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Security Council Committee established pursuant to resolution 1267 (1999)

Note verbale dated 16 April 2003 from the Permanent Representative of Finland to the United Nations addressed to the Chairman of the Committee

The Permanent Representative of Finland to the United Nations presents her compliments to the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999), and with reference to the note regarding resolution 1455 (2003) and its paragraph 6 has the honour to submit herewith the updated report of the Government of Finland on all steps taken to implement the measures imposed by paragraph 4 (b) of resolution 1267 (1999), paragraph 8 (c) of resolution 1333 (2000) and paragraphs 1 and 2 of resolution 1390 (2002) (see annex).

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Annex to the note verbale dated 16 April 2003 from the Permanent Representative of Finland to the United Nations addressed to the Chairman of the Committee

Report pursuant to Security Council resolution 1455 (2003)

I. Introduction

(Question 1) So far, no activities of the designated individuals or entities in Finland have been observed. Presently the designated individuals and entities are not regarded as posing a threat to Finland or Finnish interests abroad even though they may be considered to pose a minor threat to foreign interests in Finland.

II. Consolidated list

(Question 2) As a general rule, the imposition of economic sanctions and the implementation of the United Nations Security Council resolutions imposing economic sanctions fall within the competence of the European Community. The respective UN resolutions are implemented in the European Union through Council regulations which are directly applicable legislation in Finland as a Member State of the EU.

UNSC Resolution 1390(2002) as well as the relevant paragraphs of Resolutions 1267(1999) and 1333(2000) have been implemented in the European Union through Council Common Position (2002/402/CFSP) and Council Regulation (EC) No 881/2002 concerning and imposing restrictive measures against Usama bin Laden, members of the al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them. The Common Position and the Regulation have been in force as from 29 May 2002, and their copies have been submitted to the Committee together with the Note YKE0033-134, dated 29 May 2002, of the Permanent Representative of Finland to the United Nations concerning the implementation of the measures under Resolution 1390(2002).

The list of designated persons and entities attached to Resolution 1390(2002) and subsequent amendments thereto are attached as Annex I to the above-mentioned Council Regulation No 881/2002. The Regulation as well as the list and its amendments have been published in the Official Journal of the European Communities. The Commission of the European Communities is empowered to amend Annex I on the basis of determinations made either by the UNSC or by its Committee established pursuant to the SC Resolution 1267(1999).

As the Regulation and its Annex, which reproduces the list of designated persons and entities determined by the SC Committee, are directly applicable legislation in EU Member States, binding on their authorities and officials, there is no particular need to further incorporate the SC consolidated list into the national legal system or administrative structure. The Ministry for Foreign Affairs informs the competent authorities, in particular the Ministry of the Interior, Ministry of Defence, Ministry of Finance, Ministry of Trade and Industry, Finnish Frontier Guard, Financial Supervision Authority, Insurance Supervision Authority, Money Laundering Clearing House of the National Bureau of Investigation, Security Police, Consular officials, Customs, Bank of Finland as well as Finland's Bank Association, of any amendments made to the list of designated individuals and entities.

(Question 3) The financial institutions, particularly the banks, when determining whether a designated person belongs to their clientele, have encountered some difficulties with regard to the inadequate identifying information concerning designated persons with a common name. To make financial sanctions an effective tool in the fight against terrorist financing, it is necessary that the financial institutions which play a crucial role in this respect are provided with adequate means. It has also been brought to the attention of the Committee, in the discussions between the Monitoring Group established pursuant to SC Resolution 1390(2002) and the Schengen

Information Centre, that there have been similar difficulties with respect to the manner in which the designated individuals are reflected in the Schengen Information System.

(Questions 4, 5 and 7) So far, the Finnish authorities have not identified any of the designated persons in Finland and nor have they been found to have Finnish nationality or residence in Finland. Nor are the Finnish authorities aware of any names of individuals or entities associated with Usama bin Laden or members of the Taliban or al-Qaida that have not been included in the list.

(Question 6) As the implementation of the financial sanctions imposed by the UNSC falls within the competence of the European Union, the Court of the European Communities in Luxemburg has jurisdiction under the Council Regulation No 881/2002. Several individuals have filed a suit against the Commission of the European Communities and the Council of the European Union before the Court of the European Communities in Luxembourg for their inclusion in Annex I to Regulation 881/2002.

(Question 8) Chapter 34a of the Penal Code of Finland contains provisions on terrorist offences. The Chapter provides for the sentences applied to terrorist offences and their planning, to the directing of a terrorist group, to the promotion of a terrorist group, and to the financing of terrorism. The Chapter also contains a provision defining terrorist offences, a provision on the right of prosecution and a provision on corporate liability. Section 4 of Chapter 34a prohibits promotion of terrorist groups. It is applied to participation in terrorist groups, including recruitment of members. As far as recruitment of members to terrorist organizations is concerned, the relevant part of section 4 of Chapter 34a reads as follows:

> A person who, with the intention of facilitating or in the knowledge that his/her conduct will contribute to the criminal activities of a terrorist group as referred to in sections 1 and 2,
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> 1) creates or organises the group, or recruits or attempts to recruit members to such a group,
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> [...]
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> shall be sentenced, where the group's activities include the commission of or an attempt to commit an offence referred to in section 1 or the commission of an offence referred to in section 2, for *promotion of a terrorist group*, to imprisonment for at least four months and at most eight years.

The promotion of a terrorist group may be punished even if an offence has not actually been committed or attempted, provided that the group has planned to commit terrorist offences. According to subsection 3 of section 7 in Chapter 1 of the Penal Code, Finnish law shall apply to an offence referred to in Chapter 34a, committed outside of Finland, irrespective of the law of the place of commission.

So far, no criminal investigations or court proceedings on the basis of the provisions of Chapter 34a of the Penal Code which entered into force on 1 February 2003 have been initiated.

III. Financial and economic asset freeze

(Question 9) As stated in Section II above, the EU regulations imposing sanctions, including those implementing the UNSC resolutions imposing economic sanctions are directly binding legislation throughout the EU. However, additional national laws or regulations are needed with respect to the sanctions to be imposed in cases where the EU regulations are infringed.

Sanctions imposed by the UNSC or the EU are implemented at the national level by virtue of the *Act on the Enforcement of Certain Obligations of Finland as a Member of the United Nations and of the European Union* ("Sanctions Act", Act No 659/1967 as amended by Acts 824/1990, 705/1997, 191/2000, 882/2001 and 364/2002). The Act provides a basis for the prompt implementation of provisions of Council sanctions regulations for cases where the regulations have been adopted on the basis of Article 60, 301 or 308 of the Treaty establishing the European Union. In fact, the relevant penal provisions enter into force simultaneously with the regulation itself.

The Sanctions Act authorises the implementation of binding SC resolutions and EU sanctions imposed under Articles 60, 301 and 308 of the Treaty. While most EU sanctions so far have been implementing norms for binding UNSC resolutions, the Act also allows for the implementation of EU sanctions imposed independently from UN sanctions. Furthermore, it provides a basis for implementation of binding UNSC resolutions in the absence of a corresponding Council or Community regulation.

The Act, together with the Finnish Penal Code, provides for the sanctions and forfeitures to be imposed for violations of UNSC resolutions or Council regulations. According to Chapter 46, section 1 (11) of the Penal Code, a person who violates or attempts to violate a regulatory provision in a sanctions regulation, adopted on the basis of Article 60, 301 or 308 of the Treaty establishing the European Community, shall be sentenced for a regulation offence to a fine or to imprisonment for at most four years.

So far, there have been no cases before the Finnish courts relating to the infringement of Council regulation No 881/2002 implementing SC Resolution 1390(2002).

(Question 10) - Investigation of terrorist offences, including the financing of terrorism, falls within the competence of the National Bureau of Investigation. Exchange of information takes place within the framework of relevant international cooperative bodies, in particular Interpol and Europol. The unit responsible for the preliminary investigation is the Money Laundering Clearing House which operates in close co-operation with other Financial Intelligence Units of the Bureau.

The Office of the Prosecutor General is responsible for prosecution for terrorist offences.

(Questions 11 and 14) The Ministry for Foreign Affairs is responsible for the implementation and monitoring of the financial sanctions imposed by the EU and the UNSC. In the case of EU sanctions the MFA issues a notification to be published in the Statute Book, informing of the sanctions and forfeitures to be imposed by virtue of the Sanctions Act and the Penal Code for violations of the relevant regulations. In the absence of EU decisions binding SC sanctions resolutions are implemented by an implementing decree.

After the relevant EU regulations have entered into force, the Financial Supervision Authority (FSA) and the Insurance Supervision Authority are requested to provide information to the Ministry for Foreign Affairs on any suspicious accounts or on any decisions by the institutions under their supervision to freeze accounts of designated individuals or entities, within a given period of time.

The Ministry for Foreign Affairs also informs the Ministry of Finance, Money Laundering Clearing House of the National Bureau of Investigation, Bank of Finland and Finnish Bank Association on the entry into force of the relevant regulations on financial sanctions. Banks, other financial institutions and insurance companies are requested to provide information either through their supervision body or directly to the Ministry for Foreign Affairs. When necessary, and on the basis of the information provided by the financial institutions, the Ministry for Foreign Affairs will take necessary further measures, *inter alia*, to try to obtain further identifying information on the designated individuals.

The due diligence obligation and that of customer identification set forth in the existing Act on Preventing and Clearing of Money Laundering (68/1998; hereinafter referred to as the Money Laundering Act), as well as in the Credit Institutions Act, Investment Firms Act and Mutual Funds Act, aims at ensuring that financial institutions observe strict know-your-customer rules and follow good banking practice and good securities market practice.

Financial institutions have not only an obligation to identify their customers but also a duty to know their customers' operations as well as the grounds for and purpose and reason of using the respective institution's services. Further, financial institutions are under obligation to monitor customer transactions in order to detect unusual and suspicious activities which are to be reported to the Money Laundering Clearing House. From the financial institutions' viewpoint, largely the same know-your-customer rules also apply to transactions related to the financing of terrorism.

The Government Bill (173/2002) for the amendment of the Money Laundering Act was passed in January 2003. The amendments will be ratified by the President of the Republic with effect as of 1 June 2003. The Act implements, *inter alia*, Directive of the European Parliament and of the European Council of 4 December 2001 amending Council Directive on prevention of the use of the financial system for the purpose of money laundering, and partly the special counter-terrorist recommendations of the FATF concerning the prevention of the financing of terrorism.

The most relevant amendment is the extension of the scope of the Act, whereby the reporting obligation will concern not only suspected cases of money laundering but also suspicions of financing of terrorism. If there is a suspicion that transaction has a connection to the financing of terrorism the money does not need to originate from criminal activities. The Act will also apply to accountants, book-keepers, dealers and suppliers of valuables, auctioneers and persons assisting in legal matters through a business or professional practice, placing them under an obligation to report on suspicious transactions.

The FSA has a duty to ensure that the supervised entities consistently observe good banking practice and good securities market practice. The requirements of due diligence and prevention of money laundering are part of the risk management and internal controls of supervised entities, on which the FSA has focused in its supervisory action. The FSA carries out on-site inspection and supervisory visits to the supervised entities as often and as extensively as necessary to ensure that their operations and internal risk management and control systems are sufficiently advanced so that internal and external criminal activities can be identified and prevented at an early stage. In this connection it also monitors compliance with international financial sanctions. The FSA has raised financial institutions' awareness of sanctions by arranging seminars and panel discussions and by keeping close contact with the representatives of the financial institutions and other authorities. The FSA is also obliged to inform the Money Laundering Clearing House if it finds that the operations of a supervised entity give reason to suspect negligence with regard to the provisions of the Money Laundering Act.

The working group set up by the Ministry of the Interior, to review the existing legislation and to make recommendations on how the enhance the control of fundraising by organizations which have charitable, social or cultural goals, will most likely be able to give its report before the end of the year so that a Government Bill may be submitted to Parliament in 2004.

(Question 12 and 13) So far, no funds relating to the persons and entities designated pursuant to UNSC resolutions 1267(1999), 1333(2001) and 1390(2002) have been found in Finland. Despite occasional similarities between the names of some bank clients and those of designated individuals, further investigation has not justified the freezing of funds.

IV. Travel ban

(Question 15) The attached Council Common Position 2002/402/CFSP obliges the Member States of the EU, *inter alia*, to take the necessary measures to prevent the entry into, or transit through, their territories of individuals referred to in Article 1 under the conditions set out in paragraph 2(b) of the Security Council Resolution 1390(2002).

(Question 16, 17 and 19) The Ministry for Foreign Affairs has informed the visa-issuing officials as well as the Finnish Frontier Guard of their obligations under the above-mentioned Common Position and SC Resolution 1390(2002) as well as the amendments to the list of designated individuals. The names of the designated individuals have been included into national electronic visa register to which the Finnish Frontier Guard also has access.

(Question 18) The names of the designated individuals have been checked and verified through the relevant registers of the Finnish Frontier Guard. So far, enlisted individuals have not been found or apprehended at the Finnish borders. However, the Frontier Guard has found a few close hits, mainly due to the inadequate identifying information concerning designated persons with a common name. These cases were further examined in co-operation with the Security Police.

V. Arms embargo

(Questions 20, 22 and 23) The Common Position (2002/402/CFSP, adopted 27 May 2002) of the Council of the EU prohibits the direct or indirect supply, sale and transfer, to the individuals designated by the Committee established pursuant to the resolution 1267(1999), of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, from the territories of the European Union Member States, or using their flag vessels or aircraft, or by nationals of the EU Member States outside their territories, under the conditions set out in SC Resolution 1390(2002).

The Common Position, together with the Council Regulation No 881/2002, also prohibits the granting, selling, supply or transfer, directly or indirectly, of technical advice, assistance or training related to military activities, including in particular training and assistance related to the manufacture, maintenance and use of arms and related materiel of all types, to any natural or legal person, group or entity designated by the SC Committee.

In Finland, the arms embargoes imposed by the UNSC or the EU are implemented by virtue of the Act on the Export and Transit of Defence Materiel (Act No 242/1990, as amended by Acts 197/1995 and 900/2002). According to the act, export, transit or brokering of defence materiel is subject to specific authorisation (export license and brokerage permit, respectively). The requirement of a brokerage permit was added to the Act with effect as from 1 December 2002. Finnish citizens, corporations or foreign citizens considered permanent residents of Finland are required to have a brokerage licence to engage, outside Finnish territory, in the brokerage of defence materiel between third countries.

A licence to export or broker shall not be granted if it jeopardizes Finland's security or is inconsistent with Finland's foreign policy. The General Guidelines for Export and Transit of Defence Materiel adopted by the Government (474/1995, as amended by Government decision 1000/2002) provide for the rules to be followed when granting an export licence or licence to transhipment of defence materiel. Annexes 2.1.2. and 2.1.3. to the Guidelines state that economic sanctions and arms embargoes imposed by binding resolutions of the United Nations Security Council or by the EU, respectively, shall be complied with. The arms embargo against Usama bin Laden, al-Qaida and Taliban, as set out in the SC Resolution 1390(2002), and Common position (2002/402/CFSP, are included in the annexes to the above-mentioned guidelines.

(Question 21) According to Section 7 of the Act on the Export and Transit of Defence Materiel, a person who commits an export crime shall be fined or imprisoned for a maximum period of four years. As for the obligations originating from the Regulation, the Sanctions Act is also applicable.

In addition to the grounds for the issue of an export licence laid down in the Act on the Export and Transit of Defence Materiel, Finland applies the EU Code of Conduct for Arms Exports which specifically requires the EU Member States to take into account, *inter alia*, the record of the buyer country with regard to its support for or encouragement of terrorism and international organized crime. In assessing the impact of the proposed export on the importing country and the risk that exported goods might be delivered to an undesirable end-user, the risk of the arms being re-exported or delivered to terrorist organizations is taken into account.