



Universiteit Leiden

MEASURES AGAINST JIHADIST FOREIGN FIGHTERS

A policy comparison between the Netherlands, Belgium, Denmark, Germany, France, the UK and the US (2010 to 2017)

Stef Wittendorp, Roel de Bont, Edwin Bakker and Jeanine de Roy van Zuijdewijn

ISGA Report

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Zuijdewijn

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List of abbreviations

Belgium

LTF	Local Task Force
NVR	National Security Council
OCAD	Coordination Unit for Threat Analysis (In French: OCAM, Organe de Coordination et d'Analyse de la Menace)
POS	Troubling parenting situation (Problematische Opvoedingssituatie)
S4B	Sharia4Belgium
SW	Criminal Code
VTSv	Law concerning the previous title of the criminal code (Wet houdende de voorafgaande titel van het Wetboek van Strafvordering)

Denmark

PET	Security and intelligence service (Politiets Efterretningstjeneste)
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Germany

AufenthG	Immigration Law concerning Stay, Employment and Integration (Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet)
BKA	Federal Criminal Police Office (Bundeskriminalamt)
PaßG	Passport Act (Paßgesetz)
PAuswG	Law on Identity Cards and Electronic Identification (Gesetz über Personalausweise und den elektronischen Identitätsnachweis)
RAF	Rote Armee Faktion
StGB	Criminal Code (Strafgesetzbuch)
VPN	Violence Prevention Network

France

CESEDA	Law of Entry and Residence of Foreigners and the Right to Asylum (Code de l'entrée et du séjour des étrangers et du droit d'asile)
CSI	Law on Domestic Security (Code de la sécurité intérieure)
DGSI	General Directorate of Domestic Security (Direction Générale de la Sécurité Intérieure)

The Netherlands

AIVD	General Intelligence and Security Service (Algemene Inlichtingen- en Veiligheidsdienst)
BRP	Municipal Personal Records Database (Basisregistratie Personen)
IND	Immigration and Naturalisation Service (Immigratie- en Naturalisatiedienst)
ISD	Institution Repeat Offenders (Inrichting Stelselmatige Daders)
NCTV	National Coordinator for Security and Counterterrorism (Nationaal Coördinator Terrorismebestrijding en Veiligheid)
OM	Public Prosecution Service (Openbaar Ministerie)
RPS	Passport Flagging Register (Register Paspoortsignalering)

TA	Terrorist Prison Wing (Terroristen Afdeling)
VVD	Party for Freedom and Democracy (Volkspartij voor Vrijheid en Democratie)

United Kingdom

CPS	Crown Prosecution Service
CTSA 2015	Counter-Terrorism and Security Act 2015
OFSI	Office of Financial Sanctions Implementation
SCA	Serious Crime Act
TA 2000	Terrorism Act 2000
TA 2006	Terrorism Act 2006
TEO	Temporary Exclusion Order
TPIMs	Terrorism Prevention and Investigation Measures

United States

CIA	Central Intelligence Agency
EEA	Enemy Expatriation Act
FBI	Federal Bureau of Investigation
FTO	Foreign Terrorist Organization
ICCA	International Conflicts of Concern Act
TSDB	Terrorist Screening Database

Miscellaneous

CTG	Counter Terrorism Group
EAW	European Arrest Warrant
ECHR	European Court of Human Rights
EIS	Europol Information System
EU	European Union
FPT	Focal Point Travellers
GCTF	Global Counterterrorism Forum
IS	Islamic State (in Iraq and Syria)
NGO	Non-governmental organisation
SAA	Schengen Agreement Application
SIS	Schengen Information System
SLTD	Stolen and Lost Travel Documents
UN	United Nations

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Summary

Since the end of 2012, the phenomenon of persons travelling to and returning from Syria and Iraq has featured prominently on the agenda of many Western countries, with measures being taken in an attempt to control the problem. This report makes use of publicly available information to look at a variety of measures, including criminal prosecution, restrictions such as the seizure of travel documents, and social interventions. These measures are here referred to as person-specific measures. They differ from measures with a different scope that, for instance, seek to foster social resilience or ban organisations; these measures fall outside the bound of this report.

The measures are enacted in different phases:

Persons who are still in their country of residence: criminal law statutes that penalise making preparations to commit terrorist offences are used to prevent people travelling out (the Netherlands, Belgium, France and the US). At this stage it is not always easy to gather the required evidence. Voiding passports and identity documents is a frequently-used measure to prevent people travelling out. In spite of its application, there are known cases in which people have still managed to travel out. The US forms an exception to the passport rule, seeking instead to obtain the same effect by placing persons on a no-fly list. In countries including Belgium, Germany, France and the US, the police or other security services approach potential travellers to get them to change their minds.

Persons travelling to Syria/Iraq with the possible intention of participating in the armed jihadist struggle: information about the person's exit journey is shared bilaterally with, for example, Turkey or through international channels (Europol, Interpol, CTG) in order to monitor the traveller. People known to have travelled out are removed from the municipal personal records database in countries such as the Netherlands and Belgium. Additionally, they are excluded from social services and their financial assets are frozen. These measures are also taken against persons travelling out of Denmark, France, the UK and other countries.

Persons residing in areas of conflict in Syria/Iraq: all reviewed countries are or have been militarily engaged, whether by training Kurdish forces (Ger-

many), deploying special forces (Denmark, France, the UK and the US) or carrying out air strikes (the Netherlands, Belgium, Denmark, France, the UK and the US). Only the UK and the US have carried out targeted killings of their own nationals in areas of conflict. There have also been criminal convictions in absentia (the Netherlands and Belgium).

Persons leaving areas of conflict and travelling back to their country of residence: a number of countries provide consular assistance (the Netherlands and France). In one case, Belgium refused to repatriate a Belgian national. Generally speaking, there is little publicly available information with which to gain a sound overview of the subject.

Persons who have returned to their country of residence: in all countries under review, returnees have been convicted for membership in a terrorist organisation or for criminal acts committed in Syria/Iraq. In addition, restrictive measures are in place, including the seizure of passports or monitoring persons with the use of electronic tags. All reviewed countries have social reintegration trajectories, although these are more developed in some countries than in others.

In general it can be said that the reviewed countries all have similar approaches while also having smaller individual differences. The report gives rise to three questions:

- What is the added value of new counter-terrorism legislation?
- Can restrictive measures such as imposing electronic tags and monitoring schemes actually reduce the risk of attacks?
- Is there a taboo on person-specific measures such as consular assistance at the stage where travellers are in Syria/Iraq and want to leave the area of conflict?

1 Introduction

From the time when the problem of people travelling to areas of conflict in Syria and Iraq became a topical issue at the end of 2012, many European countries as well as the United States (US) have taken measures to prevent actual or would-be travellers and to prosecute and/or monitor returnees. These include existing, reinforced as well as newly introduced measures. Initially, the focus was on ways of preventing people travelling out. This emphasis is shifting, with increasing concerns about returnees and their children.¹ This report provides an overview of measures taken, and the instances in which they are being taken, by the Netherlands, Belgium, Denmark, Germany, France, the United Kingdom (UK) and the US in the period from 2010 to the end of 2016.

A range of different measures, varying in nature and in scope, are taken with regard to travellers and returnees. This report focuses on what are here called person-specific measures, while initiatives aimed at strengthening social cohesion or banning organisations do not fall within its scope. Person-specific measures include legislation regarding terrorist offences and reintegration programmes. Measures in the ambit of immigration law and administrative moves to seize travel documents are also part of the spectrum of measures taken.

The report shows that the reviewed countries generally take similar initiatives. Nonetheless, there are significant differences between these countries in terms of political organisation, powers and legal culture. The response to the phenomenon of travellers and returnees can be also seen as a search for ways to limit their freedom of movement. In a broader sense, this report attempts to shed light on the changing toolbox states have at their disposal as they try to face up to potentially violent, internationally operating non-state actors.

The report is structured as follows. A discussion in chapter two of the study design and methods is followed by six thematic chapters providing an inventory of policy per country. Chapter three deals with criminal law. Chapter

¹ See for instance: Nationaal Coördinator Terrorismebestrijding en Veiligheid 2017; Nationaal Coördinator Terrorismebestrijding en Veiligheid en Algemene Inlichtingen- en Veiligheidsdienst 2017.

four looks at the seizure of travel documents, the imposition of other travel restrictions and the revocation of nationality. Chapter five discusses other restrictive measures. Chapter six deals with ‘social’ interventions, both by security services and by social workers, aimed at reintegration. Chapter seven looks at the national collection and international exchange of intelligence, investigative options and detection. Chapter eight looks at military engagement. The conclusion discusses similarities and differences between the examined countries. It identifies some dilemmas around measures taken with regard to travellers and returnees.

2 Study design and methods

A number of decisions were made with regard to the structure of this series of reports, as detailed below.

2.1 Background to this series

This study was made possible in part by financial support from the National Coordinator for Security and Counterterrorism (NCTV). There have been many developments in the field of tackling jihadism since 2012. The goal of this report is to contribute to a better insight into Dutch policy as well as that of Belgium, Denmark, Germany, France, the UK and the US through a comparison of national policies. This report is the second in a series, the first report outlining counter-terrorism policy and the prevention of radicalisation in these countries.² The reports contribute to increased knowledge around tackling jihadism by examining the approach of six other Western countries and comparing these approaches to the Dutch approach.

2.2 The phase model

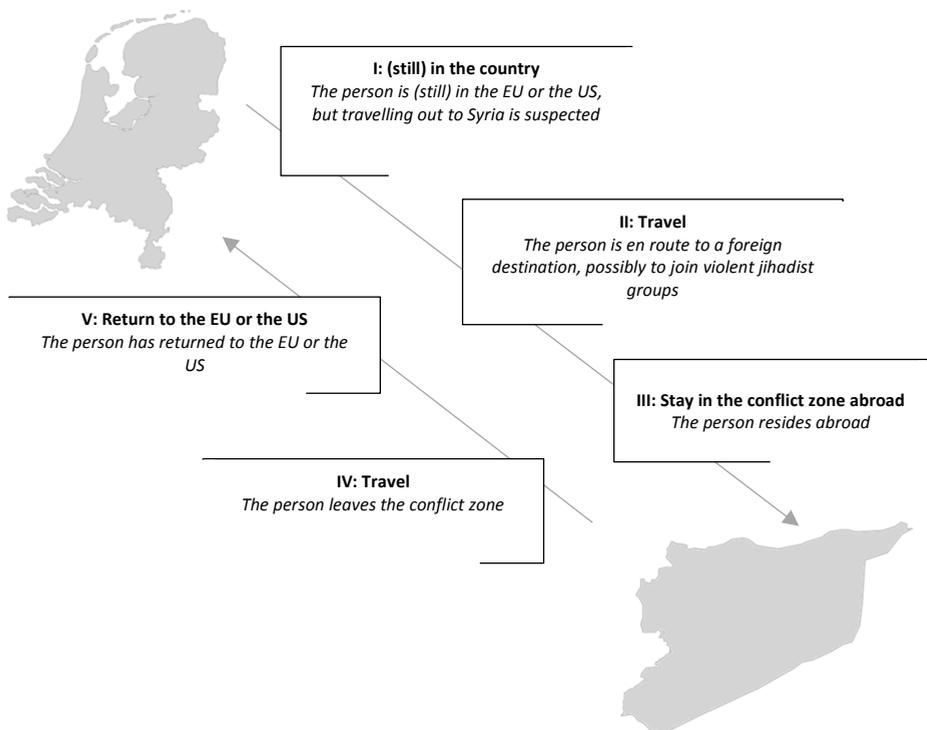
Various stages of travelling out and returning have been distinguished in order to classify measures taken against travellers or returnees. For a graphic representation of these stages, see figure 1 on page 13. *Phase one* is when the person is still in his or her country of residence while there is a suspected intention of travelling out. *Phase two* starts when the person is on the way to a foreign destination, possibly with a view to participating in jihad. *Phase three* spans the person's presence in a foreign area of conflict in the context of the jihadist struggle. *Phase four* starts when the person abandons the jihadist struggle and travels back to the US or the Schengen Area. *Phase five* covers the person's actual presence back in the Schengen Area or the US. The phase model is an analytical concept that helps to interpret the moment measures are applied.

However, there are some limitations to this model and its application. For example, it presupposes a circular movement of travel out of and return to

² Wittendorp et al. 2017.

the home country or the country of residence, whereas not all travellers necessarily follow this cycle. Several pathways are possible, including permanent residence in the present or former area of conflict, or onward travel to other countries.³ As far as applying the model, it is not always equally clear in which phase a specific measure is being taken. The voiding of travel documents is an example of this. This limitation mainly followed from the public sources that were consulted and that do not always provide sufficient information. Additionally, some measures can be applied across all of the phases. Our response to this limitation has been not to structure the report in accordance with the phases, but rather according to types of measures. This structure was arrived at inductively following an inventory of measures. The phase in which a given measure is implemented is noted in the left margin.

Figure 1: Phase model of Syria travellers and returnees



³ See for further elaboration Reed, De Roy van Zuijdewijn and Bakker 2015.

2.3 Terminology

We will here go into a number of core concepts. Firstly, there is the term *jihadism*, which in the Dutch discourse has evolved into the most common term for referring to what the National Counterterrorism Strategy 2016-2020 calls the ‘main threat (...) to our national security’.⁴ The concept of jihadism has gained widespread currency in Dutch policy documents from 2004 on, replacing terms such as ‘Islamist terrorism’ and ‘radical Islamic groups’, the latter term having been used up to 2001.⁵ The NCTV defines jihadism as ‘an extreme political ideology that attempts to comply with the obligation, experienced as a divine one, to spread Islam around the world. This is to be achieved by waging a “holy war” against all unbelievers: everything that deviates from the “pure doctrine” as understood by jihadists must, they believe, be opposed violently’.⁶ This holy war is also referred to as the ‘lesser jihad’, the armed struggle in defence of Islam. In this report, the term jihadism does *not* refer to its primary meaning in the Quran – the greater jihad – which refers to the inner effort of believers to live as good Muslims.⁷

There have also been alternatives to the concepts of ‘*uitreiziger*’ (person travelling out) and ‘*terugkeerder*’ (returnee). These alternatives are sometimes still used and include the terms ‘jihadgangers’ (persons travelling out to perform jihad), ‘jihadstrijders’ (jihadist fighters), ‘Syriëgangers’ (Syria travellers) and ‘buitenlandse strijders’ (foreign fighters).⁸ This search for the most appropriate terminology reflects the attempt to define the problem. Governments as well as media use a range of different terms, as can be seen in table one below. For the sake of readability, this report uses the concepts ‘traveller’ or ‘Syria traveller’ in reference to a person travelling out and ‘returnee’ in reference to a person returning.

⁴ Rijksoverheid 2016, p. 6.

⁵ Algemene Inlichtingen- en Veiligheidsdienst 2005; Binnenlandse Veiligheidsdienst 2002.

⁶ Nationaal Coördinator Terrorismebestrijding en Veiligheid 2016.

⁷ Berger 2006, p. 203.

⁸ See Bakker and De Roy van Zuijdewijn 2015, p. 21.

Table 1: Recent terminology for Syria travellers in the examined countries (2014-2017)

Country	Name
Belgium	‘Foreign Terrorist Fighters’, ‘syriëstrijders’ ⁹
Denmark	‘[P]ersoner udrejst til Syrien og Irak’, ‘udrejsende’, ‘syrienkrigere’, ‘fremmedkrigere’ ¹⁰
Germany	‘Ausgereisten’, ‘Rückkehrer’, ‘islamistische Kämpfer’ ¹¹
France	‘[L]es filièrès syro-irakiennes’, ‘djihadistes’ ¹²
United Kingdom	‘Foreign fighters’, ‘Isis fighters’ ¹³
United States	‘Foreign terrorist fighters’, ‘ISIS Fighters’ ¹⁴

Lastly, the term *restrictive measure* requires an explanation. For the purposes of this report, the distinctive element of a restrictive measure is its punitive effect, without necessarily implying the use of criminal law.¹⁵ A restrictive measure *can* be imposed in the course of a trial, but it can also be imposed by an administrative authority. ‘Restrictive measure’ is an umbrella term and refers to the possibly better known but narrower category of administrative measures which governments may apply as an alternative to legal sanctions. Administrative measures are generally applied by the government, whereas restrictive measures may also be imposed by a court. We return to this matter in chapter five on Other restrictive measures. Different legal traditions in each country also lead to differences in the competence of governments or courts to impose restrictive measures and in the circumstances in which these measures can be imposed. In view of these differences and for the sake of readability, this report uses the term restrictive (rather than administrative) measures, unless otherwise indicated.

⁹ Foreign Terrorist Fighters and ‘Syriëstrijders’: FOD Binnenlandse Zaken 2016; Minister van Binnenlandse Zaken and minister van Justitie 2015; Vlaamse regering 2015; ‘Syriëstrijders’: De Standaard 2017.

¹⁰ ‘Personer’ and ‘udrejsende’: Politiets Efterretningstjeneste 2014; ‘syrienkriger’ and ‘fremmedkriger’: Hornstrup Yde 2016.

¹¹ ‘Ausgereisten’ and ‘Rückkehrer’: Bundesministerium des Innern 2016a; ‘Islamistische Kämpfer’: Frankfurter Allgemeine 2017.

¹² ‘Filières’: Ministère des Affaires Étrangères 2015; Premier Ministre 2016; ‘Djihadistes’: Cornevin 2017.

¹³ Foreign fighters: HM Government 2016; Isis fighters: Gayle 2017.

¹⁴ Foreign terrorist fighters: U.S. Department of State 2017; ISIS Fighters: Schmitt 2017.

¹⁵ Boutin 2016, pp. 4-5; Huisman and Koemans 2008, p. 122.

2.4 The national context

Jihadism is an international phenomenon. It is being tackled through cooperation in a number of international forums and regular consultations. These forums include the United Nations (UN), the Council of Europe, the European Union (EU), the Global Counterterrorism Forum (GCTF; an international meeting of experts and policymakers aimed at improving the response to terrorism and the prevention of radicalisation), and the Counter Terrorism Group (CTG; part of the so-called Club de Berne, an informal, six-monthly meeting of mainly European security services). The implementation of policy, however, takes place in the national context.

This report will focus on policy and legislation drafted or used to tackle jihadism, and will therefore look mainly at the national context. Activities in connection with international partnerships largely fall outside of the scope of this study; chapter seven will look at these international forums. Within the national delimitations, the study also looks at regional or local initiatives, even though the focus is on policy at the national level.

2.5 Selection of countries

This study looks at seven countries: the Netherlands, Belgium, Denmark, Germany, France the UK and the US. These countries were selected on the basis of the following considerations: they are countries neighbouring the Netherlands (Belgium and Germany), the country plays a leading role in tackling jihadism (UK), the approach is different (Denmark and France) or little is known about the approach (US).

2.6 Time period

The report looks at laws, policy and policy initiatives in the period 2010 to the end of 2016.

2.7 Sources, limitations and methods

This report looks at policy that has a bearing on dealing with actual and would-be Syria travellers and returnees. It has been attempted to approach the countries as comparable units to the extent possible, but as indicated in

the introduction, there are limits to this approach due to differences in political organisation, competences and legal cultures. The study is based on publicly available information such as government documents, parliamentary questions and studies, court cases or press reports about them, media reports in general, and academic and other studies. Unfortunately, it is not always possible to determine on the basis of these sources whether – and if so, when and how often – specific measures were applied. It must also be noted that limited public information is available for the chapters Intelligence, investigation and detection and Military engagement and repatriation.

When examining the sources, we first looked whether the policy is declaratory – formally having an instrument at one’s disposal or having the intention to use an instrument – and then looked whether, when and how often the instruments were used. Where possible, we give examples of the application of particular policies. Relevant academic literature has been used to interpret developments and a number of academic experts have been consulted to clarify certain aspects.

3 Criminal law

3.1 Introduction

Many Western European countries have introduced new criminal legislation with which to prosecute actual and would-be Syria travellers and returnees. An important impetus for this was UN resolution 2178 from 2014, which called for activities related to travelling out of a country for terrorist purposes to be made a criminal offence.¹ A number of countries already had relevant legislation in place. Changes to criminal law areas dealing with terrorist offences have taken on various shapes: new criminal offences have been added, extraterritorial legal competences have been introduced and/or more severe penalties have been introduced for specific offences.

This chapter offers an overview of legal instruments at the disposal of the seven countries. We have used publicly available information to attempt to determine which of these instruments are being applied and how often, as well as looking at relevant case law. Our inventory shows that in spite of changes to criminal law, certain difficulties persist. For example, governments and courts find it difficult to establish what activities persons who travelled to Syria/Iraq have been engaged in. The available information allows for the tentative conclusion that prosecutions mainly centre on adherence to a foreign terrorist organisation, and to a lesser degree target specific activities engaged in abroad.

3.2 The Netherlands

Phase I

According to the Public Prosecution Service (OM), indications that a person intends to travel out require a swift and coercive response.² If there is ***reasonable suspicion that a person intends to travel out***, this person is arrested as a suspect. The Public Prosecution Service holds case discussions to look at these instances and initiates criminal prosecution in case of a criminal offence. In other words, arrests made on the grounds of a suspected

¹ Verenigde Naties 2014.

² Openbaar Ministerie undated.

intention to travel out do not always lead to criminal prosecution. In October 2013, persons were convicted for the first time in the Netherlands for preparing to travel to Syria.³ Omar H. was sentenced to 12 months in prison of which four months were suspended, while Mohammed G. was ruled not to be criminally responsible by reason of mental disorder and was committed to a psychiatric hospital for the duration of one year.⁴

The cases of H. and G. involved charges of committing a terrorist offence or making preparations to this effect (article 134a), but the court did not accept these charges. H. was convicted on the ground of making preparations to commit arson, making preparations to cause an explosion and disseminating texts or images inciting to violence against the public authority.⁵ G. was found guilty of making preparations to commit murder.⁶ In the case of H., the Public Prosecution Service appealed. In January of 2015, the court at The Hague upheld the original verdict, but did convict H. on the basis of article 134a, specifically for acquiring the means to commit a terrorist offence.⁷

In 2014, the People's Party for Freedom and Democracy (VVD) argued for a general ban on travelling to IS (Islamic State)-held areas, stating this would make it more difficult to travel out and would ensure the automatic prosecution of returnees. Exceptions could be made in the case of journalists and aid workers active in such areas. To justify the proposal, then member of Parliament for the VVD Klaas Dijkhoff referred to difficulties in gathering sufficient evidence to convict people who travelled out to Syria/Iraq and were suspected of having committed crimes there.⁸ This proposed ban did not become law.

Phase V

The Netherlands *initiates criminal investigations against all known travellers*. According to the Ministry of Security and Justice, at the end of November 2016 there were an estimated 365 ongoing criminal investigations in connection with jihadism against around 415 suspects.⁹ This included invest-

³ Van Kampen 2013.

⁴ Rechtbank Rotterdam 2013a; Rechtbank Rotterdam 2013b.

⁵ Rechtbank Rotterdam 2013a.

⁶ Rechtbank Rotterdam 2013b.

⁷ Gerechtshof Den Haag 2015.

⁸ De Volkskrant 2014a; RTL Nieuws 2014.

⁹ Ministerie van Veiligheid en Justitie 2016b, p. 2.

igations against suspects who according to the police or the Public Prosecution Service were staying in areas of conflict in Syria/Iraq. The Minister of Security and Justice emphasised that there are files on all known travellers in case they return to the Netherlands.¹⁰ *As a rule, returnees are detained and prosecuted as speedily as possible.*¹¹

Phase III

Maher H. was the first returnee to go on trial in the Netherlands. In late 2015, he was found guilty in court of preparing to commit murder and manslaughter for terrorist ends and of incitement to terrorist offences.¹² Prosecution has also been found to be possible after a person has travelled out as well as before they have returned. In the so-called ‘Context’ case, the suspects Anis Z. and Hatim R. were sentenced in absentia to six years in prison in December 2015, while they were possibly still in Syria.¹³

Persons suspected of or convicted for terrorist offences are *committed to a specialised Terrorist Prison Wing*.¹⁴ The Public Prosecution Service does not comment on the number of convicted returnees. The Ministry of Security and Justice did state in October 2016 that a large number of returnees ‘have found a place’ in Dutch society again.¹⁵

3.3 Belgium

Belgium, too, allows for legal measures against would-be Syria travellers. As early as August 2004, article 140 of the Belgian Criminal Code penalised financing terrorism, participating in the activities of a terrorist group and leading a terrorist group. In March 2013, this was expanded to the following activities if carried out for terrorist purposes: public incitement to violence, recruitment, providing training and undergoing training.¹⁶

In April 2014, a legislative proposal to amend the (inactive) Mercenary Act in order to make travelling to areas of conflict in Syria/Iraq a punishable

¹⁰ NOS 2016a.

¹¹ Openbaar Ministerie undated.

¹² Rechtbank Den Haag 2014.

¹³ Rechtbank Den Haag 2015.

¹⁴ Ministerie van Veiligheid en Justitie, Nationaal Coördinator Terrorismebestrijding en Veiligheid and ministerie van Sociale Zaken en Werkgelegenheid 2014, p. 5.

¹⁵ RTL Nieuws 2016.

¹⁶ Belgian Criminal Code (SW), articles 140bis, 140ter, 140quater and 140quinquies.

offence was defeated with the argument that existing counter-terrorism legislation covered this sufficiently.¹⁷ Following the Paris attacks of January 2015 and the antiterrorist action in Verviers, counter-terrorism legislation was amended after all. Article 140sexies of the Criminal Code entered into force in August 2015, making travelling abroad for terrorist purposes a criminal offence. This criminal law instrument is being used with increasing frequency in Belgium.¹⁸

Phase I | A recent case in which the Federal Public Prosecutor's Office instigated prosecution in view of suspected travel for terrorist purposes concerns the trial against eight members of the Way of Life-movement.¹⁹ Those members who managed to travel out were charged with *participation in the activities of a terrorist group*. Those members who did not manage to reach Syria/Iraq were charged with *attempted participation in the activities of a terrorist group*.²⁰ The same basis for prosecution was previously used in the Sharia4-Belgium (S4B)-trial, the largest terrorism trial in Belgium so far.

Phase III |

In February 2015, the judge ruled that S4B and the groups the S4B-members joined in Syria are terrorist organisations.²¹ In consequence of this ruling, the great majority of the 46 defendants were convicted (often in absentia) for *participation in or leadership of a terrorist organisation* and were handed prison sentences ranging from 40 months to 15 years.²² In another large trial against the so-called 'Filière syrienne' or 'Zerkani' network, 32 persons went on trial for recruitment for the war in Syria, for travelling to Syria or for attempting to do so. Prison sentences in this trial ranged from ten months to 20 years.

Phase I, III, V |

Phase III, V |

February 2017 was the first time a judge handed down a ruling in a trial against travellers for *specific terrorist offences committed in Syria*. As early

¹⁷ De Morgen 2013.

¹⁸ Bakker 2015, p. 4.

¹⁹ Het Laatste Nieuws 2016b.

²⁰ SW article 140, § 1.

²¹ On the basis of SW article 139. This means that the organisations are intent on committing terrorist crimes as formulated in SW article 137. When someone is prosecuted on the basis of membership of a terrorist organization it is not necessary to demonstrate terrorist crimes have actually been committed. The Syrian groups referred to are Jabhat al-Nusra (now active under the name Jabhat Fatah al-Sham) and Majlis Shura Al Mujahidin (now part of IS).

²² SW article 140, § 1 and SW article 140, § 2.

as 2003 it became legally possible to prosecute Belgians, or persons whose primary country of residence is Belgium, who commit terrorist offences abroad.²³ For example, five persons were charged with involvement in decapitation and a sixth person (Hakim E.) was charged with the execution of a prisoner.²⁴ All defendants were charged with murder with a terrorist motive, with the public prosecutor seeking the maximum penalty of 30 years plus 15 years' detention under a hospital order.²⁵ E. stood trial for execution and was eventually convicted to a prison sentence of 28 years plus 10 years' detention under a hospital order. He was also the only defendant to have actually been arrested. The other five, who are probably still in Syria or have since died there, were cleared of involvement in decapitation due to insufficient evidence.²⁶

Phase IV

Prosecution can also take place when a person has left the area of conflict in Syria/Iraq but (presumably) has not yet returned to Belgium or to Europe. One defendant in the aforementioned S4B-trial contested his conviction in absentia. The judge reached a new verdict in June 2015, handing down a prison sentence of 12 years and a fine of 30,000 euros. It was assumed that the man was no longer in Syria at the time, although he had no known place of residence in Europe.²⁷

Phase V

With regard to the ***criminal prosecution of returnees***, the Belgian Ministry of Foreign Affairs stated in 2014 that not all returnees are detained and that the Federal Public Prosecutor's Office first looks into all aspects of the files.²⁸ However, in the wake of the attacks in Paris in November 2015 the Prime Minister of Belgium declared that returnees belong in prison.²⁹ Consequently, returnees in Belgium are detained, interviewed and in most cases remanded in custody. Where possible, the Federal Public Prosecutor's Office will instigate criminal prosecution.

²³ Law concerning the Previous Title of the Criminal Code (VTSv), article 6, 1°, 1°ter.

²⁴ De Morgen 2016c; De Standaard 2016.

²⁵ SW article 137, § 2, 1°.

²⁶ Het Laatste Nieuws 2017.

²⁷ Bruggemans 2015.

²⁸ Stockmans 2014b.

²⁹ Michel 2015.

As per mid-2015, the Federal Public Prosecutor's Office was carrying out criminal or judicial investigations into about 60 returnees. These persons are suspected of having 'fought or otherwise participated in the activities of terrorist organisations' in Syria or Iraq.³⁰ In various cases in 2015 and 2016, the Federal Public Prosecutor's Office sought prison sentences of up to six years against returnees, which resulted in corresponding convictions.³¹

In case of a conviction on the basis of the aforementioned counter-terrorism legislation, Belgian courts can strip *naturalised* Belgians of their Belgian nationality. The range of terrorist offences to which this measure applies was broadened by decree in July 2015, a move stemming from the 12-Point Plan. The revocation of nationality returns in chapter four.³²

3.4 Denmark

In 2002 the law was amended to *make terrorist acts a punishable offence*. Such acts included direct and indirect support (financial or otherwise) of terrorist activities and participation in a terrorist organisation.³³ A legislative amendment in July 2016 raised the maximum penalty for participation in terrorist organisations from six to ten years.³⁴ In 2006, recruitment, training and undergoing training were added as punishable terrorist activities.³⁵

Phase III

In December 2015, the Danish parliament passed a law allowing for Danish subjects who join a terrorist organisation abroad to be sentenced to ten years' imprisonment and even to life imprisonment in case of specific aggravating circumstances. The legal basis underpinning this legislation is *treason*. The law can only be invoked in cases where Danish subjects participate in a conflict in which the Danish state is also involved directly or indirectly.³⁶

Since July 2016, the government can decree a *general travel ban* to foreign regions in which terrorist organisations are involved in a conflict. Danish

³⁰ Belgische Kamer van volksvertegenwoordigers 2015, p. 200.

³¹ See for instance Belgische Kamer van volksvertegenwoordigers 2015, p. 60; Het Laatste Nieuws 2015b; De Morgen 2015; Het Laatste Nieuws 2015c; Het Laatste Nieuws 2016c.

³² Michel 2015.

³³ Folketinget 2002.

³⁴ Justitsministeriet 2016.

³⁵ Folketinget 2006.

³⁶ Folketinget 2015a.

subjects, diplomats excepted, who want to travel to such regions in spite of the ban need to seek permission from the government.³⁷ The act was adopted in order to toughen the response to ‘fremmedkrigerne’ or foreign fighters. In June 2016, the Minister of Justice reported that proceedings had been opened against 11 foreign fighters, although the legal basis for these proceedings is unclear.³⁸

Phase III, V

In contrast to most of the countries included in this study, travelling out in the context of committing terrorist offences has not been made a punishable offence in Denmark. Nevertheless, June 2016 saw the first conviction of a traveller.³⁹ Hamza C. went to Syria twice in 2013 and wanted to travel there again in 2015, but his passport was seized. He was remanded in detention and sentenced to seven years’ imprisonment for *participating in and lending financial support to a terrorist organisation*, IS in this case; the public prosecutor had demanded six years.⁴⁰ Leaked IS membership lists were a key exhibit used by the prosecutor to argue that C. had joined IS, a contention he denied for a long time.⁴¹

3.5 Germany

German criminal law is harnessed in several ways to deal with actual and potential travellers and returnees. *Participation in a terrorist organisation* was made a criminal offence as early as 1976.⁴² This act was passed at the time in response to the violent actions of the Red Army Faction (RAF). A legislative change in 2002 added the possibility of being convicted of membership in *foreign terrorist organisations*.⁴³ In March 2016, criminal investigations on the basis of both articles were on-going against 202 persons suspected of travelling out to Syria/Iraq.⁴⁴

³⁷ Justitsministeriet 2016.

³⁸ Justitsministeriet 2016.

³⁹ Hemmingsen 2016, p. 105.

⁴⁰ Bendtsen 2016a; Nyheder 2016.

⁴¹ Bendtsen 2016b.

⁴² Criminal Code (StGB), § 129a; Deutscher Bundestag 1976; Mueller 2014, p. 330.

⁴³ Criminal Code (StGB), § 129b; Deutscher Bundestag 2002.

⁴⁴ Deutscher Bundestag 2016, p. 6.

The first sentence for participation in the conflict in Syria as an IS-fighter was handed down on the basis of membership in a terrorist organisation. In December 2014, 20-year-old Kreshnik B. was sentenced to three years and nine months' imprisonment. The measure of severity of the sentence was based on juvenile law.⁴⁵ In October 2016, Kerim Marc B. was sentenced to six years and nine months' imprisonment for membership in a terrorist organisation. Although B. contested the charge that he had participated in fighting in Syria, the court considered it proven on the basis of B.'s telephone and chat conversations. B. was sentenced as an adult in view of his actions, even though juvenile law still applied to him at the start of his criminal offences. As a mitigating circumstance for the sentence, the court noted that B. is taking part in an exit programme.⁴⁶

Since 2009, it has been a criminal offence to carry out *individual preparatory acts* in the context of terrorist activities (article 89a). This involves preparing a severe, subversive act, including by instructing others, or receiving instruction, in the use of weapons and explosives, making weapons and explosives available and providing funds for carrying out such an act. The preparation of a subversive act is also an offence if it occurs abroad.⁴⁷ In June 2015, *travelling out* was added to article 89a as a punishable offence in the context of preparing a subversive act.⁴⁸ In March 2016, criminal investigations on the basis of this article were ongoing against 387 persons suspected of travelling out to Syria/Iraq.⁴⁹ The ban on *preparatory acts in the context of a terrorist organisation* (article 89b) is also used. In March 2016, criminal investigations on the basis of this article were ongoing against 13 persons.⁵⁰

⁴⁵ Oberlandesgericht Frankfurt am Main 2014; Diehl 2014.

⁴⁶ Oberlandesgericht Düsseldorf 2016a; Zeit Online 2016a. Another court case on the basis of articles 129a and 129b is the one against Fadil Rudolf S., Mohamed A. and Mustafa P., see Oberlandesgericht Düsseldorf 2016b.

⁴⁷ StGB, § 89a; Deutscher Bundestag 2009. Terrorist financing became a separate article (89c), see Deutscher Bundestag 2015.

⁴⁸ Deutscher Bundestag 2015.

⁴⁹ Deutscher Bundestag 2016, p. 6.

⁵⁰ StGB, § 89b; Deutscher Bundestag 2016, p. 6.

An interesting case is that against Ali R., who is currently standing trial for membership in a terrorist organisation (articles 129a and 129b).⁵¹ According to media reports, the public prosecutor also wants to prosecute R. for preparing a subversive act (article 89a). In R.'s case, this act reportedly has a bearing not on Germany but on the Syrian regime headed by President Bashar al-Assad.⁵² R., however, claims he travelled to Syria against his wishes in order to be with his wife and children. According to him, travelling out was his wife's initiative. Another factor is that R. allegedly worked as an informer for the German intelligence and security service; see also chapter eight on Military engagement and assistance with repatriation.⁵³

Laws on terrorist offences are not the only measures that are being marshalled. In March 2016, the public prosecutor considered prosecuting Anis Amri – who committed the attack on the Christmas market in December 2016 – on the basis of article 89a. The public prosecutor decided not to do this due to insufficient evidence and to continue the possible case against Amri on the basis of *involvement in murder*. This approach was later abandoned as well.⁵⁴

Recruitment for foreign military service (article 109h), a proscribed activity since 1957, is also used to prosecute those who travel out to Syria/Iraq. In March 2016, this article turned out to provide the basis for nine criminal investigations.⁵⁵ Lastly, in August 2016 a proposal was mooted to make ***incitement for committing terrorist offences*** a criminal offence.⁵⁶ This proposal was part of a larger range of wishes presented in the wake of the three violent incidents in July 2016, two of which were linked to IS.⁵⁷ The current status of the proposal is unknown.

⁵¹ Generalbundesanwalt 2016.

⁵² Sundermann 2016.

⁵³ Knobbe and Schmid 2016; Sundermann 2016.

⁵⁴ Bundesministerium der Justiz und für Verbraucherschutz 2017a, pp. 10, 12.

⁵⁵ StGB, § 109h; Deutscher Bundestag 2016, p. 6.

⁵⁶ In German: 'Sympathiewerbung für den Terrorismus'.

⁵⁷ Bundesministerium des Innern 2016b. 13. The attacks related to IS are those on a train near Würzburg on 18 July 2016 and at a music festival in Ansbach on 25 July 2016. The other attack was a shooting in a shopping centre in Munich in which the perpetrator seemed to have acted on the basis of personal motives.

3.6 France

French penal law has long provided for powers to move against actual or suspected terrorism. Since 1996, the core of these powers has been the so-called ‘association de malfaiteurs en relation avec une entreprise terroriste’ – hereinafter called the malfaiteurs-article. This article permits the authorities to act in the case of *preparatory acts committed in a group* in the context of seeking to commit terrorist offences.⁵⁸ Between 2012 and April 2016, an estimated 220 of about 300 proceedings against jihadists were based on the malfaiteurs-article.⁵⁹

Phase I

The malfaiteurs-article is used in all phases, from would-be or actual travelling to returning. For example, in 2014 three men – including Youssef E., also discussed in chapter five on Other restrictive measures – were sentenced to prison terms of two to four years on the basis of the malfaiteurs-article. The three were arrested in May 2012 at Saint-Etienne airport on suspicion of attempting to travel to Syria in order to participate in the violent jihadist struggle.⁶⁰

In the spring of 2016, the Parisian court with a nationwide brief for criminal cases relating to terrorist offences announced a *new legal strategy*. The malfaiteurs-article will be used more particularly in connection with the more severe category of ‘crimes’ rather than that of ‘délits’, the lighter category most used until then. A parliamentary investigation in 2015 stated that only ten out of 69 legal investigations into travellers to Syria/Iraq and returnees fell into the category of ‘crimes’. This was because in the case of ‘délits’, the evidence required is less stringent. The change in strategy was motivated by a wish to match the response to the severity of the offences committed in Syria/Iraq. In addition, the category of ‘crimes’ allows for a better differentiation between different types of offences, which is not possible with the classification ‘délits’.⁶¹

⁵⁸ The quote as such does not exist in the French Criminal Code (‘Code pénal’), but is based on a combination of articles 421-2-1 and 450-1.

⁵⁹ Assemblée Nationale 2016a, p. 200, footnote 2. See also Smolar 2005 who reported that 300 out of a total of 358 convictions for terrorist crimes were secured on the basis of the malfaiteurs-article.

⁶⁰ L’Obs 2014.

⁶¹ Assemblée Nationale 2016a, p. 201. See also public prosecutor François Molins in Jacquin, Pascual and Seelow 2016.

A legislative amendment in December 2012 enabled *prosecuting acts committed outside of French borders* by French citizens or by persons resident in France *as terrorist offences*.⁶² The amendment also added a number of activities, including *recruitment*, to the definition of terrorist offences. However, a parliamentary investigation in April 2015 did not find any ongoing trials on this basis.⁶³ The investigation also pointed out the limited reach of the recruitment article and its overlap with both the malfaiteurs-article and the article we will discuss next.⁶⁴

In November 2014, *incitement to commit terrorist offences* (article 421-2-5) was added to the criminal statutes.⁶⁵ Previously, this article had been part of the law on the freedom of the press.⁶⁶ There were 41 convictions on the basis of this article between November 2014 and January 2016. As a comparison: there were 14 such convictions between 1994 and 2014.⁶⁷ The extent to which these recent convictions relate to travellers or returnees is unknown.

Article 421-2-5 was further differentiated in June 2016. Deliberately *sending messages inciting to terrorist offences* (article 421-2-5-1) and *regularly accessing such messages* (article 421-2-5-2) were made punishable offences.⁶⁸ In 2011, article 421-2-5-2 had been struck down as unconstitutional.⁶⁹ Legal proceedings have been brought and there have been a number of convictions on the basis of these articles. In September 2016, a 28-year-old man in Marseille was handed a two-year prison sentence for accessing material on the Internet that incited to terrorist offences. Police arrested him as he was investigating how to travel to Libya via Spain.⁷⁰

Preparatory acts carried out by individuals (article 421-2-6) have been punishable since November 2014.⁷¹ In July 2016, the parliamentary committee of inquiry into the Paris attacks of January and November 2015 stated

Phase I

⁶² Criminal Code, article 113-13.

⁶³ Criminal Code, article 421-2-4.

⁶⁴ Sénat 2015, p. 222.

⁶⁵ Criminal Code, article 421-2-5.

⁶⁶ Assemblée Nationale 2016a, p. 202, footnote 4.

⁶⁷ Assemblée Nationale 2016a, p. 203.

⁶⁸ Assemblée Nationale and Sénat 2016.

⁶⁹ Layet 2016.

⁷⁰ Champeau 2016.

⁷¹ Assemblée Nationale and Sénat 2014.

that this latter article had so far not been used much.⁷² For example, an ongoing case in connection with article 421-2-6 was re-examined in 2015 on the basis of the *malfaiteurs*-article.⁷³ A number of cases have meanwhile been brought before courts of law on the basis of 421-2-6, although insofar as is known no verdicts have yet been reached. The committee of enquiry did consider the article to be useful, as it allows for the penalisation of acts that fall outside the scope of the *malfaiteurs*-article, but its added value for combating terrorism has yet to be demonstrated.⁷⁴

3.7 United Kingdom

In and of itself, travelling to Syria is not a punishable offence in the UK. This may explain why there were relatively few arrests in the initial stages of the Syrian civil war in March 2011, in spite of the participation of British subjects in the conflict.⁷⁵ Persons who (potentially) seek to commit criminal acts in connection with travelling out can be prosecuted on the basis of the Terrorism Act 2000 (TA 2000) and the Terrorism Act 2006 (TA 2006).⁷⁶ Since the start of 2014, the British police and the Crown Prosecution Service (CPS) have taken a stricter approach to Syrian-related criminal offences. The first eight months of 2014 saw 69 Syrian-related arrests, a fivefold increase compared to the preceding years.⁷⁷ Would-be travellers, as well as those who succeeded in leaving the UK but were returned before reaching Syria, were often *arrested on suspicion of acting in preparation of a terrorist offence* (TA 2006, Section 5).⁷⁸

Phase I

As a rule, returnees are placed under arrest and it is decided in each case whether criminal prosecution is warranted.⁷⁹ Suspicion of fighting for groups such as IS or Jabhat al-Nusra/Fatah al-Sham can *lead to an indictment for*

Phase V

⁷² Assemblée Nationale 2016a, p. 202.

⁷³ Assemblée Nationale 2015, p. 101.

⁷⁴ Assemblée Nationale 2016a, p. 202.

⁷⁵ Stuart 2014, p. 10.

⁷⁶ The legal ground are: terrorism financing (TA 2000, Section 16), belonging to a 'proscribed organisation' (TA 2000, Section 11), preparation of terrorist acts (TA 2006, Section 5) or providing or participating in training for terrorism (TA 2006, Section 6(1) and (2)).

⁷⁷ May 2014; Prime Minister's Office 2014.

⁷⁸ BBC 2016c. For several examples see Gander 2015; BBC 2016a; West Midlands Police 2015; Koplowitz 2015.

⁷⁹ Stuart 2014, p. 10.

belonging to a ‘proscribed organisation’ (TA 2000, Section 11). As an example, at the start of 2016 a female British returnee was the first to be convicted for membership in IS.⁸⁰ It will also be specifically examined whether a person has undergone training for terrorist purposes or has prepared to commit terrorist acts.

Phase V

The first returnee in the UK to be convicted was Mashudur C. in May 2014; he was eventually handed a four-year prison sentence.⁸¹ Even though C. had been in Syria, he was not tried for any criminal offences he might have committed there, but rather for preparatory acts (TA 2006, Section 5) undertaken in the UK.

Before 2015, options for convicting individuals for criminal acts committed abroad were limited.⁸² *The first conviction for criminal acts committed in Syria occurred in November 2014*, when two brothers were given prison sentences of four-and-a-half and three years, respectively, for attending a training camp in Syria for terrorist ends (TA 2006, Section 8).⁸³

The 2015 Serious Crime Act (SCA) allowed for the prosecution of *preparing* (Section 5) and *training for terrorism* (Section 6) in case this takes place abroad.⁸⁴ In October 2014 it was proposed to prosecute returnees on the basis of the 1351 Treason Act, but this proposal has not been followed up on.⁸⁵

3.8 United States

The criminal law approach is central to the American response to travellers.⁸⁶ The legislation with regard to terrorist offences was amended through the ‘Patriot Act’ shortly after the attacks of 11 September 2001 and now has a broad application. The circumstance of *American citizens leaving for Syria did not prompt a change in this legislation*. A total of 113 persons have

⁸⁰ BBC 2016b.

⁸¹ See for more information Laville 2014. See also the case against Yusuf S. and Nahin A.

⁸² Stuart 2014, p. 11.

⁸³ This is the case against Mohommod N. and Hamza N. See for more information Casciani 2014.

⁸⁴ Home Office 2015.

⁸⁵ Morris 2014.

⁸⁶ Vidino 2014, pp. 16-17; Bąkowski and Puccio 2015, p. 9.

since been charged with IS-related acts on the basis of this legislation, of whom 60 persons so far have been found guilty.⁸⁷ However, it seems these figures do not relate solely to Americans who travelled out or attempted to do so, but also to crimes committed in the US in the name of IS. Other research points at 65 charges against actual and would-be travellers, 30 of whom would since have been convicted.⁸⁸

Phase I

Suspected intentions of travelling out can lead to an *undercover investigation*, often carried out by the Federal Bureau of Investigation (FBI). This often takes the form of so-called sting operations, in which the FBI encourages a person to commit a criminal act. For instance, an FBI agent can pose as a recruiter, and if a would-be traveller takes the bait and commits a criminal act, he or she can be arrested and prosecuted.⁸⁹ Research indicates that informants or undercover agents were involved in 59 percent of all IS-related arrests.⁹⁰

Phase I

Prosecution can also take place on the basis of providing *material support to persons suspected of terrorism or to an organisation designated a 'Foreign Terrorist Organization' (FTO)*.⁹¹ Examples of such organisations are IS and Jabhat al-Nusra.⁹² Material support also includes supplying personnel in the context of an FTO, which includes persons who intend to travel out. In March 2016, an American was convicted for the first time of attempting to provide material support to an FTO, in this case IS.⁹³ A total of 51 of the previously mentioned 113 persons were indicted for travelling out or attempting to do so.⁹⁴

If no criminal acts have been committed to occasion prosecution on the basis of counter-terrorism legislation, an alternative is the so-called Al Capone method: arresting the suspect for smaller offences not related to terrorism.

⁸⁷ George Washington University 2017.

⁸⁸ Mehra 2016, p. 19.

⁸⁹ Hellmuth 2015, p. 19; Personal communication with D. Gartenstein-Ross, counter-terrorism expert Foundation for Defense of Democracies and Adjunct Associate Professor Georgetown University, 22 April 2016.

⁹⁰ George Washington University 2017.

⁹¹ Successively U.S. Code, Title 18, § 2339A and U.S. Code, Title 18, § 2339B.

⁹² See for the complete list: U.S. Department of State undated.

⁹³ This is the case against Tairod P. See for more information Goldstein 2016.

⁹⁴ George Washington University 2017.

These include tax, immigration or traffic offences or providing false information to FBI agents.⁹⁵

Phase V | The extensive extraterritorial jurisdiction means that criminal law can be applied not just to actual or would-be travellers but to returnees as well.⁹⁶ Research from March 2016 suggests that 27 Americans were able to get to Syria.⁹⁷ Seven of them have since returned, six of whom have been detained; one person returned to Syria.⁹⁸ The charges against the six range from preparing an attack in the US to giving incorrect information to the FBI.

Phase V | In one case it was attempted to prosecute a returnee (Eric H.) for use of a weapon of mass destruction. It was later found that the weapon, a grenade launcher, had not been fired in the context of an FTO but in that of a rebel group supported by the US.⁹⁹ The prosecutor eventually reached a deal with H. by which he would plead guilty to a lighter misdemeanour, namely: irregularities with regard to a weapons export licence.¹⁰⁰

Lastly, the 1794 Neutrality Act prohibits Americans from committing armed acts against a country the US is not at war with.¹⁰¹ However, this legal basis is not being used in practice against travellers. After all, it would be in conflict with the position of the US with regard to the Syrian conflict, which is to provide support to opponents of al-Assad's regime.¹⁰²

⁹⁵ Hellmuth 2015, pp. 19-20.

⁹⁶ Vidino 2014, p. 17; Bąkowski and Puccio 2015, p. 10.

⁹⁷ This concerns persons labelled by Bergen et al. 2016, p. 13 as 'militants'. The authors also refer to figures of Director of National Intelligence James Clapper from March 2015 who mentions 40 returnees of whom it has been established that they travelled to Syria for humanitarian work; see Bergen et al. 2016, pp. 14-15.

⁹⁸ Bergen et al. 2016, pp. 13-14.

⁹⁹ Pelton 2014.

¹⁰⁰ The new legal basis for the charge was U.S. Code, Title 22, § 2778.

¹⁰¹ U.S. Code, Title 18, § 960.

¹⁰² Lister 2015, p. 6.

4 Measures in the context of travel movements

4.1 Introduction

This chapter looks at measures aimed at restricting travel movements. They are an important ingredient in the mix of measures with which the examined countries are trying to get a grip on the problem of travellers and returnees. They involve seizing travel documents, imposing travel restrictions and revoking nationality. These measures are imposed to prevent people travelling out (either again or for the first time) as well as to prevent people returning.

All countries already provided for the seizure of travel documents before travelling to and returning from Syria/Iraq came to be seen as a problem. There have, however, been a number of changes since. For example, some countries now also allow the seizure of identity cards. The US does not often seize travel documents, but frequently uses other measures (watchlisting) that have the same effect. Revoking people's nationality has become a subject of political debate in several countries, although it seems this measure is only being applied to a limited degree.

4.2 The Netherlands

Persons about whom there is legitimate concern that they are seeking to join, or have joined, terrorist fighting forces are included in the Passport Flagging Register (RPS). This means their *travel documents are flagged as qualifying to be declared invalid*, or they can be denied newly issued travel documents.¹ This authorises investigative and border agencies of other European countries to impound flagged Dutch travel documents.² This measure is applied both to would-be travellers and to persons suspected of already having travelled to jihadist areas of conflict. In the first case, the measure is imposed to prevent people travelling out, while in the second case the flagging is intended to make travel outside of the Netherlands more difficult,

Phase I, III

¹ Passport Act, article 23.

² Ministerie van Veiligheid en Justitie, Nationaal Coördinator Terrorismebestrijding en Veiligheid and ministerie van Sociale Zaken en Werkgelegenheid 2014, p. 7.

to prevent the issuance of Dutch passports abroad and to hinder the misuse of travel documents.³

Since December 2013, the Minister of Security and Justice has issued about 295 requests to have a passport declared invalid or refused. Flags can be removed if there no longer are legitimate concerns that a person is seeking to join a terrorist organisation.⁴ Legislation passed in February 2017 makes it possible to void passports as well as identity documents automatically if the Minister of Security and Justice imposes a *travel ban*. The bearer of the travel document is also included in the RPS, so that they will not be issued a new travel document. They do receive a replacement identity card not valid for travelling outside of the Schengen Area.⁵

In February 2017, the Senate gave its approval to a proposal to forfeit the Dutch nationality of known Syria travellers who have joined a terrorist organisation. However, this measure only applies to citizens who have dual nationality. The measure empowers the Minister of Security and Justice *to revoke Dutch nationality without the need for a prior criminal conviction*. The person in question will also be declared an undesirable alien to make it impossible for them to travel back to the Netherlands or the Schengen Area legally. The decision can be appealed up to four weeks after it has been imposed.⁶ It should be noted that in 2015 the Council of State advised against adopting this proposal on the grounds that existing legislation was sufficient.⁷ It had already been possible since March 2016 for *persons convicted of terrorist offences* on the basis of article 134a (Criminal Code) *who have dual nationality to be stripped of their Dutch nationality*.⁸

Known travellers who have non-EU nationality can also be declared undesirable aliens. In their case, the Immigration and Naturalisation Service (IND) will revoke their residence status.⁹ If such persons still return to the Netherlands, they will be declared undesirable and will be deported. As of March

³ Ministerie van Veiligheid en Justitie 2016a, p. 4.

⁴ Ministerie van Veiligheid en Justitie 2016b, p. 5.

⁵ Ministerie van Binnenlandse Zaken en Koninkrijkrelaties 2017.

⁶ Eerste Kamer der Staten-Generaal 2017a.

⁷ Raad van State 2015.

⁸ Staatsblad 2016a.

⁹ Ministerie van Veiligheid en Justitie, Nationaal Coördinator Terrorismebestrijding en Veiligheid and ministerie van Sociale Zaken en Werkgelegenheid 2014, p. 6.

2013, the IND has taken such measures against 15 travellers with non-EU nationality.¹⁰

4.3 Belgium

Phase I

In 2014, the Belgian inner cabinet rejected a proposal to revoke the identity card of minors potentially seeking to travel to Syria or Iraq, arguing that the measure would stimulate the market in counterfeit and stolen identity cards.¹¹ It would also be sufficient to use the Schengen Information System (SIS) to prevent minors from travelling out.¹² In January 2015 – following the Paris attacks and the antiterrorist action in Verviers – a proposal was introduced to *revoke identity cards and passports temporarily* or to refuse the issuance of a new passport.¹³ The Belgian Federal Parliament adopted the proposal in July 2015.

Phase I

Since 2016, the Minister of Foreign Affairs is authorised to revoke temporarily the identity card of persons suspected of wanting to travel out to ‘an area where terrorist groups are active’.¹⁴ The minister can also declare the identity card to be temporarily invalid and can decide against issuing a new identity card. If a person’s identity card is revoked, the minister is obliged also to revoke their passport. These measures all seek to prevent people travelling out to Syria. If any of these measures is imposed, the person concerned receives a replacement statement which allows for travel within Belgium only.¹⁵

As concerns the *revocation of nationality*, the Belgian government decided in February 2015 that Syria travellers who have dual nationality can lose their Belgian nationality if they obtained it through *naturalisation*. In the original proposal, the revocation could also apply to Belgians with dual nationality who were *born in Belgium*. Currently, these people cannot be stripped of their Belgian nationality, as this measure would be discriminatory in nature. After all, it would mean a person with dual nationality would be

¹⁰ Ministerie van Veiligheid en Justitie 2016b, p. 4.

¹¹ De Wit 2013.

¹² De Morgen 2013.

¹³ This occurred in the context of the 12-Point Plan.

¹⁴ Algemene Directie Veiligheid en Preventie 2016.

¹⁵ Algemene Directie Veiligheid en Preventie 2016. In Dutch: ‘vervangingsattest’.

punished more severely than a person who only has Belgian nationality.¹⁶ In view of the international norm on avoiding statelessness, stripping persons who only have Belgian nationality of their nationality is not an option.

The final legislative amendment was criticised as being symbolic because, it was argued, the measure would not be applicable to many Syria travellers. The Minister of Justice declared that revoking Belgian nationality is optional, but seldom enforced by judges.¹⁷ Additionally, naturalised Belgians can lose their Belgian nationality if convicted for terrorist offences as was mentioned in chapter three on Criminal law.¹⁸

4.4 Denmark

In 2013, a 17-year-old boy managed to travel to Syria. His mother had torn up his passport after an earlier, failed attempt, and had requested that the municipality block any new request for a passport. In case of such a block, a note is made in the passport register directing the municipality to contact the police if a new passport is requested. In spite of this registration, the boy was still able to request a new passport and to leave the country.¹⁹

Phase I

The first seizure of a *passport of a person suspected of wanting to travel out* took place on 16 March 2015 and concerned Hamza C. This was possible in view of the amendment of the passport and aliens law effected on 1 March 2015. The amendment allowed the police to seize a person's passport, or refuse to issue a new one, if there are reasons to suspect the person will take place in activities abroad that may threaten national security or the public order. The law has a sunset clause and will be active until 2020.²⁰ Decisions taken on the basis of this amendment will be valid for one year and can be appealed.²¹ In October 2015, the Danish authorities confiscated the passport of a woman who wanted to join the Peshmerga.²²

¹⁶ Geens 2015; De Redactie 2015.

¹⁷ Knack 2014.

¹⁸ Related to this theme is the discussion whether – in the context of counter-terrorism – Turkish Belgians get both nationalities at birth or not.

¹⁹ Skjoldager en Sheikh 2014.

²⁰ Folketinget 2015b, p. 3.

²¹ Tees 2015.

²² W 2015.

Denmark also allows for *stripping a person of their dual nationality*. This was one of the demands of the public prosecutor in the trial against the previously mentioned Hamza C., who was born in Denmark and also has a Turkish passport. The judge ruled that his bond with Denmark is stronger than that with Turkey and rejected the public prosecutor's request to revoke his Danish nationality.²³ This verdict was upheld during the appeals case, but the highest court of Denmark ruled in November 2017 that C. would lose his Danish nationality.²⁴

4.5 Germany

Phase I | **Passports** may be *declared void* and seized in case of a threat to national security or the national interest, or in case of preparation of a 'subversive act of serious violence'.²⁵ A legislative amendment has allowed for the *revocation of identity cards* since June 2015. In such cases a replacement document is issued.²⁶ Additionally, it can be ruled that identity cards may not be taken out of the Federal Republic if there is deemed to be a threat to national security or to the national interest, and a document's validity period may be restricted.²⁷

Prior to the introduction of a legislative amendment in 2015 allowing for the revocation of identity documents, it was considered to mark these documents to alert foreign border authorities to the fact that the holder is not allowed to leave Germany or the Schengen Area. This proposal was controversial and doubts were raised about whether foreign customs officials would understand such a mark.²⁸

Phase I | In 2015, there were 30 instances of passports being voided or identity cards being limited to specific areas.²⁹ The voiding of a passport can be coupled with a ban on travelling out.³⁰ The power to revoke travel documents and

²³ Retten i Glostrup 2016; Nyheder 2016.

²⁴ Toft 2017.

²⁵ See Passport Act (PaßG), § 7 Absatz 1 and § 8.

²⁶ See the Law on Identity Cards and Electronic Identification (PAuswG), § 6 Absatz 2. In German: 'Ersatz-Personalausweis'.

²⁷ See PAuswG, § 6 Absatz 4a and Absatz 7.

²⁸ Siebert 2014.

²⁹ Deutscher Bundestag 2016, p. 4.

³⁰ See PaßG, § 10 Absatz 1.

issue travel bans rests with the individual German states.³¹ A travel ban can also be imposed during a border check if the travel document has not yet been placed under any restrictions. When imposed, the Passport Act must be invoked, and the circumstances justifying the ban must be stated.³² By April 2016, travel bans had been imposed 199 times, of which 78 were still in force and 51 had been lifted or revoked.³³

In spite of the revocation of passports, there are still cases of persons who were able to travel out. Kerim Marc B. reached Syria in March 2013 in spite of the revocation of his passport and travel restrictions placed on his identity card.³⁴ In May 2014, Hassan M., who was residing in Germany, managed to travel to Syria using a counterfeit identity card (see also chapter five on Other restrictive measures). Media reports suggested that M. used his brother's identity card to travel.³⁵

4.6 France

Phase I

France has two options for imposing *a ban on travelling outwards*. The first type of ban is imposed in the course of a legal investigation, which is addressed in more detail in chapter five on Other restrictive measures.³⁶ This instrument has been used to prevent persons travelling out. Sami Amimour, one of the perpetrators of the November 2015 Paris attacks, was placed under this form of surveillance in October 2012. He still managed to reach Syria, probably because he had told the authorities he lost his passport and was able accidentally to request a new one in spite of being registered as being under investigation.³⁷

The second possibility of imposing a ban on travelling out was introduced by the legislative amendment of November 2014. This amendment allows the Minister of the Interior to impose such a ban, invoking the Law on Domestic

³¹ Deutscher Bundestag 2013, p. 9.

³² Deutscher Bundestag 2013, p. 9.

³³ Deutscher Bundestag 2016, p. 6. See Bundesministerium des Innern 2016a, p. 163 for a general estimate.

³⁴ Diehl 2016.

³⁵ Cuntz 2016. See also Crollly 2014.

³⁶ Code of Criminal Procedure (Code de procédure pénale), article 138. In French: 'contrôle judiciaire'.

³⁷ Assemblée Nationale 2016a, p. 148; Assemblée Nationale 2015, p. 109.

Security (CSI). The ban applies to French citizens whom the government has legitimate reasons to suspect of wanting to leave France in order to participate in terrorist acts abroad, or of being a threat to public security on their return. Following the attacks of January 2015, the travel ban was implemented by decree.³⁸ By April 2016 it had been imposed 308 times. In 56 cases it was imposed for the first time and in two cases it was imposed for the second time. The maximum length of a ban is six months, with a total duration not exceeding two years. The ban was appealed 56 times; seven appeals were deemed admissible. The admitted appeals led to the ban being revoked in four cases. Twenty persons failed to surrender their identity documents completely and six persons violated the ban, two of whom were given a prison sentence.³⁹

When a ban on travelling out is imposed, a person's *passport and/or identity card are declared void* and must be surrendered to the authorities.⁴⁰ The authorities already had the power to void passports on the basis of a decree dating back to 7 December 1792. Considering a person to be a risk to national security is one of the grounds on which a passport can be confiscated.⁴¹

Articles 214-1 and 214-2 of the immigration and asylum law also offer the possibility of imposing a *ban on travelling out of or into France*.⁴² Foreigners, both EU citizens and non-EU citizens, who do not have permanent residence in France at the time of such a ban may be barred from entering France or ordered to leave the territory of the state if they are deemed to be a threat to the public order or national security. The power to impose this ban rests with the Minister of the Interior. This measure was applied 98 times between February 2015 and April 2016, 32 of which concerned EU citizens and 66 non-EU citizens. It is unclear whether these figures only relate to persons who are (possibly) active in Syria/Iraq or also to persons considered to be a risk to national security on other grounds.

A legislative amendment in 1998 made it possible to *revoke the nationality* of *naturalised* citizens in case of a conviction for terrorist offences. There

³⁸ Ministère de l'intérieur 2015.

³⁹ Assemblée Nationale 2016a, p. 256.

⁴⁰ Assemblée Nationale en Sénat 2014.

⁴¹ Tifine 2014; Velley 2016, footnote 729.

⁴² Law of Entry and Residence of Foreigners and the Right to Asylum (CESEDA).

are some conditions to its application, including that the person concerned may not become stateless and that revocation must take place within ten years of the person's nationality having been conferred.⁴³ This measure is rarely applied: there have been 21 cases of revoked nationality since 1990. The last eight cases, between 2000 and 2014, were all connected to terrorism.⁴⁴ The French Senate is currently working on a legislative proposal that includes the possibility of ruling out the naturalisation of persons sentenced to prison terms of at least one year.⁴⁵ Proponents of the proposal cite a number of travellers with a criminal past, such as Mehdi Nemmouche and Améd y Coulibaly.

In 2015 the highest French court, the Constitutional Council, ruled the revocation of Sahnouni's French nationality to have been justified. Sahnouni, born in Morocco, was arrested in 2010 on a charge of acquiring funds for an organisation linked to al-Qaeda and of overseeing the recruitment of would-be jihadists destined for Afghanistan, Iraq and Somalia. He was given a prison sentence of seven years and was stripped of his French nationality.⁴⁶ Another ongoing case has been referred to the European Court of Human Rights (ECHR) by five French citizens with dual nationality. In October 2015 the French Prime Minister stripped them of their French nationality. Intelligence services claim they regularly moved in 'milieux islamistes'.⁴⁷ The men had been convicted previously for involvement in the 2003 attacks in Casablanca, Morocco, but were released from prison several years ago. The parliamentary committee of enquiry into the Paris attacks of January and November 2015 asserted that ending a person's dual nationality should not be a 'taboo' subject.⁴⁸

Shortly after the November 2015 attacks in Paris, a plan was launched to *revoke the nationality of French citizens convicted of terrorist offences*. The measure inspired a great amount of social and political protest, and President Franois Hollande abandoned the plan after the French Parliament failed to

⁴³ Civil Law (Code civil), article 25 and 25-1.

⁴⁴ Jouan 2015; L'Est R publicain 2015.

⁴⁵ S nat 2016a.

⁴⁶ Waldhorn 2015.

⁴⁷ Jacquin 2016.

⁴⁸ Assembl e Nationale 2016a, p. 25.

reach agreement on it.⁴⁹ Hollande later acknowledged that the measure was mainly intended to be symbolic and was hardly relevant to counter-terrorism efforts.⁵⁰

4.7 United Kingdom

Phase I

The British government has various instruments allowing it to *seize a person's passport* or *refuse to issue a passport*, either temporarily or permanently. The Home Secretary can impose travel-related measures on the basis of the Terrorism Prevention and Investigation Measures Act 2011 (TPIM Act 2011). This includes the power to seize travel documents such as passports, to prevent a person obtaining travel documents or to impose area restrictions or bans. It is a criminal offence to violate any imposed conditions. Travel restrictions can also be imposed with regard to foreign destinations in the case of persons already convicted of terrorism-related criminal offences and sentenced to a prison term of over 12 months.⁵¹

Secondly, the Home Secretary has the power to seize passports or refuse to issue them on the basis of the Royal Prerogative, a competence that was made more broadly applicable in April 2013. Previously, passports could only be seized if a person's activities were considered to be *demonstrably undesirable* to the public interest. The new rules have set a lower burden of proof, with the possibility to confiscate travel documents on the basis of activities *deemed undesirable* with a view to the public interest.⁵² This competence was invoked 61 times between April 2013 and December 2015.⁵³ In order to allow for even faster action, the Counter-Terrorism and Security Act 2015 (CTSA 2015) has, since September 2015, given police and the Border

Phase I

Force the competence to confiscate travel documents temporarily during border checks.⁵⁴ They can make use of this competence in the case of persons of whom it is suspected that their leaving the UK is connected with terrorism-

⁴⁹ France 24 2016.

⁵⁰ Diekmann and Koch 2016. See also Boutin 2016, p. 21. Boutin gives the example of Canada which has repealed legislation concerning the deprivation of nationality after a conviction for terrorist crimes.

⁵¹ Home Affairs Committee 2014, p. 21.

⁵² BBC 2013.

⁵³ In 2013, 2014 and 2015 respectively 14, 23 and 24 times. See HM Government 2014, p. 10; HM Government 2015, p. 11; HM Government 2016, p. 10.

⁵⁴ Gower 2015, p. 10.

related activities. In such cases, passports can be held for up to 30 days on the basis of the CTSA 2015. This competence was invoked 24 times in 2015.⁵⁵

Additionally, the Home Secretary has the authority to *strip a person of his or her British nationality* if this is ‘conducive to the public good’ or if British nationality was obtained in a fraudulent manner.⁵⁶ The 2002 Nationality, Immigration and Asylum Act expanded the applicability of this restrictive measure by also allowing it to be applied to persons born in the UK. The 2014 Immigration Act, enacted in response to the phenomenon of British citizens travelling to Syria, allows this measure to be applied to persons who only have British nationality. This leads to the possibility of statelessness, but the Home Secretary is required to make a plausible case that the person in question can obtain a different nationality than the British one. In 2013 and 2014, 37 persons were stripped of their British nationality.⁵⁷ However, these official figures do not record the grounds for the decisions. Research shows that since 2010, 33 persons have been stripped of their nationality for counter-terrorism purposes.⁵⁸ In all cases this concerned persons with dual nationality. The increased use of this competence has been related to the phenomenon of British citizens travelling to Syria.⁵⁹ In almost all cases, the persons stripped of their nationality were staying abroad at the time the measure was enforced.⁶⁰

Lastly, the CTSA 2015 provides for the imposition of a temporary *area ban* (Temporary Exclusion Order, TEO). This instrument appears to have been created mainly to get a grip on Britons already staying abroad, whom the TEO prevents from re-entering the UK.⁶¹ If a TEO is imposed, the British passport of the person concerned is also cancelled immediately. In order to be able to return to the UK, the traveller has to apply for a permit from the

⁵⁵ HM Government 2016, p. 11.

⁵⁶ British Nationality Act 1981, Section 40.

⁵⁷ Home Office 2014.

⁵⁸ Parsons 2016.

⁵⁹ Ross and Galey 2013.

⁶⁰ Parsons 2016.

⁶¹ Lister 2015, p. 5.

Home Secretary. It appears that until now, TEOs have rarely, if at all, been used.⁶²

4.8 United States

The US also allows for the *seizure of a person's passport* in the interest of national security. The Supreme Court, however, ruled that the person whose passport is threatened to be seized must have the opportunity to refute the evidence cited against them. This is no mean task, as the evidence is often classified in the interest of national security. Consequently, the measure of seizing the passport of would-be travellers is not much used.⁶³

Phase I

However, frequent use is made of *watchlisting*, a measure where would-be travellers are registered in a Terrorist Screening Database (TSDB, also referred to as the Watchlist), which is maintained by the FBI's Terrorist Screening Center.⁶⁴ The authorities are notified whenever a person on this list wants to leave the country by air. If there are enough indications that this person may commit criminal offences abroad, he or she can be placed on a no-fly list. Watchlisting, then, has the same effect as seizing identity documents and passports: preventing people from travelling out by air. The measure also allows for monitoring who is travelling back from the area of conflict.

Phase I, V

Work is also in progress on the International Conflicts of Concern Act (ICCA), a proposal that failed to gain sufficient backing in the House of Representatives in March 2014 but was resubmitted in April 2015. The ICCA confers powers on the President including decreeing a *general travel ban* for specific 'countries of concern', unless a travel permit has been applied for. Violating the conditions of the ICCA can lead to a fine or to criminal prosecution.⁶⁵ If the ICCA should be passed, Syria will be designated a country of concern.⁶⁶

⁶² Anderson 2016b, p. 90; Boutin 2016, p. 9.

⁶³ Homeland Security Committee 2015, p. 38; Personal communication with D. Gartenstein-Ross, counter-terrorism expert Foundation for Defense of Democracies and Adjunct Associate Professor Georgetown University, 22 April 2016.

⁶⁴ Bąkowski and Puccio 2015, p. 10.

⁶⁵ U.S. Code, Title 50, § 1705 (b) and (c) provides the penalty.

⁶⁶ U.S. Congress undated.

The US has limited possibilities for *revoking a person's nationality*. As per the Immigration and Nationality Act, American citizens can lose their nationality through actions including treason.⁶⁷ This requires a high burden of proof, causing it to be a difficult avenue for stripping travellers of their nationality. A different option for stripping a person of their nationality is when they join the armed forces of a state involved in hostilities against the US.⁶⁸ However, as terrorist organisations are not deemed to be state actors, this option is not applicable to travellers.

At various times it has been attempted to amend the Immigration and Nationality Act. In 2010 and 2012, the Enemy Expatriation Act (EEA) sought to empower the government to strip people of their nationality in case of 'engaging in or purposefully and materially supporting hostilities against the United States'. In both cases the EEA failed to garner enough support in Congress.⁶⁹ The proposal was submitted for the third time in 2015 and is currently being debated by the House of Representatives. Up to now, taking away the nationality of American travellers has not proved to be a feasible policy instrument.⁷⁰

⁶⁷ U.S. Code, Title 8, § 1481 (a) (7).

⁶⁸ U.S. Code, Title 8, § 1481 (a) (3).

⁶⁹ Van Waas 2016, p. 472; Klein 2013.

⁷⁰ Bąkowski and Puccio 2015, p. 10.

5 Other restrictive measures

5.1 Introduction

In addition to measures relating to travel movements, most of the reviewed countries also have other restrictive measures in place. These include, for example, financial restrictions, deportation or monitoring schemes. In a number of countries, including the Netherlands, Belgium, France and the UK, monitoring schemes are in use or have been modified in order to get a better grip on the problem of travellers and returnees.

These restrictive measures are being applied in different ways: *prior to* criminal prosecution; *in addition to* criminal law, after convicted persons have served their sentence; and as an *alternative to* criminal law. This means these measures have at least three functions that in most cases are intimately inter-related: monitoring, prevention and punishment.

5.2 The Netherlands

As part of the financial approach, known travellers who join a terrorist organisation are placed on a national terrorism register. In consequence, ***all financial assets of the person in question are frozen and they are denied any financial services***. It is a criminal offence to make money available directly or indirectly to a person placed on this register. Since December 2013, the Minister of Foreign Affairs, in tandem with the Minister of Finance and the Minister of Security and Justice, has placed 67 persons and three organisations on this register. This brought the total number of persons on the register to 77 by the end of 2016.¹ Most of them are Dutch nationals who left for Syria or Iraq in the past years.²

Travellers are also immediately ***removed from the Municipal Personal Records Database*** (BRP). The qualifying institution – such as the police or the General Intelligence and Security Service (AIVD) – notifies the muni-

¹ Ministerie van Veiligheid en Justitie 2016b, p. 5.

² See for the list: Rijksoverheid undated.

cipality of the fact of a person travelling out; the municipality then removes the person from the BRP. This cancels the person's right to social benefits, allowances and study grants.³

Phase V

Returnees can also be placed under supervision. Supervision orders can be imposed as part of a criminal law response, with the judge imposing a (wholly or partially) suspended sentence including probation. Following a prison term of at least one year, it is also possible to grant a convict conditional release.⁴ In November 2015, the Senate approved an act extending the supervision periods of persons released from detention under a hospital order and other persons convicted of sex crimes and violent crimes. The Comprehensive Action Programme to Combat Jihadism referred to this act as one of the avenues for long-term surveillance of returnees.⁵ Parts of the act entered into force on 1 January 2017, while other parts will enter into force on 1 January 2018.⁶ Among other things it provides for: admission to a care institution with mandatory treatment, assisted living, restraining orders, area bans, notification requirements, travel bans, participation in behavioural interventions and electronic surveillance. The measures are imposed for a number of years, with the possibility of extension, up to lifelong extension.⁷

In February 2017 the Temporary Administrative Counter-Terrorism Measures Bill was passed.⁸ This has made it possible to take administrative measures in response to 'behaviour that can be linked to terrorist activities or support for such activities'.⁹ The bill provides for notification requirements,

³ Ministerie van Veiligheid en Justitie, Nationaal Coördinator Terrorismebestrijding en Veiligheid and ministerie van Sociale Zaken en Werkgelegenheid 2014, p. 7.

⁴ Ministerie van Veiligheid en Justitie, Nationaal Coördinator Terrorismebestrijding en Veiligheid and ministerie van Sociale Zaken en Werkgelegenheid 2014, p. 5.

⁵ Ministerie van Veiligheid en Justitie, Nationaal Coördinator Terrorismebestrijding en Veiligheid and ministerie van Sociale Zaken en Werkgelegenheid 2014, p. 5. In Dutch: 'Actieprogramma Integrale Aanpak Jihadisme'.

⁶ Anderson 2016b, p. 2.

⁷ Ministerie van Veiligheid en Justitie 2016c, p. The ISD (Institution Repeat Offenders) measure allows to send repeat offenders who commit serious crimes to a special institution. The ISD measure was mentioned in the Comprehensive Action Programme to Combat Jihadism. On the basis of publicly available information it was not possible to ascertain whether this measure was applied in the context of dealing with jihadism.

⁸ In Dutch: 'Tijdelijke wet bestuurlijke maatregelen terrorismebestrijding'.

⁹ Eerste Kamer der Staten-Generaal 2017b, p. 2.

area bans and restraining orders. These measures can only be applied if there is a threat to national security.

5.3 Belgium

Phase I, V

Belgium initially considered the use of *electronic tagging* for persons registered with the Coordination Unit for Threat Analysis (OCAD). This was one of the measures of the 18-Point Plan presented in November 2015. The plan proposed mandatory electronic tagging for persons registered with the threat analysis services.¹⁰ However, in the case of returnees it was announced that they would be detained upon returning to Belgium.¹¹ Electronic surveillance would be an alternative only if detention was not possible or desirable, for instance in the case of persons believed not to have taken part in fighting.¹² In connection with this, the Minister of Justice issued a directive to exempt convicted returnees from electronic surveillance.¹³ This move replaced a prior proposal to oblige all returnees to wear an electronic tag. The decision followed on the November 2015 Paris attacks, which led the government to conclude that a ‘visible, hands-on’ approach would no longer be sufficient in the case of returnees.¹⁴

Travellers can *have their financial assets frozen*. This is one of the measures of the 12-Point Plan presented in January 2015. In September 2015, the Belgian National Security Council (NVR) approved the circular detailing this procedure.¹⁵ On the basis of this circular, the OCAD can pass on details about persons and entities linked to terrorist offences to the NVR, which will include these details on a register. Definitive inclusion has to be approved by the Council of Ministers and allows for the assets of persons and entities to be frozen. In November 2016 there were 27 names on this list.¹⁶ They mainly involved people believed to be associated with the perpetrators of the

¹⁰ Federale regering 2015, p. 1.

¹¹ This is one of the measures from the 18-Point Plan.

¹² De Standaard 2015a; Seron and André 2016, p. 13.

¹³ De Standaard 2015b.

¹⁴ De Standaard 2015a.

¹⁵ The legal basis for this measure already exists for ten years: the circular activates two articles of the Royal Decree of 28 December 2006 about terrorism financing. See Het Laatste Nieuws 2015a; Lemeunier 2016, p. 47.

¹⁶ De Morgen 2016a.

attacks in Brussels and Paris, but also include Syria travellers and even their relatives.¹⁷

In principle, people who travel to Syria are *taken off the population register*.¹⁸ This, too, has financial consequences: among other things, persons removed from the register lose their right to social benefits. As concerns the National Register, the intention is to keep returnees registered, in contrast with persons travelling out. According to the Cabinet, ‘This is the only way for the police to keep them under surveillance’.¹⁹

5.4 Denmark

A legislative proposal is currently being debated that allows travellers who participate in armed conflict abroad *to be barred from social security*.²⁰ The proposal follows on two cases of travellers active in Syria who were found still to have access to the social services of the Danish state. In November 2014, the Danish Security and Intelligence Service (PET), revealed that at least 15 Danish nationals who were active in Syria were claiming social benefits. This came to the fore following a comparison of documents from different government bodies.²¹ In December 2016, *Ekstra Bladet* revealed that 36 travellers received social benefits while active in Syria.²²

5.5 Germany

Following a 2009 ruling by the ECHR, the monitoring scheme for released prisoners was reformed. Since 2011, an *electronic tag* can be imposed on convicts sentenced to a minimum prison term of three years and who it is believed will continue to be a danger to society or their direct environment *upon their release*.²³ The built-in GPS transmitter allows for uninterrupted monitoring of the wearer of an electronic tag. This measure has been im-

¹⁷ Lemeunier 2016, p. 47.

¹⁸ Belgische Kamer van volksvertegenwoordigers 2016a, p. 59; De Morgen 2016b.

¹⁹ Belgische Kamer van volksvertegenwoordigers 2016a, p. 59; De Morgen 2016b. In early 2016, 95 of the 133 returnees were registered.

²⁰ Justitsministeriet undated.; Ingvorsen 2016.

²¹ The Local 2014.

²² Rise Børjesen, Gösta Svensson and Kornø 2016.

²³ Bräuchle and Kinzig undated, p. 2; StGB, § 56.

posed 88 times, mainly on persons convicted of sex crimes or of having committed serious violence.²⁴ Additionally, the state of Hesse has had a trial since 2000 involving a ‘kleine Fußfessel’, or small ankle monitor, *as a substitute for a prison sentence and to aid reintegration into society*.²⁵ Courts can order this small electronic tag to be worn.²⁶

There have been a number of incidents over the past years involving wearers of electronic tags. In 2008, Rafik Y., a German resident originally from Iraq, was sentenced to five years in prison for membership in a terrorist organisation. Upon his release, Y. was fitted with an electronic tag, but in October 2015 he stabbed a policewoman in Berlin before being shot dead by police.²⁷ Another wearer of a small electronic tag, Hassan M., travelled to Syria in the spring of 2014. Two criminal trials were ongoing against M., one for causing bodily harm and another for attempted burglary.²⁸ In contrast to the standard electronic tag, the small model only registers whether the wearer has been in a designated location at specific times. M. is believed to have been killed in Syria in 2016.²⁹ In 2013 another person fitted with a small electronic tag had attempted to travel out. In this case the tag was *not* worn because of ‘possible Salafist activities’.³⁰

Since the end of 2015, politicians have repeatedly called for the use of electronic tags against Jihadist ‘Gefährder’ (persons considered a threat to public safety). Introducing an electronic tag for Jihadists again became a topical issue after the three violent incidents in July 2016, two of which were linked to IS, and the Berlin Christmas market attack in December 2016.³¹

Foreign nationals can be deported on the basis of the residence act if they are deemed a threat to public safety or the public order.³² The states have powers to deport people, provided their decisions are supported by a fact file. If a case is considered to be of particular importance, the federal govern-

²⁴ Gottschalk 2017.

²⁵ Frankfurter Rundschau 2015.

²⁶ Crollly 2014.

²⁷ Finke, Pletl and Oldenburger 2015.

²⁸ Crollly 2014; Op-online.de 2014; Report Mainz 2014.

²⁹ Crollly 2014; Cuntz 2016.

³⁰ Frankfurter Allgemeine 2014; Frankfurter Neue Presse 2014.

³¹ Maron 2016; Gottschalk 2017.

³² Immigration Law concerning Stay, Employment and Integration (AufenthG), § 58.

ment can take it over. The person marked for deportation can appeal the decision.³³

In February 2016, deportation had been considered for Anis Amri, the perpetrator of the Berlin Christmas market attack in December of that year. The deportation procedure was aborted due to a lack of evidence. Deportation was again found not to be an option at the end of July, as Amri was not in possession of the right travel documents. A person needs to be positively identified in order to be deported. In October the consulate of Tunisia, Amri's country of birth, rejected a request for replacement travel documents, as Amri was not on their file. A new request was submitted as part of the deportation procedure, but the replacement travel documents could not be issued in time.³⁴

The federal government is aiming to make the residence act more stringent in order to be able to actually deport foreign nationals designated Gefährder.³⁵ A proposal has since been presented. The subject of deportation of foreign nationals was already on the agenda as one of the measures proposed following the violent incidents in July 2016.³⁶

5.6 France

France has a broad scale of restrictive measures that investigating judges can impose on suspects in the course of a judicial investigation into a crime. These include area restrictions, house arrest, notification requirements, surrendering one's identity document, a ban on contact with specific persons and a ban on specific activities. A number of these measures have been imposed in concrete cases to limit actual and would-be travellers and returnees in their freedom of movement and activity.

The previously mentioned Samy Amimour, one of the perpetrators of the November 2015 Paris attacks, was able to travel to Syria in September 2013 in spite of restrictive measures that included surrendering his passport and a *weekly notification requirement*, although this requirement was not really

³³ AufenthG, § 58a.

³⁴ Bundesministerium der Justiz und für Verbraucherschutz 2017a. See also Ziedler 2017.

³⁵ Bundesministerium der Justiz und für Verbraucherschutz 2017b.

³⁶ Bundesministerium des Innern 2016b, pp. 12-13.

followed up in practice.³⁷ On two occasions in 2015, Adel Kermiche tried and failed to travel to Syria. He was detained after the second time, but in the spring of 2016 he was allowed to serve the remainder of his sentence at home, wearing an *electronic tag*. Kermiche was allowed to leave the parental home in the morning only, and it was on one of these occasions that he and Abdel Malik Petitjean attacked the church in his home town, Saint-Etienne-du-Rouvray, in July 2016.³⁸

Foreign nationals suspected of terrorist offences can be placed under *house arrest* pursuant to the provisions of immigration law.³⁹ This provision was only used on seven occasions.⁴⁰ As concerns entry bans, exit bans and house arrest for foreign nationals, it is unclear in which phases these measures are being applied.

Electronic monitoring as a response to jihadism is seeing only limited use. While in 2016 a number of 10,642 persons were serving a sentence in this way, only 13 persons wore electronic tags in cases related to ‘terrorisme islamiste’, six of whom had been convicted and seven of whom were awaiting sentencing.⁴¹ A legislative amendment in June 2016 empowers the Minister of the Interior in tandem with the Paris public prosecutor to subject returnees to restrictions in the context of the Law on Domestic Security (CSI). These include area restrictions, notification requirements (both for a maximum duration of one month, with two possibilities for extension) and/or mandatory reporting of a person’s residence and refraining from contact with persons deemed a threat to public safety (for a maximum duration of three months, with the possibility for a once-only extension). These measures can be appealed.⁴² A current legislative proposal seeks to limit the circumstances in which these restrictions can be lifted.⁴³

Phase V

³⁷ Assemblée Nationale 2016a, p. 148.

³⁸ Piel and Seelow 2016; Willsher and Borger 2016.

³⁹ CESEDA, article L563-1.

⁴⁰ Assemblée Nationale 2016a, pp. 257-258.

⁴¹ Boscher 2016.

⁴² Law on Domestic Security (CSI), article L225-1 to L225-8.

⁴³ Sénat 2016b.

Imprisoned convicts, including those convicted for terrorist offences, *are no longer entitled to social security*.⁴⁴ This also applies to persons travelling to Syria or Iraq from the moment it is learnt that they are no longer in France. People can be denied social security because this provision is not linked to having French nationality, but rather to whether one is staying in French territory. In 2014, 290 Syria travellers were stripped of their right to social security.⁴⁵ Some political and media controversy arose in early October 2016 when it was found that Farouk Ben Abbes, considered a ‘[f]igure de l’islamisme radical’ and associated with an attack in Egypt in 2009, was receiving social security benefits while under house arrest. Whether a person is considered a threat turned out not to be a criterion in deciding whether they are entitled to social security.⁴⁶

Restrictions can also be enforced on the basis of the *state of emergency* that continued until 1 November 2017, having been extended several times since being declared after the attacks of November 2015. The state of emergency provides for measures including: placing individuals under house arrest (271 ongoing house arrests in February 2016), house searches, area restrictions (540 restrictions in effect in July 2016), closing specific locations, banning specific meetings and deporting persons who may pose a threat to national security or the public order.⁴⁷

The provisions of the state of emergency have also been applied to travellers and returnees. For example, Youssef E. was placed under house arrest following the November 2015 Paris attacks. His house arrest came into effect one month after he was released, having served a sentence for attempting to travel to Syria in May 2012.⁴⁸ However, it is not clear how many of the measures imposed on the basis of the state of emergency are connected with actual or would-be travellers or returnees. Research has pointed out the very broad applicability of the state of emergency, not only with regard to

⁴⁴ Le Figaro 2016.

⁴⁵ Le Figaro 2015.

⁴⁶ Raisse 2016. See also Pelletier 2017.

⁴⁷ The figures can be found on pages 78 and 88 of Assemblée Nationale 2016b.

⁴⁸ Europe 1 2016.

concerns about jihadism but also with regard to the international climate conference in Paris in 2016.⁴⁹

The state of emergency also allows for the deportation of foreign nationals. In March 2016 two cases of *deportation* were reported and three pertinent investigations were ongoing.⁵⁰ Deportation can also take place on the basis of immigration law.⁵¹ Figures from December 2016 refer to 60 deportations of foreign jihadists since 2012, 17 of which took place in 2016. By comparison, in the early 2000s there were about ten deportations a year.⁵² It is not clear which powers are invoked with which frequency to carry out deportations. The motive behind deportations is often based on information from the intelligence services. A deportation order can be appealed, but according to the newspaper *Le Figaro* there are cases where the government acts so fast that appealing the order is no longer an option.⁵³ Deportation procedures are complex as it is not always easy to establish the identity of the person to be deported. Moreover, an agreement must be reached with the state the person is to be deported to, a process that can take months.⁵⁴ Lastly, deportation is not always an option, as the ECHR prohibits subjecting anyone to torture or degrading treatment.⁵⁵

Lastly, in the wake of the November 2015 attacks *preventive detention* was proposed as a measure against persons suspected of having been radicalised and registered as such on the ‘Fiche S’, a national register of persons wanted for or suspected of various activities. So far, this suggestion has never reached the status of a formal legislative proposal. The Council of State ruled that the concept would constitute a grave violation of constitutional rights.⁵⁶

⁴⁹ Amnesty International 2016, pp. 17-18; Assemblée Nationale 2016b.

⁵⁰ Assemblée Nationale 2016b, p. 210.

⁵¹ CESEDA, article L563-1.

⁵² Cornevin 2016.

⁵³ Cornevin 2016.

⁵⁴ Cornevin 2016.

⁵⁵ Assemblée Nationale 2015, p. 82.

⁵⁶ Boutin 2016, pp. 15-16. In French: ‘Conseil d’État’.

5.7 United Kingdom

Phase I

The UK, too, provides for *electronic monitoring*, which is one of the Terrorism Prevention and Investigation Measures (TPIMs). Other TPIMs include restraining orders, restrictions on the use of computers and telephones, financial restrictions, police station notification requirements, mandatory moves and the travel measures mentioned in chapter four. The TPIMs were introduced in 2011 to replace Control Orders, with the argument that they provide a better balance between a person's rights and freedoms on the one hand and the need to protect society from the possible danger posed by the person on the other hand.⁵⁷ Critics, however, refer to TPIMs as Control Orders lite.⁵⁸

Before a TPIM can be imposed, the Home Secretary first has to confer with police and the judiciary on whether there is sufficient evidence for a criminal law approach. TPIMs can only be used if the evidence is insufficient for criminal prosecution.⁵⁹ This goes a long way towards explaining the limited use of TPIMs: as of October 2016 there were TPIMs in place against six persons, five of whom were Britons.⁶⁰ While these restrictive measures have seen limited use, there has been a considerable increase in criminal prosecutions over the past years.⁶¹

Phase V

Those TPIMs that can be imposed to prevent a person travelling out can also be imposed on returnees. The CTSA 2015 offers additional instruments to 'improve [the] ability to manage [foreign fighters] on their return', including a ban on contacting certain organisations or persons and on possessing weapons and explosives.⁶²

Moreover, the Office of Financial Sanctions Implementation (OFSI) of the Treasury can *freeze the assets* of travellers (as well as of organisations) by placing them on a 'consolidated list'. The OFSI list includes all persons and organisations that are on the EU's terrorism list. The legal basis for these

⁵⁷ Hunt 2014, p. 289.

⁵⁸ Hunt 2014, p. 289; Liberty undated.

⁵⁹ TPIMs are imposed for one year. This can be extended with another year after which the measure expires. See Home Affairs Committee 2016, p. 16.

⁶⁰ Home Affairs Committee 2016, p. 12.

⁶¹ Home Affairs Committee 2016, p. 12.

⁶² HM Government 2015, pp. 10, 13.

measures is provided by the 2010 Terrorist Asset Freezing Act. Anyone providing funds to persons or organisations on the list is liable to prosecution.⁶³

By September 2014 the Treasury had placed 33 names on the list: 25 persons and eight organisations.⁶⁴ This is a decrease compared to previous years, as the number of persons the government removes from the list exceeds the number of persons being added. Most of the persons listed by OFSI in 2014 concerned those suspected involvement in terrorism in Syria and Iraq. They were placed on the list after having been identified in a video made by IS.⁶⁵

5.8 United States

Measures against persons travelling out of the United States seem to be limited to measures relating to travel movements, as described in the previous chapter. The absence of other restrictive measures appears to underscore the preference for a criminal law approach to Syria travellers.

⁶³ Office of Financial Sanctions Implementation 2016.

⁶⁴ Anderson 2016a, p. 9.

⁶⁵ Anderson 2016a, p. 9.

6 Social interventions

6.1 Introduction

This chapter looks at social interventions aimed at actual and would-be travellers and returnees. We wish to make two observations with regard to the use of this category of interventions. Firstly, this chapter does not purport to provide an exhaustive overview of measures in this area: rather, the emphasis is on a number of examples of person-specific interventions. Policy aimed at communities falls outside of this scope. A number of social interventions go back to the period before the phenomenon of persons travelling to Syria and Iraq and returning from these countries became a prominent issue at the end of 2012.

These measures involve supervision programmes in which a person receives coaching to try to help them reintegrate into society. Such programmes can be used to try to prevent people travelling out but also to coach returnees. We mention these initiatives as an example of the range of measures being developed and applied with regard to actual and would-be travellers and returnees in addition to criminal and restrictive measures.

Secondly, the category of social interventions has a broad definition and includes situations in which the police or security services have conversations with persons suspected of wanting to travel out. This type of intervention has taken place in Germany, France, the US and other countries.

6.2 The Netherlands

Phase I

In the Netherlands, would-be travellers and returnees are being monitored in the context of a local, person-specific approach to extremism and terrorism. This approach is not uniform across Dutch municipalities, but consists in principle of multidisciplinary case discussions led by the municipality. It is decided on an individual basis what form of monitoring is most effective. *Informing the immediate environment* of the would-be traveller can be a

part of this approach.¹ In such cases, the person's immediate environment is warned on the mayor's instructions in order to prevent the person travelling out.² If considered necessary, the individual approach can also comprise supervision and a network of key figures intended to provide the person with alternative perspectives.³

Phase I, V

In 2014, the Dutch government announced an *exit facility* to be established for persons who want to distance themselves from jihadism.⁴ The exit facility – called Exits – has been in operation since October 2015 and is currently in its pilot phase. This form of supervision occurs on a voluntary basis. Persons may be signed up to it through such channels as the Radicalisation Family Support Centre or the municipality.⁵ Exits is supplementary to the rehabilitation trajectories that can be imposed as part of a criminal law trajectory. The Exits-programme is run by an independent foundation and currently has ‘several strands’, comprising both would-be travellers and returnees.⁶ Coaching takes the form of a buddy system aimed at sustained and intensive contact.

6.3 Belgium

Phase I

In Belgium, a person's immediate environment is warned if he or she is suspected of wanting to travel out, in order that travel may be prevented. The precise way in which this is done is decided by the Local Task Force (LTF) concerned.⁷ Would-be travellers are also contacted themselves in their place of residence, initially by the local police force. This is, in principle, an example of the ‘visible, hands-on’ approach: the person in question can and should know that he or she is being watched. The aim is to be in personal touch with the would-be traveller at least once a month; preferably, the con-

¹ Ministerie van Veiligheid en Justitie 2016b, p. 9.

² Ministerie van Veiligheid en Justitie, Nationaal Coördinator Terrorismebestrijding en Veiligheid and ministerie van Sociale Zaken en Werkgelegenheid 2014, p. 11.

³ Roodnat and Eijkman 2016, p. 33.

⁴ Ministerie van Veiligheid en Justitie, Nationaal Coördinator Terrorismebestrijding en Veiligheid and ministerie van Sociale Zaken en Werkgelegenheid 2014, p. 8.

⁵ In Dutch: ‘Familiesteunpunt Radicalisering’.

⁶ Ministerie van Veiligheid en Justitie 2016b, p. 9. The Exits-organisation operates on the basis of confidentiality and does not share information with other organisations.

⁷ Minister van Binnenlandse Zaken and minister van Justitie 2015.

tact person is the police officer on the beat. An exception to this approach can be made if it is considered necessary not to alert or alarm the person in question, in which case they can be monitored discreetly.⁸

Apart from the criminal law approach, the management of would-be travellers and returnees takes place at the local level. Returnees are registered with the relevant municipalities, which take action in the context of a person-specific approach.⁹ This could include an integration trajectory, psychological support, interventions from social services and/or the engagement of prevention workers and the police.¹⁰ The municipality of Vilvoorde, for instance, has a coaching/mentoring programme for young people exposed to radicalisation, and free psychological assistance for would-be travellers and their families.

The municipality of Antwerp also offers a tailor-made exit programme, and the majority of Belgian municipalities have similar programmes.¹¹ In few cases, the government seems to have assisted people with finding a new job.¹² Supervision can also take place if a criminal law approach results in a person's conditional release. In these cases Flemish houses of justice, which offer rehabilitation services similar to the Dutch services, provide supervision aimed at deradicalisation.¹³ Nevertheless, following up on would-be travellers and returnees through social programmes only seems to take place to a limited extent. In the past two years, 'hardly any' returnees were supervised by the Flemish houses of justice.¹⁴

6.4 Denmark

After several dozen young people left for Syria in 2013, the social services of Aarhus municipality took action in cooperation with the police. The so-called Aarhus model is aimed both at the prevention of radicalisation and at reintegration into society. The target group consists of would-be travellers

⁸ Minister van Binnenlandse Zaken and minister van Justitie 2015.

⁹ Minister van Binnenlandse Zaken and minister van Justitie 2015.

¹⁰ Vidino 2014, p. 8; Tweede Kamer der Staten-Generaal 2016, p. 2.

¹¹ Gielen 2015, p. 28; Vidino 2014.

¹² Clerix 2014.

¹³ In Dutch: 'justitiehuizen'.

¹⁴ Het Laatste Nieuws 2016. See also Townsend 2016.

Phase I, V | and returnees from Syria/Iraq and, in the case of returnees, is not limited to
: persons who participated in the armed struggle. Participants are entitled to
: psychological assistance, healthcare, a personal mentor and/or support with
: starting education and training.¹⁵ This approach has since become the national
: standard.¹⁶ Would-be travellers and returnees only qualify for assistance
: with reintegration if there is no case for criminal prosecution and the PET
: does not consider them to be a risk to national security.¹⁷

6.5 Germany

German police engage in so-called ‘Gefährder-Ansprachen’: contacting persons seen as a risk to public security and the public order with a view to preventing them from committing crimes.¹⁸ This is an established form of preventive intervention used in the case of left-wing and right-wing extremists, football hooligans and people who have served a sentence for sex crimes and who are believed to be at risk of reoffending. This form of intervention is also used if citizens report a suspicion or fear of domestic violence.¹⁹

Phase I | These Ansprachen have also taken place in the case of travellers. In 2013,
: the security service of the state of Schleswig-Holstein reported that it spoke
: with would-be travellers about their plans and has managed in this way to
: prevent people travelling out.²⁰ In Cologne in June 2016, police carried out
: an Ansprache with a 16-year-old Syrian refugee who reputedly wanted to die
: in the name of IS; the boy was arrested in September of that year.²¹

Phase I, V | A range of NGOs in various states offer programmes for the prevention of
: radicalisation and for deradicalisation. Among other things, the programmes
: of the ‘Beratungsstellen’, as these NGOs are called, offer person-specific su-

¹⁵ Personal communication Danish expert on radicalisation, 4 May 2016.

¹⁶ Hemmingsen 2015, p. 18.

¹⁷ Personal communication Danish expert on radicalisation, 4 May 2016; Bertelsen 2015, p. 245.

¹⁸ Fortbildungsinstitut der Bayerische Polizei undated.

¹⁹ Spiegel Online 2001; Die Welt 2002; Abendzeitung München 2008; Welt 2016; Ruf 2016.

²⁰ Schleswig-Holsteinischer Landtag 2014, p. 118.

²¹ Zeit Online 2016b.

pervision to actual and would-be travellers, returnees and others.²² For example, Kerim Marc B. is taking part in an exit programme.²³

In October 2016, the state of North Rhine-Westphalia reported a growing demand for consultation or ‘Beratung’ with regard to ‘Salafismus’. About 200 young people are receiving this kind of supervision and five new centres will be opened in addition to the eight existing ones, as reported by *Ruhr Nachrichten*.²⁴ The Violence Prevention Network (VPN), an NGO active throughout the federal republic, runs deradicalisation programmes in prisons. Kreshnik B. seems to have followed such a programme successfully.²⁵ The VPN is also active outside of prisons. Reportedly, the network currently provides support in about 60 cases where people are at imminent risk of travelling out or have already returned.²⁶

Phase I, V

6.6 France

The domestic security service, the General Directorate of Domestic Security (DGSI), interviews persons suspected of planning to travel to Syria. Ammour, for example, was visited by the DGSI in October 2012.²⁷

Phase I

Countering radicalisation is a fairly new policy area in France: the first initiatives at the national level were taken in 2014. **Rehabilitation programmes** have since been set up locally. The city of Mulhouse, for example, has had a programme for radicalised persons and persons at risk of radicalisation since September 2015. This programme can be employed at various stages: as an alternative to prosecution, prior to a trial, as part of a judicial investigation and as a punitive measure. The intervention is carried out by a team consisting of psychologists, educational workers and social workers.²⁸ It is not clear to what extent the programme is tailored to (would-be) travellers and returnees.

²² Violence Prevention Network undated; HAYAT-Deutschland undated.

²³ Oberlandesgericht Düsseldorf 2016a.

²⁴ Ruhr Nachrichten 2016.

²⁵ Völlinger 2017.

²⁶ Bachner 2016.

²⁷ Assemblée Nationale 2016a, p. 148.

²⁸ Entenmann et al. 2015, p. 13; Le Parisien 2015.

6.7 United Kingdom

Phase I, V

In the UK, would-be travellers can be referred to the *Channel programme*, which forms part of the Prevent strategy.²⁹ Syria-related referrals mostly take the form of one-on-one conversations with a professional who measures his findings against a number of risk factors. Where needed, the professional also considers which other services are needed to provide further support to the referred individual.³⁰ In the case of returnees for whom criminal prosecution is not an option, it will also be considered whether to follow up on them through Prevent. Specific reference in this context is made to the Channel programme, although it remains unclear to what extent returnees receive supervision from Channel.³¹

Additionally, in 2015 the Home Affairs Committee recommended that the government implement a *second programme comparable to Channel* and tailored for returnees.³² In response, the British government announced the formation of a mandatory deradicalisation programme offering intensive help to persons who have already been radicalised to a serious extent.³³ Here, too, it remains uncertain for now to what extent this programme will focus on would-be travellers and returnees.

6.8 United States

Phase I

The US federal government has in a number of cases *contacted the parents* of would-be travellers to prevent their children from leaving the country.³⁴ FBI agents also pay visits to would-be travellers to make clear that the authorities are watching them, to discourage them from travelling out and to warn that committing offences opens the door to criminal prosecution.³⁵ It appears, however, that these practices are not carried out systematically.³⁶

²⁹ Prevent is one of the so-called workstreams of the British counter-terrorism strategy called CONTEST.

³⁰ Stuart 2014, p. 13.

³¹ HM Government 2016, p. 16.

³² Home Affairs Committee 2015, p. 10.

³³ HM Government 2016.

³⁴ Homeland Security Committee 2015.

³⁵ Vidino 2014, p. 17; Personal communication with D. Gartenstein-Ross, counter-terrorism expert Foundation for Defense of Democracies and Adjunct Associate Professor Georgetown University, 22 April 2016.

³⁶ Homeland Security Committee 2015.

The US all but lacks federal guidance for communities on how to intervene in the case of radicalised persons or persons at risk of becoming radicalised.³⁷ Consequently, the US *does not have federal intervention trajectories* along the lines of, for instance, the Channel programme in the UK. However, in cities such as Minneapolis-Saint Paul there have been attempts at an earlier stage to prevent radicalisation and people travelling out. From this city, which has the largest Somali American population of the US, about twenty young persons left for Somalia between 2007 and 2009 to join al-Shabaab. As part of community policing, the FBI and local police undertook activities to create opportunities for the Somali community. These programmes were criticised, however, as mainly being a means of intelligence gathering and/or attracting the required federal funding in times of spending cuts.³⁸

Since 2014, the federal government has paid renewed attention to developing *local intervention strategies* as a direct result of the 2013 Boston Marathon bombing. Initial steps were previously taken in 2011, but had limited financial backing and were incoherent in their implementation.³⁹ The Three City Pilot is an example of a start towards developing local intervention strategies with potential federal application. The plans for Boston, Minneapolis-Saint Paul and Los Angeles were unveiled in January 2015.

Phase I, V

In spite of the pilot initiative, no specific intervention or supervision programme have been set up insofar as is known.⁴⁰ It can therefore be concluded that the US does not have an official policy with regard to intervention trajectories for would-be travellers and returnees. In 2015, the Homeland Security Committee counselled caution with regard to government deradicalisation programmes, which it argued could threaten freedom of speech. In the committee's view, a person's immediate surroundings would be in a better position than civil servants to prevent radicalisation.⁴¹

³⁷ Bjelopera 2014, p. 25.

³⁸ Kundnani 2015, chapter seven.

³⁹ See for more information Wittendorp et al. 2017, p. 54; Vidino and Hughes 2015, p. 6.

⁴⁰ Personal communication J. Stern, terrorism expert, Pardee School of Global Studies, Harvard School of Public Health, 11 January 2017; Personal communication E. Savoia, researcher public health, Harvard School of Public Health, 11 January 2017.

⁴¹ Homeland Security Committee 2015, p. 34.

In 2015 the FBI did decide in a number of cases to provide guidance for suspects rather than arresting them. Depending on the specific requirements, this guidance could involve teachers, religious experts, parents, friends and/or medical doctors. These interventions are seen as an important avenue for dealing with young people interested in IS, partly because of the barriers for the criminal prosecution of minors.⁴² However, the decision to provide guidance does not mean that the FBI will abandon criminal investigations against these persons.

⁴² Barrett 2015.

7 Intelligence, investigation and detection

7.1 Introduction

An important part of investigating and monitoring travellers and returnees is gathering and exchanging intelligence. In contrast to the previous chapters, this does not really involve person-specific measures. Nonetheless, given the express cross-border nature of the phenomenon of people travelling to Syria and Iraq, it is relevant to devote some attention to the subject of international intelligence sharing. This chapter attempts to shed some light on a number of ways in which countries share intelligence on travellers and returnees. Unlike the other chapters, this chapter does not discuss each country separately in view of the limited availability of public information on international intelligence sharing. Besides detection and intelligence sharing through international systems, this chapter dwells briefly on these practices in a national context.

7.2 Intelligence, detection and investigation in a national context

Phase I

In the US, fusion centers play a role in the response to actual or would-be travellers or returnees. As an example, in a recent case the federal government was warned that an as yet unidentified American would have travelled out to join Islamist militants. This information was passed on to a fusion center, which collected supplementary information on the basis of local sources. This data enabled the fusion center to identify the traveller. This information was shared with the federal government, who entered the person into the TSDB to prevent them returning to the US unnoticed.¹

In other countries, too, fusion centers play a role in the verification of travellers. In Belgium, for instance, any services that receive information about actual or would-be travellers are required to notify the OCAD immediately. This unit will request and collect supplementary information for verification purposes. The OCAD will also open an intelligence record that includes an

¹ Homeland Security Committee 2015, p. 31.

individual threat analysis on the basis of the collected data. The record will be made available to the LTF, which takes care of the local follow-up. Normally, the first type of local follow-up in Belgium is a police visit, as mentioned in chapter six.

In contrast to European countries, *all* travellers in the US are *screened* through the use of various databases. Moments at which this happens include the purchase of a ticket, checking in and getting off a plane. These screenings are aimed at recognising suspicious patterns and are a means of using up-to-date intelligence to recognise and stop would-be travellers. The EU prohibits EU citizens from being subjected to this type of systematic screening; however, it is applied to non-EU citizens. With regard to EU citizens, consulting databases for counter-terrorism purposes is only allowed if there are concrete suspicions.²

7.3 International detection, investigation and intelligence sharing

Since 2004, the EU has provided for a *European Arrest Warrant* (EAW) against persons suspected or convicted of crimes. The Netherlands issues an EAW for each person known to have travelled out to Syria or Iraq.³ Countries can also *flag travel documents and persons through Interpol, Europol and the Schengen Information System (SIS)*. The SIS is a database that uses alerts to provide participating countries with information on individuals and objects registered as missing or wanted. An upgraded version, SIS II, was taken into use in 2013 and allows for uploading bio-metric data such as fingerprints, creating new alerts and connecting multiple alerts. The Netherlands has stated that it flags all rescinded passports in the SIS. In June 2015, Italy registered Anis Amri in SIS for having entered the Schengen Area illegally. In October 2016 the German federal police, the Federal Criminal Police Office (BKA), added the designation Foreign Fighter to this registration.⁴

The international police organisation Interpol runs the *Stolen and Lost Travel Documents (SLTD) database*. The Netherlands also uses this database to

² Homeland Security Committee 2015.

³ Ministerie van Veiligheid en Justitie 2016b, p. 2.

⁴ Bundesministerium der Justiz und für Verbraucherschutz 2017a, pp. 5, 18.

flag passports it has rescinded and will be taking the SLTD into use for border checks.⁵ A large number of the 190 countries participating in Interpol do not do this.⁶ Interpol also maintains a ‘foreign terrorist fighter’ database, which can be consulted and added to by all 190 countries. However, in September 2015 this database was found to include a mere 5,000 names, while the total number of foreign fighters in Syria/Iraq is estimated at over 25,000.⁷ In the case of the US, both the federal government and a select number of states have access to the database.⁸ Because of a reluctance to share intelligence, only a small number of the countries participating in Interpol are actually involved in keeping this database up-to-date.⁹

In 2013 Europol, a partnership of police forces within the EU, set up *Focal Point Travellers* (FPT), a team of experts who register intelligence to be used for analysis. The FPT also supports member states in carrying out criminal investigations into travellers. A second system for registering intelligence on travellers is the *Europol Information System* (EIS), a personal records database that allows direct feedback to the member states. In 2015, the Netherlands and Belgium were among the few countries that were sharing intelligence with Europol in the context of the FPT and the EIS.¹⁰ The number of countries willing to share intelligence has since risen and includes non-European countries. In 2016 Europol and the FBI signed an agreement involving the FBI in the FPT.¹¹

Eurojust is one context in which the European countries included in this study cooperate to investigate and prosecute criminals. The European countries included in this study cooperate. This EU agency, located in The Hague, aims to improve the efficiency and effectiveness of national investigating and prosecuting authorities in their fight against serious international and organised crime.¹² The number of cases in which the help of Eurojust was

⁵ Ministerie van Veiligheid en Justitie, Nationaal Coördinator Terrorismebestrijding en Veiligheid and ministerie van Sociale Zaken en Werkgelegenheid 2014, p. 29.

⁶ Homeland Security Committee 2015, p. 53.

⁷ Homeland Security Committee 2015, p. 29.

⁸ Homeland Security Committee 2015.

⁹ Homeland Security Committee 2015, p. 29.

¹⁰ Belgische Kamer van volksvertegenwoordigers 2015a, p. 24.

¹¹ Europol 2016; Minister van Veiligheid en Justitie 2016c.

¹² Eurojust 2017a.

sought has increased in the past years and includes counter-terrorism cases.¹³ In 2015, most of the 41 counter-terrorism cases hailed from Belgium, France and Italy.¹⁴ The assistance provided included the exchange of intelligence (over a hundred instances in 2015) with regard to prosecutions for terrorist offences.

Another, more intensive form of cooperation in the context of Eurojust consists of the so-called *Joint Investigation Teams* (JITs). This instrument is not often brought to bear against terrorism. A JIT is a team of judges, public prosecutors and other law enforcement authorities from various countries who carry out a judicial investigation in one or more countries for a specific period and with regard to a specific case.¹⁵ Such JITs are a highly effective form of international cooperation, but their success does depend on a history of cooperation and a high level of trust.¹⁶ Between neighbouring countries and in the field of jihadist terrorism of a highly transnational character, this Eurojust instrument offers a perspective for still more effective cooperation in investigating jihadists and bringing them to justice.

As far as the intelligence and security services go, one form of intelligence sharing is the *Counter Terrorism Group* (CTG). This partnership was set up after the attacks on 11 September 2001 as part of the so-called Club de Berne, an informal meeting of the services to reinforce ties that go back to the seventies. The CTG comprises the services of the EU member states, Norway and Switzerland and meets every six months. It should be noted that this partnership does *not* form part of the EU. Since the November 2015 Paris attacks, a number of steps have been taken within the CTG and on the initiative of the Netherlands to improve the exchange of intelligence. There has been a digital platform since 1 July 2016 allowing for faster and better intelligence exchange about Europeans who have joined jihadist organi-

¹³ Eurojust 2016, pp. 9, 28.

¹⁴ Eurojust 2016, pp. 28-29.

¹⁵ Eurojust 2017b.

¹⁶ Bakker and Powderly 2011, pp. 19-28.

sations.¹⁷ Intelligence officers of the various services also meet in the Netherlands on a regular basis to be better able to interpret intelligence.¹⁸

7.4 Bilateral intelligence sharing

Lastly, *intelligence can be exchanged bilaterally*. Especially Turkey is a key partner in this regard. As an example, the Turkish authorities have a list drawn up by the Belgian government of known Belgian ‘extremists’. In August 2013, the use of this list led to three Belgians being denied entry into Turkey.¹⁹ Since 2012, Turkey has returned over 60 travellers to Belgium.²⁰

The UK also shares information on travellers with Turkey and does so with increasing frequency.²¹ In March 2015, three teenagers were stopped at a Turkish airport and returned to the UK, where they were arrested on suspicion of acting in preparation of terrorist offences (TA 2000, Section 5). Two of the teenagers had been reported missing to the British police, who immediately passed the information on to the Turkish authorities.²²

France is another example. Between September 2014 and October 2016, over 150 French nationals who sought to travel on to Syria or to return were arrested by the Turkish authorities and deported to France.²³ This has not always gone smoothly: three French nationals deported by Turkey in September 2014 arrived in Marseille without being arrested by the security service. It was later found that the Turkish authorities had originally intended to include the men on a flight to Paris and had been late to notify France of the change of plan.²⁴

In November 2014 Bernard Cazeneuve, the then French Minister of the Interior, visited Turkey. The outcome of his visit was the ‘Cazeneuve’ protocol, intended to improve the sharing of intelligence by France with Turkey on French nationals travelling to Turkey. When Turkey detains a French

¹⁷ Modderkolk 2016; Algemene Inlichtingen- en Veiligheidsdienst 2016, pp. 17, 38.

¹⁸ Modderkolk 2016.

¹⁹ Vidino 2014, p. 7.

²⁰ De Redactie 2016.

²¹ Flynn 2015.

²² BBC 2015a; Flynn 2015.

²³ Le Figaro 2016b.

²⁴ Le Figaro 2016b; Assemblée Nationale 2015, p. 84.

returnee already flagged by France, France provides consular assistance and an assessment of the person's threat level, the person is briefly detained in Turkey and France opens a judicial investigation. If the returnee has not yet been registered by France, Turkey starts a judicial investigation and the person is then deported to France.²⁵

²⁵ Assemblée Nationale 2015, pp. 285-286.

8 Military engagement and assistance with repatriation

8.1 Introduction

The Netherlands, Belgium, Germany, France and the UK are part of the US-led Global Coalition against Daesh and have in the past period been active in or over Syria and/or Iraq. Military action includes reconnaissance flights, air strikes and providing training to Iraqi soldiers and Kurdish fighters. In addition, the several military intelligence services collect intelligence on the warring parties. Only the UK and the US also take person-specific military actions. Both countries have carried out targeted killings of their own nationals.

At the same time, the coalition has been reported as wanting to formulate a plan to encourage Western travellers who joined IS to turn themselves in so as to help them return to their home countries.¹ So far this has remained an unconfirmed idea. In the past months, however, an increasing number of Western travellers have contacted their governments asking for consular assistance. Reportedly, 150 persons did this in the summer of 2016 alone.² To be able to get assistance, the traveller in many cases needs to report to a consulate in Turkey or Iraq. They are first questioned by the Turkish or Iraqi authorities for a number of weeks before being handed over to representatives of foreign embassies.³

8.2 The Netherlands

Phase III

Between October 2014 and July 2016, the Netherlands made F-16s available for air strikes against IS targets.⁴ These strikes were initially limited to Iraq; from February 2016 on they also took place in Eastern Syria. The primary aim of these actions was to disrupt supply lines, to destroy strategic locations and to provide air support to ground forces fighting IS.⁵ Targeted drone killings do not form part of the Dutch military contribution; the Minister of

¹ The New Arab 2016.

² The Telegraph 2016.

³ Abi-Habib 2016.

⁴ Ministerie van Defensie undated.

⁵ Ministerie van Defensie undated.

Defence has repeatedly emphasised that ‘the Netherlands does not take part in liquidations carried out with drones’.⁶ In the framework of the Global Coalition against Daesh, the Dutch air force was relieved by Belgium midway through 2016. The Dutch military is currently still active providing security for the Belgian detachment and training Iraqi soldiers and Kurdish Peshmerga fighters, a training mission that began in February 2015.

Phase IV

With regard to the repatriation of travellers, the Ministry of Security and Justice and the Ministry of Foreign Affairs have declared that everyone is entitled to consular assistance from Dutch embassies in neighbouring countries, but that people need to report to the embassies in order to qualify.⁷ For this reason, the two ministries indicated they could not do much to take the Dutch IS-fighter Reda N. out of a rehabilitation camp run by rebels in Syria.⁸ Nonetheless, contacts between Reda N.’s father and the Ministry of Foreign Affairs suggest that the ministry is taking steps, although it is not known which steps.⁹

Consular assistance is not the only form of aid consulates or embassies can offer. For instance, the Ministry of Foreign Affairs indicated that the consulate in Erbil (Iraq) was ready to assist Laura H. – who claimed to have fled from IS and was being held by Kurds – through such measures as providing travel documents, mediating or asking family members to transfer money for a flight ticket.¹⁰ It is not clear whether the consulate did provide any assistance. Dutch embassies can also provide assistance in case of contact (either initial or renewed) with family members.¹¹ Laura H. flew back to the Netherlands at the start of August 2016 and was arrested there. Reda N., who allegedly fled the rehabilitation camp, was arrested in Turkey when trying to cross the border from Syria. A Dutch embassy employee visited him in prison in Ankara.¹²

⁶ See for instance De Volkskrant 2014b.

⁷ NOS 2016a.

⁸ NOS 2016a.

⁹ Pauw 2016.

¹⁰ Omroep West 2016.

¹¹ Ministerie van Veiligheid en Justitie, Nationaal Coördinator Terrorismebestrijding en Veiligheid and ministerie van Sociale Zaken en Werkgelegenheid 2014.

¹² Linggen 2016.

8.3 Belgium

The Belgian air force flew missions over Iraq between October 2014 and June 2015, when the operation ended for budgetary reasons. The Belgian Ministry of Defence is reluctant to provide information about military engagement.¹³ The operation was resumed in 2016, with Belgian F-16s active over Iraq again as well as over Syria.

Phase IV

In 2013, the Minister of the Interior made ten proposals for dealing with travellers. One proposal was to draw up a list of contact persons in Syria who might be able to help with the repatriation of such people.¹⁴ One person who travelled out and whom Belgium refused to repatriate is Harris C., who was alleged to have fought in Somalia and Syria, respectively. He was wounded in a bombardment in Syria and ended up in a Turkish hospital. In June, the Belgian Ministry of Foreign Affairs stated it was unwilling to return the man to Belgium. Because of this, his father tried to take him to a Belgian hospital by car.

A European arrest warrant had been issued against Harris C., and he was detained in 2014 when trying to cross the border from Turkey into Bulgaria with his father.¹⁵ At the end of 2015, C. was sentenced to four years in prison. Another Belgian father who had gone to Turkey to try to repatriate his son in Syria had ‘regular indirect contact with the Belgian embassy in the Turkish city of Ankara’.¹⁶ The Ministry of Foreign Affairs confirmed it knew about the father’s activities. These examples appear to indicate that the Belgian government does not provide active support to travellers or to their family members.

8.4 Denmark

Phase III

Denmark joined the Global Coalition against Daesh in September 2014. After a year of Danish F-16s flying nearly 500 sorties over Iraq and Syria, the planes returned to Denmark. About 120 soldiers stayed in Iraq to train

¹³ Airwars 2016.

¹⁴ De Wit 2013.

¹⁵ De Standaard 2014.

¹⁶ Gazet van Antwerpen 2015.

Iraqi forces.¹⁷ In April 2016, the Danish parliament voted to resume its air operations for a period of six months as well as to deploy 400 ground troops. These include 60 Special Forces charged with ‘a range of missions’ in Iraq and Syria.¹⁸ Denmark took its decision to intensify military involvement following requests from France and the US.

Phase IV

The available public sources suggest that Denmark is not taking a person-specific approach in the region. Although attempts were made at the local level – in the city of Aarhus – to help returnees reintegrate into society, there is no active policy at the national level or on the part of the Ministry of Foreign Affairs to help Danish subjects return to Denmark from Syria or Iraq.

8.5 Germany

Phase III

At the start of December 2015, the German parliament voted in favour of military assistance in the fight against IS. The decision was taken following a request from France in the wake of the attacks in Paris of the previous month. Germany itself does not carry out air strikes, opting instead for a supporting role: the air force only conducts reconnaissance flights, and a frigate of the German Navy provides support to the French aircraft carrier *Charles de Gaulle*.¹⁹ In addition, Germany provides military training to the Peshmerga in the Kurdish part of Iraq.

Phase IV

Although the German Ministry of Foreign Affairs provides a lot of information on its website about the risks of travelling to Syria and calls on German citizens to leave Syria, Germany has no active policy for supporting or supervising the return of travellers.²⁰

A report in *Der Spiegel* showed that the German intelligence and security services did use an informer who was an IS member. Chapter three on Criminal law mentions that Ali R. is being prosecuted for membership in a terrorist organisation. In December 2014, R. allegedly followed his wife to Syria against his will. According to *Der Spiegel*, R. would have got in touch

¹⁷ NOS 2015.

¹⁸ Matzen 2016.

¹⁹ BBC 2015b; Dearden 2015.

²⁰ Auswärtiges Amt 2016.

with the Berlin security service at a previous stage. His stay in Syria would have provided valuable information to the intelligence and security services about the functioning of IS. In October 2015, R. and his children travelled to Kurdish territory ruled by the YPG. The German intelligence service was said to have assisted with his repatriation.²¹

8.6 France

Phase III

In September 2014, France began a military operation by carrying out air strikes. At the start of 2015 – after the attack on the office of the satirical magazine *Charlie Hebdo* – the French President Hollande announced the engagement of the aircraft carrier Charles de Gaulle in the fight against IS. In September 2015, France carried out its first air strikes in Syrian territory. Following the November 2015 Paris attacks, Hollande declared that French fighters jets would be stepping up their bombardments. In addition, France sent Special Forces to Syria in 2016. The government stated that these troops would be deployed to provide military training and advice and would not engage in direct fighting against IS.²²

When bombarding IS positions, the French government is aware of the possible presence of French nationals. Prime Minister Manuel Valls confirmed that French travellers had been killed in an attack on an IS camp in Raqqa in October 2015.²³ Valls parried criticism by saying that he did not see this as a problem: the goal, according to Valls, was to hit IS and in his view terrorists did not have passports.²⁴

In view of the number of French travellers and the frequency of French air sorties over Syria and Iraq, it could be argued that such situations occur more frequently and that the French government appears not to see a problem if its nationals get killed. No proof has been found of targeted killings by French soldiers.²⁵ However, a number of persons involved in the Paris

²¹ Knobbe and Schmid 2016.

²² Paton 2016; See also El-Ghobashy, Abi-Habib and Faucon 2017.

²³ The Atlantic 2015; France 24 2015.

²⁴ France 24 2015.

²⁵

attacks were killed by the US in targeted attacks in Syria. The degree of cooperation between Paris and Washington is unclear.

Phase IV | The French government does not seem to have an active policy for assisting French travellers who have stated publicly that they want to return to France. In the case of a few persons detained by the Free Syrian Army, the Turkish government has been found willing to escort them to a Turkish border crossing and to detain them until they leave for France. The French Ministry of Foreign Affairs has indicated it does not play a role at least in this case.²⁶ Reports that France is getting French nationals who have deserted out of Syria and Iraq are not confirmed officially by the French government.²⁷

8.7 United Kingdom

Phase III | On 26 September 2014, the British parliament approved the engagement of the Royal Air Force in Iraqi airspace. The first air strikes were carried out four days later.²⁸ On 2 December 2015, the British parliament passed a motion to extend the operation to include Syria.²⁹ Shortly afterwards, the first British Tornado jets took off to bombard IS targets in Syria.

The UK has stated: ‘We will act decisively where terrorists pose an imminent threat to the UK and our interests overseas or to our allies.’³⁰ In consequence, and other than the countries discussed above, the UK carries out targeted killings of its own subjects. August 2015 was the first time a Briton was killed deliberately in a precision attack in which another Briton and a Belgian traveller were also killed.³¹ In November 2015, Mohammed Emwazi, also known as Jihadi John, was killed in an American drone attack in Syria.

The British Prime Minister David Cameron stated that the UK and the US had cooperated intensively to determine Emwazi’s location and to neutralise him.³² Furthermore, British Special Forces are posted in Iraq and allegedly

²⁶ Liberation 2016.

²⁷ NOS 2016b.

²⁸ Sparrow and Phipps 2014.

²⁹ UK Parliament 2015.

³⁰ HM Government 2016, p. 13.

³¹ Prime Minister’s Office 2015a; Cole 2016.

³² Prime Minister’s Office 2015b.

have a kill or capture list with 200 names of British travellers who joined IS. Captured British travellers were reportedly being handed over to the Iraqi authorities.³³ The British Ministry of Defence, which generally does not comment on the use of Special Forces, declined to confirm these actions.

Phase IV | There does not seem to be a person-specific approach in Syria to help British IS-fighters who are disillusioned or who were captured by the Syrian opposition to return to Britain.

8.8 United States

Phase III | In August 2014, the US began air strikes against IS targets in Iraq.³⁴ Shortly afterwards, on 5 September, the US declared it had formed a core coalition against IS. This US-led Global Coalition against Daesh and the operation Inherent Resolve would eventually include over sixty countries.

US military involvement includes the use of fighter jets, Special Forces and Predator and Reaper drones. The previously cited case of Emwazi shows that the US is using these drones to carry out targeted killings. Since 2010 the American government has used a Disposition Matrix, also known as the kill list, that includes possible enemies of the US.³⁵

The first American to be added to the list, Anwar al-Awlaki, was added in 2010 and was killed in a drone attack in Yemen in September 2011. As far as is known, al-Awlaki is as yet the only American deliberately killed by the American government. Other Americans killed by American drones, such as Kemal Darwish (Yemen, 2002), Samir Khan (Yemen, 2011) and Jude Kenan Mohammed (Pakistan, 2013) were, according to a spokesperson, ‘in the wrong place at the wrong time’ rather than being specific targets.³⁶

American drones have also killed Europeans. In some cases, such as that of Emwazi, these were targeted killings. In other cases this is unclear, such as in the case of a Belgian killed in Syria in December 2016 and the previously cited attacks against those involved in the Paris attacks. The Pentagon is

³³ Kentish 2016; Hookham 2016.

³⁴ Rubin et al. 2014.

³⁵ Miller 2012.

³⁶ Taylor 2015.

reluctant to provide information on the use of US Special Forces, but has repeatedly declared that their role is limited to ‘providing advice and assistance’.³⁷ However, it seems these troops also have a mandate to go on the offensive, as was shown by an operation north of the Syrian city of Deir ez-Zor at the start of January 2017.³⁸

Phase IV

With regard to the repatriation of travellers, the intentions and policy of the US are unclear. The case of Eric H. in 2014 showed that the US government may not just have been interested in his return but also in obtaining information about the situation in Syria. After various interviews conducted by the FBI and the Central Intelligence Agency (CIA), H. was offered a flight ticket from Turkey to the US. An American agent accompanied him on his flight back. Against his expectations, the FBI arrested H. on arrival.³⁹

Cooperation between the US and Turkey to prevent people travelling out or to send them back has since been intensified. The CIA and its Turkish counterpart, the MIT, reportedly have a secret joint coordination centre near the Turkish border.⁴⁰ It is not clear whether person-specific measures are being taken with regard to returnees in the context of these collaborations.

³⁷ U.S. Department of Defense 2016.

³⁸ Sharifi 2017; Sly and Rian 2017.

³⁹ Pelton 2014b.

⁴⁰ Miller and Mekhennet 2016.

9 Conclusion

9.1 Introduction

This report provides an overview of policy and legislation in the Netherlands, Belgium, Denmark, Germany, France, the UK and the US with regard to dealing with actual and would-be travellers to and returnees from Syria or Iraq, with a focus on initiatives taken between 2010 and the end of 2016 and on person-specific measures. We have worked with publicly available information and attempted to contextualise the measures with reference to the moment of implementation. To do so, we have distinguished five phases: (1) the person concerned is still in his or her country of residence but is or may be ready to travel out; (2) the person concerned is on the way to a foreign destination with the possible intention of participating in jihad; (3) the person is staying in a foreign area of conflict; (4) the person leaves the area of conflict and travels back to his or her country of residence; (5) the person has returned to his or her country of residence.

The general picture that emerges from this inventory is that the response to actual and would-be travellers and returnees represents a quest on the part of governments to get to grips with these problems. To do so they rely on a broad range of measures. Although the countries differ considerably in their political organisation, competences and legal cultures, we have found that by and large they take the same approach, with the difference being in the detail. Most initiatives centre on phases one and five. This is no surprise, as these are the phases in which the actual or would-be traveller or the returnee is in the state's territory, where the government has the greatest authority to act. Even so, in these phases most attention is focused on limiting the person's mobility, whether through (preferably early) intervention in the area of criminal law or through passport-related measures. The greatest differences were found in social interventions – in particular the reintegration trajectories – and in military engagement, with the UK and the US being the most active in the latter area.

9.2 Criminal law

The core of the response by all countries consists of the judiciary framework and criminal law in particular. This is not entirely surprising, as the concerns about actual and would-be travellers and returnees mostly revolve around the actual or potential use of violence. All countries use criminal law acts that touch on terrorist offences. Many countries have expanded this area of legislation since 2014 in order to make travelling to areas of conflict a punishable offence. These offences mainly involve training for terrorist purposes and travelling abroad to join terrorist organisations.

The question is whether further developments in criminal law will help provide a better grip on the problem posed by travellers. Germany, France and the US have mainly used existing counter-terrorism legislation, which in the case of the first two countries dates back to well before 11 September 2001. Then there are examples from France and Denmark demonstrating that it is not always easy to gather sufficient evidence in a case. The report also cites cases from the Netherlands, Germany and the US where prosecuting authorities have resorted to non-terrorism-related legislation to try to secure a conviction. It would be interesting to examine to what extent the use of non-terrorism-related legislation leads to actual convictions.

9.3 Restrictive measures

There are also the measures that are not grounded in criminal law while still having a restrictive or punitive effect, such as electronic tagging, house arrest, freezing financial assets, cutting off social security, deporting non-nationals and/or seizing or voiding passports and identity documents. These measures also include taking away a person's dual nationality.

Measures in connection with electronic tagging differ per country. France allows this if a person has attempted to travel out or is suspected of wanting to do so, as well as after a person has served a prison sentence. In Germany only the latter option applies, although some have argued in favour of preventive electronic tagging. In Belgium, too, there has been a call for preventive tagging, but the use of electronic tags is focused on a specific type of returnees. In the UK, electronic tagging is possible only where criminal pro-

secution is not feasible. People have managed to travel to Syria from Germany and France in spite of having had their passport revoked. In France, a person managed to commit an attack despite wearing an electronic tag. This gives rise to the question of what may be expected of these restrictive measures in terms of prevention or of countering people who travel out or commit terrorist offences. Are these measures mainly symbolic in nature, or do they actually reduce the risk of persons travelling out or committing attacks?

9.4 Social interventions

Generally speaking, the initiatives and projects in the field of social interventions are very similar between countries. In the case of Belgium, Germany, France and the US it was found that the police or the security service try to contact the person suspected of seeking to travel out and/or his or her direct surroundings to try to prevent them from travelling out. All of the reviewed countries are also introducing similarly structured reintegration trajectories, with an emphasis on a person-specific, local approach as well as on the multidisciplinary use of resources. Some countries, such as the Netherlands and the UK, have greater coordination at the national level, while other countries, such as Germany and the US, provide for a greater role for the states and/or individual cities. There are also different levels of involvement of non-state actors, with the social sector playing a role especially in Germany, but also in the Netherlands. There are marked differences, however, in the implementation of reintegration policy. The Netherlands, Denmark, Germany and the UK have been active in this area for some time, whereas the US and especially France are relative newcomers to it. Note that this implies nothing about the degree of effectiveness of such initiatives.

9.5 Military engagement and repatriation

The seven reviewed countries all carry out military action against IS in Syria and/or Iraq or provide indirect support to such action. Western travellers to Syria or Iraq get killed in these actions, but only the UK and the US indicate that they sometimes carry out targeted killings. The Netherlands is not

involved in person-specific military actions in Iraq and Syria. There is a great deal of ambiguity about how the other countries deal with knowledge about the presence of their own nationals who have travelled out and possible military action in which these nationals get killed. The same goes for assistance with repatriation, for which most countries do not officially have any active policy. In practice, however, the situation has been found to be different in some cases. There is a reluctance to comment on, and a lack of transparency around, both military action against and assistance provided to travellers. This is the case to a degree that one could speak of a taboo with regard to person-specific measures against travellers once they are in the region.

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