United Nations S/2006/174

Security Council

Distr.: General
20 March 2006

Original: English

Letter dated 20 March 2006 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

The Counter-Terrorism Committee has received the attached third report from Benin submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). 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*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 15 March 2006 from the Permanent Mission of Benin to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: French]

The Permanent Mission of Benin to the United Nations in New York presents its compliments to the Chairman of the Counter-Terrorism Committee of the Security Council of the United Nations and has the honour to transmit the report entitled “Additional information on the report of Benin in implementation of Security Council resolution 1373 (2001) concerning counter-terrorism” (see enclosure).

This report, submitted by the competent authorities of Benin, contains additional information requested by the Counter-Terrorism Committee.

Enclosure

[Original: French]

Republic of Benin

Ministry for Foreign Affairs and African Integration

Directorate of International Organizations

United Nations Service

Additional information on the report of Benin in implementation of resolution 1373 (2001) concerning counter-terrorism

This document contains additional information requested by the Counter-Terrorism Committee following consideration of the second report prepared by Benin on measures taken to combat terrorism. It takes the Committee's concerns into account.

1. Outline of the bill on the suppression of money-laundering submitted to the National Assembly and progress report on its enactment

The bill on the suppression of money-laundering, which consists of six parts, establishes the legal framework to prevent the recycling of proceeds of crime through economic channels.

The provisions of the bill would apply to all natural or legal persons who in the practice of their profession conduct, monitor or provide advice about transactions involving deposits, exchanges, investments, conversions or any other movements of funds. It covers entities operating in the non-financial sector as well as in the financial sector and includes, in particular, members of the legal profession with regard to certain of their activities, money-transmission agencies, purveyors of high-value items and gambling establishments.

The introduction and title I contain a definition of money-laundering definitions of the principal terms employed and general provisions (purpose and scope of application). In particular, money-laundering is criminalized in these sections, as are conspiracy, association and attempt to aid and abet.

Title II entitled "Preventing money-laundering" (articles 6 to 15) sets forth the methods to be used by financial institutions to identify their clients (both regular and occasional) and the rules on preserving supporting documentation on transactions carried out; it also contains provisions concerning the establishment by financial institutions of internal prevention programmes for better detection of money-laundering transactions.

Title III entitled "Detection of money-laundering" (articles 16 to 34) sets out the methods for detecting money-laundering transactions and the procedures for reporting suspicious transactions. In addition, it lays out the responsibilities of those subject to the law and of the State and provides for the lifting of professional

secrecy in investigations related to money-laundering. This section also provides for the establishment of a National Financial Information Processing Unit (CENTIF).

CENTIF is to be a permanent body, consisting of six members, including a representative of the Central Bank of West African States (BCEAO), who will act as its secretary, and two investigators. The members of CENTIF shall carry out their functions on a full-time basis, for a term of three years, which may be renewed once. CENTIF, in carrying out its functions, shall be supported by a network of correspondents designated as such by order of the responsible Minister within the various State agencies involved in combating money-laundering (police, gendarmerie, customs and State judicial services).

The CENTIF headquarters at BCEAO will be responsible for coordinating CENTIF activities at the community level. The headquarters of the Central Bank will also be tasked with centralizing and synthesizing the periodic reports drawn up by the national CENTIF Units. The combined report, to be produced no less than once a year, is intended to provide information to the capitals of the countries in the West African Economic and Monetary Union (WAEMU). Through these reports, BCEAO will be able to suggest approaches likely to promote information exchanges, cooperation among the national CENTIF Units and coordination of their actions.

Title IV entitled "Coercive measures" (articles 35 to 45) contains provisions concerning the administrative and criminal penalties applicable to natural and legal persons and the interim measures of protection that an examining magistrate is authorized to order in conformity with the law. These would include, in particular, seizure or confiscation of goods in relation to the money-laundering offence.

With regard to the penalties applicable to natural persons, money-laundering has been made an offence punishable by imprisonment for a term of from three to seven years and a fine equal to three times the value of the laundered assets or funds. The same penalties are applicable in cases of conspiracy, association and aiding and abetting with a view to the commission of an act constituting this offence.

The choice of these penalties was based on the need to ensure strict suppression of the act of money-laundering, in keeping with current international practice, while maintaining a similar correctional level in all of the member States of WAEMU so as to promote real international cooperation in judicial matters. Regarding in particular the penalty of imprisonment, in establishing the minimum and maximum sentences, existing national legislation concerning laundering of assets deriving from narcotics trafficking in most of the member States of the WAEMU (Benin, Burkina Faso, Niger, Senegal and Togo) was taken into account.

The fine was set on a sliding scale, so that the maximum amount payable could be based on significant, concrete parameters, such as the value of the funds or assets, which could be easily determined. Certain acts related to money-laundering have also been criminalized. These include, in particular, disclosing to the person who committed the offence the reporting of suspicious transactions or the follow-up measures taken. However, the penalty is less severe than the penalty for the money-laundering offence. All the penalties for money-laundering and related acts can be accompanied by additional penalties, such as a ban on entry into a country or the loss of civic, civil and family rights for varying periods of time.

With regard to aggravating circumstances relating to money-laundering, the nature of the predicate offence is taken into account when determining the penalty. Thus, when the predicate offence is punishable by a longer prison sentence than the money-laundering offence, the penalty shall be equal to the sentence attached to the predicate offence of which the perpetrator was aware.

Conversely, the bill provides for a system whereby those who commit or aid and abet a money-laundering offence and report the offence, thereby allowing the others involved to be identified and the offence to be prevented, are either exempted from punishment or given a reduced sentence. Where legal persons are concerned, the assertion of the principle that they can be held criminally liable for money-laundering is a key element in effectively combating this scourge in the vast majority of WAEMU member States.

Title V is specifically devoted to international cooperation. This is because the establishment of a global anti-money-laundering strategy is the indispensable corollary to an effective national penal policy. It will require an international legislative framework to be drawn up in order to establish the legal bases and principles of a collective and coherent penal policy on the matter. The aim is to promote, coordinate and organize national anti-money-laundering policies. The international dimension of money-laundering requires States to review their rules of jurisdiction (by instituting quasi-universal jurisdiction) and cooperate actively with other States, in order to overcome the obstacles to prosecution, in particular conflicts of jurisdictions, criminal mobility and the dispersion of evidence.

Title V is composed of thirty articles (articles 46 to 75) subdivided into four chapters. Its provisions aim to promote cooperation and joint action among the States members of the Union, by developing judicial assistance to suppress crime at the community and international levels.

These provisions are based on the fundamental principles defined in the main international conventions to which almost all States members of WAEMU are a party, in particular:

– The General Convention on Judicial Cooperation, signed at Antananarivo on 12 September 1961;

– The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, of 20 December 1988;

– Convention A/P1/7/92 of the Economic Community of West African States (ECOWAS) on mutual legal assistance in criminal matters, signed at Dakar on 29 July 1992;

– Convention A/P1/8/94 of the Economic Community of West African States (ECOWAS) on extradition, signed at Abuja on 6 August 1994;

– The United Nations Convention against Transnational Organized Crime, adopted at Palermo on 15 December 2000.

Apart from international jurisdiction, judicial assistance (articles 53 to 70) and extradition (articles 71 to 75) are the main pillars of international cooperation. The basic idea, which underpins the related provisions, is expressed in the fundamental principle of international jurisdiction, which is established in article 46. One of the consequences of this principle is that the community made up of the eight WAEMU

member States is considered to be a single territory, in particular for the purposes of implementing the uniform law on the suppression of money-laundering. Under this law, individuals arrested for money-laundering could be tried by any member State, provided the offence is committed inside the WAEMU community. One of the basic elements of the principle of international jurisdiction is the transfer of prosecutions, as provided for in article 47. This measure aims to enable legal proceedings that are planned or already under way to be organized more effectively, so that the prosecutions relating to them can be conducted in the most appropriate member State.

With regard to judicial assistance, mechanisms have been put in place to facilitate cooperation during money-laundering investigations. The related provisions also enable information and evidence to be sent from one member State to another and investigations to be conducted successfully. They also aim to ensure that judgements passed are valid throughout the WAEMU community, so that decisions relating to criminal cases taken in one member State can be enforced in any member State. With regard to extradition, article 71 defines the relevant conditions, while article 72 seeks to simplify extradition procedures under the common law system. With regard to the disposal of the proceeds of crime, the bill authorizes, to the fullest extent possible, the confiscation of criminal assets for the benefit of the State in which such confiscation takes place. Furthermore, other provisions (article 64) place an obligation on the requested State, upon a request from the requesting State, to order any interim measure allowing for the preservation of illicit assets.

Lastly, **Title VI** sets out the final provisions of the bill.

2. Relationship between CENTIF and the other financial intelligence units

The relationship between CENTIF and the other financial intelligence units is defined in title III of the draft uniform law concerning the control of money-laundering.

Title III: Detection of money-laundering

Chapter I: National Financial Information Processing Unit (CENTIF)

Article 16: Establishment of CENTIF

A National Financial Information Processing Unit (CENTIF), reporting to the Minister of Finance, is hereby established by decree.

Article 17: Functions of CENTIF

CENTIF shall be an administrative agency with financial autonomy and autonomous decision-making power on matters falling within its competence. It shall be responsible for collecting and processing financial information relating to money-laundering channels.

To that end CENTIF:

– Shall be responsible, above all, for receiving, analysing and processing information capable of determining the origin of transactions or the nature of operations reported as suspicious by the persons subject to the law;

– Shall also receive such other useful information as it may require to fulfil its mission, in particular information communicated by the oversight authorities and judicial police officers;

– May request the persons subject to the law and any natural or legal person to transmit any information in their possession that could assist investigations into reports of suspicious transactions;

– Shall carry out or have carried out periodic assessments of developments in the money-laundering techniques used in the country.

It shall issue opinions on the review of the State's anti-money-laundering policy and shall propose such reforms as may be necessary to make anti-money-laundering efforts more effective.

CENTIF shall draw up periodic reports (at least one every three months) and an annual report on developments in anti-money-laundering activities at the national and international levels and evaluate suspicious transaction reports received. The CENTIF reports shall be submitted to the Minister of Finance.

Article 18. Composition of CENTIF

CENTIF shall be composed of six members, namely:

– A senior official having the rank of Director in the central Administration, seconded by the Ministry of Finance from the customs department, the treasury department or the tax department, who shall serve as chairperson of CENTIF;

– A magistrate specializing in financial matters, seconded by the Ministry of Justice;

– A senior official of the judicial police, seconded by the Ministry of Security;

– A representative of the Central Bank of West African States (BCEAO), who shall act as secretary for CENTIF;

– An investigator who shall be a customs inspector, seconded by the Ministry of Finance;

– An investigator who shall be a judicial police officer, seconded by the Ministry of Security.

The members of CENTIF shall exercise their duties on a full-time basis for a term of three years, which may be renewed once.

Article 19. CENTIF correspondents

In carrying out its functions, CENTIF may have recourse to correspondents in the State's police, gendarmerie, customs and judicial services or any other service whose assistance is considered necessary to combat money-laundering. The correspondents chosen shall be designated as such by order of the responsible Minister. They shall collaborate with CENTIF in carrying out its functions.

Article 20. Confidentiality

Members and correspondents of CENTIF shall take an oath before assuming their duties. They shall be required to respect the confidentiality of the information collected, which may not be used for any purposes other than those provided for by this law.

Article 21. Organization and operation of CENTIF

The decree establishing CENTIF shall set out its status, organization and methods of financing. The internal operating rules of CENTIF shall be laid down in rules of procedure approved by the Minister of Finance.

Article 22. Financing of CENTIF

CENTIF's resources shall derive in particular from contributions of the State, institutions of the West African Economic and Monetary Union (WAEMU) and development partners.

Article 23. Relations among financial intelligence units of WAEMU member States

The National Financial Information Processing Unit (CENTIF) shall be required to:

– Transmit, upon the request of a WAEMU member, for the purposes of an inquiry, any information and data relating to investigations undertaken at the national level following a suspicious transaction report;

– Submit detailed periodic (quarterly and annual) reports on its activities to BCEAO headquarters, which is responsible for synthesizing CENTIF reports for the information of the WAEMU Council of Ministers.

Article 24. Relations between CENTIF and the financial intelligence services of third States

CENTIF may, on condition of reciprocity, exchange information with the financial intelligence services of third States, charged with receiving and processing suspicious transaction reports, when such services are subject to similar obligations of professional secrecy.

Agreements between CENTIF and an intelligence service of a third State shall require the prior authorization of the Minister of Finance.

Article 25. Role assigned to BCEAO

The role of BCEAO is to facilitate cooperation between the various national CENTIF Units. It is accordingly responsible for coordinating their actions to combat money-laundering and for synthesizing the information contained in their reports. BCEAO takes part, along with the CENTIF Units, in meetings of international bodies on anti-money-laundering issues. The synthesis prepared by BCEAO headquarters is communicated to the CENTIF Units of WAEMU member States, for their databases. It will serve as a basis for a periodic report to the WAEMU Council of Ministers on developments in the fight against money-laundering. A version of

these periodic reports will be prepared for public information and for those required to report suspicious transactions.

Chapter II. Reports of suspicious transactions

Article 26. Obligation to report suspicious transactions

The persons referred to article 5 shall be required to report to CENTIF, under the conditions laid down in this law and in accordance with a reporting format established by an order issued by the Minister of Finance:

– Sums of money and other assets in their possession that might result from money-laundering;

– Assets-related transactions that might form part of a money-laundering process;

– Sums of money and other assets in their possession suspected of being intended to finance terrorism and appearing to result from money-laundering operations.

Employees of the aforementioned persons shall be required to inform their supervisors of such transactions immediately upon learning of them.

The aforementioned natural and legal persons shall be under an obligation to report such transactions to CENTIF, even if it was not possible to delay their execution or if it transpired, after the transaction had occurred, that it involved sums of money and other assets originating from suspicious sources.

Such reports shall be confidential and may not be communicated to the owner of the assets or to the initiator of the transactions. Any information likely to alter the assessment expressed by the natural or legal person when reporting the suspicious transaction, either to confirm it or show it to be unfounded, should be brought promptly to the notice of CENTIF.

No report made to an authority in compliance with a text other than this law shall have the effect of releasing the persons referred to in article 5 from their reporting obligation under this article.

Article 27. Transmission of the report to CENTIF

Reports of suspicious transactions shall be transmitted to CENTIF by the natural and legal persons referred to in article 5 by any means that leaves a written record. Suspicions reported by telephone or by any other electronic means must be confirmed in writing no more than 48 hours later.

The reports shall state in particular and as appropriate:

– The reasons why the transaction has already been executed; or

– The time limit within which the suspicious transaction must be executed.

Article 28. Processing of reports transmitted to CENTIF and blocking of transactions

CENTIF shall acknowledge receipt of any written report of a suspicious transaction. It shall immediately process and analyse the information collected and

shall, if need be, request further information from the originator of the report and from any public and/or oversight authority.

CENTIF may, in exceptional cases, on the basis of serious, consistent and reliable information in its possession, block any transaction before expiry of the time limit for its execution specified by the originator of the report. The latter shall be notified in writing of the blocking measure, which shall remain in effect for a period that may not exceed 48 hours.

In the absence of any blocking measure or if, at the end of the 48-hour time limit, the originator of the report has not been notified of any decision from an examining magistrate, he may proceed with the transaction.

Article 29. Follow-up to suspicious transaction reports

When transactions reveal facts that may constitute the offence of money-laundering, CENTIF shall transmit a report on those facts to the public prosecutor, who shall immediately bring the matter to the attention of an examining magistrate. This report shall be accompanied by any relevant documents, apart from the suspicious transaction report. The identity of the originator of the latter report must not appear in the CENTIF report, which shall be deemed authentic until proved otherwise.

CENTIF shall in due course inform those required to report suspicious transactions of the findings of its investigations.

Article 30. Exemption from liability for good-faith reporting of suspicious transactions

The persons or managers and employees of the persons referred to in article 5 who, in good faith, have transmitted information or made any report in accordance with the provisions of this law shall be exempt from any penalty for breach of professional secrecy.

No civil or criminal proceedings may be initiated nor any penalty for professional misconduct be imposed against the persons or managers and employees of the persons referred to in article 5 who have acted in the manner set out in the previous paragraph, even if judicial decisions handed down on the basis of the reports referred to in that same paragraph have not resulted in convictions.

Furthermore, no civil or criminal proceedings may be initiated against the persons referred to in the previous paragraph for material and/or moral injury that might result from the blocking of a transaction under the provisions of article 28.

The provisions of this article shall apply *ipso jure*, even if the criminal nature of the facts at the origin of the report is not proved or if those facts have been the subject of a pardon, dismissed for lack of evidence or resulted in discharge or acquittal.

Article 31. Liability of the State for good-faith reporting of suspicious transactions

The State shall be liable for injury to persons resulting directly from suspicious transaction reports that were made in good faith but turned out, nevertheless, to have been inaccurate.

Article 32. Exemption from liability for execution of certain transactions

Where a suspicious transaction has been executed and there has been no collusion with the perpetrator or perpetrators of the money-laundering, no criminal prosecution on a money-laundering charge shall be brought against the persons referred to in article 5, or their managers or employees, if the suspicious transaction report was made in accordance with the provisions of this law.

The same shall apply where a person referred to in article 5 has executed a transaction at the request of judicial authorities or State officials responsible for detecting and suppressing offences related to money-laundering, acting under a court order.

Article 33. Investigative measures

In order to obtain evidence relating to the original offence and evidence related to the money-laundering, the examining magistrate may, in accordance with the law and notwithstanding any objection based on professional secrecy, order that certain steps shall be taken for a fixed time period, namely:

– Monitoring of bank accounts and similar accounts, when there are serious indications giving reason to suspect that they are being utilized or might be utilized for transactions related to the original offence or other offences covered by this law;

– Accessing of computer systems, networks and servers utilized or likely to be utilized by persons who, there are serious reasons to believe, participated in the original offence or other offences covered by this law;

– Transmission of certified documents or private deeds and banking, financial and commercial documents.

The magistrate may also order the seizure of the above-mentioned deeds and documents.

Article 34. Lifting of professional secrecy

Notwithstanding any legislative provisions or regulations to the contrary, professional secrecy may not be invoked by the persons referred to in article 5 as grounds for refusal to hand over information to the oversight authorities, or to CENTIF, or to submit the reports provided for under this law.

The same shall apply to information requested for purposes of an investigation into facts relating to money-laundering that has been ordered by an examining magistrate or is being carried out under his supervision by State officials responsible for detecting and suppressing offences relating to money-laundering.

3. List of multilateral agreements on mutual legal assistance in criminal matters entered into by Benin

Benin is a party to a number of multilateral agreements on mutual legal assistance:

– Convention A/P1/7/92 of the Economic Community of West African States on mutual legal assistance in criminal matters, signed at Dakar on 29 July 1992; this Convention has not yet been ratified by Benin;

– Convention A/P1/8/94 of the Economic Community of West African States on extradition, signed at Abuja on 6 August 1994; this Convention has not yet been ratified by Benin;

– Quadripartite convention on extradition between Benin, Togo, Ghana and Nigeria;

– The United Nations Convention against Corruption, adopted by the General Assembly and ratified by Benin on 12 August 2005;

– The United Nations Convention against Transnational Organized Crime, adopted at Palermo on 15 December.

4. Legal and administrative provisions to prevent counterfeiting and falsification of travel documents

There are three types of travel documents in Benin:

– The national identity card, issued by the National Police and the Prefecture of the Departments, which enables an individual to travel in all 15 States of the Economic Community of West African States (ECOWAS);

– The regular passport, issued only by the National Police (Immigration and Emigration Service);

– Diplomatic and service passports, issued only by the Ministry of Foreign Affairs and African Integration.

Various measures have been adopted in order to prevent the counterfeiting and falsification of these documents. For such documents to be issued, a dossier must be created, which requires showing documents confirming the applicant's origins and attesting to his or her effective nationality and residence. Since June 2002 the immigration and emigration services have systematically computerized the issuance of travel documents. The issuance of national identity cards and passports is computerized. Using their detection equipment the services have encountered no fraudulent travel documents since 2002.

Diplomatic and service passports are issued only by the Ministry of Foreign Affairs and African Integration and steps have been taken to computerize the issuance of those passports as well. A new design for diplomatic and service passports in conformity with the standards of the International Civil Aviation Organization and recommended by ECOWAS is being developed.

5. Border controls

The porous nature of Benin's borders has led to a massive influx of foreigners without proper documents into Benin. Most of them settle in Benin without residence permits and sometimes become involved in criminal activities or commit crimes. Various measures have been taken by the Ministry of the Interior and controls have been instituted at all borders and in the larger towns. However, the lack of adequate equipment for border surveillance has been a great handicap and has reduced the effectiveness of such action.

A second problem is linked to the laws on the regulation of foreigners in Benin. A commission has been established to bring the laws up to date. A draft decree has already been submitted to the President of the Republic for his signature.

6. Progress report on the bill to establish a regime for controlling weapons and ammunition

The National Commission to Combat the Proliferation of Light Weapons has taken into account the opinion handed down by the Supreme Court. The bill will be submitted very soon to the Council of Ministers for examination, adoption and transmission to the National Assembly.

7. Status of the ratification of the 12 counter-terrorism conventions

Benin has already ratified 11 of the 12 counter-terrorism conventions. Moreover, the Penal and Criminal Procedure Code incorporates all the relevant provisions of the 12 conventions. While the Code was being drafted, two missions of experts from the United Nations Office on Drugs and Crime came from Vienna to Benin to assist the National Commission that had been established. The technical work has now been completed. The Code is on the agenda of the National Assembly for its consideration.

A technical assistance mission from the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons and from the United States National Authority visited Benin from 1 to 3 December 2005 to help begin the process of drafting a bill to implement the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction of 13 January 1993. The bill will be finalized very soon and will be submitted to the Council of Ministers for transmission to the National Assembly.

8. Assistance needs

The areas selected by the Committee could serve as a framework for assistance to Benin, namely:

– The establishment of the National Financial Information Processing Unit (CENTIF) and the training of its experts;

– The establishment of a central office of anti-terrorism, training of experts and supply of equipment for that purpose;

– Training to enable the staff of Benin's Financial Intelligence Unit to meet international standards;

– Training in border patrol and security investigation techniques;

– Regulation of alternative currency transfer systems to ensure that they are not used for terrorist purposes; and

– Regulation of charitable or non-profit organizations to ensure that they, and funds provided to them, are not used for terrorist purposes.

These needs could be forwarded to donor countries and organizations likely to be able to provide the assistance desired.

Cotonou, 14 March 2006