

FRANCE

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NATIONAL POLICY

A victim of international terrorism both at home and abroad, France has long been giving proof of its determination to combat terrorism in all its forms, regardless of who is responsible for it.

The terrorist threat has led it to introduce cohesive and specific laws and practical measures progressively, and to work for closer international co-operation.

This determination was reaffirmed in the wake of the terrorist attacks of 11 September 2001 in the USA, which led to a strengthening of internal prevention and international co-operation, in accordance with Security Council Resolution 1373.

LEGAL FRAMEWORK

France has progressively adopted specific anti-terrorist laws, the keystone being the Act of 9 September 1986, which has been updated at regular intervals.¹ Since the attacks of 11 September 2001, the Acts of 15 November 2001,² 18 March 2003,³ 9 March 2004⁴ and 23 January 2006 have reinforced the basic legislation and procedural regulations.⁵

In general, it should be said that France's action against international terrorism respects human rights and public liberties.

The laws in question are in no sense emergency laws, but merely special laws containing derogations, of the kind already current in the law on economic and financial crime, or the law on organised crime, of which anti-terrorist law now forms part.

Apart from criminal law, which is the main legal weapon against terrorism, French anti-terrorist law also draws on civil and administrative law

(interception for security reasons, refusal of admission, refusal of asylum, refusal of naturalisation, deprivation of rights, expulsion, removal, supervision of associations, combat groups and private militias).

Basic legislation

The legal definition of a terrorist act comprises two elements:

a) it is a crime or lesser indictable offence defined as such in the Criminal Code. These crimes and offences are listed in Article 421-1 of the Criminal Code. They are:

- deliberate attacks upon life;
- deliberate attacks on integrity of the person;
- abduction, holding of persons against their will;
- hijacking of an aircraft, ship or other means of transport;
- theft, extortion, destruction of and damage to property;
- computer offences (as defined in Section III of the Criminal Code);
- offences involving prohibited combat groups and movements;
- offences involving firearms, explosives or nuclear substances;
- handling the proceeds of one of the above offences;
- money laundering;
- insider offences;
- endangering human, animal or environmental health by introducing substances into the air, soil, sub-soil, foodstuffs or foodstuff ingredients, or water.

b) The above crimes and lesser indictable offences are connected with an individual or collective operation aimed at seriously disturbing public order by intimidation or terror, which is the distinguishing feature of terrorism.

Moreover, the law specifically punishes the following terrorist, or potentially terrorist, offences:

- conspiracy for the purpose of committing terrorist offences;⁶

¹ Act No. 86-1020 of 9 September 1986 on action against terrorism.

² Act No. 2001-1062 of 15 November 2001 on everyday security.

³ Act No. 2003-239 of 18 March 2003 on internal security.

⁴ Act No. 2004-204 of 9 March 2004 bringing justice into line with new patterns of crime.

⁵ Act No. 2006-64 of 23 January 2006 on action against terrorism, containing various provisions on security and border checks.

⁶ Articles 421-2-1 and 421-6 of the Criminal Code.

- funding of a terrorist operation.⁷ Provision is also made for freezing of the assets and, as an additional penalty, confiscation of all or part of the assets of terrorist offenders;⁸
- failure to account for resources on the part of any person habitually in contact with one or more persons engaging in terrorist acts;⁹
- direction and organisation of a criminal association for the purpose of preparing terrorist acts;¹⁰
- direct incitement to, and justification of, terrorism, which are punishable offences under Section 24 of the Act of 29 July 1881 on freedom of the press;
- concealment of the authors of a terrorist act.¹¹

Under Articles 421-3ff. of the Criminal Code, terrorist acts carry aggravated penalties.

Procedural rules

Special procedural rules apply to terrorist offences:

During the investigation

- *Special police custody*

- for all terrorist offences, police custody may be extended to 96 hours,¹² and this also applies to minors over the age of 16 (Article 4 of the Order of 2 February 1945, as supplemented) "*when there are one or more plausible reasons for suspecting that one or more adult persons have been involved, as authors or accomplices, in committing the offence*";
- police custody may be extended to six days if there is a serious danger that acts of terrorism are imminent in France or abroad, or the requirements of international co-operation make this essential;¹³
- in the case of adults, lawyers are not involved until the suspect has been in police custody for 72 hours.¹⁴

- *Special investigation techniques*

These include:

- seizures and searches without the agreement of the persons concerned, *inter*

alia at night, under a special authorisation system;¹⁵

- vehicle inspections;¹⁶
- the use of audiovisual recording equipment during the investigation and when information is being collected;
- anonymous hearing of witnesses;
- video surveillance;
- surveillance throughout the national territory of persons suspected of committing terrorist acts, and of supplying or transporting objects, commodities or products derived from, or used to commit, such offences;¹⁷
- identity checks on transnational trains;¹⁸
- in certain high-risk areas, facilities for computerised checking of vehicle registration data, and photographing of occupants;¹⁹
- comparison of personal data collected in relation to passenger transport;
- infiltration operations authorised²⁰ by state prosecutors or investigating judges and designed to facilitate the disclosure of crimes without provoking them;
- protection for special police officers investigating terrorist offences, who are allowed to identify themselves by their special service numbers;²¹
- tapping of phones, authorised by the liberties and detention judge in connection with expedited or preliminary police investigations for a period of 15 days, once renewable, on application by the public prosecutor;²²
- the placing of sound-recording devices in any public or private place or vehicle by order of the investigating judge, who must first consult the public prosecutor and obtain the consent of the liberties and detention judge, *inter alia* outside legal search hours and without the consent of the persons concerned;²³
- the possibility for the prosecution service of involving the tax services, under Article 10B of the Tax Procedures Code, in investigations concerned with the funding of terrorism;²⁴
- the possibility for the judicial authority concerned, with the prior approval of the Minister of Justice and the consent of the EU

⁷ Article 421-2-2 of the Criminal Code.

⁸ Articles 422-6 of the Criminal Code.

⁹ Article 421-2-3 of the Criminal Code.

¹⁰ Article 421-5, para. 2 of the Criminal Code.

¹¹ Article 434-6 of the Criminal Code.

¹² Article 706-88 of the Code of Criminal Procedure.

¹³ Article 706-88 of the Code of Criminal Procedure.

¹⁴ Article 706-88 of the Code of Criminal Procedure.

¹⁵ Article 76 of the Code of Criminal Procedure.

¹⁶ Article 78-2-2 of the Code of Criminal Procedure.

¹⁷ Article 706-80 of the Code of Criminal Procedure.

¹⁸ Article 78-2 of the Code of Criminal Procedure.

¹⁹ Article 26 of Act No. 2003-239 of 18 March 2003 on internal security, as amended by Article 8 of Act No. 2006-64 of 23 January 2006 on action against terrorism, containing various provisions on security and frontier checks.

²⁰ Articles 706-81 to 70-687 of the Code of Criminal Procedure.

²¹ Article 706-24 of the Code of Criminal Procedure.

²² Article 70-696 of the Code of Criminal Procedure.

²³ Articles 706-97 to 706-97-6 of the Code of Criminal Procedure.

²⁴ Article 421-2-3 of the Criminal Code.

- member state(s) concerned, to set up a joint investigation team;²⁵
- payment of informers;²⁶
- use of state technical facilities covered by the secrecy rules applying in the national defence sphere to decode encrypted messages.²⁷

Special judicial treatment

- *Special judicial powers*
 - French courts have semi-universal powers under the anti-terrorist conventions accepted by France and referred to in Articles 689-1 to 689-10 of the Code of Criminal Procedure, if the presumed terrorist is in France;
 - the judicial authority comprises a prosecutor's department (seven prosecutors) and an investigation unit (seven investigating judges) specialising in terrorist offences;
 - prosecution, investigation and enforcement of penalties are centralised (from 1 May 2006) at the Paris Regional Court;
 - the joint appointment of an economic and financial investigating judge and an anti-terrorist judge is provided for when the financing of terrorism, concealment, insider offences, money laundering in connection with a terrorist operation and failure to account for resources on the part of persons engaging in acts of terrorism are being investigated;²⁸
 - adults and minors above the age of 16 accused of terrorist crimes are tried by a specially constituted court of professional judges;²⁹
 - the limitation periods for prosecution and serving of sentence are extended to 30 years for crimes, and 20 years for lesser indictable offences.³⁰

- *Measures to facilitate judicial investigation*

These are:

- longer periods of detention on remand;³¹
- provision for the freezing of assets;³²
- the possibility of using the European arrest warrant;³³

- the possibility of using video conferencing facilities to hear witnesses, civil parties and experts, question suspects, and hold adversarial hearings on placement in detention on remand, extension of detention on remand, or applications for release;³⁴
- a provision making it an offence, punishable by five years in prison, for persons involved or assisting in criminal proceedings to disclose information which may impede the investigations to a third party.³⁵

Other relevant legislation

- *Protection for persons who have helped to stop terrorist offences from being committed*

Special protection is provided for offenders, collaborators of justice, who co-operate with the police and help them to prevent acts of terrorism, terminate or mitigate the damage caused, or identify offenders or accomplices;³⁶ if necessary, such persons may be authorised to use false identities. Protection also applies to family members and personal associates.

- *Sentence reduction for convicted persons who help to stop or prevent terrorist offences*

Enforcement judges may grant special sentence reductions to convicted persons who make statements, before or after conviction,³⁷ concerning the offences listed in Articles 706-73 and 706-74 of the Code of Criminal Procedure (including crimes and lesser indictable offences constituting acts of terrorism covered by Articles 421-1 to 421-6 of the Criminal Code) and so help to stop or prevent them.

- *Special compensation for victims of acts of terrorism*

A special scheme to compensate victims of acts of terrorism, via the Guarantee Fund for Victims of Acts of Terrorism and other Offences (*Fonds de garantie des victimes d'actes de terrorisme et d'autres infractions* - F.G.T.I.),³⁸ was introduced in 1986.³⁹

²⁵ Articles 695-2 and 695-3 of the Code of Criminal Procedure.

²⁶ Section 15-1 of the Act of 21 January 1995 on guidance and planning in connection with security.

²⁷ Article 230 of the Code of Criminal Procedure.

²⁸ Article 706-17 of the Code of Criminal Procedure.

²⁹ Article 706-25 of the Code of Criminal Procedure.

³⁰ Articles 706-25-1 of the Code of Criminal Procedure.

³¹ Articles 145-1 and 2 of the Code of Criminal Procedure.

³² Articles 706-103 of the Code of Criminal Procedure.

³³ Articles 695-11 to 695-51 of the Code of Criminal Procedure.

³⁴ Article 706-71 of the Code of Criminal Procedure.

³⁵ Article 434-7-2 of the Criminal Code.

³⁶ Articles 132-78 of the Criminal Code and 706-63-1ff. of the Code of Criminal Procedure.

³⁷ Article 721-3 of the Code of Criminal Procedure.

³⁸ The F.G.T.I. is financed from a levy on property insurance contracts; its resources are supplemented by repayments which the fund obtains from offenders and, since adoption of the Act of 15 November 2001 providing for freezing of the assets and confiscation of the property of terrorists as an additional penalty, from the proceeds of financing or property sanctions imposed on terrorists (Article 422-7 of the Criminal Code).

³⁹ Articles 706-3 to 706-14 of the Code of Criminal Procedure and Articles L 126-1 and 2 of the Insurance Code.

Regardless of their nationality, victims of terrorist attacks committed in France are entitled to compensation; French nationals normally resident in France, or residing elsewhere and registered with the consular authorities, are also covered when terrorist acts are committed abroad.

Compensation covers all physical injuries and, in the case of deceased persons, non-material and economic damage suffered by their beneficiaries.

Any person who considers him/herself the victim of an act of terrorism may apply directly to the F.G.T.I. for compensation. Compensation is determined and paid by the F.G.T.I. by agreement with the victims; the procedure takes the form of a transaction.

INSTITUTIONAL FRAMEWORK

In France, no single service is responsible for punishing terrorism. Action against terrorism mobilises all the services which can help to prevent and punish it.

The judicial authority comprises a prosecution department, an investigating unit and trial benches specialising in terrorist crimes. All such cases are processed in Paris.

Within the Ministry of the Interior, most of the services specially responsible for action against terrorism are attached to the National Police Directorate (*Direction générale de la police nationale* - DGPN). As well as playing its traditional counter-espionage role, the National Territory Surveillance Directorate (*Direction de la surveillance du territoire* - DST) directly helps to prevent and punish terrorist activity, using its judicial and administrative police powers for that purpose. The Central Directorate of Information (*Direction centrale des renseignements généraux* - DCRG) keeps a watch on dangerous groups. The Central Police Directorate (*Direction centrale de la police judiciaire* - DCPJ) conducts numerous investigations via its National Anti-Terrorist Division (*Division nationale antiterroriste* - DNAT). In the field of financial crime, one of its central specialised offices may also be involved.

The Anti-Terrorist Co-ordination Unit (*Unité de coordination de la lutte antiterroriste* - UCLAT) centralises information provided by the various services answerable to the Ministry of the Interior, the Ministry of Defence, and the Ministry of Economics, Finance and Industry. It also exchanges information regularly with the judicial authority. The police's RAID (Research, Assistance, Intervention and Dissuasion) unit is always available to help the DGPN in emergencies. The border police (*Police aux frontières* - PAF) monitor suspect arrivals and

departures. The Paris police have specialised administrative and judicial police units. The National Gendarmerie, which is answerable to the Minister of the Interior, contributes to action against terrorism through its extensive coverage of the national territory and its ability to mobilise various judicial services, which are co-ordinated by the Anti-Terrorist Office in its General Directorate.

Within the Ministry of Defence, the Directorate General of External Security (*Direction générale de la sécurité extérieure* - DGSE) plays a vital role by supplying information collected outside France. The Directorate of Military Intelligence (*Direction du renseignement militaire* - DRM) has facilities for detection (including satellite surveillance) and analysis. By virtue of its military powers, particularly in connection with external operations, the National Gendarmerie also plays an important role. Moreover, its Security and Action Group (GSIGN) is permanently ready to move against terrorists. Finally, the Directorate of Defence, Protection and Security (*Direction de la protection et de la sécurité de la défense* - DPSD) protects defence-sector personnel and premises in the broad sense (state and industry) against terrorism.

Several departments in the Ministry of Economics, Finance and Industry are also involved in fighting terrorism. The National Directorate of Customs Information and Investigations (*Direction nationale du renseignement et des enquêtes douanières* - DNRED) collects, analyses and circulates customs information on the funding of terrorism. The TRACFIN (*Traitement du renseignement et action contre les circuits financiers clandestins*) unit processes data on unlawful financial circuits and takes action against them. It collects data, compares them with data from other ministries, and passes its findings on to the courts. The FINATER Unit (set up in October 2001 to draft and implement ministerial guidelines on action to curb the funding of terrorism) is involved, *inter alia*, in freezing the assets of terrorists.

INTERNATIONAL CO-OPERATION

Mutual legal assistance and extradition

France can provide mutual assistance with criminal investigations concerning terrorism under bilateral or multilateral conventions or, if there are no conventions, on a reciprocal basis under French law.

Multilateral instruments which France has accepted include the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and its first additional protocol. At present, it is also

bound by some 50 bilateral agreements on mutual assistance in criminal matters.

Extradition in France does not depend on the existence of a treaty since, if there is none, French law permits extradition on a reciprocal basis. France is also party to the European Convention on Extradition of 13 December 1957, some 50 bilateral treaties, and the European Convention for the Suppression of Terrorism of 27 January 1977, which facilitates extradition of the authors of acts of terrorism. Finally, the Framework Decision "on the European arrest warrant and the surrender procedures between Member States", adopted by the Council of the European Union on 13 June 2002⁴⁰ and incorporated into French law by the Act of 9 March 2004,⁴¹ has established an exclusively judicial procedure based on mutual recognition of court decisions, which helps to strengthen judicial co-operation, particularly on action against terrorism.

International measures

United Nations

France supports the action taken against terrorism by the United Nations. The resolutions adopted in the wake of 11 September paved the way for permanent strengthening of international co-operation against terrorism, which must be accompanied by dialogue and assistance for states, and to which France is ready to contribute both bilaterally and multilaterally.

France has signed and ratified twelve of the thirteen UN anti-terrorist conventions. It attaches special importance to implementation of the International Convention for the Suppression of the Financing of Terrorism, which provides a comprehensive and effective solution in terms of both prevention and punishment. It signed the Convention for the Prevention of Acts of Nuclear Terrorism on the day on which it was opened for signing, 14 September 2005, and the ratification process is already under way.

G8

France made action against terrorism one of its priorities when it chaired the G8 in 2003. The Evian Summit accordingly adopted an action plan to strengthen political determination and augment anti-terrorist capacity at international level. The plan's purpose is to ensure consistency of the technical

assistance offered, strengthen the role and facilitate the work of the UN Counter-Terrorism Committee and mobilise the international organisations concerned.

In accordance with the message it put over when chairing the G8, France believes that terrorism, being a global threat, requires a global response and global co-operation. This is why technical assistance is a necessary adjunct to the international community's standard-setting work at the UN.

Financial Action Task Force Against Money Laundering (FATF)

France is a member of the FATF, whose work on money laundering and financial crime sets international standards, and it plays an important part in its work.

It implements the FATF's special recommendations on measures to combat the funding of terrorism.

At the urging of several member states (France prominent among them), the FATF supplemented its own arsenal of measures against the funding of terrorism in October 2004 by publishing a ninth special recommendation, which is intended to stop terrorists and criminals from taking money across frontiers, and by adopting, at its Cape Town plenary in February 2006, interpretive notes on Special Recommendation VIII (non-profit organisations).

Measures in the European Union

Within the EU, France plays an active role in combating terrorism.

For several years, action of this kind has been the subject of institutional co-operation within the EU. This co-operation was also reinforced by the adoption, at an extraordinary European Council on 21 September 2001, of a substantial and comprehensive plan to combat terrorism. On 25 March 2004, in the wake of the Madrid attacks, the European Council adopted a declaration on action against terrorism, coupled with strategic objectives, and this provided a further impetus towards protecting our fellow citizens more effectively and dealing, comprehensively and in the long term, with the various factors in terrorism. With these amendments and additions, the Council's action plan was incorporated in a document "Anti-terrorism Strategy of the European Union" in December 2005. France is doing all it can to implement the recommended measures.

⁴⁰ Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

⁴¹ Act No. 2004-204 of 9 March 2004 bringing justice into line with changing patterns of crime.

With more specific reference to action against the funding of terrorism, and in accordance with its legal obligations within the EU,⁴² France is taking steps to ensure that funds, financial assets and economic resources are not made available to, or used for the benefit of, persons, groups or entities involved in terrorism.

⁴² Council Regulation No. 2580/2001 of 27 December 2001.

Relevant Council of Europe conventions – France	Signed	Ratified
European Convention on the Suppression of Terrorism (ETS 90)	27/01/77	21/09/87
Amending Protocol (ETS 190)	15/05/03	-
European Convention on Extradition (ETS 24)	13/12/57	10/02/86
First Additional Protocol (ETS 86)	-	-
Second Additional Protocol (ETS 98)	-	-
European Convention on Mutual Assistance in Criminal Matters (ETS 30)	28/04/61	23/05/67
First Additional Protocol (ETS 99)	28/03/90	01/02/91
Second Additional Protocol (ETS 182)	08/11/01	-
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)	-	-
European Convention on the Compensation of Victims of Violent Crimes (ETS 116)	24/11/83	01/02/90
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	05/07/91	08/10/96
Convention on Cybercrime (ETS 185)	23/11/01	10/01/06
Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189)	28/01/03	10/01/06
Council of Europe Convention on the Prevention of Terrorism (ETS 196)	22/05/06	-
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198)	-	-