



Security Council

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Letter dated 27 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Belgium, submitted pursuant to paragraph 6 of resolution 1373 (2001).

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(Signed) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee



Annex

Note verbale dated 21 December 2001 from the Permanent Mission of Belgium to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Belgium to the United Nations presents its compliments to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism and has the honour to refer to his note SCA/20/01(6).

The Permanent Mission of Belgium has the honour to transmit herewith, pursuant to paragraph 6 of resolution 1373 (2001), the national report on the measures taken by Belgium to give effect to the resolution (see annex).

Enclosure

Report of Belgium on the implementation of Security Council resolution 1373 (2001)

The following are the questions and Belgium's responses concerning the resolution.

1. Decides that all States shall:

(a) Prevent and suppress the financing of terrorist acts;

Subparagraph (a) — What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1 (b) to (d)?

One aspect of the prevention of the financing of terrorism is covered by the anti-money-laundering law of 11 January 1993, article 3, paragraph 2, of which reads as follows:

“§ 2. For the purposes of the present law, the origin of capital or assets is illicit whenever the latter are derived from:

(1) An offence connected with terrorism; ...”

As a result, the Belgian Financial Intelligence Processing Unit, which is charged, inter alia, with enforcing this law, is in possession of an instrument for obtaining knowledge regarding suspected money-laundering operations connected with terrorism.

Annex 1 describes a number of actions taken by the European Union (to which Belgium belongs) that also help prevent the financing of terrorism.

(b) Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

Subparagraph (b) — What are the offences and penalties in your country with respect to the activities listed in this subparagraph?

At present, until the entry into force of the framework decision on combating terrorism (which is expected to enter into force by the end of 2002 and contains a list of terrorist acts including the collection and supplying of funds for such acts), Belgian legislation does not actually speak of any “terrorist offence”.

Anti-terrorist activities are based on:

(a) The Belgian Penal Code, which provides penalties for acts constituting offences which take place upstream of a terrorist act (such as criminal conspiracy, threats of attacks, etc.), as well as the offences whereby the terrorist act is carried out (such as the taking of hostages, kidnapping, murder, etc.). In addition, any offence perpetrated by terrorist elements with a view to facilitating their action is also punishable by the Belgian authorities (such as the use of false documents, collection of funds, etc.);

(b) Various specific laws, in particular, the law of 11 January 1993 on preventing the use of the financial system for money-laundering and the law of 10 January 1999 on organized crime;

(c) The implementation of various international conventions, most of which are United Nations sectoral conventions on terrorism.

It is clear from the foregoing that Belgium does not yet have any legal instrument to criminalize the acts described in paragraph 1 (b). Those same acts, however, can be prosecuted when they fall within the fields of the legislative system which are described in points (a), (b), etc.

- (c) *Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;*

Subparagraph (c) — What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

The law of 11 May 1995 on the implementation of decisions of the United Nations Security Council permits the issuance of a royal order discussed in the Council of Ministers. For example, the royal decree of 17 February 2000 on restrictive measures against the Taliban of Afghanistan pronounces the freezing of funds and other financial resources derived notably from property belonging to or directly or indirectly controlled by the Taliban or any enterprise connected with the Taliban and identified by the Security Council Committee established pursuant to resolution 1267 (1999). Under the same decree, the Minister of Finance has the power to organize and take any measure aimed at the related implementation, in particular, the publication of lists of the persons and entities concerned, in accordance with the relevant United Nations resolutions.

Under the decree-law of 6 October 1944 on foreign-exchange control, it is possible to take measures to freeze funds in connection with European Union regulations and even unilateral measures of Belgium with respect to a third country. For example, the European regulations relating to the freezing of the assets of Milosevic and the members of his family were applied by means of the royal decree of 5 March 2001 on financial relations with the Federal Republic of Yugoslavia, based on the said decree-law.

- (d) *Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;*

Subparagraph (d) — What measures exist to prohibit the activities listed in this subparagraph?

Such activities are punishable by reference to the existing legislation as described under paragraph 1 (b): criminal conspiracy or money-laundering, for example. The entry into force of the framework decision on combating terrorism (end of 2002) will obviously make prohibition and suppression easier.

2. Decides also that all States shall:

- (a) *Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;*

Subparagraph (a) — What legislation or other measures are in place to give effect to this subparagraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

Here mention should be made once again of the framework decision on combating terrorism, which should take effect at the end of 2002, and will make it possible to criminalize the acts described in paragraph 2 (a). Until that time, insofar as a terrorist organization comes under the definition of a “criminal organization”, as described in article 324 bis of the Penal Code, belonging to such an organization is punishable by a penalty of one to three years’ imprisonment and a fine of from 100 to 5,000 Belgian francs (to be adapted).

Concerning the recruitment of members of terrorist groups, no specific legislation exists (apart from the framework decision already mentioned). Nevertheless, mention should be made of a case currently in the investigation stage in which a pro-Taliban preacher encouraging youths to join training camps in Afghanistan has been arrested and indicted, partly on the basis of article 1 of the law of 1 August 1979 on serving in a foreign army or troop situated in the territory of a foreign State.

With regard to the supply of weapons to terrorists, the following legislative measures should be mentioned: the royal decree of 9 February 1999 on the creation of an interdepartmental committee on combating illegal arms transfers; the law of 11 September 1962 on the import, export and transit of dual-use goods and technologies; the law of 5 August 1991 on the import, export and transit of weapons, ammunition and materiel specially intended for military purposes and the related technology. In addition, customs penalties are applicable at the time of import, export or transit if prohibition, restriction or control measures have not been observed or if the customs procedures have not been respected (article 231 of the general law on customs and excise — *Moniteur belge*, 21 September 1977).

- (b) *Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;*

Subparagraph (b) — What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning mechanisms exist to allow exchange of information with other States?

Within the European Union, the police and intelligence services of the member States have several systems and bilateral or community-wide alert procedures. Those systems and procedures were re-examined after the attacks of 11 September,

in particular through the creation of an anti-terrorist unit within the European Police Office (Europol).

In addition, close judicial and police cooperation has existed with the United States since the events of 11 September.

- (c) *Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;*

Subparagraph (c) — What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this subparagraph? It would be helpful if States supplied examples of any relevant action taken.

Under the Convention relating to the Status of Refugees, persons implicated in acts of terrorism may be barred from the right of asylum. In the majority of such cases, the terrorists or presumed terrorists are denied refuge and returned to their country of origin, except where the person in question runs a serious and genuine personal risk in that country (the death penalty, for example).

- (d) *Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;*

Subparagraph (d) — What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens? It would be helpful if States supplied examples of any relevant action taken.

Pending the implementation of the framework decision on combating terrorism, there is no specific legislation for preventing terrorists from using Belgium as a base for committing terrorist acts against other States.

It should be pointed out, however, that this does not prevent inquiries from being conducted on the preparation of attacks to be carried out abroad, some of which have led to recent arrests (the case of Trabelsi et al.). Such procedures are based on the body of legal provisions described under paragraph 1 (b).

- (e) *Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;*

Subparagraph (e) — What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

Belgium has not yet adopted any special measures, but has negotiated the framework decision on combating terrorism, which was approved by the Justice and Home Affairs Council on 6 December 2001 and is to be made enforceable under Belgian law by the end of 2002. Moreover, the same Council obtained political agreement on the establishment of a judicial cooperation unit, Eurojust.

In the trial of the members of the Armed Islamic Group (GIA), the persons found guilty were given heavy sentences.

- (f) *Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;*

Subparagraph (f) — What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.

Customary practice in the area of legal cooperation in criminal matters applies also in the case of terrorism. Furthermore, all the sectoral conventions against terrorism and the European Convention on the Suppression of Terrorism, which have been ratified by Belgium, permit judicial cooperation between States parties to those conventions.

Measures exist for the exchange of information in the fiscal area (see under paragraph 3 (b)) and under the following instruments:

The Convention of 15 December 1950 establishing the Customs Cooperation Council (approved by the law of 10 December 1952, *Moniteur belge*, 31 December 1952), currently known as the World Customs Organization (WCO);

The Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations (*Official Journal* No. C024 of 23 January 1998, pp. 0002-0022), currently being ratified in Belgium: convention between Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands on mutual assistance between the respective customs administrations and protocols, signed at Rome on 7 September 1967 (*Moniteur belge*, 16 April 1970);

The Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol) (Europol Convention), Annex and Declarations, signed at Brussels on 26 July 1995;

The Convention applying the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic, on the gradual abolition of checks at their common borders;

Bilateral conventions;

Article 325 of the general law on customs and excise, mentioned above.

Belgian customs can lend assistance in connection with violations of the laws and regulations applicable to entry into and exit from Belgian territory; such violations may be based on events connected with terrorist acts or supporting such acts.

- (g) *Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;*

Subparagraph (g) — How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery etc.?

Within the countries of the Schengen zone there exists a personal identity system, the Schengen Information System (SIS), whereby it is possible to detect the movements of persons known within the anti-terrorism context at the zone's outer borders.

In March 2001 Belgium introduced a new type of passport offering a high degree of protection against forgery.

A European Union regulation of 25 May 1995 imposed a uniform visa for the countries belonging to this system. The regulation provides procedures and specifications designed to prevent the creation and use of false or falsified visas.

Written forgeries and the use of false documents are punishable under articles 194 et seq. of the Penal Code.

3. *Calls upon all States to:*

- (a) *Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;*

Subparagraph (a) — What measures if any have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?

Within the European Union, operational cooperation in fighting terrorism between the police and intelligence services of member States is entirely satisfactory, especially after the Council adopted, on 20 September 2001, a number of measures to intensify the exchange of information among member States. Among these, mention can be made of the regular meetings of the heads of antiterrorism units and of their intelligence services, and the strengthening of the role of Europol in fighting terrorism.

Exchanges take place regularly with eligible third countries within the European Union, and for other countries with which Belgium has signed bilateral police cooperation agreements, terrorism is a subject of cooperation and discussion. These bilateral agreements must still be approved by the Belgian Parliament before they can enter into force. Otherwise, exchanges of information take place on a case-by-case basis.

With regard to exchanges of information about exchanges of goods, including all types of weapons, information concerning dual-use goods will now be exchanged within the Interdepartmental Committee to Control Illegal Arms Transfers, which can only improve the monitoring of exports and transit.

With regard to explosives, data concerning imports of fireworks (Code NC 36.04.1000) are periodically transmitted to the federal police and are discussed within the task force comprising representatives of the customs, justice and federal police departments and the Ministry of Economic Affairs. Cooperation also exists with the Netherlands.

The forthcoming ratification by Belgium of the Convention on the use of information technology for customs purposes (*Official Journal* No. C316 of 27

November 1995, p. 0033) will make it possible to implement the customs information system (CIS) database (third pillar), conceived as a bulletin board of cases with an early warning system and recommended actions, particularly with regard to goods subject to measures of prohibition, restriction or control, including weapons and hazardous substances.

In addition, the initiative of the German, Belgian and French delegations to the customs cooperation working group of the Council of the European Union, regarding the establishment of an archive of customs investigation files, could help to promote the exchange of useful information on terrorism.

The purpose of this initiative is to establish a computerized archive in order to make available to each member State's competent customs investigation services the reference numbers of customs investigation files currently open or closed upon a finding by the competent services of other member States that a breach has occurred. This is a tool which, if adopted, can also contribute indirectly to controlling acts in support of terrorism.

Furthermore, a cooperation agreement between the police and customs departments was concluded with a view to the implementation in Belgium of the Europol Convention in all its aspects, and a cooperation agreement between the maritime police and customs departments, including anti-terrorism among its objectives, will be signed shortly.

- (b) *Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;*

Subparagraph (c) — What steps have been taken to cooperate in the areas indicated in this subparagraph?

No new steps have been taken, either with specific regard to taxes or with regard to exchanges of information and existing administrative cooperation in tax matters.

Nevertheless, with regard to exchanges of information in tax matters, note should be taken of several existing instruments:

- Bilateral conventions for the avoidance of double taxation. Most conventions follow the provisions of the Organisation for Economic Cooperation and Development (OECD) model convention.

These conventions were concluded by Belgium in order to avoid double taxation on income and prevent tax evasion. Nevertheless, they contain numerous restrictions. Indeed, a large number of conventions restrict such exchanges to residents of Belgium and to States with which such a treaty has been signed. Information, which is limited to the taxes enumerated in the conventions, may be transmitted only to the individuals and authorities responsible for levying and collecting taxes, and are aimed only at ensuring the correct implementation of those conventions and of the domestic tax laws of the States concerned. Nevertheless, several conventions permit the transmittal of information to the authorities empowered to penalize breaches of the tax laws.

- The directives issued in the field of direct taxation and value-added tax by the Council of the European Communities, namely, Council Directive 77/799/EEC

of 19 December 1977 concerning mutual assistance by the competent authorities in the field of direct and indirect taxation, as amended by Council Directive 79/1070/EEC of 6 December 1979 in the field of value-added tax, authorize exchanges of information;

- The Joint OECD/Council of Europe Convention on Mutual Assistance in Tax Matters.

This Convention is the fruit of joint efforts by the Council of Europe and OECD. The Convention is aimed at developing international cooperation with a view to ensuring a stricter enforcement of national tax laws. It is a new legal instrument making it possible to implement various forms of international administrative assistance: exchanges of information, simultaneous fiscal controls, fiscal controls abroad, assistance in recovery efforts and notification of documents. It was opened for signature by the States members of the Council of Europe and OECD on 25 January 1988 and was signed by Belgium on 7 February 1992.

In the first five countries to ratify, accede to or adopt the Convention, namely, Denmark, the United States, Finland, Norway and Sweden, the Convention entered into force on 1 April 1995. These countries were joined in 1996 by Iceland and in 1997 by the Netherlands and Poland. In Belgium the Convention entered into force on 1 December 2000.

This Convention has the merit of covering nearly all taxes, that is, all forms of compulsory levies by States or their subordinate authorities, whether direct or indirect, with the exception of customs duties, import duties and other, similar duties.

In this context, exchanges of information take place mainly on demand or spontaneously.

Moreover, with the agreement of the respective competent authorities, some States authorize the presence of officials of another State in their territory.

In the context of searching for and suppressing serious and organized tax fraud and the dismantling of fraudulent mechanisms and schemes, there is no doubt that, where terrorism is financed through such specific mechanisms, the tax administrations, in cooperation with the judicial authorities, *are indirectly involved in the administrative investigations and inquiries designed to combat terrorism. Such involvement, however, occurs not through specific instruments or means, but through the normal use of exchanges of information and procedures developed to control tax fraud.*

- It should be noted that, where there are serious indications of money-laundering, the Financial Intelligence Processing Unit (CTIF) must report the facts to the district attorney's office. In such instances, where a case showing signs of tax fraud is referred by CTIF to the district attorney's office, a report is transmitted by the Office of the Public Prosecutor to the Ministry of Finance pursuant to article 2 of the Act of 28 April 1999 (*Moniteur belge*, 25 June 1999). It goes without saying that such indications are put to use by the research services of the tax administrations and, in particular, by the Special Tax Inspectorate, which undertakes large-scale monitoring efforts to detect, prevent and suppress waves of fraud.

- Article 29, paragraph 2, of the Code of Criminal Procedure provides that tax officials must bring to the attention of the Office of the Public Prosecutor the punishable tax offences which they discover.

- (c) *Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;*

Subparagraph (c) — What steps have been taken to cooperate in the areas indicated in this subparagraph?

Most of the Belgian and/or European measures were mentioned in paragraph 3 (b), but it should be noted that the European Union has begun to assess the attitudes of third countries towards terrorism; in the long run, this will have an impact on the Union's assistance programmes.

- (d) *Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;*

Subparagraph (d) — What are your Government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this subparagraph?

Annex 2 sets out the status of Belgium's signatures and ratifications of the conventions: six conventions are signed and ratified; five are signed, but have yet to be ratified. There are no major obstacles to incorporating them into Belgian law. The International Convention for the Suppression of the Financing of Terrorism will be ratified as a matter of priority.

Belgium plans to accede to the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 14 December 1973); thereafter, all the United Nations conventions will be operative in Belgium.

- (e) *Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);*

Subparagraph (e) — Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.

The information provided in paragraph 3 (d) explains the implementation of the conventions and protocols. The implementation of the aforesaid resolutions should be read together with the answers provided in paragraphs 1 (b) and (c), 3 (d) and 2 (c).

- (f) *Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts;*

Subparagraph (f) — What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status. Please supply examples of any relevant cases.

To ensure that an asylum seeker is not a terrorist, the individual is interviewed and his statements are verified as far as possible. The various police and security services are consulted as needed. If it turns out that the asylum seeker has committed terrorist acts abroad, his application may be rejected.

Moreover, if an individual has been granted asylum, but it is later learned that he has been implicated in terrorism, his status may be revoked and, to the extent that the acts committed are under the jurisdiction of the Belgian courts, he will be prosecuted and possibly sentenced.

- (g) *Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;*

Subparagraph (g) — What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognized as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

Refugees in Belgian territory are subject to Belgian law and are therefore punishable in the event of terrorist crimes falling under Belgian jurisdiction.