

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

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## Summary

- [1]. Given the present state of law, Luxembourgish legislation does not provide any legal basis for mass surveillance. Nonetheless, various social and political developments compelled the state to develop them in the interests of national protection. During the cold war, Luxembourg had prepared to protect the country from the Soviet Union threats. Under such circumstances, it created the State Intelligence Service SIS (*Service de renseignement de l'état, SREL*) whose mission of that time was to protect national secrets externally and secrets of the United States with whom Luxembourg was united by common defense agreements<sup>1</sup>.
- [2]. The Law establishing the SIS and its missions was reformed in the 2000s. The act of 15 June 2004<sup>2</sup> had been revised throughout the 2000s and the latest change was introduced in 2014. Thus, the new law corresponds to new realities, and has established legal framework of the State Intelligence Service, which is under the authority of the Prime Minister, Minister of State (Art. 1 of the Law). Within the framework of the missions of the SIS, articles 88-3 and 88-4 of the criminal investigation code entitle the Prime Minister to authorise specific and selective surveillance and monitoring by appropriate technical means of communications in order to search for offences and external security of the State. Art. 2 of the Law established the scope of the intelligence service, which includes the search, analysis and processing, with the purpose to prevent as well as to inform about any activity that threatens or could threaten the safety of the Grand Duchy of Luxembourg, or the states with which Luxembourg has common defense agreements. In this regard, in order to protect the state, the service is entitled to survey any activity within the country or from abroad. The act of 15 June 2004 specifies that data collection and its treatment is realised within the act of 2 August 2002 on the protection of persons with regard to the processing of personal data.
- [3]. The activities of the intelligence service are subject to a review by the Parliamentary Control Commission (*Commission de contrôle du service de renseignement de l'Etat*). (Art. 14)<sup>3</sup>. The Parliamentary Control Commission is composed of representatives of political parties of the parliament. Each member has one vote. The reporting meetings between the commission and the intelligence service are held in camera (*huis clos*). The Director of the SIS informs the Commission about general activities of the agency, including relations with the intelligence services and the foreign security. The Commission may conduct checks on specific issues. To this end, the Commission is authorised to have access to any information and documents it considers relevant to the performance of its duties, with the exception of information or documents that could reveal the identity of a source

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<sup>1</sup> Luxembourg, Act of 30 July 1960 regarding the creation of the National Solidarity Fund (*Loi du 30 juillet 1960 concernant la création d'un Fonds National de Solidarité*).

<sup>2</sup> Luxembourg, Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*), 16 March 2014.

<sup>3</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

service or that would impair the rights of third parties (art. 15)<sup>4</sup>. At the end of each review, the Commission files a confidential report that includes findings, conclusions and recommendations to its members. This report is addressed to the Prime Minister, Minister of State, the Director of the Intelligence Service and MPs who are members of the Parliamentary Control Commission. The Prime Minister, Minister of State, may request the Commission to prepare an opinion on matters related to the operation and activities of the Intelligence Service (Art 15.6). The Parliamentary Control Commission is informed every six months of surveillance measures of communications ordered by the Prime Minister, Minister of State at the request of the SIS. After this, the Parliamentary Control Commission submits an annual activity report to the House of Deputies (Art.15.6-7) which is not open to the public.

- [4]. The monitoring of access to databases by the SIS is exercised by a supervisory committee, which is composed by the State Prosecutor General or his delegate and two members of the National Commission on Data Protection (art.17.2 of the act of 2 August 2002<sup>5</sup>). Members of the committee are immediately informed during the data collection process or/and after the completion of it (Art.4.2. of 2004 law). The structure and functioning of this supervisory authority was to be defined by a Grand Ducal Regulation. However, as far as it was possible for us to assess, this Regulation has not been adopted yet (pp. 4-5)<sup>6</sup>. The Commission mentioned in paragraph 3 and this Committee do not have a legally defined relationship with each other.
- [5]. The act of 2002<sup>7</sup> on privacy protection applies to the data processing and to personal data processing for a filing system; the processing of data relating to public security, defence, seeking out and prosecuting criminal offences, or the state security, even if those data are related to a major economic or financial interest of the state. Moreover, Art. 3.3. of the same Law of 2002 specifies that “this law will not apply to processing carried out by a natural person pursuant exclusively to his personal or domestic activities.”
- [6]. With regard to processing in breach of the law, the act of 2 August 2002 specifies that, “any party (...) will be liable to a prison sentence of between eight days and

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<sup>4</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

<sup>5</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

<sup>6</sup> Luxembourg, House of Representatives (*Chambre des Députés*) (2013), Report monitoring the execution of the mission of the inspection authorities for 2013 (*Rapport rendant compte de l'exécution de la mission de l'autorité de contrôle pendant l'année 2013*), available at: [www.cnpd.public.lu/fr/publications/rapports/groupe\\_article17/rapport\\_13.pdf](http://www.cnpd.public.lu/fr/publications/rapports/groupe_article17/rapport_13.pdf) all hyperlinks were accessed on 18 August 2014.

<sup>7</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

one year and a fine of between 251 and 125,000 euros or only one of these penalties". The court may order the discontinuance of processing that is contrary to the Law.

- [7]. Article 28 of the Law<sup>8</sup> applies also to cases of surveillance. According to this article, any person may request (a) access to data related to him/her; (b) confirmation as to whether or not data relating to him are processed and information at least as to the purposes of the processing, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed. However, as allowed by Article 29 of the same Law<sup>9</sup>, the right of access to data may be restricted or deferred if necessary in order to safeguard the interests of (a) national security; (b) defense; (c) public safety. Furthermore, Art.29.(5) specifies that the controller "arranges for the rectification, deletion or blocking of data the processing of which does not comply with this law." The controller "may notify the data subject of the result of the investigations, while at the same time not endangering the purpose or purposes of the processing operations in question".
- [8]. In cases of surveillance, the right of access to personal data may only be exercised through the above-mentioned supervisory authority. Pursuant to Article 17 (2), par. 4, of the Law of 2002: "The supervisory authority will carry out the appropriate verification and investigations, arrange for any necessary rectifications and will inform the data subject that the processing in question does not contain any data contrary to the treaties, laws and implementing regulations."
- [9]. In 2013 Luxembourg Court began a "Bomber" (*Bommeleer*) trial, which involved the Secret Investigation Service and allegedly a secret police department and their activities in the 1980s. The report of the parliamentary committee of inquiry on the SIS<sup>10</sup> indicated the flaws of the secret service, its secret involvement with other bodies and the silencing of the SIS activities by the Ministry of State (Mr. Junker). The report concluded with recommendations, calling for more transparency and criminal responsibility of members of the SIS. Following the political scandal in 2013, Prime Minister Mr. Junker had to dissolve the parliament and call for new parliamentary elections. In 2014 the newly composed government with Mr. Bettel as new Prime Minister called for a reform of the SIS. In April 2014 a new draft bill was submitted which included critique of the SIS structure voiced in the last

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<sup>8</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

<sup>9</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

<sup>10</sup> Luxembourg, House of representatives (*Chambre des Députés*) (2013), Report of the commission of inquiry into the intelligence service status (*Rapport de la commission d'enquête sur le service de renseignement de l'état*) (5.7.2013) available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/136/267/123656.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/136/267/123656.pdf) all hyperlinks were accessed on 14 August, 2014.

report.<sup>11</sup> 2012 government program stated that "in order to implement the conclusions of the final report of the parliamentary committee of inquiry on the State Intelligence Service, the duties of SIS (*SREL*) are to be redefined. Any form of monitoring political connotation is to be prohibited. A specific legal framework will be established for the use of operational resources service" (p.9)<sup>12</sup>.

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<sup>11</sup> Luxembourg, draft bill N° 6675 o the organisation oft he Secret Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), available at: [www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6675](http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6675) all hyperlinks were accessed on 09 September 2014.

<sup>12</sup> Luxembourg (2012), Governmental programme (*Programme gouvernemental*), available at: [www.gouvernement.lu/3322796/Programme-gouvernemental.pdf](http://www.gouvernement.lu/3322796/Programme-gouvernemental.pdf) , all hyperlinks were accessed on 09 September 2014.

## Annex 1 – Legal Framework relating to mass surveillance

### A- Details on legal basis providing for mass surveillance

| Name and type of the mass surveillance-related law  | A definition of the categories of individuals liable to be subjected to such surveillance | Nature of circumstances which may give rise to surveillance | List purposes for which surveillance can be carried out       | Previous approval / need for a warrant   | List key steps to be followed in the course of surveillance  | Time limits, geographical scope and other limits of mass surveillance as provided for by the law  | Is the law allowing for mass surveillance in another country (EU MS or third countries)? |
|---|---|---|---|--|--|---|--|
| <p><i>Full name in English and national languages indicating its type – Act of the parliament, Government order, etc.</i></p> |   |   | <p><i>National security, economic well-being, etc....</i></p> | <p><i>Indicate whether any prior/ex post judicial warrant or a similar permission is needed to undertake surveillance and whether such approval/warrant needs to be regularly reviewed</i></p> | <p><i>See for example the principles developed by the European Court of Human Rights in the case of Weber and Saravia v. Germany, (dec.) n°<a href="#">54934/00</a>, 29 June 2006, para. 95</i></p> <p><i>Steps could include collecting data, analysing data, storing data, destroying data, etc.</i></p> | <p><i>Clearly state if there are any existing limitations in terms of nationality, national borders, time limits, the amount of data flow caught etc.</i></p> | <p><i>Please, provide details</i></p>  |

| Name and type of the mass surveillance-related law  | A definition of the categories of individuals liable to be subjected to such surveillance  | Nature of circumstances which may give rise to surveillance   | List purposes for which surveillance can be carried out                                | Previous approval / need for a warrant  | List key steps to be followed in the course of surveillance | Time limits, geographical scope and other limits of mass surveillance as provided for by the law   | Is the law allowing for mass surveillance in another country (EU MS or third countries)? |
|---|--|---|--|---|---|--|--|
| <p>State Intelligence service, SIS (<i>Service de renseignement de l'état, SREL</i>)</p> <p>Act of 15 June 2004<sup>13</sup> on the organisation of the State Intelligence Service (<i>loi du 15 juin 2004 portant organisation du Service de</i></p> | <p>Art 4. Act of 15 June 2004<sup>14</sup> ( 4.1 and 4.4): Any natural or legal person</p> | <p>Art 2. Act of 15 June 2004<sup>15</sup>: - for preventive reasons the service is allowed to search, analyse information about any activity that threatens or could threaten the safety of the Grand Duchy of Luxembourg, the states with which it is bound by an</p> | <p>National security as defined in the Art 2. of Act of 15 June 2004<sup>16</sup>)</p> | <p>No need for a judicial warrant, no other permission, but communication to the commission composed of the Minister of State and 2 Data Protection officers.</p> <p>Art.12.3(J) of the act of 2 August 2002<sup>17</sup> draws circumstances under which SIS (<i>SREL</i>) does not need to obtain a</p> | <p>N/A.the law does not specify it</p>                      | <p>No limitations, any activity, individual or collective, deployed within the country or from abroad:</p> <p>art 4.3 of the Act of 15 June 2004<sup>18</sup> on the SIS limits mass surveillance that go beyond missions SIS (<i>SREL</i>).</p> | <p>N.A the law does not include provisions on mass surveillance.</p>                     |

<sup>13</sup> Luxembourg, Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*), 16 March 2014.

<sup>14</sup> Luxembourg, Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*), 16 March 2014.

<sup>15</sup> Luxembourg, Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*), 16 March 2014.

<sup>16</sup> Luxembourg, Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*), 16 March 2014.

<sup>17</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*), 13 August 2002.

<sup>18</sup> Luxembourg, Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*), 16 March 2014.

| Name and type of the mass surveillance-related law | A definition of the categories of individuals liable to be subjected to such surveillance | Nature of circumstances which may give rise to surveillance   | List purposes for which surveillance can be carried out | Previous approval / need for a warrant   | List key steps to be followed in the course of surveillance | Time limits, geographical scope and other limits of mass surveillance as provided for by the law | Is the law allowing for mass surveillance in another country (EU MS or third countries)? |
|--|---|---|---|--|---|--|--|
| <i>Renseignement de l'Etat)</i>                    |   | <p>agreement to common defense.</p> <p>The service can carry out safety investigations required by law (or withing international law)</p> |   | <p>permission from the <u>comission</u>: “The processing of data of a personal nature carried out by administrative authorities if the processing is subject to specific regulations by or by virtue of the law regulating access to the data processed and its use and the manner in which it is obtained”.</p> |   |  |  |



## B- Details on the law providing privacy and data protection safeguards against mass surveillance

| <p><b>Please, list law(s) providing for the protection of privacy and data protection against unlawful surveillance</b></p>   | <p><b>List specific privacy and data protection safeguards put in place by this law(s)</b></p>   | <p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only to nationals or also to EU citizens and/or third country nationals</b></p> | <p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only inside the country, or also outside (including differentiation if EU or outside EU)</b></p>   |
|---|--|--|---|
| <p><i>Include a reference to specific provision and describe their content</i></p>  | <p><i>e.g. right to be informed, right to rectification/deletion/blockage, right to challenge, etc.</i></p>  | <p><i>Please, provide details</i></p>  | <p><i>Please, provide details</i></p>   |
| <p>Art.11.3 of the constitution</p>   | <p>Right to private life without exception</p>   | <p>Any individual</p>  | <p>On the territory of the country</p>  |
| <p>Art.3.1.3. of the act of 2 August 2002<sup>19</sup> on the protection of individuals with regard to processing of personal data privacy law specifies that it is applicable to “the processing of data</p> | <p>- Right to access (Art. 17 of the act 2 August 2002<sup>20</sup>) (Commission of the Minister of State and 2 Data Protection Officers intermediate between the SIS (<i>SREL</i>) and the individual) Art. 17 of the Law states that: “the right of access to data may be exercised only through the</p> | <p>Any individual</p>  | <p>On the territory of the country</p> <p>Art. 3.2 act 2 August 2002<sup>23</sup> specifies: (a) data processing by a controller established on the territory of the Grand Duchy of Luxembourg; (b) not based on Luxembourg territory or the territory of any other Member State of the</p> |

<sup>19</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

<sup>20</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

<sup>23</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 14 August 2014.

|   |   |  |  |
|---|---|--|--|
| <p>relating to public security, defence, seeking out and prosecuting criminal offences, or the State security, even if those data are related to a major economic or financial interest of the”</p> | <p>supervisory authority (Commission of the Minister of State and 2 members of the DPA). The supervisory authority will carry out the appropriate verification and investigations, arrange for any necessary rectifications and will inform the data subject that the processing in question does not contain any data contrary to the treaties, laws and implementing regulations”.</p> <p>- Act of 2 August 2002 (Art .29)<sup>21</sup> specifies exception (might refuse in these circumstances) the act of 2 August 2002<sup>22</sup> (Art.3.1.3.) also specifies that it is applicable to “the processing of data relating to public security, defence, seeking out and prosecuting criminal offences, or the State security, even if those data are related to a major economic or financial interest of the State”</p> |  | <p>European Union but that uses processing resources situated in Luxembourg.</p> |
|---|---|--|--|

<sup>21</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

<sup>22</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002..

## Annex 2 – Oversight bodies and mechanisms

| Name of the body/mechanism  | Type of the body/mechanism                                      | Legal basis   | Type of oversight   | Staff  | Powers  |
|---|---|---|---|--|---|
| <i>in English as well as in national language</i>   | <i>e.g. parliamentary, executive/government, judicial, etc.</i> | <i>name of the relevant law, incl. specific provision</i> | <i>ex ante / ex post / both/ during the surveillance/etc. as well as whether such oversight is ongoing/regularly repeated</i> | <i>including the method of appointment of the head of such body AND indicate a total number of staff (total number of supporting staff as well as a total number of governing/managing staff) of such body</i>   | <i>e.g. issuing legally binding or non-binding decisions, recommendations, reporting obligation to the parliament, etc.</i>   |
| The Parliamentary Control Commission<br>( <i>Commission de control du service se Renseignement de l' état</i> ) | Parliamentary   | Art.14 - 15 of the act of 15 June 2004 <sup>24</sup>      | No exact time period, any time , ex-post (report on activities in the form of report to the parliament control commission)    | The Parliamentary Control Commission is composed of the representatives of elected political parties. <sup>25</sup> (4 members of political parties: LSAP, DP, Green Party) and a Secretary, 5 in total) <sup>26</sup> . They are appointed by their political party members (Art. 2 of the act of 15 June 2004 <sup>27</sup> ). Each member has one vote. <sup>28</sup> | Controlling powers (the Commission can receive information considered important to exercise its controlling powers); each controlling activity shall be finalised with a confidential report.<br><br>Issuing non-binding recommendations. |

<sup>24</sup> Luxembourg, Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*), 16 March 2014.

<sup>25</sup> Luxembourg, Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*), 16 March, 2014.

<sup>26</sup> Luxembourg, Rules of the house of representatives (*Règlement de la chambre des députés*), 21 December, 2012. All hyperlinks were accessed on 14 August, 2014.

<sup>27</sup> Luxembourg, Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*), 16 March, 2014.

<sup>28</sup> Luxembourg, act of 27 June 2014 on the Rules of the House of Deputies (*Règlement de la Chambre des Députés*), 09 September 2014.

|  |                                     |   |   |   |   |
|--|-------------------------------------|---|---|---|---|
|  |                                     |   |   |   | Reporting obligation to the parliament (once per year)  |
| Supervisory authority of the National Data Protection Committee (specified under the art. 17 of the act of 2 August 2002) ( <i>l'autorité de contrôle</i> visée à l'article 17, paragraphe (2) de la loi modifiée du 2 août 2002). <sup>29</sup> | Supervisory [independent authority] | art 17.2 act of of 2 August 2002 <sup>30</sup><br>Art. 4 (2) of the act of 15 June 2014 <sup>31</sup> | -During the surveillance Art 17. 2. specifies that the to ensure that treatments are carried out in accordance with the legal provisions that govern them. The Supervisory authority of the National Data Protection Committee should be “informed immediately” by the body (i.e.SREL) that processes the data.<br><br>-ex-post (art 4.2 of the act of 15 June 2004 <sup>32</sup> ) | 3 members have mandates: supervisory authority is made up of the State Prosecutor ( <i>Procureur Général d'Etat</i> ) or his deputy who will act as its chairman and two members of the National Commission on data protection, appointed by the Minister's proposal (ministerial order ( <i>arrêté ministériel</i> )). | Monitoring powers (Art 17.2. of the act of 2 August 2002) <sup>33</sup><br><br>Art. 17.2. of the act of 15 June 2004 states that the structure and functioning of this supervisory authority is to be defined by a Grand Ducal Regulation. However, as far as it was possible for us to assess, this Regulation has not yet been adopted. |

<sup>29</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

<sup>30</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

<sup>31</sup> Luxembourg, Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*), 16 March 2014.

<sup>32</sup> Luxembourg, Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*), 16 March 2014.

<sup>33</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

## Annex 3 – Remedies<sup>34</sup>

| [Act of 2 August 2002 on the protection of persons with regard to the processing of personal data ( <i>Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel</i> ) ] |   |   |   |  |
|--|---|---|---|--|
| Stages of surveillance process   | Is the subject informed?  | Does the subject have a right of access to the data collected on him/her? | List remedies available to an individual concerned  | Legal basis for using the available remedies   |
|  | <i>Yes/No</i>   | <i>Yes/No, please provide details if needed</i>                           | <i>Please list the type of remedial action that can be taken: e.g.: claims lodged with court(s), claims lodged with the oversight body, request to the surveillance authority, etc. AND please specify also the name (e.g. Supreme Court) and type of the body (e.g. judicial, executive, parliamentary) providing such remedies.</i> | <i>Violation of data protection, private life, specific legislation, etc.</i>            |
| <b>Collection*</b>   | No  | Yes (Art. 28 of the act of 2 August 2002 <sup>35</sup> )                  | claims lodged with court by the presiding judge (civil court) of the district where the processing operation was carried out (Art. 39 of the act of 2 August 2002).   | Violations of the provisions of law (Art. 39 of the act of 2 August 2002 <sup>36</sup> ) |
|  | Act of 2002 (Art. 17): supervisory authority (State prosecutor and 2 National Commission for Data | No  | N.A:  | Violations of the provisions of law (Art. 39 of the act of 2                             |

<sup>34</sup> In case of different remedial procedures please replicate the table for each legal regime.

\* For the definitions of these terms, please refer to the FRA/CoE (2014), *Handbook on European data protection law*, Luxembourg, 2014, pp. 46-47, available at: <http://fra.europa.eu/en/news/2014/council-europe-and-eu-fundamental-rights-agency-launch-handbook-european-data-protection>

<sup>35</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

<sup>36</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

|                  |  |  |  |  |
|------------------|--|--|--|--|
|                  | Protection) should be immediately informed of a data processing operation It will ensure that the said processing operations are carried out in accordance with the legal provisions that govern them. In order to perform its function, the supervisory authority will have direct access to the data processed. It may perform on-site checks, obtain documents and any information. <sup>37</sup> |  |  | August 2002 <sup>38</sup>  |
| <b>Analysis*</b> | No   | Yes (Art. 28 of the act of 2 August 2002 <sup>39</sup> ) | Claims lodged with court by the presiding judge of the district where the processing operation was carried out (Art. 39 of the act of 2 August 2002) | Violations of the provisions of law (Art. 39 of the act of 2 August 2002 <sup>40</sup> ) |
|                  | No<br>Act of 2002 (Art. 17): supervisory authority (State prosecutor and 2 National Commission for Data Protection) should be immediately informed of a data processing operation It will ensure that the said processing operations are   | No   | N.A:   | Violations of the provisions of law (Art. 39 of the act of 2 August 2002 <sup>42</sup> ) |

<sup>37</sup> Luxembourg, Information is provided by the State Intelligence Service (*Service de renseignement de l'état, SREL*) upon request (letter of 4 September 2014).

<sup>38</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

<sup>39</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

<sup>40</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002

<sup>42</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

|                 |  |  |                                      |  |
|-----------------|--|--|--------------------------------------|--|
|                 | carried out in accordance with the legal provisions that govern them. In order to perform its function, the supervisory authority will have direct access to the data processed. It may perform on-site checks, obtain documents and any information. <sup>41</sup>  |  |                                      |  |
| <b>Storing*</b> | No   | Yes (Art. 28 of the act of 2 August 2002 <sup>43</sup> ) | <i>N.a. the law does not specify</i> | Violations of the provisions of law (Art. 39 of the act of 2 August 2002 <sup>44</sup> ) |
|                 | No. Act of 2002 (Art. 17): supervisory authority (State prosecutor and 2 National Commission for Data Protection) should be immediately informed of a data processing operation It will ensure that the said processing operations are carried out in accordance with the legal provisions that govern them. In order to perform its function, the supervisory authority will have direct access to the data processed. It may perform on-site checks, | No   | N.A:                                 | Violations of the provisions of law (Art. 39 of the act of 2 August 2002 <sup>46</sup> ) |

<sup>41</sup> Luxembourg, Information is provided by the State Intelligence Service (*Service de renseignement de l'état, SREL*) upon request (letter of 4 September 2014).

<sup>43</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

<sup>44</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 14 August 2014

<sup>46</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

|   |  |   |                           |  |
|---|--|---|---------------------------|--|
|   | obtain documents and any information. <sup>45</sup>  |   |                           |  |
| <b>Destruction*</b>                                   | no   | n.a. ( Art. 28 of the act of 2 August 2002 <sup>47</sup> does not foresee it) | n.a. no law foresees that | n.a. no law foresees that  |
|   | No. Act of 2002 (Art. 17): supervisory authority (State prosecutor and 2 National Commission for Data Protection) should be immediately informed of a data processing operation It will ensure that the said processing operations are carried out in accordance with the legal provisions that govern them. In order to perform its function, the supervisory authority will have direct access to the data processed. It may perform on-site checks, obtain documents and any information. <sup>48</sup> | No  | N.A:                      | Violations of the provisions of law (Art. 39 of the act of 2 August 2002 <sup>49</sup> ) |
| <b>After the whole surveillance process has ended</b> | No   | Yes (Art. 28 of the act of 2 August 2002)                                     | n.a. no law foresees that | n.a. no law foresees that  |

<sup>45</sup> Luxembourg, Information is provided by the State Intelligence Service (*Service de renseignement de l'état, SREL*) upon request (letter of 4 September 2014).

<sup>47</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.

<sup>48</sup> Luxembourg, Information is provided by the State Intelligence Service (*Service de renseignement de l'état, SREL*) upon request (letter of 4 September 2014).

<sup>49</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*). 13 August 2002.



## Annex 4 – Surveillance-related case law at national level

Please provide a maximum of three of the most important national cases relating to surveillance. Use the table template below and put each case in a separate table.

|  |                    |
|--|--------------------|
| <b>Case title</b>  |                    |
| <b>Decision date</b>   | N.A. <sup>50</sup> |
| <b>Reference details (type and title of court/body; in original language and English [official translation, if available])</b> |                    |
| <b>Key facts of the case (max. 500 chars)</b>  |                    |
| <b>Main reasoning/argumentation (max. 500 chars)</b>   |                    |
| <b>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</b>   |                    |
| <b>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</b>                                   |                    |

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<sup>50</sup> Luxembourg, we contacted Advisor to the Court of Appeal (*conseillère à la Cour d'appel*) who searched through the internal database and could not identify any case law specific to mass surveillance (e-mail of 23 July 2014 and a meeting on 23 July 2014).

## Annex 5 – Key stakeholders at national level

Please list all the key stakeholders in your country working in the area of surveillance and divide them according to their type (i.e. public authorities, civil society organisations, academia, government, courts, parliament, other). Please provide name, website and contact details.

| <b>Name of stakeholder</b><br>(in English as well as your national language)                         | <b>Type of stakeholder</b><br>(i.e. public authorities, civil society organisations, academia, government, courts, parliament, other) | <b>Contact details</b>   | <b>Website</b>   |
|--|---|--|--|
| <b>parliament</b>  | <i>parliament</i>   |  |  |
| <b>National Commission for Data Protection (Commission nationale pour la protection des données)</b> | Public authority  | 1, avenue du Rock'n'Roll<br>L-4361 Esch-sur-Alzette<br>Tél.: (+352) 26 10 60-1 Fax:<br>(+352) 26 10 60-29<br>info@cnpd.lu  | <a href="http://www.cnpd.public.lu/fr/index.html">www.cnpd.public.lu/fr/index.html</a>   |
| <b>Parliament committee</b>  | Public authority  | <u>Lsap:</u><br>68, rue de Gasperich,<br>Luxembourg<br><u>Demokratesch Partei:</u><br>9, rue du St. Esprit L-1475<br>Luxembourg Tel : 22 41 84<br>1<br>Fax : 47 10 07<br>groupdp@chd.lu<br>Dei Greng (Green Party):<br>3, rue du Fossé,<br>L-1536 Luxembourg | <a href="http://www.dp.lu">www.dp.lu</a><br><a href="http://www.lsap.lu">www.lsap.lu</a><br><a href="http://www.greng.lu">www.greng.lu</a> |

|  |                    |  |   |
|--|--------------------|--|---|
|  |                    | <p>Tél +352 27 48 27 1<br/> Fax +352 27 48 27 22<br/> greng@greng.lu<br/> ADR:20, rue de l'eau L-1449<br/> Lëtzebuerg<br/> Tel.: 26 203 706<br/> Fax: 26 20 37 36<br/> Mail: info@adr.lu</p>   |   |
| <b>Ministry of justice, judges</b>   | Government, courts | <p>13, rue Erasme<br/> L-2934 Luxembourg<br/> Tél: (+352) 247-84537<br/> Fax: (+352) 26 68 48 61<br/> E-mail: info@mj.public.lu</p>  | <p><a href="http://www.mj.public.lu/functions/contact/index.php">www.mj.public.lu/functions/contact/index.php</a><br/> <a href="http://www.justice.public.lu/fr/index.html">www.justice.public.lu/fr/index.html</a></p> |
| <b>Transparency international</b>  | NGO                | <p>27, rue Jean-Baptiste<br/> Esch, L-1743</p>   | <p><a href="http://www.transparency.lu">www.transparency.lu</a></p>   |
| <b>SnT - Interdisciplinary Centre for Security, Reliability and Trust, University of Luxembourg</b>                                | academia           | <p>6, rue Richard Coudenhove-Kalergi L-1359 Luxembourg-Kirchberg T.:+352 466644 5721 F.: +352 466644 5669 Email: snt@uni.lu</p>  | <p><a href="http://wwwen.uni.lu/snt/contact">wwwen.uni.lu/snt/contact</a></p>   |
| <b>Mark D. Cole, professor at the SnT - Interdisciplinary Centre for Security, Reliability and Trust, University of Luxembourg</b> | academia           | <p>Faculté de Droit, d'Economie et de Finance<br/> Research Unit LDE<br/> Postal Address Weicker Building,<br/> Université du Luxembourg<br/> 4, rue Alphonse Weicker<br/> L-2721 Luxembourg<br/> Campus Office C205</p> <p>mark.cole@uni.lu<br/> Tel : +352 46 66 44 6824</p> | <p><a href="http://wwwen.uni.lu/recherche/fdef/droit/equipe/mark_cole">wwwen.uni.lu/recherche/fdef/droit/equipe/mark_cole</a></p>   |

## Annex 6 – Indicative bibliography

Please list relevant reports, articles, studies, speeches and statements divided by the following type of **sources** (*in accordance with FRA style guide*):

1. 1. Government/ministries/public authorities in charge of surveillance
  - Luxembourg, House of representatives (Chambre des Députés) (2013), Report of the commission of inquiry into the intelligence service status (*Rapport de la commission d'enquête sur le service de renseignement de l'état*) (5.7.2013) available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/136/267/123656.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexpdata/Mag/136/267/123656.pdf) all hyperlinks were accessed on 14 August, 2014.
  - Luxembourg, National Commission for Data Protection (*Commission nationale pour la protection des données*) (2013), Opinion of the National Commission for Data Protection on the Grand Ducal Decree draft pursuant to Article 4 of the amended act of 15 June 2004 on the organisation of the Intelligence Service (*Avis de la commission nationale pour la protection des données relatif à l'avant-projet de règlement grand-ducal pris en exécution de l'article 4 de la loi modifiée du 15 juin 2004 portant organisation du Service de renseignement de l'état*), available at: [www.cnpd.public.lu/fr/decisions-avis/2013/06/sre/274\\_2013\\_Deliberation\\_Ministere-d\\_Etat\\_avis-organisation-SRE.pdf](http://www.cnpd.public.lu/fr/decisions-avis/2013/06/sre/274_2013_Deliberation_Ministere-d_Etat_avis-organisation-SRE.pdf) all hyperlinks were accessed on 14 August, 2014.
2. National human rights institutions, ombudsperson institutions, national data protection authorities and other national non-judicial bodies/authorities monitoring or supervising implementation of human rights with a particular interest in surveillance
  - Non-governmental organisations (NGOs) Luxembourg, Transparency International Luxembourg (2013), Communiqué de presse Rapport commission d'enquête SREL (11.07.2013), available at: [www.transparency.lu/wp-content/uploads/2013/07/Communiqué-de-presse-SREL-11.7.2013.pdf](http://www.transparency.lu/wp-content/uploads/2013/07/Communiqué-de-presse-SREL-11.7.2013.pdf) all hyperlinks were accessed on 14 August, 2014.
  - Luxembourg, Transparency International Luxembourg (2013), Providing an Alternative to Silence: Towards Greater Protection and Support for Whistleblowers in the EU, available at: [www.transparency.lu/wp-content/uploads/2013/12/Luxembourg-ATS-Providing-an-alternative-to-silence-Country-Report-ENG-v4.11.2013-Clean.pdf](http://www.transparency.lu/wp-content/uploads/2013/12/Luxembourg-ATS-Providing-an-alternative-to-silence-Country-Report-ENG-v4.11.2013-Clean.pdf) all hyperlinks were accessed on 14 August, 2014.
3. Academic and research institutes, think tanks, investigative media report.

No publications found<sup>51</sup>

4. Non-governmental organisations (NGOs)’’

No publications found<sup>52</sup>

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<sup>51</sup> We searched the university platform ([www.uni.lu](http://www.uni.lu)) as well as Statistics Institute ([www.statec.lu](http://www.statec.lu)) no result have been found.

<sup>52</sup> To our knowledge, there are no NGOs working in this field. No results have been found.