

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

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Country: Italy

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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](#)

In Italy, during the reporting period (mid-2016 until third quarter of 2022) the Italian oversight system and the available remedies were not affected by any reform.

In Italy, a Decree of the President of the Italian Government was approved on 17 February 2017 on “Directive on National Cyber Protection and Cybersecurity Guidelines”¹. The Decree was introduced to respond to emerging challenges and threats to data protection and State security potentially caused by new technologies. The Decree introduced a functional model aimed at achieving the integration between intelligence activities carried out by the Ministry of Defence, the Ministry of the Interior and the Italian Government with the view of preventing and countering cybercrime. The Department of Security Intelligence (Dipartimento delle informazioni per la sicurezza - DIS) of the Italian Government thus gained a crucial role of coordination of information research activities aimed at strengthening national cyber protection and cyber security.

In Italy, in March 2019 the DPA and the General Director of the Department Security Intelligence (Dipartimento delle informazioni per la sicurezza - DIS) of the Italian Government signed a two-year

¹ [Decreto del Presidente del Consiglio dei Ministri 17 febbraio 2017](#), “Direttiva recante indirizzi per la protezione cibernetica e la sicurezza informatica nazionali”.

Protocol on Data Protection in the Cybersecurity Activities². the Protocol confirmed the in-force Guidelines signed in 2013 and renewed in 2017. The Protocol is aimed at fostering cooperation and communication exchange between the two institutions, as well as the promotion of good practices on cybersecurity, in connection with research and academic institutions. The DPA commits to identify and share with the DIS any data breach incidents that is deemed to be relevant for cybersecurity.

In Italy, in July 2021 the National DPA issued an official request³ to the company distributing the software Pegasus asking specific information to be transmitted within 20 days concerning: i. the role played by the company in relation to the processing of data collected through the software; ii. Whether Italian clients have purchased the software. The company's reply was not made public; however, according to specialized commentators⁴, the company has already publicly stated in official press releases that the software is sold only to police forces and intelligence agencies, also stressing that the tool is not directly managed by the company that has no direct access to the collected data. As for the second request, the DPA might not be receiving any list of Italian clients since the company already clarified that the obligation of disclosing such data exists only in case of ongoing judicial investigation.

In Italy, in February 2022 the Parliamentary Committee for the Security of the Republic (Comitato Parlamentare per la Sicurezza della Repubblica – COPASIR) released its annual report⁵ addressed to the two Parliament's Chambers, providing an overview of the Committee's annual activity, as well as the most relevant developments in the security and intelligence field. The report confirms that no major developments and reforms were adopted concerning the Italian oversight system and the available remedies. Italian authorities mostly focused on threats to economic activities and the discipline of the golden rule, as well as on the creation of the National Cybersecurity Agency (Agenzia per la cybersicurezza nazionale - ACN), introduced by the Law-Decree No. 82 of 14 June 2021⁶.

In Italy, in July 2022 the Italian DPA released its report⁷ on the annual activity carried out in 2021. In 2021, 448 collegial measures were adopted. The Authority responded to 9,184 complaints and reports concerning, among other things, marketing and telematic networks; online data of public administrations; health; IT security; the banking and financial sector; and labour. There were 72 opinions issued by the DPA on regulatory and administrative acts and they concerned health; tax; justice; education; digitisation of the public administration; functions of public interest. There were 7 opinions on primary legislation: in particular, on the digitalisation of the public administration, justice, and open data. The functioning of the Italian surveillance system, as well as the remedies available had not a key role in the DPA's activity.

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.

Information confirmed for Italy.

² The information was made public on the DPA's [website](#).

³ The request was made public on the DPA's [website](#).

⁴ Federprivacy (2021), "[Caso Pegasus, scende in campo il Garante per la Privacy](#)", 26 July 2021.

⁵ COPASIR (2022), "[Relazione sull'attività svolta dal 1° gennaio 2021 al 9 febbraio 2022](#)", February 2022.

⁶ [Decreto-legge 14 giugno 2021, n. 82](#), "Disposizioni urgenti in materia di cybersicurezza, definizione dell'architettura nazionale di cybersicurezza e istituzione dell'Agenzia per la cybersicurezza nazionale".

⁷ Garante per la Protezione dei Dati Personali (2022), "[Relazione Annuale 2021](#)", July 2022.

| | Civil (internal) | Civil (external) | Civil (internal and external) | Military |
|-----------|--|--|-------------------------------|--|
| IT | Information and Internal Security Agency/ <i>Agenzia informazioni e sicurezza interna</i> (AISI) | Information and External Security Agency/ <i>Agenzia informazioni e sicurezza esterna</i> (AISE) | | Department information and security/ <i>Reparto informazioni e sicurezza</i> (RIS) |

The Department of Security Intelligence (DIS) coordinates all intelligence activities and reviews the results of the activities carried out by the AISE and the AISI. The Inspection Office established within the DIS, in accordance with Art. 4 sec. 3 para i) of Law n. 124/2007⁸, is entrusted with a form of internal control on *intelligence* activities.

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

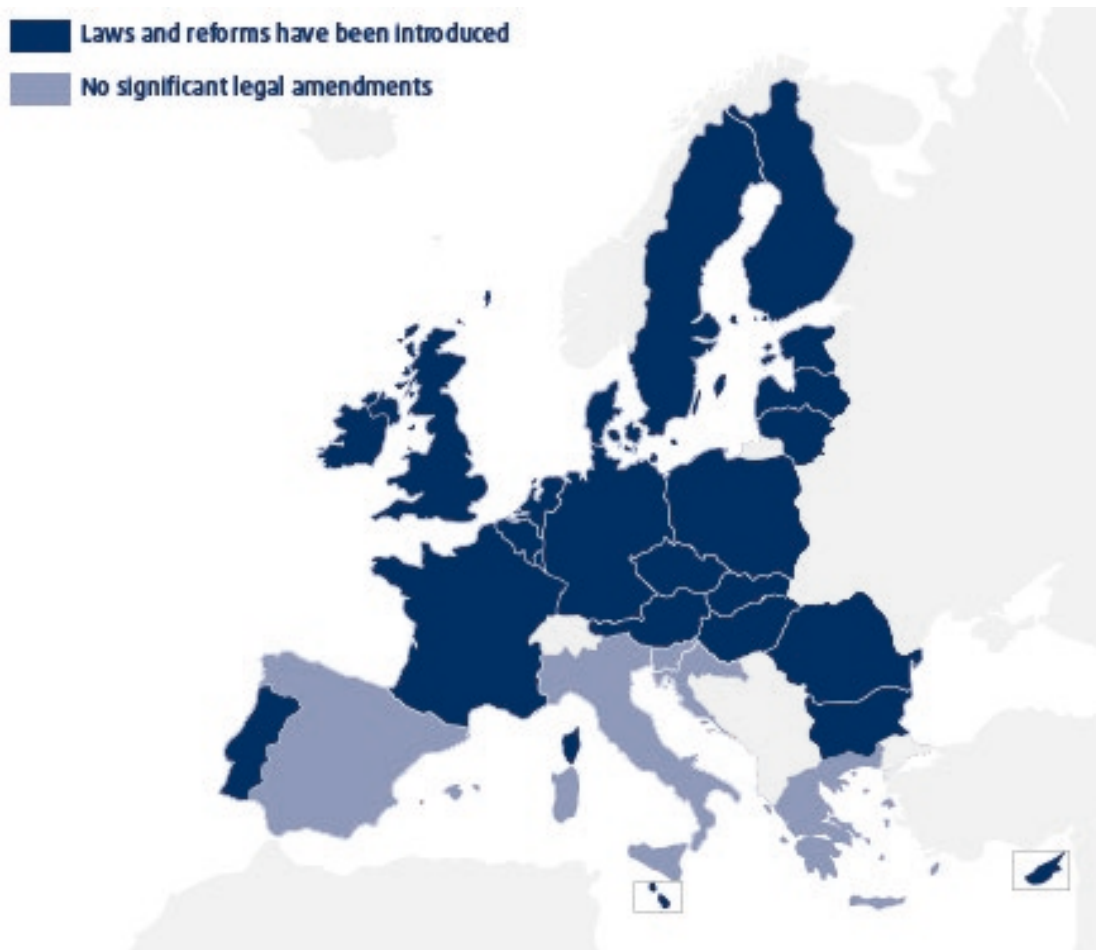
In order to update the map below (Figure 1 (p. 20) of the FRA 2017 report), FRANET contractors are requested to state:

- 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.*

In Italy, no significant legal amendments occurred since 2017.

⁸ [Legge 3 agosto 2007, n. 124](#), “Sistema di informazione per la sicurezza della Repubblica e nuova disciplina del segreto”.

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.

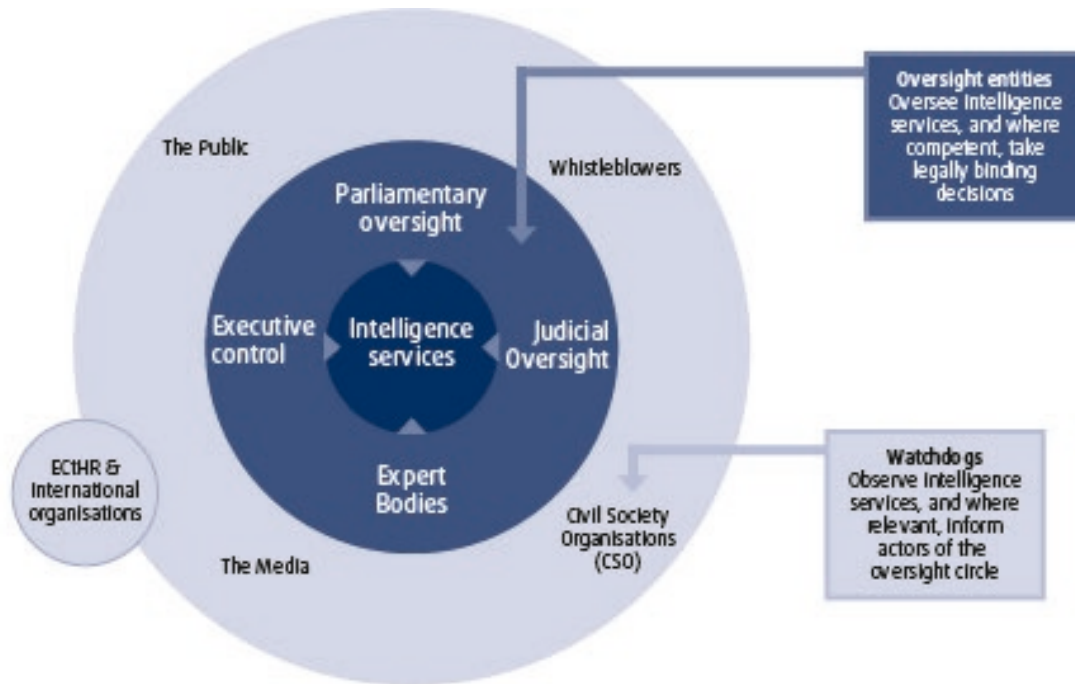
This graphic representation is on the whole accurate; however, no expert bodies exist in Italy.

According to the above-mentioned Law No. 124/2007, the President of the Italian Government is vested with the **oversight** of and overall **responsibility** for the security intelligence policy. Law No. 124/2007 also provides for a Parliamentary Committee for the Security of the Republic (**COPASIR**), **entrusted with a general oversight function**. The COPASIR, constantly and systematically verifies that the activities of the Security Intelligence System are carried out in accordance with both the Constitution and the law. In the peculiar matter of the *electronic research*, the President of the Council of Ministers reports to the Parliamentary Committee for the Security of the Republic **on a monthly basis**. There is also a **judicial review** by the Constitutional Court if a conflict of jurisdiction is raised between the government and the judiciary in relation to activities covered by State-secret status. **In no circumstances may State-secret status be invoked against the Constitutional Court**. The General Prosecutor by the Rome Court of Appeal authorizes **the activities of preventive intelligence interception**, regulated by the Law-Decree No. 144/2005, transposed into Law No. 155/2005 (Art. 4).

Furthermore, an internal form of control within the intelligence community is carried out by the **Inspection Office established within the DIS**, in accordance with Art. 4 sec. 3 para i) of the Law No. 124/2007. The Office is also accountable before the President of the Italian Government.

Eventually, the DPA may conduct investigations into the processing of personal data by the Security Intelligence System under Art. 58 of the Italian Privacy Code (Legislative Decree No. 196/2003⁹), as provided in Art. 160 of the Privacy Code.

Figure 5: Intelligence services' accountability scheme



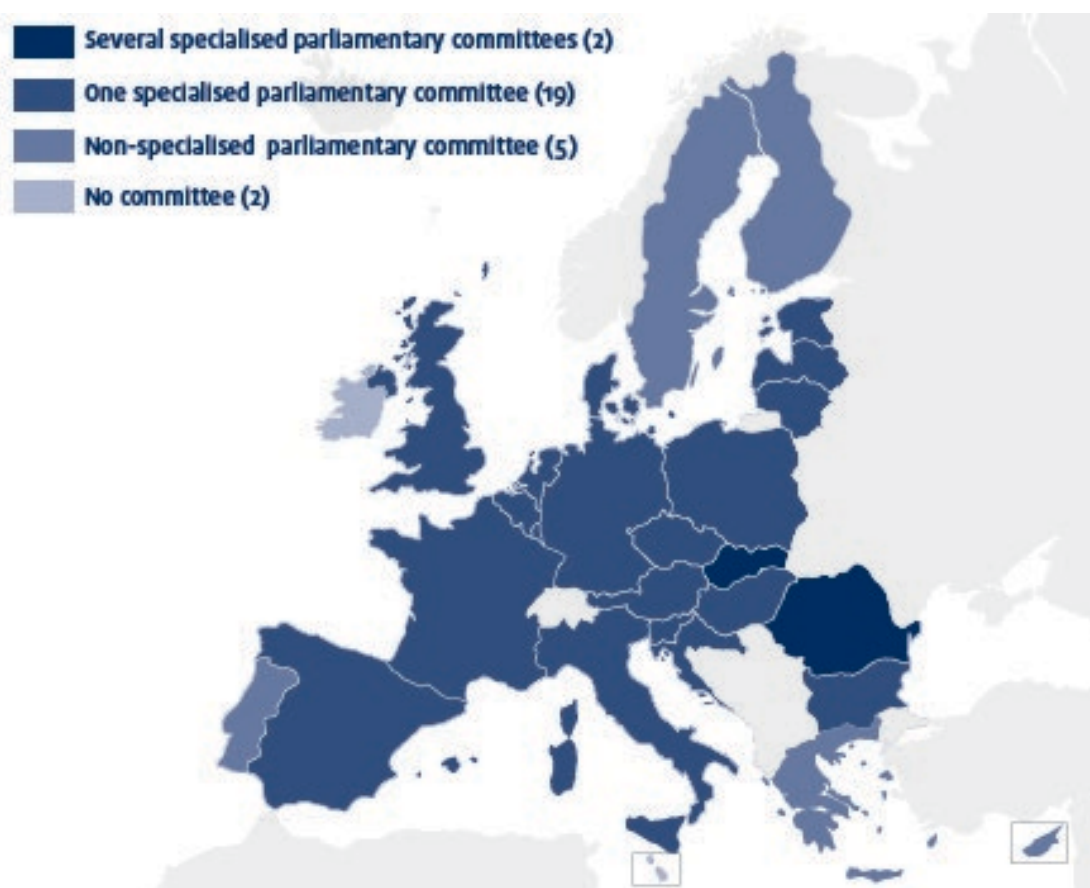
2.4. Parliamentary oversight of intelligence services in EU Member States

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.

This information is confirmed for Italy.

⁹ [Decreto Legislativo 30 giugno 2003, n. 196](#), “Codice in materia di protezione dei dati personali”.

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.

This information is confirmed for Italy.

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

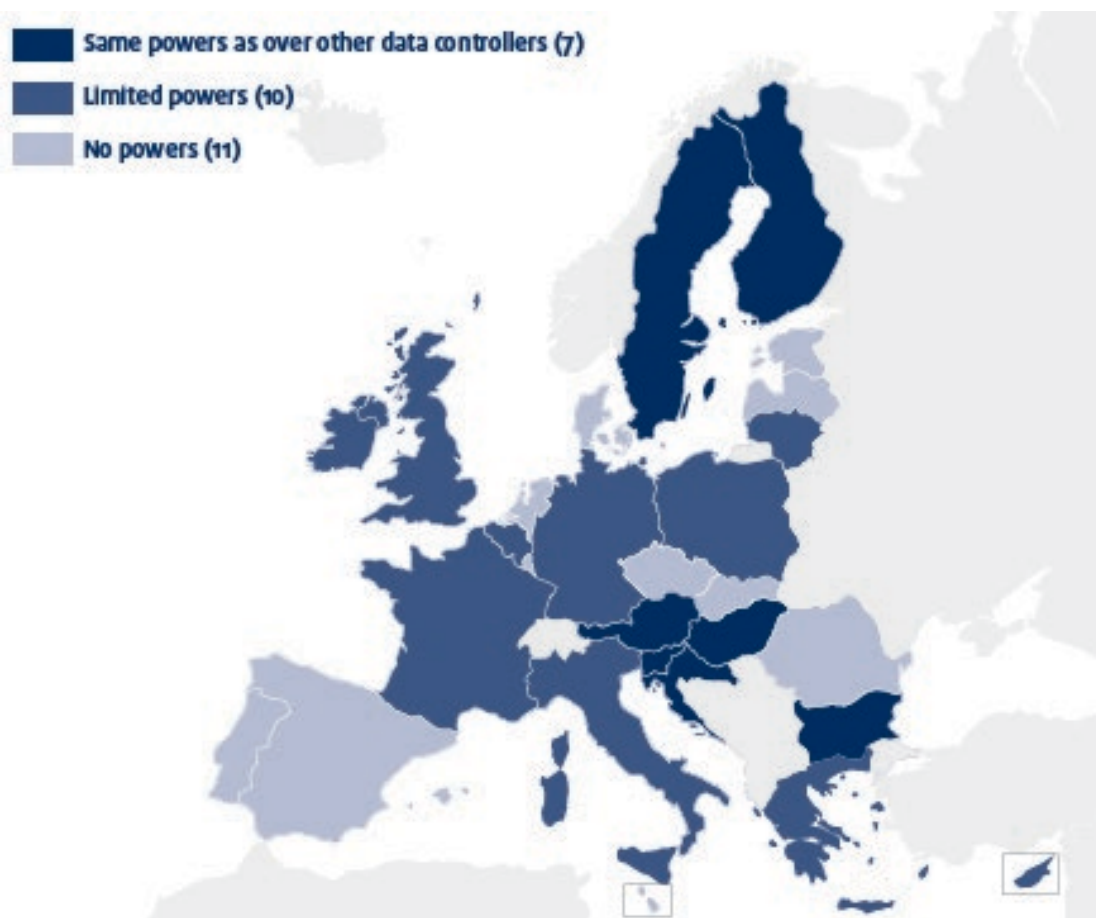
| EU Member State | Expert Bodies |
|-----------------|---------------|
| IT | N.A. |

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.

This information is confirmed for Italy.

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

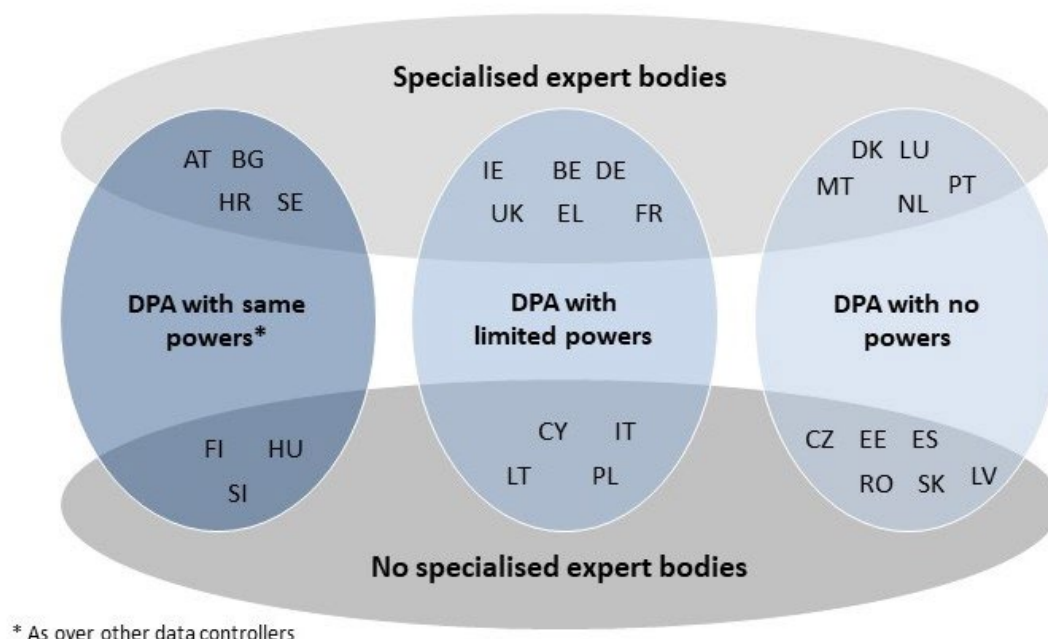


2.7. DPAs' and expert bodies' powers over intelligence techniques, by EU Member State

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.

This information is confirmed for Italy.

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.

This information is confirmed for Italy.

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

| | Judicial | Executive | Expert bodies | Services |
|----|----------|-----------|---------------|----------|
| IT | ✓ | | | |

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).

Italy does not carry out any activity of general surveillance of communication: each surveillance activity is linked to a specific legal provision or a specific political/judicial authorization (*targeted surveillance*).

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.

We confirm this information for Italy: this aspect is governed by Art. 160 of the Italian Data Protection Code.

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

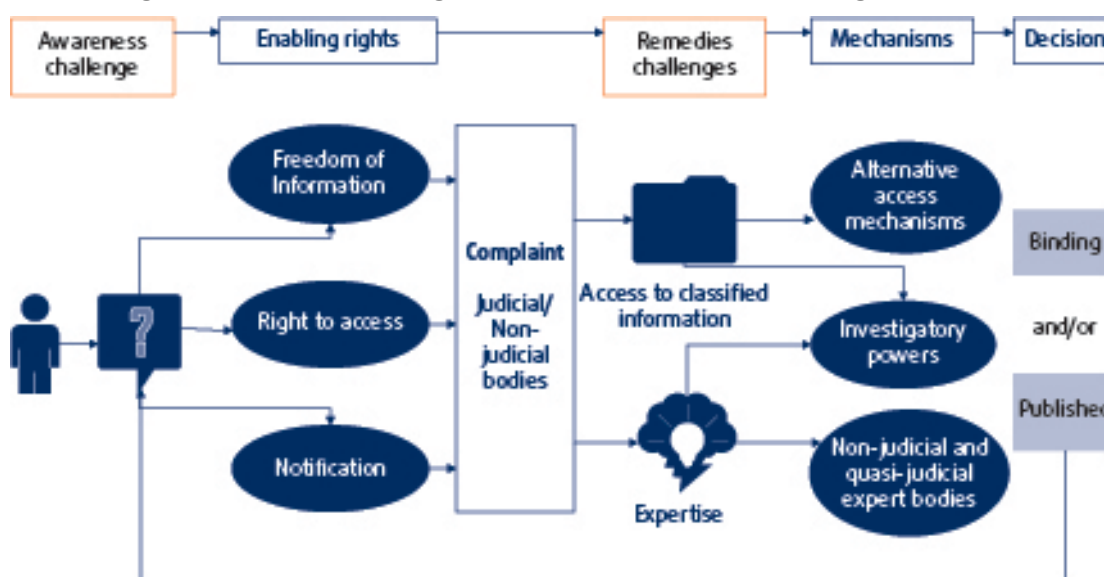
| | Executive (ministry) | Expert body(ies) | DPA | Parliamentary committee(s) | Ombuds institution |
|----|----------------------|------------------|-----|----------------------------|--------------------|
| IT | | | ✓ | | |

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.

This diagram is confirmed for Italy. However, it is worth stressing that if the documents consulted by the DPA are covered by State secrecy or if the disclosure of the results of the investigation could jeopardise State security, the interested party who may have requested the DPA to carry out the investigation may not be informed (Art. 160.2 of the Italian Privacy Code).

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.

This information is confirmed for Italy.

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 |
|----|--|-----------------------|---------------------------------|--|--------------------------|
| IT | Garante per la protezione dei dati personali | | | ¹⁰ | |

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.

This information is confirmed for Italy.

¹⁰ Pursuant to Art. 160.2 of the Italian Privacy Code mentioned above, whether the assessment has been requested by the interested party, the latter shall be provided with feedback on the outcome of the assessment, if this does not jeopardize the State security.

Figure 10: DPAs' remedial competences over intelligence services

