SECILE Securing Europe through Counter-Terrorism: Impact, Legitimacy and Effectiveness

D4.2

REPORT ON PERSPECTIVES ON IMPACT, LEGITIMACY & EFFECTIVENESS OF COUNTER-TERRORIST FINANCE LAW AND POLICY – COUNTER-TERRORIST FINANCE OPERATIVES PERSPECTIVES

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EXECUTIVE SUMMARY

- The European Union has developed counter-terrorist finance law and policy systems in the aftermath of the September 11 2001 attacks. These systems merge with anti-money laundering law and policy to form an 'AML-CTF' policy field. This policy field – although broad-reaching in its effects – has not had significant scrutiny in public debate.

- This report sets out the results of a focus group with eleven current and former operatives of counter-terrorist finance law and policy from nine EU Member States that took place at King's College London on 11 December 2013 as part of the SECILE Research Consortium's Work Package 4. The operatives were largely drawn from Financial Intelligence Units or from relevant government departments. The focus group sought to explore the views of the research participants on counter-terrorist finance law and policy's impact, legitimacy and effectiveness.

- There was not a clear consensus amongst the operatives as to the impact of counter-terrorist finance law and policy. The participants were unclear as to whether a determination about the system's impact could even be made owing to the lack of an appropriate risk assessment on terrorist financing in Europe. The decision to merge counter-terrorist finance with anti-money laundering was also the subject of criticism from some participants.

- In broader terms, some research participants were skeptical about the origins of EU policy in this field, and held it to be a US rather than an EU policy priority. Other research participants saw this as a policy field to which the EU should deepen its commitment. In general the research participants agreed that this was a field in which success would only be possible with international co-operation but that such co-operation could be problematic.

- There was significant discussion on the effectiveness of Financial Intelligence Units in counter-terrorist finance law and policy and their relationship with financial service providers. Although some counter-terrorist finance operatives thought that FIUs should be understood as an intelligence service other operatives thought this would be unhelpful.

- There was also differences of opinion as to the role of FIUs in criminal justice and whether counter-terrorist finance law and policy aims to eradicate the financing of terrorism through prosecution or to manage the problem through disruptive and preventive measures. Some operatives put great

stress on the need to avoid the risk that the system becomes an end in itself. In general operatives were of the view that there needed to be greater co-operation with the private sector.

- The counter-terrorist finance operatives were also conscious that there are certain limitations on the European Union's effectiveness in the field of national security as a result of the constitutional (Treaty) limits on the EU's competences. This might limit the extent to which the EU can pursue policy goals in this field as powers remain with the Member States.

- There was significant discussion of the role of trust in respect of information sharing in this field. The importance of trust – both between the private sector and FIUs and among the FIUs themselves – was a recurring theme in the focus group.

- The operatives were in agreement that it was legitimate for the EU to seek to counter the financing of terrorism. They understood this legitimacy as stemming from the Treaties in the first instance as a necessary counterpart to the free movements that form the internal market.

- The operatives were, more broadly, of the view that transparency was necessary to ensure legitimacy. Some operatives set out the importance of due process, for instance in the imposition of asset-freezing sanctions, although others thought that such due process may hamper the effectiveness of measures.

- The effectiveness of counter-terrorist finance law and policy could also contribute to its legitimacy - although this would require agreement on the goals that the system aims to achieve – something about which there was a significant degree of scepticism and disagreement.

1. Introduction: Global Counter-Terrorist Finance Policy

The proliferation of new policies and laws on counter-terrorist finance (CTF) after 11 September 2001 has not had the same level of public scrutiny as preventive detention, extraordinary rendition, torture, or new surveillance practices. It is, nevertheless, a significant policy field at both global and European levels. One practice in particular – the freezing of assets of those under suspicion of financing terrorism – led to decade-long litigation with an impact on several different doctrines in EU law. [1]

The global counter-terrorist finance sphere has a broad range of policy-makers and operational actors. The Financial Action Task Force, an intergovernmental body working to regulate the financial sector for the purposes of global security, includes amongst its measures 9 special recommendations on combating the financing of terrorism. These recommendations have the endorsement of the UN Security Council. They have also been integrated into European law, through successive money-laundering and counter-terrorist finance directives, and through regulations imposing counter-terrorism asset-freezes.

In Europe, as elsewhere, government and the private sector work closely on counter-terrorist finance. EU Member States have Financial Intelligence Units – offices that work to review suspicious activity in financial transactions following reports from financial service providers. These offices take different forms in different Member States and have a high level of interaction with their counterparts in other states within and outside the EU.

The rapid development of this apparatus of governance in response to the 11 September 2001 attacks has not been without its critics. Anti-money laundering has been a concern for governments for decades. However, the dramatic increase in the breadth of financial surveillance systems, and the severity of enforcement actions, is subject to critique on grounds of excessive interference with human rights to privacy and property.

Despite being in the academic, if not the public spotlight, CTF law and policy has not been the subject of significant empirical legal research. The SECILE consortium sought to remedy this gap in the literature, at least in part, through the carrying out of this case study. This report is the product of fieldwork involving eleven research participants including officials from Financial Intelligence Units (FIUs) and government officials. In light of the small number of research participants the report does not claim to offer a

[1] For a more detailed introduction to EU law and policy in this field see C.C. Murphy, *EU Counter-terrorism Law: Pre-emption & the*

comprehensive treatment of the subject. Rather, it offers a critical exposition and analysis of the views of the research participants on the impact, legitimacy and effectiveness of CTF measures to inform both public policy and future research agendas.

2. Methodological Background

This section offers a brief overview of the methodology used in this case study – a full account of the methodological approaches taken by the SECILE research team is available in Appendix A. The fieldwork for the case study consisted of a focus involving officials from Financial Intelligence Units (FIUs) and government officials. It was coordinated by a team at King's College London (King's) on 11 December 2013. As provided by the Grant Agreement, in addition to the focus group on the CTF law and policy, King's also conducted two further focus groups on the European Arrest Warrant and on EU Border Control Databases.

Focus groups were selected as the principal data collection method for this research because they enable programme implementation, utility and efficacy to be understood. Their utility has also been recognized in respect of qualitative research in criminal justice. Thus, focus groups may generate understanding as to the participants' experiences and beliefs about a particular topic of inquiry, and are a useful method of data collection in a field that has been the subject of little empirical research. The limitations of this data collection method should also be understood. Focus groups rely on a small number of research participants and a small sample of the subject population is unlikely to be representative of the population as a whole. Moreover, focus groups in the field of criminal justice require access to, and successful recruitment of, data subjects that may be difficult to reach. This can further limit the degree to which the results are representative of perspectives in the subject population in general. It is necessary therefore to emphasize the limitations of generalizability of the data in this case study.

The King's team relied on a range of open-source materials to invite relevant operational actors whose contact details were available from open sources such as the List of Members of the Egmont Group of Financial Intelligence Units. In addition to approaching individuals in all EU Member States authorities, the research team also relied upon nomination of research participants through existing networks. While invitations were sent to all EU Member States authorities, the total number of participants was eleven. These research participants were from a variety of Member States, as follows: Participant A (United Kingdom); Participant B (Ireland); Participant C (Malta); Participant D (Belgium); Participant E (Bulgaria); Participant F (Latvia); Participant G (Latvia); Participant H (Portugal); Participant I (Romania); Participant J (Poland); and Participant K (United Kingdom). The participants were asked a series of questions to ascertain their perspective on the impact, legitimacy and effectiveness of CTF law and policy. The questions are set out in Appendix A. The audio recordings of the focus groups were then subject to transcription, coding, analysis, and writing-up as section 3 of this report.

3. Focus Group Report

The eleven counter-terrorist finance operatives that partook in the focus group all held, or had held in the past, positions in national authorities that dealt with counter-terrorist finance law and policy. Some were members of Financial Intelligence Units while others were civil servants in government departments. The participants were knowledgeable as to the operation of the system itself and the dynamics that led to the system being brought about in EU law and policy.

3.1 Impact of Counter-Terrorist Finance Law and Policy

The participants' consideration of impact in this policy field brought about a discussion of how difficult it is to determine impact in the absence of 'a global or European-wide risk assessment'.[2] A further challenge is the lack of agreement over the objectives of CTF law and policy. For instance, at a more general level, some participants suggested that the overall objectives of these measures included stopping terrorism[3] and improving the safety of citizens.[4] Others, on the other hand, were less sure. For example, one participant reflected: 'I don't think it will ever end crime and terrorism but at least [these measures may serve] to disrupt it as best you can'.[5] Meanwhile, another participant held that alternative objective could be to collect sufficient credible evidence in order to prosecute the people involved.[6] However, a fellow participant countered that, while the prosecution of people involved in terrorism may be desirable, 'disrupting them is an end in itself'. [7] The consideration of impact covers three broad topics: (i) impact on European security; (ii) impact on the financial sector; and (iii) the external dimension.

(i) Impact on European Security – 'A Theoretically Perfect System'

When asked 'do you think the EU measures to monitor or restrict the financing of criminal activity makes Europe more secure?', participants generally held that, although this is an important question, it is difficult to answer. [8] Nevertheless, one participant answered in the affirmative and noted that the development of common measures in this area across EU Member States is, to some extent, a necessary corollary of the

[2] CTF-Q2-A – United Kingdom.
[3] CTF-Q3/4-K – United Kingdom.
[4] CTF-Q4-B – Ireland.
[5] CTF-Q4-B – Ireland.
[6] CTF-Q3-A – United Kingdom.
[7] CTF-Q4-B – Ireland.
[8] CTF-Q1-J – Poland.

development of the internal market. For this participant, CTF measures represent an important step in matching the potential for abuse of the single financial and economic market by criminals.[9]

Some participants saw terrorism as having important links to other crimes. For instance, one participant held that, in the context of terrorism, 'the discussion always falls on organised crime [and] drug trafficking because this is the source, the income for…eventual terrorist action.'[10] This participant emphasised the close links between these crimes because 'when we talk about controls on organised crime in Europe, definitely, this affects the ability of terrorist strands or groups to…deploy their…terrorist resources'.[11] Another participant also accentuated the links between terrorism and organised crime:

> 'There is demonstrable and inextricable links between organised crime and terrorism... and actions that are taken to counter money laundering…can be very effective in disrupting organised crime.'[12]

The participant from Belgium went on to note that it is 'quite difficult to find a distinction between terrorist financing and money laundering.'[13] This participant proceeded to refer to an FATF report on Terrorist Financing in West Africa[14] which made reference to a case study where border police in Niger apprehended a person travelling from northern Mali carrying pressure cookers and large sums of different cash currencies. As this occurred soon after the Boston marathon bombing, the border police on duty became suspicious, as they knew that pressure cookers could be used in bombings. Theparticipant noted 'nobody's going to walk into a bank and say "I'm financing terrorism!"'[15] On the contrary, people involved in such activities were more likely to claim they were involved in lawful business transactions and it was up to the law enforcement officials 'to discover what is behind or under the veil and that's quite a difficult task.'[16]

In terms of tackling terrorism and terrorism financing, one participant held that 'we are far from achieving…this goal'.[17] Similarly, another participant stipulated that, while she felt safe in the EU and the threat from terrorism did not necessarily make her feel unsafe, 'we cannot stop in saying that "everything has been done" because everything must be done every day'.[18] Therefore, she was of the view that more work had to be undertaken in this area.

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[9] CTF-Q1-B - Ireland.
[10] CTF-Q1-C – Malta.
[11] CTF-Q1-C – Malta.
[12] CTF-Q4-B – Ireland.
[13] CTF-Q2-D – Belgium.
[14] FATF Report on Terrorist Financing in West Africa, October 2013.
[15] CTF-Q2-D – Belgium.
[16] CTF-Q2-D – Belgium.
[17] CTF-Q1-D – Belgium.
[18] CTF-Q1-H – Portugal.

Not all participants were willing to agree that CTF law and policy makes Europe more secure. One participant answered 'no' for two reasons. First, he pointed out that when CTF measures were adopted in the aftermath of 11 September 2001, they were modeled on anti-money laundering law and policy, which may not have been appropriate and may have potentially undermined the effectiveness of existing strategies. Second, he contended that the European system did not recognize that FIUs operated as a 'sort of secret financial service,'[19] dealing with 'future possible crime.'[20] For this participant, this was particularly the case in the context of CTF. In this light, he emphasised that the European system was missing a mechanism for information sharing between FIUs. For these reasons, he concluded that, although the system seemed 'quite perfect on paper…it's lacking effectiveness.'[21] Another participant agreed with this view, reflecting that 'it is theoretically perfect, but practically I'm not sure it works'.[22] The question of the effectiveness of the system is discussed in more detail below.

Indeed, the sheer complexity and potential incoherence of the CTF system were often cited as factors that could undermine the impact of the system. For instance, one participant argued that Europe may be perceived as 'less secure' not only because of the actual threat of terrorism but also because European CTF law and policy action, which was aimed at countering this threat, was riddled with complexity.[23] In the midst of such complexity, one might lose sight of the ultimate ends of CTF measures, and that the system would become self-perpetuating or an end in itself, which, in turn, could threaten the rule of law.[24] For example, one participant said:

> 'What you're doing is ending up with a means as an end to itself, which all looks nice and tidy, but in effect what you're doing is subverting the existing rules of law in order to achieve an end…which doesn't achieve [that] end.'[25]

Another participant took the view that the impact of CTF measures had to be assessed, principally, from the perspective of individual EU Member States, rather than from the perspective of the EU as a whole. He held that, in spite of the EU's 'global position' in the area of CTF, particularly in the area of sanctions,[26] it was 'difficult to give a picture of Europe as a whole'.[27] This was because the threat of terrorism was still 'about the states … there are different EU Member States which are more or less secure … this is not about the EU as a whole'.[28] Thus, according to this participant the impact of CTF measures could differ amongst EU

[19] CTF-Q1-D – Belgium.
[20] CTF-Q1-D – Belgium.
[21] CTF-Q1-D – Belgium.
[22] CTF-Q1-F – Latvia.
[23] CTF-Q1-J – Poland.
[24] CTF-Q3/4-A – United Kingdom.
[25] CTF-Q3/4-A – United Kingdom.
[26] See the discussion in section 3.2.3.
[27] CTF-Q2-J – Poland.
[28] CTF-Q2-J – Poland.

Member States: 'does the Polish citizen feel safe in Poland? Yes, he does. And I don't know about other states, the answer might be totally different'.[29]

(ii) Impact on the Financial Sector

In terms of the impact of CTF law and policy on the financial sector, participants generally agreed that more work was required on further aligning the interests of the regulators and the regulatees. The focus group participants considered various entities that, depending on one's perspective, could be regarded as the 'regulator' and/or the 'regulatee'. For instance, the regulator could be an entity 'devising and applying' certain controls, such as the government and FIUs whereas the regulatee could be an entity subject to such controls, such as financial service providers.[30] However, the regulator could also be entities carrying out certain actions, such as financial service providers, while the regulatee could be consumers of financial services. Moreover, the regulator could be 'the consumer of financial systems where he's the potential victim of a terrorist act…So you've got…this circularity running right the way through [the policy field]'.[31]

Some participants referred to the 'inequality of interests' between regulators and regulatees,[32] and took the view that 'aligning the interests'[33] of all sides was a 'key point'.[34] However, the lack of a risk assessment in this area could make it harder to agree on common outcomes. As one participant put it, 'you have no way of measuring what your risk is, you don't know how far you're getting short or beyond…the goal'.[35]

Nevertheless, there was strong agreement, particularly between the participants from Ireland and the United Kingdom, on this topic. They agreed on the importance of 'narrowing the gap between the interests on both sides'[36] because otherwise 'you're building a dichotomy into your system'.[37] The participant from Ireland mused that 'buy-in' was needed from financial service providers and that this had to be based on self-interest:

> 'It is buying them in as an arm of the state in effect but it's buying them in on a basis of self-interest in that you're improving the system of financial regulation generally, and it's a protection for these institutions themselves.'[38]

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[29] CTF-Q2-J – Poland.
[30] CTF-Q3/4-K – United Kingdom.
[31] CTF-Q3/4-K – United Kingdom.
[32] CTF-Q3/4-B – Ireland.
[33] CTF-Q2-K – United Kingdom.
[34] CTF-Q3/4-B – Ireland.
[35] CTF-Q2-K – United Kingdom.
[36] CTF-Q3-B – Ireland.
[37] CTF-Q2-K – United Kingdom.
[38] CTF-Q3-B – Ireland.

The participant from the United Kingdom asserted that, in order to minimize potential discord in the system, it was necessary to 'get everybody willing to stop terrorism'.[39] This might in part be achieved through privatizing controls for terrorism, establishing a sort of 'shareholders relationship with the entity rather than a command-control, master-servant relationship'.[40]

In addition, one participant held that it is important to incorporate terrorist financing into 'not just anti-money laundering but into financial regulation generally'.[41] This may be one way to narrow the 'intelligence sharing gap' between governments and FIUs on the one hand and financial service providers on the other.[42]

Finally, the Romanian participant stressed that measures in this area should not only focus on terrorist financing but should have a broader scope. She observed that 'terrorist organizations do not need only money to survive…They need also logistical equipment, they need knowledge, they need exercise, they need proper training, guns and so on…'.[43] For instance, she noted that although, pursuant to the Third Money Laundering Directive,[44] the EU regulations on customer due diligence were strong, and although most financial institutions reported suspicious transactions, there are ways to circumvent the measures – such as through trade. She observed that, for example, it is possible to use trade to obtain guns or explosive materials, or even food necessary for their activities.[45] In this context, any strategy with a sole focus on financial transfers is 'incomplete'.[46]

(iii) The External Dimension

Several participants referred to the idea that terrorism financing is a global phenomenon and pointed out that an assessment of the impact of CTF measures could impact, and be impacted upon by, external factors. For instance, many participants referred to the perception that EU CTF measures had been greatly influenced by the United States (US). One participant asserted that the attack on 11 September 2001 led to

[39] CTF-Q3/4-K – United Kingdom.
[40] CTF-Q3/4-K – United Kingdom.
[41] CTF-Q3/4-B – Ireland.
[42] CTF-Q3-B – Ireland.
[43] CTF-Q1-I – Romania.
[44] Directive 2005/60/EC Of The European Parliament And Of The Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
[45] CTF-Q1-I – Romania.
[46] CTF-Q1-I – Romania.

pressure from the US: 'everything changed after 2001. The elephant in the room is the United States'.[47] The participant from the United Kingdom built on this point, going so far as to suggest that 'we seem to have copied the EU regime from somebody else. So the question is, do we have our own regime or have we copied somebody else's regime?'.[48] For this participant, this meant that the EU regime is not 'built from the ground up, from a risk assessment of what is going on in Europe' but rather the EU regime is based on risk assessments made by the United States 'which we, [the EU], have been very quietly tagging along to'.[49] Thus, participants held that, as a result of US influence, there may be flaws in EU CTF law and policy.

In contrast, another participant set out aspects of the relationship between the EU and the US that are based more on collaboration: 'There are elements to the system that [have] developed over time – the EU-US TFTP agreement is a case in point'.[50] However, another participant argued that, whilst improvements had been made, more must be done to address the gaps in EU counter terrorist financing. For instance, he said that Belgium had proposed the creation of an EU FIU:

> 'And so we need to talk to each other, develop another framework which is not only the framework of the FIU but try to build something. Belgium has proposed to build an EU FIU taking the model of Europol or EuroJust as an example.'[51]

The same participant commented that many groups operating in West Africa may exploit gaps in EU law and policy. He suggested that states may inadvertently contribute to terrorist financing by paying hostage ransoms.[52] The participant concluded that this is 'what we are…doing [wrong] in Europe'.[53] However, he also made clear that he considered the CTF law and policy in the EU to be exacting. As a result, certain industries which could seek to avoid such regulation or which may have links with financiers of terrorism, could move away from the EU to avoid detection:

> 'A huge community involved in the diamond sector [in Belgium] are moving their businesses to [Middle-Eastern states, such as] Qatar and Dubai…because the rules concerning the prevention of money laundering are less well applied in these countries.'[54]

He referred to the diamond sector in Belgium as an example. While the departure of some businesses in this sector to the Middle East was indicative that the European system may disrupt terrorist financing

[47] CTF-Q1-A – United Kingdom.
[48] CTF-Q2-K – United Kingdom.
[49] CTF-Q2-K – United Kingdom.
[50] CTF-Q1-B - Ireland.
[51] CTF-Q1-D - Belgium.
[52] CTF- Q1-D - Belgium.
[53] CTF- Q1-D - Belgium.
[54] CTF- Q1-D – Belgium.

within the EU, he was concerned that 'these countries might help … movements which might be involved in terrorist action', and thereby create security problems for Europe.[55]

In conclusion, one participant expressed the view that, although some Member States are more likely to serve as platforms for terrorism on account of their size and location, the threat of terrorism concerns all Member States, and therefore all Member States have the responsibility to work together:

> 'This is a question of being honest and trying to be aware that it concerns everybody – not only a small country because it's small, but maybe it's a platform – And I'm thinking about my own country - we have no problems, or we have small problems about it but we have a platform to America, to Africa and to Europe. So what about the other huge countries? So Germany, the UK…they have the same responsibilities.'[56]

3.2 Effectiveness of Counter-Terrorist Finance Law and Policy

It proved difficult to draw a clear line between the participants' views on the impact of CTF law and policy and the effectiveness of that law and policy. The perspectives on effectiveness can be understood as falling under three topics: (i) the character and coherence of CTF law and policy; (ii) the operational dynamics of CTF law and policy – with particular reference to FIUs; (iii) the specific example of asset-freezes.

(i) Character and Coherence

Despite the prior existence of an anti-money laundering framework the research participants keenly felt the effect of the 11 September 2001 attacks. One participant from Belgium said clearly: 'September 2001 occurred. And then everything moved.'[57] The language of a 'war on terrorism' did not, however, appeal to one participant. Thus, one participant from the United Kingdom said:

> 'One of the things I don't like is that we have wars, I don't like that word, wars on terrorism… It's almost that you manage terrorism within a jurisdiction or an area – you don't have wars…'.[58]

There was skepticism amongst the participants as to the appropriateness of merging the anti-money laundering and counter-terrorist finance policy fields. Thus, the Belgian participant said:

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[55] CTF- Q1-D - Belgium.
[56] CTF-Q1-H - Portugal.
[57] CTF-Q1-D – Belgium.
[58] CTF-Q1-A – United Kingdom.

> 'Money laundering is, well, looking at the proceeds of crimes *which have been committed.* Terrorist crime is looking at the money which is going to serve the purpose of terrorism – terrorist acts which are going to be committed… days, weeks, years *after* collecting the money.'[59]

As a result, for this participant, although the merging of these two fields in the immediate aftermath of the 11 September 2001 attacks was an understandable response to the attacks, 'today it seems to lack effectiveness'.[60] The same participant also argued that 'it's far more easy to fight against money laundering than terrorist financing' – noting that it can be more straightforward, for example, to apprehend criminals.[61] On the other hand, for the participant from Bulgaria, it was very difficult to distinguish the financing of terrorism from money laundering 'and other suspicious financial crimes' and there is space here for regulatory guidance from the EU.[62] The participant from Latvia agreed that it can be difficult to identify terrorist financing because such transactions are 'so similar to usual transactions'.[63]

Any call for further involvement of the EU may run into some difficulties according to one participant because the EU does not have competence over national security – rather, that remains the Member States' prerogative.[64] The EU constitutional structure may therefore place limits on the effectiveness of the EU itself in further developing EU counter-terrorist finance law and policy. There may also be reluctance amongst some Member States to facilitate co-operation in this field – prompting one participant to suggest that such Member States might ask 'are we in or are we out?'.[65]

As a final point in respect of the character and coherence of the policy field it is also worth recalling a point from the section on impact above. Thus, for the participants, there remains the question as to whether the EU can be effective in this field when its policies may merely be borrowed from US CTF law and policy and may not draw on risk assessments of European security.

(ii) Operational Dynamics of CTF Law and Policy

The operational dynamics of counter-terrorist finance law and policy – and in particular the role of financial intelligence units – was a significant point of discussion for the participants. For one participant in particular, FIUs should be understood as a form of 'secret service':

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[59] CTF-Q1-D – Belgium.
[60] CTF-Q1-D – Belgium.
[61] CTF-Q2-D – Belgium.
[62] CTF-Q1-E – Bulgaria.
[63] CTF-Q2-F – Latvia.
[64] CTF-Q1-B-Ireland.
[65] CTF-Q2-D – Belgium.

> 'What we are collecting is sometimes important information, sensitive intelligence, which are not going to be used in the process of prosecuting somebody but which may be used in the process of preventing terrorist acts to be committed… FIUs are the sort of secret financial service…'.[66]

This point found support from some, but not all, of the other participants. For example, the participant from Romania was in agreement:

> 'Maybe that Financial Intelligence Units could be aligned – could be considered as intelligence structure in terms of secret service… but as providers of intelligence products for the law enforcement or for any other interested parties in the national system for combating terrorist financing.'[67]

In addition to the classification of the FIUs, the participants also had a lively discussion on the subject of information exchange. There was some skepticism as to whether EU structures, working on a multi-lateral basis, could achieve as much as bilateral co-operation. Thus, the participant from United Kingdom considered: 'effective intelligence procedures – intelligence is still shown bilaterally at times and is shared between trusted partners and I think in some ways the EU lacks that credible intelligence to turn what the intelligence produces into effective measures.'[68] The participant from Ireland also held information sharing to be an important but difficult area of operation:

> '[We need] to find ways around that for the intelligence sharing community that allows them to be more effective in perhaps the bilateral interactions in the European Union. Some Member States find it easier than others to manage those relationships – they may have a unitary system of policing and intelligence. Other Member States have various organisations that are engaged in various aspects and there may be internal coordination problems that arise, first of all, before there's any external coordination problem within the EU or indeed external coordination in further countries.'[69]

The participant from Belgium set out the view that, even if there is a willingness to co-operate, the difficult processes that this might involve could hamper information sharing:

> 'I would be more than pleased to send [colleagues in Ireland] my information or the intelligence I do have which is of no use to me and which might be useful for him but I need to undertake such a cumbersome way of exchanging or of trying to find the appropriate service which might serve as a

[66] CTF-Q1-D – Belgium.
[67] CTF-Q5-I – Romania.
[68] CTF-Q1-A – United Kingdom.
[69] CTF-Q1-B – Ireland.

> platform for him that after weeks and months and years he might not be in possession of my intelligence which might be useful but I don't know.'[70]

However, the participant from Portugal expressed significant skepticism about the willingness to co-operate outside of quid pro quo agreements between existing partners:

> 'Are we – all Member States – really interested on exchanging intelligence and information? Honestly – are we? Or we are not? Or, we are really interested when you have something to give and I will give you something… this is the first point I want to stress… The second is trust: domestic trust and external trust. If we want to exchange information we have together to have the information from our financial entities… And do they trust on us? Do they give us all the information, all the intelligence, we want and we need or not? In my opinion it's not a question of being a law enforcement type of FIU or administrative type of FIU – it's a quest of respect and trust. If they trust us they will send us information.'[71]

This problem can, however, also exist within Member States. As one of the Latvian participants pointed out:

> '[I]n Latvia we have different institutions that are involved in decisions about fighting counter terrorism and sometimes this information doesn't go from one national service to another national service. So just like in your country if people don't know what's going on or what next door is doing so… it's also a big problem.'[72]

A certain disagreement persisted between the participants about the purpose of the counter-terrorist finance law and policy system and, as a result, about how it should operate. Thus, for the participant from Belgium, the system is a preventive one with a focus on intelligence:

> 'My sense is that we are behind when it comes to intelligence… how the FIUs operate – are they getting the info they need? … I believe that we have to have more intelligence before even beginning to discuss what to do with that intelligence … crime always has to remain in the picture. We have all of these criminal activities from Africa, from other parts of the world, into Europe where the crime itself will be the money itself resulted from a crime. So yes – information sharing and even the political aspect have to link together.'[73]

Somewhat in contrast with this view, one of the participants from the United Kingdom reflected that CTF law and policy should seek to lead to the prosecution of financiers of terrorism – a goal made more difficult by the problems of evidence and due process:

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[70] CTF-Q2-D – Belgium.
[71] CTF-Q1-H – Portugal.
[72] CTF-Q1-G – Latvia.
[73] CTF-Q1-D – Belgium.

> 'The outcome that we're looking for is to be part of a process that brings a person before court, with credible evidence, and sentences that person to whatever or that person is off. The problem we have is that when we can flag intelligence and information that is used to achieve that through various different channels, but how is that going to be used to prosecute terrorists? And I feel as though one of the ways that has become less effective and we get in an awful tangle about different types of material that we're allowed to use and not to use…'[74]

A final point on the operational dynamics of CTF law and policy is that it can impose a burden on the private sector. Thus, one participant set out that financial service providers find 'their daily duties [heavier] because of this… burden of searching for terrorist threats in addition to anti-money laundering efforts'.[75]

(iii) Asset-Freezing Sanctions

One participant said that asset-freezing sanctions might, in some respects, be a less effective element of CTF law and policy owing to 'the lack of consensus… in the European Union about the black listing'. He drew attention to the example of Hezbollah as a group about which there was not consensus.[76] In contrast, another participant held that 'concrete instruments are more effective' than the policy field as a whole – making explicit reference to 'listing, freezing of assets in detecting suspicious transactions…'. For this participant it was rather the practice of dividing CTF law and policy into different sub-fields that was less effective.[77]

In contrast, another participant said that sanctions had 'variable' effectiveness.[78] The same participant made reference to sanctions litigation – stating that 'in some respects, they're important challenges because it allowed those individuals, of course, to assert in essence their fundamental rights in the face of the state and face the process against them'.[79] One participant said that sanctions 'have again been slightly imposed on the EU from other areas' – thus calling the provenance of the asset-freezing system into question.[80] The shift towards sanctions against individuals also raises a question as to their effectiveness. For instance, a participant pondered that 'previously sanctions were used quite effectively for what [were] considered to be rogue states… but is it an effective tool against terrorist activity?' The participant was unsure on this point and also said that the sanctions litigation may 'devalue' the system.[81]

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[74] CTF-Q3/4-A – United Kingdom.
[75] CTF-Q1-J – Poland.
[76] CTF-Q3-E – Bulgaria.
[77] CTF-Q3-J – Poland.
[78] CTF-Q3-B – Ireland.
[79] CTF-Q3-B – Ireland.
[80] CTF-Q3-A – United Kingdom.
[81] CTF-Q3-A – United Kingdom.

3.2 Legitimacy of Counter-Terrorist Finance Law and Policy

All participants agreed that it was legitimate for the EU to seek to disrupt the financing of terrorism as a means to combat terrorism in Europe.[82] Thus, after the whole group answered 'yes' to the question 'is it legitimate?', one participant said: 'it's an interesting question but I don't see it [requiring] particular elaboration. It's perfectly legitimate'.[83] However, some participants did voice concerns about aspects of the system that could have a bearing on the question of legitimacy. These concerns relate to: (i) the democratic basis for CTF law and policy; and (ii) the coherence of EU action in this field.

(i) Democratic Basis for Law and Policy

The participant from Ireland set out why, in his opinion, CTF law and policy is legitimate. First, he pointed out that:

> 'The treaties are very clear and have democratic bases: in the European Union; in the Member States getting together as collective action to create an area of freedom, security and justice…which inevitably implies taking actions where it can to improve the safety of citizens.'[84]

He went on to state:

> 'I think it's perfectly legitimate because there is no doubt that if you cut off all of the money supplied to terrorists, cut off their lifeline; they can't do anything unless they can fund it. Of course, they need resources, they need training but, fundamentally, they need money to do it.'[85]

It is notable that, while the above participant placed considerable emphasis on the needs and purposes for CTF law and policy, another participant warned that, if these are forgotten, such measures could become as an 'end to themselves', or as he rephrased it '[achieving] an end…which doesn't achieve an end' which could, in turn, '[subvert] the existing rules of law.[86] He emphasized the need to ensure due process in terrorism-related cases, such as bringing the people involved before a court of law, and ensuring they are not 'shuffled off into some secret court where it's all quiet'.[87] In this light, this participant reflected that 'we can only bring in emergency measures for so long'.[88]

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[82] CTF-Q4 - ALL.
[83] CTF-Q4-B – Ireland.
[84] CTF-Q4-B – Ireland.
[85] CTF-Q4-B – Ireland.
[86] CTF-Q3/4-A – United Kingdom.
[87] CTF-Q3/4-A – United Kingdom.
[88] CTF-Q3/4-A – United Kingdom.

The same participant observed that there was a lack of awareness of EU action in the CTF sphere: 'I doubt that very many people, outside…a narrow group, are aware of what the EU does in a … terrorist financing way'.[89] Meanwhile, a different participant sought to emphasize the need for greater participation of the regulatees in the process through his reference to a 'shareholders relationship'[90] between the two sides with a focus on 'agreed outcomes'.[91]

(ii) The Coherence of EU Action

The question of coherence has already been mentioned in the context of impact. However, this question was also raised in the discussion of legitimacy. One participant noted that '[t]he action of the Union is legitimate…in so far as the Union remains coherent'.[92] Another participant said that for EU action in this area to provide added value, 'you have to make sure that your equation afterwards is worth more than your equation beforehand'.[93]

Some participants questioned the coherence of the EU's approach with particular reference to principles of data protection. For example, one participant referred to the tension between the need for FIUs to exchange information relating to CTF and data protection laws that set restrictions on sharing of personal data.[94] This participant argued that if these data protection laws did not take into account the 'need to exchange information, then it's going to be a total mess'.[95] Another participant supported this, claiming that such laws may facilitate access by criminals to some data (i.e. through requiring transparency and due process in the implementation of laws), more than access to data for law enforcement agencies.[96] In this context, this participant made reference to a European Commission Framework Programme 7 project she was involved in, which aims to create a hybrid system for combating terrorism and money laundering.[97] However, she said that some FIUs may not be able to use some of the modules of this project because of 'European legislation on data protection'.[98]

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[89] CTF-Q5-K – United Kingdom.
[90] CTF-Q3/4-K – United Kingdom.
[91] CTF-Q5-K – United Kingdom.
[92] CTF-Q4-D – Belgium.
[93] CTF-Q3/4-K – United Kingdom.
[94] CTF-Q4-D – Belgium.
[95] CTF-Q4-D – Belgium.
[96] CTF-Q4-I – Romania.
[97] The Hybrid Enhanced Money Laundering Intelligence, Investigation, Incrimination and Alerts ("HEMOLIA") project.
[98] CTF-Q4-I – Romania.

4. Conclusion: Law and Policy Towards What End?

It is appropriate to commence the conclusions by noting once more the limitations of this study. The results of one focus group with eleven operatives from nine Member States cannot yield sufficient data to make generalizable claims about the operation of counter-terrorist finance law and policy. Thus, the first broad conclusion is that this research, although a significant step forward on the existing literature, also makes clear that there is a strong need for further empirical research with hard to reach groups such as counter-terrorism law and policy officials. In particular, the research team came to the conclusion that interviews with focus group participants and others with direct experience of the system would yield further valuable data. The analysis that follows considers the data in respect of impact, legitimacy and effectiveness, and also the manner in which these three themes relate to each other.

4.1 Impact of Counter-terrorist Finance Law and Policy

There was not a clear consensus amongst the participants as to the impact of counter-terrorist finance law and policy on European security. The participants were unclear if any such determination could even be made given the absence of an appropriate means to measure the risk to Europe through terrorist financing. The participants were not sure whether it is realistic to expect counter-terrorist finance to 'end crime and terrorism' and some thought it was more likely that it could serve a disruptive function. Furthermore, one participant in particular was sceptical about the value of the concept of a 'war' on terrorism – instead making the suggestion that this was a problem subject to management rather than eradication. In doing so the participants were conscious that counter-terrorist finance law and policy places onerous obligations on the financial services sector and that these obligations, in effect, co-opt financial services institutions to play a role in security. It is, they agreed, necessary for the relationship between the state and the financial services sector to be a co-operative one if it is to be successful.

A key question for participants was whether the US is playing an undue role in respect of European policy in this field. Although several participants were dubious as to the provenance of laws and policies in this field – believing them to be imposed by the US on the EU – others pointed to the Terrorist Finance Tracking Programme as a successful transatlantic collaboration. A related point is that the participants made some reference to the prospect of displacing terrorist financing to other jurisdictions. This did not necessarily render Europe more safe as overseas financing could be used to launch attacks on Europe. Rather, it left financiers of terrorism beyond the reach of European regulation as they may operate in jurisdictions with less robust counter-terrorist financing law and policy. This point, and references to money laundering

operations in the broader European neighbourhood, suggests that international co-operation is necessary for counter-terrorist financing to have a positive impact on security.

However, all points on impact are subject to the caveat set out at the start – that in the absence of a reliable means to assess threats to Europe through the financial system – it is difficult to ascertain what, if any, impact these polies have on European security. Indeed, there was a general skepticism amongst most, if not all, of the participants that the system serves a security goal at all – it may merely be an end in itself. The participants themselves took note of the complexity of the system as a hindrance to its having a positive impact. Despite this complexity, and potential confusion owing to the merging of anti-money laundering with counter-terrorist finance policies, one participant was strongly of the view that a focus on financing alone was insufficient and, if anything, the policy field should be broader. These differences of opinion are indicative of the lack of agreement on the impact of the system on European security.

4.2 Effectiveness of Counter-terrorist Finance Law and Policy

It is difficult, as was the case with other case-studies undertaken as part of this research, to draw a clear line between the participants' views on impact and their views on effectiveness. This was a significant challenge in respect of counter-terrorist finance law and policy owing to disagreement amongst the participants as to the aims of the policy field. The criticism of the shift towards a merged anti-money laundering and counter-terrorist finance policy field is also salient here. Their merging may hinder effectiveness because the fields have difference goals and dynamics.

A significant element in shaping the participants' views on counter-terrorist finance law and policy was their respective views on the role and operation of Financial Intelligence Units. For some participants these units are, or should be, best understood as a financial intelligence service. However, for other participants the idea of an FIU as an intelligence service would be unhelpful, in part because it might discourage financial service institutions from engaging in co-operation with FIUs. This difference in views may in part reflect the different forms that FIUs can take in different Member States. In some they may be criminal justice agencies, in others they may be administrative offices, and in others still they may take a hybrid form. Also pertinent, as the participants' comments make clear, is the role of the private sector. Insofar as the impact on the private sector has been to co-opt financial service institutions as counter-terrorism operatives then the effectiveness of counter-terrorist finance law and policy is dependent on the co-

operation of those institutions. There is a strong need therefore for trust between the public and private actors.

The role of asset-freezing sanctions as a key part of counter-terrorist finance law and policy was a point of concern for some participants. One challenge to effectiveness was the lack of political agreement as to which organisations should be subject to blacklisting. A further challenge was the use of litigation to oppose blacklisting decisions – although some participants saw this litigation as necessary to held legitimate the asset-freezing sanctions system. The participants were not all convinced that asset-freezing sanctions could be effective in combating terrorism as they are in respect of sanctions against states. This emphasis on effectiveness and prevention is one manifestation of a broader point about the relationship between preventive measures and the criminal justice system. There was disagreement amongst the participants as to whether the counter-terrorist finance system should aim for prosecution of financiers of terrorism or if its aim should be to prevent the financing of terrorism.

A final point to note on effectiveness was the constitutional limitation on the EU role in national security. This remains the prerogative of the Member States and not all Member States have an equal commitment to EU co-operation in this field. This reluctance to co-operate may also manifest itself in terms of information exchange. The participants' views suggest that multi-lateral co-operation through the EU may not be as effective as bi-lateral co-operation owing to a degree of relutance on the part of particular Member States. This raises the consideration of trust in an external sense, as one participant put it, and echoes the theme of mutual trust that recurs throughout the SECILE case studies on counter-terrorism co-operation.

4.3 Legitimacy of Counter-terrorist Finance Law and Policy

The participants in general agreed that the disruption of the financing of terrorism through counter-terrorist finance law and policy was legitimate. At a fundamental level the participants understood the policy field to be legitimate because it has a 'democratic basis' in the EU treaties. In this respect, the legitimacy of EU action was grounded, in part, in the need for a corollary to the free movement of citizens within the area of freedom, security and justice. However, this legitimacy might be subject to some reservation owing the role of the US in promoting action in this field around the world – including within the EU.

A further consideration in respect of legitimacy is the rationality of the system. Thus, participants thought that the action's legitimacy was linked to its achievement of its goals (even though these goals may be subject to contestation) and also to its coherence. Thus, for the participants, the system's legitimacy rests in part on its success in preventing the financing of terrorism.

It is noteworthy that although they had concerns as to the effect of litigation on the effectiveness of EU asset-freezing sanctions, some participants also made note of the role of EU litigation in developing transparency and standards of due process. A contrasting point in this regard is the idea that data protextion laws may pose challenges to information sharing between counter-terrorism and law enforcement officials. At least one participant was of the view that data protection law may hinder law enforcement and protect law-breakers. The participants were, therefore, aware of the tensions between factors which may add to the legitimacy of EU action on the one hand – but pose challenges for effectiveness on the other.

Overall it is noteworthy that common themes arose in the broad discussion of legitimacy: the formal legitimacy that arises from the EU treaties, the need for broader legitimacy through transparency and, in some circumstances, due process, (although the participants were unsure as to the extent to which the general public is even aware of counter-terrorist finance law and policy) and also the role of outcome legitimacy - the effectiveness of the measures in achieving their goals. It is clear that a holistic approach to the question of legitimacy is necessary to adequately capture these different dimensions.

4.4 Conclusions

The counter-terrorist finance operatives exhibited the greatest degree of divergence in their views on their policy field of any of the three case studies undertaken by the SECILE research team. There were differences in respect of the provenance of the counter-terrorist finance law and policy. There were also differences in perspectives on how best to characterise Financial Intelligence Units. And there were differences in opinions in respect of the effectiveness, and to a lesser extent, the legitimacy, of the system. An overall conclusion for this case study is therefore to note that there is strong agreement that counter-terrorist finance law and policy is a complex system of rules and institutions but that the operation of the law and policy remains subject to debate and is need of better understanding. It is clear that this case study, in particular, merits further study through empirical case-studies within the EU and in the broader counter-terrorist finance community.

Appendix A: Methodology

Under the terms of the Securing Europe through Counter-Terrorism-Impact, Legitimacy and Effectiveness (SECILE) Grant Agreement (Description of Work), King's was responsible for conducting an empirical study of counter-terrorist finance (CTF) law and policy, taking into account the perspectives of a dedicated end user group engaged with such law and policy.[1] The Agreement further specified that a focus group methodology would be employed for this research.[2]

1. Ethics Approval

As a first step in the process, the King's team completed an ethics application and the research project was granted approval from the Law Research Ethics Panel, King's College London, on 2 October 2013.

2. Research Design

At the outset, the King's team reviewed available literature to assess the use of focus group methodology with respect to criminal justice and security studies. It emerged from the literature that focus groups, as a useful means of conducting qualitative research in these fields, has generally been recognised.[3] The literature review was conducted primarily using legal databases, namely SAGE publications, HeinOnline and Westlaw. These databases were searched using the following query: 'focus group' AND 'terrorism.' The literature review also drew on other sources, including the report of the DETECTER project, a European Union Framework Programme 7-funded project, which sought to survey applications of detection technologies in counter-terrorism across the EU and which included a focus group of retired or serving police officers and counter terrorism professionals.[4]

From the literature it was evident that, while some studies employed focus groups to assess the effectiveness of counter-terrorism measures within particular jurisdictions,[5] it was not possible to locate specific scholarship which adopted this methodology to undertake research from a distinctly European perspective.

2.1 The Focus Groups Method

Focus groups may generate important insights into potential or existing strengths and weaknesses of existing or proposed programmes. They enable programme implementation, perceived utility and efficacy

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[1] Securing Europe through Counter-Terrorism-Impact, Legitimacy and Effectiveness (SECILE) Grant Agreement 313195, Annex I (Description of Work), 24.
[2] SECILE Grant Agreement, 13.
[3] See, for instance, Croft, 'Images and Imaginings of Security', 20 *International Relations* (2006) 387, p.389 and 390 and Borell, 'Terrorism and Everyday Life in Beirut 2005: Mental Reconstructions, Precautions and Normalization', *51 Acta Sociologica* (2008) 55, p.59.
[4] Hadjimatheou, van der Hilst, Guelke, and Draper, 'A Double-edged Sword: Counter-Terrorism Professionals' Perceptions of the Practical and Ethical Factors Affecting the Use of Surveillance Technology in Their Work', in William Webster (ed.), *The State of Surveillance* (2012), p.74. See also http://www.detecter.eu/
[5] Mythen, Walklate and Khan, 'Why Should We Have to Prove We're Alright?': Counter-terrorism, Risk and Partial Securities', 47 Sociology (2012) 383, p.387.

to be documented.[6] This method has been considered particularly useful in assessing perceptions to emerging areas of practice.[7] Specifically, focus groups can generate a wealth of understanding of the participant's experiences and beliefs about a particular topic of inquiry.[8] Solorzano et al. have summarized four strengths in which focus groups may enrich the research process. They consider that focus groups provide a methodology to:

a. Explore and discover concepts and themes about a phenomena about which more knowledge is needed;
b. Add context and depth to the understanding of the phenomena;
c. Provide an interpretation of the phenomena from the point of view of the participants in the group; and
d. Observe the collective interaction of the participants.[9]

In this context, the focus group methodology has been contrasted with, for instance, interview polls, in which the interviewer poses questions that require answers within seconds, usually entailing a simple choice among a small number of alternatives.[10] Unlike such polls, 'focus groups generate an environment in which respondents have the opportunity to reflect on the question posed, and can then discuss their reflections with other participants.'[11] It has also been noted that participants in focus groups tend to be more 'candid and forthcoming with their views than the questionnaire interviewees,'[12] making focus groups a particularly useful tool for eliciting people's reasoning.[13] Indeed, focus groups have been recognised as a particularly useful means of exploring knowledge, perceptions and concerns.[14]

2.2 Challenges with the Focus Group Methodology

It has to be borne in mind that qualitative research methods, such as focus groups, may give rise to 'impressionistic and piecemeal findings that are not replicable or comparable,'[15] and it is therefore important that the specific limitations of this research method be recognised.[16]

Focus groups normally rest on a very small sample of participants and it has been emphasised that 'a small discussion group will rarely be a representative sample, no matter how carefully it is recruited.'[17] Moreover, focus groups may raise issues of access and/or recruitment of key participants or may otherwise not manage to attract participation from key subgroups. For instance, in his research on paramilitary groups in Northern Ireland, Knox underscored the difficulty of accessing those who have been subjected to

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[6] Joshi, 'Focus Group interviews', in Ling and van Dijk (eds.) *Performance Audit Handbook* (RAND Europe, 2009), p.54.
[7] See Borell, p.55, and Gebbie, Merrill, Hwang, Gupta, Btoush and Wagner, 'Identifying Individual Competency in Emerging Areas of Practice: An Applied Approach' 12 *Qual Health Res* (2002) 990, p.994. For a useful survey of the strengths and weaknesses of focus groups, see also Hollander, 'The Social Contexts Of Focus Groups', 33 *Journal of Contemporary Ethnography* (2004) 602, p.606 (Hollander a).
[8] Solorzano, Allen and Carroll, 'Keeping race in place: Racial microaggressions and campus racial climate at the University of California, Berkeley', 23 *Chicano-Latino L. Rev.* (2002) 15, p.32.
[9] Solorzano, p.32. In addition, other benefits of focus groups may be identified, such as that they are usefully 'relatively more cost-effective research than individual interviews': see Somer, Buchbinder, Peled-Avram and Ben-Yizhack, 'The Stress and Coping of Israeli Emergency Room Social Workers Following Terrorist Attacks', 14 *Qual Health Res* (2004) 1077, p.1080.
[10] Roberts, 'Public Opinion, Crime, and Criminal Justice', 16 *Crime & Just.* (1992) 99, p.106.
[11] Roberts, p.106.
[12] Wallace, 'Findings from a concurrent study on the level of community involvement in the policing process in Trinidad and Tobago', 85 *Police Journal* (2012) 61, p.71.
[13] Donnelly, 'The police officer as social scientist', *Police Journal* (2013) 53, p.53.
[14] Santos, Helmer, Fotiades, Copeland and Simon, 'Developing a Bioterrorism Preparedness Campaign for Veterans: Using Focus Groups to Inform Materials Development', 8 *Health Promot Pract* (2007) 31, p.38.
[15] Donnelly, p.59-60.
[16] Donnelly, p.59-60.
[17] Zikmund, *Business Research Methods* (Dryden Press, 1997), p.110.

paramilitary beatings.[18] In his research of interfaith dialogue, Michael acknowledged that his focus groups had 'failed to attract participation from some of the important parts of the community.'[19] In view of these limitations, it has been stressed that 'in spite of the benefits of using focus group discussions, the results cannot be used to draw statistically based conclusions about the larger population.'[20] Indeed, in utilizing data generated by focus groups, one has to resist the temptation of making broad generalizations.[21] Focus group findings 'are not necessarily generalizable to the target population relevant to the audit.'[22]

With respect to the focus group on CTF law and policy conducted by King's, invitations to participate were sent to *all* Member States authorities. However, even after sending several reminders, a number of Member States authroties simply did not respond to this invitation.

Furthermore, it has been observed that, 'the group pressures inherent in focus groups make them a problematic method for measuring individual thoughts or beliefs.'[23] Hollander argues that, given that focus group discussions are shaped by multiple social contexts or group pressures (including associational, status, conversational, and relational contexts), these contexts may foster both problematic silences (when participants do not share their relevant thoughts or experiences with the group) and problematic speech (when participants offer opinions or information that do not represent their underlying beliefs or experiences) in group discussion. Thus, these processes limit the usefulness of focus groups as a tool for understanding individual thoughts, feelings, or experiences.[24] These considerations may be particularly relevant in the context of criminal justice and security. In this respect, in the focus group conducted in the context of the DETECTER project, it was observed that:

> '[N]one of the participants were able to be completely open about their experiences, partly because they were bound by confidentiality agreements with their employers, partly because they recognized the ethical tension between protecting operations and participating in research, and possibly because they were aware that the researchers and/or readers of the research might be critical of their work.'[25]

2.3 Methods of Recruitment for Focus Group

A number of factors may have a bearing on the recruitment of participants. These include: (1) the research legitimacy; (2) the issue of 'outsiders'; and (3) the confidentiality of discussions. With respect to research legitimacy, the literature suggests that if the research and/or researcher are not perceived to be legitimate by his/her research subjects, this may raise suspicions over the research objectives.[26] The first requirement for the researcher is, therefore to establish their good faith. A key component of this is the need to

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[18] Knox, 'Establishing research legitimacy in the contested political ground of contemporary Northern Ireland', 1 *Qualitative Research* (2001) 205, p.209.
[19] Michael, 'Developing a Regional Interfaith and Intercultural Network in Melbourne's Northern Suburbs', 4 *Contemp. Readings L. & Soc. Just.* (2012) 15, p.34.
[20] Wallace, p.71.
[21] Roberts, 'Public Opinion, Crime, and Criminal Justice', 16 *Crime & Just.* (1992) 99, p.108. In this context, the literature indicates that different qualitative research methodologies may generate different data and, in general, a multi-method approach may furnish a fuller understanding of the phenomenon: see Hutton, 'Beyond populist punitiveness?', 7 *Punishment & Society* (2005) 243, p.245. Indeed, it has been noted that 'focus groups are not as useful as a stand-alone method when the primary research objective is to measure outcomes across an entire setting or programme or to determine the cause of effects of an implemented programme: see Joshi, p.54.
[22] Joshi, p.55.
[23] Hollander, 'Resisting Vulnerability: The Social Reconstruction of Gender in Interaction', 49 *Soc. Probs.* (2002) 474, p.478 (fn 3) (Hollander b). See also Somer et al, p.1080.
[24] Hollander a, p.603.
[25] Hadjimatheou et al, p.80.
[26] Knox, p.206.

demonstrate objectivity in one's approach to the study.[27] There is also the need to be open and transparent on the objectives of the research.

With respect to the issue of 'outsiders,' the Duke University Guidelines for Conducting a Focus Group (the 'Guidelines) state that '[i]n an ideal focus group, all the participants are very comfortable with each other….'[28] The Guidelines place emphasis on the importance of a homogenous group of participants in focus groups in order to promote more open discussions. . This is of particular relevance to the context of law enforcement officers and counter-terrorism professionals, who may be considered 'difficult-to-reach population[s].'[29] This is because of the restricted and confidential nature of the information they may own or have access to, and the potential reluctance (or, indeed, legal constraints arising from confidentiality agreements) of several professionals to take part in focus group research.

It was important to bear in mind that the success of recruiting law enforcement officers and counter-terrorism professionals (and the extent to which they may be prepared to speak openly) would be, in part, reliant on who the other participants were, and whether they were perceived as 'outsiders'. It was for this reason that, while the importance of the perspectives of certain 'outsiders' was acknowledged, such as civil society, academics and defence lawyers, these were not invited to participate in the focus group conducted by the King's research team. However, a separate focus group, gathering the perspectives of civil society and academics, was organized for this purpose.

With this in mind, The Guidelines provide several different ways in which focus group participants can be recruited. Some of the most popular include:

1. Nomination – Key individuals nominate people they think would make good participants. Nominees are familiar with the topic, known for their ability to respectfully share their opinions, and able to volunteer their time. In the DETECTER project, this technique was used in conjunction with snowballing.[30]
2. Random Selection – If participants will come from a large but defined group, names can be randomly selected until the desired number of verified participants is achieved.
3. Membership of a Group – Sometimes an already existing group serves as an ideal pool from which to invite participants.
4. Role/Occupation – Depending on the topic, the pool might be defined by position, title or condition.
5. Volunteers – When selection criteria are broad, participants can be recruited with flyers and newspaper ads.[31]

The King's team used the following method to recruit focus group participants. Firstly, the King's team drew up an EU-wide list of FIU officials from open sources such as the List of Members of the Egmont Group of Financial Intelligence Units. The recruitment process was supplemented by nomination and snowballing. As noted, while invitations to participate were sent to all Member States authorities, a total of eleven participants were recruited as follows: Participant A (United Kingdom); Participant B (Ireland); Participant C (Malta); Participant D (Belgium); Participant E (Bulgaria); Participant F (Latvia); Participant G (Latvia);

[27] Knox, p.211.
[28] Office of Assessment, Trinity College, 'Guidelines for Conducting a Focus Group', p.3. Available at: http://assessment.aas.duke.edu/documents/How_to_Conduct_a_Focus_Group.pdf
[29] Brown, 'Visa as Property, Visa as Collateral', 64 *Vanderbilt Law Review* (2011) 1047, p.1074.
[30] Hadjimatheou et al, p.1074
[31] Office of Assessment, Trinity College, p.3.

Participant H (Portugal); Participant I (Romania); Participant J (Poland); and Participant K (United Kingdom). These participants included officials from FIUs and governmental officials.

2.4 Method of Moderation

The Focus Group was held at the King's Strand campus, in London, on 11 December 2013. The focus group was conducted by 'a team consisting of a moderator and assistant moderator. The moderator facilitates the discussion; the assistant takes notes and runs the tape recorder.'[32] Indeed, it is usual practice for focus group discussions, which generally last between one and two hours, to be audio-recorded and transcribed, and for an assistant moderator to be present to take notes and record dynamics such as nonverbal cues.[33]

At the start of the focus group session, the moderator used a prepared script to welcome participants, which reminded them of the purpose of the session, offered a basic framework and structure for the discussion and also set the ground rules. The ground rules for the focus group included an assurance to the participants that the information gathered would be confidential and that everyone's views were important. Participants were also reminded to speak clearly and to not talk over the top of one another.[34]

The King's team set a questioning route which moved from more general, to more specific, question sequences.[35] The King's questioning route is found below:

Engagement Questions

0. Perhaps you could tell us how long you've each been working in the area of financial intelligence and counter-terrorist finance?

Exploratory Questions

1. Do you think the EU measures to monitor or restrict the financing of criminal activity makes Europe more secure?

2. Are there, or do you think, that EU measures to monitor/restrict the financing of criminal activity make Europe less secure?

3. Are there aspects of EU measures which disrupt the financing of terrorism that are more effective? Or are there aspects… And/or are there measures which are less effective? So moving from the general to the particular – are there aspects which are more effective and are there aspects which are less effective?

4. In your view is it legitimate to use EU measures to disrupt the financing of terrorism as a means to combat terrorism in Europe? So it's the question of legitimacy.

Exit Question

5. [Summarise main points of the discussions] So has this brief summary that I've

[32] Office of Assessment, Trinity College, p.7.
[33] Santos et al, p.34. See also Gebbie et al, p.995, and Joshi, p.57.
[34] Joshi, p.55.
[35] Joshi, p.55; and Office of Assessment, Trinity College, p.3.

given captured the points that have been discussed? Is there anyone that feels that there's something that needs particular emphasis or that I have omitted?

An important challenge for the King's team was the reduction of bias. They were aware that the data generated can be 'influenced by the method of inquiry, the degree of information provided and the framing of the accounts.'[36] Therefore, the King's moderator was careful not to take the focus group in a particular direction and tried to encourage all participants to contribute to the session.

2.5 Confidentiality & Anonymity with Focus Group Research

Without exception, in the literature reviewed, the identity (and other identifying information) of all focus group participants had been anonymized. Various techniques had been used to achieve this. For instance, in the DETECTER project, pseudonyms were assigned to all focus groups participants (eg. FGP1, FGP2, FGP3, etc).[37] Brown used initials to anonymize the identity of her focus group participants (eg. 'DR1, MK, DR2, AB, WM…).[38] And, in other cases, participants were identified by certain qualities/characteristics. For instance, Solorzano et al. identified their focus group participants by reference to their race/gender/position (eg. 'a Black male scholar'; 'an Asian American female student', etc).[39] Finally, some studies only made use of generic terms, such as 'a participant' or 'a man.'[40]

In the research conducted by the King's team, each participant was assigned a letter (e.g. Participant A, Participant B, Participant C, etc). During discussions, participants could then refer to each other using their assigned letters and, later, researchers could maintain the anonymity of participants during the coding process.

2.6 Data Analysis

In analysing the data, the King's team followed, broadly, the 'Long-Table Approach.'[41] Firstly, the principal investigator and the co-investigator independently analysed the transcript and coded it in accordance with the overall framework of (1) impact, (2) legitimacy and (3) effectiveness. Secondly, the data within each theme was analysed to distil and refine further sub-themes.

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[36] Hutton, p.246.

[37] Hadjimatheou et al, p.75. See also Hardgrove, 'Liberian Refugee Families in Ghana: The Implications of Family Demands and Capabilities for Return to Liberia' 22 *J. Refugee Stud.* (2009) 483, p.485.

[38] Brown, p.1074 (fn. 75).

[39] Solorzano et al, p.36.

[40] For instance, Friedman and Immerwahr, 'Discussing Foreign Policy with the Post-Cold War Public', 3 *The Brown Journal of World Affairs* (1996) 259, p.262.

[41] See Kreuger, Richard A. and Casey, Mary Anne, *Focus Groups: A Practical Guide For Applied Research* (3rd edn, SAGE Publications 2000) p.132.