

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

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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

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.

○ 2018:

In Greece, the procedure laid out for approving the waiving of privacy of communications by state authorities changed in 2018.¹ With the passage of this new law, the two-stage approval process for waiving the privacy of communications was abolished. Now, the sole order of the prosecution officer placed within the National Intelligence Service (*Εθνική Υπηρεσία Πληροφοριών ΕΥΠ*) would suffice. The second stage approval of a prosecutor of the appellate court was revoked.

¹ Greece, Law No. 4531, Government Gazette Issue A' 62/05.04.2018, "Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and adaptation of Greek legislation [...] and III) Other provisions of the competence of the Ministry of Justice, Transparency and Human Rights and other provisions.", Art. 25 para. 3, Available in Greek at: <http://bit.ly/3WfZ239>

○ **2019:**

In Greece, the supervision of the National Intelligence Service (*Εθνική Υπηρεσία Πληροφοριών ΕΥΠ*), was moved from the Ministry of Public Order to the direct control of the office of the Greece Prime Minister.²

In Greece, a piece of legislation passed in August 2019 stipulated that the Data Protection Authority (*Αρχή Προστασίας Δεδομένων Προσωπικού Χαρακτήρα ΑΠΔΠΧ*) is not competent for supervising the personal data processing conducted by the judicial or prosecutorial authorities. The same law also provided that the Greek Data Protection Authority is no longer competent for supervising the processing of classified personal data conducted for activities concerning national security.³

○ **2021:**

The Greek government introduces a law amending the legal procedure detailing how privacy of communications can be waived by state authorities. The provisions under which privacy of communications could be waived by state authorities was laid out in a law introduced in 1994.⁴ The new law was introduced in March 2021 with retroactive effect and effectively prevented the Hellenic Authority for Communication Security and Privacy (*Αρχή Διασφάλισης του Απορρήτου των Επικοινωνιών. ΑΔΑΕ*) from informing members of the public that they have been subjected to surveillance when the waiving of the privacy of communications was ordered for national security reasons.⁵

On 7 April 2021, the president of the Hellenic Authority for Communication Security and Privacy and two members of the Authority wrote an academic article stating that the amendment to the law was, in their opinion, contrary to the Constitution of Greece and the ECHR.⁶ According to the arguments presented in this article, withdrawing the competency of the Hellenic Authority for Communication Security and Privacy to inform the subject of the surveillance in cases of threat to national security even at the time when national security is no longer considered to be at risk, is incompatible with the constitutionally protected, absolutely inviolable right to privacy of communications as per the Constitution of Greece and the right to private life of the European Convention of Human Rights (ECHR). The authors note that this academic article does not constitute an official position of the Authority and only expresses their personal position.

○ **2022:**

The Special Permanent Committee on Institutions and Transparency (*Επιτροπή Θεσμών και Διαφάνειας*) is one of the ten special committees in the Hellenic Parliament and is permanent.⁷ It exerts parliamentary control and oversight over the National Intelligence Service and its actions and remains functional to date.

According to his party's letter to the Speaker of the Hellenic Parliament, after notifying the Special Service of the European Parliament on 28 June 2022 of his suspicions, Mr Androulakis filed a report to the Prosecutor of the Supreme Court in Greece on 26 of July 2022 which was then handed in to Hellenic

² Greece, Law No. 4622, Government Gazette Issue A' 133/07.08.2019, "*Executive State: organisation, functioning and transparency of the Government, government bodies and central public administration*", Art. 21 para. 4. Available in Greek at: <https://bit.ly/3Yqxc62>

³ Greece, Law No. 4624, Government Gazette Issue A' 137/29.08.2019, "*Personal Data Protection Authority [...]and other provisions*", Art. 10 para 5, Available in Greek at: <https://bit.ly/3Ygtdet>

⁴ Greece, Law No. 2225, Government Gazette Issue A' 121/20.07.1994, "*For the protection of the freedom of broadcasting and communication and other provisions*". Available in Greek at: <https://bit.ly/3Pu4xJf>

⁵ Greece, Law No. 4790, Government Gazette Issue A' 48/31.03.2021, "*Emergency regulations for the protection of public health from the ongoing consequences of the Covid 19 pandemic, development, social protection, re-opening of the courts and other matters*" Article 87, Available in Greek at: <https://bit.ly/3W0XnP s>

⁶ Greece, *Constitutionalism*, 7 April 2021, Christos Rammos and others, "*Contradiction of Article 87 of Law 4790/2021 to the guarantees of the ECHR for safeguarding the privacy of communications*". Available in Greek at: <https://www.constitutionalism.gr/2021-04-07-rammos-gritzalis-papanikolaou-aporrito-epikinonion/>

⁷ Greece, Law No 2682, Government Gazette Issue A' 106/24.06.1987, "*Regulation of the Parliament*", Art. 43A, Available in Greek at:

Authority for Communication Security and Privacy. The Authority then in turn launched an investigation.⁸

In August 2022, Greek lawmakers set up an inquiry commission to probe the phone tapping of an opposition leader and member of the European Parliament, Nikos Androulakis.⁹ The mandate of the commission was to investigate the allegations of infringement of the privacy of communications of Nikos Androulakis by the National Intelligence Service or by other natural or legal persons, and the use of Predator malware in Greece.

In August 2022, a new piece of legislation was passed in the form of an emergency law to strengthen the integrity and transparency of the operations of the National Intelligence Service.¹⁰ This new law stipulated that the appointment of the head of the National Intelligence Service by the government requires the previous opinion of the competent parliamentary committee on Institutions and Transparency. Further, the law reinstated the two-tier approval system whereby any order for waiving the privacy of communications must receive two approvals – one from the prosecution officer who ordered the waiver and additional sign-off by a prosecutor of the appellate court.

In November 2022, a new bill on surveillance was introduced for consultation in Greece.¹¹ According to the analysis of the consequences of the proposed bill accompanying the draft text of the bill, the existing law needed to change as the then current legislative framework regulating the privacy of communications was incomplete and not up to date. Further, according to the same analysis, it is necessary to improve the organisation of the National Intelligence Service and establish new service units to ensure more efficiency and transparency in the Authority's operation.¹² On 18 November 2022, The Hellenic Authority for Communication Security and Privacy convened to analyse the proposed bill of the government and issued a press release a few days later. As introduced for consultation before its final submission to Parliament for vote, Authority The Authority concluded in its statement, among other observations, that the bill in its current form, will render the Hellenic Authority for Communication Security and Privacy an unreliable body, diminishing its institutional credence.¹³

The proposed law passed on 9 December 2022, with few changes from the original draft bill submitted for public consultation.¹⁴ The Hellenic Authority for Communication Security and Privacy and the Hellenic Data Protection Authority opined on the draft law, expressing concerns over the procedure of waiving the privacy of communications for national security reasons and for investigating criminal activity among others.¹⁵ The Greek National Commission for Human Rights also issued a note detailing

⁸ Letter of the PASOK parliamentary group to the speaker of the Hellenic Parliament, 22.08.2022, p. 2, Available in Greek at: https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/4864%20%CE%91%CE%A0%CE%9F%2022.8.2022_1.pdf

⁹ Reuters, 29 August 2022, "[Greek parliament sets up inquiry commission to probe phone tapping scandal](#)".

¹⁰ Greece, Law No 4969, Government Gazette Issue A' 175/15.09.2022, "[Ratification of the Legislative Content Act from 9.8.2022 'Emergency provisions to strengthen the integrity of the operation of the National Intelligence Service'](#)". Available in Greek at: <https://bit.ly/3hoNrjw>

¹¹ Greece, Public digital consultation on the draft law "[Procedure on waiving privacy of communications, cybersecurity and data protection of citizens](#)". Available in Greek at: <http://www.opengov.gr/ministryofjustice/?p=16477>

¹² Greece, Ministry of State, "[Analysis of the consequences of the regulation](#)", Available in Greek at: http://www.opengov.gr/ministryofjustice/wp-content/uploads/downloads/2022/11/%CE%91%CE%A3%CE%A5%CE%A1_A-%CE%9C%CE%95%CE%A1%CE%9F%CE%A3.pdf

¹³ Greece, Hellenic Authority for Communication Security and Privacy, Press Release, 21 November 2022, "[Press Release of the Hellenic Authority for Communication Security and Privacy on the draft law on waiving privacy of communications](#)", Available in Greek at: <http://www.adac.gr/nomothetiko-plaisio/leptomereies/article/bfont-size3-colorreddeltio-typoy-tis-adac-schetika-me-to-no/>

¹⁴ The changes made to the initial draft are marked in hand-written track changes in this document uploaded on the official website of the Hellenic Parliament: <https://www.hellenicparliament.gr/UserFiles/18a4e643-1429-4e6b-a317-d7c6a29adabf/12157803.pdf>

¹⁵ Greece, Hellenic Authority for Communication Security and Privacy, Press Release, 21 November 2022, "[Press Release of the Hellenic Authority for Communication Security and Privacy on the draft law on waiving privacy of communications](#)", Available in Greek at: <http://www.adac.gr/nomothetiko-plaisio/leptomereies/article/bfont-size3-colorreddeltio-typoy-tis-adac-schetika-me-to-no/>

their concerns over the draft law, highlighting that, despite its institutional role as independent advisory body to the state on human rights, they were not invited to opine or consult in preparation of the draft law that went through parliament.¹⁶ It also notes that the draft law does not respect the constitutional competence of the Hellenic Authority for Communication Security and Privacy as an institution which safeguards a fundamental human right.¹⁷

Summary of key provisions introduced with the law passed on 9 December 2022¹⁸

Definition of national security

The definition of national security in Law 5002/2022 includes essential functions of the state and fundamental interests of Greek citizens, particularly national defence, foreign policy, energy safety and cyber security.

Procedure of waiving the privacy of communications for national security reasons, accountability and supervision¹⁹

The request for waiving the privacy of communications of the general public can only be filed by the National Intelligence Service or the Directorate for Dealing with Special Violent Crimes (*Διεύθυνση Αντιμετώπισης Ειδικών Εγκλημάτων Βίας ΔΑΕΕΒ*) of the Hellenic Police. Such a request must then be filed to a designated officer of the prosecution authority who must decide on the request within 24 hours of receipt. The request must be defined as per a) the reasons substantiating the threat to national security b) the necessity of the measure c) the communication media for which the waiver is requested d) the object of the communications and e) the temporal and local limitation of the measure requested. If however the deciding prosecutor deems that the omission of some of the items above is necessary for the protection of national security, they may allow for the request to not include them. The approval order of the prosecutor of this stage must then be submitted for further sign-off by a prosecutor of the appellate court or the Supreme Court (*Άρειος Πάγος*). The prosecutor of this second stage must decide within 24 hours of receipt of the approving order from the first prosecutor. The law does not permit this second stage prosecutor to keep a record of the entirety of the documents accompanying the request for surveillance.²⁰, and includes a procedure whereby the destruction of surveillance material can be ordered.²¹ The Hellenic Authority for Communication Security and Privacy raises issues of transparency of the declassification process for reasons of national security and the impossibility of carrying out a valid and effective audit without access to a full record.²²

The new law distinguishes between the process for orders mandating the surveillance of political figures as opposed to the public. Political figures are defined in the same law exhaustively.²³ The procedure

¹⁶ Greece, Greek National Commission for Human Rights, Note addressed to the Parliament of Greece, “Regarding the Draft Law of the Ministry of Justice and of the Minister of State, with the title: “Removal of confidentiality of communications, cyber security and personal protection citizen data”, 05.12.2022, Available in Greek at: https://www.nchr.gr/images/pdf/apofaseis/protaseis_epi_nomoth_keimenwn/Simeiomata_EEDA_Aporito_epikoinonion.pdf

¹⁷ Greece, Greek National Commission for Human Rights, Note addressed to the Parliament of Greece, “Regarding the Draft Law of the Ministry of Justice and of the Minister of State, with the title: “Removal of confidentiality of communications, cyber security and personal protection citizen data”, 05.12.2022, Available in Greek at: https://www.nchr.gr/images/pdf/apofaseis/protaseis_epi_nomoth_keimenwn/Simeiomata_EEDA_Aporito_epikoinonion.pdf

¹⁸ Greece, Law No. 5002/2022, Government Gazette Issue A’ 228/09.12.2022, “Waiving privacy procedure, cyber security and protection of citizens’ personal data.” Available in Greek at: <https://bit.ly/3HwRgOI>

¹⁹ Greece, Law No. 5002/2022, Government Gazette Issue A’ 228/09.12.2022, “Waiving privacy procedure, cyber security and protection of citizens’ personal data.”, Art. 4 para. 2. Available in Greek at: <https://bit.ly/3HwRgOI>

²⁰ Greece, Law No. 5002/2022, Government Gazette Issue A’ 228/09.12.2022, “Waiving privacy procedure, cyber security and protection of citizens’ personal data.”, Art. 4, para. 2 penultimate sentence., Available in Greek at: <https://bit.ly/3HwRgOI>

²¹ Greece, Law No. 5002/2022, Government Gazette Issue A’ 228/09.12.2022, “Waiving privacy procedure, cyber security and protection of citizens’ personal data”, Art. 5, Available in Greek at: <https://bit.ly/3HwRgOI>

²² Greece, Hellenic Authority for Communication Security and Privacy, Press Release, 21 November 2022, “Press Release of the Hellenic Authority for Communication Security and Privacy on the draft law on waiving privacy of communications”, Available in Greek at: <http://www.adac.gr/nomothetiko-plaisio/leptomereies/article/bfont-size3-colorreddeltio-typoy-tis-adac-schetika-me-to-no/>

²³ Greece, Law No. 5002/2022, Government Gazette Issue A’ 228/09.12.2022, “Waiving privacy procedure, cyber security and protection of citizens’ personal data.”, Art. 3 indent b., Available in Greek at: <https://bit.ly/3HwRgOI>

followed for lifting the protection of the privacy of communications of political figures provides additional safeguards and the threat to national security must be imminent and adequately substantiated. The request can only be filed by the National Intelligence Service and is submitted by its head to the Speaker of the Parliament, who must decide within 24 hours on whether the political figure in question will be surveilled or not. If the surveillance involves the Speaker of the Parliament, then the request is addressed to the Prime Minister.²⁴

The Greek National Commission for Human Rights, in its note of 5.12.2022, highlighted that the draft law as was submitted for public consultation fails to address the difference between the cases of prevention of risking national security and those where the national security has already been jeopardised. The Commission highlighted that waiving the privacy of communications of a member of the public must only be decided in cases where the risk to the national security is sufficiently substantiated and imminent as is the case for political figures²⁵

The Hellenic Authority for Communication Security and Privacy, in its opinion on the draft law, pointed out that the Constitution of Greece necessitates that any decisions permitting the lift of the privacy of communications must be taken by a judicial authority and therefore believes that this new law is not in line with the spirit of the constitutional provisions. The Authority also remarked that the fact that the law does not require specific justification in the order mandating the lift of the privacy and the absence of the name of the subject whose right to privacy has been lifted, is problematic. The lack of justification, according to the opinion of the Hellenic Authority for Communication Security and Privacy, effectively eliminates accountability as the state cannot be assessed in relation to its discretionary powers and the proportionality of the measure, something that undermines the rule of law.²⁶

According to the recent Law No. 5002/2022, an officer of the prosecution authority is appointed by the Supreme Judicial Council to serve for three years within the National Intelligence Service to oversee the legality of the special operational activities that interfere with human rights.²⁷

Right to information

According to Law 5002/2022, the subject whose privacy has been lifted for national security reasons, has the right to be informed three years after the end of the surveillance period, provided that the purpose for which it was ordered is not compromised by informing the subject. The decision to release this information is taken by a three-member-body, consisting of two prosecutors and the head of the Hellenic Authority for Communication Security and Privacy²⁸ The Greek National Commission for Human Rights, in its note of 5.12.2022, pointed out that the three-year wait as a general rule is not substantiated and that the composition of the body deciding on the notification is questionable due to the hierarchical relation between the prosecutors in Greece as per their years of service.²⁹ The Hellenic Authority for

²⁴ Greece, Law No. 5002/2022, Government Gazette Issue A' 228/09.12.2022, "*Waiving privacy procedure, cyber security and protection of citizens' personal data.*", Art. 4 para. 3, Available in Greek at: <https://bit.ly/3HwRgOI>

²⁵ Greece, Greek National Commission for Human Rights, Note addressed to the Parliament of Greece, "*Regarding the Draft Law of the Ministry of Justice and of the Minister of State, with the title: 'Removal of confidentiality of communications, cyber security and personal protection citizen data'*", 05.12.2022, Available in Greek at: https://www.nchr.gr/images/pdf/apofaseis/protaseis_epti_nomoth_keimenwn/Simecioma_EEDA_Aporito_epikoinonion.pdf

²⁶ Greece, Hellenic Authority for Communication Security and Privacy, Press Release, 21 November 2022, "*Press Release of the Hellenic Authority for Communication Security and Privacy on the draft law on waiving privacy of communications*", Available in Greek at: <http://www.adae.gr/nomothetiko-plaisio/leptomereies/article/bfont-size3-colorreddeltio-typoy-tis-adae-schetika-me-to-no/>

²⁷ Law No. 5002/2022, Government Gazette Issue A' 228/09.12.2022, "*Waiving privacy procedure, cyber security and protection of citizens' personal data.*", Art. 9 para 1, Available in Greek at: <https://bit.ly/3HwRgOI>

²⁸ Greece, Law No. 5002/2022, Government Gazette Issue A' 228/09.12.2022, "*Waiving privacy procedure, cyber security and protection of citizens' personal data.*", Art. 4 para. 7, Available in Greek at: <https://bit.ly/3HwRgOI>

²⁹ Greece, Greek National Commission for Human Rights, Note addressed to the Parliament of Greece, "*Regarding the Draft Law of the Ministry of Justice and of the Minister of State, with the title: 'Removal of confidentiality of communications, cyber*

Communication Security and Privacy highlighted that the responsibility to release information to the subject affected is being removed from their mandate for the first time after 18 years and is being transferred to a three-member body, essentially going against the constitutional guarantees whereby the Authority and the judiciary are the ultimate guardians of the procedure lifting the privacy of communications.³⁰

At the end of 2022 a series of press reports in Greece suggested that the privacy of communication of certain people -including specifically mentioned holders of public offices had been waived in violation of the interception procedure provided for in Law No 2225/1994 or breached through the use of illegal spyware. On 23 December 2022, the plenary of the Hellenic Authority for Communication Security and Privacy decided to conduct inspections of the records kept by the communication network/service providers to ascertain and verify whether there has been a waiving of the privacy of communication regarding certain phone numbers and whether the rules governing the procedure for the waiving of the privacy of communications were respected.

The question of Hellenic Authority for Communication Security and Privacy's competence to conduct inspections regarding the waiving of the privacy of communication for national security reasons following the amendments introduced by Law No 5002/2022 was raised during one of the Hellenic Authority for Communication Security and Privacy inspections by representatives of a telecommunication provider, although ADAE's competence to conduct audits is based on Law No. 3115/2003³¹, which was not amended by Law No. 5002/2022. The question was even put before the Prosecutor of the Greek Supreme Court (*Εισαγγελέας του Αρείου Πάγου*) who issued a legal opinion on the relevant provisions of Law 5002/2022. According to this opinion, the competence to inform the subject of an interception order for national security reasons was transferred under Law 5002/22 to the above mentioned three-member body. Thus, according to the Prosecutor of the Greek Supreme Court, the Hellenic Authority for Communication Security and Privacy did no longer retain the power to conduct inspections either ex officio or upon citizens' requests regarding the waiving of their communication's privacy for reasons of national security.³²

Procedure of waiving the privacy of communications for the investigation of crimes

Law 5002/2022 also permits the lifting of privacy of communications for the investigation of several crimes.³³ The Hellenic Authority for Communication Security and Privacy noted in its opinion on the draft law, that this new law in its form as submitted for consultation, is effectively rendering the lift permissible for all felonies and for more than 50 misdemeanours (*πλημμελήματα*).³⁴ It must be noted that the list of felonies and misdemeanours remained unchanged in the law that passed through parliament. The Hellenic Authority for Communication Security and Privacy warrants for incompatibility with the Constitution of Greece due to the high number of exceptions, effectively blurring the lines between the rule and the exception. Art 19 of the Constitution of Greece only permits

security and personal protection citizen data", 05.12.2022, Available in Greek at: https://www.nchr.gr/images/pdf/apofaseis/protaseis_ep_i_nomoth_keimenwn/Simeiomata_EEDA_Aporito_epikoinonion.pdf

³⁰ Greece, Hellenic Authority for Communication Security and Privacy, Press Release, 21 November 2022, "Press Release of the Hellenic Authority for Communication Security and Privacy on the draft law on waiving privacy of communications", Available in Greek at: <http://www.adae.gr/nomothetiko-plaisio/leptomereies/article/bfont-size3-colorreddeltio-typoy-tis-adae-schetika-me-to-no/>

³¹ Greece, Law No. 3115/2003, Government Gazette Issue A' 47/27.02.2003, on the Hellenic Authority for Communication Security and Privacy. Available in Greek at: <http://www.adae.gr/fileadmin/docs/nomoi/N.3115-2003.pdf>

³² Greece, Prosecutor of the Supreme Court, Isidoros E. Ntogiakos, Opinion No 1/2023, 10.01.2023, "Interpretation of Law 5002/2022 "Declassification of communications, cyber security, protection of citizens' personal data", Available in Greek at: <https://eisap.gr/%ce%b3%ce%bd%cf%89%ce%bc%ce%bf%ce%b4%cf%8c%cf%84%ce%b7%cf%83%ce%b7-1-2023/>

³³ Greece, Law No. 5002/2022, Government Gazette Issue A' 228/09.12.2022, "Waiving privacy procedure, cyber security and protection of citizens' personal data.", Art. 6, Available in Greek at: <https://bit.ly/3HwRgOl>

³⁴ Greece, Hellenic Authority for Communication Security and Privacy, Press Release, 21 November 2022, "Press Release of the Hellenic Authority for Communication Security and Privacy on the draft law on waiving privacy of communications", Available in Greek at: <http://www.adae.gr/nomothetiko-plaisio/leptomereies/article/bfont-size3-colorreddeltio-typoy-tis-adae-schetika-me-to-no/>

the waiver of the privacy of communications in exceptional circumstances.³⁵ Law No 5002/2022 also amends the sentencing for the crime “Breach of non-public data transferring or of electromagnetic signals” («Παραβίαση μη δημόσιων διαβιβάσεων δεδομένων ή ηλεκτρομαγνητικών εκπομπών», rendering this crime a felony.³⁶

Prohibition of spyware trading in Greece and procedure of exception in the case of procurement by the public sector

According to article 12 of Law 5002/2022, a new Article «370ΣΤ» has been added to the Penal Code that punishes with up to 2 years in prison anyone that sells or buys spyware, or codes and passwords that would enable unauthorized access into IT systems.

Also, the procedure of exception of the public sector entities for the procurement of spyware is defined to be legislated through a Presidential Decree within 3 months of the approval of the law on 9th December 2022.

An indicative catalogue of explicitly forbidden spyware to trade in the country will be compiled by the Authority for Communication Security and Privacy (to be updated at least semi-annually) and upon which the National Intelligence Service is instructed to provide informational material on its website.

Specifically, law 5002/2022 introduces a horizontal prohibition on malware possession, trading and use.³⁷ Whereas previous legislation considered illegal surveillance a misdemeanor and provided no criminal penalties for possessing and trading surveillance devices and spyware, the new framework strictly prohibits any transaction, sale, possession, trading and use of spyware throughout Greek territory. In particular, anyone who produces, sells, procures for use, imports, possesses, distributes or otherwise traffics a) prohibited monitoring software or surveillance devices, namely having the capacity to intercept, record and otherwise extract content and/or communication data or b) access codes or other similar data that grant access to information systems, irrespectively of the purpose for committing the above-mentioned actions and of whether there has been an actual use of those, is sentenced to at least two (2) years in prison. Moreover, the use of surveillance methods is punished with the imposition of a prison sentence of up to ten (10) years. The new law provides also for a list of banned surveillance software/devices to be made publicly available and regularly updated by the Hellenic Authority for Communication Security and Privacy, whereas the procurement of surveillance software or devices is permitted for the public sector only under the conditions set out in a presidential decree, following a preventive review by the Council of State, Greece’s supreme administrative court. In a similar vein, law 5002/2022 includes measures to strengthen cybersecurity, most notably a Coordination Committee on Cybersecurity and a National Risk Assessment Plan for Information and Communication Technology.

The Restructuring of the National Intelligence Service

Law 5002/2022 introduces additional safeguards in the functioning of the National Intelligence Service,³⁸ establishing for the first time an Information and Counterintelligence Academy and an Internal Control and Transparency Unit, providing transparency guarantees in the National Intelligence Service’s activities and limiting the eligibility criteria for the appointment of the Service’s Head.

³⁵ Greece, Constitution of Greece, Available in English at: https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/2019_SYDAGMA_EN_2022_WEB.pdf

³⁶ Law No. 5002/2022, Government Gazette Issue A’ 228/09.12.2022, “Waiving privacy procedure, cyber security and protection of citizens’ personal data.”, Art. 11, Available in Greek at: <https://bit.ly/3HwRgOl>

³⁷ Law No. 5002/2022, Government Gazette Issue A’ 228/09.12.2022, “Waiving privacy procedure, cyber security and protection of citizens’ personal data.”, Chapter C, Art. 10-14, Available in Greek at: <https://bit.ly/3HwRgOl>

³⁸ Law No. 5002/2022, Government Gazette Issue A’ 228/09.12.2022, “Waiving privacy procedure, cyber security and protection of citizens’ personal data.”, Chapter D, Art. 15-19, Available in Greek at: <https://bit.ly/3HwRgOl>

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
EL	National Intelligence Service/ Εθνική Υπηρεσία Πληροφοριών (EYP)	National Intelligence Service/ Εθνική Υπηρεσία Πληροφοριών (EYP)	National Intelligence Service/ Εθνική Υπηρεσία Πληροφοριών (EYP)	Directorate of Military Intelligence of the National Defence General Staff/ Διεύθυνση Στρατιωτικών Πληροφοριών του Γενικού Επιτελείου Εθνικής Άμυνας

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.

In Greece, the legal framework on surveillance has been reformed (law 5002/2022).

2. whether the reform was initiated in the context of the PEGASUS revelations.

In Greece, the legal framework on surveillance was recently been reformed. According to the analysis of the consequences of the proposed bill accompanying the draft text of the bill, it is not clear whether the reform has been initiated in the context of the PEGASUS revelations.³⁹ According to the first chapter

³⁹ Greece, Ministry of State, “Analysis of the consequences of the regulation”, Available in Greek at: <http://www.opengov.gr/ministryofjustice/wp->

of the draft law, the purpose of this new piece of regulation is the shielding and modernisation of the process of waiving the privacy of communications, the optimisation of the operation of the National Intelligence Service, the protection of the privacy of communications from tracking software; the operational upgrading of the cyber security level in Greece, and the effective protection of personal data.

With this new piece of legislation passed on 9th December 2022, a new Article «370ΣΤ» has been added to the Penal Code that punishes with up to 2 years in prison anyone that sells or buys spyware, or codes and passwords that would enable unauthorized access into IT systems.

Also, the procedure of exception of the public sector entities for the procurement of spyware is defined to be legislated through a Presidential Decree within 3 months of the approval of the law in 9th December 2022.

An indicative catalogue of explicitly forbidden spyware to trade in the country will be compiled by the Authority for Communication Security and Privacy (to be updated at least semi-annually) and upon which the National Intelligence Service is instructed to provide informational material on its website.

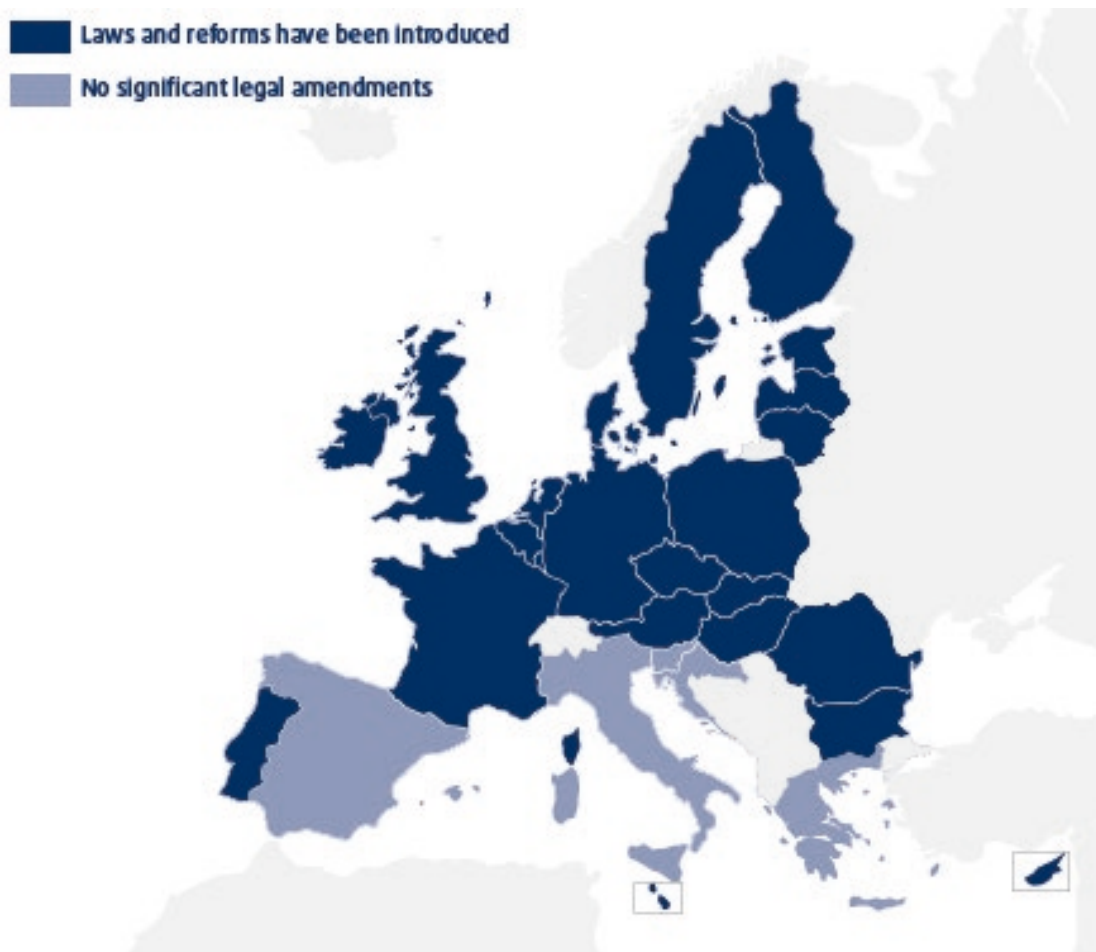
According to Greek national press, the spokesperson for the government, in response to the opposition party, Syriza, criticising the bill, stated that "*The government, [...], took political initiatives to solve the problems, bravely performed political responsibilities [...]. At the same time, he prepared legislative initiatives that come to answer the problems in a convincing and definitive way*", referring to the recent discoveries and allegations around wiretapping and the use of Predator malware.⁴⁰

The laws passed in the context of surveillance by state authorities in Greece within the reference period since 2017 are as follows:

- Law No. 4531, Government Gazette Issue A' 62/05.04.2018, "*Ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and adaptation of Greek legislation [...] and III) Other provisions of the competence of the Ministry of Justice, Transparency and Human Rights and other provisions.*", Available in Greek at: <http://bit.ly/3WfZ239>
- Law No. 4622, Government Gazette Issue A' 133/07.08.2019, "*Executive State: organisation, functioning and transparency of the Government, government bodies and central public administration*", Available in Greek at: <https://bit.ly/3Yqxc62>
- Law No. 4624, Government Gazette Issue A' 137/29.08.2019, "*Personal Data Protection Authority [...]and other provisions.*", Available in Greek at: <https://bit.ly/3Ygtdct>
- Law No. 4790, Government Gazette Issue A' 48/31.03.2021, "*Emergency regulations for the protection of public health from the ongoing consequences of the Covid 19 pandemic, development, social protection, re-opening of the courts and other matters*", Available in Greek at: <https://bit.ly/3W0XnP>
- Law No 4969, Government Gazette Issue A' 175/15.09.2022, "*Ratification of the Legislative Content Act from 9.8.2022 "Emergency provisions to strengthen the integrity of the operation of the National Intelligence Service"*". Available in Greek at: <https://bit.ly/3hoNrjw>
- Law No. 5002/2022, Government Gazette Issue A' 228/09.12.2022, "*Waiving privacy procedure, cyber security and protection of citizens' personal data.*", Available in Greek at: <https://bit.ly/3HwRgOl>

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

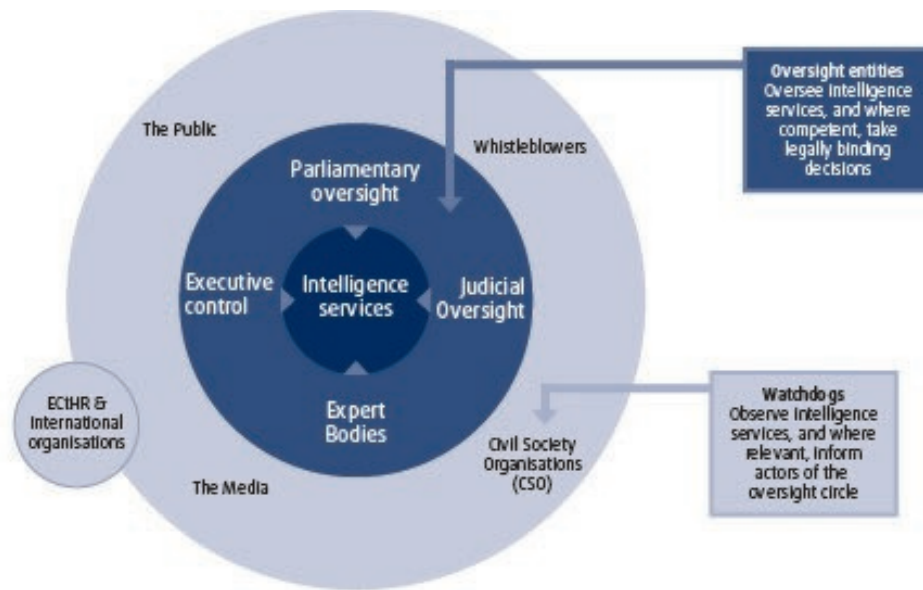
Significant legal amendments have been introduced in Greece, therefore the colour coding corresponding to Greece is blue.



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.

Figure 5: Intelligence services' accountability scheme

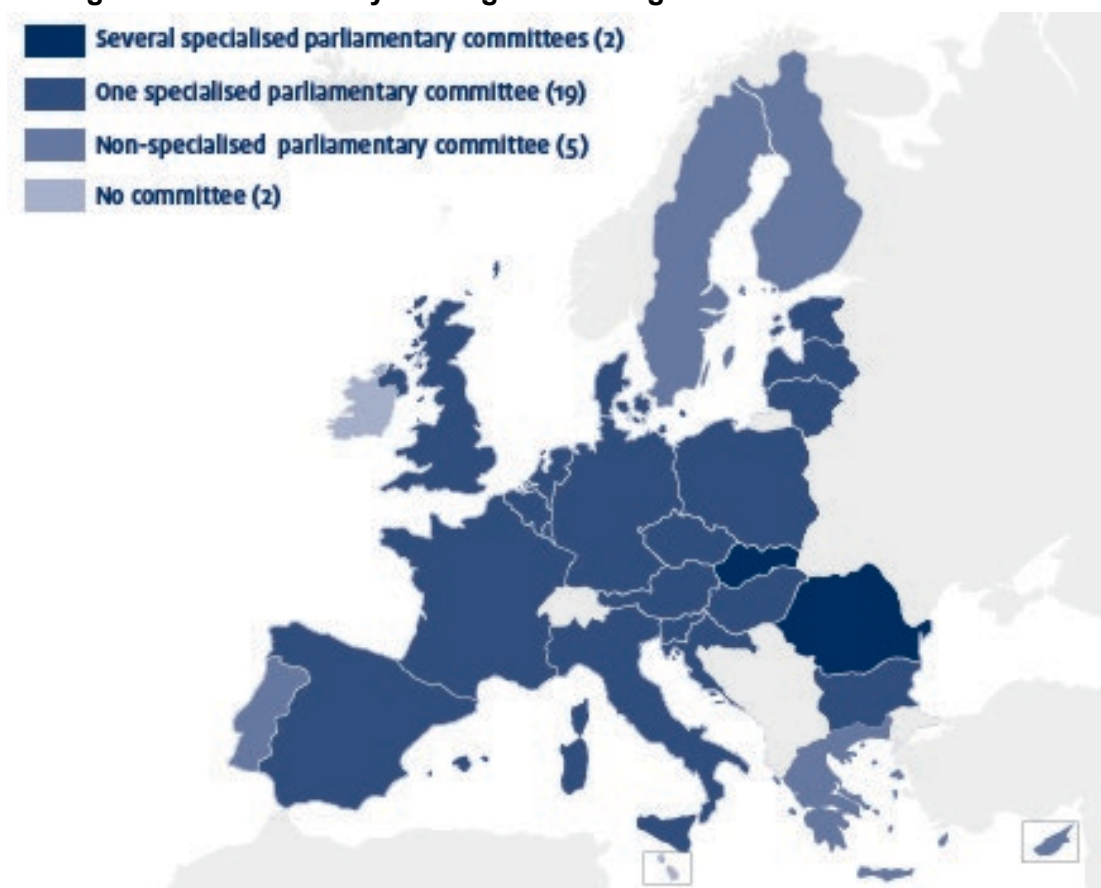


The figure accurately reflects the situation in Greece.

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.

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



In Greece, there is one specialised parliamentary committee providing parliamentary supervision to the intelligence services, Special Permanent Committee on Institutions and Transparency (*Επιτροπή Θεσμών και Διαφάνειας*) as per the Regulation of the Hellenic Parliament.⁴¹ Therefore Greece should be moved to the appropriate colour coding to reflect that.

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.

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

EU Member State	Expert Bodies
EL	Hellenic Authority for Communication Security and Privacy (<i>Αρχή Διασφάλισης του Απορρήτου των Επικοινωνιών</i>)

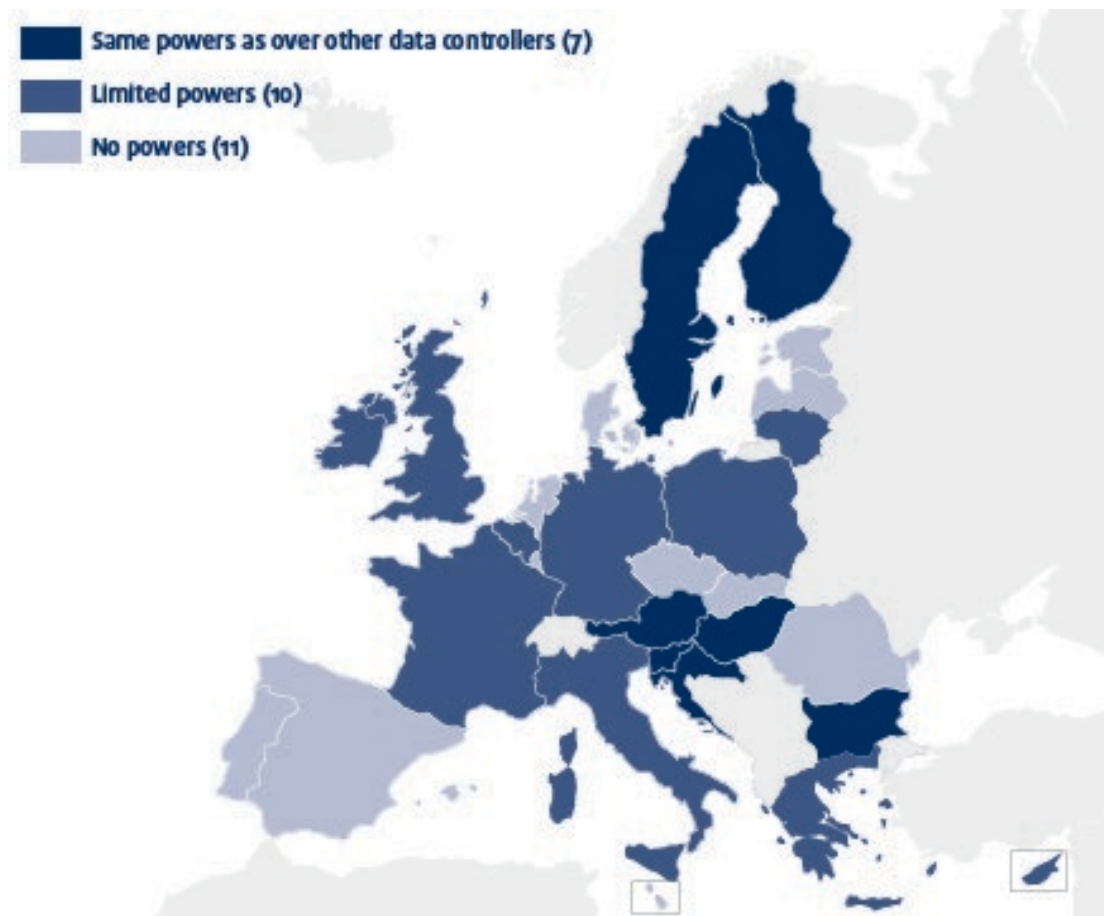
2.6. DPAs' powers over national intelligence services, by member states

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

⁴¹ Greece, Law No 2682, Government Gazette Issue A' 106/24.06.1987, "Regulation of the Parliament", Art. 43A, Available in Greek at: <https://bit.ly/3UVfp3Z>

suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

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



The Hellenic Data Protection Authority has little to no supervisory or remedial powers over national intelligence services in Greece according to a law introduced in 2019. The Authority is not competent to supervise processing operations of classified personal data carried out for activities concerning national security⁴²

The Authority handles complaints lodged by the data subject, or by a body, organisation or association, and inform the complainant of the progress and the outcome of the investigation or inspection within a reasonable period. Furthermore, the Authority conducts, ex officio or following a complaint, investigations or inspections regarding the application of data protection Law and other regulations relating to the protection of individuals with regard to the processing of personal data, including on the basis of information received from another public authority.⁴³

⁴² Greece, Law No. 4624, Government Gazette Issue A' 137/29.08.2019, "Personal Data Protection Authority [...] and other provisions." , Art. 10 para 5, Available in Greek at: <https://bit.ly/3Ygtdct>

⁴³ Greece, Law No. 4624, Government Gazette Issue A' 137/29.08.2019, "Personal Data Protection Authority [...] and other provisions." Art. 13 para 1, Available in Greek at: <https://bit.ly/3Ygtdct>

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

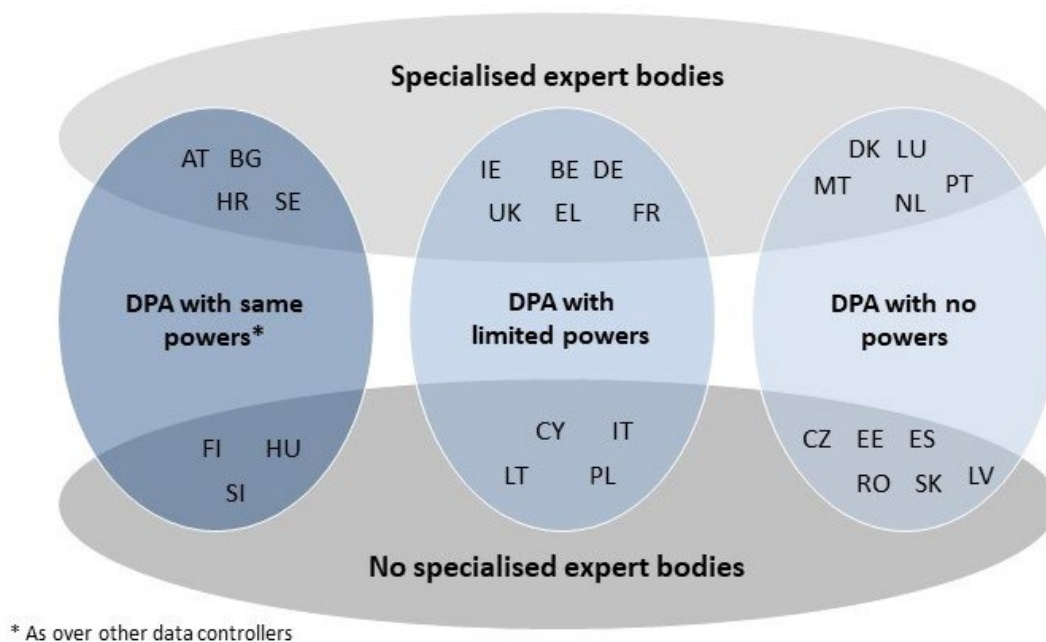
FRANET contractors are required to check the accuracy of the figure below (Figure 8 (p. 82) of the FRA 2017 report). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

The Hellenic Data Protection Authority has limited powers over national intelligence services in Greece according to a law introduced in 2019-and effectively abolished the possibility of the president of the Data Protection Authority to check the electronic records of the National Intelligence Service and other services kept for "activities concerning national security" or in the context of conducting prosecutorial or judicial duties-.

The Authority is not competent to supervise processing operations of classified personal data carried out for activities concerning national security⁴⁴. According to the recent law 5002/2022, an officer of the prosecution authority is appointed by the Supreme Judicial Council to serve for three years within the National Intelligence Service to oversee the legality of the special operational activities that interfere with human rights.⁴⁵

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

The Hellenic Data Protection Authority does not have powers over intelligence techniques so Greece must be moved to the third circle.



⁴⁴ Greece, Law No. 4624, Government Gazette Issue A' 137/29.08.2019, "Personal Data Protection Authority [...]and other provisions.", Art. 10 para 5, Available in Greek at: <https://bit.ly/3Ygtdct>

⁴⁵ Law No. 5002/2022, Government Gazette Issue A' 228/09.12.2022, "Waiving privacy procedure, cyber security and protection of citizens' personal data.", Art. 9 para. 1, Available in Greek at: <https://bit.ly/3HwRgOl>

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.

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

	Judicial	Executive	Expert bodies	Services
EL	✓ (prosecutorial)			

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				✓

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
EL		✓ (three-member-body, consisting of two prosecutors and the head of the Hellenic Authority for Communication Security and Privacy (Αρχή Διασφάλισης του Απορρήτου των Επικοινωνιών. ΑΔΑΕ) [for national security			

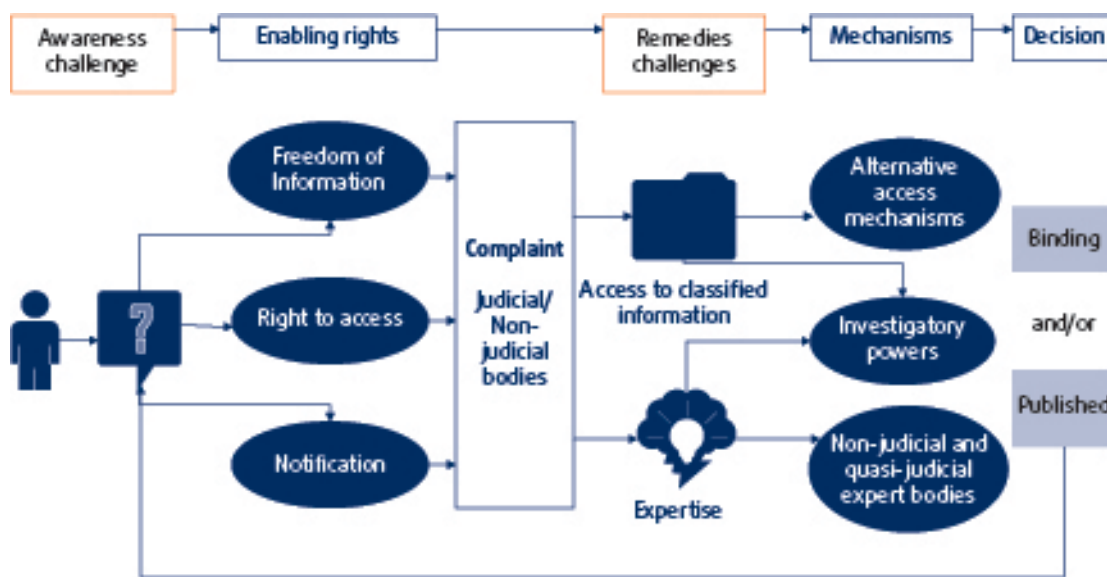
	reasons] ⁴⁶ And Hellenic Authority for Communication Security and Privacy (Αρχή Διασφάλισης του Απορρήτου των Επικοινωνιών. ΑΔΑΕ) for surveillance pertaining to the investigation of crimes. ⁴⁷			
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1.11. Implementing effective remedies

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 accurately illustrates the situation in Greece.

Figure 9: Implementing effective remedies: challenges and solutions



1.12. 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.

⁴⁶ Greece, Law No. 5002/2022, Government Gazette Issue A' 228/09.12.2022, "Waiving privacy procedure, cyber security and protection of citizens' personal data.", Art. 4 para. 7, Available in Greek at:

⁴⁷ Law No. 5002/2022, Government Gazette Issue A' 228/09.12.2022, "Waiving privacy procedure, cyber security and protection of citizens' personal data.", Art. 6 para 8, Available in Greek at: <https://bit.ly/3HwRgOl>

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
EL	Hellenic Authority for Communication Security and Privacy, (ΑΔΑΕ)				
	Three-member-body, consisting of two prosecutors and the head of the Hellenic Authority for Communication Security and Privacy				

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

Source: FRA, 2017

According to the new law passed in Greece in December 2022, the data subject affected by surveillance decisions related to national security reasons can apply to be informed of the surveillance three years after the surveillance period has lapsed. It is not allowed to submit a new request before one (1) year has elapsed since the submission of the previous one.⁴⁸ In cases of surveillance in the context of investigation of potential criminal offences, the request to be informed is submitted to the Hellenic Authority for Communication Security and Privacy after the end of the surveillance period. The Authority then releases the information within 60 days, subject to the agreement of the prosecutor of the Court of Cassation, under the condition that the purpose of the surveillance is not at risk by releasing the information.⁴⁹ The law does not permit this second stage prosecutor to keep a record of the entirety of the documents accompanying the request for surveillance.⁵⁰ The Hellenic Authority for Communication Security and Privacy raises issues of transparency of the declassification process for reasons of national security and the impossibility of carrying out a valid and effective audit without access to a full record.⁵¹

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.

The DPA in Greece does not have remedial competence in surveillance cases as per the law of 2019. limiting its responsibilities.⁵² Therefore Greece must be moved to the outer circle.

⁴⁸ Law No. 5002/2022, Government Gazette Issue A' 228/09.12.2022, "Waiving privacy procedure, cyber security and protection of citizens' personal data.", Art. 4 para 7, Available in Greek at: <https://bit.ly/3HwRgOl>

⁴⁹ Law No. 5002/2022, Government Gazette Issue A' 228/09.12.2022, "Waiving privacy procedure, cyber security and protection of citizens' personal data.", Art. 6 para 8, Available in Greek at:

⁵⁰ Greece, Law No. 5002/2022, Government Gazette Issue A' 228/09.12.2022, "Waiving privacy procedure, cyber security and protection of citizens' personal data.", Art. 4, para. 2 penultimate sentence., Available in Greek at: <https://bit.ly/3HwRgOl>

⁵¹ Greece, Hellenic Authority for Communication Security and Privacy, Press Release, 21 November 2022, "Press Release of the Hellenic Authority for Communication Security and Privacy on the draft law on waiving privacy of communications", Available in Greek at: <http://www.adae.gr/nomothetiko-plaisio/leptomereies/article/bfont-size3-colorreddeltio-typoy-tis-adae-schetika-me-to-no/>

⁵² Greece, Law No. 4624, Government Gazette Issue A' 137/29.08.2019, "Personal Data Protection Authority [...] and other provisions.", Art. 13 para 1, Available in Greek at: <https://bit.ly/3Ygtdct>

Figure 10: DPAs' remedial competences over intelligence services

