

Short Thematic Report

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

Legal update

Country: Czech Republic

Version of 30 June 2016

FRANET contractor: Institute of Sociology of the Czech Academy of
Sciences

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1. Description of tasks – Phase 3 legal update

1.1 Summary

FRANET contractors are requested to highlight in 1 to 2 pages **maximum** the key developments in the area of surveillance by intelligence services in their Member State. This introductory summary should enable the reader to have a snap shot of the evolution during the report period (last trimester of 2014 until mid-2016). It should in particular mention:

1. the legislative reform(s) that took place or are taking place and highlight the key aspect(s) of the reform.

An amendment to the Act on Intelligence Services¹ (*Novela zákona o zpravodajských službách*) came into effect on 25 September 2015. Adopted as Act No. 219/2015 Coll.,² the amendment gives new powers to the intelligence services. Some Czech political representatives as well as human rights defenders opposed the amendment and saw it as giving the intelligence services a ‘bianco checque’.³

First, the intelligence services will be entitled to request information from the database of customers of telephone service providers about publicly available telephone services, which means they will be able to ascertain the name of a certain telephone station holder or the number of the telephone station of a certain person. This power is not limited: the amendment stipulates that it can be used ‘*within the scope necessary for the fulfilment of a particular task in the area of their competence*’.⁴

Second, the amendment will allow the security services to request tax information from the General Financial Directorate (*Generální finanční ředitelství*). Hitherto their right to obtain information had been limited to countering the financing of terrorism. It has now been broadened. The only grounds on which the General Financial Directorate could now refuse to provide the information is if the provision of said information would obstruct the work of the tax authorities in some way. The law now explicitly states in § 11 para. 2 that the provision of tax information to the intelligence services is not a breach of the duty of non-disclosure (*povinnost mlčenlivosti*) according to the Tax Code (*Daňový řád*).⁵ In order for the intelligence services to seek such information, consent must first be obtained from a judge.⁶ The intelligence services will also be entitled to seek information that would have otherwise been protected under the principle of the secrecy of bank transactions from banks, credit and

¹ Czech Republic, Act on Intelligence Services (*Zákon o zpravodajských službách České republiky*), No. 153/1994, 7.7. 1994.

² Czech Republic, Amendment to the Act on Intelligence Services, as amended, and some other laws (*Zákon č. 219/2015 Sb., kterým se mění zákon o zpravodajských službách České republiky, ve znění pozdějších předpisů, a některé další zákony*), No. 219/2015, 25.9.2015.

³ Critical voices are available online – e.g. at the server ‘Czech position’ (*Česká pozice*) -

http://ceskapozice.lidovky.cz/bianco-sek-pro-tajne-sluzby-velky-bratr-uvidi-vic-fbh-/tema.aspx?c=A150715_010133_pozice-tema_kasa. Suchánek, P.: Czech Republic, Centre for Human Rights and Democratisation (*Centrum pro lidská práva a demokratizaci*), *The Traps of Extending the Powers of the Intelligence Services (Nástrahy rozšíření pravomocí zpravodajských služeb)*, 6.5.2015. <http://www.centrumlidskaprava.cz/nastrahy-rozsireni-pravomoci-zpravodajskych-sluzeb>

⁴ Czech Republic, Act on Intelligence Services (*Zákon o zpravodajských službách*), No. 153/1994, 7. 7. 1994, § 11b.

⁵ Czech Republic, Tax Code (*Daňový řád*), No. 280/2009, 22. 7. 2009.

⁶ Czech Republic, Act on Banks (*Zákon o bankách*), No. 21/1992, 20. 12. 1991, § 38/3j.

savings institutions (*Spořitelní a úvěrová družstva*). Both authorisations (to obtain information from the General Financial Directorate and from banks and credit and savings institutions) can be requested only for the purpose of a particular inquiry or investigation. In the case of banks, credit and savings institutions, preliminary consent from a judge is required.⁷

On 1 October 2015, the amendment to the Act on Security Services No. 204/2015⁸ came into effect. This amendment allows the security services as well as the National Security Office to have access to the Criminal Register.

2. *the important (higher) court decisions in the area of surveillance*

On 26 November 2015, the European Court for Human Rights ruled on the case of *Regner v the Czech Republic* (Case No. 35289/11). The Court stated that the Czech Act on the Protection of Classified Information,⁹ § 133/2,3, is not in violation of with the European Convention for Human Rights. The case and the provision in question (§ 133 of the Act on the Protection of Classified Information) relate to the review by Czech courts of decisions taken by the National Security Office (*Národní bezpečnostní úřad*). Classified information is exempt from evidence making (*dokazování*) and may be disclosed to the parties of proceedings only with the consent of the National Security Office. The courts then decide whether the classified information is to be kept in a separate part of the file or not. In *Regner v the Czech Republic*, the European court stated that judges in Czech courts had access to the classified information, so even though the information was not revealed to the parties of the proceedings, the right to a fair trial was preserved.

A similar decision was adopted in a recent judgment of the Supreme Administrative Court (case No. 4 As 1/2015 of 1 March 2016). In addition to the issue of using classified information for evidence making (*dokazování*), the court up an opinion commenting on and verifying the credibility of conclusions made by the intelligence services. This opinion is not mandatory. However, the National Security Office may ask the security service for cooperation, in particular in issuing security clearances of higher levels (Confidential, Strictly Confidential).¹⁰ The court stated that reports from the intelligence services cannot be just an expression of the opinion of [the person who wrote the report], and the information in them has to be verified by the court or the National Security Office (if these reports present background information in support of its decision to grant/not grant a security (clearance) certificate. Therefore, the information has to be reliable and has to be relevant in direct relation to security proceedings (*bezpečnostní řízení*).

3. *the reports and inquiry by oversight bodies (parliamentary committees, specialised expert bodies and data protection authorities) in relation to the Snowden revelations*
4. *the work of specific ad hoc parliamentary or non-parliamentary commission (for example the NSA inquiry of the German Parliament) discussing the Snowden*

⁷ Czech Republic, Act on Savings and Credit Institutions (*Zákon o spořitelních a úvěrních družstvech*), No. 87/1995, 20. 4. 1995, § 25b/3/j.

⁸ Czech Republic, Amendment to Act No. 200/1990, on Misdemeanours, and Act No. 269/1994, on the Criminal Register and some other laws (*Zákon, kterým se mění zákon č. 200/1990 Sb., o přestupcích, zákon č. 269/1994 Sb., o Rejstříku trestů a některé další zákony*), No. 204/2015, 23.7.2015.

⁹ Czech Republic, Act on the Protection of Classified Information (*Zákon o ochraně utajovaných skutečností*), No. 412/2005, 21.9.2005.

¹⁰ Czech Republic, Act on the Protection of Classified Information and on Security Clearance (*Zákon o ochraně utajovaných skutečností a o bezpečnostní způsobilosti*), No. 412/2005, 21.9.2005, § 107.

revelations and/or the reform of the surveillance focusing on surveillance by intelligence services should be referred to.

We requested this information from the chair of the Permanent Parliamentary Committee on the control of the Security Information Service but have not received any response. No reports have been published.

1.2 International intelligence services cooperation

*FRANET contractors are requested to provide information, in 1 to 2 pages **maximum**, on the following two issues, drawing on a recent publication by Born, H., Leigh, I. and Wills, A. (2015), Making international intelligence cooperation accountable, Geneva, DCAF.¹¹*

- 1. It is assumed that in your Member State international cooperation between intelligence services takes place. Please describe the legal basis enabling such cooperation and any conditions that apply to it as prescribed by law. If the conditions are not regulated by a legislative act, please specify in what type of documents such cooperation is regulated (eg. internal guidance, ministerial directives etc.) and whether or not such documents are classified or publicly available.*

The legal basis for the cooperation of the national intelligence services with foreign intelligence services is provided in § 10 of the Act on Intelligence Services of the Czech Republic.¹² In order for such cooperation to occur, the consent of the Government is required. There are no further regulations regarding the scope of cooperation. The Act on Intelligence Services regulates the position, scope, coordination and cooperation of all intelligence services at the general level. Specific issues, such as the relations and procedures within each service and specific procedures for obtaining information, are regulated in particular laws. According to the Annual Report of the Security Information Service of the Czech Republic (*Bezpečnostní informační služba České republiky, BIS*), which is publicly accessible online, the Security Information Service is allowed to cooperate bilaterally with 104 services from 65 countries in the world. In 2014, there were active contacts with foreign partner services. On a multilateral level, the BIS has been engaged in active cooperation within the framework of the Counter-Terrorist Group (CTG), NATO Civil Intelligence Command (CIC). The BIS accepted more than 7500 reports and forwarded almost 1400 documents. Its representatives took part in more than 500 international meetings.¹³

- 2. Please describe whether and how the international cooperation agreements, the data exchanged between the services and any joint surveillance activities, are subject to oversight (executive control, parliament oversight and/or expert bodies) in your Member States.*

As described above under point 1, international cooperation of the national intelligence services is subject to the consent of the Government. The agenda of the intelligence services is coordinated by the Government Committee for the Intelligence Services (*Výbor pro zpravodajskou činnost*), a working body that operates under the Security Council of the State (*Bezpečnostní rada státu*). The committee is made up of the Prime Minister, as chair, and the

¹¹ <http://www.dcaf.ch/Publications/Making-International-Intelligence-Cooperation-Accountable>

¹² Czech Republic, Law on Security Services of the Czech Republic (*Zákon o zpravodajských službách České republiky*, No. 153/1994, 7. 7. 1994.

¹³ Czech Republic, Security Information Service, Annual reports of the year 2014. Available at: <https://www.bis.cz/vyrocní-zpráva6c8d.html?ArticleID=1096#Toc428886896>.

Minister of the Interior, as vice-chair. Other members are: the Minister for Foreign Affairs, the Minister of Defence, the Director of the Security Information Service, the Director of the Office for External Relations and Information and the Director of Military Intelligence. The Office of the Government of the Czech Republic administratively oversees the committee.

The Secretariat of the Committee for the Intelligence Services was contacted in a formal inquiry directed to the Office of the Government of the Czech Republic. Its response, however, was rather general. In a letter signed by the head of the Department of Public Relations, the FRA contractor was informed that the Government addresses issues of international cooperation with foreign services and all other issues relating to security services at closed and classified meetings in conformity with the Act on the Protection of Classified Information and on Security Qualification.¹⁴ Proposals for international cooperation are submitted by members of the Government and are provisionally discussed and approved by the Committee for the Intelligence Services. More detailed information was not communicated to the FRA contractor owing to the classified nature of the information, as noted above.

1.3 Access to information and surveillance

*FRANET contractors are requested to summarise, in 1 to 2 pages **maximum**, the legal framework in their Member State in relation to surveillance and access to information.*

Please refer to the Global Principles on National Security and the Right to Information (the Tshwane Principles)¹⁵ (in particular Principle 10 E. – Surveillance) and describe the relevant national legal framework in this context. FRANET contractors could in particular answer the following questions:

1. *Does a complete exemption apply to surveillance measures in relation to access to information?*

The national legal framework on access to information is formed by the Act on Free Access to Information (*Zákon o svobodném přístupu k informacím*).¹⁶ In § 7, the law provides for the protection of secret information (*Ochrana utajovaných informací*). The Act does provide for exempting access to information and states that, if certain information is marked as 'confidential' and the person who requests such information does not have access to it, the subject who would normally be obliged to provide the information must refuse to provide it. Therefore, there is no exercise of discretion by the public authority. If the Act on classified information marks certain information as 'secret'¹⁷ and the person who requests such information does not have access to it, the subject who would normally be obliged to provide the information must refuse to provide it.

For example, in letters to the FRA contractor, both the Office for Foreign Relations and Information and the Security Information Service refused to answer a question about models of signals intelligence (see Figure 1 in 1.5.2 of this report) and reveal whether such a model is used in the Czech Republic or not. The refusal was made on the grounds of the Act on

¹⁴ Czech Republic, Act on the Protection of Classified Information and on Security Clearance (*Zákon o ochraně utajovaných skutečností a o bezpečnostní způsobilosti*), No. 412/2005, 21.9.2005.

¹⁵ <http://www.right2info.org/exceptions-to-access/national-security/global-principles#section-10>

¹⁶ Czech Republic, Act on Free Access to Information (*Zákon o svobodném přístupu k informacím*), No. 106/1999, 11. 5. 1999.

¹⁷ Czech Republic, Act on Classified Information and on Security Clearance (*Zákon o ochraně utajovaných informací a o bezpečnostní způsobilosti*), No. 412/2005, 21. 9. 2005.

Classified Information and on Security Clearance – the spokesperson for the Office for Foreign Relations and Information reported that the detailed range and description of topics dealt with by the office is classified under this law.

2. *Do individuals have the right to access information on whether they are subject to surveillance?*

No, individuals do not have this right. The Act on the Security Information Service and the Act on the Intelligence Services both stipulate that the information that a person is subject to surveillance by these services and the content of the surveillance are not provided to the person.¹⁸

1.4 Update the FRA report

FRANET contractors are requested to provide up-to-date information based on the FRA report on [Surveillance by intelligence services: fundamental rights safeguards and remedies in the EU – mapping Member States' legal framework](#).

Please take into account the **Bibliography/References** (p. 79 f. of the FRA report), as well as the **Legal instruments index – national legislation** (p. 88 f. the FRA report) when answering the questions.

Introduction

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

The Czech Republic is not mentioned. The FRA contractor did not identify any data that would call for a specific reference.

1 **Intelligence services and surveillance laws**

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

¹⁸ Czech Republic, Act on the Security Information Service (*Zákon o bezpečnostní informační službě*), No. 154/1994, 7. 7. 1994, § 16/3, Act on the Intelligence Services of the Czech Republic (*Zákon o zpravodajských službách České republiky*), No. 153/1994, 7. 7. 1994, § 19/3.

The Czech Republic is not mentioned. The FRA contractor did not identify any data that would call for a specific reference.

1.1 Intelligence services

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

On p. 14, in the second paragraph, it is stated that ‘In some Member States, such as France, Germany, Italy, Romania and Poland, civil intelligence services are further divided into two separate services, mandated with a domestic and international competence. Please note that the Czech Republic figures on this list of states. Services with the authority to act internationally is the Office for Foreign Relations and Information (*Úřad pro zahraniční styky a informace*). The Office for Foreign Relations and Information is the only body with a scope of authority that extends internationally. This Office, as well as the Security Information Service (*Bezpečnostní informační služba*), already mentioned in this report, was established by the Act on Security Services of the Czech Republic (*Zákon o zpravodajských službách České republiky*).¹⁹

1.2 Surveillance measures

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

The FRA contractor asked the Security Information Service whether signals intelligence is used in the Czech Republic. In its response, the Security Information Service stated that this information cannot be provided because it is confidential. However, according to the Service, the usage of signals intelligence is legal according to § 8/1/b of the Act on the Security Intelligence Service.²⁰ The § 8/1/b of the Act on the Security Intelligence Service includes a definition of what intelligence methods can be used. These include ‘wiretapping, the recording of telecommunication, radio-communication and other similar traffic’.

1.3 Member States’ laws on surveillance

¹⁹ Czech Republic, Act on Intelligence Services of the Czech Republic (*Zákon o zpravodajských službách České republiky*), No. 153/1994, 7. 7. 1994.

²⁰ Czech Republic, Act on the Security Information Service (*Zákon o bezpečnostní informační službě*), No. 154/1994, 7. 7. 1994.

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

On p. 19, in the last paragraph in the first column, the report states that most Member States organise the work of their intelligence services under two laws: one on the mandate and organisation of the service, the other on the methods of work and the conditions for using them. We can confirm that this is basically the case also in the Czech Republic. The general legal framework of the service is set out in the Act on the Security Services of the Czech Republic (*Zákon o zpravodajských službách České republiky*)²¹ (not mentioned in the 2015 report), which states that there are three intelligence services in the Czech Republic: the Security Information Service (*Bezpečnostní informační služba*), regulated in a separate law,²² the Office for Foreign Relations and Information (*Úřad pro zahraniční styky a informace*), and the Military Intelligence of the Defence Ministry (*Vojenské zpravodajství*), also regulated in a separate law,²³ which is not mentioned in the 2015 report.

FRA key findings

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

The FRA contractor did not identify any data that would call for a specific reference.

2 Oversight of intelligence services

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

²¹ Czech Republic, Act on the Security Services of the Czech Republic (*Zákon o zpravodajských službách České republiky*, No. 153/1994, 7. 7. 1994.

²² Czech Republic, Act on the Security Information Service (*Zákon o bezpečnostní informační službě*), No. 154/1994, 7. 7. 1994.

²³ Czech Republic, Act on Military Intelligence (*Zákon o Vojenském zpravodajství*), No. 289/2005, 16. 6. 2005.

The Security Information Service has been publishing its annual reports online since 1996.²⁴ The latest report published is for 2014. The report consists of eight sections: the scope of the intelligence activities, its major outcomes (organised crime, protection of economic interests, etc.), the protection of secret information, cooperation with other (foreign) services, control, complaints procedure, and the budget.

2.1 Executive control

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

The procedural rules relating to executive control are governed by the Act on Audit.²⁵ The intelligence services are excluded from these rules. Executive audit of the intelligence services may only be performed with the consent of the directors of the services. If consent is not given, the intelligence services may perform an audit by their own means or request specific conditions for the performance of the control by a controlling body.²⁶

The agenda of the intelligence services is coordinated by the Government Committee for the Intelligence Services (*Výbor pro zpravodajskou činnost*), a working body of the Security Council of the State (*Bezpečnostní rada státu*). The committee is composed of the Prime Minister as a Chair and the Minister of the Interior as a Vice-Chair. Other members are: the Minister for Foreign Affairs, Minister of Defense, Director of the Security Information Service, the Director of the Office for External Relations and Information and the director of the Military Intelligence. The Office of the Government of the Czech Republic administratively oversees the Committee.

2.2 Parliamentary oversight

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

The FRA contractor did not identify data that would call for a specific reference.

2.2.1 Mandate

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

²⁴ Czech Republic, The Security Information Service, Annual reports of the year 1996 and 1997. Available at: <https://www.bis.cz/vyrocní-zpraváfe83.html?ArticleID=39>.

²⁵ Czech Republic, Act on Audit (*Zákon o kontrole*), No. 255/2012, 14.6.2012.

²⁶ Czech Republic, Act on the Security Services of the Czech Republic (*Zákon o zpravodajských službách České republiky*), No. 153/1994, 7. 7. 1994, § 13a.

On p. 36, it is stated that if the Parliamentary Committee establishes a breach of law has occurred, it must inform the appropriate Minister, Head of the Service, and Prosecutor, with reference to Art. 19 of the Security Information Service Act. This information requires a slight correction. There is no particular ‘Minister’ responsible for the Security Information Service – the Director of Security Information Service is appointed directly by the Government, after a discussion in the Parliament. The Director responds directly to the Government. The information about informing the Director and the Prosecutor about a breach of law is mentioned in Art. 20 of the Act on the Security Information Service.

2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*

No new data available.

3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Not applicable.

2.2.2 Composition

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

The Permanent Parliamentary Committee for the Auditing of the Security Information Service is composed of seven members, all of who must be Members of the Parliament.²⁷

2.2.3 Access to information and documents

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Members of the Permanent Parliamentary Committee for Auditing the Security Information Service do not have access to all the information and documents (‘files’) of the service. Upon request, they will receive ‘summary information about the cases and the number of cases’, and also information about the use of intelligence techniques and about cases where information that is subject to bank secrecy was requested by the service.²⁸

²⁷ Czech Republic, Act on the Security Information Service (*Zákon o bezpečnostní informační službě*), No. 154/1994, 7. 7. 1994, § 18.

²⁸ Czech Republic, Law on the Security Information Service (*Zákon o bezpečnostní informační službě*), No. 154/1994, 7. 7. 1994, § 19.

2.2.3 Reporting to parliament

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

The Security Information Service submits an activity report to the Parliamentary Committee upon request.²⁹ In 2014, the annual reports for 2012 and 2013 were discussed.

2.3 Expert oversight

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

The FRA contractor did not identify any data that would call for a specific reference.

2.3.1 Specialised expert bodies

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned. No changes to Table 2.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

The FRA contractor did not identify any data that would call for a specific reference.

2.3.2 Data protection authorities

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The information on p. 47 is accurate. There are no changes in Table 3 and Figure 4.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Personal Data Protection Act³⁰ explicitly excludes personal data processed by the intelligence services from the scope of provided by the Czech Personal Data Protection Authority.

²⁹ Czech Republic, Act on the Security Information Service (*Zákon o bezpečnostní informační službě*), No. 154/1994, 7. 7. 1994, § 19/3/a.

³⁰ Czech Republic, Personal Data Protection Act (*Zákon o ochraně osobních údajů*), No. 101/2000, 25.4.2000, § 29.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Not applicable.

2.4 Approval and review of surveillance measures

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is mentioned in Table 4. The information is accurate. The intelligence service should submit basic data about the subject of surveillance to the court **if they are known**.³¹ We can infer from the wording of the law that a warrant could in theory be issued without these data.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

No new data available.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Not applicable.

FRA key findings

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

The FRA contractor did not identify any data that would call for a specific reference.

3 Remedies

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

The FRA contractor did not identify any data that would call for a specific reference.

3.1 A precondition: obligation to inform and the right to access

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

³¹ Czech Republic, Act on the Security Information Service (*Zákon o bezpečnostní informační službě*), No. 154/1994, 7. 7. 1994, § 10/1/a.

The information on pp. 62 and 63 is accurate. The reference in footnote 443 needs a slight correction: the correct provision is § 16/3 (*'The Security Information Service neither provide information about the fact that a natural or legal person is part of its register of persons, nor informs these persons about the contents of the file'*).

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

No new data are available.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

The Act on the Security Information Service and the Act on the Intelligence Services both stipulate that neither the information that a person is subject to surveillance by these services nor the content of the surveillance are provided to the person.³²

3.2 Judicial remedies

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Judicial remedies focus on scrutinising the use of intelligence techniques by the service.³³ These are not actually judicial proceedings, but a control by a judge to assess that the conditions that apply for using intelligence techniques have been met. There is no legal avenue for an individual whose data were unlawfully processed to seek judicial remedy, as the service is not obliged to inform the person about the fact that information/data are processed.

3.2.1 Lack of specialisation and procedural obstacles

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

The FRA contractor did not identify any data that would call for a specific reference.

3.2.2 Specialised judges and quasi-judicial tribunals

³² Czech Republic, Act on the Security Information Service (*Zákon o bezpečnostní informační službě*), No. 154/1994, 7. 7. 1994, § 16/3, Act on the Intelligence Services of the Czech Republic (*Zákon o zpravodajských službách České republiky*), No. 153/1994, 7. 7. 1994, § 19/3.

³³ Czech Republic, Act on the Security Information Service (*Zákon o bezpečnostní informační službě*), No. 154/1994, 7. 7. 1994, § 11.

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Not applicable.

3.3 Non-judicial remedies: independence, mandate and powers

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Not applicable.

3.3.1 Types of non-judicial bodies

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Not applicable.

3.3.2 The issue of independence

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Not applicable.

3.3.3 Powers and specialisation of non-judicial remedial bodies

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The information on p. 73 and 74 is accurate.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

No new data available.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Not applicable.

FRA key findings

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

Not applicable.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

Not applicable.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Not applicable.

Conclusions

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*

The Czech Republic is not mentioned.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

The Czech Republic is not mentioned.

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

The FRA contractor did not identify data that would call for a specific reference.

1.5 Check the accuracy of the figures and tables published in the FRA report (see the annex on Figures and Tables)

1.5.1 Overview of security and intelligence services in the EU-28

- *Please, delete all lines not referring to your country in the table below (see Annex p. 93 of the FRA Report)*
- *Check accuracy of the data*
- *Add in track changes any missing information (incl. translation and abbreviation in the original language).*
- *Provide the reference to the national legal framework when updating the table.*

The data were checked and are accurate.

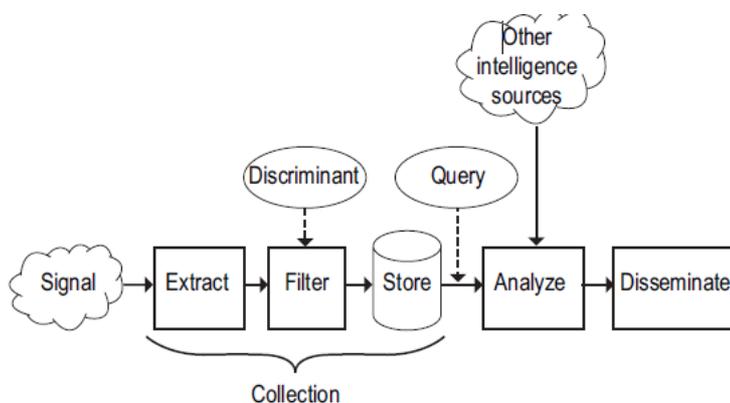
	Civil (internal)	Civil (external)	Civil (internal and external)	Military
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CZ	Security Information Service/ <i>Bezpečnostní informační služba</i> (BIS)	Office for Foreign Relations and Information/ <i>Úřad pro zahraniční styky a informace</i> (ÚZSI)		Military Intelligence/ <i>Vojenské zpravodajství</i> (VZ)
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Figure 1: A conceptual model of signals intelligence

- Please, provide a reference to any alternative figure to Figure 1 below (p. 16 of the FRA Report) available in your Member State describing the way signals intelligence is collected and processed.

The FRA contractor asked the Security Information Service whether signals intelligence is used in the Czech Republic. In its response, the Security Information Service stated that this information cannot be provided because it is classified. However, according to the Service,³⁴ the usage of signals intelligence is legal according to § 8/1/b of the Act on the Security Intelligence Service.³⁵



1.5.3 Figure 2: Intelligence services' accountability mechanisms

Please confirm that Figure 2 below (p. 31 of the FRA Report) illustrates the situation in your Member State in an accurate manner. If it is not the case, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

Figure 2 illustrates the situation in the Czech Republic correctly, except that there are no expert bodies set up to oversee the work of the intelligence services.

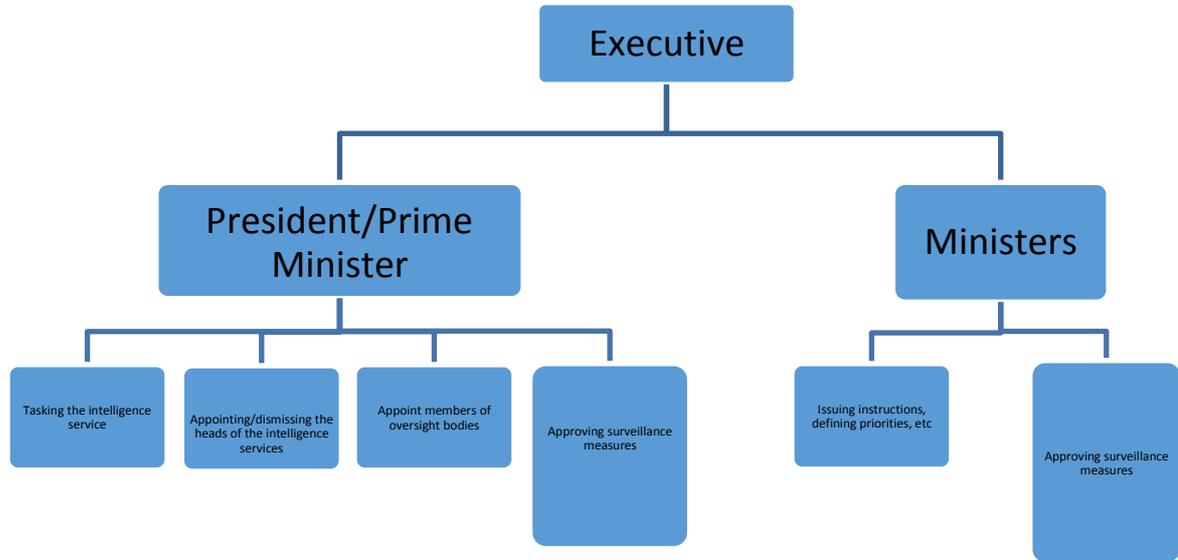
³⁴ Letter from the Security Information Service of 22 April 2016.

³⁵ Czech Republic, Act on the Security Information Service (*Zákon o bezpečnostní informační službě*), No. 154/1994, 7. 7. 1994.

1.5.4 Figure 3: Forms of control over the intelligence services by the executive across the EU-28

Please confirm that Figure 3 below (p. 33 of the FRA Report) properly captures the executive control over the intelligence services in your Member State. If it is not the case, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

Amendments are in bold.



1.5.5 Table 1: Categories of powers exercised by the parliamentary committees as established by law

Please, delete all lines not referring to your country in the table below (see p. 36 of the FRA Report)

Please check the accuracy of the data.. Please confirm that the parliamentary committee in your Member State was properly categorised by enumerating the powers it has as listed on p. 35 of the FRA Report. Please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

Member States	Essential powers	Enhanced powers
CZ	X	

Note: Finland, Ireland, Malta and Portugal do not have parliamentary committees that deal with intelligence services.

The Czech Republic was properly categorised and the information is accurate.

1.5.6 Table 2: Expert bodies in charge of overseeing surveillance, EU-28

Please, delete all lines not referring to your country in the table below (p. 42 of the FRA Report). Please check the accuracy of the data. In case of inaccuracy, please suggest

any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

CZ	N.A.
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The Czech Republic was properly categorised and the information is accurate.

1.5.7 Table 3: DPAs' powers over national intelligence services, EU-28

Please, delete all lines not referring to your country in the table below (p. 49 of the FRA Report). Please check the accuracy of the data. In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

EU Member State	No powers	Same powers (as over other data controllers)	Limited powers
CZ	X		

Notes: No powers: refers to DPAs that have no competence to supervise NIS.

Same powers: refers to DPAs that have the exact same powers over NIS as over any other data controller.

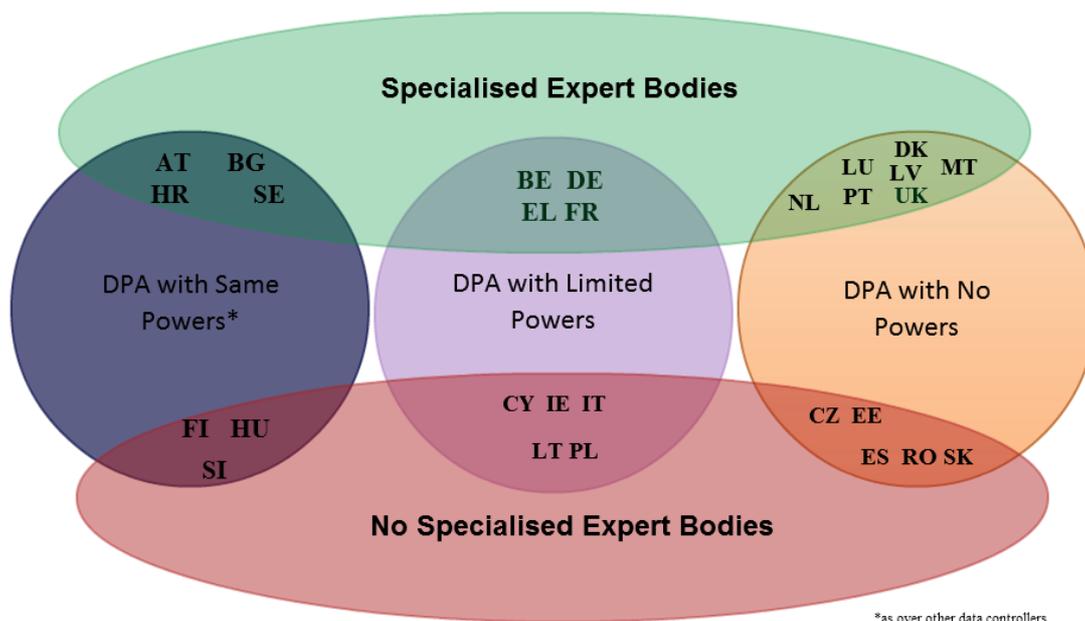
Limited powers: refers to a reduced set of powers (usually comprising investigatory, advisory, intervention and sanctioning powers) or to additional formal requirements for exercising them.

The Czech Republic was properly categorised and the information is accurate.

1.5.8 Figure 4: Specialised expert bodies and DPAs across the EU-28

Please check the accuracy of Figure 4 below (p. 50 of the FRA Report). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

The Czech Republic was properly categorised and the information is accurate.



1.5.9 Table 4: Prior approval of targeted surveillance measures, EU-28

Please, delete all lines not referring to your country in the table below (p. 52 of the FRA Report). Please check the accuracy of the data. In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

EU Member State	Judicial	Parliamentary	Executive	Expert bodies	None
CZ	X				

The Czech Republic was properly categorised and the information is accurate.

1.5.10 Table 5: Approval of signals intelligence in France, Germany, the Netherlands, Sweden and the United Kingdom

Please check the accuracy of Table 5 below (p. 55 of the FRA Report). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

EU Member State	Judicial	Parliamentary	Executive	Expert
FR			X	

DE		X (telco relations)		X (selectors)
NL			X (selectors)	
SE				X
UK			X	

Not applicable.

1.5.11 Figure 5: Remedial avenues at the national level

Please confirm that Figure 5 below (p. 60 of the FRA Report) illustrates the situation in your Member State in an accurate manner. If it is not the case, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

Amendments:

Ombudsperson institutions - The scope of authority of the Public Defender of Rights (veřejný ochránce práv) over the intelligence services are explicitly excluded from the law.³⁶ The Ombudsperson is not responsible for overseeing the FOI law. The only case in which oversight of the FOI law would be the responsibility of the Ombudsperson would matters relating to the performance of state administration.

DPA - The Personal Data Protection Act³⁷ explicitly excludes personal data processed by the intelligence services from the scope of protection provided by the Czech Personal Data Protection Authority.

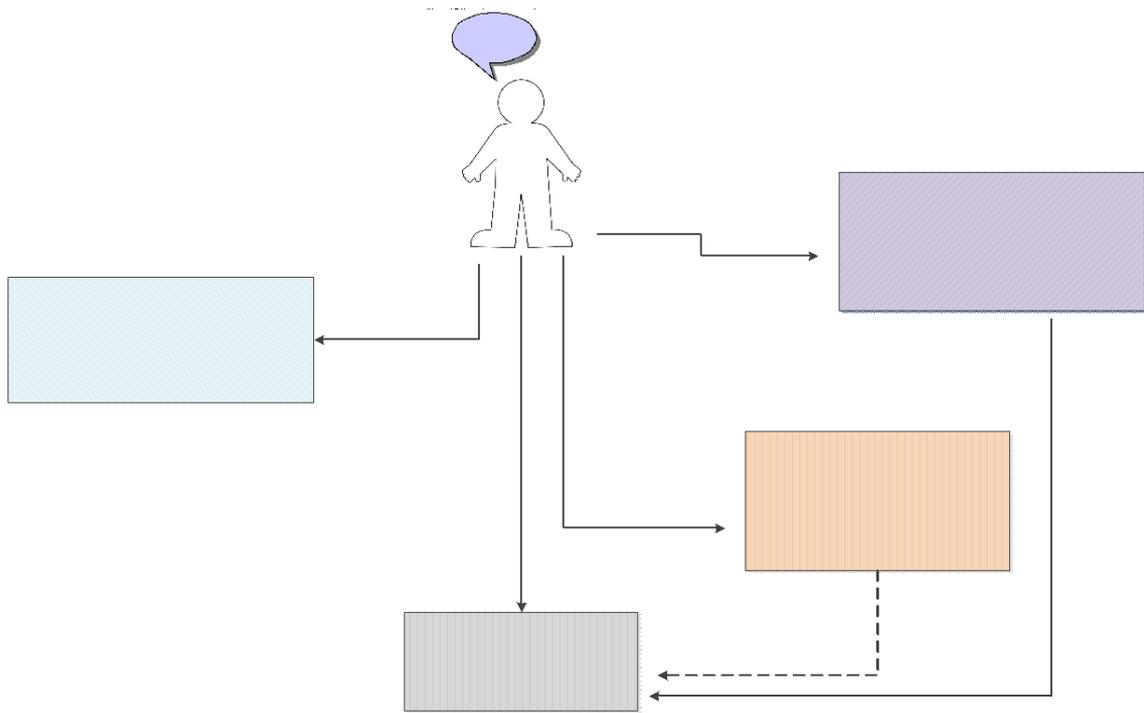
Oversight bodies (other than DPAs, with remedial powers) – do not exist in the Czech Republic.

Courts - Judicial remedies focus on reviewing the use of intelligence methods by the service.³⁸ There is no legal avenue for an individual whose data were unlawfully processed to seek judicial remedy, as the service is not obliged to inform the person about the fact that information/data are processed.

³⁶ Czech Republic, Act on the Public Defender of Rights (Zákon o veřejném ochránci práv), No. 349/1999, 30. 12. 1999, § 1/7.

³⁷ Czech Republic, Data Protection Act (Zákon o ochraně osobních údajů), No. 101/2000, 25.4.2000, § 29.

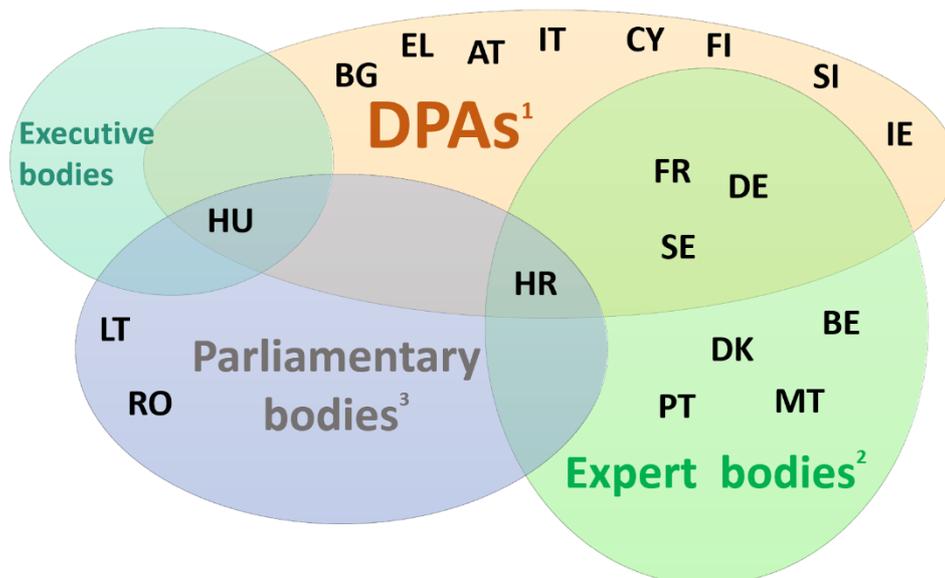
³⁸ Czech Republic, Act on the Security Information Service (Zákon o bezpečnostní informační službě), No. 154/1994, 7. 7. 1994, § 11.



1.5.12 Figure 6: Types of national oversight bodies with powers to hear individual complaints in the context of surveillance, by EU Member States

Please check the accuracy of Figure 6 (p. 73 of the FRA Report) below. In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

The information is accurate.



- Notes: 1. *The following should be noted regarding national data protection authorities: In Germany, the DPA may issue binding decisions only in cases that do not fall within the competence of the G 10 Commission. As for 'open-sky data', its competence in general, including its remedial power, is the subject of on-going discussions, including those of the NSA Committee of Inquiry of the German Federal Parliament*
2. *The following should be noted regarding national expert oversight bodies: In Croatia and Portugal, the expert bodies have the power to review individual complaints, but do not issue binding decisions. In France, the National Commission of Control of the Intelligence Techniques (CNCTR) also only adopts non-binding opinions. However, the CNCTR can bring the case to the Council of State upon a refusal to follow its opinion. In Belgium, there are two expert bodies, but only Standing Committee I can review individual complaints and issue non-binding decisions. In Malta, the Commissioner for the Security Services is appointed by, and accountable only to, the prime minister. Its decisions cannot be appealed. In Sweden, seven members of the Swedish Defence Intelligence Commission are appointed by the government, and its chair and vice chair must be or have been judges. The remaining members are nominated by parliament.*
3. *The following should be noted regarding national parliamentary oversight bodies: only the decisions of the parliamentary body in Romania are of a binding nature.*