

## LEGISLATIVE AND STRUCTURAL FRAMEWORK OF ANTI-MONEY LAUNDERING REGIME IN THE UNITED KINGDOM

### Birleşik Krallık'taki Karapara Aklamayla Mücadele Reji- mi'nin Yasal ve Yapısal Çerçevesi

Selçuk SEVGEL\*

#### Özet

**K**arapara aklama, ulusal ve uluslararası düzeyde önemi her geçen gün artan küresel bir problemdir. Karapara aklamının varlığı ekonomik göstergeleri bozmakta ve rekabetle birlikte hükümetlerin bütçelerini de olumsuz yönde etkilemektedir. Hali hazırda devletlere ve küresel topluma aşırı zarar vermeye devam eden bu problemle mücadelede son yıllarda önemli kazanımlar elde edilmiştir. Ancak, bu çabalar sınıraşan örgütlü suç gruplarını durdurmakta yetersiz kalmaktadır. Birleşik Krallık da son on yılda karapara aklamayla mücadelede kayda değer çaba göstermiştir. Bu makalede, Birleşik Krallık'taki karapara aklamayla mücadele rejiminin mevzuatı ve organizasyonu; Mali Eylem Görev Gücü'nün (FATF) raporları ve kendi kurumlarının yıllık raporları perspektifinde analiz edilmektedir. Rejimin zayıflıklarının ve problemlerinin tartışılmasının yanı sıra bu makalede ayrıca Birleşik Krallık'ta karapara aklamayla mücadele için atılan adımlar da incelenmektedir.

**Anahtar kelimeler:** Karapara, Karapara aklamayla mücadele, Birleşik Krallık, Suç gelirleri, Mali Eylem Görev Gücü (FATF), Ciddi Organize Suçlar Dairesi (SOCA), Şüpheli İşlem Bildirimi (SARs), Suç Gelirleri Kanunu (POCA).

\* Emniyet Amiri, Bitlis Emniyet Müdürlüğü, selcuksevgel@hotmail.com

### Abstract

**M**oney laundering is a global and increasingly important problem at both national and international levels. The presence of money laundering distorts the economic indicators and affects the competition and the budgets of the Governments negatively. While it still does so much harm to states and societies globally, efforts to combat money laundering have been strengthened in the past decades. However these efforts are not sufficient to stop transnational organised crime groups. The United Kingdom has showed a remarkable effort to fight against money laundering in the last decade. This study analyses the anti-money laundering (AML) legislation and organisation in the United Kingdom (UK) from the perspective of the Financial Action Task Force (FATF) reports and the UK's own combating institutions annual reports. This article discusses the problems and weaknesses of the regime. The steps taken to combat money laundering in the UK are also analyzed in this paper.

**Key Words:** Money Laundering, Anti-Money Laundering, The United Kingdom, Proceeds of crime, Financial Action Task Force (FATF), Serious Organized Crime Agency (SOCA), Suspicious Activity Reports (SARs), The Proceeds of Crime Act (POCA).

### Introduction

The term “*Money Laundering*” originates from the United States (US) describing the Mafia’s attempt to “launder” illegal money via cash-intensive washing salons in the 30s, which were controlled by criminal organizations (Schneider, 2010:2). As such money laundering (ML) is not a new concept but lately ML activities have gained momentum and became a worldwide problem debated widely. In response to this growing concern, international agreements were initiated to combat ML activities. Amongst the main agreements, the United Nation (UN) was the first international organization that initiated the combating of ML globally. Subsequently, the Financial Action Task Force (FATF) recognized as an international standard setter for Anti-Money Laundering (AML) efforts was established in 1989 by the G-7 Summit in Paris to implement and monitor effective AML programs. More importantly, the FATF has compiled 40+9 recommendations for ML control which provides a basic framework relevant to all parties involved in the effort to combat ML. According to FATF, ML is defined as:

*... the processing of a large number of criminal acts to generate profit for individual or group that carries out the act with the intention to disguise their illegal origin in order to legitimize the ill gotten gains of crime. Any crime that generates significant profit-extortion, drug trafficking, arms smuggling and some kind of white collar crime may create a "need" for money laundering (FATF, n.d.).*

Legally, ML refers only to concealing the proceeds of specific crimes (Levi and Reuter, 2009:358). According to Rees, Fisher and Bogan (2008:127), the term 'money laundering' applies to the process by which funds derived from illicit activity are given apparent legitimacy. Gilmore also emphasizes 'the process' and 'illicit origins' and defines money laundering as the process by which criminal proceeds are sanitized to disguise their illicit origins (Gilmore, 2004:11). According to the United Nations Office on Drugs and Crime (UNODC) website, money laundering is the method by which criminals disguise the illegal origins of their wealth and protect their asset bases so as to avoid suspicion of law enforcement agencies and to prevent leaving a trail of incriminating evidence (UNODC, 2012). Simply, money laundering is the process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income in order to make it appear legitimate.

The United Kingdom (UK) has a comprehensive legal, institutional and supervisory regime for anti-money laundering (AML) and combating the financing of terrorism (CFT). It is broadly in line with the criteria set forth in the Financial Action Task Force (FATF) 40 Recommendations for AML and 9 Special Recommendations for CFT (IMF Report, 2011:4). The UK is a member of FATF, Egmont Group and Basel Committee which are dealing with money laundering and terrorist financing problems. It has adopted new laws and regulations to fight against money laundering (ML) and terrorist financing issues in the past decade.

Despite the positive comments of the IMF report (2011) on the UK, an estimate by Her Majesty's Treasury in 2007 was that the most serious forms of organized crime alone generated an illicit turnover of some £15 billion a year, around £10 billion of this was ML through the regulated sector, such as banks, insurers and accountants. It also generated criminal "capital formation" that is, assets invested in a possible seizable form of about £5 billion, £3 billion of which was exported overseas (Her Majesty's Treasury, 2007:8).

Additionally, The Home Office has expanded on this attempt to assign financial costs to criminal behavior in a recent document entitled *Extending our reach: A comprehensive approach to tackling serious organized crime*. In one of the annexes to this document the Home Office estimates an annual cost to the UK from serious organized crime of £32 billion (Home Office, 2009:75). The most recently available figures from the Home Office (2006) estimate that the revenue made by organized crime in the UK from the markets for illicit goods and services, such as Class A drugs<sup>1</sup>, and the criminal abuse of legitimate markets, such as fiscal fraud, is in the order of £15 billion per annum (SOCA, 2010:8).

In the UK, most criminal proceeds are generated in large metropolitan areas, which is where most organized criminal activity is concentrated. Criminals seek out the money placement and exchange services they need. Criminal cash is often moved out of the UK to a foreign jurisdiction for placement in the legitimate financial system, investment in property, or used to pay for illicit commodities or services. This can be done using couriers or via money transmission services. However, many organized criminals make use of financial and legal professionals to handle their financial affairs. This often involves using property purchases and legitimate or quasi-legitimate businesses, typically those with a high cash turnover, to launder criminal proceeds as well as to provide cover for the purchase, delivery and sale of illicit goods (SOCA, 2010:8).

In 2004 the British Government published a white paper entitled “*One Step Ahead: A 21st century strategy to defeat organized crime*”. In it, the Government outlined its plans to create a new agency for this purpose (Home Office, 2004). The Serious Organised Crime Agency (SOCA) was established on 1st April 2006 and reports to the Home Secretary. All Suspicious Activity Reports (SARs) related to suspicions of ML are referred to the SOCA (Rees, 2008:15).

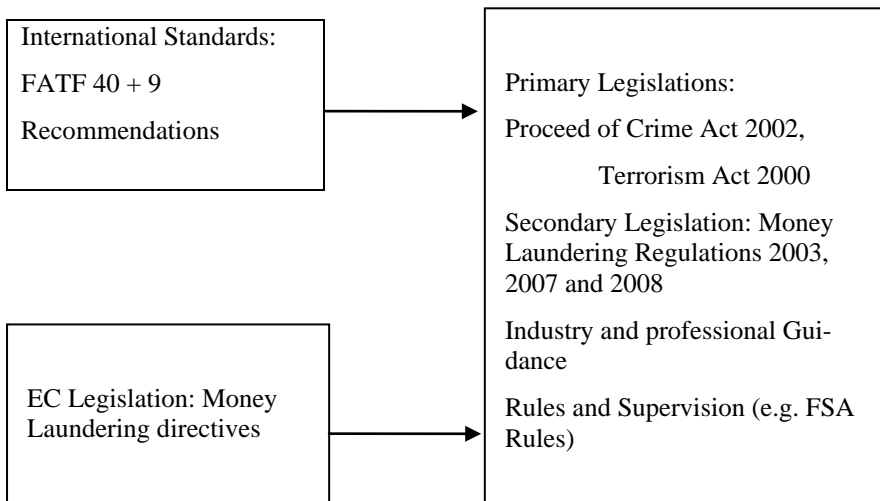
---

<sup>1</sup> The different kinds of controlled drugs, often referred to as ‘illegal drugs’, are divided into three different classes in the UK. These classes (A, B and C) carry different levels of penalty for possession and dealing under the Misuse of Drugs Act 1971. Class A drugs: Ecstasy, LSD, heroin, cocaine, crack, magic mushrooms, amphetamines (if prepared for injection). Class A drugs are considered to be the most likely to cause harm (Home Office, 2012).

## 1. Legislative Framework on AML

The UK's AML system is based on a framework of international standards, primary and secondary legislation, industry and professional standards regulated by the Financial Services Authority (FSA) Rules.

**Figure 1:** The UK Anti-Money Laundering Framework (fsa.gov.uk, 2010).



The origins of the proceeds of crime regime in England and Wales can be found in the Report of the Hodgson Committee in 1984 that recommended the introduction of confiscation powers. The Drug Trafficking Offences Act (1986) introduced confiscation provision for drug traffickers that was extended to non-drug cases by the Criminal Justice Act (1988). The provision for drugs cases was consolidated by the Drugs Trafficking Act (1994), and the Proceeds of Crime Act (1995) strengthened provision further and further aligned non-drug confiscation powers with drug powers (Levi and Osofsky, 1995; Cabinet Office, 2000).

The system did not work well and the implementation of the powers was erratic (Levi and Osofsky, 1995). Reflecting this, in 2000 the Cabinet Office's Performance and Innovation Unit published an influential report recommending, amongst other things, that a legislative framework to strengthen the criminal confiscation regime, remove anomalies and en-

hanced investigative powers was called for (Cabinet Office, 2000). The subsequent 2002 Proceeds of Crime Act brought together a number of financial investigation techniques aimed at maximizing the opportunities for law enforcement personnel to recover the proceeds of crime. Financial investigations are primarily concerned with the seizure of cash; the use of AML powers or with confiscating the proceeds of crime through the court ordered confiscation order (Bullock, 2009:1-2).

### ***1.1. The Proceeds of Crime Act 2002 (or POCA)***

The POCA was deliberately designed to dramatically increase the recovery of the proceeds, or more accurately the financial “benefit”, of crime from acquisitive criminals. It was for this reason the POCA contained new offences of ML; imposed a wider legal duty on the gatekeepers of the financial system to report suspicion of such offences (the SARs regime); allowed the seizure and forfeiture of cash suspected of being the proceeds of crime, and created the Assets Recovery Agency (ARA) to recover criminal assets using a civil standard of proof or taxation. The confiscation of the proceeds of crime after conviction in a criminal court continued, but the potential amount that could be recovered was dramatically increased by the POCA which enabled the recovery of the value of all of the assets gained by a so-called “lifestyle criminal” in the previous six years. In conjunction with this legal watershed, the government put extra resources into the AML and asset recovery regime(s) across the UK. New dedicated institutions such as the ARA and Regional Asset Recovery Teams (RARTs) were created and additional amount of money was also given to existing agencies involved in AML and asset recovery work (Sproat, 2009:392). After SOCA’s establishment the ARA merged with it in 2007.

ML is a crime punishable in the UK by up to 14 years in prison. There are certain facets of it which make it a very distinctive crime. The regime was also simplified and made more consistent by vesting jurisdiction for restraint matters, as well as the investigative tools, in the Crown Court rather than the High Court. POCA also reduced the scope for restrained assets to be eroded by their use to meet legal fees (Criminal Justice Joint Inspection, 2010).

The POCA 2002 created a single set of ML offences applicable throughout the UK to the proceeds of all crimes; these are known as the principal ML offences. There are separate offences of failure to disclose

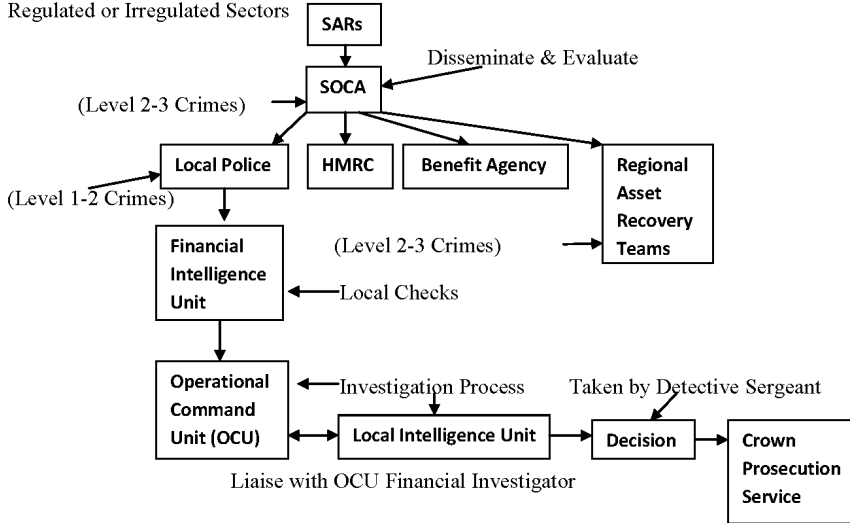
ML. A disclosure of ML or that another person is engaged in ML is commonly known as a Suspicious Activity Report (SAR). SARs can also be made under the Terrorism Act 2000. SARs submitted by firms in the regulated sector (defined by the legislation) reporting that another person is engaged in ML must be made to SOCA.

The start of this process is the reporting of SARs to the nation's Financial Investigation Unit (FIU) based within the SOCA. Once, the SOCA has received the SARs it sends those directly to other law enforcement agencies. This usually means distributing the SARs to the relevant police forces according to the postcode noted in the SAR. The parallel ML Regulations also impose legal duties to maintain an effective AML regime within this regulated sector (Sproat, 2009:394).

A recent report by the SOCA shows that the Agency is full speed ahead with plans to use powerful data analytics tools to help find and prosecute everything from money laundering to illegal gambling to 419 scams (SOCA, 2011:7).

The 2011 Annual Report on Suspicious Activity Reports (SARs) came out in November from the SOCA. The report found that law enforcement officials have taken advantage of the capabilities of an "enhanced search and analysis system" dubbed ARENA that provides enhanced visualization and data aggregation features, allowing law enforcement officials to link SARs to other SARs or law enforcement records that mention people, companies, bank accounts and so on.

According to the report, ARENA system has been used to identify elderly victims of so-called 419 scams in Scotland after banks filed reports about suspicious money transfers. In other incidents highlighted in the report, a network of organized crime figures involved in a mortgage fraud scheme was identified by what's described as ARENA's spidering and visualization features. Other cases showed how information on suspicious bank accounts could be linked to other SAR reports, revealing larger patterns of fraud. SOCA first deployed the ARENA system in November, 2010. ARENA brings greater opportunities for operational success and improves chances for local asset recovery and decision making. As part of the roll out phase SOCA hosted a training event for representatives from end user organisations and appointed "subject matter experts" (SMEs) from within SOCA, who engaged with partner agencies and attended road shows to promote the benefits of ARENA and ensure end users were ready for the live system (SOCA, 2011:3-7).

**Figure 2:** How does the SARs system work?

**Source:** This Cycle of SARs system is drawn based on interviews with Financial Investigators in the Hampshire Constabulary (Sevgel, 2010).

Under POCA, individual persons and businesses in the regulated sector are required not only to report before the suspicious transactions or activity that they become aware of, but to desist from completing these transactions until a specific consent is received. This is the ‘consent regime’ in section 335 of POCA. A person does not commit one of the principal ML offences in sections 327-329 of POCA if he makes a disclosure before the ‘prohibited act’ takes place and obtains the appropriate consent. (Under certain conditions, as set out in section 338(3), a defense can be obtained by reporting after the event). Such disclosures, or “consent SARs”, can be made to any constable or officer of Revenue and Customs. However, current practice is for them to be made to SOCA. Where they are made to a constable or officer of Revenue and Customs they must be forwarded to SOCA as soon as practicable.



**Table 1:** The SARs received by the SOCA in 2009

Key Statistics	Oct 07 to Sept 08	Oct 08 to Sept 09
Total SARs	210,524	228,834
Consent SARs	13,223	113,618
SARs disseminated to National Terrorist Finance Intelligence Unit	956	703
Percentage submitted electronically	94%	96%
Percentage submitted manually	6%	4%
Breaches of confidentiality	2	1

**Source:** (SARs Annual Report, 2009:14).

**Table 2:** The SARs received by the SOCA in 2011

Key statistics	Oct 09 to Sept 10	Oct 10 to Sept 11
Total SARs	240,582	247,601
Consent SARs	14,334	13,662
Percentage submitted electronically	97%	98%
Percentage submitted manually	3%	2%
Breaches of confidentiality	0	1

**Source:** (SARs Annual Report, 2011:10).

The data in Table 1 and 2 show that the number of SARs received by the SOCA had been increased compared to the previous reporting periods.

The “consent” provisions in sections 327-329 and section 335 of POCA have two purposes: Firstly, they offer law enforcement agencies an opportunity to gather intelligence or intervene in advance of potentially suspicious activity taking place and secondly, they allow individuals and institutions who make reports seeking to consent to proceed with a “prohibited act” the opportunity to avoid liability in relation to the principal ML offences in the Act (Home office Circular, 2008).

The Home Office (2004:35) strategy to defeat organized crime noted that: the POCA provided “new opportunities to reduce the available capital that organized crime needs to finance its activities”. According to the government, the POCA has “strengthened” the UK’s AML controls and “made it much harder for criminals to launder their proceeds” (Sproat, 2009:392). In detail, this new legislation removed the previously important distinction between drug and non-drug predicate offences (Sproat, 2009:393), when it came to recovering the proceeds of crime and it criminalized the actual possession of criminal property by the predicate offender (HM Treasury et al., 2007:18). The result was that the POCA contained “three principal ML offences” (SOCA, 2008), Section 329, outlawed the acquisition, use or possession of the proceeds of crime, whilst Section 327 declared it an offence to conceal, disguise, convert, transfer or removes it from the UK jurisdiction and Section 328 outlawed becoming concerned in an arrangement which he knows or suspects will facilitate another person to acquire, retain, use or control criminal property and the person knows or suspects that the property is criminal property (SOCA, 2008). POCA also threatens up to five years imprisonment for similar offences of “tipping off” an investigation (s333), and prejudicing an investigation (s342) (The Joint Money Laundering Steering Group, 2007:129).

Additionally, the ML offences of the POCA can be applied to proceeds derived from any offence under UK criminal law as well as predicate offence which occurs outside of the UK.

Finally, the new powers introduced in the POCA 2002 to take the profit out of crime were “strongly welcomed by police and other law enforcement agencies” (Sproat, 2009:394) The following table shows SOCA’s progress in addressing the Government’s proceeds of crime targets.

**Table 3:** 2010/11 Proceeds of Crime Compared With Earlier Years

	2006/07 (£)	2007/08 (£)	2008/09 (£)	2009/10 (£)	2010/11 (£)
<b>Cash seizure</b>	3.3 million	8 million	9.2 million	5.1 million	8.54 million
<b>Cash forfeiture</b>	2.3 million	2.9 million	4.5 million	n/a	n/a
<b>Restraint orders</b>	27.2 million	46.8 million	128.8 million	103.7million	100.09 million
<b>Confiscation orders</b>	14.5 million	11.6 million	29.7 million	17.2 million	35,22 million
<b>Civil recovery</b>	n/a	n/a	16.7 million	22.3 million	n/a

**Source:** (SOCA Annual Report 2008/09: 32, SOCA Annual Report 2009/10:20 and SARs Annual Report 2011:21).

According to the Table 3, SOCA had shown notable progress between 2006 and 2009 in all titles under proceeds of crime. The progress stopped and declined dramatically in cash seizure and confiscation orders and restraint orders declined slightly as well in 2010 but cash seizure and confiscation orders increased dramatically in 2011. The figure in relation to restraint orders is lower than last year. Because asset recovery investigations can last for much longer than one year and because of the variables involved, asset recovery results can fluctuate widely from one year to the next.

### ***1.2. Terrorism Act 2000***

This Act, which consolidated and extended the UK law on terrorism, came into force in 2001. It is the second of the two pieces of primary UK legislation relating to ML. It was amended very quickly by the Anti-terrorism, Crime and Security Act 2001 which was passed following 11 September and came into effect on 14 December 2001. Afterwards it was further amended by Terrorism Act 2006 and the Counter-Terrorism Act 2008.

The Act defines “terrorist property” as money or other property which is either likely to be used for the purposes of terrorism or the proceeds of an act carried out for the purpose of terrorism. This would obviously include anything which was available for use by a proscribed organization’ as a terrorist organization. The Secretary of State has the power to designate any ‘proscribed organization’ as a terrorist organization.

There are two separate reporting requirements in this Act: Section 19 and Section 21A. Section 19 relates to persons and businesses outside the regulated sector, whereas 21A only applies to the regulated sector. The reporting requirements for the regulated sector are basically the same as for the POCA 2002 (Hopton, 2010:79).

Financial sanctions are not part of any of the above Acts but they do have an effect on AML procedures and policies (Hopton, 2010:81).

### ***1.3. Money Laundering Regulations 2007***

The Money Laundering Regulations 2007, which were laid before Parliament on 25 July 2007, implement into UK law the requirements of the Third EU Money Laundering Directive(2005) and came into force on 15 December 2007 (Hopton, 2010:83) It explicitly enshrines in UK legislation the concept of the risk-based approach to AML. This approach is relevant not only to the way firms discharge their legal obligations in the area of customer due diligence, but also to the way supervisors monitor their firms. The Government has made clear that it regards the risk-based approach to AML as essential to the effective and proportionate functioning of the UK’s AML regime. The Regulations also require all persons subject to the Regulations to be supervised. As a result, the number of supervisory authorities with responsibilities in the area of AML in the UK has increased (Anti-Money Laundering Supervisors’ Forum, 2008).

## **2. AML Structure: Combating Institutions**

### ***2.1. Ministries and Co-ordinating Committees***

Her Majesty’s Treasury (HM Treasury or HMT) is responsible for all policy on the regulation of the UK’s financial services sector, which includes joint overall co-ordination of UK AML/CFT policy with the Home Office. The Treasury has a dedicated Financial Crime Team whose responsibilities include: negotiation and domestic implementation of EU

ML Directives and related European legislation; domestic implementation of international financial sanctions obligations imposed at both UN and EU level, and the application of unilateral financial sanctions and asset freezes; leading the UK delegation to the FATF & representing the UK at other international fora or conferences concerning AML/CFT; and approval of industry guidance on compliance with ML and terrorist financing controls (FATF UK Report, 2007:24).

The Home Office serves as the ministry of the interior for England and Wales. It is responsible for the funding and oversight of the 43 police forces in England and Wales, and the SOCA. It is also responsible for national security across the UK. The Home Office has a Specialist Crime Directorate and a Terrorism Policy Unit to cover these responsibilities: all UK primary legislation concerning ML and terrorist financing; overall police strategy and targets for ML and terrorist financing investigations and prosecutions; overall strategy and targets for asset seizure and confiscation in England & Wales; leading on domestic counter-terrorism policy; coordinating mutual legal assistance treaties and requests; implementing EU Framework Decisions and Conventions on ML and other criminal issues (FATF UK Report, 2007:24).

The Foreign and Commonwealth Office (FCO) is the UK's ministry of foreign affairs. It has little direct responsibility for the domestic AML/CFT framework; however, it does have lead responsibility for UK entry into international agreements, such as ratification of UN treaties, and negotiation of UN Security Council Resolutions (FATF UK Report, 2007:24).

The Department for Trade and Industry (DTI) is the ministry responsible for trade, business, employees, consumers, science and energy. As such, it is responsible for the law relating to legal persons and is responsible for two relevant executive agencies: (1) the Companies House which incorporates and dissolves companies in the UK on behalf of the registrar of companies, and stores information that companies are obliged to provide under the Companies Act 1985; and (2) Companies Investigation Branch, which investigates companies for adherence to company law (FATF UK Report, 2007:24).

The Money Laundering Advisory Committee (MLAC) is jointly chaired by Home Office and HMT and is a forum for key public and private stakeholders to co-ordinate the UK's AML regime and reviews its

efficiency and effectiveness. Most financial services sector trade associations are represented (FATF UK Report, 2007:24).

The Terrorist Finance Action Group (TFAG) is an inter-governmental committee that forms part of the wider government framework on counter-terrorism. It is focused on the development of policy to combat terrorist financing, and brings together representatives from central government, regulators, intelligence, and law enforcement (FATF UK Report, 2007:24).

## ***2.2. Criminal Justice and Operational Agencies***

Serious Organized Crime Agency (SOCA) became operational on 1 April 2006. The functions of the National Crime Squad and the National Criminal Intelligence Service (NCIS) were transferred to SOCA and those agencies have been abolished. SOCA also absorbed the investigative functions of HM Revenue and Customs (HMRC) in relation to drug trafficking and related criminal finance, and a small part of the Immigration Service. The UK FIU is located within SOCA (FATF UK Report, 2007:25). Its functions are described in its 2009/10 Annual Plan as ‘to prevent and detect serious organized crime and to contribute to its reduction in other ways and the mitigation of its consequences, and to gather, store, analyze and disseminate information on crime. In addition, SOCA is tasked to provide support to law enforcement partners, notably the UK police forces and HM Revenue and Customs (SOCA Annual Plan, 2009/10:7).

Police: There are 43 regional police forces in England and Wales funded by and subject to Home Office oversight, 8 in Scotland funded by and subject to Scottish Executive oversight and 1 in Northern Ireland funded by the Northern Ireland Office and answerable to the Northern Ireland Policing Board. In Scotland there is also a dedicated Scottish Crime and Drug Enforcement Agency “SCDEA” which tackles ML as part of its remit (FATF UK Report, 2007:24-26). Of the 43 forces in England and Wales the majority have specialist financial crime investigation units, accounting for approximately 3000 trained financial investigators. All are trained to a common standard and provided with support, both in terms of operational capacity and continuous knowledge development along with safeguards to prevent the abuse of the intrusive powers of POCA (National Policing Improvement Agency, 2012).

There are also 5 Regional Asset Recovery Teams (RART) in England and Wales. Funded through the Recovered Assets Incentivisation Fund (RAIF), these multi-agency teams provide financial investigation expertise for ML, cash seizure and confiscation in support of criminal prosecution and provide assistance to law enforcement agencies within their region (London, North East, North West, West Midlands and Wales) (FATF UK Report, 2007:25).

National Terrorist Finance Investigation Unit (NTFIU) is the lead authority for the investigation of terrorist financing in the UK, although individual forces also undertake such investigations when relevant or appropriate. NTFIU relies on CPS, PPSNI, or COPFS to take forward prosecutions (FATF UK Report, 2007:25).

The Serious Fraud Office (SFO) is an independent government department that investigates and prosecutes serious or complex fraud, headed by a Director who is appointed by and accountable to the Attorney General. The SFO's jurisdiction covers England, Wales, and Northern Ireland but not Scotland. The SFO has a limited role in the investigation of ML except where the laundering has formed part of a larger more complex financial crime (FATF UK Report, 2007:25).

The Crown Prosecution Service (CPS) is the principal independent prosecuting authority in England and Wales and is responsible for prosecuting criminal cases investigated by the police and SOCA. It advises the police and SOCA on cases for possible prosecution and reviewing cases received; determines the charge in all but minor cases; prepares cases court; and applies for restraint, receivership and confiscation orders in respect of CPS prosecutions. The CPS is headed by the Director of Public Prosecutions who is superintended by the Attorney General (FATF UK Report, 2007:25).

The Public Prosecution Service Northern Ireland (PPSNI) is the Government Department responsible for prosecuting criminal cases investigated by the police, HMRC, and SOCA in Northern Ireland. It is headed by the Director of Public Prosecutions Northern Ireland who is accountable to the Attorney General Northern Ireland (FATF UK Report, 2007:26).

The Scottish Crown Office and Procurator Fiscal Service (COPFS) prosecute all crime in Scotland. One of its current key objectives is the recovery of assets of those involved in criminal activities. COPFS is headed by the Crown Agent who is accountable to the Lord Advocate, the

principal law officer of the Crown in Scotland (FATF UK Report, 2007:26).

Her Majesty's Revenue and Customs (HMRC) is primarily responsible for the collection of taxes, and the enforcement of import / export controls. HMRC's jurisdiction is UK-wide. It has two key functions relating to AML: (1) Investigative: including the investigation of tax matters, smuggling and ML activities (not including drugs, currently the responsibility of SOCA); and enforcement relating to the seizure and confiscation of cash at ports and other frontiers; and (2) Regulatory: HMRC registers money service businesses and high value dealers, and has enforcement powers in relation to these two sectors. As of June 2007, HMRC will also be responsible for enforcing the provisions of EU Council Regulation No 1889/2005 (FATF UK Report, 2007:26).

The Revenue and Customs Prosecution Office (RCPO) is an independent government department responsible for prosecuting all HMRC criminal cases and SOCA investigations of drug trafficking and related ML in England and Wales. It is headed by the Director of Revenue of Customs Prosecutions who is accountable to the Attorney General. RCPO defers to the Crown Office for prosecutions in Scotland and the PPSNI in Northern Ireland (FATF UK Report, 2007:26).

### ***2.3. Financial Sector Bodies-government***

The Bank of England (BoE) is the central bank of the United Kingdom. Its two key functions are the promotion and maintenance of monetary stability and financial stability. The BoE acts as the agent of HMT in the day-to-day administration of financial sanctions (asset freezing etc). In this regard, the BoE produces and maintains an up to date list of financial sanctions targets, notifies the financial services sector of changes to the list, and issues licenses for humanitarian exemptions to financial sanctions where appropriate (FATF UK Report, 2007:26).

The Financial Services Authority (FSA) is an independent non-governmental body, given statutory powers by the Financial Services and Markets Act (FSMA) 2000, and is a company limited by guarantee. HMT appoints the FSA Board for fixed terms. The Board consists of a Chairman, a Chief Executive Officer, three Managing Directors, and 9 non-executive directors. The FSA is accountable to Treasury Ministers and through them to Parliament for its performance. It is operationally independent of Government and sets its own budget which is funded entirely



by the firms it regulates. The FSA is the main statutory regulator (as well as AML/CFT regulator) for the financial services industry in the UK and regulates nearly 29,000 firms and approximately 165,000 individuals within these firms. The FSA authorises and regulates most financial services markets, exchanges and firms. It has a wide range of rule-making, investigatory, and enforcement powers. One of its four statutory objectives is the reduction of financial crime, including fraud or dishonesty, market misconduct and ML (FATF UK Report, 2007:26).

The Office of Fair Trading (OFT) is responsible for making markets work well and as part of this general function, is the statutory regulator of consumer credit providers; this includes licensing such providers, and enforcing the obligations contingent on such a licence (FATF UK Report, 2007:26).

## **Conclusion**

FATF rates its member's compliance of 40 + 9 Recommendations with a simple method. The rating of compliance concerning the FATF Recommendations are made according to the four levels of compliance mentioned in the 2004 Methodology: Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC) - or, in exceptional cases, Not Applicable (N/A).

Compliant means the Recommendation is fully observed with respect to all essential criteria. Largely compliant means there are only minor shortcomings, with a large majority of the essential criteria being fully met. Partially compliant means the country has taken some substantive action and complies with some of the essential criteria. Non-compliant means there are major shortcomings, with a large majority of the essential criteria not being met. Not applicable means a requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country (FATF Turkey Report, 2007:130).

According to these rating of compliance tables (2007), the UK was compliant with 24 recommendations, largely compliant with 12, partly compliant with 10 and non-compliant with only 3 recommendations (FATF UK Report 2007:283-288).

The UK has reached a satisfactory level of compliance with all core Recommendations and key Recommendations. Consequently, FATF

decided to remove the UK from the regular follow up process, with a view to having it present its first biennial update in October 2011 (FATF Follow up Report of the UK, 2009:4).

Although the turnover of the most serious forms of organized crime is perhaps £15 billion a year, the UK has not signed the Warsaw Convention<sup>2</sup>. According to House of Lords Report 2009, the failure to sign and ratify the Warsaw Convention sends out a negative message about current United Kingdom commitment to the prevention and control of ML and the financing of terrorism. The Warsaw Convention, if in force, would also help with recovery of the proceeds of crime, especially through civil proceedings. The UK Government has not set a clear timetable for signature and ratification (House of Lords Report, 2009:20).

Moreover, the SAR was reviewed by Sir Stephen Lander in 2006. The key conclusion of his review was that the reports are a potentially invaluable resource and could be used much better. One of the key ways this could happen is through better information sharing. SARs represent a prima facie basis for suspicion of crime, and provisional SOCA analysis of SARs suggests that the underlying suspicion of criminal activity is likely to be well founded in at least 40% of reports made (Lander, 2006:17).

Prioritizing the reports for action and developing the information they contain is, however, a substantial challenge given the very large numbers submitted (over 200,000 per annum). Depending on the underlying facts behind the report, there could be a range of possible responses. Some might justify full scale criminal investigation, others might lead to valuable further leads, and many are likely to justify further investigation on tax or asset recovery grounds.

Additionally, the joint criminal justice inspectorate report in 2004, called "*Payback Time*", surveyed the asset recovery landscape a year after the POCA 2002 had come into force. It found that there were pockets of excellent practice but that the overall application of the powers across England and Wales was patchy, with ML and confiscation seen as complex, specialist activities, divorced from mainstream business. Activity was often only targeted at the higher profile 'crime barons' and almost exclusively against drug trafficking, leading to failure to use POCA to its

---

<sup>2</sup> Warsaw Convention: Council of Europe adopted Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism on May 16, 2005.

full potential. Opportunities to combat those engaged in volume crime, street robbery and low-level drug dealing were being missed.

Since then, more work has been done to mainstream asset recovery, and to improve performance in the usage of POCA. Targets were set for police forces and the Crown Prosecution Service (CPS) to achieve this goal. In October 2007, the government's Public Service Agreement (PSA) target was for £250 million to be recovered (including by way of confiscation, cash forfeiture and civil recovery/tax) by 2009-10, out of a criminal economy estimated to be worth £15 billion. However, since the baseline of £125 million was established in 2006-07, performance has fallen steadily behind trajectory, and the overall target is very unlikely to be met this financial year (HMIC, 2010).

Furthermore, the confiscation investigation is not a mainstream policing activity. Her Majesty's Inspectorate of Constabulary (HMIC, 2004) noted that despite the increased interest and investment in recovering the proceeds of crime, the provisions of the POCA 2002 remain a mystery to many within the police. The key message from the joint criminal justice inspectorate report "Payback Time" in 2004 was that POCA represents a powerful opportunity to disrupt and deter criminality, but only if it is used as a routine investigative process against a wide range of criminality. Joint Inspection of HMIC Report 2010 found that this message has yet to become a reality in the criminal justice system, although their fieldwork has confirmed that the confiscation system is at least partially effective, insofar as it delivers large sums of cash from the hands of convicted defendants into the public purse, in a manner which is just to defendants, according to the POCA regime (HMIC, 2010:1).

The Public Service Agreement (PSA) targeted to recover £250 million of criminal assets in 2009-10. The HMIC 2010 Report identified two particular and connected reasons which mean that assets are not likely to be recovered at the optimum rate. It is apparent that the targets fixed do not have a direct correlation with what is achievable or what the system is resourced to deliver (HMIC, 2010:2). Indeed in terms of volume, confiscation orders are relatively few according to the Ministry of Justice Statistics bulletin (2010:7), the number of confiscation orders obtained across England and Wales from April to September 2010 was 2,698.

Finally, according to the joint criminal justice inspectorate report 2010; Police Financial Investigators (FIs) are often allocated to assist in the identification and categorization of confiscation cases when the inves-

tigative officer first notifies the police Economic Crime Unit (ECU). Their role tends to be limited to this task and they then move on, to return later when the defendant is convicted, without having made any preliminary judgments as to the potential recoverable assets. This investigative vacuum arises at the very point, known by some as “the golden hour”, when it might be most desirable and appropriate to identify, value, and freeze any assets in the hands of the defendant. Generally, it is envisaged that FIs should work throughout the life of the case with prosecutors and investigative officers. However, links between FIs and the criminal investigation are less than clear in some areas, and there is an apparent lack of synchronization between them in most cases, within the police and HMRC. Therefore, assets are not always properly identified, some are not realistically valued, and few are restrained (HMIC, 2010:3).

## References

- Anti-Money Laundering Supervisors’ Forum, (2008), “A risk-based approach to anti-money laundering supervision in the UK”, [http://www.fsa.gov.uk/pages/About/What/financial\\_crime/pdf/amlsf\\_mar08.pdf](http://www.fsa.gov.uk/pages/About/What/financial_crime/pdf/amlsf_mar08.pdf) (erişim tarihi: 28.5.2010).
- Bullock, Karen, (2009), “The Confiscation Investigation: Investigating the Financial Benefit Made from Crime”, *Oxford Journals: Policing*, V. 1, N. 4, pp.7-14.
- Cabinet Office, (2000), “Recovering the Proceeds of Crime”, London: Cabinet Office.
- Criminal Justice Joint Inspection, (2010), “Joint Thematic Review of Asset Recovery: Restraint and Confiscation Casework, March 2010”, <http://library.npia.police.uk/docs/hmcpsi/AssetRecovery.pdf> (erişim tarihi: 20.6.2010).
- FATF (Financial Action Task Force), (2007), “Third Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism, Turkey”, <http://www.fatf-gafi.org/dataoecd/14/7/38341173.pdf> (erişim tarihi: 15.05.2010).
- FATF (Financial Action Task Force), (2007), “Third Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism, The United Kingdom of Great Britain and Northern Ireland”, <http://www.fatf-gafi.org/dataoecd/55/29/39064399.pdf> (erişim tarihi: 13.05.2010).

- FATF (Financial Action Task Force), (2009), “Mutual Evaluation Fourth Follow-Up Report Anti-Money Laundering and Combating the Financing of Terrorism United Kingdom”, <http://www.fatf-gafi.org/dataoecd/44/8/44048060.pdf> (erişim tarihi: 13.01.2012).
- FATF (Financial Action Task Force), (2010), “Improving Global AML/CFT Compliance: On-going Process”, <http://www.fatf-gafi.org/dataoecd/34/28/44636196.pdf> (erişim tarihi: 14.01.2012).
- Financial Services Authority, (2010), [http://www.fsa.gov.uk/library/publications\\_by\\_date](http://www.fsa.gov.uk/library/publications_by_date), (erişim tarihi: 15.01.2012).
- Gill, Martin and Taylor, Geoff, (2004), “Preventing money laundering or obstructing business? Financial companies' perspectives on ‘know your customer’ procedures”, *The British Journal of Criminology*, V. 4, N. 44, pp.94-582.
- Gilmore, William C., (2004), *Dirty Money: The evolution of international measures to counter money laundering and financing of terrorism* (3<sup>rd</sup> ed.), Strasbourg: Council of Europe Publishing.
- HMIC (Her Majesty’s Inspectorate of Constabulary), (2004), “Payback Time: Joint Inspection of Asset Recovery since the Proceeds of Crime Act 2002”, London: HMIC.
- HMIC (Her Majesty’s Inspectorate of Constabulary), (2010), “Executive Summary of Joint Thematic Review of Asset Recovery: Restraint and Confiscation Casework”, <http://www.hmic.gov.uk/media/joint-thematic-review-of-asset-recovery-restraint-and-confiscation-casework-executive-summary-20100324.pdf> (erişim tarihi: 25.01.2012).
- HMIC (Her Majesty’s Inspectorate of Constabulary), (2010), “Getting Organised- A thematic report on the police service’s response to serious and organised crime”, [http://www.hmic.gov.uk/sitecollectiondocuments/thematics/thm\\_20090331.pdf](http://www.hmic.gov.uk/sitecollectiondocuments/thematics/thm_20090331.pdf) (erişim tarihi: 25.05.2010).
- Her Majesty’s Treasury, Home Office, SOCA and FCO, (2007), “The Financial Challenge to Crime and Terrorism”, February, p.8, [http://www.hm-treasury.gov.uk/d/financialchallenge\\_crime\\_280207.pdf](http://www.hm-treasury.gov.uk/d/financialchallenge_crime_280207.pdf) (erişim tarihi: 23.05.2010).
- Home Office, (2004), “One Step Ahead: A 21st Century Strategy to Defeat Organized Crime”. London: *Her Majesty’s Stationary Office*.

- Home Office, (2009), "Extending our reach: A comprehensive approach to tackling serious organised crime", <http://www.homeoffice.gov.uk/documents/extending-our-reach/> (erişim tarihi: 05.07.2010).
- Home Office, (2012), "Drugs and the Law", <http://www.homeoffice.gov.uk/drugs/drug-law/index.html/> (erişim tarihi: 05.05.2012).
- Hopton, Doug, (2010), *Money Laundering: A Concise Guide for all Business* (2<sup>nd</sup> ed.), Farnham: Gower Publishing Ltd.
- House of Lords, (2009), "Money Laundering and Financing of Terrorism", (Volume 1), <http://www.publications.parliament.uk/pa/ld200809/ldselect/ldecom/132/132i.pdf> (erişim tarihi: 15.06.2010).
- IMF (International Monetary Fund), (2011), "United Kingdom: Anti-Money Laundering/Combating the Financing of Terrorism Technical Note", <http://www.imf.org/external/pubs/ft/scr/2011/cr11231.pdf> (erişim tarihi: 25.01.2012).
- JMLSG (The Joint Money Laundering Steering Group), (2007), "Prevention of money laundering/combating terrorist financing" <http://www.jmlsg.org.uk/jmlsg-guidance/part-i-of-the-jmlsg-2007-guidance> (erişim tarihi: 25.05.2010).
- Lander, Stephen, (2006), "Review of the Suspicious Activity Reports Regime", [http://www.soca.gov.uk/about-soca/library/doc\\_download/177-sars-review-sir-stephen-lander](http://www.soca.gov.uk/about-soca/library/doc_download/177-sars-review-sir-stephen-lander) (erişim tarihi: 23.5.2010).
- Levi, Michael and Osofsky, Lisa, (1995), "Investigating, Seizing and Confiscating the Proceeds of Crime", London: Home Office", <http://webarchive.nationalarchives.gov.uk/20110218135832/http://rds.homeoffice.gov.uk/rds/prgpdfs/fcdps61.pdf> (erişim tarihi: 17.01.2012).
- Levi, Michael and Reuter, Peter, (2009), "Money Laundering", In Michael Tonry (Ed.), *The Oxford Handbook of Crime and Public Policy*, New York: Oxford University Press, pp.356-378.
- Ministry of Justice, (2010), "The Ministry of Justice Statistics Bulletin (2010)" <http://www.justice.gov.uk/publications/docs/cjs-stats-bulletin-sept2010.pdf> (erişim tarihi: 19.01.2012).
- Rees, Edward; Fisher, Richard and Bogan, Paul, (2008), "Blackstone's Guide to The Proceeds of Crime Act 2002", (3<sup>rd</sup> Ed.), Oxford: Oxford University Pres, pp.15-127.

- Schneider, Friedrich, (2010), “Money Laundering and Financial Means of Organized Crime: Some Preliminary Empirical Findings”, [http://www.diw.de/documents/publikationen/73/diw\\_01.c.354167.de/diw\\_econsec0026.pdf](http://www.diw.de/documents/publikationen/73/diw_01.c.354167.de/diw_econsec0026.pdf) (erişim tarihi: 25.01.2012).
- Sevgel, Selçuk, (2010), “Field interviews in relation to Financial Crime Investigation and Anti-money Laundering Regime”, Portsmouth.
- SOCA (Serious Organised Crime Agency), (2006), “The United Kingdom Threat Assessment of Serious Organised Crime 2006/7”, [www.soca.gov.uk/assessPublications/downloads/threat](http://www.soca.gov.uk/assessPublications/downloads/threat) (erişim tarihi: 15.05.2010).
- SOCA (Serious Organised Crime Agency), (2008), “Annual Plan 2008/09”, [http://www.soca.gov.uk/assessPublications/downloads/SocaAnnualPlan\\_0809.pdf](http://www.soca.gov.uk/assessPublications/downloads/SocaAnnualPlan_0809.pdf) (erişim tarihi: 15.05.2010).
- SOCA (Serious Organised Crime Agency), (2009), “Suspicious Activity Reports Regime Annual Report 2009”, <http://www.soca.gov.uk/news/151-suspicious-activity-reports-regime-annual-report-2009> (erişim tarihi: 16.05.2010).
- SOCA (Serious Organised Crime Agency), (2010), “The United Kingdom Threat Assessment of Organised Crime 2009/10”, [http://www.soca.gov.uk/search?q=The+United+Kingdom+Threat+Assessment+of+Organised+Crime+2009%2F10&Submit=Go&option=com\\_googlemini](http://www.soca.gov.uk/search?q=The+United+Kingdom+Threat+Assessment+of+Organised+Crime+2009%2F10&Submit=Go&option=com_googlemini) (erişim tarihi: 22.01.2012).
- SOCA (Serious Organised Crime Agency), (2011), “Suspicious Activity Reports Regime Annual Report 2011”, <http://www.soca.gov.uk/news/391-publication-of-the-sars-annual-report-2011> (erişim tarihi: 21.01.2012).
- Sproat, Peter Alan, (2009), “Payback time? To what extent has the new policing of assets provided new assets for policing?”, *Journal of Money Laundering Control*, V.4, N.12, pp.392-405.
- UNODC (United Nations Office on Drugs and Crime), (2012), “Introduction to money-laundering”, <http://www.unodc.org/unodc/en/money-laundering/introduction.html?ref=menu> (erişim tarihi: 23.01.2012).

