

Short Thematic Report

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

Legal update

Country: PORTUGAL

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FRANET contractor: CESIS – Centro de Estudos para a Intervenção Social

Author(s) name(s): Josefina Leitão

Reviewed by: Isabel Baptista

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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.

1.1 Summary

1. In Portugal, the most recent laws on the surveillance system were published on 13 August 2014, having come into force 30 days after their publication (Organic Law 4/2014 of 13 August¹ and Law 50/2014 of the same date²). This means that they do not fall within the scope of the present Report. It should be mentioned that there was an unsuccessful attempt to amend these Laws. This lack of success may be explained by the fact that the Parliamentary Decree 426/XII of 31 July 2015,³ which was adopted after the Government's Draft Bill 345/XII/4,⁴ was declared unconstitutional. This Bill sought to establish a new Juridical System of the Intelligence Services of the Portuguese Republic that made provisions for the possible implementation of surveillance means. The unconstitutional nature of the Parliamentary Decree was stated in Judgement 403/2015 of 17 September 2015.⁵ After the Constitutional Court decision, the deadline for the Portuguese Parliament to undertake a revision of the above-mentioned Decree 426/XII ran out. In the meantime, the 12th legislature came to an end and legislative elections were held

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¹ Portugal, Organic Law 4/2014, amends and republishes Law 30/84 of 5 September that passed the Framework Law on the Intelligence System of the Portuguese Republic (*Lei orgânica 4/ 2014, de 13 de agosto (Procede à alteração e republicação da Lei 30/84, de 5 de setembro, que aprova a Lei Quadro do Sistema de Informações da República Portuguesa)*), 13 August 2014, available at: <https://dre.pt/application/dir/pdf1sdir/2014/08/15500/0419404206.pdf>. All hyperlinks were accessed on 07 June 2016.

² Portugal, Law 50/2014, 1st amendment to law 9/2007 of 19 February that lays down the Organic law of the Secretary-General of the Intelligence Services of the Portuguese Republic, the Strategic Defence Intelligence Service and the Security Intelligence Service (*Lei 50/2014, 13 de agosto (Primeira alteração à Lei 9/2007, de 19 de fevereiro, que estabelece a orgânica do Secretário-Geral do Sistema de Informações da República Portuguesa, do Serviço de Informações Estratégicas de Defesa (SIED) e do Serviço de Informações de Segurança (SIS))*), 13 August 2014, available at: <https://dre.pt/application/file/56057676>.

³ Portugal, Parliamentary Decree 426/XII, published in the Parliamentary Gazette (*Decreto da Assembleia da República 426/XII, Diário da Assembleia da República, II série A, N.º 177, de 31 de julho*), 31 July 2015, available at: <http://debates.parlamento.pt/catalogo/r3/dar/s2a/12/04/177/2015-07-31/592?pgs=592-729&org=PLC>.

⁴ Portugal, Government Draft Bill 345/XII/4, passing the Juridical System of the Intelligence Services of the Portuguese Republic (*Proposta de Lei 345/XII/4 de 11 de Junho de 2015 (Aprova o Regime Jurídico do Sistema de Informações da República Portuguesa)*), 11 June 2015, available at: <http://app.parlamento.pt/webutils/docs/doc.pdf?path=6148523063446f764c3246795a5868774d546f334e7a67774c336470626d6c7561574e7059585270646d467a4c31684a535339305a58683062334d76634842734d7a51314c56684a5353356b62324d3d&fich=ppl345-XII.doc&Inline=true>.

⁵ Portugal, Constitutional Court Judgement 403/2015, (*Acórdão do Tribunal Constitucional 403/2015, Diário da República 1.ª Série, N.º 182, de 17 de Setembro de 2015*), 17 September 2015, available at: <https://dre.pt/application/conteudo/70300353>.

on 4 October 2015. Therefore, the laws in force date from the last third of 2014. It is not known whether there is any intention of reviewing the law about the Intelligence Services.

During the period referred to, laws were indeed published and, although they did not change the legal framework of the Intelligence System, they nevertheless had a few repercussions:

- Law 59/2015 of 24 June⁶ amending Law 53/2008 of 29 August which had passed the Internal Security Law. This new Law changed the composition of the Higher Authority of Internal Security (*Conselho Superior de Segurança Interna*) and the way in which the Antiterrorism Coordination Unit (*Unidade de Coordenação Antiterrorismo*) worked and was organised. As a result, the Directors of the Strategic Defence Intelligence Service (*Serviço de Informações Estratégicas de Defesa*, SIED) and the Security Intelligence Service (*Serviço de Informações de Segurança*, SIS) now sat on the Higher Authority of Internal Security (Article 12 (2) h) and the Antiterrorism Coordination Unit (Article 23).
- Organic Law 1/2015 of 8 January⁷ which amended and re-published Law 2/2014 of 6 August that passed the State Secrets System (*Regime do Segredo de Estado*). According to Article 2 (4) d) in this Law, documents and intelligence based on matters mainly seeking to foresee and ensure the identity of operational agents and intelligence within the activity carried out by the agencies and services incorporating the Intelligence System of the Portuguese Republic (*Sistema de Informações da República Portuguesa*, SIRP), may fall under the State Secrets System provided certain conditions are complied with. Classification made within the scope of the SIRP, abides by the terms laid down in the above-mentioned Organic Law, (Article 5 (4)).

2. As was referred to above, the President of Republic requested that the Constitutional Court make an appraisal as to whether Article 78 (2) in the Parliamentary Decree 426/XII conformed to Article 34 (4) in the Portuguese Constitution. The Article in question (in the Decree) stated that the intelligence-service agents from the Security Intelligence Service (SIS) and the Strategic Defence Intelligence Service (SIED) could, in determined circumstances, gain access to banking and tax data, data on communication traffic, locality or other data connected with communications needed in order to identify the subscriber or the user, or find and identify the source, destination, date, time, duration and type of communication, as well as identify the telecommunication facilities or its locality whenever deemed necessary, suitable and proportional in a democratic society. The aim was to fulfil the legal attributes of the intelligence services, provided the compulsory prior authorisation of the Prior Supervisory Committee had been obtained. For its part, Article (4) in the Constitution states “The interference of public authorities in the correspondence, telecommunications and other means of communication, is forbidden, except in cases related to criminal proceedings, as foreseen in the law”.

In its decision, the Constitutional Court stated, namely, that forbidding interference in communications as laid down in the Constitution, covers data trafficking as referred to above; the Court also stated that the prior authorisation obtained from the Prior

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⁶ Portugal, Law 59/2015, amending Law 53/2008 of 29 August which passed the Internal Security Law thereby changing the composition of the Higher Council of Internal Security and the organisation and functioning of the Antiterrorism Coordination Unit (*Lei 59/2015, de 24 de Junho (Alterou a Lei 53/2008, de 29 de agosto, que aprova a Lei de Segurança Interna, modificando a composição do Conselho Superior de Segurança Interna e a organização e o funcionamento da Unidade de Coordenação Antiterrorismo)*, 24 June 2015, available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2349&tabela=leis&ficha=1&pagina=1&so_miolo.

⁷ Portugal, Organic Law 1/2015, which amended and re-published Law 2/2014 of 6 August that passed the State Secret Protection System (*Lei 1/2015, de 8 de janeiro, altera e republica a Lei 2/2014, de 6 de agosto, que aprovou o Regime do Segredo de Estado*), 8 January 2015, available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2247&tabela=leis&ficha=1&pagina=1&so_miolo.

Supervisory Committee had not respected the terms of the law about criminal procedure. Indeed, access to the aforementioned data had neither occurred within the framework - thus providing safeguards pursuant to criminal procedure, nor had the authorisation received by the Prior Supervisory Committee met with the order substantiated by the examining judge as demanded in criminal proceedings (Code of Criminal Procedure, Articles 187 to 190⁸). The latter finding may be explained by the fact that although the Prior Supervisory Committee is composed of judges, it is an administrative authority.

Apart from this case, no other jurisprudence about the subject under study was found.⁹

3. Organic Law 4/2014 mentioned above, acted to strengthen the inspection powers of the SIRP Supervisory Authority pursuant to Article 9 (2) which states that the Supervisory Authority namely has the duty to: appraise reports on the activity of the Strategic Defence Intelligence Service (SIED) and the Security Intelligence Service (SIS); hold hearings and enquiries whenever it deems necessary so as to carry out its inspections; issue half-yearly statements of opinion about the way the Intelligence System of the Portuguese Republic (SIRP) is working, where these Statements need to be presented to a Parliamentary Committee pursuant to Article 26 (2) in the above mentioned law; propose to the Government that inspections, investigations and sanctions are put in place whenever called for according to the seriousness of the case. It falls to the respective Directors of the SIED and the SIS to draw up the annual Reports on the activities undertaken, as laid down in Articles 28 (2) g) and 36 (2) g) in Law 50/2014 mentioned above. The Reports are accepted and passed by the SIRP Secretary-General as per Article 13 (1) s) in the same Law, and Article 19 (2) l) in Organic Law 4/2014, and an appreciation of them is made by the SIRP Supervisory Authority as was referred to above. The Reports are not for public disclosure.

The SIRP Supervisory Authority did not reply to our query regarding any activity that had been undertaken within its legal powers. Neither did it give any possible opinion issued about the Snowden revelations.¹⁰ Nevertheless, the Authority's statements of opinion sent to the Portuguese Parliamentary Committee for Constitutional Affairs, Rights, Liberties and Guarantees (*Comissão Parlamentar de Assuntos Constitucionais, Direitos, Liberdades e Garantias*) available online, led us to believe that such powers are indeed exercised. Such is the case of the most recent of these statements covering the first period, from 1 January to 30 June 2015.¹¹ However, the various matters raised in the statements are not connected with the Snowden revelations, at least, not directly connected with them.¹²

The Data Supervisory Board (*Comissão de Fiscalização de Dados*) was asked to provide information with the same aim in mind, but it failed to give a timely answer. The answer came in too late to be included in the first phase of this Report, and it provided no relevant

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⁸ Portugal, Code of Criminal Procedure, Decree-Law 78/87, subject to several amendments, the most recent amendment made by Law 130/2015 of 4 September (*Código do Processo Penal, Decreto-lei 78/87, de 17 de fevereiro, objeto de sucessivas alterações a última das quais pela Lei 130/2015, de 4 de setembro*), 17 February 1987, updated version available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?ficha=101&artigo_id=&nid=199&pagina=2&tabela=leis&nversao=&so_miolo.

⁹ Portugal, Juridical-Documents Data Bank, Justice Institute of Financial and Facilities Management (*Bases Jurídico-Documentais*), Instituto de gestão Financeira e Equipamentos da Justiça, I.P. – IGFEJ, available at: www.dgsi.pt/.

¹⁰ Written request sent on April 19th 2016 (reference CESIS2016_30).

¹¹ Portugal, Statement of Opinion made by the Supervisory Authority of the Intelligence System of the Portuguese Republic (*Parecer do Conselho de Fiscalização do Sistema de Informações da República Portuguesa*), 01 January to 30 June 2015, available at: www.cfsirp.pt/images/documentos/CFSIRP%20Parecer%201%20Semestre%202015.pdf.

¹² Portugal, Supervisory Authority of the Intelligence System of the Portuguese Republic, CFSIRP (*Conselho de Fiscalização do Sistema de Informações da República*, CFSIRP), CFSIRP Documents and Opinions (*Documentos, Pareceres do CFSIRP*), available at: www.cfsirp.pt/Geral/documentos.html.

information about the Snowden Revelations.¹³ However, the request for information did not meet with the same treatment when the Parliamentary Committee for Constitutional Affairs, Rights, Freedoms and Guarantees was contacted. The information given was that “no record of any debates, statements of opinion or any other initiatives related to the Snowden revelations were found in the Committee’s files” (*não ter sido encontrado no arquivo desta Comissão, qualquer registo de debates, pareceres ou outras iniciativas relacionadas com as revelações Snowden*). The only references available concern the votes of two political parties (the Portuguese Communist Party, PCP, and the *Bloco de Esquerda*, BE) that involved a “condemnation of the Government’s attitude in refusing to authorise the President of Bolivia’s aircraft to fly over and land in Portuguese territory” (*de condenação da atitude do Governo de recusar o sobrevoos e a aterragem do avião presidencial da República da Bolívia em território português*).¹⁴

Regarding the Portuguese Data Protection Authority (*Comissão Nacional de Proteção de Dados*, CNPD) which was also asked about the subject, its reply was that supervising the intelligence services was not within its power; therefore, “it in no way enquired into the activities of these services either before or after the Snowden revelations” (*não teve qualquer intervenção quanto à atividade destes serviços ante ou pós revelações Snowden*).¹⁵ Nonetheless, on 23 October 2015, the CNPD adopted a Deliberation¹⁶ upon the Judgement passed down by the Court of Justice of the European Union (Case C-362/14), in which reference was made to the Snowden revelations. It may be recalled that this Judgement invalidated the Commission’s Decision 2000/520/CE (US Safe Harbour Decision) that provided protection for many European businesses to send personal data to the USA whether in order to subcontract services or to communicate data to third parties, in particular, to the headquarters of multinational companies. In the CNPD Decision, it was decided that “it would issue only provisional authorisations for the transfer of personal data to the USA, undertaken by resorting to alternative mechanisms to the Safe Harbour Principles, after the flow of data covered by the Safe Harbour Decision had been forbidden” (*que emitirá apenas autorizações provisórias para a transferência de dados pessoais para os EUA realizadas através de mecanismos alternativos aos Princípios de Porto Seguro, após ter proibido os fluxos de dados ao abrigo da decisão Safe Harbor*).

4. From what is known, no *ad hoc* committee has been set up, whether Parliamentary or otherwise, in order to appraise the Snowden Revelations. The legislative procedure overseeing work on a new law aimed at the Intelligence System of the Portuguese Republic (SIRP) – which was started off with Government Draft Bill 345/XII/4 and ended up by Parliament’s adoption of Decree 426/XII mentioned above – failed to make any reference to the revelations. This was despite the several statements of opinion about the Draft Bill having been requested from the Parliamentary Committee for Constitutional Affairs, Rights, Freedoms and Guarantees. In fact, statements of opinion were made about the Draft Bill written by the CNPD, the Secretary General of the Intelligence Services of the Portuguese Republic (SIRP), the Supreme Council of the Public Prosecution Office

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¹³ Written reply by the Data Supervisory Board of the Intelligence System of the Portuguese Republic (*Comissão de Fiscalização de Dados do Serviço de Informações da República*), received on 4 May 2016.

¹⁴ Written reply received on 2 March 2016 from the Parliamentary Committee for Constitutional Affairs, Rights, Freedoms and Guarantees, Official letter 200 1.^a CACDLG/2016 (*Assembleia da República, Comissão de Assuntos Constitucionais, Direitos, Liberdades e Garantias, Ofício n.º 200 1.^a CACDLG/2016, de 2-03-2016, do Presidente da Comissão*).

¹⁵ Written reply by the Portuguese Data Protection Authority (*Comissão Nacional de Proteção de Dados*, CNPD), received by e-mail on the 7 March 2016.

¹⁶ Portugal, Portuguese Data Protection Authority, Transference of Personal Data to the USA, Deliberation made (*Comissão Nacional de Proteção de Dados, Transferências de dados pessoais para os EUA, Deliberação de 23 de outubro de 2015*), 23 October 2015, available at:

www.cnpd.pt/bin/relacoes/comunicados/Comunicado_CNPD_SafeHarbor.pdf.

(*Conselho Superior do Ministério Público*), the SIRP Data Supervisory Board, the SIRP Supervisory Authority and the Supreme Judicial Council (*Conselho Superior da Magistratura*). There is no indication of the Snowden revelations having been taken into consideration in the Draft Bill, or in the statements of opinion issued by the above-mentioned agencies or, moreover, by the Parliamentary Committee for Constitutional Affairs, Rights, Freedoms and Guarantees.¹⁷

Regarding the Government Draft Bill, it is mostly based on the need to adjust the SIRP's organic design and legal framework to the new reality which is namely the result, to quote the Draft Bill, of the "threat represented by Islamic terrorism but also serious organised crime and classical and economic espionage" (*ameaça representada pelo terrorismo islamita, mas também pela alta criminalidade organizada e pela espionagem clássica e económica*).¹⁸

In the statements of opinion that were issued, the opinion of the Portuguese Data Protection Authority (CNPD) deserves particular mention. This is due to the fact that Statement of Opinion 51/2015¹⁹ deliberates upon the access which the SIRP services have to personal data. The CNPD concluded that when read together with Articles 36 and 37 (2) in the Draft Bill, Article 78 (2) in the same Bill breached the following: Articles 18 (2), 26 (1) and (2), 27 (1), 34 (4) and 35 in the Portuguese Constitution; Article 8 (1) e (2) in the European Convention of Human Rights (ECHR); Articles 7 and 8 in the Charter of Fundamental Rights of the European Union (ECFR). Moreover it had failed to take into account the Judgment handed down by the Court of Justice of the European Union on 8 April 2014 (Case C-293/12 and C-594/12) which declared European Directive 2006/24 EC on the retention of data, to be invalid. The CNPD added that "the extent and intensity to which the processing is allowed of personal data that reveal different aspects of personal life if not the whole of our private life (...), and which apparently is acceptable in terms of the law, goes against the pillars of the Rule of Law and a democratic society" (*a extensão e a intensidade do tratamento de dados pessoais admitido, dados que revelavam diversos aspetos da vida privada, quando não mesmo toda a nossa vida privada (...), aparentemente legitimada pela lei, violava os pilares do Estado de Direito e de uma sociedade democrática*). As mentioned above, this position was to be upheld by the Portuguese Constitutional Court.

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 n by Born, H., Leigh, I. and Wills, A. (2015), Making international intelligence cooperation accountable, Geneva, DCAF.*²⁰

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¹⁷ Portugal, Statement of Opinion on the Government Draft Bill, issued by the Parliamentary Committee for Constitutional Affairs, Rights, Freedoms and Guarantees (*Parecer da Comissão de Assuntos constitucionais, Direitos, liberdades e Garantias sobre a Proposta de Lei do Governo*), available at: <http://app.parlamento.pt/webutils/docs/doc.pdf?path=6148523063446f764c324679626d56304c334e706447567a4c31684a5355786c5a793944543030764d554e425130524d5279394562324e31625756756447397a5357357059326c6864476c3259554e7662576c7a633246764c7a646d4e57466a4f5449344c5451314f5745744e4455325a4331684e3251314c5449324d6a597a596a41784e44466b4d7935775a47593d&fich=7f5ac928-459a-456d-a7d5-26263b0141d3.pdf&Inline=true>.

¹⁸ Portugal, Government Draft Bill 345/XII/4, passing the Juridical System of the Intelligence Services of the Portuguese Republic (*Proposta de Lei 345/XII/4 de 11 de Junho de 2015 (Aprova o Regime Jurídico do Sistema de Informações da República Portuguesa)*, 11 June 2015 available at: <http://app.parlamento.pt/webutils/docs/doc.pdf?path=6148523063446f764c3246795a5868774d546f334e7a67774c336470626d6c7561574e7059585270646d467a4c31684a535339305a58683062334d76634842734d7a51314c56684a5353356b62324d3d&fich=ppl345-XII.doc&Inline=true>.

¹⁹ Portugal, Portuguese Data Protection Authority, Statement of Opinion 51/2015 (*Comissão Nacional de Proteção de Dados (CNPD), Parecer 51/2015*), available at: www.cnpd.pt/bin/decisões/Par/40.

²⁰ www.dcaf.ch/Publications/Making-International-Intelligence-Cooperation-Accountable.

1. *It is assumed that in your Member State international cooperation between intelligence services takes place. Please describe the legal basis 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. In Portugal, there are almost no references in the legislation about the international cooperation among the intelligence services. Organic Law 4/2014 of 13 August²¹ only refers to internal cooperation. However, this does not mean to say that international cooperation is inexistent or forbidden owing to the fact that it could involve classified information. Indeed, in terms of this Law, in Article 32 (1) and (2), all data and information are protected as State secrets if their dissemination might harm the State's fundamental interests, as laid down in the State Secrets System. Furthermore, intelligence service records, documents, dossiers and files connected with sensitive or harmful material to the State's interests, may not be requisitioned or examined by any agencies that do not belong to the intelligence services.²²

Law 50/2014 of 13 August²³ is more explicit about international cooperation: it states that the Secretary-General of the Intelligence Services of the Portuguese Republic (SIRP) shall cooperate with agencies that are indicated in guidelines laid down by the Prime Minister who has heard the Higher Intelligence Authority (*Conselho Superior de Informações*). Moreover, this law lays down the cooperation of the SIED and the SIS with other agencies, in conformity with the Secretary-General's instructions and directives that comply with the Prime Minister's guidelines. According to this Law, cooperation might occur within with the framework of international agreements made by the Portuguese State. In this case, and within the boundaries of their specific powers, the SIED and the SIS may cooperate with like organisations abroad in all fields of their respective activities (Article 11). On the other hand, in an Order issued by the Secretary-General of the Intelligence Services, after having consulted the member of the government responsible for the sphere of foreign affairs, SIED representative bodies may be established abroad

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²¹ Portugal, Organic Law 4/2014 amends and republishes Law 30/84 of 5 September that passed the Framework Law on the Intelligence System of the Portuguese Republic (*Lei orgânica 4/2014, de 13 de agosto que procede à alteração e republicação da Lei 30/84, de 5 de setembro, que aprova a Lei Quadro do Sistema de Informações da República Portuguesa*) 13 August 2014, available at: <https://dre.pt/application/dir/pdf1sdip/2014/08/15500/0419404206.pdf>.

²² Portugal, Organic Law 4/2014 (*Lei orgânica 4/2014, de 13 de agosto*), 13 August, available at: <https://dre.pt/application/dir/pdf1sdip/2014/08/15500/0419404206.pdf>. In Article 32 (2), it states that matters covered by State secrecy cannot be requested or examined by any other entity, without prejudicing provisions in Articles 26 and 27 of the above-mentioned law. They refer respectively to the supervision by the SIRP Data Supervisory Board and to data deletion and correction. Likewise, Organic Law 2/2014 of August 16 (State Secret System) establishes in its Article 2 (4) c) that State secrecy covers both the identity of practitioners and information related to the activity of the bodies and services comprising the SIRP. Available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2201&tabela=leis&ficha=1&pagina=1&so_miolo.

²³ Portugal, Law 50/2014, 1st amendment to law 9/2007 of 19 February that lays down the Organic law of the Secretary-General of the Intelligence Services of the Portuguese Republic, the Strategic Defence Intelligence Service and the Security Intelligence Service (*Lei 50/2014, 13 de agosto (Primeira alteração à Lei 9/2007, de 19 de fevereiro, que estabelece a orgânica do Secretário-Geral do Sistema de Informações da República Portuguesa, do Serviço de Informações Estratégicas de Defesa (SIED) e do Serviço de Informações de Segurança (SIS))*), 13 August 2014, available at: <https://dre.pt/application/file/56057676>.

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whereby their activity and organisation are set down in their own in-house rules (Article 27 (3)).²⁴

Concerning the fact of whether documents pertaining to international cooperation when involving intelligence are classified private or public, Article 5 in Law 50/2014 states that all activity based on research, processing, interpreting, classifying and preserving intelligence gathered by the SIRP, is subject to secrecy pursuant to the terms of the SIRP Framework Law, Organic Law 4/2014. Law 4/2014 namely stipulates that whosoever, during the course of pursuing his/her duties, learns about classified information made available by the intelligence services, is obliged to keep it a strict secret (Article 28 (1)). On the other hand, Article 8 in Law 50/2014 recognises that publically invested acts may be waived when it is necessary to deal with SIRP documents when justified by reasons of security or when connected with the specific nature of the service involved. Therefore, certain regulations possibly dealing with international cooperation affairs, may not be made public.²⁵

2. When he was asked about possible agreements, data exchanges and any other activities involving international intelligence agencies, the Secretary-General of Intelligence Services of the Portuguese Republic answered that “the existing cooperation agreements are classified and all cooperation activity is subject to the scrutiny of the appropriate supervisory authorities” (*os acordos de cooperação existentes são classificados e que toda a atividade de cooperação está sujeita ao escrutínio das entidades de fiscalização competentes*).²⁶ Indeed, in conformity with Organic Law 4/2014, it falls to the SIRP Supervisory Authority to appraise the Reports in each of the intelligence services (SIED and SIS). Furthermore, it has to receive from the Secretary-General, a full list of all the cases under way, whereby the Authority may request and obtain all the clarifications and extra information that it deems necessary and fit, in order to exercise its supervisory duties. This being the case, the SIRP Supervisory Authority is informed about international cooperation. Needless to say, this fact may also be found in the Authority’s Reports that are handed in to the Parliament; an example may be seen in the last 2016 Report covering the first semester of 2015 which mainly gives an account of the SIS’s cooperation with like organisations in other countries, involving meetings, swapping intelligence and holding joint operations. The same happens with the SIED and like organisations, particularly in the sphere of the European Union, the Portuguese-Speaking African Countries (*Países Africanos de língua Oficial Portuguesa*, PALOP) and other countries and regions where there are relevant Portuguese interests.²⁷

1.3 Access to information and surveillance

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

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²⁴ Portugal, Law 50/2014 of 13 August, mentioned above, Article 27 (3), available at: <https://dre.pt/application/file/56057676>.

²⁵ Portugal, Law 50/2014 of 13 August, mentioned above, Article 8, available at: <https://dre.pt/application/file/56057676>.

²⁶ Portugal, Presidency of the Council of Ministers, Secretary-General’s Office, Intelligence Services of the Portuguese Republic, Official Letter 147, Case 02-Div/2016 of 17-02-20) (*Presidência do Conselho de Ministros, Gabinete do Secretário Geral do Sistema de Informações da República Portuguesa, Ofício 147, Processo 02-Div/2016, de 17-02-20*).

²⁷ Portugal, Statement of Opinion by the Supervisory Authority of the Intelligence Services of the Portuguese Republic (*Parecer do Conselho de Fiscalização do Sistema de Informações da República Portuguesa*), 01 January to 30 June 2015, available at: www.cfsirp.pt/images/documentos/CFSIRP%20Parecer%201%20Semestre%202015.pdf.

Please refer to the *Global Principles on National Security and the Right to Information (the Tshwane Principles)*²⁸ (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. As mentioned in FRA Report,²⁹ in Portugal, “intelligence services are not entitled to conduct surveillance activities. Article 34 (4) of the Constitution limits their mandate by not allowing any sort of intrusion into mail, telephone or communications other than in the course of a criminal investigation. Since the intelligence services cannot perform criminal investigations, they do not, by law, have surveillance powers. Their mandate is limited to promoting research and analysis, processing intelligence and archiving and disseminating the information gathered.”

Where information collected within the mandate framework is concerned, Law 50/2014, Article 5 (3) states that “all activity based on research, processing, interpreting, classifying and preserving intelligence gathered by the SIRP, is bound by secrecy” (*toda a atividade de pesquisa, análise, interpretação, classificação e conservação de informações desenvolvida no âmbito do SIRP está sujeita ao dever de sigilo*). For this reason and owing to the ends which inform such activities, Organic Law 4/2014, Article 26 (1) states that the activity pursued in each one of the SIS and SEID data centres is inspected exclusively by the Data Supervisory Board of the SIRP. The supervision of the Portuguese Data Protection Authority (CNPD) which is laid down in the Law on Data Protection, Law 67/98 of 26 October in its updated version,³⁰ is therefore not applicable. Moreover, the rights to information and access to data are not referred to in this particular Law but rather, in Organic Law 4/2014 and in Law 50/2014 both mentioned above.

Law 46/2007³¹ on access and re-use of administrative documents declares in its article 5 “Everyone shall possess the right of access to administrative documents without the need to state any interest, to include the rights of consultation, reproduction, and information as to the administrative documents’ existence and content.” However, the exceptions included under Article 6, (1) clearly specify that “Documents which contain information, knowledge of which is deemed capable of endangering or damaging the internal and external security of the State, shall be subject to prohibited access or access with authorisation, for such time as is strictly necessary, by means of their classification as such in accordance with specific legislation.” Moreover, under the terms of article 2 (1) (2) of Organic Law 1/2015 of 8 January³² (*Regime do Segredo de Estado*) “all matters, documents and information whose knowledge by unauthorised persons may endanger the State’s fundamental’s interests” (*São abrangidos pelo regime do segredo de Estado as matérias, os documentos e as informações cujo conhecimento por pessoas não autorizadas é suscetível de pôr em risco interesses fundamentais do Estado*), including those relating

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²⁸ See: www.right2info.org/exceptions-to-access/national-security/global-principles#section-10.

²⁹ FRA, Surveillance by intelligence services: fundamental rights safeguards and remedies in the EU, Mapping Member States’ legal frameworks, p. 20.

³⁰ Portugal, Law 67/98, Personal Data Protection Law (*Lei 67/98, de 26 de outubro (Lei de Proteção de dados pessoais, 26 October 1998, updated version available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?tabela=leis&artigo_id=&nid=156&nversao=&tabela=leis*).

³¹ Portugal, Law 46/2007, which regulates access to and the re-use of administrative documents (*Lei nº46/2007 de 24 de Agosto, que regula o acesso aos documentos administrativos e a sua reutilização*), 24 August 2007, available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=931&tabela=leis.

³² Portugal, Organic Law 1/2015, which amended and re-published Law 2/2014 of 6 August that passed the State Secret Protection System (*Lei 1/2015, de 8 de janeiro, altera e republica a Lei 2/2014, de 6 de agosto, que aprovou o Regime do Segredo de Estado*), 8 January 2015, available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2247&tabela=leis&ficha=1&pagina=1&so_miolo.

to national independence, the unity and the integrity of the State or its internal or external security are included under the State Secret System. Access to administrative information under the responsibility of SIS or SIED is therefore restricted.

Such restriction of access is confirmed by Article 32 (1) of Organic Law 4/2014³³ which already included under the State Secret System all data and information, the dissemination of which might endanger the fundamental interests of the State (*São abrangidos pelo segredo de Estado os dados e as informações cuja difusão seja suscetível de causar dano aos interesses fundamentais do Estado tal como definidos na lei que estabelece o regime do segredo de Estado*), adding that records, documents and files from the intelligence services regarding matters mentioned under Article 32 (1) may not be requested or examined by any other entity outside the services.

According to the information provided by the SIRP Data Supervisory Board,³⁴ among its other activities in the realm of data protection, it falls to the Board to receive complaints from people who, as a result of any action carried out by intelligence service officials or agents or arising during administrative or judicial proceedings, have learned that the data referring to them are considered incorrect, obtained in irregular ways or have infringed upon their rights, freedoms and personal guarantees. In following up such complaints, the Board does the necessary vetting and if need be, orders that the data proved to be incomplete or wrong, are deleted or corrected. The SIRP Supervisory Authority's attention is then called to these facts. Afterwards, the Board deals with the complaints lodged by people who believe they have fallen victims to a breach in their rights owing to the Intelligence Services. The people in question are then informed about the measures taken by the Data Supervisory Board.³⁵ According to the Board, "its powers are globally inserted into the sphere of the Tshwane Principles - the *Global Principles on National Security and the Right to Information*, namely Principles 31 to 36" (*a sua competência inscreve-se globalmente no âmbito dos Princípios de Tshwane – the Global Principles on National Security and the Right to Information - designadamente nos princípios 31 a 36*).³⁶

To this purpose, it should be pointed out that where access to personal data is concerned, interpreting the laws about the intelligence services has to take into account the Constitutional framework. Indeed, Article 35 (1) and (7) in the Constitution states that (*All citizens have the right of access to any computerized data relating to them and the right to be informed of the use for which the data is intended, under the law; they are entitled to require that contents of the files and records be corrected and brought up to date*"); and "*Personal data kept on manual files shall benefit from protection identical to that provided for the above articles, in accordance to the law.*") Furthermore, Article 18 (1) in the Constitution lays down that (*The constitutional provisions relating to rights, freedoms and safeguards shall be directly applicable to, and binding on, both public and private bodies.*). Therefore, it is not possible to completely block access to the personal data collected by the intelligence services, as shown by the written reply received from the Data Supervisory Board of the SIRP referred to above.

³³ Portugal, Organic Law 4/2014 amends and republishes Law 30/84 of 5 September that passed the Framework Law on the Intelligence System of the Portuguese Republic (*Lei orgânica 4/2014, de 13 de agosto que procede à alteração e republicação da Lei 30/84, de 5 de setembro, que aprova a Lei Quadro do Sistema de Informações da República Portuguesa*) 13 August 2014, available at: <https://dre.pt/application/dir/pdf1sdip/2014/08/15500/0419404206.pdf>.

³⁴ Written reply received from the SIRP Data Supervisory Board on (*Comissão de Fiscalização de Dados do SIRP*), on 5 May 2016.

³⁵ Written reply received from the Data Supervisory Board of the Intelligence System of the Portuguese Republic (*Comissão de Fiscalização de Dados do Serviço de Informações da República*), on 4 May 2016.

³⁶ Written reply received from the Data Supervisory Board of the Intelligence System of the Portuguese Republic (*Comissão de Fiscalização de Dados do Serviço de Informações da República*), on 4 May 2016.

Especially relevant to the matter under study, are Articles 9 (1) and (2) e), 26 and 27 in Organic Law 4/2014. Article 9 states that the Supervisory Authority should follow and monitor the activity carried out by the Secretary-General and the intelligence services, overseeing their compliance with the Constitution and the law, with particular attention paid to safeguarding rights, freedom and guarantees. It falls to the Supervisory Authority more in particular, to ask the officers working in the data centres what is needed for them to exercise their powers or to get to know about possible irregularities or breaches of law.

Article 26 in the same Organic Law states that the activity carried out in the SIED and SIS data centres is inspected exclusively by the Data Supervisory Board which is composed of three prosecutors from the Public Prosecutor's Office, appointed by the Prosecutor-General of the Republic. Monitoring is done by making periodical sample checks on the programmes, data and intelligence which are supplied without naming sources, as well as accessing data and intelligence with names attached particularly when the Data Supervisory Board perceives that an accusation has been made or there is a well-founded suspicion of illegal or unfounded data having been collected. The Data Supervisory Board has to order the deletion or the rectification of the collected data that have infringed upon the rights, freedoms and guarantees laid down in the Constitution and in the law. If necessary it has to bring about corresponding criminal proceedings.

Furthermore, pursuant to Article 27, when an error has occurred about the data, intelligence or irregular data processing during the course of criminal or administrative proceedings, the entity which has processed the data is obliged to inform the Data Supervisory Board. On the other hand, anyone who learns about any data that have been collected about them owing to any act committed by intelligence service officers or agents, and which they consider to be erroneous, illegally obtained or in breach of their personal rights, freedoms and guarantees, may, without jeopardising other legal safeguards, request the Data Supervisory Board to make the necessary vetting and order the deletion or the rectification of any information that is shown to be incomplete or wrong. In the event of confirmed irregularities or breaches, the Data Supervisory Board should make this fact known in its Report to the SIRP Supervisory Authority.

Therefore, although the person who is the subject of the data probe does not have any access to these data in the same terms as those afforded by the Data Protection Law, there are mechanisms that allow the subject to gain access to the data that has been collected within the mandates awarded the SIED and the SIS by Organic Law 4/2014. Moreover, the Report drawn up by the SIRP Supervisory Authority has to give an account of its activity in this field.

2. As was mentioned above, Article 34 (4) in the Portuguese Constitution states that the public authorities are prohibited from interfering in any way with correspondence, telecommunications or other means of communication, save in such cases as the law may provide for, in relation to criminal proceedings. Now, owing to the fact that the SIED and the SIS are forbidden to exercise powers, practice deeds or develop activities within the specific spheres or powers of the courts, the Public Prosecutor or the police authorities, nor are they (the SIED and the SIS) allowed to launch criminal investigations and proceedings - likewise within the framework of their allotted powers - they may not place people under surveillance without threatening or infringing upon their rights, freedoms and guarantees as laid down in the Constitution and the law (Law 50/2014, Article 6 (1) and (2)). Therefore, pursuant to the Portuguese Republic's lawful intelligence system, the question of individuals having the right to access information about whether they are subject to surveillance does not come up.

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.

Portugal is not mentioned.

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

Not applicable.

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

In this chapter there is no data that would call for specific reference, given the relevance of the situation in Portugal to illustrate or complement FRA comparative analysis.

1 Intelligence services and surveillance laws

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

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

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

The heading of the report contains no information and therefore no update is applicable. Updates are included in subheadings below.

1.1 Intelligence services

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

Portugal is not mentioned.

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

Not applicable.

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.*

Similar to some of the other Member States, such as France, Germany, Italy, Romania, and Poland, the civil intelligence services in Portugal are divided into two separate services, where one is mandated to deal with domestic affairs and internal security (SIS), and the other with foreign affairs (safeguarding national independence, national interests and external security (SIED)).

1.2 Surveillance measures

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

Portugal is not mentioned.

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

Not applicable.

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.*

No data are available that would call for a specific reference.

1.3 Member States' laws on surveillance

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

Portugal is referred to in 1.3.1.1. above regarding Article 34 (4) in the Portuguese Constitution in terms that agree with what has been laid down in the Constitution and in the law; no changes have been made in the meantime.

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

As was referred to in 1.1. above in the Summary, the Government tabled a Draft Bill in Parliament in 2015, that contained an Article based on the possibility of conferring power on the intelligence services to access data, locality and traffic banks. Nonetheless, the attempt to endow the intelligence services with such 'surveillance' powers failed owing to the decision reached by the Constitutional Court when it considered that the Article under discussion breached several articles in the Constitution, in particular Article 34 (4) mentioned in the FRA Report.

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

Not applicable.

FRA key findings

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

The key findings provide no direct references to individual countries. Thus, Portugal is not mentioned. Yet, it is possible to recognise the Portuguese information system in some of the conclusions which are presented in this section, and where they are accurate.

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

Not applicable.

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

Not applicable.

2 Oversight of intelligence services

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

Portugal is not mentioned.

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

Not applicable. The last report drawn up by the Supervisory Authority of the Intelligence System of the Republic (SIRP) and presented to the Parliamentary Committee, pursuant to Article 8 (2) J) in Organic Law 4/2014 of 13 August, on the operation of the Intelligence System of the Portuguese Republic, covered the period between 1 January and 30 June 2015.

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.*

Such as some of the other Member States, Portugal also has an internal security system whose job it is to ensure that the goals of the intelligence system do not run off the rails. This sort of security was introduced by Law 4/2014 of 13 August that laid down that the officers, agents and the leadership of the Information Services have the duty to undergo security checks, enquiries and investigations, whether during the period in which are being recruited or during the course of their duties. Such measures are carried out by the organisation's unit that is responsible for security. Even after the internal security system officer/agent has ceased to be operational, he/she continues to be subject to monitoring for a further three years. The procedures

and means used by the organisation's appropriate security unit in its enquiries and investigations follow its own in-house rules that are classified and passed upon the order of the SIRP Secretary General (Article 33-B).

2.1 Executive control

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

Yes, Portugal is mentioned here. Nevertheless, the information given needs to be more precise. The Higher Intelligence Authority (*Conselho Superior de Informações*) is presided over by the Prime Minister. It is a joint-ministerial body providing counselling and coordination in terms of intelligence and it has the duty to advise and provide assistance to the Prime Minister in coordinating the Intelligence Services. The Prime Minister appoints the Secretary-General of the Intelligence System of the Portuguese Republic (SIRP) and the Directors of the Strategic Defence Intelligence Service (SEID) and the Security Intelligence Service (SIS) after giving the Parliamentary Committee for Constitutional Affairs, Rights, Freedoms and Guarantees a hearing. The SIRP Secretary-General and the SIED and SIS intelligence services depend directly upon the Prime Minister. It falls to the Prime Minister namely to: keep the President of the Republic abreast of the activity undertaken by the Intelligence System; superintend, oversee and guide the activity carried out by the intelligence services; pass the SIED and the SIS Annual Action Plans; issue guidelines and instructions in an Order about the activities that should be developed.³⁷

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

There are not data to update.

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

Not applicable.

2.2 Parliamentary oversight

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

Portugal is referred to in 2.2 in terms which do not seem to fully reflect what has been laid down in the law. In fact, there is no Parliamentary Committee as such that specialises in handling the intelligence services. Rather, there is the Parliamentary Committee for Constitutional Affairs, Rights, Freedoms and Guarantees which has the power to undertake the following duties in connection with the intelligence services: hear the members of the SIRP Supervisory Authority before the Authority is elected by the Parliament, as well as hear the SIRP Secretary-General and the Directors of the SIED and the SIS prior to their nomination by the Prime Minister; issue a statement of opinion about the impediments preventing the members of the Supervisory Authority from doing their job and their removal; request the presence if need be, of the Supervisory Authority in order to clarify aspects about the activities it

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³⁷ Portugal, Organic law 4/2014 of 13 August, Articles 15, 17 and 18, and law 50/2014 of 13 August, Article 4 (*Lei orgânica 4/2014, de 13 de agosto, artigos 15, 17 e 18, e Lei 50/2014, de 13 de agosto, artigo 4*), available at: <https://dre.pt/application/dir/pdf1sdip/2014/08/15500/0419404206.pdf>.

exercises; receive the twice-yearly Reports drawn up by the Supervisory Authority about the intelligence system's performance. On the other hand it falls to the Parliament ensure that the SIRP Supervisory Authority has at its disposal all the means that are indispensable for its smooth running.³⁸

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

There are no data to update.

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

Not applicable.

2.2.1 Mandate

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

Portugal is mentioned in Table 1 and in the footnote, but the references are not accurate. See 2.2. 1 above. In Table 1 Portugal should be included in "Essential powers".

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

There are no data to update.

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

Not applicable.

2.2.2 Composition

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

Portugal is not mentioned.

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

Not applicable.

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.*

³⁸ Portugal, Organic Law 4/2014, Articles 8 (3) and (7); 9 (2)f and 4; 15 (3), (4) and (5) which were amended in this law, and Article 36 (*Lei orgânica 4/2014, de 13 de agosto, artigos 8 (3) e (7), 9 (2)f e (4), 15 (3), (4) e (5), objeto de alteração nesta lei, e artigo 36*), 13 August, 2014, available at: <https://dre.pt/application/dir/pdf1sdip/2014/08/15500/0419404206.pdf>.

In Portugal, the composition of the Parliamentary Committees is specified in the Rules of Procedure of the Assembly of the Republic 1/2010 of 14 October,³⁹ and is proportional to the Parliamentary groups represented in the house. The Parliamentary groups themselves appoint the members they want on the Committees, and the duration of their mandates is in conformity with the length of the legislature.

2.2.3 Access to information and documents

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

Portugal is not mentioned.

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

Not applicable.

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

In Portugal, despite the fact that the Parliamentary Committee for Constitutional Affairs, Rights, Freedoms and Guarantees may request the presence of the SIRP Supervisory Authority in order to clarify aspects about the activities it exercises, and also the fact that the Supervisory Authority has to hand in its twice-yearly Reports about the intelligence system's performance, the law does not expressly state that the Committee has access to any documentation. The Supervisory Authority is empowered to have such access.

2.2.3 Reporting to parliament

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

Portugal is not mentioned

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

Not applicable

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.*

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³⁹ Portugal, Rules of Procedure of the Assembly of the Republic 1/2010, amends and republishes the Rules of Procedure 1/2007 of 20 August (*Regimento da Assembleia da República 1/2010, de 14 de outubro (altera e republica o Regimento da Assembleia da República 1/2007, de 20 de agosto)*, artigos 29 (1), 30 (1) e 31 (1), 14 October 2010, available at: <https://dre.pt/application/file/a/307760>, and in English: www.en.parlamento.pt/Legislation/Rules_of_Procedure.pdf.

As was referred to above, the SIRP Supervisory Authority gives the Parliamentary Committee for Constitutional Affairs, Rights, Freedoms and Guarantees its twice-yearly Reports about the performance of Portugal's intelligence system.

2.3 Expert oversight

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

The Report heading contains no information and therefore no update is applicable. Updates are included in subheadings below.

2.3.1 Specialised expert bodies

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

Table 2 accurately describes the situation in Portugal. The reference on page 44 of the FRA Report “*In Portugal, (...) the three candidates of the Council for the Oversight of the Intelligence System of the Portuguese Republic must be citizens of “recognised integrity and in full capability of their civil and political rights”. Though their selection follows procedure, it is not clear from the onset what is necessary to fulfil the expert requirements*”, is accurate. However, the Council may occasionally request the Parliament to ensure the availability of the technical means and resources necessary for safeguarding the independence of its inspections.⁴⁰

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

There are no data to update.

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

Not applicable.

2.3.2 Data protection authorities

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

Portugal is mentioned and all the references in the text are accurate.

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

There are no data to update.

⁴⁰ Portugal, Organic Law 4/2014, amends and republishes Framework Law, 30/84, 5 September, as amended, on the Intelligence System of the Portuguese Republic, Article 9 (5) (*Lei 4/2014, de 13 de agosto, artigo 9 (5)*), 13 August 2014, available at: <https://dre.pt/application/dir/pdf1sdip/2014/08/15500/0419404206.pdf>.

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

Not applicable.

2.4 Approval and review of surveillance measures

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

Portugal is mentioned. The reference in Table 4 is accurate.

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

There are not data to update.

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

Not applicable.

FRA key findings

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

Portugal is not expressly mentioned.

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

Not applicable.

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.*

Nothing to add.

3 Remedies

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

Portugal is not mentioned.

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

Not applicable.

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.*

Nothing to add.

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

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

Portugal is mentioned and the reference in the text is accurate.

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

The footnote was updated with the reference to Organic Law 4/2014 of 13 August. This Law amended and republished Law 30/84 of 5 September, which itself was amended by the Law 4/95 of 21 February, Law 15/96 of 30 April, Law 75-A/97 of 2 July, and Organic Law 4/2004, of 6 November.

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

Not applicable.

3.2 Judicial remedies

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

Portugal is not mentioned.

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

Not applicable.

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.*

Nothing to add.

3.2.1 Lack of specialisation and procedural obstacles

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

Portugal is not mentioned.

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

Not applicable.

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.*

Nothing to say here.

3.2.2 Specialised judges and quasi-judicial tribunals

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

Portugal is not mentioned.

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

Not applicable.

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.*

Nothing to mention.

3.3 Non-judicial remedies: independence, mandate and powers

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

Portugal is not mentioned.

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

Not applicable.

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.*

Nothing to say here.

3.3.1 Types of non-judicial bodies

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

Portugal is mentioned. The reference in the text is accurate.

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

Nothing to update.

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.*

Nothing to add.

3.3.2 The issue of independence

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

Portugal is mentioned. The reference in the text is accurate.

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

Nothing to update.

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

Not applicable.

3.3.3 Powers and specialisation of non-judicial remedial bodies

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

Portugal is mentioned and the references in the text are accurate.

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

Nothing to update.

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

Not applicable.

FRA key findings

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

Portugal is only indirectly mentioned.

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

Not applicable.

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.*

Nothing to add.

Conclusions

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

Portugal is not expressly mentioned

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

Not applicable.

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.*

Nothing to add.

Please replace the existing two references on Portuguese legislation on page 90 (FRA report) by the following ones:

- Portugal, Organic Law 4/2014 on the Intelligence System of the Portuguese Republic, amending and republishing Law 30/84 of 5 September (*Lei orgânica 4/ 2014, de 13 de Agosto, que altera e republica a lei 30/84, de 5 de Setembro, que aprova a Lei Quadro do Sistema de Informações da República Portuguesa*), 13 August 2014.
- Portugal, Law 50/2014 amending and republishing law 9/2007 laying down the Organic law of the Secretary-General of the Intelligence Services of the Portuguese Republic, the Strategic Defence Intelligence Service and the Security Intelligence Service (*Lei 50/2014, 13 de agosto que altera a Lei 9/2007, de 19 de fevereiro, que estabelece a orgânica do Secretário-Geral do Sistema de Informações da República Portuguesa, do Serviço de Informações Estratégicas de Defesa, (SIED) e do Serviço de Informações de Segurança, (SIS)*), 13 August 2014.

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

1.1.2 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
PT	Security Intelligence Service / <i>Serviço de Informações de Segurança (SIS)</i> Organic Law 4/2014 of 15 August, Article 21. ⁴¹		Strategic Defence Intelligence Service / <i>Serviço de Informações Estratégicas de Defesa (SIED)</i> Organic Law 4/2014. ⁴²	

1.1.3 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.

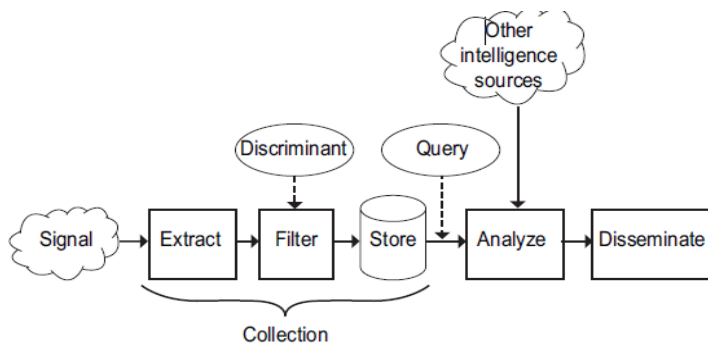
Figure not applicable in Portugal.⁴³ The laws in force do not allow us to say how intelligence work based on investigation, processing, interpretation, classification and preservation of data is done in the SIRP's sphere.

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⁴¹ Portugal, Organic Law 4/2014 amends and republishes Law 30/84 of 5 September that passed the Framework Law on the Intelligence System of the Portuguese Republic (*Lei orgânica 4/2014, de 13 de agosto que procede à alteração e republicação da Lei 30/84, de 5 de setembro, que aprova a Lei Quadro do Sistema de Informações da República Portuguesa*), 13 August 2014.

⁴² Portugal, Organic Law 4/2014 amends and republishes Law 30/84 of 5 September that passed the Framework Law on the Intelligence System of the Portuguese Republic (*Lei orgânica 4/2014, de 13 de agosto que procede à alteração e republicação da Lei 30/84, de 5 de setembro, que aprova a Lei Quadro do Sistema de Informações da República Portuguesa*), 13 August 2014, article 20, "The Defense Strategic Intelligence Service is the entity responsible for producing information aiming at preserving national Independence, national interests and the external security of the Portuguese State.

⁴³ See Portuguese Constitution, article 34 (4).



1.1.4 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.



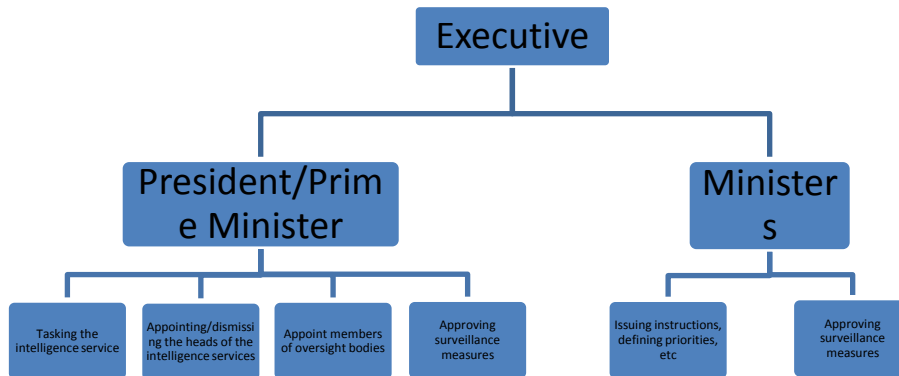
In Portugal, judicial accountability mechanisms do not include ex-ante oversight. Please delete this mention from the figure.⁴⁴

⁴⁴ Portugal, Statute of the Administrative and Fiscal Courts, Law 13/2002, which was successively amended Article 4 (1) a) (*Estatuto dos Tribunais Administrativos e Fiscais, Lei 13/2002, de 19 de Fevereiro*), February 19 2002, updated version available at: www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=418&tabela=leis.

1.1.5 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.

Suppress 3rd and 4th balloons under Prime Minister. Suppress 2nd balloon under Ministers. Replace Ministers by “Ministers only with specific delegation from Prime Minister”.⁴⁵



1.1.6 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
PT	X	

Note: Finland, Ireland and Malta do not have parliamentary committees that deal with intelligence services. However, Portugal has a Parliamentary Committee which deals with matters about the SIRP (Organic Law 4/2014, Article 36). This Committee has almost all the essential powers as defined in the FRA Report. Indeed, as a result of Article 36 in Law 4/2014, and by going through a Parliamentary Committee, the Portuguese Parliament may request the presence of the Supervisory Authority in order to clarify aspects about the way the Authority exercises its activity. Likewise, Article 9 (2) j) in the above-mentioned Law, states that the Supervisory Authority presents Statements of Opinion to the Parliamentary Committee as regards the way in which the Intelligence System of the Portuguese Republic (SIRP) operates. These Parliamentary Committee sessions are held behind closed doors whereby all those attending the hearings are bound by confidentiality. Although it is not

⁴⁵ In accordance with Organic Law 4/2014, Article 15 (2)).

specifically mentioned in the Law, the Parliamentary Committee dealing with these matters is the Committee for Constitutional Affairs, Rights, Freedoms and Guarantees, owing to the kind of activity undertaken by the SIRP. On the other hand, the Supervisory Authority works directly with the Parliament which ensures that the Authority enjoys the indispensable means needed for carrying out its mission. This means providing facilities, office personnel and adequate logistic support. Its budget has to receive sufficient funding needed to ensure the Authority's independence. Furthermore, the Supervisory Authority may, sporadically when demanded, apply for technical means and resources deemed necessary to ensure that its inspections are independent (Law 4/2014, Article 9 (4) and (5)).

1.1.7 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
PT	Supervisory Authority of the Intelligence System of the Portuguese Republic (<i>Conselho de Fiscalização do Sistema de Informações da República Portuguesa</i>)

1.1.8 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
PT	X		

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

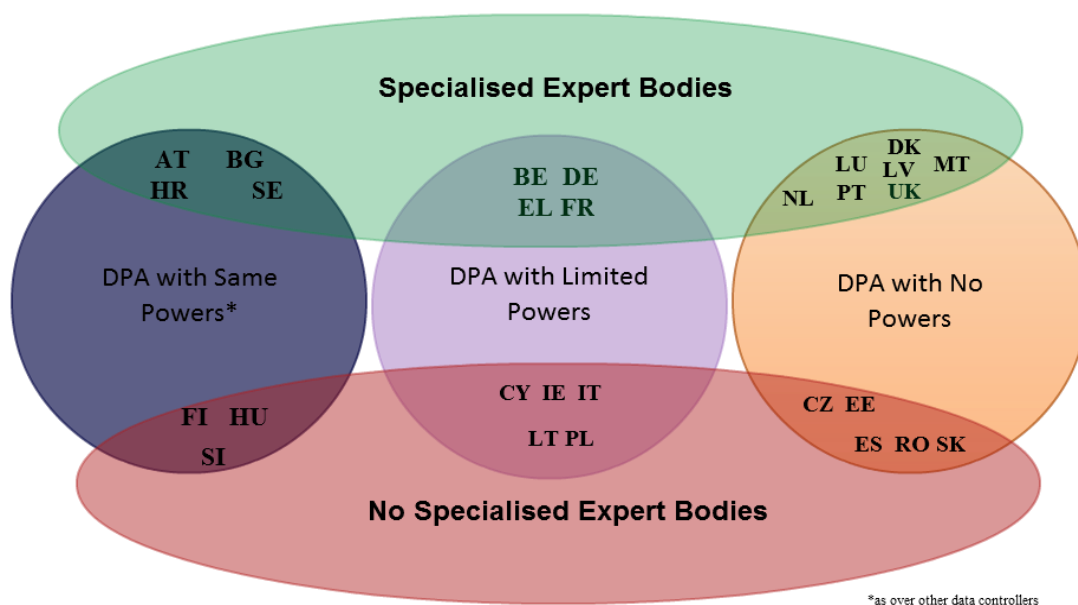
Same powers: refers to DPAs that have the exact same powers over NIS as over any other data controller.

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.

1.1.9 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.

Figure 4 is correct since there are specialised expert bodies in Portugal and the Portuguese DPA has no supervisory powers over the SIRP.



1.1.10 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
PT ⁴⁶					

1.1.11 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

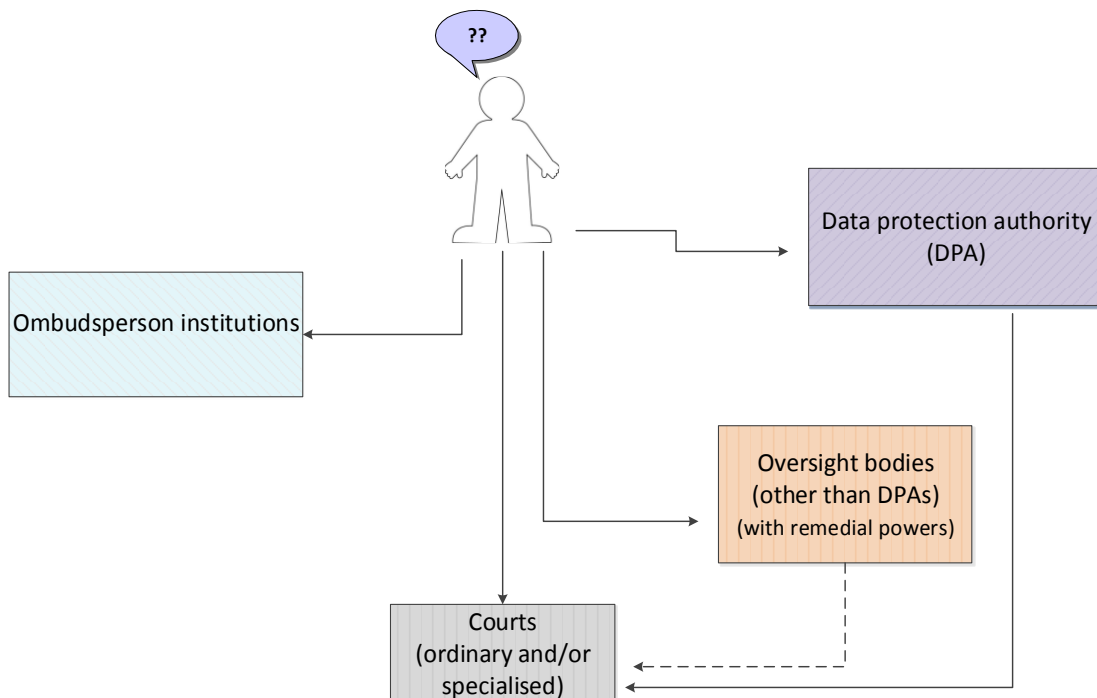
⁴⁶ The Portuguese intelligence service is prohibited from undertaking surveillance; the Portuguese Constitution only allows public authorities to interfere with correspondence, telecommunications or other means of communication in criminal proceedings, something which the intelligence service is not allowed to do.

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

1.1.12 Figure 5: Remedial avenues at the national level

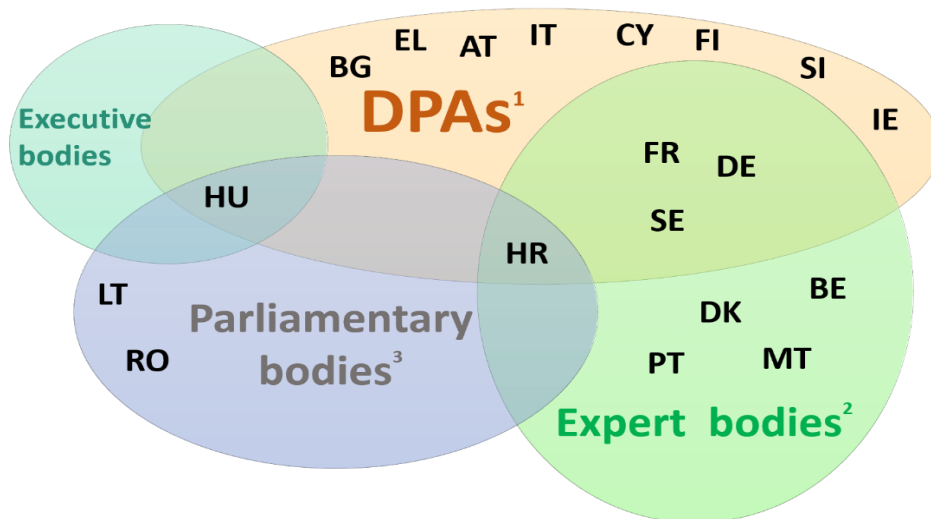
Please confirm that Figure 5 below (p. 60 of the FRA Report) illustrates the situation in your Member State in an accurate manner. If it is not the case, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

The remedial avenue of the DPA is not open to citizens in the case of SIRP activities.



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

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



- Notes: 1. The following should be noted regarding national data protection authorities: In Germany, the DPA may issue binding decisions only in cases that do not fall within the competence of the G 10 Commission. As for 'open-sky data', its competence in general, including its remedial power, is the subject of on-going discussions, including those of the NSA Committee of Inquiry of the German Federal Parliament
2. The following should be noted regarding national expert oversight bodies: In Croatia and Portugal, the expert bodies have the power to review individual complaints, but do not issue binding decisions. In Portugal the SIRP Data Supervisory Board "should order the cancelling or correction of any collected data which involve violation on rights, liberties and guarantees which guaranteed by the Constitution and by law and, if that is the case, to reorder the corresponding criminal action".⁴⁷ 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.

⁴⁷ Portugal, Organic Law 4/2014 amends and republishes Law 30/84 of 5 September that passed the Framework Law on the Intelligence System of the Portuguese Republic (*Lei orgânica 4/2014, de 13 de agosto, procede à alteração e republicação da Lei 30/84, de 5 de setembro, que aprova a Lei Quadro do Sistema de Informações da República Portuguesa*), 13 August 2014, Article 26 (6), available at: <https://dre.pt/application/dir/pdf1sdip/2014/08/15500/0419404206.pdf>.