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HEAT

**Handbook for the
Evaluation of
Anti-
Terrorism Legislation**

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Handbook for the Evaluation of Anti-Terrorism Legislation

Following 9/11, we have witnessed 15 years of increasing surveillance - improvements in technological capabilities as well as expansions of investigatory powers - which has invaded every aspect of our daily lives and undermined our civil liberties. It is time to reframe the debate that was up to now driven mainly by fear and offer solutions for a fact-based security policy to our politicians. To achieve this goal, we have published "HEAT" - the Handbook for the Evaluation of Anti-Terrorism Legislation. This report, following jurisprudential standards of rigour, catalogues all surveillance laws in a given jurisdiction and instructs lawmakers on how to assess the impact of existing or proposed legislation on citizens' fundamental rights. HEAT is a toolkit to reduce surveillance legislation to a level compatible with constitutional law as well as an offer to all parts of society to bring the discussion about modern security policy back to a fact-based debate on effectiveness and proportionality of proposed measures.

At its core, HEAT is a catalogue of criteria for the evaluation of existing as well as proposed surveillance legislation. This catalogue is based on an analysis of relevant case law, an analysis of statistics on surveillance measures, and the evaluation of the surveillance technologies available and actually used by law enforcement authorities. Finally, a preliminary technological impact assessment of surveillance measures is provided.

The main purpose of the ongoing project is to establish a basis to scrutinize surveillance legislation with respect to their compatibility with the Austrian Constitution as well as to fundamental rights, and the examination of its impact on society as a whole. The project is inspired by the idea of the "Überwachungsgesamtrechnung" ("comprehensive surveillance footprint evaluation") as described by the German Constitutional Court, according to which the impact of surveillance measures can only be assessed properly when already existing measures and their possible interoperations are taken into account comprehensively. The Court argued that the totality of already existing surveillance measures may narrow the lawmakers' leeway when introducing new surveillance measures.

The Handbook aims to support state and civil society organizations with identifying surveillance measures that potentially infringe fundamental rights before they come into effect. The interdisciplinary approach of the project combines insights from law, technology and the social sciences. Understood as a living instrument, HEAT will be updated regularly to keep track of newly introduced surveillance legislation. Although HEAT focuses (in the current version) on Austrian legislation, our intention is to develop and expand the project to the European and international level, especially regarding the vast amount of new surveillance measures pending in EU legislation.

The Handbook was written by the fundamental rights NGO epicenter.works (formerly Working Group on Data Retention Austria [AKVorrat.at]) in cooperation with Research Institute AG & Co KG and the Vienna Centre for Societal Security (VICESSE).

The handbook addresses policy makers, activists, journalists, security officials and last but not least the legal community all across Europe and beyond. Furthermore, HEAT aims to encourage people to actively participate in the process of developing the project on a European and international level. The goal is to integrate the idea of the "comprehensive surveillance footprint evaluation" in the legislative process of EU member states.

One of our main goals is to foster a network of activists, lawyers and officials who work with us in order to revoke the exaggerated surveillance legislation in Europe. We demand a strict necessity and proportionality test for newly introduced surveillance measures to protect our fundamental rights. Our organization has laid the ground work with several lawsuits (Data Retention Directive, Austrian State Protection Act) and initiated public debates which lead the lawmaker to rethink the introduction of measures that potentially infringe fundamental rights (e.g. government malware for covert electronic