

**Unofficial English translation – Consolidated
version¹**

Translated by Johan Vandendriessche²

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Article 1.

¹ This version is consolidated to 1 June 2016. Bibliographical information can be found at the end of this document.

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This Act governs a matter referred to in article 78 of the Constitution.

CHAPTER I. – Definitions

Article 2.

For the purposes of this Act, the terms hereunder shall mean:

1° unenclosed area: every area that has not been demarcated by an enclosure and that is freely accessible to the public;

2° enclosed area accessible to the public: every enclosed building or every enclosed area destined to be used by the public, where services can be rendered to the public;

3° enclosed area not accessible to the public: every enclosed building or every enclosed area that is exclusively destined for the use by its habitual users;

4° surveillance camera: every fixed or mobile observation system that serves to prevent, establish or detect offences against persons or goods, or any nuisance within the meaning of Article 135 of the New Municipalities Act, or to maintain the public order and that collects, processes or stores images to that end; the surveillance camera that is moved during an observation in order to film from various places and locations, shall be deemed a mobile camera;

5° data controller: the natural or legal person, the association without legal personality or the public authority which alone or jointly with others determines the purpose and means of the processing of personal data;

6° the Act of 8 December 1992: the Act of 8 December 1992 on privacy protection in relation to the processing of personal data.

CHAPTER II. – Scope and relation to other legislation.

Article 3.

This Act governs the installation and the use of surveillance cameras with the purpose of monitoring and supervising the areas referred to in article 2.

This Act does not govern the installation and the use of:

1° surveillance cameras governed by or by virtue of specific legislation;

2° surveillance cameras on the work floor ensuring security and health, the protection of the goods of the company, the supervision of the production process and the supervision of the work of the employee.

Article 4.

The Act of 8 December 1992 applies, except in those cases where this Act explicitly provides otherwise.

CHAPTER III. – Conditions under which the installation and use of fixed surveillance cameras is allowed

Article 5.

§1. The decision to install one or more surveillance cameras in an unenclosed area is made by the data controller.

§ 2. The decision referred to in § 1 shall be made only after having received a positive advice from the municipality council of the municipality in which the area is located.

The municipality council shall issue its advice after having consulted the chief of police of the police area in which that area is situated.

§ 3. The data controller communicates the decision referred to in §1 to the Commission for the protection of privacy and to the chief of police of the police area in which the camera is located. He shall do so at the latest on the day that precedes the day the surveillance camera or surveillance cameras are put in use.

The King is to determine by royal decree after having taken advice from the Commission for the protection of privacy, the form and contents of the standard form that must be used on that occasion, as well as the manner in which this form must be communicated to the Commission for the protection of privacy and to the chief of police of the police area where the unenclosed area is located. The data controller shall confirm in this form that the installation and the intended use of the camera or cameras is compliant with the principles of the Act of 8 December 1992.

The data controller shall place a pictogram indicating the surveillance by camera at the entry of the unenclosed area. The King is to determine by royal

decree after having taken advice from the Commission for the protection of privacy, the model of that pictogram and the indications it must mention.

The data controller shall ensure that the surveillance camera or cameras are not specifically directed at an area for which he does not process the data, unless he has explicitly obtained consent therefore from the data controller for the area to be placed under surveillance.

§4. The viewing of these images in real time shall only be permitted under the supervision of the police forces to enable the competent services to intervene immediately in case of offence, damage, nuisance or disturbance of the public order and to direct this intervention in an optimal manner.

The King is to determine by royal decree deliberated in the Council of Ministers and after having taken advice from the Commission for the protection of privacy, the conditions permitting the viewing of the images and designating these persons that act under the supervision of the police forces.

The recording of images shall only be permitted to gather evidence of nuisance or facts that qualify as an offence or that cause damage and to detect or identify perpetrators, persons that disturb the public order, witnesses or victims.

If the images cannot contribute to the evidence of an offence, damage or a nuisance, or to the identification of a perpetrator, a person disturbing the public order, a witness or a victim, they shall not be stored for a period longer than one month.

Article 6.

§ 1. The decision to install one or more surveillance cameras in an enclosed area accessible to the public is made by the data controller.

§ 2. The data controller communicates the decision referred to in §1 to the Commission for the protection of privacy and to the chief of police of the police area in which the area is located. He shall do so at the latest on the day that precedes the day the surveillance camera or surveillance cameras are put in use.

The King is to determine by royal decree after having taken advice from the Commission for the protection of privacy, the form and contents of the standard form that must be used on that occasion, as well as the manner in which this form must be communicated

to the Commission for the protection of privacy and to the chief of police of the police area where the unenclosed area is located. The data controller shall confirm in this form that the installation and the intended use of the camera or cameras is compliant with the principles of the Act of 8 December 1992.

The data controller shall place a pictogram indicating the surveillance by camera at the entry of the enclosed area accessible to the public. The King is to determine by royal decree after having taken advice from the Commission for the protection of privacy, the model of that pictogram and the indications it must mention.

The data controller shall ensure that the surveillance camera or cameras are not specifically directed at an area for which he does not process the data.

§ 3. The viewing of these images in real time shall only be permitted to enable an immediate intervention in case of offence, damage, nuisance or disturbance of the public order.

The recording of images shall only be permitted to gather evidence of nuisance or facts that qualify as an offence or that cause damage and to detect or identify perpetrators, persons that disturb the public order, witnesses or victims.

If the images cannot contribute to the evidence of an offence, damage or a nuisance, or to the identification of a perpetrator, a person disturbing the public order, a witness or a victim, they shall not be stored for a period longer than one month.

Article 7.

§ 1. The decision to install one or more surveillance cameras in an enclosed area not accessible to the public is made by the data controller.

§ 2. The data controller communicates the decision referred to in §1 to the Commission for the protection of privacy and to the chief of police of the police area in which the area is situated. He shall do so at the latest on the day that precedes the day the surveillance camera or surveillance cameras are put in use.

The King is to determine by royal decree after having taken advice from the Commission for the protection of privacy, the form and contents of the standard form that must be used on that occasion, as well as the manner in which this form must be communicated to the Commission for the protection of privacy and to

the chief of police of the police area where the unenclosed area is located. The data controller shall confirm in this form that the installation and the intended use of the camera or cameras is compliant with the principles of the Act of 8 December 1992.

The decision must not be communicated to the Commission for the protection of privacy and to the chief of police of the police area in which the area is situated, if the surveillance camera or cameras are used by a physical person for a personal or household activity.

The data controller shall place a pictogram indicating the surveillance by camera at the entry of the enclosed area not accessible to the public. The King is to determine by royal decree after having taken advice from the Commission for the protection of privacy, the model of that pictogram and the indications it must mention.

The data controller shall ensure that the surveillance camera or cameras are not specifically directed at an area for which he does not process the data. In case of surveillance of a private entry opposite to an unenclosed area or an enclosed area accessible to the public, the surveillance camera or camera shall be placed in such a manner as to limit the surveillance of that area to a strict minimum.

§ 3. If the images cannot contribute to the evidence of an offence, damage or a nuisance, or to the identification of a perpetrator, a person disturbing the public order, a witness or a victim, they shall not be stored for a period longer than one month.

CHAPTER III/1. – Conditions under which the use of mobile surveillance cameras is allowed

Article 7/1.

The police forces may use mobile surveillance cameras in the context of mass meetings, as referred to in article 22 of the Act of 5 August 1992 on police forces, as well as for automatic number plate recognition. It relates solely to non-permanent assignments that are moreover performed during a limited time.

Mobile surveillance cameras can be used in an unenclosed area or in an enclosed area accessible to the public.

Article 7/2.

§1. The decision to use mobile surveillance cameras in an unenclosed area is made by the officer of

administrative police that has been trusted with the operational responsibility in accordance with the article 7/1 to 7/4 of the Act of 5 August 1992 on police forces. He informs the concerned mayor or mayors thereof as soon as possible.

§2. The decision to use mobile surveillance cameras in an enclosed area accessible to the public is made by the mayor.

The operational responsibility is assumed by the officer of administrative police designated in accordance with article 7/1 to 7/4 of the Act of 5 August 1992 on police forces.

The latter can only decide himself to proceed with the use of mobile cameras in the case of the most extreme urgency. He must inform the concerned mayor thereof immediately.

§ 3. The officer of administrative police referred to in paragraphs 1 and 2 shall ensure that the use of the cameras is effective and efficient and compliant with the principles established by the Act of 8 December 1992.

When the officer of administrative police decides to proceed with the use of mobile cameras in the context of mass meetings, he shall inform the Commission for the protection of privacy about that decision at the latest on the day that precedes the day of the abovementioned meetings, except in case of urgent necessity. In the latter case, he must inform the Commission for the protection of privacy at the latest within seven days.

When the officer of administrative police decides to proceed with the use of mobile cameras in the context of automatic number plate recognition, he shall inform the Commission for the protection of privacy about that decision. Every quarter, a detailed report shall be sent to the Commission for the protection of privacy mentioning the number of times these mobile surveillance cameras have been used and the locations where they have been used.

The King is to determine, after having taken advice from the Commission for the protection of privacy, the form and the contents of the standard information form, the form and the contents of the detailed quarterly report, as well as the manner in which they are communicated to the Commission for the protection of privacy.

§ 4. The viewing of the images in real time by the police forces shall solely be permitted to enable the

competent services to deploy for preventive purposes and to enable the competent services to intervene immediately in case of offence, damage, nuisance or disturbance of the public order and to direct this intervention in an optimal manner.

§ 5. The recording of images shall exclusively be permitted with a view to:

- take preventive measures to prevent a disturbance of the public order;
- gather evidence of facts that qualify as an offence or a violation of the public order;
- gather evidence of facts that cause damage or nuisance;
- detect and identify a perpetrator, a person disturbing the public order, witnesses or victims.

§ 6. If the images cannot contribute to the evidence of an offence, damage or a nuisance, or to the identification of a perpetrator, a person disturbing the public order, a witness or a victim, they shall not be stored for a period longer than one month.

CHAPTER IV. – Common provisions

Article 8.

Any covert use of surveillance cameras is prohibited.

Any use of surveillance cameras without the prior consent of the person filmed is deemed to be covert.

Is considered to be prior consent:

1° the access to an area where a pictogram indicates camera surveillance is taking place;

2° the presence in an unenclosed area or an enclosed area accessible to the public where visible use is being made of mobile surveillance cameras as referred to in article 7/1.

Mobile surveillance cameras installed on unmarked vehicles, vessels or aircraft are deemed to be used in a visible manner.

Article 9.

Only the data controller in relation to enclosed areas accessible to the public or enclosed areas not accessible to the public, or the person acting under his authority, have access to the images.

The data controller or the person acting under his authority shall take all necessary precautions to secure the images against access by unauthorized persons.

The persons that have access to the images are bound by a duty of discretion in relation to the personal data that those images yield, it being understood that the data controller in relation to enclosed area accessible to the public or enclosed areas not accessible to the public, or the persona acting under his authority:

1° may communicate the images to the police forces and the judicial authorities, if he establishes facts that may qualify as an offence or nuisance and the images may contribute to the evidence of those facts and the identification of the perpetrators;

2° must communicate the images, free of charge, to the police forces if they make such a request in the context of their mission of administrative or judicial police and the images relate to the established offence or the established nuisance. If it relates to an enclosed area not accessible to the public, the data controller or the person acting under his authority may require that a court order is submitted in the context of an investigation or a judicial investigation.

Without prejudice to the application of articles 47sexies and 47septies of the Code of Criminal Proceedings, within the context of their mission of administrative or judicial police, the federal and local police services have unrestricted and free of charge access in real time to the cameras installed in the network of public transportation and of companies in nuclear sites that are designated by royal decree deliberated upon in the Council of Ministers. After having taken advice from the Commission for the protection of privacy, the King is to determine by royal decree deliberated in the Council of Ministers and after having taken advice from the Commission for the protection of privacy, what is meant by “access in real time”, “unrestricted access”, “access free of charge” and “the network of public transportation” for the purposes of this article. He is also to determine the basic principles concerning responsibility, installation, security, accessibility and reciprocal sharing of information. The technical and practical detailed provisions concerning the unrestricted access to the images, the communication and the security thereof are determined in a protocol between the concerned police service and the public transportation company.

Article 10.

Surveillance cameras may not yield images that violate the intimacy of a person, nor aim to gather information on the philosophical, religious, political,

trade union affiliation, ethnic or social origin, sexual life or health of a person.

Article 11.

A royal decree issued after deliberation in the Council of Ministers, the draft of which has been submitted to the Commission for the protection of privacy for advice, may prohibit the use of certain applications of camera surveillance or subject it to additional conditions.

Article 12.

Every filmed person has a right to access the images.

He is to address a duly reasoned request to the data controller in accordance with the articles 10 and following of the Act of 8 December 1992.

CHAPTER V. Provisions concerning offences

Article 13.

Violation of articles 9 and 10 shall be punished with a fine between fifty euro and a thousand euro. He who possesses an image which he may reasonably presume to have been obtained in violation of the articles 9 and 10 shall be punished with the same fine.

Violation of articles 5, 6, 7, 7/1, 7/2 and 8 shall be punished with a fine between twenty-five and one hundred euro. He who possesses an image which he may reasonably presume to have been obtained in violation of these articles shall be punished with the same fine.

CHAPTER VI. – Transition provisions

Article 14.

Surveillance cameras installed before the date of entry into force of this Act must comply with the provisions of this Act at the latest three years after its entry into force.

Bibliographical information³

Act of 12 November 2009 modifying the Act of 21 March 2007 governing the installation and the use of surveillance cameras (Belgian State Gazette of 18 December 2009)⁴

³ This chapter provides an overview of the acts that are incorporated in this consolidated version. Reference is made to the official title of the act and its publication date.

⁴ An official German translation was published in the Belgian State Gazette on 26 March 2010. The text can also be consulted on the website of Central Service for German Translation – Commission for German legal terminology (Ministry of Internal Affairs): <http://www.scta.be/MalmedyUebersetzungen/downloads/20091112.ppt>

Act of 3 August 2012 modifying the Act of 21 March 2007 governing the installation and the use of surveillance cameras in view of reinforcing the security on public transportation and on nuclear sites (Belgian State Gazette of 31 August 2012)⁵

Act of 4 April 2014 modifying the Act of 21 March 2007 governing the installation and the use of surveillance cameras (Belgian State Gazette of 25 April 2014)⁶

Act of 21 April 2016 concerning miscellaneous provisions Internal Affairs – Integrated Police (Belgian State Gazette of 29 April 2016)

An official, non-consolidated German translation was published in the Belgian State Gazette on 20 November 2007. An unofficial, consolidated version can be also consulted on the website of the Central Service for German Translation – Commission for German legal terminology (Ministry of Internal Affairs

– <http://www.scta.be/MalmedyUebersetzungen/downloads/20070321.pol.doc>). It is important to verify the consolidation date when consulting this document

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⁵ An official German translation was published in the Belgian State Gazette on 10 October 2012. The text can also be consulted on the website of Central Service for German Translation – Commission for German legal terminology (Ministry of Internal Affairs): <http://www.scta.be/MalmedyUebersetzungen/downloads/20120803-1.pol.docx>.

⁶ An official German translation was published in the Belgian State Gazette on 18 August 2014. The text can also be consulted on the website of Central Service for German Translation – Commission for German legal terminology (Ministry of Internal Affairs): <http://www.scta.be/MalmedyUebersetzungen/downloads/20140404L.pol.docx>.