

# Short Thematic Report

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

Legal update

Country: France

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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. The legislative reforms

In 2015, intelligence activities were provided with a more solid legal framework. To respond to developments in the terrorist threat, the intelligence services were authorized to use new more intrusive techniques and saw their resources in staff, operations and equipment reinforced.

In particular, **law No.2015-912 of 24 July 2015 relating to intelligence**<sup>1</sup> and **law No. 2015-1556 of 30 November 2015 relating to surveillance of international electronic communications**<sup>2</sup> supplemented both the **Internal security code with Book VIII entitled 'Intelligence' (Du renseignement)** and the **Code of Administrative Justice**.

In accordance with the general provisions of this Book, the public policy on intelligence contributes to the strategy of national security as well as defence and the promotion of the fundamental interests of the Nation. It comes under the exclusive responsibility of the State.

The specialized intelligence services have the roles, in France and abroad, of seeking, gathering, using, and providing the Government with intelligence relating to geopolitical and strategic interests, such as threats and risks to the Nation. They contribute to knowledge and the anticipation of these risks and to the prevention and the reduction of these risks and threats. They act with respect to the law, under the authority of the Government and in accordance with orientations determined by the National Intelligence Council.

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<sup>1</sup> France, Law No.2015-912 relating to intelligence (*Loi n° 2015-912 relative au renseignement*), 24 July 2015, available at:

[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030931899&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000030931892](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030931899&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000030931892)

<sup>2</sup> France, Law No. 2015-1556 relating to de surveillance of international electronic communications (*Loi n° 2015-1556 relative aux mesures de surveillance des communications électroniques internationales*), 30 November 2015, available at:

[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031549747&dateTexte=&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031549747&dateTexte=&categorieLien=id)

The intelligence collection techniques mentioned by the Internal security code are:<sup>3</sup>

- Administrative access to connection data
- Security interceptions
- Bugging certain places and vehicles and collecting images and data<sup>4</sup>
- Surveillance of international electronic communications.

The implementation of these intelligence gathering techniques within the country is subject to the prior approval of the Prime Minister, delivered after consultation with the National commission for the control of intelligence techniques (hereafter - the CNCTR). The authorization is delivered upon a written and legally grounded request from the Minister for defence, or the Minister of the Interior, or the Ministers in charge of the economy, the budget or customs. Each minister may delegate this remit individually to direct employees cleared to work with official State secrets (*collaborateurs directs habilités au secret de la défense nationale*).

The collected information is destroyed at the end of a duration of:

1. Thirty days as from their collection for intercepted communications and voice recordings;
2. One hundred and twenty days as from their collection for intelligence collected by the bugging of certain places and vehicles and the collecting of images and data;
3. Four years as from their collection for intelligence or documents processed or retained by their networks or electronic communication services, according to Article L34-1 of the Post and Electronic Communications Code<sup>5</sup> and Article 6 II of Law no. 2004-575 on confidence in the digital economy.<sup>6</sup>

For intelligence which is coded, the time limit runs from the time of their deciphering. They cannot be retained for more than six years as from their collection. When it is strictly necessary for the needs of the technical analysis and to the exclusion of any use for monitoring the people concerned, intelligence collected which contains elements of cyber-attacks or which is encrypted, as well as

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<sup>3</sup> France, Internal security code (*Code de la sécurité intérieure*), Book VIII, Title V, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935579&cidTexte=LEGITEXT000025503132&dateTexte=20160613](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935579&cidTexte=LEGITEXT000025503132&dateTexte=20160613)

<sup>4</sup> The provision relating to this technique is not elaborated upon within the framework of this update, since it was considered 'off topic' for the initial study.

<sup>5</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), Article L 34-1, available at : [www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070987&idArticle=LEGIARTI000006465770&dateTexte=&categorieLien=cid](http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070987&idArticle=LEGIARTI000006465770&dateTexte=&categorieLien=cid)

<sup>6</sup> France, Law no. 2006-64 on the fight against terrorism, containing various provisions relating to security and border controls (*Loi n° 2006-64 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers*), 23 January 2006, Article 6 II, available at : [www.legifrance.gouv.fr/affichTexteArticle.do?cidTexte=JORFTEXT00000801164&idArticle=LEGIARTI000006421546&dateTexte=&categorieLien=cid](http://www.legifrance.gouv.fr/affichTexteArticle.do?cidTexte=JORFTEXT00000801164&idArticle=LEGIARTI000006421546&dateTexte=&categorieLien=cid)

deciphered intelligence associated with these, may be retained for longer than these durations. However, the law does not establish the maximum period of their retention.<sup>7</sup>

The provisions of law No.2015-912 of 24 July 2015 relating to intelligence and law No. 2015-1556 of 30 November 2015 relating to surveillance of international electronic communications were strongly criticized.

In particular, the bill relating to intelligence (which became law No.2015-912 of 24 July 2015 relating to intelligence<sup>8</sup>) was strongly criticized by the National advisory commission for human rights<sup>9</sup>, the CNIL<sup>10</sup>, the French lawyer's trade union, the Judges' trade union, as well as by NGOs such as Quadrature du Net, French Data Network, and Fédération FDN.<sup>11</sup> The bill relating to intelligence and the bill relating to surveillance of international electronic communications (which became Law No. 2015-1556 of 30 November 2015<sup>12</sup>) were also criticized by the Public Defender of Rights (*Défenseur des droits*).<sup>13</sup>

Organic law No. 2015-911 of 24 July 2015 relating to the appointment of the president of the National commission for the control of intelligence techniques amended Organic law No. 2010-837 of 23 July 2010 relating to the application of the fifth subparagraph of article 13 of the Constitution, by inserting a clause according to which the president of the CNCTR is named by the President of the Republic.

On 17 December 2015, the bill to reinforce the effectiveness of the fight against terrorism was submitted to the National Assembly.<sup>14</sup>

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<sup>7</sup> France, Internal security code (*Code de la sécurité intérieure*), article L 822-2, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935064&cidTexte=LEGITEXT000025503132&dateTexte=20160613](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935064&cidTexte=LEGITEXT000025503132&dateTexte=20160613)

<sup>8</sup> France, Law No.2015-912 relating to intelligence (*Loi n° 2015-912 relative au renseignement*), 24 July 2015, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030931899&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000030931892](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030931899&dateTexte=&oldAction=rechJO&categorieLien=id&idJO=JORFCONT000030931892)

<sup>9</sup> France, National advisory commission for human rights (*Commission nationale consultative des droits de l'homme*), Opinion on Bill relating to the intelligence (*Avis sur le projet de loi relatif au renseignement*), 16 April 2015, available at: [www.cncdh.fr/fr/actualite/avis-sur-le-projet-de-loi-relatif-au-renseignement](http://www.cncdh.fr/fr/actualite/avis-sur-le-projet-de-loi-relatif-au-renseignement)

<sup>10</sup> France, CNIL, Opinion on Bill relating to the intelligence (*Avis sur le projet de loi relatif au renseignement*), 19 March 2015, available at: [www.cnil.fr/fr/publication-de-lavis-sur-le-projet-de-loi-relatif-au-renseignement](http://www.cnil.fr/fr/publication-de-lavis-sur-le-projet-de-loi-relatif-au-renseignement)

<sup>11</sup> France (2015), Observations on the Law relating to Intelligence, available at : [www.ldh-france.org/wp-content/uploads/2015/07/Observations-sur-la-loi-relative-au-renseignement.pdf](http://www.ldh-france.org/wp-content/uploads/2015/07/Observations-sur-la-loi-relative-au-renseignement.pdf); <https://sous-surveillance.fr/#/>

<sup>12</sup> France, Law No. 2015-1556 relating to de surveillance of international electronic communications (*Loi n° 2015-1556 relative aux mesures de surveillance des communications électroniques internationales*), 30 November 2015, available at:

[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031549747&dateTexte=&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031549747&dateTexte=&categorieLien=id)

<sup>13</sup> France, Public Defender of rights (*Défenseur des droits*), Opinion n°15-04, 2 April 2015, available at: [www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd\\_avis\\_20150402\\_15-04.pdf](http://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd_avis_20150402_15-04.pdf); France, Public Defender of rights (*Défenseur des droits*), Opinion n°15-22, 7 October 2015, available at: [www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd\\_avis\\_20150922\\_15-22.pdf](http://www.defenseurdesdroits.fr/sites/default/files/atoms/files/ddd_avis_20150922_15-22.pdf)

<sup>14</sup> France (2015), Bill to reinforce the effectiveness of the fight against terrorism (*Proposition de loi tendant à renforcer l'efficacité de la lutte antiterroriste*), available at : [www.assemblee-nationale.fr/14/dossiers/renforcement\\_efficacite\\_lutte\\_antiterroriste.asp](http://www.assemblee-nationale.fr/14/dossiers/renforcement_efficacite_lutte_antiterroriste.asp)

The Bill strengthening the fight against organised crime, terrorism and their financing, and improving the efficiency and safeguards of criminal procedure, submitted to the National Assembly on 3 February 2016, was adopted on 3 June 2016.<sup>15</sup>

## 2. The important (higher) court decisions in the area of surveillance

The day after its adoption, the law on intelligence was referred to the Constitutional Council<sup>16</sup> by 60 deputies, the president of the Senate and the President of the Republic in order to check its conformity with the Constitution.

Firstly, the Constitutional Council ordered that checks be carried out before the implementation of an intelligence technique - without requiring however that these checks be of a jurisdictional nature.

In particular, one provision (later to become article L. 821-6 of the internal security code) provided that in the event of an emergency related to an imminent threat or a very high risk of not being able to carry out an operation at a later date, the intelligence services were authorized to implement monitoring without prior authorization of a controlling authority. The law only provided for, in such a case, intelligence measures from the Prime Minister, the minister concerned and the CNCTR and the issuing of an authorisation within 48 hours.

The Constitutional Council considered that such a procedure was unconstitutional and consisted of an 'obviously disproportionate threat to the right to respect of private life and the confidentiality of communications'.

However, the Constitutional Council dismissed an argument of the parliamentary referral according to which the legislator ignored the requirements of article 66 of the Constitution in not placing the recourse to monitoring techniques under the control of a judge (*juge judiciaire*). According to the Constitutional Council, the intervention of the judge (*juge judiciaire*) is by no means necessary for the activities of intelligence since these, in working towards a preventive goal, come under the administrative police. The Council validated the control measure put in place by the law, considering that it ensures a sufficient balance between the requirements of public safety and the protection of the respect of private life.

Secondly, the Constitutional Council validated the processes for the use of the intelligence techniques, since their implementation is subjected to a checks procedure judged to be satisfactory, the authorization to resort to it is limited in time, just as is the data retention period.

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<sup>15</sup> France, Law strengthening the fight against organised crime, terrorism and their financing, and improving the efficiency and safeguards of criminal procedure (*Loi renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale*), n° 2016-731, 3 June 2016, available at :

[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032627231&dateTexte=&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032627231&dateTexte=&categorieLien=id)

<sup>16</sup> France, Constitutional Council (*Conseil constitutionnel*), Decision n°2015-713 DC, 23 July 2015, available at: [www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2015/2015-713-dc/decision-n-2015-713-dc-du-23-juillet-2015.144138.html](http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2015/2015-713-dc/decision-n-2015-713-dc-du-23-juillet-2015.144138.html)

On the monitoring in real time of a person, the Council underlines that the law only authorizes the use of this for the needs of the prevention of terrorism and only with regard to a person identified beforehand as presenting a threat. The same applies to recourse to 'black boxes', devices employed to identify, by means of algorithms, unusual behaviour on the internet and to detect terrorist threats through this. In respect to these, the Constitutional Council notes that they can be used only to collect connection data but not to know the identity of the people nor the contents of the data exchanged.

Thirdly, the Constitutional Council validated the composition of the CNCTR and the setting up, before the Council of State, of a specific jurisdictional procedure adapted to the needs of the secrecy of defence (the adversarial principle and the obligation of motivation of the Council of State decisions were the subject of modifications in this particular procedure).

On 3 October 2015, the association of judicial press (APJ) filed an application with the European Court of Human Rights (ECHR) against Law No. 2015-912 of 24 July 2015 concerning intelligence which breaches the rights and freedoms of journalists. 'The secret intrusion that the Government is preparing, through wiretaps or mass collection of data, will consequently affect the right to information of our democratic society. Journalists may be victims of these violations without even being informed since by their nature this monitoring and these recordings are secret.'<sup>17</sup> Complaints against this law have also been lodged with the European Court of Human Rights by members of the APJ, by the president of the Bar, the law society of the Paris Bar, the National Bar Council, National union of Journalists and the International Federation of Journalists.<sup>18</sup>

### **3. The reports and inquiry by oversight in relation to the Snowden revelations.**

### **4. The work of specific ad hoc parliamentary or non-parliamentary commission discussing the Snowden revelations.**

The parliamentary delegation for intelligence (hereafter - the delegation) dedicated one of the chapters of its report for 2014 to the consequences of the Snowden affair, 'The world after the revelations of Edward Snowden'.<sup>19</sup> This affair provided several pieces of information, according to the delegation. Firstly, information on the technical dependence of many European countries with regard to the United States, illustrating 'the absence of European sovereignty'. However, the delegation underlines the independent capacities of the DGSE in France. In particular, the DGSE has 'the entirety of the capabilities in electromagnetic intelligence (ROEM) [and] following the recommendations of the White Paper of 2008, [has been able] to develop significant internet traffic interception measures'.<sup>20</sup> The delegation explains the difference in the actions of the NSA and the DGSE: where the NSA intercepts and stores mass flows of communication then requests

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<sup>17</sup> France, APJ, Press release, 3 Octobre 2015, available at : <http://pressejudiciaire.fr/2.html>

<sup>18</sup> France, Ordre Council, Session, 20 October 2015, available at : [www.avocatparis.org/mon-metier-davocat/publications-du-conseil/seance-du-conseil-de-lordre-du-mardi-20-octobre-2015](http://www.avocatparis.org/mon-metier-davocat/publications-du-conseil/seance-du-conseil-de-lordre-du-mardi-20-octobre-2015); France, Nextimpact, "Devant la CEDH, 13 plaintes contre la France et sa loi Renseignement ", 17 March 2016, available at : [www.nextinpact.com/news/99109-devant-cedh-13-plaintes-contre-france-et-sa-loi-renseignement.htm](http://www.nextinpact.com/news/99109-devant-cedh-13-plaintes-contre-france-et-sa-loi-renseignement.htm)

<sup>19</sup> France, Parliamentary delegation for intelligence (*Délégation parlementaire au renseignement*), Report for 2014, available at : [www.assemblee-nationale.fr/14/rap-off/i2482.asp](http://www.assemblee-nationale.fr/14/rap-off/i2482.asp)

<sup>20</sup> France, Parliamentary delegation for intelligence (*Délégation parlementaire au renseignement*), Report for 2014, available at : [www.assemblee-nationale.fr/14/rap-off/i2482.asp](http://www.assemblee-nationale.fr/14/rap-off/i2482.asp)

authorizations to exploit the stored intelligence, the DGSE requests authorizations to collect extremely precise and targeted information in zones of crisis or threat. Because the DGSE is not a technical service (as opposed to the NSA) but an intelligence service equipped with technical means implemented to ensure its role outside the country. For this reason, these means are exclusively directed at zones representing a threat for national safety. The monitoring of exchanges carried out in France does not come within this framework. In the face of the observation of an absence of European sovereignty, in its report the delegation invited the Government to seize all opportunities which may open up on the European level to build a European alliance making it possible to hope for a rebalancing of the dialogue with the United States.

The delegation underlines that one of the consequences of the revelations of Edward Snowden is the fact that terrorist groups have considerably raised the level of protection of their exchanges. 'The paradox is thus terrible: while claiming to protect public freedoms by the revelation from the documents of the NSA, Edward Snowden is actually a 'useful idiot' at the service of terrorist groups'<sup>21</sup>

According to the delegation, the Snowden affair should also allow for a real awakening of the potential danger of large internet companies.

The delegation concluded that the capacities of States as regards intelligence must be better framed.

On 10 June 2014, the deputy Mr. Yves Jégo submitted to the National Assembly a proposal aiming at proclaiming Edward Snowden a citizen of honour of the French Republic and at granting him political asylum.<sup>22</sup>

The information report No. 639 (2014-2015) of Ms. Josette Durrieu, in the name of the French delegation to the Parliamentary assembly of the Council of Europe, submitted to the Senate on 16 July 2015, cites the Snowden affair within the framework of the discussion relating to the improvement of the protection of whistle-blowers.<sup>23</sup>

Information report No. 442 (2015-2016) of the Senate, 'The fight against terrorism: a priority for the European Union', submitted on 4 March 2016, mentions the Snowden affair in connection with the disputed obligation for companies to provide encryption keys.

On 3 December 2015 a deputy raised a question written to the Secretary of State, from the Minister for the economy, industry and digital technology, in charge of digital technology, by referring to the 'Snowden' affair, revealing the crucial nature of digital technology for the sovereignty of States, as well as the mass monitoring which they could be the object of by foreign actors, both private and public. The deputy underlined that it is necessary that any contractual relationship related to 'digital gold' which consists of State data can only be made within a legal and administrative framework of absolute confidence, in particular when it is a question of sensitive public data. The deputy queries the possibility that access, analysis, as well as advisory roles of the administrations concerning public data, which is sometimes very sensitive, are entrusted, at the end of two

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<sup>21</sup> France, Parliamentary delegation for intelligence (*Délégation parlementaire au renseignement*), Report for 2014, available at: [www.assemblee-nationale.fr/14/rap-off/i2482.asp](http://www.assemblee-nationale.fr/14/rap-off/i2482.asp)

<sup>22</sup> France, Proposal, 10 June 2014, available at: [www.assemblee-nationale.fr/14/dossiers/citoyennete\\_asile\\_politique\\_Edward\\_Snowden.asp](http://www.assemblee-nationale.fr/14/dossiers/citoyennete_asile_politique_Edward_Snowden.asp)

<sup>23</sup> France, Senate (*Sénat*)(2015), Information report, available at: [www.senat.fr/rap/r14-639/r14-6391.pdf](http://www.senat.fr/rap/r14-639/r14-6391.pdf)

procedures launched by the services of the Prime Minister (relating to a framework agreement on the processing of mass data (open or not) of the administrations) and by the general Directorate of public finance (relating to tax data processing), to foreign private actors whose links with foreign intelligence agencies are of public notoriety.

## 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.*
- 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 basis of international cooperation

According to article L111-2 of the Internal security code, the reinforcement of international cooperation as regards security, arising from international and European engagements to which France has subscribed, constitutes one of the permanent orientations of the policy on public safety.<sup>25</sup>

Under Article 5 of Decree 2014-445 of 30 April 2014 relative to the missions and organization of the Directorate General of Internal Security, the DGSI provides the necessary links, in its areas of competence, with the French or foreign services or agencies concerned. For this purpose it has liaison officers abroad.<sup>26</sup>

As is pointed out by the Parliamentary delegation for intelligence, the Directorate general of external security (DGSE), under the ministry for defence, obtains intelligence including by the means of co-operation with foreign services.<sup>27</sup>

However, the provisions on the DGSE are more general than the provisions on the DGSI. Under Article D 3126-3 of the Code of defence, for the performance of its duties, the Directorate General

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

<sup>25</sup> France, Internal security code (*Code de la sécurité intérieure*), Article L 111-2, available at: [www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000025504923&cidTexte=LEGITEXT000025503132&dateTexte=20160512](http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000025504923&cidTexte=LEGITEXT000025503132&dateTexte=20160512)

<sup>26</sup> France, Decree n° 2014-445 relating to missions and organisation of the Directorate General of Interior Security (*Décret relatif aux missions et à l'organisation de la direction générale de la sécurité intérieure*), 30 April 2014, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=57567C681B19CA3BCC2DC693C8877A41.tpdila10v\\_2?cidTexte=JORFTEXT000028887486&dateTexte=20140502](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=57567C681B19CA3BCC2DC693C8877A41.tpdila10v_2?cidTexte=JORFTEXT000028887486&dateTexte=20140502)

<sup>27</sup> France, Parliamentary delegation for intelligence (*Délégation parlementaire au renseignement*), Report for 2015, available at: [www.assemblee-nationale.fr/14/rap-off/i3524.asp](http://www.assemblee-nationale.fr/14/rap-off/i3524.asp)



for External Security, in particular, is responsible for ensuring the necessary links with other departments or agencies concerned.<sup>28</sup>

Article 6 of the Decree of 10 March 2015 on the organization of the General Directorate for External Security specifies that the Strategy Directorate of the DGSE is responsible for managing the policy for partnerships with foreign counterparts, and this includes the department for international liaisons.<sup>29</sup>

The former Director General of External Security at the Ministry of Defence, Mr. Erard Cordin de Mangoux, explained in an interview that "exchanges and links with foreign intelligence services are one of the historical missions of the DGSE, which has maintained, since 1946, a dense international network. Today, the DGSE is in contact with more than 200 intelligence services worldwide. These relationships are based on the principle of sharing (*donnant-donnant*) and mutually beneficial complementarity. Thus, each day, the DGSE shares analyses, exchanges information, develops cooperation, and provides the appropriate expertise to foreign services in the form of specific assistance programmes".<sup>30</sup>

On 3 March 2016, the Commission for European affairs in the Senate examined information report No.442 (2015-2016) of Mr Philippe Bonnacarrère and Mr Simon Sutour on the European Union and the fight against terrorism, and concluded upon the submission of the motion for a European resolution under the terms of which the Senate insists on the peremptory necessity to intensify co-operation and the exchange of intelligence between the European agencies such as Europol, Eurojust and the agency in charge of the control of the external borders of the Schengen area, between the aforementioned agencies and the services of justice, police, and intelligence of the Member States, between the services of justice, police, and intelligence of the Member States themselves. The Senate underlined that failing this, all of the initiatives taken at the European Union level to reinforce the fight against the terrorism will be, in fact, ineffective. The Senate also reaffirmed the need for building a global partnership with the most sensitive third countries to combine the requirements of security and development in order to reduce the terrorist threat over time.

## 2. Oversight of international cooperation

Legal provisions on executive oversight remain very general:

The specialized committee of the Defence and national security council, the National Intelligence Council, defines the strategic direction and priorities for intelligence, and establishes the planning of human and technical resources for the specialized intelligence services.<sup>31</sup>

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<sup>28</sup> France, Code of defence (*Code de la défense*), Article D 3126-3, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=57567C681B19CA3BCC2DC693C8877A41.tpdila10v\\_2?idSectionTA=LEGISCTA000019840911&cidTexte=LEGITEXT000006071307&dateTexte=20160720](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=57567C681B19CA3BCC2DC693C8877A41.tpdila10v_2?idSectionTA=LEGISCTA000019840911&cidTexte=LEGITEXT000006071307&dateTexte=20160720)

<sup>29</sup> France, Order on the organisation of the Directorate General of External Security (*Arrêté portant organisation de la direction générale de la sécurité extérieure*), 10 March 2015, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030375775&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030375775&categorieLien=id)

<sup>30</sup> France, Interview with Mr. Erard Cordin de Mangoux, "Mutations of French external intelligence services" (*Les mutations du renseignement extérieur français*), *Questions internationales*, n°35, January-February 2009.

<sup>31</sup> France, Code of defence (*Code de la défense*), Article L 1111-3, available at: [www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000020932646&cidTexte=LEGITEXT0000060](http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000020932646&cidTexte=LEGITEXT0000060)

The National Intelligence Council is chaired by the President of the Republic, who may be deputised for by the Prime Minister.<sup>32</sup>

On the National Intelligence Council are: the Prime Minister, the ministers and directors of the specialized intelligence services whose presence is required by the agenda, and the national intelligence coordinator.<sup>33</sup>

Appointed by Order in the Council of Ministers, the national intelligence coordinator advises the President of the Republic in the field of intelligence.

With the assistance of the secretary general for defence and national security, the national intelligence coordinator reports to the National Intelligence Council for which he/she prepares meetings and ensures the implementation of decisions taken by the council.

He/she coordinates action and ensures the good cooperation of the specialized services which make up the French intelligence community.

He/she transmits the instructions of the President of the Republic to those responsible for the services which provide the information to be reported to the President of the Republic and the Prime Minister, and report on their activities.<sup>34</sup>

The General Secretary for defence and national security assists the Prime Minister in exercising his responsibilities for defence and national security and contributes to the adaptation of the legal framework which covers the action of the intelligence services, planning their resources and ensuring the organization of interdepartmental groups for analysis and synthesis of intelligence in support of the national intelligence coordinator.<sup>35</sup>

The parliamentary delegation for intelligence, along with the National Assembly and the Senate, exerts parliamentary control of Government action as regards intelligence and evaluates the public policy in this field. However, the documents and information communicated to the delegation,

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[71307&dateTexte=20160720](http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=1AC0C904882814CD9F6E50C4F19AB341.tpdila10v_2?idArticle=LEGIARTI000021544336&cidTexte=LEGITEXT000006071307&dateTexte=20160720&categorieLien=id&oldAction=&nbResultRech=); Article R 1122-6, available at:

[www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=1AC0C904882814CD9F6E50C4F19AB341.tpdila10v\\_2?idArticle=LEGIARTI000021544336&cidTexte=LEGITEXT000006071307&dateTexte=20160720&categorieLien=id&oldAction=&nbResultRech=](http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=1AC0C904882814CD9F6E50C4F19AB341.tpdila10v_2?idArticle=LEGIARTI000021544336&cidTexte=LEGITEXT000006071307&dateTexte=20160720&categorieLien=id&oldAction=&nbResultRech=)

<sup>32</sup> France, Code of defence (*Code de la défense*), Article 1121-1, available at:

[www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000020932644&cidTexte=LEGITEXT000006071307&dateTexte=20160720](http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000020932644&cidTexte=LEGITEXT000006071307&dateTexte=20160720)

<sup>33</sup> France, Code of defence (*Code de la défense*), Article R 1122-7, available at:

[www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=1AC0C904882814CD9F6E50C4F19AB341.tpdila10v\\_2?idArticle=LEGIARTI000021544334&cidTexte=LEGITEXT000006071307&dateTexte=20160720&categorieLien=id&oldAction=&nbResultRech=](http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=1AC0C904882814CD9F6E50C4F19AB341.tpdila10v_2?idArticle=LEGIARTI000021544334&cidTexte=LEGITEXT000006071307&dateTexte=20160720&categorieLien=id&oldAction=&nbResultRech=)

<sup>34</sup> France, Code of defence (*Code de la défense*), Article R 1122-8, available at:

[www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=1AC0C904882814CD9F6E50C4F19AB341.tpdila10v\\_2?idArticle=LEGIARTI000021544332&cidTexte=LEGITEXT000006071307&dateTexte=20160720&categorieLien=id&oldAction=&nbResultRech=](http://www.legifrance.gouv.fr/affichCodeArticle.do;jsessionid=1AC0C904882814CD9F6E50C4F19AB341.tpdila10v_2?idArticle=LEGIARTI000021544332&cidTexte=LEGITEXT000006071307&dateTexte=20160720&categorieLien=id&oldAction=&nbResultRech=)

<sup>35</sup> France, Code of defence (*Code de la défense*), Article R 1132-3, available at:

[www.legifrance.gouv.fr/affichCode.do;jsessionid=1AC0C904882814CD9F6E50C4F19AB341.tpdila10v\\_2?idSectionTA=LEGISCTA000021544371&cidTexte=LEGITEXT000006071307&dateTexte=20160720](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=1AC0C904882814CD9F6E50C4F19AB341.tpdila10v_2?idSectionTA=LEGISCTA000021544371&cidTexte=LEGITEXT000006071307&dateTexte=20160720)

cannot relate to the exchanges with foreign services or the relevant international organizations in the field of intelligence.<sup>36</sup>

In its report for the year 2015,<sup>37</sup> the delegation considers that taking into account the internationalization of its scope of action, the potential decentralization of its decision-making centres, but also the increasing facility of communications in the world, and in particular in Europe, the effectiveness of the fight against terrorism rests increasingly on the capacity to identify and pursue the protagonists in their movements and their exchanges, and thus on the co-operation and the exchanges with foreign intelligence services. 'The fight against terrorism is an area, par excellence, of confidence and mutualisation with our partners, and the success of our operations is related to our capacity to exchange', according to the National coordinator for intelligence. The delegation notes that although the majority of States vigorously condemn terrorism and make resolutions of principle to fight it by facilitating co-operation, the exchanges between the services should be facilitated. On the operational level, such is not always the case, either because behind the intentions, the hierarchy of the strategic objectives does not entirely coincide, or because the internal culture of co-operation and exchange is not developed, or because certain countries do not have sufficient capacities. Co-operation and exchanges are easy when they consist of a dialogue between the bigger powers, they remain complex in other cases. The delegation underlined the difficulty of organizing co-operation between the intelligence services, other than by bilateral agreements.<sup>38</sup>

In conclusion to its report for the year 2015, the parliamentary delegation for intelligence recommends seizing all available opportunities to make progress in European co-operation within the framework of the fight against terrorism, encouraging the European partners and authorities to provide better information in the SIS file, improving the Schengen border code, in particular, article 7, and examining the reinforcement of the effectiveness of external border checks in the Schengen area in the first quarter of 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)<sup>39</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?*
2. *Do individuals have the right to access information on whether they are subject to surveillance?*

#### 1. Does a complete exemption apply to surveillance measures in relation to access to information?

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<sup>36</sup> France, Ordinance n° 58-1100 on the functioning of the parliamentary assemblies (*Ordonnance n° 58-1100 relative au fonctionnement des assemblées parlementaires*), 17 November 1958, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=7A088311355CE1CB24B01CD636A113B1.tpdila12v\\_2?cidTexte=JORFTEXT000000705067&dateTexte=20160504](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=7A088311355CE1CB24B01CD636A113B1.tpdila12v_2?cidTexte=JORFTEXT000000705067&dateTexte=20160504)

<sup>37</sup> France, Parliamentary delegation for intelligence (*Délégation parlementaire au renseignement*), Report for 2015, available at: [www.assemblee-nationale.fr/14/rap-off/i3524.asp](http://www.assemblee-nationale.fr/14/rap-off/i3524.asp)

<sup>38</sup> France, Parliamentary delegation for intelligence (*Délégation parlementaire au renseignement*), Report for 2015, available at: [www.assemblee-nationale.fr/14/rap-off/i3524.asp](http://www.assemblee-nationale.fr/14/rap-off/i3524.asp)

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

According to Article L 311-5 of the Code of relations between the public and the administration, the consultation or provision of administrative documents is not permissible when this would prejudice the secrecy of national defence, the conduct of French foreign policy, state security, public safety or the safety of individuals. Thus, information on surveillance measures is not communicable.<sup>40</sup>

In addition, the Commission for access to administrative documents issued, on 18 December 1998, an unfavourable opinion on a request for access to a copy of the Prime Minister's authorization for the interception of telephone communications of applicant, using the argument of national defence secrecy.<sup>41</sup>

The French Freedom of Information law (law No. 78-17 of 6 January 1978 relating to data processing, files and freedoms - *Loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés*) applies only partially to the activities of the national intelligence services.

Firstly, some personal data processing carried out on behalf of the state can be exempt, by Order in Council of State, from the publication of the regulatory act which authorises them.<sup>42</sup>

Secondly, when data processing concerns State security, defence or public safety, the right of access to this data is indirect (through National Data Protection Authority).<sup>43</sup>

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

Under the Internal security code, any person wishing to check that no intelligence technique is unlawfully implemented on them may refer to the CNCTR.<sup>44</sup>

The CNCTR verifies the technique or techniques involved in order to check that they have been or are being implemented in compliance with the Code of internal security. It notifies the applicant that it has carried out the necessary checks, without confirming nor denying their implementation.<sup>45</sup>

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<sup>40</sup> France, Code on relations between public and administration (*Code des relations entre le public et l'administration*), Article L 311-5, available at: [www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000031366350&idArticle=LEGIARTI000031367708](http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000031366350&idArticle=LEGIARTI000031367708)

<sup>41</sup> France, Commission nationale de contrôle des interceptions de sécurité (2015), Annual report, available at: [www.ladocumentationfrancaise.fr/rapports-publics/154000101/](http://www.ladocumentationfrancaise.fr/rapports-publics/154000101/)

<sup>42</sup> France, Law No. 78-17 relating to data, files and freedoms (*Loi relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, Article 26, available at : [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460)

<sup>43</sup> France, Law No. 78-17 relating to data, files and freedoms (*Loi relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, Article 41, available at : [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460)

<sup>44</sup> France, Internal Security Code (*Code de la sécurité intérieure*), Article L 833-4, available at : [www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000025503132&idArticle=LEGIARTI000030935102&dateTexte=&categorieLien=cid](http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000025503132&idArticle=LEGIARTI000030935102&dateTexte=&categorieLien=cid).

<sup>45</sup> France, Internal Security Code (*Code de la sécurité intérieure*), Article L 833-4, available at : [www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000025503132&idArticle=LEGIARTI000030935102&dateTexte=&categorieLien=cid](http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000025503132&idArticle=LEGIARTI000030935102&dateTexte=&categorieLien=cid)

Any person wishing to check that no intelligence technique is unlawfully implemented on them and able to prove they have referred to the CNCTR under article L 833-4, may refer to the Council of State.<sup>46</sup>

When the Council of State notes the absence of any illegality in the implementation of an intelligence collection technique, the decision indicates to the applicant or to the referring jurisdiction that no illegality was present, without confirming or denying the implementation of a technique. The Council of State proceeds in the same way in the absence of illegality relating to the conservation of intelligence data (the decision indicates to the applicant or to the referring jurisdiction that no illegality was present, without confirming or denying the implementation of a technique).<sup>47</sup> When the Council of State notes that an intelligence collection technique is or was implemented illegally or that intelligence was retained illegally, it can cancel the authorization and order the destruction of the unlawfully collected intelligence. Without revealing any element protected by the secrecy of national defence, the Council of State informs the person concerned or the referring jurisdiction that no illegality was present. In light of this request concerning the implementation of an intelligence technique, or at a later date, the Council of State can order the State to pay damages. When the ruling committee finds that the illegality constitutes an offence, it advises the public prosecutor and sends all of the elements of the file it has ruled on to the Advisory commission for the secrecy of national defence, so that this may give the Prime Minister its opinion on the possibility of declassifying all or part of these elements for their transmission to the public prosecutor.<sup>48</sup>

The procedure of referral to the Council of State is different in the area of international electronic communications. Under Article L 854-9 of the Internal Security Code, when it observes a failing, the CNCTR sends a recommendation that the failing be resolved to the Prime Minister and that the intelligence collected, if this is the case, be destroyed. When the Prime Minister does not take action on this recommendation or the actions which are taken are considered insufficient, the Council of State can be referred to only by the President of the Commission or a by a grouping of a least three of its Members.<sup>49</sup>

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[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031552063&cidTexte=LEGITEXT000025503132&dateTexte=20160503](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031552063&cidTexte=LEGITEXT000025503132&dateTexte=20160503)

<sup>46</sup> France, Internal Security Code (*Code de la sécurité intérieure*), Article L 841-1, available at :  
[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935118&cidTexte=LEGITEXT000025503132&dateTexte=20160503](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935118&cidTexte=LEGITEXT000025503132&dateTexte=20160503)

<sup>47</sup> France, Code of administrative justice (*Code de justice administrative*), Article L 773-6, available at :  
[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030939577&cidTexte=LEGITEXT000006070933&dateTexte=20160506](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030939577&cidTexte=LEGITEXT000006070933&dateTexte=20160506)

<sup>48</sup> France, Code of administrative justice (*Code de justice administrative*), Article L 773-7, available at :  
[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030939577&cidTexte=LEGITEXT000006070933&dateTexte=20160506](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030939577&cidTexte=LEGITEXT000006070933&dateTexte=20160506)

<sup>49</sup> France, Internal Security Code (*Code de la sécurité intérieure*), Article L 854-9, available at :  
[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031552063&cidTexte=LEGITEXT000025503132&dateTexte=20160503](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031552063&cidTexte=LEGITEXT000025503132&dateTexte=20160503)

## 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.*

### **Introduction**

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

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

No further comment

*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 **Intelligence services and surveillance laws**

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

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

In France, law No.2015-912 of 24 July 2015 relating to intelligence and law No. 2015-1556 of 30 November 2015 relating to surveillance of international electronic communications were adopted.

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

## 1.1 Intelligence services

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

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

No further comment

*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.*

## 1.2 Surveillance measures

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

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

The Minister's request must specify the intelligence gathering techniques to be implemented; the service to which it is addressed; the end-purposes; the reasons for the measures; period of validity of the authorization; the people, places or vehicles concerned. People whose identity is not known may be designated by their identifiers or their role, and places or vehicles may be designated by reference to the people who are the subject of the request.

The distribution of jobs at the Ministry for Defence by manager shows, in programme 212, a ceiling of 5,302 full-time equivalent jobs for the Directorate General of External Security (DGSE) at the 1<sup>st</sup> January 2015 which translates, therefore for the service, in terms of actual staff to 5,072 full-time equivalents at 30 June 2015 and an expected staff at 31 December 2015 of 5,208. The Department of military intelligence (DRM) has a staff of 1,600. Within the framework of updating the law for military programming 2014-2019, its staff will be increased<sup>50</sup>.

### Administrative access to connection data

a) Authorization can be given for the collection of intelligence or documents processed or retained by the networks or electronic communications services, including: technical data relating to the identification of subscription or connection numbers to electronic communications services, the entirety of the subscription or connection numbers of a specific person, the localization of the device used and the communications of a subscriber relating to the list of incoming and outgoing numbers, the duration and the date of the communications.

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<sup>50</sup> France, Parliamentary delegation for intelligence (*Délégation parlementaire au renseignement*), Report for 2015, available at: [www.assemblee-nationale.fr/14/rap-off/i3524.asp](http://www.assemblee-nationale.fr/14/rap-off/i3524.asp)

Individually designated and authorised intelligence service agents make direct written and legally grounded requests to the CNCTR relating to technical data relating to the identification of subscription or connection numbers to electronic communications services, or the entirety of the subscription or connection numbers of a specific person. The CNCTR gives its opinion. A service of the Prime Minister's office is charged with collecting information or documents from the operators. The CNCTR has permanent, complete, direct and immediate access to intelligence or documents collected.

b) For the sole purpose of the prevention of terrorism, the following may occur:

1) Individually authorized collection in real time on operator networks of information or documents processed or retained by the networks or electronic communications services, relating to a person identified as presenting a threat.

2) Ordering operators to implement on their networks automated processing intended, according to parameters specified in the authorization, to detect connections likely to reveal a terrorist threat. This automated processing exclusively uses the information or documents processed or retained by the networks or electronic communications services, without collecting other data than those which correspond to the design parameters and without allowing the identification of the people to which the information or documents refer. The authorization of the Prime Minister specifies the technical scope of the implementation of this processing. The CNCTR gives an opinion on the request for authorization relating to the automated processing and the detection parameters selected. It has permanent, complete and direct access to this processing and the information and data collected. It is informed of any modification made to the processing or parameters and can make recommendations. When data which may reveal the existence of a terrorist threat are detected, the Prime Minister or one of the people delegated by him may authorize, after consultation with the CNCTR, the identification of the people concerned and the collection of the data pertaining to them. These data are used within sixty days as from collection and are destroyed upon the expiry of this time limit, except in the event of evidence confirming the existence of a terrorist threat relating to one or more of the persons concerned.

These authorizations are delivered for a renewable duration of two months. The provisions relating to the delivery of the authorization without prior consultation with the CNCTR are not applicable.

c) Technical data relating to the localization of devices used can be collected through a request to the network and sent in real time by the operators to a service of the Prime Minister's office.

d) The use of a technical method allowing the localization in real time of a person, a vehicle or an object can be authorized.

e) Technical connection data allowing the identification of a user device or subscription number as well as the data relating to the localization of the device used can be directly collected, by means of an apparatus or of a technical device mentioned in paragraph 1 of article 226-3 of the Criminal Code. The authorization is delivered for a duration of two months, renewable under the same conditions of duration.



## Security interceptions

Interceptions of electronic communications which may reveal intelligence relating to national defence and the promotion of the fundamental interests of the Nation can be authorized.

When there are serious grounds to believe that one or more people belonging to the entourage of a person concerned by the authorization are likely to provide intelligence as to the purposes which justify the authorization, the authorization can be also granted for these people.

For the sole purpose of national independence, the integrity of the territory and national defence; prevention of terrorism; prevention of threats to the republican form of the institutions, actions leading to the maintaining or the reconstitution of dissolved groupings and mob violence likely to seriously threaten public order, the use of an apparatus or a technical device mentioned in paragraph 1 of article 226-3 of the Criminal Code in order to intercept communications emitted or received by a device can be authorized, for a renewable duration of forty-eight hours. The communications intercepted by this apparatus or this technical device are destroyed as soon as it appears that they have no link to the authorization delivered, this happens within 30 days. A service of the Prime Minister's office manages the centralization for the interceptions. After consultation with the CNCTR, the Prime Minister defines the methods for the centralization of the intercepted communications. The operations of transcription and extraction of the intercepted communications, to which the CNCTR has permanent, complete, direct and immediate access, are carried out within a service of the Prime Minister's office.

## Surveillance of international electronic communications.<sup>51</sup>

The monitoring of communications which are emitted or received abroad can be authorized only for the purposes of defence and promotion of the fundamental interests of the Nation.

Measures taken for this reason cannot have the aim of individual monitoring of the communications of people using subscription numbers or technical identifiers from the national territory, except in cases where these people communicate from abroad and, either were the object of an authorization for a security interception on the date on which they left the country, or are identified as presenting a threat to the fundamental interests of the Nation. Subject to these particular provisions, when it appears that intercepted electronic communications are exchanged between people or equipment using subscription numbers or technical identifiers from the national territory, including when these communications are carried by equipment not from this country, these data are destroyed immediately.

The Prime Minister indicates, in a reasoned decision, for which electronic communication networks he authorizes the interception of communications emitted or received abroad. Technical interventions are carried out legally by the Interdepartmental control grouping, a body placed under the authority of the Prime Minister.

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<sup>51</sup> France, Internal security code (*Code de la sécurité intérieure*), Book VIII, Title V, Chapter IV, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031552063&cidTexte=LEGITEXT000025503132&dateTexte=20160613](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031552063&cidTexte=LEGITEXT000025503132&dateTexte=20160613)

On a reasoned request from the ministers or their delegates, the Prime Minister or one of the delegated persons can authorize non-individualized use of the intercepted connection data. The authorization is delivered for a renewable duration of one year. This consists of non-targeted use of the metadata which allows the services, in particular in the field of the prevention of terrorism, to detect weak signs of threats by using non-personal data, to install search selectors or to detect, for example, the origin of cyber-attacks.

On a reasoned request of the ministers or their delegates, the Prime Minister or one of his delegates can also deliver an authorization to use intercepted communications or connection data only. The geographical areas or the organizations, groups of people or people concerned must be indicated. The authorization is delivered for a maximum renewable duration of four months. In this case, one deduces, *a contrario*, that this consists of the use of 'individualized' communications.

A Member of Parliament, a magistrate, a lawyer or a journalist who work in France cannot be the subject of individual monitoring of their communications on the basis of their duties or the mandate of the profession concerned.

The intelligence collected is destroyed at the end of a period of twelve months as from their first use for communications, and within a period of four years as from their collection; six years as from their collection for connection data. For intelligence which is coded, the time limit runs from the time of their deciphering. They cannot be retained for more than eight years as from their collection. The applicable system is that of unlimited retention for the purposes of technical analysis as regards cryptanalysis or cyber-defence.

When the intercepted communications refer to subscription numbers or technical identifiers from the national territory, the conservation time for communications runs as from their first use, but cannot exceed six months as from their collection.

The CNCTR receives communication of all the decisions and authorizations mentioned. It has permanent, complete and direct access to the devices of traceability, the collected intelligence, the transcriptions and extractions carried out as well as the details. When it requests so, it can inspect the technical devices necessary for the execution of the decisions and authorizations. If the monitoring of the people identified as presenting a threat to the fundamental interests of the Nation is not already the object of a specific authorization, their identity is brought to the knowledge of the CNCTR at the earliest opportunity.

When it observes a failing, the CNCTR sends a recommendation that the failing be resolved to the Prime Minister and that the intelligence collected is destroyed, if this is the case. When the Prime Minister does not take action on this recommendation or the actions which are taken are considered insufficient, the Council of State can be referred to by the President of the Commission or a by a grouping of a least three of its Members.

The commission can at any time send the Prime Minister recommendations and observations which it considers necessary in its role in the control that it exerts in this field.

*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.*

### **1.3 Member States' laws on surveillance**

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

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

The specialized intelligence services can collect intelligence relating to defence and the promotion of the fundamental interests of the Nation on the following: national independence, the integrity of the territory and national defence; major interests of foreign policy, meeting France's European and international engagements and prevention of any form of foreign interference; economic interests, major French industrial and scientific interests; prevention of terrorism; prevention of attacks to the republican form of the institutions, actions leading to the maintaining or the reconstitution of dissolved groupings pursuant to Article L. 212-1 of the Code of internal security, and mob violence likely to breach public order; the prevention of crime and organized crime; preventing the proliferation of weapons of mass destruction.

*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**

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

Checked

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

*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.*

## **2 Oversight of intelligence services**

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

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

Checked

*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.*

## 2.1 Executive control

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

According to article 2 of Decree No. 2014-833 of 24 July 2014 relating to the inspectorate for the intelligence services (*Décret relatif à l'inspection des services de renseignement*),<sup>52</sup> the inspectorate for the intelligence services has a role of control, audit, study, advice and evaluation with regard to **services specialized in intelligence as well as the Intelligence Academy**.

According to Article D1122-8-1 of the Code for Defence, the specialized intelligence services indicated in article R. 811-1 of the Internal security code, train with **the national coordinator for intelligence** and the Intelligence Academy of the French intelligence community.

However, on page 32 of the FRA report it is indicated "the Inspectorate of Intelligence Services is in charge of monitoring...the services that make up the **French intelligence community**".

It should be specified that the Inspectorate of Intelligence Services does not have a role of control, audit, study, advice and evaluation with regard to the national coordinator of intelligence, but, according to article 2 §2 of the Decree quoted, controls, makes audits, studies, evaluates and gives advice on the proposal of the coordinator submitted to the Prime Minister.

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

The implementation of these intelligence gathering techniques within the country is subject to the prior approval of the Prime Minister, delivered after consultation with the National commission for the control of intelligence techniques (hereafter - the CNCTR). The authorization is delivered upon a written and legally grounded request from the Minister for defence, or the Minister of the Interior, or the Ministers in charge of the economy, the budget or customs. Each minister may delegate this remit individually to direct employees cleared to work with official State secrets (*collaborateurs directs habilités au secret de la défense nationale*).

The authorization of the implementation of the techniques is provided for a duration of four months and is renewable. If it is delivered against the opinion of the CNCTR, it must indicate the reasons for which this opinion was not followed. The authorization of the Prime Minister is communicated without delay to the minister responsible for its execution and to the CNCTR.

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<sup>52</sup> France, Decree No. 2014-833 relating to the inspectorate for the intelligence services (*Décret No. 2014-833 relatif à l'inspection des services de renseignement*), 24 July 2014, Article 2, available at : [www.legifrance.gouv.fr/eli/decret/2014/7/24/PRMX1411565D/jo/texte](http://www.legifrance.gouv.fr/eli/decret/2014/7/24/PRMX1411565D/jo/texte)

In cases of extreme urgency, the authorization may be exceptionally granted without prior notice to the CNCTR if national independence, territorial integrity and national defence are concerned; for the prevention of terrorism, threats to the republican form of institutions, actions leading to the maintaining or reconstitution of dissolved groups and mob violence likely to threaten public order.

The Prime Minister forwards to the commission, within twenty-four hours of the delivery of the authorization, all the grounds for the authorization and those justifying the nature of the extreme urgency.

A Member of Parliament, a magistrate, a lawyer or a journalist cannot be the subject of a request for the implementation of a technique of intelligence gathering based on their carrying out the duties of their profession in France. When such a request concerns one of these people or their vehicles, offices or residences, the opinion of the CNCTR is examined in plenary session. The authorization cannot be delivered without prior consultation with the CNCTR. The transcriptions of the collected intelligence are provided to the CNCTR, which monitors the necessity and proportionality of the threat, if this is the case, and the safeguards attached to the exercise of these occupations or mandates.<sup>53</sup>

The Prime Minister manages the traceability of the execution of the authorized techniques and defines the methods for the centralization of the collected intelligence. A statement of each implementation of a technique of intelligence collection is produced. It mentions the dates of the beginning and end of this implementation as well as the nature of the collected intelligence. This statement is made available to the CNCTR, which can access it permanently, completely and directly, whatever its degree of completion.<sup>54</sup>

***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 Parliamentary oversight**

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

Checked

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

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<sup>53</sup> France, Internal security code (*Code de la sécurité intérieure*), articles L 821-1 – L821-7, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935064&cidTexte=LEGITEXT000025503132&dateTexte=20160613](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935064&cidTexte=LEGITEXT000025503132&dateTexte=20160613)

<sup>54</sup> France, Internal security code (*Code de la sécurité intérieure*), article L822-1, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935064&cidTexte=LEGITEXT000025503132&dateTexte=20160613](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935064&cidTexte=LEGITEXT000025503132&dateTexte=20160613)

Article 13 of the law of 18 December 2013 No. 2013-1168 relating to military programming for the years 2014 to 2019 and on various provisions relating to defence and national security, integrated the verification commission into the parliamentary delegation on intelligence which from now on constitutes its specialized committee.<sup>55</sup> From now on the parliamentary delegation on intelligence performs the functions of the verification commission.<sup>56</sup>

***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.***

### **2.2.1 Mandate**

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

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

No further comments

***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**

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

According to article 6h of Ordinance No. 58-1100 of 17 November 1958 relating to the functioning of the parliamentary assemblies, the presidents of the standing committees of the National Assembly and the Senate respectively in charge of internal security and defence affairs are members of right of the parliamentary delegation on intelligence.

FRA's report: "the chairpersons of the standings committees of the National Assembly and Senate ...are de facto members of the Parliamentary Delegation on Intelligence".

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

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<sup>55</sup> France, Law No. 2013-1168 relating to military programming for the years 2014 to 2019 (*Loi n° 2013-1168 relative à la programmation militaire pour les années 2014 à 2019*), 18 December 2013, Article 13, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&categorieLien=id)

<sup>56</sup> France, Ordinance No. 58-1100 on the functioning of the parliamentary assemblies (*Ordonnance No. 58-1100 relative au fonctionnement des assemblées parlementaires*), Article 6 nonies, VIII, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000705067](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000705067)

*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.*

### **2.2.3 Access to information and documents**

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

Checked

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

*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.*

### **2.2.3 Reporting to parliament**

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

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

No further comments

*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.*

## **2.3 Expert oversight**

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

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

The implementation of these intelligence gathering techniques within the country is subject to the prior approval of the Prime Minister, delivered after consultation with the National commission for the control of intelligence techniques (hereafter - the CNCTR). The authorization is delivered upon a written and legally grounded request from the Minister for defence, or the Minister of the Interior, or the Ministers in charge of the economy, the budget or customs. Each minister may delegate this remit individually to direct employees cleared to work with official State secrets (*collaborateurs directs habilités au secret de la défense nationale*).

The authorization of the implementation of the techniques is provided for a duration of four months and is renewable. If it is delivered against the opinion of the CNCTR, it must indicate the reasons for which this opinion was not followed. The authorization of the Prime Minister is communicated without delay to the minister responsible for its execution and to the CNCTR.

In cases of extreme urgency, the authorization may be exceptionally granted without prior notice to the CNCTR if national independence, territorial integrity and national defence are concerned; for the prevention of terrorism, threats to the republican form of institutions, actions leading to the maintaining or reconstitution of dissolved groups and mob violence likely to threaten public order.

The Prime Minister forwards to the commission, within twenty-four hours of the delivery of the authorization, all the grounds for the authorization and those justifying the nature of the extreme urgency.

A Member of Parliament, a magistrate, a lawyer or a journalist cannot be the subject of a request for the implementation of a technique of intelligence gathering based on their carrying out the duties of their profession in France. When such a request concerns one of these people or their vehicles, offices or residences, the opinion of the CNCTR is examined in plenary session. The authorization cannot be delivered without prior consultation with the CNCTR. The transcriptions of the collected intelligence are provided to the CNCTR, which monitors the necessity and proportionality of the threat, if this is the case, and the safeguards attached to the exercise of these occupations or mandates.

The Prime Minister manages the traceability of the execution of the authorized techniques and defines the methods for the centralization of the collected intelligence. A statement of each implementation of a technique of intelligence collection is produced. It mentions the dates of the beginning and end of this implementation as well as the nature of the collected intelligence. This statement is made available to the CNCTR, which can access it permanently, completely and directly, whatever its degree of completion.

*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**

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

FRA's report: "In France, for example, one member of the CNCTR has skills in electronic communications and is nominated by the Electronic Communications and Posts Regulatory Authority (*Autorité de régulation des communications électroniques et des postes*, ARCEP)".

However, a person qualified through their knowledge in electronic communications is not directly named by the Electronic Communications and Posts Regulatory Authority, but by a Decree of the



President of the Republic on a proposal from the president of the Electronic Communications and Posts Regulatory Authority.<sup>57</sup>

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

Additional references to the paragraph in the FRA's report: "Should the CNCTR consider a surveillance measure to be carried out unlawfully, it can recommend to the prime minister, the relevant minister and the intelligence service that the surveillance be interrupted and the collected data destroyed. The prime minister must immediately inform the CNCTR about how the recommendation was followed up. If the recommendation is not followed appropriately, the CNCTR can bring the case before the Council of State": France, Interior Security Code, Articles L 833-6 – 833-8.

*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.*

### 2.3.2 Data protection authorities

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

FRA's report: "When vested with exercising individuals' right to access their own data, such as in Belgium, France or Italy, DPAs are merely permitted to inform an individual that the necessary checks have been made, but not which data have been processed, if such information affects the security of the state".

However, in France the information cannot be transmitted to an individual for a larger number of reasons: **the safety of the State, defence or public safety.**

Article 41 §§ 3 and 4 of Law No. 78-17 of 6 January 1978:

When the commission notes, in agreement with the person in charge of the processing, that the communication of the data which are contained does not threaten its purposes, the **safety of the State, defence or public safety**, these data can be communicated to the applicant.

When the processing is likely to include intelligence whose communication would not threaten the purposes which are assigned to it, the regulation on the creation of the file may provide that this intelligence may be communicated to the applicant by the officer in charge of the file who was referred to.

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<sup>57</sup> France, Internal Security Code (*Code de la sécurité intérieure*), Article L 831-1, 4°, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935076&cidTexte=LEGITEXT000025503132&dateTexte=20160508](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935076&cidTexte=LEGITEXT000025503132&dateTexte=20160508); France, Decree on the composition of the National commission for the control of intelligence techniques (*Décret relatif à la composition de la Commission nationale de contrôle des techniques de renseignement*), 1 October 2015, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031255649](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000031255649)

FRA's report: "Data processing activities by intelligence services may be partially (France) excluded from the notification requirement of controllers to DPAs".

The reference to this paragraph indicates rather that State Council can make exempt the Decree authorizing the processing of data from publication:

Article 26 §3 of Law n°78-17 of 6 January 1978:

Certain processing mentioned in I and II may be exempted, by decree in Council of State, from publication of the regulatory act which authorizes them. The list of the data processing exempted from publication is established by the Decree. <sup>58</sup>

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

Checked

*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.*

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

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

See above Checked

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

*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**

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

Checked

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

*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.*

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<sup>58</sup> France, Decree n°2007-914 adopted for implementation of Article 30 I of Law n°78-17 relating to data, files and freedoms of 6 January 1978 (*Décret pris pour l'application du I de l'article 30 de la loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés*), 15 May 2007, Articles 1 and 2, available at : [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000649189](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000649189).

### 3 Remedies

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

Checked

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

*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.*

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

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

FRA's report: "In Belgium, France, Italy and Luxembourg, individuals may exercise the right to access their own data indirectly through the DPAs or the competent oversight body (Luxembourg). These bodies implement the necessary controls to ensure data is processed lawfully. However, the individual is not informed which data are processed if doing so would threaten national security".

**The individual is not informed in larger number of cases:** the safety of the State, defence or public safety.

Article 41 §§ 3 and 4 of Law n°78-17 of 6 January 1978:

When the commission notes, in agreement with the person in charge of the processing, that the communication of the data which are contained does not threaten its purposes, the safety of the State, defence or public safety, these data can be communicated to the applicant.

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

*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.*

#### 3.2 Judicial remedies

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

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

The Council of State is authorised to know of requests concerning the implementation of article 41 of law No. 78-17 of 6 January 1978 relating to data processing, files and freedoms.<sup>59</sup>

The ruling committee bases its decision on the elements contained in the processing without revealing these nor revealing if the applicant appears in the processing or not. However, when it notes that the processing or the part of the processing which is the subject of the litigation comprises personal data which are inaccurate, incomplete, ambiguous or out-of-date, or for which the collection, the use, the communication or the retention are prohibited, it informs the applicant of this, without revealing any element protected by the secrecy of national defence. It can order that these data are, according to each case, rectified, updated or erased. In light of this, it can compensate the applicant.<sup>60</sup>

According to article L833-4 and article L854-9 of the Internal security code, any person wishing to check that no intelligence technique is unlawfully implemented on them may refer to the CNCTR. The CNCTR can also on its own initiative proceed with checks on the intelligence techniques in order to verify that they were or are implemented in respect of the provisions of the Internal security code. It notifies the complainant that it has proceeded with the checks necessary, without confirming or denying their implementation.

Any person wishing to check that no intelligence technique is unlawfully implemented on them and able to prove they have referred to the CNCTR **under Article L833-4 of the Internal Security Code**, may refer to the Council of State. The Council of State can also be referred to by the CNCTR. When an administrative jurisdiction or a legal authority is referred to for a procedure or a litigation whose resolution depends on the examination of the legality of one or several intelligence collection techniques, it can, automatically or upon a request of the one of the parties, refer to the Council of State for a preliminary ruling. It rules within one month of its being referred to.<sup>61</sup> When the Council of State notes the absence of any illegality in the implementation of an intelligence collection technique, the decision indicates to the applicant or to the referring jurisdiction that no illegality was present, without confirming or denying the implementation of a technique. The Council of State proceeds in the same way in the absence of illegality relating to the conservation of intelligence data (the decision indicates to the applicant or to the referring jurisdiction that no illegality was present, without confirming or denying the implementation of a technique).<sup>62</sup> When the Council of State notes that an intelligence collection technique is or was implemented illegally or that intelligence was retained illegally, it can cancel the authorization and order the destruction of the unlawfully collected intelligence.

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<sup>59</sup> France, Internal Security Code (*Code de la sécurité intérieure*), Article L 841-2, available at : [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935118&cidTexte=LEGITEXT000025503132&dateTexte=20160503](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935118&cidTexte=LEGITEXT000025503132&dateTexte=20160503), introduced by the Law relating to intelligence n° 2015-912 of 24 July 2015.

<sup>60</sup> France, Code of administrative justice (*Code de justice administrative*), Article L 773-8, available at : [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030939577&cidTexte=LEGITEXT000006070933&dateTexte=20160506](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030939577&cidTexte=LEGITEXT000006070933&dateTexte=20160506)

<sup>61</sup> France, Internal Security Code (*Code de la sécurité intérieure*), Article L 841-1, available at : [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935118&cidTexte=LEGITEXT000025503132&dateTexte=20160503](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935118&cidTexte=LEGITEXT000025503132&dateTexte=20160503)

<sup>62</sup> France, Code of administrative justice (*Code de justice administrative*), Article L 773-6, available at : [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030939577&cidTexte=LEGITEXT000006070933&dateTexte=20160506](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030939577&cidTexte=LEGITEXT000006070933&dateTexte=20160506)

**Without revealing any element protected by the secrecy of national defence, the Council of State informs the person concerned or the referring jurisdiction that no illegality was present.** In light of this request concerning the implementation of an intelligence technique, or at a later date, the Council of State can order the State to pay damages. When the ruling committee finds that the illegality constitutes an offence, it advises the public prosecutor and sends all of the elements of the file it has ruled on to the Advisory commission for the secrecy of national defence, so that this may give the Prime Minister its opinion on the possibility of declassifying all or part of these elements for their transmission to the public prosecutor.<sup>63</sup>

The procedure of referral to the Council of State is different in the area of international electronic communications. **Under Article L 854-9 of the Internal Security Code**, when it observes a failing, the CNCTR sends a recommendation that the failing be resolved to the Prime Minister and that the intelligence collected is destroyed, if this is the case. When the Prime Minister does not take action on this recommendation or the actions which are taken are considered insufficient, **the Council of State can be referred to** by the President of the **Commission** or a by a grouping of a least three of its Members.<sup>64</sup>

*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.*

### 3.2.1 Lack of specialisation and procedural obstacles

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

Checked

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

No further comments

*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.*

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<sup>63</sup> France, Code of administrative justice (*Code de justice administrative*), Article L 773-7, available at : [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030939577&cidTexte=LEGITEXT000006070933&dateTexte=20160506](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030939577&cidTexte=LEGITEXT000006070933&dateTexte=20160506)

<sup>64</sup> France, Internal Security Code (*Code de la sécurité intérieure*), Article L 854-9, available at : [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031552063&cidTexte=LEGITEXT000025503132&dateTexte=20160503](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031552063&cidTexte=LEGITEXT000025503132&dateTexte=20160503)

### **3.2.2 Specialised judges and quasi-judicial tribunals**

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

Checked

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

No further comments

*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 Non-judicial remedies: independence, mandate and powers**

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

Checked

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

No further comments

*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.*

#### **3.3.1 Types of non-judicial bodies**

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

Checked

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

No further comments

*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**

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

Checked

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

No further comments

*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.*

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

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

Checked

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

No further comments

*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**

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

Checked

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

No further comments

*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.*

### **Conclusions**

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

Checked

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

No further comments

*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.*



## 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
<b>FR</b>	Directorate General of Interior Security/ <i>Direction générale de la sécurité intérieure</i> (DGSi)	Directorate General of External Security/ <i>Direction générale de la sécurité extérieure</i> (DGSE)		Directorate of Military Intelligence/ <i>Direction du renseignement militaire</i> (DRM)

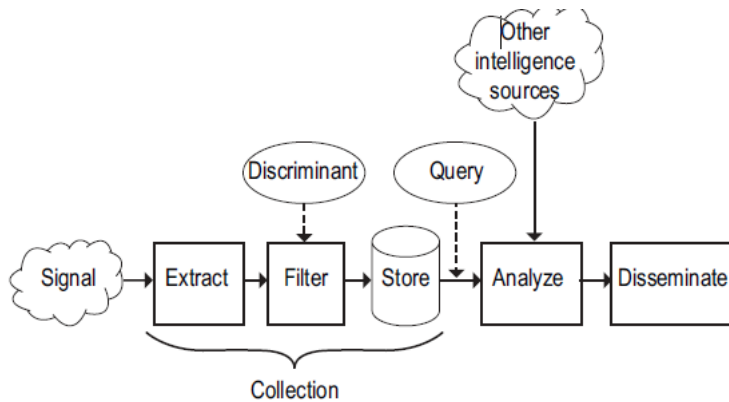
Information was rectified.

See Article 811-1 of the Code of Internal Security, available at : [www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000025503132&idArticle=LEGIARTI000031240607&dateTexte=&categorieLien=cid](http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000025503132&idArticle=LEGIARTI000031240607&dateTexte=&categorieLien=cid)

Additional information : there are also more specialized intelligence services which are not in the scope of the report, if we understand correctly: Directorate of Defence Protection and Security (*la direction de la protection et de la sécurité de la défense*), DNRED in charge of customs intelligence (*le service à compétence nationale dénommé “ direction nationale du renseignement et des enquêtes douanières ”*) and TRACFIN (*le service à compétence nationale dénommé “ traitement du renseignement et action contre les circuits financiers clandestins ”*).

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

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



No accessible legal information describing this process.

**1.5.3 Figure 2: Intelligence services' accountability mechanisms**

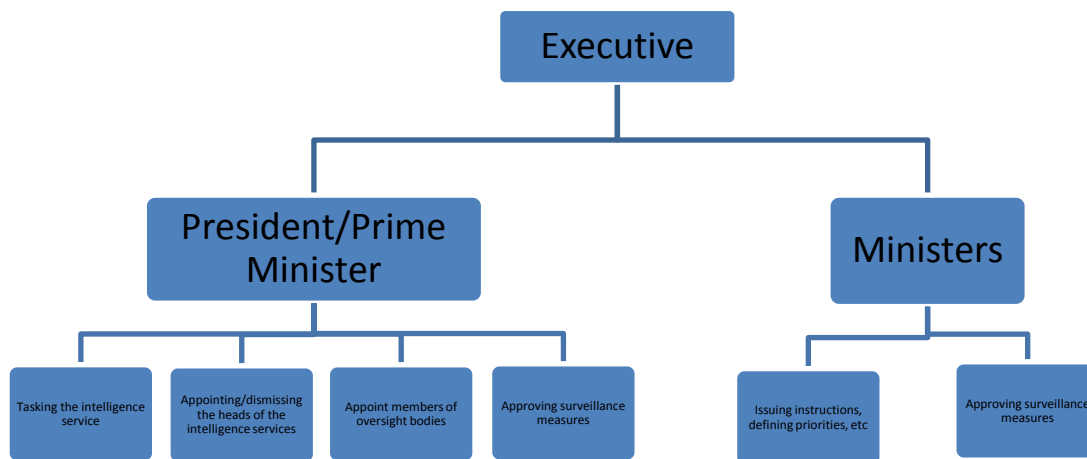
Please confirm that Figure 2 below (p. 31 of the FRA Report) illustrates the situation in your Member State in an accurate manner. If it is not the case, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.



Information is accurate.

**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 France ministers ask for surveillance measures which are approved by the Prime minister, ministers do not approve measures themselves.

Code of Internal Security, Article L 821-2, available at :

[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935046&cidTexte=LEGITEXT00025503132&dateTexte=20160722](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000030935046&cidTexte=LEGITEXT00025503132&dateTexte=20160722)

Members of the parliamentary delegation for intelligence (one of the oversight bodies) are not appointed by President/Prime minister.

Ordonnance n° 58-1100, 17 November 1958, available at : [www.legifrance.gouv.fr/affichTexte.do;jsessionid=CFFB6DD538B3C0E3F2A6C3C335642001.tpdila10v\\_2?cidTexte=JORFTEXT000000705067&dateTexte=20160722](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=CFFB6DD538B3C0E3F2A6C3C335642001.tpdila10v_2?cidTexte=JORFTEXT000000705067&dateTexte=20160722)

### 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
FR	X	

Information is accurate.

X

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

### 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
FR	National Commission for Control of Intelligence Techniques ( <i>Commission nationale de contrôle des techniques de renseignement</i> )

Information is accurate.

### 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
FR			X

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

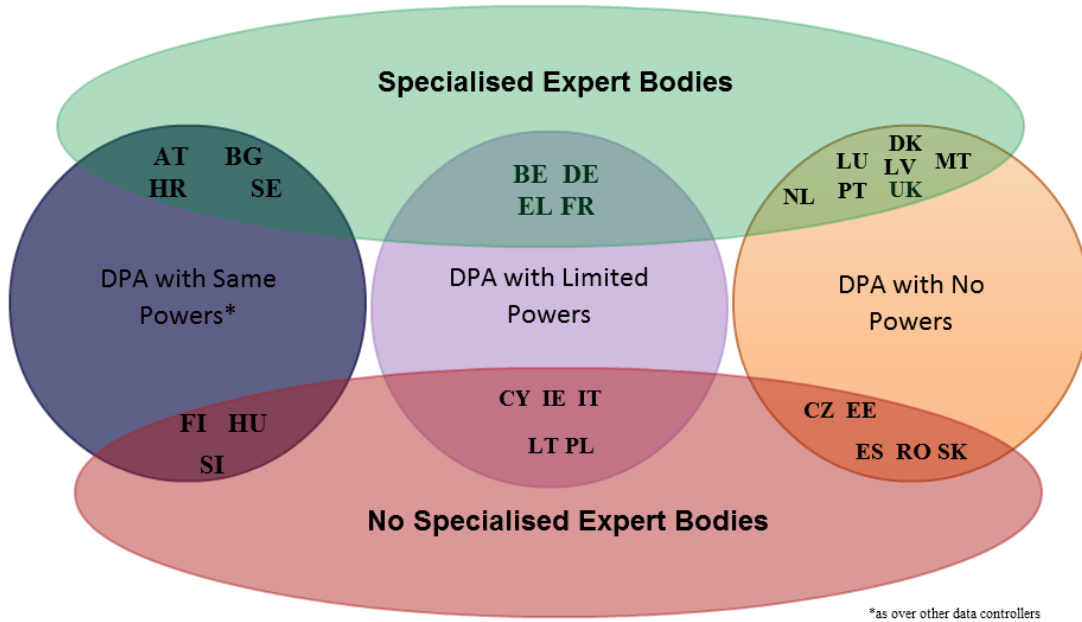
Same powers: refers to DPAs that have the exact same powers over NIS as over any other data controller.

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.

Information is accurate.

**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.



Information is accurate.

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

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

EU Member State	Judicial	Parliamentary	Executive	Expert bodies	None
FR			X		

Information is accurate.

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

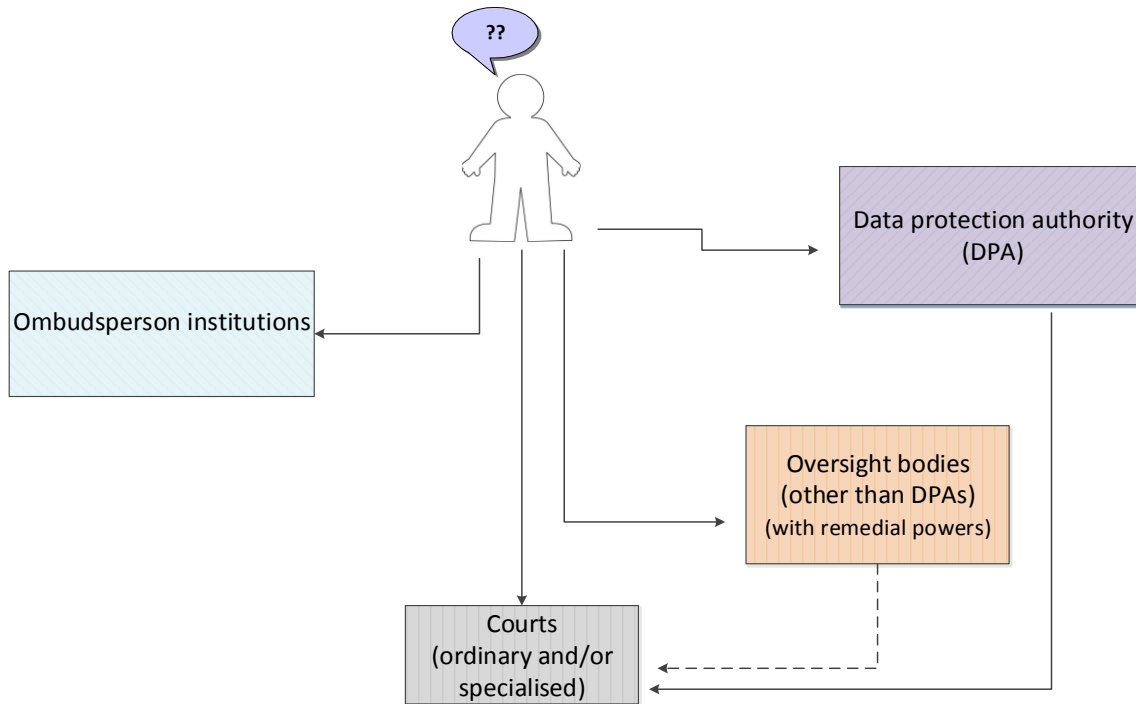
Please check the accuracy of Table 5 below (p. 55 of the FRA Report). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

EU Member State	Judicial	Parliamentary	Executive	Expert
FR			X	

Information is accurate.

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

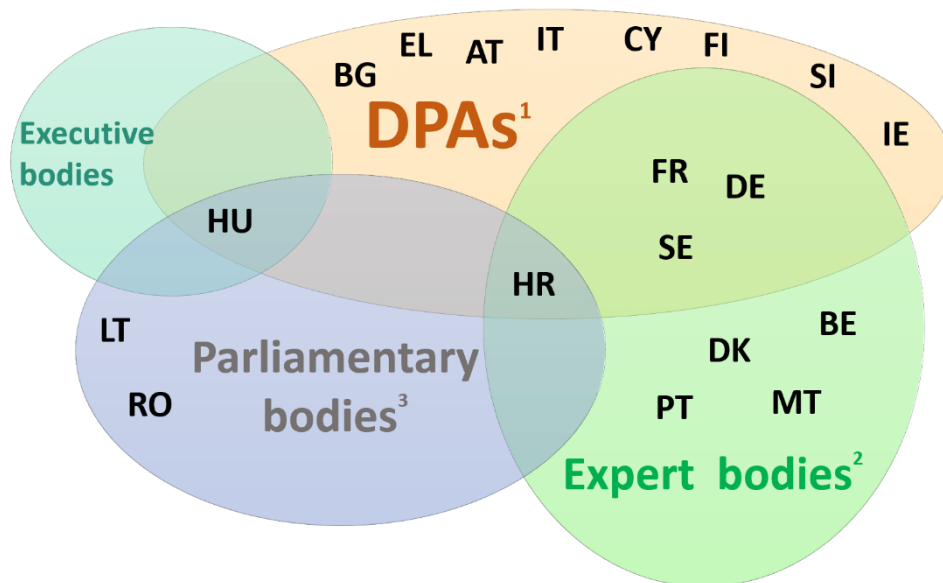
Please confirm that Figure 5 below (p. 60 of the FRA Report) illustrates the situation in your Member State in an accurate manner. If it is not the case, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.



Information is accurate.

**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.



Information is accurate.

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

3. 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, any person wishing to check that no intelligence technique is unlawfully implemented on them may refer to the CNCTR.<sup>65</sup>

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.

Information was rectified.

<sup>65</sup> France, Internal Security Code (*Code de la sécurité intérieure*), Article L 833-4, available at : [www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000025503132&idArticle=LEGIARTI000030935102&dateTexte=&categorieLien=cid](http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000025503132&idArticle=LEGIARTI000030935102&dateTexte=&categorieLien=cid); Article L 854-9, available at : <https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000031552063&cidTexte=LEGITEXT000025503132&dateTexte=20160503>