

Short Thematic Report

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

Legal update

Country: Malta

Version of 4 July 2016

FRANET contractor: aditus foundation

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1 Description of tasks – Phase 3 legal update

1.1 Summary

There have been no legislative developments or amendments to the surveillance legislative framework during the reporting period. The Security Service Act¹, the Data Protection Act² and the Processing of Personal Data (Electronic Communications Sector) Regulations³ have not been amended during the reporting period. Furthermore, there have been no court decisions in the area of surveillance or intelligence services⁴.

There have been no reports by any parliamentary committees⁵, by the Office of the Information and Data Protection Commissioner⁶ or any ad hoc parliamentary⁷ or non-parliamentary commissions. In the Annual Report of the Security Committee covering the year 2014, tabled in Parliament on 1 December 2015, there was no mention of any reports, inquiries or plans relating to the Snowden revelations or reforms of the surveillance system in Malta in general⁸.

The Report is an operational report on the work of the Security Service throughout the year, where attention was focused on combating drug importation and trafficking, terrorism, organised crime and irregular immigration. By way of context, the Report highlights the conflicts in Libya, Syria and Iraq and their potential impact on the Service's work. Very little substantive information is actually provided in the Report, with most references remaining general and vague.

On-site inspections were carried out on the premises of the Kuwait Embassy/Consulate, of Malta's Permanent Representation to the European Institutions (Brussels) and of the Passport Office. No information is provided as to the triggers or consequences of these inspections.

In relation to interceptions, the Report only states that throughout 2014 several meetings were held with private telecommunications service-providers regarding the system of legal interceptions. The Report also states that all interception operations carried out in 2014 were done on the basis of warrants signed by the Responsible Minister. No information is provided on the actual operations of 2014, yet the Report stresses the increased guarantees in the way such interceptions are conducted, namely: auditing of the numbers being intercepted; detailed reports on intercepted numbers and intercepting officials; warrants printed on secure paper; warrants numbered consecutively; the Minister writing, by hand, the date and time of his

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¹ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

² Malta, Data Protection Act, CAP. 440 of the Laws of Malta, 22nd March, 2002, <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8906&l=1>

³ Malta, Processing of Personal Data (Electronic Communications Sector) Regulations, S.L. 440.01 of the Laws of Malta, 15th July, 2003, <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11052&l=1>

⁴ Searches carried out on the judgments database on the Justice Services web portal, Ministry for Justice, Culture and Local Government, on 4 May 2016. <http://www.justiceservices.gov.mt/courtservices/Judgements/default.aspx>

⁵ Searches carried out on the Parliament web portal on 30 March, 2016 <http://www.parlament.mt/standing-committees?l=1>

⁶ Searches carried out on the Office of the Information and Data Protection Commissioner web portal on 1 April 2016 <https://idpc.gov.mt/en/Pages/dp/publications.aspx>.

⁷ Searches carried out on the Parliament web portal on 30 March, 2016 <http://www.parlament.mt/standing-committees?l=1>

⁸ Annual Report 2014 of the Security Committee in accordance with Article 14(4) of the Security Service Act (Cap. 391), Sitting Number: 335, 1 December 2015 <http://www.parlament.mt/sittingdetails?sid=5172&l=1&legcat=13&forcat=12>

signature at the moment of signing; and “*other security factors.*” The Report comments that these measures are intended to increase transparency and protection against abuse.

The Annual Report covering 2015 has not yet been tabled in Parliament⁹.

⁹ Searches carried out on the Parliament web portal on 4 May, 2016 <http://www.parlament.mt/standing-committees?l=1>

1.2 International intelligence services cooperation

The Security Service Act¹⁰ does not specifically make provision for international cooperation between intelligence services. However, the Annual Report of the Security Committee covering the year 2014 makes reference to increased cooperation between other foreign intelligence services¹¹. In particular, the Report emphasises increased cooperation with foreign liaison officers in order to discuss matters of common interest, especially in the light of regional developments. Specific cooperation is mentioned in relation to the European Joint Intelligence project on Internet and Counter Terrorism, to the implementation of the EU TEMPEST rules and to participation in meetings organised by the Council Security Committee – Information Assurance (CSC-IA) and the Security Accreditation Board (SAB).

Information relating to any international cooperation agreement, internal guidelines or ministerial directives is not publically available.¹² It is noted that there is no official website or webpage dedicated to the Malta Security Service, the Commissioner or the Security Committee instituted under the Security Service Act, CAP. 391 of the Laws of Malta and therefore publically available information and contact details are limited. Furthermore, the information is not publicly available either because it is simply not made public or because it could fall under the definition of an “*exempt document*” according to the Freedom of Information Act, particularly if it could damage Malta’s security or international relations¹³.

The Security Service Act¹⁴, though not specifically catering for data exchanges between national services or joint surveillance activities, contains general oversight mechanism provisions. The Malta Security Service is subject to the control of the Minister designated by the Prime Minister as being responsible for the Security Service, the Commissioner and the Security Committee.

The Security Service operates under the authority of the Minister¹⁵. The disclosure of records is only allowed with the approval of the Minister¹⁶, with the exception of information obtained for the purposes of any criminal proceedings and for the proper discharge of the functions of the Malta Security Services¹⁷. Warrants for entry on or interference with property and for the interception or interference with communications may only be issued by the Minister¹⁸.

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¹⁰ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

¹¹ Annual Report 2014 of the Security Committee in accordance with Article 14(4) of the Security Service Act (Cap. 391), Sitting Number: 335, 01 December 2015, See Pages 1, 5 and 14 <http://www.parlament.mt/sittingdetails?sid=5172&l=1&legcat=13&forcat=12>

¹² Email query sent to the Ministry for Home Affairs and National Security on 4 May 2016. Query remains unanswered to date. Email query sent to the Security Committee under the Security Services Act, composed of the Prime Minister, the Minister for Home Affairs and National Security, the Minister for Foreign Affairs and the Leader of the Opposition on 4 May, 2016. Query remains unanswered to date, although the Leader of the Opposition replied that he is not authorised to speak on behalf of the Committee (9 May 2016). The Office of the Prime Minister replied to query that they are checking the queries sent and will get back to the researcher as soon as possible on the 20/06/2016.

¹³ Malta, Freedom of Information Act, CAP 496 of the Laws of Malta, Article 29, 31st July, 2009, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8962&l=1>.

¹⁴ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

¹⁵ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 3(1) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

¹⁶ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 4(4) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

¹⁷ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 4(2a) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

¹⁸ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 8 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

The Commissioner, appointed by the Prime Minister¹⁹, keeps under review the exercise of the Minister's powers in relation to the issuance of warrants²⁰. The Commissioner also has the power to investigate any complaint by any person who feels aggrieved by any action carried out by the Security Services in relation to himself or to any property of his²¹.

The Security Committee, which is also established under the Security Service Act, has the power to examine the expenditure, administration and policy of the Security Service. The Security Committee must prepare an annual report relating to the discharge of their functions and lay it before the House of Representatives.²²

The Security Services may request communications data under the Processing of Personal Data (Electronic Communications Sector) Regulations.²³ The same regulations provide that any person who suffers loss or damage due to any contravention of its provisions is entitled to seek compensation before a competent court^{24, 25}.

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¹⁹ Email query sent to Hon. Mr Justice Valenzia, Commissioner under the Security Services Act, on 4 May 2016. The Commissioner directed the researcher to Article 12 of CAP 391 of the Laws of Malta in relation to the functions and work of the Commissioner in response to queries relating to access to information by individuals, exemptions on access to information on surveillance measures and oversight powers in relation to international cooperation agreements and joint surveillance activities, email response received on the 4th May, 2016.

²⁰ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 13 and Schedule 1, <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

²¹ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 12(3)(a) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

²² Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 14 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

²³ Malta, Processing of Personal Data (Electronic Communications Sector) Regulations, S.L. 440.01, 15th July, 2003, Regulation 19

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11052&l=1>

²⁴ Malta, Processing of Personal Data (Electronic Communications Sector) Regulations, S.L. 440.01, 15th July, 2003, Regulation 11

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11052&l=1>

²⁵ Email query sent to the Office of the Information and Data Protection Commissioner on 4 May 2016. Query remains unanswered to date. Reminder sent on the 23/06/2016.

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1.3 Access to information and surveillance

The Freedom of Information Act²⁶ made provision for the right to information held by public authorities and the manner in which this right may be exercised by individuals. Although Article 3 grants any eligible person²⁷ the right of access to documents²⁸ held by public authorities, there is a general exemption in relation to documents held by the Security Services²⁹. In addition, a document is an exempt document under the Freedom of Information Act if its disclosure would, or could reasonably be expected to, cause damage to the security, the defence, or the international relations of Malta³⁰. A document is also exempt if its disclosure would divulge any information communicated in confidence by or on behalf of a foreign government, an authority of a foreign government, or an international organisation³¹. Furthermore, a document is an exempt document if it contains information relating to research on security and defence matters that has been undertaken or commissioned by a public authority³².

The Security Services Act³³ does not grant the right of access to information to individuals on whether or not they are subject to surveillance activities.³⁴

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²⁶ Malta, Freedom of Information Act, CAP. 496 of the Laws of Malta, 31st July, 2009, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8962&l=1>

²⁷ An “eligible person” means a person who is resident in Malta and who has been so resident in Malta for a period of at least five years, and who is either a citizen of Malta or a citizen of any other member state of the European Union”, Malta, Freedom of Information Act, CAP. 496 of the Laws of Malta, 31st July, 2009, Article 2

²⁸ The term "document" means any article on which “information has been recorded in whatever form, including electronic data, images, scale models and other visual representations, and audio or video recordings, regardless of whether the information can be read, seen, heard or retrieved with or without the aid of any other article or device” Malta, Freedom of Information Act, CAP. 496 of the Laws of Malta, 31st July, 2009, Article 2 <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8962&l=1>

²⁹ Malta, Freedom of Information Act, CAP. 496 of the Laws of Malta, 31st July, 2009, Article 5(4)(f) <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8962&l=1>

³⁰ Malta, Freedom of Information Act, CAP. 496 of the Laws of Malta, 31st July, 2009, Article 29(1)(a) <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8962&l=1>

³¹ Malta, Freedom of Information Act, CAP. 496 of the Laws of Malta, 31st July, 2009, Article 29(1)(b) <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8962&l=1>

³² Malta, Freedom of Information Act, CAP. 496 of the Laws of Malta, 31st July, 2009, Article 32(9) <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8962&l=1>

³³ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996 <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

³⁴ Email query sent to Hon.Mr Justice Valenzia, Commissioner under the Security Services Act, on 4 May 2016. The Commissioner directed the researcher to Article 12 of CAP 391 of the Laws of Malta in relation to the functions and work of the Commissioner in response to queries relating to access to information by individuals, exemptions on access to information on surveillance measures and oversight powers in relation to international cooperation agreements and joint surveillance activities, email response received on the 4th May, 2016. Email query sent to the Office of the Information and Data Protection Commissioner on 4 May 2016. Query remains unanswered to date. Reminder sent on the 23/06/2016.

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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

Malta was not mentioned in the Introduction. There is nothing of relevance in relation to the situation in Malta to add in order to illustrate/complement the FRA comparative analysis.

1 Intelligence services and surveillance laws

Malta was not mentioned in this Chapter overall.

1.1 Intelligence services

Malta was not mentioned in this sub-section.

The Security Services Act establishes the Security Service, as a separate entity from police, under the authority of the Minister designated by the Prime Minister as being responsible for the Security Service³⁵. The function of the Service is to protect national security and, in particular, against threats from organised crime, espionage, terrorism and sabotage, the activities of agents of foreign powers and against actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means³⁶.

The Service must act in the interests of the economic well being of Malta and public safety, in particular, the prevention or detection of serious crime³⁷.

1.2 Surveillance measures

Malta was not mentioned in this sub-section. There are no specific references that need to be added in order to complement FRA's comparative analysis.

1.3 Member States' laws on surveillance

Malta was not mentioned in this sub-section.

1.3.1 The Security Service Act contains the mandate and organisation of the service and also the means of action and conditions for using them³⁸.

1.3.1.1. and 1.3.1.2

Warrants for the entry or interference with property and for the interception of or interference with communications are only issued if the Minister thinks it necessary for the action to be

³⁵ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 3(1) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

³⁶ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 3(2) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

³⁷ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 3(3) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

³⁸ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

taken on the ground that it is likely to be of substantial value in assisting the Service in carrying out any of its functions under this Act³⁹. The warrant may be issued in relation to one particular person or one set of premises, or in relation to any other communications as is necessary to intercept in order to intercept the former⁴⁰. The latter scenario therefore allows for a rather broad range of situations since the Act is specific in relation to the targeted and intended communications, yet broad in relation to all other communications the surveillance of which is deemed to be necessary to intercept the targeted and intended communications.

Under the Processing of Personal Data (Electronic Communications Sector) Regulations,⁴¹ the Security Services may request data from service providers for the purpose of the investigation, detection or prosecution of a serious crime (any crime which is punishable by a term of imprisonment of not less than one year). The data includes data necessary to trace and identify the source of communication, to identify the destination of a communication, to identify the date, time and duration of a communication, to identify the type of communication, data necessary to identify users' communication equipment or what purports to be their equipment and data necessary to identify the location of mobile communication equipment⁴². Although neither the Act nor the Regulations provide an exhaustive list of functions of the Security Services, the Malta Police Force is the competent authority to investigate crimes of a general nature, whereas the Security Service investigate and detect actions detrimental to national security, such as organised crime, espionage and the like. It is important to note that the Security Service and the Police are separate entities, though members of the service may be appointed from the Police Force⁴³. The Security Service has the function to protect national security, in particular, against threats from organised crime, espionage, terrorism and sabotage, the activities of agents of foreign powers and against actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means.

The Police Force's main function, amongst others, is to preserve public order and peace, to prevent the commission of offences, to promote and enforce the observance of the laws, as a first guarantee of the rights of all persons in Malta, even before action is needed through the judicial system to repress, sanction or remedy any breach⁴⁴.

In the carrying out of its functions the Security Services may request data under the Processing of Personal Data (Electronic Communications Sector) Regulations, as explained above. The Police may also request data under the same Regulations in the carrying out of their duties.

1.3.2

The function of the Malta Secret Service is to protect national security and, in particular, against threats from organised crime, espionage, terrorism and sabotage, the activities of agents of foreign powers and against actions intended to overthrow or undermine parliamentary

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³⁹ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 6(3)(a) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁴⁰ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 7(1) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁴¹ Malta, Processing of Personal Data (Electronic Communications Sector) Regulations, S.L. 440.01, 15th July, 2003, Regulation 19(1)

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11052&l=1>

⁴² Malta, Processing of Personal Data (Electronic Communications Sector) Regulations, S.L. 440.01, 15th July, 2003, Regulation 20

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11052&l=1>

⁴³ Malta, Security Service Act, CAP. 391 of the Laws of Malta, Article 5(c) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁴⁴ Malta, Police Act, CAP 164 of the Laws of Malta, 10th February, 1961, Article 4 <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8686>

democracy by political, industrial or violent means⁴⁵. There are no further definitions of these terms.

FRA key findings

Malta was not mentioned in this sub-section. There are no specific references that need to be added in order to complement FRA's comparative analysis.

2 Oversight of intelligence services

Malta was not mentioned in this sub-section.

Warrants for the entry on or interference with property and for the interception or interference with communications may only be issued by the Minister⁴⁶. The Commissioner, who is appointed by the Prime Minister,⁴⁷ keeps under review the exercise of the Minister's powers in relation to the issuance of warrants⁴⁸.

2.1 Executive control

Malta was not mentioned in this sub-section.

The head of the Security Service has the obligation to present an annual report on the work of the Service to the Prime Minister and the Minister responsible for the Security Services⁴⁹. In turn, the Commissioner is obliged to present an annual report to the Prime Minister who must present it to the Security Committee⁵⁰. The Prime Minister may exclude any information that would be prejudicial to the continued discharge of the functions of the Security Service, however mention of this exclusion must be made.

The Security Committee, whose function is to examine the expenditure, administration and policy of the Security Service, has the obligation to publish an annual report and to lay before the House of Representatives⁵¹.

2.2 Parliamentary oversight

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⁴⁵ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 3(2), <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁴⁶ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 8, <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁴⁷ Email query sent to Hon. Mr Justice Valenzia, Commissioner under the Security Services Act, on the 4th May 2016. The Commissioner directed the researcher to Article 12 of CAP 391 of the Laws of Malta in relation to the functions and work of the Commissioner in response to queries relating to access to information by individuals, exemptions on access to information on surveillance measures and oversight powers in relation to international cooperation agreements and joint surveillance activities, email response received on the 4th May, 2016.

⁴⁸ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 13 and Schedule 1 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁴⁹ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 4(5) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁵⁰ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 12(6) - (8) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁵¹ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 14 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

Malta is mentioned in relation to the absence of parliamentary committee that deal with intelligence services. The reference is accurate and there have been no new legislation or reports during the reporting period.

2.2.1 Mandate

Malta was not mentioned in this sub-section, having no parliamentary committee dealing with intelligence services there is no information to add.

2.2.2 Composition

Malta was not mentioned in this sub-section, having no parliamentary committee dealing with intelligence services there is no information to add.

2.2.3 Access to information and documents

Malta was not mentioned in this sub-section, having no parliamentary committee dealing with intelligence services there is no information to add.

2.2.3 Reporting to parliament

Malta was not mentioned in this sub-section, having no parliamentary committee dealing with intelligence services there is no information to add.

2.3 Expert oversight

2.3.1 Specialised expert bodies

Malta was not mentioned in this sub-section.

The Commissioner of the Security Service, who is appointed by the Prime Minister⁵², keeps under review the exercise of the Minister's powers in relation to the issuance of warrants⁵³. The Commissioner also has the power to investigate any complaint by any person who feels aggrieved by any action carried out by the Security Services in relation to himself or to any property of his⁵⁴. The person appointed to act as Commissioner must be a person who holds or has held the office of judge of the superior courts or who has held the office of Attorney General⁵⁵.

The Commissioner is obliged to present an annual report on the discharge of his functions to the Prime Minister who in turn presents this to the Security Committee⁵⁶. The report is not public. The Commissioner may also be provided with staff and finances, as the Prime Minister deems necessary⁵⁷.

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⁵² Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 12(1) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁵³ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 13 and Schedule 1 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁵⁴ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 12(3)(a) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁵⁵ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 12(1) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁵⁶ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 12(6) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁵⁷ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Paragraph 8 of Schedule 1 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

2.3.2 Data protection authorities

Malta is mentioned in relation to the fact that the national data protection authorities do not have the power of oversight over the Security Service. The reference is accurate and there have been no new legislation or reports during the reporting period.

2.4 Approval and review of surveillance measures

Malta is mentioned in relation to the fact that approval of surveillance measures comes from the Minister. The reference is accurate and there have been no new legislation or reports during the reporting period.

FRA key findings

Malta was not mentioned in this sub-section. There are no specific references that need to be added in order to complement FRA's comparative analysis.

3 Remedies

Malta was not mentioned in the introduction to the Chapter. There are no specific references that need to be added in order to complement FRA's comparative analysis.

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

Malta is mentioned in relation the restrictions at law of the obligation to inform in the interests of national security. The reference is accurate and there have been no new legislation or reports during the reporting period.

3.2 Judicial remedies

Malta was not mentioned in the introduction to the sub-section. There are no specific references that need to be added in order to complement FRA's comparative analysis.

3.2.1 Lack of specialisation and procedural obstacles

Malta was not mentioned in this sub-section. There are no specific references that need to be added in order to complement FRA's comparative analysis.

3.2.2 Specialised judges and quasi-judicial tribunals

Malta was not mentioned in this sub-section. There are no specific references that need to be added in order to complement FRA's comparative analysis.

3.3 Non-judicial remedies: independence, mandate and powers

Malta was not mentioned in this sub-section. There are no specific references that need to be added in order to complement FRA's comparative analysis.

3.3.1 Types of non-judicial bodies

Malta was mentioned in relation to the oversight of expert bodies. The reference is accurate and there have been no new legislation or reports during the reporting period.

The Commissioner of the Security Service, who is appointed by the Prime Minister⁵⁸, keeps under review the exercise of the Minister's powers in relation to the issuance of warrants⁵⁹. The person appointed to act as Commissioner must be a person who holds or has held the office of judge of the superior courts or who has held the office of Attorney General⁶⁰. The Commissioner also has the power to investigate any complaint by any person who feels aggrieved by any action carried out by the Security Services in relation to himself or to any property of his⁶¹. If the Commissioner determines that the complaint was founded then a report of the findings must be presented to the Prime Minister⁶².

The Ombudsman Act specifically lays down that it does not apply to the Security Services⁶³. Furthermore, the Act specifies that matters certified by the Prime Minister as affecting the internal or external security of Malta is also not subject to investigation by the Ombudsman⁶⁴.

3.3.2 The issue of independence

Malta is mentioned in relation to the role of the Commissioner of the Security Service. The reference is accurate and there have been no new legislation or reports during the reporting period.

3.3.3 Powers and specialisation of non-judicial remedial bodies

Malta was mentioned in this sub-section in relation to the Maltese Commissioner's authority to scrutinise the Security Services. The reference is accurate and there have been no new legislation or reports during the reporting period.

FRA key findings

Malta was not mentioned in this sub-section. There are no specific references that need to be added in order to complement FRA's comparative analysis.

Conclusions

Malta was not mentioned in this sub-section. There are no specific references that need to be added in order to complement FRA's comparative analysis.

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⁵⁸ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 12(1) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁵⁹ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 13 and Schedule 1 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁶⁰ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 121 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁶¹ Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Article 12(3)(a) <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁶² Malta, Security Services Act, CAP. 391 of the Laws of Malta, 26th July, 1996, Paragraph 4 of Schedule 1 <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

⁶³ Malta, Ombudsman Act, CAP 385 of the Laws of Malta, 25th July, 1995, Article 12 and the First Schedule <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8852&l=1>

⁶⁴ Malta, Ombudsman Act, CAP 385 of the Laws of Malta, 25th July, 1995, Article 13 and the Second Schedule <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8852&l=1>

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

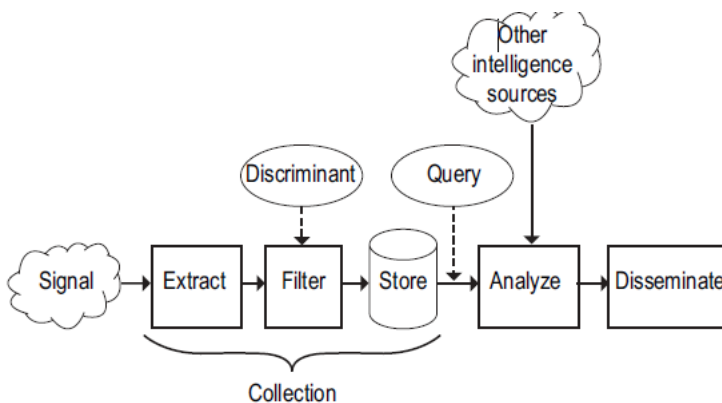
1.5.1 Overview of security and intelligence services in the EU-28

- 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 |
|----|------------------|------------------|---|----------|
| MT | | | Security Service Servizz tas-Sigurtà (Security Services Act, CAP. 391 of the Laws of Malta http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1 | |

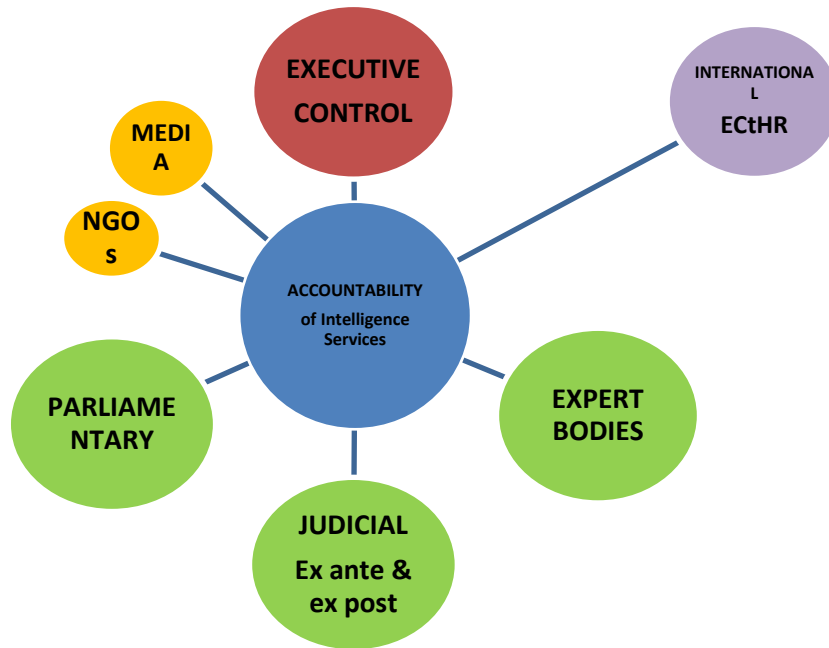
1.5.2 Figure 1: A conceptual model of signals intelligence

There are no alternative figures to the way signals intelligence is collected and processed in Malta.



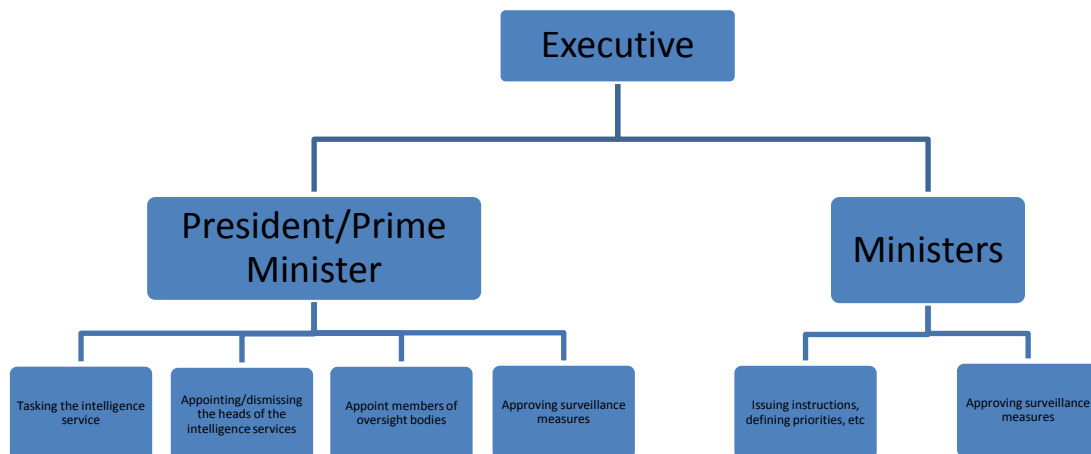
1.5.3 Figure 2: Intelligence services' accountability mechanisms

This is an accurate illustration of the situation in Malta.



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

This is an accurate illustration of the situation in Malta.



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

The information in the table and the accompanying text is accurate.

| Member States | Essential powers | Enhanced powers |
|---------------|------------------|-----------------|
| MT | | |

Note: Finland, Ireland, Malta and Portugal do not have parliamentary committees that deal with intelligence services⁶⁵.

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

The information in the table and the accompanying text is accurate.

| EU Member State | Expert Bodies |
|-----------------|---|
| MT | Commissioner of the Security Service (<i>Kummissarju tas-Servizz ta' Sigurtà</i>) |

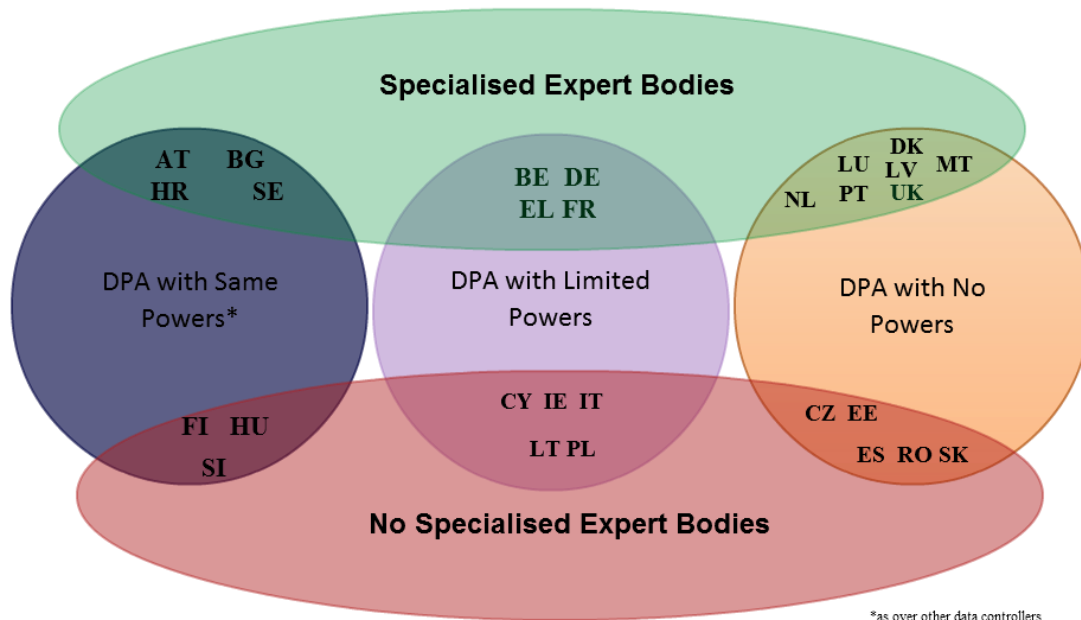
1.5.7 Table 3: DPAs' powers over national intelligence services, EU-28

The information in the table and the accompanying text is accurate.

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

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

The information in the table and the accompanying text is accurate.



⁶⁵ The full list of Parliamentary Committees is available at <http://www.parlament.mt/standing-committees?l=1>.

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

The information in the table and the accompanying text is accurate.

| EU Member State | Judicial | Parliamentary | Executive | Expert bodies | None |
|-----------------|----------|---------------|-----------|---------------|------|
| MT | | | X | | |

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

N/A

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

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

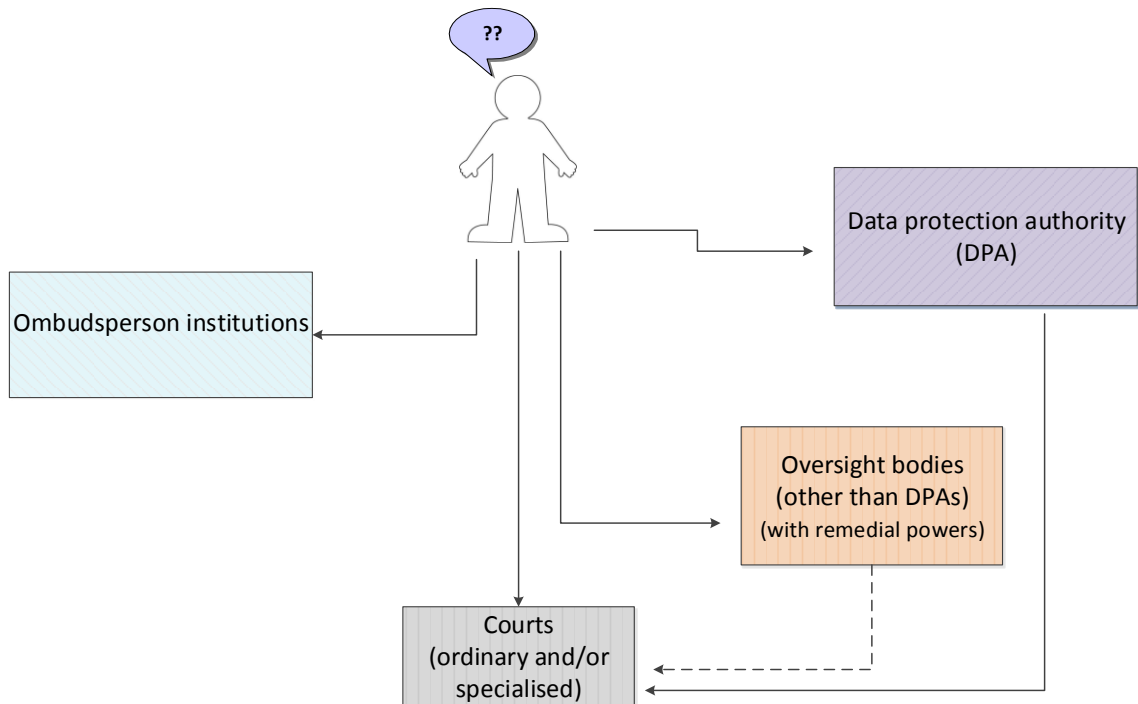
1.5.11 Figure 5: Remedial avenues at the national level

The Ombudsman Act specifically lays down that it does not apply to the Security Services⁶⁶. Therefore, the box illustrating “ombudsperson institutions” would need to be deleted for the figure to be accurate.

Additionally, in Schedule to the Human Rights and Equality Commission Bill, matters deemed by the Prime Minister to affect the internal security of Malta are exempt from investigation by the Human Rights and Equality Commission⁶⁷.

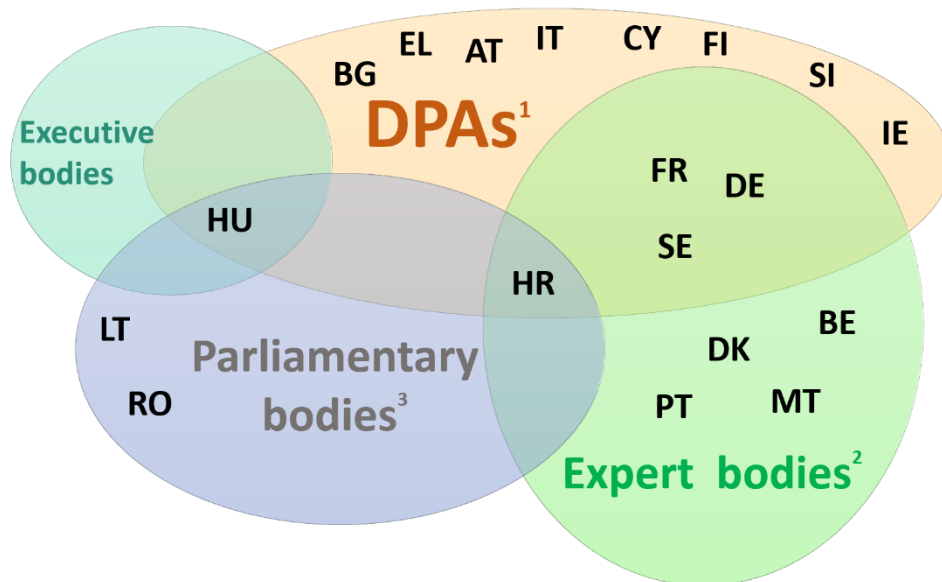
⁶⁶ Malta, Ombudsman Act, CAP 385 of the Laws of Malta, 25th July, 1995, Article 12 and the First Schedule <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8852&l=1>

⁶⁷ The Bill seeks to establish a National Human Rights Institution. It was presented for public consultation on 10 December 2015 and is currently being reviewed. It may be found at http://socialdialogue.gov.mt/en/Public_Consultations/MSDC/Documents/2015%20HREC%20Final/Bil1%20-%20Human%20Rights%20and%20Equality%20Commission%20Act.pdf



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

The information in the figure and the accompanying text is accurate.



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

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