

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](#)

In Romania, in the period mid 2016 until now there were three main topics related to intelligence services and the legislative framework establishing and organizing their work, implementation of the legislative framework and roles of the intelligence services, oversight and remedies.

1. Legislative changes for General Directorate for Internal Protection (2016-2017)

On 16 February 2016, the Romanian Constitutional Court (*Curtea Constituțională a României*, CCR) ruled in its decision 51/2016¹ that only the prosecutors (and the other specific bodies within their direct supervision) may implement any kind of technical supervision activities

¹ Constitutional Court of Romania, Decision No. 51 of 16.02.2016, (*Curtea Constituțională, Decizia 51/16.02.2016*) available in Romanian at <https://legislatie.just.ro/Public/DetaliiDocument/176576>.

(including wiretapping, access to a computer system or video-surveillance²) during a criminal investigation. The text “*and by other specialised state bodies*” which was part of Art. 142 para. 1 of the Criminal Procedure Code was considered to be unclear and thus not constitutional. In practice the Romanian Intelligence Service (*Serviciul Român de Informații*, SRI) and other intelligence services were the main bodies involved in this process, explained in most cases as “technical support.” Following the decision of the CCR, the intelligence services were excluded from these types of activities during the criminal investigations.

One of the consequences of this decision was the restructuring and renaming of the intelligence division from the Ministry of Internal Affairs – formerly called Department for Information and Internal Protection/ *Departamentul de Informații și Protecție Internă* (DIPI). Other reasons publicly mentioned included: clarifications of attributions in relation with other intelligence services, creating a clear legal basis and parliamentary supervision for these services³, but also because the “it has lost its credibility.”⁴

Thus, the Government adopted the Government Emergency Ordinance no. 76 from 2 November 2016, that scrapped DIPI, which was replaced by a new institution – the General Directorate for Internal Protection/*Direcția Generală de Protecție Internă* (DGPI), also within the Ministry of Internal Affairs, with slightly different attributions. The Government Emergency Ordinance was adopted by the Parliament as Law no. 194/2017, with minor modifications.⁵

²Full list defined in Art. 138 of the Criminal Procedure Code - (1) The following are surveillance or investigation special methods:

a) wiretapping of communications or of any type of remote communication;
b) accessing a computer system;
c) video, audio or photo surveillance;
d) tracking or tracing with the use of technical devices;
e) obtaining data regarding the financial transactions of individuals;
f) withholding, delivery or search of mail deliveries;
g) use of undercover investigators and informants;
h) authorized participation in specific activities;
i) controlled delivery;
j) obtaining data generated or processed by providers of public electronic communication networks or by providers of electronic communication services intended for the public, other than the content of communications, stored by these under the special law on storing data generated or processed by providers of public electronic communication networks and by providers of electronic communication services intended for the public
Text available in Romanian at <https://legislatie.just.ro/Public/DetaliiDocument/185907>.

³See explanatory note to the Government Emergency Ordinance no. 76 from 2 November 2016 (*Ordonanță de Urgență nr. 76 din 2 noiembrie 2016*) available at: <https://legislatie.just.ro/Public/DetaliiDocument/183418>.

⁴Statement from Minister of Internal Affairs quoted in Mediafax, “The government decided that DIPI should be abolished and replaced by DGPI. The new structure will be put under parliamentary control”, 2.11.2016 (*Guvernul a decis ca DIPI să fie desființată și să fie înlocuită cu DGPI. Noua structură va fi pusă sub control parlamentar*) available at: <https://www.mediafax.ro/social/guvernul-a-decis-ca-dipi-sa-fie-desfiintata-si-sa-fie-inlocuita-cu-dgpi-noua-structura-va-fi-pusa-sub-control-parlamentar-15900418>.

⁵ Government Emergency Ordinance no. 76 from 2 November 2016 (with updated from Law no. 194/2017) (*Ordonanță de Urgență nr. 76 din 2 noiembrie 2016*) in Romanian at <https://legislatie.just.ro/Public/DetaliiDocumentAfis/183418>.

According to Art. 4 of the new law, the Minister of Internal Affairs, must present reports yearly or following a specific request of the Parliament. According to Art. 4 paras. 2 and 3, the DGPI is subject to parliamentary control, by the two Committees from the Chamber of Deputies and the Senate that also deal with national security (note: these are the two standard Parliamentary Committees, not the Joint Parliamentary committees for SRI and SIE that supervise these intelligence services).⁶

The general director of DGPI is appointed directly by the Minister of Internal Affairs (Art.8) and the law does not foresee any specific criteria or procedure. This article was challenged before the Constitutional Court by 25 senators, that asked for this nomination to be confirmed by the Supreme Defense State Council (*Consiliul Suprem de Apărare a Țării*, CSAT) and for that person to be a military. The Constitutional Court rejected the constitutional request.⁷

The only publicly available report from DGPI is from 2020 and it was (partly) published on its web site in October 2021.⁸ There is no public information if other reports were presented to the specific Parliamentary Committees.

2. Unconstitutionality of the SRI's MoUs with different legal bodies (2017-2019) and SRI legal provisions.

In 2017-2018, in public have emerged information about the existence of Memoranda of Understanding (MoUs)⁹ between SRI and different state bodies. As all these MoUs were marked as classified information, their content was not publicly available. In October 2017, the President of the SRI Supervision Committee mentioned in the media¹⁰ that there are 65 MoUs in force, but the members of the Committee “did not have the chance to verify the legality of

⁶ Full text of Art 4 in English : Art 4 (1) Annually or at the request of the Parliament, the Minister of internal affairs presents reports on the activity of the General Directorate of Internal Protection in the field of national security. (2) The General Directorate of Internal Protection is subject to parliamentary control exercised according to art. 9 para. (2) from Law no. 51/1991 on the national security of Romania, republished, with subsequent additions. (3) The control over the activity of the General Directorate of Internal Protection is exercised by the Parliament of Romania, through the defense, public order and national security Commissions of the Chamber of Deputies and the Senate.

⁷ Constitutional Court of Romania, Decision no. 429 of 21.06.2017, (*Curtea Constituțională, Decizia 429/21.06.2017*) in Romanian at <https://legislatie.just.ro/Public/DetaliiDocument/191571>.

⁸ Report evaluation of the activity carried out by General Directorate of Internal Protection in 2020 – Extract (*Raport de evaluare a activității desfășurate de către Direcția Generală de Protecție Internă în anul 2020 – Extras*) in Romanian at <https://dgpi.ro/documente/2021/10/Bilant-DGPI-2020.pdf>.

⁹ The wording in Romanian is “Protocol”.

¹⁰ Mediafax, “History of secret protocols. How the anti-corruption fight became "order" for the SRI,” 16.03.2018 - (*Istoria protocoalelor secrete. Cum a devenit "ordin" pentru SRI lupta anticorupție*) in Romanian at <https://www.mediafax.ro/social/istoria-protocoalelor-secrete-cum-a-devenit-ordin-pentru-sri-lupta-anticoruptie-17068019>.

these MoUs.” The general objective of these MoU was to establish the general framework of cooperation between SRI and the other state bodies.

Following access to information requests and public pressure from media and civil society¹¹, it was revealed that Romanian Intelligence Service (SRI) signed MoUs with important institutions in the national justice system, including the Superior Magistracy Council (*Consiliul Superior al Magistraturii*, CSM), the High Court of Cassation and Justice (*Înalta Curte de Casație și Justiție*, ICCJ), Prosecutor’s Office attached to the High Court of Cassation and Justice (*Parchetul de pe lângă ICCJ*, PIICCJ) and the Judicial Inspection.¹²

All these documents and investigations revealed that starting with 2005 the Superior Defense Council (CSAT) “integrated corruption” as part of the National Security Strategy, as a security risk.¹³ All documents of the CSAT are classified information, so this document was never made public.

This led in time to several activities, including the “creation of mixed teams with law enforcement structures”¹⁴, despite the lack of any clear normative provision on the matter and a legal obligation of SRI not to conduct any law enforcement activities.¹⁵

Even though the texts were not public, these were criticized by several NGOs – both from civil society or formed by judges, including European NGOs, that considered that “concluding of secret protocols between bodies of judicial authority and Romanian Intelligence Service (...) is undermining the rule of law, democracy, independence of the judiciary and the right to a fair trial, violating thereby the Romanians’ fundamental human rights protected by the Romanian Constitution and the European Convention on Human Rights.”¹⁶

¹¹ See for example National Union of Judges from Romania: “CSAT document regarding the relationship between the information services and justice” 16.01.2017 (*Uniunea Națională a Judecătorilor din România (UNJR) : Document CSAT privind relația dintre serviciile de informații și justiție*) <http://www.unjr.ro/2017/01/16/document-csat-privind-relatia-dintre-serviciile-de-informatii-si-justitie/>. See also Legal Resources Center (CRJ) “The Presidential Administration recognizes that CSAT and SRI have been working outside the Constitution for over twelve years” 18.01.2017 (*Centrul de Resurse Juridice (CRJ): Administrația Prezidențială recunoaște că CSAT și SRI lucrează de peste doisprezece ani în afara Constituției*) <https://www.crj.ro/administratia-prezidentiala-recunoaste-ca-csat-si-sri-lucreaza-de-pestre-doisprezece-ani-in-afara-constitutiei/>.

¹² Mediafax - “The CSM, the High Court of Cassation and Justice and the Judicial Inspection concluded protocols with the SRI – sources” 4.04.2018 (*CSM, Înalta Curte de Casație și Justiție și Inspekția Judiciară au încheiat protocoale cu SRI – surse*) in Romanian at <https://www.mediafax.ro/social/csm-inalta-curte-de-casatie-si-justitie-si-inspectia-judiciara-au-incheiat-protocoale-cu-sri-surse-17118803>.

¹³ See fn 11.

¹⁴ See answer from Presidential Administration to the National Union of Judges from Romania as cited at fn 11.

¹⁵ According to Art. 13 from Law no. 14 of February 24, 1992 regarding the organization and operation of the Romanian Intelligence Service (SRI) (*Lege nr. 14 din 24 februarie 1992 privind organizarea și funcționarea Serviciului Român de Informații (SRI)*) in Romanian at <https://legislatie.just.ro/Public/DetaliiDocument/2144>.

¹⁶ Such as Magistrats Européens pour la Démocratie et Les Libertés (MEDEL) - “Resolution on safeguarding the independence of the Romanian judicial system from secret and unlawful interference of the intelligence agencies”, 31.05.2018 available at

Following other public requests¹⁷ and after a lengthy procedure, SRI de-classified on 18 June 2018¹⁸ the MoUs with Prosecutor's Office attached to the High Court of Cassation and Justice (*Parchetul de pe lângă ICCJ, PIICCJ*)¹⁹ and the High Court of Cassation and Justice (ICCJ).²⁰

The publication of these documents confirmed the concerns of the NGOs, such as the creation of "common operational teams"²¹ which basically allowed intelligence services employees to participate in law enforcement activities.

Some of these MoUs were closed in 2017, especially after the CCR Decision no. 51/2016²² and the beginning of the public debate around these documents and their impact. However, it is unclear until now the entire scenario, especially how many of them are still in force, their content and other reports on them from public bodies.²³

Finally, the CCR decision no. 26/16 January 2019²⁴ stated that "by signing the protocol under review, the legal security of the person, provided for in Article 1 para. (5) of the Constitution was breached"²⁵ and that, by the same protocol, the Romanian Intelligence Service was given attributions in the criminal investigations, despite the text of the Code of Criminal Procedure

<https://medelnet.eu/index.php/association/445-resolution-on-safeguarding-the-independence-of-the-romanian-judicial-system-from-secret-and-unlawful-interference-of-the-intelligence-agencies>.

¹⁷ For example CRJ - "CRJ requests the declassification of the MP-SRI Collaboration Protocol", 25.01.2017 (*CRJ solicită declassificarea Protocolului de colaborare MP-SRI*) in Romanian at <https://www.crj.ro/crj-solicita-declassificarea-protocolului-de-colaborare-mp-sri/>.

¹⁸ SRI, "Cooperation protocol between the Romanian Intelligence Service, the Prosecutor's Office attached to the High Court of Cassation and Justice and the High Court of Cassation and Justice for the performance of their duties in the field of national security" 18.06.2018 (*Protocol de cooperare între Serviciul Român de Informații, Parchetul de pe lângă Înalta Curte de Casație și Justiție și Înalta Curte de Casație și Justiție pentru îndeplinirea sarcinilor ce le revin în domeniul securității naționale*) in Romanian at <https://www.sri.ro/articole/protocol-de-cooperare-intre-serviciul-roman-de-informatii-parchetul-de-pe-langa-inalta-curte-de-casatie-si-justitie-si-inalta-curte-de-casatie-si-justitie-pentru-indeplinirea-sarcinilor-ce-le-revin-in-domeniul-securitatii-naționale>.

¹⁹ Collaboration Protocol between the Prosecutor's Office next to the High Court of Cassation and Justice (PICCJ) and the Romanian Information Service (SRI) for the fulfillment of their tasks in the field of national security (*Protocol de Colaborare între Parchetul de pe lângă Înalta Curte de Casație și Justiție (PICCJ) și Serviciul Român de Informații (SRI) pentru îndeplinirea sarcinilor ce le revin în domeniul securității naționale*) in Romanian at https://www.sri.ro/assets/img/news/protocol-de-cooperare/Protocol_declassificat.pdf.

²⁰ Collaboration Protocol between the Romanian Intelligence Service (SRI), the Prosecutor's Office attached to the High Court of Cassation and Justice (PICCJ) and the High Court of Cassation and Justice (ICCJ) for the performance of their tasks in the field of national security (*Protocol de Colaborare între Serviciul Român de Informații (SRI), Parchetul de pe lângă Înalta Curte de Casație și Justiție (PICCJ) și Înalta Curte de Casație și Justiție (ICCJ) pentru îndeplinirea sarcinilor ce le revin în domeniul securității naționale*) in Romanian at https://www.sri.ro/assets/img/news/protocol-de-cooperare-intre-serviciul-roman-de-informatii-parchetul-de-pe-langa-inalta-curte-de-casatie-si-justitie-si-inalta-curte-de-casatie-si-justitie-pentru-indeplinirea-sarcinilor-ce-le-revin-in-domeniul-securitatii-naționale/Protocol_7510.pdf.

²¹ Art 3 g) of the 2009 Protocol to PICCJ - see fn 19.

²² See fn 1.

²³ For example 19 Annexes of the IJ Report regarding the Protocol to PICCJ were never made public, despite demands from NGOs – see UNJR "UNJR and AMR request the CSM to declassify and publish the classified annexes of the IJ report regarding the PICCJ-SRI protocol" 6.06.2019 (*UNJR și AMR solicită CSM declassificarea și publicarea anexelor clasificate ale raportului IJ privind protocolul PICCJ-SRI*) in Romanian at <http://www.unjr.ro/2019/06/06/unjr-si-amr-solicita-csm-declassificarea-si-publicarea-anexelor-clasificate-ale-raportului-inspectiei-judiciare-privind-modul-de-aplicare-al-protocolului-piccj-sri/>.

²⁴ Constitutional Court of Romania, Decision no. 26 of 16.01.2019, (*Curtea Constituțională, Decizia 26/16.01.2019*) in Romanian at <https://legislatie.just.ro/Public/DetaliuDocument/211779>.

²⁵ See para. 193 of Constitutional Court of Romania, Decision no. 26 of 16.01.2019.

which was providing for these attributions in relation to another bodies.²⁶ The conclusion of the CCR was that there is a legal conflict of constitutional nature between Prosecutor's Office attached to the High Court of Cassation and Justice and the Romanian Parliament and between the High Court of Cassation and Justice and the other judicial courts due to the signing of the protocol and also due to the improper exercise of the parliamentary control over the SRI activity.

This decision had an impact on certain criminal cases in order not to allow the use of certain evidence obtained by SRI in those specific cases.²⁷

In the meantime the Parliamentary Committee for SRI Supervision failed to fulfil one of its main tasks: to discuss and approve the report from SRI. All the four yearly SRI reports from the period 2016-2019 were discussed and approved as one batch only²⁸ in its session on 14 December 2020.

Other decisions issued by CCR between 2018-2022 have also limited the power of SRI:

- Decision no. 91/2018²⁹ and Decision no. 802/2018³⁰ declared that two parts of Art. 3 lit. f)³¹ ("gravely harm the fundamental rights and freedoms of Romanian citizens" and, respectively "or other similar interests of the country") from Law no. 51/1991 on the national security of Romania are too vague and thus unconstitutional;
- Decision no. 55/2020³² in which CCR decided the wiretapping resulting from activities based on Law no. 51/1991 on the national security, in the context of Art. 139 par. 3 of the Penal Procedural Code may not be used during a criminal investigation.

²⁶ See para. 165 of Constitutional Court of Romania, Decision no. 26 of 16.01.2019.

²⁷ See for example ICCJ Decision 168/A/2018, 28.06.2018 (*Decizia ICCJ 168/A/2018*) available at <http://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=146713>. See also Minutes - Meetings of the Presidents of the Criminal Sections of the High Court of Cassation and Justice (ICCJ) and Courts of Appeal, 16-17.05.2019 (*Minuta - Întâlnirii președinților secțiilor penale ale Înaltei Curți de Casație și Justiție (ICCJ) și curților de apel*) available at: http://www.inm-lex.ro/fisiere/d_2441/Minuta%20intalnire%20presedinti%20sectii%20penale%2016%2017%20mai%202019.pdf.

²⁸ See Document of approval on the Chamber of Deputies website for years 2016, 2017, 2018 and 2019 – all adopted on 14.12.2022, in Romanian at <https://m.cdep.ro/bp/docs/F-1635934599/Rap%20conc%20C%20SRI.pdf>.

²⁹ Constitutional Court of Romania, Decision no. 91 of 28.02.2018, (*Curtea Constituțională, Decizia 91/28.02.2018*) in Romanian at <https://legislatie.just.ro/Public/DetaliiDocumentAfis/199851>.

³⁰ Constitutional Court of Romania, Decision no. 802 of 6.12.2018, (*Curtea Constituțională, Decizia 802/6.12.2018*) in Romanian at <https://legislatie.just.ro/Public/DetaliiDocumentAfis/211916>.

³¹ Full text of Art 3 f) of Law no. 51/1991 with the text considered unconstitutional as highlighted: "The following are considered threats to Romania's national security: (...)

f)undermining, sabotage or any other actions that have as purpose to remove by force the democratic institutions of the state or that gravely harm the fundamental rights and freedoms of Romanian citizens, or may damage the defence capacity, or other similar interests of the country, as well as the acts of destruction, degradation or bringing in unusable state the structures necessary to the good development of social and economic life, or to the national defence"

³² Constitutional Court of Romania, Decision no. 55 of 4.02.2020, (*Curtea Constituțională, Decizia 55/4.02.2020*) in Romanian at <https://legislatie.just.ro/Public/DetaliiDocumentAfis/226836>.

- Decision no. 55/2022³³ which declared unconstitutional several parts of the Emergency Ordinance no. 6/2016 (adopted following the CCR Decision no. 51/2016), including the texts allowing the SRI to be a “special law enforcement body” for technical supervisions³⁴ in cases of national security related crimes and the texts establishing the National Center for Wiretapping within SRI that was set up by a CSAT decision (which is not public) from 17 July 2002 and not by a law adopted by the Romanian Parliament.

3. Leaks of the draft laws for the intelligence services (2022)

On 3 June 2022, an online media outlet (G4Media)³⁵ has published the full leaks of a package of 10 new draft laws on intelligence services, that are supposed to change the entire legislative framework on all aspects that regulate intelligence services. The leak text does not include specific provisions that would apply to Pegasus or similar software, but it does use the same vague references in the legal text that could be interpreted in any direction, such as for any of the purposes the right to gather information using “specific means” and to use “methods and sources of information”. Also, the leaked text does include the provision that SRI will become the new “national wiretapping authority” despite two CCR decisions (see above) that claimed that this would be unconstitutional, as SRI can’t be involved in criminal cases.

NGOs reacted quickly calling³⁶ these laws a step towards “militarization of the state” pointing towards new provisions that would, *inter alia*, allow SRI staff to have impunity before justice, increased power of the President, while excluding the Parliament from the procedure of dismissing the SRI director, a generic obligation from any person to support SRI staff³⁷, including to keep the secrecy of the operation, or to allow SRI to become the national authority in the field of wiretapping, despite the fact that CCR has adopted several decisions which have declared outside the Constitution the presence of SRI in the criminal investigation procedure. (see section above for details).

All the political parties in the ruling coalition and a large part of the media have ignored the subject, some of them claiming they may not comment on unofficial legal proposals. At the

³³ Constitutional Court of Romania, Decision no. 55 of 16.02.2022, (*Curtea Constituțională, Decizia 55/16.02.2022*) in Romanian at <https://legislatie.just.ro/Public/DetaliiDocument/253815>. In this decision in para. 155 CCR mentions the 2017 FRA report on intelligence services (vol II page 28) with this quote “Another key element is the extent of the relationship between security services and law enforcement. Indeed, an organisational separation between intelligence services and law enforcement authorities is commonly considered a safeguard against the concentration of powers in one service and the risk of arbitrary use of information obtained in secrecy.”

³⁴ See fn 2 for details.

³⁵ All news on this subject are available on the G4Media.ro website, in Romanian at <https://www.g4media.ro/legile-securitatii>.

³⁶ StareaDemocrației.ro “Romanian Military Republic: impunity and increased powers for SRI” 31.05.2022 – statement from 15 NGOs <https://www.stareademocratiei.ro/2022/05/31/romanian-military-republic-impunity-and-increased-powers-for-sri/>.

³⁷ The leaked includes specific legal provisions that SRI may “ask any person for support to carry out its legal duties and powers. The requested person is obliged to keep the secret on the matters which are the subject of the request”

same time, in a public reaction³⁸ the President had allusively pointed to the whistle-blower and the online media outlet that have published the leaks. 45 NGOs reacted in a public statement³⁹, asking the respect of freedom of expression, of whistle-blowers protection, while demanding a public debate around these new laws, starting with the principles from the 2017 FRA surveillance report⁴⁰ that should form the basis of any public discussions.

After several days, it was revealed by the other intelligence service (External Intelligence Service (*Serviciul de Informații Externe*, SIE))⁴¹ that SIE was also involved in drafting their own laws, invited by the Presidential Administrations' Department for National Security and the General Secretariat of the Government. None of these institutions have the right to initiate any kind of legislative acts.⁴²

Despite the fact that the drafts were never presented officially by any public body, the Parliament adopted on 3 May 2022⁴³ a decision to establish a common committee of the two chambers to discuss these laws.

³⁸ G4Media.ro - "Iohannis, the first reaction to the security laws: Someone, and we know who, thought it was good to give them to the sources / No one wants a restoration of the old Security / I will personally see to it that the draft is corrected" 7.06.2022 (*Iohannis, prima reacție pe legile securității: Cineva, și știm cine, a considerat că e bine să le dea pe surse / Nu își dorește nimeni o restaurație a vechii Securități / Personal mă voi îngriji ca draftul să fie corectat*) in Romanian at <https://www.g4media.ro/breaking-iohannis-prima-reactie-pe-legile-securitatii-nu-isi-doreste-nimeni-o-restauratie-a-vechii-securitati-personal-ma-voi-ingriji-ca-draftul-sa-fie-corectat-avem-un-prim-draft-nu-e-destinat.html>.

³⁹ StareaDemocrației.ro "Well done to the whistleblower! And what do we have to discuss about security laws!" 10.06.2022 (*Bravo avertizorului! Și ce trebuie să discutăm legat de legile securității!*) statement from 45 NGOs <https://www.stareademocratiei.ro/2022/06/10/bravo-avertizorului-si-ce-trebuie-sa-discutam-legat-de-legile-securitatii/>.

⁴⁰ Surveillance by intelligence services: fundamental rights safeguards and remedies in the EU - Volume II: field perspectives and legal update - https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-surveillance-intelligence-services-vol-2_en.pdf.

⁴¹ UmbrelaStrategica.ro, "SIE: The working variants of the national security laws are the result of consultations with the Presidential Administration and the SGG" 15.06.2022 (*SIE: Variantele de lucru ale legilor securității naționale sunt rezultatul consultărilor cu Administrația Prezidențială și SGG*) in Romanian at <https://umbrela-strategica.ro/sie-variantele-de-lucru-ale-legilor-securitatii-naționale-sunt-rezultatul-consultărilor-cu-administratia-prezidentiale-si-sgg/>.

⁴² CRJ "When everything happens, in silence, at Cotroceni, although that is not the place" 16.06.2022 (*Când totul se întâmplă, în tăcere, la Cotroceni, deși nu acolo este locul*) in Romanian at <https://www.crj.ro/cand-totul-se-intampla-in-tacere-la-cotroceni-desi-nu-acolo-este-locul/>.

⁴³ Hotnews.ro "Parliament has set up a special committee on national security laws / The powers and organization of the secret services and the military enter parliamentary debate" 3.05.2022 (*Parlamentul a înființat o comisie specială pentru legile securității naționale / Atribuțiile și organizarea serviciilor secrete și ale armatei intră în dezbateră parlamentară*) in Romanian at <https://www.hotnews.ro/stiri-politic-25533543-parlamentul-infiintat-comisie-speciala-pentru-legile-securitatii-naționale-atribuțiile-organizarea-serviciilor-secrete-ale-armatei-intra-dezbateră-parlamentară.htm>. See also, The joint permanent commission of the Chamber of Deputies and the Senate in the field of national security (*Comisia permanentă comună a Camerei Deputaților și Senatului în domeniul securității naționale*) info available at: <http://cdep.ro/pls/parlam/structura2015.co?cam=0&tpc=0&idc=242>.

On 4 November 2022, one of the draft laws in the package – the draft law on cybersecurity and cyberdefense of Romania was published⁴⁴ for public consultation by the Ministry of Research, Innovation and Digitalisation. The draft law is almost identical to the text leaked in June 2022. On 8 December 2022 the Government adopted the draft law on cybersecurity and cyberdefense of Romania⁴⁵ and sent it to Parliament for deliberations with just a few modifications from the initial version.

At the moment of writing,⁴⁶ no public debate on the other laws on intelligence services was initiated by a public body.

2. Annexes- Table and Figures

2.1 Overview of security and intelligence services in the EU-27

FRANET contractors are requested to check the accuracy of the table below (see Annex pp. 93 – 95 of the FRA 2015 report) and correct or add in track changes any missing information concerning security and intelligence services in their Member State (incl. translation and abbreviation in the original language). Please provide the full reference in a footnote to the relevant national law substantiating all the corrections and/or additions made in the table.

	Civil (internal)	Civil (external)	Civil (internal and external)	Military
RO	Romanian Intelligence Service/ <i>Serviciul Roman de Informatii</i> (SRI) General Directorate for Internal Protection/ <i> Direcția Generală de Protecție Internă</i> (DGPI) ⁴⁷	External Intelligence Service/ <i>Serviciul de Informații Externe</i> (SIE)		Defense General Directorate for Information/ <i> Direcția Generală de Informații a Apărării</i> (DGIA)

⁴⁴ The Draft Law on Romania's cyber security and defense, in public consultation, 4.11.2022 (*Proiectul de Lege privind securitatea și apărarea cibernetică a României, în consultare publică*) <https://www.research.gov.ro/ro/articol/6037/comunicare-br-mass-media-proiectul-de-lege-privind-securitatea-i-apararea-cibernetica-a-romaniei-in-consultare-publica>

⁴⁵ Romanian Government Press Briefing, 8.12.2022 (*Briefing la finalul ședinței de Guvern*) in Romanian at <https://gov.ro/ro/stiri/briefing-la-finalul-edintei-de-guvern-sustinut-de-ministrul-finantelor-adrian-caciuc-ministrul-investitiilor-i-proiectelor-europene-marcel-bolo-i-purtatorul-de-cuvant-al-guvernului-dan-carbunaru>

⁴⁶ Last update – 13 December 2022.

⁴⁷ The name and attributions have changed following the new legislation – Government Emergency Ordinance 76 from 2 November 2016, with modifications by Law 194/2017 – Updated legal text available at <https://legislatie.just.ro/Public/DetaliiDocumentAfis/183418>

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.

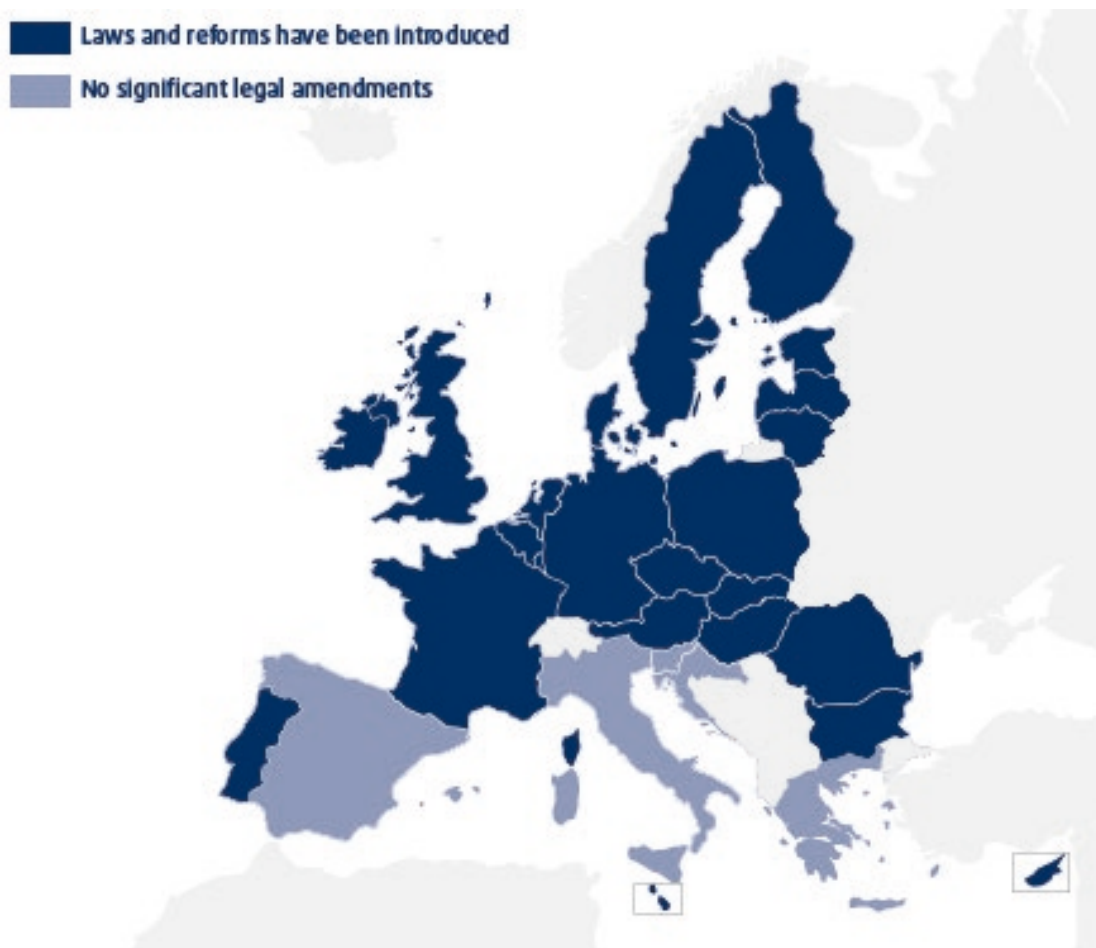
No⁴⁸

Romania, Government Emergency Ordinance 76 from 2 November 2016 on the establishment, organization and functioning of the General Directorate for Internal Protection of the Ministry of the Interior, with modifications by Law 194/2017⁴⁹

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



⁴⁸Latest change in the DGPI legislation is from Law 194 from 24 July 2017, that made slight modifications to the General Emergency Ordinance 76/2016 on setting up DGPI (as mentioned also above)

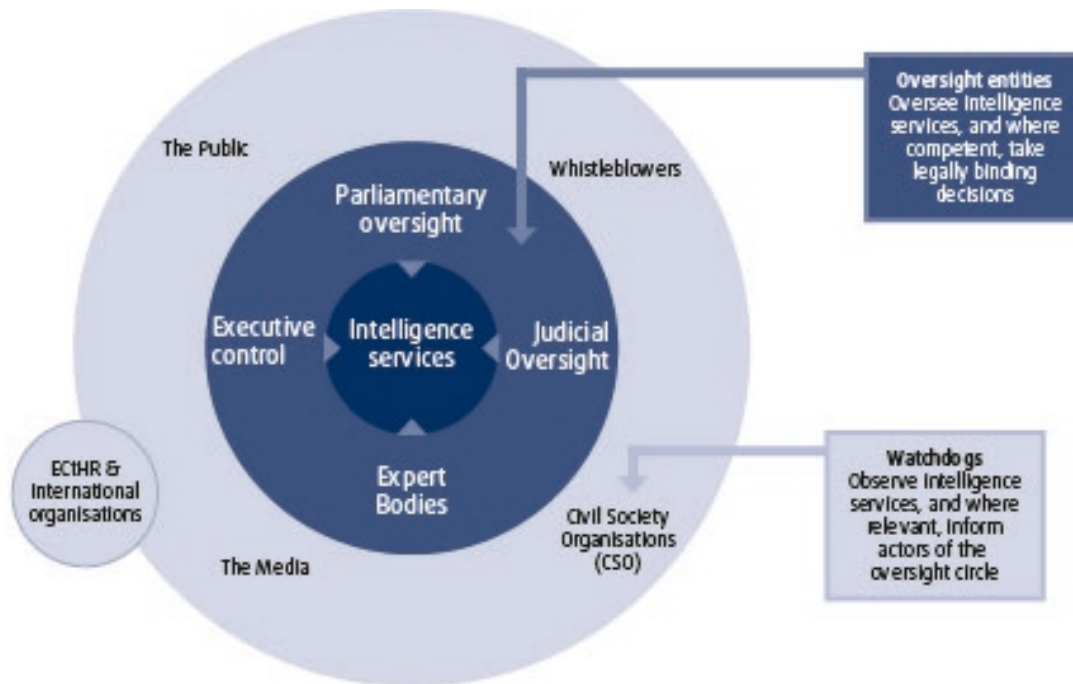
⁴⁹ Update legal text available at <https://legislatie.just.ro/Public/DetaliuDocumentAfis/183418>

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.

To a large extent, this is correct. Currently in Romania there are no expert bodies (as already correctly indicated in the FRA 2017 report – table 2 page 68)

Figure 5: Intelligence services' accountability scheme

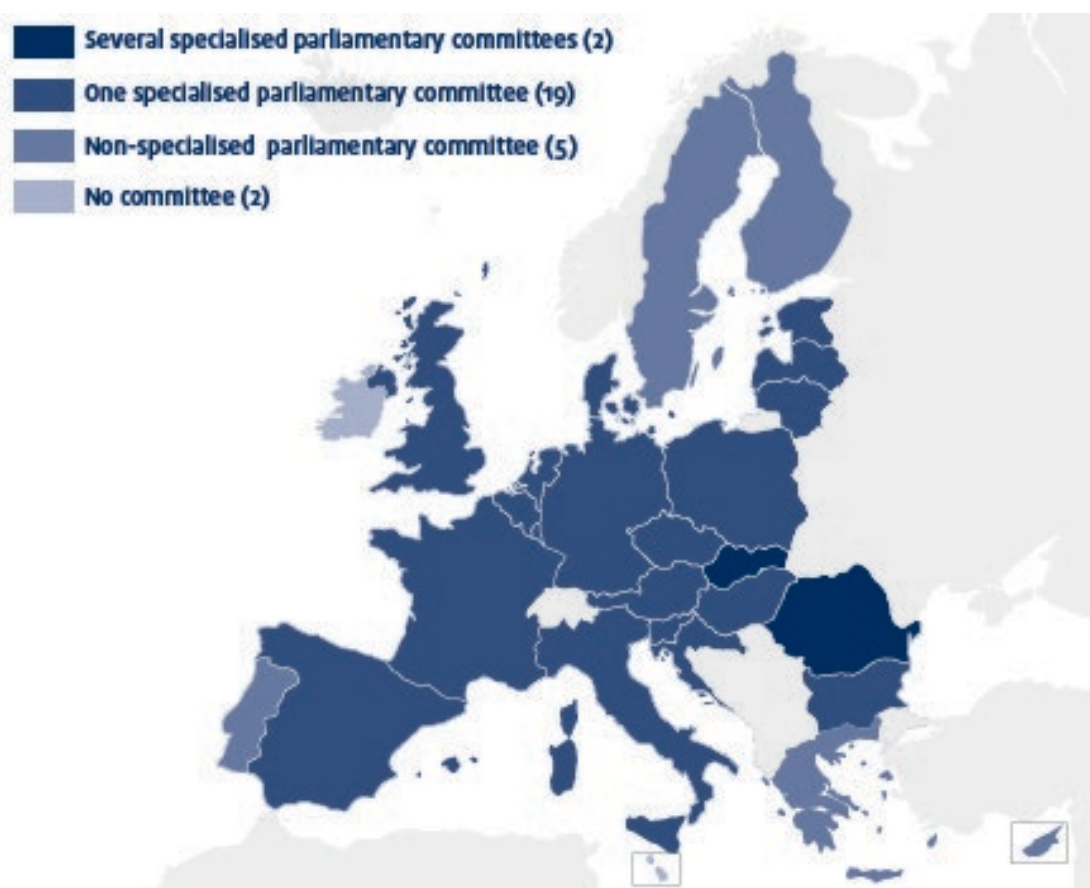


2.4. Parliamentary oversight of intelligence services in EU Member States

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 information for Romania is correct.

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 information for Romania is correct.

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

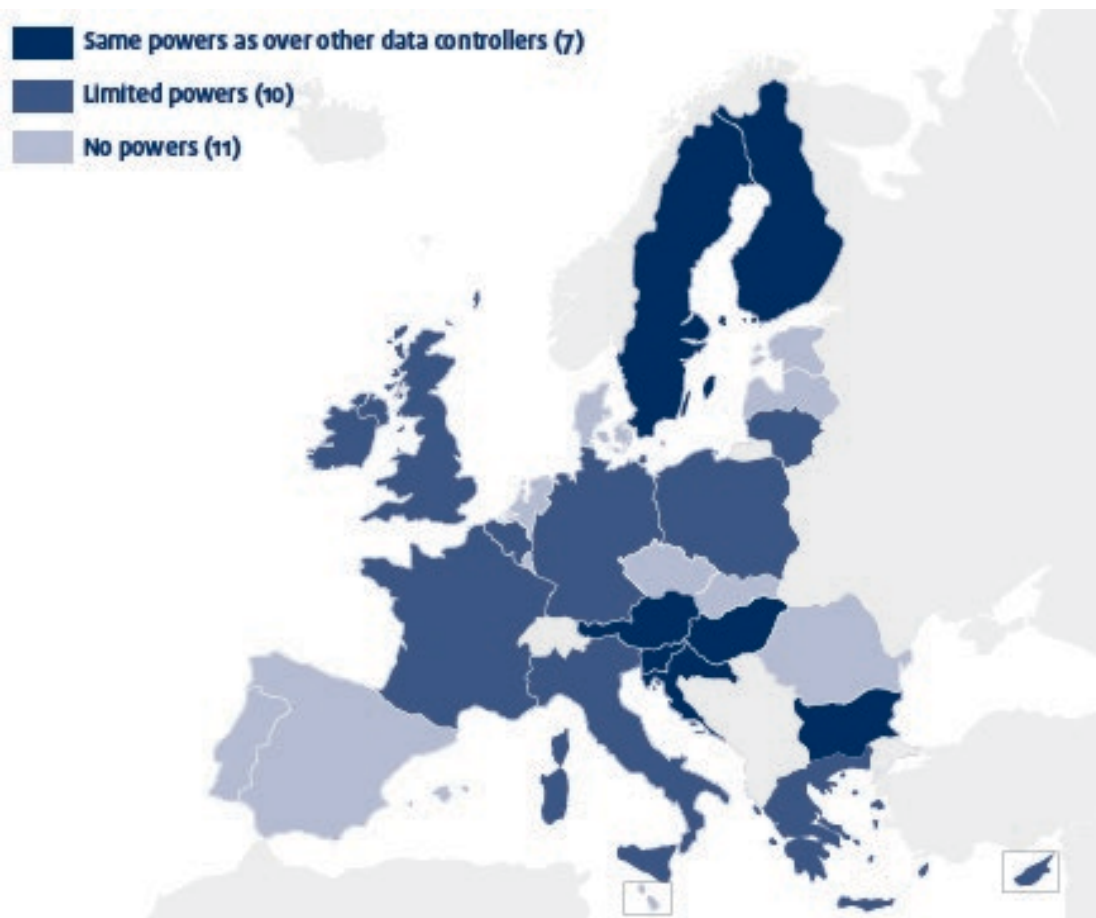
EU Member State	Expert Bodies
RO	N.A.

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 information for Romania is correct.

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

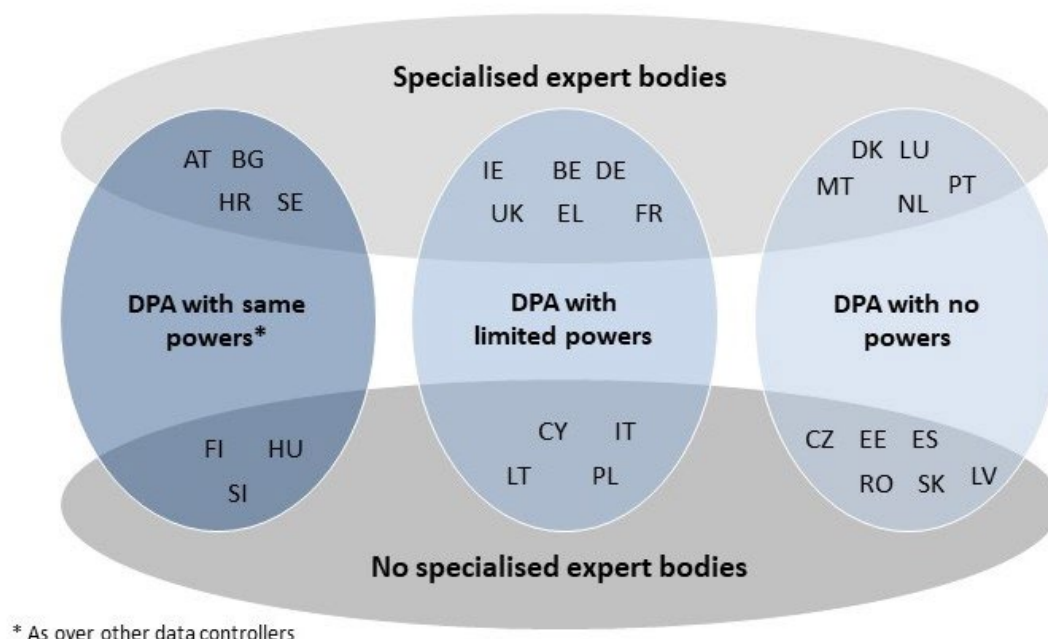


2.7. DPAs' and expert bodies' powers over intelligence techniques, by EU Member State

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 information for Romania is correct.

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 information for Romania is correct.

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

	Judicial	Executive	Expert bodies	Services
RO	✓			

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 information for Romania is correct – there is no specific legislation in force today that regulates general 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.

The information for Romania is correct.

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

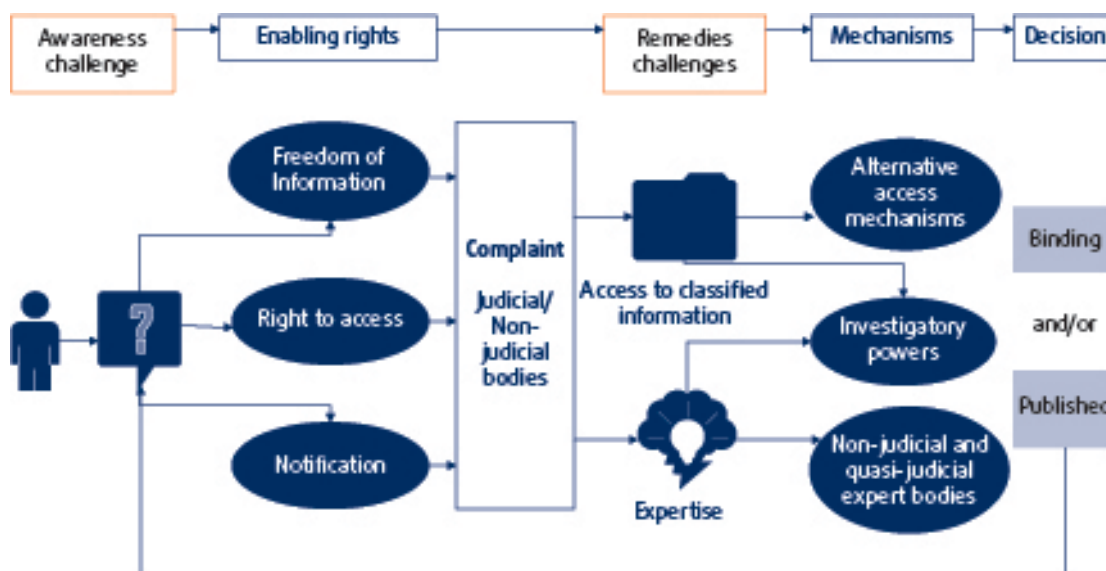
	Executive (ministry)	Expert body(ies)	DPA	Parliamentary committee(s)	Ombuds institution
RO				✓	

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 illustrates correctly the situation for Romania.

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 information for Romania is correct.

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
RO	Parliamentary Committees				

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 information for Romania is correct, as the DPA has no competences in this field.

Figure 10: DPAs' remedial competences over intelligence services

