

# LIECHTENSTEIN



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## NATIONAL POLICY

Liechtenstein condemns all forms of terrorism. Though Liechtenstein has so far been spared from violent terrorist acts within its borders, the devastating effects of terrorist attacks that many other states have suffered highlight a continuous threat to international and national security and to the freedom of peoples.

Convinced that the key to an efficient banning of international terrorist activities consists of adopting a multilateral approach, Liechtenstein actively participates in all relevant political actions taken in the framework of the UN, the Council of Europe, the FATF, the OSCE and other international organisations. Particular political emphasis is put on the fact that a successful fight against terrorism, aiming at sustainable security, demands full compliance with fundamental human rights laws, international humanitarian law and other fundamental rights of vulnerable groups.

Liechtenstein acknowledges and is aware of the threat terrorism poses to its well established and recognised financial sector. This has resulted in an intensification of Liechtenstein's international engagement and co-operation by establishing a comprehensive legal framework for efficient and swift mutual legal assistance that may lead, for example, to the blocking of suspect funds.

In its last detailed assessment report on anti-money laundering and combating the financing of terrorism in Liechtenstein (2007), the International Monetary Fund (IMF) concluded that no particular vulnerability to terrorist financing could be identified. Liechtenstein is currently working on addressing the recommendations given by the IMF in this field.

## LEGAL FRAMEWORK

In October 2003, the Liechtenstein Parliament adopted an Anti-Terrorism Package amending the Criminal Code (CC), the Code of Criminal Procedure (CCP) and the Due Diligence Act (DDA)<sup>1</sup>. In

<sup>1</sup> In German: Strafgesetzbuch (StGB), Strafprozessordnung (StPO) and Sorgfaltspflichtgesetz (SPG).

December 2008, the Liechtenstein Parliament passed legislation aimed at substantively implementing international standards in the fight against money laundering and combating the financing of terrorism. The legislative package includes in particular a comprehensive revision of the DDA, selected amendments to the CC and a new International Sanctions Act (ISA)<sup>2</sup>. The legislation entered into force in March 2009. Liechtenstein's legal texts are available on-line<sup>3</sup>.

## Penal law

### Individual terrorist acts

According to the CC, certain criminal acts are terrorist acts if they are able to produce profound or enduring disturbances of public life or to profoundly affect the economy, and if they are executed intentionally with the aim to frighten the population, to coerce public bodies or an international organisation or to seriously shock or destroy the political, constitutional, economic or social structure of a state or an international organisation. Among these criminal acts are homicide, intentional bodily harm, offences against personal liberty (such as extortionate kidnapping, coercion and dangerous threat), criminal offences against the public order (such as arson, creating an explosion and poisoning)<sup>4</sup>. These criminal offences are also sanctioned in case of attempt<sup>5</sup> or complicity<sup>6</sup>. Any person providing a safe haven to terrorists is therefore also responsible for the crime committed insofar as providing a safe haven contributes to the commission of the crime. Sanctions for terrorist acts can go up to one and a half times the maximum sentence for the criminal act as fixed by the CC<sup>7</sup>. The financial support of terrorist acts is a criminal offence sanctioned with up to five years of prison<sup>8</sup>.

<sup>2</sup> In German: Internationales Sanktionengesetz (ISG).

<sup>3</sup> [www.gesetze.li](http://www.gesetze.li).

<sup>4</sup> Section 278c subsection 1 CC.

<sup>5</sup> Section 15 CC.

<sup>6</sup> Section 12 CC.

<sup>7</sup> Section 278c subsection 2 CC.

<sup>8</sup> Section 278d CC.

## Terrorist organisations

The CC defines a terrorist organisation as a union of more than two people established for a certain length of time with the objective of one or several of its members to commit one or several terrorist acts<sup>9</sup>. The participation in and the financial support of a terrorist organisation are sanctioned with up to 10 years of imprisonment while the leading of a terrorist organisation is sanctioned with up to 15 years of imprisonment<sup>10</sup>.

## Jurisdiction

As a basic principle, all criminal acts committed on Liechtenstein territory are punishable according to Liechtenstein law. In addition to this rule, domestic legislation applies to certain crimes committed abroad, regardless of the law of the place of commission<sup>11</sup>. With respect to terrorist acts and the leading of or participation in a terrorist organisation, criminal responsibility can be established if the crime itself is committed abroad, regardless of the laws of the place of commission, and if there is a domestic connecting factor as set out by law (e.g. if the perpetrator is a Liechtenstein citizen or resident or if the perpetrator is a foreign national staying in Liechtenstein who cannot be extradited). Similar provisions apply for the financing of terrorism.

## Confiscation and forfeiture

Profits obtained from or for the commission of a criminal offence are to be confiscated by court under certain conditions<sup>12</sup>. Furthermore, property at the disposal of a terrorist association or property that has been provided or collected as a means of financing terrorism is to be declared forfeited under certain conditions, even if the property derives from an offence for which Liechtenstein jurisdiction does not apply, if the offence is punishable under the law of the State where it was committed<sup>13</sup>. Generally, forfeiture can apply to all property and items located in Liechtenstein<sup>14</sup>.

## Procedural rules

### Penal procedure

The Liechtenstein Code of Criminal Procedure (CCP) does not contain special procedures for the prosecution of persons suspected of terrorist acts, the leading of or participation in a terrorist organisation or criminal acts committed in such a context. This means that from a legal point of view there are no differences between criminal proceedings based on a suspicion of criminal acts related to terrorism and proceedings based on a suspicion of other criminal acts. Therefore, all provisions of the CCP, which apply to other suspects before or during trial, are to be applied to those suspected of criminal acts related to terrorism.

### Investigation methods

The CCP allows for investigation methods that represent a restriction of fundamental personal rights such as the search of a house or a person<sup>15</sup>, seizure of objects and the confiscation of property<sup>16</sup>, the search and seizure of documents<sup>17</sup>, the seizure and opening of letters and other items to be delivered<sup>18</sup> and the surveillance of electronic communication<sup>19</sup>.

### Competences

According to the CCP criminal acts related to terrorism are incumbent upon the Court of Justice<sup>20</sup>. The public prosecutor and the investigating judge are in charge of the investigation. For the final hearing and pronouncement of the judgement about suspected acts related to terrorism the Court of Justice acts as a criminal court<sup>21</sup>.

In order to freeze assets suspected to be linked to terrorist activities a decision by the investigating judge upon a request of the public prosecutor is needed. The decision is subject to appeal to the Appeals Court by the prosecutor, the defendant and other persons directly affected by the freeze. In some cases, the decision of the Appeals Court can be further appealed before the Supreme Court<sup>22</sup>.

<sup>9</sup> Section 278b subsection 3 CC.

<sup>10</sup> Section 278b subsections 1 and 2 CC.

<sup>11</sup> Section 64 subsection 1 CC provides the catalogue of such cases.

<sup>12</sup> Sections 20 and 20a CC.

<sup>13</sup> Sections 20b and 20c CC.

<sup>14</sup> Section 65a CC.

<sup>15</sup> Sections 92 to 95 CCP.

<sup>16</sup> Sections 96 to 97a CCP.

<sup>17</sup> Sections 98 and 98a CCP.

<sup>18</sup> Sections 99 to 102 CCP.

<sup>19</sup> Sections 103 and 104 CCP.

<sup>20</sup> In German: Landgericht.

<sup>21</sup> Section 15 subsection 2 CCP which refers to section 17 subsection 1 CC.

<sup>22</sup> In German: Obergericht and Oberster Gerichtshof respectively.

The ordering of a surveillance of electronic communication is incumbent upon the investigating judge and needs immediate authorisation by the President of the Appeals Court. In general, there are only few exceptions to the general rule that all of the investigative measures mentioned above need judicial backing.

### **Human rights and due process**

Any measure taken in the course of the fight against terrorism must respect fundamental values of justice, human dignity and cultural tolerance, which form the basis of the peaceful co-existence of all peoples. It is Liechtenstein's conviction that the fight against international terrorism is first and foremost a judiciary battle against criminal behaviour and intention on the basis of laws and within the strict borders delineated by fundamental human rights and international law.

Liechtenstein's legislation and judicial practice provide all guarantees of due process required under international law. All the relevant standards of the European Convention on Human Rights, in particular its articles 5 and 6, are part and parcel of the Liechtenstein criminal procedure, and their implementation is ultimately subject to the monitoring of the European Court of Human Rights. Liechtenstein is also a State Party to the International Covenant on Civil and Political Rights and fully implements the due process related rights contained therein<sup>23</sup>.

### **Other relevant legislation**

#### **Preventing the financing of terrorism**

In addition to the provisions against the financing of terrorism, the CC criminalises money laundering in line with to international standards<sup>24</sup> and thoroughly implements the related international sanctions regimes.

<sup>23</sup> For details see Liechtenstein's report to the Human Rights Committee contained in document CCPR/C/LIE/2003/1 at <http://tb.ohchr.org/default.aspx?country=li>.

<sup>24</sup> Money-laundering is a criminal offence under section 165 CC. For a comprehensive analysis of Liechtenstein's current laws and practices in this area, see the IMF's "Detailed Assessment Report on Anti-Money Laundering and Combating the Financing of Terrorism" regarding Liechtenstein from September 2007 ([www.imf.org/external/pubs/ft/scr/2008/cr0887.pdf](http://www.imf.org/external/pubs/ft/scr/2008/cr0887.pdf)), and most recently the respective progress report (Doc. MONEYVAL (2008) 28 available at [www.coe.int/moneyval](http://www.coe.int/moneyval)) adopted by MONEYVAL (Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism) in December 2008.

Liechtenstein's Financial Intelligence Unit (FIU) has the lead in coordinating the fight against money laundering and terrorist financing. The FIU also implements the International Sanctions Act. It analyses and disseminates information for the detection of cases of money laundering, predicate offences for money laundering, organised crime or the financing of terrorism. The revision of the Due Diligence Act (DDA) and the new Due Diligence Ordinance (DDO)<sup>25</sup>, which entered into force in March 2009, implement the Third EU Money Laundering Directive of 26 October 2005 (3MLD), the directive of 1 August 2006 (PEP Directive) and Regulation (EC) No 1781/2006 on information on the payer accompanying transfers of funds. Additional legislation addressing the recommendations of the IMF assessment report is currently being prepared.

The Financial Market Authority (FMA) is an independent supervisory body overseeing Liechtenstein's financial and insurance sector. All financial and relevant non-financial institutions must be licensed by the FMA on the basis of internationally accepted criteria. The FMA sanctions non-compliance with the DDA/DDO by supervised entities and can refer such violations to the Office of the Public Prosecutor and notify the FIU.

Non-profit sector charitable organisations that have received tax-exemption status must be registered with the Public Registry. In accordance with article 108 of the Law on Persons and Companies<sup>26</sup>, all non-commercial organisations must have a Director who is subject to the DDA. According to the new Liechtenstein Foundation Law<sup>27</sup>, which entered into force in April 2009, charitable foundations are subject to mandatory and ongoing supervision by a newly created Foundation Supervision Authority and by an audit office established as an organ of such foundations. The use of charitable organisations for the financing of terrorism is criminalised in Liechtenstein, and the activities of charitable organisations are subject to oversight.

The International Sanctions Act, which entered into force in March 2009, brought the domestic legislation in line with the current realities of the prevailing international sanctions regimes (UN-sanctions and EU-sanctions or restrictive measures). The law improves the legal basis for co-operation with international organisations in the implementation of sanctions and for data protection, sets clear responsibilities for enforcement and increases the penalties for sanctions violations.

<sup>25</sup> In German: Sorgfaltspflichtverordnung (SPV).

<sup>26</sup> In German: Personen- und Gesellschaftsrecht (PGR).

<sup>27</sup> In German: Stiftungsrecht. The Foundation Law is part of the PGR.

## Victims assistance and compensation

People who are victims of a crime committed on Liechtenstein territory can file claims for victim assistance and compensation according to the Victims Assistance Act (VCA)<sup>28</sup>, which entered into force on April 2008. Liechtenstein residents who are victims of a crime committed abroad can file claims for victim's assistance. The law considers as a victim the person whose physical, psychological or sexual integrity is immediately harmed and the dependents of that person as well as people who were harmed while trying to help, and their dependents.

Victims assistance includes immediate help and counselling, long-term assistance by the Victims Assistance Office, financial support for long-term third-party assistance and legal counselling. Compensation by the state is subsidiary to third-party compensation and can be applied for in case the crime has been committed on Liechtenstein territory.

## INSTITUTIONAL FRAMEWORK

In Liechtenstein, the following government and non-government agencies deal with the fight against terrorism:

The Office of the Public Prosecutor and the Court of Justice are responsible for the prosecution of terrorist acts and terrorist financing. They are supported by the National Criminal Police's Economic Crime Unit<sup>29</sup>.

The Financial Intelligence Unit (FIU) is responsible for receiving, analysing and disseminating information relating to ML and FT. Reporting entities must immediately give notice when suspicion of money laundering, a predicate offence of money laundering, organized crime, or terrorist financing arises. Likewise, all offices of the Public Administration and the FMA are subject to the obligation to report to the FIU.

Preventive duties against terrorism in the domain of customs and border controls are mainly incumbent upon Swiss authorities. In 1923 Liechtenstein and Switzerland concluded a custom union treaty, based on which most competencies and tasks in relation to Liechtenstein's customs and border controls were delegated to the Swiss authorities and Swiss customs laws were made directly applicable in Liechtenstein. While border controls between Liechtenstein and Switzerland have been lifted,

controls at the border of Liechtenstein and Austria are currently being performed through the Swiss authorities. The Swiss border guards act in a double function as customs officers as well as border police and therefore also have limited police powers. A cross border cash declaration system has been implemented, jointly with the Swiss authorities, in 2011.

On 19 December 2011 Liechtenstein became part of the Schengen and Dublin systems.

## INTERNATIONAL CO-OPERATION

Liechtenstein considers international co-operation in the fight against terrorism as crucial. Therefore, Liechtenstein co-operates with other states both in the area of extradition and mutual legal assistance and within the framework of international organisations committed to the fight against terrorism, such as the United Nations, the OSCE, FATF and the Council of Europe.

Furthermore Liechtenstein's FIU is an active member of the Egmont Group, the worldwide association of national financial intelligence units, which supports and promotes the mutual exchange of information at the international level. As part of cooperation within the Egmont Group, the FIU concluded several bilateral Memoranda of Understanding and cooperation agreements.

## Mutual assistance and extradition

The procedures for mutual legal assistance in criminal matters and extradition are determined by the provisions of the Legal Assistance Act (LAA)<sup>30</sup>. The Ministry of Justice is the competent authority for the reception and transmission of requests for legal assistance or extradition. The Ministry of Justice also decides about the *prima facie* admissibility of such requests.

If admissible, requests for legal assistance or extradition are transmitted to the Court of Justice. Decisions about legal assistance by the Court of Justice are subject to appeal both by the public prosecutor and by the person that is affected by the legal assistance demanded. Legal assistance may include the transfer of documents, items or information, citation before a foreign court and the transfer of imprisoned persons for evidence<sup>31</sup>. With regard to extradition, the person to be extradited

<sup>28</sup> In German: Opferhilfegesetz (OHG).

<sup>29</sup> In German: Kommissariat Wirtschaftskriminalität.

<sup>30</sup> In German: Rechtshilfegesetz (RHG).

<sup>31</sup> Sections 52 to 54a LAA.

has the right to demand a trial before the Appeals Court<sup>32</sup>.

The LLA's provisions are subsidiary to the several bilateral and multilateral treaties that include provisions on legal assistance and extradition and to which Liechtenstein is a State Party.

In general, according to the LLA, any terrorist activities as criminalised by the Liechtenstein Criminal Code (CC) are subject to legal assistance and extradition. Liechtenstein citizens may refuse extradition unless, for example, co-operation with the International Criminal Court is concerned<sup>33</sup>. In the case where a person suspected of a terrorist activity is not extradited, the person can be prosecuted under domestic jurisdiction.

## Measures at international level

### United Nations

Liechtenstein has consistently been supportive of multilateralism as the most efficient and sustainable strategy in the fight against international terrorism. It recognises the eminent role of the United Nations as the only global forum to tighten international co-operation against terrorism and promotes the comprehensive implementation of the UN Global Counterterrorism Strategy. Liechtenstein has ratified and implemented all sixteen UN anti-terrorism conventions and protocols. The four new UN instruments that were adopted in 2005 have been ratified by the Liechtenstein Parliament in July 2009.

Liechtenstein supports the work of the UN Security Council, in particular the Counter-Terrorism Committee (CTC) and the Al-Qaeda Sanctions Committee, and has fully complied with all reporting obligations to these bodies<sup>34</sup>. Liechtenstein has been financially contributing to the global project *Strengthening the Legal Regime against Terrorism* by the UN Office on Drugs and Crimes since 2005.

### Organisation for Security and Co-operation in Europe (OSCE)

Liechtenstein considers the OSCE as an important organisation for the promotion of international stability, security and co-operation and appreciates in particular the activities of the Action against

Terrorism Unit (ATU) of the Organisations Transitional Threats Department (TNT). The TNT/ATU is the focal point, information resource and implementation partner on OSCE counter-terrorism activities.

### Financial Action Task Force (FATF)

Liechtenstein fully co-operates with the FATF and implements the Forty FATF Recommendations on Money Laundering as well as the Nine Special Recommendations on Terrorist Financing.<sup>35</sup>

### Council of Europe

Liechtenstein is a member of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval). It appreciates the contribution of the Council of Europe in the area of preventing and suppressing terrorism on the basis of its commitment to democracy, human rights and the rule of law. Liechtenstein is fully committed to the ongoing work of CODEXTER.

### Egmont Group

Liechtenstein plays an active role in the Egmont Group, the international association of national financial intelligence units and supports the activities with expertise.

### Relates Issues

Liechtenstein ratified the United Nations Convention against Corruption of 31 October 2003 in July 2010. It entered into force for Liechtenstein on 7 August 2010. Furthermore, Liechtenstein joined the Council of Europe's GRECO (Group of States against Corruption) by January 2010 and signed the Council of Europe's Criminal Law Convention on Corruption of 27 January 1999 and its additional protocol in November 2009. It plans to ratify it in late 2012 or early 2013. Liechtenstein also ratified the Agreement for the Establishment of the International Anti-Corruption Academy as International Organization of 2 September 2010 in September 2011. It entered into force for Liechtenstein on 18 November 2011.

<sup>32</sup> Section 33 LAA.

<sup>33</sup> As determined in the Law on the Co-operation with the International Criminal Court and Other International Courts. In German: Gesetz über die Zusammenarbeit mit Internationalen Strafgerichtshof und anderen Internationalen Gerichten (ZIGG).

<sup>34</sup> Liechtenstein's seventh national report to the CTC of May 2011 is available under [www.newyork.liechtenstein.li](http://www.newyork.liechtenstein.li).

<sup>35</sup> See also the section *Preventing the financing of terrorism* above and in particular the assessment reports cited in fn. 24.

<b>Relevant Council of Europe conventions – Liechtenstein</b>	<b>Signed</b>	<b>Ratified</b>
European Convention on the Suppression of Terrorism (ETS 90)	22/01/1979	13/06/1979
Amending Protocol (ETS 190)	15/05/2003	08/02/2005
European Convention on Extradition (ETS 24)	-	28/10/1969 (accession)
First Additional Protocol (ETS 86)	17/11/2003	04/02/2004
Second Additional Protocol (ETS 98)	-	-
European Convention on Mutual Assistance in Criminal Matters (ETS 30)	-	28/10/1969 (accession)
First Additional Protocol (ETS 99)	-	-
Second Additional Protocol (ETS 182)	-	-
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)	20/10/1983	26/02/2003
European Convention on the Compensation of Victims of Violent Crimes (ETS 116)	07/04/2005	17/12/2008
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	29/06/1995	09/11/2000
Convention on Cybercrime (ETS 185)	17/11/2008	-
Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189)	17/11/2008	-
Council of Europe Convention on the Prevention of Terrorism (ETS 196)	-	-
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the on the Financing of Terrorism (ETS 198)	-	-

<b>Relevant United Nations conventions – Liechtenstein</b>	<b>Signed</b>	<b>Ratified</b>
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 1973)	-	28/11/1994 (accession)
International Convention against the Taking of Hostages (New York, 1979)	-	28/11/1994 (accession)
International Convention for the Suppression of Terrorist Bombings (New York, 1997)	-	26/11/2002 (accession)
International Convention for the Suppression of the Financing of Terrorism (New York, 1999)	02/10/2001	09/07/2003
International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 2005)	16/09/2005	2009
Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963)	-	26/02/2001 (accession)
Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague, 1970)	24/08/1971	23/02/2001
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971)	-	23/02/2001 (accession)
Convention on the Physical Protection of Nuclear Material (Vienna, 1971)	13/01/1986	25/11/1986
Amendment to the Convention on the Physical Protection of Nuclear Material (Vienna, 2005)		2009
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1988)	-	26/02/2001 (accession)
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 1988)	-	08/11/2002 (accession)
2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (London, 2005)	-	2009
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 1988)	-	08/11/2002 (accession)
2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (London, 2005)	-	2009
Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1991)	-	4/12/02 (accession)