

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

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Country: Netherlands

FRANET contractor: Art.1, Dutch knowledge centre on  
discrimination

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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.*

### Intelligence and Security Services Act 2017

In the Netherlands, the Intelligence and Security Services Act 2017 ( *Wet op de inlichtingen- en veiligheidsdiensten 2017*) entered into force on 1 May 2018.<sup>1</sup> It replaced the Intelligence and Security Services Act 2002. The act lays down the authorities of the General Intelligence and Security Service (*Algemene Inlichtingen en Veiligheidsdienst*) or AIVD and the Military Intelligence and Security

<sup>1</sup> The Netherlands, Intelligence and Security Services Act 2017 (*Wet op de inlichtingen- en veiligheidsdiensten 2017*), [26 July 2017](#).

Service (*Militaire Inlichtingen- en Veiligheidsdienst*) or MIVD and extends the powers of both services to have access into automated information systems (hacking) and to intercept internet traffic, email and phone communications allowing for interception of bulk data.<sup>2</sup>

In the meantime, on 21 March 2018, a consultative referendum on the Act was held. The Intelligence and Security Services Act 2017 was rejected in the referendum and the government decided to amend the Act.<sup>3</sup> A survey on the referendum found that voters name the following arguments: privacy is undermined by the law (38.8% of respondents including voters in favour and against the law), the law in its current form was not good (12%), people do not want the collected data to end up with foreign intelligence services (10%).<sup>4</sup>

### *The Act amending the Intelligence and Security Services Act 2017*

On 15 July 2021, the Act amending the Intelligence and Security Services Act 2017 took effect.<sup>5</sup> The Amendment Act introduced a number of minor adjustments. In the eyes of the NGO Bits of Freedom the changes are mainly of cosmetic nature.<sup>6</sup> Adjustments were among other things: The ‘as targeted as possible’ requirement is included in the amendment. This means that the AIVD and MIVD must exercise their surveillance powers in such a way that they are as narrowly targeted as possible. They also must demonstrate and justify what measures they use to comply with this requirement. Furthermore, the amendments obliges the AIVD and MIVD, when exchanging unevaluated data with foreign services, the Dutch Review Committee on the Intelligence and Security Services (CTIVD) must always be informed.

Under the Intelligence and Security Services Act 2017, the Investigatory Powers Commission (*Toetsingscommissie inzet bevoegdheden*) or TIB assesses the legality of the prior authorisation granted by the minister of the Interior and Kingdom Relations to the General Intelligence and Security Service (AIVD) and the minister of Defence to the Military Intelligence and Security Service (MIVD). get real-time and fully automated access to databases, to intrude into automated information systems (hacking) or to tap on a large-scale into the Internet traffic.<sup>7</sup> The Investigatory Powers Commission (*Toetsingscommissie inzet bevoegdheden*) or TIB indicated in its annual reports that it assessed a total of 9,750 requests from the General Intelligence and Security Service (AIVD) and the Military Intelligence and Security Services from 1 May 2018 to 31 December 2021. In the period from 1 May 2018 to 1 April 2019, the Investigatory Powers Commission ruled that in 4.5% of the requests from the General Intelligence and Security Service (AIVD) and 5,8% of the requests of the Military Intelligence and Security Service (MIVD), the authorisation had been granted unlawfully.<sup>8</sup> From 1 April 2019 to 1 April 2020, these figures were respectively: 1.7% and 3.1%.<sup>9</sup> From 1 April 2020 to 31 December 2020, these figures were respectively: 1,9% and 8.1%.<sup>10</sup> In the 2021 calendar year, these figures were

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<sup>2</sup> The Netherlands, Intelligence and Security Services Act 2017 (*Wet op de inlichtingen- en veiligheidsdiensten 2017*), [Articles 32-37](#).

<sup>3</sup> The Netherlands, Minister of Interior and Kingdom relations / Minister of Defense (*Minister van Binnenlandse Zaken en Koninkrijksrelaties/ Minister van Defensie*) (2018), Draft bill for an Act amending the Act on Intelligence and Security Services 2017 ([Concept-wetsvoorstel. Wet to wijziging van de Wet op de inlichtingen- en veiligheidsdiensten 2017](#)).

<sup>4</sup> Foundation Electoral Studies Netherlands (*Stichting Kiezersonderzoek Nederland*) (2022), The Wiv Referendum. National Referendum Study 2018 ([Het Wiv-referendum. Nationaal Referendum Onderzoek 2018](#)).

<sup>5</sup> The Netherlands, Bulletin of Acts, Orders and Decrees of the Kingdom of the Netherlands (*Staatsblad van het Koninkrijk der Nederlanden*) (2021), Act of 16 June 2021 amending Act on Intelligence and Security Services 2017 (['Wet van 16 juni 2021 tot wijziging van de Wet op de inlichtingen- en veiligheidsdiensten 2017'](#)), Volume 2021, No. 322.

<sup>6</sup> Bits of Freedom (2021), ['Update on the Dutch "Dragnet-Act": One step forward, two steps back?'](#), Blog, 21 July 2021

<sup>8</sup> The Netherlands, Investigatory Powers Commission (*Toetsingscommissie inzet bevoegdheden*) (2020), [Annual report 2018/2019](#).

<sup>9</sup> The Netherlands, Investigatory Powers Commission (*Toetsingscommissie inzet bevoegdheden*) (2021), [Annual report 2019/2020](#).

<sup>10</sup> The Netherlands, Investigatory Powers Commission (*Toetsingscommissie inzet bevoegdheden*) (2021), [Annual report 2020](#).

respectively: 3.3% and 7.1%.<sup>11</sup> Reasons for assessing requests as unlawful are: incorrect information provided by the services, insufficient substantiation of the necessity of the request, lack of proportionality in the request, lack of legal basis in the requests or because the request exceeds the scope of the law.

Under the Intelligence and Security Services Act 2017, the Review Committee for the Intelligence and Security Services (*Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten*) or CTIVD performs two tasks: a general oversight task and a task to handle complaints by citizens and to handle reports about any suspicion of wrongdoing.<sup>12</sup> The CTIVD has two separate departments for each task. The results of the general oversight tasks which the CTIVD performs are – among other things – made public in reports. Often these reports contain recommendations, but these are not binding. Under its task to handle complaints, the CTIVD has the power to issue binding decisions on complaints. That means that the involved minister has a duty to implement the decisions on the complaints. An appeal to this binding ruling is not possible. From 1 January 2018 to 31 December 2021 the Complaints Handling Department of the CTIVD handled 48 complaints, 5 of which were found to be partly founded.<sup>13</sup> On 15 June 2022, Complaints Handling Department of the CTIVD ruled that five datasets (containing the data of millions of citizens) were kept unlawfully by the two secret services, and had to be immediately deleted.<sup>14</sup> The class action complaint that led to this decision was filed by the NGO Bits of Freedom and was the first of its kind. It was the first time the CTIVD's Complaints Department has used its binding authority.

On 20 January 2021, the Evaluation Commission of the Intelligence and Security Services Act 2017 published its report.<sup>15</sup> It concludes that the Act has largely achieved what was intended. Under the Act the General Intelligence and Security Service (*Algemene Inlichtingen en Veiligheidsdienst*) or AIVD and the Military Intelligence and Security Service (*Militaire Inlichtingen- en Veiligheidsdienst*) or MIVD have enough essential powers and the guarantees on the work of both services have been strengthened.

However, the Evaluation Commission also concludes that the Act is deficient in certain respects. The Act does not sufficiently match the technological complexity and the dynamics of the operational practice of the services. For example, it appears that in some respects the explanatory notes in explanatory memorandum to Article 45 (on hacking powers) do not adequately reflect to the speed and complexity of the hacking power. In that explanation of the law, there are a number of examples that do not always do justice to the complexity and diversity of practice. Here are, according to the Evaluation Committee, too many based on 'individual' targets and known threats. In practice, investigations into as yet hidden threat, where, for example, it is not yet known who the targets are, is also an important task of the AIVD and MIVD.

In addition, important concepts of the Act are not always formulated and delineated in a consistent, clear and technology-independent way. This means that disputes can arise between the AIVD and

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<sup>11</sup> The Netherlands, Investigatory Powers Commission (*Toetsingscommissie inzet bevoegdheden*) (2022), [Annual report 2021](#).

<sup>12</sup> The Netherlands, Intelligence and Security Services Act 2017 (*Wet op de inlichtingen- en veiligheidsdiensten 2017*), [Chapter 7, Articles 97-134](#).

<sup>13</sup> The Netherlands, Review Committee for the Intelligence and Security Services (*Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten*) (2022), [Annual report 2021](#); The Netherlands, Review Committee for the Intelligence and Security Services (*Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten*) (2021), [Annual report 2020](#); The Netherlands, Review Committee for the Intelligence and Security Services (*Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten*) (2020), [Annual report 2019](#); The Netherlands, Review Committee for the Intelligence and Security Services (*Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten*) (2019), [Annual report 2018](#).

<sup>14</sup> The Netherlands, Review Committee for the Intelligence and Security Services (*Commissie van Toezicht op de Inlichtingen en Veiligheidsdiensten*) (2022), Decision on Bits of Freedom's complaint about the actions of the AIVD and MIVD ([Beslissing inzake de klacht van Bits of Freedom over het handelen van de AIVD en de MIVD](#)).

<sup>15</sup> The Netherlands, Evaluation Commission Intelligence and Security Services Act 2017 (*Evaluatiecommissie Wet op de inlichtingen- en veiligheidsdiensten 2017*) (2021), Evaluation 2020 - Intelligence and Security Services Act 2017 ([Evaluatie 2020 - Wet op de inlichtingen- en veiligheidsdiensten 2017](#)).

MIVD and the two oversight commissions. In the event of disputes about those concepts or about the open standards in the Act, the Act does not offer any possibility of dispute resolution between the two services and the two oversight commissions (the Investigatory Powers Commission and the Review Committee for the Intelligence and Security Services or CTIVD). The Act also lacks a regulation for dealing with bulk data and sufficiently detailed standards for international cooperation between services.

*The Temporary act on investigations by AIVD and MIVD into countries with offensive cyber programmes and other upcoming changes*

On 29 April 2022, the Dutch government introduced a draft for a bill called the “Temporary act on investigations by AIVD and MIVD into countries with offensive cyber programmes” (*Tijdelijke wet onderzoeken AIVD en MIVD naar landen met een offensief cyberprogramma*). The governments considers that the threat of cyber-attacks from Russia and China, among others, has never been quite as real. At the same time, the Intelligence and Security Services Act 2017 does not give the AIVD and MIVD enough scope for properly monitoring the digital threat and taking adequate counter measures. The draft for this bill was open for internet consultation from 1 April 2022 to 14 April 2022 and a revised text was send to parliament in December 2022.<sup>16</sup> The temporary law will give the General Intelligence and Security Service (*Algemene Inlichtingen en Veiligheidsdienst*) or AIVD and the Military Intelligence and Security Service (*Militaire Inlichtingen- en Veiligheidsdienst*) or MIVD more powers and thereby more opportunities for intercepting internet traffic and hacking. This law will be applied in investigations by both services into countries with an offensive cyber programme against the Netherlands or Dutch interests.

The bill foresees in a different supervisory system than the one under the Intelligence and Security Services Act 2017. The explanation for the change given in the Explanatory Memorandum to the bill is that under the Intelligence and Security Services Act 2017 the static ex-ante assessment of the Investigatory Powers Commission (*Toetsingscommissie inzet bevoegdheden or TIB*) is less well suited to certain aspects of the use of the hacking power.<sup>17</sup> The bill modifies the powers of the Investigatory Powers Commission (TIB) to assess the legality of the prior authorisation granted by the ministers to intercepting internet traffic or hacking and transfers some of these powers to the Intelligence and Security Services Review Committee (CTIVD), who can exercise binding oversight. This means that the CTIVD follows the entire process and can halt the operation at any moment if anything unlawful is identified. The CTIVD can also demand that all unlawfully collected data must be destroyed. Under this new law the CTIVD and the TIB will be given additional financial resources: €1 million in 2022 and €2,2 million structurally from 2023.

Should there be a clash between the oversight bodies and the intelligence services the matter could be brought, by the responsible minister, before the Administrative Jurisdiction Division of the Council of State. This is not possible under the aforementioned Intelligence and Security Services Act 2017. On 15 April 2022, the Netherlands Institute for Human Rights (*College voor de rechten van de mens*) sent an advisory letter to the responsible ministers.<sup>18</sup> The Netherlands Institute for Human Right states in this letter that the broadening of the powers of the AIVD and MIVD is worrisome from a human rights

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<sup>16</sup> The Netherlands, Minister of Interior and Kingdom relations / Minister of Defence (*Minister van Binnenlandse Zaken en Koninkrijksrelaties / Minister van Defensie*) (2022), Bill for the Temporary act on investigations by AIVD and MIVD into countries with offensive cyber programmes ([\*Tijdelijke wet onderzoeken AIVD en MIVD naar landen met een offensief cyberprogramma\*](#)).

<sup>17</sup> The Netherlands, Minister of Interior and Kingdom relations / Minister of Defence (*Minister van Binnenlandse Zaken en Koninkrijksrelaties / Minister van Defensie*) (2022), Explanatory Memorandum to the Bill for the Temporary act on investigations by AIVD and MIVD into countries with offensive cyber programmes([\*Tijdelijke wet onderzoeken AIVD en MIVD naar landen met een offensief cyberprogramma\*](#), *Memorie van Toelichting*).

<sup>18</sup> The Netherlands Institute for Human Rights (*College voor de rechten van de mens*) (2022), ‘Legislative advice on Temporary act on investigations by AIVD and MIVD into countries with offensive cyber programmes’([\*Wetgevingsadvies inzake Tijdelijke wet onderzoek AIVD en MIVD naar landen met offensief cyberprogramma\*](#)), Letter to Minister of Interior and Kingdom relations and Minister of Defence, 15 April 2022.



perspective because the use of these powers is insufficiently restricted in the bill. The Netherlands Institute for Human Rights stresses moreover that the bill and the explanatory memorandum to the bill do not mention against which countries the future act will be applicable. Moreover the bill states that the future act will become applicable when a mere suspicion arises that a specific country is behind a cyberattack, but is not clear from the bill on the basis of which criteria it will be determined whether a country has an offensive cyber programme. The bill was the reason for Ben Huberts to resign from the Investigatory Powers Commission (*Toetsingscommissie inzet bevoegdheden or TIB*). Huberts states in a personal statement on his website that under this new law his specific role (technical risk analysis) would mostly be eliminated.<sup>19</sup> In addition he expressed a number of concerns, the bulk interception powers would be stripped of a lot of regulatory requirements. Furthermore, according to him, there are new powers, like using algorithmic analysis on bulk intercepted data, without a requirement to get external approval.<sup>20</sup> Finally, significant parts of the oversight would move from up front ('ex ante') to ongoing or afterwards ('ex post').<sup>21</sup>

Already an amendment to the draft bill for the "Temporary act on investigations by AIVD and MIVD into countries with offensive cyber programmes" (*Tijdelijke wet onderzoeken AIVD en MIVD naar landen met een offensief cyberprogramma*) is in preparation and has been part of a public internet consultation which started on 22 December 2022 and ended on 16 January 2023.<sup>22</sup> It applies the new oversight regime to all bulk datasets acquired with special powers (special powers are subject to an ex ante authorisation needing the agreement of the TIB).<sup>23</sup> More in particular, every year the further use of acquired bulk datasets not only needs a new authorisation by the minister, but also the CTIVD needs to agree. A refusal by the CTIVD can be challenged in court. A formal bill is expected to be sent to parliament in the first half of 2023.

Finally, a more comprehensive bill for the revision of the Intelligence and Security Services Act 2017 is envisaged by government, including the recommendations of the Review Committee mentioned earlier. A memo discussing the main topics for revision – including the oversight model - is expected to be sent to parliament for discussion later this year (2023).

### *The Coordination on the and Analysis of Counterterrorism and National Security Act*

On 9 November 2021, the Dutch Minister of Justice and Security sent the bill for The Coordination on the and Analysis of Counterterrorism and National Security Act (*Wet verwerking persoonsgegevens coördinatie en analyse terrorismebestrijding en nationale veiligheid*) to the House of Representatives.<sup>24</sup> The bill gives powers to the National Coordinator for Counterterrorism and Security (NCTV) to collect data on citizens. At the end of 2021, the bill is still under review of the House of Representatives. The NCTV frequently analyses trends and phenomena in the field of counterterrorism and national security. This involves processing personal data – not only names and addresses, but sometimes also extra sensitive data, for example about a person's religion or beliefs. However, the NCTV is not at present legally authorised to process such data. This is why, on 9 November 2021, the Minister of Justice and Security submitted a bill to the House of Representatives aimed at anchoring these tasks and powers in the law. On 31 March 2022 the Review Committee for the Intelligence and Security Services

<sup>19</sup> Huberts, B. (2022), '[On my resignation as regulator of the Dutch intelligence and security services](#)', 9 September 2022.

<sup>20</sup> Huberts, B. (2022), '[On my resignation as regulator of the Dutch intelligence and security services](#)', 9 September 2022.

<sup>21</sup> Huberts, B. (2022), '[On my resignation as regulator of the Dutch intelligence and security services](#)', 9 September 2022.

<sup>22</sup> The Netherlands, Minister of Interior and Kingdom relations / Minister of Defence (*Minister van Binnenlandse Zaken en Koninkrijksrelaties / Minister van Defensie*) (2022), Memorandum of amendment. Bill for the Temporary act on investigations by AIVD and MIVD into countries with offensive cyber programmes ([Nota van wijziging Tijdelijke wet onderzoeken AIVD en MIVD naar landen met een offensief cyberprogramma](#)).

<sup>23</sup> The proposal doesn't cover bulkdatasets acquired through general powers, such as using informants or based on cooperation with foreign services.

<sup>24</sup> The Netherlands, Minister of Justice and Security / Minister for Legal Protection (*Minister van Justitie en Veiligheid / Minister voor Rechtsbescherming*) (2021), Bill on the Coordination and Analysis of Counterterrorism and National Security Act ([Wetsvoorstel voor Wetverwerking persoonsgegevens coördinatie en analyse terrorismebestrijding en nationale veiligheid](#)).

(*Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten*) sent a memo to House of Representatives claiming that the activities addressing national security should be part of one comprehensive regulatory framework and that therefore the activities of the NCTV with the national security domain should be incorporated in the Wiv 2017. Bringing those activities under the GDPR will not result in good balance of interests at stake as <sup>25</sup>

However, the bill contains so many exceptions, that in reality the GDPR and the safeguards contained therein do not play a significant role. Moreover the bill contains no complaint mechanism and no special oversight system. The bill makes the Dutch DPA responsible for the monitoring of the future act because the act fully falls within the scope of the GDPR and the GDPR and the Implementation Act GDPR. <sup>26</sup> The explanatory memorandum to the bill states that incidental and structural costs for the tasks in this bill will be covered within the existing budget of the Ministry of Justice and Security. <sup>27</sup>

From 1 December 2021 to 1 December 2022, the Review Committee for the Intelligence and Security Services (CTIVD) applied enhanced oversight of cable interception by the AIVD and MIVD. Reason for the enhanced oversight was the conclusion of a review report of the CTIVD about the use of cable interception by the AIVD and the MIVD. <sup>28</sup> Central question of this rapport was: In the period from 1 May 2018 to 31 March 2021, did the AIVD and the MIVD lawfully operationalise an access location and lawfully exercise the cable interception in the snapshot phase? The duty of care is laid down in Article 24 of the Intelligence and Security Services Act 2017. That duty means that the heads of the AIVD and the MIVD are responsible for applying technical, staffing and organizational measures to ensure data is processed lawfully. The duty of care includes the continuous monitoring by both services of how they process data and to ensure that this data-processing is and continues to be in accordance with the applicable legal requirements. At the end of August 2021, the CTIVD shared its findings of the investigation with both heads of service, in light of their specific responsibilities for the duty of care. Both services have since drafted an improvement plan. In addition to the improvement plan, the services intend to implement cable interception for the intelligence production process in phases. In November 2022 the CTIVD terminated the enhanced oversight and made cable interception part of its permanent oversight and monitoring mechanisms.

## 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 information concerning the Netherlands in the table below is correct.

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<sup>25</sup> The Netherlands, Review Committee for the Intelligence and Security Services (*Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten*) (2022), [Letter to House of Representatives](#), 31 March 2022.

<sup>26</sup> The Netherlands, Minister of Justice and Security / Minister for Legal Protection (*Minister van Justitie en Veiligheid / Minister voor Rechtsbescherming*) (2021), ), Explanatory Memorandum. Bill on the Coordination and Analysis of Counterterrorism and National Security Act ([Memorie van Toelichting. Wetsvoorstel voor Wetverwerking persoonsgegevens coördinatie en analyse terrorismebestrijding en nationale veiligheid](#)).

<sup>27</sup> The Netherlands, Minister of Justice and Security / Minister for Legal Protection (*Minister van Justitie en Veiligheid / Minister voor Rechtsbescherming*) (2021), ), Explanatory Memorandum. Bill on the Coordination and Analysis of Counterterrorism and National Security Act ([Memorie van Toelichting. Wetsvoorstel voor Wetverwerking persoonsgegevens coördinatie en analyse terrorismebestrijding en nationale veiligheid](#)).

<sup>28</sup> The Netherlands, Review Committee for the Intelligence and Security Services (*Commissie van Toezicht op de Inlichtingen en Veiligheidsdiensten*) (2022), Review report No. 75 about the use of cable interception by the AIVD and the MIVD ([Toezichtsrapport nr. 75 over de inzet van kabelinterceptie door de AIVD en de MIVD](#)).



	Civil (internal)	Civil (external)	Civil (internal and external)	Military
NL			General Intelligence and Security Service/ <i>Algemene Inlichtingen- en Veiligheidsdienst</i> (AIVD)	Military Intelligence and Security Service/ <i>Militaire Inlichtingen- en Veiligheidsdienst</i> (MIVD)

## 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 the Netherlands the legal framework on surveillance has been reformed since **mid-2017**.

In the Netherlands the Intelligence and Security Services Act 2017 (*Wetsvoorstel Wet op de inlichtingen- en veiligheidsdiensten 2017*) entered into force on 1 May 2018<sup>29</sup>. It replaced the Intelligence and Security Services Act 2002. On 11 July 2017 Dutch parliament passed the bill for this Act.<sup>30</sup>

Two important changes (relating to countries with offensive cyber programmes and to bulkdatasets) are to be discussed in parliament this year (2023) and a more comprehensive revision of the entire law will follow. These changes will have a substantial impact on the existing regulatory system.

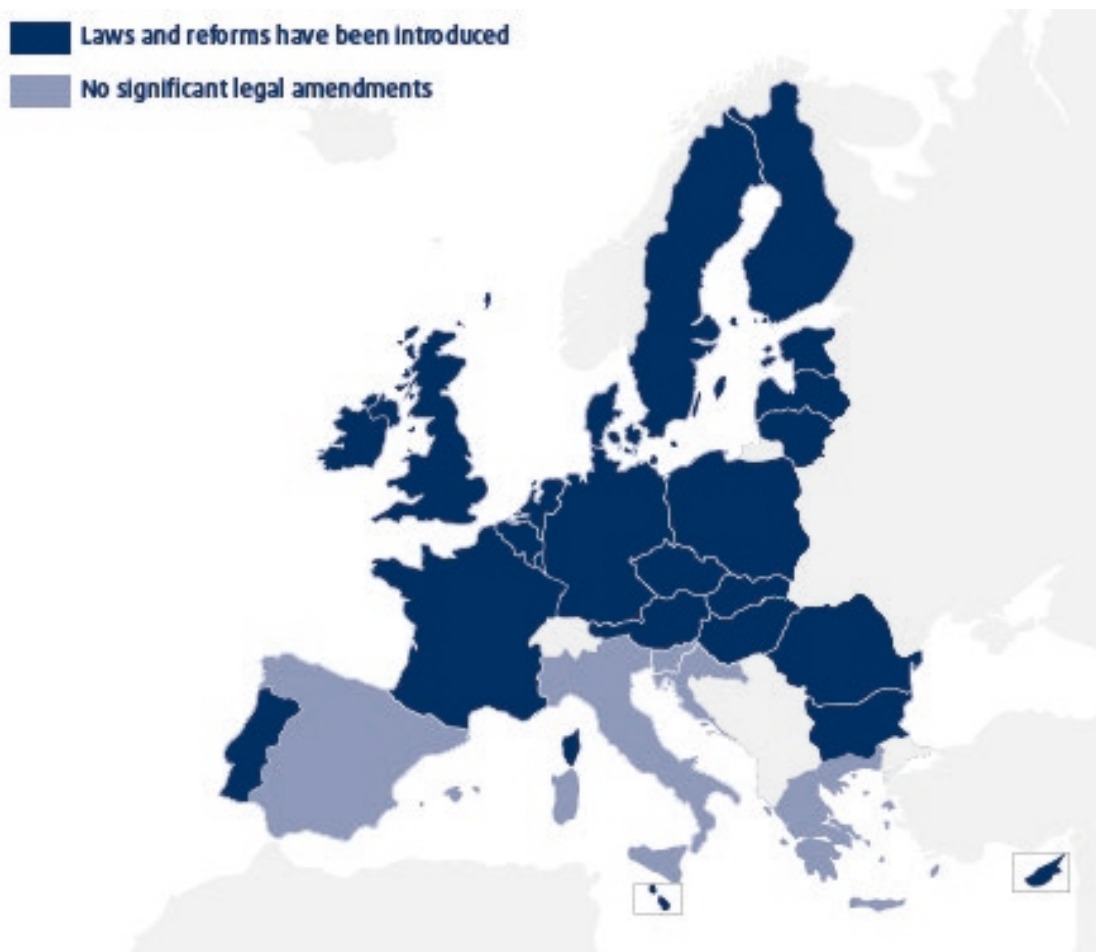
2. *whether the reform was initiated in the context of the PEGASUS revelations.*

Reforms not initiated in the context of the PEGASUS revelations.

<sup>29</sup> The Netherlands, Intelligence and Security Services Act 2017 (*Wet op de inlichtingen- en veiligheidsdiensten 2017*), [Web page](#)

<sup>30</sup> The Netherlands, Senate (*Eerste Kamer der Staten-Generaal*) (2017), 'Wet op de inlichtingen- en veiligheidsdiensten 2017', (*Wet op de inlichtingen- en veiligheidsdiensten 2017*), [Web page](#).

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

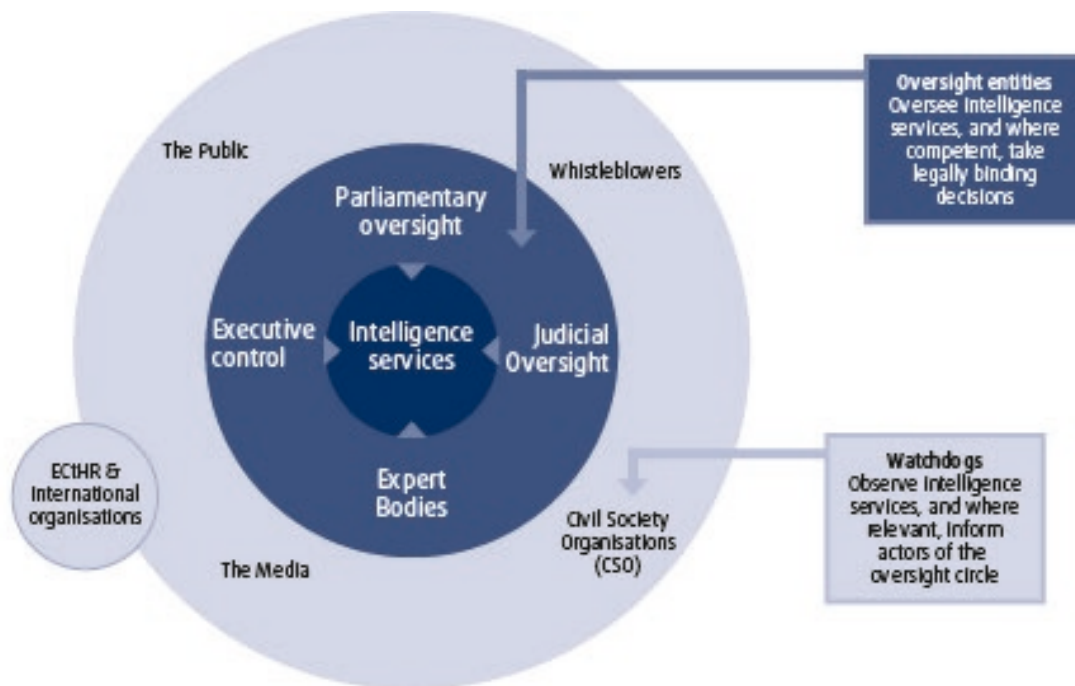


### 2.3. Intelligence services' accountability scheme

*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.*

The diagram is correct and illustrates the situation in the Netherlands in an accurate manner.

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

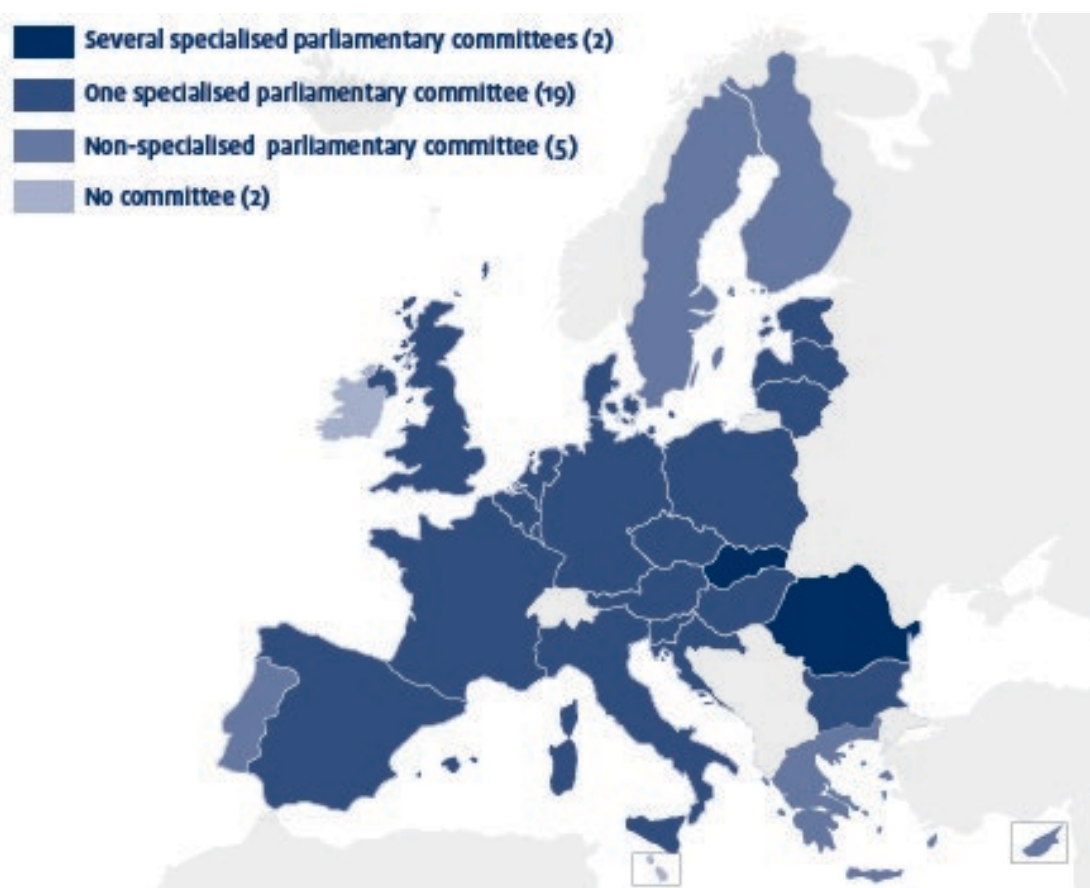


## **2.4. Parliamentary oversight of intelligence services in EU Member States**

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

The map below (Figure 6 (p. 66) of the FRA 2017 report) illustrates the situation in the Netherlands in an accurate manner.

**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.*

Concerning the Netherlands, the table below (Table 2 (p. 68) of the FRA 2017 report) is not correct.

Besides the Review Committee on the Intelligence and Security Services (*Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten*), that performs a general oversight task by performing investigations and handles complaints and reports about any suspicion of wrongdoing, there is the Investigatory Powers Commission (*Toetsingscommissie Inzet Bevoegdheden*) or TIB. This Commission assess whether the prior authorisation to use several surveillance techniques granted by the minister is legal. Its decisions are binding. The legal basis of this Commission are articles 32-37 of the Intelligence and Security Services Act 2017.<sup>31</sup>

<sup>31</sup> *The Netherlands, Intelligence and Security Services Act 2017 (Wet op de inlichtingen- en veiligheidsdiensten 2017), Articles 32-37.*

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

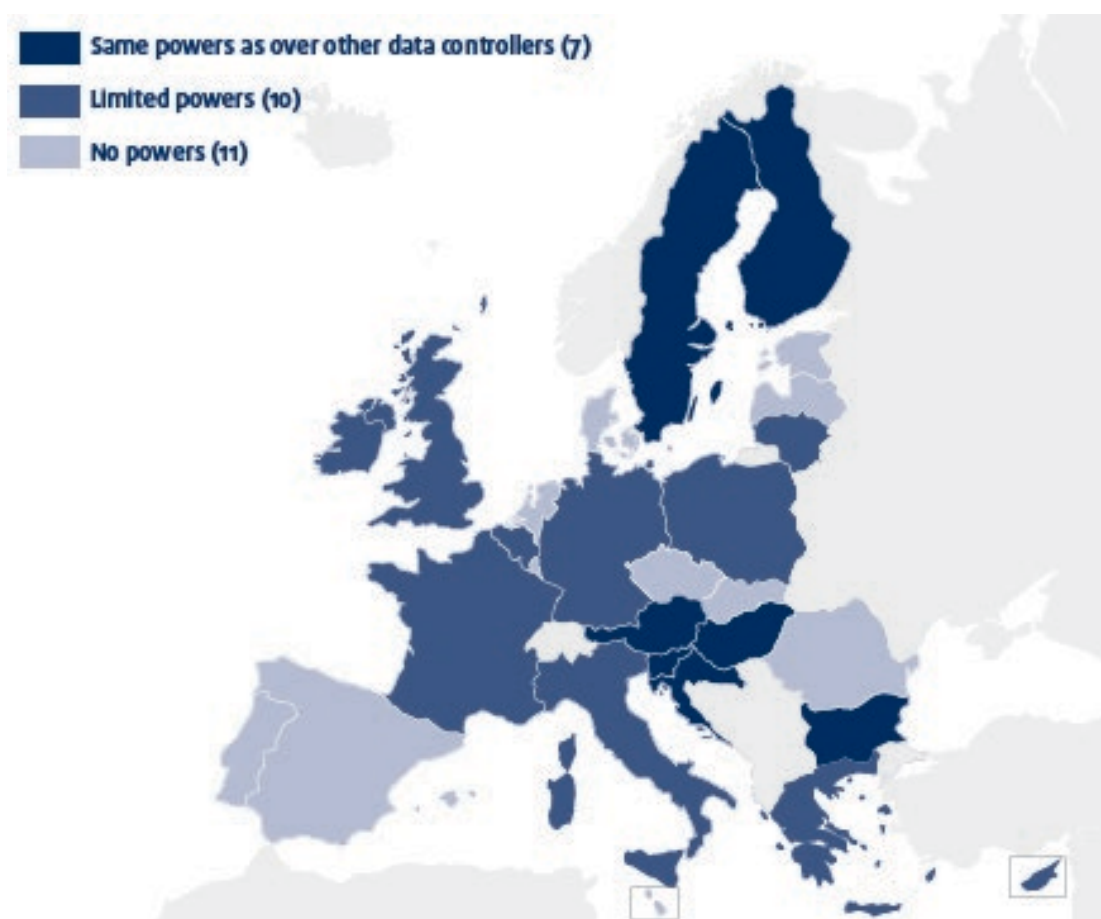
EU Member State	Expert Bodies
NL	The Review Committee on the Intelligence and Security Services ( <i>Commissie van Toezicht op de Inlichtingen- en Veiligheidsdiensten</i> ) or CTIVD  Investigatory Powers Commission ( <i>Toetsingscommissie Inzet Bevoegdheden</i> ) or TIB.

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

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

The map below (Figure 7 (p. 81) of the FRA 2017 report) illustrates the situation in the Netherlands in an accurate manner.

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



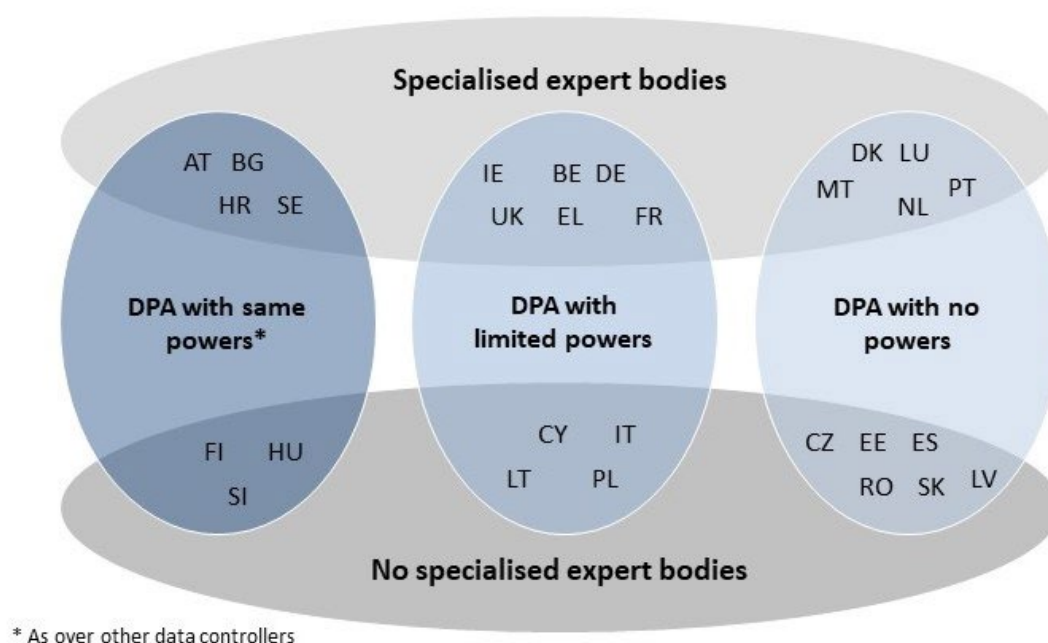
## 2.7. DPAs' and expert bodies' powers over intelligence techniques, by EU Member State

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



The figure below (Figure 8 (p. 82) of the FRA 2017 report) illustrates the situation in the Netherlands in an accurate manner.

**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 below (Table 4 (p. 95) of the FRA 2017 report) illustrates the situation in the Netherlands in an accurate manner.

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

	Judicial	Executive	Expert bodies	Services
NL	✓	✓	✓	

## 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 below (Table 5 (p. 97) of the FRA 2017 report), is not correct concerning the Netherlands. In the Netherlands the Intelligence and Security Services Act 2017 does not foresee in a judicial approval of authorisation of general surveillance of communication.<sup>32</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 table below (Table 6 (p. 112) of the FRA 2017 report) illustrates the situation in the Netherlands in an accurate manner.

**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
NL*		✓			

## 2.11. Implementing effective remedies

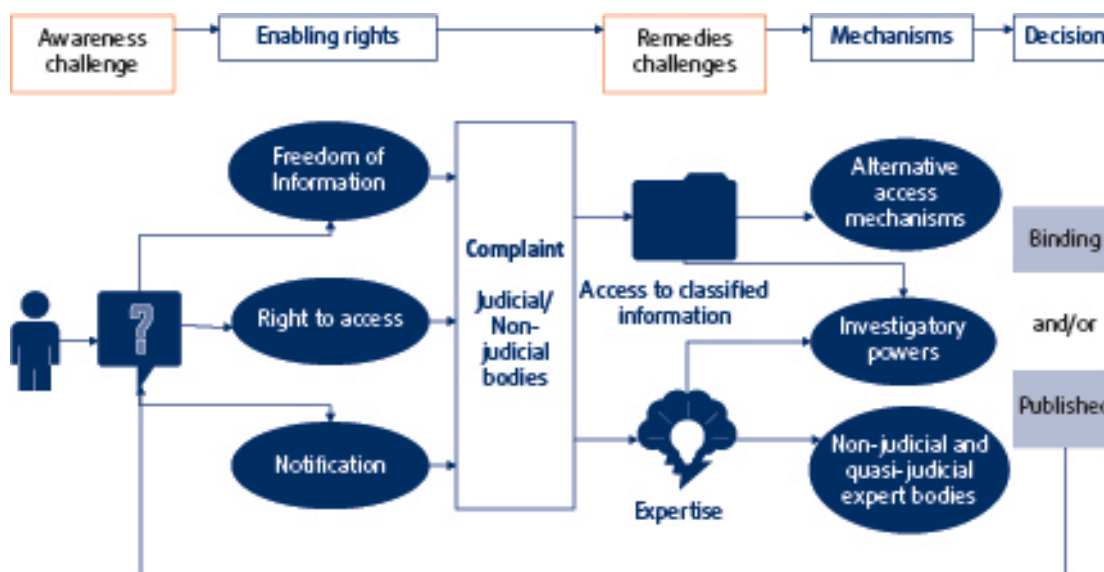
*FRANET contractors are requested to confirm that the diagram below (Figure 9 (p. 114) of the FRA 2017 report) illustrates the situation in your Member State in an accurate manner. If it is not the case, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.*

The diagram below (Figure 9 (p. 114) of the FRA 2017 report) illustrates the situation in the Netherlands in an accurate matter.

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<sup>32</sup> The Netherlands, Intelligence and Security Services Act 2017 (Wet op de inlichtingen- en veiligheidsdiensten 2017), Web page.

**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.

The table below (Table 7 (pp. 115 - 116) of the FRA 2017 report) illustrates the situation in the Netherlands in accurate manner.

**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
NL	Review Committee for the Intelligence and Security Services				

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 figure below (Figure 10 (p. 117) of the FRA 2017 report) illustrates the situation in the Netherlands in accurate manner.

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

