

Short Thematic Report

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

Legal update

Country: AUSTRIA

Version of 30 June 2016

FRANET contractor: European Training and Research Centre for
Human Rights and Democracy

Author(s) name(s):

Veronika Apostolovski, Markus Möstl

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

1 Description of tasks – Phase 3 legal update

1.1 Summary

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

1. the legislative reform(s) that took place or are taking place and highlight the key aspect(s) of the reform.
2. the important (higher) court decisions in the area of surveillance
3. the reports and inquiry by oversight bodies (parliamentary committees, specialised expert bodies and data protection authorities) in relation to the Snowden revelations
4. the work of specific ad hoc parliamentary or non-parliamentary commission (for example the NSA inquiry of the German Parliament) discussing the Snowden revelations and/or the reform of the surveillance focusing on surveillance by intelligence services should be referred to.

1. Legislative reforms

On 27 January 2016 the Act concerning Police Protection of the State (*Polizeiliches Staatsschutzgesetz, PStSG*)¹ was adopted in Parliament. The act is based on the workprogramme of the Austrian Federal Government 2013-2018, which foresees the establishment of federal rules on state protection. Overall, the Police Protection of the State (*Polizeilicher Staatsschutz*) shall protect the constitutional institutions, critical infrastructure and the population against terrorist, ideologically or religiously motivated crime and against risks arising from espionage by espionage and proliferation. Furthermore, international cooperation in these areas will be made a task for the security authorities pursuant § 1 (3) PStSG. The PStSG deals with the organisation, functions and powers of the Police State Protection and entered into force on 1 July 2016. The Security Police Act (*Sicherheitspolizeigesetz, SPG*)² remains in force and is applicable for the Police State Protection subsidiary to the PStSG. Thus, in case the PStSG does not foresee specific rules, the SPG applies according to §5 PStSG.

Organisation:

The PStSG will regulate the organisation of the Police State Protection as follows: At the federal level the tasks of the Police State Protection are implemented by the Federal Agency for State Protection and Counter Terrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung, BVT*). The BVT is an organisational unit of the Directorate General for Public Security of the Federal Ministry of the Interior. At the provincial level, organisational units of the Provincial Police Directorates (*Landespolizeidirektionen*) will be entrusted with the tasks of Police State Protection. The Minister may, however, reserve certain matters to the BVT. The new PStSG was built on the already existing structures and the Police State Protection will form a part of the Security Police.

New functions and powers:

¹ Austria, Police State Protection Act (5. Bundesgesetz mit dem das Bundesgesetz über die Organisation, Aufgaben und Befugnisse des polizeilichen Staatsschutzes (Polizeiliches Staatsschutzgesetz – PStSG) erlassen und das Sicherheitspolizeigesetz geändert werden), BGBl. I Nr. 5/2016, available at: www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_5/BGBLA_2016_I_5.pdf.

² Austria, Security Police Act (*Bundesgesetz über die Organisation der Sicherheitsverwaltung und die Ausübung der Sicherheitspolizei, Sicherheitspolizeigesetz - SPG*), BGBl. Nr. 566/1991, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005792.

The core tasks of the Act concerning Police Protection of the State will be “extended threat investigation” (*erweiterte Gefahrenforschung*) and the protection against attacks endangering the constitutional order (*verfassunggefährdender Angriff*) as set out in §6 PStSG. The rules of §21 (3) SPG provided the legal basis for extended danger investigation in respect to potentially dangerous groups are taken over in the PStSG. The provisions of the SPG on extended threat investigation in respect to individuals had been perceived by the police as inadequate and are amended in the new PStSG. With the new provision of the PStSG, the Police State Protection may intervene already on the basis of a reasonable suspicion of threat (*begründeter Gefahrenverdacht*). This suspicion, however, has to refer to a “attack endangering the constitutional order” (*verfassunggefährdender Angriff*). What constitutes an “attack endangering the constitutional order” is enumerated exhaustively in §6 (2) PStSG. Basically, these attacks include offenses associated with extremism (concerning the Prohibition Act, *Verbotsgesetz*³), terrorism, proliferation, intelligence operations or espionage. §6 (1) PStSG foresees extended threat investigation with regards to groups (“*Gruppierungen*”).

The investigative powers, including in particular the use of “undercover agents”, and the legal protection against the actions of the security authorities pursuant § 1 (3) PStSG were discussed controversially before the law was adopted. Due to accompanying changes in the SPG, it will be possible to resort to confidential persons (*Vertrauensperson*) outside the area already covered by the rules of the Criminal Procedures Act (*Strafprozessordnung*)⁴, if otherwise the prevention of dangerous attacks or criminal connections would be at risk or would considerably be hampered. Under certain circumstances, the security authorities pursuant § 1 (3) PStSG may even use hidden devices for recording image and sound (as this was the case in the past to avert dangerous attacks or criminal organizations or for extended threat investigation). §11 (1) 4 PStSG provides a novelty, as this provision enables the security authorities to use devices for the recognition of license plates, which could previously only be used for searches (*Fahndung*). §11 (1) 6 PStSG will also enable the security authority to obtain information from passenger transport operators, which may relate not only to the relevant person, but also to persons accompanying that person. Finally, according to §11 (1) 7 PStSG information of telecommunications services and service providers may be obtained (including information on subscriber numbers, IP addresses and location data). Information may also be obtained in respect to contact persons or accompanying persons.

Legal protection:

Legal protection against actions by the security authorities pursuant § 1 (3) PStSG is available through the Legal Protection Officer (§91a SPG). According to §14 PStSG, the security authorities pursuant § 1 (3) PStSG have to obtain the authorisation of the Legal Protection Officer before resorting to the extended threat investigation. Extended threat investigation may only be conducted with regards to groups (“*Gruppierungen*”).

For drawing upon confidential persons (*Vertrauenspersonen*) and for gathering information on traffic data, access data or location data, a so-called “Legal Protection Senate” (*Rechtsschutzsenat*) consisting of the Legal Protection Officer and two of his deputies has to decide according to §14 (3) PStSG. The Legal Protection Officer checks the use of data by the security authorities pursuant § 1 (3) PStSG and has to inform the person affected in case the rights of the person have been violated according to §16 PStSG. In case the person cannot be informed because of overriding public interests, the Legal Protection Officer has to file a complaint instead of the concerned individual at the Data Protection Authority (DPA).

³ Austria, Prohibition Act (*Verbotsgesetz 1947*), StGBI. Nr. 13/1945, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000207 .

⁴ Austria, Criminal Procedures Act (*Strafprozeßordnung 1975, StPO*), BGBl. Nr. 631/1975, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002326 .

The authorisation regarding the task and the measures of the Legal Protection Officer/Legal Protection Senate itself to perform the task pursuant § 6 Abs. 1 Z 1 and § 6 Abs. 1 Z 2 is not subject to judicial or parliamentary scrutiny.. According to §15 (4) PStSG the Legal Protection Officer has to report to the Federal Minister of the Interior until 31 March of the following year about his actions and findings (*Tätigkeiten und Wahrnehmungen*). The Federal Minister of the Interior has to inform the Standing Sub-Committee of the Committee on Internal Affairs (*Ständiger Unterausschusses des Ausschusses für interne Angelegenheiten*) every six months and provide this Sub-Committee with the report of the Legal Protection Officer according to §17 (3) and (4) PStSG. The PStSG does not prescribe the information to be included in the report in more detail.

2. Court decisions

There are no important (higher) court decisions to report. During the negotiations and discussions on the draft law the Freedom Party Austria (*FPÖ*) and the Green Party raised a number of concerns. While some of these concerns led to amendments in the draft law, some of those points criticised were not changed. These two parties publicly stated, that they will bring a claim to the constitutional court, as there are still some problematic points in the act, as for example the lack of judicial control.⁵ According to information received from a representative of the Green Party a complaint at the Constitutional Court is prepared at the moment and will soon be submitted to the Court.⁶

Criticism on the Police State Protection Act was also raised in advance by the Data Protection Council (*Datenschutzrat*): The Data Protection Council, an advisory council for the federal and provincial governments on questions regarding data protection installed at the Federal Chancellery (*Bundeskanzleramt*), issued a statement on the draft Police State Protection Act in April 2015.⁷ The Data Protection Council identified tensions between police state protection and data protection and reminded of the principle of proportionality, as stated by the CJEU and the Austrian Constitutional Court before. The Data Protection Council also pointed at a number of issues which are problematic from a data protection point of view. The term “computer system”, for instance, was regarded to be not precise enough. The Data Protection Council thus claimed that it needs to be clarified in the explanations to the law, which new technologies are covered by this term. The final explanations to the law now define computer system with a reference to the legal definition of §74 (1) 8 Criminal Code as any item, which processes data automatically (*jede Vorrichtung, die Daten automationsunterstützt verarbeitet*).⁸ The Data Protection Council further criticised §7 PStSG. This provision stipulates that the bodies responsible for implementing the PStSG also have the task to foster the willingness and ability of individual persons to be informed about any endangerment of their legal interests (*Rechtsgut*) and to prevent related attacks, particularly in the area of cyber security. According to the criticism raised by the Data Protection Council, such “public relations tasks” should rather be taken over by another independent institution.

4

⁵ See various media reports, such as Austria, *Tiroler Tageszeitung*, Staatsschutz: FPÖ und Grüne planen Beschwerde beim VfGH, 9 March 2016, available at: www.tt.com/politik/innenpolitik/11229228-91/staatsschutz-fp%C3%B6-und-gr%C3%BCne-planen-beschwerde-beim-vfgh.csp.

⁶ Information received from a member of parliament of the Green Party on 24 May following an information request.

⁷ Austria, Data Protection Council, Statement on the draft of the Police State Protection Act (*Stellungnahme zum Entwurf eines Bundesgesetzes, mit dem das Bundesgesetz über die Organisation, Aufgaben und Befugnisse des polizeilichen Staatsschutzes, Polizeiliches Staatsschutzgesetz – PStSG) erlassen und das Sicherheitspolizeigesetz geändert wird*), April 2015, available at: www.bka.gv.at/DocView.axd?CobId=59530.

⁸ Austria, Explanations on the government bill, (763 der Beilagen XXV. GP-Regierungsvorlage Erläuterungen), available at: http://www.parlament.gv.at/PAKT/VHG/XXV/I/I_00763/fname_432301.pdf, p. 3.

3. Reports and inquiry by oversight bodies

As the work of the two parliamentary sub-committees is strictly confidential no information about their work is publicly available.

4. Ad hoc parliamentary or non-parliamentary commission

There are no such reports. In May 2015 the NEOS, the Green Party and the Working Group Data Retention filed a number of parliamentary inquiries regarding surveillance in Austria. Due to reasons of confidentiality, the Federal Minister of Defence stated in a number of answers, that he is not willing to answer the questions publicly.⁹

⁹ See, for instance, www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_03853/imfname_406712.pdf; www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_04052/imfname_414848.pdf. See also a related media report available at <http://derstandard.at/2000015695576/Ueberwachung-der-oesterreichischen-Bevoelkerung-Regierung-nicht-nicht-besonders-auskunftsfreudig>.

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.¹⁰

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. Legal basis and conditions

The BVT remains a police department under the new Police State Protection Act. Therefore the legal bases for international cooperation are those of the police authorities in general.

The international cooperation between the BVT and foreign intelligence services takes place within the International Police Cooperation Act (*Bundesgesetz über die internationale polizeiliche Kooperation, Polizeikooperationsgesetz, PolKG*¹¹) and the EU Police Cooperation Act (*Bundesgesetz über die polizeiliche Kooperation mit den Mitgliedstaaten der Europäischen Union und dem Europäischen Polizeiamt (Europol), EU – Polizeikooperationsgesetz, EU-PolKG*¹²).¹³ The PolKG lays down general rules on international police cooperation, administrative assistance (*Amtshilfe*) as well as acting of foreign police authorities in Austria and of Austrian authorities abroad.¹⁴

Austria has also signed a number of intergovernmental agreements on police cooperation, which are available at the legal information database “www.ris.bka.gv.at”.¹⁵ A search in this database revealed that there are agreements on police cooperation with countries such as Bulgaria, Latvia, Albania, Azerbaijan,

6

¹⁰ <http://www.dcaf.ch/Publications/Making-International-Intelligence-Cooperation-Accountable>

¹¹ Austria, International Police Cooperation Act (*Bundesgesetz über die internationale polizeiliche Kooperation, Polizeikooperationsgesetz - PolKG*), BGBl. I Nr. 104/1997, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10006019.

¹² Austria, EU Police Cooperation Act (*Bundesgesetz über die polizeiliche Kooperation mit den Mitgliedstaaten der Europäischen Union und dem Europäischen Polizeiamt (Europol), EU – Polizeikooperationsgesetz, EU-PolKG*), BGBl. I Nr. 132/2009, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20006630.

¹³ Information provided by the Federal Agency for State Protection and Counter Terrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung, BVT*) on 22 April 2016 in response to an information request.

¹⁴ Austria, International Police Cooperation Act (*Bundesgesetz über die internationale polizeiliche Kooperation, Polizeikooperationsgesetz - PolKG*), BGBl. I Nr. 104/1997, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10006019.

¹⁵ Information provided by the Federal Agency for State Protection and Counter Terrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung, BVT*) on 22 April 2016 in response to an information request.

Bosnia-Herzegovina, Georgia, Italy, Croatia, Slovakia, Slovenia.¹⁶ The content of these agreements certainly varies. Often, the parties to these agreements commit themselves to work together in order to prevent dangers for the public order/security, to prevent and detect criminal acts, to provide administrative assistance, etc. by way of mutual exchange of information and knowledge, coordinated police measures, etc.

§12 (4) PStSG lays down that the transfer of data to foreign security authorities and security organizations is allowed following the rules on international police administrative assistance (*Amtshilfe*) according to §2 (2) and (3) Police Cooperation Act (*Polizeikooperationsgesetz*).¹⁷ According to the explanations on the PStSG, further legal basis for international police exchange are especially the PolKG, the EU-PolKG as well as the Europol Agreement. No particular reference to the SPG is made in the explanations in this context.

2. Oversight

According to information provided by the BVT, oversight is provided by parliamentary control (permanent sub-committees on controlling of intelligence services and the right of interpellation). The processing of personal data by the BVT is further controlled by the Legal Protection Officer and the Data Protection Authority (§ 30 DSGVO 2000).¹⁸ Given this information provided by the BVT, it can be concluded that the control of international activities is the same as the oversight of internal activities.

¹⁶ See search results using the German word for the search term “police cooperation”: www.ris.bka.gv.at/Ergebnis.wxe?Abfrage=Bundesnormen&Kundmachungsorgan=&Index=&Titel=&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=&BisParagraf=&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnungsdatum=&FassungVom=06.05.2016&VonInkrafttredatum=&BisInkrafttredatum=&VonAusserkrafttredatum=&BisAusserkrafttredatum=&NormabschnittnummerKombination=Und&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=polizeiliche+Zusammenarbeit&Position=1.

¹⁷ Austria, International Police Cooperation Act (*Bundesgesetz über die internationale polizeiliche Kooperation, Polizeikooperationsgesetz - PolKG*), BGBl. I Nr. 104/1997, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10006019.

¹⁸ Information provided by the Federal Agency for State Protection and Counter Terrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung, BVT*) on 22 April 2016 in response to an information request.

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)¹⁹ (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.

The general obligation of authorities to provide information is provided in Art. 20 (4) of the Federal Constitutional Act.²⁰ This provision foresees an obligation of authorities to provide information. Restrictions to provide information are only possible in case an “official secret” (*Amtsgeheimnis*) speaks against providing such information. Moreover, the Duty of Disclosure Act 1987 (*Auskunftspflichtgesetz 1987*)²¹ foresees the obligation of authorities to provide information, as long as the duty to secrecy (*Verschwiegenheitspflicht*) according to Art. 20 (3) of the Federal Constitutional Act is not opposed to it.

A Freedom of Information Act (*Informationsfreiheitsgesetz*), abolishing the “official secret” (*Amtsgeheimnis*), is discussed in parliament. According to the draft new Act shall enter into force on 1st January 2018.²² The Freedom of Information Act generally aims at transparency of any state action. Yet, this new law also foresees exemptions from the obligation to provide information. Secrecy may, for instance, be maintained in case issues of national security or are touched upon, which could be the case in the context of surveillance measures.

According to Art. 49 (1) and (2) of the Federal Constitutional Act Federal Laws and international treaties have to be published in the Federal Law Gazette. Since 2004 the publication is electronically performed within the legal information database of the Federal Chancellery www.ris.bka.gv.at. Therefore, the entire legal framework concerning surveillance of all kinds, as well as the procedures to be followed for authorizing surveillance, selecting targets of surveillance, and using, sharing, storing, and destroying intercepted material is accessible for the public via the legal information database of the Federal Chancellery at "ris.bka.gv.at". No identification or payment is required to access those documents.

The relevant Security Police Act (*Sicherheitspolizeigesetz, SPG*), laying down the basic rules on the security police (which the BVT is a part of), as well as their powers regarding surveillance in the SPG is accessible. Furthermore, the newly drafted Police State Protection Act is also accessible via this channel.

8

¹⁹ <http://www.right2info.org/exceptions-to-access/national-security/global-principles#section-10>

²⁰ Austria, Federal Constitution (*Bundesverfassungsgesetz, B-VG*), BGBl. Nr. 1/1930 last amended by BGBl. I. Nr. 102/2014, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000138,

²¹ Austria, Duty of Disclosure Act 1987 (*Auskunftspflichtgesetz 1987*), BGBl. Nr. 287/1987 last amended by BGBl. I. Nr. 158/1998, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000916.

²² Austria, Parliament (2015), Abschaffung des Amtsgeheimnisses: In Regierungspläne kommt Bewegung, Parlamentskorrespondenz Nr. 1194 vom 9.11.2015, available at: www.parlament.gv.at/PAKT/PR/JAHR_2015/PK1194/.

8

There are no publicly available statistics on surveillance measures by the BVT. Also the Annual Reports by the BVT do not include any statistical information on surveillance measures.²³

2.

The Legal Protection Officer has the duty to safeguard the right to information of possibly concerned persons. There is no right to access information foreseen in the SPG or the PStSG, but the Legal Protection Officer has the duty to inform persons about their data protection being violated by processing of data if he/she gets knowledge about this fact (see §91d (3) SPG and §16 PStSG). In case the person cannot be informed because of overriding public interests pursuant § 26 (2) DSG 2000, the Legal Protection Officer is obliged to file a complaint at the DPA according to §17 PStSG.

In case an affected person assumes that his/her personal data was affected by surveillance, the DPA is competent for complaints against public and private entities regarding the right to obtain information (§1 (3) Z1 and §26 Data Protection Act 2000, *Datenschutzgesetz 2000*, DSG 2000), for complaints against public entities regarding the right to secrecy and the right to rectification or erasure (§1 (1, 2) (3 Z 2) and § 27 DSG 2000). Apart from that, the DPA is competent to investigate proprio motu in the private and public sector, if it assumes that rules on data protection have been infringed.

According to §90 SPG the DPA decides on claims because of the violation of rights because of data processing through the security administration (*Sicherheitsverwaltung*) according to §31 DSG 2000. According to §90 second sentence SPG the assessment of legality of collection of data through exercise of power of command or power of enforcement is exempted. In this case the Federal Administrative Court decides on appeals, allowing for judicial review. The Committee on the Interior as well as the Committee on Defence of the Parliament established permanent sub-committees on controlling of intelligence services. The members of the sub-committees can ask any members of the government on information. The meetings of the sub-committees are confidential; no public reports on these meetings are available.²⁴ According to §32 d (2) Rule of Procedure Act (*Geschäftsordnungsgesetz*)²⁵ the sub-committees have to be held once every three months.

Any person who wants to complain about alleged maladministration by the Federation may lodge an informal complaint free of charge with the independent Austrian Ombudsman Board (*Volksanwaltschaft*).

²³ Austria, Federal Agency for State Protection and Counter Terrorism (2015), *Verfassungsschutzbericht* 2015, available at: www.bmi.gv.at/cms/BMI_Verfassungsschutz/Verfassungsschutzbericht_2015.pdf.

²⁴ Austria, Parliament (2014), *Ständige Unterausschüsse zur Kontrolle der Nachrichtendienste*, available at: www.parlament.gv.at/PERK/KONTR/POL/6STAEND_UNTERAUSSCHUESSE/index.shtml.

²⁵ Austria, Rules of Procedure Act (*Geschäftsordnungsgesetz*), BGBl Nr. 302/1979, last amended by BGBl I Nr. 6/2014, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10000576.

1.4 Update the FRA report

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

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

Introduction

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

The reference regarding Snowden revelations is correct.

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

No updates required.

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

1 Intelligence services and surveillance laws

1. If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.
2. If your Member State is mentioned, please update the data (new legislation, new report etc.)
3. If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.

1.1 Intelligence services

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

You mention Austria as an example for exceptions, where the body responsible for conducting intelligence activities belongs directly to the police and/ or law enforcement authorities. This holds indeed true for the BVT (which is a separate unit within Section II/General Directorate for Public Security of the Federal Ministry of the Interior) but not for the military intelligence services.

Please note that on 27 January 2016 a new police State Protection Act (*polizeiliches Staatsschutzgesetz*)²⁶ was adopted, setting up new powers of the BVT, as well as the provincial state protection units as the police intelligence service. These provisions will enter into force on 1 July 2016.

²⁶ Austria, Police State Protection Act (5. Bundesgesetz mit dem das Bundesgesetz über die Organisation, Aufgaben und Befugnisse des polizeilichen Staatsschutzes (Polizeiliches Staatsschutzgesetz – PStSG) erlassen und das Sicherheitspolizeigesetz geändert werden), BGBl. I Nr. 5/2016, available at: www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_5/BGBLA_2016_I_5.pdf.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
No further updates required.
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

1.2 Surveillance measures

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is nothing to be added with respect to Austria.

1.3 Member States' laws on surveillance

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

The reference to Austria in 1.3.1.1. is correct. §21 (3) SPG provides the legal basis for so-called “extended threat investigation” (*erweiterte Gefahrenforschung*). This rule allows the police to observe potentially dangerous groups and individuals.

The core tasks of the Police State Security according to the new PStSG will be “extended threat investigation” (*erweiterte Gefahrenforschung*) and the protection against attacks endangering the constitutional order (*verfassungsgefährdender Angriff*) as set out in §6 PStSG. The rules of §21 (3) SPG providing the legal basis for extended threat investigation in respect to potentially dangerous groups are taken over in the PStSG. With the new provision of the PStSG, the Police State Protection may intervene already on the basis of a reasonable suspicion of threat (*begründeter Gefahrenverdacht*). This suspicion, however, has to refer to a “attack endangering the constitutional order” (*verfassungsgefährdender Angriff*). What constitutes an “attack endangering the constitutional order” is enumerated exhaustively in §6 (2) PStSG. Basically, these attacks include offenses associated with extremism (concerning the Prohibition Act, *Verbotsgesetz*), terrorism, proliferation, intelligence operations or espionage.

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

No further updates required.

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

Austria is not mentioned explicitly in Section 1.3.1.2. There is no apparent reason to challenge the selection of states made by the authors of the FRA study.

FRA key findings

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Austria is not mentioned explicitly in this Section. There is nothing to be added.

2 Oversight of intelligence services

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

2.1 Executive control

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Austria is not mentioned explicitly in this Section. There is nothing to be added.

2.2 Parliamentary oversight

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

The indirect reference to Austria is correct.

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

No updates required.

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

2.2.1 Mandate

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

The reference to Austria is correct. On page 37, you mention that generally, the intelligence services' budget are controlled by parliament. Please note in this context that the Austrian Court of Audit (*Rechnungshof*) controls the use of the budget of the Federal Ministry of the Interior and thus also the BVT.

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

No further updates required.

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

2.2.2 Composition

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

The reference to Austria is correct.

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

No updates required.

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

2.2.3 Access to information and documents

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

The reference to Austria is correct.

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

No updates required.

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

2.2.4 Reporting to parliament

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

You mention that the reports are kept secret, since the work of the sub-committee is confidential according to §32a (2) Rule of Procedure Act. This is correct, but please note that the exact wording of §32a (2) Rule of Procedure Act is that work of the sub-committee is confidential, unless the subcommittee decides otherwise (*“Die Verhandlungen des Ständigen Unterausschusses sind, soweit er nicht anderes beschließt, vertraulich gemäß § 37a Abs. 3”*).

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

No further updates required.

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

2.3 Expert oversight

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

2.3.1 Specialised expert bodies

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

The reference in footnote 312 is incorrect. §91a SPG does not stipulate the requirement that RSBs have to have experience in and knowledge of human rights, and at least five years' experience in legal profession. In fact this requirement is stipulated in §91b *Sicherheitspolizeigesetz (SPG)*.

When referring to the *Sicherheitspolizeigesetz (SPG)* we suggest using the official term „Security Police Act“ instead of “Police Powers Act” in the entire report.

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

On 1 July 2016, the Police State Protection Act (*Polizeiliches Staatsschutzgesetz, PStSG*)²⁷ will enter into force. Legal protection against actions by the security authorities pursuant § 1 (3) PStSG will then be available through the Legal Protection Officer (§91a SPG). According to §14 PStSG, the security authorities have to obtain the authorisation of the Legal Protection Officer before resorting to the use of certain special investigative measures, such as the extended threat investigation. Each special investigation measure according to § 11 Abs. 1 PStSG has to be applied separately by .BVT and authorised by the Legal Protection Commissioner or in specific cases by the Legal Protection Senate. For drawing upon confidential persons (*Vertrauenspersonen*) and for gathering information on traffic data, access data or location data, a so-called “Legal Protection Senate” (*Rechtsschutzsenat*) consisting of the Legal Protection Officer and two of his deputies has to decide according to §14 (3) PStSG.

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

2.3.2 Data protection authorities

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

14

²⁷ Austria, Police State Protection Act (5. Bundesgesetz mit dem das Bundesgesetz über die Organisation, Aufgaben und Befugnisse des polizeilichen Staatsschutzes (*Polizeiliches Staatsschutzgesetz – PStSG*) erlassen und das Sicherheitspolizeigesetz geändert werden), BGBl. I Nr. 5/2016, available at: www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_5/BGBLA_2016_I_5.pdf.

14

The reference to Austria is correct.

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

No updates required.

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.*

2.4 Approval and review of surveillance measures

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

The reference to Austria is correct in principle. Please note that in case of §21 (3) SPG the task and measures have to be requested by BVT or one of its subordinated units and then the Legal Protection Commissioner had to approve the requested task and measures. In the report you merely refer to an “approval” given by the RSB on page 53.

The footnote 396 could refer to the new Police State Protection Act (*Polizeiliches Staatsschutzgesetz, PStSG*), which will enter into force on 1 July 2016.²⁸

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

As of 1 July 2016, Police State Protection Act (*Polizeiliches Staatsschutzgesetz, PStSG*)²⁹ entered into force. For the amendments see the section 1 on legislative reforms at the beginning of this report.

Legal protection against actions by the security authorities pursuant § 1 (3) PStSG authorities is available through the Legal Protection Officer (§91a SPG). According to §14 PStSG, the Security authorities have to obtain the authorisation of the Legal Protection Officer before resorting to a specific task and the use of certain investigative measures

For drawing upon confidential persons (*Vertrauenspersonen*) and for gathering information on traffic data, access data or location data, a so-called “Legal Protection Senate” (Rechtsschutzsenat) consisting of the Legal Protection Officer and two of his deputies has to decide according to §14 (3) PStSG. The Legal Protection Officer checks the use of data by security authorities pursuant § 1 (3) PStSG and has to inform the person affected in case the rights of the person have been violated according to §16 PStSG. In case the person cannot be informed because of overriding public interests, the Legal Protection Officer has to file a complaint at the DPA.

15

²⁸ Austria, Police State Protection Act (5. Bundesgesetz mit dem das Bundesgesetz über die Organisation, Aufgaben und Befugnisse des polizeilichen Staatsschutzes (*Polizeiliches Staatsschutzgesetz – PStSG*) erlassen und das Sicherheitspolizeigesetz geändert werden), BGBl. I Nr. 5/2016, available at: www.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_5/BGBLA_2016_I_5.pdf.

²⁹ Austria, Police State Protection Act (5. Bundesgesetz mit dem das Bundesgesetz über die Organisation, Aufgaben und Befugnisse des polizeilichen Staatsschutzes (*Polizeiliches Staatsschutzgesetz – PStSG*) erlassen und das Sicherheitspolizeigesetz geändert werden), BGBl. I Nr. 5/2016, available at: www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_5/BGBLA_2016_I_5.pdf.

The authorisation regarding the task and the measures of the Legal Protection Officer/Legal Protection Senate itself to perform the task pursuant § 6 Abs. 1 Z 1 and § 6 Abs. 1 Z 2 is not subject to judicial or parliamentary scrutiny. The Legal Protection Officer has to report to the Federal Minister of the Interior until 31 March of the following year about his actions and findings concerning his tasks. The Federal Minister of the Interior, however, has to inform the Standing Sub-Committee of the Committee on Internal Affairs (Ständiger Unterausschusses des Ausschusses für interne Angelegenheiten) every six months and provide this Sub-Committee with the report of the Legal Protection Officer according to §17 (3) and (4) PStSG.

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

FRA key findings

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Austria is not mentioned explicitly in this section. There is no information included in this section that contradicts the situation in Austria.

3 Remedies

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Austria is not mentioned explicitly in this section. There is no information included in this section that contradicts the situation in Austria.

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

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

Austria is first mentioned implicitly in this section on page 62 (“all EU Member States”). Then, Austria is mentioned as an example. Both statements given in this Section are correct for Austria.

On page 64, you mention Austria again. A reference to §26 (5) Data Protection Act 2000 could be added in footnote 470.

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

No updates required.

§91d (3) SPG remains unchanged also after the entry into force of the new Police State Protection Act on 1 July 2016.

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

3.2 Judicial remedies

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Austria is not mentioned explicitly in this section. There is no information included in this section that contradicts the situation in Austria.

3.2.1 Lack of specialisation and procedural obstacles

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

Austria is mentioned implicitly in this section (“Every Member state...”) on page 66. The reference is correct.

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

No updates required.

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

3.2.2 Specialised judges and quasi-judicial tribunals

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Austria is not mentioned in this section. There is nothing to be added regarding Austria here.

3.3 Non-judicial remedies: independence, mandate and powers

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

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

Austria is not mentioned in this Section. There is nothing to be added.

3.3.1 Types of non-judicial bodies

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

The implicit reference to Austria (“all EU-28”) given on page 70 is correct.

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

3.3.2 The issue of independence

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Austria is not mentioned in this Section. There is nothing to be added.

3.3.3 Powers and specialisation of non-judicial remedial bodies

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

The reference to Austria given on page 74 is correct.

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

No updates required.

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.*

FRA key findings

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

The implicit references to Austria on page 75 (judicial remedies in “Every Member State...” and non-judicial remedies “in all 28 EU Member States”) are correct.

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

No updates required.

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

As the member states concerned are often not mentioned it is difficult too understand, when the report refers to Austria specifically.

Conclusions

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Austria is not mentioned explicitly in this Section. There is nothing to be added.

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
AT	Federal Agency for State Protection and Counter Terrorism/Bundesamt für Verfassungsschutz und Terrorismusbekämpfung (BVT) ³⁰ (part of the police)			Military Intelligence Service/Heeresnachrichtendienst (HNnA) ³¹ Military Defence Agency/Abwehramt (AbwA) ³²

It is unclear to what the terms “internal” and “external” refer to in this table (threats, competences, activities, definition given in the legal basis, etc.). The text of the report does not elucidate this either. Clarification is needed in order to fit the BVT into the correct column.

20

³⁰ Austria, Security Police Act (*Bundesgesetz über die Organisation der Sicherheitsverwaltung und die Ausübung der Sicherheitspolizei, Sicherheitspolizeigesetz - SPG*), BGBl. Nr. 662/1992, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005792.

On 1 July 2016 the Police State Protection Act (*Polizeiliches Staatsschutzgesetz, PStSG*) will enter into force will constitute a further legal basis for the BVT. Austria, Police State Protection Act (5. Bundesgesetz mit dem das Bundesgesetz über die Organisation, Aufgaben und Befugnisse des polizeilichen Staatsschutzes (Polizeiliches Staatsschutzgesetz – PStSG) erlassen und das Sicherheitspolizeigesetz geändert werden, BGBl. I Nr. 5/2016, available at: www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2016_I_5/BGBLA_2016_I_5.pdf.

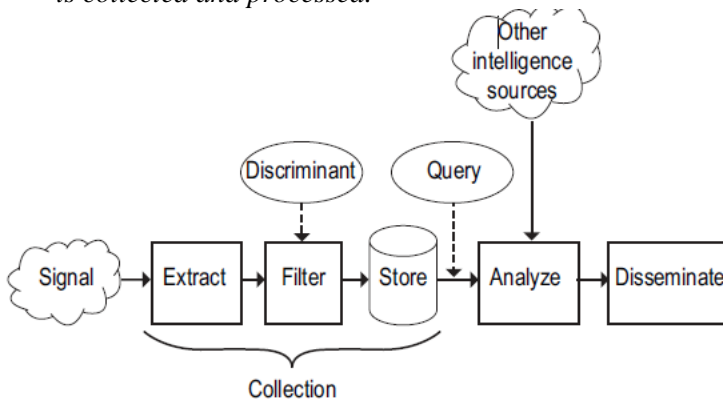
³¹ Austria, Military Authority Act (*Bundesgesetz über Aufgaben und Befugnisse im Rahmen der militärischen Landesverteidigung, Militärbefugnisgesetz - MBG*), BGBl. I Nr. 86/2000, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20000864.

³² Austria, Military Authority Act (*Bundesgesetz über Aufgaben und Befugnisse im Rahmen der militärischen Landesverteidigung, Militärbefugnisgesetz - MBG*), BGBl. I Nr. 86/2000, available at: www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20000864.

20

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 could be identified for Austria.

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.

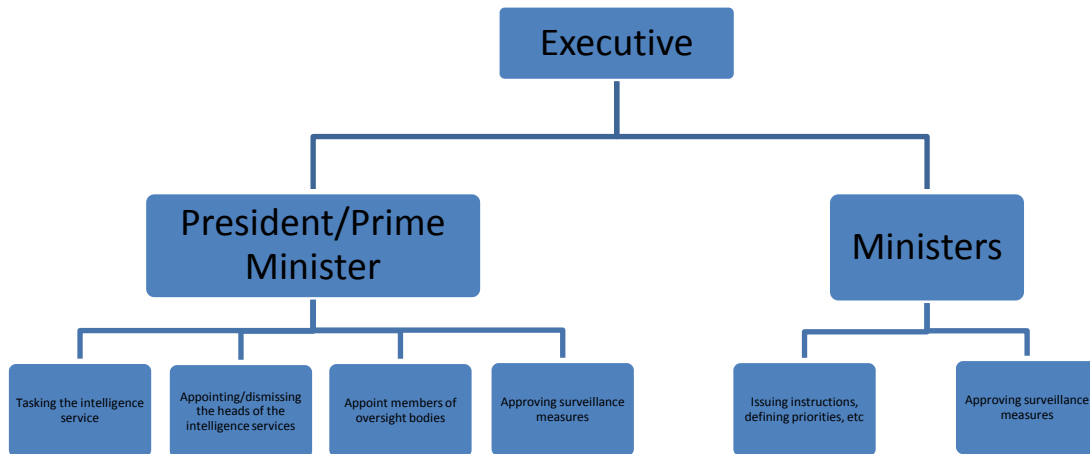


Please note that there is no ex ante judicial mechanism in place in Austria. Thus, the figure does not illustrate the situation in Austria correctly.

Here is also a more general remark: It is not obvious at first hand that Data Protection Authorities are considered as “expert bodies”. Maybe it would make sense to make a separate bubble for Data Protection Authorities. This seems to be justified as they are also discussed in detail in the text of the report.

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

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



The figure might be correct in general. However, please note that in Austria the executive does not have all the forms of control over the intelligence services mentioned in the figure.

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

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

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

Member States	Essential powers	Enhanced powers
AT	X	

The Standing Sub-Committee of the Committee on Internal Affairs (*Ständiger Unterausschusses des Ausschusses für innere Angelegenheiten*) may **ask the executive** (usually the competent Minister) **to provide the committee with information**. Members of government are obliged to grant access to documents, except when this is not possible or might endanger national interests or the security of persons.

Standing Sub-Committee of the Committee on Internal Affairs (*Ständiger Unterausschusses des Ausschusses für innere Angelegenheiten*) also **receives reports from the executive** (namely the Federal Minister of the Interior) as it has to be provided with the report by the Legal Protection Officer annually.

In respect to overseeing the services’ budget and expenditure it has to be noted that budget of the BVT is part of the budget allocated for the Federal Ministry of the Interior. There is no information available on how much is spent by the BVT.

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
AT	Legal Protection Commissioner (Rechtsschutzbeauftragter)

Correct for Austria.

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

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

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

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

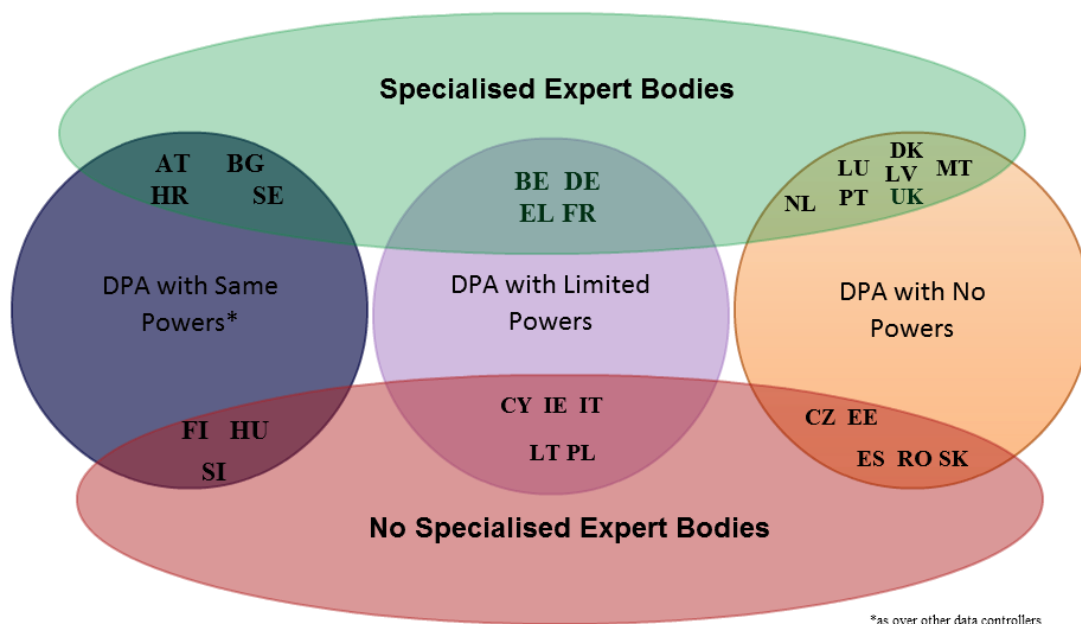
Same powers: refers to DPAs that have the exact same powers over NIS as over any other data controller.

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.

Correct for Austria.

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.



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
AT				X	

Correct for Austria.

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

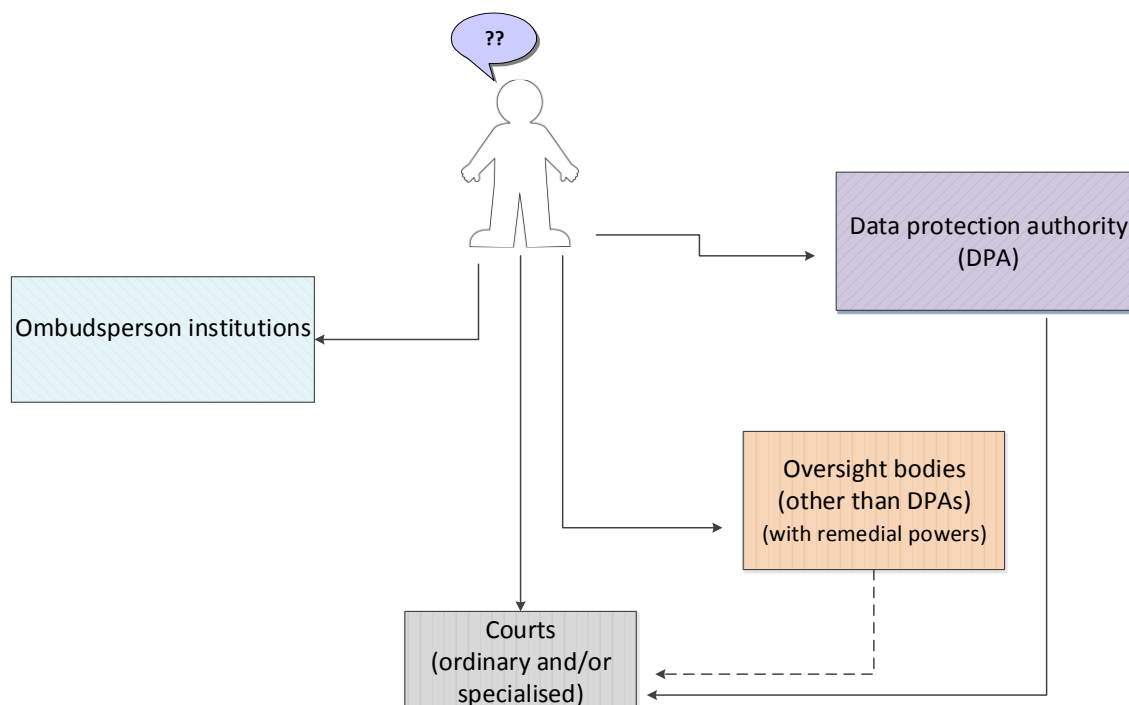
Please check the accuracy of Table 5 below (p. 55 of the FRA Report). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

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

Austria is not mentioned in this table.

1.5.11 Figure 5: Remedial avenues at the national level

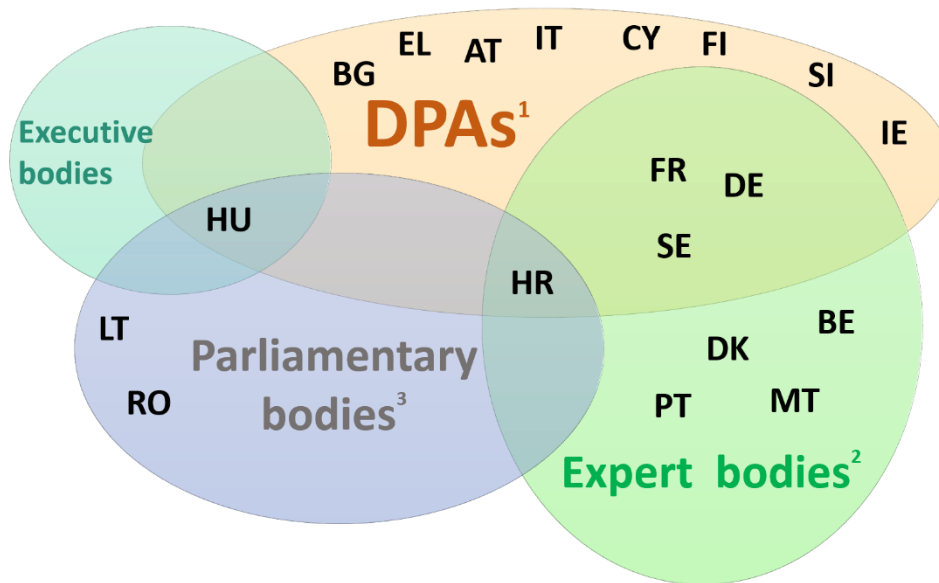
Please confirm that Figure 5 below (p. 60 of the FRA Report) illustrates the situation in your Member State in an accurate manner. If it is not the case, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.



The figure might be correct in general. However, please note that in Austria there is no oversight body apart from the DPA. Thus, this “avenue” is not available in Austria.

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.



Notes: 1. The following should be noted regarding national data protection authorities: In Germany, the DPA may issue binding decisions only in cases that do not fall within the competence of the G 10 Commission. As for 'open-sky data', its competence in general, including its remedial power, is the subject of on-going discussions, including those of the NSA Committee of Inquiry of the German Federal Parliament

2. The following should be noted regarding national expert oversight bodies: In Croatia and Portugal, the expert bodies have the power to review individual complaints, but do not issue binding decisions. In France, the National Commission of Control of the Intelligence Techniques (CNCTR) also only adopts non-binding opinions. However, the CNCTR can bring the case to the Council of State upon a refusal to follow its opinion. In Belgium, there are two expert bodies, but only Standing Committee I can review individual complaints and issue non-binding decisions. In Malta, the Commissioner for the Security Services is appointed by, and accountable only to, the prime minister. Its decisions cannot be appealed. In Sweden, seven members of the Swedish Defence Intelligence Commission are appointed by the government, and its chair and vice chair must be or have been judges. The remaining members are nominated by parliament.

3. The following should be noted regarding national parliamentary oversight bodies: only the decisions of the parliamentary body in Romania are of a binding nature.

Correct for Austria.