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Stakeholder Report: 24th Session, Belgium

The Right to Privacy in Belgium

Submitted by Privacy International, Liga voor Mensenrechten and the Ligue des droits de l'Homme

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Introduction

1. This stakeholder report is a submission by Privacy International (PI), Liga voor Mensenrechten and Ligue des droits de l'Homme. PI is a human rights organisation that works to advance and promote the right to privacy and fight unlawful surveillance around the world. Liga voor Mensenrechten and the Ligue des droits de l'Homme are Belgian human rights organisations which focus, among many thematic topics, on privacy infringements within the Flemish speaking (Liga) and French speaking (Ligue) parts of Belgium.

2. PI, Liga voor Mensenrechten and Ligue des droits de l'Homme wish to bring concerns about the protection and promotion of the right to privacy in Belgium before the Human Rights Council for consideration in Belgium's upcoming review.

The right to privacy

3. Privacy is a fundamental human right, enshrined in numerous international human rights instruments.[1] It is central to the protection of human dignity and forms the basis of any democratic society. It also supports and reinforces other rights, such as freedom of expression, information and association.

4. Activities that restrict the right to privacy, such as surveillance and censorship, can only be justified when they are prescribed by law, necessary to achieve a legitimate aim, and proportionate to the aim pursued.[2]

5. As innovations in information technology have enabled previously unimagined forms of collecting, storing and sharing personal data, the right to privacy has evolved to encapsulate State obligations related to the protection of personal data.[3] A number of international instruments enshrine data protection principles,[4] and many domestic legislatures have incorporated such principles into national law.[5]

Follow up to the previous UPR

6. Whilst the national report submitted by Belgium and the compilation report by the OHCHR did not raise the issue of privacy, and the report of the Working Group in the first cycle did not include reference to or recommendations on the right to privacy, various stakeholder reports expressed concerns with the regards to privacy related issues. These included:
   - Amnesty International, London, UK, raised concerns on right to privacy as a result of the overcrowding prison conditions;[6]

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1 Universal Declaration of Human Rights Article 12, United Nations Convention on Migrant Workers Article 14, UN Convention of the Protection of the Child Article 16, International Covenant on Civil and Political Rights, International Covenant on Civil and Political Rights Article 17; regional conventions including Article 10 of the African Charter on the Rights and Welfare of the Child, Article 11 of the American Convention on Human Rights, Article 4 of the African Union Principles on Freedom of Expression, Article 5 of the American Declaration of the Rights and Duties of Man, Article 21 of the Arab Charter on Human Rights, and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Johannesburg Principles on National Security, Free Expression and Access to Information, Camden Principles on Freedom of Expression and Equality.

2 Universal Declaration of Human Rights Article 29; General Comment No. 27, Adopted by The Human Rights Committee Under Article 40, Paragraph 4, Of The International Covenant On Civil And Political Rights, CCPR/C/21/Rev.1/Add.9, November 2, 1999; see also Martin Scheinin, "Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism," 2009, A/HRC/17/34.

3 Human Rights Committee general comment No. 16 (1988) on the right to respect of privacy, family, home and correspondence, and protection of honour and reputation (art. 17).

4 See the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (No. 108), 1981; the Organization for Economic Co- operation and Development Guidelines on the Protection of Privacy and Transborder Data Flows of Personal Data (1980); and the Guidelines for the regulation of computerized personal data files (General Assembly resolution 45/95 and E/CN.4/1990/72)

5 As of December 2013, 101 countries had enacted data protection legislation: David Banisar, National Comprehensive Data Protection/Privacy Laws and Bills 2014 Map (January 28, 2014). Available at SSRN: http://ssrn.com/abstract=1951416 or http://dx.doi.org/10.2139/ssrn.1951416

6 A/HRC/WG.6/11/BEL/3, para. 28

– The Council of Europe Commissioner on human rights expressed concerns with the regards to: (i) providing decent detention conditions for all detained aliens in closed detention centres which are conducive to respect for the privacy and autonomy,[7] and (ii) the right to respect for privacy in relations to the Royal Decree on data relating to counter-terrorism.[8]

Domestic laws related to privacy

7. Added to the Constitution of Belgium[9] in 1994, Article 22 states that: *"Everyone has the right to the respect of his private and family life, except in the cases and conditions determined by the law. The laws, federate laws and rules referred to in Article 134 guarantee the protection of this right."*

8. Furthermore, Article 29 reads: *"The confidentiality of letters is inviolable. The law determines which officials may violate the confidentiality of letters entrusted to the postal service."*

9. Other laws relating to privacy include the 1992 Personal Data Act, which applies to automatic processing of personal data by public or private entities and is supplemented by a variety of other laws in specific areas including consumer credit, social security, electoral rolls, professional secrets, employee rights and the national ID number.

10. The law on the protection of privacy against wire-tapping monitoring and recording of private communications of 30 June 1994 as amended on 10 June 1998, which regulates interception of communications, alongside other legislation.

11. The Belgian intelligence services are regulated by the Act of 18 July 1991 and the Act of 30 November 1998 which governs the intelligence and security services, and more recently the Act of 4 February 2010 on special intelligence methods by the intelligence and security services.

Regional and international obligations relating to privacy

12. Belgium has ratified the International Covenant on Civil and Political Rights ('ICCPR'). Article 17 of the ICCPR provides that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation". The Human Rights Committee has noted that states parties to the ICCPR have a positive obligation to "adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right [privacy]."[10]

13. Belgium is also bound by the European Convention on Human Rights, Article 8 of which protects the privacy of the home and correspondence, and the Charter of Fundamental Rights of the European Union, Articles 7 and 8 of which relate to the right to privacy and the protection of personal data respectively.

14. Belgium is a member of the Council of Europe and has signed and ratified the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (ETS No. 108).[11] It also is a member of the Organization for Economic Cooperation and Development and has adopted the OECD Guidelines on the Protection of Privacy and

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7 A/HRC/WG.6/11/BEL/3 para. 72
8 A/HRC/WG.6/11/BEL34, para. 80
9 Available at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1994021730&table_name=loi
10 General Comment No. 16 (1988), para. 1
11 Available at: http://conventions.coe.int/Treaty/en/Treaties/Html/108.htm

Transborder Flows of Personal Data.[12]

Areas of concern

15. Belgium has undertaken various progressive measures to protect the right to privacy and to ensure the protection of personal data such as:
    - the appointment of a Secretary of State for privacy;[13]
    - the establishment of a robust Data Protection Authority; and
    - the creation of the Belgian Standing Intelligence Agencies Review Committee, a robust Intelligence Oversight body (Le Comité permanent R) which has very strong transparency policy. In 2013 it published two in-depth investigative reports[14] on the revelations made by Edward Snowden;
    - the annulment of the data retention law in compliance with the European Court of Justice ruling declaring the EU Directive 2006/24/EC;[15] and
    - the Belgian Commission for the protection of privacy has initiated legal proceedings against Facebook for violating privacy laws by tracking user behaviour on non-Facebook websites by default until they opt-out.[16]

16. Nevertheless, the following policies and practices are a cause of concern for the right to privacy in Belgium.

Communication surveillance

Powers of the police to store and access data

17. Law 2014-03-18/5[17] repealed Article 44 (1) to (11) of 5 August 1992[18] on the function of the police and introduced new provisions granting police more power to store and access data in the National Police Database.

18. On 29 September 2014, the Liga voor Mensenrechten and the Ligue des droits de l'Homme challenged the amendments made by the 2014 law before the Constitutional Court and called for the law to be revoked.[19] The case is still pending.
19. In particular they expressed their concerns regarding the following provisions:
    - Data of individuals who have been acquitted are not automatically deleted from the Database;
    - There is no effective control on the process of storage and destruction of data by the police;
    - The data retention period is unreasonably long with an archival lifetime of 30 years;
    - Minors aged between 14 and 18 years-old are being registered on the Database without

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12 For further information, please visit the OECD website at: http://www.oecd.org/sti/ieconomy/oecdguidelinesontheprotectionofprivacyandtransborderflowsofpersonaldata.htm

13 See: http://www.belgium.be/fr/la_belgique/pouvoirs_publics/autorites_federales/gouvernement_federal/composition_gouvernement/index_bart_tommelein.jsp

14 Verlmeulen, M., *Les révélations de Snowden, interception massive de données et espionnage politique. Etude des sources ouvertes*, 23 Octobre 2013. Available at: http://www.comiteri.be/images/pdf/rapport_dexpertise_drs_vermeulen_fr.pdf; Schaus, A., *Consultation sur les règles en vigueur en Belgique en matière de protection de la vie privée eu égard aux moyens autorisant l'interception et l'exploitation à grande échelle de données relatives à des personnes, organisations, entreprises ou instances établies en Belgique ou qui ont un lien avec la Belgique*, 27 November 2013. Available at: *http://www.comiteri.be/images/pdf/rapport_dexpertise_prof_schaus_fr.pdf*

15 Jennotte, A., *Internet: grande victoire pour les defenseurs de la vie privée*, http://www.lesoir.be/904798/article/economie/2015-06-11/internet-grande-victoire-pour-defenseurs-vie-privee

16 Teffer, P., Belgian privacy watchdog sues Facebook, EU Observer, 15 June 2015. Available at: *https://euobserver.com/digital/129110*

17 Available at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2014031805

18 Available at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1992080552&table_name=loi

19 De Standaard, *Liga voor Mensenrechten naar Grondwettelijk Hof omdat politie te veel data over ons bijhoudt*, 9 October 2014. Available at: http://www.standaard.be/cnt/dmf20141009_01311867

specific safeguards which meet the protection standards which should awarded to children to ensure they are not treated in the same way as adults as upheld by international law and standards.

20. The aforementioned provisions, amongst other amendments, amount to a violation of the right to privacy as enshrined in Article 17 of the ICCPR and Article 8 of the European Convention on Human Rights.

New anti-terrorism measures

21. Following a large anti-terrorism operation in the southern province and in Brussels region[20], mid-January 2015, the Belgian government announced that it would take a series of anti-terrorism measures in order to combat the perceived threats of terrorism. The twelve measures included legal reform to include travelling abroad to commit terrorist acts as a crime, expansion of special investigative methods to activities related to inciting terrorism, recruitment, and training as well as travelling abroad to commit terrorist acts, optimise the exchange of information between the authorities and the administrative and judicial system, broad reform of the intelligence and security structures as well as calling on the army to conduct specific surveillance missions of specific places.[21]

22. The government press statement notes that the Council of Ministers had approved three bills. The one that raises concerns for privacy refers to a bill which expands the list of criminal offences for which wire-tapping is permitted.[22] The bill has not yet been published online, but concerns have been expressed that offences may including recruiting, encouraging and training in the context of terrorism, and a new offence for moving abroad for terrorist purposes, which go beyond prohibiting direct of acts of terrorism. If interpreted broadly these new offences could allow for wider justification to conduct surveillance, particularly the new offence related to encouraging terrorism which is very vague, and could have a chilling effect on privacy but also freedom of expression.

23. Many have come out to criticise and express concerns regarding the human rights implication of the anti-terrorism measures announced in January 2015. La Ligue des Droit de l'Homme (LDH) noted how the state and the security services already have extensive access to centralised databases, and questions the need for further powers and increased access to information. The LDH called on the government to ensure that the measures taken met the principle of proportionality and necessity, particularly with the respect to privacy, warning of the paradox if privacy, a fundamental value in democracy, becomes a "*collateral" victim*" of the so-called fight to protect these fundamental democratic values.[23] The Flemish Bar Association has also come out criticising the new anti-terrorism measures stating they would violate the right to privacy.[24]

24. Furthermore, the Liga voor Mensenrechten criticized the new measures, considering the lack of conclusive studies evaluating the effectiveness of the more than 250 restrictive measures that already have been taken since 9/11. Belgium already has a substantive list of its own: the anti-terrorism law, the European arrest warrant, the development and linking of databases such as Europol and Schengen, CCTV, laws with special investigation methods for the police and Intelligence Service, the biometric passport, the establishment of Eurojust and the Coordination Body for Threat Analysis. The Liga voor Mensenrechten

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[20] La Libre Belgique, Vaste opération anti-terroriste en Belgique: trois suspects sous mandat d'arrêt, deux relâchés sous conditions, 16 January 2015. Available at: http://www.lalibre.be/actu/belgique/vaste-operation-anti-terroriste-en-belgique-trois-suspects-sous-mandat-d-arret-deux-relaches-sous-conditions-54b7f3f23570c2c48ad60a7b

[21] Euronews, *Belgium seeks to tighten anti-terror laws*, 16 January 2015. Available at: http://www.euronews.com/2015/01/16/belgium-seeks-to-tighten-anti-terror-laws/

[22] Available at: http://www.presscenter.org/nl/pressrelease/20150612/strijd-tegen-radicalisme-en-terrorisme

[23] Belgian League of Human Rights, *Belgium's New Anti-Terror Measures Could Do More Harm than Good*, 5 February 2015. Liberties, Available at: http://www.liberties.eu/en/news/anti-terror-laws-belgium-counterproductive

[24] De Morgen, *Vlaamse advocaten kritisch voor schending privacy door antiterreurbeleid*, 26 January 2015. Available at: http://www.demorgen.be/binnenland/vlaamse-advocaten-kritisch-voor-schending-privacy-door-antiterreurbeleid-a2195502/

questions how a government can still justify the proportionality of it all as well as the justification behind the need for new, expansive, measures.[25]

25. The envisaged measures contain vague and ill-defined provisions which risk criminalising legitimate dissent and raise significant concerns that these will facilitate human rights violations.

26. As stated by two UN experts in April 2015, Ben Emmerson, Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and Heiner Bielefeldt, Special Rapporteur on freedom of religion or belief, human rights and freedoms should not be sacrificed for political convenience in the fight against terrorism.[26] Any measures taken must be in respect with Belgium's Constitution and its obligations under international human rights law and standards.

Data retention

27. In 2013, Belgium passed a new law[27] implementing into national law the EU Directive 2006/24/EC, which required all telecommunication operators to retain the data of their customers for one year.[28] This data was made accessible to the police, the judiciary and intelligence services as part of their investigations.

28. In April 2014, the European Court of Justice (CJEU) struck down the EU-wide data retention policy calling it mandatory data retention *"an interference with the fundamental rights of practically the entire European population...without such an interference being precisely circumscribed by provisions to ensure that is is actually limited to what is strictly necessary"*.[29] Since this decision, many European countries have taken the necessary steps to reform their laws and align themselves with the CJEU decisions.

29. The Liga voor Mensenrechten, and the Ligue des droits de l'Homme filed a legal proceeding before the Constitutional Court requesting the law be repealed. We welcome the decision of the Belgian Constitution Court on 11 June 2015 to strike down the law which transposed the EU Directive.

30. Following this ruling, the law that will now apply is the law of 13 June 2005 on electronic communications[30]. However given the decision of the Constitutional Court is very recent, it remains unclear how the judgement will impact current investigations, and how they will be conducted in the future.

31. Privacy International, the Liga voor Mensenrechten and the Ligue des droits de l'Homme would like to note that any new policy that the Belgium government may decide to adopt must be in line with the decisions of the Belgian Constitutional Court and the CJEU.

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25 Vandervelpen, J.,*Antiterreurmaatregelen en mensenrechtelijke bezwaren*, De Jurist Krant, 13 February 2015. Available at: http://www.mensenrechten.be/index.php/site/nieuwsberichten/antiterreurmaatregelen_en_mensenrechtelijke_bezwaren

26 OHCHR, *Human rights must always be protected, even when countering terrorism – UN experts*, 16 April 2015. Available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15846&LangID=E

27 Available at: http://www.ejustice.just.fgov.be/cgi_loi/loi_a.pl?language=fr&dt=LOI&chercher=t&choix1=ET&fr=f&choix2=ET&numero=2&table_name=LOI&fromtab=loi_all&imgcn.x=53&DETAIL=2013073010/F&nm=2013011417&imgcn.y=5&ddda=2013&sql=dt+contains++%27LOI%27+and+dd+=+date%272013-07-30%27and+actif+=+%27Y%27&rech=9&tri=dd+AS+RANK+&trier=promulgation&dddj=30&cn=2013073010&row_id=1&caller=image_a1&dddm=07&la=F&pdf_page=7&pdf_file=http://www.ejustice.just.fgov.be/mopdf/2013/08/23_1.pdf

28 Available at: http://www.ejustice.just.fgov.be/cgi_loi/loi_a1.pl?sql=%28text%20contains%20%28%27%27%29%29&language=fr&rech=1&tri=dd%20AS%20RANK&value=&table_name=loi&F=&cn=2013091920&caller=image_a1&fromtab=loi&la=F

29 Court of Justice of the European Union, *The Court of Justice declares the Data Retention Directive to be invalid*, Press Release, No 54/14. Luxembourg, 8 April 2014. Available at: http://curia.europa.eu/jcms/upload/docs/application/pdf/2014-04/cp140054en.pdf

30 Available at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2005061332&table_name=loi

Foreign spying

32. On 21 June 2013, Belgacom, Belgium's national public telecommunication company and the country's largest ISP, discovered malware in its internal computer system. The malware was forensically examined by the Dutch company, Fox-IT. Following the analysis, Belgacom filed a complaint against unknown persons for fraudulent access to internal computer systems in July 2013. In September 2014, the Belgian Data Protection Authority, in collaboration with Belgacom and the Belgian Institute for postal services and telecommunications (IBPT), opened a separate investigation to find out more about this incident. The Prosecution Office announced that given the scope – both in terms of financial resources and logistics – evidence pointed that this was a State operation.[31]

33. Subsequently, based on evidence provided by sources working on the case, De Standaard, a Flemish newspaper, mentioned that the U.S. National Security Agency (NSA) was behind the hack of Belgacom[32] and subsequent media investigations provided further evidence on these operations.[33] More recent allegations emerged regarding the role played by the German intelligence agency, BND, to spy on on European states,[34] including Belgian communications between 2004 and 2008.[35]

34. Such foreign spying initiatives and use of such sophisticate espionage tools directly threaten the privacy of Belgian citizens as well as the security of the telecommunication network and infrastructure, and the financial sector.

35. On 30 November 2013, the Ligue des Droits de l'Homme (LDH), together with FIDH, filed a complaint against X in the Prism/Belgacom case for disproportionate intrusion in telecommunication information.[36] On the basis on the Article 3 of the Criminal Code, the complaint argues that the Belgian jurisdiction is the competent authority to judge on this legal question given that the offence took place on the Belgian territory, and argues that there have been violations of Articles 314bis §1 and 2 and 550bis of the Penal Code, as well as 124 and 145 of the law of 13 June 2005 on electronic communications.

36. The Liga Voor Mensenrechten vzw has requested several times for a parliamentary investigation into the NSA surveillance, including to identify the extent in which the Belgian intelligence services have collaborated with the NSA. Only the Green parties, Groen and Ecolo, echoed a similar request calling on the establishment of a commission of inquiry to be led by all democratic parties .[37] But no Parliamentary investigation has yet been initiated following these requests.

37. Whilst the Belgian authorities have opened a legal investigation into the allegations made against the BND, there is a need for an independent commission of inquiry which, in light of all the evidence that has emerged since June 2013, identifies what measures must be taken to ensure that the Belgian government meets its international legal obligations to protect the right to privacyfrom external threats.[38]

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31 Verlmeulen, M., *Les révélations de Snowden, interception massive de données et espionnage politique. Etude des sources ouvertes,* 23 Octobre 2013, Section 11.3, para. 58-65. Available at: http://www.comiteri.be/images/pdf/rapport_dexpertise_drs_vermeulen_fr.pdf

32 Eeckhaut, M., De Lobel, P., and Vanhecke, N., *NSA verdacht van hacken Belgacom*, De Standaard, 16 Septembre 2013 Available at: http://www.standaard.be/cnt/dmf20130915_00743233

33 De Spiegel Online International, *'Out of Hand': Europe Furious Over US Spying Allegations*, 24 October 2013, Available at: http://www.spiegel.de/fotostrecke/photo-gallery-operation-socialist-fotostrecke-101663.html

34 Uggler, J., *German spies 'monitored European targets for the US against German interests'*, The Telegraph, 24 April 2015. Available at: http://www.telegraph.co.uk/news/worldnews/europe/germany/11562072/German-spies-monitored-European-targets-for-the-US-against-German-interests.html

35 RTBF, *Espionnage de la Belgique par l'Allemagne: le parquet fédéral ouvre une enquête.* Available at: 7 June 2015. Available at: http://www.rtbf.be/info/belgique/detail_espionnage-de-la-belgique-par-l-allemagne-le-parquet-federal-ouvre-une-enquete?id=9000460

36 La Ligue des droits de l'Homme, *La FIDH et la LDH portent le scandale PRISM devant les tribunaux*, 3 December 2013. Available at: http://www.liguedh.be/2013/1886-la-fidh-et-la-ldh-portent-le-scandale-prism-devant-les-tribunaux

37 Groen, *Groen en Ecolo vragen onderzoekscommissie nav NSA-spionageschandalen*, 1 February 2014, Available at: https://www.groen.be/nieuws/groen-en-ecolo-vragen-onderzoekscommissie-nav-nsa-spionageschandalen

38 Liga voor Mensenrechten, Liga vraagt Parlementaire Onderzoekscommissie over NSA , 28 January 2014. Available at: http://www.mensenrechten.be/index.php/site/nieuwsberichten/liga_vraagt_parlementaire_onderzoekscommissie_over_nsa

Mandatory SIM-Card registration

38. On 16 June 2015, the Minister of Justice has mentioned that discussions are underway between the relevant Ministerial Cabinets to ban unregistered pre-paid SIM card registration.[39] Whilst these discussions are yet to formalise, Privacy International, the Liga voor Mensenrechten and the Ligue des droits de l'Homme express their concerns by these discussion that may result in limiting anonymity of communications . The Minister of Justice noted how Belgium is one of the few European countries without mandatory identification system for pre-paid SIM cards.

39. Mandatory SIM card registration facilitates the establishment of extensive databases of user information, eradicating the potential for anonymity of communications, enabling location-tracking, and simplifying communications surveillance and interception location-tracking, and simplifying communications surveillance and interception in violation of applicable international standards.

Data protection

40. The 1992 Personal Data Act[40] applies to automatic processing of personal data by public or private entities. In 2001, the firs Royal Decree[41] was adopted to implement the Privacy Act on the occasion of the transposition of European Directive 95/46/EC.

41. In 2003, a second Royal Decree[42] established the work of the Sector Committees. The Privacy Commission (CPP) includes Sectorial Committees which oversee various legislation in various sectors including the National Register, the Federal Authority, Social Security and Health, Statistics Monitoring, and Crossroads Bank for Enterprises.[43]

42. There are various on-going initiatives which pose a concern regarding the measures taken to protect the personal data in Belgium.

CCTV and ANPR cameras

43. On 4 April 2014, the law regulating the installation and use of surveillance cameras of 21 March 2007[44] was amended providing expanding powers which now include the use of Automatic Number Plate Recognition (ANPR). Previously, the use was only permitted on the occasion of large demonstrations and for a limited time period. However following the 2014 amendments, they can be used in many other instances, on the condition that the Privacy Commissioner be informed, and that the police report on a quarterly basis to the Privacy Commission on when the ANPR was used, and where.[45]

44. Notwithstanding the new legislative expansion, Belgian privacy laws only permit targeted surveillance of a specific individual when there is a specific reason to do so, i.e. a reasonable assumption of a legal criminal offence. Unlimited processing of number plate data is not permitted. Thus far, preventive control can never be a legitimate reason for surveillance. To claim otherwise would turn every citizen into a possible suspect, which hampers the fundamental presumption of innocence. Moreover, ANPR cameras can only

[39] De Redactie, Geens wil af van anonieme simkaarten, 16 June 2015. Available at: http://deredactie.be/cm/vrtnieuws/politiek/1.2369203

[40] 1992 Privacy Act, Available at: http://www.privacycommission.be/sites/privacycommission/files/documents/CONS_loi_vie_privee_08_12_1992.pdf

[41] Available at: http://www.privacycommission.be/sites/privacycommission/files/documents/CONS_ar_execution_loi_vie_privee_13_02_2001.pdf

[42] Available at: http://www.privacycommission.be/sites/privacycommission/files/documents/ar_comites_sectoriels_17_12_2003.pdf

[43] See: http://www.privacycommission.be/fr/node/7227

[44] Available at: http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2007032139&table_name=loi

[45] Legal World, *Modification de la loi caméras pour l'utilisation des caméras ANPR mobiles à partir du 25 avril*, 29 April 2014. Available at: http://www.legalworld.be/legalworld/content.aspx?id=74814&LangType=2060

be effective when they are linked to police-, insurance, tax service databases. This poses additional privacy concerns in the light of purpose restriction of databases. A database cannot be used for other purposes than initially planned.

45. The Liga voor Mensenrechten strongly argued that the government is not taking the necessary steps to ensure there is a robust legal framework regulate the lawful use of camera surveillance and the link between this data and the data already stored in other databases. The function creep of the ANPR system is also of concern. The Liberal political party (Open VLD) already proposed a bill in which data from number plate detection is linked with social benefit database[46]. The ANPR camera is already disproportionately used for border control at the border crossings with the Netherlands, Germany and France[47].

National Passenger Name Record

46. Passenger Name Record (PNR) data is information provided by passengers and collected by air carriers during reservation and check-in procedures.

47. In early 2015, the Belgian Minister for Security and Internal Affairs, Mr Jan Jambon has called for the systematic collecting and vetting of passenger data as part of its fight against terrorism.[48] Mr Jambon stated that Belgium must consider whether it should implement its own national system, if the EU is not able to agree on a regional system. Since 2007, the EU has been discussion the establishment of a EU PNR system, but as result of legality and data protections concerns has yet to be finalised.[49]

48. PNR systems disproportionately and unnecessarily interfere with the right to privacy as it consists of the mass processing of personal data. Raised concerns on PNR also include the ability to deduce sensitive personal data from the PRN system (such as religion from food preferences). As the data is completed by the passenger or a travel agency there are also concerns around accuracy and verification of data, and with whom and for what purpose the data is shared.

Social welfare fraud initiative

49. In late 2014, the Secretary of State for privacy has proposed various programmes to tackle 'home social fraud' which would consist of data mining across various databases.[50] One particular proposal is a measure which requires that data on consumption of gas, water and electricity will be transferred to the Banque Carrefour de la sécurité social (National data bank for society security).[51] Whilst the data shared is said to be anonymous, it is unclear how this provision will be respected if the aim is to identify potential fraudsters by comparing the declared number of individuals in a household versus their (irregular/abnormal) energy consumption. This is particular concerning given plans to connect digitally the databases of all the CPAS in Belgium.[52]

50. Other suggestions by the Secretary of State for tackling the fraud of the social welfare

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46 De Standaard, *"Open VLD: 'Uitkeringsbestanden koppelen aan nummerplaatregistratie'",* 10 January 2013. Available at: http://www.standaard.be/cnt/dmf20130110_00428743

47 Jespers R., *Big Brother-systeem zet privacy automobilist aan kant*, De Telegraaf, 10 September 2012. Available: http://www.telegraaf.nl/binnenland/20814757/__Big_Brother-systeem_aan_grens__.html

48 Der Standaard, Jambon wil dat België desnoods op eigen houtje passagiersgegevens doorlicht, 20 January 2015. Available at: http://www.standaard.be/cnt/dmf20150120_01483169

49 European Commission, Migration and Home Affairs, *Passenger Name Record (PNR).* Available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/police-cooperation/passenger-name-record/index_en.htm

50 Buxant, M., *Big Brother" Bart Tommelein part chasser la fraude sociale*, L'Echo, 8 November 2014. Available at: http://www.lecho.be/economie_politique/belgique_federal/Big_Brother_Bart_Tommelein_part_chasser_la_fraude_sociale.9565657-3154.art?ckc=1&ts=1434641456

51 Berns, D., and Lorent, P., *"Big Brother" Bart Tommelein part chasser la fraude sociale,* Le Soir, 3 April 2015. Available at: http://www.lesoir.be/842291/article/actualite/belgique/politique/2015-04-03/donnees-energetiques-des-chomeurs-seront-analysees

52 Le Guide Social, Les CPAS s'opposent au rapport social électronique, 7 October 2014. Available at: http://pro.guidesocial.be/actualites/les-cpas-s-opposent-au-rapport-social-electronique.html

system has included removing the duty of professional secrecy for the staff of the Public Centre for Social Welfare (CPAS) following complaints that from the police that the staff of the CPAS refused to provide the necessary information requested by the police for cases of suspicion of fraud.[53]

Recommendations

51. We recommend that the government of Belgium:

- Recognise and take steps towards compliance with international human rights law and standards by ensuring the application of the following principles to communication surveillance, namely legality, legitimacy, necessity, adequacy, proportionality and respecting process of authorisation from a competent judicial authority; due process, user notification, transparency, public oversight and respect for the integrity of communications and systems as well as ensuring safeguards against illegitimate access and right to effective remedy;
- Ensure that all anti-terrorism, measures taken, existing and planned, are in respect with human rights and fundamental freedoms enshrined in its Constitution and protected by international human rights law and standards, particularly the right to privacy;
- Set-up an independent commission of inquiry to investigate the recent revelations relating to the surveillance programmes of foreign intelligence agencies, and take the necessary steps to ensure the protection of individuals' privacy, including their mobile phone communications;
- Ensure that data processing of personal data is conducted in compliance with national and international standards and obligations, and any violations are investigated and redress provided to victims.

[53] 7 sur 7, *"Levons le secret professionnel du CPAS"*, 26 March 2015. Available at: http://www.7sur7.be/7s7/fr/1502/Belgique/article/detail/2265970/2015/03/26/Levons-le-secret-professionnel-du-CPAS.dhtml