

Brussels, 15 November 2021

Dear XXX,  
cc: XXX

**Re: Serious fundamental rights concerns about proposed Portuguese video surveillance Law 111/XIV/2**

I am writing to you and your colleagues on behalf of [European Digital Rights \(EDRI\)](#), a network of 45 digital human rights groups from across Europe, including [D3 - Defesa dos Direitos Digitais](#), to urge you to oppose this proposed law.

We want to express our deep concern about the **Proposed Law 111/XIV/2 on the use of video surveillance by security forces and services**. Despite providing **no evidence of effectiveness, necessity or proportionality of these measures**, the proposal puts forward **sweeping measures which would permit the constant video and biometric mass surveillance of each and every person**.

There are many reasons why this proposal is likely to be **incompatible with the essence of Portugal's constitutional obligations to ensure that restrictions on fundamental rights are necessary and proportionate** (article 18/2); with Portugal's **obligations under the Charter of Fundamental Rights of the European Union** (including but not limited to articles 1, 7, 8, 11, 12, 20, 21, 41, 47, 48 and 49); and the **European Convention on Human Rights (ECHR)**. The proposed law 111/XIV/2:

1. **Removes current legal safeguards limiting the use of invasive video surveillance**, such that the permanent and nearly omnipresent use of these systems in publicly accessible spaces may be permitted;
2. **Permits video surveillance by aerial drones without limits**, further creating possibilities for the pervasive public surveillance; and
3. **Establishes that these vast video surveillance networks may be combined with facial recognition and other AI-based systems in public spaces**. Such practices enable the omnipotent tracking of individuals, and can thus unduly interfere with a wide range of people's rights including to: privacy and data protection; as well as to express, associate and assemble freely; to have respect for their rights to equality, non-discrimination and dignity; as well as rights to the presumption of innocence and other due process rights.

### **Furthermore, the proposal recklessly removes existing safeguards:**

Law 111/XIV/2 proposes to withdraw vital powers from the national data protection authority, the *Comissão Nacional de Protecção de Dados* (CNPD). This means that not only has the government proposed measures which contradict Portugal's data protection obligations, but that **the very authorities designated to protect people's from undue violations of their rights will be deliberately prevented from being able to carry out their vital public duties.** [The CNPD have called this proposal a "gross violation of the principle of proportionality"](#) and have emphasised that it is likely incompatible with the Portuguese Constitution.

### **The proposal enables biometric mass surveillance practices:**

The combined effect of these measures would be highly likely to **unduly restrict the rights and freedoms of large parts of the Portuguese population and to constitute unjustified biometric mass surveillance practices.** Such measures treat each person as a potential suspect, and they obscure the possibility of targeted use, as passers-by are an inherent feature of public spaces. Over 63.000 EU citizens have already objected to these practices via [the Reclaim Your Face campaign](#), including close to 750 Portuguese nationals.

The Italian Data Protection Authority has further confirmed that [uses of facial recognition and other biometric identification in public spaces constitutes mass surveillance](#), even when authorities are searching for specific individuals on a watch-list. This is because, as the European Data Protection Supervisor (EDPS) and Board (EDPB) have emphasised, [the personal data and privacy of anyone passing through that space is unduly infringed upon by such surveillance.](#)

Another particular risk arises from the fact that the proposal requires the processing of **especially sensitive data. People's biometric data, such as their faces, are central to their personal identity and sometimes their protected characteristics.** Their processing can therefore infringe on rights to dignity, equality and non-discrimination, autonomy and self-determination.

### **The proposal is at odds with the European Parliament and the United Nations:**

The proposed law stands in direct contradiction to [the position of the European Parliament, which voted in October 2021 to adopt the 'AI and criminal law' report.](#) This official report call to ban biometric mass surveillance, including of the kind that is being proposed in law 111/XIV/2. Other EU opposition to such practices includes the proposed ban on real-time remote biometric identification (RBI) by law enforcement in the [EU's Artificial Intelligence Act](#), and a call from the EDPS and EDPB to implement a ["general ban any use of AI for an automated recognition of human features in publicly accessible space."](#)

The need to prohibit, rather than legalise, such practices has also been confirmed by [the UN High Commissioner for Human Rights, who warned](#) that it “*dramatically increases the ability of State authorities to systematically identify and track individuals in public spaces, undermining the ability of people to go about their lives unobserved*” and should therefore be limited or banned.

**The proposal undermines the essence of a democratic society:**

Mass surveillance is not just bad for individuals, but also for communities. The landmark [Census judgement](#) of the German Constitutional Court articulated the **threats not only to people’s political rights and civil rights, but also to democracy and “the common good, because self-determination [which is harmed by mass surveillance] is an essential prerequisite for a free and democratic society that is based on the capacity and solidarity of its citizens.”**

European and international human rights groups have raised [the severe harms of biometric mass surveillance](#). Constant, invasive surveillance **disincentivises people from protesting; suppresses anti-corruption efforts by making it harder for sources to blow the whistle anonymously; and has a general chilling effect on people’s rights and freedoms.** Biometric mass surveillance systems have been used across Europe and the world to spy on groups including human rights defenders, [LGBT+ communities and people going to church](#).

Lastly, the **hurried manner in which this proposal has been brought forward is grave cause for concern.** With the upcoming dissolution of the Portuguese Parliamentary Assembly, the government aims to push through this rights-violating proposal in a rushed manner and without public consultation. This prevents proper democratic scrutiny of the proposal and will undermine people’s trust in the legislative process.

**We urge you to consider the rights and freedoms of the people of Portugal and your obligations under constitutional, EU and international law, to reject the proposed video surveillance law 111/XIV/2.** We are at your disposal should you wish to discuss any of the above.

Yours sincerely,

Diego Naranjo

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