

**Sixth Report
of the Principality of Liechtenstein
to the Counter-Terrorism Committee
established by Security Council resolution 1373 (2001)
(27 January 2009)**

Liechtenstein herewith submits additional information to the Counter-Terrorism Committee (CTC) established by resolution 1373 (2001), as requested in the letter of the CTC dated 26 November 2007. Earlier reports are contained in documents S/2002/1253 of 27 December 2001, S/2002/788 of 26 June 2002, S/2003/273 of 10 February 2003, and S/2004/254 of 16 March 2004, and S/2006/312 of 23 May 2006. The Government emphasizes once again that it continues to accord the highest priority to international cooperation in combating terrorism, and it views the dialogue with the CTC as a key element of this cooperation.

The information submitted below is structured in accordance with the Preliminary Implementation Assessment (PIA) prepared by the CTC, dated November 2007. Only those parts of the PIA are addressed where updates are necessary.

1. Information relating to OP 1 of resolution 1373 (2001)

1.1. Prevent and suppress financing of terrorism / Prohibit non-State entities from making any assets available to fund terrorist activities – 1 (a) and (d)

1.1.1. Anti money laundering law in force

In December 2008, the Liechtenstein Parliament passed legislation aimed at substantively implementing international standards in the fight against money laundering and combating terrorist financing. The legislative package includes in particular a comprehensive revision of the Due Diligence Act as well as selected amendments to the Criminal Code. The package substantively implements EC Directive 2005/60/EG of 26 October 2005 for the prevention of the use of the financial system for money laundering and the financing of terrorism (Third Money Laundering Directive) as well as EC Directive 2006/70/EG of 1 August 2006 regarding “politically exposed persons”. The legislation will enter into force by March 2009. For a comprehensive analysis of Liechtenstein’s current laws and practices in this area, see the IMF’s “Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism” regarding Liechtenstein, dated September 11, 2007¹, and most recently the respective progress report² adopted by MONEYVAL (Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism) on 8 December 2008.

¹ <http://www.imf.org/external/pubs/ft/scr/2008/cr0887.pdf>

² Doc. MONEYVAL (2008) 28 available at www.coe.int/moneyval.

1.1.5. Establishment of a financial intelligence unit (FIU) or equivalent

The Liechtenstein FIU³ has continued to grow in its resources and operations. The FIU currently employs 7 staff and has a budget of 200.000 Swiss francs (not counting staff salaries and IT).

In 2007, 205 STRs were submitted to the FIU, 163 in 2006. As in the years before, more than two-thirds of STRs were forwarded to the Public Prosecutor's Office.

For details see the annual reports of the Liechtenstein FIU for 2006 and 2007.⁴ The annual report 2008 will be published in the first quarter 2009.

1.1.6. Regulation of charitable organizations

Resolution 1373 (2001) contains in paragraphs 1 (a) and (d) detailed provisions requiring all States to prevent and suppress the financing of terrorist acts. This requirement includes the prevention and suppression of terrorist financing via charitable organizations. Liechtenstein has fully implemented that provision with respect to charitable organizations, albeit without resorting to the use of specific provisions linking charitable organizations to potential misuse for terrorist purposes.

As stated in previous reports, article 278d of the Criminal Code criminalizes the provision and collection of assets for the purpose of perpetrating any of the terrorist offenses listed in the individual subparagraphs. Any form of terrorist financing, including through use of a charitable organization, is thus unequivocally criminalized.

With respect to the regulatory regime covering the establishment and management of charitable organizations, the following clarifications are provided: In Liechtenstein, there are currently 222 entities with non-commercial purpose that have received tax-exemption status and can thus be regarded as "charitable organizations". The great majority of these entities are foundations, the rest are associations. All tax-exempt entities must be registered in the Public Registry and are subject to the same due diligence regime as commercial entities in Liechtenstein.

Due to their tax-exempt status, charitable organizations are subject to stricter government oversight. Tax authorities exercise control over whether the organization fulfills its stated purpose in accordance with its founding documents. While this oversight is originally aimed at verifying that tax-exempt status continues to be justified, it could also potentially reveal indications of terrorist financing.

³ Please note that the common acronym used in Liechtenstein is „FIU“ rather than „EFFI“ (Einheit für Finanzinformationen).

⁴ Available at www.sfiu.llv.li.

According to the new Liechtenstein Foundation Law, which will enter into force on 1 April 2009, charitable foundations are subject to registration as well as to mandatory and ongoing supervision by a newly created Foundation Supervision Authority and by an audit office established as an organ of such foundations.

In sum, the use of charitable organizations for terrorist financing is fully criminalized in Liechtenstein, and the activities of charitable organizations are subject to stricter oversight than other entities.

1.1.7. Regulation of alternative remittance systems

With regard to the implementation of FATF Special Recommendation IX (control of cross-border transportation of currency and bearer negotiable instruments), it should be recalled that Liechtenstein and Switzerland form a Customs Union since 1923. On the basis of this treaty, there are no controls at the internal border between Liechtenstein and Switzerland, while the external borders of both countries are being controlled by Swiss authorities. Due to Liechtenstein's accession to the Schengen System, Liechtenstein and Switzerland have been negotiating a new treaty regarding the legal mandate of the Swiss Border Guard on Liechtenstein territory beyond the past delegations on the basis of the 1923 Treaty on the Customs Union, in particular regarding the police powers of the Swiss Border Guard. This new treaty was signed on 3 December 2008 and is provisionally applied since 12 December 2008 as far as cooperation between the Liechtenstein Police and the Swiss Border Guard is concerned. Specifically, it will in the future allow the Liechtenstein Police to delegate to the Swiss Border Guards the authority to control cash couriers on Liechtenstein territory. Liechtenstein is in constant and close contact with Switzerland with regard to the planned establishment of a declaration system.

1.3. Law/regulation to freeze funds/assets of terrorists without delay – 1 (c)

1.3.1. Provision for the freezing, without delay, of funds and assets of terrorists, whether of licit or illicit origin

In December 2008, the Liechtenstein Parliament adopted a comprehensive Sanctions Act (Sanktionengesetz). While Liechtenstein does already fully implement the various sanctions regimes adopted by the UN Security Council as well as the autonomous sanctions of the European Union based on the current legislation (the law on measures concerning economic transactions with foreign states), the new law brings the letter of the Liechtenstein law more in line with the current realities of international sanctions. Furthermore, the law improves the legal basis for cooperation with international organizations in the implementation of sanctions and for data protection, sets clear responsibilities for enforcement and increases the penalties for sanctions violations. The new Sanctions Act will enter into force on 1 March 2009.

Following up on an IMF recommendation (see footnote 1) with regard to seizure and confiscation, articles 20 and 26 of the Criminal Code have been amended in December 2008 to achieve greater clarity. Criminal seizure and confiscation of laundered assets as the object of the autonomous money

laundering offense is now formally and fully covered (article 20b Paragraph 2 of the Criminal Code, as amended). All (intended) instrumentalities are subject to seizure and confiscation, in accordance with article 26 paragraph 1 of the Criminal Code, as amended.

There are currently no *in rem* proceedings pending related to the freezing of terrorist funds.

The overall amount of funds frozen in compliance with resolution 1267 (1999) is currently 90,200 Swiss Francs. At the end of 2006, approximately 115,000 Swiss Francs were released for humanitarian reasons in coordination with the 1267 Sanctions Committee.

1.3.2. Guarantees of due process

The Liechtenstein law and practice provides all guarantees of due process required under international law in the implementation of resolution 1373 (2001), in particular with respect to the judicial guarantees in the prosecution of terrorist financing. All due process guarantees provided under the Liechtenstein Criminal Code and the Liechtenstein Code of Criminal Procedure apply fully to proceedings related to terrorist financing. All the relevant standards of the European Convention on Human Rights, in particular its articles 5 and 6, are part and parcel of the Liechtenstein criminal procedure, and their implementation is ultimately subject to the monitoring of the European Court of Human Rights. Liechtenstein is also a State Party to the International Covenant on Civil and Political Rights and fully implements the due process related rights contained therein (for details see Liechtenstein's first report to the Human Rights Committee contained in document CCPR/C/LIE/2003/1).

In case of criminal proceedings (to be distinguished from the administrative action taken in the implementation of UN and EU sanctions based on sanctions lists), assets are frozen pursuant to Art. 97a of the Code of Criminal Procedure in accordance with a decision by the investigating judge upon application of the public prosecutor. The decision is subject to appeal by the prosecutor, the defendant and other persons concerned to the Appeals Court ("Obergericht"). In some cases, the decision of the Appeals Court can be further appealed to the Supreme Court (see Art. 240 Code of Criminal Procedure). These provisions, which are of general nature and not limited to terrorist financing, are frequently applied.

In this context, it should be recalled that Liechtenstein has, together with other like-minded countries, submitted a discussion paper⁵ to the Security Council regarding due process at the level of the Council's sanctions committees, underlining Liechtenstein's commitment to due process in this area.

⁵ A/62/891 – S/2008/428.

2. Information relating to OP 2 of resolution 1373 (2001)

2.1. Suppress recruitment of members of terrorist groups – 2 (a)

2.1.2. Efforts to suppress recruitments by terrorist groups

The Government of Liechtenstein agrees with the assessment that the risk of recruitment by terrorist groups in Liechtenstein is very low, mainly due to the size and homogeneity of the country which makes it very difficult to pursue extremist activities in secret. The prohibition of terrorist recruitment is effectively overseen by the Liechtenstein police and the Office of the Public Prosecutor. The Liechtenstein authorities have close contacts with all parts of Liechtenstein society and would be quickly aware of any potential for extremist ideologies. Concrete cases are extremely rare and are investigated and prosecuted effectively. The most relevant case of recent times dates from 2006 and involved the sentencing of a small group of perpetrators for spreading racist ideologies (article 283 of the Criminal Code), though no link to terrorist activity was found. Liechtenstein has all the necessary legislation and law enforcement machinery in place to deal effectively with any attempts at terrorist recruitment inside the country.

2.2. Eliminate the supply of weapons to terrorists – 2 (a)

For further information on relevant laws and enforcement see the latest update report to the SC Committee established pursuant to resolution 1540 (2004) dated 20 January 2006 (S/AC.44/2004/(02)/59/Add.1).

2.4. Deny safe haven to those who assist or commit terrorist acts – 2 (c)

2.4.1. Legislation criminalizing the provision of safe haven to terrorists and their supporters by individuals or organizations

Providing safe haven to terrorists and their supporters is specifically and fully criminalized in Liechtenstein, albeit without the use of the phrase “providing safe haven”. Under the Liechtenstein Criminal Code, not only the principal perpetrator of a crime, but any person that “contributes” to the commission of a crime bears criminal responsibility (article 12 Criminal Code).⁶ With respect to terrorist offences, such criminal responsibility is also established in cases where the crime itself takes place in another country (article 64 paragraph 1 Criminal Code), irrespective of the laws of that country. Any person providing safe haven to terrorists would therefore be equally responsible for the crime committed insofar as providing safe haven contributes to the commission of the crime.

2.4.4. Provision to ensure that human traffickers are apprehended and punished.

⁶ Article 12 reads: „*Treatment of all participants as perpetrators.* Not only the immediate perpetrator shall be deemed to commit the punishable act, but also every person who directs another person to perform the act or who otherwise contributes to its performance.”

On 20 February 2008, Liechtenstein deposited its instrument of ratification of the United Nations Convention against Transnational Organized Crime, including *inter alia* the Protocol against the Smuggling of Migrants by Land, Sea and Air. Convention and Protocol entered into force for Liechtenstein on 21 March 2008. Said Convention and Protocol have been fully implemented into domestic law, as is customary for Liechtenstein when becoming party to a treaty. As part of the implementation of the Palermo Convention and its Protocols the Penal Code was amended according to the relevant Austrian draft legislation. The new definition of trafficking in persons in the Liechtenstein Penal Code (Art. 104a StGB), which entered into force on 1 August 2007, is in conformity with the definition in the protocol. § 104a Penal Code makes the recruitment, harboring, receipt, transportation, transfer or offering of a person for the purpose of exploitation subject to punishment. Exploitation includes sexual exploitation, exploitation by illegal removal of organs and forced labor. According to § 64 of the Liechtenstein Penal Code, § 104a (Trafficking in Human Beings) applies to offenses committed in other countries – irrespective of the penal laws of the State where the offenses were committed.

2.4.5. Measures to criminalize and reduce illegal migration.

Illegal migration does not constitute a significant problem in Liechtenstein, since the country does not lend itself to such activities, mainly due to its size.

The Swiss Federal Law on the Temporary and Permanent Residence of Foreign Nationals (Bundesgesetz über Aufenthalt und Niederlassung der Ausländer, ANAG) applies also in Liechtenstein with respect to third country nationals (i.e. not holding the citizenship of a member state of the European Economic Area (EEA) and or Switzerland). That law (article 23) criminalizes all forms of illegal immigration and all forms of assistance to illegal immigration. With respect to persons whose immigration status does not derive from an EEA or Swiss citizen, the new Liechtenstein Aliens Act (“Ausländergesetz”, AuG) applies as of 1 January 2009. It is aimed at improving the active integration of legal immigrants into Liechtenstein society. Articles 83 to 89 AuG criminalize illegal immigration and related activities, such as illegal employment.

The Liechtenstein police and judicial authorities are in charge of the implementation of the criminal provisions regarding illegal migration. The Aliens and Passport Office is the competent administrative authority.

2.5. Prevent those who finance, plan, support or commit terrorist acts from using a State’s territory for those purposes against other States or citizens – 2 (d)

Regarding the practical application and practitioner capacity to prevent the use of Liechtenstein territory for terrorist crimes committed against other States or citizens, the same considerations apply as with respect to law enforcement against other forms of terrorist activity in the country. While Liechtenstein has all the legal provisions and enforcement capacity in place, the actual risk of such activities being undertaken on Liechtenstein territory is minimal. This is mainly due to the small size of the country and its population, its homogeneity and the effective law enforcement by its police and judicial authorities.

2.6. Ensure that persons who finance, plan, prepare or perpetrate terrorist acts are brought to justice, that such terrorist acts are established as serious criminal offences in domestic laws and that the punishment duly reflects the seriousness of such acts – 2 (e)

2.6.2. Existence of exceptional criminal procedures and accompanying safeguards applicable to terrorism-related cases

In Liechtenstein there are no exceptional criminal procedures applicable to terrorism-related cases.

3. Information relating to OP 3 of resolution 1373 (2001)

3.2. Exchange information and cooperate on administrative and judicial matters to prevent the commission of terrorist acts – 3 (b)

3.2.1. Procedures for exchange of information and cooperation on administrative and judicial matters

On 1 August 2003, the Mutual Legal Assistance Treaty (MLAT) between the United States and Liechtenstein entered into force. In July/October 2006, an exchange of diplomatic notes regarding the interpretation of the MLAT took place.

On 20 February 2008, Liechtenstein deposited its ratification of the United Nations Convention against Transnational Organized Crime, including the Protocol against the Smuggling of Migrants by Land, Sea and Air and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Convention and two of its Protocols entered into force for Liechtenstein on 21 March 2008.

Liechtenstein is currently preparing the ratification of the *2005 International Convention for the Suppression of Acts of Nuclear Terrorism*, the *2005 Protocol to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf*, the *2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, as well as the *Amendments to the 1980 Convention on the Physical Protection of Nuclear Material*. Action by Parliament can be expected in its spring session 2009.

Liechtenstein signed the United Nations Convention against Corruption. While almost all the substantial provisions of the Convention have been implemented already, it is foreseen to conclude the ratification process in 2009.

On 28 February 2008, Liechtenstein signed Protocols to become part of the so called Schengen and Dublin systems. These agreements are expected to become operational before the end of 2009.

3.4. Become a party to and fully implement the international instruments relating to terrorism – 3 (d) and (e)

See the answer under 3.2.1. By the time of ratification of the four outstanding international instruments related to terrorism, the respective domestic implementing legislation will be in place, as is customary for Liechtenstein when becoming party to a treaty.

3.5. Take appropriate measures to ensure that asylum seekers and refugees have not committed terrorist acts – 3 (f) and (g)

3.5.3. Provision for excludable or expellable asylum seekers/refugees who cannot be deported

The Liechtenstein Refugee Law („Flüchtlingsgesetz“) provides for temporary stay in cases where an asylum seeker who does not qualify for refugee status cannot be deported.

3.5.4. Existence of a parallel asylum, humanitarian or informal protection system and information on how individuals who have planned, facilitated or participated in an act of terrorism are dealt with

There are no such parallel asylum, humanitarian or informal protection systems in place beyond those provided for by the regular laws dealing with these matters. Individuals who have planned, facilitated or participated in acts of terrorism would be prosecuted by the Liechtenstein judicial authorities in accordance with applicable provisions of criminal law. These provisions address terrorist crimes in detail and fully implement the relevant provisions of international conventions in this area.