

Short Thematic Report

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

Legal update

Country: Bulgaria

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FRANET contractor: Project One (Center for the Study of Democracy)

Author(s) name(s): Dimitar Markov

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1 Description of tasks – Phase 3 legal update

1.1 Summary

FRANET contractors are requested to highlight in 1 to 2 pages **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 snap shot of the evolution during the report period (last trimester of 2014 until mid-2016). It should in particular mention:

1. the legislative reform(s) that took place or are taking place and highlight the key aspect(s) of the reform.
2. the important (higher) court decisions in the area of surveillance
3. the reports and inquiry by oversight bodies (parliamentary committees, specialised expert bodies and data protection authorities) in relation to the Snowden revelations
4. the work of specific ad hoc parliamentary or non-parliamentary commission (for example the NSA inquiry of the German Parliament) discussing the Snowden revelations and/or the reform of the surveillance focusing on surveillance by intelligence services should be referred to.

During the reporting period a major legislative reform took place in the area of intelligence in Bulgaria. Three new laws were adopted: the Governance and Functioning of the National Security Protection System Act (*Закон за управление и функциониране на системата за защита на националната сигурност*),¹ the State Intelligence Agency Act (*Закон за Държавна агенция “Разузнаване”*),² and the Military Intelligence Act (*Закон за военното разузнаване*).³

The Governance and Functioning of the National Security Protection System Act (*Закон за управление и функциониране на системата за защита на националната сигурност*) defines the national security protection system, the tasks and responsibilities of the institutions and services included in this system, the coordination between them, and the control over their operation.⁴ The law envisages four different forms of control over the national security protection system: parliamentary, administrative, judicial and civic.⁵

The parliament exercises control through one of its standing parliamentary committees. In addition, the parliament and all of its committees can invite the heads of the State Intelligence Agency (SIA) (*Държавна агенция “Разузнаване”*, ДАР), the Defense Information Service (DIS) (*Служба “Военна информация”*, СВИ) and the State Agency for National Security (SANS) (*Държавна агенция “Национална сигурност”*, ДАНС), who are obliged to respond to the invitation and provide all the requested information. The three agencies must also submit annual reports about their activities to the parliament.⁶

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¹ Bulgaria, Governance and Functioning of the National Security Protection System Act (*Закон за управление и функциониране на системата за защита на националната сигурност*), 11 August 2015, in force since 1 November 2015, www.lex.bg/bg/laws/ldoc/2136588572.

² Bulgaria, State Intelligence Agency Act (*Закон за Държавна агенция “Разузнаване”*), 13 October 2015, in force since 1 November 2015, www.lex.bg/bg/laws/ldoc/2136641510.

³ Bulgaria, Military Intelligence Act (*Закон за военното разузнаване*), 13 November 2015, in force since 1 November 2015, www.lex.bg/bg/laws/ldoc/2136679099.

⁴ Bulgaria, Governance and Functioning of the National Security Protection System (*Закон за управление и функциониране на системата за защита на националната сигурност*), 11 August 2015, in force since 1 November 2015, Chapter Two, www.lex.bg/bg/laws/ldoc/2136588572.

⁵ Bulgaria, Governance and Functioning of the National Security Protection System (*Закон за управление и функциониране на системата за защита на националната сигурност*), 11 August 2015, in force since 1 November 2015, Chapter Four, www.lex.bg/bg/laws/ldoc/2136588572.

⁶ Bulgaria, Governance and Functioning of the National Security Protection System Act (*Закон за управление и функциониране на системата за защита на националната сигурност*), 11 August 2015, in force since 1 November 2015, Art. 22, www.lex.bg/bg/laws/ldoc/2136588572.

According to the law, the so-called civic control (*граждански контрол*) is exercised by citizens and civil society organisations within the limits of their rights defined by the legislation. In addition, the government is obliged to set up a consultative mechanism for allowing representatives of NGOs, whose statutory objectives are related to national security, to be involved in the discussion of draft laws, reports and other documents in the area of national security.⁷

The law includes rules and procedures for crisis management⁸ and regulates the operation of the Security Council with the Council of Ministers (SCCM) (*Съвет по сигурността при Министерския съвет*, CCMC).⁹ The latter, before the adoption of the law, was governed by secondary legislation.¹⁰

With the adoption of the State Intelligence Agency Act (*Закон за Държавна агенция "Разузнаване"*) the former National Intelligence Service (NIS) (*Национална разузнавателна служба*, НРС) was transformed into State Intelligence Agency (SIA) (*Държавна агенция "Разузнаване"*, ДАР). Previously under the president, the new agency is now directly subordinate to the government.¹¹

The main task of the State Intelligence Agency (SIA) (*Държавна агенция "Разузнаване"*, ДАР) is to collect, process, analyse, assess, store and provide intelligence information. The law defines intelligence information as any information collected by the agency about foreign countries, organisations or persons or Bulgarian organisations or persons linked to them, which is important for the national security of Bulgaria.¹² The agency performs its activities through the use of special intelligence means in the country line with the Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), use of intelligence means abroad, recruitment of informants, use of undercover agents, etc.¹³

The parliament exercises control over the activities of the State Intelligence Agency (SIA) (*Държавна агенция "Разузнаване"*, ДАР) through a standing parliamentary committee. However, the parliamentary committee does not receive information about: (1) the organisation, means and techniques used for the execution of special tasks involving operational intelligence work, and (2) officers and other persons co-operating with the agency. When the parliamentary committee exercises control over the activities of the agency, its sessions are not public.¹⁴

⁷ Bulgaria, Governance and Functioning of the National Security Protection System Act (*Закон за управление и функциониране на системата за защита на националната сигурност*), 11 August 2015, in force since 1 November 2015, Art. 24, www.lex.bg/bg/laws/ldoc/2136588572.

⁸ Bulgaria, Governance and Functioning of the National Security Protection System (*Закон за управление и функциониране на системата за защита на националната сигурност*), 11 August 2015, in force since 1 November 2015, Chapter Three, www.lex.bg/bg/laws/ldoc/2136588572.

⁹ Bulgaria, Governance and Functioning of the National Security Protection System (*Закон за управление и функциониране на системата за защита на националната сигурност*), 11 August 2015, in force since 1 November 2015, Art. 8-16, www.lex.bg/bg/laws/ldoc/2136588572.

¹⁰ Bulgaria, Regulation on the Functions, Tasks and Organisation of Work of the Security Council with the Council of Ministers (*Правилник за функциите, задачите и организацията на работа на Съвета по сигурността при Министерския съвет*), 7 October 1998, www.lex.bg/laws/ldoc/-13047295.

¹¹ Bulgaria, State Intelligence Agency Act (*Закон за Държавна агенция "Разузнаване"*), 13 October 2015, in force since 1 November 2015, Art. 2, www.lex.bg/bg/laws/ldoc/2136641510.

¹² Bulgaria, State Intelligence Agency Act (*Закон за Държавна агенция "Разузнаване"*), 13 October 2015, in force since 1 November 2015, Art. 3, www.lex.bg/bg/laws/ldoc/2136641510.

¹³ Bulgaria, State Intelligence Agency Act (*Закон за Държавна агенция "Разузнаване"*), 13 October 2015, in force since 1 November 2015, Art. 10, www.lex.bg/bg/laws/ldoc/2136641510.

¹⁴ Bulgaria, State Intelligence Agency Act (*Закон за Държавна агенция "Разузнаване"*), 13 October 2015, in force since 1 November 2015, Art. 114, www.lex.bg/bg/laws/ldoc/2136641510.

The Military Intelligence Act (*Закон за военното разузнаване*) regulates the organisation, operation, tasks and functions of military intelligence.¹⁵ It defines the structure and responsibilities of the Defense Information Service (DIS) (*Служба “Военна информация”*, СВИ), which was previously governed by the Defense and Armed Forces of the Republic of Bulgaria Act (*Закон за отбраната и въоръжените сили на Република България*).¹⁶ According to the new law, the service remains subordinate to the minister of defense, but its director is no longer appointed by the minister, but is nominated by the government and appointed by the President.¹⁷

The Special Intelligence Means Act (*Закон за специалните разузнавателни средства*) was amended six times during the reporting period (once in December 2014 and five times in 2015):

- The list of agencies authorised to request the use of special intelligence means was aligned with the newly adopted legislation in the area of national security and intelligence and the newly established State Intelligence Agency (SIA) (*Държавна агенция “Разузнаване”*, ДАР) was added to the list.
- The scope of application of the law was broadened to allow the use of special intelligence means on witnesses in criminal cases.¹⁸
- Requesting authorities were obliged to always present the entire information justifying the request. Before the changes they were obliged to present this information only if requested by the court. In addition, a 72-hour deadline was introduced for the court to issue a decision on the request.¹⁹ Before the changes there was no such mandatory timeframe.
- The responsibility to appoint the chairperson of the State Agency for Technical Operations (SATO) (*Държавна агенция “Технически операции”*, ДАТО) was transferred from the government to the President. The limit on the chairperson’s term of office, which was four years before the changes, was removed.²⁰ The requirements for the position of chairperson and deputy chairperson were increased. The required professional experience as a judge, prosecutor, lawyer, security services officer or law enforcement official was increased from eight to 10 years for the chairperson and from five to seven years for the deputy chairpersons.²¹
- Two exceptions were added to the general rule that special intelligence means could be used for up to two months with an option for obtaining extensions for up to six months altogether. When special intelligence means are used for the identification of persons (untargeted surveillance), the maximum initial duration was set to 20 days and the maximum duration including extensions was changed to 60 days. When special intelligence means are

¹⁵ Bulgaria, Military Intelligence Act (*Закон за военното разузнаване*), 13 November 2015, in force since 1 November 2015, Art. 1, www.lex.bg/bg/laws/ldoc/2136679099.

¹⁶ Bulgaria, Defense and Armed Forces of the Republic of Bulgaria Act (*Закон за отбраната и въоръжените сили на Република България*), 12 May 2009, www.lex.bg/bg/laws/ldoc/2135631954.

¹⁷ Bulgaria, Military Intelligence Act (*Закон за военното разузнаване*), 13 November 2015, in force since 1 November 2015, Art. 24(4), www.lex.bg/bg/laws/ldoc/2136679099.

¹⁸ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, Art. 13(3), <http://lex.bg/laws/ldoc/2134163459>.

¹⁹ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, Art. 15, <http://lex.bg/laws/ldoc/2134163459>.

²⁰ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, Art. 19c(1), <http://lex.bg/laws/ldoc/2134163459>.

²¹ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, Art. 19c(3), <http://lex.bg/laws/ldoc/2134163459>.

used for protecting national security or for preventing a serious crime against the republic, these periods were increased to six months and 12 months respectively.²²

- New grounds were introduced for discontinuing the use of special intelligence means: (a) when the permission granted by the court referred to crimes outside the scope of the law, and (b) when there were mistakes in the request or in the permission.²³
- The previously unlimited period for storing the information, collected in relation to national security, was restricted to 15 years.²⁴

In May 2015, the newly established National Special Intelligence Devices Control Bureau (*Национално бюро за контрол на специалните разузнавателни средства*, НБКРС) published its first annual report. The report summarises the findings of the inquiries performed by the bureau in 2014 and lists the most widespread violations related to the use of special intelligence means. One of the recommendations, listed in the document, was to separate the rules governing the use of special intelligence means in relation to national security from those governing surveillance for criminal cases.²⁵

The public debates, including the legislative changes, were not related to the Snowden revelations. Most of them resulted from several high-profile cases of allegedly illegal use of special intelligence means by Bulgarian authorities. In one of these cases, a former chair of the Sofia City Court (SCC) (*Софийски градски съд*, СГС) was charged with and convicted at first instance for illegally authorising surveillance on one of the information databases of the Ministry of the Interior (MoI) (*Министерство на вътрешните работи*, МВР).²⁶ In another case, a former Minister of the Interior and three senior officials from the surveillance directorate of the Ministry of the Interior (MoI) (*Министерство на вътрешните работи*, МВР) were investigated for illegally wiretapping politicians, magistrates and businessmen, but were later found not guilty by the court.²⁷

²² Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, Art. 21, <http://lex.bg/laws/ldoc/2134163459>.

²³ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, Art. 22(3), <http://lex.bg/laws/ldoc/2134163459>.

²⁴ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, Art. 31(6), <http://lex.bg/laws/ldoc/2134163459>.

²⁵ National Special Intelligence Devices Control Bureau (*Национално бюро за контрол на специалните разузнавателни средства*) (2015), Report of the National Special Intelligence Devices Control Bureau for its Activities in 2014 (*Доклад на Националното бюро за контрол на специалните разузнавателни средства за извършената дейност през 2014 г.*), Sofia, National Special Intelligence Devices Control Bureau (*Национално бюро за контрол на специалните разузнавателни средства*), p. 23, <http://nbksrs.bg/документи/доклади/126-доклад-на-националното-бюро-за-контрол-на-специалните-разузнавателни-средства-за-извършената-дейност-през-2014-г>.

²⁶ Mediapool (2016), 'Vladimira Yaneva received one year suspended sentence for the "Worms" case' (*Владимира Янева осъдена на година условно по делото "Червей"*), 15 January 2016, www.mediapool.bg/vladimira-yaneva-osadena-na-godina-uslovno-po-deloto-chervei-news244254.html.

²⁷ Mitov, B. (*Митов, Б.*) (2016), 'Tsvetanov and former heads of the Specialised Directorate for Operational and Technical Operations found not guilty for the mobile wiretapping' (*Цветанов и ексшефовите на СДОТО са невинни за мобилното подслушване*), Mediapool, 29 January 2015, www.mediapool.bg/tsvetanov-i-eksshefovete-na-sdoto-sa-nevinni-za-mobilnoto-podslushvane-news229935.html.

1.2 International intelligence services cooperation

FRANET contractors are requested to provide information, in 1 to 2 pages **maximum**, on the following two issues, drawing on a recent publication by Born, H., Leigh, I. and Wills, A. (2015), *Making international intelligence cooperation accountable*, Geneva, DCAF.²⁸

1. *It is assumed that in your Member State international cooperation between intelligence services takes place. Please describe the legal basis enabling such cooperation and any conditions that apply to it as prescribed by law. If the conditions are not regulated by a legislative act, please specify in what type of documents such cooperation is regulated (e.g. internal guidance, ministerial directives etc.) and whether or not such documents are classified or publicly available.*
2. *Please describe whether and how the international cooperation agreements, the data exchanged between the services and any joint surveillance activities, are subject to oversight (executive control, parliament oversight and/or expert bodies) in your Member States.*

In Bulgaria, each intelligence service operates under a separate law and each of these laws regulates the international cooperation of the service it refers to.

The State Intelligence Agency (SIA) (Държавна агенция “Разузнаване”, ДАР) operates under the State Intelligence Agency Act (Закон за Държавна агенция “Разузнаване”). It cooperates with the services of the EU, NATO, other international organisations and foreign intelligence and counterintelligence services according to and in compliance with: (a) international treaties, to which Bulgaria is a party, (b) decrees issued by the government, or (c) agreements with partner services.²⁹

International treaties include bilateral agreements for cooperation in the fight against crime and protection of public order and safety, agreements for the protection and exchange of classified information, agreements on mutual cooperation in criminal matters, etc. These treaties list the cooperating agencies, the areas in which they can cooperate, and the rules for exchange of information. However, they do not include detailed procedures for the exchange of information. Instead, they authorise the relevant agencies to share information and refer to the national legislation for the specific rules and procedures. For example, the agreement between Bulgaria and Portugal on the exchange of classified information authorises the security services of the two countries, including their national intelligence services, to exchange operational and intelligence information in line with their domestic laws.³⁰

There are no special rules governing the oversight of the international cooperation of the agency. The institution supervising the work of the agency is the parliament through its standing parliamentary committee responsible for overseeing the intelligence services.³¹ The agency presents an annual report to the parliament through the government, but only its non-classified version is publicly accessible.³² The non-classified version does not include information about the agreements concluded between the agency and other services. Instead, it offers a summary of the agency’s participation in international cooperation. Thus, in 2015, the agency maintained regular working relations with partner services from 59 countries, including services of countries outside the EU and NATO. The aim of such cooperation was to share information

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²⁸ <http://www.dcaf.ch/Publications/Making-International-Intelligence-Cooperation-Accountable>

²⁹ Bulgaria, State Intelligence Agency Act (Закон за Държавна агенция “Разузнаване”), 13 October 2015, in force since 1 November 2015, Art. 33, www.lex.bg/bg/laws/ldoc/2136641510.

³⁰ For the full list of international agreements on the protection and exchange of classified information see www.dksi.bg/bg/International+Documents/International+Agreements/default.htm.

³¹ Bulgaria, State Intelligence Agency Act (Закон за Държавна агенция “Разузнаване”), 13 October 2015, in force since 1 November 2015, Art. 114-117, www.lex.bg/bg/laws/ldoc/2136641510.

³² Bulgaria, Governance and Functioning of the National Security Protection System Act (Закон за управление и функциониране на системата за защита на националната сигурност), 11 August 2015, in force since 1 November 2015, Art. 22(5), www.lex.bg/bg/laws/ldoc/2136588572.

about the crises in the Near East and North Africa, the activities of terrorist groups in the Balkans, operation of transborder organised crime, the refugee crisis, illegal migration, etc.³³

For the use of special intelligence means for the purpose of international cooperation the agency follows the rules laid down in the chapter on international cooperation of the Special Intelligence Means Act (*Закон за специалните разузнавателни средства*).³⁴ According to these rules, information collected through special intelligence means in Bulgaria can be used by another country following the procedures for mutual assistance in criminal matters.³⁵

The State Agency for National Security (SANS) (*Държавна агенция “Национална сигурност”*, ДАНС) operates under the State Agency for National Security Act (*Закон за Държавна агенция “Национална сигурност”*). The law authorises the agency to participate in international cooperation and allows it to share the collected information with foreign services if this is laid down in international treaty, to which Bulgaria is a party.³⁶

The international treaties authorising the agency to share information with foreign services are include bilateral agreements for cooperation in the fight against crime and protection of public order and safety, agreements for the protection and exchange of classified information, agreements on mutual cooperation in criminal matters, etc. (see above). The sharing of information collected through special intelligence means is done in the framework of the mutual assistance in criminal matters.³⁷

The Defense Information Service (DIS) operates under the Military Intelligence Act . Military Intelligence takes part in the activity of NATO and EU intelligence communities, exchanges intelligence, and provides intelligence support to allied and coalition operations. The Defense Information Service (DIS) provides strategic, operational and tactical information to NATO and EU intelligence structures, NATO and EU member states’ intelligence bodies, and to partner services.³⁸

1.3 Access to information and surveillance

*FRANET contractors are requested to summarise, in 1 to 2 pages **maximum**, the legal framework in their Member State in relation to surveillance and access to information.*

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³³ State Intelligence Agency (*Държавна агенция “Разузнаване”*) (2016), Report on the activities of the State Intelligence Agency in 2015 (*Доклад относно дейността на Държавна агенция “Разузнаване” през 2015 г.*), pp. 4-5, www.government.bg/fce/001/0211/files/Doklad_DAR_2015.pdf.

³⁴ Bulgaria, State Intelligence Agency (*Държавна агенция “Разузнаване”*) (2016), Letter No 12-556/03.05.2016 to the Center for the Study of Democracy (*Писмо № 12-556/03.05.2016 г. до Центъра за изследване на демокрацията*), 3 May 2016.

³⁵ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, Art. 34м, <http://lex.bg/laws/ldoc/2134163459>.

³⁶ Bulgaria, State Agency for National Security Act (*Закон за Държавна агенция “Национална сигурност”*), 20 December 2007, Art. 6(4), Art. 34(8) and Art. 42(1)7, <http://lex.bg/laws/ldoc/2135574489>.

³⁷ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, Art. 34м, <http://lex.bg/laws/ldoc/2134163459>.

³⁸ Military Intelligence Act, 01. November 2015

Please refer to the *Global Principles on National Security and the Right to Information (the Tshwane Principles)*³⁹ (in particular Principle 10 E. – Surveillance) and describe the relevant national legal framework in this context. FRANET contractors could in particular answer the following questions:

1. Does a complete exemption apply to surveillance measures in relation to access to information?
2. Do individuals have the right to access information on whether they are subject to surveillance?

The overall legal framework concerning surveillance and the procedures for authorising surveillance, selecting targets, and using, sharing, storing, and destroying intercepted material are accessible to the public (Principle 10E(1) of the Tshwane Principles).

The public has information about which entities are authorised to conduct surveillance because they are listed in the law.⁴⁰ Statistics about the use of surveillance are also public. They are published each year as part of the annual report of the National Special Intelligence Devices Control Bureau (*Национално бюро за контрол на специалните разузнавателни средства*, НБКРСР) (Principle 10E(1) of the Tshwane Principles).⁴¹ The annual reports include data on the total number of persons under surveillance during the year, the number of procedures initiated by each authorised institution (as a share of the total number of procedures), the number of requests, permissions and rejections issued by the courts, the number of cases where the use of surveillance was extended, etc. For example, in 2015, surveillance was used on a total of 2,638 persons. In the 50.29 % of the cases the procedure was initiated by the Ministry of the Interior (MoI) (*Министерство на правосъдието*, МП), in 30.05% of the cases – by public prosecutors, in 19.16% of the cases – by the State Agency for National Security (SANS) (*Държавна агенция “Национална сигурност”*, ДАНС), and in 0.51% of the cases by the military police. No procedures have been initiated by the State Intelligence Agency (SIA) (*Държавна агенция “Разузнаване”*, ДАР) and the Defense Information Service (DIS) (*Служба “Военна информация”*, СВИ).⁴²

The annual reports of the National Special Intelligence Devices Control Bureau (*Национално бюро за контрол на специалните разузнавателни средства*, НБКРСР) include information about violations of the surveillance procedures, including illegal surveillance (Principle 10E(3) of the Tshwane Principles).⁴³ In 2015, the bureau performed 123 investigations of alleged illegal surveillance. In 99 of these cases investigations were carried on the basis of information received from citizens, in 15 cases the bureau acted on its own initiative, and 10 cases were referred to the bureau by other institutions. By the end of 2015, investigation was completed in 110 of these cases and 10 citizens were informed about illegal use of surveillance on them. The most often established violations included: longer use of surveillance than the maximum period

³⁹ <http://www.right2info.org/exceptions-to-access/national-security/global-principles#section-10>

⁴⁰ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, Art. 13, <http://lex.bg/laws/ldoc/2134163459>.

⁴¹ For more information, see the annual reports of the **National Special Intelligence Devices Control Bureau** (*Национално бюро за контрол на специалните разузнавателни средства*), <http://nbksrs.bg/документи/доклади>.

⁴² **National Special Intelligence Devices Control Bureau** (*Национално бюро за контрол на специалните разузнавателни средства*) (2016), Report on the activities of the **National Special Intelligence Devices Control Bureau** in 2015 (*Доклад на Националното бюро за контрол на специалните разузнавателни средства за извършената дейност през 2015 г.*), <http://nbksrs.bg/документи/доклади/166-доклад-на-националното-бюро-за-контрол-на-специалните-разузнавателни-средства-за-извършената-дейност-през-2015-г>.

⁴³ For more information, see the annual reports of the **National Special Intelligence Devices Control Bureau** (*Национално бюро за контрол на специалните разузнавателни средства*), <http://nbksrs.bg/документи/доклади>.

allowed by law, use of surveillance without sufficient data that a crime justifying the use of surveillance was committed, permission of surveillance issued by a wrong court, etc.⁴⁴

The National Special Intelligence Devices Control Bureau (*Национално бюро за контрол на специалните разузнавателни средства*, НБКРС) is obliged to notify persons about any unlawful use of surveillance on them. Persons are not notified when such notification would: (a) endanger the achievement of the objectives of surveillance; (b) reveal the used means and techniques; or (c) create a risk for the life and health of the undercover officer or their close ones (Principle 10E(4) of the Tshwane Principles).⁴⁵

The procedure for requesting information from intelligence services is laid down in the Access to Public Information Act (*Закон за достъп до обществена информация*).⁴⁶ This procedure applies only to information, which is not classified as state secret or official secret.⁴⁷ The Protection of Classified Information Act (*Закон за защита на класифицираната информация*) classifies as state secret the information about the implemented special intelligence means (the technical means and the methods for their use).⁴⁸ Until 2013, the information obtained through the use of special intelligence means was also classified as state secret. However, in 2013, the Protection of Classified Information Act (*Закон за защита на класифицираната информация*) was amended and this category of data was excluded from the list of information classified as state secret.⁴⁹

According to the Access to Public Information Act (*Закон за достъп до обществена информация*), access to information can be requested orally or in writing, including by e-mail.⁵⁰ Requests must be processed within 14 days.⁵¹ This deadline can be extended by not more than 10 days when the amount of the requested information is big, or by not more than 14 days when the information concerns another person and his/her consent is required.⁵² Access to information is granted after the applicant pays the corresponding fee. If the requested information is sent by e-mail, access is free of charge.⁵³ Access can be denied if the requested information is classified or confidential (in this case access must be granted to this part of the information, which is not classified or confidential) or if it concerns a third person and this

⁴⁴ **National Special Intelligence Devices Control Bureau** (*Национално бюро за контрол на специалните разузнавателни средства*) (2016), Report on the activities of the **National Special Intelligence Devices Control Bureau** in 2015 (*Доклад на Националното бюро за контрол на специалните разузнавателни средства за извършената дейност през 2015 г.*), pp. 24-25, <http://nbksrs.bg/документи/доклади/166-доклад-на-националното-бюро-за-контрол-на-специалните-разузнавателни-средства-за-извършената-дейност-през-2015-г>.

⁴⁵ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, Art. 34g, <http://lex.bg/laws/ldoc/2134163459>.

⁴⁶ Bulgaria, Access to Public Information Act (*Закон за достъп до обществена информация*), 7 July 2000, <http://lex.bg/laws/ldoc/2134929408>.

⁴⁷ Bulgaria, Access to Public Information Act (*Закон за достъп до обществена информация*), 7 July 2000, <http://lex.bg/laws/ldoc/2134929408>.

⁴⁸ Bulgaria, Protection of Classified Information Act (*Закон за защита на класифицираната информация*), 30 April 2002, Annex 1, Part II, Item 6, <http://lex.bg/laws/ldoc/2135448577>.

⁴⁹ Bulgaria, Protection of Classified Information Act (*Закон за защита на класифицираната информация*), 30 April 2002, Annex 1, Part II, Item 8, <http://lex.bg/laws/ldoc/2135448577>.

⁵⁰ Bulgaria, Access to Public Information Act (*Закон за достъп до обществена информация*), 7 July 2000, Art. 24, <http://lex.bg/laws/ldoc/2134929408>.

⁵¹ Bulgaria, Access to Public Information Act (*Закон за достъп до обществена информация*), 7 July 2000, Art. 28, <http://lex.bg/laws/ldoc/2134929408>.

⁵² Bulgaria, Access to Public Information Act (*Закон за достъп до обществена информация*), 7 July 2000, Art. 30-31, <http://lex.bg/laws/ldoc/2134929408>.

⁵³ Bulgaria, Access to Public Information Act (*Закон за достъп до обществена информация*), 7 July 2000, Art. 35, <http://lex.bg/laws/ldoc/2134929408>.

person has explicitly objected against its provision.⁵⁴ The decision by which access is denied can be appealed before the court.⁵⁵

⁵⁴ Bulgaria, Access to Public Information Act (*Закон за достъп до обществена информация*), 7 July 2000, Art. 37, <http://lex.bg/laws/ldoc/2134929408>.

⁵⁵ Bulgaria, Access to Public Information Act (*Закон за достъп до обществена информация*), 7 July 2000, Art. 40-41, <http://lex.bg/laws/ldoc/2134929408>.

1.4 Update the FRA report

FRANET contractors are requested to provide up-to-date information based on the FRA report on Surveillance by intelligence services: fundamental rights safeguards and remedies in the EU – mapping Member States' legal framework.

Please take into account the **Bibliography/References** (p. 79 f. of the FRA report), as well as the **Legal instruments index – national legislation** (p. 88 f. the FRA report) when answering the questions.

Introduction

1. If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.
2. If your Member State is mentioned, please update the data (new legislation, new report etc.)
3. If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.

There is only one reference to Bulgaria (reference to a decision of the ECtHR) and it is correct. Given the situation in the country, there is no data that would call for another specific reference.

1 Intelligence services and surveillance laws

1. If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.
2. If your Member State is mentioned, please update the data (new legislation, new report etc.)
3. If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.

1.1 Intelligence services

1. If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.
2. If your Member State is mentioned, please update the data (new legislation, new report etc.)
3. If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.

There is no reference to Bulgaria in this section of the report. Bulgaria can be added to the group of countries where civil intelligence services are divided into two separate services, mandated with a domestic or foreign scope (p. 14 of the report). The service mandated with a domestic scope is the State Agency for National Security (SANS) (*Държавна агенция "Национална сигурност"*, ДАНС),⁵⁶ and the service mandated with a foreign scope is the State Intelligence Agency (SIA) (*Държавна агенция "Разузнаване"*, ДАР).⁵⁷

1.2 Surveillance measures

1. If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.

⁵⁶ For the mandate of the State Agency for National Security (SANS) (*Държавна агенция "Национална сигурност"*, ДАНС), see www.dans.bg/en/about-sans-menu-en.

⁵⁷ For the mandate of the State Intelligence Agency (SIA) (*Държавна агенция "Разузнаване"*, ДАР), see www.dar.bg/en/about-us/main-tasks.

2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report. Given the situation in the country, there is no data that would call for a specific reference.

1.3 Member States' laws on surveillance

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is only one reference to Bulgaria (reference to a decision of the ECtHR) and it is correct. Bulgaria is among the countries with a complex framework made up of several laws and regulations. A separate act regulates the mandate and organisation of each intelligence service⁵⁸, another act governs the coordination between them,⁵⁹ and there is a separate law laying down the procedure for authorisation and use of surveillance (the so-called 'special intelligence means' – *специални разузнавателни средства*), which is the same for both intelligence and law enforcement.⁶⁰

FRA key findings

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report. Given the situation in the country, there is no data that would call for a specific reference.

2 Oversight of intelligence services

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

⁵⁸ Bulgaria, State Intelligence Agency Act (*Закон за Държавна агенция "Разузнаване"*), 13 October 2015, in force since 1 November 2015, www.lex.bg/bg/laws/ldoc/2136641510; Bulgaria, Defense and Armed Forces of the Republic of Bulgaria Act (*Закон за отбраната и въоръжените сили на Република България*), 12 May 2009, www.lex.bg/bg/laws/ldoc/2135631954; Bulgaria, State Agency for National Security Act (*Закон за Държавна агенция "Национална сигурност"*), 20 December 2007, <http://lex.bg/laws/ldoc/2135574489>.

⁵⁹ Bulgaria, Governance and Functioning of the National Security Protection System (*Закон за управление и функциониране на системата за защита на националната сигурност*), 11 August 2015, in force since 1 November 2015, www.lex.bg/bg/laws/ldoc/2136588572.

⁶⁰ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, <http://lex.bg/laws/ldoc/2134163459>.

3. If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.

There is no reference to Bulgaria in this section of the report.

The new State Intelligence Agency Act (*Закон за Държавна агенция "Разузнаване"*) envisages for the first time the appointment of an inspector in charge exercising internal control within the State Intelligence Agency (SIA) (*Държавна агенция "Разузнаване"*, ДАР). The inspector is responsible for overseeing, among other things, compliance with the law and regulations and respect for the fundamental rights and freedoms of individuals.⁶¹ However, the chairperson of the agency is authorised to order the inspector to discontinue or not to start a certain inquiry if it would result in access to data about operational intelligence sources, methods and means, operational activities or intelligence operations.⁶²

2.1 Executive control

1. If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.
2. If you Member State is mentioned, please update the data (new legislation, new report etc.)
3. If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.

Bulgaria is mentioned among the countries, which have a body similar to the French National Intelligence Council (p. 32). A reference is given to an article by N. Bozhilov published in 2007 (footnote 199). The body referred to in this article is the Security Council of the Council of Ministers (SCCM) (*Съвет по сигурността към Министерския съвет*, CCMC), governed at that time by secondary legislation.⁶³ Now, the legal framework of the council is part of the new Governance and Functioning of the National Security Protection System Act (*Закон за управление и функциониране на системата за защита на националната сигурност*).⁶⁴ The council has different composition and powers compared to the one described in the article referred to in the report. A reference to the current legal framework would be more precise and up-to-date.

The Bulgarian Security Council of the Council of Ministers (SCCM) (*Съвет по сигурността към Министерския съвет*, CCMC) is the government's consultative and coordinating body on national security issues. It is chaired by the prime minister and includes as members the relevant ministers, the heads of intelligence services, the secretary general of the Ministry of the Interior (MoI) (*Министерство на вътрешните работи*, МВР), the secretary of the council and two representatives of the president of the republic. The council is responsible for analysing and assessing the national security system of the country and for coordinating the activities of all agencies whose operation is related to national security.⁶⁵

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⁶¹ Bulgaria, State Intelligence Agency Act (*Закон за Държавна агенция "Разузнаване"*), 13 October 2015, in force since 1 November 2015, Art. 20-21, www.lex.bg/bg/laws/ldoc/2136641510.

⁶² Bulgaria, State Intelligence Agency Act (*Закон за Държавна агенция "Разузнаване"*), 13 October 2015, in force since 1 November 2015, Art. 22, www.lex.bg/bg/laws/ldoc/2136641510.

⁶³ Bulgaria, Regulation on the Functions, Tasks and Organisation of Work of the Security Council with the Council of Ministers (*Правилник за функциите, задачите и организацията на работа на Съвета по сигурността при Министерския съвет*), 7 October 1998, www.lex.bg/laws/ldoc/-13047295.

⁶⁴ Bulgaria, Governance and Functioning of the National Security Protection System Act (*Закон за управление и функциониране на системата за защита на националната сигурност*), 11 August 2015, in force since 1 November 2015, Art. 8-16, www.lex.bg/bg/laws/ldoc/2136588572.

⁶⁵ Bulgaria, Governance and Functioning of the National Security Protection System Act (*Закон за управление и функциониране на системата за защита на националната сигурност*), 11 August 2015, in force since 1 November 2015, Art. 8-9, www.lex.bg/bg/laws/ldoc/2136588572.

2.2 Parliamentary oversight

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report. Given the situation in the country, there is no data that would call for a specific reference.

2.2.1 Mandate

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report.

The Bulgarian parliamentary committee in charge of exercising control over the intelligence services has the following mandate: (a) to give opinion on the annual reports and budgets of security services; (b) to discuss draft laws; (c) to request thematic reports from security services; (d) to hold hearings with acting and former officials of security services; (e) to perform checks in terms of compliance with the law and respect for fundamental rights; (f) to examine and give recommendations on the internal regulations of security services, including those containing classified information; (g) to exercise parliamentary control over the use of special intelligence means; (h) to receive complaints from citizens and organisations related to violations committed by the staff of security services; (i) to forward the cases of established violations to the public prosecution or other competent authorities; and (j) to inform the public about the results of its activities through public statements and statements in the media.⁶⁶

2.2.2 Composition

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report.

Bulgaria is among the countries with mandatory proportional representation rules on membership. The composition of the parliamentary committee in charge of exercising control over the intelligence services must be proportional to the size of the different parliamentary

⁶⁶ Bulgaria, Internal rules on the procedures and operation of the Committee for Oversight of the Security Services, the Deployment of Special Surveillance Techniques and the Access of Data under the Electronic Communications Act (*Вътрешни правила за реда и работата на Комисията за контрол над службите за сигурност, използването и прилагането на специалните разузнавателни средства и достъпа до данните по Закона за електронните съобщения*), Art. 13, www.parliament.bg/bg/parliamentarycommittees/members/2348/info.

groups.⁶⁷ In the current parliament, the committee is composed of 20 members. Each parliamentary group has at least one representative in the committee. The bigger parliamentary groups have more members according to the number of MPs they have in the parliament. The current composition of the committee is: seven members from Political Party GERB (which has a total of 84 MPs), three members from the Bulgarian Socialist Party (with 38 MPs) and from Movement for Rights and Freedoms (with 30 MPs), two members from the Reformist Bloc (with 23 MPs) and from the Patriotic Front (with 18 MPs), and one member from the Bulgarian Democratic Centre (with 14 MPs), from Political Party ABV (with 11 MPs) and from Political Party ATAKA (with 11 MPs). MPs who are not members of any parliamentary group are not represented in the committee.⁶⁸

2.2.3 Access to information and documents

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report. Given the situation in the country, there is no data that would call for a specific reference.

2.2.3 Reporting to parliament

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report. The Bulgarian parliamentary committee exercising control over the intelligence services presents an annual report to the parliament. The report includes analysis of the use of special intelligence means, an overview of the complaints received by the committee, and a summary of the main legislative developments during the preceding year.⁶⁹

2.3 Expert oversight

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

⁶⁷ Bulgaria, Rules of Procedure of the National Assembly (*Правилник за организацията и дейността на народното събрание*), Art. 20, para. 1, www.parliament.bg/en/rulesoftheorganisations.

⁶⁸ For the full list of committee members, see the website of the National Assembly www.parliament.bg/en/parliamentarycommittees/members/2348.

⁶⁹ Bulgaria, Committee for Oversight of the Security Services, the Deployment of Special Surveillance Techniques and the Access of Data under the Electronic Communications Act (*Комисия за контрол над службите за сигурност, използването и прилагането на специалните разузнавателни средства и достъпа до данните по Закона за електронните съобщения*) (2016), Report on the application and use of special intelligence means and access to data under the Electronic Communications Act in 2015 (*Доклад относно прилагане и използване на специални разузнавателни средства и достъп до данните по Закона за електронните съобщения през 2015 г.*).

3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

2.3.1 Specialised expert bodies

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

Bulgaria is mentioned in relation to the parliamentary involvement in the establishment of the expert body and the election of its members (p. 43). The information is accurate, but the reference in the footnote is not precise. The rules on the election of the members of the Special Intelligence Devices Control Bureau (*Национално бюро за контрол на специалните разузнавателни средства*, НБКРС) are laid down in Article 34c (34в in Cyrillic) and not in Article 34 (b).

2.3.2 Data protection authorities

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

In this section, Bulgaria is mentioned among the countries where DPAs have the same powers over national intelligence services as they do over any other controller (p. 47). This information is accurate and up-to-date. The Bulgarian DPA publishes an annual report on its activities but it contains no specific information about intelligence services.⁷⁰

2.4 Approval and review of surveillance measures

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

In this section Bulgaria is mentioned, together with Spain, as a country, in which the judicial decision must always state the grounds on which it is approved or dismissed (p 54). The information is accurate and up-to-date.

Bulgaria also has included provisions permitting the primary authority to postpone approvals in exceptional cases similar to the case of Latvia referred to in the FRA report (p. 54). When there is a need to act without delay to prevent a threat to national security or a serious intentional

⁷⁰ For more information, see the annual reports of the Commission for Personal Data Protection (*Комисия за защита на личните данни*), www.cdpd.bg/en/index.php?p=rubric&aid=14.

crime, surveillance can be initiated without the approval of the court, but such approval must be obtained within 24 hours.⁷¹

FRA key findings

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report. Given the situation in the country, there is no data that would call for a specific reference.

3 Remedies

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report. Given the situation in the country, there is no data that would call for a specific reference.

3.1 A precondition: obligation to inform and the right to access

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

In this section Bulgaria is mentioned several times.

There is a reference to a decision of the ECtHR concerning Bulgaria (p. 62, textbox). The reference is accurate.

Bulgaria is mentioned in the list of countries where data protection laws alone, or in conjunction with specific laws, constitute the legal basis for the restriction of the obligation to inform and the right to access (p. 62). This information is accurate and up-to-date.

Bulgaria is also mentioned among the countries where additional conditions are enshrined in the law and notification and right to access apply only to unlawful surveillance (p. 63). The information is accurate and up-to-date and the reference to the legal provision is correct. There is a restriction to this rule, which is not mentioned in the report. Notification is not done when it would: (a) endanger the achievement of the objectives of surveillance; (b) reveal the used

⁷¹ Bulgaria, Special Intelligence Means Act (*Закон за специалните разузнавателни средства*), 21 October 1997, Art. 18, <http://lex.bg/laws/ldoc/2134163459>.

means and techniques; or (c) create a risk for the life and health of the undercover officer or their close ones (Principle 10E(4) of the Tshwane Principles).⁷²

Given the situation in the country, there is no data that would call for additional references.

3.2 Judicial remedies

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report. Given the situation in the country, there is no data that would call for a specific reference.

3.2.1 Lack of specialisation and procedural obstacles

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report. Given the situation in the country, there is no data that would call for a specific reference.

3.2.2 Specialised judges and quasi-judicial tribunals

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report. Given the situation in the country, there is no data that would call for a specific reference.

3.3 Non-judicial remedies: independence, mandate and powers

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If you Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If you Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report. Given the situation in the country, there is no data that would call for a specific reference.

3.3.1 Types of non-judicial bodies

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report. Bulgaria can be added to the list of countries, in which the parliamentary committee can also function as complaint-handling body (p. 70). The Bulgarian parliamentary committee exercising control over the intelligence services has the power to receive complaints from citizens and organisations related to violations committed by the staff of security services.⁷³

3.3.2 The issue of independence

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report. Given the situation in the country, there is no data that would call for a specific reference.

3.3.3 Powers and specialisation of non-judicial remedial bodies

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report. Given the situation in the country, there is no data that would call for a specific reference.

FRA key findings

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

⁷³ Bulgaria, Internal rules on the procedures and operation of the Committee for Oversight of the Security Services, the Deployment of Special Surveillance Techniques and the Access of Data under the Electronic Communications Act (*Вътрешни правила за реда и работата на Комисията за контрол над службите за сигурност, използването и прилагането на специалните разузнавателни средства и достъпа до данните по Закона за електронните съобщения*), Art. 13, www.parliament.bg/bg/parliamentarycommittees/members/2348/info.

In the subsection on non-judicial remedies (p. 76) the FRA report says that parliamentary committees in four Member States are entitled to hear individual complaints. This number, according to Figure 6 earlier in the report (p. 73) excludes Bulgaria. However, the Bulgarian parliamentary committee exercising control over the intelligence services has the power to receive complaints from citizens and organisations related to violations committed by the staff of security services.⁷⁴ Therefore, the number indicated in the report should be increased to five to include Bulgaria.

In 2015, the committee received 20 complaints from individuals and legal entities: seven complaints against officials of security services, six complaints against unlawful use of special intelligence means and seven complaints concerning other issues (employment, access to classified information, etc.). According to the report, the committee completed the investigations on 17 complaints and three cases remained pending at the end of the year. The complainants were duly informed about the results of the investigations. However, the report does not include information about the outcome of these investigations.⁷⁵

The parliamentary committee has no power to issue binding decisions. If, as a result of the investigation, the committee has identified unlawful practices, it must refer the case to the public prosecutor or another competent authority.⁷⁶

Conclusions

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*
3. *If your Member State is not mentioned, please provide data that would call for a specific reference given the relevance of the situation in your Member State to illustrate/complement FRA comparative analysis.*

There is no reference to Bulgaria in this section of the report. Given the situation in the country, there is no data that would call for a specific reference.

⁷⁴ Bulgaria, Internal rules on the procedures and operation of the Committee for Oversight of the Security Services, the Deployment of Special Surveillance Techniques and the Access of Data under the Electronic Communications Act (*Вътрешни правила за реда и работата на Комисията за контрол над службите за сигурност, използването и прилагането на специалните разузнавателни средства и достъпа до данните по Закона за електронните съобщения*), Art. 13, www.parliament.bg/bg/parliamentarycommittees/members/2348/info.

⁷⁵ Bulgaria, Committee for Oversight of the Security Services, the Deployment of Special Surveillance Techniques and the Access of Data under the Electronic Communications Act (*Комисия за контрол над службите за сигурност, използването и прилагането на специалните разузнавателни средства и достъпа до данните по Закона за електронните съобщения*) (2016), Report on the application and use of special intelligence means and access to data under the Electronic Communications Act in 2015 (*Доклад относно прилагане и използване на специални разузнавателни средства и достъп до данните по Закона за електронните съобщения през 2015 г.*), p. 9-10.

⁷⁶ Bulgaria, Internal rules on the procedures and operation of the Committee for Oversight of the Security Services, the Deployment of Special Surveillance Techniques and the Access of Data under the Electronic Communications Act (*Вътрешни правила за реда и работата на Комисията за контрол над службите за сигурност, използването и прилагането на специалните разузнавателни средства и достъпа до данните по Закона за електронните съобщения*), Art. 13, www.parliament.bg/bg/parliamentarycommittees/members/2348/info.

1.5 Check the accuracy of the figures and tables published in the FRA report (see the annex on Figures and Tables)

1.5.1 Overview of security and intelligence services in the EU-28

- Please, delete all lines not referring to your country in the table below (see Annex p. 93 of the FRA Report)
- Check accuracy of the data
- Add in track changes any missing information (incl. translation and abbreviation in the original language).
- Provide the reference to the national legal framework when updating the table.

	Civil (internal)	Civil (external)	Civil (internal and external)	Military
BG	State Agency for National Security (SANS) (Държавна Агенция “Национална сигурност”, ДАНС) State agency “Technical operations” (SATO) (Държавна агенция „Технически операции”, ДАТО)	State Intelligence Agency (SIA) (Държавна агенция “Разузнаване”, ДАР)		the Defense Information Service (DIS) () (Служба “Военна информация”, СВИ)

The State Agency “Technical operations” (SATO) (Държавна агенция „Технически операции”, ДАТО), listed in the table as a civil internal security and intelligence service, does not exactly fit into this category. This is the agency that implements in practice the special intelligence means when it is requested to do so by the competent authorities. It can neither act upon its own initiative, nor use the collected information. The three security and intelligence services regulated by law are the State Agency for National Security (SANS) (Държавна Агенция “Национална сигурност”, ДАНС), the State Intelligence Agency (SIA) (Държавна агенция “Разузнаване”, ДАР) and the Defense Information Service (DIS) () (Служба “Военна информация”, СВИ). When these services want to use surveillance and obtain the required authorisation from the court, they have two options: (a) to request SATO to apply the necessary surveillance tools and send back the collected information, or (b) to apply their own surveillance tools, which they are explicitly allowed by law to possess and use.

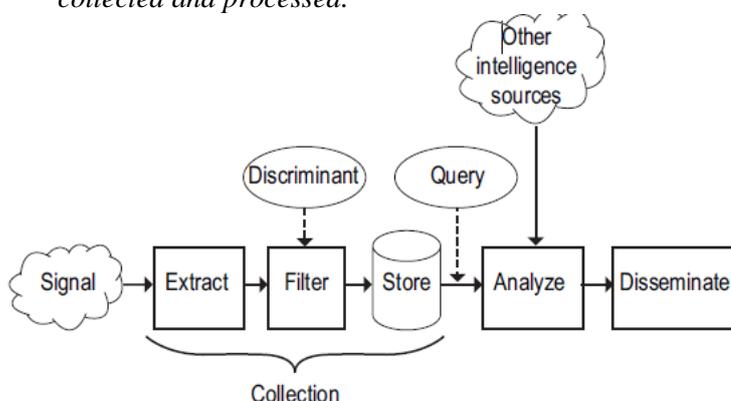
In Bulgaria, the civil internal intelligence service is the State Agency for National Security (SANS) (Държавна Агенция “Национална сигурност”, ДАНС). It was established with the adoption of the State Agency for National Security Act in 2008 (Закон за Държавна агенция “Национална сигурност”). The agency is a specialized body under the Council of Ministers in charge of implementing the policy of protection of national security.

In Bulgaria, the civil external intelligence service is the State Intelligence Agency (SIA) (*Държавна агенция “Разузнаване”*, ДАР). It was established with the adoption of the State Intelligence Agency Act (*Закон за Държавна агенция “Разузнаване”*) and replaced the former National Intelligence Service (NIS) (*Национална разузнавателна служба*, НРС). Previously under the president, the new agency is now directly subordinate to the government.⁷⁷

The military intelligence service, the Defense Information Service (DIS) (*Служба “Военна информация”*, СВИ), has a new legal framework. Previously governed by the Defense and Armed Forces of the Republic of Bulgaria Act (*Закон за отбраната и въоръжените сили на Република България*),⁷⁸ now the service’s organisation, operation, tasks and functions are regulated by the new Military Intelligence Act (*Закон за военното разузнаване*).⁷⁹

1.5.2 Figure 1: A conceptual model of signals intelligence

- Please, provide a reference to any alternative figure to Figure 1 below (p. 16 of the FRA Report) available in your Member State describing the way signals intelligence is collected and processed.



No alternative figure to Figure 1 above is available in Bulgaria.

1.5.3 Figure 2: Intelligence services’ accountability mechanisms

Please confirm that Figure 2 below (p. 31 of the FRA 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.

⁷⁷ Bulgaria, State Intelligence Agency Act (*Закон за Държавна агенция “Разузнаване”*), 13 October 2015, in force since 1 November 2015, www.lex.bg/bg/laws/ldoc/2136641510.

⁷⁸ Bulgaria, Defense and Armed Forces of the Republic of Bulgaria Act (*Закон за отбраната и въоръжените сили на Република България*), 12 May 2009, www.lex.bg/bg/laws/ldoc/2135631954.

⁷⁹ Bulgaria, Military Intelligence Act (*Закон за военното разузнаване*), 13 November 2015, in force since 1 November 2015, www.lex.bg/bg/laws/ldoc/2136679099.

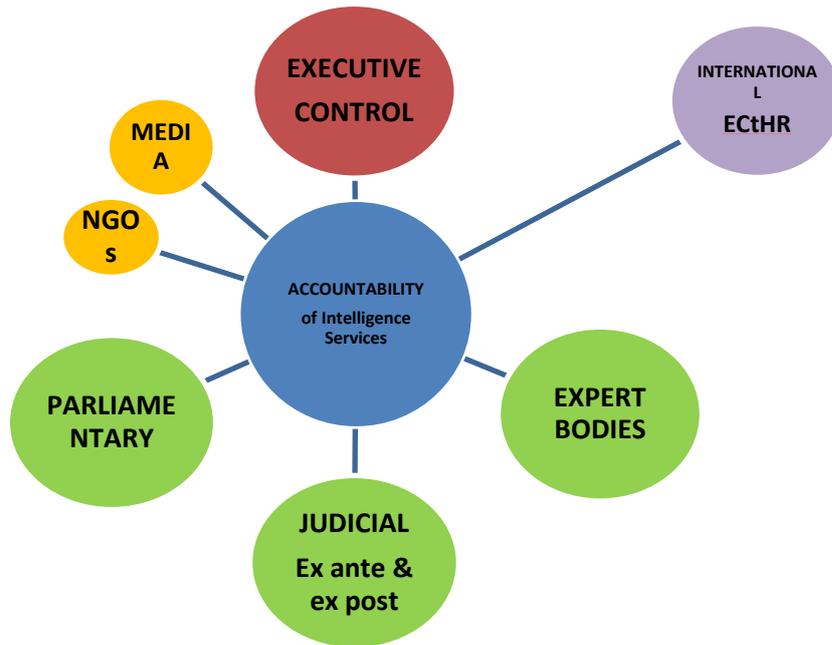


Figure 2 above illustrates the situation in Bulgaria in an accurate manner.

1.5.4 Figure 3: Forms of control over the intelligence services by the executive across the EU-28

Please confirm that Figure 3 below (p. 33 of the FRA Report) properly captures the executive control over the intelligence services in your Member State. If it is not the case, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

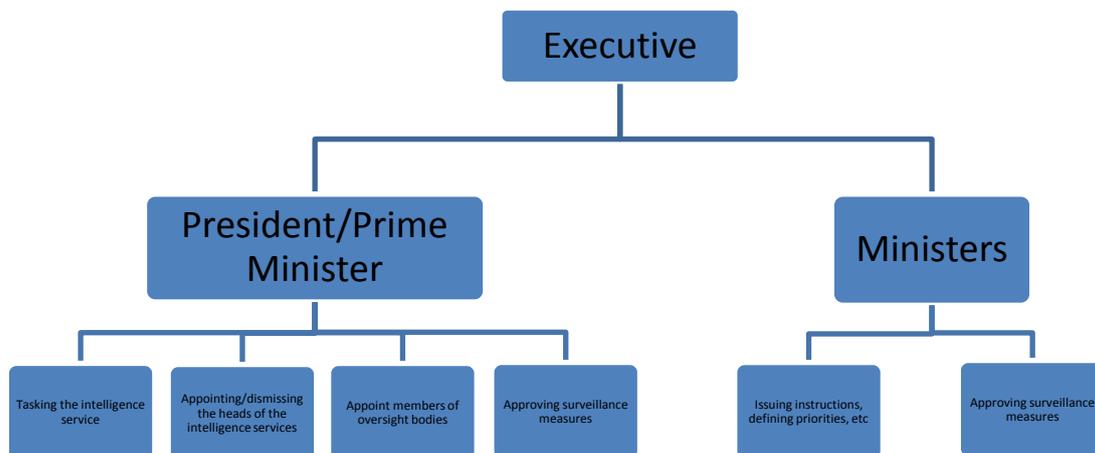


Figure 3 above properly captures the executive control over the intelligence services in Bulgaria.

1.5.5 Table 1: Categories of powers exercised by the parliamentary committees as established by law

Please, delete all lines not referring to your country in the table below (see p. 36 of the FRA Report)

Please check the accuracy of the data.. Please confirm that the parliamentary committee in your Member State was properly categorised by enumerating the powers it has as listed on p. 35 of the FRA Report. Please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

Member States	Essential powers	Enhanced powers
BG	X	

Note: Finland, Ireland, Malta and Portugal do not have parliamentary committees that deal with intelligence services.

In Bulgaria, the parliamentary committee in charge of exercising control over the intelligence services has some of the powers defined by the FRA report as enhanced powers. These include the powers to: (a) to perform checks in terms of compliance with the law and respect for fundamental rights; (b) to examine and give recommendations on the internal regulations of security services, including those containing classified information; and (c) to receive complaints from citizens and organisations related to violations committed by the staff of security services.⁸⁰ If this additional powers justify the categorisation of the Bulgarian parliamentary committee as a committee having enhanced powers, then the categorisation for Bulgaria in the table needs to be changed from essential powers to enhanced powers.

1.5.6 Table 2: Expert bodies in charge of overseeing surveillance, EU-28

Please, delete all lines not referring to your country in the table below (p. 42 of the FRA Report). Please check the accuracy of the data. In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

EU Member State	Expert Bodies
BG	National Special Intelligence Devices Control (Национално бюро за контрол на специалните разузнавателни средства)

The data in the table above are accurate and up-to-date.

1.5.7 Table 3: DPAs' powers over national intelligence services, EU-28

Please, delete all lines not referring to your country in the table below (p. 49 of the FRA Report). Please check the accuracy of the data. In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

EU Member State	No powers	Same powers (as over other data controllers)	Limited powers
BG		X	

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⁸⁰ Bulgaria, Internal rules on the procedures and operation of the Committee for Oversight of the Security Services, the Deployment of Special Surveillance Techniques and the Access of Data under the Electronic Communications Act (Вътрешни правила за реда и работата на Комисията за контрол над службите за сигурност, използването и прилагането на специалните разузнавателни средства и достъпа до данните по Закона за електронните съобщения), Art. 13, www.parliament.bg/bg/parliamentarycommittees/members/2348/info.

Notes: No powers: refers to DPAs that have no competence to supervise NIS.

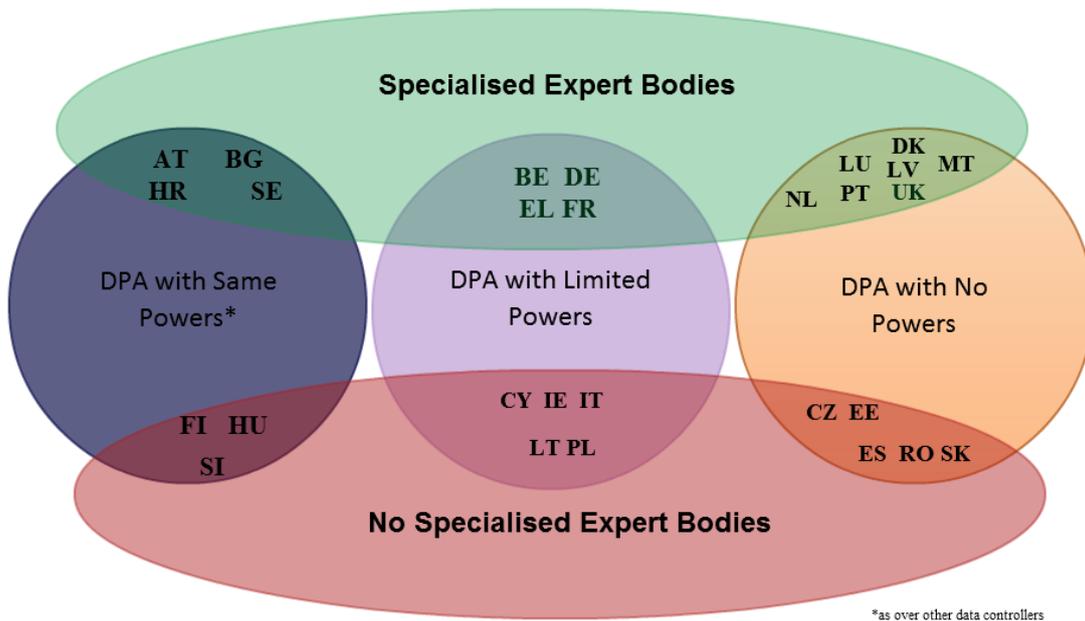
Same powers: refers to DPAs that have the exact same powers over NIS as over any other data controller.

Limited powers: refers to a reduced set of powers (usually comprising investigatory, advisory, intervention and sanctioning powers) or to additional formal requirements for exercising them.

The data on Bulgaria in the table above are accurate and up-to-date.

1.5.8 Figure 4: Specialised expert bodies and DPAs across the EU-28

Please check the accuracy of Figure 4 below (p. 50 of the FRA Report). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.



The categorisation of Bulgaria in Figure 4 above is accurate.

1.5.9 Table 4: Prior approval of targeted surveillance measures, EU-28

Please, delete all lines not referring to your country in the table below (p. 52 of the FRA Report). Please check the accuracy of the data. In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

EU Member State	Judicial	Parliamentary	Executive	Expert bodies	None
BG	X				

The data in the table above is accurate and up-to-date.

1.5.10 Table 5: Approval of signals intelligence in France, Germany, the Netherlands, Sweden and the United Kingdom

Please check the accuracy of Table 5 below (p. 55 of the FRA Report). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

EU Member State	Judicial	Parliamentary	Executive	Expert
FR			X	
DE		X (telco relations)		X (selectors)
NL			X (selectors)	
SE				X
UK			X	

Not applicable for Bulgaria.

1.5.11 Figure 5: Remedial avenues at the national level

Please confirm that Figure 5 below (p. 60 of the FRA 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.

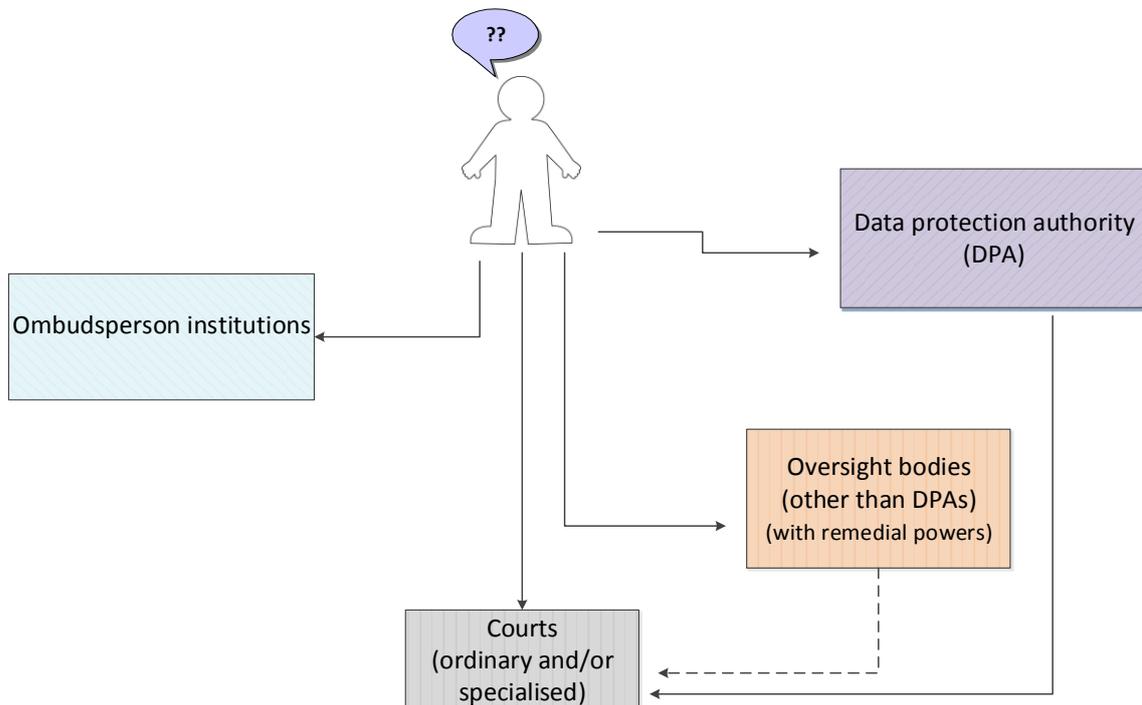
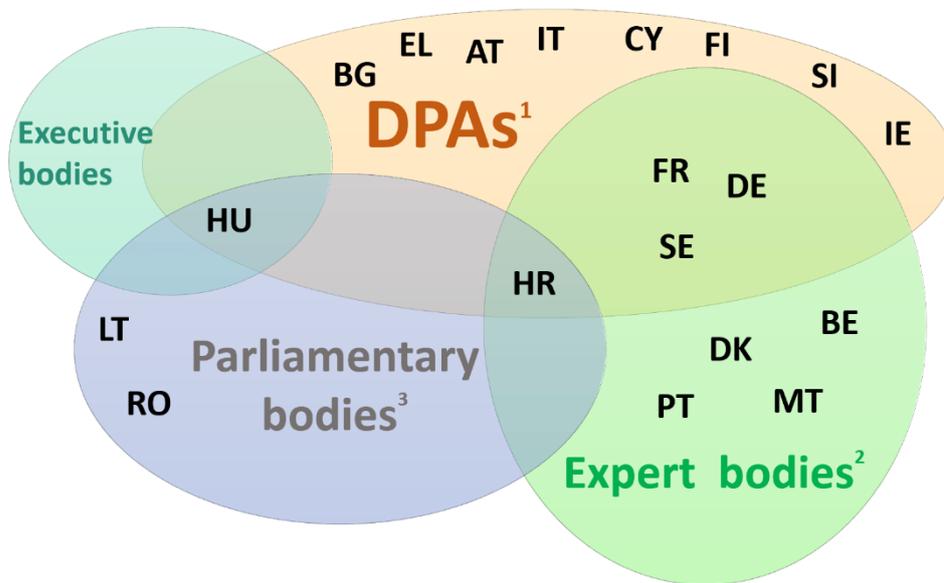


Figure 5 above illustrates the situation in Bulgaria in an accurate manner. The parliamentary committee has no real remedial powers. It receives complaints and investigates them, but when a violation is identified its only option is to refer the case to the prosecutor or to another competent authority.

1.5.12 Figure 6: Types of national oversight bodies with powers to hear individual complaints in the context of surveillance, by EU Member States

Please check the accuracy of Figure 6 (p. 73 of the FRA Report) below. In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.



- Notes:
1. The following should be noted regarding national data protection authorities: In Germany, the DPA may issue binding decisions only in cases that do not fall within the competence of the G 10 Commission. As for 'open-sky data', its competence in general, including its remedial power, is the subject of on-going discussions, including those of the NSA Committee of Inquiry of the German Federal Parliament
 2. The following should be noted regarding national expert oversight bodies: In Croatia and Portugal, the expert bodies have the power to review individual complaints, but do not issue binding decisions. In France, the National Commission of Control of the Intelligence Techniques (CNCTR) also only adopts non-binding opinions. However, the CNCTR can bring the case to the Council of State upon a refusal to follow its opinion. In Belgium, there are two expert bodies, but only Standing Committee I can review individual complaints and issue non-binding decisions. In Malta, the Commissioner for the Security Services is appointed by, and accountable only to, the prime minister. Its decisions cannot be appealed. In Sweden, seven members of the Swedish Defense Intelligence Commission are appointed by the government, and its chair and vice chair must be or have been judges. The remaining members are nominated by parliament.
 3. The following should be noted regarding national parliamentary oversight bodies: only the decisions of the parliamentary body in Romania are of a binding nature.

The positioning of Bulgaria in Figure 6 above is not accurate. The Bulgarian parliamentary committee exercising control over the intelligence services has the power to receive complaints from citizens and organisations related to violations committed by the staff of security services.⁸¹

⁸¹ Bulgaria, Internal rules on the procedures and operation of the Committee for Oversight of the Security Services, the Deployment of Special Surveillance Techniques and the Access of Data under the Electronic Communications Act (Вътрешни правила за реда и работата на Комисията за контрол над службите за сигурност, използването и прилагането на специалните разузнавателни средства и достъпа до данните по Закона за електронните съобщения), Art. 13, www.parliament.bg/bg/parliamentarycommittees/members/2348/info.