

Short Thematic Report

National intelligence authorities and surveillance in the EU: Fundamental rights safeguards and remedies

Legal update

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1 Description of tasks – Phase 3 legal update

1.1 Summary

1.1.1 Legislative reforms

During this reporting period, some legislative reforms were adopted in Belgium. Following the judgement of the Court of Justice of the European Union (CJEU) in the cases *Digital Rights Ireland and Seitlinger and Others*¹, the Belgian Constitutional Court declared the Data Retention Act to be unconstitutional but the government responded directly by submitting a new bill on data retention allowing intelligence services to access specific data stored by electronic communication providers. In the context of the justice reform, a 2016 act easing the requirements for intelligence services to request information to communication service providers has also been adopted. In addition, in response to the terrorist attacks in France and Belgium, the government has adopted several legal and policy measures to extend the surveillance missions of the intelligence services. While some measures specifically target terrorism threats, others may have a broader and more general impact on citizens.

a. Data Retention Bill

On 11 June 2015, the Constitutional Court repealed the Act of 30 July 2013 implementing the Data Retention Directive.² Following this repeal, the government immediately drafted a bill on data retention in the electronic communications sector. On 9 September 2015, the Privacy Commission issued a favourable opinion together with some appropriate amendments to the draft bill.³ A vote in plenary session adopted the amended text on 4 May 2016. Hence, once the bill will have received the Royal Assent, the government should proclaim the bill into act.⁴

Many elements of the new bill are similar to those present in the repealed act. However, the new bill also adds a series of elements, including strict safeguards and security measures, in response to the concerns raised by the Constitutional Court and those voiced by the CJEU in its ruling on the Data Retention Directive.⁵ The bill stipulates the requirements under which specific authorities may have access to three different categories of data: identification data (about the subscriber and communications means), connection and localisation data, and personal data about communications.⁶ With respect to the intelligence services, the bill stipulates that such services can access these data in the framework of their missions through the procedures laid down in Articles 16/2, 18/7 and 18/8 the Organic Act of 30 November

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¹ Court of Justice of the European Union (CJEU), *Digital Rights Ireland and Seitlinger and Others*, Nos. 293/12 and 594/12, 8 April 2014.

² Belgium, Constitutional Court (*Cour Constitutionnelle/ Grondwettelijk Hof*), *Case No. 84/2015*, 11 June 2015.

³ Belgium, Belgian Privacy Commission (*Commission vie privée/ Privacycommissie*), (2015), *Opinion nr. 33/2015 concerning the Draft Bill on data retention in the sector of telecommunications* (*Avis n° 33/2015 du 9 septembre 2015 concernant l'avant-projet de loi relative à la collecte et à la conservation des données dans le secteur des communications électroniques/Advies nr. 33/2015 van 9 september 2015 inzake het voorontwerp van wet betreffende de bewaring van gegevens in de elektronische communicatiesector*), CO-A-2015-040, 9 September 2015.

⁴ House of Representatives, *Parliamentary Document No. 1567/014* (accessed on 2 May 2016).

⁵ Anonym (2015), '[Annulation de la loi sur la conservation des données issues des communications électroniques](#)', brussels, Jura.

⁶ House of Representatives, *Bill on data retention in the sector of telecommunications* ('*Wetsontwerp van wet betreffende het verzamelen en het bewaren van de gegevens in de sector van de elektronische communicatie/Projet de loi relative à la collecte et à la conservation des données dans le secteur des communications électroniques*'), 4 May 2016, Article 4§3.

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1998 concerning the intelligence and security services and under the conditions set by this act.⁷

The bill also provides the introduction of several amendments in the Organic Act mentioned above. The main modification concerns Article 18/3 with the introduction of new additional safeguards for the use of specific data collection methods by imposing new information to be included in the decision of the chief executive officer of the service, including the factual circumstances justifying the specific method, a motivation in terms of subsidiarity and proportionality and the link between the target of the method and the potential threat.⁸ A priori, Article 18/3 will also prohibit surveillance agencies from carrying out mass surveillance, to be able to get access to data, these services must first give indications on *'the natural person or legal person, the associations or groups, the objects, the locations, the events or information'* concerned by the specific data collection methods.⁹ Furthermore, access to data is granted only in the context of a specific investigation. The bill also adds specific safeguards for the protection of doctors, legal counsels and journalists. Serious evidence of participation or involvement in a threat, together with prior notification of the demand to the president of the respective professional association, will be required before any permission from the Administrative Commission will be granted to access data.¹⁰

In addition, Article 14 introduces a differentiation of the duration in which the traffic and location data can be requested depending on the gravity of the threat:

1. Access for the whole duration of retention (12 months) of the data in the case of a potential threat which has a link to terrorism, extremism, espionage or the proliferation of weapons of mass destruction.
2. A maximum of six months of access in cases of a potential threat, such as that posed by criminal organisations, sectarian organisations, etc.¹¹

However, following the submission of this bill to the House of Representatives, the human rights organisations Datapanik, the Liga voor Mensenrechten, the Ligue des droits de l'Homme and NURPA had issued a common opinion in which they called for the parliamentary commissions to oppose the adoption of this bill.¹² They emphasised the

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⁷ House of Representatives, [Bill on data retention in the sector of telecommunications](#) (*Wetsontwerp van wet betreffende het verzamelen en het bewaren van de gegevens in de sector van de elektronische communicatie/Projet de loi relative à la collecte et à la conservation des données dans le secteur des communications électroniques*), 4 May 2016, Article 4§2, 2°; Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, articles 16/2, 18/7 and 18/8.

⁸ House of Representatives, [Bill on data retention in the sector of telecommunications](#) (*Wetsontwerp van wet betreffende het verzamelen en het bewaren van de gegevens in de sector van de elektronische communicatie/Projet de loi relative à la collecte et à la conservation des données dans le secteur des communications électroniques*), 4 May 2016, Article 13.

⁹ House of Representatives, [Bill on data retention in the sector of telecommunications](#) (*Wetsontwerp van wet betreffende het verzamelen en het bewaren van de gegevens in de sector van de elektronische communicatie/Projet de loi relative à la collecte et à la conservation des données dans le secteur des communications électroniques*), 4 May 2016, Article 13.

¹⁰ House of Representatives, [Bill on data retention in the sector of telecommunications](#) (*Wetsontwerp van wet betreffende het verzamelen en het bewaren van de gegevens in de sector van de elektronische communicatie/Projet de loi relative à la collecte et à la conservation des données dans le secteur des communications électroniques*), 4 May 2016, Article 13.

¹¹ House of Representatives, [Bill on data retention in the sector of telecommunications](#) (*Wetsontwerp van wet betreffende het verzamelen en het bewaren van de gegevens in de sector van de elektronische communicatie/Projet de loi relative à la collecte et à la conservation des données dans le secteur des communications électroniques*), 4 May 2016, Article 14.

¹² NURPA (2016), [Opinion from Datapanik, the Liga voor Mensenrechten, the Ligue des droits de l'Homme and NURPA concerning the data retention bill](#) (*Avis de Datapanik, la Liga voor Mensenrechten,*

Government's failure to demonstrate the need to massively and indiscriminately collect and retain the metadata of electronic communications of every Belgian citizen. In addition, they recalled that metadata related to communications are private in nature, as well as the contents of a conversation.¹³

b. The Justice Plan: 'Potpourri Act II' reforming the Criminal Code and the Code of Criminal Procedure

In 2015, the Ministry for Justice adopted a Justice Plan to reform the Belgian justice system. The second phase consisting of reforming the criminal and criminal procedure matters resulted in the adoption of an omnibus act¹⁴ amending mainly the Criminal Code and the Code of Criminal Procedure. In addition, the so called 'Potpourri Act II' modified the Organic Act concerning intelligence services by introducing less red tape when the State Security (civil) and the General Intelligence and Security Service (SGRS) (military) request data to electronic communication network operators and communication service providers. The new Articles 16/2 and 18/7 provide that the intelligence services can require from the electronic communication providers:

- the identification of a regular user and subscriber,
- the identification or localisation of services or means of communication used by a user or a specific person,
- the data on the method of payment, the identification of the means of payment and the time of payment of the subscription or the use of electronic communications service.¹⁵

These data must be requested in writing, except in emergency cases where they can be requested verbally. The new provision also provides for sanction in case of refusal to give access to the requested information: a fine of 26 euros to 10.000 euros.¹⁶ Lastly, it also requires from the surveillance agencies to hold a registry of all required identifications and those obtained by direct access. A list of these identifications must be sent to the Standing Committee I every month.¹⁷

c. The adoption of anti-terrorism measures

In the aftermath of the terrorist attacks in Paris, the government has announced 30 new anti-terrorism measures packages¹⁸. In surveillance by intelligence services, the following measures have been presented by the government:

la Ligue des droits de l'Homme et la NURPA concernant le projet de loi relatif à la collecte et à la conservation des données dans le secteur des communications électroniques, (DOC 54 1567/001), 15 February 2016.

¹³ NURPA (2016), *Opinion from Datapanik, the Liga voor Mensenrechten, the Ligue des droits de l'Homme and NURPA concerning the data retention bill* (Avis de Datapanik, la Liga voor Mensenrechten, la Ligue des droits de l'Homme et la NURPA concernant le projet de loi relatif à la collecte et à la conservation des données dans le secteur des communications électroniques), (DOC 54 1567/001), 15 February 2016.

¹⁴ Belgium, *Law amending the criminal law and criminal procedure and other amendments in justice matter* (Loi modifiant le droit pénal et la procédure pénale et portant des dispositions diverses en matière de justice/ Wet tot wijziging van het strafrecht en de strafvordering en houdende diverse bepalingen inzake justitie), 5 February 2016.

¹⁵ Belgium, *Law amending the criminal law and criminal procedure and other amendments in justice matter* (Loi modifiant le droit pénal et la procédure pénale et portant des dispositions diverses en matière de justice/ Wet tot wijziging van het strafrecht en de strafvordering en houdende diverse bepalingen inzake justitie), 5 February 2016, Articles 222-224.

¹⁶ In Belgium, criminal fines in the legislation must be adapted to the growth in consumer prices via a system of coefficient. The current coefficient is six (50 decimals). Therefore, the fines must be multiplied by six. Belgium, *Act concerning surcharges on criminal fines* (Loi relative aux décimes additionnels sur les amendes pénales/ Wet betreffende de opdécimes op de strafrechtelijke geldboeten), 5 March 1992.

¹⁷ Belgium, *Law amending the criminal law and criminal procedure and other amendments in justice matter* (Loi modifiant le droit pénal et la procédure pénale et portant des dispositions diverses en matière de justice/ Wet tot wijziging van het strafrecht en de strafvordering en houdende diverse bepalingen inzake justitie), 5 February 2016, Articles 222-224.

¹⁸ Twelve measures after the terrorist attacks in Paris at Charlie Hebdo and 18 measures after the terrorist attacks in Paris at the Bataclan. Nous Citoyens (2015), *'30 mesures de lutte contre le terrorisme'*, November 2015; Belgium, Chancellery of the Prime Minister (*Chancellerie du Premier Ministre/Kanselarij van de Eerste Minister*)

1. Revision of the Circular of 25 September 2015 "Foreign Terrorist Fighters": the Circular provides a customised analysis of the threat posed by every terrorist foreign fighter based on information collected by the police, intelligence services and any other relevant partner, brought together in a single database.¹⁹
2. Reform of intelligence and security structures: establishment of the National Security Council.
3. The possibility to call upon the army for specific surveillance and security missions.
4. Strengthening the analytical capacity of the State Security.
5. Review of the Criminal Procedure Code: access to new special investigative methods for the intelligence services (voice prints and expanded telephone tapping, among others, in situations related to arms trafficking).
6. Adoption of a Belgian "Passenger Name Record" to record all passenger data in transport.
7. Creation of two live databases containing common data on foreign fighters and "terrorism vectors" between different counter-terrorism services (police and intelligence services, Coordination Unit for Threat Assessment (*Organe de coordination pour l'analyse de la menace/Coördinatieorgaan voor de dreigingsanalyse*) (CUTA). Specific conditions are required to access, record and retain data, and a consultant specialised in security and data protection has been appointed.
8. Strengthening the State Security capacities and transfer of the VIP protection to the Federal Police.²⁰

The measures not requiring legislative modifications have already been adopted, while those requiring legal amendments have been presented to the House of Representatives. The government has established a temporary Commission "Fight against Terrorism" (*Commission Lutte contre le terrorisme/Kamercommissie Terrorismebestrijding*), responsible for examining the related bills, including the proposed measures.²¹ Several legal proposals have already been adopted by the Special Commission and are described in more detail later in this section.

d. The creation of a National Security Council (*Conseil national de sécurité/Nationale Veiligheidsraad*) (NSC)

The Act of 6 December 2015 replaced the Ministerial Committee for Intelligence and Security (*Ministerieel Comité voor inlichtingen en veiligheid/Comité ministériel du renseignement et de la sécurité*) with the National Security Council (NSC) (*Conseil national de sécurité/Nationale Veiligheidsraad*).²² Like its predecessor, the NSC is the political body which determines the general intelligence policy of the government. It is responsible for the coordination of the fight against terrorism and proliferation of weapons of mass destruction,

(2015), '[Lutte contre le terrorisme – mesures décidées par le Gouvernement fédéral](#)', Press Release, 19 November 2015; Presscenter.org (2015), '[Lutte contre le radicalisme et le terrorisme](#)', Press Release, 12 July 2015.

¹⁹ Belgium, Minister for Security and the Interior (*Ministre de la Sécurité et de l'Intérieur/ minister van Veiligheid en Binnenlandse Zaken*) (2015), '[12 mesures: nouvelle circulaire relative à l'approche des combattants terroristes étrangers](#)', Press Release, 27 August 2015.

²⁰ Belgium, Chancellery of the Prime Minister (*Chancellerie du Premier Ministre/Kanselarij van de Eerste Minister*) (2015), '[Lutte contre le terrorisme – mesures décidées par le Gouvernement fédéral](#)', Press Release, 19 November 2015; Presscenter.org (2015), '[Lutte contre le radicalisme et le terrorisme](#)', Press Release, 12 July 2015.

²¹ The House of Representatives (2016), '[Magazine La chambre](#)', LaChambre.be, p.3; House of Representatives, [Text adopted by the temporary Commission "Fight against Terrorism" - Bill concerning complementary measures related to the fight against terrorism](#) (*Projet de loi relatif à des mesures complémentaires en matière de lutte contre le terrorisme/Wetsontwerp inzake aanvullende maatregelen ter bestrijding van terrorisme*), 14 April 2016.

²² Belgium, [Royal Decree establishing the National Council of Security](#) (*Arrêté royal portant création du Conseil national de sécurité/Koninklijk besluit tot oprichting van de Nationale Veiligheidsraad*), 28 January 2015; Belgium, [Act amending various laws regarding the denomination of the "National Security Council"](#) (*Loi modifiant diverses lois en ce qui concerne la dénomination "Conseil national de sécurité"/Wet tot wijziging van diverse wetten wat de benaming "Nationale Veiligheidsraad betreft"*), 6 December 2015.

among others. It also defines national policy for the protection of sensitive information.²³ Its structure, however, varies to that of the previous body. In addition to the Prime Minister and the Ministers of Foreign Affairs, Justice, Defence, and Interior Affairs, it also includes the General Manager of the State Security, the Head of the SGRS, the General Commissioner of the Federal Police, the Director of OCAM, the President of the Direction Committee of the Minister of the Interior, a representative of the College of Public Prosecutors, and the Federal Prosecutor.²⁴ The composition of the NSC is, therefore, much broader than that of the Ministerial Committee for Intelligence and Security. Since its creation, the NSC has met frequently and adopted a series of decisions in the field of security policy.²⁵

e. The creation of a Strategic Committee (*Comité stratégique/Strategisch Comité*) and a Coordination Committee for Intelligence and Security (*Comité de coordination du renseignement et de la sécurité/ Coördinatiecomité voor inlichting en veiligheid*)

Following the adoption of a Royal Decree on 2 June 2015, the former Board of Intelligence and Security (*College voor inlichting en veiligheid/Collège du renseignement et de la sécurité*) was replaced by a Strategic Committee, which serves as a liaison between the Coordination Committee and the NSC.²⁶ This Strategic Committee is comprised of representatives from the NSC and the President of the Coordination Committee, and it is responsible for the preparation and implementation of agreed policy. The secretariat of the Strategic Committee is provided by the Chancellery of the Prime Minister.²⁷ The Coordination Committee is composed of the heads of authorities and services involved in intelligence and security policy. It develops strategic proposals, assesses implementation of the priorities established by the NSC, and ensures effective collaboration and exchange of information between the services and authorities.²⁸

f. Bills on exceptional investigative and data collection methods

Following the terrorist attacks, in March 2016 the Minister for Justice approved two draft bills on specific and exceptional investigative data collection methods.²⁹ The first bill aims to improve the exceptional investigative and data collection methods carried out by the police in the context of investigation proceedings, particularly for the Internet, electronic communications and telecommunications, with the objective of updating the act to the current technological developments.³⁰ The second bill extends the exceptional investigative and data collection methods to enable both services (the State Security and the SGRS) to use methods such as taping, cyber hacking, collecting bank information, etc. in terrorism and foreign interference matters. Today, only ordinary and specific methods can be used in such cases. In

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²³ Belgium, [Royal Decree establishing the National Council of Security](#) (*Arrêté royal portant création du Conseil national de sécurité/Koninklijk besluit tot oprichting van de Nationale Veiligheidsraad*), 28 January 2015, Article 3 ; Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*), [‘What do intelligence and security services stand for?’](#) (accessed on 1 May 2016).

²⁴ Belgium, [Royal Decree establishing the National Council of Security](#) (*Arrêté royal portant création du Conseil national de sécurité/Koninklijk besluit tot oprichting van de Nationale Veiligheidsraad*), 28 January 2015.

²⁵ Lemmens, L. (2015), [‘Un Conseil national de sécurité remplace le Comité ministériel du renseignement et de la sécurité’](#), *Jura*; Lemmens, L., Lisy, B. (2015), [‘Le Comité ministériel du renseignement et de la sécurité est définitivement supprimé de la législation’](#), *Jura*.

²⁶ Belgium, [Royal Decree establishing the Strategic Committee and the Coordination Committee for Intelligence and Security](#) (*Arrêté royal portant création du Comité stratégique et du Comité de coordination du renseignement et de la sécurité/Koninklijk besluit tot oprichting van het Strategisch Comité en Coördinatiecomité voor inlichting en veiligheid*), 2 June 2015.

²⁷ Lemmens, L., Mees, K. (2015), [‘Le Conseil national de sécurité est soutenu par le Comité stratégique et le Comité de coordination’](#), *Jura*.

²⁸ [Presscenter.org](#) (2015), [‘Création du Comité stratégique et du Comité de coordination du renseignement et de la sécurité’](#), Press Release, 28 May 2015.

²⁹ The bills have not yet been submitted to the Parliament and are not, therefore, publicly available.

³⁰ Belgium, Minister for Justice (*Ministre de la Justice/Minister van Justitie*) (2016), [‘Le Ministre Geens adapte les méthodes particulières d’investigation et les méthodes particulières de renseignement’](#), Press Release, 17 March 2016.

addition, it allows for the State Security to use specific and exceptional methods abroad, within certain limits.³¹ For instance, if a phone call is from Belgium and the caller is abroad, this electronic communication may also be monitored beyond the border. The bill also introduces an emergency procedure to implement each of the specific methods while today the State Security can only use specific methods such as the immediate surveillance of an individual and inspection through the ordinary written procedure.³² Furthermore, the requirements to make use of the emergency procedure for implementing exceptional methods are relaxed. The possibility for individuals and private bodies to provide information to intelligence services is also expanded, and the functioning rules of the Administrative Commission - the judicial body monitoring and approving these particular methods - are improved.³³ Lastly, the draft bill provides to extend the retention time of tape recording from 1 year to 10 years. This does not only concern the communications of “the person who represents a serious potential threat” but also those of people who have been in contact with him/her. Although no bill has been submitted to the Parliament yet, the Privacy Commission has already delivered an opinion on this draft bill.³⁴ It opined that six provisions should be reviewed for their incompliance with the right to private life. For instance, the Commission deplored that the bill does not require from the intelligence services to inform a posteriori the person who has been subject to an exceptional measure (duty of direct notification), as requested by the Constitutional Court case-law.³⁵

g. The draft bill for Passenger Name Record (PNR)

The government approved a draft bill on passenger name records (PNR) on 4 December 2015.³⁶ Although the bill has not yet been submitted to the Parliament, the Council of Ministers has already announced that the act obliges travel operators for air, rail, maritime and road transport to provide data on any passenger travelling to or from Belgium, as well as those passing through Belgium.³⁷

As regards with the intelligence services, the draft bill provides that the State Security and the SGRS will be able to access PNR data in the framework of their missions described in the Organic Act of 30 November 1998, (i.e. activities which may constitute a threat to the

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³¹ Belgium, Minister for Justice (*Ministre de la Justice/Minister van Justitie*) (2016), [‘Le Ministre Geens adapte les méthodes particulières d’investigation et les méthodes particulières de renseignement’](#), Press Release, 17 March 2016.

³² Belgium, Belgian Privacy Commission (*Commission vie privée/ Privacycommissie*), [Opinion, Nr. 20/2016 on the bill amending the Organic Law of 30 November 1998 concerning the intelligence and security services](#) (*Avant-projet N° 20/2016 de loi modifiant la loi du 30 novembre 1998 organique des services de renseignement et de sécurité/Voorontwerp Nr. 20/2016 van wet tot wijziging van de wet van 30 november 1998 houdende regeling van de inlichtingen- en veiligheidsdienst*), CO-A-2016-016, 18 May 2016.

³³ Minister for Justice website (2016), [‘Le Ministre Geens adapte les méthodes particulières d’investigation et les méthodes particulières de renseignement’](#), Press Release, 17 March 2016.

³⁴ Belgium, Belgian Privacy Commission (*Commission vie privée/ Privacycommissie*), (2016) [Opinion, Nr. 20/2016 on the bill amending the Organic Law of 30 November 1998 concerning the intelligence and security services](#) (*Avant-projet N° 20/2016 de loi modifiant la loi du 30 novembre 1998 organique des services de renseignement et de sécurité/Voorontwerp Nr. 20/2016 van wet tot wijziging van de wet van 30 november 1998 houdende regeling van de inlichtingen- en veiligheidsdienst*), CO-A-2016-016, 18 May 2016.

³⁵ Belgium, Belgian Privacy Commission (*Commission vie privée/ Privacycommissie*) (2016), [Opinion, Nr. 20/2016 on the bill amending the Organic Law of 30 November 1998 concerning the intelligence and security services](#) (*Avant-projet N° 20/2016 de loi modifiant la loi du 30 novembre 1998 organique des services de renseignement et de sécurité/Voorontwerp Nr. 20/2016 van wet tot wijziging van de wet van 30 november 1998 houdende regeling van de inlichtingen- en veiligheidsdienst*), CO-A-2016-016, 18 May 2016, point 59.

³⁶ Presscenter.org (2015), [‘Traitement et analyse des données des passagers dans la lutte contre le terrorisme et la criminalité grave’](#), Press release, 4 December 2015 ; Le Soir (2015), [‘Attaque du Thalys: Jambon veut fichier les passagers des avions et des trains’](#), 31 August 2015.

³⁷ Presscenter.org (2015), [‘Traitement et analyse des données des passagers dans la lutte contre le terrorisme et la criminalité grave’](#), Press release, 4 December 2015 ; Le Soir (2015), [‘Attaque du Thalys: Jambon veut fichier les passagers des avions et des trains’](#), 31 August 2015.

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fundamental interests of the State).³⁸ The Standing Committee I could ask for the registry of the services containing the duly motivated requests and prohibit the use of data collected in violation of the act.³⁹ The draft text is also to contain safeguards for the respect of the right to privacy.⁴⁰ In terms of retention, it provides that passenger data may be retained for a maximum duration of five years but the access time to this information will differ depending on the purposes pursued. Analysis of this data will be undertaken by a Passenger Data Unit (*Unité d'Information des Passagers/ Passagiers Informatie Eenheid*) created inside the Ministry of the Interior, made up of its own members, together with representatives from the federal police, customs, State Security, and the SGRS, under the supervision of the lead civil servant. This unit will collect the data received, process it and manage the passenger database.⁴¹

The Privacy Commission, when consulted on the first draft of the bill, criticised several provisions, including the necessity for processing of the data.⁴² Furthermore, the Commission questioned the relevance of this Belgian PNR bill, as such an EU Directive on PNR aiming to harmonise the positions of Member States is nearly reached.⁴³ In addition, the French-speaking human rights league (*Ligue des droits de l'homme*) has also strongly criticised the bill, saying that will permit the collection of too much data and that it will allow mass surveillance. It has also highlighted the risks of discrimination or profiling, for example, the government knowing if someone is taking a halal meal on a plane. The bill is not restricted to terrorism, but also covers serious crime, giving it a significantly broader scope.⁴⁴

h. Transfer of the Senate oversight competence Standing Committee I to the House of Representatives

Following the sixth reform of the State, the Senate has lost numerous competences, including its monitoring of the Standing Intelligence Agencies Review Committee (Standing Committee I).⁴⁵ In January 2014, this competence was transferred by law to the House of Representatives.⁴⁶ The Act on monitoring the intelligence services was amended by Article 66bis, requiring that the House of Representatives set up a permanent Monitoring Committee responsible for issuing opinions on draft laws and reviewing the monitoring report from the Standing Committee I.⁴⁷ Like the former Senate Monitoring Committee, this parliamentary

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³⁸ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998,

³⁹ Belgium, Belgian Privacy Commission (*Commission vie privée/ Privacycommissie*) (2015), [Opinion Nr. 55/2015 on the draft bill for Passenger Name Record](#) (*Opinion n° 55/2015 sur l'avant-projet de loi relatif au traitement des données des passagers/Advies nr. 55/2015 op het voorontwerp van wet betreffende de verwerking van passagiersgegevens*), CO-A-2015-065, 16 December 2015, point 14.

⁴⁰ RTBF.be (2015), ['PNR à la Belge: le gouvernement Michel approuve son propre contrôle des données des passagers'](#), 5 December 2015.

⁴¹ Presscenter.org (2015), ['Traitement et analyse des données des passagers dans la lutte contre le terrorisme et la criminalité grave'](#), Press release, 4 December 2015.

⁴² Belgium, Belgian Privacy Commission (*Commission vie privée/ Privacycommissie*) (2015), [Opinion Nr. 55/2015 on the draft bill for Passenger Name Record](#) (*Opinion n°55/2015 sur l'avant-projet de loi relatif au traitement des données des passagers/Advies nr. 55/2015 op het voorontwerp van wet betreffende de verwerking van passagiersgegevens*), CO-A-2015-065, 16 December 2015, point 28.

⁴³ Belgium, Belgian Privacy Commission (*Commission vie privée/ Privacycommissie*) (2015), [Opinion Nr. 55/2015 on the draft bill for Passenger Name Record](#) (*Opinion n°55/2015 sur l'avant-projet de loi relatif au traitement des données des passagers/Advies nr. 55/2015 op het voorontwerp van wet betreffende de verwerking van passagiersgegevens*), CO-A-2015-065, 16 December 2015, point 11.

⁴⁴ RTBF.be (2015), ['PNR à la Belge: le gouvernement Michel approuve son propre contrôle des données des passagers'](#), 5 December 2015.

⁴⁵ Lemmens, L. (2014), ['La surveillance des Comités P et R ne relève plus du Sénat \(sixième réforme de l'Etat\)'](#), *Jura*.

⁴⁶ Belgium, [Act amending certain provisions following the Reform of the State](#) (*Loi modifiant diverses lois suite à la réforme du Sénat/Wet tot wijziging van diverse wetten ten gevolge van de hervorming van de Senaat*), 31 January 2014, Article 15.

⁴⁷ Belgium, [Organic Law on monitoring intelligence services, the police services and the Threat Assessment Coordination Body](#) (*Loi organique du contrôle des services de police et de renseignement et de l'Organe de*

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commission also monitors the functioning of the Standing Committee I and ensures that the legislation and the Internal Regulations are respected.⁴⁸

i. Creation of a new Parliamentary Investigative Commission after the terrorist attacks in Brussels

On 14 April 2016, the House of Representatives adopted an emergency Proposition establishing a Parliamentary Investigative Commission responsible for examining the circumstances leading to the terrorist attacks of 22 March 2016 in Brussels National Airport and Maelbeek metro station.⁴⁹ According to Article 1 of this act, the Commission has:

1. to conduct a chronological and historical reconstruction of all the facts that led to the attacks of 22 March 2016;
2. to examine the support offered to victims;
3. to consider whether the authorities, including the intelligence services, have functioned adequately in response to terrorist threat.⁵⁰

In this respect, the Commission will study the collection and transmission of information, the management and use of information and databases and the cooperation between the different Belgian services and their cooperation with the foreign and international services.⁵¹ As a result of its activities, the Commission will have to submit a report to the House of Representatives.⁵²

coordination pour l'analyse de la menace/Wet tot regeling van het toezicht op politie- en inlichtingendiensten en op het Coördinatieorgaan voor de dreigingsanalyse), 18 July 1991, Article 66bis.

⁴⁸ Belgium, [Organic Law on monitoring intelligence services, the police services and the Threat Assessment Coordination Body](#) (*Loi organique du contrôle des services de police et de renseignement et de l'Organe de coordination pour l'analyse de la menace/Wet tot regeling van het toezicht op politie- en inlichtingendiensten en op het Coördinatieorgaan voor de dreigingsanalyse*), 18 July 1991, Article 66bis.

⁴⁹ Belgium, [Proposition to establish a Parliamentary Investigative Commission responsible for examining the circumstances leading to the terrorist attacks of 22 March 2016 in Brussels National Airport and the Maelbeek metro station](#) (*Proposition visant à instituer une commission d'enquête parlementaire chargée d'examiner les circonstances qui ont conduit aux attentats terroristes du 22 mars 2016 dans l'aéroport de Bruxelles-National et dans la station de métro Maelbeek à Bruxelles, y compris l'évolution et la gestion de la lutte contre le radicalisme et la menace terroriste/Voorstel tot oprichting van een parlementaire onderzoekscommissie belast met het onderzoek naar de omstandigheden die hebben geleid tot de terroristische aanslagen van 22 maart 2016 in de luchthaven BrusselNationaal en in het metrostation Maalbeek te Brussel, met inbegrip van de evolutie en de aanpak van de strijd tegen het radicalisme en de terroristische dreiging*), 11 April 2016.

⁵⁰ Belgium, [Proposition to establish a Parliamentary Investigative Commission responsible for examining the circumstances leading to the terrorist attacks of 22 March 2016 in Brussels National Airport and the Maelbeek metro station](#) (*Proposition visant à instituer une commission d'enquête parlementaire chargée d'examiner les circonstances qui ont conduit aux attentats terroristes du 22 mars 2016 dans l'aéroport de Bruxelles-National et dans la station de métro Maelbeek à Bruxelles, y compris l'évolution et la gestion de la lutte contre le radicalisme et la menace terroriste/Voorstel tot oprichting van een parlementaire onderzoekscommissie belast met het onderzoek naar de omstandigheden die hebben geleid tot de terroristische aanslagen van 22 maart 2016 in de luchthaven BrusselNationaal en in het metrostation Maalbeek te Brussel, met inbegrip van de evolutie en de aanpak van de strijd tegen het radicalisme en de terroristische dreiging*), 11 April 2016, Article 1.

⁵¹ Belgium, [Proposition to establish a Parliamentary Investigative Commission responsible for examining the circumstances leading to the terrorist attacks of 22 March 2016 in Brussels National Airport and the Maelbeek metro station](#) (*Proposition visant à instituer une commission d'enquête parlementaire chargée d'examiner les circonstances qui ont conduit aux attentats terroristes du 22 mars 2016 dans l'aéroport de Bruxelles-National et dans la station de métro Maelbeek à Bruxelles, y compris l'évolution et la gestion de la lutte contre le radicalisme et la menace terroriste/Voorstel tot oprichting van een parlementaire onderzoekscommissie belast met het onderzoek naar de omstandigheden die hebben geleid tot de terroristische aanslagen van 22 maart 2016 in de luchthaven BrusselNationaal en in het metrostation Maalbeek te Brussel, met inbegrip van de evolutie en de aanpak van de strijd tegen het radicalisme en de terroristische dreiging*), 11 April 2016, Article 1.

⁵² Belgium, [Proposition to establish a Parliamentary Investigative Commission responsible for examining the circumstances leading to the terrorist attacks of 22 March 2016 in Brussels National Airport and the Maelbeek metro station](#) (*Proposition visant à instituer une commission d'enquête parlementaire chargée d'examiner les circonstances qui ont conduit aux attentats terroristes du 22 mars 2016 dans l'aéroport de Bruxelles-National et dans la station de métro Maelbeek à Bruxelles, y compris l'évolution et la gestion de la lutte contre le radicalisme et la menace terroriste/Voorstel tot oprichting van een parlementaire onderzoekscommissie belast met het onderzoek naar de omstandigheden die hebben geleid tot de terroristische aanslagen van 22 maart 2016 in de luchthaven BrusselNationaal en in het metrostation Maalbeek te Brussel, met inbegrip van de evolutie en de aanpak van de strijd tegen het radicalisme en de terroristische dreiging*), 11 April 2016, Article 1.

The Commission will certainly hold hearings with officials of the intelligence services on these questions. In May and June 2016, the Commission has held several meetings and six days hearings with Belgian authorities - support and assistance services, rescue services, Belgian Red Cross, Higher Institute of Emergency Planning, crisis centre, the Fire Brigade and Emergency Medical Service of the Brussels-Capital Region - but these latter were held in closed sessions.⁵³ Hence, the meetings were not made available online to the public.

In the coming weeks, the Commission is going to submit several legislative proposals aiming to fight against the financing of terrorism.⁵⁴ One of them aims to give more competences to the Financial Intelligence Processing Unit (CTIF) and, in this purpose, will also improve the exchange of information and collaboration between the CTIF, the OCAM and the intelligence services.⁵⁵

1.1.2 Relevant Case Law

The judgement of the Constitutional Court repealing the Belgian Data Retention Act of 30 July 2013

Following an action for annulment filed by the French- and German-speaking Bars (OBFG) and human rights associations, the Constitutional Court abrogated the Act on Retention of Data of 30 July 2013 on 11 June 2015.⁵⁶ This act enabled intelligence services to access the so called “connexion data” coming from telephone calls and electronic communications (i.e. telephone numbers called from a mobile phone, the geographical location of the emission of the call, the date, time and duration of communications) retained by the electronic communications service provider for a period of one year.⁵⁷ The Act implemented the Retention Data Directive 2006/24 that was declared invalid by the CJEU on 8 April 2014. In its judgement, the Court has considered the Belgian act of 30 July 2013 to contain the same legal defects as the Directive, thereby requiring it to be annulled. It stated that the act pursued exactly the same goals as the Directive, as its scope covered the personal data of every Belgian citizen, and was not limited to those suspected of posing a threat to public security or those related to a serious and specific offence. The act did not contain any derogations for people whose communications are protected by professional secrecy, nor were any guarantees provided to guide the authorities’ access to stored data.⁵⁸ The Court concluded that for these reasons and “by those same reasons which led the Court of Justice of the European Union to judge the Directive data retention invalid, the Belgian legislature exceeded the limits imposed by the respect of the principle of proportionality”. The Court concluded that on the basis of these grounds and “for the same reasons that led the ECJ to consider the Directive invalid”, the Belgian legislator had not respected the proportionality principle.⁵⁹

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⁵³ House of Representatives, ‘[Overview of the Parliamentary Investigative Commission ‘Terrorist attacks’ meetings](#)’ (accessed on 10 June 2016).

⁵⁴ House of Representatives, ‘[Temporary Commission ‘Fight against terrorism’ – law proposal to be discussed at the meeting of 17 June 2016](#)’ (accessed on 10 June 2016).

⁵⁵ Belgium, [Proposition aiming to improve the cooperation between the CTIF and the agencies in charge of the fight against terrorism](#) (*Proposition visant à améliorer la coopération entre la CTIF et les organismes chargés de la lutte contre le terrorisme/Wetsvoorstel tot verbetering van de samenwerking tussen de Cel voor Financiële Informatieverwerking en de instellingen ter bestrijding van het terrorisme*), 5 January 2016.

⁵⁶ Belgium, Constitutional Court (*Cour Constitutionnelle/Grondwettelijk Hof*), [Case No. 84/2015](#), 11 June 2015; de Terwagne, C. (2015), ‘[Il y a des limites à la conservation des données dites « de connexion », ou quand la Cour constitutionnelle et la Cour de justice de l’Union européenne se donnent la main pour protéger la vie privée](#)’, *Justice-en-ligne*.

⁵⁷ Belgium, [Act on Retention of Data](#) (*Loi portant modification des articles 2, 126 et 145 de la loi du 13 juin 2005 relative aux communications électroniques et de l’article 90decies du Code d’instruction criminelle/Wet houdende wijziging van de artikelen 2, 126 en 145 van de wet van 13 juni 2005 betreffende de elektronische communicatie en van artikel 90decies van het Wetboek van strafvordering*), 30 July 2013.

⁵⁸ Belgium, Constitutional Court (*Cour Constitutionnelle/Grondwettelijk Hof*), [Case No. 84/2015](#), 11 June 2015.

⁵⁹ Belgium, Constitutional Court (*Cour Constitutionnelle/Grondwettelijk Hof*), [Case No. 84/2015](#), 11 June 2015; de Terwagne, C. (2015), ‘[Il y a des limites à la conservation des données dites « de connexion », ou quand la Cour](#)

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1.1.3 Oversight bodies' reports and enquiries

a. The four enquiries of the Standing Committee I

The 2014 Annual Report of the Standing Committee I (Standing Committee) dedicated an entire 60-page chapter to the Snowden revelations and the position of the Belgian intelligence services.⁶⁰ In it, the Committee detailed the four enquiries carried out in 2014 and 2015 after the Snowden revelations, at the request of the Senate Parliamentary Commission, following a complaint by the Brussels Flemish Bar:

1. The first enquiry dealt with the capacity of the US and the UK to intercept data on a large scale. It also sought to determine whether the Belgian intelligence services were aware of such programmes, and whether the Belgian State is sufficiently protected to counter such interceptions by foreign services.
2. The second enquiry focused on the national and international rules in force in Belgium for the protection of privacy with regard to the large-scale interception of data.
3. The third enquiry concerned the use of large-scale collection of data in the context of criminal proceedings.
4. The fourth enquiry dealt with the possible implications of such data-mining by foreign programmes for the protection of the scientific and economic potential of the country.⁶¹

For these enquiries, the Standing Committee I called on outside expertise. Following the enquiries, it was required to inform individuals about the results of the investigations, for which it made its reports available on its website.⁶² In the collation of these reports, it carried out several stakeholder consultations, as well as collecting and examining considerable amounts of data and information. In addition, it requested the intelligence services to answer targeted survey questions, to share numerous related documents, and it interviewed some members of both the State Security and the SGRS.

After the first enquiry, the Committee concluded that the Belgian services neither participated, nor were in any way involved, with the large-scale interception of data by the National Security Authority (NSA) and the Government Communications Headquarters (GCHQ). The Committee also declared that its enquiries tended to confirm the Snowden revelations. On the question of whether or not the data of Belgian citizens and companies had been intercepted, the Committee observed that there was insufficient information to answer this question. However, it highlighted that it would be naïve to think that Belgium remained out of range, particularly given the inclusion of certain elements suggesting that Belgian data might also have been directly or indirectly intercepted on a large scale. The Standing Committee I drew attention to the competences of the Belgian intelligence services in response to the interception of large-scale data and political and economic espionage by foreign services, while also clarifying their competence in the field of data collection. Lastly, the Committee explained how the Belgian intelligence agencies have responded to the revelations, analysing their position and functioning before and after the leaks.

[constitutionnelle et la Cour de justice de l'Union européenne se donnent la main pour protéger la vie privée](#), *Justice-en-ligne*.

⁶⁰ Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*) (2015), *Rapport d'activités 2014/Activiteitenverslag 2014*, Antwerp and Cambridge, Intersentia, pp. 7-71.

⁶¹ Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*) (2015), *Rapport d'activités 2014/Activiteitenverslag 2014*, Antwerp and Cambridge, Intersentia, pp. 7-71.

⁶² Vermeulen, M. (2014) '[Les révélations de Snowden. Interception massive de données et espionnage politique](#)', Brussels, Belgian Standing Intelligence Agencies Review Committee; Schaus, A. (2014), '[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](#)', Brussels, Belgian Standing Intelligence Agencies Review Committee.

1.1.4 Ad hoc parliamentary or non-parliamentary commission work

j. Request for enquiries and new monitoring competence for foreign intelligence services

In addition to requiring that the Standing Committee I carry out several enquiries after the Snowden revelations, the Parliament has also proposed and adopted an amendment to the Act of 30 November 1998 regulating the intelligence services remit. Articles 7 and 11 of the amendment includes new remit for both the State Security and the SGRS, with both now competent to monitor the data collection activities of foreign intelligence services on Belgian territory.⁶³

k. Proposition for establishing a Parliamentary Investigative Commission

After the revelations, a proposition to set up a Parliamentary Investigative Commission was submitted to the Parliament in November 2014. This Commission would be responsible for examining the mass surveillance systems, as well as for the eventual cooperation of Belgian intelligence services with those of other countries, and the counter-intelligence and security measures taken by the Belgian government to protect its citizens and strategic interests.⁶⁴ To-date, the proposition is still pending before the House of Representatives.⁶⁵

1.2 International intelligence services cooperation

1.2.1 International cooperation between intelligence services

The legal basis for international cooperation is provided by Article 20§1 of the Act of 30 November 1998 on the intelligence and security services.⁶⁶ This Article states that the intelligence services have a duty to cooperate with foreign intelligence and security services, and that the NSC defines the conditions of this cooperation.⁶⁷ If such conditions have already been fixed by the NSC, they have not been made publicly available.

The State Security has already adopted internal detailed guidance for bilateral cooperation, although this guidance is classified.⁶⁸ The Standing Committee I considers this guidance to be valid, but believes that it should also be validated by the NSC.⁶⁹ According to the Standing Committee I, the most important aspect of the cooperation, i.e. the types of intelligence that can be shared with foreign services, is addressed only briefly in the guidance.⁷⁰

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⁶³ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Articles 7, 3° and 11, 5°.

⁶⁴ House of Representatives, [Proposition to set up a Parliamentary Investigative Commission](#) (*Proposition visant à instituer une commission d'enquête parlementaire chargée d'enquêter sur le rôle des services de renseignement dans le cyberespionnage/Voorstel tot oprichting van een parlementaire onderzoekscommissie belast met het onderzoek naar de rol van inlichtingendiensten in cyberespionage*), DOC 54 0552/001, 3 November 2014.

⁶⁵ House of Representatives website, '[Document parlementaire 54K0552](#)' (accessed on 4 April 2016).

⁶⁶ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 20§1.

⁶⁷ Born, H., Leigh, I. and Wills, A. (2015), [Making international intelligence cooperation accountable](#), Geneva, DCAF, p. 86.

⁶⁸ Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*) (2015), [Rapport d'activités 2014/Activiteitenverslag 2014](#), Antwerp and Cambridge, Intersentia, p. 24.

⁶⁹ Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*) (2015), [Rapport d'activités 2014/Activiteitenverslag 2014](#), Antwerp and Cambridge, Intersentia, p. 24.

⁷⁰ Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*) (2015), [Rapport d'activités 2014/Activiteitenverslag 2014](#), Antwerp and Cambridge, Intersentia, p. 24.

For its part, the SGRS worked on similar guidelines in 2014.⁷¹ According to the Standing Committee I, the SGRS's international collaboration usually takes place under some sort of formal agreement between the different intelligence services, such as a Memorandum of Understanding, most of the time without explicit and official cover.⁷² The Standing Committee I can control those agreements and it has done so in the past, but they are not publicly available.⁷³

1.2.2 Overseeing international cooperation agreements

Before 2016, no Belgian authority was legally competent to monitor the activities of foreign intelligence services. In practice, the SGRS simply conducted follow-up to such activities.⁷⁴

After the Snowden revelations, the Parliament and the Standing Committee I deemed it necessary to grant the intelligence agencies competence in overseeing foreign intelligence activity in Belgium. As a result, in January 2016, the Parliament added two provisions to the Law of 30 November 1998, enabling both intelligence services to verify the legality of foreign intelligence services' activities on the Belgian territory.⁷⁵ The Standing Committee I has specified that it is the responsibility of the intelligence services to monitor the large-scale interception of data carried out by any foreign intelligence agency, regardless of whether it is done by a "friendly country" or "friendly service".

In addition, in 2014 the Standing Committee I conducted an enquiry to determine whether or not Belgian enterprises and research centres were victims of data-mining by foreign services. The report of the inquiry was due to be finalised at the end of 2015, however, it is not yet publicly available.⁷⁶

In cases where information is illegally obtained by foreign intelligence services, the Act of 30 November 1998 on the intelligence and security services makes no provision regulating how this illegality should be addressed.⁷⁷ However, the Act of 4 February 2010 on investigative and data collection methods provides that any data illegally obtained by the intelligence services must be destroyed and cannot be exchanged or used.⁷⁸ A priori, its provision could also apply to any information collected by foreign intelligence services within Belgium. The president of the Standing Committee I has indicated that "The Committee cannot control

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⁷¹ The Annual Activity Report 2015 of the Standing Committee I has not been published yet. As a result, it is unclear at this time if the General Intelligence and Security Service has finalised its guidance. *Further information has been requested from the Standing Committee I.*

⁷² Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*) (2015), [Rapport d'activités 2014/Activiteitenverslag 2014](#), Antwerp and Cambridge, Intersentia, p. 30.

⁷³ Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*) (2015), [Rapport d'activités 2014/Activiteitenverslag 2014](#), Antwerp and Cambridge, Intersentia, p. 30.

⁷⁴ Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*) (2015), [Rapport d'activités 2014/Activiteitenverslag 2014](#), Antwerp and Cambridge, Intersentia, p. 30.

⁷⁵ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Articles 7 and 11.

⁷⁶ Belgium, Standing Intelligence Agencies Review Committee (Standing Committee I) (*Comité permanent de contrôle des services de renseignements et de sécurité – Comité Permanent R*) (2015), [Rapport d'activités 2014/Activiteitenverslag 2014](#), Antwerp and Cambridge, Intersentia, pp. 65-67.

⁷⁷ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998.

⁷⁸ A. Schaus. (2014), ['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'](#), Brussels, Belgian Standing Intelligence Agencies Review Committee, p. 22.

foreign intelligence services. It would be wise to complete the act on this point so that the legality of the operations of the friendly foreign intelligence services allowed on our territory, can also be controlled by the SGRS”.⁷⁹ As for this service, its chief declared that “The SGRS assumes that it is systematically informed by foreign services when they pursue an objective in Belgium. The service has very good contacts with friendly countries and has access to a system of data sharing. The service is of course responsible for the data that are collected on the territory of Belgium”.⁸⁰ In her enquiry report, Professor Schaus concludes that, “first, the use by a foreign service of an exceptional data collection method in Belgium, such as computer intrusion, is not regulated, second that this data collection method is a criminal offence, and third, that it is forbidden for Belgian services to use information obtained illegally, failing which the Belgian services would also be guilty of committing an offence if they knowingly do so”.⁸¹

The issue of cooperation with foreign services, along with the control of such cooperation, is one of the priorities of the Standing Committee I, and it has touched upon international intelligence cooperation in several of its enquiries.⁸²⁸³ It observed that, in practice, “intelligence service providers” keep their sources covert, a practice accepted by “intelligence service recipients”. To fill the legal gap, the Committee proposed several regulations but it also admitted that this “win-win” practice is part of the international intelligence culture and will take time to change”.⁸⁴

1.3 Access to information and surveillance

The legal framework in Belgium places some limitations on the right to access information about whether particular individuals are subject to surveillance, but it does not provide for a complete exemption. In accordance with Principle 10E(1) of the Global Principles on National Security and the Right to Information, an individual can, under a different legal basis, obtain information on the surveillance measure(s) to which he/she has been subjected.

Nevertheless, the practice shows that there are very few cases where an individual requests access to documents concerning him/her held by the intelligence services. Furthermore, these requests are most, if not all, rejected on the basis of article 6 of the Act of 11 April 1994 or on the basis of the Law of 11 December 1998 on classification and security clearances (*both acts are detailed further below*).⁸⁵

No practices allowing Belgian citizens to access statistics on the use of surveillance have yet been developed.

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⁷⁹ Belgium, *Doc. Parl*, Chambre, Session 52ème législature, 2009-2010, DOC 52 / 2128/000, 41.

⁸⁰ Belgium, *Doc. Parl*, Chambre, Session 52ème législature, 2009-2010, DOC 52 / 2128/000, 46.

⁸¹ A. Schaus. (2014), [‘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’](#), Brussels, Belgian Standing Intelligence Agencies Review Committee, p. 23.

⁸² A. Schaus. (2014), [‘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’](#), Brussels, Belgian Standing Intelligence Agencies Review Committee, p. 23.

⁸³ Born, H., Leigh, I. and Wills, A. (2015), [‘Making international intelligence cooperation accountable’](#), Geneva, DCAF, p. 145.

⁸⁴ Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*) (2015), [‘Rapport d’activités 2014/Activiteitenverslag 2014’](#), Antwerp and Cambridge, Intersentia, pp. 190-191.

⁸⁵ Information received through stakeholder consultation (Belgian Standing Intelligence Agencies Review Committee) on 6 July 2016.

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1.3.1 Requests for information from the Intelligence Services under the Act of 30 November 1998

A 2010 reform added to Article 2§3 of the Act of 30 November 1998 on the intelligence and security services, provides that an individual with a legitimate interest can request information from the intelligence service concerned on whether or not he/she has been the target of specific or exceptional methods of data collection. The chief of the service will inform the individual in writing whether or not that was the case, provided that two conditions are fulfilled:

- Five years have passed since the end of the special method of data collection.
- Since the end of the special method of data collection, no new data on the individual has been collected.⁸⁶

The information provided to the individual is precise and limited to the strict minimum. It also details the legal framework under which the service was allowed to carry out the special method of data collection.⁸⁷ The act provides that a Royal decree will detail the way in which the information will be communicated, however, such a decree has not been adopted.

In a judgement of 22 September 2011, the Constitutional Court has declared Article 2§3 of the act of 30 November 1998 unconstitutional, holding that it infringes Articles 10 and 11 of the Constitution, in conjunction with Article 8 and 22 of the European Convention on Human Rights.⁸⁸ The Court found that the provision stating that a person who has been subjected to a secret intelligence method and who is only informed afterwards ‘on request’, is contrary to the respect of human rights as enshrined in the Belgian Constitution and the ECHR.⁸⁹ Referring to the case law of the ECtHR, in particular to the cases *Klass and Weber and Saravia v. Germany*, the Constitutional Court stated that the intelligence service itself must actively inform the person subject to a measure of surveillance as soon as such notification is possible without jeopardising the purpose of the intelligence work.⁹⁰ It also highlighted that legal entities subject to a surveillance measure shall be informed and shall be able to exercise their right to access.⁹¹ The Court creates, therefore, an obligation for intelligence agencies to notify a posteriori those individuals subjected to a surveillance measure.⁹² The act has not yet been amended accordingly.⁹³

1.3.2 Request for consultation of documents from the Intelligence Services under the Act of 11 April 1994

Article 4 of the Act of 11 April 1994 on the transparency of administration allows any individual to consult and request a copy of any document relating to him/herself held by an administrative authority, as well as their State Security “file”.⁹⁴ An exception to this right is provided by Article 6 of the same act, which lists the series of interests whose safeguarding

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⁸⁶ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 2§3.

⁸⁷ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 2§3.

⁸⁸ Belgium, Constitutional Court, [Judgement No. 145/2011](#), 22 September 2011.

⁸⁹ De Hert, P. and Boehm, F. (2012), ‘[The Right of Notification after Surveillance is over: Ready for Recognition?](#)’ in Bus, J. et al (eds.), *Digital Enlightenment Yearbook*, pp 26-27.

⁹⁰ Belgium, Constitutional Court, [Judgement No. 145/2011](#), 22 September 2011, paras 88 to 92.

⁹¹ Belgium, Constitutional Court, [Judgement No. 145/2011](#), 22 September 2011, paras 88 to 92.

⁹² Belgium Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*) (2012), [Rapport d’activités 2011/Activiteitenverslag 2011](#), Antwerp and Cambridge, Intersentia, pp. 52-53.

⁹³ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 2§3.

⁹⁴ Belgium, [Act on disclosure of information by the administration](#) (*Loi relative à la publicité de l’administration/Wet betreffende de openbaarheid van bestuur*), 11 April 1994, Article 4.

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the administrative authority may deem more important than the principle of transparency.⁹⁵ Among these are public order, public security, national defence and the safety of the population. As mentioned earlier, these requests are very rare and almost always rejected on the basis of this article 6. Furthermore, the intelligence services do not maintain statistics about the number of requests made for consultation of information collected by their services.⁹⁶

If the administrative authority refuses, it must provide the individual with a justifiable reason for doing so.⁹⁷ The individual can then ask the administrative authority to reconsider its decision. If it refuses again, the individual can contest the decision before the Council of State, whose decision is final.⁹⁸

Article 7 of the act also allows data to be corrected if it is proven that the data are incorrect or incomplete.⁹⁹ However, it is very unlikely that an individual would be able to prove this, given that the information held by the intelligence services is classified.

1.3.1 The right of indirect access to information under the Privacy Act of 8 December 1992

Article 9 of the Privacy Act of 8 December 1992 provides the right of direct access to the subject of any data, as well as the right of correction to their personal data.¹⁰⁰ However, for information processed for national security, state safety, national defence and act enforcement purposes, Article 13 of the Act only provides a right of indirect access where the Privacy Commission (data protection authority) is itself responsible to exercise the individual's right of access and correction.¹⁰¹ In practice, the individual can submit a request for access to information processed by an intelligence service to the Privacy Commission, but the individual will not him/herself have access to the information.¹⁰² Rather, the Privacy Commission will run the necessary checks to see if the intelligence services complied with the acts when handling the individual's data and will eventually make the necessary changes and/or recommendations to the intelligence agency. The Commission will then confirm to the individual that the necessary checks and/or amendments have been made, but not which data have been processed or any other details pertaining to the content of the file.¹⁰³

1.3.2 Request for information from the Standing Committee I in the context of a complaint

Article 43(4) of the Act of 30 November 1998 on the intelligence and security services allows any individual to issue a complaint against a surveillance measure to the Standing Committee

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⁹⁵ Belgium, [Act on disclosure of information by the administration](#) (*Loi relative à la publicité de l'administration/Wet betreffende de openbaarheid van bestuur*), 11 April 1994, Article 6§1.

⁹⁶ Information received through stakeholder consultation (Belgian Standing Intelligence Agencies Review Committee) on 6 July 2016.

⁹⁷ Belgium, [Act on disclosure of information by the administration](#) (*Loi relative à la publicité de l'administration/Wet betreffende de openbaarheid van bestuur*), 11 April 1994, Article 6§5.

⁹⁸ Belgium, [Act on disclosure of information by the administration](#) (*Loi relative à la publicité de l'administration/Wet betreffende de openbaarheid van bestuur*), 11 April 1994, Article 8§2.

⁹⁹ Belgium, [Act on disclosure of information by the administration](#) (*Loi relative à la publicité de l'administration/Wet betreffende de openbaarheid van bestuur*), 11 April 1994, Article 7.

¹⁰⁰ Belgium, [Privacy Act](#) (*Loi relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel/Wet tot bescherming van de persoonlijke levensfeer ten opzichte van de verwerking van persoonsgegevens*) 8 December 1992, Article 9.

¹⁰¹ Belgium, [Privacy Act](#) (*Loi relative à la protection de la vie privée à l'égard des traitements de données à caractère personnel/Wet tot bescherming van de persoonlijke levensfeer ten opzichte van de verwerking van persoonsgegevens*) 8 December 1992, Article 13.

¹⁰² Belgium, Belgian Privacy Commission (*Commission vie privée/ Privacycommissie*), '[L'accès indirect à vos données gérées par les services de police et les services de renseignements](#)' (accessed on 5 May 2016).

¹⁰³ Belgium, Belgian Privacy Commission (*Commission vie privée/ Privacycommissie*), '[La protection des données à caractère personnel en Belgique](#)', Brussels, Privacy Commission, p. 20.

I, if they can prove a legitimate and personal interest.¹⁰⁴ The Standing Committee I will decide if it is competent to examine the complaint, and whether or not the complaint is founded.¹⁰⁵ Often, requests are deemed unfounded, for example, in 2014, 28 out of 31 complaints were rejected.¹⁰⁶ If it decides not to act on the complaint, the reason for its decision must be communicated to the individual making the request.¹⁰⁷

Unless the complaint is manifestly unfounded, the Standing Committee I will examine the file and make its decision within one month. During the processing of a complaint, the complainant and his/her lawyer may consult the file at the Standing Committee I's Secretariat for a period of five working days.¹⁰⁸ The file will include any relevant information, except those elements that are classified and sensitive for state security. The complainant and his/her lawyer must be given access to at least the following information:

- The legislative framework that served as the basis for the special or exceptional method of data collection.
- The nature and degree of seriousness of the threat that justified the usage of the special or exceptional method of data collection.
- The type of personal data collected by the special or exceptional method of data collection.¹⁰⁹

If the Standing Committee I find that the intelligence services have broken the act while monitoring the individual concerned, it will order the cessation of the infringing surveillance method and will communicate this decision to the complainant. The decision will be precise and formulated in general terms, with any classified elements suppressed.¹¹⁰ The Standing Committee I cannot award compensation or mediate in disputes, but it can refer the complainant to the body or service that has jurisdiction over his/her complaint.¹¹¹

1.3.3 Appeal before the Appeal Body for security clearance, certificates or advice

According to the Act of 11 December 1998 pertaining to classification and to security clearance, certificates and advice, the National Security Authority grants such security clearance, certificates and advice to individuals or legal entities.¹¹² Before doing so, it will request the intelligence services to conduct a security enquiry on the individual or legal entity.

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¹⁰⁴ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 43(4).

¹⁰⁵ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 43(4).

¹⁰⁶ Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*) (2015), [Rapport d'activités 2014/Activiteitenverslag 2014](#), Antwerp and Cambridge, Intersentia, p. 7.

¹⁰⁷ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 43(4).

¹⁰⁸ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 43(5).

¹⁰⁹ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 43(5).

¹¹⁰ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 43(6§2).

¹¹¹ Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*), ['Complaints and denunciations'](#) (accessed on 7 May 2016).

¹¹² Belgium, [Law pertaining to classification and to security clearance, certificates and advice](#) (*Loi relative à la classification et aux habilitations, attestations et avis de sécurité/ Wet betreffende de classificatie en de veiligheidsmachtigingen, veiligheidsattesten en veiligheidsadviezen*), 11 December 1998.

During this enquiry, the intelligences services may use the special and exceptional methods of data collection.¹¹³

In situations where the National Security Authority has refused, or not made, a decision to grant security clearance, certificates or advice, the Act of 11 December 1998 pertaining to the creation of an Appeal Body for security clearances, certificates or advice (*Beroepsorgaan inzake veiligheidsmachtigingen, veiligheidsattesten en veiligheidsadvizen/Organe de recours en matière d'habilitations, d'attestations et d'avis de sécurité*) (Appeal Body)¹¹⁴ allows an individual to appeal a refusal or lack of decision before this Appeal Body. During the appeal, the Appeal Body will put the enquiry reports at the disposal of the complainant and his/her lawyer. However, at the request of an intelligence service, the Appeal Body may decide that some information in the enquiry reports remain classified and these are not made available to the complainant and his/her lawyer.¹¹⁵ The number of appeals in 2014 amounted to 171 and 189 in 2013.¹¹⁶

1.3.4 The Federal Ombudsman

Upon receipt of a complaint from an individuals, or at the request of the House of Representatives, the Federal Ombudsman may initiate an investigation.¹¹⁷ Unlike the Standing Committee I, it does not have the right to initiative an investigation of its own accord. The Federal Ombudsman receives one or two complaints per year about the State Security. The Ombudsman may question the members of the State Security and may impose a compulsory period for reply. It may also establish any findings on site, have all necessary documents or information shared, and interview all people concerned if it has obtained the required security clearance. In the framework of an investigation undertaken by the Ombudsman, the members of the State Security are also released from their duty of confidentiality. On the basis of its findings, the Federal Ombudsman may make recommendations and issue a report. In addition, the complainant will be informed of the results of his complaint.¹¹⁸

1.4 Update the FRA report

Introduction

Belgium is not mentioned in the introductory section. However, the footnotes referring to “Belgium” on pages 7 and 9 are accurate.

1. Intelligence services and surveillance laws

1.1. Intelligence services

Belgium is not mentioned in this section of the report.

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¹¹³ Belgium, [Law pertaining to classification and to security clearance, certificates and advice](#) (*Loi relative à la classification et aux habilitations, attestations et avis de sécurité/ Wet betreffende de classificatie en de veiligheidsmachtigingen, veiligheidsattesten en veiligheidsadviezen*), 11 December 1998, Articles 18-21.

¹¹⁴ Belgium, [Law pertaining to the creation of an Appeal Body for security clearance, certificates and advice](#) (*Loi portant création d'un organe de recours en matière d'habilitations, d'attestations et d'avis de sécurité/Wet tot oprichting van een beroepsorgaan inzake veiligheidsmachtigingen, veiligheidsattesten en veiligheidsadviezen*), 11 December 1998.

¹¹⁵ Belgium, [Law pertaining to the creation of an Appeal Body for security clearance, certificates and advice](#) (*Loi portant création d'un organe de recours en matière d'habilitations, d'attestations et d'avis de sécurité/Wet tot oprichting van een beroepsorgaan inzake veiligheidsmachtigingen, veiligheidsattesten en veiligheidsadviezen*), 11 December 1998, Article 5§3.

¹¹⁶ Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*) (2015), [Rapport d'activités 2014/Activiteitenverslag 2014](#), Antwerp and Cambridge, Intersentia, p. 103.

¹¹⁷ Belgium, [Act establishing the Federal Ombudsman](#) (*Loi instaurant des médiateurs fédéraux/Wet tot instelling van federale ombudsmannen*), 22 March 1995.

¹¹⁸ Van Laethem, W. (2008), [‘The Belgian civil intelligence service: roles, powers, organisation and supervision’](#), *European Journal of Information Systems*, Vol. 2, pp. 24-25.

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In Belgium, there are two intelligence and security services. The State Security (Staatsveiligheid/Sûreté de l'Etat) is the civil intelligence service. This is primarily under the authority of the Minister of Justice but sometimes falls under the authority of the Minister of the Interior. The SGRS of the armed forces (Algemene Dienst Inlichting en veiligheid/Service Général du Renseignement et de la Sécurité) is the military intelligence service and is under the authority of the Minister of Defence. Surveillance missions of those services are governed by the Act of 30 November 1998 on the intelligence and security services.¹¹⁹

In 2006, the Belgian government set up the Coordination Unit for Threat Assessment (CUTA) to draw up specific or strategic evaluations of terrorist and extremist threats in and to Belgium. CUTA is regulated by the Threat Assessment Act of 10 July 2006.¹²⁰

1.2. Surveillance measures

Belgium is not mentioned in this section. However, the footnote referring to “Belgium” on page 16 is accurate.

Belgian intelligence services are not entitled to carry out large-scale surveillance.¹²¹ The Belgian legal framework requires suspicion-based surveillance and prior identification of an individual or a group before a targeted surveillance method can be initiated.¹²²

1.3. Member States’ laws on surveillance

The reference in the text on page 20 is accurate.

The mandates of Belgian intelligence services are defined in the Act of 30 November 1998 on the intelligence and security services, which provides that their remit to process and analyse information can only be executed where there is an “activity that threatens or could threaten the internal security of the State and the sustainability of the democratic and constitutional order, the external state security and the international relations, the scientific or economic potential”.¹²³ Specific threats to national security defined in law are “any activity, individual or collective, carried out in Belgium or abroad, which can be linked to espionage, terrorism, extremism, proliferation, harmful sectarian organisations, criminal organisations, and attempts to influence decision-making through misleading and illegal means”.¹²⁴

FRA key findings

Belgium is not mentioned in this section of the report, and there is nothing new to add.

2. Oversight of the intelligence services

2.1. Executive control

Although the State Security is placed under the authority of the Minister for Justice, there is no real executive control over the civil intelligence service, as it does not require

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¹¹⁹ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998.

¹²⁰ Belgium, [Threat Assessment Act](#) (*Loi relative à l'analyse de la menace/Wet Betreffende de Analyse Van de Dreiging*), 10 July 2006.

¹²¹ Belgium, [Response of the Ministry of Justice to the parliamentary question no. B139](#), 3 February 2014.

¹²² Belgium, [Act on the Special Intelligence Methods used by the Intelligence and Security Services](#) (*Loi relative aux méthodes de recueil des données par les services de renseignement et de sécurité/Wet betreffende de methoden voor het verzamelen van gegevens door de inlichtingen- en veiligheidsdiensten*), 4 February 2010.

¹²³ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 7.

¹²⁴ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 8.

government authorisation for any of its missions. The Minister of Justice is responsible for the administration and management of the intelligence service, particularly for expenditure, personnel administration and training, internal order and discipline, salaries and allowances, and equipment.¹²⁵ The Minister of the Interior is associated with the administration and management of the State Security insofar as it relates to maintaining public order and the protection of people.¹²⁶

By contrast, the SGRS is monitored by the NSC and the Minister of Defence for certain of its activities. For instance, it needs the Minister of Defence's prior approval to intercept communications transmitted abroad.¹²⁷ Also, any exceptional data collection method against natural or legal persons must first be approved by the NSC.¹²⁸

Lastly, it should be noted that the NSC established the policies and priorities that both agencies must follow.

2.2. Parliamentary oversight

2.2.1 Mandate

The information on Belgium on page 35 remains accurate.

2.2.2 Composition

The information on Belgium on page 39 remains accurate.

2.2.3 Access to information and documents

Belgium is not mentioned in this section of the report but the right to access information is described in detail under Section 1.3 of the present report (*see p. 14*).

2.2.4 Reporting to parliament

Belgium is not mentioned in this section of the report.

The Standing Committee I produces an Annual Report for the Monitoring Committee of the House of Representatives.¹²⁹ This report contains general conclusions on the last calendar year, together with proposals for improving the functioning of the services concerned. In this report, the Standing Committee I pays special attention to the specific and exceptional methods used to collect data, to the a posteriori review which it performs in these cases, to the operation of the Coordination Unit for Threat Assessment and, finally, to the Appeal Body for security clearance, certificates and advice. The report is completed and issued by 1 June at the latest, and is published following discussion in Parliament. The Standing Committee I is also required to report to the Monitoring Committee every six months on the application of the special methods of intelligence collection used by the intelligence services.¹³⁰ In addition, the

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¹²⁵ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 5§3.

¹²⁶ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 6.

¹²⁷ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 47bis.

¹²⁸ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 18/9§2.

¹²⁹ Belgium, [Organic Law on monitoring intelligence services, the police services and the Threat Assessment Coordination Body](#) (*Loi organique du contrôle des services de police et de renseignement et de l'Organe de coordination pour l'analyse de la menace/Wet tot regeling van het toezicht op politie- en inlichtingendiensten en op het Coördinatieorgaan voor de dreigingsanalyse*), 18 July 1991, Article 11.

¹³⁰ Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*), 'Publications' (accessed on 7 May 2016); Belgium, [Organic Law on monitoring intelligence services, the police services and the Threat Assessment Coordination Body](#) (*Loi organique du contrôle des services de police et de renseignement et de l'Organe de coordination pour l'analyse de la menace/Wet tot regeling van het toezicht op politie- en inlichtingendiensten en op het Coördinatieorgaan voor de dreigingsanalyse*), 18 July 1991.

Standing Committee I compiles a report after each investigation, each of which is sent to Parliament and to the competent ministers.¹³¹ The Standing Committee I may also decide to make all, or part, of its investigation reports public.¹³²

2.3. Expert oversight

2.3.1 Specialised expert bodies

The references to Belgium on page 43 remain accurate.

2.3.2 Data protection authorities

The references to Belgium on pages 47 and 48 remain accurate.

2.3.4. Approval and review of surveillance measures

The reference to Belgium on page 53 is accurate.

FRA key findings

Nothing new to add.

3. Remedies

3.1. A precondition: obligation to inform and the right to access

The references to Belgium on pages 62, 63, 65 are accurate.

3.2. Judicial remedies

3.2.1 Lack of specialisation and procedural obstacles

Belgium is not mentioned in this section of the report.

In Belgium, there are no specialised judges appointed for surveillance cases. If a fundamental right is violated, or if somebody has suffered harm as a result of unlawful or careless acts by the government, the person concerned may go through the ordinary courts on the basis of the general principles of tort law (Articles 1382 and 1383 of the Civil Code). Although compensation may be claimed or an ongoing illegality may be stopped, these remain largely theoretical, as the work of the State Security will generally be unknown. If information obtained illegally is used in a criminal case, the person may attempt to have this information removed from the case. Indeed, in a number of cases the courts cannot take into account evidence obtained unlawfully.¹³³

3.2.2 Specialised judges and quasi-judicial tribunals

The references to Belgium on pages 68 and 69 are accurate.

3.3. Non-judicial remedies: independence, mandate and powers

3.3.1. Types of non-judicial bodies

The references to Belgium on page 70 are accurate.

3.3.2. The issue of independence

The reference to Belgium on page 71 is accurate.

3.3.3. Powers and specialisation of non-judicial remedial bodies

The references to Belgium on pages 73 and 74 are accurate.

FRA key findings

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¹³¹ Belgium, [Organic Law on monitoring intelligence services, the police services and the Threat Assessment Coordination Body](#) (*Loi organique du contrôle des services de police et de renseignement et de l'Organe de coordination pour l'analyse de la menace/Wet tot regeling van het toezicht op politie- en inlichtingendiensten en op het Coördinatieorgaan voor de dreigingsanalyse*), 18 July 1991, Article 11.

¹³² Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*), '[Publications](#)' (accessed on 7 May 2016).

¹³³ Van Laethem, W. (2008), '[The Belgian civil intelligence service: roles, powers, organisation and supervision](#)', *European Journal of Information Systems*, Vol. 2, p. 26.

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Nothing new to add.

Conclusions

Nothing new to add.

Bibliography/References

The references to Belgium on pages 79 and 85 remain accurate.

Legal instruments index – national legislation/case law

The references to Belgium on pages 87 and 88 remain accurate.

1.5 Check the accuracy of the figures and tables published in the FRA report (see the Annex on Figures and Tables)

1.5.1 Overview of security and intelligence services in the EU-28

Although the Belgian civil intelligence service, the State Security, is not sub-divided into two services, one with a domestic mandate and one with a foreign mandate, Article 7 provides that “the State Security has the remit to search, analyse and process the information relating to any activity that threatens or could threaten the internal security of the state and the sustainability of the democratic and constitutional order and the **external security of the state and the international relations**, (...)”.¹³⁴ The Standing Committee I describes the “external security of the state and the international relations” mission in the following way: “the safeguard of the national integrity, state sovereignty and independence, the interests of countries with which Belgium pursues common objectives, as well as the international relations that Belgium maintains with foreign and international States or supranational institutions”.¹³⁵

	Civil (internal)	Civil (external)	Civil (internal and external)	Military
BE	State Security/ <i>Staatsveiligheid /Sûreté de l'Etat</i> (SV/SE)			General Intelligence and Security Service of the armed forces/ <i>Algemene Dienst Inlichting en Veiligheid/ Service Général du Renseignement et de la</i>

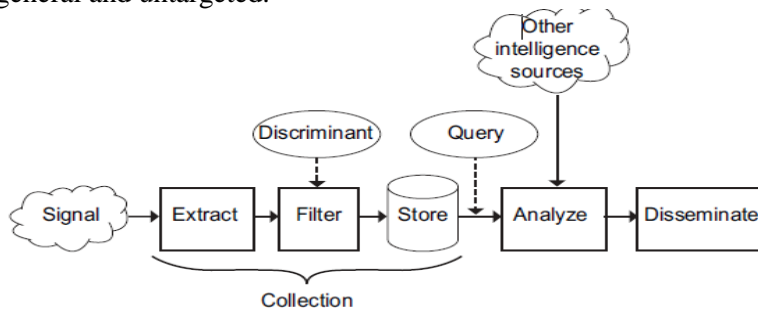
1.5.2 Figure 1: A conceptual model of signals intelligence

Figures describing the way signals intelligence is collected and processed are not available through desk research but it should be noted that Belgian law does not allow untargeted signals intelligence. Surveillance must concern a specific person or a determined group of

¹³⁴ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 7.

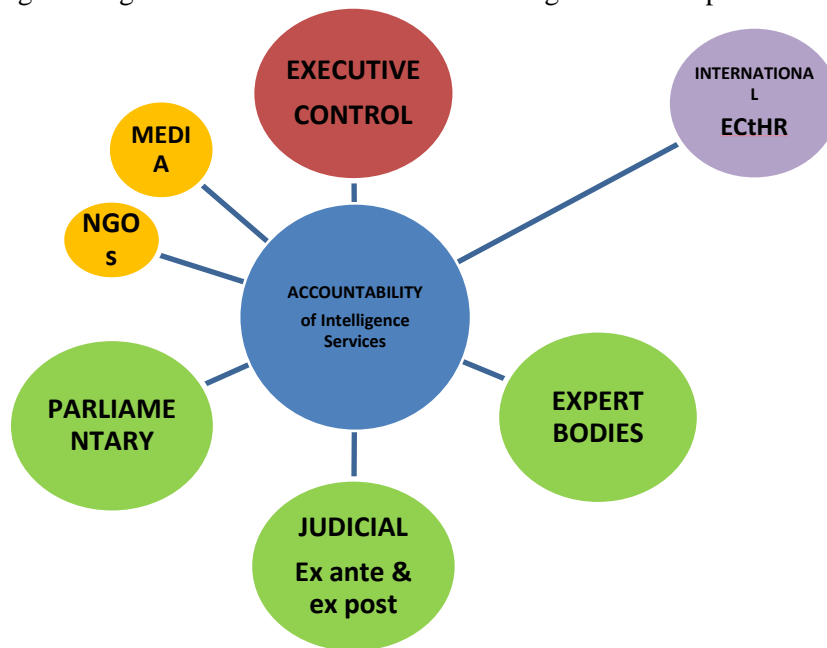
¹³⁵ Belgium, Belgian Standing Intelligence Agencies Review Committee (*Comité permanent de contrôle des services de renseignement et de sécurité/Vast Comité van toezicht op de inlichtingen- en veiligheidsdiensten*) (2015), [Rapport d'activités 2014/Activiteitenverslag 2014](#), Antwerp and Cambridge, Intersentia, p. 79.

persons, it must comply with the principles of subsidiarity and proportionality, and it cannot be general and untargeted.¹³⁶



1.5.2 Figure 2: Intelligence services' accountability mechanisms

Figure 2 below (p. 31 of the FRA Report) accurately illustrates the situation in Belgium. However, it is important to note that the Administrative Commission exercises an ex-ante judicial review only when intelligence services resort to exceptional methods of data collecting.¹³⁷ In addition, the State Security is not, strictly speaking, monitored, as its activities do not require authorisation by the Ministers of Justice and the Interior, or the NSC. They do, however, set out the policies and priorities that the State Security must follow, as well as regulating its budget and the administration and management of its personnel.¹³⁸



1.5.3 Figure 3: Forms of control over the intelligence services by the executive across the EU-28

¹³⁶ Belgium, [Act on the Special Intelligence Methods used by the Intelligence and Security Services](#) (*Loi relative aux méthodes de recueil des données par les services de renseignement et de sécurité/Wet betreffende de methoden voor het verzamelen van gegevens door de inlichtingen- en veiligheidsdiensten*), 4 February 2010, Articles 2 and 18(3).

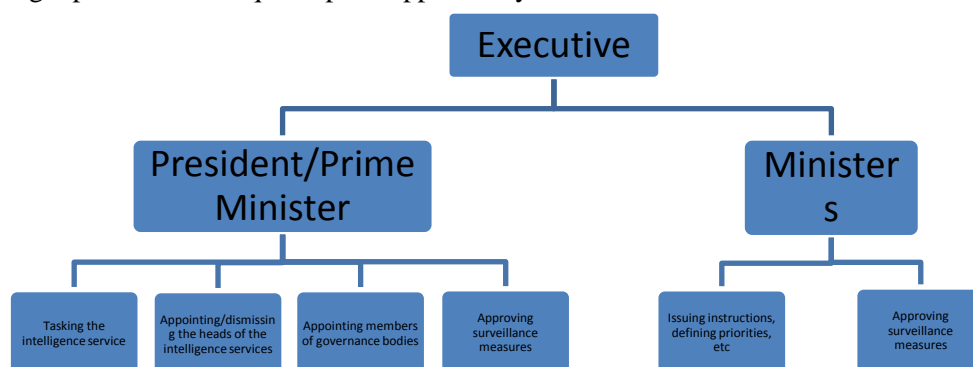
¹³⁷ Belgium, [Act on the Special Intelligence Methods used by the Intelligence and Security Services](#) (*Loi relative aux méthodes de recueil des données par les services de renseignement et de sécurité/Wet betreffende de methoden voor het verzamelen van gegevens door de inlichtingen- en veiligheidsdiensten*), 4 February 2010, Articles 18/9 and 18/10.

¹³⁸ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Articles 5§3 and 6.

In Belgium, the control over both intelligence services is exercised by expert bodies: the Standing Committee I, the Administration Commission and the Monitoring Committee of the House of Representatives.¹³⁹

The executive power, represented by the NSC and the Ministers of Justice and the Interior, does not, strictly speaking, exercise control over the civil intelligence service, the State Security.¹⁴⁰ Nevertheless, the State Security must carry out its investigations and conclude its cooperation agreements with the SGRS in conformity with the directives of the NSC.¹⁴¹

By contrast, the SGRS is monitored by the NSC and the Minister of Defence in certain instances, i.e. it needs the Minister of Defence's prior approval to intercept communications transmitted abroad.¹⁴² The use of an exceptional data collection method against natural or legal persons also requires prior approval by the NSC.¹⁴³



1.5.4 Table 1: Categories of powers exercised by the parliamentary committees, as established by law

The information contained in the table is accurate. The description of the powers exercised by the Belgian Monitoring Committee of the House of Representatives on page 35 remains up to date.¹⁴⁴

Member States	Essential powers	Enhanced powers
BE	X	

Note: Finland, Ireland, Malta and Portugal do not have parliamentary committees that deal with intelligence services.

¹³⁹ Belgium, [Organic Law on monitoring intelligence services, the police services and the Threat Assessment Coordination Body](#) (*Loi organique du contrôle des services de police et de renseignement et de l'Organe de coordination pour l'analyse de la menace/Wet tot regeling van het toezicht op politie- en inlichtingendiensten en op het Coördinatieorgaan voor de dreigingsanalyse*), 18 July 1991.

¹⁴⁰ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Articles 5§3 and 6.

¹⁴¹ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Articles 7, 2° and 20.

¹⁴² Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 47bis.

¹⁴³ Belgium, [Organic Law concerning the intelligence and security services](#) (*Loi organique des services de renseignement et de sécurité/Wet houdende regeling van de inlichtingen- en veiligheidsdienst*), 30 November 1998, Article 18/9§2.

¹⁴⁴ Belgium, [Organic Law on monitoring intelligence services, the police services and the Threat Assessment Coordination Body](#) (*Loi organique du contrôle des services de police et de renseignement et de l'Organe de coordination pour l'analyse de la menace/Wet tot regeling van het toezicht op politie- en inlichtingendiensten en op het Coördinatieorgaan voor de dreigingsanalyse*), 18 July 1991, Article 66bis.

1.5.5 Table 2: Expert bodies in charge of overseeing surveillance, EU-28

The information contained in the table remains accurate.

EU Member State	Expert Bodies
BE	Standing Intelligence Agencies Review Committee (<i>Vast Comité van Toezicht op de inlichtingen - en veiligheidsdiensten/Comité permanent de Contrôle des services de renseignement et de sécurité</i>) Administrative Commission (<i>Bestuurlijke Commissie/Commission Administrative</i>)

1.5.6 Table 3: DPAs' (Data Protection Authorities) powers over national intelligence services, EU-28

The information contained in the table remains accurate.

EU Member State	No powers	Same powers (as over other data controllers)	Limited powers
BE			X

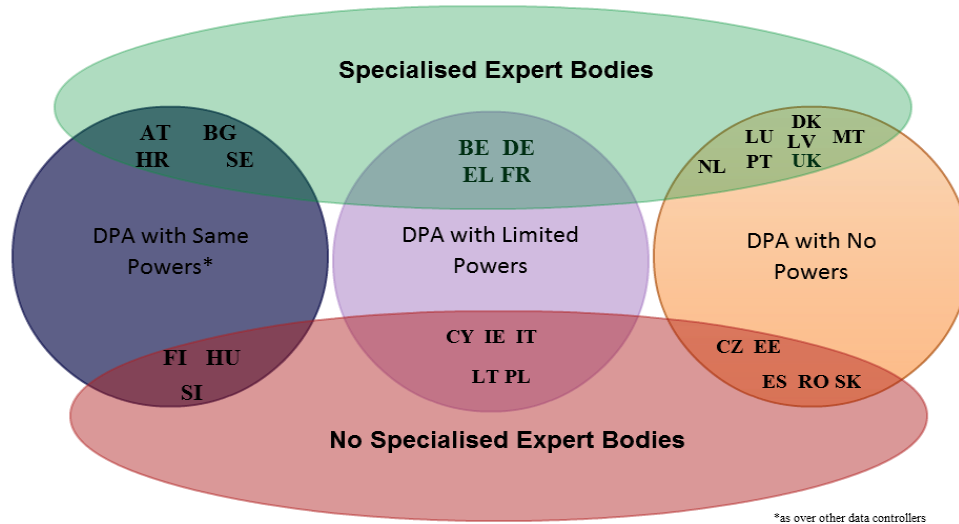
Notes: *No powers: refers to DPAs that have no competence to supervise NIS.*

Same powers: refers to DPAs that have the exact same powers over NIS as over any other data controller.

Limited powers: refers to a reduced set of powers (usually comprising investigatory, advisory, intervention and sanctioning powers) or to additional formal requirements for exercising such powers.

1.5.7 Figure 4: Specialised expert bodies and DPAs across the EU-28

The information contained in the figure is accurate.



1.5.8 Table 4: Prior approval of targeted surveillance measures, EU-28

As described on page 43 of the FRA Report, the implementation of an exceptional data collection method by the intelligence services requires the prior approval of the expert oversight body, the Administrative Commission.

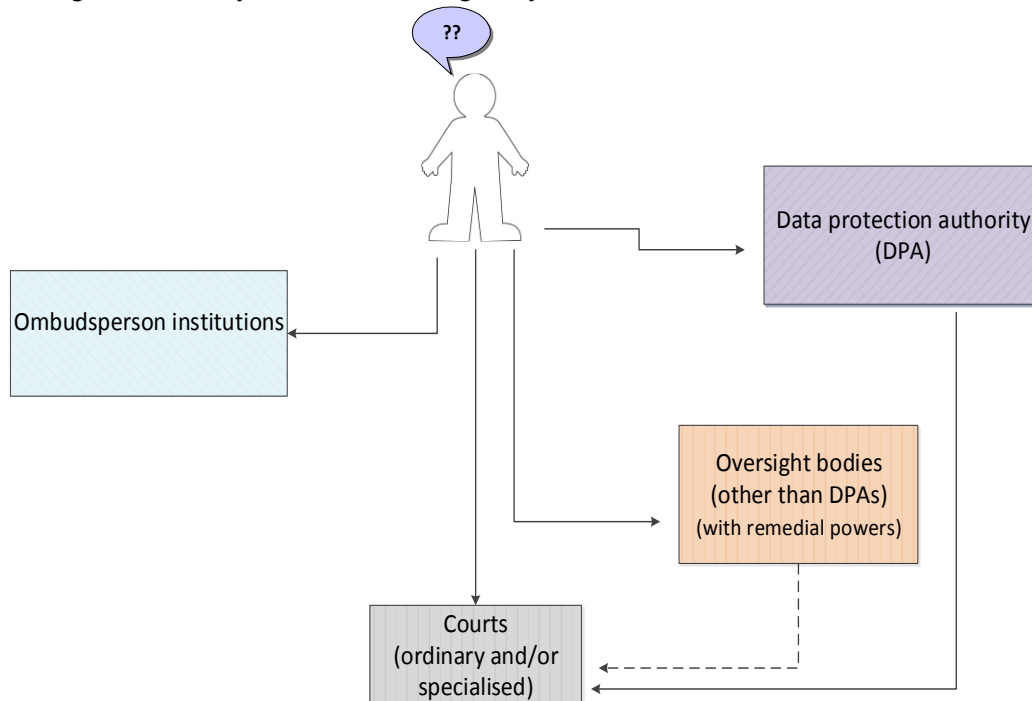
EU Member State	Judicial	Parliamentary	Executive	Expert bodies	None
BE				X	

1.5.9 Table 5: Approval of signals intelligence in France, Germany, the Netherlands, Sweden and the UK

EU Member State	Judicial	Parliamentary	Executive	Expert
FR			X	
DE		X (telco relations)		X (selectors)
NL			X (selectors)	
SE				X
UK			X	

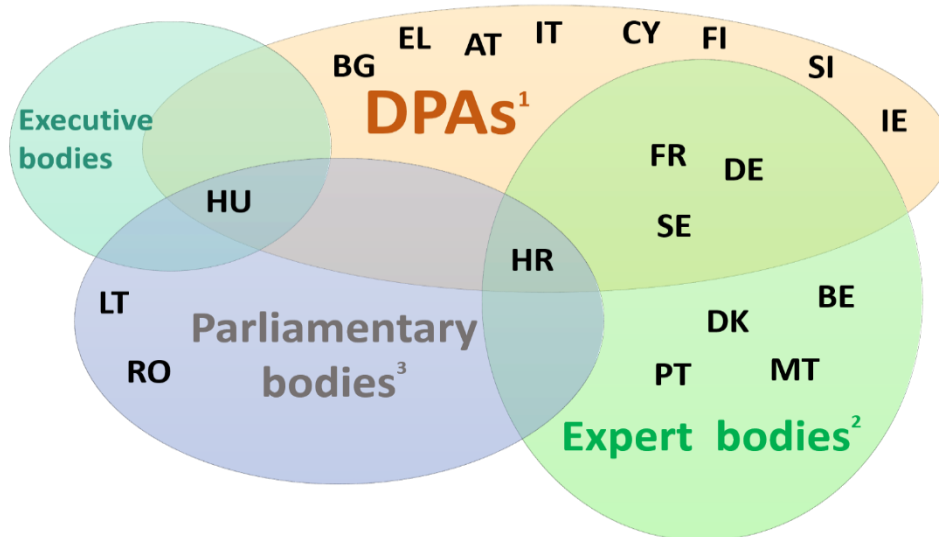
1.5.10 Figure 5: Remedial avenues at the national level

The figure accurately describes the Belgian system.



1.5.11 Figure 6: Types of national oversight bodies with powers to hear individual complaints in the context of surveillance, by EU Member States

The figure accurately describes the Belgian situation.



- Notes: 1. The following should be noted regarding national data protection authorities: In Germany, the DPA may issue binding decisions only in cases that do not fall within the competence of the G 10 Commission. As for “pen-sky data”, its competence in general, including its remedial power, is the subject of on-going discussions, including those of the NSA Committee of Inquiry of the German Federal Parliament
2. The following should be noted regarding national expert bodies: In Croatia and Portugal, the expert bodies have the power to review individual complaints, but do not issue binding decisions. In France, the National Commission of Control of the Intelligence Techniques (CNCTR) also only adopts non-binding opinions. However, the CNCTR can bring the case to the Council of State upon a refusal to its opinion. In Belgium, there are two expert bodies, but only Standing Committee I can review individual complaints and issue non-binding decisions. In Malta, the Commissioner for the Security Services is appointed by, and accountable only to, the Prime Minister. Its decisions cannot be appealed. In Sweden, seven members of the Swedish Defence Intelligence Commission are appointed by the government, and its chair and vice-chair must be, or have been, judges. The remaining members are nominated by parliament.
3. The following should be noted regarding national parliamentary oversight bodies: only the decisions of the parliamentary body in Romania are of a binding nature.