use of companies as vehicles for money laundering. This recommendation, if implemented, would assist in ascertaining the real identities of the persons on whose behalf financial transactions are conducted, and it is therefore connected to recommendation no. 4.

7.

ASYMMETRY

Differences in the regulation of trusts, given that in some jurisdictions the identities of the settlor and the beneficiary may remain unknown.

BACKGROUND AND RATIONALE

In jurisdictions in which trust regulations allow for the anonymity of settlors and beneficiaries, trusts are misused for money laundering purposes. The establishment and dissemination of coherent and transparent rules governing trusts is therefore essential.

AIM

To impose minimum standards of transparency on trusts, prevent their use as vehicles for money laundering (in that they shield the real identities of the criminals who control them), facilitate the investigation of money laundering cases, and lay a better basis for co-operation among law enforcement/judicial authorities across countries.

REMEDY

Mandating registration of trust deeds and disclosure of the identities of the settlor and the beneficiary.

	ACTIONS TO BE TAKEN BY EUROPEAN UNION INSTITUTIONS	
	Harmonisation and reduction of the asymmetries	**Exclusion**
Addressed group	*Methods of implementation*	*Methods of implementation*
Group 0	Assess and introduce the most effective instruments within the Community to ensure transparency in the matter of trust law (with special regard to registration of trust deeds and disclosure of the identities of the settlor and the beneficiary).	Draw up a black (negative) list of countries which do not meet transparency standards in their trust laws (i.e., which do not register trust deeds and cannot disclose the identities of the settlor and the beneficiary). The European Investment Bank would not grant loans to countries on the list.
Group 1	Use the co-operation frameworks developed within the Community to apply pressure on Group 1 to introduce and follow best practices in the matter of trust law (with special regard to registration of trust deeds and disclosure of the identities of the settlor and the beneficiary).	
Group 2		
Group 3	Proposal to be submitted to international *fora* in which European Union is represented (FATF, others).	

RECOMMENDATION N. 7

Considering that:

- **trust law in many financial and offshore centres renders identification of the beneficiary and the settlor impossible;**

- **trusts are exploited in many jurisdictions as vehicles for money laundering by being used to shield the identities of the criminals who effectively control them;**

it is recommended that specific requirements, such as the registration of trust deeds and disclosure of the identities of the settlor and the beneficiary, be introduced to enhance the transparency of trust law. This recommendation, if implemented, would assist in ascertaining the identities of the persons on whose behalf transactions are conducted, and it is therefore closely connected to recommendation 4.