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Letter dated 16 July 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 23 April 2003 (S/2003/460).

The Counter-Terrorism Committee has received the attached third report from Italy submitted pursuant to paragraph 6 of resolution 1373 (2001).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 9 July 2003 from the Permanent Representative of Italy to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

Following your letter S/AC.40/2003/MS/OC.232 dated last April 11, 2003, I have the pleasure to enclose herewith the answers provided by the relevant Italian authorities to the questionnaire that was sent by the Counter-Terrorism Committee with regard to the implementation of Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Marcello **Spatafora**
Permanent Representative

Enclosure

Supplementary report by Italy to the Counter-Terrorism Committee pursuant to Security Council resolution 1373 (2001)

I. Implementation measures

1.2 Regulation of the informal banking circuits

Within the scope of the term “informal banking” Italy includes the provision of services that are comparable to banking services, except that they are transacted through channels falling outside those that are officially authorized and supervised. The danger of such systems, which all members of the international community recognize, lies in the possibility that they may evade legislation regarding banking and financial supervision and money-laundering controls.

Essentially, informal banking comprises two basic types:

- money transfer, based on an international network of agents working in different countries who are authorized to perform financial transactions, and who themselves work through sub-agents;
- fully-fledged informal banking circuits, also known as alternative remittance systems, or systems for transferring money abroad using the offsetting system.

Bearing this in mind, Italian legislation makes the following provisions. The Consolidated Banking Act (Legislative Decree 385 of 1 September 1993):

- defines banking and financial activities (Sections 10 et seq.) and applies a strict authorization regime, under which individuals performing banking operations require a permit (Section 4) and for whom a special register has been set up (Section 14);
- prohibits (Section 11) the collection of savings, namely, collecting funds with the obligation to repay them in any way from the general public, by any individuals or entities other than banks;
- makes provision for the supervision of banks (Sections 51 et seq.);
- governs all the parties operating in the financial sector, other than those who are listed in the special register held by the Ufficio Italiano dei Cambi (Section 106) and those listed in the “special” register at the Bank of Italy (Section 107); in both cases, very stringent requirements are laid down regarding their repute and professional expertise for the performance of these operations, as well as their subjection to a supervisory regime;
- lays down criminal law penalties for illegal banking and financial operations (Sections 130 et seq.).

With specific reference to preventing the use of the financial system for the purposes of money-laundering — for which the crime (Articles 648-bis and ter of the Criminal Code) involves money, assets or other proceeds from wilful criminal actions — Law 197/1991 has laid down a set of strict rules that are based essentially on the following prohibitions and obligations (Section 1 et seq.):

- the prohibition on the use of cash or non-registered securities for transferring money in amounts in excess of €12,500, except through authorized intermediaries/brokers;
- the obligation on the part of authorized intermediaries/brokers to identify the persons performing the operations of transferring or transmitting any kind of payment for amounts in excess of €12,500;
- the obligation to record all such operations (and to set up a single computer archive);
- the obligation to notify the Ufficio Italiano dei Cambi of any operation whose features, amount, nature or other characteristics and circumstances give rise to the suspicion that it may involve money, assets or proceeds from criminal activities, and to submit such reports to the Anti-Mafia Investigation Directorate (DIA) and the Finance Police (Guardia di Finanza) for the necessary investigations to be conducted (these police bodies are all represented on the Financial Security Committee).

Summing up: the Italian system requires banking and financial operations to be carried out within a strict system of authorization and supervision; penalties are laid down for any infringements of this system; it prohibits the use of cash in amounts in excess of €12,500 except through authorized intermediaries/brokers, thereby makes a system of "channelling" cash flows towards these intermediaries/brokers compulsory; the intermediaries/brokers are required to disclose the name of the customer, record the operation, and report any operations suspected of being money-laundering; it provides that, through the Ufficio Italiano dei Cambi, these "suspect operations" are notified to the DIA and the Guardia di Finanza for investigations to be conducted; these latter policing organizations sit on the Financial Security Committee, whose remit is to protect the Italian financial system from possible exploitation by international terrorists to finance their criminal operations, and to gather information so that the assets of such individuals operating in Italy can be frozen.

As far as money transfers are concerned, in Italy they are recorded in the list of intermediaries/brokers provided by Section 106 of the Consolidated Banking and Credit Act, and are consequently covered by the provisions summarized above.

As far as the informal banking circuits are concerned, it should be noted that since their operations are based on the offsetting mechanism, they take place in two phases, collecting the funds and depositing them in current accounts held with banks. The first phase (cash collection) is illegal and prohibited, as already stated, and penalties are provided for it: the second phase (depositing funds in a current account) is an activity whereby cash is channelled towards intermediaries/brokers, with the possibility of simultaneously triggering the counter-money-laundering system in the terms described above.

In addition to this there is also European Union Directive 308 of 10 June 1991 on the prevention of the use of the financial system to launder the proceeds of crime, which provides that "money transmission/remittance offices" also be considered as "financial institutions" and subject to the relevant rules (Article 1(B)); this being so, when the Community legislation is incorporated into Italian law, it can, where necessary, introduce further specific prescriptive measures.

1.3 Regulation of financial intermediaries

The Ufficio Italiano dei Cambi, by joint agreement with the authorities responsible for supervising the industry, monitors compliance by authorized intermediaries with the rules governing the transfer of currency and securities, and, on the basis of selective criteria, monitors compliance with and the adequacy of reporting procedures by parties required to issue reports. By decree, the Minister for the Economy and Finance lays down the general criteria according to which the Ufficio Italiano dei Cambi conducts an analysis of the aggregate data on the overall operations of each authorized intermediary, to identify any money-laundering operations in particular areas of the country. The Ufficio Italiano dei Cambi is authorized to collect this data, for which it can have direct access to computer archives, and, on the basis of the general criteria laid down by Decree of the Minister for the Economy, it lays down the technical rules for implementation, which are published in the Official Gazette, with which the authorized intermediaries are required to comply. When any major anomalies emerge that point to money-laundering, the Ufficio Italiano dei Cambi carries out the statutory financial investigations and, by joint agreement with the supervisory authorities concerned, notifies the investigative bodies (the Anti-Mafia Investigation Directorate, and the Guardia di Finanza).

In the financial intermediation sector, the Guardia di Finanza works mainly through the Special Currency Police Unit (Nucleo Speciale Polizia Valutaria) (and, under delegated powers, the Regional and Provincial Units of the Tax Police pursuant to Section 5(10) of Law 197 of 5 July 1991, as amended by Legislative Decree 153 of 26 May 1997), with responsibility for anti-money-laundering inspections into the following, over whom it acts as the Supervisory Authority:

– non-authorized financial intermediaries who are members of the register kept by the Ufficio Italiano dei Cambi under Articles 106 and 113 of the Consolidated Banking Act;

– “non-financial” professional categories subject to anti-money-laundering formalities by Legislative Decree 374/99.

In particular, the non-authorized intermediaries may perform the financial transactions provided by Article 106 of the Consolidated Banking Act (acquiring equity interests, granting loans of all kinds, providing payment and currency brokerage services)[1]

[1] The Decree of the then Minister of the Treasury (now of the Economy and Finance) of 6.7.1994:
- (Section 2) **Lending in any form**: leasing, credit acquisition, consumer credit, mortgage credit, pawn-broking loans, issue of guarantees, documentary credit, acceptances, endorsements, lending commitments;
- (Section 3) **Currency brokerage**: negotiating spot and forward currency transactions and all forms of currency brokerage;
- (Section 4) **Payment services**: collection and transfer of funds, transfer or execution of payment orders, by debit and credit;
- (Section 6) **Acquiring equity interests**: acquiring, holding and managing rights over other companies’ capital. An equity interest is acquired when the holder has at least one tenth of the voting rights that can be exercised at the ordinary General Meeting.

a. in dealings with the public,[2] in which case, pursuant to Section 106, they are listed in a general register at the Ufficio Italiano dei Cambi and are required to comply with the requirements regarding their legal status, minimum share capital, and the good repute and professional skills of their officers, and the good repute of their shareholders;

b. not in dealings with the public, for which they are listed in a special section of the aforementioned general register (under Section 113 of the Consolidated Banking Act), with the sole requirement that the shareholders and company officers are of good repute.

It is fundamentally important to point out that in the course of the inspections carried out under Law 197/91 for the purpose of identifying money-laundering, the Special Currency Police Unit also investigates cases of money lending, ensuring that the rates applied to customers are based on the benchmark interest rate set every quarter by the Ministry of the Economy and Finance, and the Bank of Italy.

This being so, the Unit:

– exercises the powers vested in it by currency legislation;

– may request inspections to be conducted by the regional and provincial Currency Police Units, in which case they are automatically vested with the same powers set forth in the Consolidated Currency Act for the performance of their duties.

These inspections can also be carried out against individual persons performing the financial transactions indicated under a. and b. above, even if they are not listed in the general register or the special section of the register.

This shows that the group of individuals under the supervision of the Special Currency Police Unit are potentially at a higher risk level than traditional intermediaries or brokers, who are subject to forms of prudential monitoring by the industry authorities, such as the Ufficio Italiano dei Cambi, the Bank of Italy, CONSOB (Banking Authority), ISVAP (Insurance Sector Authority) and the Ministry of Production.

1.4 The possibility of freezing the property of terrorists at the request of third States

As already indicated in the second report submitted to the CTC, through the work of its Financial Security Committee Italy has rapidly frozen the assets of individual terrorists and terrorist organizations, fully complying with its obligations under resolution 1455 (2003) of the United Nations Security Council, and applying

[2] Decree of the then Minister for the Treasury (now Minister for the Economy and Finance) of 6.7.1994:

– (Section 5) Transacting operations with the public: 1. The operations referred to in Sections 2, 3 and 4 are transacted with the public whenever they involve third parties, on a professional basis. 2. By way of exception to the foregoing, operations transacted with parent, subsidiary or related companies as defined by Article 2359 of the Civil Code, and controlled by one and the same parent, and at all events within one and the same group, are not deemed to be operations with the general public. 3. With regard to the granting of loans in any form, any activity performed exclusively to shareholders in companies having the status of cooperatives and not more than fifty members, are not deemed to be operations with the general public. 4. Consumer credit activities are at all events considered to be performed with the general public even when it is restricted to the shareholders alone.

the European Union procedure for imposing penalties in implementation of resolution 1373 (2001).

At the request of third countries, it has also been possible to freeze the property of individuals, for which provision is not made in Community regulations, by issuing ad hoc measures. For the Ufficio Italiano dei Cambi may, under Section 6 of Law 197/91, suspend a financial transaction for a maximum of 48 hours at the request of investigators, provided that this does not hamper the investigations or curb the current activities of the intermediaries. This is confirmed by the fact that in November 2001 Italy immediately froze accounts held in the name of Hamas, and subsequently obtained confirmation from the Milan Court.

1.5 Regulation and the collection of funds by private associations

While the international community is trying to remove the loopholes that exist in the international financial system and could be manipulated to finance terrorism, the abuses committed by charities should also be very carefully monitored. Crucial efforts must be made to maintain the vitality and the integrity of the charity industry. In numerous cases, charities have been found to be used to cover the financing of terrorism. Sometimes the organization has existed for the sole purpose of providing money to terrorists. This is, however, often done without the knowledge of the donors or even of the members or the management of the organization concerned. In addition to financial support, some organizations provide logistical support for terrorist movements and weapons. The Financial Action Task Force has also recognized that these organizations are “particularly vulnerable” to abuse by financial terrorism. National and international legislation must therefore guarantee:

(a) adequate financial transparency to reassure the donors that their funds are being directly channelled through to the intended beneficiaries;

(b) close monitoring of the management and the employees, to guarantee that the organization does not fall under the control of terrorists.

Law 460 of 4 December 1997 reorganized this sector by instituting the category of “Not-for-Profit Organizations of Social Utility” (under the acronym ONLUS), which do not operate for profit and exist to provide social solidarity or for sports, social, cultural, educational, political or other charitable purposes, in many cases outside the business sector. Such an organization can be an association (whether registered or not), a Foundation or a Fundraising Committee. Regulation 329 of 21 March 2001 requires that the organization be supervised by a Regulator, the ONLUS Agency, which prepares an annual report for the Prime Minister’s Office. Because of the short period of time that has passed since its institution, many matters referring to its tasks and structure are still awaiting a decision. Law 460/97 required the organization to produce annual financial statements, with separate balance sheets and annual reports. Under Regulation 329/2001 the ONLUS Agency may also supervise the not-for-profit sector. Italian legislation requires any not-for-profit organization wishing to be classified as an ONLUS to be recorded in special Registers held by the local offices of the Ministry of the Economy and Finance. The ONLUS Register was only instituted recently, and it has so far mainly been used for tax purposes. Further developments are expected shortly. Lastly, such an organization must include the word “ONLUS” as part of its name and on all logos or notices intended for the general public.

1.6 The application of the principle *aut dedere aut iudicare*

It is always mandatory to apply Italian criminal law against anyone (whether Italian or foreign) who is suspected of having committed acts of terrorism abroad in the cases provided by Articles 6 and 7 of the Criminal Code.

This refers to the following cases:

1) When the crime has been committed partially in Italy (Article 6 Criminal Code). Applying the general principles of Italian law to aiding and abetting a crime, any causal contribution by accomplices in Italy makes the whole act a crime committed on Italian territory. The consequence of this is that all the persons involved in it are liable to be tried by the Italian courts without requiring recourse to the criteria set out in Articles 7 et seq. of the Criminal Code. By way of example, one of several centres belonging to a terrorist association may be located in Italy; in this case, independently of where the criminal action is actually committed by the members of the association, it falls within the jurisdiction of the Italian courts.

2) In the case of crimes against the personality of the Italian State (Article 7(1) Criminal Code), which includes conspiracy to commit subversion, conspiracy to commit acts of terrorism and providing comfort to its members. In these cases the act committed abroad damages or poses a threat to property or interests of the Italian State. Italian law applies to such cases, which also fall within the jurisdiction of the Italian courts, in accordance with the principle of the State's right to defend itself and its "passive personality".

3) In the case of crimes for which special legislation or international conventions require Italian law to apply (Article 7(5) Criminal Code). Considering that international conventions on criminal matters often contain provisions that adopt the traditional rule of *aut dedere aut iudicare*, Article 7(5) of the Criminal Code provides a criterion for establishing a permanent linkage between the Italian legal system and international legal provisions relating to *aut dedere aut iudicare*. This means that in the Italian system, thanks to Article 7(5) of the Criminal Code, a criterion exists which creates a permanent linkage for the application of the *aut dedere aut iudicare* rule, and the assumption of the related commitments, without requiring the adoption of any further measures, wherever any international agreement to which Italy is party recognizes it.

The most recent and most important multilateral Conventions ratified by Italy containing the rule *aut dedere aut iudicare* are: The Hague Convention for the Suppression of Unlawful Seizure of Aircraft (1970); the Montreal Convention for the Suppression of Unlawful Acts Against Safety of Civil Aviation, which was brought into effect in Italy by Law 906 of 1973; the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (1973), which was brought into effect by Law 107 of 1985; the European Convention on Terrorism (1977), which was made effective by Law 719 of 1985; the International Convention Against the Taking of Hostages (1979), brought into effect by Law 718 of 1985.

Apart from the cases provided by Articles 6 and 7 of the Criminal Code, making it mandatory to apply Italian criminal law and Italian jurisdiction, Article 10(2) of the Italian Criminal Code provides that a foreigner committing a crime, outside Italy, against a foreign State or a crime against a foreign citizen, shall be subject to Italian law when (all) the following conditions are met:

a) the Italian Minister for Justice has requested proceedings to be instituted;

b) the person is staying on Italian territory;

c) extradition has not been granted. This latter case is in application of the *aut dedere aut iudicare* principle.

The *aut dedere aut iudicare* principle is not recognized as a principle of international law in general, but it is provided (precisely for this reason) by many international extradition conventions. In Europe, it is provided by both Article 6(2) of the 1957 European Convention on Extradition, linked to the refusal to extradite the national, and by Articles 6 and 7 of the 1977 European Convention on the Repression of Terrorism, in a general and mandatory form. Italy is party to these two Conventions and to many other international extradition conventions which make provision for the *aut dedere aut iudicare* principle.

The Constitutional Court, in judgement 54 of 21 June 1979 and judgement 223 of 27 June 1996, ruled that Articles 9 and 10 of the Criminal Code are the relevant instruments of positive law provided by the Italian legal system for the implementation of the provisions of conventions relating to the *aut dedere aut iudicare* principle.

1.7 Laws ratifying International Convention for the Suppression of the Financing of Terrorism, and the International Convention for the Suppression of Terrorist Bombings

Under Law 7 of 14 January 2003 Italy ratified and brought into effect the International Convention for the Suppression of the Financing of Terrorism, done in New York on 9 December 1999, and a number of provisions to adjust Italian domestic legislation accordingly.

The Government introduced this legislation to complete the framework of laws ratifying the United Nations Conventions on combating international terrorism.

Decree Law 374 of 18 October 2001, enacted by Law 438 of 15 December 2001, had already introduced the crime of the unlawful financing of associations in the pursuit of domestic or international terrorism into Italian criminal law.

The new ratification law places particular emphasis on the liability of entities and companies involved in financing terrorism and the need to protect the victims of terrorism.

Specifically, in implementation of Article 5 of the Convention, provision is made for attributing liability to companies and entities for crimes committed to finance terrorism, referring, where not otherwise expressly provided, to the provisions introduced by Legislative Decree 231 of 8 June 2001, as subsequently amended, which sets out the general framework for governing the principle of the criminal liability of legal persons and entities.

The law also extended the penalties provided by Section 26 of Law 55 of 19 March 1990 for the crimes of money laundering, to the crimes of financing terrorism if committed in the performance of banking activities or professional activities, or any other activities subject to authorization, licences, registration or any other form of authorization.

A provision has also been introduced extending the current legislation governing the Victims of Terrorism Fund to apply to acts of international terrorism.

Under Law 34 of 14 February 2003, Italy ratified and implemented the International Convention for the Suppression of Terrorist Bombings, adopted by the United Nations General Assembly in New York on 15 December 1997, and signed by Italy on 4 March 1998.

In the Italian legal system the obligations imposed by the Convention were already largely covered by current legislation.

These relate to the control of weapons, munitions and explosives, and numerous other Criminal Code rules, which include in particular Articles 270-bis (Conspiracy for the purposes of terrorism and subverting the democratic order), 280 (Terrorist or subversive attacks), 284 (Armed insurrection against the powers of the State), 285 (Devastation, looting and multiple murder), 420 (Attacks against facilities of public utilities), 422 (Mass murder), 432 (Attacks to threaten the safety of transport), 433 (Attacks on the safety of electricity and gas facilities, or facilities belonging to the public administration).

The ratification law introduced a new Article 280-bis into the Criminal Code ("Terrorist act using lethal devices or explosives"). This new crime provides penalties against anyone committing an act for the purposes of terrorism designed to damage moveable or immoveable assets belonging to others, using explosives or lethal devices. The penalty for the basic crime is a term of imprisonment of between two and five years. But if it is committed against the Offices of the President of the Republic, the Legislative Assemblies, the Constitutional Court, the organs of Government or the organs provided by the Constitution or by Constitutional Laws, the penalty is increased by up to one half. Furthermore, if the act constitutes a threat to the safety of the general public, or seriously damages the national economy, imprisonment is between five and ten years.

Under this set of rules, the concept of "terrorism" or "terrorist act" as indicated in Articles 2 and 4 of the Convention, has been fully taken into Italian legislation. Italy has therefore complied with the obligation to charge the persons provided by Article 4 of the Convention.

As far as extradition procedures and the de-politicization clause are concerned, existing Italian legislation complies with the provisions of the Convention.

With regard to the prohibition of extradition for political crimes provided by Article 10 (final paragraph) of the Italian Constitution, it should be pointed out that the rationale for this ban was the need to protect a person under an extradited request from being subjected to discriminatory treatment or political persecution. This means that the prohibition on extradition only operates where there is a risk that the person for whom extradition is sought might be the object of discrimination if extradited to the requesting State, purely because of the political nature of the act committed.

The mechanism introduced by the rules of Articles 11 and 12 of the Convention, namely the de-politicization clause accompanied by a non-discrimination clause, would therefore appear to be consistent with the rationale of the constitutional provision which prohibits extradition for political crimes. For this makes it possible to prudently strike a balance between the needs of judicial

cooperation for particularly serious crimes provided by Article 2 of the Convention and the need to recognize the fundamental rights to freedom on the part of the person to be extradited.

1.8 Asylum applications by an individual involved in terrorist activities abroad, but not members of terrorist organizations

In this particular case, provision 1Fb of the Geneva Convention applies. The clause in question, which denies the possibility of providing international protection, and applies when the applicant is subject to an international arrest warrant or has been convicted, or when this emerges as a result of a number of situations which stem from the fact that the foreign national belongs to a group that everyone knows uses violent methods for affirming their political or religious convictions. It is often statements made by the person concerned that impose its application.

Article 1Fb of the Geneva Convention refers to subversive acts committed outside the host country: Italian legislation provides for the "ineligibility" for asylum of persons falling within the scope of the exclusion clauses or those who have committed a crime provided by Article 380 of the Code of Criminal Procedure ("Crimes committed for the purposes of terrorism").

Quite clearly, this crime must be committed on Italian territory, or it must in any event fall within the scope of Italian criminal law.

II. Assistance

Italy has already provided the CTC with information on counter-terrorism assistance in implementation of resolution 1373 (2001), submitting a national report for the inventory drawn up by the CTC (the Directory of Assistance), which it has subsequently updated at its own initiative. Italy has also provided all the information required to produce the matrix of assistance on counter-terrorism managed by the CTC.