



# Counterterrorism Legislation in Selected Countries

Belgium • Germany • United Kingdom

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**COUNTERTERRORISM LEGISLATION**

*Executive Summary*

*The 2003 Law on Terrorist Offenses forms the major framework for prosecuting terrorism related crimes in Belgium. A number of other legislative acts enhanced the ability of the police to counteract terrorist activities and defined the role of varied government agencies in this field. Counterterrorism measures are under judicial control and appear to be in line with major European Human Rights legislation. Belgium cooperates with the United States Contained Security Initiative.*

**I. Overview**

The Law on Terrorist Offenses of 2003<sup>1</sup> introduced a new Title I ter (Articles 137 to 141ter) in the Belgian Criminal Code concerning terrorist offenses, implementing the EU's Framework Decision of June 2002 on combating terrorism and the European Arrest Warrant.<sup>2</sup> The law punishes terrorist acts and association with terrorists and provides for imprisonment of up to twenty years and in certain cases a life sentence (when related to Nuclear, Biological, Chemical and Radiological [NBCR] security).<sup>3</sup> Article 137 defines a terrorist offense as an offense that "by its nature or context may cause serious harm to a country or an international organization" and that is "committed intentionally with the aim of seriously intimidating a population or unduly forcing public authorities or an international organization to take or refrain from taking certain action or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization."<sup>4</sup>

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<sup>1</sup> Loi relative aux infractions terroristes [Law on Terrorist Offenses] of Dec. 19, 2003, Moniteur Belge [M.B.] [Official Gazette of Belgium], Dec. 29, 2003, 61689, available at [http://suisse.juridat.be/cgi\\_loi/loi\\_F.pl?cn=2003121934](http://suisse.juridat.be/cgi_loi/loi_F.pl?cn=2003121934) (in French; last visited Sept. 6, 2011).

<sup>2</sup> COUNCIL OF EUROPE, COMMITTEE OF EXPERTS ON TERRORISM (CODEXTER), PROFILES ON COUNTER-TERRORIST CAPACITY: BELGIUM (Oct. 2004), available at [http://www.coe.int/t/dlapil/codexter/4\\_theme\\_files/country\\_profiles/CODEXTER%20Profiles%20\(2004\)%20Belgium.pdf](http://www.coe.int/t/dlapil/codexter/4_theme_files/country_profiles/CODEXTER%20Profiles%20(2004)%20Belgium.pdf), at 1.

<sup>3</sup> Rik Coolsaet & Tanguy Struye de Swielande, Belgium and Counterterrorism Policy in the Jihadi Era (1986-2007) at 13 (Egmont Paper 15, Brussels, Sept. 2007), available at <http://www.egmontinstitute.be/paper/egm/ep15.pdf>.

<sup>4</sup> Law on Terrorist Offenses art. 137.

<sup>4</sup> COUNCIL OF EUROPE, *supra* note 2, at 1.

The law on “special investigation methods”<sup>5</sup> enhanced police capabilities for search and surveillance (wiretapping, infiltration measures, resort to informers, special observation measures). Terrorist offenses are included in the list of offenses that may warrant the following measures:

- telephone tapping (Code of Criminal Investigation [CCI] art. 90ter, § 2)
- proactive investigations (CCI art. 28bis, § 2)
- infiltration measures (CCI art. 47octies, § 1)
- observation measures involving use of technical devices to spy into people's homes (CCI art. 56bis, second para.)
- questioning of witnesses under conditions of complete anonymity (CCI art. 86bis, § 2)
- secret searches (CCI art. 89ter, § 1)
- special protection measures granted to a threatened witness by the Witness Protection Board (CCI art. 104, § 2)<sup>6</sup>

A specific feature of the law is the permanent control by courts over the application of special investigation measures.<sup>7</sup>

As a member of Financial Action Task Force (FATF) Belgium applies that body’s special recommendations on combating the financing of terrorism.<sup>8</sup> The legislation in this field has been in place since 1993.<sup>9</sup>

Other legal acts regulating counterterrorism activities are as follows:

- Law on organized crime (1999)
- Law on the implementation of decisions of the United Nations Security Council (1995)
- Royal decree on restrictive measures against the Taliban of Afghanistan (2000)
- Decree-law on foreign-exchange control (1944)

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<sup>5</sup> Loi concernant les méthodes particulières de recherche et quelques autres méthodes d’enquête [Law on Particular Methods of Investigation] of Jan. 6, 2003, M.B., May 12, 2003, 25351, *available at* <http://legislationline.org/documents/action/popup/id/6377> (in French).

<sup>6</sup> COUNCIL OF EUROPE, *supra* note 2, at 2.

<sup>7</sup> Coolsaet & de Swielande, *supra* note 3, at 13.

<sup>8</sup> COUNCIL OF EUROPE, *supra* note 2, at 4.

<sup>9</sup> Law of 11 January 1993 on preventing use of the financial system for purposes of money laundering and terrorist financing, *as amended*, *available at* [http://www.ctif-cfi.be/website/images/EN/law\\_be/law\\_1993\\_en.pdf](http://www.ctif-cfi.be/website/images/EN/law_be/law_1993_en.pdf) (unofficial translation).

- Royal decree on financial relations with the Federal Republic of Yugoslavia (2001)
- Act of 28 April 1999, art. 2
- Code of Criminal Procedure, art. 29, para. 2
- Penal Code, art. 324 bis
- Law on serving in a foreign army or troop situated in the territory of a foreign State (1979)
- Royal decree on the creation of an interdepartmental committee on combating illegal arms transfers (1999)
- Law on the import, export, and transit of dual-use goods and technologies (1962)
- Law on the import, export, and transit of weapons, ammunition and materiel specially intended for military purposes and the related technology (1991)
- General Law on customs and excise, art. 231<sup>10</sup>

## II. Main Agencies Involved in Counterterrorism Activities

Belgium has no counterpart to the U.S. Department of Homeland Security, and individual components of homeland security, counterterrorism, and emergency management responsibilities are spread throughout the following government bodies:<sup>11</sup>

- Prime Minister, who is responsible for general policy and chairs the Ministerial Committee on Intelligence and Security, in which the ministers responsible for certain aspects of security participate
- 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<sup>12</sup> (the Ministry of Defense's intelligence service may only be called into play when there is a military aspect to a certain case)<sup>13</sup>
- Local and federal police
- OCAM (*Organe de Coordination et d'Analyse de la Menace*), under the joint authority of the Ministers of Justice and the Interior, created by law in 2006 and

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<sup>10</sup> Barry Kellman, *National Laws and Measures: Counter-Terrorism Regulation of Biology – Belgium 23*, available at <http://www.interpol.int/Public/BioTerrorism/NationalLaws/Belgium.pdf> (last visited Sept. 6, 2011).

<sup>11</sup> KRISTIN ARCHICK ET AL., CONG. RESEARCH SERV., RL 33573, EUROPEAN APPROACHES TO HOMELAND SECURITY AND COUNTERTERRORISM 4 (2006).

<sup>12</sup> COUNCIL OF EUROPE, *supra* note 2, at 3.

<sup>13</sup> ARCHICK ET AL., *supra* note 11, at 7.

charged with coordination of information flows among different agencies involved in terrorism-related issues (Foreign Affairs, the Treasury, Customs and the Interior), as well as general analysis and evaluation of threats<sup>14</sup>

- The Ministry of Foreign Affairs with an Anti-Terrorism unit created in 2005<sup>15</sup>
- The Committee I (officially named Permanent Committee for the Control on the Intelligence Services) with a three-member panel, appointed for five years, presided over by a magistrate, and operating under the direction of the Belgian Senate, which prepares yearly reports on the activities of the two intelligence services and the OCAM and makes suggestions to improve their services<sup>16</sup>
- The Governmental Coordination and Crisis Centre, created in April 1988, which assists the authorities in the planning and interdepartmental management of large-scale crises<sup>17</sup>
- The Belgian Financial Intelligence Processing Unit enforces the anti-money-laundering law of 1993 by collecting and analyzing financial data about possible terrorist links (Treasury is responsible for freezing assets belonging to suspected terrorists)<sup>18</sup>
- The Federal Police and the Customs Office (an agency of the Finance Department), which are responsible for border security (Ministry of Transportation is tasked with handling the technical side of transportation security)<sup>19</sup>

### III. Cooperation with the United States

The ports of Antwerp and Zeebrugge joined the Department of Homeland Security's Container Security Initiative, which aims at ensuring that maritime cargo containers posing a terrorism risk are identified and examined at foreign ports before they are shipped to the United States. US Customs agents with their Belgian counterparts screen containers to be loaded on vessels bound for the United States.<sup>20</sup>

### IV. Human Rights Issues

The Human Rights Committee urged Belgium to produce a more precise definition of terrorist offenses, noting that the current definition, in referring to the degree of severity of

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<sup>14</sup> Coolsaet & de Swielande, *supra* note 3, at 14.

<sup>15</sup> *Id.* at 14.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 15.

<sup>18</sup> *Id.*

<sup>19</sup> ARCHICK ET AL., *supra* note 11, at 8.

<sup>20</sup> Coolsaet & de Swielande, *supra* note 3, at 15.

offenses and the perpetrator's intended purpose, does not entirely satisfy the principle that offenses and penalties must be clearly set out in law.<sup>21</sup>

Article 141ter provides that the articles of the Criminal Code concerning terrorist offenses 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.<sup>22</sup>

Judges play a central role in all state actions related to terrorism in order to protect fundamental rights.<sup>23</sup> The Belgian Constitutional Court (Court of Arbitration) partly annulled the 2003 governmental act on special investigation methods on December 21, 2004, because of a lack of judicial supervision over the use of these methods, which are considered serious infringements on privacy.<sup>24</sup> Belgium refuses to consider ethnic profiling as a means of identifying potential terrorists.<sup>25</sup> Assets of a group cannot be frozen, unless it is demonstrated in each case that the group giving financial support actually constitutes a terrorist group.<sup>26</sup> As a result of these precautions taken by the government there have been relatively lesser tensions between human rights activists and the government, compared to neighboring European countries.<sup>27</sup>

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<sup>21</sup> International Commission of Jurists, E-Bulletin on Counter-Terrorism & Human Rights 4 (No. 2, Sept. 2004), available at <http://www.icj.org/img/E-bulletinSept.pdf>.

<sup>22</sup> COUNCIL OF EUROPE, *supra* note 2, at 1.

<sup>23</sup> Coolsaet & de Swielande, *supra* note 3, at 25.

<sup>24</sup> *Id.* at 25.

<sup>25</sup> *Id.* at 24.

<sup>26</sup> *Id.* at 25.

<sup>27</sup> *Id.*

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**COUNTERTERRORISM LEGISLATION**

The following information is a brief summary of recent reports on legal developments related to counterterrorism legislation in Germany, as found in English-language sources.<sup>1</sup>

**I. Anti-Terrorism Law Supplement of 2007**

In addition to the Criminal Code provisions on terrorism, including section 129a, which prohibits membership in a terrorist group, Germany adopted counterterrorism legislation in 2001 and 2002. This legislation was augmented by the 2007 Act Supplementing the Anti-Terrorism Act, effective January 11, 2007, which extended intelligence powers.<sup>2</sup>

**II. Federal Police Legislation in 2008–2009**

In November 2008, Germany's lower parliamentary house, the Bundestag, passed a law expanding the investigative powers of the federal police.<sup>3</sup> It was initially rejected by the upper house, the Bundesrat, on November 28, but after the work of a conciliation committee, it was passed and signed into law. It became effective on January 1, 2009.<sup>4</sup> The original bill granted the Federal Criminal Police, the Bundeskriminalamt or BKA, aggressive evidence-gathering abilities, particularly to acquire information electronically from computers and telephone lines, as well as from the homes of terror suspects. The law permits the BKA to tap land-line phones and track cell phone signals, film homes, and send viruses to suspects' computers to set up remote forensic software to secretly access drives.<sup>5</sup> The major change that was made to the draft law was on the question of whether in urgent cases, the BKA needs to get judicial approval to

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<sup>1</sup> A December 2006 report by Senior Foreign Law Specialist Edith Palmer, *Detention of Terrorism Suspects: Germany* (LL No. 2008-00248), is attached.

<sup>2</sup> Cited in Christian Walter, *Submission to the Eminent Panel on Terrorism, Counter-Terrorism and Human Rights, European Union Sub-Regional Hearing, Brussels* at 5 (July 2007), available at <http://ejp.icj.org/IMG/ICJGermanyWalter.pdf>.

<sup>3</sup> *Big Brother Worries: German Parliament Passes Anti-Terror Law*, SPEIGEL ONLINE INTERNATIONAL (Nov. 13, 2008), <http://www.spiegel.de/international/germany/0,1518,590198,00.html>.

<sup>4</sup> Katrin McCauran, *Statewatch Analysis: Germany: Permanent State of Pre-Emption*, STATEWATCH JOURNAL 3 (Oct.–Dec. 2008), available at <http://www.statewatch.org/analyses/no-79-germany-permanent-state-of-preemption.pdf>.

<sup>5</sup> Charles Hawley, *New Anti-Terror Legislation: Journalists Worry 'Big Brother Law' Will Kill Press Freedom*, SPEIGEL ONLINE INTERNATIONAL (Dec. 17, 2008), <http://www.spiegel.de/international/germany/0,1518,596807,00.html>.



search the hard drives of computers belonging to terror suspects; a requirement for a judicial order was added to the law before its final passage.<sup>6</sup>

### III. Reauthorization in 2011

On June 29, 2011, Germany's Ministers of the Interior and of Justice announced an agreement to extend most of the existing counterterrorism laws for four years. They had been due to expire at the end of 2011. Hans-Peter Friedrich, the Minister of the Interior, stated he thought the laws would be extended "as long as they are necessary."<sup>7</sup> As extended, the legislation reportedly permits the government to request information from central points, rather than having to go directly to individual companies such as banks and airlines.<sup>8</sup>

Provisions permitting authorities to obtain information about mail and post office boxes will expire, and a procedure known as "mini-eavesdropping," under which officers could use listening devices attached to their bodies, but which was not much used, will also end. Debate is ongoing on issues related to retention of data collected by Internet and telecom providers.<sup>9</sup>

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<sup>6</sup> McCauran, *supra* note 4.

<sup>7</sup> Andrew Bowen, *Ministers Agree on Extension of Germany's Anti-Terrorism Laws*, DW-WORLD.DE (June 29, 2011), <http://www.dw-world.de/dw/article/0.,15197003,00.html>.

<sup>8</sup> *Anti-Terror Laws Extended for Four Years*, THE LOCAL (Germany ed.) (June 29, 2011), <http://www.the.local.de/society/20110629-35971.html>.

<sup>9</sup> *Id.*

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**UNITED KINGDOM**  
**COUNTERTERRORISM LEGISLATION**

The following is a brief overview of major counterterrorism laws in the United Kingdom and some of their impacts on human rights and civil liberties.

**I. The Terrorism Act 2000, c. 11**

Section 44 of the United Kingdom's Terrorism Act 2000<sup>1</sup> allows the Home Secretary to authorize the police to conduct random stops and searches of any persons or vehicles within authorized geographical areas. Grounds for suspicion are not necessary to carry out a search. The section was found incompatible with article 8 of the European Convention on Human Rights (ECHR) by the European Court of Human Rights (ECtHR).<sup>2</sup> The UK government intends to repeal the "stop and search" powers by passing the Protection of Freedoms Bill.<sup>3</sup> However, provisionally, the Home Secretary has made a remedial order under section 10 of the Human Rights Act 1998,<sup>4</sup> effectively repealing Section 44 and other provisions.

Section 41 of the 2000 Act allows for a pre-charge detention period of forty-eight hours if the person is suspected of being a terrorist. The Criminal Justice Act 2003<sup>5</sup> extended the period to fourteen days, and to twenty-eight days under the Terrorism Act 2006.

**II. Anti-Terrorism, Crime and Security Act 2001, c. 24**

Part 4 of the Anti-Terrorism, Crime and Security Act, c. 24<sup>6</sup> allows the Home Secretary to certify any foreign national if he "reasonably (a) believes that the person's presence in the United Kingdom is a risk to national security, and (b) suspects that the person is a terrorist."<sup>7</sup> By certifying an individual, the Home Secretary intends to deport or extradite the person and can

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<sup>1</sup>Terrorism Act 2000, c. 11, <http://www.legislation.gov.uk/ukpga/2000/11/contents>.

<sup>2</sup> Gillan and Quinton v. United Kingdom, App. No. 4158/05, 50 Eur. Ct. H. R. 45 (2010).

<sup>3</sup> Protection of Freedoms Bill 2010-11, <http://services.parliament.uk/bills/2010-11/protectionof/freedoms.html>.

<sup>4</sup> Human Rights Act 1998, c. 42, <http://www.legislation.gov.uk/ukpga/1998/42/contents>.

<sup>5</sup> Criminal Justice Act 2003, c. 44, <http://www.legislation.gov.uk/ukpga/2003/44/contents>.

<sup>6</sup> Anti-Terrorism, Crime and Security Act 2001, c. 24, <http://www.legislation.gov.uk/ukpga/2001/24/contents>.

<sup>7</sup> *Id.* § 21(1).

detain the person without charge. The House of Lords found Part 4 incompatible with the ECHR.<sup>8</sup> Part 4 of the 2001 Act has now been repealed by the Prevention of Terrorism Act 2005.

### III. The Prevention of Terrorism Act 2005

The Prevention of Terrorism Act 2005<sup>9</sup> repealed Part 4 of the Anti-Terrorism, Crime and Security Act 2001, allowing the Home Secretary to impose “control orders” on British or non-British nationals suspected of being terrorists. The control orders regime is currently under review with the Terrorism Prevention and Investigation Measures Bill 2010–11.<sup>10</sup>

### IV. The Terrorism Act 2006, c. 11

Of particular controversy was the extension of the period of detention without charge from fourteen days to twenty-eight days under the Terrorism Act 2006.<sup>11</sup> However in January 2011 the period of detention reverted back to fourteen days after the UK government decided not to extend an order.<sup>12</sup>

### V. The Counter-Terrorism Act 2008, c.28

Under the Counter-Terrorism Act 2008, pre-charge detention was to be extended to forty-two days but the provision was dropped from the bill. The 2008 Act<sup>13</sup> removes the prohibition on post-charge questioning, establishes longer sentences for terrorism offenses, and authorizes the police to take fingerprints or DNA from persons subject to control orders. Another controversial provision was section 76 of the Act, making it an offense to elicit or attempt to elicit

information about an individual who is or has been—(i) a member of Her Majesty’s forces, (ii) a member of any of the intelligence services, or (iii) a constable, which is of a kind likely to be useful to a person committing or preparing an act of terrorism, or (b) publish[] or communicate[] any such information.<sup>14</sup>

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<sup>8</sup> *A and Others v. Secretary of State for the Home Department*, [2004] UKHL 56 (appeal taken from Eng.), <http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd041216/a&oth-1.htm>.

<sup>9</sup> Prevention of Terrorism Act 2005, c.2, <http://www.legislation.gov.uk/ukpga/2005/2/contents>.

<sup>10</sup> Terrorism Prevention and Investigation Measures Bill 2010–11, <http://services.parliament.uk/bills/2010-11/terrorismpreventionandinvestigationmeasures.html>.

<sup>11</sup> The Terrorism Act 2006, c. 11, <http://www.legislation.gov.uk/ukpga/2006/11/contents>.

<sup>12</sup> *28 Day Terror Detention Order to Expire*, THE INDEPENDENT (Jan. 20, 2011), <http://www.independent.co.uk/news/uk/crime/28-day-terror-detention-order-to-expire-2189737.html>.

<sup>13</sup> The Counter-Terrorism Act 2008, c.28, <http://www.legislation.gov.uk/ukpga/2008/28/contents>.

<sup>14</sup> *Id.* § 76.

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