

# Short Thematic Report

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

Legal update

Country: Denmark

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FRANET contractor: Danish Institute for Human Rights

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DISCLAIMER: This document was commissioned under a specific contract as background material for the project on [National intelligence authorities and surveillance in the EU: Fundamental rights safeguards and remedies](#). The information and views contained in the document do not necessarily reflect the views or the official position of the EU Agency for Fundamental Rights. The document is made publicly available for transparency and information purposes only and does not constitute legal advice or legal opinion. FRA would like to express its appreciation for the comments on the draft report provided by Denmark that were channelled through the FRA National Liaison Officer.

# 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.

Following the terrorist attacks in Paris and Copenhagen, the former Government drafted “A Strong Defense Against Terror” (“*Et stærkt værn mod terror*”) containing 12 initiatives, incl. the use of Passenger Name Records (PNR), to protect against and counter terrorism.<sup>1</sup> The Danish Intelligence and Security Service (*Politiets Efterretningstjeneste (PET)*) was to be given access to PNR, a PNR-system should be established, and the European PNR-system should be endeavored adopted in Denmark.

The increased use of PNR was envisaged as a means for border control along with Automatic License Plate Recognition (ALPR) already in December 2014 with the introduction of a bill amending the Danish Aliens Act (*Udlændingeloven*).<sup>2</sup> The act was adopted on 17 March 2015,<sup>3</sup> followed in May 2015 by an administrative order on border control, incl. PNR.<sup>4</sup> Concern was raised, that the collection, storage and deletion of the PNR were disproportionate<sup>5</sup>.

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<sup>1</sup> The Danish Prime Minister’s Office (15 February 2015) *Et stærkt værn mod terror, 12 nye titag mod terror*, available in Danish at: [www.justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2015/Et%20st%C3%A6rkt%20v%C3%A6rn%20mod%20terror.pdf](http://www.justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/2015/Et%20st%C3%A6rkt%20v%C3%A6rn%20mod%20terror.pdf)

<sup>2</sup> Denmark, , Bill no. 95 of 12 december 2014, Amending the Aliens Act (Reinforced feasibility of control at boarders and airports and the reinforcement of the level of fines for foreigners' illegal entry, stay and work) ( *Lov nr. 95 af 12. december 2014, Forslag til lov om ændring af Udlændingeloven (Styrkede kontrolmuligheder i grænseområder og lufthavne samt skærpelse af bødeniveau for udlændinges ulovlige indrejse, ophold og arbejde*)), Sections 38, 59 and 60, available in Danish at: [http://www.ft.dk/RIPdf/samling/20141/lovforslag/L95/20141\\_L95\\_som\\_fremsat.pdf](http://www.ft.dk/RIPdf/samling/20141/lovforslag/L95/20141_L95_som_fremsat.pdf)

<sup>3</sup> Denmark, Act, no. 95 of 17 march 2015 Amending the Aliens Act (Reinforced feasibility of control at boarders and airports and the reinforcement of the level of fines for foreigners' illegal entry, stay and work) ( *Lov nr. 95 af 12. december 2014, Forslag til lov om ændring af Udlændingeloven (Styrkede kontrolmuligheder i grænseområder og lufthavne samt skærpelse af bødeniveau for udlændinges ulovlige indrejse, ophold og arbejde*)), Sections 38, 59 and 60, available in Danish at: [http://www.ft.dk/RIPdf/samling/20141/lovforslag/L95/20141\\_L95\\_som\\_vedtaget.pdf](http://www.ft.dk/RIPdf/samling/20141/lovforslag/L95/20141_L95_som_vedtaget.pdf)

<sup>4</sup> Denmark, Control of Illigal Residence After Entry, Administrative order no. 640 of 12 May 2015 (Kontrol af ulovligt ophold efter indrejse, Bekendtgørelse nr. 640 af 12. maj 2015), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=170384>.

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Moreover, in May 2015, a bill amending the PET Act was introduced.<sup>6</sup> It intended to give PET access to PNR collected by the Danish Tax and Customs Authority (SKAT). Such collaboration had already been in place, but it had recently been repealed due to lack of legal basis. The mechanism, due to which, PET was to access data through SKAT, including data of no interest to SKAT, was considered temporary and should be replaced by the abovementioned PNR-system. The bill was criticised for several reasons,<sup>7</sup> however, the act was adopted on 29 December 2015.<sup>8</sup>

Also in May 2015, the former Government introduced a bill amending the Danish Act on the Danish Defence Intelligence Service (*Forsvarets Efterretningstjeneste (FE)*) (FE).<sup>9</sup> Due to change of Government the bill was cancelled, but reintroduced by the new Government.<sup>10</sup> The act was adopted on 15 December 2015.<sup>11</sup> The act allows for FE to conduct targeted surveillance on Danish citizens abroad, if faced with specific grounds to believe that the person concerned is involved with activities, which may imply or enhance a terror threat against Denmark or Danish interests.<sup>12</sup> The act was introduced to enable FE to collect data on

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<sup>6</sup> Denmark, Bill no. 204 of 5 May 2015 amending the Act on the Danish Security and Intelligence Service (PET) and the Customs Act (The Danish Security and Intelligence Service's access to information on airline passengers in terrorism cases etc. and SKAT's handling of information on airline passengers for customs inspections etc.) (*Lovforslag nr. 204 af 5. maj 2015 til lov om ændring af lov om Politiets Efterretningstjeneste (PET) og toldloven (Politiets Efterretningstjenestes adgang til oplysninger om flypassagerer i terrørsager m.v. og SKATs håndtering af oplysninger om flypassagerer i forbindelse med toldkontrol m.v.)*), sections 4, 17 og 79, available in Danish at: [www.ft.dk/RIpdf/samling/20141/lovforslag/L204/20141\\_L204\\_som\\_fremsat.pdf](http://www.ft.dk/RIpdf/samling/20141/lovforslag/L204/20141_L204_som_fremsat.pdf)

<sup>7</sup> See Overview of legal briefs (Kommenteret høringsoversigt), available in Danish at: [www.ft.dk/samling/20141/lovforslag/1204/bilag/1/1526723.pdf](http://www.ft.dk/samling/20141/lovforslag/1204/bilag/1/1526723.pdf) and the Danish Institute for Human Rights (*Institut for Menneskerettigheder*) (2015) 'Høring over udkast til forslag til lov om ændring af lov om Politiets Efterretningstjeneste og toldloven', Legal brief 6 May 2015, available in Danish at: <http://menneskeret.dk/hoeringssvar/aendring-lov-politiets-efterretningstjeneste-toldloven>

<sup>8</sup> Denmark, Act no. 1881 of 29 December 2015 amending the Act on the Danish Security and Intelligence Service (PET) and the Customs Act (The Danish Security and Intelligence Service's access to information on airline passengers in terrorism cases etc. and SKAT's handling of information on airline passengers for customs inspections etc.) (*Lov nr. 1881 af 29. december 2015 om ændring af lov om Politiets Efterretningstjeneste (PET) og toldloven (Politiets Efterretningstjenestes adgang til oplysninger om flypassagerer i terrørsager m.v. og SKATs håndtering af oplysninger om flypassagerer i forbindelse med toldkontrol m.v.)*), sections 4, 17 og 79, available in Danish at: [www.retsinformation.dk/Forms/R0710.aspx?id=176843](http://www.retsinformation.dk/Forms/R0710.aspx?id=176843).

<sup>9</sup> Denmark, Bill no. 200 of 5 May 2015 amending the Act on the Danish Defence Intelligence Service (Enhanced efforts towards activities abroad implying a terror threat against Denmark and Danish interests) (*Lovforslag nr. 200 af 5. maj 2015 til lov om ændring af lov om Forsvarets Efterretningstjeneste (FE) (Styrket indsats mod aktiviteter i udlandet, der kan indebære en terror trussel mod Danmark og danske interesser)*), available in Danish at: [www.ft.dk/RIpdf/samling/20141/lovforslag/L200/20141\\_L200\\_som\\_fremsat.pdf](http://www.ft.dk/RIpdf/samling/20141/lovforslag/L200/20141_L200_som_fremsat.pdf).

<sup>10</sup> Denmark, Bill no. 9 of 7 October 2015 amending the Act on the Danish Defence Intelligence Service (Enhanced efforts towards activities abroad implying a terror threat against Denmark and Danish interests) (*Lovforslag nr. 9 af 7. oktober 2015 til lov om ændring af lov om Forsvarets Efterretningstjeneste (FE) (Styrket indsats mod aktiviteter i udlandet, der kan indebære en terror trussel mod Danmark og danske interesser)*), available in Danish at: [www.retsinformation.dk/Forms/R0710.aspx?id=174467](http://www.retsinformation.dk/Forms/R0710.aspx?id=174467).

<sup>11</sup> Denmark, Act no. 1571 of 15 December 2015 amending the Act on the Danish Defence Intelligence Service (Enhanced efforts towards activities abroad implying a terror threat against Denmark and Danish interests) (*Lov nr. 1571 af 15. december 2015 om ændring af lov om Forsvarets Efterretningstjeneste (FE) (Styrket indsats mod aktiviteter i udlandet, der kan indebære en terror trussel mod Danmark og danske interesser)*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=176299>.

<sup>12</sup> Denmark, Act on the Danish Defence Intelligence Service, Consolidated Act no. 1 of 4 January 2016 (*lov om Forsvarets Efterretningstjeneste (FE), lovbekendtgørelse nr. 1 af 4. januar 2016*), section 3(3).

so-called “foreign fighters” (the preparatory works highlight the conflicts in Syria and Iraq as examples). Data collection includes SIGINT and Computer Networks Exploitation, physical collection, cooperation with other authorities etc. The measure requires a prior court order, unless the purpose of the measure would thus be wasted. In such cases the question must be brought before a court subsequently, but as soon as possible. It is also required to appoint an attorney with specific expertise in such cases to ensure the rights of the person concerned.<sup>13</sup> Before, FE was not allowed to collect information about Danish citizens, and the act thus indicates an extension of the powers of FE in relation to counter terrorism. The act gave rise to critique, in particular as the measure does not require the same degree of suspicion as similar coercive and investigatory measures under the general rules on criminal procedure.<sup>14</sup>

In March 2015, the former Government appointed an impartial expert committee with the task to scrutinise the Danish antiterror legislation.<sup>15</sup> However, in October 2015, the new Government decided to close the committee.<sup>16</sup>

Following the annulment of the Data Retention Directive by the CJEU, the Ministry of Justice announced, that the ruling had no influence on the Danish data retention rules (except for the rules on session logging which were repealed due to questionable suitability<sup>17</sup>) which remain in force enabling the law enforcement authorities / the police, including PET, to access these data. Following the attack on Charlie Hebdo in Paris, the former Government prepared to re-introduce session logging<sup>18</sup> and suggested to postpone the planned revision of the Danish Data Retention rules.<sup>19</sup> Due to change of Government, no bill was introduced. The new Government announced, that a bill revising the rules would be introduced in February 2016.<sup>20</sup> However, meanwhile it announced a reintroduction of session logging in an extended version before conducting an evaluation of the existing rules prior to the introduction of new rules.

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<sup>13</sup> Ibid, sections 3a – 3d.

<sup>14</sup> See for instance, the Danish Institute for Human Rights (*Institut for Menneskerettigheder*) (2015), ‘Høring over udkast til lov om ændring af lov om Forsvarets Efterretningstjeneste’, Legal brief, 4 May 2015, available in Danish at: [http://menneskeret.dk/files/media/hoeringssvar/uct53\\_b\\_lovaendring\\_fe-loven.pdf](http://menneskeret.dk/files/media/hoeringssvar/uct53_b_lovaendring_fe-loven.pdf).

<sup>15</sup> Denmark, Ministry of Justice (*Justitsministeriet*), *Kommissorium for Udvalget vedrørende den danske terrorbekæmpelse*, case no. 2012-181-0019, document no. 542975, available in Danish at: [http://justitsministeriet.dk/sites/default/files/media/Arbejdsomraader/Ministeriet/Raad/Kommissorium\\_udvalg\\_terror.pdf](http://justitsministeriet.dk/sites/default/files/media/Arbejdsomraader/Ministeriet/Raad/Kommissorium_udvalg_terror.pdf).

<sup>16</sup> Berlingske (2015), ‘Regeringen nedlægger uvildigt terror-udvalg’, 30 October 2015, available in Danish at: [www.b.dk/nationalt/regeringen-nedlaegger-uvildigt-terror-udvalg](http://www.b.dk/nationalt/regeringen-nedlaegger-uvildigt-terror-udvalg).

<sup>17</sup>The Danish Ministry of Justice (*Justitsministeriet*), ‘Justitsministeren ophæver reglerne om sessionslogging’ Press release, 2 June 2015, available in Danish at: <http://www.justitsministeriet.dk/nyt-og-presse/pressemeddelelser/2014/justitsministeren-oph%C3%A6ver-reglerne-om-sessionslogging>

<sup>18</sup> Version 2 (2015) ‘Justitsministeren vil genindføre overvågning af danskernes internetbrug’ 8 January 2015, available in Danish at: <http://www.version2.dk/artikel/justitsministeren-vil-genindfoere-overvaagning-af-danskernes-internetbrug-76124>. See also Berlingske (2015) ‘Politiet vil genindføre overvågning af danskere på internettet’ 7 January 2015, available in Danish at: <http://www.b.dk/nationalt/politiet-vil-genindfoere-overvaagning-af-danskere-paa-internettet>

<sup>19</sup> Denmark, Bill no. 193 of 29 April 2015, amending the Criminal Code, the Administration of Justice Act, Act on Competition and Consumers in the Telecommunications Market, The Arms Act, the Extradition Act and the Law on Extradiction to Finland, Iceland, Norway and Sweden (Changing the review clause) (*Lovforslag nr. 193 af 29. april 2015 om ændring af lov om ændring af straffeloven, retsplejeloven, lov om konkurrence- og forbrugerforhold på telemarkedet, våbenloven, udleveringsloven samt lov om udlevering af lovovertrædere til Finland, Island, Norge og Sverige (Ændring af revisionsbestemmelse)*), Section 8, available in Danish at: [http://www.ft.dk/RIPdf/samling/20141/lovforslag/L193/20141\\_L193\\_som\\_fremsat.pdf](http://www.ft.dk/RIPdf/samling/20141/lovforslag/L193/20141_L193_som_fremsat.pdf)

<sup>20</sup> Denmark, The Government /The Prime Ministers Office (*Regeringen / Statsministeriet*) (2015), *Lovgivning Folketingetsåret 2015/16*, October 2015, available in Danish at: [www.statsministeriet.dk/multimedia/regeringens\\_lovprogram\\_2015-16.pdf](http://www.statsministeriet.dk/multimedia/regeringens_lovprogram_2015-16.pdf).

The Government has indicated that it does not intend to await the outcome of the pending cases before the European Court of Justice (C-2013/15, Tele 2 Sverige AB and C-698/15, Davis), in which the Court will consider the Swedish and British rules similar to the existing Danish data retention rules.<sup>21</sup> This has given rise to severe critique.<sup>22</sup> Due to critique on the expenses of such data retention rules for phone and internet companies, the Ministry of Justice had an external consultant calculate the economic consequences for such companies and concluded that the expenses were unacceptable. Instead, in April 2016, the Government introduced a bill to Parliament postponing the revision of the data retention regulation until the Parliamentary session 2016-17 and the Ministry of Justice has entered into dialogue with the ICT companies on the future data retention regulation.

No legal proceedings have been launched against the Government or Danish intelligence services following the Snowden revelations.

The first reports on FE and PET were published in 2014 by the Danish Intelligence Oversight Board (TET). Additionally, a report has been published by TET regarding the Center for Cyber Security in May 2016 covering both 2014 and 2015. In the most recent reports on PET, FE and the Center for Cyber Security respectively, TET stated that whilst it had mainly focused on its organization and establishment in 2014, in 2015, it had taken a more active approach, intensifying its control (which includes inspections and questioning as well as participation in meetings). In its annual report from 2015 on PET, TET found *inter alia* that PET had in some instances failed to delete personal data which was no longer relevant for PET's work. In response to TET's findings, PET stated that according to their interpretation of the rules, personal data which is no longer relevant should not be deleted if the data is part of a document in which other data is still necessary for investigative purposes. TET had stated in its report that due to TET and PET's differences in the interpretation of the law, TET requested that the Ministry of Justice provide its opinion in May 2015. As of 24 June 2016, the Minister of Justice has stated in an answer to the parliamentary Legal Affairs Committee's question on the matter that he will discuss a possible amendment of the PET Act with the political parties in parliament ensuring that the rules on deleting personal data are clarified, striking a balance between the necessity of deleting personal data no longer in use while still safeguarding PET's operational tasks.<sup>23</sup> In its report on FE, TET stated that it had no general concerns regarding FE's handling of personal data. However, TET stated *inter alia* that in one case, FE had collected data in an unauthorized manner. TET did not raise any major concerns in its report on the Center for Cyber Security.

Further reference is made to contributions to FRA Annual Report 2014 and 2015.

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<sup>21</sup> Denmark, Ministry of Justice (*Justitsministeriet*), Question S 758, Parliament year 2015-16, available at: [www.ft.dk/samling/20151/spoergsmaal/s758/svar/1306353/1608921.pdf](http://www.ft.dk/samling/20151/spoergsmaal/s758/svar/1306353/1608921.pdf).

<sup>22</sup> See for instance, Altinget (2016) 'IMR: Hold fast i kravet om evaluering af logningsregler', 4. februar 2016, available in Danish at: [www.altinget.dk/justits/artikel/imr-hold-fast-i-kravet-om-evaluering-af-logningsregler](http://www.altinget.dk/justits/artikel/imr-hold-fast-i-kravet-om-evaluering-af-logningsregler) and the Legal Affairs Committee (*Retsudvalget*), Questions AS-AY, Parliamentary year 2015-16, available in Danish at: [www.ft.dk/samling/20151/almdel/reu/samspm/as/index.htm](http://www.ft.dk/samling/20151/almdel/reu/samspm/as/index.htm).

<sup>23</sup> Denmark, Legal Affairs Committee (*Retsudvalget*), Question 686, Parliamentary year 2015-16, available in Danish at: <http://www.ft.dk/samling/20151/almdel/reu/spm/686/svar/1334283/index.htm>

## 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.<sup>24</sup>

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 (eg. internal guidance, ministerial directives etc.) and whether or not such documents are classified or publicly available.

The legal basis enabling cooperation between intelligence services, incl. international cooperation with foreign services, is stipulated in section 10 of the Act on the Danish Security and Intelligence Service (*lov om Politiets Efterretningstjeneste (PET)*) (The PET Act)<sup>25</sup> and section 7 of the Act on the Danish Defence Intelligence Service (*lov om Forsvarets Efterretningstjeneste (FE)*) (The FE Act).<sup>26</sup>

The possibility to disclose personal data with foreign services and international organisations is regulated in section 10(2) and (4), cf. section 7, of the PET Act, and in section 7(2) and (4), cf. section 4, of the FE Act. Pursuant to these provisions, disclosure of personal data is to be carried with respect with e.g. section 5 of the Danish Act on Processing of Personal Data (*Persondataloven*)<sup>27</sup>, which among others stipulates that collecting personal data shall be in accordance with the principles of purpose limitation, necessity and proportionality. As for personal data on e.g. race, ethnicity, political, philosophical or religious conviction, health, sexuality, criminal offences or severe social problems, disclosure is regulated in section 7 and 8 of the Act on Processing of Personal Data, providing strict conditions.

As for PET, it is regulated in an administrative order that disclosure of such sensible personal data to foreign authorities required a prior approval from the head of PET, the judicial head of PET his/her substitute. Additionally, it is stated that the head of PET are to provide further instructions on the sharing of personal data.<sup>28</sup> PET has drafted internal guidelines on e.g. disclosure in accordance with section 10 of the PET Act – these are however not publicly available.<sup>29</sup>

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<sup>24</sup> <http://www.dcaf.ch/Publications/Making-International-Intelligence-Cooperation-Accountable>

<sup>25</sup> Denmark, Act on the Danish Security and Intelligence Service, Consolidated Act no. 1600 of 19 December 2014 with amendments (*Lov om Politiets Efterretningstjeneste (PET), lovbekendtgørelse nr. 1600 af 19. december 2014 om med senere ændringer*), available in Danish at: <https://www.retsinformation.dk/forms/r0710.aspx?id=165838>

<sup>26</sup> Denmark, Act on the Danish Defence Intelligence Service, Consolidated Act no 1 of 4 January 2016 (*Lov om Forsvarets Efterretningstjeneste (FE), lovbekendtgørelse nr. 1 af 4. januar 2016*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=176852>.

<sup>27</sup> Denmark, the Personal Data Protection Act, Consolidated Act no. 429 of May 31 2000 with amendments (*Persondataloven, lovbekendtgørelse nr. 429 af 31. maj 2000 med senere ændringer*), available in Danish at: [www.retsinformation.dk/forms/r0710.aspx?id=828](http://www.retsinformation.dk/forms/r0710.aspx?id=828).

<sup>28</sup> Denmark, Administrative Order no. 763 of 20 June 2014 on PET's processing of information on physical and judicial persons etc (*Bekendtgørelse nr. 763 af 20. juni 2014 om Politiets Efterretningstjenestes behandling af oplysninger om fysiske og juridiske personer m.v.*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=164082>.

<sup>29</sup> Information available at the website of PET: <https://www.pet.dk/English/Legal%20matters/Legislation.aspx>.

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As for FE, it is stipulated in the preparatory work to the FE Act that it is assumed that rules of procedural character concerning disclosure of information will be established administratively. These shall include clear provisions on the requirements for disclosure of personal data, which identifies persons with foreign partners.<sup>30</sup> There is no publicly available information on the existence of such internal guidelines.

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.

Pursuant to the general rules on the competences of the Danish Intelligence Oversight Board (*Tilsynet med Efterretningstjenesterne*) (TET) in section 18 of the PET Act and section 15 of the FE Act, TET ensures – ex officio or by complaint – that PET and FE comply with among others the rules on disclosure of information to foreign authorities and international organisations.

In accordance with section 19 of the PET Act and section 16 of the FE Act, TET may submit recommendations to PET and FE, as well as notify the Minister of Justice (*Justitsministeren*) and the Minister of Defence (*Forsvarsministeren*) respectively on issues, which TET finds that the minister concerned should know of. If PET and FE as an exception decides not to follow a recommendation from the TET, PET and FE should notify TET and without undue delay submit the case to the minister concerned, who will make a decision in the case.

PET and FE are each obligated annually to provide the Parliamentary Control Committee (*Kontroludvalget*) with a report on the activities of PET and FE, including PET's use of agents and coercive measures not subject to prior court approval.<sup>31</sup>

It has been criticized that the control mechanisms are too weak, as they primarily focus on the processing of personal data and lack focus on the remaining activities of the services.<sup>32</sup>

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<sup>30</sup> Denmark, Bill no. 163 of 27 February 2013 on the Act on the Danish Defence Intelligence Service (*Lovforslag nr. 163 af 27. Februar 2013 til lov om Forsvarets Efterretningstjeneste (FE)*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=145518>.

<sup>31</sup> Denmark, Bill no. 162 of 27 February 2013, amending the Act no. 378 of 6 July 1988 on the establishment of a committee on the Danish Defence intelligence Agency and the Danish Security and Intelligence Service (*Lovforslag nr. 162 af 27. februar 2013 om ændring af lov nr. 378 af 6. juli 1988 om etablering af et udvalg om forsvarets og politiets efterretningstjenester*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=145508>.

<sup>32</sup> Danish Institute for Human Rights (*Institut for Menneskerettigheder*) (2013), 'Høring over betænkning nr. 1592/2012 om PET og FE', j. no. 540.10/27157/PVK/ SWG/RFJ/HSC, 8 June 2012, available in Danish at: [http://menneskeret.dk/files/media/hoeringssvar/hoeringssvar\\_afgivet\\_i\\_2012/juni\\_2012/50\\_b\\_betaenkning\\_om\\_pet\\_og\\_fe.pdf](http://menneskeret.dk/files/media/hoeringssvar/hoeringssvar_afgivet_i_2012/juni_2012/50_b_betaenkning_om_pet_og_fe.pdf), Berlingske (2012), "PET-lov risikerer at blive en papirtiger" by Jonas Christoffersen and Louise Holck, 22. september 2012, available in Danish at: <http://www.b.dk/kronikker/pet-lov-risikerer-at-blive-en-papirtiger> and The Danish Institute for Human Rights (*Institut for Menneskerettigheder*) (2013), 'Høring over udkast til forslag til lov om ændring af lov om etablering af et udvalg om forsvarets og politiets efterretningstjenester (styrkelse af den parlamentariske kontrol og indsigt)', j. no.540.10/28538/HSC/JCH, 11 February 2013, available in Danish at: [http://menneskeret.dk/files/media/hoeringssvar/h%C3%B8ringssvar\\_afgivet\\_i\\_2013/februar\\_2013/24\\_b\\_styrkelse\\_af\\_kontroludvalget.pdf](http://menneskeret.dk/files/media/hoeringssvar/h%C3%B8ringssvar_afgivet_i_2013/februar_2013/24_b_styrkelse_af_kontroludvalget.pdf).

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### 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.

Please refer to the *Global Principles on National Security and the Right to Information (the Tshwane Principles)*<sup>33</sup> (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?

While the Global Principles on National Security and the Right to Information is based on the general right to information, unless national security reasons are specifically demonstrated by the authorities, the Danish legislation is based on an almost complete exemption on access to information regarding the surveillance by the Danish intelligence services.

The general rules on access to information in the Danish Public Information Act<sup>34</sup> and the Danish Public Administration Act<sup>35</sup> do not apply to the intelligences services, cf. section 14 of the PET Act,<sup>36</sup> section 11 of the FE Act<sup>37</sup> and section 8 of the Act on the Danish Centre for Cyber Security<sup>38</sup>. The Danish Public Information Act does, however, cover administrative information from PET, but not operative information, cf. section 14 of the PET Act.

2. Do individuals have the right to access information on whether they are subject to surveillance?

The Danish Public Information<sup>39</sup> and the Danish Public Administration Act<sup>40</sup> do not apply as they are ruled out by the specific Acts on intelligence services.<sup>41</sup>

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<sup>33</sup> <http://www.right2info.org/exceptions-to-access/national-security/global-principles#section-10>

<sup>34</sup> Denmark, The Danish Public Information Act, Act no. 606 of 12 June 2013 (Offentlighedsloven, lov nr. 606 af 12. juni 2013), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=152299>.

<sup>35</sup> Denmark, the Danish Public Administration Act, Consolidated Act no. 988 of 9 October 2012 with amendments (*Forvaltningsloven, lovbekendtgørelse nr. 988 af 9. oktober 2012 med senere ændringer*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=161411>

<sup>36</sup> Denmark, Act on the Danish Security and Intelligence Service, Consolidated Act no. 1600 of 19 December 2014 with amendments (*Lov om Politiets Efterretningstjeneste (PET), lovbekendtgørelse nr. 1600 af 19. december 2014 om med senere ændringer*), available in Danish at: <https://www.retsinformation.dk/forms/r0710.aspx?id=165838>.

<sup>37</sup> Denmark, Act on the Danish Defence Intelligence Service, Concolidated Act no 1 of 4 January 2016 (*Lov om Forsvarets Efterretningstjeneste (FE), lovbekendtgørelse nr. 1 af 4. januar 2016*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=176852>.

<sup>38</sup> Denmark, Act no. 713 of 25 June 2014 on The Danish Centre for Cyber Security (Lov nr. 713 af 25. juni 2014 om Center for Cybersikkerhed).

<sup>39</sup> Denmark, The Danish Public Information Act, Act no. 606 of 12 June 2013 (Offentlighedsloven, lov nr. 606 af 12. juni 2013), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=152299>.

<sup>40</sup> Denmark, the Danish Public Administration Act, Consolidated Act no. 988 of 9 October 2012 with amendments (*Forvaltningsloven, lovbekendtgørelse nr. 988 af 9. oktober 2012 med senere ændringer*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=161411>

<sup>41</sup> Denmark, Act on the Danish Security and Intelligence Service, Consolidated Act no. 1600 of 19 December 2014 with amendments (*Lov om Politiets Efterretningstjeneste (PET), lovbekendtgørelse nr. 1600 af 19. december 2014 om med senere ændringer*), Section 14, Act on the Danish Defence Intelligence Service, Concolidated Act no 1 of 4 January 2016 (*Lov om Forsvarets Efterretningstjeneste (FE), lovbekendtgørelse nr. 1 af 4. januar 2016*), Section 11 and Act no. 713 of 25

## 1.4 Update the FRA report

FRANET contractors are requested to provide up-to-date information based on the FRA report on [<sup>42</sup>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.

Not mentioned – nothing to add.

### 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.

Not mentioned – nothing to add.

#### 1.1 **Intelligence services**

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

The information is accurate.

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.

## 1.2 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.

*Not mentioned – nothing to add.*

## 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.

*P. 19, paragraph on Denmark should be deleted. As this is not the case in Denmark. It is true, however, that the mandate of the Danish Security and Intelligence Service (PET) is regulated in the Act on the Danish Security and Intelligence Service<sup>43</sup> and PET's means of actions and conditions for using them are set out separately in the general rules of the Danish Administration on Justice Act,<sup>44</sup> thus two different acts. However, the context of the report seems to refer to two different acts on the intelligence services, one regulating the organisation and the mandate, and another regulating the competences.*

*P. 20: paragraph on Denmark regarding targeted surveillance is accurate.*

*P. 20, paragraph on Denmark to be changed into the following: "In Denmark, for example, the Security and Intelligence Service (Politiets Efterretningstjeneste, PET) collects information that "could be of importance" to its activities and conducts investigations e.g. observation of individuals/undertakings that "can be assumed to be of important" to its efforts in relation to counter-terrorism or that are "strictly required" to its other activities. Investigative and coercive measures must be conducted in accordance with the Danish Administration of Justice Act.<sup>45</sup> A prior court order is required, except in urgent cases, and there must be grounds for suspicion of certain "serious crimes". In accordance with the specific regulation of each type of surveillance measure/intervention in the Administration of Justice Act, e.g. search of localities pursuant to section 798 (3) intervention in the secrecy of correspondence pursuant to section 783, the intelligence services may carry out the intervention without prior court approval, when the aim of the intervention would be endangered by awaiting prior approval (the principle of 'periculum in mora'). In these cases, the decision must be presented before and approved by the court. Observation in open space or without use of optical devices does not require a court order. Furthermore, public*

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<sup>43</sup> Denmark, Act on the Danish Security and Intelligence Service, Consolidated Act no. 1600 of 19 December 2014 with amendments (*Lov om Politiets Efterretningstjeneste (PET), lovbekendtgørelse nr. 1600 af 19. december 2014 om med senere ændringer*)

<sup>44</sup> Denmark, The Administration of Justice Act, Consolidated Act no. 1255 of 16 November 2015 with amendments (*Retsplejeloven, lovbekendtgørelse nr. 1255 af 16. november 2015 med senere ændringer*),

<sup>45</sup> Denmark, The Administration of Justice Act, Consolidated Act no. 1255 of 16 November 2015 with amendments (*Retsplejeloven, lovbekendtgørelse nr. 1255 af 16. november 2015 med senere ændringer*),

authorities are obligated to pass on to PET information which “could be of importance” to PET’s activities in relation to counter-terrorism.

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.

### **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.

*Not mentioned – nothing to add.*

## **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.)
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.

*Not mentioned – nothing to add.*

### **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 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.

*P. 32, a paragraph on Denmark to be added following “Members of the executive other than the president [...] the Minister of Citizen Protection”, stating: “Similarly, in Denmark, the Security and Intelligence Service is under the authority of the Ministry of Justice.”<sup>46</sup>*

### **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.)

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<sup>46</sup> Denmark, Act on the Danish Security and Intelligence Service, Consolidated Act no. 1600 of 19 December 2014 with amendments (*Lov om Politiets Efterretningstjeneste (PET), lovbekendtgørelse nr. 1600 af 19. december 2014 om med senere ændringer*) Section 2.

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.*

*Not mentioned – nothing to add.*

#### **2.2.1 Mandate**

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

*P. 37 the information on Denmark is accurate.*

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.*

#### **2.2.2 Composition**

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

*P. 39, Denmark to be omitted from the paragraph and the following should be added instead: “In Denmark, members are selected by political parties with a seat in the Presidium of the Danish Parliament.”<sup>47</sup>*

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.*

#### **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.*

*Not mentioned – nothing to add.*

#### **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.*

*P. 41: the information is accurate.*

<sup>47</sup> Denmark, Act on the Establishment of a Committee on the Danish Defence Intelligence Service and the Danish Security and Intelligence Service, Consolidated Act no. 937 of 26 August 2014 (*Lov om etablering af et udvalg om forsvarrets og politiets efterretningstjenester, lovbekendtgørelse nr. 937 af 26. august 2014*), Section 1(2).

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.*

### **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.)*
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.*

*Not mentioned – nothing to add.*

#### **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.*

*P. 43, Denmark to be omitted from paragraph and the following should be added instead: “In Denmark, the members are similarly appointed by the executive (the Minister of Justice after negotiation with the Minister of Defence) but only following discussions with the Parliamentary Control Committee (except the president of the Board, who must be a High Court judge and is nominated by the presidents of the Eastern and Western High Courts).<sup>48</sup>”*

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.*

#### **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. P. 47, the information on Denmark is accurate.*
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.*

*Not mentioned – nothing to add.*

### **2.4 Approval and review of surveillance measures**

<sup>48</sup> Denmark, Act on the Danish Security and Intelligence Service, Consolidated Act no. 1600 of 19 December 2014 with amendments (*Lov om Politiets Efterretningstjeneste (PET), lovbekendtgørelse nr. 1600 af 19. december 2014 om med senere ændringer*) Section 16 (1) and (2) and Denmark, Act on the Establishment of a Committee on the Danish Defence Intelligence Service and the Danish Security and Intelligence Service, Consolidated Act no. 937 of 26 August 2014 (*Lov om etablering af et udvalg om forsvarrets og politiets efterretningstjenester, lovbekendtgørelse nr. 937 af 26. august 2014*), Section 2 a.

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.*

*Not mentioned – nothing to add.*

### **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.*

*Not mentioned – nothing to add.*

### **3 Remedies**

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.*

*Not mentioned – nothing to add.*

#### **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.*

*P. 63, 1<sup>st</sup> colum: the information on Denmark is accurate.. The following can be added in section 3.1.: The general rules on access to information in the Danish Public Information Act<sup>49</sup>, the rules on parties access to information in administrative cases in the Danish Public Administration Act<sup>50</sup> and the rules on insight in personal information in the Act on Processing of Personal Data<sup>51</sup> do not apply to the intelligence services.<sup>52</sup>However, an*

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<sup>49</sup> Denmark, The Danish Public Information Act, Act no. 606 of 12 June 2013 (Offentlighedsloven, lov nr. 606 af 12. juni 2013), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=152299>.

<sup>50</sup> Denmark, the Danish Public Administration Act, Consolidated Act no. 988 of 9 October 2012 with amendments (*Forvaltningsloven, lovbekendtgørelse nr. 988 af 9. oktober 2012 med senere ændringer*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=161411>

<sup>51</sup> Denmark, the Personal Data Protection Act, Consolidated Act no. 429 of May 31 2000 with amendments (*Persondataloven, lovbekendtgørelse nr. 429 af 31. maj 2000 med senere ændringer*), available in Danish at: [www.retsinformation.dk/forms/r0710.aspx?id=828](https://www.retsinformation.dk/forms/r0710.aspx?id=828)

individual can file a complaint to the Danish Intelligence Oversight Board (TET) to make sure that rules on processing of personal data are observed correctly, but will generally not receive any information on whether he or she is subject to surveillance except in extraordinary circumstances. The general rules on access to information do not apply to TET.<sup>53</sup> P. 63, 2<sup>nd</sup> colom, paragraph on Denmark to be changed into the following: “In Denmark, there is a general obligation to inform individuals at the end of surveillance,<sup>54</sup> provided the notification would not jeopardise the investigation in the case or in another case or would lead to risk of confidential information about the surveillance methods of the service being compromised. Notification can only be omitted or delayed subject to a court order.”

P. 65, paragraph on Denmark to be changed into the following: “In Denmark, there is a general rule to inform the individual at the end of the surveillance measures. If notification would jeopardise the investigation or there are other arguments against it, the judiciary may permit withholding – or delaying the provision of – the information.<sup>55</sup> In addition to this basic rule, specific rules foresee that in extraordinary cases, an individual may receive the information in part or in full – even while the surveillance is being carried out – directly from the surveillance authority<sup>56</sup> or by filing a claim to the Oversight Board (TET).<sup>57</sup> In case of a request to TET regarding surveillance activities carried out by the Danish Defence Intelligence Service (FE), access in part or full can only be granted to Danish or Nordic citizens, foreigners with a residence permit, and asylum seekers who have resided in the country for more than six months.”

2. If you Member State is mentioned, please update the data (new legislation, new report etc.)

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<sup>52</sup> Denmark, Act on the Danish Security and Intelligence Service, Consolidated Act no. 1600 of 19 December 2014 with amendments (Lov om Politiets Efterretningstjeneste (PET), lovbekendtgørelse nr. 1600 af 19. december 2014 om med senere ændringer), section 14, Act on the Danish Defence Intelligence Service, Consolidated Act no 1 of 4 January 2016 (Lov om Forsvarets Efterretningstjeneste (FE), lovbekendtgørelse nr. 1 af 4. januar 2016), section 11 and Act no. 713 of 25 June 2014 on the Danish Centre for Cyber Security (lov nr. 713 af 25. juni 2014 om Center for Cybersikkerhed) section 8

<sup>53</sup> Denmark, Act on the Danish Security and Intelligence Service, Consolidated Act no. 1600 of 19 December 2014 with amendments (Lov om Politiets Efterretningstjeneste (PET), lovbekendtgørelse nr. 1600 af 19. december 2014 om med senere ændringer), section 21, Act on the Danish Defence Intelligence Service, Consolidated Act no 1 of 4 January 2016 (Lov om Forsvarets Efterretningstjeneste (FE), lovbekendtgørelse nr. 1 af 4. januar 2016), section 18 and Act no. 713 of 25 June 2014 on the Danish Centre for Cyber Security (lov nr. 713 af 25. juni 2014 om Center for Cybersikkerhed) section 23

<sup>54</sup> Denmark, The Administration of Justice Act, Consolidated Act no. 1255 of 16 November 2015 with amendments (Retsplejeloven, lovbekendtgørelse nr. 1255 af 16. november 2015 med senere ændringer), Section 788 (1)

<sup>55</sup> Denmark, The Administration of Justice Act, Consolidated Act no. 1255 of 16 November 2015 with amendments (Retsplejeloven, lovbekendtgørelse nr. 1255 af 16. november 2015 med senere ændringer), Section 788 (4)

<sup>56</sup> Denmark, Act on the Danish Security and Intelligence Service, Consolidated Act no. 1600 of 19 December 2014 with amendments (Lov om Politiets Efterretningstjeneste (PET), lovbekendtgørelse nr. 1600 af 19. december 2014 om med senere ændringer) Section 12(2) and Denmark, Act on the Danish Defence Intelligence Service, Consolidated Act no 1 of 4 January 2016 (Lov om Forsvarets Efterretningstjeneste (FE), lovbekendtgørelse nr. 1 af 4. januar 2016), Section 9 (2)

<sup>57</sup> Denmark, Act on the Danish Security and Intelligence Service, Consolidated Act no. 1600 of 19 December 2014 with amendments (Lov om Politiets Efterretningstjeneste (PET), lovbekendtgørelse nr. 1600 af 19. december 2014 om med senere ændringer) Section 13 (2) and Denmark, Act on the Danish Defence Intelligence Service, Consolidated Act no 1 of 4 January 2016 (Lov om Forsvarets Efterretningstjeneste (FE), lovbekendtgørelse nr. 1 af 4. januar 2016), Section 10 (2)

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.*

### **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 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.*

*Not mentioned – nothing to add.*

#### **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 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.*

*Not mentioned – nothing to add.*

#### **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 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.*

*Not mentioned – nothing to add.*

### **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 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.*

*Not mentioned – nothing to add.*

#### **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.*

*P. 70, Denmark to be deleted from the list of Member States. Instead the following should be added: “The Danish Oversight Board provides remedies, however these are of questionable efficiency.”*

As a rule, individuals/undertakings do not have a right to access / insight in information about them, which is being processed by PET. Individuals/ undertakings may ask the Danish Intelligence Oversight Board (TET) to oversee that PET is not illegally processing data about them and – under extraordinary circumstances – gain partly or full insight in information about them. They may also file a complaint to TET in order to make sure that PET observes the rules on the collection and processing of personal data as set out in the PET act.<sup>58</sup>

Similarly, as a rule, individuals/undertakings do not have a right to access / insight in information about them, which is being processed by FE. Individuals/undertakings with Danish residency can request that TET to oversees that FE is not illegally processing data about them, but will only under extraordinary circumstances gain partly or full insight in information about them. Individuals/undertakings can file a complaint to TET to make sure that FE observes the rules on the processing of personal data on individuals/undertakings who are Danish or Nordic citizens, foreigners with a residence permit, or asylum seekers who have resided in the country for more than six months.<sup>59</sup>

Individuals/undertakings can file a complaint to the Danish Intelligence Oversight Board (TET) to make sure that the rules on the processing of personal data are observed by the Danish Center for Cyber Security.<sup>60</sup> The Act on the Danish Center for Cyber Security does not contain provisions allowing for partly or full insight in information.”

*P. 71 and 72 Danish Oversight Committee to be changed into Danish Oversight Board (TET)*

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.*

### **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 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.*

*Not mentioned – nothing to add.*

### **3.3.3 Powers and specialisation of non-judicial remedial bodies**

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<sup>58</sup> Denmark, Act on the Danish Security and Intelligence Service, Consolidated Act no. 1600 of 19 December 2014 with amendments (*Lov om Politiets Efterretningstjeneste (PET), lovbekendtgørelse nr. 1600 af 19. december 2014 om med senere ændringer*), available in Danish at: <https://www.retsinformation.dk/forms/r0710.aspx?id=165838>, sections 12, 13 and 18

<sup>59</sup> Denmark, Act on the Danish Defence Intelligence Service, Consolidated Act no 1 of 4 January 2016 (*Lov om Forsvarets Efterretningstjeneste (FE), lovbekendtgørelse nr. 1 af 4. januar 2016*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=176852>, Sections 9, 10 and 15

<sup>60</sup> Denmark, Act no. 713 of 25 June 2014 on the Danish Centre for Cyber Security (*lov nr. 713 af 25. juni 2014 om Center for Cybersikkerhed*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=163853>, Section 20

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

*P. 72, mention of the Danish Oversight Committee to be removed from the paragraph. Instead Denmark should be mentioned in a separate paragraph with the following: “The Danish Oversight Board (TET) has the power to receive compliants but cannot – as a general rule – issue binding decisions. It may impose upon the surveillance authority that it provides full or partial access to information to an individual in exceptional circumstances.<sup>61</sup> Additionally, TET ensures that the surveillance authority does not process data illegally<sup>62</sup>P. 74, the information provided for Denmark is accurate.*

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.*

#### **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.*

*Not mentioned – nothing to add.*

#### **Conclusions**

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.*

*Not mentioned – nothing to add.*

<sup>61</sup> Denmark, Act on the Danish Security and Intelligence Service, Consolidated Act no. 1600 of 19 December 2014 with amendments (Lov om Politiets Efterretningstjeneste (PET), lovbekendtgørelse nr. 1600 af 19. december 2014 om med senere ændringer), section 13 (2)

<sup>62</sup> Denmark, Act on the Danish Security and Intelligence Service, Consolidated Act no. 1600 of 19 December 2014 with amendments (Lov om Politiets Efterretningstjeneste (PET), lovbekendtgørelse nr. 1600 af 19. december 2014 om med senere ændringer), section 13 (1)

## 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
DK			Danish Security and Intelligence Service/ <i>Politiets Efterretningstjeneste (PET)</i> <sup>63</sup> (part of the police)	Danish Defence Intelligence Service/ <i>Forsvarets Efterretningstjeneste (FE)</i> <sup>64</sup> and the Danish Centre for Cyber Security ( <i>Center for Cybersikkerhed</i> ) <sup>65</sup> (part of FE)

### 1.5.2 Figure 1: A conceptual model of signals intelligence

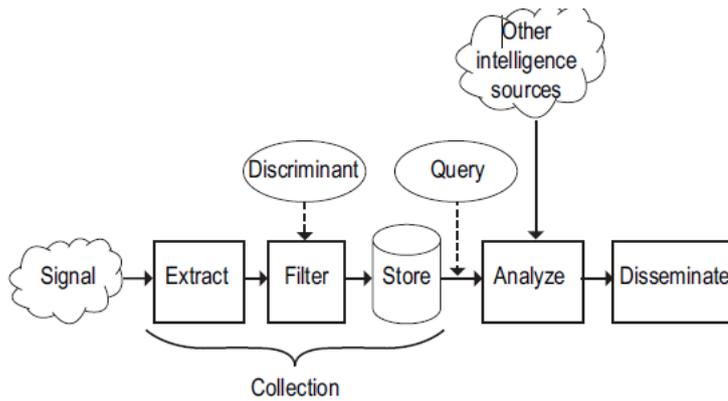
- Please, provide a reference to any alternative figure to Figure 1 below (p. 16 of the FRA Report) available in your Member State describing the way signals intelligence is collected and processed.

19

<sup>63</sup> Denmark, Act on the Danish Security and Intelligence Service, Consolidated Act no. 1600 of 19 December 2014 with amendments (*Lov om Politiets Efterretningstjeneste (PET), lovbekendtgørelse nr. 1600 af 19. december 2014 om med senere ændringer*), available in Danish at: <https://www.retsinformation.dk/forms/r0710.aspx?id=165838>.

<sup>64</sup> Denmark, Act on the Danish Defence Intelligence Service, Consolidated Act no 1 of 4 January 2016 (*Lov om Forsvarets Efterretningstjeneste (FE), lovbekendtgørelse nr. 1 af 4. januar 2016*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=176852>.

<sup>65</sup> Denmark, Act no. 713 of 25 June 2014 on the Danish Centre for Cyber Security (*lov nr. 713 af 25. juni 2014 om Center for Cybersikkerhed*), available in Danish at: <https://www.retsinformation.dk/Forms/R0710.aspx?id=163853>.



FE's signals intelligence generally corresponds to the procedure described in figure 1.<sup>66</sup>

PET does not apply SIGINT.<sup>67</sup>

### 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.



For the sake of completeness, it should be mentioned that Denmark has institutions such as the National Human Rights Institution and the Ombudsman to further ensure safeguards. However, please note that in Denmark, the National Human Rights Institution and Ombudsman do not have any specific powers in relation to the intelligence services.

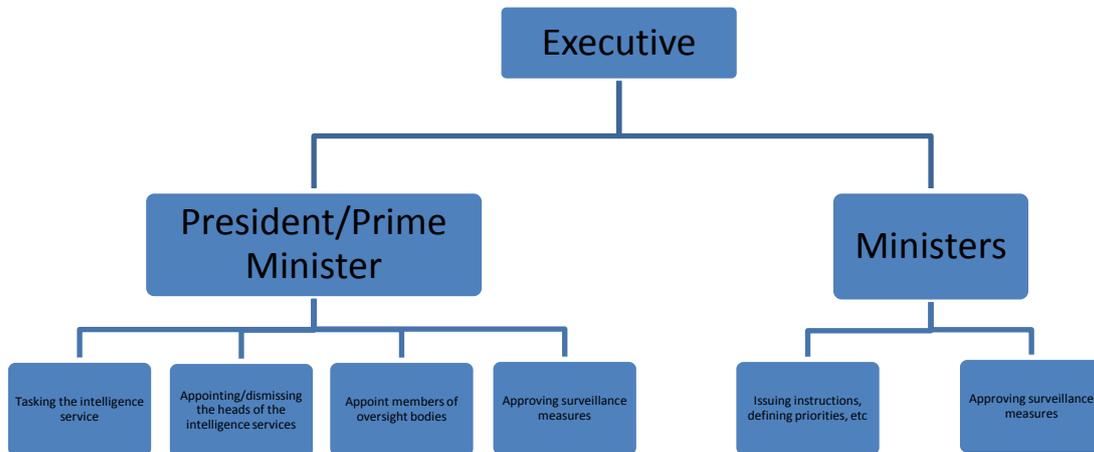
20

<sup>66</sup> Denmark, Danish Defence Intelligence Service (*Forsvarets Efterretningstjeneste, FE*) (2013), *Beretning 2011-2012*, published May 2013, available in Danish at: [https://fe-ddis.dk/SiteCollectionDocuments/FE/Beretning/FE\\_Beretning\\_2011-2012\\_udgivet\\_maj\\_2013.pdf](https://fe-ddis.dk/SiteCollectionDocuments/FE/Beretning/FE_Beretning_2011-2012_udgivet_maj_2013.pdf).

<sup>67</sup> Information provided by PET by e-mail on 6 July 2016.

**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.



In Denmark, the Minister of Justice has executive control over PET and the Minister of Defence has executive control over FE, including Center for Cyber Security. Members of oversight bodies are appointed by the executive (the Minister of Justice after negotiation with the Minister of Defence) but only following discussions with the Parliamentary Control Committee. The President of the Oversight Board is nominated by the presidents of the Eastern and Western High Courts).<sup>68</sup>

**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
DK	X	

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

<sup>68</sup> Denmark, Act on the Danish Security and Intelligence Service, Consolidated Act no. 1600 of 19 December 2014 with amendments (*Lov om Politiets Efterretningstjeneste (PET), lovbekendtgørelse nr. 1600 af 19. december 2014 om med senere ændringer*) Section 16 (1) and (2) and Denmark, Act on the Establishment of a Committee on the Danish Defence Intelligence Service and the Danish Security and Intelligence Service, Consolidated Act no. 937 of 26 August 2014 (*Lov om etablering af et udvalg om forsvarets og politiets efterretningstjenester, lovbekendtgørelse nr. 937 af 26. august 2014*), Section 2 a.

The information is accurate for Denmark.

### 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
DK	The Danish Intelligence Oversight Board ( <i>Tilsynet med Efterretningstjenesterne</i> )

### 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
DK	X		

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

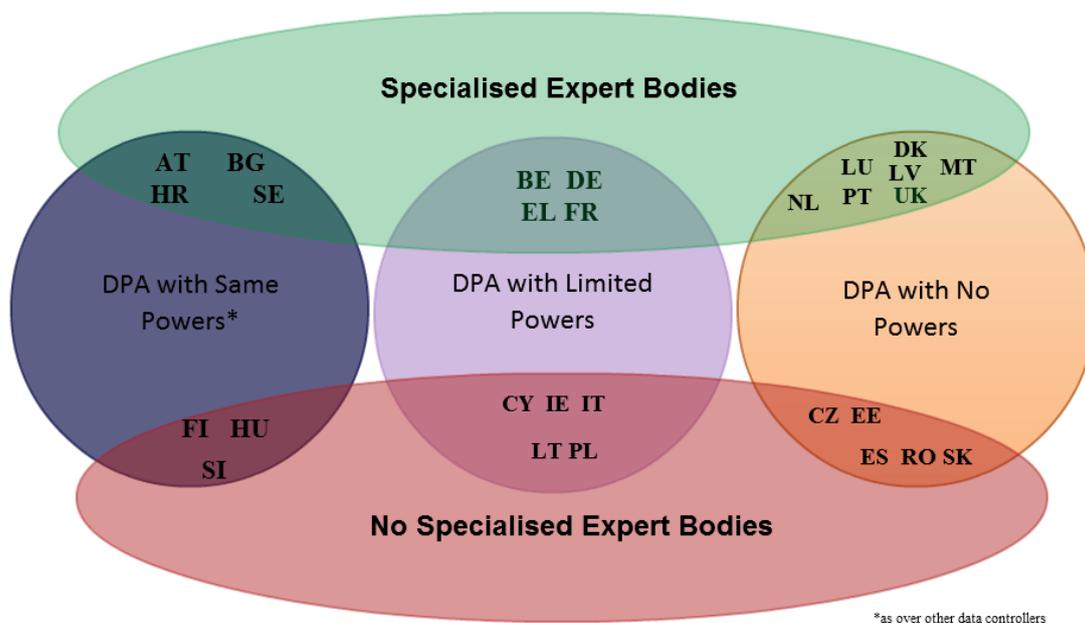
*Same powers*: refers to DPAs that have the exact same powers over NIS as over any other data controller.

*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 information is accurate for Denmark.

### 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 information is accurate for Denmark.

### 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
DK	X		(X) <sup>69</sup>		

### 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
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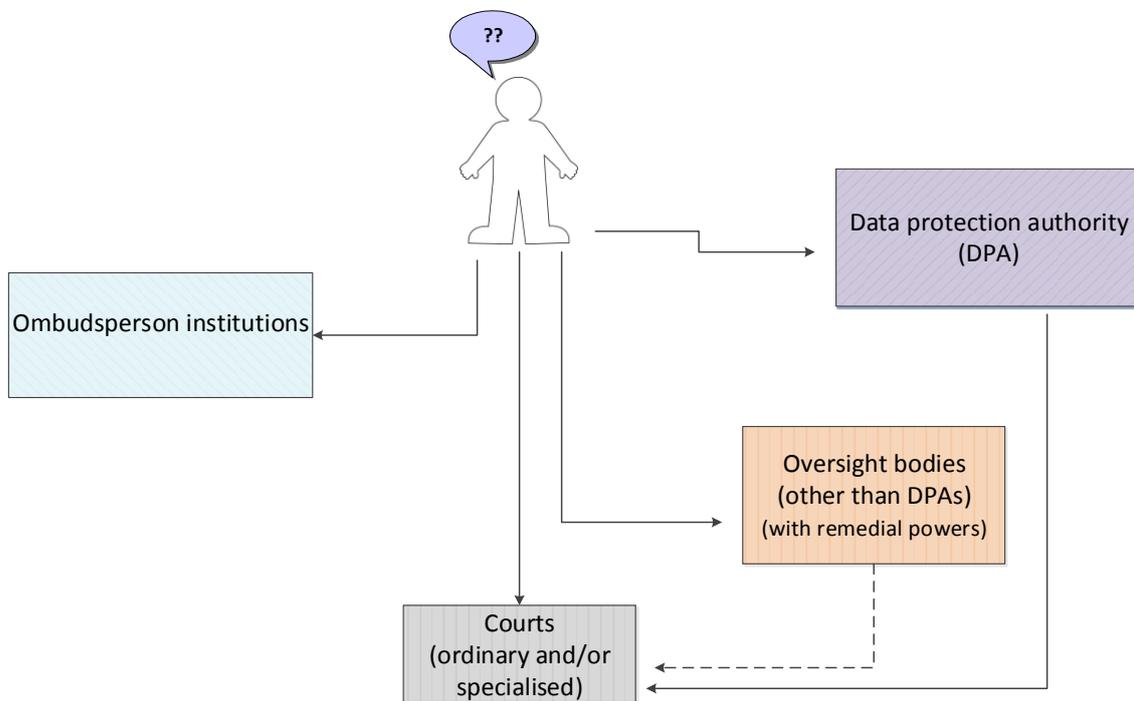
23

<sup>69</sup> In accordance with the specific regulation of each type of surveillance measure/intervention in the Administration of Justice Act, Consolidated Act no. 1255 of 16 November 2015 with amendments (Retsplejeloven, lovbekendtgørelse nr. 1255 af 16. november 2015 med senere ændringer)e.g. search of localities pursuant to section 798 (3) intervention in the secrecy of correspondence pursuant to section 783, the intelligence services may carry out the intervention without prior court approval, when the aim of the intervention would be endangered by awaiting prior approval (the principle of 'periculum in mora').

FR			X	
DE		X (telco relations)		X (selectors)
NL			X (selectors)	
SE				X
UK			X	

### 1.5.11 Figure 5: Remedial avenues at the national level

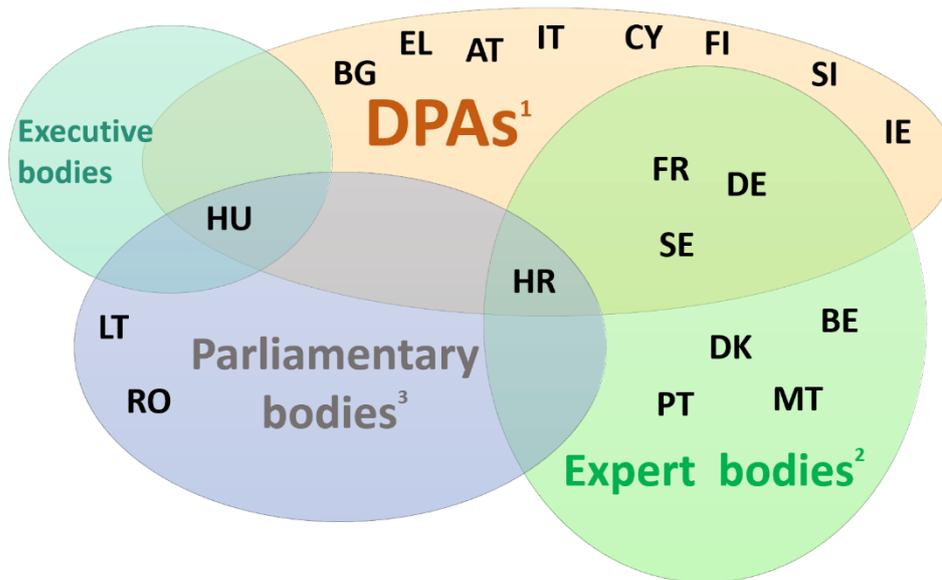
Please confirm that Figure 5 below (p. 60 of the FRA Report) illustrates the situation in your Member State in an accurate manner. If it is not the case, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.



For Denmark, the figure does not illustrate the situation, as the DPA does not have any authority in relation to the activities of the intelligence services. PET, FE and Center for Cyber Security have been exempted from the Danish Act on the Processing of Data which the DPA oversees. Similarly, the Danish Ombudsman does not have authority in relation to the intelligence services.

### 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 Portugal and Denmark, the expert bodies have the power to review individual complaints, but do not issue binding decisions. However, in Denmark, the Oversight Board (TET) may impose upon the surveillance authority that it provides full or partial access to information to an individual in exceptional circumstances. Additionally, TET ensures that the surveillance authority does not process data illegally. 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 Defence 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.