

Short Thematic Report

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

Legal update

Country: Cyprus

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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.

1. Legislative reforms

1.1. Law on intelligence services is adopted

A bill initially tabled on 23 September 2014 regulating the functioning of the Cypriot intelligence agency known as ‘KYP’ (the initials stand for Cypriot Information Service), hereafter referred to as CIS was finally adopted on 14 April 2016 and entered into force 4 May 2016.¹ The CIS had been operating since 1970 without any regulatory legal framework, deriving its legitimisation by a decision of the Council of Ministers and without any parliamentary consent. The new law seeks to fill in this gap by providing the legal framework, although the problems highlighted by the FRA surveillance report, such as the fact that the director is appointed by the executive remain unchanged. The DPA oversight over intelligence services is dealt with by this law (Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service Article 5 (2)); the previously existing limitations as regards the mandate of the DPA also remain unchanged.

The new law describes the mission of the CIS to be:

- the protection and promotion of the national and state interests of the Republic;
- the prevention and management of activities which constitute a threat against the security and sovereignty of the Republic; and
- the prevention and combating of activities of terrorist organisation and of organised crime.

The mission must be carried out ‘in the framework of respect for fundamental human rights, the Constitution and the laws’ and in compliance with the data protection legislation.² This means that the intelligence authority can process personal data only in compliance with the data protection law and that the Data Protection Authority (DPA) can exercise over the intelligence authority the oversight foreseen by the data protection legislation, which includes access to records where personal data is maintained except to data revealing the identity of collaborators in records kept for national security purposes or for the purpose of investigating particularly serious crimes. This check is performed by the Commissioner himself or herself or by a DPA

¹ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*) N. 75(I)/2016, available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

² Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*) N. 75(I)/2016, articles 4 and 5(2), available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

officer specifically authorised for this by the Commissioner. Records kept for national security purposes can be checked only in the presence of the Commissioner.³

The mandate of the CIS is described in the law as:

- The search for, collection, evaluation, processing and supply of data, information and evidence and the submission to the President of the Republic recommendations for the prevention and combating of threats related to its mission;
- The prevention and handling of terrorist activities;
- Prevention and handling of surveillance activities against the Republic;
- The coordination of the activities of information and security services which are relevant to the mission of the CIS, in the framework of the decisions of the Council of Ministers;
- The provision to competent state bodies information necessary to handle crisis;
- The provision of information support to the army which is necessary for the army's operational plans;
- The cooperation with other intelligence authorities in other countries or with international organisations;
- The compilation of studies and reports on the basis of information at its disposal to competent governmental authorities.⁴

The above concepts must be given a rather liberal interpretation. The preamble to this law includes in the mandate of CIS 'illegal immigration' and, even though this was not included in the text of the law, it remains within the CIS' mandate. There is an abundance of case law where the reports of the CIS on a number of issues not directly pertaining to state security, such as the actual place of residence of Turkish Cypriots or on the professional activities of persons seeking to acquire Cypriot nationality or on whether the marriage of Union nationals with third country nationals is genuine or one of convenience, were accepted by the Supreme Court as legitimate evidence, without questioning the right of CIS to collect information in this field. The new intelligence law does not restrict the scope of the activities of the CIS to specific fields; it is the author's opinion that it will have no impact over the current *modus operandi* of the CIS, nor will it restrict the activities of the CIS to specific fields more closely impacting state security.

Under the new law, the legality of the activities of CIS as regards respect of fundamental rights is to be monitored by a three-member committee, to be appointed by the Council of Ministers following a recommendation from the President of the Republic. The oversight committee will conduct an a posteriori evaluation of the activities of the CIS for the purpose of improving the exercise of its mandate and not an a priori approval of the methods used or the targets selected. This is the only procedure foreseen in the law purporting to monitor the activities of the CIS; no procedure or requirement is foreseen for any a priori approvals by any other body. The manner of operation of the committee will be governed by internal regulations which will be compiled by the committee itself in collaboration with the CIS director and sub-directors.⁵ Currently and until such regulations are finalised,, the operational methods used by the CIS are decided internally.

³ Cyprus, Law on the processing of personal data (Protection of the individual) of 2001 [*Ο περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμος του 2001*] N. 138(I)/2001, article 23(h), available at http://cyllaw.org/nomoi/enop/non-ind/2001_1_138/full.html

⁴ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*) N. 75(I)/2016, article 5(1), available at www.cyllaw.org/nomoi/arith/2016_1_075.pdf

⁵ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*) N. 75(I)/2016, article 6(3), available at www.cyllaw.org/nomoi/arith/2016_1_075.pdf

There are no particular requirements which the members of the oversight committee must meet; they only need to be ‘of recognised standing’ and ‘of highest moral standard’. The head of this committee must have legal background.⁶ There is no requirement for these members to have any surveillance or fundamental rights expertise. The proposal of the Parliamentary Committee on Institutions, Merit and the Commissioner for Administration for appointing retired judges to serve in this Committee⁷ was not adopted in the final draft. The members of the oversight committee have not as yet been appointed.⁸

In addition to the oversight committee, another body is foreseen in the law with powers to access the CIS archives and monitor the declassification process. This is again a three-member committee appointed by the Council of Ministers upon recommendation by the President of the Republic and comprising of persons of ‘acknowledged esteem and highest professional and moral standard’.⁹

The CIS director is appointed by the Council of Ministers following the recommendation of the President, for a term which expires at the latest three months following the end of term of the President. Older legislation which used to provide that the CIS director was to be appointed by the Chief of police was amended¹⁰ in order to be brought in line with the new law on the CIS. The Council of Ministers can remove the CIS director or any of the deputy directors upon the President’s recommendation at any time before the expiry of their term, whenever ‘this is deemed appropriate’.¹¹ The CIS director is directly accountable to the President of the Republic and may only brief informal meetings between the President of the heads of political parties if requested by the President.¹²

1.2. Law on the lifting of confidentiality in communications is amended

In December 2015 the old law of 1996 on confidentiality of private communications, was amended by widening its scope of application.¹³ The new law covers private communications of any form which are recorded or stored in any document, equipment or object and includes content recorded in letters, electronic messages such as SMS, MMS or emails or other internet messages. The law regulating the interception of private communications provides for a

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⁶ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*) N. 75(I)/2016, article 6, available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

⁷ Cyprus, Parliamentary Committee on Institutions, Merit and the Commissioner for Administration (2016), *Report on the bill “Law providing for the establishment and functioning of the Cyprus Intelligence Service (CIS) of 2014*, 30 March 2016, available at http://www2.parliament.cy/parliamentgr/008_05g/008_05_4769.htm

⁸ Letter from the Cypriot Information Service to the FRANET contractor, 10 May 2016.

⁹ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*) N. 75(I)/2016, article 10(1)(b), available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

¹⁰ Cyprus, Law amending the laws on police 2004-2015 (*Νόμος που τροποποιεί τους Περί Αστυνομίας Νόμους 2004-2015*) N. 64(I)/2016, 28 April 2016, available at http://cylaw.org/nomoi/arith/2016_1_64.pdf

¹¹ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*) N. 75(I)/2016, article 7, available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

¹² Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*) N. 75(I)/2016, article 8(1)(f), available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

¹³ Cyprus, Law amending the law on protection of confidentiality of private communication (Surveillance of conversations) and access to registered content of private communication of 1996 [*Νόμος που τροποποιεί το νόμο περί προστασίας του απορρήτου της ιδιωτικής επικοινωνίας (Παρακολούθηση συνδιαλέξεων) του 1996*] N. 216(I)/2015, 31 December 2015, available at http://cylaw.org/nomoi/arith/2015_1_216.pdf

procedure in court, which must be initiated by the Attorney General who may act on his own behalf or on behalf of the Chief of the Police or any investigator and not by intelligence agencies.¹⁴

The law sets out a procedure for the Attorney General to apply to Court, for a permit to access, review or collect the registered content of private communication for his own use or for the use of the Chief of Police or of any investigator.¹⁵ The law does not authorize the Attorney General to apply for such a court order on behalf of the intelligence agency. Also no explicit reference is made to intelligence services as recipients of such data.

The Court may issue a warrant under the Law if it is satisfied, based on the facts submitted before it, that there is reasonable suspicion that a person has committed, is committing or is about to commit an offence or there is reasonable suspicion or possibility that the security of the Republic is at risk and the issue of the warrant is in the interests of justice¹⁶. It should be noted that the only offences for which an application for such a warrant may be made are those listed in Article 17.2B of the Constitution, i.e. murder with intent or manslaughter, human trafficking or child pornography, trade, supply, cultivation or production of drugs, offences related to the currency of the Republic and any offences for which a prison sentence of five years or more is foreseen.

In addition to the warrant to access data, the Court may also issue warrants of entry and investigation into any premises and confiscation of any documents, equipment or objects found on the premises for which there is reasonable suspicion that they hold private communications. If in the process of accessing, reviewing or collecting content, the investigators come across content relating to an offence other than the one mentioned in the warrant, they may seize such content and it will be deemed to have been lawfully seized provided an application is submitted to the Court the soonest possible for the issue of a new warrant.¹⁷

A general provision protecting the privacy of communications is found in Article 17 of the Constitution, which applies to all, and the CIS are implicitly included, and which prohibits interference with communications except where this is allowed by law in the following cases:

- Where persons are serving a prison sentence or are remanded in custody;
- Where a court order was issued following an application by the Attorney General and the interference is necessary in a democratic society for the interests of the Republic or

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¹⁴ Cyprus, Law amending the law on protection of confidentiality of private communication (Surveillance of conversations) and access to registered content of private communication of 1996 [*Νόμος που τροποποιεί το νόμο περί προστασίας του απορρήτου της ιδιωτικής επικοινωνίας (Παρακολούθηση συνδιαλέξεων) του 1996*] N. 216(I)/2015, 31 December 2015, available at http://cylaw.org/nomoi/arith/2015_1_216.pdf

¹⁵ Cyprus, Law on the protection of the confidentiality of private communication (surveillance of conversations and access to written content of private communication) Law of 1996 [*Ο περί Προστασίας του Απόρρητου της Ιδιωτικής Επικοινωνίας (Παρακολούθηση Συνδιαλέξεων και Πρόσβαση σε Καταγεγραμμένο Περιεχόμενο Ιδιωτικής Επικοινωνίας) Νόμος του 1996*], article 6, available at http://cylaw.org/nomoi/enop/non-ind/1996_1_92/full.html

¹⁶ Cyprus, Law on the protection of the confidentiality of private communication (surveillance of conversations and access to written content of private communication) Law of 1996 [*Ο περί Προστασίας του Απόρρητου της Ιδιωτικής Επικοινωνίας (Παρακολούθηση Συνδιαλέξεων και Πρόσβαση σε Καταγεγραμμένο Περιεχόμενο Ιδιωτικής Επικοινωνίας) Νόμος του 1996*], article 8, available at http://cylaw.org/nomoi/enop/non-ind/1996_1_92/full.html

¹⁷ Cyprus, Law on the protection of the confidentiality of private communication (surveillance of conversations and access to written content of private communication) Law of 1996 [*Ο περί Προστασίας του Απόρρητου της Ιδιωτικής Επικοινωνίας (Παρακολούθηση Συνδιαλέξεων και Πρόσβαση σε Καταγεγραμμένο Περιεχόμενο Ιδιωτικής Επικοινωνίας) Νόμος του 1996*], article 15, available at http://cylaw.org/nomoi/enop/non-ind/1996_1_92/full.html

for the avoidance investigation or prosecution of specific crimes set out in paragraph 2.B of the said Article and mentioned above.¹⁸

2. *Court decisions*

There are no Court decisions in the area of surveillance.

A Court decision in October 2015, examining certiorari applications to prevent access by the police to the applicant's telephone data, confirmed that the national data retention legislation, which regulates the issue of court orders authorising access to private data in the context of criminal justice, remains valid in spite of the invalidation of the Data Retention Directive following the CJEU ruling in *Digital Rights Ireland*.¹⁹ The data retention law does not authorise the intelligence agency to access data; it only regulates the right of the police to access content data in the course of investigating the commission of crimes.

3. *The Snowden revelations*

There were no public debates or reports in Cyprus on the Snowden revelations. A few media articles highlighted the role of Cyprus as a spying base for other countries,²⁰ but these allegations were not picked up for further investigation or discussion by either ad hoc or standing oversight bodies. Neither parliament nor the DPA discussed or reported on the Snowden revelations.

4. *Political developments and the background to the adoption of the law regulating intelligence activities*

On 30 September 2014 the Parliamentary Committee on Institutions, Merit and the Commissioner for Administration begun discussion on a bill submitted on 23 September 2014 purporting to regulate the manner of operation of the CIS. The bill was discussed in numerous meetings many of which took place behind closed doors and were attended to by the Chief of Police, the Chief of the National Guard, the acting Permanent Secretary of the Ministry of Justice, the State Archives Registrar, the former and current head of the CIS and representatives of the Attorney General and the associations of police officers and army personnel. Discussion focused on:

- CIS' mission, mandate and breadth of the scope, as well as the need to avoid conflict with the mandate of other bodies whilst at the same time achieving the necessary cooperation between these bodies;
- The need for and the role of an oversight authority and its composition;

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¹⁸ Cyprus, The Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*) article 17(2), available at <http://cylaw.org/nomoi/enop/ind/syntagma/section-sc3c3bc52c-4568-070e-d908-0b2e5b3e6a13.html>

¹⁹ Cyprus, Supreme Court, Re the ex parte application of Constantinos Syphantos from Geroskipou regarding the issue of a certiorari order, Civil Applications Nos. 216/14 and 36/2015, 27 October 2015. Available at www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_1/2015/1-201510-216-14etc_1.htm&qstring=%F0%F1%EF%F3%F4%E1%F3%2A%20and%20%F4%EF%F5%20and%20%E1%F0%EF%F1%F1%E7%F4%EF%2A%20and%20%F4%E7%F3%20and%20%E9%E4%E9%F9%F4%E9%EA%2A%20and%20%E5%F0%E9%EA%EF%F9%ED%F9%ED%E9%2A%20and%202015

²⁰ Hager N and Maurizi, S (2013), 'Cyprus: the home of British/American Internet surveillance in the Middle East', *L'Espresso*, 5 November 2013. Available at http://espresso.repubblica.it/inchieste/2013/11/04/news/the-history-of-british-intelligence-operations-in-cyprus-1.139978?refresh_ce; Hopkins, N and Borger, J (2013), 'NSA pays £100m in secret funding for GCHQ', *The Guardian*, 1 August 2013, available at www.theguardian.com/uk-news/2013/aug/01/nsa-paid-gchq-spying-edward-snowden

- The appointment of the CIS' director and deputies, their term of office and the need to synchronise the commencement and end of their term with that of the President of the Republic;
- The handling of classified files and the process of declassification;
- Budgeting and staffing arrangements and the terms of secondment of other public servants to CIS.²¹

The discussion recorded in the report of the Parliamentary Committee is very much reflected in the law which took on board all the recommendations of the Committee, except with regard to the members of the oversight committee for which the Parliamentary Committee recommended retired judges; this is not a requirement of the law as adopted, which provides that the committee members must be professionally and morally of the highest standard, and its president must also have legal training. No reference was made to the FRA Surveillance report which had been covered by the national media in November and December 2015 or to the fundamental rights concerns raised by this report. No discussion was recorded as to the methods of surveillance to be used by the CIS or as to the breadth of their mandate. In July 2015 the CIS director resigned under the weight of a WikiLeaks publication about the secret acquisition by CIS of the specialised surveillance software 'Galileo' from the Italian firm 'Hacking Team'. Galileo could be used for the surveillance of smart phones and other equipment and for intercepting phone calls, SMS, emails, images, Facebook, twitter, viber, for activating microphones from a distance, etc. CIS confirmed having purchased such software, pointing out that the data collected was used only for 'national security purposes', however the digital systems of two media outlets appeared to have been 'infected' by this software, which means that they had been targeted by CIS. Some of the data collected by CIS through this system returned to the centre which had supplied the software in Italy, where a group of analysts would compile a macroscopic analysis, which was then sent to a recipient in an unnamed third country. Journalistic information suggested that the software was acquired without the knowledge of the political leadership, which prompted the President to demand the director's resignation.²² Such interference with private communications is clearly prohibited by article 17 of the Constitution.²³

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.*²⁴

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²¹ Report of the Parliamentary Committee on Institutions, Merit and the Commissioner for Administration on the bill "Law providing for the establishment and functioning of the Cyprus Intelligence Service (CIS) of 2014, 30 March 2016, available at http://www2.parliament.cy/parliamentgr/008_05g/008_05_4769.htm

²² Sigmalive (2015) 'Παρατίθηκε ο Ανδρέας Πενταράς, προϊστάμενος της ΚΥΠ', 11 July 2015, available at www.sigmalive.com/news/local/248702/paraitithike-o-andreas-pentaras-proistamenos-tis-kyp#sthash.iaGSIE4u.dpuf; Sigmalive (2015), 'Επιβεβαιώνει η ΚΥΠ την αγορά του Galileo', 08 July 2015, available at www.sigmalive.com/news/local/247710/epivevaionei-i-kyp-tin-agera-tou-galileo#sthash.1015YlrD.dpuf; Theodorou P. (2015), 'Παραίτηση Πενταρά υπό το βάρος αποκαλύψεων', *Phileltheros*, 12 July 2015, www.philenews.com/el-gr/eidiseis-politiki/39/266586/paraitisi-pentara-ypo-to-varos-apokalypseon#sthash.hPq6ZBP7.dpuf; Theodorou, M. (2015), 'Ο «Πολίτης» ως δόλωμα για τις παρακολουθήσεις της ΚΥΠ', *Politis*, 14 July 2015, available at www.politis-news.com/cgi-bin/hweb?-A=297433&-V=articles

²³ Cyprus, The Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*) article 17(2), available at <http://cylaw.org/nomoi/enop/ind/syntagma/section-sc3c3bc52c-4568-070e-d908-0b2e5b3e6a13.html>

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

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.*
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.*

1. *Legal framework on international intelligence cooperation*

The legal framework is summed up in two lines in the newly adopted law on intelligence services, which merely provides that for the fulfilment of its mission CIS can cooperate with corresponding agencies in other member states or in third countries or with international organisations.²⁵ Further regulation is provided by a classified internal document of the CIS which was not made available.²⁶

2. *Oversight*

There are no provisions in the legal framework **for oversight** of the international cooperation between the CIS and other intelligence services. According to the CIS Law the Chief of the CIS is accountable only to the President of the Republic. The law states that the oversight committee will assess the legality of the special operational actions of the CIS which impact on fundamental rights without providing any details about the actions to be evaluated. The CIS itself reports that international cooperation and exchange takes place under ‘internal control’²⁷ on the basis of an internal confidential regulation²⁸ which suggests that there is no mechanism in place for external control or oversight from any executive or parliamentary or other body. It is clear that the CIS does not consider international cooperation as an activity that is subject to scrutiny by the oversight body and does not intend to submit this to external monitoring.

²⁵ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*) Ν. 75(I)/2016, article 5(1)(g), available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

²⁶ Letter from the Cypriot Information Service to the Ministry of Justice and Public Order, 5 May 2016.

²⁷ Letter from the Cypriot Information Service to the Ministry of Justice and Public Order, 5 May 2016.

²⁸ Letter from the Cypriot Information Service to the FRANET contractor, 10 May 2016.

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)*²⁹ (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?

1. Exemptions to access to information

Cyprus does not have a freedom of information act. A draft bill seeking to regulate the right to freedom to information, which received considerable criticism from civil society organisations,³⁰ was subject to public consultation in 2015 but had not, at the time of writing, been introduced to the House of Representatives.³¹

The Tshwane Principles on access to information have not been incorporated in national legislation. Instead, the new law on intelligence services sets out a procedure for making information available to the public, which draws significantly on the discretion of the intelligence services and of the executive, which is described below.

Access to the files of the intelligence services (CIS) is permitted only to:

- the CIS director,
- the CIS staff members who are specifically authorised by the director and
- the members of an Advisory Committee set up under the new law to access the archives of the CIS.³²

Although structurally similar, the Advisory Committee is separate from the oversight committee mandated to monitor the activities of the CIS. The Advisory Committee is made up of three persons of ‘recognised standing and highest professional and moral standard’ proposed by the CIS director and appointed by the Council of Ministers upon recommendation by the President of the Republic. The term of this body expires automatically upon the expiry of the term in office of the President of the Republic, but the Council of Ministers may remove any member of this committee at any time whenever deemed appropriate.³³

The CIS director may select certain CIS files to be transferred to the state archives, upon which these files become accessible to the public. The decision for the transfer of CIS files to the state archives is made by the CIS director upon recommendation by the Advisory Committee. In the event of a disagreement between the CIS director and the Advisory Committee as to whether

²⁹ <http://www.right2info.org/exceptions-to-access/national-security/global-principles#section-10>

³⁰ Pavlou, A., Access Info Europe (2014), *Cypriot draft access to information law needs significant improvement according to civil society organisations*, 3 July 2014, available at <https://www.access-info.org/nat/12589>

³¹ Cyprus, Bill to regulate (Νόμος που ρυθμίζει το δικαίωμα σε πληροφορίες) 7 May 2014, available at www.access-info.org/wp-content/uploads/1405nomosxedio.pdf

³² Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών) N. 75(I)/2016, article 10(1)(b), available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

³³ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών) N. 75(I)/2016, article 10(3), available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

certain files should be transferred to the state archives, the matter is referred to the President of the Republic to decide finally.³⁴

CIS files which are not marked as classified are automatically transferred to the state archive 30 years after they were produced, at the latest. If the files are marked as classified, they can only be transferred to the state archive once they are declassified. Files which are not declassified 30 years after they were produced or which were not selected for transfer to the state archive, remain in CIS records (inaccessible to the public) and the Parliamentary Committee on Institutions, Merit and the Commissioner for Administration is notified accordingly.³⁵

3. *Right of individuals to be informed that they are subject to surveillance*

Cyprus does not have a freedom of information act. Under the national data protection legislation, all persons have the right to be informed if their personal data are or have been the subject of processing.³⁶ However, the duty of the controller to so inform the data subjects may be lifted with a decision of the Commissioner for the Protection of Personal Data, following a request by the controller, where the processing was carried out for reasons of national needs or national security or for the prevention, investigation and prosecution of criminal offences or for other reasons of important economic or financial interests of a member state of the EU.³⁷

The law on the confidentiality of private communications, which regulates interference with private communications by law enforcement agencies, requires the Attorney General to inform persons involved in private communications subjected to interception or surveillance, of the issue of the court order and of whether surveillance actually took place or not, within a reasonable time and no later than 90 days from the issue of the court order sanctioning surveillance. Upon application by the affected persons, the Court may, at its discretion, order the disclosure and provision to the applicant of extracts of the applicants' private communication collected as a result of surveillance, which in the opinion of the Court must be provided to the applicants for the purposes of delivery of justice, unless these records have in the meantime been destroyed. Such notification to the applicant may however be delayed following an ex parte application by the Attorney General if this is in the interests of: public security, constitutional order, public order, the security of the Republic, public health, public morals, protection of rights and freedoms, the dignity of others, preventing the discovery of information collected confidentially or in the public interests or for the need to protect investigations.³⁸ The scope of this law covers applications to the court by the Attorney General, acting upon the request of either the Chief of Police or the Director of Customs, both of which are law enforcement agencies; intelligence services are not covered by this law and cannot

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³⁴ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*) N. 75(I)/2016, articles 10(1)(a), 10(2)(b) available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

³⁵ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*) N. 75(I)/2016, article 10(2)(c), available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

³⁶ Cyprus, Law on the processing of personal data (Protection of the Individual) of 2001 [*Ο περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμος του 2001*], N138(I)/2001, article 12(1), available at http://cylaw.org/nomoi/enop/non-ind/2001_1_138/full.html

³⁷ Cyprus, Law on the processing of personal data (Protection of the Individual) of 2001 [*Ο περί Επεξεργασίας Δεδομένων Προσωπικού Χαρακτήρα (Προστασία του Ατόμου) Νόμος του 2001*], N138(I)/2001, article 12(4), available at http://cylaw.org/nomoi/enop/non-ind/2001_1_138/full.html

³⁸ Cyprus, Law on the protection of the confidentiality of private communication (surveillance of conversations and access to written content of private communication) Law of 1996 [*Ο περί Προστασίας του Απόρρητου της Ιδιωτικής Επικοινωνίας (Παρακολούθηση Συνδιαλέξεων και Πρόσβαση σε Καταγεγραμμένο Περιεχόμενο Ιδιωτικής Επικοινωνίας) Νόμος του 1996*], article 17, available at http://cylaw.org/nomoi/enop/non-ind/1996_1_92/full.html

request the Attorney General to apply for a court order to sanction the surveillance of private communications. However, it is possible for the CIS to request the police for assistance and information under the law regulating the activities of the CIS which provides a framework of cooperation with all state services, including a procedure of requesting assistance from other state services.³⁹

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.*

Cyprus is not mentioned in the introduction. However, given the WikiLeaks revelations about the Hacking Team software and the consequent resignation of the director of the Cypriot Intelligence Service, we suggest that a mention is added in your report’s introduction about the privacy concerns raised by the uncontrolled sale of such software. We propose the following:

“Several countries around the globe, including Spain, Switzerland, the Czech Republic, Luxembourg, Russia, Nigeria, Turkey, Sudan, Mexico, Italy, Chile, Saudi Arabia, Hungary, Malaysia, UAE, USA and Singapore have been revealed by WikiLeaks to have acquired surveillance software from the Hacking Team, which has repeatedly been under the spotlight of the Italian authorities for their activities and the risks posed to fundamental rights by their surveillance software.⁴⁰⁴¹ There is further evidence presented by international NGOs that the Hacking Team’s and other European vendors’ software was used not only to spy against other states but also against human rights NGOs and against individuals, prompting for the introduction of effective control over the sale of such software which are of questionable legality.⁴²”

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³⁹ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών) N. 75(I)/2016, article 11, available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

⁴⁰ Privacy International, *Briefing for the Italian Government on Hacking Team*, available at <https://privacyinternational.atavist.com/hackingteamsurveillanceexports>

⁴¹ Amnesty International and Privacy International (2014), *Case studies illustrating the urgent need for stricter trade controls on surveillance interception technology*, April 2014, available at [www.amnesty.nl/sites/default/files/public/cause - ai and pi case studies.pdf](http://www.amnesty.nl/sites/default/files/public/cause_-_ai_and_pi_case_studies.pdf) ; Human Rights Watch (2014), *They know everything we do*, 25 March 2014, available at <https://www.hrw.org/report/2014/03/25/they-know-everything-we-do/telecom-and-internet-surveillance-ethiopia>

⁴² Amnesty International (2016), *A brief history of governments hacking human rights organizations*, 11 January 2016, available at www.amnesty.org/en/latest/campaigns/2016/01/brief-history-of-government-hacking-human-rights-organizations/

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.*

Cyprus is not mentioned in this section. On the issue of the organisational separation between law enforcement agencies and intelligence agencies (p. 14 of the FRA report), a reference could be added as follows:

“In Cyprus, the intelligence service is distinct and separate from the police and the army, with different heads and different regulatory frameworks, the law regulating the intelligence services adopted in 2016 provides that members of the police force and of the army may be seconded to serve in the intelligence agency⁴³ confirming the practice followed so far.”

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.*

Other than the addition proposed above, there is nothing to add or change in this section

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.*

There is nothing to add or change in this section

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.)*

⁴³ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών) Ν. 75(Ι)/2016, article 13(1), available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

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.*

On page 19, in the sentence “FRA data show that for some Member States the legal basis that frames the intelligence services’ mandates and powers is constituted by one unique legal act governing their organisation and means (such as Estonia or Luxembourg)”, Cyprus can be added in the brackets. The organisation and mandate of the Cypriot intelligence service is also governed by a single legal act, although there may be internal regulations which are not publically available, as the director of the intelligence agency is entitled to issue such internal regulations.

On page 20, please delete the sentence “In Cyprus, a bill regulating the intelligence service’s functioning is under discussion” and the corresponding footnote no. 111. In its place, please add the following:

In Cyprus a new law was adopted in 2016⁴⁴ codifying to a large extent the existing manner of operation of the intelligence services and regulating areas which had previously not been regulated. The new law does not set out or seek to regulate the surveillance methods used by the intelligence services, nor does it explicitly sanction or prohibit surveillance. The Cypriot Constitution prohibits surveillance except where sanctioned by a Court order and provided this is in the interests of the security of the Republic or for the purpose of preventing or prosecuting serious crime.⁴⁵

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.*

Although Cyprus is not explicitly named in this section, we believe the following references in your report relate to Cyprus.

On page 27, under the heading “Legal regulation of surveillance”, your report reads: “*Intelligence services are regulated by law in the vast majority of Member States (26 out of 28). Legal provisions regulate the organisation and functioning of the countries’ intelligence services. One Member State’s constitution prohibits its intelligence service from undertaking surveillance. Another Member State is in the process of enacting legislation that will regulate its intelligence services’ surveillance practices.*”

If the reference to the two member states (28 minus 26) who don’t have a law regulating the intelligence services includes Cyprus, please change that to “27 out of 28” as Cyprus now has such a law.

⁴⁴ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*) N. 75(I)/2016, available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

⁴⁵ Cyprus, Constitution of the Republic of Cyprus (*Σύνταγμα της Κυπριακής Δημοκρατίας*) available at <http://cylaw.org/nomoi/enop/ind/syntagma/section-sc3c3bc52c-4568-070e-d908-0b2e5b3e6a13.html>

If the reference in the final sentence of the above paragraph (“Another member state...”) is to Cyprus, please replace that with the following:

“Another member state enacted legislation in 2016 regulating the operation of the national intelligence agency but without regulating its surveillance practices”.

On page 27 again, under the same heading, your report reads: “*Most EU Member States (23 out of 28) have separated intelligence services from law enforcement authorities. Two Member States have recently moved away from systems in which the intelligence services belonged to the police or similar law enforcement authorities.*” Here you could add a reference to the Cypriot arrangements of organizational separation as follows:

“In one member state, although the intelligence agency is distinct from law enforcement authorities, the framework provides for members of the police and the army serving in the intelligence agency on assignment.”

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.*

Although Cyprus is not explicitly mentioned in this section, the following could be added in page 31, at the end of the paragraph which begins with “*As the Snowden revelations have shown...* ”:

“By contrast, in Cyprus all staff members of the intelligence agency are under a strict confidentiality duty, infringement of which may lead to disciplinary proceedings and suspension from duties.⁴⁶”

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.*

Cyprus is not mentioned in this section, however the following could be added on page 34, at the end of the paragraph starting with “*In the Netherlands, on the other hand...* ”:

“In Cyprus the executive appoints not only the director of the intelligence agency but also the members of the two oversight committees foreseen by the law, which are

⁴⁶ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*) Ν. 75(Ι)/2016, articles 25, 27 and 29, available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

mandated with the task of assessing the lawfulness of the agency's activities and accessing and advising on the declassification of the agency's records, respectively.⁴⁷

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 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.*

The classification of parliamentary bodies into those having 'essential' or 'enhanced' powers, and the respective definitions given to these two categories, do not allow for the classification of Cyprus into a specific category, because all parliamentary committees have, in addition to the 'essential' powers some (but not all) of the 'enhanced' powers. Parliamentary committees in Cyprus may initiate investigations, request the submission of documents and summon witnesses but are not involved in the authorisation process of surveillance measures. An important element on the question whether these bodies can exercise effective control, however, is whether the legal framework regulating surveillance provides for such control: in Cyprus, although parliamentary committees have wide investigating powers, these may in practice be of little consequence because the law on the intelligence agency does not regulate or restrict the agency's powers of surveillance.

We therefore suggest the insertion of the following paragraph in page 36, after footnote 240:

“In Cyprus, Parliamentary Committees have the right to request information from governmental departments, legal persons and private individuals which may in their opinion support the implementation of their tasks and all persons so summoned are under a legal duty to provide the information requested, except where the provision of information may infringe upon a professional duty of confidentiality, where the revelation contains a risk of self-incrimination or may lead to the prosecution of a close relative, or in the case of public servants where the revelation may pose a risk to national security, defence or external relations. The investigating parliamentary committee may request the submission of documents, may summon witnesses and may commission expert advice and expert witnesses, following which it will assess the evidence collected and submit a report to the plenary session of the House to decide if the findings warrant further examination. The plenary session may also notify the Attorney General who can finally decide on whether to initiate prosecutions or not.⁴⁸ The legal framework does not specifically provide for parliamentary scrutiny of intelligence activities.

2.2.1 Mandate

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⁴⁷ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*) Ν. 75(I)/2016, articles 6(1) and 10(3), available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

⁴⁸ Cyprus, Laws on the submission of data and information to the House of Parliament and Parliamentary Committees of 1985 and 1993 (*Οι περί της Καταθέσεως Στοιχείων και Πληροφοριών στη Βουλή των Αντιπροσώπων και στις Κοινοβουλευτικές Επιτροπές Νόμοι του 1985 και 1993*), available at http://cylaw.org/nomoi/enop/non-ind/1985_1_21/full.html

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.*

We suggest that you delete the entire reference to Cyprus on page 37 (“*Cyprus’ House of Representatives deals directly with the president. This is due to the country’s unique situation: there is no law regulating CIS’ functioning, meaning it is not clear whether CIS can be considered a public service, and therefore subject to scrutiny by any of the existing parliamentary committees. The House of Representatives has not established a special parliamentary committee to oversee the intelligence services, and itself carries out very limited oversight.*”). It is not correct to state that the House of Representatives deals directly with the President, or that the CIS is not subject to scrutiny by any parliamentary committee. It is correct to state that no special parliamentary committee was set up to oversee the intelligence committee, but this is already stated elsewhere in your report. But the intelligence service is part of the mandate of one of the standing parliamentary committees (the Parliamentary Committee on Institutions, Merit and the Commissioner for Administration) is notified accordingly which had for two years debated on the bill that finally became law in May 2016. The criticism in your report that surveillance and data protection is not high on the agenda of the House is correct but could perhaps be alternatively phrased as follows:

“In Cyprus, issues of surveillance and interference with the right to privacy and data protection may also be monitored by the House Standing Committee on Legal Affairs and the Committee on Human Rights and on Equal Opportunities between Men and Women although so far there have not been any cases of major investigations launched by any of these committees.”

On page 37, at the end of the paragraph beginning with “*Other parliamentary committees may hold hearings...*” Cyprus could also be added as another country where parliamentary committees may hold such hearings. The relevant footnote is here:⁴⁹

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 Cyprus in this section. However, the following could be added on page 39 at the end of the paragraph beginning with “*Many Member States include mandatory...*”:

“In Cyprus, a Committee of Selection, comprising of the President and the Vice President of the House of Representatives and of eight other MPs, selects the MPs to

⁴⁹ Cyprus, Laws on the submission of data and information to the House of Parliament and Parliamentary Committees of 1985 and 1993 (*Οι περί της Καταθέσεως Στοιχείων και Πληροφοριών στη Βουλή των Αντιπροσώπων και στις Κοινοβουλευτικές Επιτροπές Νόμοι του 1985 και 1993*), available at http://cylaw.org/nomoi/enop/non-ind/1985_1_21/full.html

participate in each parliamentary committee.⁵⁰ The MPs selected for each committee must be proportionate to the representation of their party in parliament. The choice of the MP to chair each committee is the result of consensus in the plenary, where each party is apportioned the chairs of those committees it bids for, based on its proportionate strength.⁵¹ The previously observed convention that the special committees must be chaired by opposition MPs is no longer followed.”

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.*

Cyprus is not mentioned in this section and no deletions or additions are necessary.

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.*

Cyprus is not mentioned in this section and no deletions or additions are necessary.

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.*

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.*

⁵⁰ Cyprus, The Constitution of the Republic of Cyprus (*To Σύνταγμα της Κυπριακής Δημοκρατίας*), article 73, available at <http://cylaw.org/nomoi/enop/non-ind/syntagma/full.html>

⁵¹ [For more details see the website of the House of Parliament, available at www.parliament.cy/easyconsole.cfm/id/183](http://www.parliament.cy/easyconsole.cfm/id/183)

The new law on intelligence services provides for the setting up of a three-member committee appointed by the executive to assess the lawfulness of the activities of the intelligence agency.⁵² The adoption of the law is very recent and at the time of writing the members of this committee had not as yet been announced. The proposal of the parliamentary committee before which the bill was debated was that this committee comprises of former judges. In the text that was finally adopted, the committee members are not necessarily former judges: one of the three members must be legally trained and all three of them must be ‘of the highest moral standard’. There is no requirement that they are experts in the field or that they are serving in this committee on a full time basis. In our view, the reference to Cyprus in Table 2 on page 42 should remain unaltered, but perhaps a reference to this committee could be made in the text, such as at the end of the paragraph beginning with “*By contrast, the executive appoints the members ...*” on page 43. We propose the addition of the following text:

“In Cyprus, the new law on intelligence services provides for the appointment by the executive of a three-member committee to assess the lawfulness of the activities of the intelligence services.⁵³ The terms of service and the functional rules of the committee will be regulated by internal rules that will be prepared by the CIS and the committee.”

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.*

The references to Cyprus in this section are correct. There is no need for further additions.

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.*

The references to Cyprus in this section are correct. There is no need for further additions.

FRA key findings

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

⁵² Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών) Ν. 75(Ι)/2016, article 6(1), available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

⁵³ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών) Ν. 75(Ι)/2016, article 6(1), available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

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.*

Cyprus is not mentioned in this section. There is no need for any additions.

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.*

There is no reference to Cyprus in this section and no need to add a 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 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.*

The reference to Cyprus in this section is correct.

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.*

Cyprus was not mentioned in this section and there is 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.*

Cyprus was not mentioned in this section and there is 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.*

Cyprus was not mentioned in this section and there is 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.*

Cyprus was not mentioned in this section and there is 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.*
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.*

Cyprus was not mentioned in this section and there is nothing to add.

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.*

Cyprus was not mentioned in this section and there is nothing to add.

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.*

The reference to Cyprus in this section is correct.

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.*

Cyprus was not mentioned in this section and there is 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 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.*

Cyprus was not mentioned in this section and there is nothing to add.

The reference to Cypriot law on page 88 (National legislation) needs to be replaced with the details of the newly enacted law:

Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (*Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών*) N. 75(I)/2016, 4 May 2016, available at http://cyllaw.org/nomoi/arith/2016_1_75.pdf

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

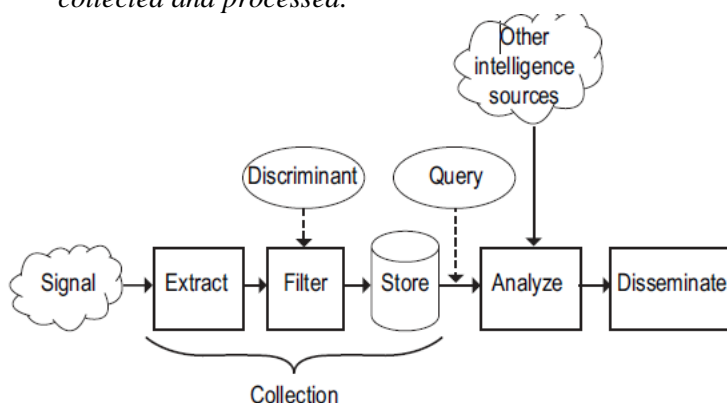
1.5.1 Overview of security and intelligence services in the EU-28

- 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
CY	Central Intelligence Service/ Κεντρική Υπηρεσία Πληροφορικών (ΚΥΠ) ⁵⁴			

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.



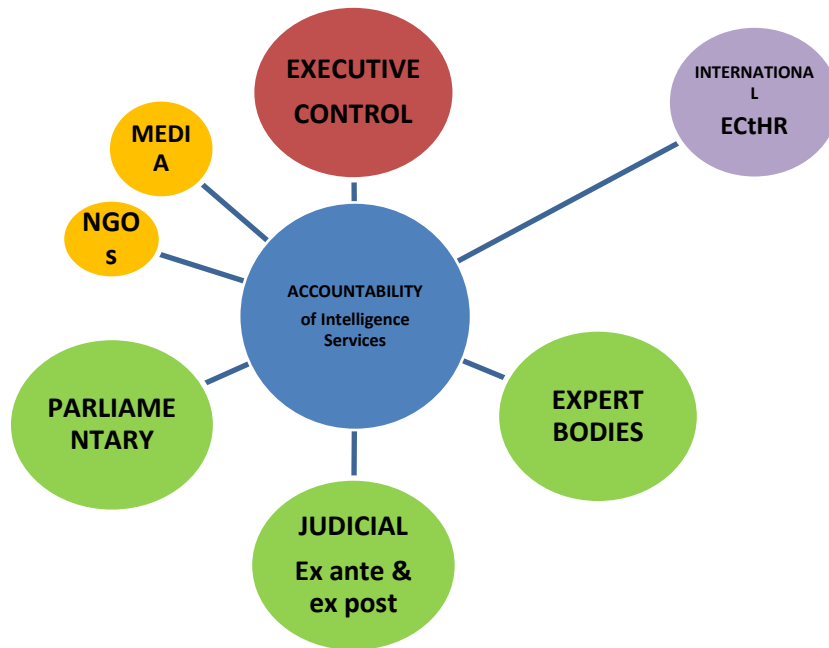
Signals intelligence is not used in Cyprus; the collection of information is, according to the intelligence agency, carried out only with conventional (physical) surveillance methods.⁵⁵

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.

⁵⁴ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών) Ν. 75(I)/2016, 4 May 2016, available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

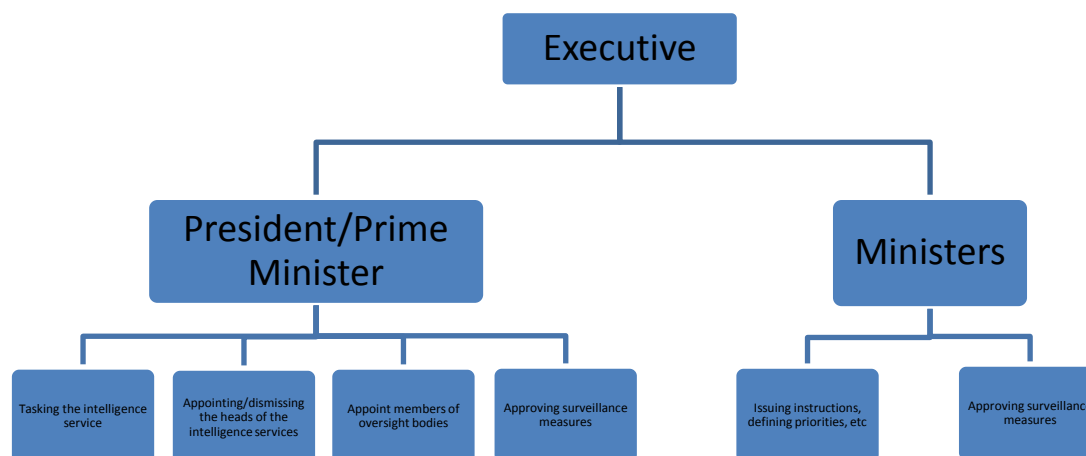
⁵⁵ Letter from the Cypriot Information Service to the Ministry of Justice, 5 May 2016.



In Cyprus, intelligence services are accountable, in the strict sense of the word, only to the executive. The new law enacted in May 2016 sets up a committee to assess the legality of the activities of the intelligence service with respect to fundamental human rights, but its members are once again appointed by the executive. The only expert body with oversight is the DPA. There are no NGOs operating in the field. The media can raise awareness and provide the forum for public debate but the intelligence agency is not accountable to the media. Parliamentary bodies can investigate the activities of the intelligence services. National courts as well as the ECtHR can examine applications alleging violations of the law and of the ECHR respectively.

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 the case of Cyprus, the Council of Ministers appoints the director of the intelligence service and the members of the committee tasked with the assessment of the legality of the activities of the intelligence service, upon recommendation from the President.⁵⁶ Other than that, the above figure applies in the case of Cyprus.

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
CY	X	

In Cyprus, in addition to the essential powers, parliamentary committees may initiate investigations, request the submission of documents and summon witnesses and submit a report to the plenary in order for further action to be taken, if necessary.⁵⁷

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

⁵⁶ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών) N. 75(I)/2016, articles 6(1) and 7(1), available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

⁵⁷ Cyprus, Laws on the submission of data and information to the House of Parliament and Parliamentary Committees of 1985 and 1993 (Οι περί της Καταθέσεως Στοιχείων και Πληροφοριών στη Βουλή των Αντιπροσώπων και στις Κοινοβουλευτικές Επιτροπές Νόμοι του 1985 και 1993), available at http://cylaw.org/nomoi/enop/non-ind/1985_1_21/full.html

amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

EU Member State	Expert Bodies
CY	N.A.

At the time of writing, Cyprus did not have an expert body overseeing the activities of the intelligence services and therefore the above table is accurate. However the new law on intelligence services provides for the appointment by the executive of a three-member committee tasked with assessing the lawfulness of the activities of the intelligence agency.⁵⁸ The composition of this team and the expertise of its members is not known yet but it is possible that this team will, over time, develop into an oversight body of experts.

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.

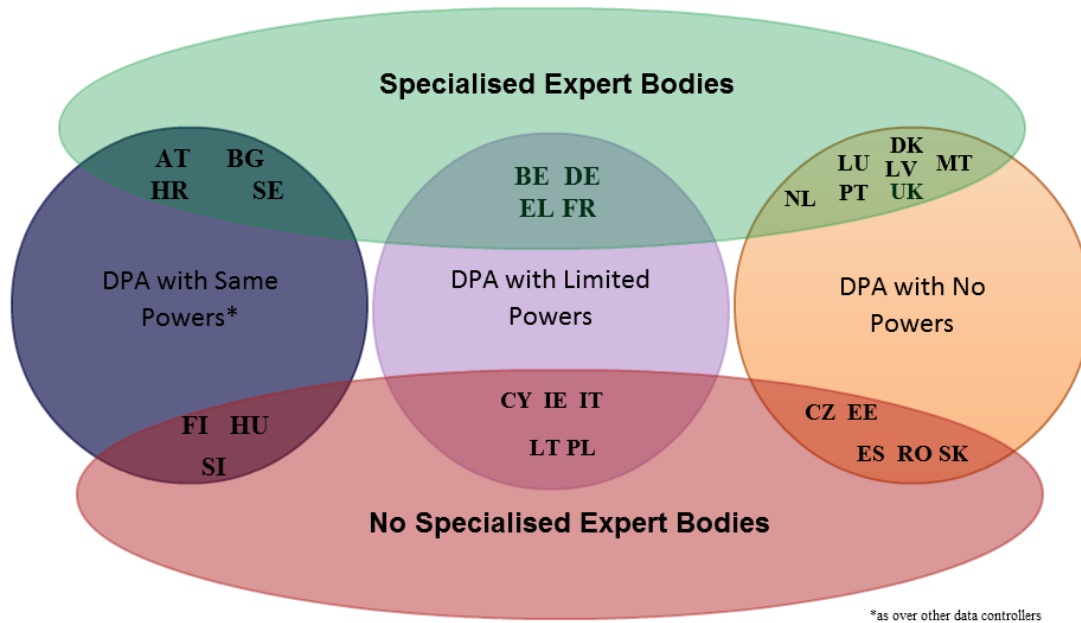
EU Member State	No powers	Same powers (as over other data controllers)	Limited powers
CY			X

The table is correct.

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.

⁵⁸ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών) N. 75(I)/2016, article 6(1), available at www.cylaw.org/nomoi/arith/2016_1_075.pdf



The above table is accurate as far as Cyprus is concerned.

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
CY	X				

Under the Cypriot Constitution, a Court order is needed in order to interfere with private communications. However there is no procedure in law *for the intelligence services* to apply for and obtain such a court order; only law enforcement agencies can request the Attorney General to apply for this court order. In order for such a court order to be issued, there has to be a law sanctioning such type of surveillance.⁵⁹ The law regulating the interception of private communications provides for a procedure in court, which must be initiated by the Attorney General who may act on his own behalf or on behalf of the Chief of the Police or any investigator and not by intelligence agencies.⁶⁰ The intelligence agency is authorised by law to collect data without specifying the methods but in doing so it must comply with the Constitution

⁵⁹ Cyprus, The Constitution of the Republic of Cyprus (*Το Σύνταγμα της Κυπριακής Δημοκρατίας*) article 17(2), available at <http://cylaw.org/nomoi/enop/ind/syntagma/section-sc3c3bc52c-4568-070e-d908-0b2e5b3e6a13.html>

⁶⁰ Cyprus, Law amending the law on protection of confidentiality of private communication (Surveillance of conversations) and access to registered content of private communication of 1996 [*Νόμος που τροποποιεί το νόμο περί προστασίας του απορρήτου της ιδιωτικής επικοινωνίας (Παρακολούθηση συνδιαλέξεων) του 1996*] N. 216(I)/2015, 31 December 2015, available at http://cylaw.org/nomoi/arith/2015_1_216.pdf

and the data protection laws.⁶¹ Interference with private communications is prohibited by the Constitution⁶² which is a higher form of law than the intelligence law. Surveillance of private communications may, under conditions, be carried out by law enforcement agencies subject to obtaining a court order,⁶³ but the intelligence services are not such an agency. The Cypriot intelligence services may carry out targeted surveillance even in the absence of a Court order, but only through ‘conventional means’ which is the procedure of close monitoring through visual or acoustic contact in a natural manner.⁶⁴ The intelligence services themselves claim to be using only conventional means of surveillance.⁶⁵

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 to Cyprus.

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.

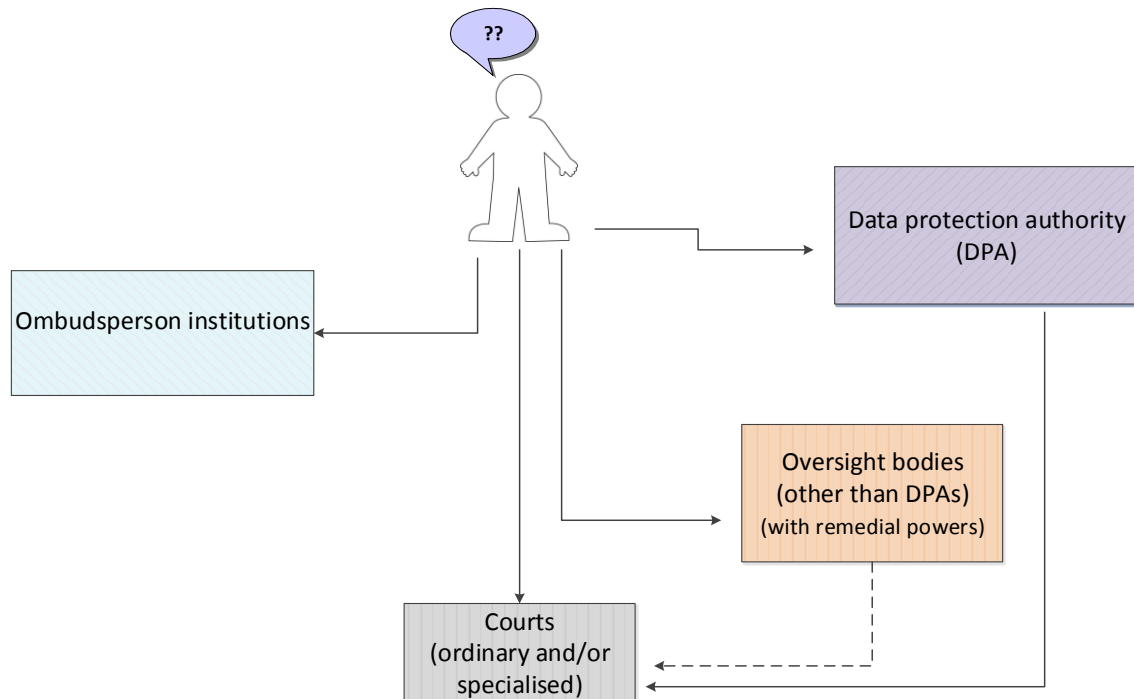
⁶¹ Cyprus, Law providing for the establishment and functioning of the Cyprus Intelligence Service (Νόμος που προβλέπει για τη θέσπιση και τη λειτουργία της Κυπριακής Υπηρεσίας Πληροφοριών) N. 75(I)/2016, article 5, available at www.cylaw.org/nomoi/arith/2016_1_075.pdf

⁶² Cyprus, The Constitution of the Republic of Cyprus (Το Σύνταγμα της Κυπριακής Δημοκρατίας) article 17(2), available at <http://cylaw.org/nomoi/enop/ind/syntagma/section-sc3c3bc52c-4568-070e-d908-0b2e5b3e6a13.html>

⁶³ Cyprus, Law amending the law on protection of confidentiality of private communication (Surveillance of conversations) and access to registered content of private communication of 1996 [Νόμος που τροποποιεί το νόμο περί προστασίας του απορρήτου της ιδιωτικής επικοινωνίας (Παρακολούθηση συνδιαλέξεων) του 1996] N. 216(I)/2015, 31 December 2015, available at http://cylaw.org/nomoi/arith/2015_1_216.pdf

⁶⁴ Letter from the CIS to the FRANET team, 10 June 2016.

⁶⁵ Letter from the Cypriot Information Service to the Ministry of Justice, 5 May 2016.

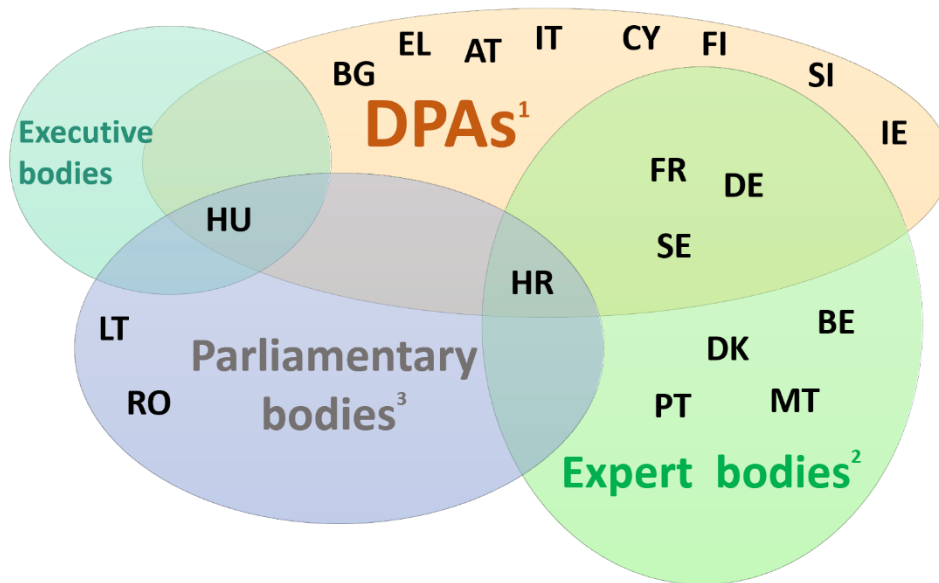


In Cyprus, an individual may apply to the DPA and to the Courts; there are no other oversight bodies with remedial powers. The Ombudsman’s mandate is to check on administrative malpractice in general, so strictly speaking an individual may complain to the Ombudsman against acts of the intelligence agency, although the lack of expertise of this institution and the secrecy of intelligence activities may negatively impact this procedure. The Ombudsman does not have a specific mandate to monitor the activities of the intelligence service. A draft bill seeking to regulate the right of access to information, which was subject to public consultation in 2015 but has not yet been introduced to the House of Representatives sought to appoint the DPA as competent body to oversee the implementation of its provisions.⁶⁶

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.

⁶⁶ Cyprus, Bill to regulate (Νόμος που ρυθμίζει το δικαίωμα σε πληροφορίες) 7 May 2014, available at www.access-info.org/wp-content/uploads/1405nomosxedio.pdf



- 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 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.

The figure is accurate in the case of Cyprus.