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## **USA Patriot Act: Anti-Money Laundering and Terrorist Financing Legislation in the U.S. and Europe Since September 11<sup>th</sup>**

Alicia L. Rause\*

*"Today, we take an essential step in defeating terrorism, while protecting the constitutional rights of all Americans. With my signature, this law will give intelligence and law enforcement officials important new tools to fight a present danger."*

-President George W. Bush, October 26, 2001<sup>1</sup>

### **I. The International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001**

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (hereinafter Patriot Act) was signed into law by President Bush on Friday, October 26, 2001.<sup>2</sup> This new law came on the heels of the horrific terrorist attacks that took place in the United States on September 11, 2001. The legislation passed through Congress very quickly, partly because of public outcry for action in the wake of the terrorist attacks. In Part I of this paper, I will examine some of the important revisions made to the Bank Secrecy Act pursuant to the USA Patriot Act, including certain extraterritorial effects. I will also highlight five cases that have already been or are currently being prosecuted under U.S. Anti-Money Laundering laws, including the Patriot Act. In Part II, I will address the Terrorist Financing Executive Order. In Part III, I will briefly discuss similar anti-money laundering legislation and efforts currently being made by the European Union.

#### **A. The Bank Secrecy Act**

The USA Patriot Act broadened the scope of many existing laws including immigration, surveillance, search and seizure, and finance. Title III of the Patriot Act, entitled the International Money Laundering Abatement and Anti-Terrorist Funding Act of 2001 is particularly notable

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<sup>1</sup> Remarks by the President at Signing of the Patriot Act, Anti-Terrorism Legislation, 37 WEEKLY COMP. PRES. DOC. 1550 (Oct. 26, 2001), *available at* <http://www.whitehouse.gov/news/releases/2001/10/20011026-5.html>.

<sup>2</sup> USA PATRIOT Act of 2001, 107 P.L. 56, 115 Stat. 272 (2001).

for its substantial expansion of the Bank Secrecy Act, the already existing domestic anti-money laundering legislation.<sup>3</sup> Title III requires domestic financial institutions to make a number of revisions to existing compliance policies and procedures. It also requires foreign financial institutions with assets in the United States, which have never before been directly subject to U.S. financial regulation, to accept broad new anti-money laundering obligations as a condition for doing business in the U.S.<sup>4</sup>

For example, domestic financial institutions are now required to increase their due diligence efforts for correspondent accounts and their private banking customers. Banks that have correspondent relationships with financial institutions operating under offshore banking licenses or under licenses issued by countries that have been designated by the international community as non-cooperative, now must meet the minimum standards required of all banks.<sup>5</sup> The Patriot Act also forbids banks from offering correspondent accounts to foreign "shell banks" or banks that are not physically located in any one country or effectively regulated anywhere.<sup>6</sup> In addition to the obligation to ascertain the identity of the owners of the foreign bank, a domestic bank must also determine whether the foreign bank provides correspondent accounts to other foreign banks. If so, the domestic bank must determine the identity and due diligence information of those banks.<sup>7</sup> It is important that any correspondent account maintained by an institution for a foreign bank is not being used by that foreign bank to provide banking services to another foreign bank that lacks a physical presence in any country.<sup>8</sup> This provision is one example of the far reach of the USA Patriot Act. Foreign banks that would like to continue doing business in the United States must also discontinue providing banking services to "shell banks."

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<sup>3</sup> Bank Secrecy Act, 31 U.S.C.S. §§ 5311 et seq.

<sup>4</sup> Jonathon Winer & Debra Bernstein, *New Anti-Terrorist Law has Significant Search and Seizure and Money Laundering Implications for U.S. Companies*, 2 Privacy Info. L. Rep. 10 (Dec. 2001).

<sup>5</sup> Robert Sims & Leah Castella, *The USA Patriot Act of 2001: New Obligations and Opportunities in the Fight Against Global Money Laundering*, 7 ANBLLR 1.

<sup>6</sup> *Id.*

<sup>7</sup> William Sweet, Saul Pilchen & Stacie McGinn, *Summary of the USA Patriot Act of 2001 Anti-Money Laundering Provisions*, 1289 PLI/Corp 55, 75.

<sup>8</sup> *Id.* at 76.

The Patriot Act also requires “enhanced due diligence” for private bank accounts and enhanced scrutiny for accounts opened by senior foreign political figures and their relatives.<sup>9</sup> Accounts held by foreign persons are not only subject to enhanced scrutiny by the bank, but are also subject to forfeiture. The USA Patriot Act extends the U.S. courts’ long-arm jurisdiction over individuals and foreign banks suspected of being involved in money laundering. Federal Courts are empowered to issue pretrial restraining orders or to take other steps to preserve property in the United States. The statute extends forfeiture rules to deposits of foreign banks, and it requires any foreign bank that maintains a correspondent account in the United States to appoint an agent for service of process within the United States.<sup>10</sup>

The Secretary of the Treasury or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and request records related to the account, including records maintained outside of the United States. A covered financial institution is required to terminate the correspondent relationship with the foreign bank if the foreign bank does not comply with the request for information.<sup>11</sup> Under the amendments implemented by the USA Patriot Act, funds of a foreign person in a foreign bank that has a correspondent account in a U.S. financial institution are now deemed to have been deposited into the correspondent account in the U.S.<sup>12</sup> Accordingly, if a foreign person deposits funds into a foreign bank “that has an interbank account in the United States with a covered financial institution,” and assets of the foreign person become subject to a forfeiture order, money in the interbank account may be forfeited from the U.S. financial institution to satisfy the forfeiture order.<sup>13</sup> The government is not required to establish that the funds to be forfeited are directly traceable to the funds that were deposited in the foreign bank,<sup>14</sup>

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<sup>9</sup> Robert Sims & Leah Castella, *The USA Patriot Act of 2001: New Obligations and Opportunities in the Fight Against Global Money Laundering*, 7 ANBLLR 1.

<sup>10</sup> *Id.*

<sup>11</sup> International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, Public Law 107-56, Oct. 26, 2001, *available at* <http://www.dbcf.state.ms.us/USA%20PATRIOT%20ACT%20Summary.pdf>.

<sup>12</sup> USA PATRIOT Act, Section 319(1)(A).

<sup>13</sup> USA PATRIOT Act, Section 319(1)(A).

<sup>14</sup> USA PATRIOT Act, Section 319(2).

and does not need to show any relationship between the funds forfeited and the criminally derived proceeds.<sup>15</sup>

## **B. Anti-Money Laundering Legislation in Action – Five Case Summaries**

### **1. United States v. Speed Joyeros, S.A.**

One example of the long arm of US money laundering law was recently highlighted in a federal money laundering case in New York.<sup>16</sup> A Panamanian “gold and jewelry merchant who did no business and had no presence or bank account in the United States, but took in millions of drug dollars saying she did not know their source, has pleaded guilty to violating U.S. money laundering law.”<sup>17</sup> By doing so, the merchant, Yardena Mizrahi Hebroni, illustrated how non-U.S. businesses that do no business in the United States are nonetheless subject to U.S. money laundering prosecution.<sup>18</sup> “The indictment charged the defendant with five counts of washing and conspiring to wash drug money. A superseding indictment was filed more than a year later, on December 13, 2001, clarifying the government’s legal theory.”<sup>19</sup> Hebroni did not run a bank or financial institution of any kind. She ran a jewelry store in Panama. She did not have a bank account in the U.S. She was, however, subject to the jurisdiction of U.S. money laundering legislation because a large portion of the Colombian drug money she received was in the form of checks drawn on U.S. bank accounts. This indirect connection was enough for her to fall under U.S. jurisdiction.

### **2. Mohamed M. Hussein**

We also saw the first successful prosecution under the Patriot Act, on April 30, 2002. A Somali businessman, Mohamed M. Hussein, was convicted in U.S. federal court in Boston of running an unlicensed money-wiring office. Although the possibility of a terrorist connection

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<sup>15</sup> William Sweet, Saul Pilchen & Stacie McGinn, *Summary of the USA Patriot Act of 2001 Anti-Money Laundering Provisions*, 1289 PLI/Corp 55, 78.

<sup>16</sup> *United States v. Speed Joyeros, S.A.*, 204 F. Supp. 2d 412 (E.D.N.Y. 2002), available at <http://www.nyed.uscourts.gov/00cr9605902.pdf>.

<sup>17</sup> *U.S. laundering law reaches new foreign terrain in gold case*, Money Laundering Alert, May 2002, 1, 3.

<sup>18</sup> *Id.*

<sup>19</sup> *United States v. Speed Joyeros, S.A.*, 204 F. Supp. 2d 412 (E.D.N.Y. 2002) available at <http://www.nyed.uscourts.gov/00cr9605902.pdf>.

cast its shadow over the three-day trial, the allegation was never formally made. Hussein and his brother were charged with running an unlicensed 'hawala' or money transfer business named al-Barakaat. The hawala system is "an ancient network for moving money around the globe without using wire transfers, banks or any other part of the conventional financial structure."<sup>20</sup> Under the old money laundering law, ignorance of state licensing laws for money transfer businesses was a valid defense.<sup>21</sup> With the Patriot Act, however, knowledge of these state laws is irrelevant.<sup>22</sup> A person can now be convicted whether or not he/she knew any laws were being broken.<sup>23</sup> Hussein was convicted of a misdemeanor crime, running a money transfer business without a state license, and was given a sentence of eighteen months in prison.<sup>24</sup> However, Hussein's brother, who was also charged in the indictment, remains in Canada. To date, he has avoided extradition to the United States.

### 3. United States v. Wray

The long arm of the Patriot Act was tested in a recent case in the Virgin Islands.<sup>25</sup> Bernard Christy Wray was charged with knowingly concealing more than \$10,000 in U.S. currency in his suitcase, in violation of the Bank Secrecy Act, §§ 5316 and 5332, among other charges. After arriving in the Virgin Islands from St. Maarten, Netherlands Antilles, United States Customs stopped Wray during a routine border inspection. Customs agents found \$120,856 concealed in one of his suitcases. Section 5332 of the Bank Secrecy Act provides:

Whoever, with the intent to evade a currency reporting requirement under section 5316, knowingly conceals more than \$10,000 in currency or other monetary instruments on

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<sup>20</sup> Stephen Temple, *Cleaning Dirty Cash: The New Drive and Its Victims* (2002), at World Markets Research Center, <http://www.worldmarketsanalysis.com/InFocus2002>.

<sup>21</sup> David Hench, *Man Guilty of Running Unlicensed "Hawala,"* PORTLAND PRESS HERALD, May 1, 2002, at 1A.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> David Hench, *Maine link to terrorists called matter of chance*, (Sept. 10, 2002) at Maine Today.com, <http://www.maine.com/911/news/020910portland.shtml>.

<sup>25</sup> *United States of America v. Wray*, No. CR.2002-53, 2002 WL 31628435 (D.Virgin Islands, 2002).

the person of such individual or in any conveyance, article of luggage, merchandise, or other container, and transports or transfers or attempts to transport or transfer such currency or monetary instruments from a place within the United States to a place outside of the United States, or from a place outside the United States to a place within the United States, shall be guilty of a currency smuggling offense...<sup>26</sup>

At trial, Wray moved to dismiss the indictment against him on the grounds that section 103 of title 31 of the Code defines "the United States" as the States of the United States and the District of Columbia for purposes of title 31. The Virgin Islands, Wray noted, is not a state, and therefore he could not have violated this law by bringing a suitcase full of money into St. Thomas. The Court, however, denied Wray's motion to dismiss and held that the definition of the "United States" contained in the Patriot Act was the controlling definition. That definition provides 'United States' means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, a territory or possession of the United States, or a military or diplomatic establishment.<sup>27</sup> The Court also noted that even if these two definitions were to conflict, and "were held ambiguous, the language of the Patriot Act is clear that Congress reaffirmed its intent to expand its criminal laws to the U.S. possessions while it refined and strengthened the nation's money laundering laws."<sup>28</sup>

#### 4. James R. Gibson

The United States Postal Service activated another weapon from the Patriot Act arsenal for the first time last fall when they seized over one and a half million dollars in connection with the prosecution of a husband and wife on money laundering charges. Officials applied section 319(a) of the Patriot Act in order to seize for forfeiture the funds of a foreign bank, held on deposit in a correspondent account at a financial institution in the United States. In January 2001, a grand jury in

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<sup>26</sup> 31 U.S.C. § 5332(a)(1) (2002).

<sup>27</sup> 31 U.S.C. § 5312(a)(6) (2002).

<sup>28</sup> *Wray*, 2002 WL 31628435.

the Southern District of Illinois indicted James R. Gibson for various offenses, including conspiracy to commit money laundering, mail and wire fraud.<sup>29</sup> Gibson and his wife, who was indicted later, fled to Belize, depositing some of their fraudulent proceeds in two Belizean banks.<sup>30</sup> The U.S. efforts to recover the proceeds from those banks were at first unsuccessful.<sup>31</sup> The local law prohibited a freeze of the assets, as well as any legal assistance to the United States. In the meantime, the Gibsons continued to spend the money in their accounts in Belize. The passage of the USA Patriot Act, however, authorized the use of Section 319(a), and a seizure warrant was served on the correspondent bank in the United States. The amount remaining in the Belizean bank accounts was frozen and recovered from the interbank account.<sup>32</sup>

### 5. Mohamad Hammoud

Two Lebanese brothers were convicted in June 2002 for conspiracy to commit money laundering and providing material support to a terrorist organization. Authorities identified Mohamad Hammoud as the ringleader of a cell of the Hizballah organization based in Charlotte, North Carolina. He and his brother Chawki, along with several co-defendants, were accused of smuggling millions of dollars worth of cigarettes from North Carolina to Michigan, and then sending home some of the illegal proceeds to Lebanon in order to help finance Hizballah's military operations.<sup>33</sup> Hizballah appears on the United States State Department's list of "Designated Foreign Terrorist Organizations." Mohamad was the first person to be convicted under a 1996 law prohibiting knowingly providing material support to foreign terrorist organizations.<sup>34</sup> That law was passed as part of the Antiterrorism and

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<sup>29</sup> Michael Chertoff, U.S. Senate Committee on Banking, Housing, and Urban Affairs, Hearing on "*The Financial War of Terrorism and the Administration's Implementation of the Anti-Money Laundering Provisions of the USA Patriot Act*," January 29, 2002, available at [http://banking.senate.gov/02\\_01hr/012902/chertoff.htm](http://banking.senate.gov/02_01hr/012902/chertoff.htm).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Two Men in United States Convicted of Aiding Hizballah*, Jun. 23, 2002, at <http://www.ict.org.il/spotlight/det.cfm?id=797>.

<sup>34</sup> *Id.*

Effective Death Penalty Act of 1996.<sup>35</sup> Hammoud objected to the designation of Hizballah as a Foreign Terrorist Organization, but the District Court overseeing the Hammoud prosecution was unconvinced by the defendant's due process arguments regarding the designation process.<sup>36</sup> Interestingly, in the 2002 case of *United States v. Rahmani*,<sup>37</sup> involving alleged material support to a designated terrorist group, a California district court issued a ruling directly contrary to that of the district court hearing the Hammoud case.<sup>38</sup> Finding that the organization that the defendants were alleged to have funded was designated as a terrorist group in violation of due process, the district court dismissed the indictment against the defendants.<sup>39</sup> The prosecution, involving Iranian exiles, was dismissed last June on the same day that the Hammoud conviction was handed down.<sup>40</sup>

## II. Terrorist Financing Executive Order

*We will starve terrorists of funding, turn them against each other, rout them out of their safe hiding places, and bring them to justice.*<sup>41</sup>

The Terrorist Financing Executive Order (The Order), entered into force on September 24, 2001, expands the Treasury Department's power to target the support structure of terrorist organizations.<sup>42</sup> The Order enables the United States government to freeze U.S. assets and block U.S. transactions by terrorists.<sup>43</sup> The Order also increases the government's ability to block U.S. assets of and deny access to U.S.

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<sup>35</sup> Joanne Mariner, *Make a List but Check it Twice: Prosecuting Suspected Supporters of Terrorist Groups*, Findlaw's Legal Commentary, Sept. 2, 2002, available at <http://writ.news.findlaw.com/mariner/20020902.html>.

<sup>36</sup> *Id.*

<sup>37</sup> 209 F. Supp. 2d 1045 (C.D.Cal. 2002).

<sup>38</sup> Joanne Mariner, *Make a List but Check it Twice: Prosecuting Suspected Supporters of Terrorist Groups*, Findlaw's Legal Commentary, Sept. 2, 2002, at <http://writ.news.findlaw.com/mariner/20020902.html>.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> President George Bush, Fact Sheet on Terrorist Financing Executive Order, Sept 24, 2001, at

<http://www.whitehouse.gov/news/releases/2001/09/20010924-2.html>.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

markets by foreign banks who refuse to cooperate with U.S. authorities to identify and freeze terrorist assets abroad.<sup>44</sup> The Order named twenty-seven persons or groups known to be connected to terrorist financing and authorized blocking the assets of these persons and groups.<sup>45</sup> Several names have been added to the list since it was first published. This list is taken very seriously, not only in the United States, but all over the world:

[T]he United States order does not have legal force in New Zealand. However, I draw your attention to this notice because the effect of the order is to impose penalties on, among others, institutions that have assets in the United States and that the United States determines have been providing services to or in support of the identified terrorists or terrorist organisations. Moreover, the stated intention of the United States authorities is to deny access to the United States financial system for any institution that does not take action to support the United States.<sup>46</sup>

The process that goes into placing a name on the list is quite thorough. Names are considered according to evidence obtained from criminal investigation, investigative information, intelligence information as well as open source information.<sup>47</sup> After the names being considered for the list have been gathered, the Department of Justice engages in a review with respect to legal sufficiency for any blocking orders that are to be issued.<sup>48</sup> The legal standard that is used for this review is the standard set out in the Executive Order, which reiterates the international standard—namely UN Security Council Resolutions 1333, 1373, and, most recently, 1390.<sup>49</sup>

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<sup>44</sup> *Id.*

<sup>45</sup> Executive Order on Terrorist Financing, Sept. 24, 2001, at <http://www.whitehouse.gov/news/releases/2001/09/20010924-1.html>.

<sup>46</sup> Steven Dawe, *Terrorist Financing Advice – US Executive Order*, Reserve Bank of New Zealand, Nov. 8, 2001, at <http://www.rbnz.govt.nz/fxcontrols/terrorism/0112108.html>.

<sup>47</sup> Transcript of Press Roundtable Concerning Executive Order 13224 blocking Terrorist Property, Feb. 11, 2002; at [http://www.un.int/usa/02\\_016.htm](http://www.un.int/usa/02_016.htm).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

Additionally, there is an Administrative review process that is available to anyone who is listed, and believes that the blocking order has been issued in error.<sup>50</sup> The relevant procedures and regulations for this process are published on the Office of Foreign Assets Control (OFAC) website and are readily available to anyone who believes they have been designated in error.<sup>51</sup> However, there have been only a handful of legal challenges to the blocking orders so far.<sup>52</sup> If a person does exhaust the administrative review process provided, and they are still not satisfied with the outcome, they may bring their case in United States Federal Court.<sup>53</sup>

It remains to be seen how this process will play out globally. Bringing suit in the United States is a logical option for a United States citizen, but what about groups that foreign governments attempt to have added to the United States' list? This whole system of freezing terrorist assets will not work without the collaboration of many different governments. We must all help each other out. So, when Russia agrees to block the assets of people or groups that the United States has designated presumably through a high standard of evidentiary review, what does the United States do when Russia comes back with a list of their own? United States Under Secretary Jimmy Gurule asserts that any person, even those recommended by foreign governments must go through the same review process before his or her assets are frozen in the United States.

The United States and the European Union have already cooperated on the proliferation of several lists of names. The European Union and the United States, however, have similar high standards for evidentiary review and judicial due process for names that are added. The concern must be for countries with lower standards in these areas. What happens when Russia or China decides to add the names of its local separatist groups, not for terrorist activities, but to make life harder for their political enemies? Will the United States be able to turn down these countries if it finds that the evidence against the group does not meet our standard of review? After all, we need Russia and China to support OUR list. Many of these questions are purely hypothetical, as of yet. Presumably, however, they will come up in the future as more and

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<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

more names are added to the asset freezing lists. When that happens, we may see a need for some kind of international review standard for a name to be added to any list and for assets to be frozen anywhere in the world.

### III. European Union Money Laundering Directive 2001/97/EC

*The Governing Council of the European Central Bank fully supports the measures taken in the aftermath of the horrific attacks on targets in the United States to intensify efforts to prevent the use of the financial system in the funding of terrorist activities.*<sup>54</sup>

On November 19, 2001, the European Union responded to the terrorist attacks and the implementation of the USA Patriot Act by passing legislation that revised the existing Directive on Money Laundering. The Directive amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering broadens the definition of money laundering and extends its provisions to certain non-financial activities and professions.<sup>55</sup> The Revised Directive extends requirements to external accountants and auditors, real estate agents, notaries, lawyers, and dealers in high-value goods, along with auctioneers and casinos.<sup>56</sup> It expands the definition of "credit and financial institutions" to make it clear that currency exchange offices and money transmitters are now covered, as well as investment firms.<sup>57</sup> The previous Directive primarily covered money laundering of drug proceeds. This loophole has been closed by the new Directive which now covers all "serious crimes," including drug offenses, organized crime activities, fraud, corruption, and any offenses that may generate substantial proceeds and are punishable under Member State penal law by a severe sentence of imprisonment.<sup>58</sup>

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<sup>54</sup> Public Statement of the European Central Bank, ECB Press Release, Oct. 1, 2001, available at <http://www.ecb.int/press/01/pr011001en.htm>.

<sup>55</sup> *The Legal Response to the September 11 Attacks: The USA PATRIOT Act, the Executive Order on Prohibited Dealings with Terrorists, and the EU Directive On Money Laundering*, MoFo Update, Morrison & Foerster, LLP., at <http://www.mofo.com/news/general.cfm?MCatID=&concentrationID=&ID=600&Type=5>.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

The latest European Union Money Laundering Directive, which took effect in December 2001, is significant on a number of fronts.<sup>59</sup> The unique nature of the European Union as a “Community of States” makes it fundamentally different from those of all other international organizations.<sup>60</sup> The European Union can adopt laws that have force of law without the need for them to be approved beforehand by national Parliaments.<sup>61</sup> Equally significant, if not more so, European law prevails over national law in the case of directives.<sup>62</sup> The European Union Revised Directive requires Member States to implement laws, regulations and administrative provisions necessary to comply within eighteen months after its entry into force.<sup>63</sup> However, some Member States have already begun making substantial changes to their national money laundering legislation.

The New Directive is definitely a step in the right direction in the fight against terrorist financing. However, some interesting information that has come out of the war on terrorism is not easily covered by anti-money laundering laws. In many cases, terrorists are not obtaining their financing from the proceeds of a crime. They are obtaining it from “legal” charities and businesses. For instance, Hamas, one of the most controversial additions to the United States’ list of evildoers, runs countless charity fundraising organizations in Europe. They are controversial because they raise money for so called humanitarian reasons such as supporting the widowed families of suicide bombers. However, they also finance the terrorist acts that leave those families widowed.

How do you separate the “humanitarian” charity from the terrorist financing? The USA PATRIOT Act closes this loophole with respect to money laundering because its “provisions apply to all terrorist assets, including legally obtained funds, if intended for use in planning,

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<sup>59</sup> Gerhard Schmid, *Money Laundering Developments Around the World*, Money Laundering Alert, March 2002, 1, 9.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *The Legal Response to the September 11 Attacks: The USA PATRIOT Act, the Executive Order on Prohibited Dealings with Terrorists, and the EU Directive On Money Laundering*, MoFo Update, Morrison & Foerster, LLP., at <http://www.mofo.com/news/general.cfm?MCatID=&concentrationID=&ID=600&Type=5>.

committing or concealing a terrorist act.’<sup>64</sup> However, all countries do not have this standard yet. So, how can the United States and other countries serious about stopping terrorist financing be sure that these groups that use legal modes of obtaining money do not fall through the cracks? Well, if you are the United States, or any other country heavily influenced by them, you put Hamas and all of their businesses on the frozen asset list. That way, although they may or may not be covered by anti-money laundering regulations because their proceeds do not come from the commission of a crime, they are thwarted nonetheless because their proceeds may not be used in the commission of any future crimes, including terrorist acts.

The European Union, although quick to respond in many areas related to terrorist activity after September 11<sup>th</sup>, was slow to join the United States in blocking terrorist assets. Once the United States’ list of names began to expand beyond the al-Qaida network, the European Union became more hesitant to block the assets of these other groups. Some individual countries, such as the United Kingdom, implemented their own blocking orders, but a European Union-wide block on certain terrorist groups was slow in coming. Facing pressure from the United States and other countries, the European Union designated a list of forty-two terrorist entities in December of 2001.<sup>65</sup> The United States took six entities from the European Union list and added them to the United States list, subject to Executive Order 13224.<sup>66</sup> Then, in May 2002, the European Union joined the United States in designating a list of eighteen terrorists and their supporters.<sup>67</sup>

One other important factor that may have given the European Union the boost it needed is the Paris-based Financial Action Task Force (FATF). The FATF, which sets standards for national and international money laundering controls and annually blacklists nations for not cooperating in the global effort, has added standards for combating

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<sup>64</sup> Elise Bean, *Summary of Key Anti-Money Laundering Provisions in Anti-Terrorism Bill H.R. 3162/P.L. 107-56*, Money Laundering Alert, November 2002, 89, 90.

<sup>65</sup> United States Department of Treasury, Office of Public Affairs, US-EU Designation of Terrorist Financiers Fact Sheet, at <http://www.treas.gov/press/releases/po3070.htm>.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

terrorist financing.<sup>68</sup> On October 29, 2001, the FATF met in extraordinary session and agreed to a set of eight new recommendations to add to its standard list of forty.<sup>69</sup> If nations did not meet the June 2002 deadline for the new anti-terrorist standards, they would have to face “counter-measures” in the same way that “non-cooperative” nations are threatened in the money laundering field.<sup>70</sup> One of these new standards was to “freeze and seize terrorist assets.”<sup>71</sup> Presumably, the European Union did not want to fall short of these standards.

#### IV. Conclusion

This global “War on Terrorism,” initiated by the Bush administration, has truly been a lesson in global diplomacy. Especially in the months just following 9/11, the cooperation among most of the developed countries in the world was unprecedented. This cooperation among the nations helped to ease an intense sense of mourning that was being felt not only in the United States, but around the world. Now that the intensity of those feelings has died down a bit, it is important that these governments do not take that opportunity to let down their guard and relax their watch on terrorist activities. As the White House has warned countless times since this war began, it is a battle that will be ongoing for many years to come. There are still many loopholes to close in global money laundering legislation, and many regions of the world are not even close to meeting the necessary standards. However, money laundering and terrorist financing is taken seriously on a global scale now, and that is an important start.

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<sup>68</sup> *FATF will Blacklist Nations that Lag in Attacking Terrorist Funds*, 13 Money Laundering Alert 8, December 2001.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*