

# Short Thematic Report

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

Legal update

Country: Sweden

Version of 8 July 2016

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## CONTEXT

### 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.

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

There are three key developments within the field of legislative reform of particular interest for the theme in question – 1) a government bill introducing a number of changes in Swedish laws relating to covert coercive measures; 2) a review of the conditions needed for the Government to be able include the Security Service's (*Säkerhetspolisen*) use of covert coercive measures in its annual report to the Parliament; and 3) the Government appointed Data Storage Inquiry (*Datalagringsutredningen*) presented a government official report on data storage and integrity concerns to the Government. These three developments will be presented below.

The Government Bill "Covert coercive measures against serious crimes" (*Hemliga tvångsmedel mot allvarliga brott*) was presented to the Swedish Parliament on 22 May 2014.<sup>1</sup> In the Bill, the term "covert coercive measures" referred to covert bugging of rooms and other facilities, covert interception of electronic communication, covert surveillance of electronic communication and covert camera surveillance.

The Bill had two main purposes: 1) to make a number of temporary acts on secret surveillance permanent with some adjustments; and 2) to strengthen the rule of law (*rättssäkerheten*) and the protection of privacy. All amendments were accepted by the Swedish Parliament and entered into force on 1 January 2015.

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<sup>1</sup> Sweden, Ministry of Justice (*Justitiedepartementet*), Government Bill "Covert coercive measures against serious crimes" (*Proposition [2013/24:237] Hemliga tvångsmedel mot allvarliga brott*), available at: [www.regeringen.se/contentassets/cc6ff48d963b40cea1eebed07ba09644/hemliga-tvangsmedel-mot-allvarliga-brott-prop.-201314237](http://www.regeringen.se/contentassets/cc6ff48d963b40cea1eebed07ba09644/hemliga-tvangsmedel-mot-allvarliga-brott-prop.-201314237)

The temporary acts that were made permanent of relevance for the theme were:

- “Act on measures to investigate of certain crimes that constitute a threat to society” (*Lag [2008:854] om åtgärder för att utreda vissa samhällsfarliga brott*).<sup>2</sup>

The Act lists a number of crimes (or attempts, preparations and conspiracies to commit such crimes) for which secret surveillance may be used as an investigatory measure. Secret surveillance is defined as “secret interception of electronic communications, secret surveillance of electronic communications or covert surveillance”. The crimes listed include sabotage or gross sabotage, arson or gross arson, destruction or damage that constitutes a public danger (*allmänfarlig ödeläggelse*), hijacking, maritime or aircraft sabotage or airport sabotage, rebellion, armed threats to the legal order or violations of civil liberties, treason, war instigation, espionage, gross espionage, unauthorized handling of secret information, gross unauthorized handling of secret information or illegal intelligence activities against Sweden, against a foreign power, or against individuals, industrial espionage and terrorist crimes. Before the act was made permanent secret surveillance measures for these types of crimes were only covered by temporary laws.

- “Act on measures to prevent certain particularly serious offenses” (*Lag [2007:979] om åtgärder för att förhindra vissa särskilt allvarliga brott*);<sup>3</sup>

The act stipulates that permission to use covert interception of electronic communications and secret monitoring of electronic communications may be issued in relation to all the crimes mentioned in the Act described above. Furthermore, it adds an additional paragraph granting the use covert coercive measures also in cases where there is a real risk that an organization or group will be engaged in such criminal activities and a person belonging to such a group will actively participate in these activities. Before the act was made permanent secret surveillance measures for these types of crimes were only covered by temporary laws.

“Data Collection Act” (*Lag [2012:278] om inhämtning av uppgifter om elektronisk kommunikation i de brottsbekämpande myndigheternas underrättelseverksamhet*);<sup>4</sup>

The Act grants the Police Authority (*Polismyndigheten*), the Security Service (*Säkerhetspolisen*) and the Swedish Customs (*Tullverket*) permission to retrieve secret intelligence information on electronic communication from the providers of electronic communications networks or electronic communications services concerning messages in an electronic communications and the use of electronic communication equipment in a certain

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<sup>2</sup> Sweden, Act on measures to investigate of certain crimes that constitute a threat to society” (*Lag [2008:854] om åtgärder för att utreda vissa samhällsfarliga brott*), 6 November 2008, available at: [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008854-om-atgarder-for-att-utreda-vissa\\_sfs-2008-854](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008854-om-atgarder-for-att-utreda-vissa_sfs-2008-854)

<sup>3</sup> Sweden, Act on measures to prevent certain particularly serious offenses (*Lag [2007:979] om åtgärder för att förhindra vissa särskilt allvarliga brott*), 22 November 2007, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007979-om-atgarder-for-att-forhindra\\_sfs-2007-979](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007979-om-atgarder-for-att-forhindra_sfs-2007-979)

<sup>4</sup> Sweden, Data Collection Act (*Lag [2012:278] om inhämtning av uppgifter om elektronisk kommunikation i de brottsbekämpande myndigheternas underrättelseverksamhet*), 16 May 2012, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2012278-om-inhamtning-av-uppgifter-om\\_sfs-2012-278](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2012278-om-inhamtning-av-uppgifter-om_sfs-2012-278)

geographical area. Before the act was made permanent the authorities' were only granted permission to retrieve information of this kind through temporary laws.

The Bill also proposed amendments to other legal acts of relevance to the theme in question:

- Act on special alien control (*Lag [1991:572] om särskild utlänningskontroll*);<sup>5</sup>

The amendment of the Act adds a paragraph stipulating that a recording or a record made in secret interception of electronic communication shall be reviewed as soon as possible. The review may be conducted only by a court, the Security Service (*Säkerhetspolisen*), the Police Authority (*Polismyndigheten*) or a prosecutor. If the recording or the record contains something that is not relevant to the purpose of the interception, this part must be destroyed immediately after the review.

Corresponding changes were made in the Code of Judicial Procedure (*Rättegångsbalk [1942:740]*).<sup>6</sup> The changes in the Code of Judicial Procedure simply mirror the content of the acts that were permanented. Their content were not included in the Code before due to their temporary nature. All amendments entered into force 1 January 2015. The main aim of the amendments were, as mentioned above, to permanent the temporary acts that at the time for the amendments had been extended three to four times each. Other amendments changed sections of the acts to allow for authorization of covert interception of rooms and other facilities also in relation to investigations of espionage and so-called State-controlled industrial espionage.<sup>7</sup> The prohibition to intercept certain calls was extended to include calls

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<sup>5</sup> Sweden, Act on special alien control (*Lag [1991:572] om särskild utlänningskontroll*), 5 May 1991, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1991572-om-sarskild-utlanningskontroll\\_sfs-1991-572](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1991572-om-sarskild-utlanningskontroll_sfs-1991-572)

<sup>6</sup> The amendments in the Code of Judicial Procedure (*Rättegångsbalk [1942:740]*) concerned chapter 27, sections 2, 18, 19, 20 a, 21, 21 a, 22, 23, 23 a, 24, 26, 28, 31, 32 and 33. New sections were added to chapter 27, section 9a, 20d, 20e, 25a and 34 §§. The heading of chapter 27 was also changed from "On confiscation and secret interception of electronic communications, etc." (*Om beslag och hemlig avlyssning av elektronisk kommunikation m.m.*) to "On confiscation and covert coercive measures" (*Om beslag och hemliga tvångsmedel*). The amendments add a number of crimes (or attempts, preparations and conspiracies to commit such crimes) to the list of crimes for which secret surveillance may be used as an investigatory measure. The crimes include sabotage or gross sabotage, arson or gross arson, destruction or damage that constitutes a public danger (*allmänfarlig ödeläggelse*), hijacking, maritime or aircraft sabotage or airport sabotage, rebellion, armed threats to the legal order or violations of civil liberties, treason, war instigation, espionage, gross espionage, unauthorized handling of secret information, gross unauthorized handling of secret information or illegal intelligence activities against Sweden, against a foreign power, or against individuals, industrial espionage and terrorist crimes. Secret surveillance measures for these types of crimes have earlier been covered only by the temporary acts mentioned with the exception of and espionage and industrial spionage. Sweden, Code of Judicial Procedure (*Rättegångsbalk [1942:740]*), 1 January 2015, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740\\_sfs-1942-740](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740_sfs-1942-740)

<sup>7</sup> The amendment to chapter 27, section 19 of the Code of Judicial Procedure (*Rättegångsbalk [1942:740]*) limits industrial espionage to such cases where there is reason to believe that the crime has been committed on behalf of or supported by a foreign power or by someone who has acted on behalf of a foreign power. Sweden, Code of Judicial Procedure (*Rättegångsbalk [1942:740]*), chapter 27, section 19, 1 January 2015, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740\\_sfs-1942-740](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740_sfs-1942-740)

between suspected persons and persons that are bound to secrecy.<sup>8</sup> Consequently, chapter 37, section 22 of the Code of Judicial Procedure (*Rättegångsbalk [1942:740]*) now stipulates that the interception of such calls must be terminated immediately (*omedelbart*).<sup>9</sup> A prosecutor's right to make temporary decisions on surveillance measures in investigations as expanded to include all types of covert surveillance measures in if the investigation will be substantially delayed otherwise. In such cases the prosecutor can take the decision to go ahead pending the court's decision. Before these amendments, a prosecutor could only make temporary decisions on interception of rooms and other facilities. The Stockholm District Court (*Stockholms tingsrätt*), which has the national responsibility for this kind of cases, must still urgently (*skyndsamt*) review this kind of cases.<sup>10</sup> However, its power to decide on the use of secret surveillance measures without the participation of a public counsel (*offentligt ombud*) was removed in the amendments.<sup>11</sup>

B) A review of the conditions needed for the Government to be able include the Security Service's (*Säkerhetspolisen*) use of covert coercive measures in its annual report to the Parliament was carried out by Ms. Doris Högne Rydheim on commission from the Ministry of Justice from February to June 2015. A proposal based on the review was presented on a press conference, which opened up for certain reporting of the Security Services' use of covert coercive measures.<sup>12</sup> (The covert coercive measures of the Police Authority (*Polismyndigheten*), the Prosecution Authority (*Åklagarmyndigheten*) and the Swedish Customs (*Tullverket*) are reported in more a comprehensive manner, as a consequence of the amendments of the legal acts mentioned earlier). According to the press conference, the proposal suggested that Government's annual report can include the Secret Services' total use of covert coercive measures. This allows for a public tracing of increases or decreases in the use of covert coercive measures, while the types of crimes (or suspicions of crimes) in focus for the main secret. After the review, the Swedish Prosecution Authority (*Åklagarmyndigheten*) has been tasked to report certain information about the Security Services' (*Säkerhetspolisen*) use of covert coercive measures to the Government on a yearly

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<sup>8</sup> Chapter 36, section 5 of the Code of Judicial Procedure (*Rättegångsbalk [1942:740]*) mentions lawyers, doctors, dentists, midwives, nurses, psychologists, psychotherapists, counsellors, Defence counsels, priests or persons of the same status etc. Sweden, Code of Judicial Procedure (*Rättegångsbalk [1942:740]*), chapter 36, section 5, 1 August 2011, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740\\_sfs-1942-740](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740_sfs-1942-740)

<sup>9</sup> Sweden, Code of Judicial Procedure (*Rättegångsbalk [1942:740]*), chapter 27, section 21a, 1 January 2015, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740\\_sfs-1942-740](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740_sfs-1942-740)

<sup>10</sup> Sweden, Code of Judicial Procedure (*Rättegångsbalk [1942:740]*), chapter 27, section 34, 1 January 2015, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740\\_sfs-1942-740](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740_sfs-1942-740)

<sup>11</sup> Sweden, Code of Judicial Procedure (*Rättegångsbalk [1942:740]*), chapter 27, section 26, 1 January 2015, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740\\_sfs-1942-740](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/rattegangsbalk-1942740_sfs-1942-740)

<sup>12</sup> Sweden, press release (*pressmeddelande*) "Increased openness for the Security service suggested" (*Ökad öppenhet för säkerhetspolisen föreslås*), 19 June 2015, available at: [www.regeringen.se/pressmeddelanden/2015/06/okad-oppenhet-for-sakerhetspolisen-foreslas/](http://www.regeringen.se/pressmeddelanden/2015/06/okad-oppenhet-for-sakerhetspolisen-foreslas/) The review itself is not available to the public due to its subject area.

basis beginning in 2016. The report should be developed in cooperation with the Security Service on the basis of their respective mandates.<sup>13</sup>

C) In March 2015, the Data storage inquiry (*Datalagringsutredningen*) presented a government official report on data storage and integrity concerns to the Government.<sup>14</sup> The report focused on the Electronic Communications Act (*Lag [2003:389] om elektronisk kommunikation*)<sup>15</sup> and the Data Collection Act (*Lag [2012:278] om inhämtning av uppgifter om elektronisk kommunikation i de brottsbekämpande myndigheternas underrättelseverksamhet*).<sup>16</sup> The Inquiry's remit was to propose the changes it deemed appropriate to strengthen the protection of privacy in relation to these acts and to review the Security Service's (*Säkerhetspolisen*) needs to have special powers to collect information about certain criminal activities. According to the general rule in the Data Collection Act (*Lag [2012:278] om inhämtning av uppgifter om elektronisk kommunikation i de brottsbekämpande myndigheternas underrättelseverksamhet*),<sup>17</sup> data may be collected if the circumstances are such that the measure is of particular importance for preventing or detecting criminal activities that include crimes for which the sentence is imprisonment for two years or more. The Act also contains a special time-limited provision allowing data to be collected concerning criminal activities that include certain specific crimes. The crimes covered by this provision are

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<sup>13</sup> Sweden, Ministry of Justice (*Justitiedepartementet*) Assignment to the Swedish Prosecution Authority, in collaboration with Swedish Economic Crimes Authority, the Police Authority, Security Services and the Swedish Customs, to annually report the use of covert coercive measures (*Uppdrag till Åklagarmyndigheten att i samverkan med Ekobrottsmyndigheten, Polismyndigheten, Säkerhetspolisen och Tullverket årligen redovisa användningen av hemliga tvångsmedel*), Government Decision Ju2015/04549/Å; Ju2015/04886/PO; Ju2015/05328/Å; and Ju2015/09908/Å, 17 December 2015, available at: [www.regeringen.se/contentassets/f9e9bc6a10a5442b8a8e07fe41fa72b6/uppdrag-till-aklagarmyndigheten-att-i-samverkan-med-ekobrottsmyndigheten-polismyndigheten-sakerhetspolisen-och-tullverket-arligen-redovisa-anvandningen-av-hemliga-tvangsmedel.pdf](http://www.regeringen.se/contentassets/f9e9bc6a10a5442b8a8e07fe41fa72b6/uppdrag-till-aklagarmyndigheten-att-i-samverkan-med-ekobrottsmyndigheten-polismyndigheten-sakerhetspolisen-och-tullverket-arligen-redovisa-anvandningen-av-hemliga-tvangsmedel.pdf)

<sup>14</sup> Sweden, Ministry of Justice (*Justitiedepartementet*), "Data storage and integrity", report from the Data Storage Inquiry, Government official report (*Datalagring och integritet, Betänkande från Datalagringsutredningen, SOU 2015:31*), available at: [www.regeringen.se/contentassets/116590d7d8824b458b4142fe9f3624f5/datalagring-och-integritet-sou-201531](http://www.regeringen.se/contentassets/116590d7d8824b458b4142fe9f3624f5/datalagring-och-integritet-sou-201531)

<sup>15</sup> Sweden, Electronic Communications Act (*Lag [2003:389] om elektronisk kommunikation*), 12 June 2003, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2003389-om-elektronisk-kommunikation\\_sfs-2003-389](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2003389-om-elektronisk-kommunikation_sfs-2003-389) The Electronic Communications Act contains provisions stating that suppliers of publicly available electronic communications services are to retain certain data generated or processed in connection with providing such services so that these data can be used for law enforcement purposes.

<sup>16</sup> Sweden, Data Collection Act (*Lag [2012:278] om inhämtning av uppgifter om elektronisk kommunikation i de brottsbekämpande myndigheternas underrättelseverksamhet*) 16 May 2012, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2012278-om-inhamtning-av-uppgifter-om\\_sfs-2012-278](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2012278-om-inhamtning-av-uppgifter-om_sfs-2012-278) The Data Collection Act regulates the possibilities of the law enforcement authorities (the Swedish Police [*Polisen* Authority [*Polismyndigheten*], the Swedish security service [*Säkerhetspolisen*] and the Swedish Customs [*Tullverket*] of accessing information on electronic communication in their intelligence activities.

<sup>17</sup> Sweden, Data Collection Act (*Lag [2012:278] om inhämtning av uppgifter om elektronisk kommunikation i de brottsbekämpande myndigheternas underrättelseverksamhet*), 16 May 2012, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2012278-om-inhamtning-av-uppgifter-om\\_sfs-2012-278](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2012278-om-inhamtning-av-uppgifter-om_sfs-2012-278)

the types of criminal activity that pose a threat to society and that are generally targeted by the Security Service.<sup>18</sup>

The Inquiry's report presented proposals on how the need to collect information about certain criminal activities should be met while striking a balance with the interests of privacy. The Data storage inquiry stated that the way in which the Data Collection Act has been applied has led to considerable benefits for the intelligence activities in relation to criminal activities covered by sections 2 and 3 of the act.<sup>19</sup> Consequently, the Inquiry proposed that the Security Service' possibility of collecting data in relation to criminal activities covered by the aforementioned sections should not only be retained but be given a permanent application in the future. Moreover, the Inquiry found that the Security Service needed the powers to collect data concerning criminal activities that include state-sponsored industrial espionage and gross assault and unlawful deprivation of liberty committed with the intention of influencing public bodies or persons professionally engaged in news coverage or other journalism to take or refrain from taking a measure or to take revenge for a measure ('system-threatening crime'). As a consequence, the inquiry also proposed that the possibility for the law enforcement authorities to collect data should be extended to include these crimes.<sup>20</sup>

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

There are no new court decisions concerning the area surveillance during the period in question. The Parliamentary Ombudsmen (*Justitieombudsmannen*) have deliver serious criticism of a judge at Blekinge District Court (*Blekinge tingsrätt*), who had decided on the use of covert coercive measures without legal support.<sup>21</sup> Even if the reasons behind the decision

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<sup>18</sup> According to section 2 of the Data Collection Act (*Lag [2012:278] om inhämtning av uppgifter om elektronisk kommunikation i de brottsbekämpande myndigheternas underrättelseverksamhet*), 16 May 2012, data may be retrieved by the use of covert coercive measures if the action is of particular importance to prevent, avert or detect criminal activity involving the crimes that will lead to imprisonment for two years or more, and if the reasons outweigh the interference of the privacy of the individuals in focus. In accordance to section 3, if these conditions are met data may also be retrieved if the covert coercive measure is necessary to prevent, avert or detect criminal activity involving the following crimes: 1) sabotage; 2) hijacking, maritime or aircraft sabotage or airport sabotage; 3) violation of civil liberties; 4) espionage, gross unauthorized handling of secret information or gross illegal intelligence activities against Sweden; and 5) financing of particularly serious crimes, public incitement (*offentlig uppmaning*), recruitment and training for terrorist crimes and other particularly serious crime. "Data Collection Act" (*Lag [2012:278] om inhämtning av uppgifter om elektronisk kommunikation i de brottsbekämpande myndigheternas underrättelseverksamhet*), section 2, 16 May 2012 and section 3, 1 July 2014, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2012278-om-inhamtning-av-uppgifter-om-sfs-2012-278](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2012278-om-inhamtning-av-uppgifter-om-sfs-2012-278)

<sup>19</sup> Sweden, "Data storage and integrity", report from the Data Storage Inquiry, Government official report (*Datalagring och integritet, Betänkande från Datalagringsutredningen, SOU 2015:31*), available at: [www.regeringen.se/contentassets/116590d7d8824b458b4142fe9f3624f5/datalagring-och-integritet-sou-201531](http://www.regeringen.se/contentassets/116590d7d8824b458b4142fe9f3624f5/datalagring-och-integritet-sou-201531)

<sup>20</sup> Sweden, "Data storage and integrity", report from the Data Storage Inquiry, Government official report (*Datalagring och integritet, Betänkande från Datalagringsutredningen, SOU 2015:31*), available at: [www.regeringen.se/contentassets/116590d7d8824b458b4142fe9f3624f5/datalagring-och-integritet-sou-201531](http://www.regeringen.se/contentassets/116590d7d8824b458b4142fe9f3624f5/datalagring-och-integritet-sou-201531)

<sup>21</sup> Sweden, Parliamentary Ombudsmen (*Justitieombudsmannen*), "Serious criticism of a judge at Blekinge District Court has decided on the secret surveillance of electronic communications without support of the law", Parliamentary Ombudsmen Decision No. 387-2015 (*Allvarlig kritik mot en*

was the planning of larceny, which is outside the theme of the report, the easiness with which the judge in question granted permission for the prosecution to intercept electronic communications indicates a normalisation of a integrity infringing practice. In short, the case reviewed concerned covert interception of electronic communication. A prosecutor sought court approval to intercept electronic communications on the suspicion of preparation of gross larceny. According to the prosecutor, two persons were planning a burglary of a private home and had been noticed moving around the house in question. Since gross larceny is punishable with imprisonment from six months upto two years, secret surveillance of electronic communications may be allowed if a person is justifiably suspected (*skäligen misstänkt*) of preparation of the crime. The intelligence gathered pointed out the two persons on the ground of their movements in the area and a photograph of a shoe print resembling a shoe print from one of the suspected persons visible in the snow close to the house. The prosecutor considered that this could be sufficient reasons to justifiably suspect the two persons in question on the grounds of preparation of gross larceny. Consequently, she requested the permission of the Blekinge District Court (*Blekinge tingsrätt*) to intercept the electronic communications of the two suspects. The District Court and the responsible judge gave the prosecution the permission to use secret surveillance in the case.

However, as pointed out by the Parliamentary Ombudsmen in their decision, chapter 23, section 2 of the Penal Code (*Brottsbalk [1962:700]*)<sup>22</sup> stipulates that in order for an action to be considered a preparation of crime a person must have accepted or payed out remuneration for committing a crime or to cover expenses for the execution of a crime, or the person must have handled something that is particularly likely to be used as an aid in a crime. The Ombudsmen could not find anything in the documentation from the District Court that indicated that the suspects had been engaged in such planning activities. Thus, the criteria of preparation for larceny could not be considered fulfilled. As a consequence, the suspects should not have been considered to be justifiably suspected of preparation of crime. Based on this legal arguments, the Ombudsmen decided that the Blekinge District Court's decision to grant the prosecutor permission to intercept electronic communications of the suspects did not have support in the Penal Code and the responsible judge received serious criticism for her action.

### *3 the reports and inquiry by oversight bodies (parliamentary committes, specialised expert bodies and data protection authorities) in relation to the Snowden revelations*

The reports referenced below were not commissioned as a consequence of the Snowden revelations. On a general note, the Snowden revelations did not have such a great impact on political discussions or law-making processes concerning surveillance as the acts of terror in Paris and Brussels. At the time of the revelations in 2013, Sweden and the UK distinguished themselves from the other EU member states by submitting an official protest against the US

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*rådman vid Blekinge tingsrätt som utan stöd i lag har beslutat om hemlig övervakning av elektronisk kommunikation*, JO-beslut, Dnr. 387-2015), 20 May 2016, available at: [www.jo.se/PageFiles/6505/387-2015.pdf](http://www.jo.se/PageFiles/6505/387-2015.pdf)

<sup>22</sup> Sweden, Penal Code (*Brottsbalk [1962:700]*), chapter 23, section 2, 1 July 2001, available at: [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700\\_sfs-1962-700](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/brottsbalk-1962700_sfs-1962-700)

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interception of the electronic communication of various EU institutions, including German Chancellor Angela Merkel's phone. Even when it was revealed that the National Defence Radio Establishment (*Försvarets radioanstalt [FRA]*) had a close collaboration with the US National Security Agency (NSA) this was not considered to be enough a reason to revise the Swedish covert signal intelligence activities.

The Data Protection Authority (*Datainspektionen*) was commissioned by the Swedish Government to review the National Defence Radio Establishment's (*Försvarets radioanstalt [FRA]*) personal data processing from a privacy/integrity perspective. The review was carried out 2009 – 2010 and was a follow-up to the introduction of the Act on signals defence intelligence (*Lag [2008:717] om signalspaning i försvarsunderrättelseverksamhet*).<sup>23</sup> The review report was presented in 2010.<sup>24</sup> The Authority's overall assessment was that personal data processing and privacy issues were taken seriously by the National Defence Radio Establishment. According to the report, the National Defence Radio Establishment spent considerable time and resources to create procedures and train its staff to minimise the risk of undue intrusion of privacy. The Swedish Data Protection Authority will carry out a new review of the personal data processing at the National Defence Radio Establishment during 2016.<sup>25</sup> This review will also consider a principally important case brought to attention by the Swedish Foreign Intelligence Inspectorate (*Statens inspektion av försvarsunderrättelseverksamhet [SIUN]*) in 2015.<sup>26</sup>

During 2014, the Swedish National Audit Office (*Riksrevisionen*) carried out a review of the Swedish Foreign Intelligence Inspectorate (*Statens inspektion av försvarsunderrättelseverksamhet [SIUN]*) to see how the authority carried out its assignments and if it did so in an appropriate and effective manner. The review report was presented in January 2015.<sup>27</sup> The conclusions of the National Audit Office were that the Foreign Intelligence Inspectorate had the mandate and the resources necessary to fulfil its control function. Furthermore, the

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<sup>23</sup> Sweden, Signal Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelseverksamhet*), 10 July 2008, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i-sfs-2008-717](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i-sfs-2008-717)

<sup>24</sup> Sweden, Swedish Data Protection Authority (*Datainspektionen*) (2010) "The Data Protection Authority's account for the government assignment FÖ 2009/355" (*Datainspektionens redovisning av regeringsuppdraget FÖ 2009/355*), 7 December 2010, available at [www.datainspektionen.se/Documents/beslut/2010-12-07-fra.pdf](http://www.datainspektionen.se/Documents/beslut/2010-12-07-fra.pdf)

<sup>25</sup> Sweden, National Defence Radio Establishment (*Försvarets radioanstalt*) "The Data Protection Authority reviews the National Defence Radio Establishment's processing of personal data" (*Datainspektionen genomför tillsyn av FRA:s personuppgiftshantering*), webpage news published by National Defence Radio Establishment in 2015, available at [www.fra.se/snabblankar/nyheterochpress/nyhetsarkiv/nyheter/datainspektionengenomfortillsynavfraspersonuppgiftshantering.260.html](http://www.fra.se/snabblankar/nyheterochpress/nyhetsarkiv/nyheter/datainspektionengenomfortillsynavfraspersonuppgiftshantering.260.html)

<sup>26</sup> Sweden, Swedish Foreign Intelligence Inspectorate (*Statens inspektion av försvarsunderrättelseverksamhet*), Summary of Swedish Foreign Intelligence Inspectorates inspections of the National Defence Radio Establishment (*Sammanställning över SIUNS inspektioner av FRA*) and Swedish Foreign Intelligence Inspectorates Annual report 2015 (*Årsrapport 2015*) available at [www.fra.se/download/18.7fa21d9714ce119787c8000168/Siuns-inspektioner\\_Sammanstallning.pdf](http://www.fra.se/download/18.7fa21d9714ce119787c8000168/Siuns-inspektioner_Sammanstallning.pdf) [http://www.siun.se/dokument/Arsredovisning\\_2015.pdf](http://www.siun.se/dokument/Arsredovisning_2015.pdf)

<sup>27</sup> Sweden, Swedish National Audit Office (*Riksrevisionen*) "The control of the Defence intelligence operations" (*Kontrollen av försvarsunderrättelseverksamheten*, RiR 2015:01), 2015, available at: [www.riksrevisionen.se/PageFiles/21131/RiR\\_2015\\_02\\_Anpassad.pdf](http://www.riksrevisionen.se/PageFiles/21131/RiR_2015_02_Anpassad.pdf)

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National Audit Office concluded that the Inspectorate operates in accordance with Swedish laws and ordinances. However, the lack of documentation of the Inspection's activities should be considered a cause for concern both in relation to audit processes and for further monitoring.<sup>28</sup>

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.*

As mentioned above, the Snowden revelations did not have a lasting impact on the political discussion and law making process regarding surveillance. The most widespread discussions concerning surveillance took place in relation to adopting the Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelseverksamhet*) where it was made possible to intercept cable ridden signal.<sup>29</sup>

The more recent terror attacks in Paris and Brussels in 2015 and 2016 have led to discussions on the need for increased possibilities for surveillance. Amendments to a number of acts were proposed in a Government Bill presented to the Swedish Parliament in February 2016. The most important amendments concerned the criminalization of 1) the reception of instructions to manufacture or use of explosives, weapons etc. specifically intended to be used for particularly serious crime; and 2) journeys to other countries in order to commit or prepare particularly serious crime, or notify or receive the type of instructions described above.<sup>30</sup> The amendments were accepted by Parliament and entered into force on 1 April 2016.

The standing Parliamentarian Committee on Justice (*Justitieutskottet*) concluded its deliberations and submitted a report to the Parliament concerning the Government Bill and the proposed amendments. In the report the standing Committee on Justice touched upon surveillance in regards to the proposed amendments to the acts. The report stated that the Security Service (*Säkerhetspolisen*) should not be given an expanded mandate to carry out covert surveillance during the period of preliminary investigations.<sup>31</sup>

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<sup>28</sup> Sweden, Swedish National Audit Office (*Riksrevisionen*) Control of Defence intelligence operations (*Kontroll av försvarsunderrättelseverksamheten*, RiR 2015:01) 2015, available at: [www.riksrevisionen.se/PageFiles/21131/RiR\\_2015\\_02\\_Anpassad.pdf](http://www.riksrevisionen.se/PageFiles/21131/RiR_2015_02_Anpassad.pdf)

<sup>29</sup> Sweden, Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelsetjänst*), 10 July 2008, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i\\_sfs-2008-717](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i_sfs-2008-717)

<sup>30</sup> Sweden, Act on penalties for public incitement, recruitment and training for terrorist offenses and other particularly serious crimes (*Lag [2010:299] om straff för offentlig uppmaning, rekrytering och utbildning avseende terroristbrottch annan särskilt allvarlig brottslighet*), sections 5a and 5b, 1 April 2016, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2010299-om-straff-for-offentlig-uppmaning\\_sfs-2010-299](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2010299-om-straff-for-offentlig-uppmaning_sfs-2010-299)

<sup>31</sup> Sweden, Standing Committee on Justice (*Justitieutskottet*), Report (2015/16JuU17) on Government Bill 2015/16:78 Special criminal liability for travels in the purpose of terrorism (*Ett särskilt straffansvar för resor i terrorismsyfte*) available at: <https://data.riksdagen.se/fil/19898AED-2FDA-467C-8C57-CB39E70C3507>

No specific or ad hoc parliamentary or non-parliamentary commission have been established as a consequence of the Snowden revelations.

## **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>32</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.

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.

There are two branches of intelligence services in Sweden. The first is the intelligence services connected to the defence intelligence. According to section 2 of the Ordinance on defence intelligence service (*Förordning [2000:131] om försvarsunderrättelseverksamhet*),<sup>33</sup> defence intelligence activities are carried out by the following institutions; the Armed Forces (*Försvarsmakten*), the National Defense Radio Establishment (*Försvarets radioanstalt [FRA]*), the Swedish Defence Material Administration (*Försvarets materielverk*) and the Swedish Defense Research Agency (*Totalförsvarets forskningsinstitut*). The Military intelligence and security service (*Militära underrättelse- och säkerhetstjänsten [MUST]*) is the coordinating agency for the intelligence services within the armed forces. In addition, there are two main directions within the military intelligence and security service; the military security service and the military intelligence service.<sup>34</sup>

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<sup>33</sup> Sweden, Ordinance on Defence intelligence service (*Förordning [2000:131] om försvarsunderrättelseverksamhet*), section 2, 23 August 2007, available at: [www.lagboken.se/Views/Pages/GetFile.ashx?portalId=56&cat=27546&docId=163595&propId=5](http://www.lagboken.se/Views/Pages/GetFile.ashx?portalId=56&cat=27546&docId=163595&propId=5)

<sup>34</sup> Interview with an anonymous informant within the Military Intelligence and Security Service (*Militära underrättelse- och säkerhetstjänsten*), 2 May 2016

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The second branch of the intelligence services in Sweden is the Swedish Security Service (*Säkerhetspolisen [SÄPO]*). The Ordinance on instruction for the Security service (*Förordning [2014:1103] med instruktion till säkerhetspolisen*) stipulates that the Security service is tasked with intelligence and security activities.<sup>35</sup>

The principal differences between the two branches, described above, are that the Security service is tasked with protecting Swedish interest in Sweden, while the Swedish defence intelligence institutions primarily are tasked with obtaining intelligence information outside Swedish borders.<sup>36</sup> The legal bases for the two branches of Swedish intelligence service are found in different legal acts. This being the case, the questions will be answered in two sections. The first section focuses on the defence intelligence service.

According to section 3 of the Act on Defence intelligence service (*Lag [2000:130] om försvarsunderrättelseverksamhet*),<sup>37</sup> the authority or authorities, which are commissioned to carry out defence intelligence services are allowed to establish and maintain cooperation with other countries and international organizations following the government's decisions (*närmare bestämmande*). The authorities carrying out defence intelligence service are allowed to cooperate with other states' intelligence services or with international organizations, but only under the condition that the purpose of the cooperation serves the Swedish state and the Swedish defense interests as stipulated in the Ordinance on defence intelligence service (*Förordning [2000:131] om försvarsunderrättelseverksamhet*).<sup>38</sup> According to section 9 of the Act on signals defence intelligence (*Lag [2008:717] om signalspaning i försvarsunderrättelseverksamhet*), the authorities in question are allowed to establish and

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<sup>35</sup> Sweden, Ordinance with instruction for the security service (*Förordning [2014:1103] med instruktion för säkerhetspolisen*), section 1, 11 september 2014, available at: [www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Forordning-20141103-med-ins\\_sfs-2014-1103/?bet=2014:1103](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Forordning-20141103-med-ins_sfs-2014-1103/?bet=2014:1103)

<sup>36</sup> Interview with an anonymous informant within the Military Intelligence and Security Service (*Militära underrättelse- och säkerhetstjänsten*), 2 May 2016.

<sup>37</sup> Sweden, Act on Defence intelligence service (*Lag [2000:130] om försvarsunderrättelseverksamhet*) section 3, 1 October 2007, available at: [www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-2000130-om-forsvarsunde\\_sfs-2000-130/](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-2000130-om-forsvarsunde_sfs-2000-130/)

<sup>38</sup> Sweden, Ordinance on Defence intelligence service (*Förordning [2000:131] om försvarsunderrättelseverksamhet*) section 3, 30 Mars 2000, available at: [www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Forordning-2000131-om-forsv\\_sfs-2000-131/?bet=2000:131](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Forordning-2000131-om-forsv_sfs-2000-131/?bet=2000:131). See also Sweden, Signals Intelligence Ordinance (*Förordning [2008:923] om signalspaning i försvarsunderrättelseverksamhet*) section 6, available at: [http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2008923-om-signalspaning-i\\_sfs-2008-923](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2008923-om-signalspaning-i_sfs-2008-923); Sweden, Act on processing of personal data in the foreign intelligence and development operations of the National Defence Radio Establishment (*Lag [2007:259] om behandling av personuppgifter i Försvarets radioanstalts försvarsunderrättelse- och utvecklingsverksamhet*), chapter 1, section 17, available at: [http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007259-om-behandling-av-personuppgifter-i\\_sfs-2007-259;and](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007259-om-behandling-av-personuppgifter-i_sfs-2007-259;and) Sweden, Ordinance on processing of personal data in the foreign intelligence and development operations of the National Defence Radio Establishment (*Förordning [2007:261] om behandling av personuppgifter i Försvarets radioanstalts försvarsunderrättelse- och utvecklingsverksamhet*), section 7, available at: [http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2007261-om-behandling-av\\_sfs-2007-261](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2007261-om-behandling-av_sfs-2007-261)

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maintain cooperation on signal surveillance with other countries and international organizations following the government's decisions (*närmare bestämmande*).<sup>39</sup>

The Swedish government issues an annual document titled "National focus of defence intelligence activities" (*Nationella inriktningen av försvarsunderrättelsetjänsten*), which contains the areas and issues that the defense intelligence shall prioritise that year.<sup>40</sup> The international cooperations of the Swedish defense intelligence services must be in line with prioritisations in this document.<sup>41</sup> The "National focus of defence intelligence activities" is referred to in section 4 of the Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelseverksamheten*).<sup>42</sup> The content of the "National focus of defence intelligence activities" is highly classified.<sup>43</sup> The international cooperation of the defence intelligence activities are governed by section 3 of the Act on Defence intelligence service (*Lag [2000:130] om försvarsunderrättelseverksamhet*), mentioned above.<sup>44</sup> The international cooperation agreements are not always in writing but can be based on verbal agreements. If the agreements are in writing they are classified as it concerns national security. The international cooperation mirrors the Swedish defence intelligence need for certain intelligence information which is highly sensitive information.<sup>45</sup> Sweden still has a military position of non alignment.<sup>46</sup> This increases the need to keep international intelligence cooperation classified.<sup>47</sup> The international cooperation carried out by Swedish defence intelligence services is controlled by the Swedish Foreign Intelligence Inspectorate<sup>48</sup>. If

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<sup>39</sup> Sweden, Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelseverksamhet*) section 9, 1 December 2009, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i\\_sfs-2008-717](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i_sfs-2008-717)

<sup>40</sup> Interview with an anonymous informant within the Military Intelligence and Security Service (*Militära underrättelse- och säkerhetstjänsten*), 2 May 2016.

<sup>41</sup> Interview with an anonymous informant within the Military Intelligence and Security Service (*Militära underrättelse- och säkerhetstjänsten*), 2 May 2016.

<sup>42</sup> Sweden, Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelseverksamheten*), section 4, 10 July 2008, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i\\_sfs-2008-717](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i_sfs-2008-717)

<sup>43</sup> Interview with an anonymous informant within the Military Intelligence and Security Service (*Militära underrättelse- och säkerhetstjänsten*), 2 May 2016.

<sup>44</sup> Sweden, Act on Defence intelligence service (*Lag [2000:130] om försvarsunderrättelseverksamhet*) section 3, 1 October 2007, available at: [www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-2000130-om-forsvarsunde\\_sfs-2000-130/](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Lag-2000130-om-forsvarsunde_sfs-2000-130/)

<sup>45</sup> Interview with an anonymous informant within the Military Intelligence and Security Service (*Militära underrättelse- och säkerhetstjänsten*), 6 July 2016.

<sup>46</sup> Sweden, Declaration of government prioritize made by premier minister Stefan Löfven (*Regeringsförklaringen statsminister Stefan Löfven*), 15 September 2015, available at: [www.regeringen.se/tal/2015/09/regeringsforklaringen-den-15-september-2015/](http://www.regeringen.se/tal/2015/09/regeringsforklaringen-den-15-september-2015/)

<sup>48</sup> Sweden, Ordinance with instructions for the Swedish Foreign Intelligence Inspectorate (*Förordning [2009:969] men instruktion för statens inspektion för försvarsunderrättelseverksamhet*), section 1, 15 October 2009, available at: [http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2009969-med-instruktion-for-statens\\_sfs-2009-969](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2009969-med-instruktion-for-statens_sfs-2009-969)

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cooperation is carried out that is not in line with the “National focus of intelligence activities” this will be part of the inspectorates report.<sup>49</sup>

The second branch of the Swedish intelligence service is the Swedish Security Service (*Säkerhetspolisen [SÄPO]*). According to section 17 of the Ordinance for the Security Service (*Förordning [2014:1103] med instruktion för säkerhetspolisen*), the Security Service may cooperate with foreign authorities or bodies and international organisations to the extent needed for the purposes of the Security Service. Before any new cooperation is entered into the Head of Security Service has to brief the Ministry of Justice (*Justitiedepartementet*).<sup>50</sup> . These cooperations are classified as is the majority of other governing documents for the Swedish Security Service. The only document publically available are the Ordinance for the Security Service (*Förordning [2014:1103] med instruktion för säkerhetspolisen* and the budget part of the letter of appropriation (regleringsbrevet).<sup>51</sup> This is due to national security. According to chapter 18 and section 2 of the Public Access to Information and Secrecy Act (*Offentlighets och sekretesslagen [2009:400]*) only information that cannot jeopardize planned, current or future activities can be publically accessible.<sup>52</sup>

*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 stated above, there are two branches of the Swedish intelligence service. First the oversight of the defence intelligence services will be discussed.

The intelligence information that Swedish defence institutions provide their cooperation partners must not endanger Swedish interests neither domestically nor abroad. All authorities with the mandate to carry out defense intelligence service must brief the Ministry of Defence (*Försvarsdepartementet*) of any planned international cooperation.<sup>53</sup> Furthermore, the authorities must inform the Ministry of Defence (*Försvarsdepartementet*) about any important issues that arise from such cooperation.<sup>54</sup> According to section 6 of the Ordinance on Defence intelligence service (*Förordning [2000:131] om försvarsunderrättelseverksamhet*),

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<sup>50</sup> Sweden, Ordinance with instruction for the security service (*Förordning [2014:1103] med instruktion för säkerhetspolisen*), section 17, 11 september 2014, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-20141103-med-instruktion-for\\_sfs-2014-1103](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-20141103-med-instruktion-for_sfs-2014-1103)

<sup>51</sup> Sweden, Swedish Security Service (*Säkerhetspolisen*), website, available at: [www.sakerhetspolisen.se/om-sakerhetspolisen/lagar-och-regler/dokument-som-styr-verksamheten.html](http://www.sakerhetspolisen.se/om-sakerhetspolisen/lagar-och-regler/dokument-som-styr-verksamheten.html),

<sup>52</sup> Sweden, Act of the Public Access to Information and Secrecy (*Offentlighet och sekretesslagen [2009:400]*), ch 18, section 2, 1 August 2015, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400\\_sfs-2009-400](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400_sfs-2009-400)

<sup>53</sup> Sweden, Ordinance on Defence intelligence service (*Förordning [2000:131] om försvarsunderrättelseverksamhet*), section 3 and 4, 30 Mars 2000, available at: [www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Forordning-2000131-om-forsv\\_sfs-2000-131/?bet=2000:131](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Forordning-2000131-om-forsv_sfs-2000-131/?bet=2000:131)

<sup>54</sup> Sweden, Ordinance on Defence intelligence service (*Förordning [2000:131] om försvarsunderrättelseverksamhet*), section 4, 30 Mars 2000, available at: [www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Forordning-2000131-om-forsv\\_sfs-2000-131/?bet=2000:131](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Forordning-2000131-om-forsv_sfs-2000-131/?bet=2000:131)

the Defence institutions must also inform the Swedish Foreign Intelligence Inspectorate (*Statens inspektion av försvarsunderrättelseverksamhet*) of: 1) the principles applied in their international cooperation; and 2) the countries and/or organizations they cooperate with.<sup>55</sup> The Swedish Foreign Intelligence Inspectorate is the direct oversight body for the intelligence carried out by the defence institutions. Its task is to check that the intelligence activities fall within the prioritisations and areas of interest stipulated in the National Focus of Defence Intelligences Service.<sup>56</sup> If the Inspectorate notes a transgression committed by that a Defence intelligence agency this results in a concern (*synpunkt*). Serious transgressions are notified to the Chancellor of Justice (*Justitiekanslern [JK]*), the Prosecutor-General (*Riksåklagaren*) or the Data Protection Authority (*Datainspektionen*). The Foreign Intelligence Inspectorate issues an annual report describing the number of inspections to each authority and the concerns raised during the year. An example of a case notified to the Data Protection Authority in 2015 concerns the personal data processing of the Defence Radio Establishment (*Försvarets radioanstalt*), where the Inspectorate questions the Establishment's interpretation of a section of the Act on personal data processing in the Defence intelligence and development activities of the Defence Radio Establishment (*Lag [2007:259] om behandling av personuppgifter i Försvarets radioanstalts försvarunderrättelse- och utvecklingsverksamhet*).<sup>57</sup> The reports are available on the Inspectorate's website.<sup>58</sup>

The Security Service may enter into an international agreement of cooperation with foreign law enforcement authorities, intelligence and security services or similar bodies in a member state of the European Union or a country that signed the convention on implementation of the Schengen agreement from 1985. As mentioned above, the head of the Security Service has the authority to enter into such agreements after he/she has briefed the Ministry of Justice (*Justitiedepartementet*).<sup>59</sup> The oversight bodies for the Swedish Security Services are the Parliamentary ombudsman (*Riksdagens ombudsman [JO]*), the office of the chancellor of justice (*Justitiekanslern [JK]*), the Swedish National Audit Office (*Riksrevisionen*) and the Swedish Commission on Security and Integrity Protection (*Säkerhets och integritetsskyddsämnden*). The Parliamentary ombudsman (*Riksdagens ombudsman [JO]*), the office of the chancellor of justice (*Justitiekanslern [JK]*) and the Swedish National Audit Office (*Riksrevisionen*) are the same oversight bodies as for all Swedish authorities.<sup>60</sup> The

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<sup>55</sup> Sweden, Ordinance on Defence intelligence service (*Förordning [2000:131] om försvarsunderrättelseverksamhet*), section 6, 30 Mars 2000, available at: [www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Forordning-2000131-om-forsv\\_sfs-2000-131/?bet=2000:131](http://www.riksdagen.se/sv/Dokument-Lagar/Lagar/Svenskforfattningssamling/Forordning-2000131-om-forsv_sfs-2000-131/?bet=2000:131)

<sup>56</sup> Interview with an anonymous informant within the Military Intelligence and Security Service (*Militära underrättelse- och säkerhetstjänsten*), 2 May 2016.

<sup>59</sup> Sweden, Ordinance with instruction to the Security Service (*Förordning [2014:1103] med instruktion för säkerhetspolisen*), section 17, 11 september 2014, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-20141103-med-instruktion-for\\_sfs-2014-1103](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-20141103-med-instruktion-for_sfs-2014-1103)

<sup>60</sup> Sweden, Act with instruction for the office of chancellor of justice (*Förordning [1975:1345] med instruktion för Justitiekanslern*) 15 December 1975, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-19751345-med-instruktion-for\\_sfs-1975-1345](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-19751345-med-instruktion-for_sfs-1975-1345) Sweden, Ordinance with instruction for parliamentary ombudsman (*Lag [1986:765] med*

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Commission on Security and Integrity Protection (*Säkerhets och integritetsskyddsnämnden*) supervises the use by crime-fighting agencies of secret surveillance and qualified assumed identities and associated activities. The Commission also supervises the processing of personal data by the Swedish Police Authority, some parts of the Swedish Economic Crime Authority and the Swedish Security Service. The supervision aims in particular at ensuring that the activities are conducted in accordance with laws and other regulations.<sup>61</sup>

### 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>62</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?

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

A complete exemption does not apply to surveillance measures in relation to access to information. The Freedom of the Press Act (*Tryckfrihetsförordning [1949:105]*) concerns the right for all Swedish citizens to access public documents.<sup>63</sup> The Act is a part of the Swedish constitution, which implies that other legal acts should never be in conflict with the laws of the constitution. Consequently, a complete exemption does not apply.

Chapter 1, section 3 of the Act on personal data processing in the Defence intelligence and development activities of the National Defence Radio Establishment (*Lag [2007:259] om behandling av personuppgifter i försvarets radioanstalts försvarsunderättelse- och utvecklingstjänst*) addresses the relationship between the measures employed and the

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*instruction för riksdagens ombudsman*) 13 November 1986, available at:

[www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1986765-med-instruktion-for-riksdagens\\_sfs-1986-765](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1986765-med-instruktion-for-riksdagens_sfs-1986-765) Sweden, Act with instruction for Swedish National Audit

Office (*Lag 2002:1023 med instruktion för Riksrevisionen*) 5 December 2002, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-20021023-med-instruktion-for\\_sfs-2002-1023](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-20021023-med-instruktion-for_sfs-2002-1023)

<sup>61</sup> Sweden, Ordinance with instruction for The Commission on Security and Integrity Protection (*Förordning [2007:1141] med instruktion för Säkerhets och integritetsskyddsnämnden*) 22 November 2007, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-20071141-med-instruktion-for\\_sfs-2007-1141](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-20071141-med-instruktion-for_sfs-2007-1141)

<sup>63</sup> Sweden, Freedom of the Press Act (*Tryckfrihetsförordning [1949:105]*) chapter 2, 5 April 1945, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/tryckfrihetsforordning-1949105\\_sfs-1949-105](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/tryckfrihetsforordning-1949105_sfs-1949-105)

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principle of public access to official records.<sup>64</sup> The section stipulates that the provisions of the law is not applicable in cases where it would restrict the National Defence Radio Establishment's (*Försvarets radioanstalt*) responsibility to hand over personal data requested under the second chapter of the Freedom of the Press Act.<sup>65</sup>

Furthermore, the Act on processing of personal data in the armed forces' Defence intelligence and military services (*Lag [2007:258] om behandling av personuppgifter i försvarsmaktens försvarsunderrättelseverksamhet och militära säkerhetstjänst*) states that the provisions of the act itself are not applicable if it would restrict the armed forces' responsibility to hand over personal data requested under the second chapter of the Freedom of the Press Act.<sup>66</sup>

According to Chapter 2, Section 12 of the Freedom of the Press Act, official documentation (*handlingar*) must be disclosed upon request, immediately or as soon as is possible free of charge, to anyone who wishes to access them, so that said documentation can be read, listened to or otherwise comprehended.<sup>67</sup> The documentation may also be copied, reproduced, or used for audio transmission. The request to access public documentation should be made to the authority that holds the documentation in its archives. However, the citizens' right to access official documentation may be restricted if it is necessary. According to Chapter 2, Section 2 of the Freedom of the Press Act such restrictions may be necessary on grounds of national security or its relations with another state or international organization, but also e.g. due to an authority's activities concerning inspection, control or supervision, or in order to prevent or prosecute crimes, or protect of an individual's personal or financial circumstances.<sup>68</sup> Limitations of the right to access to official documentation shall be defined in special Act or, in certain cases, in other acts referred to in the special Act. The current special act is the Publicity and Secrecy Act (*Offentlighets- och sekretesslag [2009:400]*), which includes provisions for public authorities and other agencies on the registration, disclosure and

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<sup>64</sup> Sweden, Act on processing of personal data in the foreign intelligence and development operations of the National Defence Radio Establishment (*Lag [2007:259] om behandling av personuppgifter i försvarets radioanstalts försvarsunderrättelse- och utvecklingstjänst*), chapter 1, section 3, 1 July 2007 available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007259-om-behandling-av-personuppgifter-i-sfs-2007-259](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007259-om-behandling-av-personuppgifter-i-sfs-2007-259)

<sup>65</sup> Sweden, Act on processing of personal data in the foreign intelligence and development operations of the National Defence Radio Establishment (*Lag [2007:259] om behandling av personuppgifter i försvarets radioanstalts försvarsunderrättelse- och utvecklingstjänst*), chapter 1, section 3, 1 July 2007 available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007259-om-behandling-av-personuppgifter-i-sfs-2007-259](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007259-om-behandling-av-personuppgifter-i-sfs-2007-259)

<sup>66</sup> Sweden, Act on processing personal data in the armed forces' Defence intelligence and military service (*Lag [2007:258] om behandling av personuppgifter i försvarsmaktens försvarsunderrättelseverksamhet och militära säkerhetstjänst*) chapter 1, section 3, 1 July 2007, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007258-om-behandling-av-personuppgifter-i-sfs-2007-258](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007258-om-behandling-av-personuppgifter-i-sfs-2007-258)

<sup>67</sup> Sweden, Freedom of the Press Act (*Tryckfrihetsförordning [1949:105]*) chapter 2, section 12, 1976 (no date available), available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/tryckfrihetsforordning-1949105\\_sfs-1949-105](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/tryckfrihetsforordning-1949105_sfs-1949-105)

<sup>68</sup> Sweden, Freedom of the Press Act (*Tryckfrihetsförordning [1949:105]*) chapter 2, section 2, 1976 (no date available), available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/tryckfrihetsforordning-1949105\\_sfs-1949-105](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/tryckfrihetsforordning-1949105_sfs-1949-105)

handling of official documentation.<sup>69</sup> The Act also contains provisions on secrecy and the prohibition to disclose certain types of official documentation. Chapter 15 of the Publicity and Secrecy Act contains provisions concerning secrecy for the protection of national security or Sweden's relations with other states and international organisations. According to chapter 15, section 1b, secrecy applies to data from other states or international organisations that a Swedish authority has electronic access to for automatic processing, unless the authority in question is allowed to process the data.<sup>70</sup> No time limits are provided. The other secrecy provisions concerning secrecy in relation to foreign policy and defence activities have a time limit of 40 years.<sup>71</sup>

An individual may appeal the decision of an authority not to disclose documentation under chapter 6, section 7 of the Publicity and Secrecy Act (*Offentlighets- och sekretesslag [2009:400]*). The decision of the Parliament, the Government, the Supreme Court (*Högsta Domstolen*) and the Supreme Administrative Court (*Högsta Förvaltningsdomstolen*) cannot be appealed.<sup>72</sup> Appeals should be addressed to the Administrative Court of Appeal (*Kammarrätten*).<sup>73</sup> Appeals of the rulings of the Administrative Court of Appeal should be filed with the Administrative Supreme Court.<sup>74</sup>

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

According to section 11a of the Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelsetjänst*), private individuals must be notified about searches made under this act, if the search terms used can be directly related to the person in question. The notification must entail information about when the information was collected and for what purpose.<sup>75</sup> However, this does not apply if the data collection activities that are classified as

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<sup>69</sup> Sweden, Publicity and Secrecy Act (*Offentlighets- och sekretesslag [2009:400]*), 20 May 2009, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400\\_sfs-2009-400](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400_sfs-2009-400)

<sup>70</sup> Sweden, Publicity and Secrecy Act (*Offentlighets- och sekretesslag [2009:400]*), chapter 15, section 1b, 1 January 2014, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400\\_sfs-2009-400](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400_sfs-2009-400)

<sup>71</sup> Sweden, Publicity and Secrecy Act (*Offentlighets- och sekretesslag [2009:400]*), chapter 15, sections 1 and 2, 20 May 2009, and section 1a, 1 January 2014, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400\\_sfs-2009-400](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400_sfs-2009-400)

<sup>72</sup> Sweden, Publicity and Secrecy Act (*Offentlighets- och sekretesslag [2009:400]*), chapter 6, section 7, 1 January 2011, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400\\_sfs-2009-400](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400_sfs-2009-400)

<sup>73</sup> Sweden, Publicity and Secrecy Act (*Offentlighets- och sekretesslag [2009:400]*), chapter 6, section 8, 1 January 2011, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400\\_sfs-2009-400](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400_sfs-2009-400)

<sup>74</sup> Sweden, Publicity and Secrecy Act (*Offentlighets- och sekretesslag [2009:400]*), chapter 6, section 9, 1 January 2011, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400\\_sfs-2009-400](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/offentlighets--och-sekretesslag-2009400_sfs-2009-400)

<sup>75</sup> Sweden, Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelsetjänst*), section 11a, 1 December 2009, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i\\_sfs-2008-717](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i_sfs-2008-717)

secret.<sup>76</sup> This is in line with the exceptions stipulated in chapter 2, Section 2 of the Freedom of the Press Act (*Tryckfrihetsförordning [1949:105]*) and the Freedom of the Press Act (*Tryckfrihetsförordning [1949:105]*) secrecy provisions of chapter 15 of the Publicity and Secrecy Act (*Offentlighets- och sekretesslag [2009:400]*), mentioned above.

The right for individuals to access information on if they have been subject to surveillance is regulated in more detail in the Act on personal data processing Defence intelligence and development activities of the National Defence Radio Establishment (*Lag [2007:259] om behandling av personuppgifter i försvarets radioanstalts försvarsunderättelse- och utvecklingstjänst*).<sup>77</sup> The National Defence Radio Establishment (*Försvarets radioanstalt*) has to answer any person that requests information on if his/her personal data has been processed by the Establishment. If a person's personal data have been processed, and if said person requests information, the National Defence Radio Establishment must provide him/her with written information on 1) the kind of information processed; 2) where the information was collected; 3) the reason behind the data processing; and 4) the institution that has received the collected data from the Establishment.<sup>78</sup> However, this does not apply if the data collection activities that are classified as secret.<sup>79</sup> This is in line with the exceptions stipulated in chapter 2, Section 2 of the Freedom of the Press Act (*Tryckfrihetsförordning [1949:105]*) and the Freedom of the Press Act (*Tryckfrihetsförordning [1949:105]*) secrecy provisions of chapter 15 of the Publicity and Secrecy Act (*Offentlighets- och sekretesslag [2009:400]*), mentioned above.

The oversight authority, Swedish Foreign Intelligence Inspectorate (*Statens inspektion av försvarsunderrättelseverksamhet*), must inform any person whether his/her message information has been collected as part of a surveillance activity, if he/she requests such information. If a person's message information has been collected the Inspectorate must make sure that the processing of the intelligence information was conducted according to laws and regulations. The Inspectorate must also notify the individual in question when the

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<sup>76</sup> Sweden, Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelsetjänst*), section 11b, 1 December 2009, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i\\_sfs-2008-717](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i_sfs-2008-717)

<sup>77</sup> Sweden, Act on processing of personal data in the foreign intelligence and development operations of the National Defence Radio Establishment (*Lag [2007:259] om behandling av personuppgifter i försvarets radioanstalts försvarsunderättelse- och utvecklingstjänsten*), 1 July 2007 available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007259-om-behandling-av-personuppgifter-i\\_sfs-2007-259](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007259-om-behandling-av-personuppgifter-i_sfs-2007-259)

<sup>78</sup> Sweden, Act on processing of personal data in the foreign intelligence and development operations of the National Defence Radio Establishment (*Lag [2007:259] om behandling av personuppgifter i försvarets radioanstalts försvarsunderättelse- och utvecklingstjänsten*), chapter 2, section 1, 1 July 2007 available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007259-om-behandling-av-personuppgifter-i\\_sfs-2007-259](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007259-om-behandling-av-personuppgifter-i_sfs-2007-259)

<sup>79</sup> Sweden, Act on processing of personal data in the foreign intelligence and development operations of the National Defence Radio Establishment (*Lag [2007:259] om behandling av personuppgifter i försvarets radioanstalts försvarsunderättelse- och utvecklingstjänsten*), chapter 2, section 3, 1 July 2007 available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007259-om-behandling-av-personuppgifter-i\\_sfs-2007-259](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007259-om-behandling-av-personuppgifter-i_sfs-2007-259)

requested control has been carried out.<sup>80</sup> If the Inspectorate discovers any errors this may make the Swedish state liable to pay damages vis a vis a legal or physical person. Any errors discovered must be reported to the Chancellor of Justice (*Justitiekanslern*).<sup>81</sup> If the data collection activities carried out are classified as secret the information requirements do not apply.<sup>82</sup> This is in line with the exceptions stipulated in chapter 2, Section 2 of the Freedom of the Press Act (*Tryckfrihetsförordning [1949:105]*) and the Freedom of the Press Act (*Tryckfrihetsförordning [1949:105]*) secrecy provisions of chapter 15 of the Publicity and Secrecy Act (*Offentlighets- och sekretesslag [2009:400]*), mentioned above.

In addition to the control function of the Swedish Foreign Intelligence Inspectorate, the Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelsetjänst*) also contains provisions for the creation of a Privacy Protection Council (*integritetsskyddsråd*) within the National Defence Radio Establishment (*Försvarets radioanstalt*).<sup>83</sup> The Council has a special responsibility to protect personal integrity the context of the Establishment's work. Its main task is to monitor how the Establishment's work is governed through internal regulations and routines. In doing so, the Council should analyse the compatibility of the signals intelligence activities and the legislation and inform the Establishment's management of its observations.<sup>84</sup>

When the Government decides on the annual "National Focus of the Defence Intelligence Service" the different Defence intelligence services, such as the National Defence Radio Establishment (*Försvarets radioanstalt*), decide on a number of relevant search terms, which may include certain individual persons, phone numbers and events. The search terms must be approved by the Swedish Foreign Intelligence Court (*Förvarsunderrättelsesdomstolen*) before the National Defence Radio Establishment can start its signal surveillance activities.<sup>85</sup> The Swedish Foreign Intelligence Court assesses whether the search terms are in line with the "National Focus of the Defence Intelligence Service". If the Court decision concerns search terms targeting a known individual an public Defence counsel (*offentligt ombud*) must be

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<sup>80</sup> Sweden, Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelsetjänst*), section 10a, 1 December 2009, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i\\_sfs-2008-717](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i_sfs-2008-717)

<sup>81</sup> Sweden, Ordinance with instruction for the Swedish Foreign Intelligence Inspectorate (*Förordning [2009:969] med instruktion för Statens inspektion för försvarsunderrättelseverksamhet*) section 15, 15 October 2009 available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2009969-med-instruktion-for-statens\\_sfs-2009-969](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2009969-med-instruktion-for-statens_sfs-2009-969)

<sup>82</sup> Sweden, Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelsetjänst*), section 11b, 1 December 2009, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i\\_sfs-2008-717](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i_sfs-2008-717)

<sup>83</sup> Sweden, Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelsetjänst*), section 11, 1 December 2009, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i\\_sfs-2008-717](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i_sfs-2008-717)

<sup>84</sup> Sweden, Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelsetjänst*), section 11, 1 December 2009, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i\\_sfs-2008-717](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i_sfs-2008-717)

<sup>85</sup> Interview with an anonymous informant within the Military Intelligence and Security Service (*Militära underrättelse. och säkerhetstjänsten*) 2 May 2016

appointed to defend the interest of the person in question, even though the person will still be unaware of the surveillance.<sup>86</sup>

<sup>86</sup>Interview with an anonymous informant within the Military Intelligence and Security Service (*Militära underrättelse- och säkerhetstjänsten*) 2 May 2016

## 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

No changes or suggested additions

## 1 Intelligence services and surveillance laws

No changes or suggested additions

### 1.1 Intelligence services

No changes or suggested additions

### 1.2 Surveillance measures

The number of people employed at the Swedish SIGINT agency, Försvarets Radioanstalt (National Defence Radio Establishment) is 700.<sup>87</sup>

### 1.3 Member States’ laws on surveillance

The passage should be updated to read (additions underlined): “The National Defence Radio Establishment may not intercept signals intelligence on its own initiative; the government, its offices, the armed forces, the Security Service or the National Operations Department of the Swedish Police Authority must task it to do so, and the Foreign Intelligence Court must approve such requests.”<sup>88</sup>

### FRA key findings

No changes or suggested additions

## 2 Oversight of intelligence services

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<sup>87</sup>Email correspondence with the National Defence Radio Establishment (*Försvarets radioanstalt [FRA]*) 6 May 2016

<sup>88</sup> A reference for this should be provided as: “Ibid, section 1”, given the outline of the report or to be accurate: Sweden, Signal Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelseverksamhet*) section 4, 10 July 2008 [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i\\_sfs-2008-717](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i_sfs-2008-717)

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Suggested change on page 30 (and multiple following occurrences) : The preferred translation of “Statens Inspektion för Försvarsunderrättelseverksamhet”, SIUN, is “Swedish Foreign Intelligence Inspectorate”.<sup>89</sup>

Suggested clarification on page 30 (and 33): The text mentions a “National Integrity Protection Council” within the National Defence Radio Establishment. This is the same body mentioned on page 33 as the “Privacy Protection Council”. According to correspondence with the National Defence Radio Establishment the correct translation is the Privacy Protection Council.<sup>90</sup>

This body is established in the Signals Intelligence Act, but expanded upon in the cited Ordinance. We therefore suggest reference note 187 on page 30 to be updated to reflect this: “187. Sweden, Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelseverksamhet*, section 11, 1 December 2009, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i-sfs-2008-717](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i-sfs-2008-717) and Ordinance with Instruction for the National Defence Radio Establishment (*Förordning [2007:937] med instruktion för Försvarets radioanstalt, sections 8a and 8b*) 1 January 2009, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2007937-med-instruktion-for-sfs-2007-937](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2007937-med-instruktion-for-sfs-2007-937)

## 2.1 Executive control

Suggested clarification on page 30. The reference notation 208 is incorrect.

Suggested change: “208. Sweden, Act on personal data processing in the Defence intelligence and development activities of the National Defence Radio Establishment (*Lag [2007:259] om behandling av personuppgifter i Försvarets radioanstalts försvarsunderrättelse- och utvecklingsverksamhet*), 10 May 2007, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007259-om-behandling-av-personuppgifter-i-sfs-2007-259](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007259-om-behandling-av-personuppgifter-i-sfs-2007-259)”

## 2.2 Parliamentary oversight

### 2.2.1 Mandate

Suggested addition on page 38:

“When the Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelseverksamhet*) was adopted by Swedish Parliament in 2008, the Parliament also tasked the government to present annual reports on the protection of individual person’s integrity in relation to Defence signals intelligence activities. These annual

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<sup>89</sup> Email correspondence with the Swedish Foreign Intelligence Inspectorate (*Statens inspektion av försvarsunderrättelseverksamhet*), 6 May 2016, this translation term is for example used by the National Audit Office, in their recent report on the work of SIUN available at: [www.riksrevisionen.se/PageFiles/22233/Summary%202015\\_2.pdf](http://www.riksrevisionen.se/PageFiles/22233/Summary%202015_2.pdf)

<sup>90</sup> Email correspondence with the National Defence Radio Establishment, 6 May 2016

reports are reviewed by the Parliamentary Committee of Defence (*Försvarsutskottet*), before it is accepted by the Parliament.<sup>91</sup>”

Please also note that there are some problems in the provided URL. It should read:

[www.riksdagen.se/en/committees/the-15-parliamentary-committees/](http://www.riksdagen.se/en/committees/the-15-parliamentary-committees/)

### **2.2.2 Composition**

No changes

### **2.2.3 Access to information and documents**

No changes

### **2.2.3 Reporting to parliament**

No changes

## **2.3 Expert oversight**

### **2.3.1 Specialised expert bodies**

Some clarifications suggested (page 46):

Reference 346. points to the legislation establishing the Foreign Intelligence Court, not the Foreign Intelligence Inspectorate. Suggested change:

“346 Sweden, Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelseverksamhet*), Sections 10 and 10a, 10 December 2009, available at [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i\\_sfs-2.008-717](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i_sfs-2.008-717) and Sweden, Ordinance with instructions for the Swedish Foreign Intelligence Inspectorate (*Förordning [2009:969] med instruktion för Statens inspektion för försvarsunderrättelseverksamheten*), 15 October 2009, available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2009969-med-instruktion-for-statens\\_sfs-2009-969](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2009969-med-instruktion-for-statens_sfs-2009-969) “

Reference 347. occurs after mentioning “The commission is supported by a secretariat”, but this is not covered in the legislation referenced. Instead this is established in a separate ordinance. Reference 347 should be moved to the preceding clause, and a new reference provided for this part:

“Sweden, Ordinance with instructions for the Swedish Foreign Intelligence Inspectorate (*Förordning [2009:969] med instruktion för Statens inspektion för försvarsunderrättelseverksamheten*) section 11, 15 October 2009 available at

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<sup>91</sup> Sweden, Parliamentary communication (Riksdagsskrivelse 2007/08:266) on the Government Bill “Adaptation of Defence Intelligence Activities” (*Proposition 2006/07:63, En anpassad försvarsunderrättelseverksamhet*), available at <https://data.riksdagen.se/fil/4FD876DF-05AC-4745-A7C0-3C8C10DFF260>

[www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2009969-med-instruktion-for-statens\\_sfs-2009-969](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2009969-med-instruktion-for-statens_sfs-2009-969)”

Reference 348. contains a link to the authority’s webpage and no legal source. Should you wish to include one it would be: “348. Sweden, Act on the Swedish Commission on Security and Integrity Protection, (*Lag [2007:980] om tillsyn över viss brottsbekämpande verksamhet*) 22 November 2007 available at: [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007980-om-tillsyn-over-viss\\_sfs-2007-980](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2007980-om-tillsyn-over-viss_sfs-2007-980)

### **2.3.2 Data protection authorities**

No changes

## **2.4 Approval and review of surveillance measures**

No changes

### **FRA key findings**

No changes

## **3 Remedies**

No changes

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

Suggested change: Page 63 states: “So far, no individuals have yet been informed, due to secrecy reasons.” The report referenced (in footnote 450) was a special report commissioned by the Government. The information is somewhat dated and may be inaccurate. Since no new reports has been issued where this information is provided, the clause should be omitted.

### **3.2 Judicial remedies**

No changes

#### **3.2.1 Lack of specialisation and procedural obstacles**

No changes

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

No changes

### **3.3 Non-judicial remedies: independence, mandate and powers**

No changes

### **3.3.1 Types of non-judicial bodies**

No changes

### **3.3.2 The issue of independence**

No changes

### **3.3.3 Powers and specialisation of non-judicial remedial bodies**

No changes

## **FRA key findings**

No changes

## **Conclusions**

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

No changes

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

No changes

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.*

No changes

## **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.*

	Civil (internal)	Civil (external)	Civil (internal and external)	Military
SE	Security Service/ <i>Säkerhetspolisen</i> , (SÄPO)	National Defence Radio Establishment <i>/Försvarets Radioanstalt</i> (FRA)		Military Intelligence Agency/ <i>Militära underrättelsetjänsten</i> (MUST) The correct name is the Military Intelligence and Security Service translated to <i>Militära underrättelse- och säkerhetstjänsten (MUST)</i>

Comments concerning figure 1.4.1

1) The Security Service *might* also belong to the column "Civil (internal and external)" for the following two reasons:

- i. The Security Service (*Säkerhetspolisen [SÄPO]*) is allowed to direct (*bestämna inriktning*) signal intelligence in relation to external threats (most probably for purposes covered by subsections 3, 5 and 7 of section 1 of the Signals Intelligence Act)<sup>92</sup>, in order to gather information about external threats; and
- ii. The Security Service sometimes assists private corporations or NGO:s working in foreign countries (defined as Swedish interests) in assessing threats to their activities (e.g. terrorism, violence, kidnapping etc.) and advising the corporations and organizations on how to prevent them.<sup>93</sup>

2) The National Defence Radio Establishment belongs to the column "Civil (external)" because it is a civil organisation.

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<sup>92</sup> Sweden, Signals Intelligence Act (*Lag [2008:717] om signalspaning i försvarsunderrättelseverksamhet*) section 3,5 and 7, 1 December 2009, [www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i\\_sfs-2008-717](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2008717-om-signalspaning-i_sfs-2008-717)

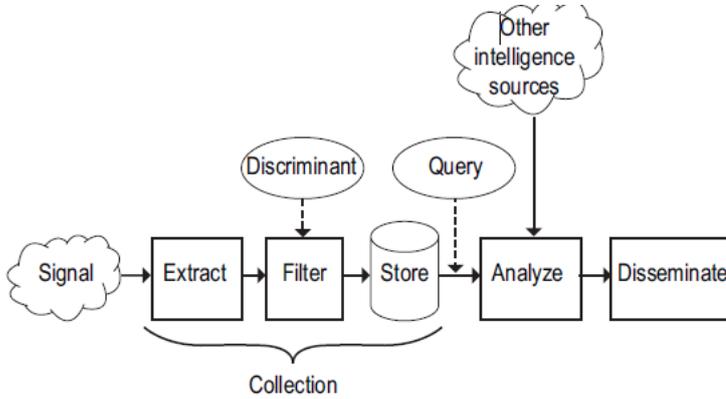
<sup>93</sup> Sweden, Ordinance with instruction for the Security Service (Förordning (2014:1103), sections 6 and 7, [http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-20141103-med-instruktion-for\\_sfs-2014-1103](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-20141103-med-instruktion-for_sfs-2014-1103)

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**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.

No alternative figure



**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.

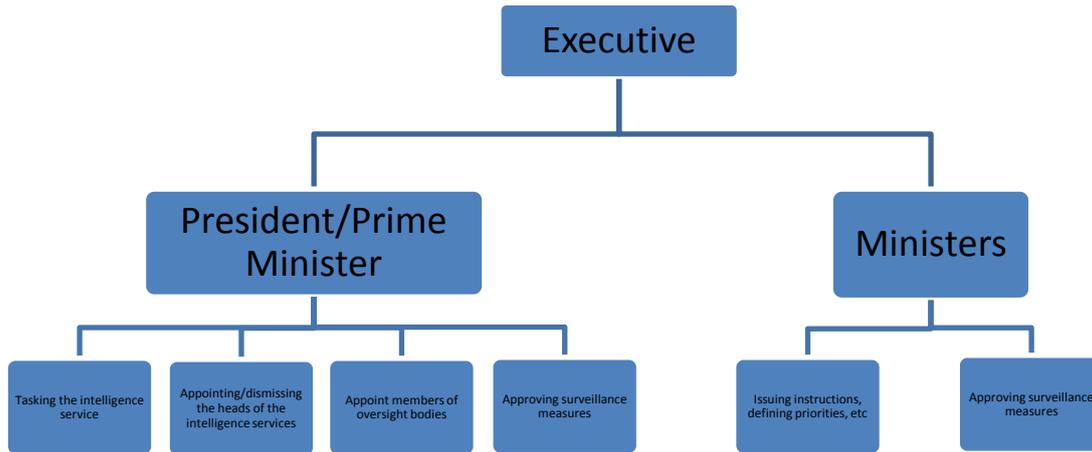
Confirmed



**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.

Confirmed



**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.

Confirmed

Member States	Essential powers	Enhanced powers
SE	X	

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

**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.

EU Member State	Expert Bodies
SE	<p>Swedish Foreign Intelligence Inspectorate<sup>94</sup> (<i>Statens inspektion för försvarsunderrättelseverksamheten</i>)</p> <p>Commission on Security and Integrity Protection (<i>Säkerhets- och integritetsskyddsämnden</i>)</p> <p>Foreign Intelligence Court (<i>Försvarsunderrättelsedomstolen</i>)</p>

### Confirmed

#### 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.

No changes

EU Member State	No powers	Same powers (as over other data)	Limited powers
SE		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.

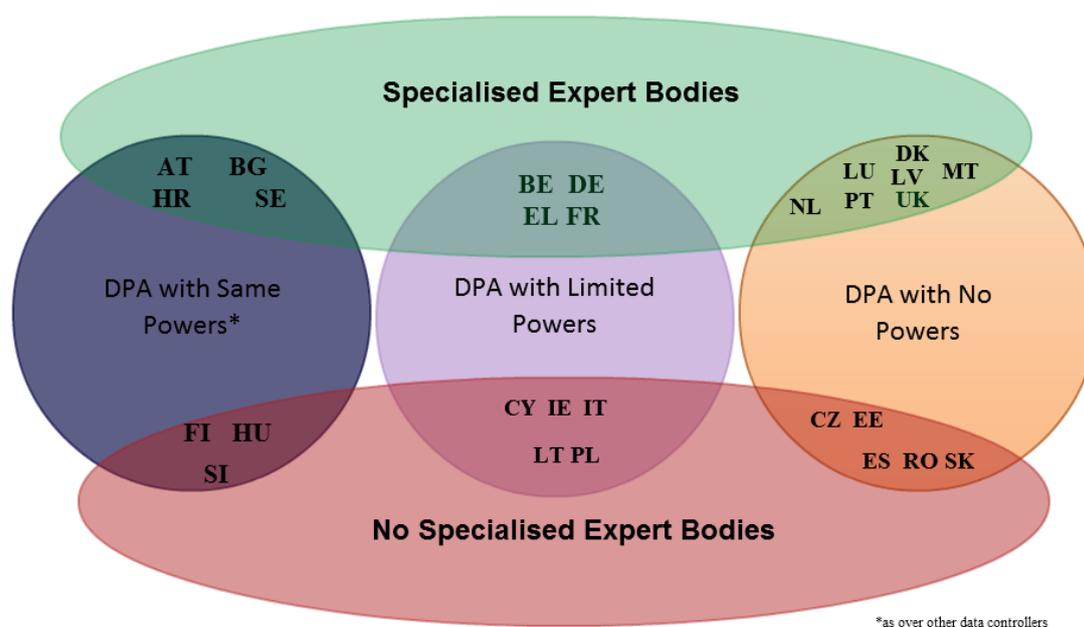
*Limited powers*: refers to a reduced set of powers (usually comprising investigatory, advisory, intervention and sanctioning powers) or to additional formal requirements for exercising them.

<sup>94</sup> Email correspondence with the Swedish Foreign Intelligence Inspectorate (*Statens inspektion av försvarsunderrättelseverksamheten*) regarding English translation.

**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.

No changes



**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
SE <sup>95</sup>					

Confirmed

<sup>95</sup> Sweden's security and intelligence services do not carry out targeted surveillance. The security service (*Säkerhetspolisen [SÄPO]*) processes and analyses data collected by the law enforcement through secret wiretapping and intercepted traffic data, while the signals intelligence agency, the National Defence Radio Establishment (*Försvarets radioanstalt [FRA]*) gathers signals intelligence.

**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.

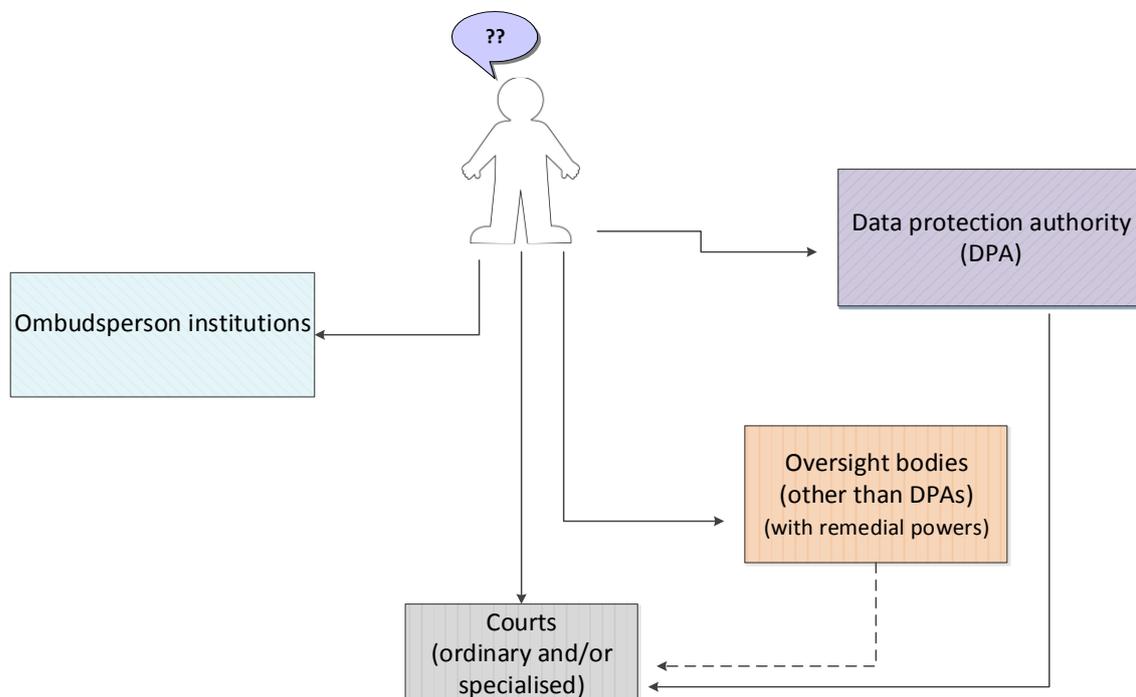
EU Member State	Judicial	Parliamentary	Executive	Expert
SE				X

No changes

**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.

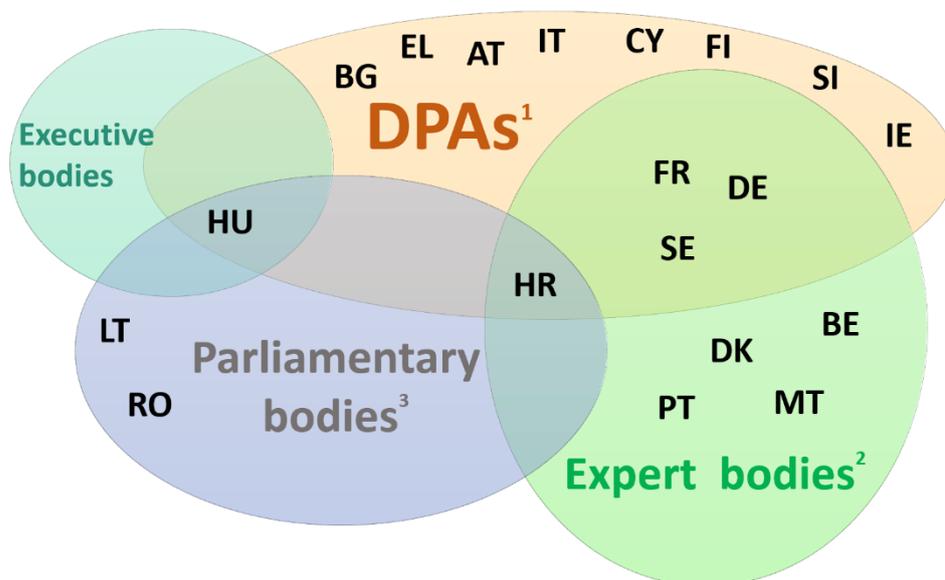
No changes



**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.

No changes



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 Foreign Intelligence Inspectorate 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.