

BELGIUM

October 2004

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NATIONAL POLICY

Belgium attaches fundamental importance to fighting terrorism and strives to ensure that it has all the appropriate means of preventing acts of terrorism and effectively bringing the perpetrators to trial. This combat is pursued with due regard for human rights and the rule of law.

To establish a coherent, effective counter terrorism system, Belgium has introduced a legal framework, an institutional framework and provisions aimed at enhancing international co-operation.

LEGAL FRAMEWORK

Penal law

On 19 December 2003 Belgium adopted new measures to combat terrorism. The Terrorist Offences Act (published in the *Moniteur Belge* (official gazette) of 29 December 2003), which transposed into Belgian law the Council of the European Union's Framework Decision of 13 June 2002 on combating terrorism, introduced a new Title I ter in the Belgian Criminal Code concerning terrorist offences.

This new Title includes Articles 137 to 141ter of the Criminal Code. Article 137 defines a terrorist offence as an offence which "by its nature or context may cause serious harm to a country or an international organisation" and which is "committed intentionally with the aim of seriously intimidating a population or unduly forcing public authorities or an international organisation to take or refrain from taking certain action or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation."

Article 138 of the Criminal Code determines the penalties applicable to terrorist offences covered by Article 137.

Article 139 deals with terrorist groups, which it defines as "an organised association of more than two people, established on a lasting basis and taking concerted action with a view to the

commission of terrorist offences covered by Article 137." The article nonetheless stipulates that an "organisation whose real purpose is solely of a political, trade union or philanthropic, philosophical or religious nature, or which solely pursues any other legitimate aim, cannot, as such, be considered a terrorist group."

Article 140 of the Criminal Code makes it a criminal offence to participate in the activity of a terrorist group. This concerns the situation of "anyone who participates in an activity of a terrorist group, including by providing information or material resources to that group or through any form of financing of a terrorist group's activity, in the knowledge that such participation aids the commission of an offence." The penalties for leading a terrorist group are more severe than those incurred for "mere" participation.

Articles 141bis and 141ter clarify the scope of the legislation concerning terrorist offences. Reiterating a provision of the Framework Decision of 13 June 2002, Article 141bis excludes action by armed forces from the ambit of Articles 137 to 140 of the Criminal Code. Article 141ter shows Belgium's attachment to the provisions guaranteeing fundamental rights and freedoms. It provides that the articles of the Criminal Code concerning terrorist offences shall not be construed as "seeking to reduce or interfere with fundamental rights or freedoms such as the right to strike, freedom of assembly, of association and of expression, including the right to form trade unions with others and to join such trade unions with a view to defending one's interests, and the related right of protest, and such as are enshrined, in particular, in Articles 8 to 11 of the European Convention on Human Rights and Fundamental Freedoms."

Procedural rules

In Belgium persons suspected of terrorist offences are dealt with in accordance with ordinary law, and all the relevant rules of procedure accordingly apply to them. They have exactly the same rights as any other accused during questioning and trial proceedings, including the possibility of appealing against decisions concerning them. However, in view of the nature of terrorist offences, certain

specific investigation methods such as telephone tapping or proactive investigations (set out in detail below under "Other relevant legislation"), which are applied to serious offences, can be applied where the acts committed come under Article 137 of the Criminal Code.

Where acts of terrorism or financing of terrorism are suspected, the Belgian Code of Criminal Investigation makes it possible to seize property which seems to constitute:

- the object of an offence or which was used or intended to be used in its commission;
- the proceeds of an offence;
- or assets derived directly from an offence, property or securities substituted for them or income from their investment.

As for other serious offences, rules of extraterritorial competence apply in the fight against terrorism.

The Belgian courts have jurisdiction in respect of offences covered by the new Title I ter of the Criminal Code perpetrated outside Belgium where:

- the offence was committed by a Belgian national (Article 6, 1ter of the Preliminary Title of the Code of Criminal Procedure);
- the offence was committed against a Belgian national or institution or an institution or body of the European Union having its seat in Belgium (Article 10ter, 4 of the Preliminary Title of the Code of Criminal Procedure);
- extraterritorial competence is imposed under a rule of international law binding on Belgium (Article 12bis of the Preliminary Title of the Code of Criminal Procedure).

Practical application

On 30 September 2003 in a trial for acts of terrorism the Brussels Criminal Court (tribunal correctionnel) convicted 18 people of forgery and use of forged documents, criminal association, recruitment for the benefit of a foreign power, formation of a private militia and the offence of handling. The verdict was severe: the defendants, some of whom had been directly involved in the assassination of Commander Massoud in Afghanistan while others had participated in the preparation of various terrorist attacks in Belgium, received prison sentences of up to ten years.

Other relevant legislation

Specific investigation methods

Under the Act of 19 December 2003 the new offences covered by Articles 137 to 141 of the

Criminal Code were added to the list of offences which might warrant:

- telephone tapping (Article 90ter § 2 of the Code of Criminal Investigation);
- proactive investigations (Article 28bis § 2 of the Code of Criminal Investigation);
- infiltration measures (Article 47octies § 1 of the Code of Criminal Investigation);
- observation measures involving use of technical devices to spy into people's homes (Article 56bis, second paragraph, of the Code of Criminal Investigation);
- questioning of witnesses under conditions of complete anonymity (Article 86bis § 2 of the Code of Criminal Investigation);
- secret searches (Article 89ter § 1 of the Code of Criminal Investigation);
- special protection measures granted to a threatened witness by the Witness Protection Board (Article 104 § 2 of the Code of Criminal Investigation).

Victim protection

Victims of acts of terrorism may lodge a compensation claim with the Committee for Financial Aid to Victims of Acts of Violence, governed by section II of the Act of 1 August 1985, as amended by the Act of 22 April 2003. This Committee is responsible for taking decisions on requests for financial assistance from all victims of deliberate acts of violence, not just acts of terrorism.

The Committee may grant financial aid:

1. to persons who suffer significant physical or psychological harm as a direct result of a deliberate act of violence;
2. to relatives of, or persons living in a lasting family relationship with, a person whose death was a direct result of a deliberate act of violence;
3. to the parents of, or persons having charge of, a minor who needs long-term medical treatment or therapy as a result of a deliberate act of violence;
4. to the relatives up to the second degree of, or relatives living in a lasting family relationship with, a victim who has been untraceable for more than one year and whose disappearance is acknowledged to be very probably due to a deliberate act of violence.

Financial aid, the amount of which is decided on an equitable basis within a range of € 500 to 62,000, is awarded under certain conditions. Firstly, the act of violence must have been perpetrated in Belgium. Secondly, at the time of commission of the act, the victim must have been of Belgian nationality (or have been entitled to

enter Belgian territory and to stay or settle there; alternatively, the victim may subsequently have been issued with an indefinite residence permit by the Immigration Office in connection with an investigation concerning trafficking of human beings). Thirdly, the claim must be lodged within three years of the final judicial decision. Lastly, effective, adequate reparation of the damage must not be obtainable from the perpetrator or another compensation scheme (social security, private insurance, etc.).

Preventing financing of terrorism

In 2004 financing of terrorism was included in the scope of the Act of 11 January 1993 on prevention of use of the financial system for money laundering. This means that financial institutions and other operators involved in monetary flows are obliged to inform the Financial Information Processing Unit (Cellule de Traitement des Informations Financières - CTIF) of any matters which they suspect are linked to financing of terrorism.

INSTITUTIONAL FRAMEWORK

In Belgium the main government officials and bodies involved in fighting terrorism are:

- the Prime Minister, who is responsible for general policy and, in that capacity, chairs the Ministerial Committee on Intelligence and Security, in which the ministers responsible for certain aspects of security participate;
- the Minister of the Interior, principally through the Crisis Centre, in charge, in particular, of preventing terrorism;
- the local and federal police forces, which co-operate in all matters to do with preventing and fighting crime, in particular terrorism;
- the Inter-Forces Counter-Terrorism Group (GIA), which, under the joint authority of the interior and justice ministers, gathers and analyses information originating from the police and intelligence services with a view to assessing the terrorist threat;
- the Minister of Justice, who is responsible for the judicial investigations conducted by the public prosecution service and for determining crime policy in conjunction with the College of Prosecutors General;
- the Criminal Investigation Department (Sûreté de l'Etat), supervised by the Minister of Justice, which constitutes the civil intelligence service;
- the Financial Information Processing Unit (CTIF), an independent authority under the external supervision of the justice and finance

ministers, which gathers and analyses financial information linked, in particular, to terrorism;

- the Treasury, attached to the Federal Public Finance Department, which, in accordance with European regulations, is the authority competent for freezing terrorists' assets;
- the Customs and Excise Department, competent, in particular, in matters of arms trafficking.

INTERNATIONAL CO-OPERATION

Mutual assistance and extradition

Belgium is party to a number of bilateral and multilateral treaties such as the European Convention on Extradition (1957) and its two additional protocols and the European Convention on Mutual Assistance in Criminal Matters (1959) and its first additional protocol. Although these treaties cover more than just assistance requests and extraditions in connection with the fight against terrorism, they also apply to such cases.

Belgium implemented the Framework Decision on the European Arrest Warrant under an Act of 19 December 2003 (published in the *Moniteur Belge* on 22 December 2003), thereby enabling enhanced international co-operation, *inter alia*, in fighting terrorism.

The European Convention on the Suppression of Terrorism of 1977, to which Belgium has been party since 31 October 1985, facilitates the extradition of persons who have committed acts of terrorism. Belgium has launched the domestic process for ratification of the Protocol amending the European Convention on the Suppression of Terrorism, which it signed on 15 May 2003.

Measures at international level

United Nations

Belgium has ratified nine of the twelve United Nations conventions against terrorism. The ratification process is pending for the following three conventions: the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and its protocol (1988), the International Convention for the Suppression of Terrorist Bombings (1998) and the Convention on the Marking of Plastic Explosives for the Purpose of Detection (1991).

Belgium supports the action taken by the United Nations Security Council and honours the

obligations deriving from the latter's resolutions on the fight against terrorism.

Belgium has provided the Security Council Committee established pursuant to Resolution 1267 (1999), concerning Al-Qaida and the Taliban, with very detailed information on the intelligence at its disposal.

Belgium has also submitted a number of reports to the United Nations Counter Terrorism Committee on domestic developments in the fight against terrorism.

Financial Action Task Force against Money Laundering (FATF)

Belgium is a member of the FATF and applies that body's special recommendations on combating the financing of terrorism.

Measures taken within the EU

Belgium has always participated actively in European Union initiatives, notably by applying the measures mentioned in the European Council Declaration on the Fight against Terrorism of 25 March 2004 and in the Revised Plan of Action/Road-Map on Combating Terrorism adopted by the JHA Council at its meeting on 8 June 2004.

Relevant Council of Europe conventions - Belgium	Signed	Ratified
European Convention on the Suppression of Terrorism (ETS 90)	27/1/1977	31/10/1985
Amending Protocol (ETS 190)	15/5/2003	
European Convention on Extradition (ETS 24)	13/12/1957	29/8/1997
First Additional Protocol (ETS 86)	18/11/1997	18/11/1997
Second Additional Protocol (ETS 98)	18/11/1997	18/11/1997
European Convention on Mutual Assistance in Criminal Matters (ETS 30)	20/4/1959	13/8/1975
First Additional Protocol (ETS 99)	11/7/1978	28/2/2002
Second Additional Protocol (ETS 182)	8/11/2001	
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)	15/5/1972	
European Convention on the Compensation of Victims of Violent Crimes (ETS 116)	19/2/1998	23/3/2004
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	8/11/1990	28/1/1998
Convention on Cybercrime (ETS 185)	23/11/2001	
Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189)	28/1/2003	