

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

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Country: Lithuania

FRANET contractor: Lithuanian Centre for Social Sciences in  
partnership with the Human Rights Monitoring Institute

Author name: Karolis Liutkevičius

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# 1. Summary

FRANET contractors are requested to highlight in 1 page **maximum** the key developments in the area of surveillance by intelligence services in their Member State. This introductory summary should enable the reader to have a snapshot of the evolution during the reporting period (mid-2016 until third quarter of 2022). It should mention:

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

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

### **FRA 2017 Report:**

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

### **FRANET data collection for the FRA 2017 Report:**

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

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

### **FRA 2015 Report:**

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

### **FRANET data collection for the FRA 2015 Report:**

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

FRANET contractors are requested to highlight in 1 page **maximum** the key developments in the area of surveillance by intelligence services in their Member State. This introductory summary should enable the reader to have a snapshot of the evolution during the reporting period (mid-2016 until third quarter of 2022). It should mention:

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

The security and intelligence services in Lithuania remain unchanged since the last reporting period, i.e., mid-2016. There are two: the State Security Department (*Valstybės saugumo departamentas*) for internal and external civil intelligence and the Second Investigation Department under the Ministry of National Defence (*Antrasis operatyvinių tarnybų departamentas prie Krašto apsaugos ministerijos*).

One of the main developments since the last reporting period is the revocation of oversight functions of the national Data Protection Authority and the general Ombuds institution. In 2018 the Parliament adopted a new law on protection of personal data processed for the purposes of criminal procedures and national security and defence. This law specifically precludes the Data Protection Authority from

exercising any control over data processing by national institutions for the purposes of national security and defence.<sup>1</sup>

Also, in late 2021 the Parliament amended the law on the general Ombuds institution, the Seimas Ombudsmen. The amendments preclude the Seimas Ombudsmen from investigating any activities of intelligence institutions.<sup>2</sup>

This latter change was made together with another key development, the introduction of a new expert body for oversight of intelligence services – the Intelligence Ombudsman. The Parliament adopted the Law on Intelligence Ombudsmen in late 2021 and it came into force on 1 January 2022.<sup>3</sup>

Under the Law, two intelligence ombudsmen are to be appointed by the Parliament, each for a five-year term.<sup>4</sup> The Intelligence Ombudsmen are tasked with carrying out independent supervision of intelligence institution activities and their compliance with human rights standards.<sup>5</sup> To this end, the Intelligence Ombudsmen are independent from other institutions, they are accountable to the Parliament, to which they must submit an annual report assessing intelligence institutions' activities.<sup>6</sup> The Ombudsmen only carry out assessment of the intelligence institutions' activities and methods legality, and do not have a role in approval of intelligence measures.<sup>7</sup> To ensure the activities of the Ombudsmen, the Intelligence Ombudsmen Office must also be established, with its own staff and budget, the Office is funded by the state budget and headed by one of the two Intelligence Ombudsmen.<sup>8</sup>

The Intelligence Ombudsmen can investigate intelligence services' activities and personal data processing, and may access their collected data. The Ombudsmen initiate their investigations based on complaints received from applicants, i.e. natural or legal persons, or intelligence officers, regarding intelligence institutions' or officers' abuse of power, acts in contravention of laws or human rights standards, or violations concerning personal data processing.<sup>9</sup> They also investigate complaints forwarded to them by Members of Parliament and other institutions or officers, but they have a right to refuse to consider any anonymous complaint.<sup>10</sup> Intelligence Ombudsmen may also open investigations on their own initiative, if they identify indications that intelligence officers or institutions may be abusing their powers or acting in violation of human rights, or committing personal data processing related violations.<sup>11</sup>

After completing the investigation, the Ombudsmen must send the complaining applicant or intelligence officer, as well as the concerned intelligence institution their decision with their findings.<sup>12</sup> Decisions of the Intelligence Ombudsmen are non-binding, but of recommendatory nature, though the intelligence

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<sup>1</sup> [Law on Legal Protection of Personal Data Processed for the Purposes of Prevention, Investigation, Detection, or Prosecution of Criminal Acts, Execution of Sentences, or National Security and Defence \(\*Asmens duomenų, tvarkomų nusikalstamų veikų prevencijos, tyrimo, atskleidimo ar baudžiamojo persekiojimo už jas, baudsmių vykdymo arba nacionalinio saugumo ar gynybos tikslais, teisinės apsaugos įstatymas\*\)](#), No. XIII-1435, 30 June 2018. Article 39(3).

<sup>2</sup> [Law on Seimas Ombudsmen \(\*Seimo kontrolierių įstatymas\*\)](#), No. VIII-950, 3 December 1998, as amended by [Law No. XIV-872](#), 23 December 2021, and other amendments. Article 12(2).

<sup>3</sup> [Law on Intelligence Ombudsmen \(\*Žvalgybos kontrolierių įstatymas\*\)](#), No. XIV-868, 23 December 2021.

<sup>4</sup> *Ibid.* Article 7.

<sup>5</sup> *Ibid.* Article 3.

<sup>6</sup> *Ibid.* Articles 4, 30.

<sup>7</sup> *Ibid.* Articles 11, 12.

<sup>8</sup> *Ibid.* Articles 25-27.

<sup>9</sup> *Ibid.* Articles 14, 15.

<sup>10</sup> *Ibid.* Articles 15, 18.

<sup>11</sup> *Ibid.* Articles 14, 15.

<sup>12</sup> *Ibid.* Article 22.

institution concerned must consider the decision and inform the Ombudsman about the results of this consideration and action, if any, taken to implement the decision.<sup>13</sup>

However, at the time of writing the Intelligence Ombudsmen and the Intelligence Ombudsmen Office exist only in law. The Parliament has not yet appointed any of the two Intelligence Ombudsmen envisioned under the law, nor has the Office been established.

Parliamentary oversight functions concerning intelligence services remain unchanged since the last reporting period, and are carried out by the same Parliamentary committee.

## 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 table is accurate for Lithuania, no amendments necessary.

	Civil (internal)	Civil (external)	Civil (internal and external)	Military
LT			State Security Department/ <i>Valstybės Saugumo Departamentas</i> (VSD)	Second Investigation Department under the Ministry of National Defence / <i>Antrasis operatyvinių tarnybų departamentas prie Krašto apsaugos ministerijos</i> (AOTD prie KAM)

### 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.*

#### New legislation:

- [Law on Legal Protection of Personal Data Processed for the Purposes of Prevention, Investigation, Detection, or Prosecution of Criminal Acts, Execution of Sentences, or National Security and Defence \(Asmens duomenų, tvarkomų nusikalstamų veikų prevencijos, tyrimo, atskleidimo ar baudžiamojų persekiojimo už jas, bausmių vykdymo arba nacionalinio saugumo ar gynybos tikslais, teisinės apsaugos įstatymas\)](#), No. XIII-1435, 30 June 2018.

<sup>13</sup> *Ibid.* Articles 22, 23.

- [Law on Intelligence Ombudsmen \(\*Žvalgybos kontrolierių įstatymas\*\)](#), No. XIV-868, 23 December 2021.

**Amended legislation:**

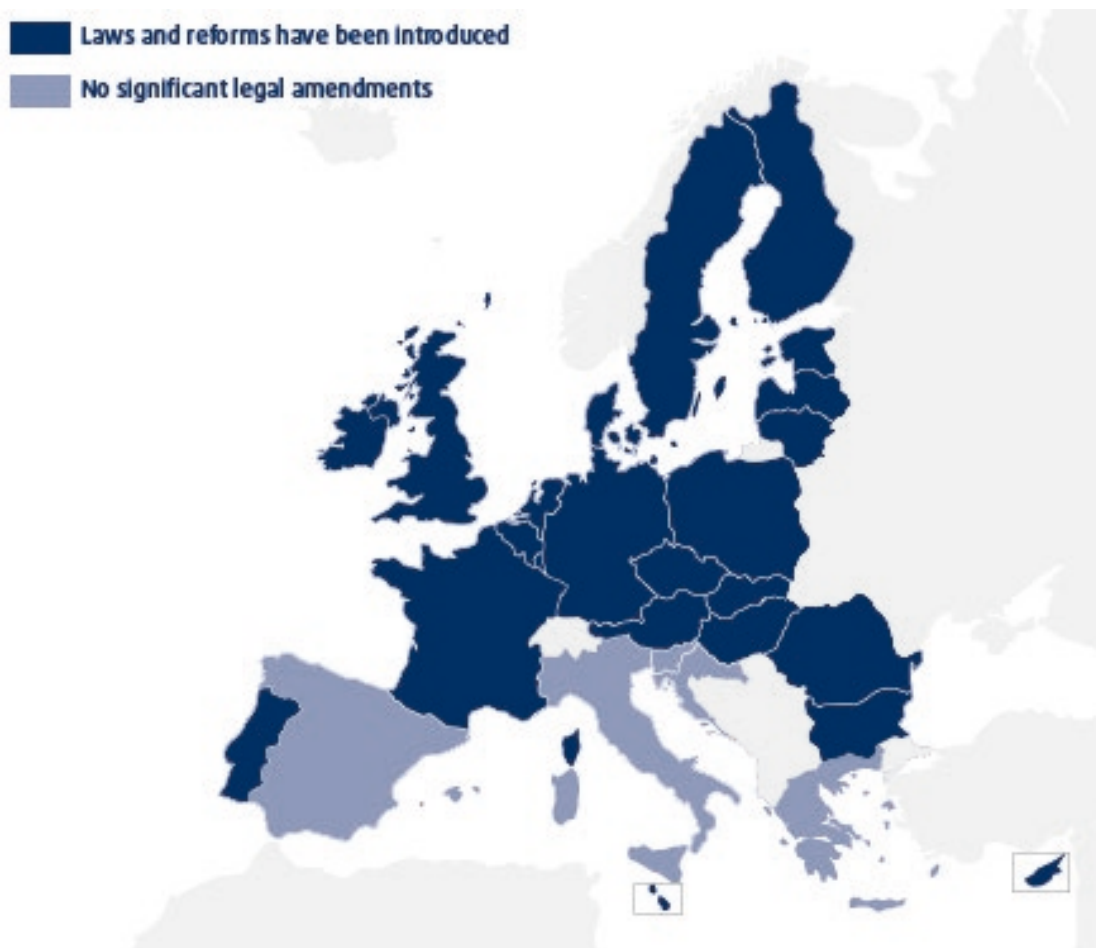
- [Law on Intelligence \(\*Žvalgybos įstatymas\*\)](#), No. VIII-1861, 17 July 2000, as amended by [Law No. XIV-869](#), 23 December 2021, and other amendments.

- [Law on Seimas Ombudsmen \(\*Seimo kontrolierių įstatymas\*\)](#), No. VIII-950, 3 December 1998, as amended by [Law No. XIV-872](#), 23 December 2021, and other amendments.

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

No.

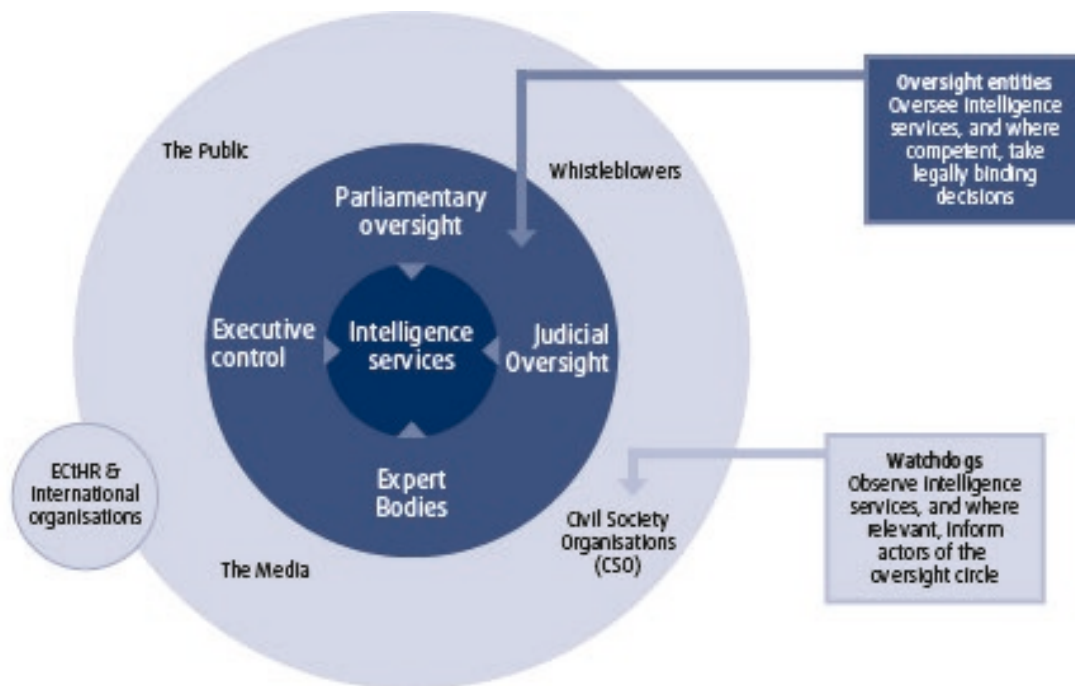
**Figure 1: EU Member States' legal frameworks on surveillance reformed since October 2015**



### 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.*

**Figure 5: Intelligence services' accountability scheme**



The diagram is accurate for Lithuania, no amendments necessary.

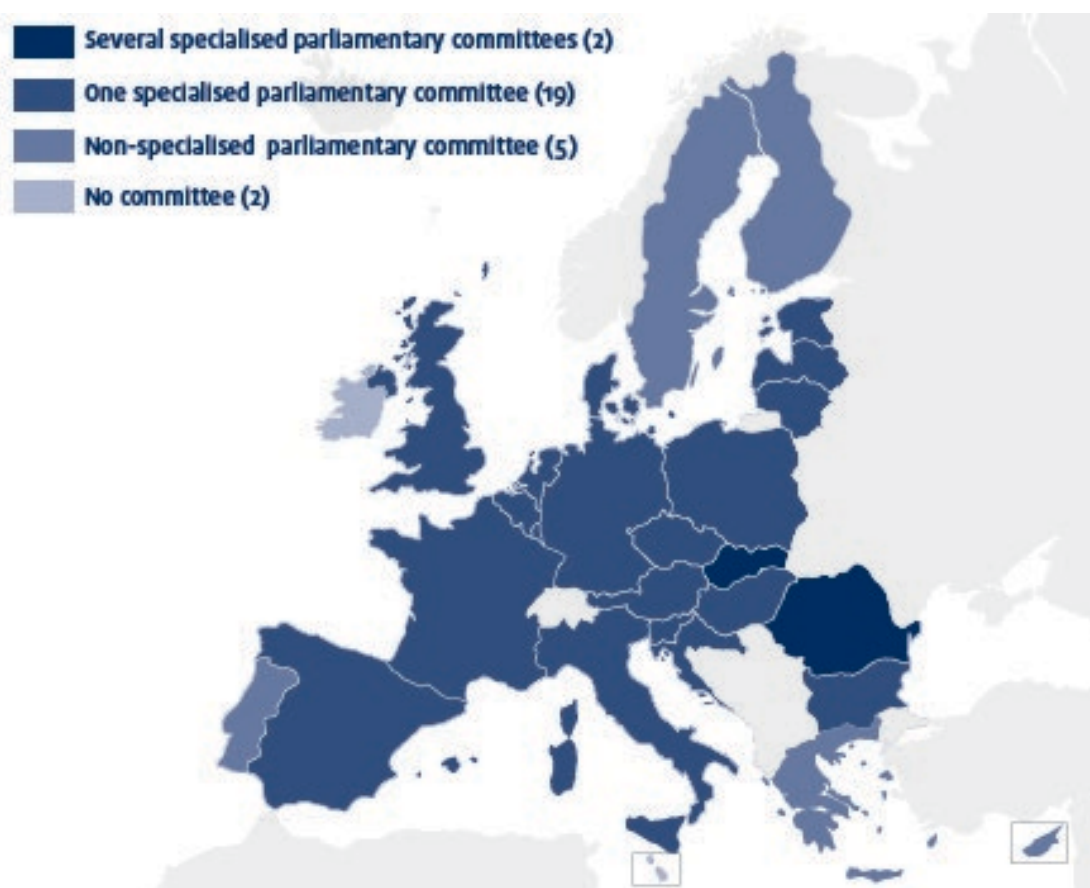
## **2.4. Parliamentary oversight of intelligence services in EU Member States**

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

The map is accurate for Lithuania, no amendments necessary.



**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.*

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

EU Member State	Expert Bodies
LT	Intelligence Ombudsman ( <i>Žvalgybos kontrolierius</i> )

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

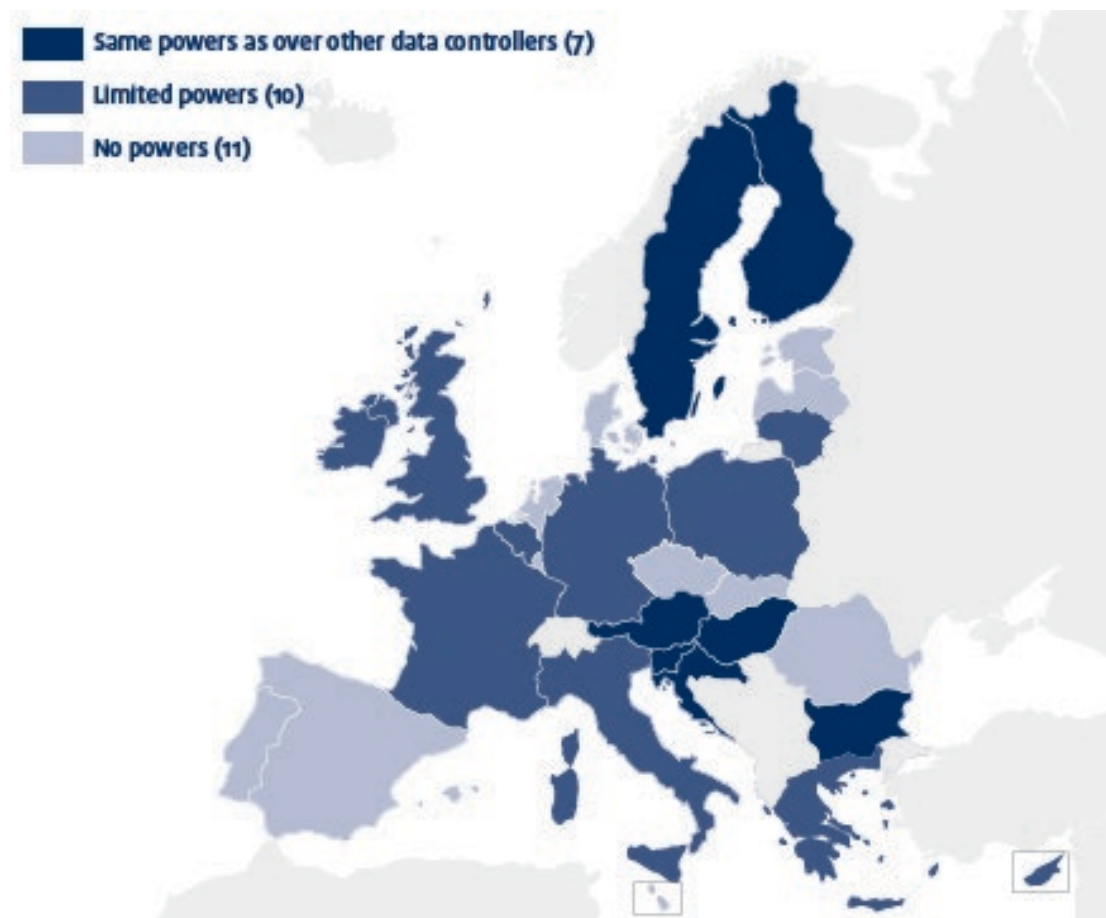
*FRANET contractors are requested to confirm that the map below (Figure 7 (p. 81) of the FRA 2017 report) illustrates the situation in your Member State in an accurate manner. If it is not the case, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.*

Lithuania should be moved to the group of Member States where DPAs have no powers over intelligence services.



Legislation introduced in 2018 specifically excludes the Lithuanian DPA from exercising any control over data processing by national institutions for the purposes of national security and defence.<sup>14</sup>

**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.*

Lithuania should be moved to the group of Member States with specialised expert bodies, and whose DPA has no powers over intelligence institutions.

The Law on Intelligence Ombudsmen, which was adopted in late 2021 and came into force on 1 January 2022, introduces an expert body, Intelligence Ombudsman, tasked with supervision of national intelligence institutions.<sup>15</sup> Also, legislation introduced in 2018 specifically excludes the Lithuanian

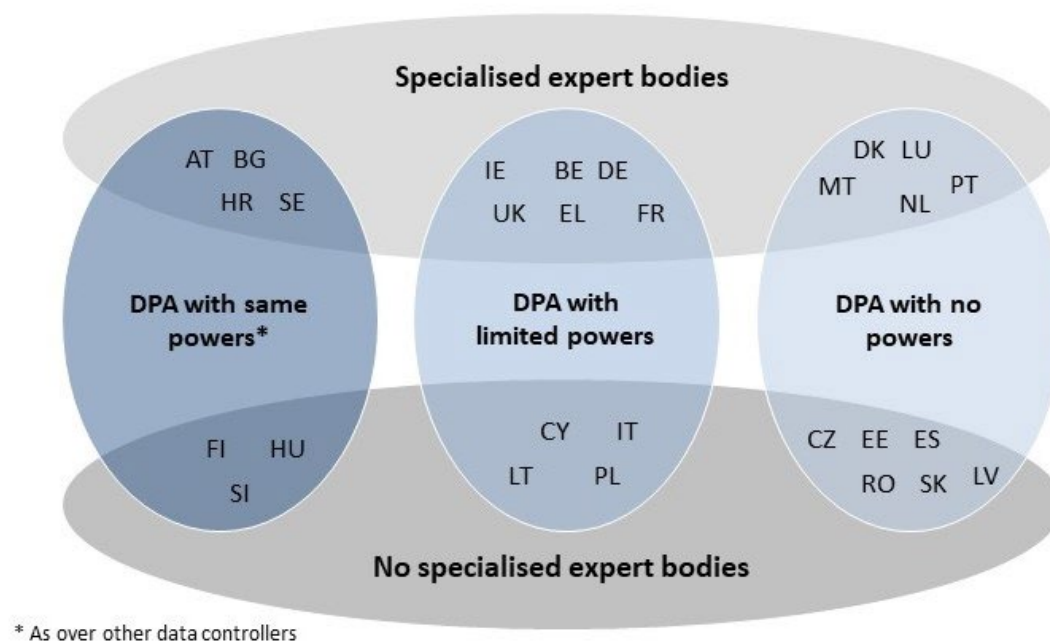
<sup>14</sup> [Law on Legal Protection of Personal Data Processed for the Purposes of Prevention, Investigation, Detection, or Prosecution of Criminal Acts, Execution of Sentences, or National Security and Defence \(\*Asmens duomenų, tyrimų nusikalstamų veikų prevencijos, tyrimo, atskleidimo ar baudžiamojo persekiojimo už jas, baudsmių vykdymo arba nacionalinio saugumo ar gynybos tikslais, teisinės apsaugos įstatymas\*\)](#), No. XIII-1435, 30 June 2018. Article 39(3).

<sup>15</sup> [Law on Intelligence Ombudsmen \(\*Žvalgybos kontrolierių įstatymas\*\)](#), No. XIV-868, 23 December 2021.

DPA from exercising any control over data processing by national institutions for the purposes of national security and defence.<sup>16</sup>

It is important to note, however, that at the time of writing the Intelligence Ombudsmen exist only in law. No actual Intelligence Ombudsman has been appointed by the Parliament.

**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.

The table is accurate for Lithuania, no amendments necessary.

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

	Judicial	Executive	Expert bodies	Services
LT	✓			

<sup>16</sup> [Law on Legal Protection of Personal Data Processed for the Purposes of Prevention, Investigation, Detection, or Prosecution of Criminal Acts, Execution of Sentences, or National Security and Defence \(Asmens duomenų, tvarkomų nusikalstamų veikų prevencijos, tyrimo, atskleidimo ar baudžiamojo persekiojimo už jas, baudsmių vykdymo arba nacionalinio saugumo ar gynybos tikslais, teisinės apsaugos įstatymas\)](#), No. XIII-1435, 30 June 2018. Article 39(3).

## 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).

The table is not applicable to Lithuania. The Lithuanian Law on Intelligence does not envision general surveillance of communication, and thus contains no approval/authorisation mechanism for such.

However, the Lithuanian legislation does require retention of metadata by electronic services providers for the purposes of crime prevention and national security.<sup>17</sup> This retained data can be accessed by intelligence services by direct request to the electronic service provider.<sup>18</sup> Under the Law on Intelligence, prior to obtaining information on “electronic communications events”, intelligence institutions must obtain authorisation from a regional court.<sup>19</sup> When an electronic services provider receives a request, they must provide the retained data within 24 hours, the requesting institutions is not required to provide a copy or extract of the regional court authorisation, only a general “legal ground for the request”.<sup>20</sup>

**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.

The Lithuanian DPA and the general Ombuds institution, i.e., the Seimas Ombudsmen, no longer have remedial powers.

<sup>17</sup> [Law on Electronic Communications \(Elektroninių ryšių įstatymas\)](#), No. IX-2135, 15 April 2004, as amended. Article 77(2).

<sup>18</sup> *Ibid.* Article 80(5).

[Description of Terms and Procedure for Provision of Data Stored, Generated, or Processed by Providers of Public Electronics Communications Networks and \(or\) Public Electronics Communications Services to the Competent Institutions of the Republic of Lithuania \(Viešųjų elektroninių ryšių tinklų ir \(arba\) viešųjų elektroninių ryšių paslaugų teikėjų saugomų, generuojamų ir \(ar\) tvarkomų duomenų teikimo Lietuvos Respublikos kompetentingoms institucijoms sąlygų ir tvarkos aprašas\)](#), Resolution of the Government, No. 1569, 3 November 2010, as amended.

<sup>19</sup> [Law on Intelligence \(Žvalgybos įstatymas\)](#), No. VIII-1861, 17 July 2000, as amended. Article 13(1) point 4.

<sup>20</sup> [Description of Terms and Procedure for Provision of Data Stored, Generated, or Processed by Providers of Public Electronics Communications Networks and \(or\) Public Electronics Communications Services to the Competent Institutions of the Republic of Lithuania \(Viešųjų elektroninių ryšių tinklų ir \(arba\) viešųjų elektroninių ryšių paslaugų teikėjų saugomų, generuojamų ir \(ar\) tvarkomų duomenų teikimo Lietuvos Respublikos kompetentingoms institucijoms sąlygų ir tvarkos aprašas\)](#), Resolution of the Government, No. 1569, 3 November 2010, as amended. Points 8, 12.

Legislation introduced in 2018 precludes the Lithuanian DPA from exercising any control over data processing by national institutions for the purposes of national security and defence.<sup>21</sup> Also, amendments to the Law on Seimas Ombudsmen, which came into force on 1 January 2022, preclude the Seimas Ombudsmen from investigating activities of intelligence institutions.<sup>22</sup>

A new expert body, the Intelligence Ombudsmen, has been given remedial powers concerning intelligence services' personal data processing and other activities. The Law on Intelligence Ombudsmen came into force on 1 January 2022.<sup>23</sup>

Remedial powers of the parliamentary committee remain unchanged.

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

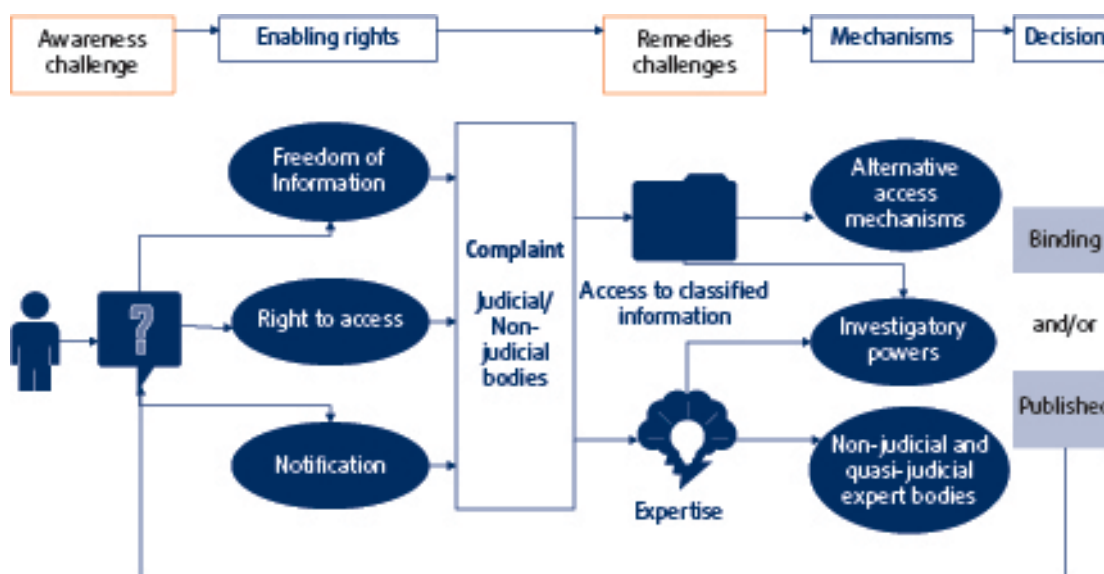
	Executive (ministry)	Expert body(ies)	DPA	Parliamentary committee(s)	Ombuds institution
LT		✓		✓	

## 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 is accurate for Lithuania, no amendments necessary.

**Figure 9: Implementing effective remedies: challenges and solutions**



<sup>21</sup> [Law on Legal Protection of Personal Data Processed for the Purposes of Prevention, Investigation, Detection, or Prosecution of Criminal Acts, Execution of Sentences, or National Security and Defence \(Asmens duomenų, tvarkomų nusikalstamų veikų prevencijos, tyrimo, atskleidimo ar baudžiamojo persekiojimo už jas, baudsmių vykdymo arba nacionalinio saugumo ar gynybos tikslais, teisinės apsaugos įstatymas\)](#), No. XIII-1435, 30 June 2018. Article 39(3).

<sup>22</sup> [Law on Seimas Ombudsmen \(Seimo kontrolierių įstatymas\)](#), No. VIII-950, 3 December 1998, as amended by [Law No. XIV-872](#), 23 December 2021, and other amendments. Article 12(2).

<sup>23</sup> [Law on Intelligence Ombudsmen \(Žvalgybos kontrolierių įstatymas\)](#), No. XIV-868, 23 December 2021. Article 3.

## 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.

The Lithuanian DPA and the general Ombuds institution, i.e., the Seimas Ombudsmen, no longer have remedial powers.

Legislation introduced in 2018 precludes the Lithuanian DPA from exercising any control over data processing by national institutions for the purposes of national security and defence.<sup>24</sup> Also, amendments to the Law on Seimas Ombudsmen, which came into force on 1 January 2022, preclude the Seimas Ombudsmen from investigating activities of intelligence institutions.<sup>25</sup>

A new expert body, the Intelligence Ombudsmen, has been given remedial powers concerning intelligence services' activities. Under the Law on Intelligence Ombudsmen, the Intelligence Ombudsman may fully access data collected by intelligence services when conducting investigations, and communicates their decision to the complainant when the investigation is completed.<sup>26</sup> Decisions of the Intelligence Ombudsmen are not binding and not subject to review.<sup>27</sup>

Remedial powers of the parliamentary committee remain unchanged.

**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
LT	Intelligence Ombudsmen				
	Ombudsperson				
	State Data Protection				
	Parliamentary Committee on National Security and Defence				

Note:

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

Source: FRA, 2017

<sup>24</sup> [Law on Legal Protection of Personal Data Processed for the Purposes of Prevention, Investigation, Detection, or Prosecution of Criminal Acts, Execution of Sentences, or National Security and Defence \(Asmens duomenų, tvarkomų nusikalstamų veikų prevencijos, tyrimo, atskleidimo ar baudžiamojo persekiojimo už jas, baudsnių vykdymo arba nacionalinio saugumo ar gynybos tikslais, teisinės apsaugos įstatymas\)](#), No. XIII-1435, 30 June 2018. Article 39(3).

<sup>25</sup> [Law on Seimas Ombudsmen \(Seimo kontrolierių įstatymas\)](#), No. VIII-950, 3 December 1998, as amended by [Law No. XIV-872](#), 23 December 2021, and other amendments. Article 12(2).

<sup>26</sup> [Law on Intelligence Ombudsmen \(Žvalgybos kontrolierių įstatymas\)](#), No. XIV-868, 23 December 2021. Articles 12, 22.

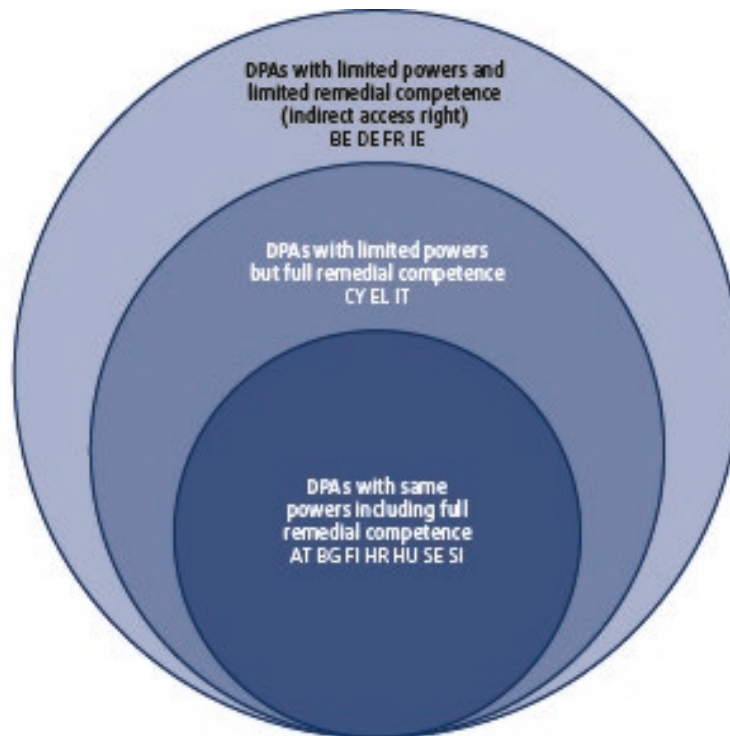
<sup>27</sup> *Ibid.* Article 22(3).

### 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.*

Lithuania is not included in the below figure, but it also does not belong in any of the three sections, as the national DPA has no powers and remedial competence concerning intelligence services. Legislation introduced in 2018 specifically precludes the Lithuanian DPA from exercising any control over data processing by national institutions for the purposes of national security and defence.<sup>28</sup>

**Figure 10: DPAs' remedial competences over intelligence services**



<sup>28</sup> [Law on Legal Protection of Personal Data Processed for the Purposes of Prevention, Investigation, Detection, or Prosecution of Criminal Acts, Execution of Sentences, or National Security and Defence \(\*Asmens duomenų, tvarkomų nusikalstamų veikų prevencijos, tyrimo, atskleidimo ar baudžiamojo persekiojimo už jas, baudsmių vykdymo arba nacionalinio saugumo ar gynybos tikslais, teisinės apsaugos įstatymas\*\)](#), No. XIII-1435, 30 June 2018. Article 39(3).