

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

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Country: Bulgaria

FRANET contractor: Project One / Center for the Study of
Democracy

Author(s) name(s): Dimitar Markov

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1. Summary

FRANET contractors are requested to highlight in 1 page **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 snapshot of the evolution during the reporting period (mid-2016 until third quarter of 2022). It should mention:

*the most significant legislative reform/s that took place or are taking place and highlight the key aspect/s of the reform, focusing on oversight and remedies.
relevant oversight bodies' (expert bodies (including non-judicial bodies, where relevant), data protection authorities, parliamentary commissions) reports/statements about the national legal framework in the area of surveillance by intelligence services.*

List of the different relevant reports produced in the context of FRA's surveillance project to be taken into account

FRA 2017 Report:

[Surveillance by intelligence services: fundamental rights safeguards and remedies in the EU - Volume II: field perspectives and legal update](#)

FRANET data collection for the FRA 2017 Report:

[Country studies for the project on National intelligence authorities and surveillance in the EU: Fundamental rights safeguards and remedies - Legal update](#)

[Country studies for the project on National intelligence authorities and surveillance in the EU: Fundamental rights safeguards and remedies - Monthly data collection on the current reform of intelligence legislation \(BE, FI, FR, DE, NL and SE\)](#)

FRA 2015 Report:

[Surveillance by intelligence services: fundamental rights safeguards and remedies in the EU – mapping Member States' legal framework](#)

FRANET data collection for the FRA 2015 Report:

[Country studies for the project on National intelligence authorities and surveillance in the EU: Fundamental rights safeguards and remedies](#)

FRANET contractors are requested to highlight in 1 page **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 snapshot of the evolution during the reporting period (mid-2016 until third quarter of 2022). It should mention:

*the most significant legislative reform/s that took place or are taking place and highlight the key aspect/s of the reform, focusing on oversight and remedies.
relevant oversight bodies' (expert bodies (including non-judicial bodies, where relevant), data protection authorities, parliamentary commissions) reports/statements about the national legal framework in the area of surveillance by intelligence services.*

Since mid-2016, the legal framework governing the operation of intelligence services was amended several times. The most important amendment was the exclusion of intelligence services from the scope of application of the Personal Data Protection Act (*Закон за защита на личните данни*). The change was adopted in February 2019 as part of an overall legislative reform aimed to bring Bulgarian legislation in compliance with the General Data Protection Regulation and Directive (EU) 2016/680. Based on the understanding that the General Data Protection Regulation and Directive (EU) 2016/680

do not apply to the processing of personal data outside the scope of application of EU law,¹ the parliament changed the general rule defining the scope of application of the Personal Data Protection Act (*Закон за защита на личните данни*). Thus, the old provision stipulating that the law shall apply to the processing of personal data for the purposes of national defence and national security “insofar as a specific law does not provide otherwise” was replaced by a new rule, according to which the law “shall not apply to the processing of personal data for the purposes of national defence and national security unless otherwise provided by a special law”.² This change also has an impact on the powers of the national data protection authority. Under the old regime, the Commission for Personal Data Protection (CPDP) (*Комисия за защита на личните данни*, КЗЛД) was empowered by law to supervise compliance with data protection rules by intelligence authorities, unless a special law provided otherwise. The new wording of the law, however, requires the data protection authority to be explicitly authorised by the special laws governing the operation of the various intelligence services in order to retain its supervisory powers over the processing of personal data by these services.

This change was accompanied by corresponding amendments to the special laws governing the operation of the different intelligence services.

- In the Military Intelligence Act (*Закон за военното разузнаване*), the provision that personal data shall be processed in accordance with this act and the Personal Data Protection Act (*Закон за защита на личните данни*) was replaced by a new rule stating that (1) personal data shall be processed only in accordance with this act, and (2) the control over the protection of the rights of individuals in the processing of their personal data and access to such data shall be exercised by the Commission for Personal Data Protection (CPDP) (*Комисия за защита на личните данни*, КЗЛД) under the terms and conditions of the Personal Data Protection Act (*Закон за защита на личните данни*).³ Despite the change, the national data protection authority retained its competencies related to the protection of the rights of individuals whose personal data have been processed by the military intelligence services.
- In the State Intelligence Agency Act (*Закон за Държавна агенция „Разузнаване“*) all rules referring to the Personal Data Protection Act (*Закон за защита на личните данни*) were repealed.⁴ Unlike the other laws governing the operation of intelligence services, in this law no explicit provision was included to retain the competencies of the data protection authority in relation to the protection of the rights of individuals whose personal data have been processed. The law envisages that the procedure for processing personal data shall be laid down in an internal legal act issued by the agency’s chairperson, which, however, is not public.⁵
- In the State Agency for National Security Act (*Закон за Държавна агенция „Национална сигурност“*) some of the provisions referring to the Personal Data Protection Act (*Закон за защита на личните данни*) were amended, but the provision stipulating that the control over the protection of the rights of individuals in the processing of their personal data and access to such data shall be exercised by the Commission for Personal Data Protection (CPDP) (*Комисия за*

¹ Bulgaria, National Assembly (*Народно събрание*) (2019), Explanatory report to the Draft Amendments and Supplements to the Personal Data Protection Act ([Мотиви към Законопроект за изменение и допълнение на Закона за защита на личните данни](#)), 18 July 2015.

² Bulgaria, Amendments and Supplements to the Personal Data Protection Act ([Закон за изменение и допълнение на Закона за защита на личните данни](#)), 26 February 2019.

³ Bulgaria, Military Intelligence Act ([Закон за военното разузнаване](#)), 13 November 2015, last amended 26 March 2021, Art. 78.

⁴ Bulgaria, State Intelligence Agency Act ([Закон за Държавна агенция „Разузнаване“](#)), 13 October 2015, last amended 4 August 2020, Art. 27 and Art. 28.

⁵ Bulgaria, State Intelligence Agency Act ([Закон за Държавна агенция „Разузнаване“](#)), 13 October 2015, last amended 4 August 2020, Art. 27 and Art. 28.

защита на личните данни, КЗЛД) under the terms and conditions of the Personal Data Protection Act (Закон за защита на личните данни) was preserved.⁶

Regardless of these changes in the powers of the Commission for Personal Data Protection (CPDP) (Комисия за защита на личните данни, КЗЛД), in accordance with Article 11 of the amended Convention of the Council of Europe for the Protection of Individuals with Automated Processing of Personal Data (Convention 108+), the independent and effective supervision of the processing of personal data has been preserved. On the one hand, the use of special intelligence means and the storage and destruction of information collected through such means (including the storage and destruction of information acquired by the intelligence services through the so-called “covert surveillance”), is controlled by the National Bureau for Control over Special Intelligence Means (NBCSIM) (Национално бюро за контрол на специалните разузнавателни средства, НБКСПС).⁷ On the other hand, the access, authorisation, storage and destruction of electronic communications (including the storage and destruction of collected traffic data) is controlled by the Committee for Oversight of the Security Services, the Deployment of Special Intelligence Means and the Access of Data under the Electronic Communications Act (Комисия за контрол над службите за сигурност, прилагането и използването на специалните разузнавателни средства и достъпа до данните по Закона за електронните съобщения).⁸

The other amendments to the legal framework governing the operation of intelligence services adopted during the reporting period were not related to the use of surveillance or the collection and processing of data.

The legal framework governing the use of special intelligence means was amended several times since mid-2017 and more amendments are under discussion. None of these changes, however, are related to the use of surveillance by intelligence services.

According to official data published by the National Bureau for Control over Special Intelligence Means (NBCSIM) (Национално бюро за контрол на специалните разузнавателни средства, НБКСПС), the relative share of special intelligence means used by national intelligence services is significantly lower compared to police authorities and prosecutors. In 2021, for example, more than 86 % of the requests for using special intelligence means came from the police and the prosecution services, about 10 % from the State Agency for National Security (SANS) (Държавна агенция „Национална сигурност”, ДАНС), and none from the State Intelligence Agency (SIA) (Държавна агенция „Разузнаване”, ДАР) and the Military Intelligence Service (MIS) (Служба „Военно разузнаване”, СВР).⁹

Bulgarian laws and practices relating to secret surveillance remain under ongoing review by the Committee of Ministers of the Council of Europe in the exercise of its task of supervising the execution of the ECtHR judgment in the case *Association for European Integration and Human Rights and Ekimdzhiev v. Bulgaria*.¹⁰ Meanwhile, in January 2022, the Court delivered a new judgment holding that both the system of secret surveillance and the system of retention and subsequent accessing of communications data in Bulgaria did not meet the requirements of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. According to the Court, although

⁶ Bulgaria, State Agency for National Security Act ([Закон за Държавна агенция „Национална сигурност”](#)), 13 October 2015, last amended 5 June 2020, Art. 37.

⁷ Bulgaria, Special Intelligence Means Act ([Закон за специалните разузнавателни средства](#)), 21 October 1997, last amended 5 August 2022, Art. 35b.

⁸ Bulgaria, Electronic Communications Act ([Закон за електронните съобщения](#)), 22 May 2007, last amended 26 April 2022, Art. 261b.

⁹ Bulgaria, National Bureau for Control over Special Intelligence Means (Национално бюро за контрол на специалните разузнавателни средства) (2022), [Annual Report 2021](#), 26 May 2022.

¹⁰ European Court of Human Rights (ECtHR), [Association for European Integration and Human Rights and Ekimdzhiev and Others v. Bulgaria](#), No. 62540/00, 28 June 2007.

significantly improved after they were examined by the Court in *Association for European Integration and Human Rights and Ekimdzhiiev v. Bulgaria*, the laws governing secret surveillance in Bulgaria, as applied in practice, still fall short of the minimum safeguards against arbitrariness and abuse required under Article 8 of the Convention in the following respects: (a) the internal rules governing the storage and destruction of materials obtained via surveillance have not been made accessible to the public; (b) the term “objects” that may be placed under surveillance is not defined in a way so as to ensure that it cannot serve as a basis for indiscriminate surveillance; (c) the excessive duration of the initial authorisation for surveillance on national-security grounds – two years – significantly weakens the judicial control to which such surveillance is subjected; (d) the authorisation procedure, as it operates in practice, is not capable of ensuring that surveillance is resorted to only when “necessary in a democratic society”; (e) a number of lacunae exist in the statutory provisions governing the storing, accessing, examining, using, communicating and destroying of surveillance data; (f) the oversight system, as currently organised, does not comply with the requirements of sufficient independence, competence and powers; (g) the notification arrangements are too narrow; and (h) the dedicated remedy, a claim for damages, is not available in practice in all possible scenarios, does not ensure examination of the justification of each instance of surveillance (by reference to reasonable suspicion and proportionality), is not open to legal persons, and is limited in terms of the relief available. The Court also noted that those shortcomings in the legal regime appear to have had an actual impact on the operation of the system of secret surveillance in Bulgaria with the recurring scandals relating to secret surveillance suggesting the existence of abusive surveillance practices, which appear to be at least in part due to the inadequate legal safeguards. Based on these findings the Court concluded that the Bulgarian laws governing secret surveillance do not fully meet the “quality of law” requirement and are incapable of keeping the “interference” entailed by the system of secret surveillance in Bulgaria to what is “necessary in a democratic society”.¹¹

A recent article on the need for reforms in the use of special intelligence means in the context of the series of judgments against Bulgaria by the ECtHR recommended several legislative changes including, among others, reducing the duration of the initial authorisation for surveillance on national-security grounds from two years to one year (with an option for two extensions of up to one year each) and extending the range of persons to be notified beyond those who have been illegally subjected to surveillance.¹²

¹¹ European Court of Human Rights (ECtHR), *Ekimdzhiiev and Others v. Bulgaria*, No. 70078/12, 11 January 2022.

¹² Stoichkov, O. (2022), ‘Special Intelligence Means and the Judgments of the European Court of Human Rights against Bulgaria’ (*‘Специални разузнавателни средства и решенията на Европейския съд по правата на човека срещу България’*), *Lex.bg*, 26 October 2022.

2. Annexes- Table and Figures

2.1. Overview of security and intelligence services in the EU-27

FRANET contractors are requested to check the accuracy of the table below (see Annex pp. 93 - 95 of the FRA 2015 report) and correct or add in track changes any missing information concerning security and intelligence services in their Member State (incl. translation and abbreviation in the original language). Please provide the full reference in a footnote to the relevant national law substantiating all the corrections and/or additions made in the table.

	Civil (internal)	Civil (external)	Civil (internal and external)	Military
BG	State Agency for National Security (SANS) / Държавна Агенция „Национална сигурност“ (ДАНС)	State Intelligence Agency (SIA) / Държавна агенция „Разузнаване“, (ДАР) ¹³		Military Intelligence Service (MIS) / Служба „Военно разузнаване“ (СВР) ¹⁴

The State Agency “Technical Operations” (SATO) (Държавна агенция „Технически операции“, ДАТО), listed in the table as a civil internal security and intelligence service, does not exactly fit into this category. This is the agency responsible for the technical implementation of special intelligence means. It operates upon request by an authorised body and can act upon its own initiative only in cases of imminent danger of a serious crime or in the event of a threat to national security.¹⁵ According to Bulgarian law, there are three security and intelligence services: the State Agency for National Security (SANS) (Държавна Агенция „Национална сигурност“, ДАНС), the State Intelligence Agency (SIA) (Държавна агенция „Разузнаване“, ДАР) and the Military Intelligence Service (MIS) (Служба „Военно разузнаване“, СВР). When any of these services intends to use surveillance and has obtained the required authorisation from the court, it can either (a) request SATO to apply the necessary surveillance tools and provide the collected information, or (b) apply its own surveillance tools that it is explicitly authorised by law to possess and use.

The civil internal intelligence service is the State Agency for National Security (SANS) (Държавна агенция „Национална сигурност“, ДАНС). It was established in 2008 with the adoption of the State Agency for National Security Act (Закон за Държавна агенция „Национална сигурност“).¹⁶ The

¹³ Bulgaria, State Intelligence Agency Act ([Закон за Държавна агенция „Разузнаване“](#)), 13 October 2015, last amended 4 August 2020.

¹⁴ Bulgaria, Military Intelligence Act ([Закон за военното разузнаване](#)), 13 November 2015, last amended 26 March 2021.

¹⁵ Bulgaria, Special Intelligence Means Act ([Закон за специалните разузнавателни средства](#)), 21 October 1997, last amended 5 August 2022, Art. 18. In cases of imminent danger of committing a serious intentional crime or in the event of a threat to national security, special intelligence means may be used without permission, based on an order of the Chairperson of the State Agency “Technical Operations” (SATO) (Държавна агенция „Технически операции“, ДАТО), the Chairperson of the State Agency for National Security (SANS) (Държавна Агенция „Национална сигурност“, ДАНС) or the Secretary General of the Ministry of the Interior (MoI) (Министерство на вътрешните работи, МВР). In such cases, an authorisation by the court should be provided within 24 hours to continue using the special intelligence means and validate the activities carried out by that moment.

¹⁶ Bulgaria, State Agency for National Security Act ([Закон за Държавна агенция „Национална сигурност“](#)), 20 December 2007, last amended 5 June 2020.

agency operates as a specialised government body for counterintelligence, security and detection, prevention and neutralisation of threats to the country's national security.¹⁷

The civil external intelligence service is the State Intelligence Agency (SIA) (*Държавна агенция „Разузнаване“*, ДАР). It was established in 2015 with the adoption of the State Intelligence Agency Act (*Закон за Държавна агенция „Разузнаване“*) and replaced the former National Intelligence Service (NIS) (*Национална разузнавателна служба*, НРС).¹⁸ Previously under the president, the new agency is now directly subordinate to the government. The agency is a security service, which obtains, processes, analyses and provides the state leadership with intelligence, assessments, analyses and prognoses, related to the country's national security, interests and priorities.¹⁹

The Military Intelligence Service (MIS) (*Служба „Военно разузнаване“*, СБР) is the new name of the military intelligence unit, formerly known as Military Information Service (MIS) (*Служба „Военна информация“*). Previously governed by the Defence and Armed Forces of the Republic of Bulgaria Act (*Закон за отбраната и въоръжените сили на Република България*),²⁰ since 2015 the service's organisation, operation, tasks and functions are regulated by the Military Intelligence Act (*Закон за военното разузнаване*).²¹ In July 2020, the name of the service was changed to Military Intelligence Service (MIS) (*Служба „Военно разузнаване“*, СБР).²²

2.2. EU Member States' legal framework on surveillance reformed since 2017

In order to update the map below (Figure 1 (p. 20) of the FRA 2017 report), FRANET contractors are requested to state:

- 1. Whether their legal framework on surveillance has been reformed or is in the process of being reformed since **mid-2017** – see the Index of the FRA 2017 report, pp. 148 - 151. Please do not to describe this new legislation but only provide a full reference.*
- 2. whether the reform was initiated in the context of the PEGASUS revelations.*

¹⁷ For more information about the organisation and activities of the State Agency for National Security, see the agency's [website](#).

¹⁸ Bulgaria, State Intelligence Agency Act ([Закон за Държавна агенция „Разузнаване“](#)), 13 October 2015, last amended 4 August 2020.

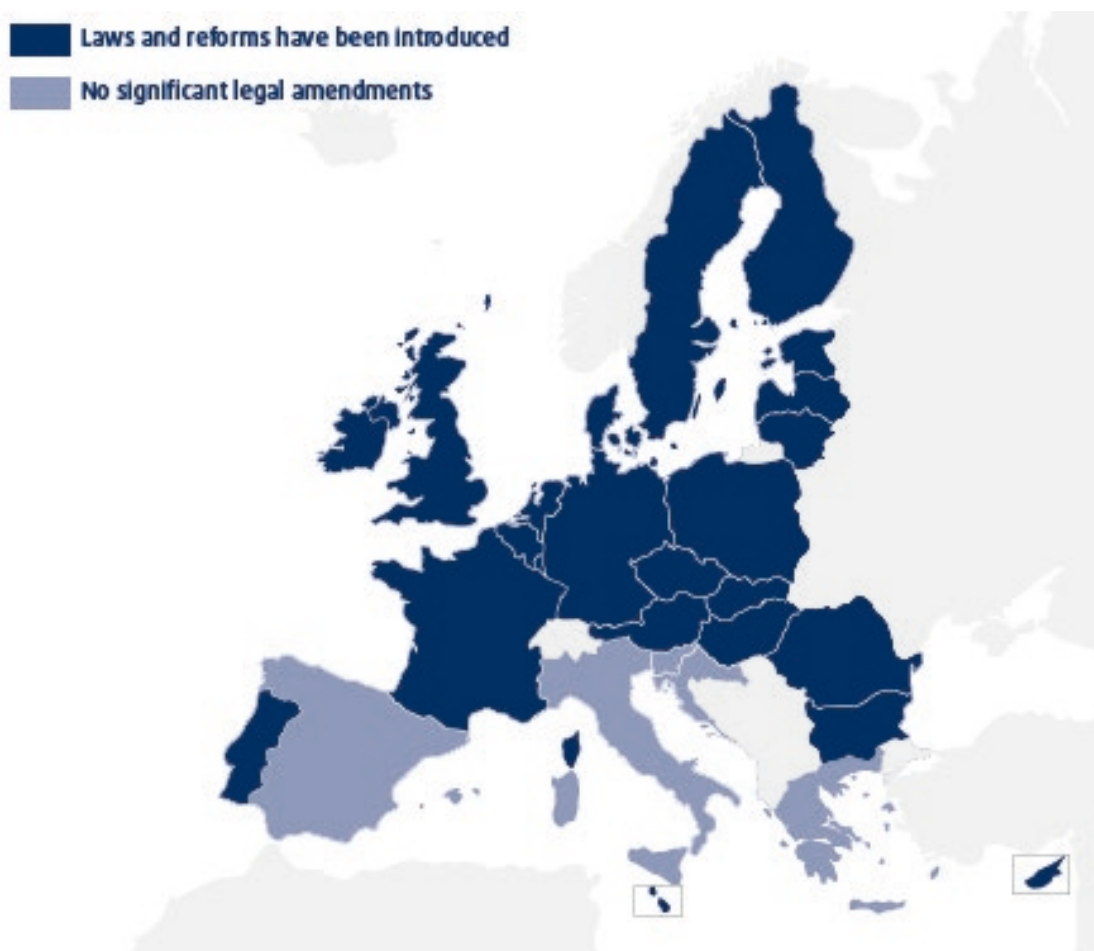
¹⁹ For more information about the organisation and activities of the State Intelligence Agency, see the agency's [website](#).

²⁰ Bulgaria, Defence and Armed Forces of the Republic of Bulgaria Act ([Закон за отбраната и въоръжените сили на Република България](#)), 12 May 2009, last amended 5 August 2022.

²¹ Bulgaria, Military Intelligence Act ([Закон за военното разузнаване](#)), 13 November 2015, last amended 26 March 2021.

²² For more information about the organisation and activities of the Military Intelligence Service, see the service's [website](#).

Figure 1: EU Member States' legal frameworks on surveillance reformed since October 2015



Since mid-2017, several legislative reforms took place affecting, in a different manner, the use of surveillance by intelligence services.

The Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), which is the main legal act governing the use of surveillance, was amended nine times.²³ None of the amendments was related to the PEGASUS revelations.

A major amendment to the Personal Data Protection Act (*Закон за защита на личните данни*) was adopted in February 2019 as part of the overall legislative reform aimed to bring Bulgarian legislation in compliance with the General Data Protection Regulation and Directive (EU) 2016/680. The amendment excluded intelligence services from the scope of application of the data protection law. Based on the understanding that the General Data Protection Regulation and Directive (EU) 2016/680 do not apply to the processing of personal data outside the scope of application of EU law,²⁴ the parliament changed the general rule defining the scope of application of the Personal Data Protection Act (*Закон за защита на личните данни*). Thus, the old provision stipulating that the law shall apply

²³ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, last amended 5 August 2022.

²⁴ Bulgaria, National Assembly (*Народно събрание*) (2019), Explanatory report to the Draft Amendments and Supplements to the Personal Data Protection Act (*Мотиви към Законопроект за изменение и допълнение на Закона за защита на личните данни*), 18 July 2015.

to the processing of personal data for the purposes of national defence and national security “insofar as a specific law does not provide otherwise” was replaced by a new rule, according to which the law “shall not apply to the processing of personal data for the purposes of national defence and national security unless otherwise provided by a special law”.²⁵ This change had an impact on the powers of the national data protection authority, which, under the old regime, was empowered by law to supervise compliance with data protection rules by intelligence services, unless a special law provided otherwise. The new wording of the law, however, requires the data protection authority to be explicitly authorised by law in order to retain its supervisory powers over these services.

This change was accompanied by amendments to the special laws governing the operation of the different intelligence services.

- In the Military Intelligence Act (*Закон за военното разузнаване*), the provision that personal data shall be processed in accordance with this act and the Personal Data Protection Act (*Закон за защита на личните данни*) was replaced by a new rule stating that (1) personal data shall be processed only in accordance with this act, and (2) the control over the protection of the rights of individuals in the processing of their personal data and access to such data shall be exercised by the Commission for Personal Data Protection (CPDP) (*Комисия за защита на личните данни, КЗЛД*) under the terms and conditions of the Personal Data Protection Act (*Закон за защита на личните данни*).²⁶ Despite the change, the national data protection authority retained its competencies related to the protection of the rights of individuals whose personal data have been processed by the military intelligence services.
- In the State Intelligence Agency Act (*Закон за Държавна агенция „Разузнаване“*) all rules referring to the Personal Data Protection Act (*Закон за защита на личните данни*) were repealed.²⁷ Unlike the other laws governing the operation of intelligence services, in this law no explicit provision was included to retain the competencies of the data protection authority in relation to the protection of the rights of individuals whose personal data have been processed. The law envisages that the procedure for processing personal data shall be laid down in an internal legal act issued by the agency’s chairperson, which, however, is not public.²⁸
- In the State Agency for National Security Act (*Закон за Държавна агенция „Национална сигурност“*) some of the provisions referring to the Personal Data Protection Act (*Закон за защита на личните данни*) were amended, but the provision stipulating that the control over the protection of the rights of individuals in the processing of their personal data and access to such data shall be exercised by the Commission for Personal Data Protection (CPDP) (*Комисия за защита на личните данни, КЗЛД*) under the terms and conditions of the Personal Data Protection Act (*Закон за защита на личните данни*) was preserved.²⁹

Other amendments to the legal framework governing the operation of intelligence services were also adopted during the reporting period, but they were not related to the use of surveillance or the collection and processing of data.

²⁵ Bulgaria, Amendments and Supplements to the Personal Data Protection Act (*Закон за изменение и допълнение на Закона за защита на личните данни*), 26 February 2019.

²⁶ Bulgaria, Military Intelligence Act (*Закон за военното разузнаване*), 13 November 2015, last amended 26 March 2021, Art. 78.

²⁷ Bulgaria, State Intelligence Agency Act (*Закон за Държавна агенция „Разузнаване“*), 13 October 2015, last amended 4 August 2020, Art. 27 and Art. 28.

²⁸ Bulgaria, State Intelligence Agency Act (*Закон за Държавна агенция „Разузнаване“*), 13 October 2015, last amended 4 August 2020, Art. 27 and Art. 28.

²⁹ Bulgaria, State Agency for National Security Act (*Закон за Държавна агенция „Национална сигурност“*), 13 October 2015, last amended 5 June 2020, Art. 37.

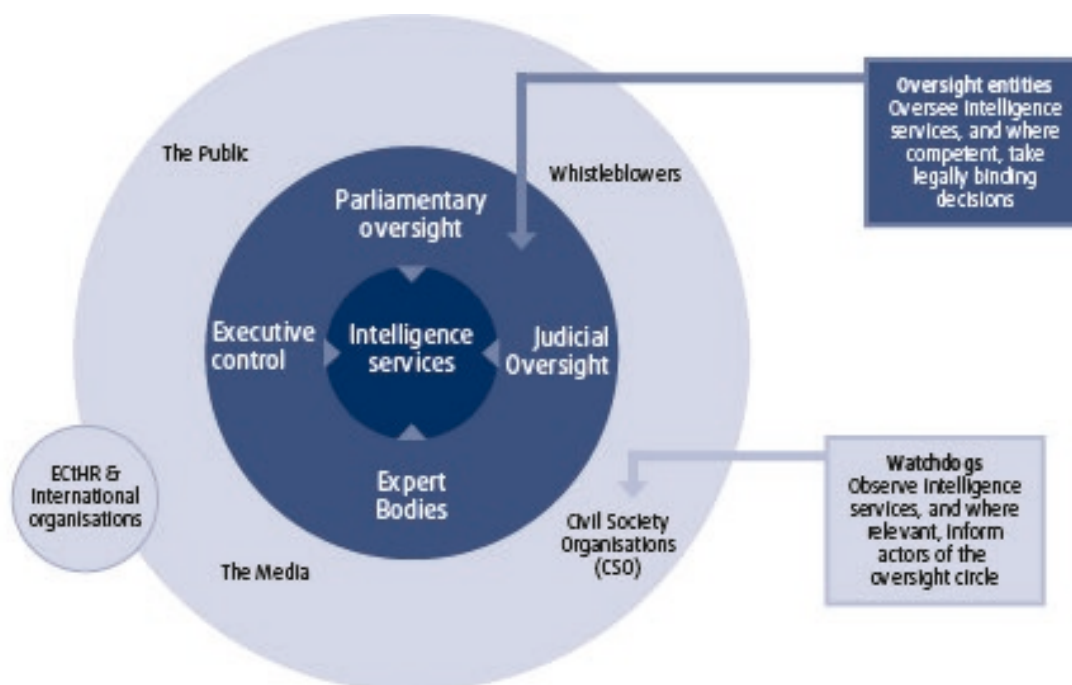
The Internal rules on the procedures and operation of the Committee for Oversight of the Security Services, the Deployment of Special Intelligence Means and the Access of Data under the Electronic Communications Act ceased to apply with the dissolution of the parliament under which this committee was established. According to Bulgarian law, the committee, elected by each successive parliament, adopts its own internal rules. The rules of the current committee were adopted on 3 November 2022.³⁰ Despite the fact that each newly elected committee adopts its own internal rules, there have been no major changes affecting the committees' powers, including their oversight role

2.3. Intelligence services' accountability scheme

FRANET contractors are requested to confirm whether the diagram below (Figure 5 (p. 65) of the FRA 2017 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 diagram (Figure 5 (p. 65) of the FRA 2017 report) illustrates in an accurate manner the situation in Bulgaria in terms of accountability of intelligence services.

Figure 5: Intelligence services' accountability scheme



2.4. Parliamentary oversight of intelligence services in EU Member States

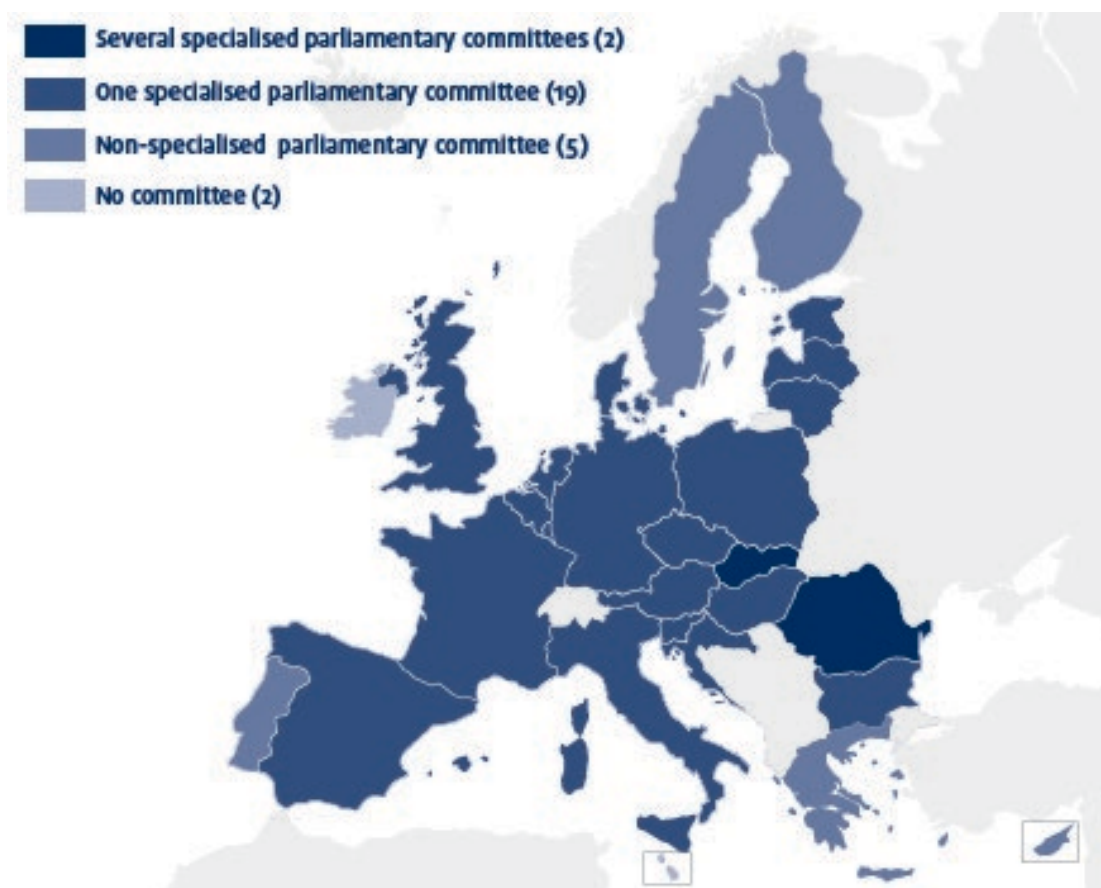
FRANET contractors are requested to confirm that the map below (Figure 6 (p. 66) of the FRA 2017 report) illustrates the situation in your Member State in an accurate manner. If it is not the case, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

The map (Figure 6 (p. 66) of the FRA 2017 report) illustrates in an accurate manner the situation in Bulgaria in terms of parliamentary oversight of intelligence services. In Bulgaria, there is one

³⁰ Bulgaria, Internal rules on the organisation and activities of the Committee for Oversight of the Security Services, the Deployment of Special Intelligence Means and the Access of Data under the Electronic Communications Act ([Вътрешни правила за организацията и дейността на Комисията за контрол над службите за сигурност, прилагането и използването на специалните разузнавателни средства и достъпа до данните по Закона за електронните съобщения](#)), 3 November 2022.

specialised parliamentary committee dealing solely with the exercise of oversight of security services (including intelligence services) and the use of surveillance techniques. In the present parliament, this is the Committee for Oversight of the Security Services, the Deployment of Special Intelligence Means and the Access of Data under the Electronic Communications Act (*Комисия за контрол над службите за сигурност, прилагането и използването на специалните разузнавателни средства и достъпа до данните по Закона за електронните съобщения*).³¹

Figure 6: Parliamentary oversight of intelligence services in EU Member States



2.5. Expert bodies (excluding DPAs) overseeing intelligence services in the EU

FRANET contractors are requested to check the accuracy of the table below (Table 2 (p. 68) of the FRA 2017 report). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

The table (Table 2 (p. 68) of the FRA 2017 report) accurately indicates the expert body overseeing intelligence services in Bulgaria.

Table 2: Expert bodies (excluding DPAs) overseeing intelligence services in the EU

EU Member State	Expert Bodies
BG	National Bureau for Control over Special Intelligence Means (Национално бюро за контрол на специалните разузнавателни средства)

³¹ For more information on the activities of the committee, see the relevant section on the [website](#) of the parliament.

2.6 DPAs' powers over national intelligence services, by member states

FRANET contractors are requested to confirm that the map below (Figure 7 (p. 81) of the FRA 2017 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 map (Figure 7 (p. 81) of the FRA 2017 report) does not illustrate the situation in Bulgaria in an accurate manner. Bulgaria no longer falls under the category “same powers as over other data controllers” and should be moved to the category “limited powers”.

In February 2019, as part of the legislative reform aimed to bring Bulgarian legislation in compliance with the General Data Protection Regulation and Directive (EU) 2016/680, surveillance activities were excluded from the overall scope of application of the Personal Data Protection Act (*Закон за защита на личните данни*).³² According to the explanatory report accompanying the amendments, the changes were in compliance with the principle that the GDPR and Directive (EU) 2016/680 did not apply to the processing of personal data in areas outside the scope of the application of EU law.³³ The changes limited the powers of the Commission for Personal Data Protection (CPDP) (*Комисия за защита на личните данни, КЗЛД*) in the area of surveillance to those explicitly provided for in the special laws governing the operation of the different intelligence services. These special laws, in turn, govern the matter differently. In the Military Intelligence Act (*Закон за военното разузнаване*)³⁴ and the State Agency for National Security Act (*Закон за Държавна агенция „Национална сигурност“*)³⁵ the power of the commission to exercise control over the protection of the rights of individuals in the processing of their personal data was retained, while in the State Intelligence Agency Act (*Закон за Държавна агенция „Разузнаване“*), no such provision was included.³⁶

³² Bulgaria, Amendments and Supplements to the Personal Data Protection Act (*Закон за изменение и допълнение на Закона за защита на личните данни*), 26 February 2019.

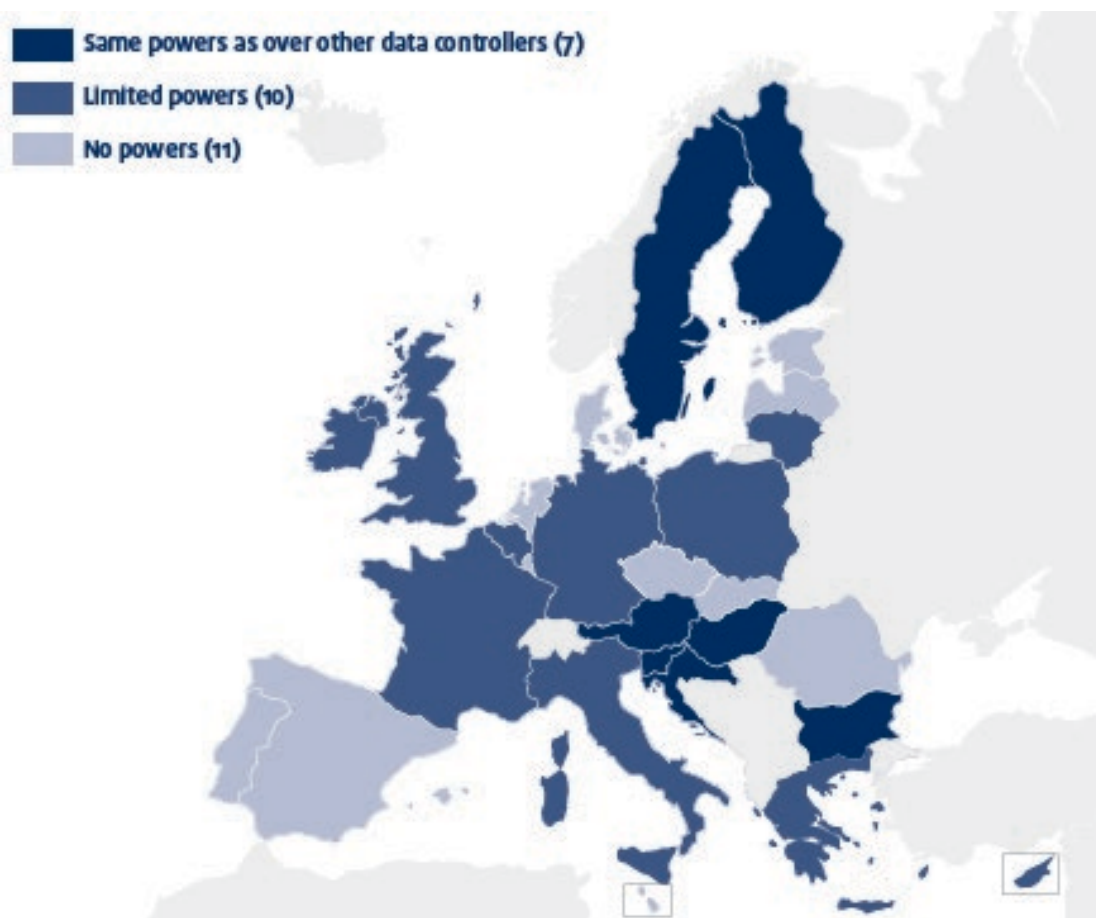
³³ Bulgaria, National Assembly (*Народно събрание*) (2019), Explanatory report to the Draft Amendments and Supplements to the Personal Data Protection Act (*Мотиви към Законопроект за изменение и допълнение на Закона за защита на личните данни*), 18 July 2015.

³⁴ Bulgaria, Military Intelligence Act (*Закон за военното разузнаване*), 13 November 2015, last amended 26 March 2021, Art. 78.

³⁵ Bulgaria, State Agency for National Security Act (*Закон за Държавна агенция „Национална сигурност“*), 13 October 2015, last amended 5 June 2020, Art. 37.

³⁶ Bulgaria, State Intelligence Agency Act (*Закон за Държавна агенция „Разузнаване“*), 13 October 2015, last amended 4 August 2020, Art. 27 and Art. 28.

Figure 7: DPAs' powers over national intelligence services, by member states



2.7. DPAs' and expert bodies' powers over intelligence techniques, by EU Member State

FRANET contractors are required to check the accuracy of the figure below (Figure 8 (p. 82) of the FRA 2017 report). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

The figure (Figure 8 (p. 82) of the FRA 2017 report) does not accurately illustrate the situation in Bulgaria, specifically in terms of the powers of the national DPA. In the upper part of the figure, Bulgaria is correctly placed in the category “Specialised expert bodies”. In the lower part of the figure, however, Bulgaria no longer falls under the category “DPA with same powers” and should be moved to the category “DPA with limited powers”.

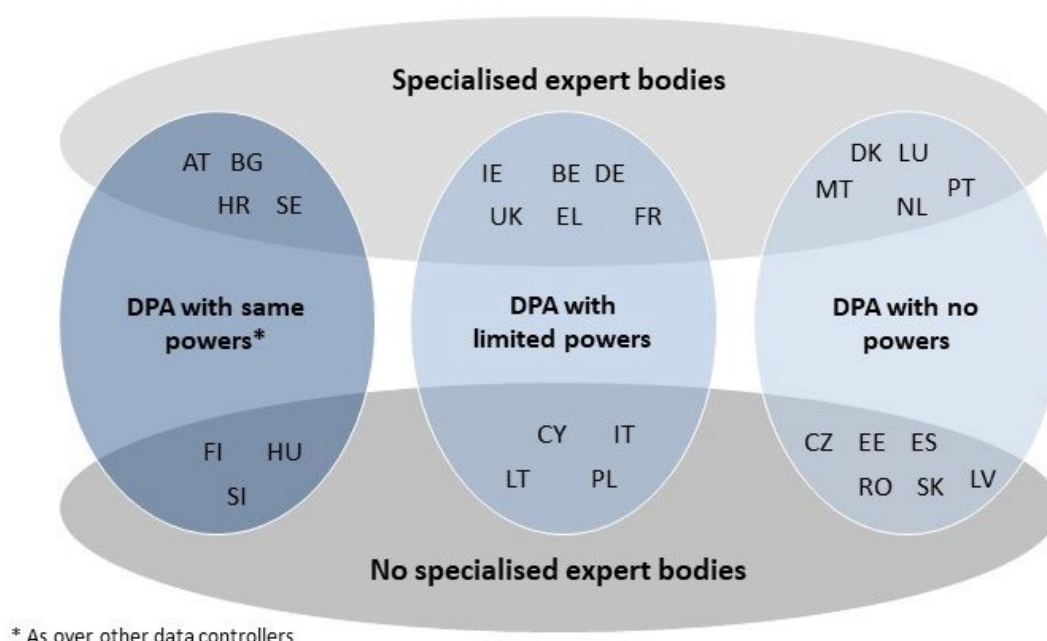
In February 2019, as part of the legislative reform aimed to bring Bulgarian legislation in compliance with the General Data Protection Regulation and Directive (EU) 2016/680, surveillance activities were excluded from the overall scope of application of the Personal Data Protection Act (*Закон за защита на личните данни*).³⁷ According to the explanatory report accompanying the amendments, the changes were in compliance with the principle that the GDPR and Directive (EU) 2016/680 did not apply to the processing of personal data in areas outside the scope of the application of EU law.³⁸ The changes

³⁷ Bulgaria, Amendments and Supplements to the Personal Data Protection Act (*Закон за изменение и допълнение на Закона за защита на личните данни*), 26 February 2019.

³⁸ Bulgaria, National Assembly (*Народно събрание*) (2019), Explanatory report to the Draft Amendments and Supplements to the Personal Data Protection Act (*Мотиви към Законопроект за изменение и допълнение на Закона за защита на личните данни*), 18 July 2015.

limited the powers of the Commission for Personal Data Protection (CPDP) (*Комисия за защита на личните данни, КЗЛД*) in the area of surveillance to those explicitly provided for in the special laws governing the operation of the different intelligence services. These special laws, in turn, govern the matter differently. In the Military Intelligence Act (*Закон за военното разузнаване*)³⁹ and the State Agency for National Security Act (*Закон за Държавна агенция „Национална сигурност“*)⁴⁰ the power of the commission to exercise control over the protection of the rights of individuals in the processing of their personal data was retained, while in the State Intelligence Agency Act (*Закон за Държавна агенция „Разузнаване“*), no such provision was included.⁴¹

Figure 8: DPAs' and expert bodies' powers over intelligence techniques, by EU Member State



2.8. Binding authorisation/approval of targeted surveillance measures in the EU

FRANET contractors are required to check the accuracy of table below (Table 4 (p. 95) of the FRA 2017 report). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

³⁹ Bulgaria, Military Intelligence Act ([Закон за военното разузнаване](#)), 13 November 2015, last amended 26 March 2021, Art. 78.

⁴⁰ Bulgaria, State Agency for National Security Act ([Закон за Държавна агенция „Национална сигурност“](#)), 13 October 2015, last amended 5 June 2020, Art. 37.

⁴¹ Bulgaria, State Intelligence Agency Act ([Закон за Държавна агенция „Разузнаване“](#)), 13 October 2015, last amended 4 August 2020, Art. 27 and Art. 28.

Table 4: Binding authorisation/approval of targeted surveillance measures in the EU-27

	Judicial	Executive	Expert bodies	Services
BG	✓			

The table (Table 4 (p. 95) of the FRA 2017 report) illustrates accurately the situation in Bulgaria. In Bulgaria, the use of targeted surveillance measures is authorised only by the courts.

2.9. Approval/authorisation of general surveillance of communication

All FRANET contractors are requested to check the accuracy of the table below (Table 5 (p. 97) of the FRA 2017 report), and to update/include information as it applies to their Member State (if not previously referred to). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework, in particular where - since 2017 - your Member State regulates these type of surveillance methods (for a definition of general surveillance, see FRA 2017 Report, p. 19).

Table 5: Approval/authorisation of general surveillance of communication in France, Germany, the Netherlands and Sweden

	Judicial	Parliamentary	Executive	Expert
DE		✓		✓
FR			✓	
NL	✓		✓	✓
SE				✓

The table (Table 5 (p. 97) of the FRA 2017 report) illustrates accurately the situation in Bulgaria in terms of application of general surveillance of communication.

2.10. Non-judicial bodies with remedial powers

FRANET contractors are requested to check the accuracy of table below (Table 6 (p. 112) of the FRA 2017 report). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

Table 6: Non-judicial bodies with remedial powers in the context of surveillance, by EU Member State

	Executive (ministry)	Expert body(ies)	DPA	Parliamentary committee(s)	Ombuds institution
BG		✓	(within the limits of the powers laid down in special laws) ✗	✓	

The table (Table 6 (p. 112) of the FRA 2017 report) does not accurately illustrate the situation in Bulgaria, specifically in terms of the powers of the national DPA.

In Bulgaria, the expert body, the National Bureau for Control over Special Intelligence Means (NBCSIM) (*Национално бюро за контрол на специалните разузнавателни средства*, НБКСПС), has certain remedial powers. The bureau can exercise control over the use of special intelligence means

based on “justified requests” (*мотивирани искания*) from individuals⁴², and can give “mandatory instructions related to improving the regime of use and application of special intelligence means, as well as to the storage and destruction of the information acquired through them”.⁴³

In February 2019, as part of the legislative reform aimed to bring Bulgarian legislation in compliance with the General Data Protection Regulation and Directive (EU) 2016/680, surveillance activities were excluded from the overall scope of application of the Personal Data Protection Act (*Закон за защита на личните данни*).⁴⁴ According to the explanatory report accompanying the amendments, the changes were in compliance with the principle that the GDPR and Directive (EU) 2016/680 did not apply to the processing of personal data in areas outside the scope of the application of EU law.⁴⁵ The changes limited the powers of the Commission for Personal Data Protection (CPDP) (*Комисия за защита на личните данни*, КЗЛД) in the area of surveillance to those explicitly provided for in the special laws governing the operation of the different intelligence services. These special laws, in turn, govern the matter differently. In the Military Intelligence Act (*Закон за военното разузнаване*)⁴⁶ and the State Agency for National Security Act (*Закон за Държавна агенция „Национална сигурност“*)⁴⁷ the power of the commission to exercise control over the protection of the rights of individuals in the processing of their personal data was retained, while in the State Intelligence Agency Act (*Закон за Държавна агенция „Разузнаване“*), no such provision was included.⁴⁸

2.11. Implementing effective remedies

FRANET contractors are requested to confirm that the diagram below (Figure 9 (p. 114) of the FRA 2017 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 (Figure 9 (p. 114) of the FRA 2017 report) illustrates in an accurate manner the situation in Bulgaria.

⁴² Bulgaria, Rules on the Activities of the National Bureau for Control over Special Intelligence Means and its Administration (*Правилник за дейността на Националното бюро за контрол на специалните разузнавателни средства и неговата администрация*), 4 October 2016, Art. 8.

⁴³ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, last amended 5 August 2022, Art. 34f.

⁴⁴ Bulgaria, Amendments and Supplements to the Personal Data Protection Act (*Закон за изменение и допълнение на Закона за защита на личните данни*), 26 February 2019.

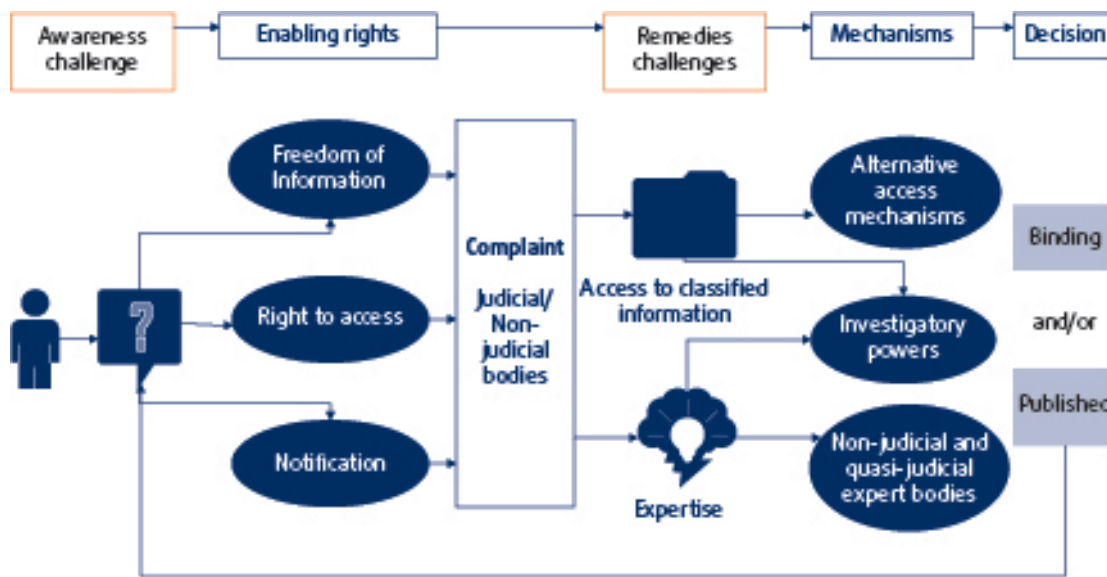
⁴⁵ Bulgaria, National Assembly (*Народно събрание*) (2019), Explanatory report to the Draft Amendments and Supplements to the Personal Data Protection Act (*Мотиви към Законопроект за изменение и допълнение на Закона за защита на личните данни*), 18 July 2015.

⁴⁶ Bulgaria, Military Intelligence Act (*Закон за военното разузнаване*), 13 November 2015, last amended 26 March 2021, Art. 78.

⁴⁷ Bulgaria, State Agency for National Security Act (*Закон за Държавна агенция „Национална сигурност“*), 13 October 2015, last amended 5 June 2020, Art. 37.

⁴⁸ Bulgaria, State Intelligence Agency Act (*Закон за Държавна агенция „Разузнаване“*), 13 October 2015, last amended 4 August 2020, Art. 27 and Art. 28.

Figure 9: Implementing effective remedies: challenges and solutions



2.12. Non-judicial bodies' remedial powers

FRANET contractors are required to check the accuracy of table below (Table 7 (pp. 115 - 116) of the FRA 2017 report). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

2. Table 7: Non-judicial bodies' remedial powers in case of surveillance, by EU Member State

Bodies with remedial competence		Decisions are binding	May fully access collected data	Control is communicated to complainant	Decision may be reviewed
BG	National Bureau for Control over Special Intelligence Means				
	Commission for Personal Data Protection				
	Committee for Oversight of the Security Services, the Deployment of Special Intelligence Means and the Access of Data under the Electronic Communications Act				

Note:

- = Expert body
- = Ombuds institution
- = Data protection authority
- = Parliamentary Committee
- = Executive

Source: FRA, 2017

The table (Table 7 (pp. 115 - 116) of the FRA 2017 report) does not illustrate in an accurate manner the situation in Bulgaria.

In Bulgaria, the expert body, the National Bureau for Control over Special Intelligence Means (NBCSIM) (*Национално бюро за контрол на специалните разузнавателни средства, НБКСПС*), has certain remedial powers. The bureau can carry out inspections of the use of special intelligence

means based on “justified requests” (*мотивирани искания*) from individuals⁴⁹. It can provide intelligence services with “mandatory instructions related to improving the regime of use and application of special intelligence means, as well as to the storage and destruction of the information acquired through them”.⁵⁰ The bureau notifies ex officio all persons on whom special intelligence means have been unlawfully used. This applies both to cases where the inspection is carried out on the basis of a justified request by an individual and where it is carried out at the bureau’s own initiative.⁵¹ The persons concerned are not notified only if this would create risk (a) of not achieving the objectives, for which the special intelligence means have been used, (b) of revealing the operational methods or techniques, or (c) for the life or health of the undercover officer or their ascendants, descendants, siblings, spouse or persons with whom the officer is in a particularly close relationship, when the risk arises from the assigned tasks. In addition to informing the persons concerned, the bureau should also notify the prosecutor’s office, the head of the body that applied the special intelligence means and the head of the body that had requested it.⁵²

The data protection authority has access to the collected data with the limits of its powers laid down in the special laws governing the operation of the different security services. In February 2019, as part of the legislative reform aimed to bring Bulgarian legislation in compliance with the General Data Protection Regulation and Directive (EU) 2016/680, surveillance activities were excluded from the overall scope of application of the Personal Data Protection Act (*Закон за защита на личните данни*).⁵³ According to the explanatory report accompanying the amendments, the changes were in compliance with the principle that the GDPR and Directive (EU) 2016/680 did not apply to the processing of personal data in areas outside the scope of the application of EU law.⁵⁴ As a result, the powers of the Commission for Personal Data Protection (CPDP) (*Комисия за защита на личните данни*, КЗЛД) in the area of surveillance were limited to those explicitly provided for in the special laws.

The parliamentary committee is no longer called the Committee for Oversight of the Security Services (*Комисия за контрол над службите за сигурност*). In Bulgaria, the parliament often changes the names of its committees, including the committee responsible for overseeing the use of surveillance. In the current parliament, elected in October 2022, the full name of the committee is Committee for Oversight of the Security Services, the Deployment of Special Intelligence Means and the Access of Data under the Electronic Communications Act (*Комисия за контрол над службите за сигурност, прилагането и използването на специалните разузнавателни средства и достъпа до данните по Закона за електронните съобщения*).⁵⁵ Despite the name change, the remedial power of the commission (the power to receive and act upon complaints filed by individuals) remain the same.

⁴⁹ Bulgaria, Rules on the Activities of the National Bureau for Control over Special Intelligence Means and its Administration (*Правилник за дейността на Националното бюро за контрол на специалните разузнавателни средства и неговата администрация*), 4 October 2016, Art. 8.

⁵⁰ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, last amended 5 August 2022, Art. 34f.

⁵¹ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, last amended 5 August 2022, Art. 34g.

⁵² Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, last amended 5 August 2022, Art. 34f.

⁵³ Bulgaria, Amendments and Supplements to the Personal Data Protection Act (*Закон за изменение и допълнение на Закона за защита на личните данни*), 26 February 2019.

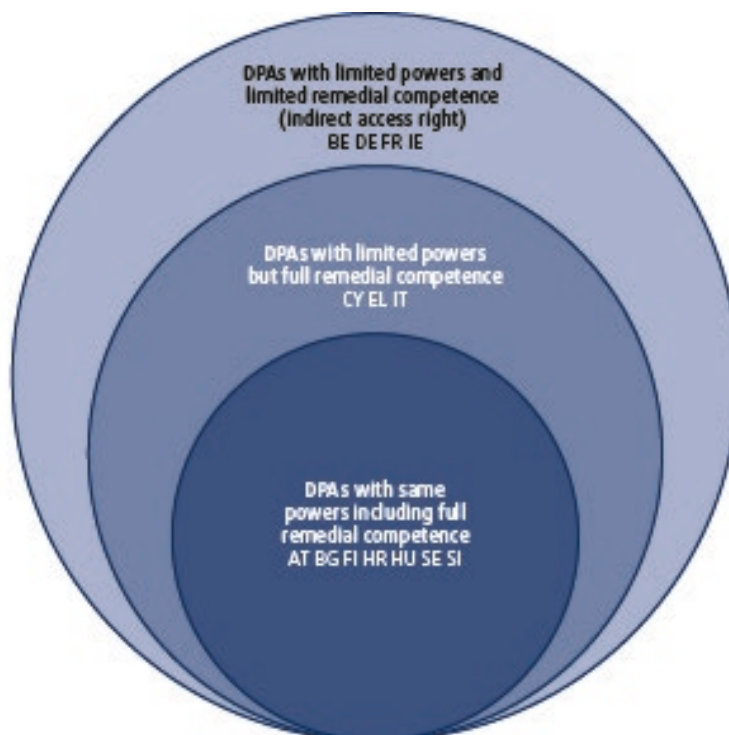
⁵⁴ Bulgaria, National Assembly (*Народно събрание*) (2019), Explanatory report to the Draft Amendments and Supplements to the Personal Data Protection Act (*Мотиви към Законопроект за изменение и допълнение на Закона за защита на личните данни*), 18 July 2015.

⁵⁵ For more information on the activities of the committee, see the relevant section on the [website](#) of the parliament.

2.13. DPAs' remedial competences

FRANET contractors are required to check the accuracy of the figure below (Figure 10 (p. 117) of the FRA 2017 report) with respect to the situation in your Member State. In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

Figure 10: DPAs' remedial competences over intelligence services



The figure (Figure 10 (p. 117) of the FRA 2017 report) does not accurately illustrate the situation in Bulgaria in terms of the powers of the national DPA. Bulgaria no longer falls under the category “DPAs with same powers including full remedial competence” and should be moved to the category “DPAs with limited powers but full remedial competence”.

In February 2019, as part of the legislative reform aimed to bring Bulgarian legislation in compliance with the General Data Protection Regulation and Directive (EU) 2016/680, surveillance activities were excluded from the overall scope of application of the Personal Data Protection Act (*Закон за защита на личните данни*).⁵⁶ According to the explanatory report accompanying the amendments, the changes were in compliance with the principle that the GDPR and Directive (EU) 2016/680 did not apply to the processing of personal data in areas outside the scope of the application of EU law.⁵⁷ The changes limited the powers of the Commission for Personal Data Protection (CPDP) (*Комисия за защита на личните данни*, КЗЛД) in the area of surveillance to those explicitly provided for in the special laws governing the operation of the different intelligence services. These special laws, in turn, govern the matter differently. In the Military Intelligence Act (*Закон за военното разузнаване*)⁵⁸ and the State

⁵⁶ Bulgaria, Amendments and Supplements to the Personal Data Protection Act (*Закон за изменение и допълнение на Закона за защита на личните данни*), 26 February 2019.

⁵⁷ Bulgaria, National Assembly (*Народно събрание*) (2019), Explanatory report to the Draft Amendments and Supplements to the Personal Data Protection Act (*Мотиви към Законопроект за изменение и допълнение на Закона за защита на личните данни*), 18 July 2015.

⁵⁸ Bulgaria, Military Intelligence Act (*Закон за военното разузнаване*), 13 November 2015, last amended 26 March 2021, Art. 78.

Agency for National Security Act (*Закон за Държавна агенция „Национална сигурност“*)⁵⁹ the power of the commission to exercise control over the protection of the rights of individuals in the processing of their personal data was retained, while in the State Intelligence Agency Act (*Закон за Държавна агенция „Разузнаване“*), no such provision was included.⁶⁰

⁵⁹ Bulgaria, State Agency for National Security Act ([*Закон за Държавна агенция „Национална сигурност“*](#)), 13 October 2015, last amended 5 June 2020, Art. 37.

⁶⁰ Bulgaria, State Intelligence Agency Act ([*Закон за Държавна агенция „Разузнаване“*](#)), 13 October 2015, last amended 4 August 2020, Art. 27 and Art. 28.