



FRA project on national intelligence authorities and surveillance in the EU: Fundamental rights safeguards and remedies

*Background paper for the inter-parliamentary conference
on democratic oversight of intelligence services in the European Union*

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1. Background

In June 2013, a contractor working at the US National Security Agency (NSA) lifted the veil on some of the surveillance practices that were being carried by intelligence services in the United States and the United Kingdom. The files Edward Snowden leaked to the media revealed the extent to which the NSA and the UK's Government Communications Headquarters (GCHQ) had been using mass surveillance programmes to intercept global telecommunications and data flows.

The revelations triggered a worldwide outcry. In the European Union, the EU institutions reacted promptly with political declarations and resolutions. In particular, the European Parliament decided to conduct an in-depth inquiry into the NSA surveillance programme. The results fed into the European Parliament Resolution of 12 March 2014, which called on FRA to undertake in-depth research in this area.

In April 2014, the European Parliament specifically requested FRA to conduct research into the protection of fundamental rights in the context of surveillance. This included looking into the remedies available to individuals in relation to surveillance practices being carried out by Member States' intelligence services.

Since then, subsequent terrorist attacks have once again thrown the spotlight on the question of finding the right balance between safeguarding fundamental rights while also maintaining security in the context of the work of national intelligence services.

2. Introducing FRA's surveillance project

FRA's surveillance project focuses on safeguarding the fundamental rights to privacy and the protection of personal data as enshrined in the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights.

The project is currently in its first phase, which is based on legal desk research relating to fundamental rights safeguards with respect to national intelligence authorities and surveillance. A second phase of the project will follow-up in due course, which will build on the initial findings from the first phase.

In responding to the initial request for research in this field by the European Parliament, the scope of the project is limited to surveillance measures, in particular personal data processing, conducted by intelligence services within their mandate according to national laws. It does not cover activities by law enforcement authorities and their relations with intelligence services, and does not cover international cooperation between intelligence services.

The project analyses how democratic oversight of intelligence services works, which bodies are responsible for this and the possible routes to effective remedies against fundamental rights violations resulting from surveillance measures.

The first stage of the research consisted of desk research on the legal frameworks in all 28 Member States. The data were collected by the Agency's multidisciplinary research network, FRANET. Additional information was gathered through exchanges with key

partners, including FRA's national liaison officers in the Member States and individual experts.

3. Main issues

This background paper outlines the key issues that are being covered by the legal analysis from the first stage of the project:

1. Surveillance activities carried out by intelligence services;
2. Oversight of intelligence services;
3. Remedies following fundamental rights violations.

3.1. Surveillance activities carried out by intelligence services

In general, intelligence services protect national security but their mandate can be wider. FRA's analysis maps what this actually includes from Member State to Member State. It looks at the mandates of the different national intelligence services, whether they deal with internal or external security. In addition, it looks into the safeguards surrounding the usage of different modes of intelligence.

3.2. Oversight of intelligence services

The research also seeks to better understand the bodies responsible for providing oversight of intelligence services across the EU.

This is broadly divided into four areas: executive control, parliamentary oversight, expert bodies, including data protection authorities, and judicial review. The research also aims at explaining how such oversight mechanisms work, as well as their powers and limitations. Particular attention is being paid to whether approval and review mechanisms are in place, and if so, who is responsible for such mechanisms.

3.3. Remedies following fundamental rights violations

The third main area of research is that of remedies. Here the research seeks to ascertain which bodies complainants can turn to in case of violations of their rights as a result of surveillance, the powers these bodies have when it comes to remedial action, as well as the limitations and barriers to effective redress. Particular attention is being paid to information obligations and access to personal data which both underpin the effectiveness of remedial actions.

The main bodies that are being looked at are the courts, parliamentary and expert oversight bodies including data protection authorities, and ombudspersons institutions.

4. Next steps

The findings of this comparative legal analysis will be presented in a report that will be available in the coming months.

The second stage of the project will consist of field research in selected Member States. This will involve interviews with a range of stakeholders either directly involved with or concerned with data protection and privacy issues related to surveillance. It will provide data on the day-to-day implementation of national legal frameworks relating to surveillance.

The findings from the fieldwork research will be combined with the legal analysis in a final report. This report is expected to be ready by the end of 2016.

Further information is available on the FRA website:

<http://fra.europa.eu/en/project/2014/national-intelligence-authorities-and-surveillance-eu-fundamental-rights-safeguards-and>

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