

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

Royal Decree 146/2021 affecting one of the bodies of the Spanish intelligence community: el Centro Nacional de Protección de las Infraestructuras Críticas (CNEPIC, its Spanish acronym)

The Royal Decree 146/2021¹ affected one of the bodies of the Spanish intelligence community, namely the National Center for the Protection of Critical Infrastructure (*Centro Nacional de Protección de las Infraestructuras Críticas*, CNEPIC, its Spanish acronym) and the reference cybersecurity computer incident response teams (CSIRT, its Spanish acronym).

¹ Spain, Minister for the Presidency, Parliamentary Relations and Democratic Memory (*Ministro de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) (2021) [Royal Decree 146/2021, of March 9, amending Royal Decree 139/2020, of January 28, establishing the basic organizational structure of the ministerial departments, and Royal Decree 734/2020, of August 4, developing the basic organizational structure of the Ministry of Interior](#) (*Real Decreto 146/2021, de 9 de marzo, por el que se modifican el Real Decreto 139/2020, de 28 de enero, por el que se establece la estructura orgánica básica de los departamentos ministeriales, y el Real Decreto 734/2020, de 4 de agosto, por el que se desarrolla la estructura orgánica básica del Ministerio del Interior*) Official Gazette, press release, 12 March 2021.

By Decree 146/2021, the General Directorate for Coordination and Studies (*Dirección General de Coordinación y Estudios*) was included organizationally in the National Center for the Protection of Critical Infrastructure (*Centro Nacional de Protección de las Infraestructuras Críticas* (CNEPIC). Its functions are to include assisting the head of the Secretariat of State (*Secretaría de Estado del Ministerio del Interior*) in its role as the senior manager of the National Center for the Protection of Critical Infrastructure and as coordinator of the cybersecurity policies entrusted to the Ministry (Article 5 bis of the Royal Decree 734/2020, of August 4, developing the basic organizational structure of the Ministry of Interior).

With the official creation of the General Directorate for Coordination and Studies (*Dirección General de Coordinación y Estudios*), this body was elevated to a management and political-technical body.

Following the Pegasus security breach, the Ministry of Interior has turned to external specialists to provide cyber intelligence training for 300 police officers in matters of national security defense, which until now were almost exclusively the responsibility of the National Intelligence Centre (*Centro Nacional de Inteligencia*, CNI, its Spanish acronym) and its technological unit, the National Cryptographic Center (*Centro Criptográfico Nacional*, CCN, its Spanish acronym)².

The creation of the Spanish Agency for the Supervision of Artificial Intelligence

Law 22/2021 of the General State Budget for the year 2022 (*Ley 22/2021, de 28 de diciembre, de Presupuestos Generales del Estado para el año 2022*) authorizes the Government to promote the creation of the Spanish Agency for the Supervision of Artificial Intelligence (*Agencia Española de Supervisión de Inteligencia Artificial*, AESIA its Spanish acronym) attached to the Secretary of State for Digitalization and Artificial Intelligence within the Ministry of Economic Affairs and Digital Transformation (*Secretaría de Estado de Digitalización e Inteligencia Artificial dentro del Ministerio de Asuntos Económicos y Transformación Digital*), with an endowment of 5 million euros (Additional provision 130)³.

The Spanish Artificial Intelligence Supervisory Agency (AESIA) will audit algorithms of social networks, public administrations and companies. The aim of the AEISIA is to "minimize significant risks to the safety and health of people, as well as to their fundamental rights, that may arise from the use of Artificial Intelligence systems"⁴.

The Spanish Government is currently in the process of choosing the headquarters of the Spanish Agency for the Supervision of Artificial Intelligence⁵.

Based on the information available on the Agency, the connection of this body with the intelligence services is not yet clear. However, the creation of the AESIA is foreseen in the National Artificial Intelligence Strategy (*Estrategia Nacional de Inteligencia Artificial*, ENIA, its Spanish acronym)

² Spain, [Interior to train 300 police officers to combat cyber-attacks following Pegasus security breach](#) (*Interior adiestrará a 300 policías para combatir ciberataques tras el fallo de seguridad de Pegasus*), El Español, press release, 16 September 2022.

³ Spain, Ministry of the Presidency, Relations with the Courts and Democratic Memory, (*Ministerio de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) (2021) [Law 22/2021 of the General State Budget for the year 2022](#) (*Ley 22/2021, de 28 de diciembre, de Presupuestos Generales del Estado para el año 2022*), Official State Gazette, 29 December 2021.

⁴ Spain, [Spain will have a national agency to supervise algorithms in 2022](#) (*España tendrá una agencia nacional de supervisión de algoritmos en 2022*), Newtra, press release, 22 December 2021.

⁵ Spain, Council of Ministers (*Consejo de Ministros*), [The Government is currently in the process of choosing the headquarters of the Spanish Agency for the Supervision of Artificial Intelligence](#) (*El Gobierno inicia el proceso para elegir la sede de la Agencia Española de Supervisión de la Inteligencia Artificial*), La Moncloa official website, press release, 13 September 2022.

which clearly includes among its objectives the use of AI in public administration and national strategic missions⁶.

Resolution of the Presidency of the Congress of Deputies on Official Secrets, of April 26, 2022

On April 28, 2022, the plenary session of the Congress of Deputies elected the members of the ad hoc Resources Reserve Committee (*Comisión de control de los créditos destinados a gastos reservados*), usually referred to as the *Comisión de Secretos Oficiales*, first constituted in 2002, and which is the parliamentary oversight body that exercises control over the use of reserved funds and the activity of the National Intelligence Center⁷.

The initiative takes on special relevance after a report from Citizen Lab determined that Spanish intelligence services used the Israeli-made malware Pegasus to spy on more than 60 pro-independence leaders⁸. When the pro-sovereignty formations asked the Spanish Government for explanations, it was referred to the Resources Reserve Committee (*Comisión de Secretos Oficiales*), which was not yet constituted, as the only organ which could provide answers.

The Resources Reserve Committee (*Comisión de Secretos Oficiales*) is specifically mentioned in Article 11 of Act 11/2002 regulating the National Intelligence Centre (*Ley 11/2002, de 6 de mayo, reguladora del Centro Nacional de Inteligencia*) and it is the Committee to be set up so that Spanish Parliament can have access to classified matters⁹.

The last time the Resources Reserve Committee (*Comisión de Secretos Oficiales*) met was in March 2019; since then the CNI has not explained why it has used Pegasus software. The vetoes between the different parliamentary groups have made it impossible to constitute this Committee even during these years (2019-2022). There have been parties with a fixed presence in the Resources Reserve Committee (*Comisión de Secretos Oficiales*), such as PP, PSOE or PNV, and others that have been coming and going depending on their electoral results, which determine whether they have their own parliamentary group. In this scenario, the reluctance of PP, VOX or Ciudadanos has prevented formations such as EH Bildu, ERC and CUP from accessing this Committee due to the sensitivity of its content¹⁰.

The way to reactivate the Resources Reserve Committee (*Comisión de Secretos Oficiales*) has been by a [Resolution of the President of the Congress of Deputies](#)¹¹, Mrs. Meritxell Batet. Article 32. 2 of

⁶ Spain, Ministry of Economic Affairs and Digital Transformation (*Ministerio de Asuntos Económicos y Transformación Digital*), [National Artificial Intelligence Strategy](#) (*Estrategia Nacional de Inteligencia Artificial*), press release, November 2020.

⁷ Spain, [Resources Reserve Committee: how the body that controls the CNI's activity has been unblocked and who is going to be part of it](#) (*Comisión de secretos oficiales del Congreso: cómo se ha desbloqueado el órgano que controla la actividad del CNI y quiénes lo van a integrar*), Newtra, press release, 28 April 2022.

⁸ Spain, [Beginning in 2017, and possibly as early as 2015, Catalan citizens' phones were targeted by a large-scale operation using spyware from the mercenary surveillance firm NSO Group](#), Citizen Lab, press release, 20 April 2022

⁹ Spain, Minister for the Presidency, Parliamentary Relations and Democratic Memory (*Ministro de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) (2002) [Law regulating the National Intelligence Center](#) (*Ley 11/2002, de 6 de mayo, reguladora del Centro Nacional de Inteligencia*) press release, 7 May 2002.

¹⁰ Spain, [The Pegasus case: only the the Resources Reserve Committee can monitorate the CNI](#) (*El caso del espionaje con Pegasus: solo la comisión de secretos puede indagar en el CNI*), La Vanguardia, press release, 22 April 2022.

¹¹ Spain, President of the of the Congress of Deputies (*Presidenta del Congreso de los Diputados*) (2022), [411/000004 Resolution of the Presidency of the Congress of Deputies on Official Secrets, of April 26, 2022](#) (*411/000004 Resolución de la Presidencia del Congreso de los Diputados sobre secretos oficiales, de 26 de abril de 2022*) Official Gazette of the Cortes Generales of the Congress of Deputies, XIV Legislature, press release, 26 April 2022.

the [Regulations of the Congress of Deputies](#)¹² grants the President of the Congress of Deputies the power to "interpret (this rule) in case of doubt" and "to substitute for it in the case of omission". Thus, the matter has been turned into a mere procedure and achieved by lowering the necessary majority to elect the representative of each parliamentary group that will integrate the Resources Reserve Committee (*Comisión de Secretos Oficiales*): from the support of three fifths of the plenary (210 deputies) to the absolute majority (176 deputies).

The Resources Reserve Committee (*Comisión de Secretos Oficiales*) is a parliamentary commission of the Spanish Congress of Deputies through which the legislature has access to information on classified government spending, official secrets and controls the activity of the National Intelligence Center (CNI). Discussions within this Committee are secret (not subject to public scrutiny). The method for being elected to the Resources Reserve Committee requires a large parliamentary majority; only one member from each parliamentary group can be a member of this Committee.

The members of the current Resources Reserve Committee (*Comisión de Secretos Oficiales*) represent each of the parliamentary groups and include the following 10 compositions¹³:

-PSOE: Héctor Gómez, speaker, 280 votes.

-PP: Cuca Gamarra, speaker, 282 votes.

-Vox: Iván Espinosa de los Monteros, speaker, 270 votes.

-United We Can: Pablo Echenique, speaker, 272 votes.

-ERC: Gabriel Rufián, speaker, 186 votes.

-Plural: Miriam Nogueras, deputy of Junts, which is a formation integrated in this parliamentary group. She obtained 186 votes.

-Ciudadanos: Edmundo Bal, deputy speaker, 276 votes.

-PNV: Aitor Esteban, speaker, 275 votes.

-EH Bildu: Mertxe Aizpurua, speaker, 186 votes.

Draft Law on Classified Information, of August 1, 2022

On August 1, 2022 the Spanish Government approved the Draft Law on Classified Information (*Anteproyecto de Ley de Información Clasificada*) in the Council of Ministers¹⁴.

The future Law on Classified Information will replace the current Law on Official Secrets (*Ley 9/1968, de 5 de abril, sobre secretos oficiales*)¹⁵, approved in 1968 and reformed in October 1978, prior to the Constitution being approved. The draft law reflects the Constitution and the standards for the treatment of classified information of the European Union and NATO partners.

¹² Spain, Congress of Deputies (*Congreso de los Diputados*) (1982) [Regulations of the Congress of Deputies](#) (*Reglamento del Congreso de los Diputados de 10 de febrero de 1982*),) Official Gazette of the Cortes Generales of the Congress of Deputies, press release, 10 February 1982.

¹³ Spain, Congress of Deputies (*Congreso de los Diputados*) [Current membership of Comisión de control de los créditos destinados a gastos reservados](#), Official website of the Congress of Deputies, press release, 28 April 2022.

¹⁴ Spain, Minister for the Presidency, Parliamentary Relations and Democratic Memory (*Ministro de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) (2022) [Draft Law on Classified Information](#) (*Anteproyecto de Ley de Información Clasificada*), press release, 1 st August 2022.

¹⁵ Spain, Minister for the Presidency, Parliamentary Relations and Democratic Memory (*Ministro de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) (1968) [Law on Official Secrets](#) (*Ley 9/1968, de 5 de abril, sobre secretos oficiales*) press release, 6 April 1968.

The Draft Law establishes four categories of classification: top secret, secret, confidential and restricted. Each level is assigned a different level of protection depending on the danger that unauthorised disclosure or misuse may pose to national security or defense.

The competence to classify any document as top secret and secret lies with the Council of Ministers. Certain authorities may classify the material as restricted or confidential, such as the heads of ministries, the director of the National Intelligence Centre, the director of the National Security Department, the delegates and sub-delegates of the Government, and the directors general of the Police and the Guardia Civil.

In addition, the law provides for automatic declassification after a certain period, depending on the level of protection of the cases.

Top secret content will be declassified after 50 years and may be extended for a further 15 years, and secret content after 40 years, with an extension of up to 10 years. Information classified as confidential will be declassified between 7 and 10 years, and restricted information between 4 and 6 years. These deadlines, according to the minister, are "reviewable."

The National Authority for the Protection of Classified Information has been created under the Ministry of the Presidency, Parliamentary Relations and Democratic Memory, as the body responsible for the protection and processing of top secret, secret and confidential information produced in Spain and that which comes from other states or international organizations. In addition, the Authority will assess the suitability of persons who should have access to such information, grant clearance for its professional processing, and regulate parliamentary access. Specifically, the Congress of Deputies' access to classified information will continue to be done by Parliamentary Committee. Nevertheless, the National Authority for the Protection of Classified Information will be competent to treat the information to which the Committee has had access (Art. 36 of the Draft Law on Classified Information).

Finally, the text establishes the guarantees for the treatment, protection, and custody of the information, the consultation of which will preferably be carried out in the office where it is filed. In case of improper dissemination, fines could range from 50,000 euros to 3 million euros without prejudice to any criminal liability¹⁶.

However, according to a joint analysis by expert organizations -namely, Hay Derecho, Más Democracia, Access Info, and Transparency International Spain-, the future Law does not guarantee a balance between the classification of information and the right to freedom of information, accountability, and transparency. The claims of these organizations are, among others: that the Draft Law allows the classification of entire areas of matters that are not related to defense or national security, that a large number of senior officials or political appointees can classify cases with practically no control and no technical advice; and that the legal text does not guarantee that the classification of information will not be used to hide severe violations of human rights or widespread violations of privacy, as required by international standards¹⁷.

Likewise, some political representatives have shown their disappointment with some aspects of the proposed law on official secrets, especially concerning the criteria and deadlines. According to them, the Draft law will involve more classifications. The terms vary depending on the category of the document according to its degree of confidentiality: the time for documents classified as top secret will be 50 years, extendable for 15 more; information classified as secret will be classified for 40

¹⁶ Spain, Council of Ministers (*Consejo de Ministros*), [The Government of Spain approves a plan for energy saving and air conditioning management](#), La Moncloa official website, press release, 1 August 2022.

¹⁷ Spain, [Joint Statement on the Draft Law on Classified Information on the occasion of International Right to Know Day](#) (*Declaración conjunta sobre el Anteproyecto de Ley de Información Clasificada con motivo del Día Internacional del Derecho a Saber*) Transparencia Internacional España official website, press release, 28 September 2022.

years, extendable for ten more years; confidential content will be classified for between seven and ten years, and documents classified as restricted will have a term for declassification of between four and six year¹⁸.

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.

The National Intelligence Centre (*Centro Nacional de Inteligencia*, CNI) is a special public body integrated into the Ministry of Defense with the highest preeminence of the Spanish intelligence community. In the field of police intelligence, the National Police Corps and the Civil Guard have jurisdiction; the body that coordinates both bodies is the Intelligence Centre on Organised Crime and Terrorism (*Centro de Inteligencia Contra el Terrorismo y el Crimen Organizado*, CITCO). In the military field, the Intelligence Centre of the Armed Forces (*Centro de Inteligencia de las Fuerzas Armadas*, CIFAS) is the only military intelligence service at the strategic level. And in the field of civil protection, the anticipation of risks and threats is focused on the National Center for the Protection of Critical Infrastructures (*Centro Nacional de Protección de Infraestructuras Críticas*, CNPIC).

¹⁸ Spain, [The new Law on official secrets will mean more classifications, change of competencies and a 50-year extension limit](#) (*La nueva ley de secretos oficiales supondrá más clasificaciones, cambio de competencias y 50 años prorrogables como límite*), Newtra, press release, 2 August 2022.

	Civil (internal)	Civil (external)	Civil (internal and external)	Military
ES	National Center for the Protection of Critical Infrastructures /Centro Nacional de Protección de Infraestructuras Críticas (CNPIC)		National Intelligence Centre/Centro Nacional de Inteligencia (CNI) Intelligence Centre on Organised Crime and Terrorism/Centro de Inteligencia Contra el Terrorismo y el Crimen Organizado	Intelligence Centre of the Armed Forces/ Centro de Inteligencia de las Fuerzas Armadas (CIFAS)

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

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.

The Royal Decree 146/2021¹⁹ affected one of the bodies of the Spanish intelligence community, namely the National Center for the Protection of Critical Infrastructure (Centro Nacional de Protección de las Infraestructuras Críticas, CNEPIC, its Spanish acronym) and the reference cybersecurity computer incident response teams (CSIRT, its Spanish acronym).

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

The Spanish legal framework on surveillance has not undergone any major reforms since mid-2017.

However, some relevant reforms have been initiated in the context of the PEGASUS revelations. This has been the case with the unblocking of the Resources Reserve Committee (*Comisión de control de los créditos destinados a gastos reservados*, usually called *Comisión de Secretos Oficiales*) through the a **Resolution of the President of the Congress of Deputies on Official Secrets**²⁰ on 26 April

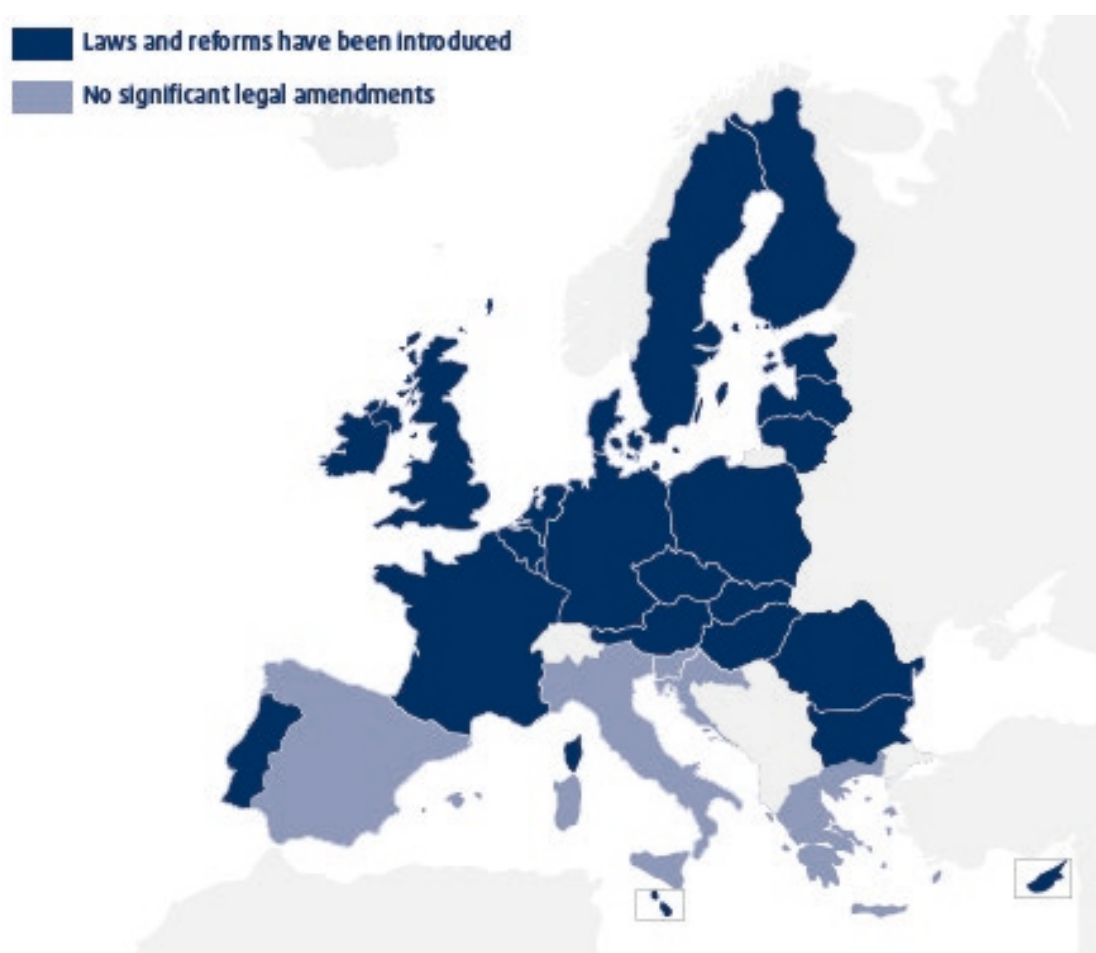
¹⁹ Spain, Minister for the Presidency, Parliamentary Relations and Democratic Memory (*Ministro de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) (2021) [Royal Decree 146/2021, of March 9, amending Royal Decree 139/2020, of January 28, establishing the basic organizational structure of the ministerial departments, and Royal Decree 734/2020, of August 4, developing the basic organizational structure of the Ministry of Interior](#) (Real Decreto 146/2021, de 9 de marzo, por el que se modifican el Real Decreto 139/2020, de 28 de enero, por el que se establece la estructura orgánica básica de los departamentos ministeriales, y el Real Decreto 734/2020, de 4 de agosto, por el que se desarrolla la estructura orgánica básica del Ministerio del Interior) Official Gazette, press release, 12 March 2021.

²⁰ Spain, President of the of the Congress of Deputies (*Presidenta del Congreso de los Diputados*) (2022), [411/000004 Resolution of the Presidency of the Congress of Deputies on Official Secrets, of April 26, 2022](#) (411/000004 Resolución de la Presidencia del Congreso de los Diputados sobre secretos oficiales, de 26 de abril de 2022) Official Gazette of the Cortes Generales of the Congress of Deputies, XIV Legislature, press release, 26 April 2022.

2022; and the approval of the the **Draft Law on Classified Information** (*Anteproyecto de Ley de Información Clasificada*) in the Council of Ministers²¹ on 1 st August 2022.

Spanish legal framework on surveillance has not had significant legal amendments since October 2015. Therefore, the table accurately reflects the current situation in Spain. However, this situation may change at the time the **Law on Classified Information** (*Anteproyecto de Ley de Información Clasificada*) comes into force.

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



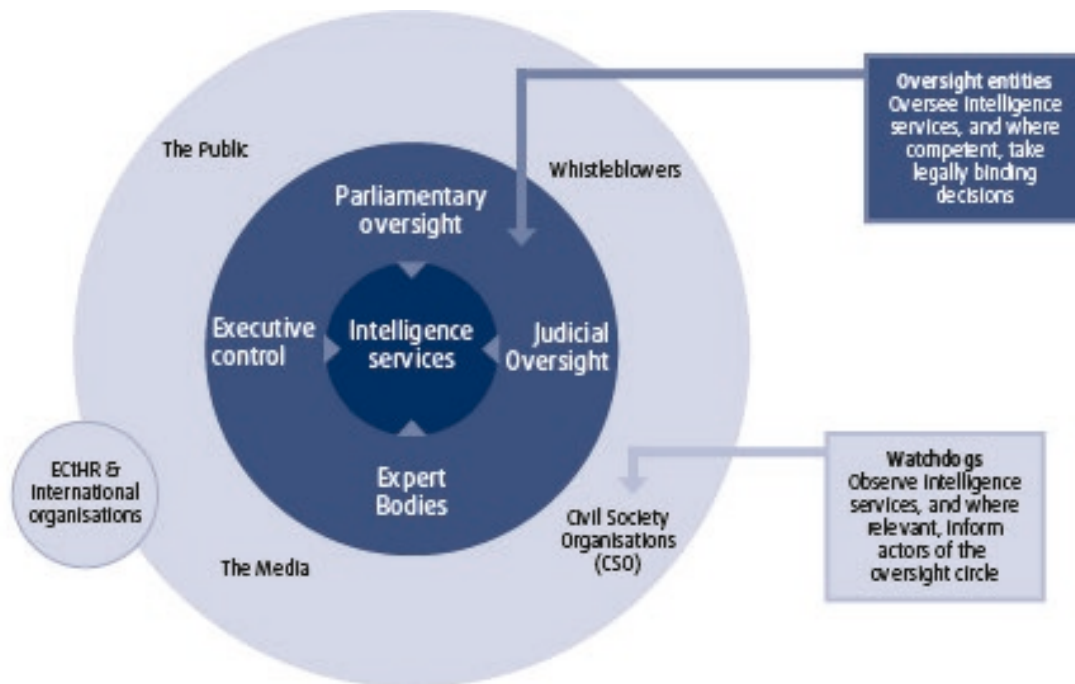
2.3. Intelligence services' accountability scheme

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.

²¹ Spain, Minister for the Presidency, Parliamentary Relations and Democratic Memory (*Ministro de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) (2022) [Draft Law on Classified Information](#) (*Anteproyecto de Ley de Información Clasificada*), press release, 1 st August 2022.

The diagram in the Figure 5 of the FRA 2017 report accurately illustrates the situation in Spain. There have been no changes in the context of the intelligence services' accountability scheme since mid-2017.

Figure 5: Intelligence services' accountability scheme

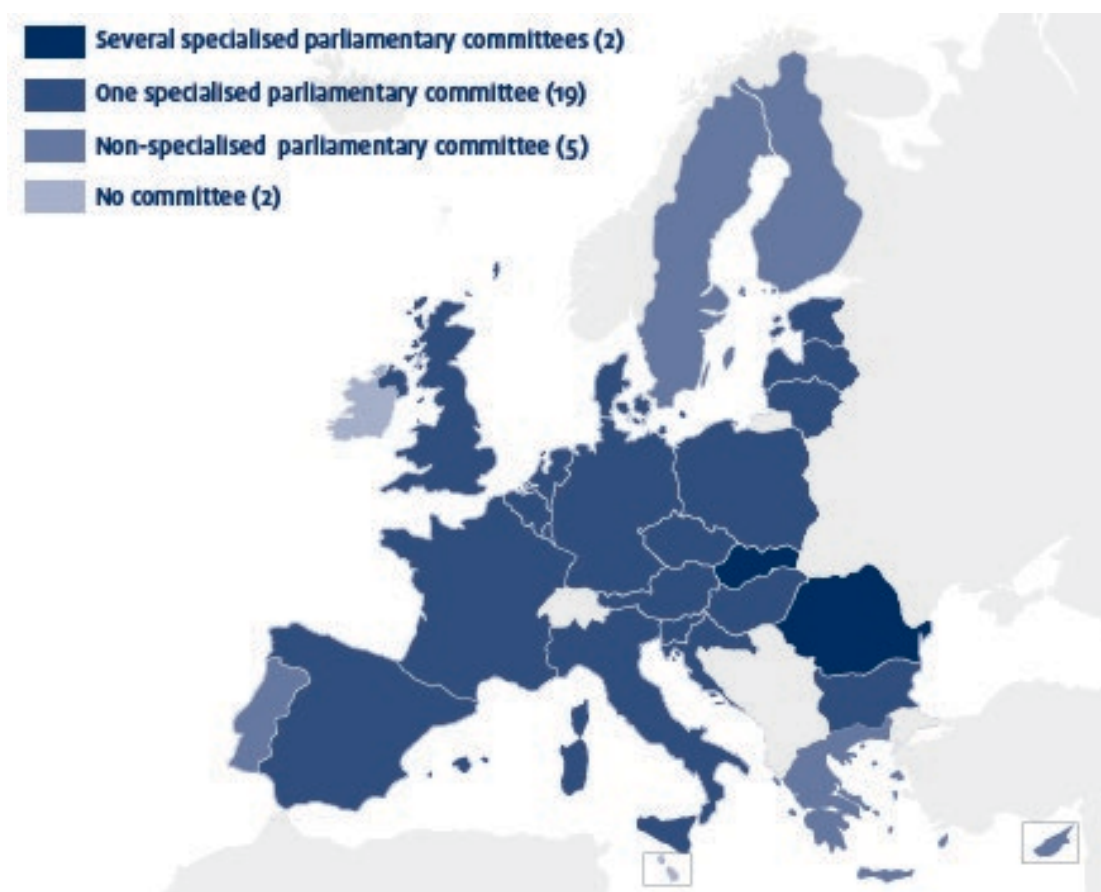


2.4. Parliamentary oversight of intelligence services in EU Member States

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 diagram in the Figure 6 of the FRA 2017 report accurately illustrates the situation in Spain. There is only one specialised parliamentary committee in Spain.

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 2 of the FRA 2017 accurately reflects the situation in Spain. At the moment, there is not an expert body overseeing intelligence services in Spain.

However, the future Law on Classified Information will replace the current Law on Official Secrets (*Ley 9/1968, de 5 de abril, sobre secretos oficiales*)²² and provide for the creation of a National Authority for the Protection of Classified Information under the Ministry of the Presidency, Parliamentary Relations and Democratic Memory. The text presented is still in the process of parliamentary negotiation.

²² Spain, Minister for the Presidency, Parliamentary Relations and Democratic Memory (*Ministro de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) (1968) [Law on Official Secrets](#) (*Ley 9/1968, de 5 de abril, sobre secretos oficiales*) press release, 6 April 1968.

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

EU Member State	Expert Bodies
ES	N.A.

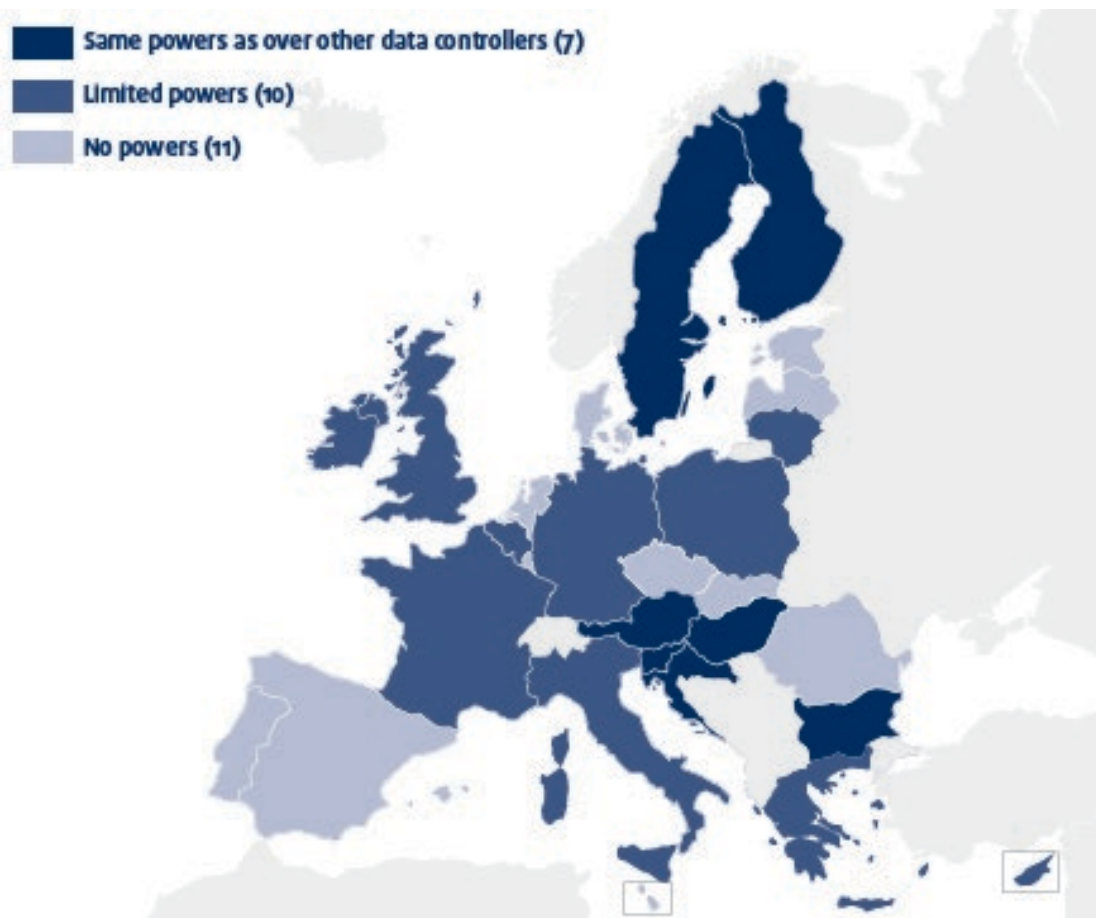
2.6 DPAs' powers over national intelligence services, by member states

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 Spanish DPA is not entitled to oversee the CNI's activities. The Spanish Data Protection Agency has the function of supervising compliance with the Organic Law on Protection of Personal Data and Guarantee of Digital Rights (Article 47)²³. Accordingly, in this context, data protection law does not apply to data processing activities by the national intelligence services. The table accurately reflects the current situation in Spain because the Spanish DPA does not have powers over national intelligence services in Spain.

²³ Spain, Minister for the Presidency, Parliamentary Relations and Democratic Memory (*Ministro de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) (2018) [Organic Law on Protection of Personal Data and Guarantee of Digital Rights](#) (*Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales*), Official Gazette, press release, 6 December 2018.

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

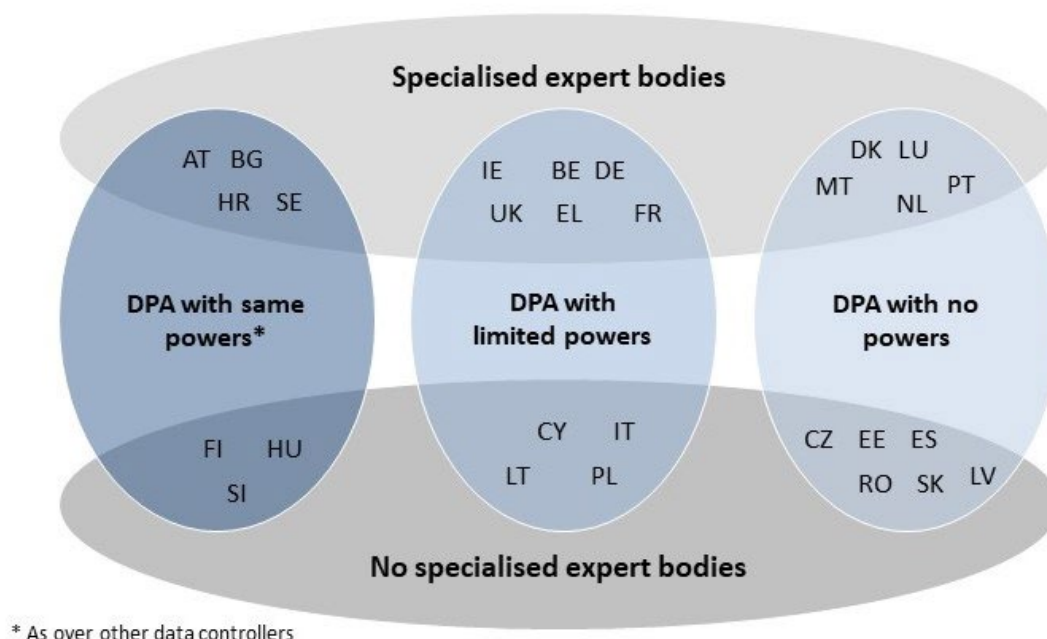


2.7 DPAs' and expert bodies' powers over intelligence techniques, by EU Member State

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 map in the Figure 8 of the FRA 2017 report accurately illustrates the situation in Spain .

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.

In order to comply with the Intelligence Directive, the National Intelligence Centre/*Centro Nacional de Inteligencia* (CNI) must carry out activities in which rights under Article 18(2) and (3) of the Constitution (inviolability of the home and secrecy of communications) may be affected. The Secretary of State Director must request prior authorization from a supervisory magistrate of the Supreme Court.

The information contained in the Table 4 of the FRA 2017 report is correct in the Spanish case.

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

	Judicial	Executive	Expert bodies	Services
ES	✓			

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).

Spain should be referred to in Table 5 of the FRA 2017 report and include information regarding the Judicial authorisation box.

According to the Organic Law regulating the prior judicial control of the National Intelligence Center (*Ley Orgánica 2/2002, de 6 de mayo, reguladora del control judicial previo del Centro Nacional de Inteligencia*) only a judge can authorize the interception of communications in Spain²⁴.

In this section, it is important to note that the Spanish Agency for the Supervision of Artificial Intelligence is currently being set up. In the near future, the Executive box could be checked as well.

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.

As stated in the Spanish study for the FRA 2017 Report, the Ombudsman itself can obtain access to any kind of documents on a request of citizen and request information for data collected/processed by the Spanish National Intelligence Centre. The information contained in the Table 6 of the FRA 2017 report is correct for Spain.

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
ES					✓

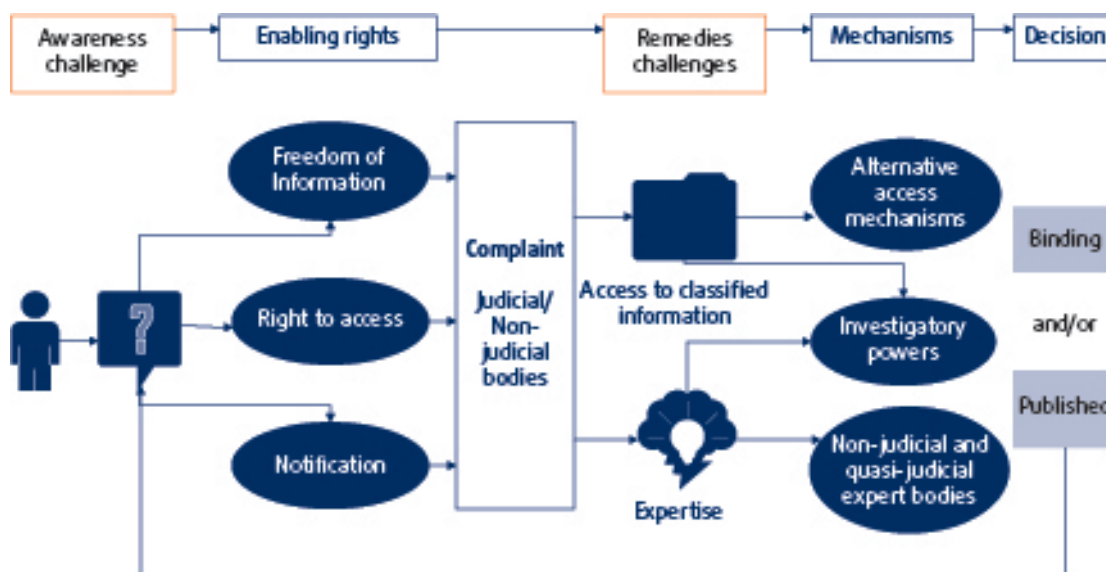
2.11 Implementing effective remedies

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 diagram in Figure 9 of the FRA 2017 report accurately illustrates the situation in Spain.

²⁴ Spain, Minister for the Presidency, Parliamentary Relations and Democratic Memory (*Ministro de la Presidencia, Relaciones con las Cortes y Memoria Democrática*) (2002) [Organic Law regulating the prior judicial control of the National Intelligence Center](#) (*Ley Orgánica 2/2002, de 6 de mayo, reguladora del control judicial previo del Centro Nacional de Inteligencia*) press release, 7 May 2002.

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.

As stated in the Spanish study for the FRA 2017 Report, the Ombudsman can obtain access to any type of documents upon request of citizens. The Ombudsman can also request information for data collected/processed by the Spanish National Intelligence Centre. The information contained in the Table 7 of the FRA 2017 report is correct for Spain.

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
ES	Spanish Ombudsman				

Note:

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

Source: FRA, 2017

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 Spanish Data Protection Agency - as an independent public authority in charge of safeguarding the privacy and data protection of citizens - has not remedial competences over intelligence services. Spain should be included in the group where countries have DPAs with limited powers and limited remedial competence (indirect access right), as noted in Figure 10 of the FRA 2017 report.

Figure 10: DPAs' remedial competences over intelligence services

