

BELGIUM

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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.

Belgium has established a coherent, effective counter terrorism system built around a legal framework, an institutional framework and provisions aimed at enhancing international co-operation.

LEGAL FRAMEWORK

Criminal law

Since 19 December 2003, Belgium has had provisions on combating 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 Framework Decision of 13 June 2002 on combating terrorism, introduced a Title I ter into the Belgian Criminal Code concerning terrorist offences.

This Title embodies 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 definition as an offence concerns the situation of "anyone who participates in an activity of a terrorist group, including by providing it with information or material resources or through any form of financing of a terrorist group's activity, in the knowledge that such participation aids the commission of a crime or an offence." The penalties for leading a terrorist group are more severe than those incurred for "mere" participation. It is under this article that the financing of terrorism is liable to criminal sanctions.

The law of 18 February 2013 amending Book II, Title I ter of the Criminal Code (published in the *Moniteur Belge* of 4 March 2013) introduces three new offences into the Belgian Criminal Code, namely public provocation to commit a terrorist offence, recruitment for terrorism and training for terrorism. This law transposes into Belgian law Framework Decision 2008/919/JHA of the Council of the European Union of 28 November 2008 amending Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism. It also brings Belgian law into line with the Council of Europe Convention on the Prevention of Terrorism, opened for signature in Warsaw on 15 May 2005.

Article 140 bis criminalises public provocation to commit a terrorist offence. It provides as follows: "Without prejudice to the application of Article 140, anyone who distributes or otherwise makes available a message to the public with the intent to incite the commission of one of the offences listed in Article 137, with the exception of the offence referred to in Article 137, § 3, 6°, shall be punished with a prison sentence of five to ten years and a fine of one hundred to five thousand euros, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed". The application of this offence may not have the result of punishing acts

unconnected with terrorism and, in so doing, endangering freedom of expression. The courts will therefore need to apply various criteria in order to assess whether there has been public provocation to commit a terrorist offence. These criteria are: the source of the message, its target, its nature and its context.

Articles 140 ter and 140 quater make it a criminal offence to recruit another person to commit a terrorist offence and to provide instruction or training in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods and techniques, for the purpose of committing such an offence. The applicable penalties are a prison sentence of five to ten years and a fine of one hundred to five thousand euros.

In addition to this, "anyone who, in Belgium or any other country, receives the instruction or training referred to in Article 140 quater for the purpose of committing one of the offences listed in Article 137, with the exception of the offence referred to in Article 137, § 3, 6°, shall be punished with a prison sentence of five to ten years and a fine of one hundred to five thousand euros" (Art. 140 quinquies).

Article 141 of the Criminal Code punishes persons who provide assistance, particularly financial assistance, to a terrorist acting alone, i.e. outside the context of a terrorist group.

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 curtail or interfere with fundamental rights or freedoms such as the right to strike, freedom of assembly and association, 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, freedom of expression, freedom of the press and other media, and such as are enshrined, in particular, in Articles 8 to 11 of the European Convention on Human Rights and Fundamental Freedoms".

It should be noted that a law of 5 March 1952 provided for criminal fines to be increased by a coefficient known as "*décimes additionnels*". The law

of 28 December 2011 concerning various provisions in the field of justice increased this coefficient from 45 to 50 as from 1 January 2012. In practice, this means that the criminal and administrative fines provided for in a law have to be multiplied by 6.

Procedural Rules

In Belgium, suspected culprits of terrorist offences are dealt with in accordance with ordinary law, and are accordingly subject to all the relevant rules of procedure. 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"), pertaining to serious offences, can be applied where the acts committed come under Article 137 of the Criminal Code.

The federal prosecution service, whose jurisdiction covers the whole of Belgian territory, is responsible for prosecuting terrorist offences.

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:

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

As with 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).

Since the Act of 6 February 2012, the perpetrator of a terrorist offence committed abroad may be

prosecuted in Belgium, even when not detected in Belgium (Article 12 of the Preliminary Title of the Code of Criminal Procedure).

Some instances of 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.

On 19 January 2007, the Brussels Court of Appeal delivered judgment in the "G.I.C.M." case – Groupe Islamique Combattant Marocain, pursuant to the Terrorist Offences Act of 19 December 2003. On that occasion, three accused who had appealed against the decision delivered on 16 February 2006 by the Brussels criminal court were convicted of participation in a terrorist group. Sentences of 7 and 6 years of imprisonment without remission were passed on two of the accused, whom the Court considered "leading members" of a terrorist group, the third, as a "simple" participant, receiving a 5 year prison sentence. The Court held that the GICM was a terrorist group. The accused were convicted of belonging to the Belgian cell of this group. An application was lodged before the ECtHR at the end of 2007 by one of the sentenced persons for violation of Article 6, §1 of the ECHR. The Court found a violation of the right to a fair trial in that the notification of the judgment to the applicant had not mentioned the time allowed for appeal.

The Ghent criminal court on 28 February 2006 passed heavy prison sentences (4-6 years), under the Terrorist Offences Act in some cases, on seven persons held to be members of the DHKP-C, a Turkish revolutionary group. This DHKP-C case gave rise to four decisions on the merits and two judgments by the Court of Cassation. As a result of the various decisions, on 7 February 2008 the accused were cleared of the charges of belonging to a criminal and terrorist organisation. This protracted case highlighted the difficulties in interpreting the concept of "terrorist group".

The "Afghan kamikaze ring" case concerned ten persons charged with participation in the activities of a terrorist group, three of them as leaders of a terrorist recruitment ring. One of them – a woman - was sentenced on 10 May 2010 to 8 years in prison as ringleader, particularly for involvement in creating

and managing a jihadi propaganda site and assistance in financing aspiring combatants.

It should be noted that, of the terrorism cases already tried in Belgium, there have been none involving victims or civil actions for damages. In addition, so far only one woman has received a final conviction in Belgium for committing terrorist acts.

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 surveillance (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).

The Act of 27 December 2005 amends the Code of Criminal Investigation and the Judicial Code in order to improve investigation practices in combating terrorism and serious organised crime. The Act creates a statutory framework for certain special methods of investigation or extends their application. In decision no. 105/2007 of 19 July 2007, the Belgian Constitutional Court partly set aside the Act in respect of:

- the provisions on the use of special tracing methods in the execution of custodial sentences or measures where the person concerned has evaded their execution;
- allowing informers to commit offences in special circumstances;
- production of a report on the application of the special investigation methods in the execution of custodial sentences or measures.

The Act of 4 February 2010 on methods of data acquisition by the intelligence and security services

prescribes a series of specific methods and exceptional methods for gathering data. For the Criminal Investigation Department, the Act is the counterpart to the Act of 19 December 2003 enforced by the Federal police. It affords the two Belgian intelligence and security services (civil and military) the possibility of using special investigation methods for the performance of their missions.

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 ruling 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 kinship, or relatives living in a lasting family relationship with, a victim who has been missing for more than one year and whose disappearance is 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 following the final judicial decision. Lastly, effective, adequate redress 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.

On 28 December 2006, the Belgian authorities adopted a royal order on special restrictive measures in respect of certain persons and entities in the context of preventing the financing of terrorism. The order notably prescribes freezing the assets of persons and entities suspected of acts of terrorism whose assets are not or cannot be frozen on the basis of the European instruments implementing UN resolutions 1267 and 1373. The OCAM (see below) may propose to the Ministerial Committee on Intelligence and Security the names of persons, groups or entities for inclusion in the national list with a view to freezing their assets. The Council of Ministers takes the final decision.

Combating radicalisation

Belgium is also active in combating radicalisation and recruitment, and in 2005 adopted a "national counter-radicalism plan".

The plan provides for proactive, preventive and punitive measures to combat, inter alia, the causes of Islamic radicalism and terrorism. It has seven focal points:

1. radical websites,
2. radio and television broadcasts,
3. extremist imams and preachers,
4. cultural centres and associations under Belgian law,
5. radical groups,
6. propaganda centres,
7. prisons.

For each of these areas, an individual action plan has been devised by a pilot service represented in a national co-ordination unit. It involves assessment of the situation, setting of objectives and description of the means to achieve the objectives and the bodies enlisted to do so.

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 cooperate in all matters to do with preventing and fighting crime, in particular terrorism;
- the Threat Analysis Co-ordination Body (Organe de coordination pour l'analyse de la menace - OCAM) which, under the joint authority of the Ministers of the Interior and Justice, analyses terrorist and extremist threat on the basis of the information and intelligence provided in particular by the General Intelligence and Security Service, the federal and local police forces, and the Criminal Investigation Department (Sûreté de l'Etat). It supplants the former Inter-Forces Counter-Terrorism Group (GIA);
- 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.

A ministerial committee and a co-ordination group against laundering of illicitly obtained money will shortly be set up to complete the existing institutional framework. The aim is to put in place an authority at national level to define and co-ordinate national policies for analysis of the risks and threats to which Belgium is exposed in the field of money laundering and terrorist financing.

INTERNATIONAL CO-OPERATION

Mutual assistance in criminal matters and extradition

Belgium is a party to several 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 permitting enhanced international co-operation, inter alia in fighting terrorism.

The 1977 European Convention on the Suppression of Terrorism, by which Belgium has been bound since 31 October 1985, facilitates the extradition of persons who have committed acts of terrorism. In 2007 Belgium ratified the Protocol amending the European Convention on the Suppression of Terrorism, which it had signed on 15 May 2003.

Measures at international level

- United Nations

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.

Belgium collaborates closely with the European Union in the framework of the "Counter-Terrorism Strategy" adopted in December 2005 by the EU. This has four main strands: "prevent, protect, pursue and respond".

Relevant Council of Europe conventions – Belgium	Signed	Ratified
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism [CETS No. 198]	16/05/2005	17/09/2009
Council of Europe Convention on the Prevention of Terrorism [CETS No. 196]	19/01/2006	
Convention on Cybercrime [ETS No. 185]	23/11/2001	20/08/2012
Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems [ETS No. 189]	28/01/2003	
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime [ETS No. 141]	08/11/1990	28/01/1998
European Convention on the Compensation of Victims of Violent Crimes [ETS No. 116]	19/02/1998	23/03/2004
European Convention on the Suppression of Terrorism [ETS No. 90]	27/01/1977	31/10/1985
Protocol amending the European Convention on the Suppression of Terrorism [ETS No. 190]	15/05/2003	16/08/2007
European Convention on the Transfer of Proceedings in Criminal Matters [ETS No. 73]	15/5/1972	
European Convention on Mutual Assistance in Criminal Matters [ETS No. 30]	20/4/1959	13/8/1975
Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters [ETS No. 99]	11/07/1978	28/02/2002
Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters [ETS No. 182]	08/01/2001	09/03/2009
European Convention on Extradition [ETS No. 24]	13/12/1957	29/08/1997
Additional Protocol to the European Convention on Extradition [ETS No. 86]	18/11/1997	18/11/1997
Second Additional Protocol to the European Convention on Extradition [ETS No. 98]	18/11/1997	18/11/1997
Third Additional Protocol to the European Convention on Extradition [CETS No. 209]		
Fourth Additional Protocol to the European Convention on Extradition [CETS No. 212]		

Relevant United Nations conventions – Belgium	Signed	Ratified
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 1973)		19/05/2004 accession
International Convention against the Taking of Hostages (New York, 1979)	03/01/1980	16/04/1999
International Convention for the Suppression of Terrorist Bombings (New York, 1997)	12/01/1998	20/05/2005
International Convention for the Suppression of the Financing of Terrorism (New York, 1999)	27/09/2001	17/05/2004
International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 2005)	14/09/2005	02/10/2009
Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963)	20/12/1968	06/08/1970
Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague, 1970)	16/12/1970	24/08/1973
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971)	23/09/1971	13/08/1976
Convention on the Physical Protection of Nuclear Material (Vienna, 1979)	13/06/1980	06/09/1991
Amendment to the Convention on the Physical Protection of Nuclear Material (Vienna, 2005)	08/07/2005	22/01/2013
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)	16/03/1989	20/04/1999
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 1988)	09/03/1989	11/04/2005
2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (London, 2005)		
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 1988)	09/03/1989	11/04/2005
2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (London, 2005)		
Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1991)	01/03/1991	16/04/2007