

Ten Years of EU's Fight Against Terrorist Financing: A Critical Assessment

Oldřich Bureš

Metropolitan University Prague

oldrich.bures@mup.cz

Structure of the presentation

1. Intro to countering terrorist financing (CTF)
2. Key international and EU CTF instruments
3. Meeting EU's own CTF goals
4. Effectiveness of EU's CTF measures
5. EU-US TFTP "official" and "unofficial" records
6. Difficulties of private financial institutions with the risk based model within the publicly regulated CTF framework
7. Lessons learned: **Efficiency does not equal effectiveness when it comes to CTF!**

Introduction: CTF logic & aims

- Logic: Terrorists, like everyone else, need money and resources to survive and function => if the money can be shut down, so can the terrorist activities that it was meant to finance
- Aims:
 1. To prevent terrorists and those connected with them from receiving money and money substitutes in the first place, and
 2. To enhance the speed, quality and quantity of intelligence, investigations and evidence gathering relating to terrorists/criminals who already hold funds (and so improve surveillance and/or interdiction)

Key multilateral CTF processes

- United Nations Framework - **targeted/smart sanctions model** (i.e. blacklisting+freezing):
 1. UN GA and various other UN agencies have produced thirteen counterterrorism-oriented conventions and protocols
 2. UN Security Council resolutions (UNSCR) represent the second strand of UN's CTF activity: 1267, 1333, 1373, 1390, 1989
- Financial Action Task Force Framework - **anti-money laundering model** (i.e. KYC+reporting):
 1. Forty Recommendations for pursuing the fight against money laundering (1990)
 2. Nine Special Recommendations (2001/2004)

Key EU CTF Instruments

- Measures specifically designed to implement and/or enhance the UN SCRs and FATF's recommendations :
 - The First (1991), Second (2001), Third (2005) and Fourth (2015) Money Laundering Directives (MLD)
 - Promulgation of the key elements of UN SCR 1373 as first pillar EC regulations/third pillar decisions - EU's own terrorist list
 - Direct adoption of the UN terrorist list concerning financial assets of Taliban, Al-Qaeda and their associates (UN SCR 1267 and 1989)
- Special measure: The 2010 EU-US TFTP Agreement
- **EU CTF = Combination of anti-money laundering and targeted sanctions models**

Meeting EU's Own CTF Goals?

- Official EU documents offer no baseline performance evaluation criteria for assessing CTF efforts
- One can merely detect the following specific CTF “goals” for EU Member States, whose achievement can be evaluated:
 1. Ratification and implementation of UN resolutions and FATF recommendations
 2. Drafting, adoption and implementation of EU's own legal measures

Ratification and implementation of UN Resolutions and FATF Recommendations

1. Slow transposition of EU measures to national law
2. *De iure* acceptance of an external (=UN SCR 1267) terrorist list, whose listing/de-listing procedures the EU cannot control, criticized on both legal and human rights grounds
3. EU MSs have different motives for, and thus also records of, compliance with the FATF recommendations
4. Blind implementation of external models which may not be appropriate for dealing with CTF in Europe:
 - a) The “smart sanctions” regime is neither smart nor targeted enough
 - b) The FATF reporting regime is actually an organized crime regime, not a specific CTF regime

	Interest in introducing FATF40R and 9SR	
	High	Low
High initial level of compliance (sound financial system)	Terrorist threat countries (A)	Economically developed countries which want to remain transparent (B)
Low initial level of compliance (less transparent financial system)	Economic growth countries (C)	Low transparency, less concerned countries. (D)

Source: John Howell & Co. 2007, 23.

Cash payment restrictions in the European Union: an overview

Belgium		€3,000	1 January 2014
Bulgaria		BGN 10,000 (≈€5,112)	1 July 2011
Czech Republic		CZK 350,000 (≈€12,763)	1 January 2013
Denmark		DKK 10,000 (≈€1,340)	1 July 2012
France	€3,000 (residents and non-resident traders)	€15,000 (non-resident consumers)	1 January 2002
Greece		€1,500	1 January 2011
Hungary		HUF 1.5 million (≈€5,000) (legal persons)	1 January 2013
Italy		€999.99	6 December 2012
Portugal		€1,000	14 May 2012
Slovakia	€5,000	€15,000 (natural persons being not entrepreneurs)	1 January 2013
Spain	€2,500 (residents)	€15,000 (non-residents)	19 November 2012

Source: European Consumer Centre France (2014); Véber and Brosch (2013)

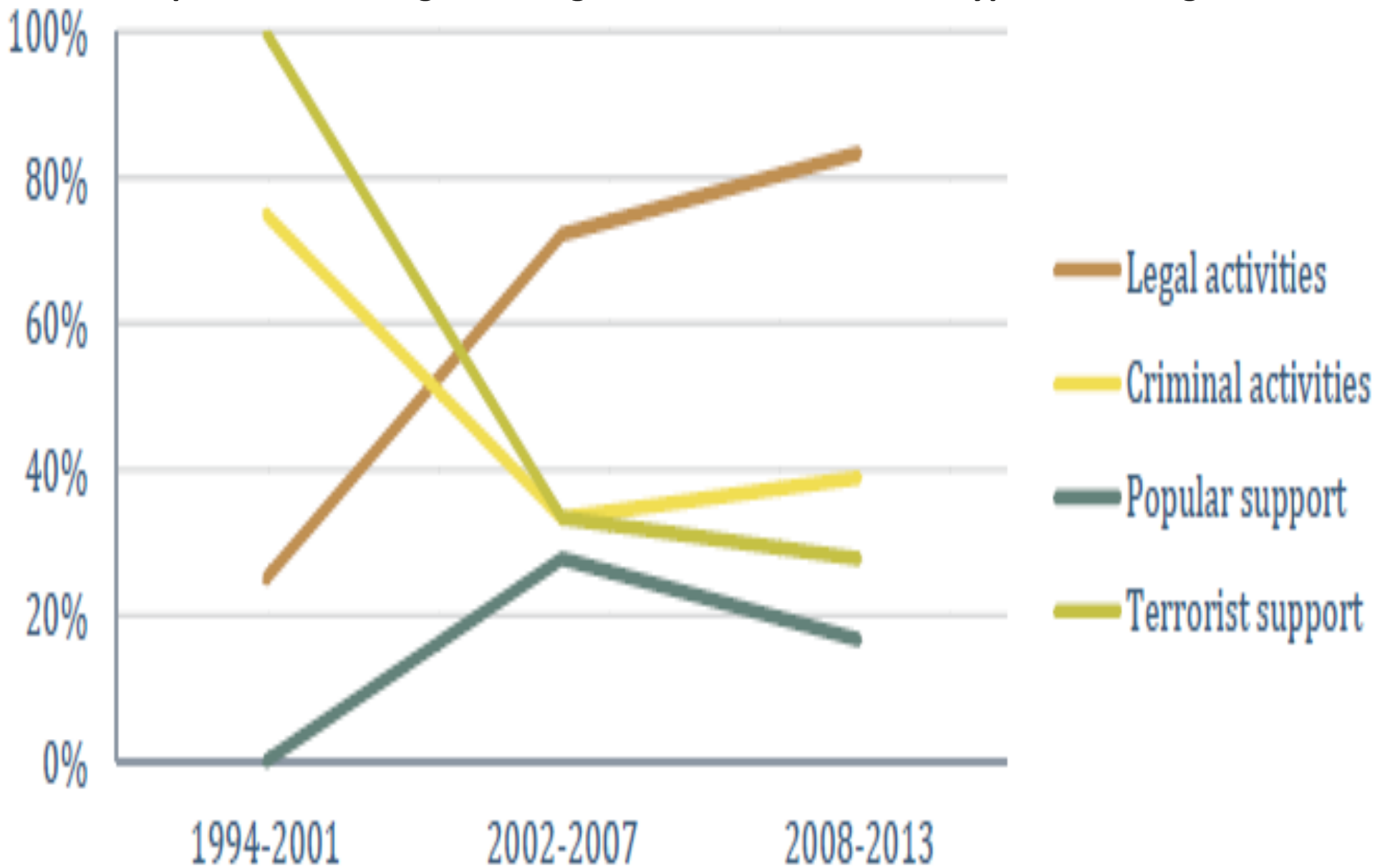
Findings of a 2014 Norwegian study regarding financing of 40 jihadi cells that have plotted attacks against Europe over the last 20 years (1994 to 2013)

- 73% of the 40 jihadi cells studied generated income from legal sources, and the most common income source was the salaries and savings of cell members.
- There is no evidence that involvement in criminal activities has increased.
- Most jihadi cells in Europe raise the money they need themselves, and close to 50% have been entirely self-financed.
- Only 25% of the cells studied received support from international terrorist networks.
- Only two cases (5%) involved funding from Islamic charities.
- Self-financed cells are more likely to execute attacks than cells that received outside support. Among entirely self-financed cells, 53% have managed to carry out their plans, compared to only 21% among those that receive some external support.

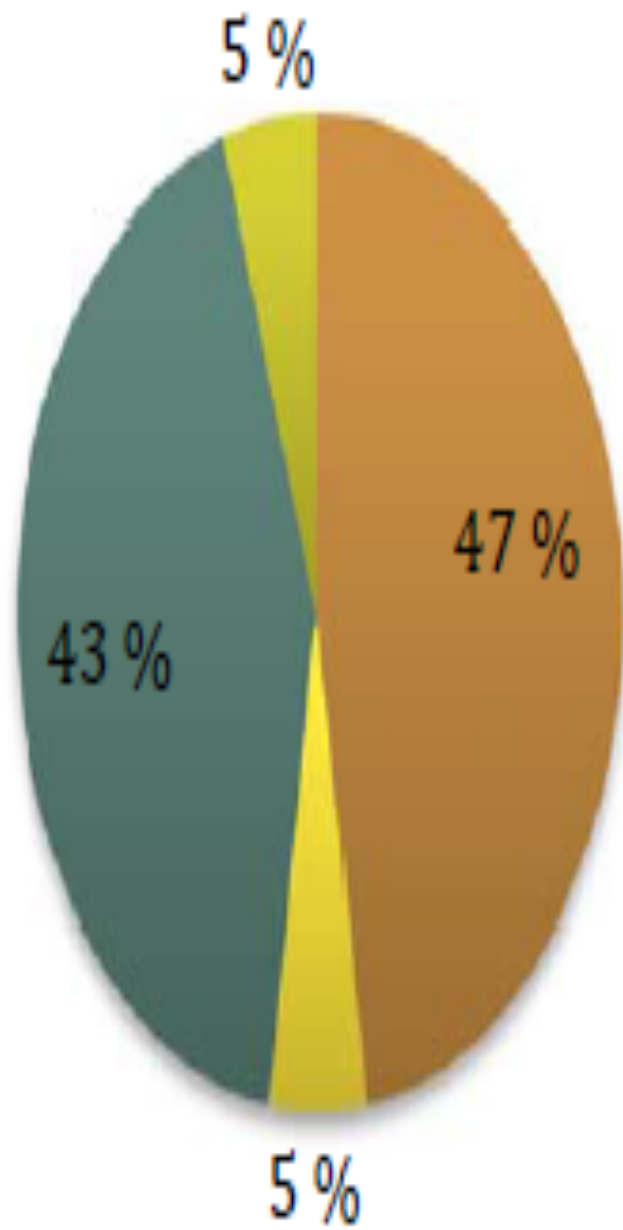
(Source: www.ffi.no/no/Rapporter/14-02234.pdf)

Change in Types of Funding Over Time

Proportion of cells generating income from the main type of funding



Self-Financing vs. External Support



■ Only self-generated income

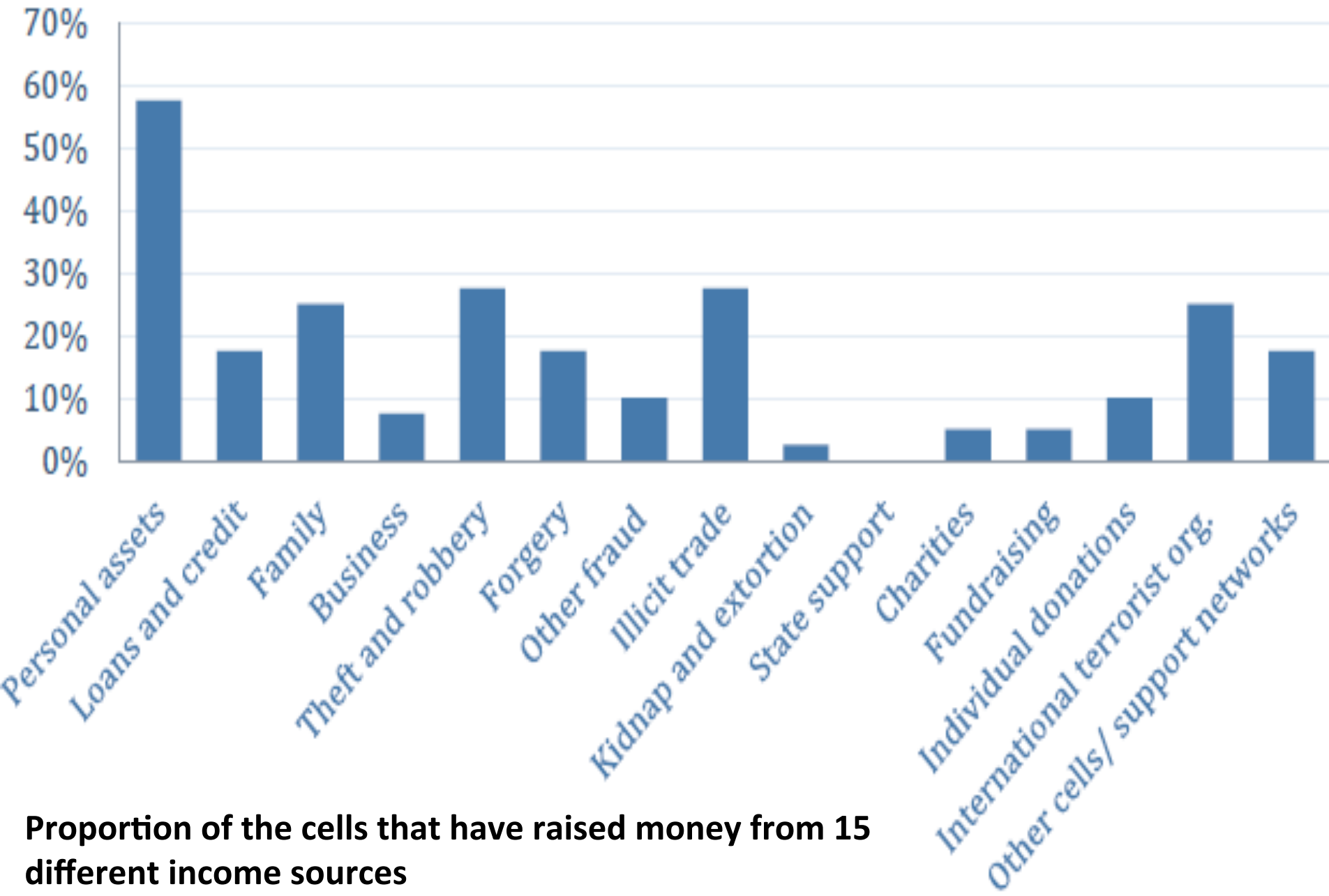
■ Only external support

■ Both

■ No information

Proportion of cells that are self-funded, externally supported, and a combination

Income Sources



Proportion of the cells that have raised money from 15 different income sources

Drafting, adoption and implementation of EU's own CTF measures

1. Different EU lists (plus national list in MSs) with different names/groups
2. Slow transposition of EU measures to national law
3. Imperfect utilization of even formally transposed EU measures by relevant national authorities
4. Differences in regard to the sophistication and transparency of national financial systems
5. EU's own terrorist lists and their compilation also criticized on both legal and human rights grounds – ultimately forced EU Council to revise the listing/de-listing provisions

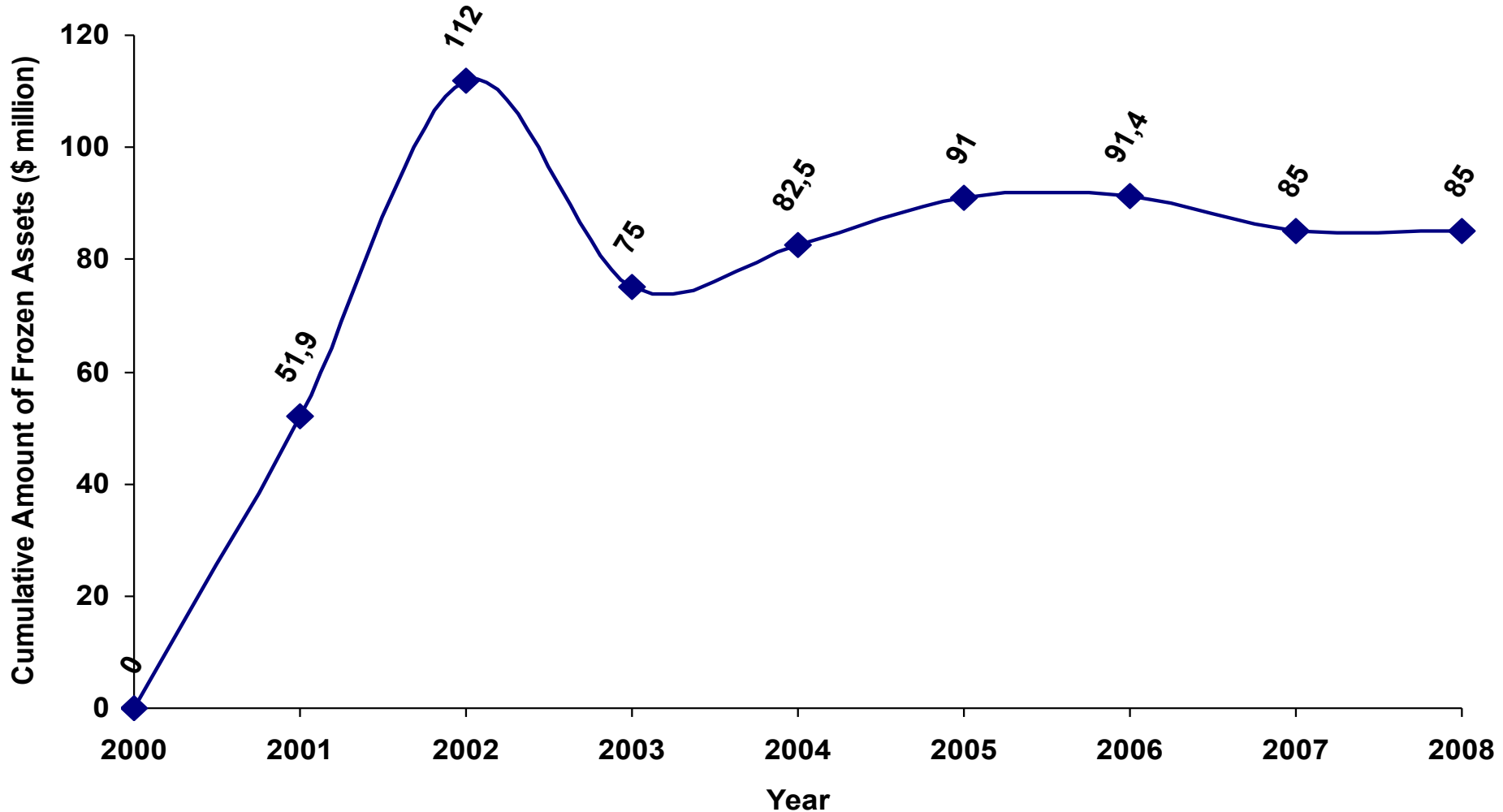
Effectiveness of EU CTF policy?

- Instead of assessing the impact of CTF measures, most official CTF evaluations focus on output, e.g. on the adoption of agreed principles, best practices and their implementation, rather than on actual impact and tangible outcomes
- **BUT efficiency is not the same as effectiveness!**
Possible CTF effectiveness criteria:
 1. Amount of Frozen Terrorist Assets
 2. Number of Suspicious Activity Reports
 3. Number of criminal proceedings/convictions
 4. Possibly also: Number of forfeiture orders, value of assets diverted, reduced revenues to terrorist organizations, increased international cooperation, lower number of attacks
- PLUS, the crucial, yet thus far neglected, role of private sector that actually does CTF in practice + Impact on civil rights and liberties + Unintended consequences

Amount of Frozen Terrorist Assets

- “European countries have frozen nearly \$35 million in terrorist assets since the September 11 attacks in the U.S., a figure equal to the assets blocked by the U.S.” (The *Financial Times*, 2002)
- Since 2002, according to a March 2004 news report by the *Associated Press*, banks across the EU have allegedly frozen close to \$2 million dollars in assets belonging to terrorist groups.
- “[A]t least \$139 million in assets has been kept out of the control of terrorists as a result of efforts by the United States (75%) and its allies.” (U.S. *Department of the Treasury* 2004)
- Of the \$147 million blocked in 2005, “\$36 million have been frozen by the United States and \$111 million by other countries (approximately \$24m by Switzerland, \$11,9m by UK, \$5,5m by Saudi Arabia, and an undisclosed amount by the UAE” (Biersteker et al. 2007)
- In the UK, the total figure for assets frozen recently: £100,000 in 2011, £44,000 in 2012, £102,000 in 2013; £61,000 in 2014

Cumulative Worldwide Amounts of Frozen Terrorist Assets



Cost of European Jihadi Terrorist Plots (1994-2013)

	Disrupted before any costs incurred	<\$100	\$100-1,000	\$1,000-10,000	\$10,000-20,000	>\$20,000	Not possible to estimate	Total
Proportion of plots	8%	8%	10%	50%	13%	8%	5%	100%
	(3)	(3)	(4)	(20)	(5)	(3)	(2)	(40)

(Source: www.ffi.no/no/Rapporter/14-02234.pdf)

Number of Suspicious Activity Report Filings by Year

S t a t e	1994	1995	1996	1997	2002	2003	2004	2005	2006
B e l g i u m	2,183	3,926	5,771	7,747	13,120	9,953	11,234	10,148	9,938
G e r m a n y	3,282	2,935	3,289	N A	8,261	6,602	8,062	8,241	1,0051
F r a n c e	684	866	902	1,213	8,719	9,019	10,842	11,553	12,047
Netherlands	3,546	2,994	2,572	N A	24,741	37,748	41,003	38,481	N A
U n i t e d K i n g d o m	15,007	13,170	16,125	14,148	56,023	94,718	154,536	195,702	213,561
United States	N A	N A	62,473	81,242	281,373	507,217	689,414	919,230	1,0788,94

Number of Suspicious Activity Report Filings Related to Terrorist Financing in Germany

Year	2002	2003	2004	2005	2006	2007	2008	2009
S A R s total	8,261	6,602	8,062	8,241	10,051	9,080	7,439	9,046
C T F related SARs	90	127	114	104	59	90	65	98

EU-US TFTP “Official” Record

- Official Joint EU-US Review Reports: Since the inception of the TFTP in 2001, it has produced tens of thousands of leads and over 3,000 reports (which contain multiple TFTP leads) to counter terrorism authorities worldwide, including over 2,100 reports to European authorities
- According to the 2013 Joint Review report, TFTP data has provided added value in 16 high profile cases (of which 11 have taken place prior to the conclusion of the Agreement in 2010)
- Other concrete examples in which SWIFT data are said to have played a role are also given in the 2010 Bruguere report and at the US Treasury website

Overview of TFTP reports to the EU

Year	Cumulative total number of reports to European authorities since 2001 (total for that year)	Cumulative total of EU TFTP requests
End 2009	1450 (100)	-
January 2010	1550	-
January 2011	1700	15*
July 2011	1800	-
October 2012	More than 2000	94
November 2013	2100	194

EU-US TFTP “Unofficial” Record

- The provided numbers of reports to EU authorities do not allow for an interpretation which countries benefitted from the TFTP information, whether the information was useful and for what purposes it was used (i.e. prevention, investigation, detection, or prosecution?)
- The analysis of these concrete examples shows that in a majority of the cases data from the TFTP does not allow for preventive action avoiding a terrorist attack from happening but contributes to investigations after an attack has taken place
- The analysis of several high-profile cases shows the clear link between the TFTP and the detention and possibly torture in secret prisons and Guantanamo Bay
- Plus, continuing concerns regarding the retention periods, the deletion of non-extracted data, oversight by Europol and independent overseers.
- **In short, evidence of effectiveness shaky while concerns about liberty&justice versus security remain**

Difficulties of private actors with the risk based model

- Risk management models operate on the assumption that the company is able to quantify the extent of loss that would arise in the event that that the risk occurs
- This is extremely difficult, if not impossible, to do within the CTF framework:
 1. Lack of data on exact amount of laundered money
 2. It is still not entirely clear how private financial institutions are supposed to identify CTF risks
 3. Limited capacities of compliance departments
 4. Vast amount of daily transactions vs. low cost terrorist attacks

The profit versus security dilemma

- Although private and public actors nowadays indeed interact in a “new CTF security space,” this does not mean that they share the same objectives
 1. Private financial institutions are primarily profit, rather than security, oriented
 2. Facing numerous costs of CTF, especially in term of penalties and potential reputation losses, financial institutions are going through the publicly required procedures as evidence of compliance rather than in the expectation of unearthing criminal activity

The phenomenon of defensive (over-)compliance

- Shortcomings of the CTF models, the risk assessment model and the profit vs. security dilemma have led to defensive compliance – FIs reporting even marginally suspicious transactions to “cover their backs”
- Problem – a high number of reports does not translate into effectiveness in CTF
- In addition to placing a substantial burden of the public FIUs which have to process a large amount of data of dubious value, the increasing number of reported transactions serves to further bury suspicious transactions actually indicative of money laundering or terrorist financing

Lessons learned

- The current combination of “smart” sanctions and the AML models may not represent the best way to combat terrorist financing in Europe
- Efficiency is not the same as effectiveness
- Plus, CTF efforts have had significant impact on the quality of life of common people all over the world:
 1. Liberty vs. security debates in developed countries
 2. Impact on informal banking systems in the developing countries

Where & how EU could add value?

1. The peer review mechanism
2. The twinning procedure that has been quite successfully applied in the most recent enlargement rounds
3. Produce less paperwork
4. Consulting more with those implementing rules – private sector
5. Including *de minimis* provisions for minor transgression to lessen burdens of rules on private sector
6. Formulate sanctions controls on a risk-based model that distinguishes between the primary targets and secondary or tertiary targets of sanctions
7. Create an official mechanism to correct blacklisting mistakes and other human rights shortcomings
8. Check latest terrorist financing trends & adjust accordingly

Thank you for your attention!

- Questions, comments, disagreements are very welcomed!
- This presentation contains findings from several of my publications:
 - Ten Years of EU's Fight against Terrorist Financing: A Critical Assessment. *Intelligence and National Security* 30, no. 2 (2015): 207-233.
 - Public-Private Partnerships in the Fight against Terrorism? *Crime, Law, Social Change* 60, no. 4 (2013): 429-455.
 - Private Actors in the Fight against Terrorist Financing: Efficiency versus Effectiveness. *Studies in Conflict & Terrorism* 35, no. 10 (2012): 712-732.
 - EU' s Fight against Terrorist Finances: Internal Shortcomings and Unsuitable External Models. *Terrorism and Political Violence* 22, no. 3, (Summer 2010), 419–438.