

Suggestions for right to privacy-related questions to be included in the list of issues on Belgium, Human Rights Committee, 117th Session, June 2016

April 2016

Privacy International encourages the Committee to seek information from the government of Belgium on the impact of envisaged counter-terrorism measures with the right to privacy.

Further information on these and other concerns related to the right to privacy in Belgium are contained in the stakeholder report for the Belgium UPR 24th session (June 2015), submitted by Privacy International, the Liga voor Mensenrechten and the Ligue des droits de l'Homme.¹

Counter-terrorism measures

In 2015 the Belgian government announced a series of measures to address the threat posed by terrorism, in particular following the terrorist attack in Paris in November 2015. These proposals included:

- Expansion of the criminal offences for which wire-tapping is permitted, including potentially for vaguely worded crimes such as encouraging terrorism.²
- Introduction of Passenger Name Record requirement.³ PNR systems consist of the mass processing of personal data disproportionately and unnecessarily interfere with the right to privacy. Concerns about PNR also include the ability to deduce sensitive personal data from the PRN system (such as religion from food preferences); the limited accuracy and verification of the data (as the data is completed by the passenger or a travel agency); and with whom and for what purpose the data may be shared.
- Ban on unregistered pre-paid SIM Cards, which would result in limiting anonymity of communications and facilitating the establishment of extensive databases of user information.⁴
- Extension of CCTV and Automatic Number Plate Recognition (ANPR) cameras. On 4 April 2014, the law regulating the installation and use of surveillance cameras of 21 March 2007 was amended expanding the use of ANPR.⁵ While, under Belgian privacy law unlimited processing of number plate data is not permitted, there needs to be an effective legal framework to regulate the lawful use of CCTV and ANPR cameras and the link between data so collected with personal data contained in other databases.

¹ Available here: <https://www.privacyinternational.org/node/609>

² See: <http://www.presscenter.org/nl/pressrelease/20150612/strijd-tegen-radicalisme-en-terrorisme>

³ See: Der Standaard, Jambon wil dat België desnoods op eigen houtje passagiersgegevens doorlicht, 20 January 2015. Available at: http://www.standaard.be/cnt/dmf20150120_01483169

⁴ See De Redactie, Geens wil af van anonieme simkaarten, 16 June 2015. Available at: <http://deredactie.be/cm/vrtnieuws/politiek/1.2369203>

⁵ See:

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

On 18 March 2016, the Council of Ministers accepted a proposal to capture, analyse and store in a central database all voices during communication interceptions. This centralised database would be accessible for the purpose of investigations but such evidence could not be submitted in legal proceedings. Whilst the Minister of Justice noted this would have to be approved by an investigative judge and would apply to serious crimes (terrorism, human trafficking, and sexual exploitation), such measures are concerning given issues of accuracy and the negative implications that may result for those.

Further measures have been announced⁶ following the attacks in Brussels on 23 March 2016, including:

- Permitting searches to be conducted 24hour/day;
- The creation of two central databases of suspected foreign fighters and the others which will be shared to all security and intelligence agencies working to counter terrorism. Data would be stored for 30 years and would include regular updating every three years. It was announced that a data protection advisor would be appointed.

These new measures are currently being discussed before the Chamber of Representatives.

The impact on the enjoyment of the right to privacy of these and other envisaged counter-terrorism measures deserves close scrutiny. As noted by the then Council of Europe Commissioner for Human Rights following his visit to Belgium in 2008 “it is essential to strike a balance between the fight against terrorism, and the broader fight against crime, and individuals’ right to protection against intrusions into their privacy and against the improper collection, storage, sharing and use of data concerning them. An independent assessment of the use and impact of such data bases must be carried out in order to ensure that they are necessary and proportionate. The Commissioner recommends that the authorities make sure that the restrictions placed on the rights of the defence and the rights to respect for privacy and protection of personal data, in the name of the detection and prevention of terrorist activities and the fight against crime, are necessary, appropriate, proportionate and provided for by law.”⁷

Data retention

On 11 June 2015 the Belgian Constitutional Court struck down the 2013 law on data retention that required all telecommunication operators to retain data of their customers for one year.⁸

The decision followed the judgment by the Court of Justice of the European Union that annulled the EU data retention directive on which the 2013 Belgian law was based.

However, there are concerns that the government is seeking to reintroduce data retention legislation in ways that would likely lead to violation of the right to privacy.⁹

⁶ See: <http://derefactie.be/cm/vrtnieuws.english/News/1.2615407> ; <http://www.lalibre.be/actu/belgique/le-gouvernement-planche-deja-sur-de-nouvelles-mesures-antiterroristes-56f1989535708ea2d3d05e79>

⁷ See Report by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, on his visit to Belgium 15-19 December 2008, available here:

https://wcd.coe.int/ViewDoc.jsp?p=&id=1458603&direct=true#P532_128370

⁸ See judgment (in French): <http://www.const-court.be/public/f/2015/2015-084f.pdf>

⁹ See opinion by Datapanik, the Liga voor Mensenrechten, the Ligue des droits de l’Homme and the NURPA (in French) http://nurpa.be/files/20160215_avis-associations-droits-homme-projet-loi-conservation-donnees.pdf

List of issues

Based on the above observations, Privacy International proposes the following questions for the List of Issues Prior to Reporting on Belgium:

- Could the government provide an assessment of the impact of envisaged counter-terrorism measures with the right to privacy?
- Could the government clarify the extent of data retention requirement it is seeking in the proposed new legislation and to what extent the provisions contained therein comply with the right to privacy, most notably the conditions laid in the Court of Justice of the European Union Digital Rights Ireland judgment?