

# Short Thematic Report

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

Legal update

Country: Luxembourg

Version of 1 July 2016

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# 1 Description of tasks – Phase 3 legal update

## 1.1 Summary

The State Intelligence Service (*Service de renseignement de l'état*, SREL) is under the authority of the Prime Minister, Minister of State - Article 1 of the Act of Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*)<sup>1</sup>.

In November 2012, the national press revealed a conversation between the Prime Minister and the former Director of the SREL which had been recorded by the latter<sup>2</sup>. This was followed by the unveiling of facts that noted a malfunction and facts that were contrary to the legal norms happening within SREL<sup>3</sup>.

The scandal led to the creation of the Parliamentary Committee of inquiry on the SREL (*Commission d'enquête sur le service de renseignement de d'état*). The Committee's report concluded with recommendations, calling for more transparency and criminal responsibility of members of the SREL<sup>4</sup>. The Prime Minister then dissolved the parliament and called for new parliamentary elections.

In April 2014 the newly composed government initiated a legislative reform of the SREL. The Bill 6675 proposed a completely new law to replace the Act of 15 June 2004 on the organisation of the State Intelligence Service (Act of 15 June 2004). The text of the explanatory memorandum of the Bill 6675 on the organisation of the State Intelligence Service underlines that among the reasons for a legal reform is the need to ensure that the rights to liberty and safety exist<sup>5</sup>, while ensuring that any form of surveillance with political connotation is to be prohibited. The changes were so many that a completely new law was necessary<sup>6</sup>. The explanatory memorandum also emphasises that the goal is to create new legislation that is more precise concerning SREL's activities<sup>7</sup>.

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<sup>1</sup> Luxembourg, amended Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*), 12 July 2014, available at: [www.legilux.public.lu/leg/a/archives/2004/0113/2004A17381.html?highlight=](http://www.legilux.public.lu/leg/a/archives/2004/0113/2004A17381.html?highlight=). All hyperlinks were accessed on 20 April 2016.

<sup>2</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), 2 April 2014, General Context (*Contexte général*), p. 17, available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf).

<sup>3</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), 2 April 2014, Explanatory memorandum (*Exposé des motifs*) General Context (*Contexte général*), p. 17, available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf).

<sup>4</sup> Luxembourg, Chamber of Deputies (*Chambre des Députés*) (2013), Report of the commission of inquiry on the intelligence service status (*Rapport de la commission d'enquête sur le service de renseignement de d'état*), 5 July 2013, available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/136/267/123656.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/136/267/123656.pdf).

<sup>5</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), 2 April 2014, p. 21 available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf).

<sup>6</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), 2 April 2014, Explanatory memorandum (*Exposé des motifs*) General Context (*Contexte général*), p. 17, available at:

The legislative reform focus in three main aspects: the oversight of the SREL, with a threefold system of oversight by a Ministerial Committee (*Comité ministériel*), a delegate to SRE (*Délégué au SREL*) and an internal disciplinary control (*contrôle disciplinaire interne*); a clear and detailed text concerning recruitment of staff, adapted to SREL's requirements; and a simplified cooperation with the judicial authorities<sup>8</sup>.

The work concerning this Bill is still in progress in the Committee of Institutions and Constitutional Reform (*Commission des Institutions et de la Révision constitutionnelle*) of the Parliament.<sup>9</sup>

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[www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf).

<sup>7</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), 2 April 2014, p. 22, available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf).

<sup>8</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), 2 April 2014, p. 19, available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf).

<sup>9</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), 2 April 2014, available at: [www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public/accueil/actualite/tut/p/b1/04\\_SjzQ0Nbc0N7M0tjDVj9CPykssy0xPLMnMz0vMAfGjzOJdjFzCgJxNjAz8XYPNDIyMA4wdg4KNDAwMTIAKIeEKDHAARwNC-v088nNT9XOjciwA1CM6EQ!!/d14/d5/L2dBISEvZ0FBIS9nQSEh/&id=6675](http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public/accueil/actualite/tut/p/b1/04_SjzQ0Nbc0N7M0tjDVj9CPykssy0xPLMnMz0vMAfGjzOJdjFzCgJxNjAz8XYPNDIyMA4wdg4KNDAwMTIAKIeEKDHAARwNC-v088nNT9XOjciwA1CM6EQ!!/d14/d5/L2dBISEvZ0FBIS9nQSEh/&id=6675).

## 1.2 International intelligence services cooperation

The scope of tasks of the State Intelligence Service (*Service de renseignement de l'état*, SREL) includes preventive searches, analysis and processing of data related to any activity that threatens or could threaten the states with which Luxembourg has common defense agreements or international organisations based or with activities in Luxembourg, or Luxembourg's international relations. This results from the text of Article 2 (1), first paragraph of the Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*)<sup>10</sup>. The corresponding Article (Article 3 (1) a)) of the Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*)<sup>11</sup> proposes a different draft for the text of such an article. According to it, searches, analysis and processing of data shall be not only preventive but also anticipatory; the data shall be related to any activity that threatens or could threaten the safety of foreign states - instead of only those states with which Luxembourg has common defense agreements – and of international or supranational organisations with which Luxembourg has common objectives by virtue of agreements, bilateral or multilateral conventions. The text of the Bill clarifies that the introduction of the concept of “anticipation” in this article has the purpose of giving a better understanding of the specific nature of the SREL's mission to identify emerging threats, as well as of clarifying the key difference between this mission and the Police's one to maintain public order<sup>12</sup>.

Pursuant to Article 3 of the Act of 15 June 2004 on the organisation of the State Intelligence Service, within the framework of the scope of its tasks, the SREL must ensure an efficient cooperation with other states' intelligence services. The Bill 6675 on the organisation of the State Intelligence Service does not propose any different text in this regard.

Protection of sources of information is provided for in the Act of 15 June 2004. According to Article 5 (3), the President of the Superior Court of Justice (*Président de la Cour supérieure de Justice*) may decide that information that can reveal the identity of a source can be disclosed, as long as it does not affect SREL's ongoing operations and it does not constitute a danger for a natural person. However, paragraph 3 excludes the possibility of such a decision in the case of information provided by foreigner intelligence services.

The Bill 6675 has a different draft on the issue of protection of sources in Article 7. According to the proposed text, the President of the Superior Court of Justice can only take such a decision after having received a written, reasoned opinion from the Director of the SREL, as long as it does not affect SREL's ongoing operations, does not constitute a danger for a natural person and the disclosure of concrete methods used by SRE does not pose a threat to national security. As is the case in the Act of 15 June 2004, the Bill also provides for

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<sup>10</sup> Luxembourg, amended Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*), 12 July 2014, available at: [www.legilux.public.lu/leg/a/archives/2004/0113/2004A17381.html?highlight=](http://www.legilux.public.lu/leg/a/archives/2004/0113/2004A17381.html?highlight=).

<sup>11</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), 2 April 2014, available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf).

<sup>12</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), 2 April 2014, Comments to Articles, p. 35, available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf).

an exception in the case of information provided by foreigner intelligence services: the President of the Superior Court of Justice cannot take the decision to disclose the information. In addition, the text of the Bill explicitly mentions information that could reveal the identity of a human source of a foreigner service, to which the exception also applies, i. e, the President of the Superior Court of Justice cannot take the decision to disclose the information. However, if previous authorisation for disclosure of information is received from the foreigner intelligence service, the President of the Superior Court of Justice can still decide for the disclosure. It should be noted that the text of the Bill also proposes that even if the exception is applied and no information of foreigner intelligence services can be disclosed, the President of the Superior Court of Justice can still verify the foreign origin of the information, on request by the Public Prosecutor's Office and after hearing the Director of the SRE. The authors of the Bill justify the new text proposed by these Articles, by quoting the Constitutional Court in case 104/13<sup>13</sup> concerning the protection of identity of sources as well as the protection of the information obtained via foreign intelligence services. In this case, the Constitutional Court stated that the right of defense of a State of Law is not absolute.

The Director of SREL informs the Parliamentary Control Committee of the general activities of SREL, including contacts with foreign intelligence services (*relations avec les services de renseignement et de sécurité étrangers*), as mentioned in Article 15 (2) of the Act of 15 June 2004 and Article 1, paragraph 1 of the Internal Rules of the Parliamentary Control Committee (*Règlement d'ordre intérieur de la Commission de Contrôle parlementaire du Service de Renseignement de l'Etat*)<sup>14</sup>.

<sup>13</sup> Luxembourg, Constitutional Court (*Cour constitutionnelle*), No. 104/13, 25 October 2013.

<sup>14</sup> Luxembourg, Regulation of the Chamber of Deputies (*Règlement de la Chambre des Députés*), Annex 1: Internal Rules of the Parliamentary Control Committee (*Annexe 1 : Règlement d'ordre intérieur de la Commission de Contrôle parlementaire du Service de Renseignement de l'Etat*), coordinated version of 25 October 2007, 26 November 2007, available at: [www.legilux.public.lu/leg/a/archives/2007/0206/2007A3574A.html](http://www.legilux.public.lu/leg/a/archives/2007/0206/2007A3574A.html).

### 1.3 Access to information and surveillance

Luxembourg has no legislation providing for the freedom of access to information in administrative documents.

In 2013, a Bill on the access of citizens to administrative documents (*Projet de loi relative à l'accès des citoyens aux documents détenus par l'administration*) was drafted and introduced into Parliament<sup>15</sup>. However, in 2015 this text was removed from the Parliament's agenda for being considered too restrictive and a new Bill was introduced. Bill 6810 on a transparent and open administration (*Projet de loi 6810 relative à une administration transparente et ouverte*)<sup>16</sup> was introduced into Parliament in 5 May 2015 and has not been adopted at the date of drafting.

Individuals that have been, or believe to have been, subject to surveillance, have access to information in accordance with Article 28 of the Act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*)<sup>17</sup>, which applies also to cases of surveillance. According to this article, any person may request (a) access to data related to him/her; (b) confirmation as to whether or not data relating to him/her are processed and information at least as to the purposes of the processing, the categories of data concerned, and the recipients or categories of recipients to whom the data are disclosed. However, as allowed by Article 29 of the same Act, the right of access to data may be restricted or deferred if necessary in order to safeguard the interests of (a) national security; (b) defense; (c) public safety.

<sup>15</sup> Luxembourg, Bill 6540 on the access of citizens to administrative documents (*Projet de loi 6540 relative à l'accès des citoyens aux documents détenus par l'administration*), 5 February 2013, available at:

[www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/197/101/119060.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/197/101/119060.pdf).

<sup>16</sup> Luxembourg, 6810 on a transparent and open administration (*Projet de loi 6810 relative à une administration transparente et ouverte*), 5 May 2015, available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/146/408/144057.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/146/408/144057.pdf).

<sup>17</sup> Luxembourg, Coordinated text of the act of 2 August 2002 on the protection of persons with regard to the processing of personal data (*Loi du 2 août 2002 relative à la protection des personnes à l'égard du traitement des données à caractère personnel*), 13 August 2002, available at: [www.legilux.public.lu/leg/a/archives/2002/0091/2002A18361.html?highlight=](http://www.legilux.public.lu/leg/a/archives/2002/0091/2002A18361.html?highlight=).

## 1.4 Update the FRA report

### Introduction

#### Background

While the Snowden revelations affected the world, in 2013 a political scandal in Luxembourg known as the “Bomber” (*Bomeleer*) triggered discussions around the national legal framework of the State Intelligence Service (*Service de renseignement de l'état*, SREL). The scandal involved the Secret Investigation Service and allegedly a secret police department and their activities in the 1980s. The Report of the parliamentary committee of inquiry on the SREL (*Rapport de la commission d'enquête sur le service de renseignement de d'état*)<sup>18</sup> indicated the flaws of the intelligence services, its secret involvement with other bodies and the silencing of the SREL activities by the Ministry of State at the time. The report concluded with recommendations, calling for more transparency and criminal responsibility of members of the SREL.

Following the political scandal, the Prime Minister had to dissolve the Parliament and called for new parliamentary elections. In 2014 the newly composed government proposed a reform of the SREL. In April 2014 the Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*) was introduced into Parliament. The critiques to the SREL structure voiced in the Report of the parliamentary inquiry committee were mentioned in the explanatory statements (*exposé des motifs*) of the Bill.<sup>19</sup>

#### Fundamental Rights and Safeguards

The text of the explanatory statements of the Bill 6675 on the organisation of the State Intelligence Service underlines that among the reasons for a legal reform is the need to ensure that the rights to liberty and safety exist. The authors of the proposal stand out that safety is essential to protect other values and interests of the State, including liberty of citizens<sup>20</sup>.

Another reason pointed out for the reform is connected with the case law of the European Court of Human Rights (ECtHR) on the protection of private life. According to the explanatory memorandum, without new legislation that is more precise concerning SREL's activities, it cannot be excluded that Luxembourg will not be found to be in breach of the European Convention on Human Rights by the ECtHR (*En l'absence de cette adaptation législative, il n'est pas exclu que le Luxembourg puisse un jour faire l'objet d'une condamnation par la CEDH*)<sup>21</sup>.

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<sup>18</sup> Luxembourg, Chamber of Deputies (*Chambre des Députés*) (2013), Report of the commission of inquiry on the intelligence service status (*Rapport de la commission d'enquête sur le service de renseignement de d'état*), 5 July 2013) available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/136/267/123656.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/136/267/123656.pdf).

<sup>19</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), 2 April 2014, pp. 17-18 available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf).

<sup>20</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), 2 April 2014, p. 21 available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf).

<sup>21</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), 2 April 2014, p. 22, available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf).



## **1 Intelligence services and surveillance laws**

### **1.1 Intelligence services**

Whereas the text of the Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*)<sup>22</sup>, Article 2, refers to “security of the Grand-Duchy” (*sécurité du Grand-Duché*), the newly proposed text mentions “national security” (*sécurité nationale*). According to the comments on Article 3 of the Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), this clarification was necessary in order to better define the nature of the mission of the State Intelligence Service (*Service de renseignement de l'état*, SREL) which is different from that of the Grand-Ducal Police [Unofficial translation] (*Police grand-ducale*).

### **1.2 Surveillance measures**

Luxembourg is not mentioned. No relevant data to provide. Nor Luxembourg's Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*), nor Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*) refer to specific surveillance measures mentioned in 1.2.

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

#### **1.3.1. Surveillance ‘in accordance with the law’**

"FRA data show that for some Member States the legal basis that frames the intelligence services' mandates and powers is constituted by one unique legal act governing their organisation and means (such as Estonia or Luxembourg)." – We confirm that this information is accurate. Luxembourgish act governing the intelligence services' mandates is the Act of 15 June 2004 on the organisation of the State Intelligence Service. New provisions have been proposed by the Bill 6675 on the organisation of the State Intelligence Service, but changes are proposed still under the one legal act system.

One of the reasons pointed out for this reform is connected with the case law of the European Court of Human Rights (ECtHR) on the protection of private life. According to the explanatory memorandum, without new legislation that is more precise concerning SREL's activities, it cannot be excluded that Luxembourg will not be found to be in breach of the European Convention on Human Rights by the ECtHR (*En l'absence de cette adaptation législative, il n'est pas exclu que le Luxembourg puisse un jour faire l'objet d'une condamnation par la CEDH*)<sup>23</sup>.

#### **1.3.2. Surveillance following a legitimate aim**

Whereas the text of the Act of 15 June 2004 on the organisation of the State Intelligence Service (Act of 15 June 2004), Article 2, refers to “security of the Grand-Duchy” (*sécurité du Grand-Duché*), the newly proposed text mentions “national security” (*sécurité nationale*). According to the comments on Article 3 of the Bill 6675 on the organisation of the State Intelligence Service (Bill 6675), this clarification was necessary in order to better define the nature of the mission of the State Intelligence Service which is different from that of the Grand-Ducal Police [Unofficial translation] (*Police grand-ducale*).

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<sup>22</sup> Luxembourg, amended Act of 15 June 2004 on the organisation of the State Intelligence Service (*Loi du 15 juin 2004 portant organisation du Service de Renseignement de l'Etat*), 12 July 2014, available at: [www.legilux.public.lu/leg/a/archives/2004/0113/2004A17381.html?highlight=..](http://www.legilux.public.lu/leg/a/archives/2004/0113/2004A17381.html?highlight=..)

<sup>23</sup> Luxembourg, Mr Xavier Bettel, Prime Minister, Minister of State (*Premier Ministre, Ministre d'Etat*), Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), 2 April 2014, p. 22, available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexdpata/Mag/106/329/130258.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServingServletImpl/?path=/export/exped/sexdpata/Mag/106/329/130258.pdf).

The term “national security” is not defined in the Bill. However, similarly to what is provided for in the Act of 15 June 2004, there is a definition of “activities that threaten or could threaten national security”.

Side by side with security of the Grand-Duchy, the current Act of 15 June 2004 refers to activities that threaten or could threaten economic potential. The Bill 6675 proposes that the terms “economic potential” are replaced by “economic interests”. Such a change intends, according to the text of the Bill<sup>24</sup>, to better take into consideration the reality of the threat of economic and industrial espionage in order to better protect the functioning of the national economy.

### **FRA key findings**

Luxembourg is not mentioned.

Concerning “national security”, we emphasise that the Bill 6675 proposes that a new text of the Act governing the organisation of the State Intelligence Service refers to it, instead of “security of the Grand Duchy” (as is the case in the text currently applicable of the Act of 15 June 2004). Please refer to 1.3.2 for more details.

## **2 Oversight of intelligence services**

Luxembourg is not mentioned.

NGOs in Luxembourg haven’t been having a key role in the legislative reform. Since the Bill 6675 has been introduced into Parliament only one association, Open and solidary Luxembourg Action – Luxembourg’s League of Human Rights (*Action Luxembourg Ouvert et Solidaire - Ligue des Droits de l’Homme a.s.b.l.*), issued its Opinion to the Bill<sup>25</sup>.

Concerning internal control it should be mentioned that the Bill 6675 dedicates a chapter (6) to a new type of control: internal disciplinary control (*contrôle disciplinaire interne*). The internal auditor (*auditeur interne*) and an assistant (*adjoint*) mentioned in this chapter (Articles 22 and 23) have the tasks of controlling the internal functioning (*contrôler le fonctionnement interne*) by verifying that laws, regulations and internal instructions are respected. They have a general and permanent right to inspection (*droit d’inspection general et permanent*) and they have freedom and independence to carry out their tasks (*en toute liberté et indépendance*).

### **2.1 Executive control**

Luxembourg is not mentioned.

The SREL is under the authority of the Prime Minister, Minister of State (Art. 1 of the Act of 15 June 2004 and Art. 2 of the Bill 6675).

Following a recommendation of the parliamentary committee of inquiry on the SREL (*Commission d’enquête sur le service de renseignement de l’état*) to create a special body that could be put in place at the governmental level in order to better define the needs of ministerial representatives in straight cooperation with SREL, the text of the Bill 6675 proposes that a “double control” (*double contrôle*)<sup>26</sup> is introduced. Article 2 of the Bill

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<sup>24</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l’Etat*), 2 April 2014, Comments to Articles, p. 35, available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/106/329/130258.pdf).

<sup>25</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l’Etat*), 2 April 2014, available at: [www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6675#](http://www.chd.lu/wps/portal/public/RoleEtendu?action=doDocpaDetails&backto=/wps/portal/public&id=6675#).

<sup>26</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l’Etat*), 2 April 2014, Comments to Articles, p. 30, available at:

provides for control through a Ministerial Committee (*Comité ministériel*) and a delegate to SRE (*Délégué au SREL*).

According to Article 2 of the Bill, the Ministerial Committee shall be in charge of defining the general orientation of SREL and of coordinating its activities. The comments to Article 2 in the text of the Bill complement the text of the Article. It is clarified there that the Ministerial Committee is to be responsible for the general coordination of SREL at the political level. It is also added there that in order to establish SREL's policies, the Ministerial Committee shall take into consideration on the one hand the needs to obtain data and the available means to obtain it, on the other hand, which will allow the Ministers to be informed of the missions and challenges of the SREL.

It is proposed in the same article that the Ministerial Committee is chaired by the Prime Minister, Minister of State and composed of the Minister responsible for Justice and the Minister responsible for internal security.

The Director of SREL shall report regularly to the Ministerial Committee and can attend its meetings.

The second form of control provided by Article 2 of the Bill is the delegate to SRE (*Délégué au SREL*). The Ministerial representative is to be appointed by the Government Council (*Conseil de gouvernement*) upon the proposal of the Prime Minister. The Ministerial representative shall be in charge of controlling the SREL's functioning. S/he participates in all the meetings of the Ministerial Committee to which s/he is the Secretary. Participation in these meetings is the way to make a direct link between the Ministerial Committee and the SREL possible<sup>27</sup>.

The Ministerial representative also attends the management meetings (*réunions de direction*) and can attend other meetings of SREL. The Ministerial representative shall be informed of the activities, operations and mandates (*activités, opérations et missions*). No secret can be kept from the Ministerial representative and s/he shall have his/her own investigation and control powers. The Ministerial representative can be heard by the Parliamentary Committee.

## 2.2 Parliamentary oversight

Luxembourg is not specifically mentioned. However, it is implied in the last paragraph before 2.2.1 that Luxembourg has a Parliamentary Committee. We confirm this information.

Main powers and mandates of the Parliamentary Control Committee (*Commission de Contrôle parlementaire*) are described in Chapter 5 (Articles 14 and 15) of the Act of 15 June 2004, which corresponds to Articles 24 and 25 in the Bill 6675. The Bill adopted the text of the previous articles 14 and 15 without proposing any changes to the powers and mandates described therein.

### 2.2.1 Mandate

We confirm the information and the accuracy of the reference concerning the power of the Parliamentary Control Committee to carry out "checks on specific issues" (*contrôles portant sur des dossiers spécifiques*). The Bill 6675 does not propose to change this power of the committee. The Committee may also hold hearings with the members of the intelligence service in charge of the file/issue that is being checked ([I]a *Commission peut*

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[www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexdpata/Mag/106/329/130258.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexdpata/Mag/106/329/130258.pdf).

<sup>27</sup> Luxembourg, Bill 6675 on the organisation of the State Intelligence Service (*Projet de loi 6675 portant organisation du Service de Renseignement de l'Etat*), 2 April 2014, Comments to Articles, p. 31, available at: [www.chd.lu/wps/PA\\_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexdpata/Mag/106/329/130258.pdf](http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexdpata/Mag/106/329/130258.pdf).

*entendre les agents du Service de Renseignement en charge du dossier sur lequel porte le contrôle).*

Article 2 of the Bill 6675 proposes that the Ministerial representative (see above, 2.1) may also be heard by the Parliamentary Control Committee.

As regards to SREL's budget, the Committee is involved only in the beginning of the financial year, when it must be informed by the Prime Minister of the details of funds made available to the SREL – Article 6 of the Act of 15 June 2004.

### **2.2.2 Composition**

We confirm the information provided on Luxembourg. However, the given reference concerns the powers of the Committee, but not its composition. The most appropriate reference for the composition of the Committee is: Luxembourg, Regulation of the Chamber of Deputies (*Règlement de la Chambre des Députés*), Annex 1: Internal Rules of the Parliamentary Control Committee of the State Intelligence Service (*Annexe 1 : Règlement d'ordre intérieur de la Commission de Contrôle parlementaire du Service de Renseignement de l'Etat*), coordinated version of 25 October 2007, 26 November 2007, Article 2, available at: [www.legilux.public.lu/leg/a/archives/2007/0206/2007A3574A.html](http://www.legilux.public.lu/leg/a/archives/2007/0206/2007A3574A.html).

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

We confirm accuracy of information and references concerning Luxembourg.  
No additional relevant data to provide.

### **2.2.4 Reporting to parliament**

We confirm accuracy of information and references concerning Luxembourg.  
No additional relevant data to provide.

## **2.3 Expert oversight**

### **2.3.1 Specialised expert bodies**

We do not describe the Supervisory Authority here because it is described in the following chapter.

#### **Committee of the Criminal Investigation Code**

In case common investigation measures prove to be inadequate due to the nature of the facts and the special circumstances of the case, the Prime Minister (*Président du Gouvernement*) may authorise surveillance and monitoring subject to the conditions of Article 88-3 of the Criminal Investigation Code (*Code d'Instruction Criminelle, CIC*)<sup>28</sup>. This Article entitles the Prime Minister to authorise surveillance and monitoring (*la surveillance et le contrôle*) of all forms of communication in order to search for offences against the internal security of Luxembourg that one or more persons are trying to commit, have committed or have tried to commit.

The Prime Minister can only give this authorisation if the Committee mentioned in Article 88-3 gives its assent. This Committee is made up of the President of the Superior Court of Justice (*Président de la Cour supérieure de Justice*), the President of the Administrative Court (*Président de la Cour administrative*) and the President of the District Court (*Président du Tribunal d'arrondissement de Luxembourg*).

In case of emergency, the Prime Minister may also take the initiative to authorise the surveillance immediately, provided he informs the Committee. The Committee will then decide if the surveillance measures are to be maintained.

<sup>28</sup> Luxembourg, Criminal Investigation Code (*Code d'Instruction Criminelle*), coordinated text of 01 January 2016, available at: [www.legilux.public.lu/leg/textescoordonnes/codes/code\\_instruction\\_criminelle/cic.pdf](http://www.legilux.public.lu/leg/textescoordonnes/codes/code_instruction_criminelle/cic.pdf).

### **2.3.2 Data protection authorities**

We confirm the information provided on Luxembourg and the accuracy of the reference. Concerning Table 3, we agree with Luxembourg's positioning in it given the table's current frame. Nonetheless, we would like to leave a suggestion for a minor change in the table. Considering the WP29 recommendation quoted in the text of the Report, that supervision should "be carried out by DPAs themselves, or with their genuine involvement", we think it would better reflect Luxembourg's reality to have a column mentioning DPA involvement. Even if this would be a column where only Luxembourg would stand, we think it would better reflect the state of things also in the EU-28, because there would be one less State in the column "No powers". We think the column "No powers" might be understood, by a reader of the table alone (without considering the text with it), as the one corresponding to States not following international recommendations, which is not true at least in the case of Luxembourg in this particular aspect.

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

We confirm the information provided on Luxembourg and the accuracy of the reference. The approval of the Committee can be postponed in emergency cases, pursuant to Article 88-3 of the CIC.

### **FRA key findings**

No additional relevant data to provide.

## **3 Remedies**

Luxembourg is not mentioned.

No additional relevant data to provide.

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

We confirm the information provided.

### **3.2 Judicial remedies**

Luxembourg is not mentioned.

No additional relevant data to provide.

#### **3.2.1 Lack of specialisation and procedural obstacles**

Luxembourg is not mentioned.

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

Luxembourg is not mentioned. No additional relevant data to provide. There are currently no specialised judges nor quasi-judicial tribunals and the newly proposed reform (Bill 6675) also does not foresee the establishment of a body with such specialised or quasi-judicial competences.

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

Luxembourg is not mentioned.

No additional relevant data to provide.

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

Luxembourg is not mentioned.

No additional relevant data to provide.

#### **3.3.2 The issue of independence**

Luxembourg is not mentioned.

No additional relevant data to provide.

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

Luxembourg is not mentioned.

No additional relevant data to provide.

#### **FRA key findings**

Luxembourg is not mentioned.

No additional relevant data to provide.

#### **Conclusions**

Luxembourg is not mentioned.

No additional relevant data to provide.

We would just like again to emphasise that Luxembourg' legal reform was initiated after a national scandal.

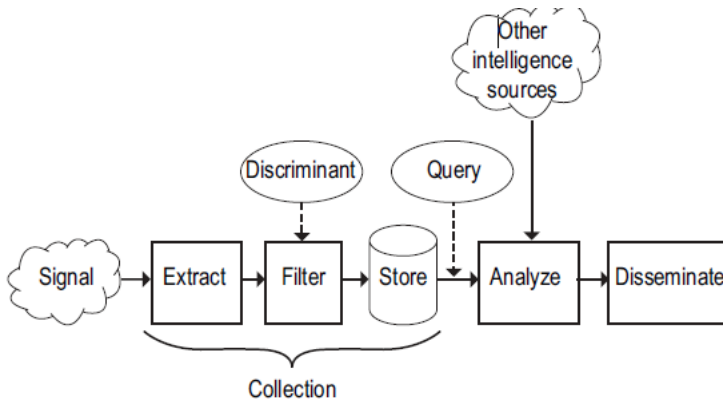
**1.5 Check the accuracy of the figures and tables published in the FRA report (see the annex on Figures and Tables)**

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

We confirm accuracy of the data in the table.

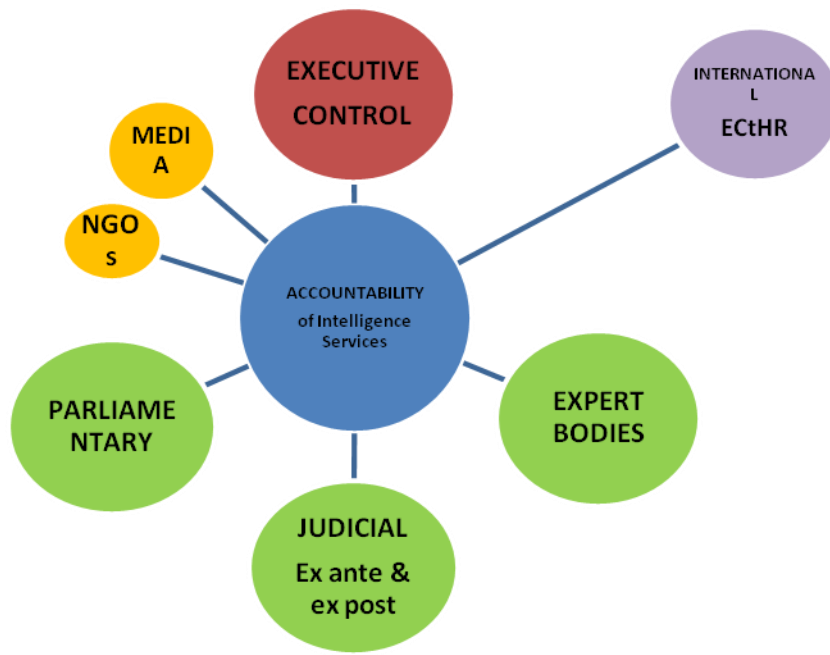
	Civil (internal)	Civil (external)	Civil (internal and external)	Military
<b>LU</b>			State Intelligence Service/ <i>Service de renseignement de l'état</i> (SREL)	

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



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

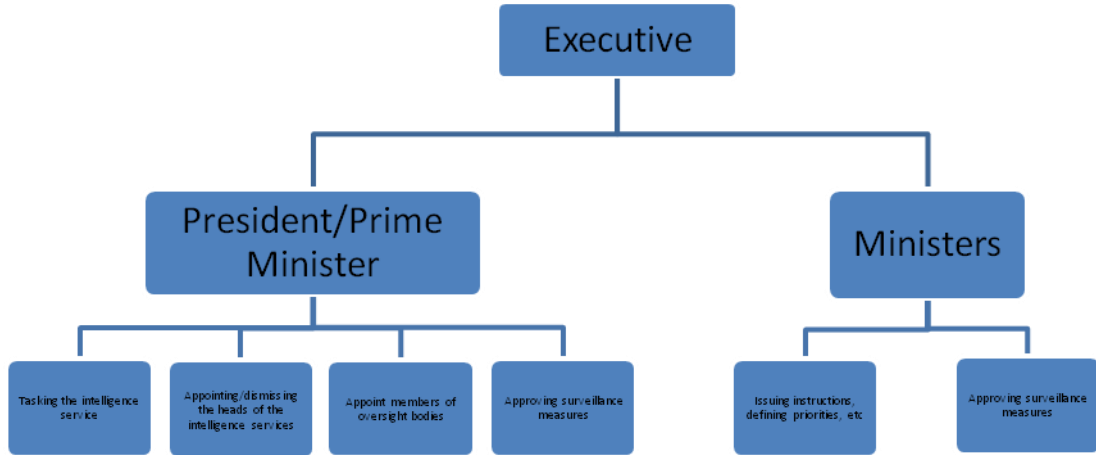
We confirm that Figure 2 below (p. 31 of the FRA Report) illustrates the situation in Luxembourg in an accurate manner.





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

We confirm that Figure 3 below (p. 33 of the FRA Report) properly captures the executive control over the intelligence services in Luxembourg.



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

We confirm that the parliamentary committee in Luxembourg was properly categorised by enumerating the powers it has as listed on p. 35 of the FRA Report.

Member States	Essential powers	Enhanced powers
LU		X

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

We confirm the accuracy of the data in the table below.

EU Member State	Expert Bodies
LU	Supervisory committee ( <i>autorité de contrôle</i> ) of Act of 2 August 2002 Commission ( <i>commission</i> ) of the Criminal Investigation Code ( <i>Code d'Instruction Criminelle</i> )

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

We confirm the accuracy of Table 3 below.

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

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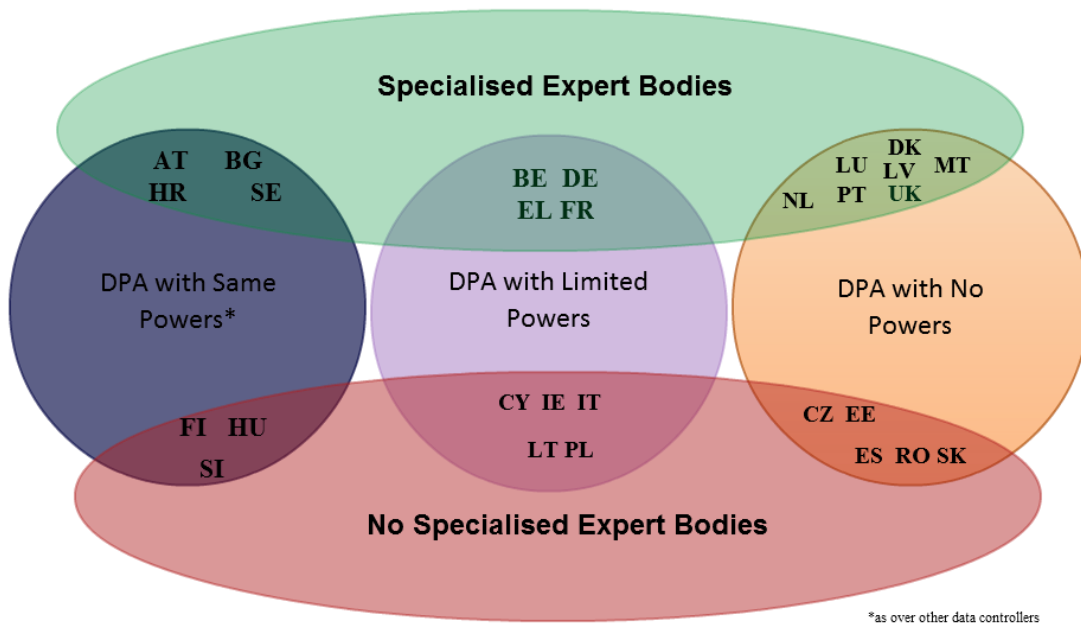
Notes: No powers: refers to DPAs that have no competence to supervise NIS.

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.

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

We confirm the accuracy of Figure 4 below (p. 50 of the FRA Report).



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

We confirm the accuracy of the data.

EU Member State	Judicial	Parliamentary	Executive	Expert bodies	None
LU			X		

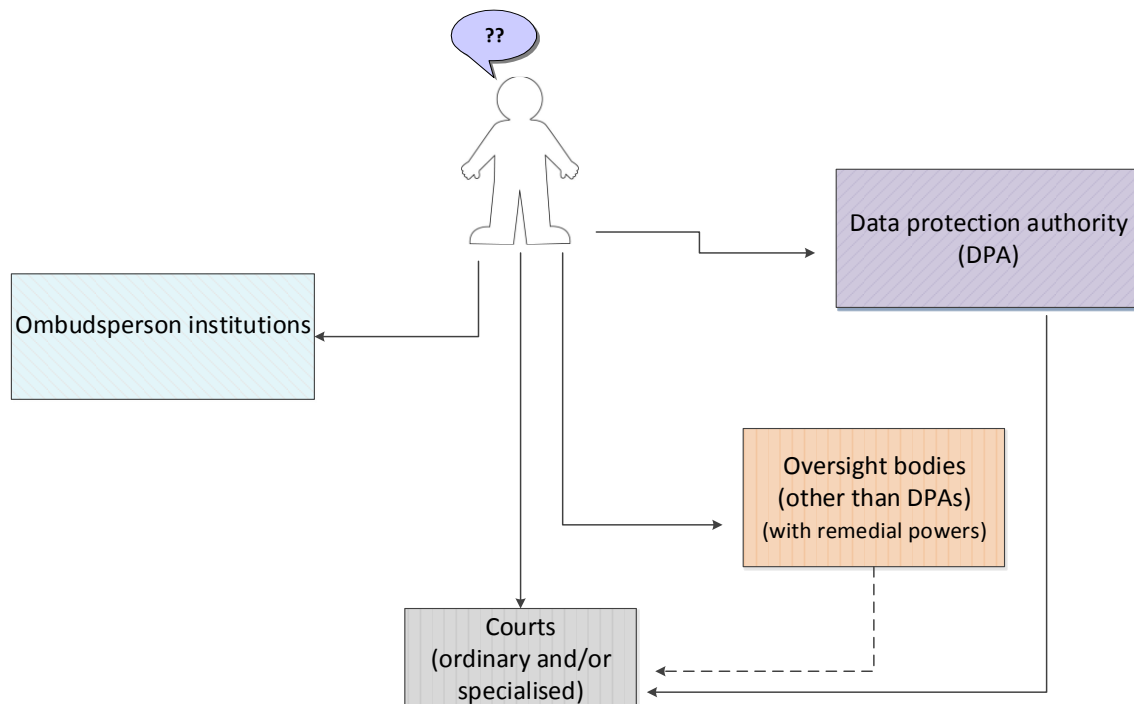
### 1.5.10 Table 5: Approval of signals intelligence in France, Germany, the Netherlands, Sweden and the United Kingdom

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

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

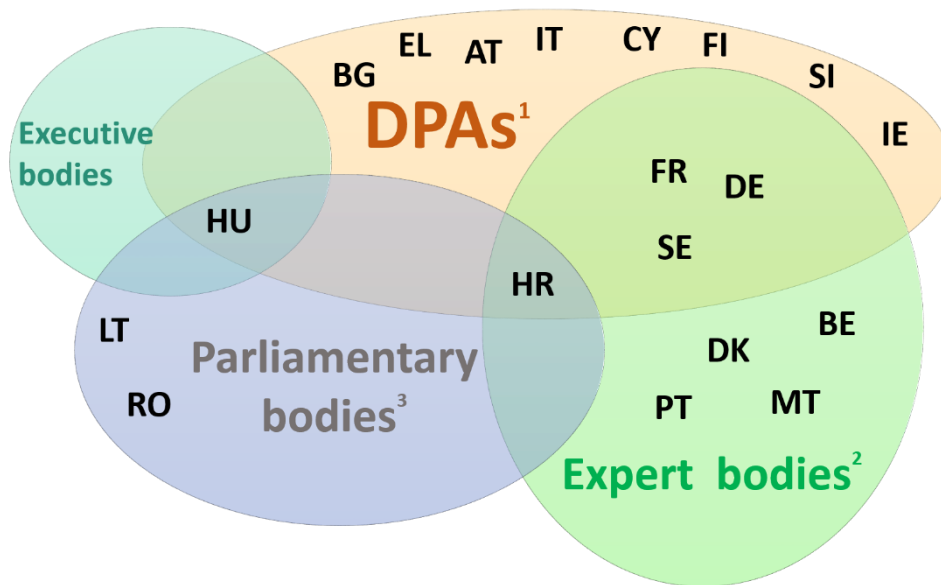
### 1.5.11 Figure 5: Remedial avenues at the national level

We confirm the accuracy of Figure 5 below.



### 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

We confirm the accuracy.



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