

SECOND EXPERT MEETING - SUMMARY
NATIONAL INTELLIGENCE AUTHORITIES AND SURVEILLANCE IN THE EU:
FUNDAMENTAL RIGHTS SAFEGUARDS AND REMEDIES

Vienna, 16 November 2015

The second expert meeting gathered 14 experts representing EU institutions and bodies, the Council of Europe, representatives of national oversight bodies and academia. The experts brought in their various perspectives, experience and expertise to the discussions. Following the meeting, FRA will further develop the legal research and fieldwork component of the second phase of the FRA surveillance project.

Constantinos Manolopoulos (acting Director of FRA) provided an introductory explanation of the mandate of the Agency, and the specific request received by the European Parliament for FRA to conduct research on this topic. Mario Oetheimer (Head of Sector – Information Society, Privacy and Data Protection) provided an introductory overview of the FRA surveillance research project and its next phase. Vida Beresneviute (Programme Manager) made a presentation on the methodology for the fieldwork research phase, and Matteo Lucchetti (Research Officer) gave a presentation on oversight operational practices.

The aims of the expert meeting were:

- To discuss and critique the main findings of the FRA report *Surveillance by Intelligence Services: fundamental rights safeguards and remedies in the EU. Mapping Member States' legal frameworks* – published in November 2015.
- To discuss and assess how best to update the legal research component of the project.
- To discuss how best to undertake the fieldwork component of the second phase of the research – assessing examples of possible interview templates/questions to be applied in the field.

The discussions consequently focused on the following three main topics:

1) Feedback concerning the FRA legal comparative report on *Surveillance by Intelligence Services: fundamental rights safeguards and remedies in the EU. Mapping Member States' legal frameworks*.

2) The second phase of FRA's project on Surveillance: methodology and draft questions:

Participants inquired about the methodology with regard to the following aspects: the selection of interviewees; the data protection rights of interviewees and data protection rules of institutions; the number of interviews; the nature of information that will be collected; the role of the interviewer; the feasibility of obtaining useful and relevant information; and the method of collecting information.

Specifically, the following suggested interview subjects were discussed in more detail: assessment of the national legal framework and issues related to its implementation; institutional framework of oversight and operational practices of oversight; remedies in case of fundamental rights violations in the area of intelligence gathering; and suggestions /

considerations for improvement of oversight of intelligence gathering. Suggestions called for more specific questions that are tailored to the specific country context and institution.

3) Oversight Operational Practices

The discussion under this section focused on potential controls that the oversight bodies may put in place to verify compliance of signals intelligence operations, with reference to: acquisition, data storage, access to data and accountability, data analysis, and outsourcing. Suggestions called for addressing how selectors are checked and focused on the whole lifecycle of the data - including data dissemination and destruction. Furthermore, the discussion addressed the aspect of transparency and effectiveness of remedies, and how they are measured in the context of filing complaints. In addition, in the context of assessing the capacity of oversight bodies, reference was made to the importance of oversight bodies' mandates, resources and their relationship with intelligence services.

Based on participants' contributions and future experts' consultations, FRA will continue to enhance the legal research and fieldwork component of the surveillance research project. FRA will stay in close contact with participants and looks forward to additional feedback during the project development and implementation.