

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

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Country: Slovenia

FRANET contractor: The Peace Institute

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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 the reporting period, only minor changes in the legislative framework governing surveillance by the Slovenian intelligence agencies were adopted, none of which relate to the oversight and remedies.

The main legislative act regulating the powers of the Slovene Intelligence and Security Agency (*Slovenska obveščevalno-varnostna agencija*, SOVA), the Slovene Intelligence and Security Agency Act (*Zakon o Slovenski obveščevalno-varnostni agenciji*)¹ has not been amended, neither were changed the relevant provisions of the Defence Act (*Zakon o obrambi*)² governing military intelligence service (*Obveščevalno varnostna služba Ministrstva za obrambo*, OVS). In 2019, the National Assembly adopted the Act Amending the Criminal Procedure Act (*Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku*, ZKP-N), which extended the jurisdiction of the Department for the Investigation and Prosecution of Official Persons Having Special Authority (*Oddelek za preiskovanje in pregon*

¹ Slovenia, Slovene Intelligence and Security Agency Act (*Zakon o Slovenski obveščevalno-varnostni agenciji*, ZSOVA), 7 April 1999, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1884.

² Slovenia, Defence Act (*Zakon o obrambi*, ZObr), 20 Decembre 1994, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO532>.

uradnih oseb s posebnimi pooblastili, Posebni oddelek) to enable prosecution of criminal offences committed by officials of SOVA and OVS.³

Although the data protection regime in the EU was reformed in 2016, Slovenia has failed to harmonise its national data protection legislation with the valid European data protection framework, therefore Data Protection Act,⁴ enacted in 2004, still applies as far as it does not contravene the General Data Protection Regulation (GDPR).⁵ Since the activities of national security and intelligence services are in the exclusive jurisdiction of the Member States, the GDPR did not invalidate the Data Protection Act as regards the data processing of SOVA and OVS. However, the National Assembly has already started the legislative procedure to adopt a new Data Protection Act,⁶ which will also regulate the oversight mechanisms of the Slovenian national supervisory authority, the Information Commissioner (*Informacijski pooblaščenec*, IP), over data processing conducted by SOVA and OVS.⁷ In an opinion issued on 10 January 2020, the Information Commissioner noted that the legislator must take a clear decision regarding the oversight of the lawfulness of the processing of personal data by the security and intelligence services, especially since their activities are often hidden from the public and the individuals concerned.⁸ The Information Commissioner issued numerous opinions regarding the draft proposals, including concerning the rights and obligations of SOVA as a controller of personal data and supervisory powers of the Information Commissioner in that regard. However, certain limitations of DPA's oversight powers still apply. Although the majority of the shortcomings of the proposals were remedied during the inter-ministerial coordination procedure, the Information Commissioner recalled in an opinion issued in August 2022 that the new Data Protection Act (ZVOP-2), which was submitted in the legislative procedure in July 2022, still does not coherently define the rights of the data subject and the procedure for their enforcement regarding the data processing conducted by both intelligence agencies (SOVA and OVS).⁹ Thus, the content, the persons subject to the obligation and the procedure for exercising the individual's rights are nowhere explicitly defined. Therefore, in the light of the ZVOP-2 proposal, according to the Information Commissioner's opinion,¹⁰ the individual is not even guaranteed the constitutional right to be informed of their data under Article 38 of the Constitution of the Republic of Slovenia (*Ustava RS*)¹¹ before these entities.

³ Slovenia, Act Amending the Criminal Procedure Act (*Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku*, ZKP-N), 26 March 2019, available at: www.pisrs.si/Pis.web/pregledPredpisa?sop=2019-01-0915.

⁴ Slovenia, Data Protection Act (*Zakon o varstvu osebnih podatkov*, ZVOP-1), 15 July 2002, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3906.

⁵ The new Data Protection Act was then adopted on 15 December 2022, after the period covered by this report.

⁶ Slovenia, Proposal for a Data Protection Act (*Predlog Zakona o varstvu osebnih podatkov*, ZVOP-2), 15 July 2022, available at: <https://imss.dz-rs.si/IMIS/ImisAdmin.nsf/ImisnetAgent?OpenAgent&2&DZ-MSS-01/ac98efd34bafcea0875c00f45ef208a8ca0f29c24701da944cc42dab7632ad91>.

⁷ The new Data Protection Act was adopted on 15 December 2022, after the period covered by this report.

⁸ Slovenia, Information Commissioner, Opinion on the Proposal for a Data Protection Act (*Predlog novega Zakona o varstvu osebnih podatkov* (ZVOP-2) – EVA: 2018-2030-0045 – MNENJE), 10 January 2020, available at: www.ip-rs.si/fileadmin/user_upload/Pdf/priponbe/2020/MP_ZVOP2_mnenje_IP_jan2020_koncno.pdf.

⁹ Slovenia, Information Commissioner, Opinion on the Proposal for a Data Protection Act (*Predlog novega Zakona o varstvu osebnih podatkov* (ZVOP-2) – EVA: 189-IX (EVA: 2018-2030-0045) – MNENJE), 31 August 2022, available at: www.ip-rs.si/fileadmin/user_upload/Pdf/priponbe/2022/DZ_ZVOP2_avg2022_koncno.pdf.

¹⁰ Slovenia, Information Commissioner, Opinion on the Proposal for a Data Protection Act (*Predlog novega Zakona o varstvu osebnih podatkov* (ZVOP-2) – EVA: 2018-2030-0045 – MNENJE), 10 January 2020, available at: www.ip-rs.si/fileadmin/user_upload/Pdf/priponbe/2020/MP_ZVOP2_mnenje_IP_jan2020_koncno.pdf.

¹¹ Slovenia, Constitution of the Republic of Slovenia (*Ustava RS*), 23 December 1991, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=USTA1.

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 correct.

	Civil (internal)	Civil (external)	Civil (internal and external)	Military
SI			Slovene Intelligence and Security Agency/ <i>Slovenska obveščevalno-varnostna agencija</i> (SOVA)	Intelligence and Security Service of the Ministry of Defence/ <i>Obveščevalno varnostna služba Ministrstva za obrambo</i> (OVS)

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:

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

Xxx

The following legislation, which constitutes the legal framework on surveillance, has changed since mid-2017:

- Criminal Procedure Act,¹²
- Classified Information Act,¹³

¹² Slovenia, Act Amending the Criminal Procedure Act (*Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku*, ZKP-N), 26 March 2019, available at: www.pisrs.si/Pis.web/pregledPredpisa?sop=2019-01-0915.

¹³ Slovenia, Act Amending the Classified Informations Act (*Zakon o spremembah in dopolnitvah Zakona o tajnih podatkih*), 29 January 2020, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7977.

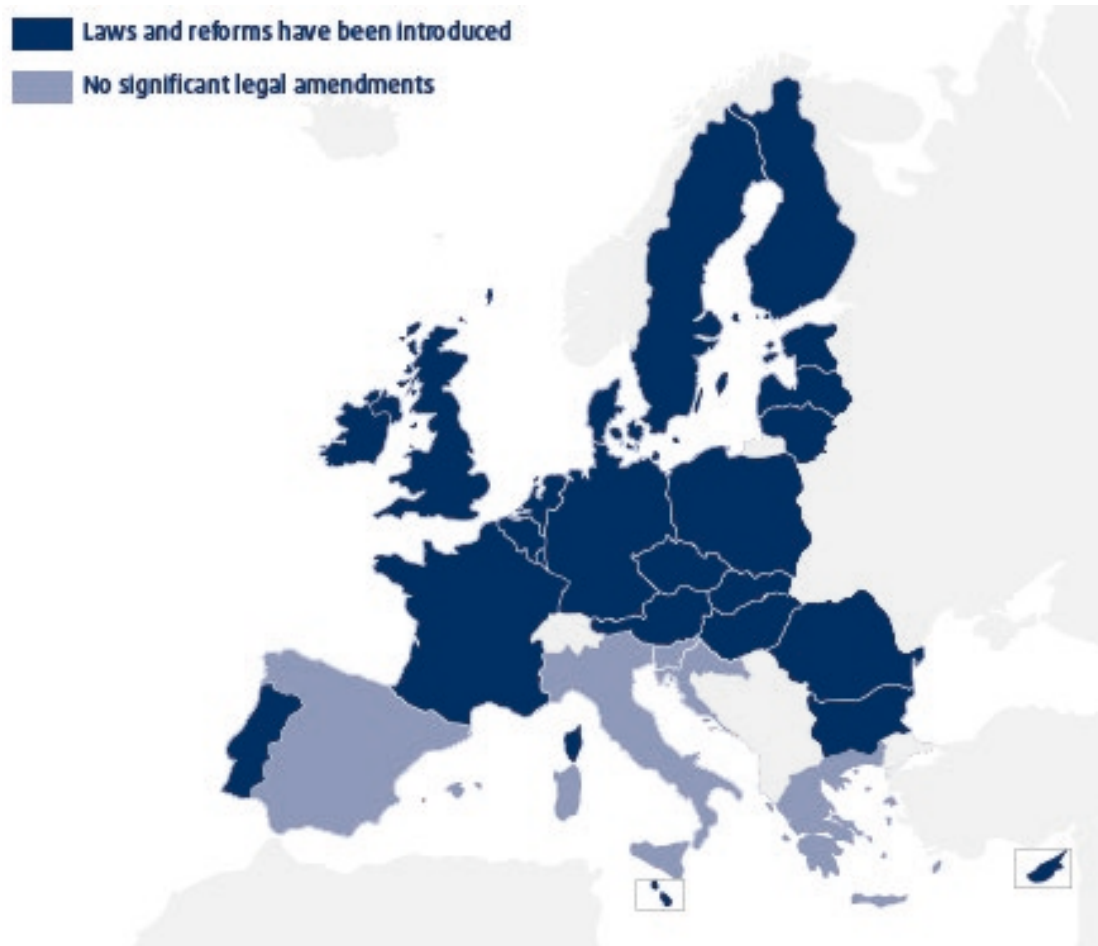
- Electronic Communications Act.¹⁴

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

None of the reforms were initiated in the context of the PEGASUS revelations.

Figure 1 is accurate.

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



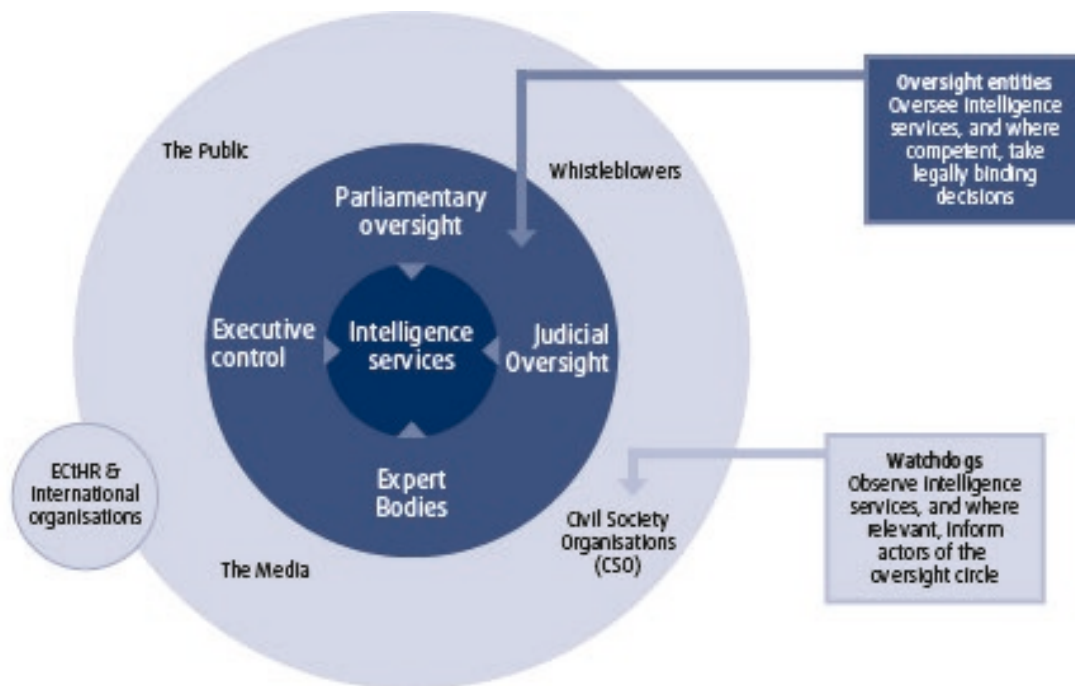
2.3. Intelligence services' accountability scheme

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 is accurate.

¹⁴ Slovenia, Electronic Communications Act (*Zakon o elektronskih komunikacijah*, ZEKom-2), 28 September 2022, available at: www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2022-01-3081/zakon-o-elektronskih-komunikacijah-zekom-2.

Figure 5: Intelligence services' accountability scheme

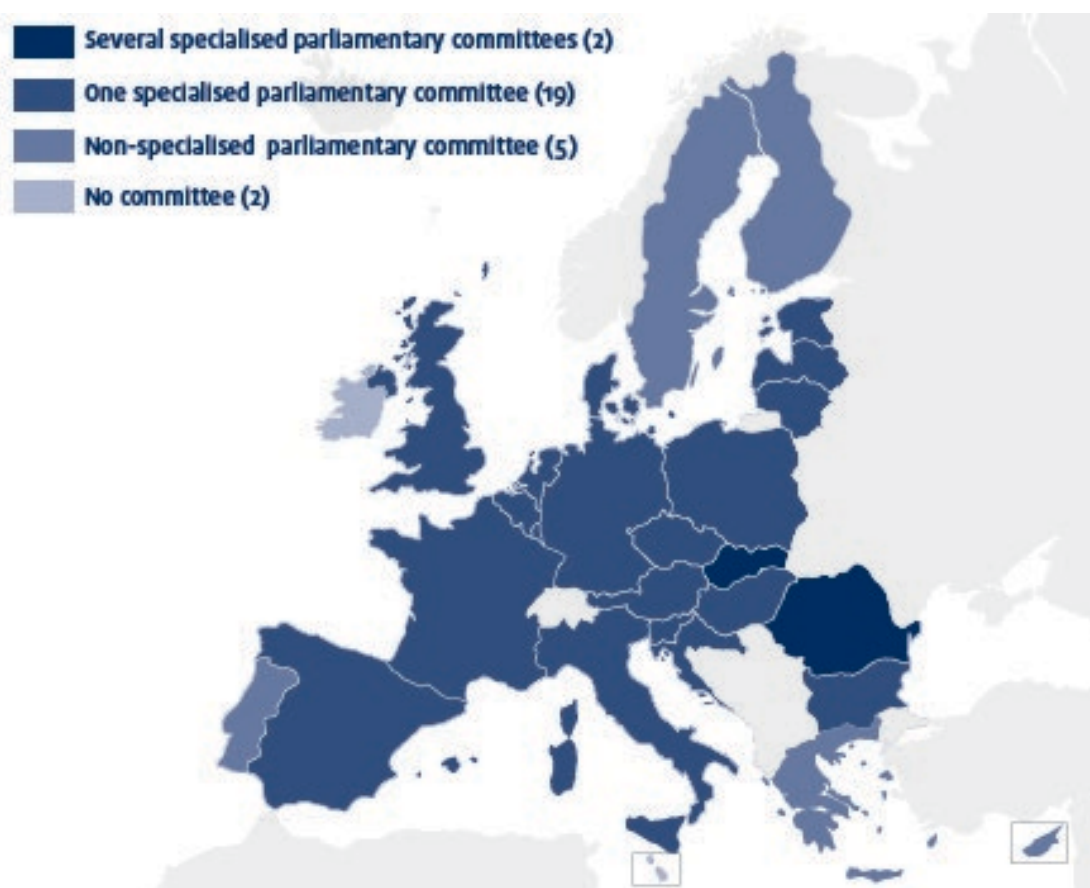


2.4. Parliamentary oversight of intelligence services in EU Member States

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.

Figure 6 is accurate.

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 is accurate.

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

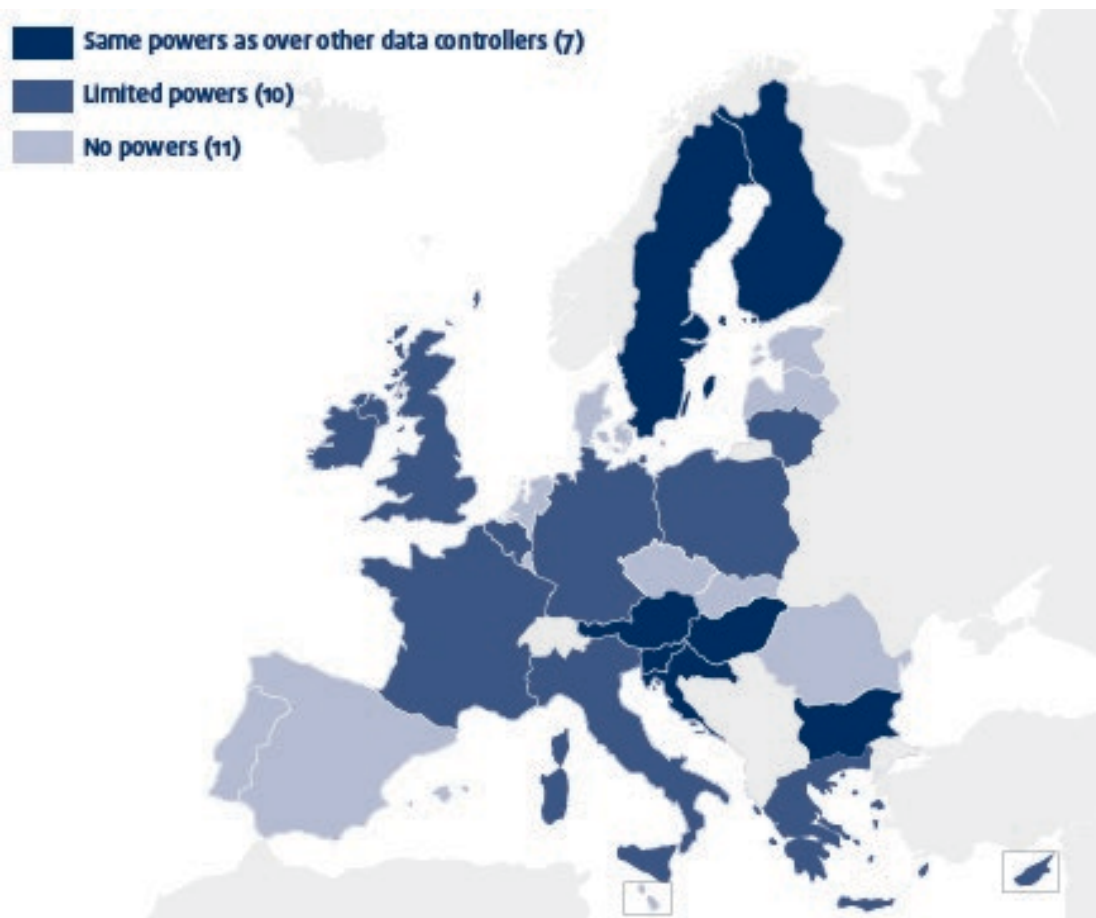
EU Member State	Expert Bodies
SI	N.A.

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.

Figure 7 is accurate.

Figure 7: DPAs' powers over national intelligence services, by member states¹⁵



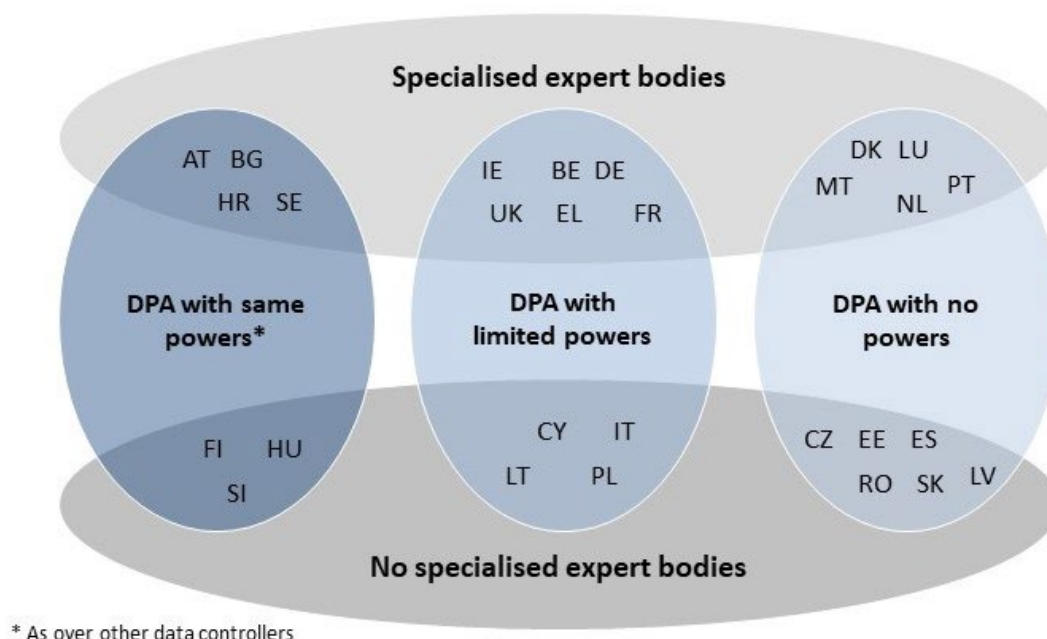
2.7. DPAs' and expert bodies' powers over intelligence techniques, by EU Member State

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.

Figure 8 is accurate.

¹⁵ National data protection regime in Slovenia, including the provisions addressing supervisory powers of the national data protection authority, the Information Commissioner, is currently being reformed in order to ensure harmonisation with the GDPR.

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 4 is accurate.

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

	Judicial	Executive	Expert bodies	Services
SI	✓			✓

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).

In Slovenia, the law does not regulate this type of surveillance technique.

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.

Table 6 is accurate.

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

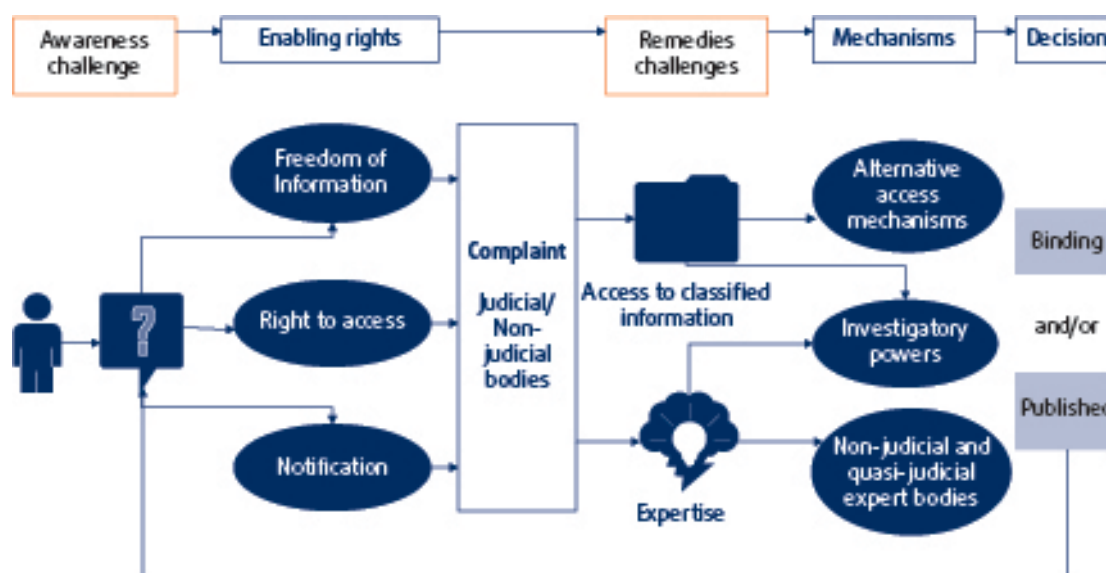
	Executive (ministry)	Expert body(ies)	DPA	Parliamentary committee(s)	Ombuds institution
SI			✓	✓	✓

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.

Figure 9 is accurate.

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.

Table 7 is accurate.

Table 7: Non-judicial bodies' remedial powers in case of surveillance, by EU Member State

SI	Bodies with remedial competence	Decisions are binding	May fully access collected data	Control is communicated to complainant	Decision may be reviewed
	Human Rights Ombudsman				
	Information Commissioner				
	Parlm. Supervision of the Intelligence and Security Services Act				

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.

Figure 10 is correct.

Figure 10: DPAs' remedial competences over intelligence services

