

# Short Thematic Report

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

Legal update

Country: Hungary

Version of 30 June 2016

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DISCLAIMER: This document was commissioned under a specific contract as background material for the project on [National intelligence authorities and surveillance in the EU: Fundamental rights safeguards and remedies](#). The information and views contained in the document do not necessarily reflect the views or the official position of the EU Agency for Fundamental Rights. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion. FRA would like to express its appreciation for the comments on the draft report provided by Hungary that were channelled through the FRA National Liaison Officer.

# 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.
  2. the important (higher) court decisions in the area of surveillance
  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 revelations and/or the reform of the surveillance focusing on surveillance by intelligence services should be referred to.
- Legislative and institutional reforms

In the reporting period, there were no significant legislative reforms adopted in Hungary. Minor amendments, however, were introduced in the law related to surveillance. Among them, the most important one, introduced on 1 February 2015, amended the remit for the Special Service for National Security (SSNS, *Nemzetbiztonsági Szakszolgálat - NBSZ*), which is one of the national security services with jurisdiction to conduct surveillance over citizens. One of the new functions is that the Special Service for National Security may provide assistance, in the form of obtaining data from the organisation or public body that manages the data concerned, to other bodies entitled to secret surveillance. The purpose of the amendment was to strengthen the cooperation and the exchange of information between the national security services by providing faster and more efficient access to national security related data. As a result of this amendment, the national security services may obtain any data necessary for their secret surveillance activities with the help of one central data access point, the Special Service for National Security.<sup>1</sup>

An important change in the institutional framework of surveillance was the establishment of a new Institute, the National Cyber Security Institute (*Nemzeti Kibervédelmi Intézet*) on 1 October 2015.<sup>2</sup> The Institute currently has three divisions: National Electronic Information Security Authority (*Nemzeti Elektronikus Információbiztonsági Hatóság*), Government Incident Response Team GovCERT-Hungary (*Kormányzati Eseménykezelő Központ*) and the

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<sup>1</sup> Hungary, Act CXXV of 1995 on national security services (1995. évi CXXV. törvény a nemzetbiztonsági szolgálatokról), 27 March 1996, Article 8(1) point h), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV). All hyperlinks were accessed on 24 June 2016.

<sup>2</sup> Hungary, Act CXXX of 2015 on the amendment of certain laws in order to establish the e-card system and on the amendment of Act L of 2013 on electronic information security of state and local governmental bodies (2015. évi CXXX. törvény az e-kártya megvalósításához szükséges törvények, valamint az állami és önkormányzati szervek elektronikus információbiztonságáról szóló 2013. évi L. törvény módosításáról), 16 July 2015, available at: <http://mkogy.jogtar.hu/?page=show&docid=a1500130.TV>

Security Governance and Vulnerability Division (*Biztonságirányítási és Sérülékenység Egység*). The Institute serves as a central intelligence as it coordinates data flow, analyses intelligence and processes information in order to protect the country from cyber-attacks. The main tasks of the Institute are to coordinate responses to serious security breaches against governmental networks and critical information structures, to promote information exchange with the critical sectors, to coordinate with national and international partner organisations in order to enhance national readiness measures, and to raise awareness in the fields of information and network security. The Institute may monitor internet traffic. The law establishing the Institute stipulates that the Institute is entitled to manage personal data only in connection with its task. In practice, this is the case when the identification or elimination of a cyber threat against the country's electronic systems requires the identification of the source or the information transmitters. Once the threat has been identified and/or eliminated, the personal data of individuals must be erased from all electronic databases and devices.<sup>3</sup>

As a response to the terrorist attacks and the threats thereof in Western Europe in the first few months of 2016, the Hungarian Government announced on 24 March 2016 the plan for a proposed legislative package on combatting terrorism.<sup>4</sup> The Hungarian Parliament adopted the package on 7 June 2016.<sup>5,6,7</sup> The new rules will enter into force on 1 July 2016, while some of them will be in effect as of 17 July 2016. According to the new laws:

- The Government will be entitled to announce a so-called 'terror emergency situation' in which the Government may suspend the application of certain laws, and may establish extraordinary measures.<sup>8</sup> Among these measures, the law specifically mentions that the Government will be entitled to order tight surveillance over internet and postal communications.<sup>9</sup>
- The telecommunication service providers will be obliged to stop all measures that could prevent the decoding of communication.<sup>10</sup> Currently the coding of communication is the rule; however, the law allows that in certain cases the service providers may be obliged by a judge to decode communication. In practice however, some of the providers still encrypt the communication, which cannot be decoded at all.
- The new law tends to refine the scope of surveillance for the national security services over the monitoring of transactions on certain individuals' bank accounts.<sup>11</sup> This will

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<sup>3</sup> Hungary, Act L of 2013 on electronic information security of state and local governmental bodies (*2013. évi L. törvény az állami és önkormányzati szervek elektronikus információbiztonságáról*), 1 July 2013, Article 22, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1300050.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1300050.TV)

<sup>4</sup> Hungary, Legislative proposal no. T/10307. on the amendment of certain acts related to counter-terrorism (*T/10307. számú törvényjavaslat a terrorizmus elleni fellépéssel összefüggő egyes törvények módosításáról*), available at: [www.parlament.hu/irom40/10307/10307.pdf](http://www.parlament.hu/irom40/10307/10307.pdf)

<sup>5</sup> Hungary, The Sixth Amendment to the Fundamental Law of Hungary (*Magyarország Alaptörvényének hatodik módosítása*), 14 June 2016, available at: <http://magyarkozlony.hu/dokumentumok/f387c82e011e199e17d20c40971aeb83562bcb18/megtekintes>

<sup>6</sup> Hungary, Act LVII of 2016 on amending certain laws in relation to the terror emergency situation (*2016. évi LVII. törvény egyes törvényeknek a terrorvédelemmel kapcsolatos módosításáról*), 1 July 2016, available at: <http://magyarkozlony.hu/dokumentumok/f387c82e011e199e17d20c40971aeb83562bcb18/megtekintes>

<sup>7</sup> Hungary, Act LXIX of 2016 on the amendment of certain acts related to counter-terrorism (*2016. évi LXIX. törvény a terrorizmus elleni fellépéssel összefüggő egyes törvények módosításáról*), 17 July 2016, available at: <http://magyarkozlony.hu/dokumentumok/f62f2822416d589a0aebf8849772ac3e7a8b7/megtekintes>

<sup>8</sup> Hungary, The Fundamental Law of Hungary (*Magyarország Alaptörvénye*), 25 April 2011, Article 51/A, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100425.ATV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100425.ATV).

<sup>9</sup> Hungary, Act CXIII of 2011 on military defence and the Hungarian Army, and measures available for special legal order (*2011. évi CXIII. törvény a honvédelemről és a Magyar Honvédségről, valamint a különleges jogrendben bevezethető intézkedésekről*), 1 January 2012, Article 64(4) point c), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100113.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100113.TV)

<sup>10</sup> Hungary, Act LXIX of 2016 on the amendment of certain acts related to counter-terrorism (*2016. évi LXIX. törvény a terrorizmus elleni fellépéssel összefüggő egyes törvények módosításáról*), 17 July 2016, Article 46, available at: <http://magyarkozlony.hu/dokumentumok/f62f2822416d589a0aebf8849772ac3e7a8b7/megtekintes>

<sup>11</sup> Hungary, Act LXIX of 2016 on the amendment of certain acts related to counter-terrorism (*2016. évi LXIX. törvény a terrorizmus elleni fellépéssel összefüggő egyes törvények módosításáról*), 17 July 2016, Article 68, available at: <http://magyarkozlony.hu/dokumentumok/f62f2822416d589a0aebf8849772ac3e7a8b7/megtekintes>

go beyond the current power provided to the national security services, which only allows for such activities in cases when a criminal procedure is ongoing against the account owner.

A new information centre (Counter-Terrorism Information and Criminal Analysis Centre) (*Terrorelhárítási Információs és Bűnügyi Elemző Központ, TIBEK*) was established for the collection and systematisation of information and the outcomes of surveillance operations gathered by the various national security services in order to inform decision makers on further measures to implement. The TIBEK started its operation as one of the national security services as of 17 July 2016, when the new legislation entered into force. The new centre may only send information to the decision makers that has already been analysed and checked; however, it cannot conduct covert or surveillance operations.<sup>12</sup> This check will extend to whether or not the information is reliable and authentic.

- Court decisions

In August 2014, two Hungarian lawyers turned to the European Court of Human Rights (ECtHR) challenging the law on national security services that allowed these services to conduct surveillance against private individuals for the ‘purpose of national security’. The claimants stated that in such cases the individual concerned has no right to get information about the surveillance, even after it has finished. Therefore, there are no effective remedies available in the Hungarian legal system to challenge the decisions on surveillance. Moreover, in these cases, the national security services do not need to obtain permission from the court, the Minister in charge for justice may authorise the surveillance.<sup>13</sup> While the Police may only conduct surveillance of private citizens suspected of a crime with judicial approval, the Counter Terrorism Centre (*Terrorelhárítási Központ*) requires neither suspicion of a crime nor judicial approval. Another interesting angle of the case was that the two claimants could not provide evidence as to whether there was ongoing or already finished surveillance activity against them, so they argued that due to the lack of constitutional safeguards, they might never get information about the surveillance activity, and therefore, they might easily be subjects of a surveillance operation without knowing about it. The ECtHR ruled for the plaintiffs on 12 January 2016.<sup>14</sup> The ECtHR stated that the absence of judicial supervision over the surveillance activity violates the fundamental rights of the individuals. The Minister of Justice is part of the executive branch; therefore, he/she does not qualify as an independent supervisor over the surveillance activity of the national security services. The Court held that the Hungarian law violates Article 8 of the European Convention on Human Rights as, according to the said provision, an independent body or a judge must decide whether the secret service operations are justified.<sup>15</sup> Despite the ruling of the ECtHR, the Hungarian Government has still not taken measures to amend the law and comply with the findings of the Court. The Eötvös Károly Institute (*Eötvös Károly Intézet*), an institute formed in 2003 to establish a novel, unconventional institutional framework for shaping democratic public affairs in Hungary, turned to the Minister of Justice in an open letter on 8 February 2016 to ask for information on what measures the Government is planning in order to comply with the findings of the ECtHR. Also, the Institute sent letters to the Head of the Supreme Court and the Commissioner for Fundamental Rights on 31 March 2016 and urged them to challenge the law before the Constitutional Court as they have jurisdiction to ask for a constitutional review of the law that

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<sup>12</sup> Index (2016), ‘A filter is coming between Orbán and the secret services’ (*Szűrő kerül Orbán és a titkosszolgálatok közé*), 30 March 2016.

<sup>13</sup> Hungary, Act CXXV of 1995 on national security services (*1995. évi CXXV. törvény a nemzetbiztonsági szolgálatokról*), 27 March 1996, Article 58(2), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

<sup>14</sup> European Court of Human Rights (ECtHR), Szabó and Vissy v. Hungary, No. 37138/14, 12 January 2016.

<sup>15</sup> Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, CETS No. 005, 1953. Article 8 (Right to respect for private and family life).

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violates international obligations.<sup>16</sup> The Government appealed against the judgment. The Grand Chamber Panel of the ECtHR, however, rejected the appeal on 7 June 2016, and decided not to send the case to the Grand Chamber, so the judgment is final.<sup>17</sup>

- Reports and inquiries

The Hungarian Authority for Data Protection and Freedom of Information (*Nemzeti Adatvédelmi és Információszabadság Hatóság*) started an investigation about the potential use of spyware software by the national security services in December 2014. The investigation was a response to a scandal that erupted when somebody hacked the server and the emails of a company that sells spyware programmes, which led to the conclusion that the Hungarian national security services might also be subscribers of the spyware software. A citizen asked for the investigation as he believed the use of spyware goes beyond the necessary measures the national security services may use in order to conduct surveillance and protect national security. The Authority found that the law does not prohibit the national security services from using such spyware software when conducting surveillance operations, and the safeguards and remedies granted by the law for surveillance operations in general provide adequate protection to the people even in such cases.<sup>18</sup>

The Hungarian Authority for Data Protection and Freedom of Information proposed legislation to the Government on how to establish registers that the electronic communication service providers should keep in order to keep track of the surveillance requests arriving from the national security services. According to the Authority, the service providers interpret the law in a way that they only have to keep records on which national security services they handed the data over to, and not on the person who was the subject of the surveillance operation.<sup>19</sup> The Authority believes that the law only prohibits the disclosure of the facts of the data management to the person who is the target of the surveillance operation by the service provider and it does not expressly state that the service providers should not keep records about it. Also, according to the Authority, while the law only stipulates that the person cannot get information about the data management if the request was from the national security services, the service providers follow the same rules even in cases when the data is obtained by other authorities that do not qualify as national security services. The lack of a register makes it almost impossible for the Authority to oversee these operations and to verify whether the surveillance was in compliance with the law or not.<sup>20</sup> The Government has so far not initiated legislation about the establishment of the register.

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<sup>16</sup> Eötvös Károly Institute (2016), 'Secret Surveillance – the Eötvös Károly Institute will not give up' (*Titkos megfigyelés – az Eötvös Károly Intézet nem hagyja annyiban*), available at: [www.ekint.org/ekint/ekint.news.page?nodeid=906](http://www.ekint.org/ekint/ekint.news.page?nodeid=906)

<sup>17</sup> Index (2016), 'The Counter-Terrorism Centre cannot search anybody's home without a judicial warrant anymore' (*Többé nem forgathatja fel a TEK bárki lakását bírói engedély nélkül*), 7 June 2016

<sup>18</sup> Hungarian Authority for Data Protection and Information Freedom (2016), 'Report on the use of spyware software by national security services' (*Jelentés a kémprogramok magyar nemzetbiztonsági célú alkalmazásáról*), available at: [www.naih.hu/files/adatved-jelentes-1904-6-2014-T\\_kemprogram.pdf](http://www.naih.hu/files/adatved-jelentes-1904-6-2014-T_kemprogram.pdf)

<sup>19</sup> Hungary, Act CXXXV of 1995 on national security services (*1995. évi CXXXV. törvény a nemzetbiztonsági szolgálatokról*), 27 March 1996, Article 42(2), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

<sup>20</sup> Hungarian Authority for Data Protection and Information Freedom (2014), 'About the register on the data the electronic information service providers share with the national security services', available at: [www.naih.hu/files/NAIH-1423-1-2014-J-140624.pdf](http://www.naih.hu/files/NAIH-1423-1-2014-J-140624.pdf).

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## 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.<sup>21</sup>

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.
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.

Act CXXV of 1995 on national security services specifically grants power to all Hungarian national security services (the Information Office (*Információs Hivatal*), the Constitution Protection Office (*Alkotmányvédelmi Hivatal*), the Special Service for National Security (*Nemzetbiztonsági Szakszolgálat*), the Military National Security Service (*Katonai Nemzetbiztonsági Szolgálat*), and, starting from 17 July 2016, the Counter-Terrorism Information and Criminal Analysis Centre (*Terrorelhárítási Információs és Bűnügyi Elemző Központ*) to be engaged in international cooperation.<sup>22</sup> The Counter Terrorism Centre (*Terrorelhárítási Központ*) of the Police is also entitled to such cooperation.<sup>23</sup> However, the Acts on the national security services<sup>24</sup> and the Police<sup>25</sup>, which among others lay down the remit of these bodies, do not specify the procedural rules of international cooperation. Therefore the legal framework adopted for the international cooperation of the law enforcement bodies<sup>26</sup> applies to the cross-border surveillance operations of the national security services and the Counter Terrorism Centre as well.

In Hungary, Act LIV of 2002 on the international cooperation of law enforcement bodies<sup>27</sup> (*2002. évi LIV. törvény a bűnüldöző szervek nemzetközi együttműködéséről*) provides the legal framework on the international cooperation of intelligence services. While the Act does not specifically mention the national security services as contributors to the international cooperation, it still refers to the national security services in several provisions, and does not distinguish between the cooperation of law enforcement bodies and intelligence services. The same rules apply, even if the cooperation is not connected to an ongoing criminal investigation.

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<sup>21</sup> Born H., Leigh I. and Wills A., DCAF a centre for security, development and the rule of law (DCAF) (2015), *Making International Intelligence Cooperation Accountable*, Printing Office of the Parliament of Norway, available at: [www.dcaf.ch/Publications/Making-International-Intelligence-Cooperation-Accountable](http://www.dcaf.ch/Publications/Making-International-Intelligence-Cooperation-Accountable)

<sup>22</sup> Hungary, Act CXXV of 1995 on national security services (*1995. évi CXXV. törvény a nemzetbiztonsági szolgálatokról*), 27 March 1996, Articles 4-8, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

<sup>23</sup> Hungary, Act XXXIV of 1994 on the Police (*1994. évi XXXIV. törvény a Rendőrségről*), 1 May 1994, Article 63(5), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99400034.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99400034.TV)

<sup>24</sup> Hungary, Act CXXV of 1995 on national security services (*1995. évi CXXV. törvény a nemzetbiztonsági szolgálatokról*), 27 March 1996, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

<sup>25</sup> Hungary, Act XXXIV of 1994 on the Police (*1994. évi XXXIV. törvény a Rendőrségről*), 1 May 1994, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99400034.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99400034.TV)

<sup>26</sup> Hungary, Act LIV of 2002 on the international cooperation of law enforcement bodies (*2002. évi LIV. törvény a bűnüldöző szervek nemzetközi együttműködéséről*), 1 April 2003, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0200054.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0200054.TV)

<sup>27</sup> Hungary, Act LIV of 2002 on the international cooperation of law enforcement bodies (*2002. évi LIV. törvény a bűnüldöző szervek nemzetközi együttműködéséről*), 1 April 2003, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0200054.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0200054.TV)

Article 7 of the Act states that requests of foreign law enforcement bodies should be responded to by the Hungarian law enforcement bodies (typically by the Police and the Customs and Finance Guard), and other agencies and services that have legal powers to fulfil such requests, such as all national security services.

Act LIV of 2002 lists the available forms of international cooperation (Article 8):

- direct exchange of information;
- exchange of information with the law enforcement bodies of EU Member States;
- supervised transport;
- the establishment of a joint tactical team;
- the use of a person cooperating with the law enforcement bodies;
- the use of covert investigators;
- cross-border surveillance;
- hot pursuit;
- the use of a liaison officer;
- secret surveillance based on international cooperation;
- international witness protection programme; and
- cooperation with special intervention units of EU Member States.

In general, requests from foreign intelligence services can only be performed if an international bilateral agreement exists between the countries concerned.<sup>28</sup> The Hungarian services may deny cooperation with agencies of non-EU countries in the following cases:

- the request is against Hungarian law;
- the request jeopardises the safety of Hungary or violates its public order;
- the request refers to political or military crimes.

Requests from foreign intelligence services for surveillance operations in Hungary must go through the International Law Enforcement Cooperation Centre of the National Police Headquarters (*Országos Rendőr-főkapitányság, Nemzetközi Bűnügyi Együttműködési Központ*). The Centre has to obtain the necessary judicial approval for the surveillance operation. Hungarian law does not have special or different rules for the judicial approval of international secret surveillance operations; therefore, the same rules apply to domestic and international requests (Article 5(3)). After obtaining the judicial approval, the Centre cooperates with the Counter Terrorism Centre that provides the operational powers. The Counter Terrorism Centre hands over the information gathered during the surveillance operation to the International Law Enforcement Cooperation Centre (Article 35). The Counter Terrorism Centre has no power to control and monitor how the International Law Enforcement Cooperation Centre will use the information. This in practice means that the International Law Enforcement Cooperation Centre may forward the information received to the foreign intelligence services. The Act also provides the opportunity for the Hungarian Counter Terrorism Centre to transmit the communication subject to surveillance directly to the devices of the foreign intelligence agency (Article 36).

If the foreign intelligence services would like to continue the surveillance operation in Hungary that they have already started in their own territory, they must obtain the approval of the International Law Enforcement Cooperation Centre of the National Police Headquarters, prior to the operation. Under special circumstances, the foreign intelligence agency may continue its surveillance operation in Hungary without obtaining preliminary approval from the Centre if it notifies the Hungarian authority immediately after its staff member crossed the Hungarian border, and it also forwards all documents supporting the necessity and urgency of the cross-

<sup>28</sup> Hungary, Act LIV of 2002 on the international cooperation of law enforcement bodies (*2002. évi LIV. törvény a bűnüldöző szervek nemzetközi együttműködéséről*), 1 April 2003, Article 3, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0200054.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0200054.TV)

border surveillance operation to the Centre. However, the surveillance activity must be terminated immediately, if the Centre does not grant approval within five hours after it has been notified (Article 27).

Act LIV of 2002 on international cooperation of law enforcement bodies does not provide rules on the safeguards for and control measures over cross-border surveillance and international intelligence cooperation. It, however, refers to the safeguards stipulated in Act CXXV of 1995 on national security services. Therefore, the same control regime applies to surveillance in international cooperation as to domestic surveillance operations. It means that the Parliamentary Commission of National Security (*Országgyűlés Nemzetbiztonsági Bizottsága*), and the Hungarian Authority for Data Protection and Freedom of Information (*Nemzeti Adatvédelmi és Információszabadság Hatóság*) oversee the operations under international cooperation. The Hungarian Authority for Data Protection and Freedom of Information occasionally assess prospected legislative amendments about the international cooperation of national security services and publish reports about its findings.<sup>29</sup> In these reports, the Authority mainly analyses the involvement of the Hungarian authorities in Europol and Interpol surveillance operations. The Authority often claims that the law does not establish special safeguards for cases of international surveillance operations, instead, it refers to the same protective mechanisms as for domestic surveillance operations. The Authority believes that feedback on the further use of the information obtained through surveillance is rarely requested from foreign authorities, and the Hungarian national security services lose control over the operation once they hand over the information obtained by the foreign partner.<sup>30</sup> Judicial control also exists in cases when the surveillance operation requires judicial authorisation. While a person subject to surveillance must not get information about the fact that he/she is under surveillance and what information the services gathered about him/her and for what purpose, the operation of the national security services is subject to supervision by the National Authority for Data Protection and Freedom of Information (*Nemzeti Adatvédelmi és Információszabadság Hatóság*), the Commissioner for Fundamental Rights (*Alapvető Jogok Biztosa*), and the Parliamentary Committee of National Security (*Országgyűlés Nemzetbiztonsági Bizottsága*).

The Hungarian national security services receive an average of 3,000 surveillance requests from foreign authorities in a year. Around 40% of these requests are in connection with drug trafficking, 20% for human smuggling, 10% for credit card forgery, while the remaining 30% are typically connected to human trafficking, homicide, abuse of excise products and terrorist threats.<sup>31</sup>

<sup>29</sup> E.g. Hungarian Authority for Data Protection and Freedom of Information (2015), On the draft amendment of Act LIV of 1999 on the information system of the EU related to criminal law enforcement and the cooperation and exchange of information under the scope of the Interpol, available at: [www.naih.hu/files/NAIH-5075-2-2015-J-150831.pdf](http://www.naih.hu/files/NAIH-5075-2-2015-J-150831.pdf), Hungarian Authority for Data Protection and Freedom of Information (2013), Report on the Activities of the Hungarian Authority for Data Protection and Freedom of Information in 2013, available at: [www.naih.hu/files/NAIH-beszamolo2013--MID-RES.pdf](http://www.naih.hu/files/NAIH-beszamolo2013--MID-RES.pdf), p. 34.

<sup>30</sup> Hungarian Authority for Data Protection and Freedom of Information (2013), Report on the Activities of the Hungarian Authority for Data Protection and Freedom of Information in 2013, available at: [www.naih.hu/files/NAIH-beszamolo2013--MID-RES.pdf](http://www.naih.hu/files/NAIH-beszamolo2013--MID-RES.pdf), p. 35.

<sup>31</sup> Information was assessed during an interview with a staff member of the National Police Headquarters on 22 March 2016.

### 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)*<sup>32</sup> (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?
2. Do individuals have the right to access information on whether they are subject to surveillance?

As the surveillance activities of the Hungarian national security services fall under the scope of the Informational Self-determination and the Freedom of Information Act,<sup>33</sup> all remedies and redress mechanisms provided by the said Act should be applicable to the surveillance activities of the national security services. It means that, in theory, every person concerned should have the right to access information on whether or not he/she was subject to surveillance, which body or organisation conducted the surveillance operation and for what purpose. On the other hand, the National Security Services Act stipulates that in the interest of national security or to protect the rights of others, the general director of the national security services may deny the request to disclose information about the surveillance operation. Therefore, the right to information self-determination granted by the Informational Self-determination and the Freedom of Information Act are restricted in cases of secret surveillance on the basis of external and internal security of the state.<sup>34</sup> It results that the person subject to surveillance gets no information about the surveillance operation at all, and the general director of the national security services may deny the disclosure of the information by referring to the excuse of national security interest or the protection of others' rights without further conditions.

In case the general director of the national security services rejects the claim for access to information, the person may initiate a court procedure before the regional courts (*törvényszék*) presuming that the national security services rejected his/her claim and did not provide information on whether he/she is or was subject to surveillance without legal grounds. He/she may also ask for an investigation of the Hungarian Authority for Data Protection and Freedom of Information (*Nemzeti Adatvédelmi és Információszabadság Hatóság*). However, it depends on the Authority's discretionary power whether it orders an investigation. The national security services also have to keep records on the requests for surveillance received from partner agencies, and they must inform, on an annual basis, the Hungarian Authority for Data Protection and Freedom of Information about such requests, the method on how they evaluate these requests and the reasons why they might reject them.<sup>35</sup> The Authority has powers to issue binding decisions on ordering that information about the surveillance operation should be given to the person concerned, if the request to grant access was refused unlawfully earlier, and the Authority can also impose a financial penalty against the national security services in such

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<sup>32</sup> [www.right2info.org/exceptions-to-access/national-security/global-principles#section-10](http://www.right2info.org/exceptions-to-access/national-security/global-principles#section-10).

<sup>33</sup> Hungary, Act CXII of 2011 on the right to information self determination and the freedom of information (2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról). 27 July 2011. available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100112.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100112.TV)

<sup>34</sup> Hungary, Act CXXXV of 1995 on the national security services (1995. évi CXXXV. törvény a nemzetbiztonsági szolgálatokról), 27 March 1996, Article 48(1), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

<sup>35</sup> Hungary, Act CXXXV of 1995 on the national security services (1995. évi CXXXV. törvény a nemzetbiztonsági szolgálatokról), 27 March 1996, Article 48(2), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

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cases.<sup>36</sup> The Authority may call upon the classifier of the information to modify the level or term of classification of the information that was classified on the basis of national security interest.<sup>37</sup>

A person who suspects that he/she was subject to surveillance may also turn to the Commissioner for Fundamental Rights (*alapvető jogok biztosa*) who has powers to investigate complaints related to secret surveillance activities. However, the Commissioner's powers are limited as he/she may not inspect:

- registers for the identification of individuals cooperating with the national security services;
- documents containing the technical data of devices and methods used by the national security services for intelligence information gathering, or documents making it possible to identify the persons using them;
- documents relating to encryption activities and encoding;
- security documents relating to the installations and staff of the national security services;
- documents relating to security documents and technological control;
- documents to which access would make the identification of the source of the information possible;
- documents to which access would infringe the obligations undertaken by the national security services towards foreign partner agencies.<sup>38</sup>

The person concerned may also file a complaint to the Minister of the Prime Minister's Office (*Miniszterelnökséget vezető miniszter*), the Minister of Interior (*Belügyminiszter*), or to the Minister of Defence (*Honvédelmi miniszter*) against any suspected activities of the national security services. If the claimant does not accept the outcome of the investigation of the Minister, he/she may turn to the Parliamentary Committee for National Security (*Országgyűlés Nemzetbiztonsági Bizottsága*). The Committee only has powers to investigate the complaint if one third of its members support the claim and find that ordering an investigation is reasonable in the given case.<sup>39</sup>

In case information about the surveillance operation is claimed classified, a specific judicial remedy is also available in the Hungarian system. The person concerned may be entitled to access surveillance information with national classification on the basis of the access licence issued by the information classifier and without a personal security clearance certificate. In case the clearance is refused, the person may turn to the Administrative and Labour Court of Budapest (*Fővárosi Közigazgatási és Munkaügyi Bíróság*). If the Court accepts the application, the classifier must issue an access licence.<sup>40</sup>

Once the secret surveillance operation is finished, the information recorded with no interest for the purposes of surveillance and the data of the persons who are not affected by the case, must

<sup>36</sup> Hungary, Act CXII of 2011 on information self-determination and freedom of information (*2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról*), 27 July 2011, Article 61, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100112.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100112.TV)

<sup>37</sup> Hungary, Act CXII of 2011 on the right to information self-determination and the freedom of information (*2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról*), 27 July 2011, Article 63(1), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100112.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100112.TV)

<sup>38</sup> Hungary, Act CXI of 2011 on the commissioner for fundamental rights (*2011. évi CXI. törvény az alapvető jogok biztosáról*), 27 July 2011, Article 23(2), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100111.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100111.TV)

<sup>39</sup> Hungary, Act CXXV of 1995 on the national security services (*1995. évi CXXV. törvény a nemzetbiztonsági szolgálatokról*), 27 March 1996, Article 37(6), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

<sup>40</sup> Hungary, Act CLV of 2009 on the protection of classified information (*2009. évi CLV. törvény a minősített adatok védelméről*), 1 April 2010, Article 11, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0900155.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0900155.TV)

be destroyed within eight days.<sup>41</sup> The person subject to surveillance gets no information and notification about these actions, and the statistics about the number of surveillance operations are not public either. It is worth mentioning that the Hungarian Criminal Code penalises the misuse of personal data and the misuse of data with public interest that also includes the denial of the disclosure of such data. The Code imposes stricter sanctions in case an official – who may also be a staff member of the national security services – commits the above mentioned felonies.<sup>42</sup>

<sup>41</sup> Hungary, Act XXXIV of 1994 on the police (*1994. évi XXXIV. törvény a rendőrségről*), 1 May 1994, Article 73(3), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99400034.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99400034.TV)

<sup>42</sup> Hungary, Act C of 2012 on the Criminal Code (*2012. évi C. törvény a Büntető Törvénykönyvről*), 1 July 2013, Articles 219 and 220, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1200100.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1200100.TV)

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

Hungary is not mentioned in this section of the report.

In Hungary, there were no special committees formed in order to discuss and analyse the 'Snowden revelations'.

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

Nothing new to add.

### 1.1 **Intelligence services**

1. If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.
2. If your Member State is mentioned, please update the data (new legislation, new report etc.)
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.

Hungary is not mentioned in this section of the report.

In Hungary, there are four civil national security services and one military national security service starting from 17 July 2016. The law uses the title 'national security services' to cover a group of agencies.<sup>43</sup> The five services are independent from each other, and are controlled by the Minister of Interior (*Belügyminiszter*), the Minister of the Prime Minister's Office (*Miniszterelnökséget vezető miniszter*), and the Minister of Defence (*Honvédelmi miniszter*).

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<sup>43</sup> Hungary, Act CXXV of 1995 on the national security services (*1995. évi CXXV. törvény a nemzetbiztonsági szolgálatokról*), 27 March 1996, Article 1, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

The five agencies are: Information Office (*Információs Hivatal*), Constitution Protection Office (*Alkotmányvédelmi Hivatal*), the Special Service for National Security (*Nemzetbiztonsági Szakszolgálat*), the Military National Security Service (*Katonai Nemzetbiztonsági Szolgálat*), and, starting from 17 July 2016, the Counter-Terrorism Information and Criminal Analysis Centre (*Terrorellhárítási Információs és Bűnügyi Elemző Központ*). According to the law, the Counter Terrorism Centre (*Terrorellhárítási Központ*), a special division of the Police, is also entitled to apply secret surveillance methods for non-criminal investigatory purposes.<sup>44</sup>

## 1.2 Surveillance measures

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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.*

Hungary is not mentioned in this section of the report.

Hungarian law only allows the national security services and the Counter Terrorism Centre to conduct targeted data collection. Untargeted collection and mass surveillance have no legal base in Hungary.<sup>45</sup>

## 1.3 Member States' laws on surveillance

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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.*

Hungary is not mentioned in this section of the report.

In Hungary, four national security services and the Counter Terrorism Centre may conduct surveillance activities, and secret surveillance is based on Act CXXV of 1995 on the national security services. Counter-Terrorism Information and Criminal Analysis Centre does not have the right to use such methods and devices according to Art. 53 of Act CXXV of 1995 on national security services. While the powers of the Counter Terrorism Centre are regulated by Act XXXIV of 1994 on the Police, its surveillance operations that do not relate to criminal investigations are regulated by the Act on national security services. Therefore, the same rules apply to the secret surveillance operations of the four concerned national security services and the Counter Terrorism Centre in Hungary. The law does not provide power to the national security services and the Counter Terrorism Centre to conduct untargeted signals' intelligence. The Act on the national security services only regulates targeted surveillance. Surveillance is a last resort, and can only be used if the desired information cannot be obtained and gathered by

<sup>44</sup> Hungary, Act XXXIV of 1994 on the police (*1994. évi XXXIV. törvény a rendőrségről*), 1 May 1994, Article 69, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99400034.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99400034.TV)

<sup>45</sup> Hungary, Act CXXV of 1995 on the national security services (*1995. évi CXXV. törvény a nemzetbiztonsági szolgálatokról*), 27 March 1996, Article 40, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

using other methods.<sup>46</sup> There are two forms of secret surveillance: those subject to external authorisation (judicial warrant) and those not subject to external authorisation (the Minister of Justice authorises the surveillance operation).

### **FRA key findings**

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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.*

Hungary is not mentioned in this section of the report.

In Hungary, the national security services are not subdivided into those with domestic mandate and those with foreign mandate. Some surveillance operations that do not relate to an ongoing criminal investigation are conducted by the Police's special division, the Counter Terrorism Centre. It also fulfils requests from foreign intelligence services.

The goal of the national security services is to ensure the independency and security of the country; however, the scope of national security is not defined by the law.<sup>47</sup>

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

Hungary is not mentioned in this section of the report.

In the Hungarian system, oversight of the operations of the national security services and the Counter Terrorism Centre are exercised in the forms of executive control and parliamentary oversight. Judicial review is also available; however, there are no expert bodies involved in any form of the oversight of the intelligence services.

### **2.1 Executive control**

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*
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.*

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<sup>46</sup> Hungary, Act CXXV of 1995 on the national security services (1995. évi CXXV. törvény a nemzetbiztonsági szolgálatokról), 27 March 1996, Article 53(2), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

<sup>47</sup> Hungary, Act CXXV of 1995 on the national security services (1995. évi CXXV. törvény a nemzetbiztonsági szolgálatokról), 27 March 1996, Articles 4-9, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

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Hungary is not mentioned in this section of the report.

The executive control in Hungary includes the nomination and appointment of the national security services' senior management. Also, by formulating the budget, the Hungarian Parliament votes on the financial resources granted to the national security services. The Government controls the national security services through three members of the cabinet (Minister of Interior, Minister of the Prime Minister's Office and the Minister of Defence).<sup>48</sup> Among these control measures, the minister with jurisdiction may establish the policies and priorities of the national security services, and controls whether the activities of the services comply with the law.<sup>49</sup> Also, in cases of surveillance not subject to external authorisation, the Minister of Justice authorises the surveillance operation, and this licence also serves as a precondition to start the operation.<sup>50</sup> It is, however, worth mentioning that the Hungarian Constitutional Court found that the Minister's approval is not enough as a constitutional requirement in order to start the surveillance operation.<sup>51</sup> The European Court of Human Rights also stated that the absence of judicial supervision over the surveillance activity in such cases violates the fundamental rights of the individuals.<sup>52</sup> The Hungarian Parliament has still not amended the Act.

## 2.2 Parliamentary oversight

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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 information related to the situation in Hungary is still accurate.

### 2.2.1 Mandate

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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 information related to the situation in Hungary is still accurate.

### 2.2.2 Composition

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

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<sup>48</sup> Hungary, Act CXXV of 1995 on the national security services (*1995. évi CXXV. törvény a nemzetbiztonsági szolgálatokról*), 27 March 1996, Article 10, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

<sup>49</sup> Hungary, Act CXXV of 1995 on the national security services (*1995. évi CXXV. törvény a nemzetbiztonsági szolgálatokról*), 27 March 1996, Article 11, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

<sup>50</sup> Hungary, Act CXXV of 1995 on national security services (*1995. évi CXXV. törvény a nemzetbiztonsági szolgálatokról*), 27 March 1996, Article 58(2), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

<sup>51</sup> Hungary, Constitutional Court (*Alkotmánybíróság*), 32/2013, 22 November 2013

<sup>52</sup> European Court of Human Rights (ECtHR), Szabó and Vissy v. Hungary, No. 37138/14, 12 January 2016

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 information related to the situation in Hungary is still accurate.

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

Hungary is not mentioned in this section of the report.

The Act on the national security services grants the Parliamentary Committee for National Security access to all information, regardless of its level of classification to control the activities of the national security services.<sup>53</sup> However, the national security services, or the minister overseeing their activities, may not grant access to the information related to the method or the source, if it highly endangers national interest. Still, even in such cases, the Committee may oblige the services or the minister to share the information if two-thirds of its members support this decision. The Committee may exercise this power while evaluating the legality of an actual operation.<sup>54</sup>

### **2.2.4 Reporting to parliament**

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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.*

Hungary is not mentioned in this section of the report.

The Parliamentary Committee for National Security has no obligation to submit reports on a regular basis; however, while overseeing the work of national security services, it may make reports about its findings, and may also decide that this report will be available to the public.<sup>55</sup>

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<sup>53</sup> Hungary, Act CXXXV of 1995 on national security services (*1995. évi CXXXV. törvény a nemzetbiztonsági szolgálatokról*), 27 March 1996, Article 14(4) point e), available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

<sup>54</sup> Hungary, Act CXXXV of 1995 on national security services (*1995. évi CXXXV. törvény a nemzetbiztonsági szolgálatokról*), 27 March 1996, Article 16, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

<sup>55</sup> Hungary, Act CXXXV of 1995 on national security services (*1995. évi CXXXV. törvény a nemzetbiztonsági szolgálatokról*), 27 March 1996, Article 19/A, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)

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### **2.3 Expert oversight**

- 1. If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
- 2. If your Member State is mentioned, please update the data (new legislation, new report etc.)*
- 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.*

Hungary is not mentioned in this section of the report.

In Hungary, there are no expert bodies specialised in overseeing the operations of the national security services.

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

Hungary is not mentioned in this section of the report.

In Hungary, there are no expert bodies specialised in overseeing the operations of the national security services.

#### **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.*
- 2. If your Member State is mentioned, please update the data (new legislation, new report etc.)*
- 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 information related to the situation in Hungary is still accurate.

### **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.*
- 2. If your Member State is mentioned, please update the data (new legislation, new report etc.)*
- 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 information related to the situation in Hungary is still accurate.

### **FRA key findings**

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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.*

Nothing new to add.

### **3 Remedies**

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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.*

Nothing new to add.

#### **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.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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 information related to the situation in Hungary is still accurate.

#### **3.2 Judicial remedies**

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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.*

Nothing new to add.

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

Hungary is not mentioned in this section of the report.

In Hungary, individuals may complain about privacy violations before ordinary courts that have competency in such cases.<sup>56</sup> Individuals may also ask for a judicial review challenging the decisions of the Hungarian Authority for Data Protection and Freedom of Information. The review procedure is before the administrative and labour courts.<sup>57</sup>

### **3.2.2 Specialised judges and quasi-judicial tribunals**

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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.*

Hungary is not mentioned in this section of the report.

In Hungary, there are no specialised judges appointed for data protection cases. If the individual challenges the decisions of the Hungarian Authority for Data Protection and Freedom of Information on court, the special administration and labour courts have jurisdiction.<sup>58</sup>

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

Nothing new to add.

#### **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.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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 information related to the situation in Hungary is still accurate.

<sup>56</sup> Hungary, Act CXII of 2011 on information self-determination and freedom of information (2011. évi CXII. törvény az információs önrendelkezési jogról és az információszabadságról), 27 July 2011, Article 22, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1100112.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1100112.TV)

<sup>57</sup> Hungary, Act CXL of 2004 on the general rules of public administration procedures and services (2004. évi CXL. törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól), 1 November 2005, Article 95, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0400140.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0400140.TV)

<sup>58</sup> Hungary, Act CXL of 2004 on the general rules of public administration procedures and services (2004. évi CXL. törvény a közigazgatási hatósági eljárás és szolgáltatás általános szabályairól), 1 November 2005, Article 95, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A0400140.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A0400140.TV)

### **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.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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 information related to the situation in Hungary is still accurate.

### **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.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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 information related to the situation in Hungary is still accurate.

FRA key findings

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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.*

Nothing new to add.

### **Conclusions**

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
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.*

Nothing new to add.

## 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.

Effective from 17 July 2016, a new civil national security service, the Counter-Terrorism Information and Criminal Analysis Centre (*Terrorelhárítási Információs és Bűnügyi Elemző Központ*), will be established.<sup>59</sup>

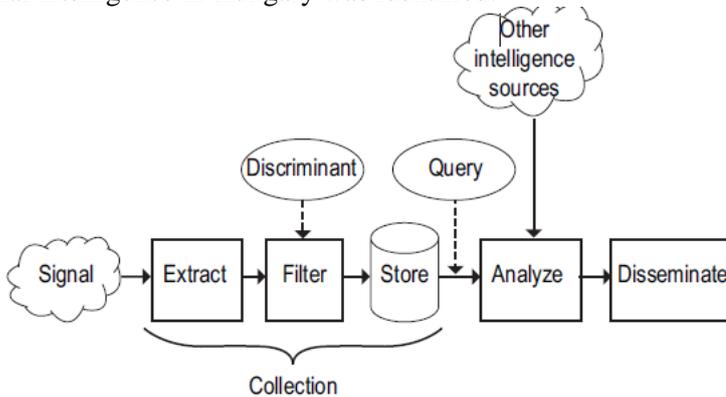
	Civil (internal)	Civil (external)	Civil (internal and external)	Military
<b>HU</b>	Constitution Protection Office/ <i>Alkotmányvédelmi Hivatal</i>  Special Service for National Security/ <i>Nemzetbiztonsági Szakszolgálat</i> (NBSZ)  Counter Terrorism Centre/ <i>Terrorelhárítási Központ</i> (TEK) (service belonging to the police)  Counter-Terrorism Information and Criminal Analysis Centre <i>(Terrorelhárítási Információs és Bűnügyi Elemző Központ)</i> (starting from 17 July 2016)		Information Office/ <i>Információs Hivatal</i> (MKIH)	Military National Security Service/ <i>Katonai Nemzetbiztonsági Szolgálat</i> (KFH)

<sup>59</sup> Hungary, Act LXIX of 2016 on the amendment of certain acts related to counter-terrorism (*2016. évi LXIX. törvény a terrorizmus elleni fellépéssel összefüggő egyes törvények módosításáról*), 17 July 2016, Article 11, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=A1600069.TV&txtreferer=00000003.TXT](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=A1600069.TV&txtreferer=00000003.TXT)

### 1.5.2 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.

Hungarian law does not allow untargeted signals' intelligence. Surveillance must have a legitimate purpose and cannot be general and untargeted.<sup>60</sup> No alternative diagram describing signal intelligence in Hungary was identified.



### 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.

In Hungary, there are no expert bodies involved in the accountability mechanisms of intelligence services.



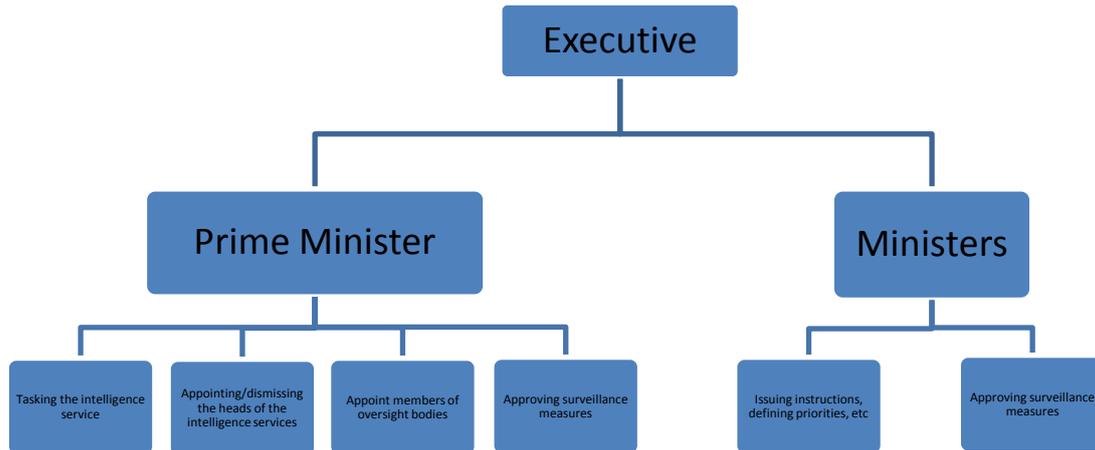
<sup>60</sup> Hungary, Act CXXV of 1995 on national security services (1995. évi CXXV. törvény a nemzetbiztonsági szolgálatokról), 27 March 1996, Article 53, available at: [http://net.jogtar.hu/jr/gen/hjegy\\_doc.cgi?docid=99500125.TV](http://net.jogtar.hu/jr/gen/hjegy_doc.cgi?docid=99500125.TV)



**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.

The Figure properly captures the executive control over the national security services in Hungary.



**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.

The information contained in the table is accurate.

Member States	Essential powers	Enhanced powers
HU		X

**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.

There are no expert bodies which oversee surveillance in Hungary.

EU Member State	Expert Bodies
HU	N.A.

### 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.

The Hungarian Authority for Data Protection and Freedom of Information (*Nemzeti Adatvédelmi és Információszabadság Hatóság*) has the same powers over national security services as it has over other data controllers.

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

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

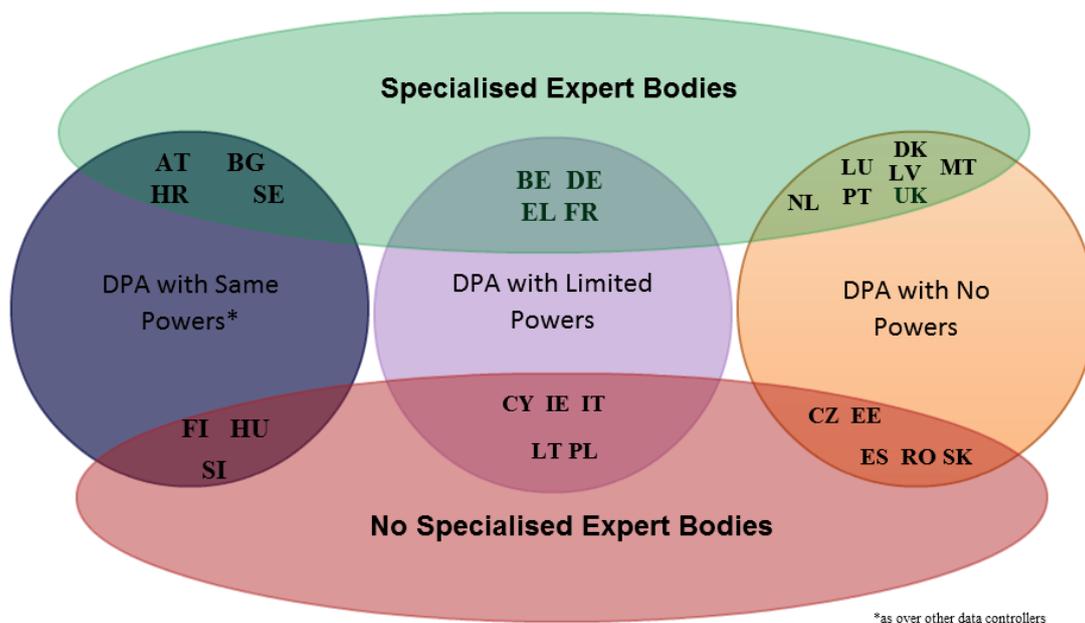
*Same powers*: refers to DPAs that have the exact same powers over NIS as over any other data controller.

*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.

### 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 information contained in the figure 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.

The information contained in the table is accurate.

EU Member State	Judicial	Parliamentary	Executive	Expert bodies	None
HU	X		X		X

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

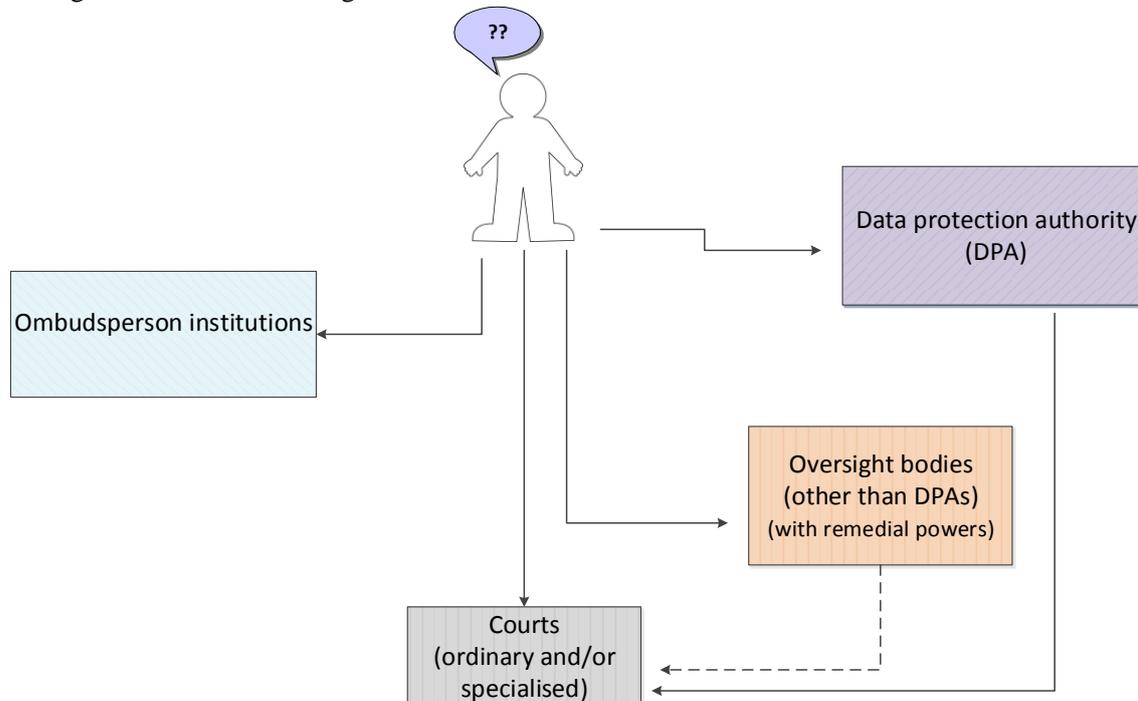
Please check the accuracy of Table 5 below (p. 55 of the FRA Report). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

EU Member State	Judicial	Parliamentary	Executive	Expert
FR			X	
DE		X (telco relations)		X (selectors)
NL			X (selectors)	
SE				X
UK			X	

### 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.

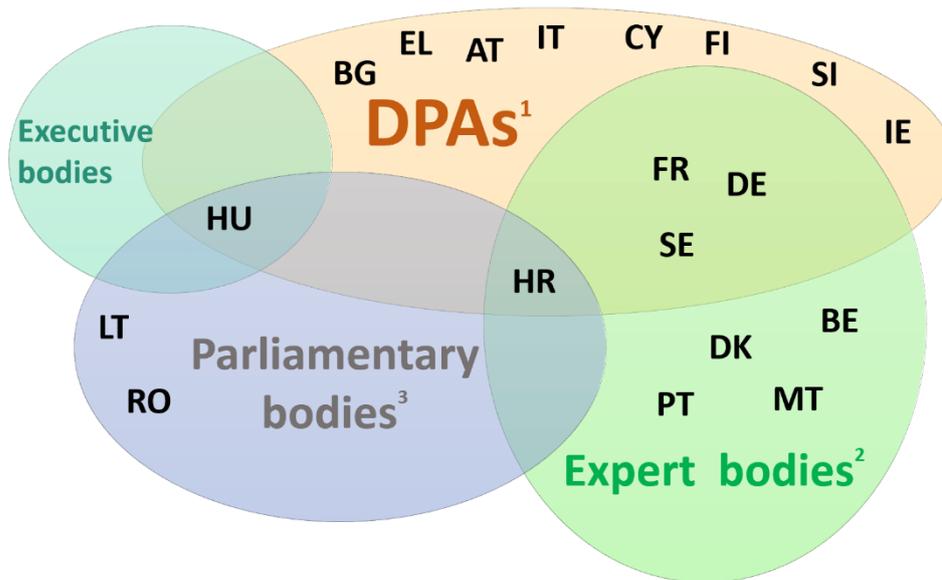
The figure describes the Hungarian situation in an accurate manner.



### 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 figure describes the Hungarian situation in an accurate manner.



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.