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Letter dated 23 February 2004 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 2 December 2003 (S/2003/1156). The Counter-Terrorism Committee has received the attached third report from Belgium 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*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 23 February 2004 from the Permanent Representative of Belgium to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

[Original: French]

I have the honour to transmit herewith the third report of Belgium on the implementation of Security Council resolution 1373 (2001) (see enclosure). The report provides answers to the questions in your letter of 21 November 2003.

(*Signed*) Jean **de Ruyt**
Ambassador
Permanent Representative of Belgium to the United Nations

Enclosure

[Original: English/French]

Belgium's responses to the third set of CTC questions

1.1 The CTC has agreed on further questions and comments for the consideration of the Government of Belgium with regard to the implementation of the Resolution, as set out in this section.

1.2 In regard of the effective implementation of sub-par. 1 (a) of the Resolution, could Belgium provide the CTC with the provisions in its laws, which oblige financial institutions to identify their clients and to report suspicious transactions to the Belgian Financial Intelligence Processing Unit or other relevant authorities?

Belgium wishes to refer to the recent law of 12 January 2004, which amends the money-laundering law of 11 January 1993 in order to incorporate into Belgian law the Second European Directive on the prevention of the use of the financial system for the purpose of money-laundering (2001/97/CE), the 40 new Recommendations and the 8 Special Recommendations of the Financial Action Task Force on Money Laundering (FATF).

Provisions with regard to client identification were clarified by the recent amendment and call for constant vigilance in order to ensure that the transactions that are performed are consistent with the knowledge that the declarants have of their clients, their risk profiles or their source of funds.

Provisions concerning the reporting of suspicious transactions to the Belgian Financial Intelligence Processing Unit (BFIPU) are referred to in the above-mentioned law in compliance with the European Directive. In certain cases, lawyers are covered by anti-money-laundering legislation and should address their reports on suspicious transactions to the president of the bar under whose jurisdiction they operate. The president shall check that such report is in compliance with the legal obligation of lawyers and promptly transmit the information to BFIPU.

Could Belgium inform the CTC as to the penalties prescribed by law for the violation of those reporting obligations?

The oversight or supervisory authority or relevant disciplinary authority shall rule on the penalties to be imposed on declarants for violation of their obligations under the law of 11 January 1993. In addition to such general penalties as official warnings or withdrawal of licences, the law also prescribes two specific penalties which allow the oversight or supervisory authority or disciplinary authority both to publish the decisions and measures taken and to impose an administrative fine of not less than 250 euros and not more than 1,250,000 euros.

In particular with regard to the proposal to bring lawyers within the scope of anti-money laundering legislation (see p. 6 of the supplementary report), the CTC would welcome learning whether the relevant new legal provisions have come into force.

The law of 12 January 2004 was published in the *Moniteur belge* of 23 January 2004 and came into force on 2 February 2004.

A consolidated version of the law is available in French at the BFIPU web site (www.ctif-cfi.be).

1.3 The CTC has information that the Belgian Council of Ministers has recently agreed on a new draft law that makes special provisions for a wide range of terrorist offences, but at the same time, preserving basic human rights. In this regard, the CTC would appreciate receiving a detailed outline of the referred draft and a progress report on its enactment.

The draft law was adopted on 19 December 2003, published in the *Moniteur belge* on 29 December 2003 and entered into force on 18 January 2004. It amends the following articles of the Penal Code.

Articles 137 to 141 of the Penal Code define "terrorist offences" and prescribe penalties for them, define "terrorist group", "involvement in a terrorist group" and "aiding and abetting the commission of a terrorist offence".

Article 141 defines the scope of those provisions relating to terrorism. Now that the financing of terrorism has become a major criminal offence, the current Criminal Code provides for the prosecution of attempted terrorism or the mere act of preparing for such an act.

Such counter-terrorism provisions may neither reduce nor infringe on such fundamental freedoms as the right to strike, the right to freedom of assembly, freedom of association or expression, including the right to form and to join trade unions for the protection of his interests.

The text of the law is available at the following web site: http://www.ejustice.just.fgov.be/cgi/summary.pl. (Next, type in the date of the act, press enter and then select the title in the required legislation.)

1.4 With regard to the effective implementation of par. 1, the CTC would appreciate receiving an outline of the regulations which govern informal banking practices and alternative remittance agencies involved in the transfer of funds in Belgium. In their absence, could Belgium outline the steps which it intends to take in order fully to comply with this aspect of the Resolution.

Informal funds transfer systems are forbidden in Belgium. The new provisions of the law of 11 January 1993 aim at linking the mechanism for the prevention of money-laundering and terrorism financing operations to the provision of unlicensed funds transfer services. That law makes it mandatory to identify clients wishing to transfer funds. The financial agencies concerned must keep track of all such information also when acting as intermediaries in a chain of payment transactions.

1.5 Belgium refers to legal provisions regulating the seizure and confiscation of the funds of charities involved in the financing of terrorism. The effective implementation of par. 1 of the Resolution requires the establishment of an appropriate monitoring mechanism (involving, f.ex., registration and auditing requirements) to ensure that funds collected by organizations, which have or claim to have charitable, social or cultural goals, are not diverted to purposes other than their stated purposes, in particular for the financing of terrorism. In this regard the CTC would appreciate receiving an outline of the legal provisions and the administrative mechanism, which Belgium put in place in this regard.

Freedom of association is enshrined in article 27 of the Constitution and guaranteed by the law of 24 May 21.

As far as charities are concerned, Belgium wishes to refer here to the law of 27 June 1921, which governs associations and foundations, amended by the law of 2 May 2002 on non-profit-making organizations, international non-profit-making organizations and foundations.

The text of the law is available at the following web site: http://www.ejustice.just.fgov.be/cgi/summary.pl. (Next, type in the date, press Enter and then select the title in the desired legislation.)

The following information on non-profit-making associations is on file at the office of the clerk of the commercial law court:

1. Their founding documents;

2. Regulations concerning the appointment and termination of service of directors and, where necessary, the persons responsible for day-to-day management or authorized to represent the association, the board members;

3. The register of members;

4. Decisions relating to the annulment or liquidation of the non-profit-making association;

5. Annual statements of accounts;

6. The comprehensive text of the founding documents as amended.

Large non-profit-making associations (with more than 100 employees or two of the following three criteria: either 50 employees, revenues of 3,150,000 euros and a balance sheet of 6,250,000 euros) are required by law to appoint an auditor who is a member of the institute of company auditors.

An audit of such bodies corporate may also be conducted through the fiscal obligation to file income tax returns annually as well as through the countervailing charge on inheritance tax.

In that regard, BFIPU can be considered as a sort of monitoring mechanism. This Unit's work basically focused more on detecting money-laundering offences than on combating the financing of terrorism. Obviously, terrorist organizations are also guilty of the crime of money-laundering, since they are often funded from such illicit activities as prostitution, trafficking in human beings, narcotics or forged documents. As a result of the recent change in the law, the investigation of the financing of terrorism now falls directly within the Unit's ambit.

Lastly, the Public Prosecutor has a broad mandate for monitoring the behaviour of bodies corporate.

1.6 The CTC notes from Belgium's supplementary report that the funds, financial assets and economic resources of persons who commit, attempt to commit or facilitate the commission of terrorist acts in Belgium or against another State can only be frozen if those persons are being prosecuted or are named in a list drawn up by the United Nations Security Council and/or referred to in the corresponding EU Regulations. In this regard could Belgium outline its existing legal or administrative provisions concerning the freezing of

assets of terrorists and terrorist organizations which are not on the lists of regulations referred to immediately above?

In this regard the CTC notes that the legal provisions in place should provide for the freezing of funds, regardless of origin, even if they are:

– suspected of being linked to terrorism, but have not as yet been used to commit a terrorist attack

– linked to terrorist activities which have not as yet caused any material damage.

There are no civil or criminal provisions that provide for the seizure of assets of alleged terrorists or terrorist organizations named in a list drawn up by the United Nations or the European Union. Only in the context of a judicial investigation can the seizure of assets suspected of being linked to terrorism be authorized. A criminal court judge shall decide on what should be done with such assets. Financial institutions should trace suspicious movements of funds that might be used to finance terrorism and then take specific measures by way of forwarding such information to BFIPU and the Office of the Prosecutor.

The law of 11 January 1993 provides that BFIPU may, given the seriousness or urgency of a matter, put a hold on a transaction if a suspicious transaction report is filed beforehand (i.e. the normal procedure).

The stoppage period has been extended from 24 to 48 hours by the law of 12 January 2004. Should BFIPU feel that such period should be further extended, it shall immediately so inform the Crown Prosecutor or the Federal Prosecutor, who shall take the necessary decisions.

For the record, the answer to question 1.3 above indicates that it may be possible under the law against acts of terrorism of 19 December 2003 to prosecute attempted terrorism or preparatory acts. This is particularly applicable to the financing of terrorism, which may be punishable by the freezing of assets, including through preventive attachment. Such a measure is at the discretion of the investigating judge, who decides on a case-by-case basis.

1.7 With regard to the implementation of sub-paragraph 2 (a) of the Resolution, could Belgium outline the sanctions in force for violating Belgian law concerning the manufacture, sale, possession, storage, import, export and transport of weapons and explosives within its territory.

Belgium does not have anything further to add to its response to this point set out in its supplementary report (page 5).

For the record, the sanctions are a fine of from 100 to 10,000 euros and a term of imprisonment of one month to thirty-six months. If the weapons concerned are prohibited, they are confiscated. Should the offence be repeated by the body corporate within a period of two years, its offices may be closed down.

1.8 The CTC notes that the special provisions in the Belgian Penal Code do not criminalize the recruitment of members of terrorist groups. In this regard the CTC would appreciate receiving an outline of the steps, which Belgium intends to take in order fully to implement this aspect of the Resolution.

New articles 139, 140 and 141 of the Penal Code define "terrorist group", "participation in a terrorist group" and "aiding and abetting the commission of a terrorist offence". They specifically cover the provision of information or material resources to terrorist groups or any form of financing of such groups. Therefore, the recruitment of terrorists becomes a criminal offence.

It should be noted that, with regard to the recruitment of mercenaries (insofar as they can be considered as terrorists) for service abroad, Belgium has enacted the law of 1 August 1979 on serving on a foreign army or troop situated in the territory of a foreign State.

1.9 Belgium indicates that Belgian courts do not have jurisdiction over a foreign national who is accused of having committed a terrorist act abroad. How then would Belgium deal with a foreign national who is present in Belgium and is suspected of having committed a terrorist act abroad? Would Belgium apply the international law principle "prosecute or extradite" (aut dedere aut judicare) in such a case?

In addition to conventional territorial jurisdiction, the new Belgian law provides for active personal jurisdiction over new terrorist offences. Belgium has also provided for Belgian courts to have jurisdiction over terrorist acts committed abroad by foreign nationals but only where such offences are committed against a Belgian national or institution, a European Union institution or against an agency established pursuant to the European Economic Community or European Union Treaty whose headquarters is located in Belgium.

Lastly, whenever an international counter-terrorism treaty to which Belgium is a signatory obliges States Parties to extend their extraterritorial jurisdiction, article 12 of the preliminary part of the Code of Criminal Procedure automatically incorporates these new jurisdictions into law.

1.10 et 1.11 Could Belgium indicate whether its existing legislation provides for extradition and mutual assistance on the ground of reciprocity or on the basis of international agreements only? Please indicate whether, in cases where an application for the extradition of an alleged terrorist has been turned down, Belgium will apply the international law principle "aut dedere aut judicare"? In particular, the CTC would appreciate receiving an outline of the steps which Belgium would take in the case of a foreign national whose extradition was not granted on the basis that the crime in question was likely to constitute a "political act or politically related act"…

The CTC would be grateful for information concerning the legal or other measures, which enable the Belgian authorities to provide assistance in criminal investigations and judicial proceedings as required by the Resolution. Does Belgium have a law providing for mutual assistance in criminal investigations and judicial proceedings? Could Belgium outline its mutual legal assistance provisions in general and, more particularly, as regards requests for the freezing, seizure and confiscation of property or valuables?

Belgium is not bound by any specific counter-terrorism conventions which, as in the case of narcotics, provide an independent basis for extradition outside the framework of bilateral or multilateral extradition conventions.

However, extradition for the commission of terrorist acts may be granted on the basis of the European Convention on Extradition of 13 December 1957, the Benelux Treaty on Extradition and Mutual Assistance in Criminal Matters of 27 June 1962 and bilateral extradition conventions that provide for a minimum sentence (as is the case, for example, of the Convention on Extradition between Belgium and the United States of America of 27 April 1987).

In contrast, while the great majority of bilateral extradition conventions binding on Belgium specify offences, terrorism is not one of them.

1.12

The framework decision on the definition of acts of terrorism was incorporated into Belgian domestic law by the law of 19 December 2003, mentioned in the answer to question 1.2. Thus, penalties under Belgian law for terrorist offences have been brought into line with international standards.

Concerning the ratification of the International Convention for the Suppression of the Financing of Terrorism, the legislative procedures have been completed, since the Federal Parliament (the Chamber and the Senate) has adopted the text. What remains is the apposition of the signatures of the competent ministers on both the law and the instrument of ratification, as well as the King's signature, before the instrument of ratification can be deposited with the United Nations in New York. It should be noted, however, that the law of 19 December 2003 gives effect to the Convention as a whole on Belgian territory, since the framework decision on the basis of which the law was promulgated drew considerably on the Convention.