

Short Thematic Report

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

Legal update

Country: ROMANIA

Version of 22 June 2016

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1 Description of tasks – Phase 3 legal update

1.1 Summary

There have been numerous developments in the area of surveillance during the last semester of 2014 up to mid-2016, some of them being ground-breaking.

1. *The legislative reform(s) that took place or are taking place and highlight the key aspect(s) of the reform.*

On 8 July 2015, Romania set up a national scheme for the collection and processing of Passenger Name Record (PNR) information, by virtue of the Government Ordinance no. 13/2015 on the Use of Passenger Name Records for Protection of National Security and Cross-border Cooperation to Combat Terrorism (*Ordonanța nr. 13/2015 privind utilizarea unor date din registrele cu numele pasagerilor în cadrul cooperării transfrontaliere pentru prevenirea și combaterea actelor de terorism, a infracțiunilor conexe acestora și a infracțiunilor contra securității naționale, precum și pentru prevenirea și înlăturarea amenințărilor la adresa securității naționale*).¹ Starting from this date, air carriers operating international flights to, from or through Romania have the obligation to transfer PNR data to a national passenger information unit (*Unitatea națională de informații privind pasagerii, UNIP*), established within the General Inspectorate of the Border Police (GIBP) (*Inspectoratul General al Poliției de Frontieră, IGPF*). Such data shall be shared with similar authorities from other Member States, as well as with third countries with which Romania or the European Union have concluded agreements in this respect. The government enacted this new legislation in anticipation of the PNR directive to be implemented in domestic legislation by 25 May 2018.² As a result, a legal framework already exists in Romania which will permit the untargeted collection of passenger information. Intelligence services will also have access to such information in order to detect patterns of suspicious behaviour to be followed up in connection with terrorist offences and other serious crimes.³

On 23 September 2015, the Romanian Parliament (*Parlamentul României*) adopted Law no. 235/2015 amending and supplementing Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector (*Legea nr. 235/2015 pentru modificarea și completarea Legii nr. 506/2004 privind prelucrarea datelor cu caracter personal și protecția vieții private în sectorul comunicațiilor electronice*).⁴ A key amendment

¹ Romania, Government Ordinance no. 13/2015 on the Use of Passenger Name Records for Protection of National Security and Cross-border Cooperation to Combat Terrorism (*Ordonanța nr. 13/2015 privind utilizarea unor date din registrele cu numele pasagerilor în cadrul cooperării transfrontaliere pentru prevenirea și combaterea actelor de terorism, a infracțiunilor conexe acestora și a infracțiunilor contra securității naționale, precum și pentru prevenirea și înlăturarea amenințărilor la adresa securității naționale*), 8 July 2015, available in Romanian at:

<http://lege5.ro/Gratuit/g4zdonbxhe/ordonanta-nr-13-2015-privind-utilizarea-unor-date-din-registrele-cu-numele-pasagerilor-in-cadrul-cooperarii-transfrontaliere-pentru-prevenirea-si-combaterea-actelor-de-terorism-a-infraciunilor-conexe>. All hyperlinks were last accessed on 9 June 2016.

² Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

³ European Parliament (2016), 'Parliament backs EU directive on use of Passenger Name Records (PNR)', Press release, 14 April 2016, available at: [http://www.europarl.europa.eu/news/en/news-room/20160407IPR21775/Parliament-backs-EU-directive-on-use-of-Passenger-Name-Records-\(PNR\)](http://www.europarl.europa.eu/news/en/news-room/20160407IPR21775/Parliament-backs-EU-directive-on-use-of-Passenger-Name-Records-(PNR)).

⁴ Romania, Law no. 235/2015 amending and supplementing Law no. 506/2004 on the processing of personal data and the protection of privacy in the electronic communications sector (*Legea nr. 235/2015 pentru modificarea și completarea Legii nr. 506/2004 privind prelucrarea datelor cu caracter personal și protecția vieții private în sectorul comunicațiilor electronice*), 23 September 2015 available in Romanian at: <http://lege5.ro/Gratuit/haydinjrg4/legea-nr-235-2015-pentru-modificarea-si->

provides that access by public authorities, including intelligence services, to collected traffic data will require a court order. Law no. 235/2015 was the result of the public debate over the so-called “Big Brother” legislation package which included laws repeatedly found by the Romanian Constitutional Court (*Curtea Constituțională a României*, CCR) to be in violation of fundamental rights, paramount among which was the right to privacy. This package of decisions of the Constitutional Court included Law no. 82/2012 regarding data retention (*Legea nr. 82/2012 privind reținerea datelor generate sau prelucrate de furnizorii de rețele publice de comunicații electronice și de servicii de comunicații electronice destinate publicului*),⁵ legislative proposal amending and supplementing Government Emergency Ordinance no.111 on Electronic Communications (*Legea pentru modificarea și completarea Ordonanței de Urgență a Guvernului nr. 111/2011 privind comunicațiile electronice*)⁶ and the Romanian Law on Cyber Security (*Legea privind securitatea cibernetică a României*).⁷

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

On 16 September 2014,⁸ the Romanian Constitutional Court (RCC) (*Curtea Constituțională a României*, CCR) invalidated the legislative proposal amending and supplementing Government Emergency Ordinance no. 111/2011 on Electronic Communications (*Legea pentru modificarea și completarea Ordonanței de Urgență a Guvernului nr. 111/2011 privind comunicațiile electronice*).⁹ This law required the mandatory registration of prepaid mobile phone SIM cards and public Wi-Fi users. According to the CCR’s decision, the legal provisions are not precise and predictable, and the manner in which the necessary data regarding the registration of prepaid SIM cards and Wi-Fi hotspot users is retained and stored does not provide for sufficient means to guarantee the necessary efficient protections for these personal data against abuse or any other kind of unlawful access to and use of these data.¹⁰ On 28 March 2016, the Minister for Communications and the Information Society (*Ministrul Comunicațiilor și pentru Societatea Informațională*) announced the introduction of a new legislative bill regulating the

[completarea-legii-nr-506-2004-privind-prelucrarea-datelor-cu-caracter-personal-si-protectia-vietii-private-in-sectorul-comunicatiilor-electronice.](#)

⁵ Romania, Constitutional Court (*Curtea Constituțională*) Decision no. 440, 8 July 2014 (*Decizia Nr. 440 din 8 iulie 2014 referitoare la excepția de neconstituționalitate a dispozițiilor Legii nr. 82/2012 privind reținerea datelor generate sau prelucrate de furnizorii de rețele publice de comunicații electronice și de servicii de comunicații electronice destinate publicului*), available at: www.ccr.ro/files/products/Decizia_440_20141.pdf.

⁶ Romania, Constitutional Court (*Curtea Constituțională*) Decision no. 461/2014, 16 September 2014 (*Decizia nr. 461 din 16 septembrie 2014 asupra obiecției de neconstituționalitate a dispozițiilor Legii pentru modificarea și completarea Ordonanței de urgență a Guvernului nr.111/2011 privind comunicațiile electronice*), available at: www.ccr.ro/files/products/Decizie_461_2014.pdf.

⁷ Romania, Constitutional Court (*Curtea Constituțională*) Decision no. 17, 21 January 2015, available at www.ccr.ro/files/products/Decizie_17_2015_EN_final.pdf.

⁸ This decision of the Romanian Constitutional Court is not mentioned in the previous national thematic report dated 27 October 2014. The reasoning underlying the decision was not available at the time.

⁹ Romania, Decision no. 461/2014 on the objection of unconstitutionality against the provisions of the Law amending and supplementing Government Emergency Ordinance no. 111/2011 on electronic communications (*Decizia nr. 461/2014 asupra obiecției de neconstituționalitate a dispozițiilor Legii pentru modificarea și completarea Ordonanței de urgență a Guvernului nr.111/2011 privind comunicațiile electronice*), 16 September 2014, available at: www.ccr.ro/files/products/Decizie_461_2014.pdf.

¹⁰ Romania, Decision no. 461/2014 on the objection of unconstitutionality against the provisions of the Law amending and supplementing Government Emergency Ordinance no. 111/2011 on electronic communications (*Decizia nr. 461/2014 asupra obiecției de neconstituționalitate a dispozițiilor Legii pentru modificarea și completarea Ordonanței de urgență a Guvernului nr.111/2011 privind comunicațiile electronice*), para 44, 16 September 2014, available at: www.ccr.ro/files/products/Decizie_461_2014.pdf.

purchase of such prepaid cards, which should prevent buyers from remaining anonymous.¹¹ The discussion re-emerged in the context of the terrorist attacks in Brussels and amid concerns raised by statements of the Romanian Prime Minister (*Primul Ministru al României*) during a television show that Romanian prepaid cards were used to prepare terrorist attacks in the European Union.¹² The Romanian Intelligence Service (*Serviciul Român de Informații*, SRI), in its capacity of national counterterrorism authority, only confirmed that Romanian prepaid cards were used in conflict zones such as Syria and Iraq,¹³ but also indicated that it was further investigating the matter.¹⁴

On 21 January 2015, the CCR declared unconstitutional the Romanian Law on Cyber Security (*Legea privind securitatea cibernetică a României*), adopted on 19 December 2014. One of the main reasons underlying the CCR's decision was that the national authority in the field of cyber security should rather be a civilian body than the National Centre for Cyber Security (*Centrul Național de Securitate Cibernetică*) which was operated by the Romanian Intelligence Service (*Serviciul Român de Informații*, SRI). As explained by the CCR, since “the National Cybersecurity Centre is a military structure as part of an intelligence service, hierarchically subordinated to the management bodies of this institution, and therefore under direct military-administrative control, it is obvious that *such entity does not meet the requirements with regard to the guarantees necessary for ensuring the respect for the fundamental rights relating to personal, family and private life and the secrecy of correspondence.*”¹⁵

On 16 February 2016, the CCR decided to strike down as unconstitutional the provisions of Article 142(1) of the Code of Criminal Procedure (*Codul de procedură penală*) allowing the SRI to engage in wiretapping in criminal cases. Pursuant to those provisions, technical surveillance ordered by a prosecutor upon a court warrant could be performed “by a criminal investigation body or by specialised workers from police or other specialised organs of the state.”¹⁶ The CCR held in its decision that the phrase “other specialised organs of the state” did not meet the quality standards of clarity, precision and foreseeability, since the law did not allow its subjects to determine exactly which “specialised organs of the state” had the power to carry on the measures ordered pursuant to a technical surveillance warrant, measures which involve a high degree of intrusion in the privacy of individuals.¹⁷ The CCR indicated that the decision should not apply in the cases that were definitively closed at the time of its publication,

¹¹ Chiriac, M. (2016), ‘Romania to Identify Pre-Paid Simcard Buyers’, *Balkan Insight Online Journal*, 29 March 2016, available at: <http://www.balkaninsight.com/en/article/romania-to-identify-prepay-card-holders-03-28-2016>.

¹² Pro TV (2016), “‘Cartele pre-pay din România, folosite în pregătirea unor atentate.’ Ciolos, despre riscul unui atac terorist la noi în țară’, *After 20 Years Show*, Pro TV, 27 March 2016, available at: <http://stirileprotv.ro/emisiuni/dupa-20-de-ani/dacian-ciolos-cartele-pre-pay-din-romania-folosite-in-pregatirea-unor-atentate-masurile-luate-dupa-atacurile-din-belgia.html>.

¹³ Digi24 (2016), ‘Exclusiv – SRI: Cartele prepaid românești folosite în Siria și Irak’, *Digi24*, 28 March 2016, available at: <http://www.digi24.ro/Stiri/Digi24/Actualitate/Stiri/SRI+Cartele+prepaid+romanesti+folosite+in+Siria+si+Irak>.

¹⁴ Romanian Intelligence Service (*Serviciul Român de Informații – SRI*) (2016), Press release, 30 March 2016, available at: <https://www.sri.ro/comunicat-de-presa-30-03-2016-18-13.html>.

¹⁵ Romania, Decision no. 17/2015 on the objection of unconstitutionality against the provisions of the Law on cybersecurity of Romania (*Decizia nr. 17/2015 asupra obiecției de neconstituționalitate a dispozițiilor Legii privind securitatea cibernetică a României*) (published in English on the official website of the CCR), para. 51, 21 January 2015, available at: www.ccr.ro/files/products/Decizie_17_2015_EN_final.pdf (emphasis in original).

¹⁶ Romania, Law no. 135/2010 on the Code of Criminal Procedure (*Lege nr. 135/2010 privind Noul Cod de Procedură Penală*), 1 July 2010, available at: <http://www.mpublic.ro/ncpp.pdf>.

¹⁷ Romania, Romania, Decision no. 51/2016 on the objection of unconstitutionality against the provisions of Art. 142(1) of the Code of Criminal Procedure (*Decizia nr. 51/2016 referitoare la excepția de neconstituționalitate a dispozițiilor art.142 alin.(1) din Codul de procedură penală*), para. 38, 16 February 2016, available at: https://www.ccr.ro/files/products/Decizia_51_2016.pdf.

but should apply in those cases still before the courts. The CCR's decision raised some concerns, notably with respect to the impact on pending cases involving terrorism and corruption allegations. In response, on 11 March 2016, the Romanian Government (*Guvernul României*) adopted Emergency Ordinance no. 6 on Certain Measures for the Enforcement of Technical Surveillance Warrants in Criminal Cases (*Ordonanța de urgență nr. 6 din 11 martie 2016 privind unele măsuri pentru punerea în executare a mandatelor de supraveghere tehnică dispuse în procesul penal*).¹⁸ The Emergency Ordinance, which applies until the Parliament takes action, amended the Code of Criminal Procedure (*Codul de procedură penală*), Law no. 304/2004 on Judicial Organisation (*Legea nr. 304/2004 privind organizarea judiciară*), as well as the Statutes governing the SRI and the Directorate for Investigating Organized Crime and Terrorism (*Direcția de Investigare a Infrafracțiunilor de Criminalitate Organizată și Terorism*, DIICOT). Although the phrase "other specialised organs of the state" has disappeared from the provisions of Article 142(1) of the Code of Criminal Procedure (*Codul de procedură penală*), the SRI's organs may now be designated as special criminal investigation bodies, even though only in national security matters and in order to carry out, under a prosecutor's supervision, technical surveillance warrants issued by a judge. Representatives of the civil society noted that this amendment appeared in the very final version of the Emergency Ordinance published in the Official Gazette (*Monitorul Oficial*) and was an extension of the SRI's powers in the realm of law enforcement.¹⁹

3. *The reports and inquiry by oversight bodies (parliamentary committees, specialised expert bodies and data protection authorities) in relation to the Snowden revelations.*

There is no available data for the covered period regarding any reports or specific inquiries by oversight bodies in relation to the Snowden revelations. The FRANET expert sent requests for information to the two Joint Permanent Commissions of the Senate and the Chamber of Deputies for the Exercise of Parliamentary Control over the Activity of the Romanian Intelligence Service (*Comisia comună permanentă a Camerei Deputaților și Senatului pentru exercitarea controlului parlamentar asupra activității Serviciului Român de Informații*), and over the Foreign Intelligence Service (*Comisia comună permanentă a Camerei Deputaților și Senatului pentru exercitarea controlului parlamentar asupra activității Serviciului de Informații Externe*), as well as to the data protection authority, i.e., the National Supervisory Authority for Personal Data Processing (*Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal*, ANSPDCP).²⁰ Only the latter responded, but provided no relevant information in this respect.²¹ According to the publicly available information, the Joint Permanent Commission of the Senate and the Chamber of Deputies for the Exercise of Parliamentary Control over the activity of the Romanian Intelligence Service (*Comisia comună permanentă a Camerei Deputaților și Senatului pentru exercitarea controlului parlamentar asupra activității Serviciului Român de Informații*) briefly discussed the Snowden revelations in December 2013 during the examination of the SRI's budget for fiscal year 2014. In a newspaper interview, the Chairman of the Commission declared, without providing further details, that the SRI had no cooperation agreement and no official or secret information sharing protocol with the NSA and that there was no indication that the NSA or another foreign

¹⁸ Romania, Emergency Ordinance no. 6/2016 on Certain Measures for the Enforcement of Technical Surveillance Warrants in Criminal Cases (*Ordonanța de urgență nr. 6/2016 privind unele măsuri pentru punerea în executare a mandatelor de supraveghere tehnică dispuse în procesul penal*), 11 March 2016, available at: <http://lege5.ro/Gratuit/geydcmrwgi2q/ordonanta-de-urgenta-nr-6-2016-privind-unele-masuri-pentru-punerea-in-executare-a-mandatelor-de-supraveghere-tehnica-dispuse-in-procesul-penal>.

¹⁹ Alex Costache, 'Surpriză în ordonanța privind interceptările. SRI a ajuns organ special de cercetare penală în cazurile de siguranță națională și terorism', *România Curată*, 13 March 2016, available at: <http://www.romaniacurata.ro/surpriza-in-ordonanta-privind-interceptarile-sri-a-ajuns-organ-special-de-cercetare-penala-in-cazurile-de-siguranța-naționala-si-terorism>.

²⁰ Requests for information sent by FRANET expert on 18 January 2016.

²¹ ANSPDCP response to questions sent by FRANET expert, dated 17 February 2016.

intelligence service had unilateral operations or illegally collected information on the Romanian territory. .²² The SRI confirmed this information in a press statement published on its website.²³

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.*

No specific work following the Snowden revelations had been reported. See above, point 3.

²² Mihaïu, L. (2013), ‘Interviu cu șeful Comisiei de control a SRI: Nu am descoperit interceptări ilegale’, *România liberă*, 18 December 2013, available at: <http://www.romanalibera.ro/opinii/interviuri/interviu-cu-seful-comisiei-de-control-a-sri--nu-am-descoperit-interceptari-ilegale-320728>.

²³ Romanian Intelligence Service (*Serviciul Român de Informații – SRI*) (2013), ‘Audieri, la Comisia parlamentară de control a activității SRI, cu privire la bugetul alocat pentru anul 2014’, 21 November 2013, available at : <https://www.sri.ro/audieri-la-comisia-parlamentara-de-control-a-activitatii-sri-cu-privire-la-bugetul-alocat-pentru-anul-2014.html>.

1.2 International intelligence services cooperation

1. *It is assumed that in your Member State international cooperation between intelligence services takes place. Please describe the legal basis enabling such cooperation and any conditions that apply to it as prescribed by law. If the conditions are not regulated by a legislative act, please specify in what type of documents such cooperation is regulated (e.g. internal guidance, ministerial directives etc.) and whether or not such documents are classified or publicly available.*

Pursuant to Article 15 of Law no. 14/1992 concerning the Organisation and Functioning of the Romanian Intelligence Service (*Legea nr. 14/1992 privind organizarea si functionarea Serviciului Roman de Informații*), the SRI may, upon approval by the Supreme Council for Defence of the Country (*Consiliul Suprem de Apărare a Țării*, CSAT), establish relations with similar foreign institutions.²⁴ Equivalent provisions, namely Articles 4(2) and 10(2¹), exist in Law no. 1/1998 concerning the Organisation and Functioning of the Foreign Intelligence Service (*Legea nr. 1/1998 privind organizarea si functionarea Serviciului de Informații Externe*), which also allow for joint covert operations.²⁵

According to the information published on its official website, the SRI has partnership relations with 119 security and intelligence services and law enforcement structures with similar functions in 64 countries and participates in departments and structures responsible with ensuring coordination, monitoring and implementation of security policies, such as NATO's Office of Security and Information Unit, the European Commission's Security Directorate, the EU Council's Security Office and Europol.²⁶ Some intelligence cooperation agreements are public and are ratified by statute, such as the cooperation agreement with Europol.²⁷ Still, most documents in this area are classified pursuant to Article 17(f) of Law no. 182 of 12 April 2002 (*Legea nr. 182 din 12 aprilie 2002 privind protecția informațiilor clasificate*) because they contain information related to intelligence work carried out by the lawful organs of the state for national security purposes.

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 State.*

In the absence of any response to requests for information sent to the two Joint Permanent Commissions of the Senate and the Chamber of Deputies for the Exercise of Parliamentary Control over the Activity of the Romanian Intelligence Service (*Comisia comună permanentă a Camerei Deputaților și Senatului pentru exercitarea controlului parlamentar asupra activității Serviciului Român de Informații*), and over the Activity of the Foreign Intelligence

²⁴ Romania, Law no. 14/1992 concerning the Organisation and Functioning of the Romanian Intelligence Service (*Legea nr. 14/1992 privind organizarea si functionarea Serviciului Roman de Informații*), 24 February 1992, Art. 15, available at: <https://www.sri.ro/fisiere/legislatie/Legea14.pdf>.

²⁵ Romania, Law no. 1/1998 concerning the Organisation and Functioning of the Foreign Intelligence Service (*Legea nr. 1/1998 privind organizarea si functionarea Serviciului de Informații Externe*), 6 January 2016, Arts. 4(2) and 10(2¹), available at: <https://www.sie.ro/pdf/legislatie/1.pdf>.

²⁶ Romanian Intelligence Service (*Serviciul Român de Informații – SRI*), Official presentation, 'Cooperare și parteneriat', available at: <https://www.sri.ro/cooperare-parteneriat.html>.

²⁷ Romania, Law no. 197/2004 ratifying the Agreement on cooperation between Romania and the European Police Office, signed in Bucharest on 25 November 2003 (*Legea nr. 197 din 25 mai 2004 pentru ratificarea Acordului privind cooperarea dintre România și Oficiul European de Poliție, semnat la București la 25 noiembrie 2003*), of 25 May 2004, available at: <https://www.sri.ro/fisiere/legislatie/legea197.pdf>.

Service (*Comisia comună permanentă a Camerei Deputaților și Senatului pentru exercitarea controlului parlamentar asupra activității Serviciului de Informații Externe*),²⁸ the following description of oversight mechanisms over international intelligence sharing and cooperation is based exclusively on desk research. Control over the activity of the Romanian Intelligence Service and over the activity of the Foreign Intelligence Service is performed by the Romanian Parliament. The Romanian Intelligence Service activity and the Foreign Intelligence Service activity are coordinated by the Supreme Council for Defence of the Country (*Consiliul Suprem de Apărare a Țării*, CSAT). The CSAT has the power to approve “the establishment of relations with similar foreign bodies by the institutions and bodies with responsibilities in national security matters.”²⁹ At the domestic level, the legal directorates of the respective intelligence services must make sure that the services comply with the Romanian Constitution and laws, as mandated by their Statutes, as well as with the principles of necessity and proportionality in carrying out their missions.³⁰

In Romania, parliamentary oversight concerning the National Intelligence Community (*Comunitatea națională de informații*) remains key. The Romanian Parliament has separate oversight committees for its domestic security service and foreign intelligence service, as well as a defence committee for each chamber whose mandate includes some aspects of both services’ work.³¹ The Joint Permanent Commission of the Senate and the Chamber of Deputies for the Exercise of Parliamentary Control over the Activity of the Foreign Intelligence Service (*Comisia comună permanentă a Camerei Deputaților și Senatului pentru exercitarea controlului parlamentar asupra activității Serviciului de Informații Externe*) has expressly the task to monitor cooperation with similar foreign services.³² However, the Commission issues no public reports. More generally, there are a number of independent sources, notably the case law of the European Court of Human Rights,³³ indicating that parliamentary oversight of surveillance in Romania is inadequate and that parliamentary oversight has not worked as well as expected, given the identified accountability problems.³⁴

²⁸ Requests for information sent by FRANET expert on 18 January 2016.

²⁹ Romania, Law no. 415 of 27 June 2002 concerning the Organisation and Functioning of the Supreme Council for Defence of the Country (*Legea nr. 415 din 27 iunie 2002 privind organizarea și funcționarea Consiliului Suprem de Apărare a Țării*), 27 June 2002, Art. 4(f)(3), available at: <http://csat.presidency.ro/?pag=41>.

³⁰ Romanian Intelligence Service (*Serviciul Român de Informații – SRI*), Official presentation, ‘Activitatea SRI - Legalitate și Transparență’, available at: <https://www.sri.ro/control-democratic.html>.

³¹ Council of Europe, Commissioner for Human Rights (2015), ‘Democratic and effective oversight of national security services’, Issue paper, Strasbourg, Council of Europe, p. 42, 5 June 2015, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2796355&SecMode=1&DocId=2286978&Usage=2>.

³² Romania, Decision no. 44/1998 of the Romanian Parliament concerning the organisation and functioning of the The Joint Permanent Commission of the Senate and the Chamber of Deputies for the Exercise of Parliamentary Control over the activity of the External Intelligence Service (*Hotărârea nr. 44/1998 a Parlamentului României privind organizarea și funcționarea Comisiei comune permanente a Camerei Deputaților și Senatului pentru exercitarea controlului parlamentar asupra activității Serviciului de Informații Externe*), 28 October 1998, Art. 6(j), available at: <https://www.sie.ro/pdf/legislatie/44.pdf>.

³³ ECtHR, *Bucur and Toma v. Romania*, No. 40238/02, 8 January 2013, para. 98.

³⁴ Council of Europe, Report on the Democratic Oversight of the Security Services adopted by the Venice Commission at its 71st Plenary Session (Venice, 1-2 June 2007) and updated by the Venice Commission at its 102nd Plenary Session (Venice, 20-21 March 2015), CDL-AD(2015)010-e, 15 December 2015, para. 200, n. 119, p. 43, available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)010-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)010-e).

1.3 Access to information and surveillance

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

Exemptions in relation to access to information are provided for in Law no. 544 of 12 October 2001 on Free Access to Public Information (*Legea nr. 544 din 12 octombrie 2001 privind liberul acces la informațiile de interes public*). Article 12(1)(a) of Law no. 544/2001 specifically excludes information regarding national defence, as well as public safety and order from free access, if such information has been classified according to the law.³⁵ As per Article 13, information that favours or conceals breaches of the law by a public authority or institution cannot be included in the category of classified information and is public information.³⁶ The protection of classified information is governed by Law no. 182 of 12 April 2002 (*Legea nr. 182 din 12 aprilie 2002 privind protecția informațiilor clasificate*). Article 17 listing state secret information refers to two relevant categories, at points (f) and (g), respectively, covering information related to intelligence work carried out by public authorities established by law for the purposes of national defence and security, and to means, methods, techniques and working equipment as well as specific intelligence sources used by public authorities who engage in intelligence operations.³⁷ By virtue of Article 20, any Romanian natural or legal person may complain, in accordance with the law on administrative litigation, to the authorities having classified a given information against such classification, its duration and the assigned level of secrecy.³⁸

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

In accordance with Article 13(1) of Law no. 677/2001 on the Protection of Individuals with regard to the Processing of Personal Data and the Free Movement of such Data, as amended and supplemented (*Legea nr. 677/2001 pentru protecția persoanelor cu privire la prelucrarea datelor cu caracter personal și libera circulație a acestor date, modificată și completată*), any concerned individual is entitled to obtain from an operator, upon request and free of charge for one request per year, confirmation that data concerning him or her has or has not been processed by that operator.³⁹ Law no. 677/2001 defines the term “operator” as any person or legal entity, private or public, including public authorities and institutions, who determines the purpose and means for the processing of personal data.⁴⁰ Article 2(7) provides for a broad exception, stating

³⁵ Romania, Law no. 544 of 12 October 2001 on Free Access to Public Information (*Legea nr. 544 din 12 octombrie 2001 privind liberul acces la informațiile de interes public*), 12 October 2001, Art. 12(1)(a), available at: <https://www.sri.ro/fisiere/legislatie/legea544.pdf>.

³⁶ Romania, Law no. 544 of 12 October 2001 on Free Access to Public Information (*Legea nr. 544 din 12 octombrie 2001 privind liberul acces la informațiile de interes public*), 12 October 2001, Art. 13, available at: <https://www.sri.ro/fisiere/legislatie/legea544.pdf>.

³⁷ Romania, Law no. 182 of 12 April 2002 on the Protection of Classified Information (*Legea nr. 182 din 12 aprilie 2002 privind protecția informațiilor clasificate*), 12 April 2002, Art. 17(f) and 17(g), available at: <https://www.sri.ro/fisiere/legislatie/legea182.pdf>.

³⁸ Romania, Law no. 182 of 12 April 2002 on the Protection of Classified Information (*Legea nr. 182 din 12 aprilie 2002 privind protecția informațiilor clasificate*), 12 April 2002, Art. 20, available at: <https://www.sri.ro/fisiere/legislatie/legea182.pdf>.

³⁹ Romania, Law no. 677/2001 on the Protection of Individuals with regard to the Processing of Personal Data and the Free Movement of Such Data, as amended and supplemented (*Legea nr. 677/2001 pentru protecția persoanelor cu privire la prelucrarea datelor cu caracter personal și libera circulație a acestor date, modificată și completată*), 21 November 2001, Art. 13(1), available at: <http://www.dataprotection.ro/servlet/ViewDocument?id=35>.

⁴⁰ Romania, Law no. 677/2001 on the Protection of Individuals with regard to the Processing of Personal Data and the Free Movement of Such Data, as amended and supplemented (*Legea nr. 677/2001 pentru protecția persoanelor cu privire la prelucrarea datelor cu caracter personal și libera*

that this law does not apply to the processing and transfer of personal data performed in the areas of national defence and security and within the limits and restrictions established by law.⁴¹

As required by Article 3 of Law no. 544 of 12 October 2001 on Free Access to Public Information (*Legea nr. 544 din 12 octombrie 2001 privind liberul acces la informațiile de interes public*),⁴² intelligence services provide for public access to information *ex officio* or upon request through their public relations departments. The SRI, for example, receives petitions from citizens, who may ask to have access to data that concerns them, collected by the intelligence service.⁴³ In its 2014 report on relations with citizens, the SRI states that it received 24,937 petitions, 28 of which had been filed under the Law on Free Access to Public Information.⁴⁴ A more detailed report concerning these 28 petitions indicates that 15 of them concerned the SRI's activity, while two were requests for information regarding the procedure to authorize and perform surveillance under Law no. 535 of 25 November 2004 on Preventing and Combating Terrorism (*Legea nr. 535 din 25 noiembrie 2004 privind prevenirea și combaterea terorismului*).⁴⁵ According to the same report, 17 out of the 28 petitions received a negative answer because the information requested was exempted from free public access.⁴⁶ It is unclear what the result with respect to the two petitions on terrorism-related surveillance was. In 2015, the number of reported petitions was 24,951, 72 of which concerned free access to public information. The SRI answered favourably to 46 petitions, rejected 22 (as covering information exempted from free public access) and took no further action in 4 cases.⁴⁷ In a separate report, the intelligence service indicated that three out of the 72 petitions were related to the surveillance procedure under Law no. 535/2004, but similar to the previous year's statistics, it is impossible to know what the result in relation to these three petitions was.⁴⁸ In light of the information provided in the reports for both 2014 and 2015, none of the SRI's determinations or negative responses triggered an appeal before the courts under Law no. 554/2004 on Administrative Litigation (*Legea contenciosului administrativ nr.*

circulație a acestor date, modificată și completată), 21 November 2001, Art. 3(e), available at: <http://www.dataprotection.ro/servlet/ViewDocument?id=35>.

⁴¹ ANSPDCP response to questions sent by FRANET expert, dated 17 February 2016. See also Romania, Law no. 677/2001 on the Protection of Individuals with regard to the Processing of Personal Data and the Free Movement of Such Data, as amended and supplemented (*Legea nr. 677/2001 pentru protecția persoanelor cu privire la prelucrarea datelor cu caracter personal și libera circulație a acestor date, modificată și completată*), 21 November 2001, Art. 2(7), available at: <http://www.dataprotection.ro/servlet/ViewDocument?id=35>.

⁴² Romania, Law no. 544 of 12 October 2001 on Free Access to Public Information (*Legea nr. 544 din 12 octombrie 2001 privind liberul acces la informațiile de interes public*), 12 October 2001, Art. 3, available at: <https://www.sri.ro/fisiere/legislatie/legea544.pdf>.

⁴³ Romanian Intelligence Service (*Serviciul Român de Informații – SRI*), Official presentation, 'Întrebări frecvente', available at: <https://www.sri.ro/intrebari-frecvente/intrabari-frecvente.html#faq2>.

⁴⁴ Romanian Intelligence Service (*Serviciul Român de Informații – SRI*) (2014), 'Relațiile Serviciului Român de Informații cu cetățenii în anul 2014', available at: https://www.sri.ro/fisiere/rapoarte/Raport_relatii_cet_2014.pdf.

⁴⁵ Romania, Law no. 535 of 25 November 2004 on Preventing and Combating Terrorism (*Legea nr. 535 din 25 noiembrie 2004 privind prevenirea și combaterea terorismului*), 25 November 2004, available at: <https://www.sri.ro/fisiere/legislatie/legea535.pdf>.

⁴⁶ Romanian Intelligence Service (*Serviciul Român de Informații – SRI*) (2014), 'Raport privind accesul la informațiile de interes public pentru anul 2014', available at: https://www.sri.ro/fisiere/rapoarte/Raport_acces_inf_2014.pdf.

⁴⁷ Romanian Intelligence Service (*Serviciul Român de Informații – SRI*) (2015), 'Relațiile Serviciului Român de Informații cu cetățenii în anul 2015', available at: https://www.sri.ro/fisiere/rapoarte/Relatiile_SRI_cu_cetatenii_in_anul_2015.pdf.

⁴⁸ Romanian Intelligence Service (*Serviciul Român de Informații – SRI*) (2015), 'Raport privind accesul la informațiile de interes public pentru anul 2015', available at: https://www.sri.ro/fisiere/rapoarte/Raport_privind_accesul_la_informatiile_de_interes_public_pentru_anul_2015.pdf.

554/2004).⁴⁹ No equivalent information is available with respect to any potential requests for free access to public information, filed with the other intelligence services.

⁴⁹ Romania, Law no. 554/2004 on Administrative Litigation (*Legea contenciosului administrativ nr. 554/2004*), 2 December 2004, available at: <http://lege5.ro/Gratuit/gu3dsojy/legea-contenciosului-administrativ-nr-554-2004>.

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. of the FRA report) when answering the questions.

Introduction

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

Romania is not mentioned in the Introduction to the report. When discussing the case-law of the European Court of Human Rights at page 9, the report should also mention the standards based on Article 10 of the ECHR (freedom of expression) and reference the following judgement: ECtHR, *Bucur and Toma v. Romania*, No. 40238/02, 8 January 2013.

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.

The references in the report concerning Romania are accurate, as explained in more detail below.

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

1.1 Intelligence services

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

The reference in the text at page 14 is accurate.

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

1.2 Surveillance measures

1. If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.
2. If your Member State is mentioned, please update the data (new legislation, new report etc.)

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

Romania is not mentioned in section 1.2 on surveillance measures. Both the Romanian Intelligence Service (*Serviciul Român de Informații*) and the Foreign Intelligence Service (*Serviciul de Informații Externe*) collect signals intelligence (SIGINT), in addition to open source intelligence (OSINT) and human intelligence (HUMINT). There is no specialised SIGINT collection authority. Article 2 of Law no. 14/1992 concerning the Organisation and Functioning of the Romanian Intelligence Service (*Legea nr. 14/1992 privind organizarea și funcționarea Serviciului Român de Informații*) grants the SRI the power to conduct surveillance and, within the limits of the law, collect, verify and process information in order to identify, prevent and combat threats to Romania's national security.⁵⁰ Furthermore, Article 9(e) authorises the SRI to access data generated or processed by providers of public networks or electronic communications service providers, other than content. Similarly, Article 10(1) of Law no. 1/1998 concerning the Organisation and Functioning of the Foreign Intelligence Service (*Legea nr. 1/1998 privind organizarea și funcționarea Serviciului de Informații Externe*) allows the SIE to collect, verify, protect, process and retain data and information regarding national security.⁵¹ Article 10(3) of the law indicates that the actions performed by the SIE must not infringe upon the citizens' rights and fundamental freedoms, their private life, honour or reputation, or submit them to illegal restrictions.⁵²

1.3 Member States' laws on surveillance

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

On 8 July 2015, Romania set up a national scheme for the collection and processing of Passenger Name Record (PNR) information, in anticipation of the PNR Directive.⁵³ The scheme is now in place by virtue of the Government Ordinance no. 13/2015 on the Use of Passenger Name Records for Protection of National Security and Cross-border Cooperation to Combat Terrorism (*Ordonanța nr. 13/2015 privind utilizarea unor date din registrele cu numele pasagerilor în cadrul cooperării transfrontaliere pentru prevenirea și combaterea actelor de terorism, a infracțiunilor conexe acestora și a infracțiunilor contra securității naționale, precum și pentru prevenirea și înlăturarea amenințărilor la adresa securității naționale*). It was published in the Official Gazette (*Monitorul Oficial*) on 13 July 2015 and

⁵⁰ Romania, Law no. 14/1992 concerning the Organisation and Functioning of the Romanian Intelligence Service (*Legea nr. 14/1992 privind organizarea și funcționarea Serviciului Român de Informații*), 24 February 1992, Art. 2, available at: <https://www.sri.ro/fisiere/legislatie/Legea14.pdf>.

⁵¹ Romania, Law no. 1/1998 concerning the Organisation and Functioning of the External Intelligence Service (*Legea nr. 1/1998 privind organizarea și funcționarea Serviciului de Informații Externe*), 6 January 1998, Art. 10(1), available at: <https://www.sie.ro/pdf/legislatie/1.pdf>.

⁵² Romania, Law no. 1/1998 concerning the Organisation and Functioning of the External Intelligence Service (*Legea nr. 1/1998 privind organizarea și funcționarea Serviciului de Informații Externe*), 6 January 1998, Art. 10(3), available at: <https://www.sie.ro/pdf/legislatie/1.pdf>.

⁵³ Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

entered into force on 12 August 2015.⁵⁴ Starting from this date, air carriers operating international flights to, from or through Romania have the obligation to provide PNR data for their passengers. PNR data shall be transferred to a National Passenger Information Unit (*Unitatea națională de informații privind pasagerii*, UNIP), established within the General Inspectorate of the Border Police (GIBP) (*Inspectoratul General al Poliției de Frontieră*, IGPF). Such data shall be shared with similar authorities from other EU Member States, as well as with third countries with which Romania or the EU have concluded agreements in this respect. While drafted along the lines of the European Commission's proposal of 2011,⁵⁵ Ordinance no. 13/2015 also addressed some of the concerns expressed by the European Union Agency for Fundamental Rights (FRA) in its opinion of 14 June 2011.⁵⁶ Under the proposal, the PNR data collected may be processed in view of the prevention, detection, investigation and prosecution of terrorist offences and "serious crime." Instead of using such open formulation, Ordinance no. 13/2015 provides that PNR data may only be collected in regard to preventing and combating terrorism and other connected offences, national security-related crimes and threats to national security, as defined by specific provisions contained in Law no. 535/2004 on Preventing and Combating Terrorism (*Legea nr. 535/2004 privind prevenirea și combaterea terorismului*), in the Romanian Criminal Code (*Codul penal*) and in Law no. 51/1991 on National Security (*Legea nr. 51 din 1991 privind siguranța națională a României*), respectively.⁵⁷ However, the Romanian Government (*Guvernul României*) did not follow the FRA's recommendations on two important points. First, Ordinance no. 13/2015, like the Commission's proposal, permits data collection and processing for all passengers on international flights, instead of a more targeted approach. Second, it provides that the only remedy against the measures taken thereunder is for data subjects to file a request with UNIP and bring a case before the National Supervisory Authority for Personal Data Processing (*Autoritatea Națională de Supraveghere a Prelucrării Datelor cu Caracter Personal*, ANSPDCP) or a court of law.⁵⁸ It does not allow the supervisory authority, namely the

⁵⁴ Romania, Government Ordinance no. 13/2015 on the Use of Passenger Name Records for Protection of National Security and Cross-border Cooperation to Combat Terrorism (*Ordonanța nr. 13/2015 privind utilizarea unor date din registrele cu numele pasagerilor în cadrul cooperării transfrontaliere pentru prevenirea și combaterea actelor de terorism, a infracțiunilor conexe acestora și a infracțiunilor contra securității naționale, precum și pentru prevenirea și înlăturarea amenințărilor la adresa securității naționale*), 8 July 2015, available at: <http://lege5.ro/Gratuit/g4zdonbxhe/ordonanta-nr-13-2015-privind-utilizarea-unor-date-din-registrele-cu-numele-pasagerilor-in-cadrul-cooperarii-transfrontaliere-pentru-prevenirea-si-combaterea-actelor-de-terorism-a-infracțiunilor-conexe>.

⁵⁵ European Commission, *Proposal for a directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime*, COM(2011) 32 final, 2011/0023(COD), Brussels, 2 February 2011, available at: http://ec.europa.eu/home-affairs/news/intro/docs/com_2011_32_en.pdf.

⁵⁶ FRA (European Union Agency for Fundamental Rights) (2011), *Opinion on the proposal for a directive on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (COM(2011) 32 final)*, Opinion 1/2011, Vienna, 14 June 2011, available at: http://fra.europa.eu/sites/default/files/fra_uploads/1786-FRA-PNR-Opinion-2011_EN.pdf.

⁵⁷ Romania, Government Ordinance no. 13/2015 on the Use of Passenger Name Records for Protection of National Security and Cross-border Cooperation to Combat Terrorism (*Ordonanța nr. 13/2015 privind utilizarea unor date din registrele cu numele pasagerilor în cadrul cooperării transfrontaliere pentru prevenirea și combaterea actelor de terorism, a infracțiunilor conexe acestora și a infracțiunilor contra securității naționale, precum și pentru prevenirea și înlăturarea amenințărilor la adresa securității naționale*), 8 July 2015, Art. 3, available at: <http://lege5.ro/Gratuit/g4zdonbxhe/ordonanta-nr-13-2015-privind-utilizarea-unor-date-din-registrele-cu-numele-pasagerilor-in-cadrul-cooperarii-transfrontaliere-pentru-prevenirea-si-combaterea-actelor-de-terorism-a-infracțiunilor-conexe>.

⁵⁸ Romania, Government Ordinance no. 13/2015 on the Use of Passenger Name Records for Protection of National Security and Cross-border Cooperation to Combat Terrorism (*Ordonanța nr. 13/2015 privind utilizarea unor date din registrele cu numele pasagerilor în cadrul cooperării transfrontaliere pentru prevenirea și combaterea actelor de terorism, a infracțiunilor conexe acestora și a*

ANSPDCP, to take action on its own initiative to protect the interests of data subjects. So far, the ANSPDCP has received no reports or complaints in relation to the processing of PNR data under Ordinance no. 13/2015.⁵⁹

On 23 September 2015, the Romanian Parliament (*Parlamentul României*) adopted Law no. 235/2015 amending and supplementing Law no. 506/2004 on the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector (*Legea nr. 235/2015 pentru modificarea și completarea Legii nr. 506/2004 privind prelucrarea datelor cu caracter personal și protecția vieții private în sectorul comunicațiilor electronice*). Following the invalidation in 2014 by the Romanian Constitutional Court (*Curtea Constituțională a României*) of Law no. 82/2012 regarding Data Retention (*Legea nr. 82/2012 privind reținerea datelor generate sau prelucrate de furnizorii de rețele publice de comunicații electronice și de servicii de comunicații electronice destinate publicului*),⁶⁰ the new legislation provides that access by state authorities to collected traffic data shall be allowed only with prior authorisation by a judge.⁶¹ In addition, when transmitted electronically, requests by state authorities and the respective replies shall be signed with an advanced electronic signature based on a qualified certificate issued by an accredited certification services provider in order to ensure data integrity and traceability.⁶² The declared purpose of the law is better to regulate access to personal data held by electronic communications service providers, by offering the necessary guarantees against abuse and arbitrariness and for the protection of privacy.⁶³ Yet, several NGOs active in the field of data protection emphasised the deficiencies of the law in terms of clarity and consistency with other relevant norms, notably the Code of Criminal Procedure (*Codul de procedură penală*), as well as the absence of an explicit limitation of the measures to serious offenses.⁶⁴ Furthermore, according to the Association for Technology and Internet (*Asociația pentru Tehnologie și Internet, ApTI*), no real debate eventually took place and the Parliament swiftly adopted the new law.⁶⁵ As a result, on 5 October 2015, ApTI and four other NGOs called upon the President of Romania (*Președintele României*) to refuse its promulgation and

infracțiunilor contra securității naționale, precum și pentru prevenirea și înlăturarea amenințărilor la adresa securității naționale), 8 July 2015, Art. 18(9), available at:

<http://lege5.ro/Gratuit/g4zdobxhe/ordonanta-nr-13-2015-privind-utilizarea-unor-date-din-registrele-cu-numele-pasagerilor-in-cadrul-cooperarii-transfrontaliere-pentru-prevenirea-si-combaterea-actelor-de-terorism-a-infracțiunilor-conexe>.

⁵⁹ ANSPDCP response to questions sent by FRANET expert, dated 17 February 2016.

⁶⁰ Romania, Constitutional Court (*Curtea Constituțională*) Decision no. 440, 8 July 2014 (*Decizia Nr. 440 din 8 iulie 2014 referitoare la excepția de neconstituționalitate a dispozițiilor Legii nr. 82/2012 privind reținerea datelor generate sau prelucrate de furnizorii de rețele publice de comunicații electronice și de servicii de comunicații electronice destinate publicului*), available at: www.ccr.ro/files/products/Decizia_440_20141.pdf.

⁶¹ Romania, Law no. 235/2015 amending and supplementing Law no. 506/2004 on the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector (*Legea nr. 235/2015 pentru modificarea și completarea Legii nr. 506/2004 privind prelucrarea datelor cu caracter personal și protecția vieții private în sectorul comunicațiilor electronice*), 12 October 2015, Art. 12¹(1), available at: <http://lege5.ro/Gratuit/haydinjrg4/legea-nr-235-2015-pentru-modificarea-si-completarea-legii-nr-506-2004-privind-prelucrarea-datelor-cu-caracter-personal-si-protectia-vietii-private-in-sectorul-comunicațiilor-electronice>.

⁶² Romania, Law no. 235/2015 amending and supplementing Law no. 506/2004 on the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector (*Legea nr. 235/2015 pentru modificarea și completarea Legii nr. 506/2004 privind prelucrarea datelor cu caracter personal și protecția vieții private în sectorul comunicațiilor electronice*), 12 October 2015, Art. 12¹(3), available at: <http://lege5.ro/Gratuit/haydinjrg4/legea-nr-235-2015-pentru-modificarea-si-completarea-legii-nr-506-2004-privind-prelucrarea-datelor-cu-caracter-personal-si-protectia-vietii-private-in-sectorul-comunicațiilor-electronice>.

⁶³ Statement of reasons for the bill, available at: <http://www.senat.ro/legis/PDF/2015/15L327EM.pdf>.

⁶⁴ Memo prepared by ApTI available at: <http://www.apti.ro/sites/default/files/Opinie-ApTI-proiect-modif-506.pdf>.

⁶⁵ ApTI response to request for information sent by FRANET expert, dated 30 September 2015.

send the law back to the Romanian Parliament (*Parlamentul României*) for additional discussions and a more transparent decision-making process. They mentioned that the civil society's comments had been ignored and that the lack of public information prompted its inaccurate description in the media as yet another "Big Brother law", despite the fact that it no longer provided for bulk surveillance.⁶⁶ On 9 October 2015, the President of Romania (*Președintele României*) promulgated the law, which was published in the Romanian Official Gazette (*Monitorul Oficial*) on 14 October 2015 and entered into force on 17 October 2015.

On 11 March 2016, the Romanian Government (*Guvernul României*) adopted Emergency Ordinance no. 6 on Certain Measures for the Enforcement of Technical Surveillance Warrants in Criminal Cases (*Ordonanța de urgență nr. 6 din 11 martie 2016 privind unele măsuri pentru punerea în executare a mandatelor de supraveghere tehnică dispuse în procesul penal*). The Emergency Ordinance, which entered into force on 14 March 2016, amended the Code of Criminal Procedure (*Codul de procedură penală*), Law no. 304/2004 on Judicial Organisation (*Legea nr. 304/2004 privind organizarea judiciară*), as well as the Statutes governing the Directorate for Investigating Organized Crime and Terrorism (*Direcția de Investigare a Infracțiunilor de Criminalitate Organizată și Terorism*, DIICOT) and the SRI. According to the new text of Article 142(1) of the Code of Criminal Procedure, the "prosecutor enforces technical surveillance warrants or may order that such enforcement be carried out by criminal investigation bodies or by specialised police officers," who will directly use the necessary technical means and procedures.⁶⁷ The SRI will, however, retain exclusive competence to obtain, process and store information in national security matters.⁶⁸ Furthermore, the SRI's organs may be designated as special criminal investigation bodies within the meaning of the Code of Criminal Procedure with respect to crimes against national security.⁶⁹ In response to the adoption of this emergency, albeit temporary, legislation, ApTI published on 30 March 2016 an open letter to the Romanian Prime Minister (*Primul Ministru al României*) criticising the lack of transparency in the decision-making process and noting the discrepancies between the text of the emergency ordinance leaked online and the one published in the Official Gazette (*Monitorul Oficial*). ApTI denounced more generally the absence of a fundamental rights impact assessment with respect to the new set of law proposals in the area of surveillance and called for a real and well-reasoned debate involving all interested parties.⁷⁰

On 12 and 13 April 2016, the President of Romania (*Președintele României*) organized consultations with representatives of the parliamentary parties on national security laws. In a press conference, he stated that the new legislation must be clear and stable, safeguard civil liberties while guaranteeing citizens' security and be adopted with wide support from political

⁶⁶ ApTI (2015), 'Scrisoare adresată Președintelui Klaus Iohannis', 5 October 2015, available at: <https://www.apti.ro/sites/default/files/Scrisoare%20finala%20presedinte%20Klaus%20Iohannis%20-%205%20octombrie.pdf>.

⁶⁷ Romania, Emergency Ordinance no. 6/2016 on Certain Measures for the Enforcement of Technical Surveillance Warrants in Criminal Cases (*Ordonanța de urgență nr. 6/2016 privind unele măsuri pentru punerea în executare a mandatelor de supraveghere tehnică dispuse în procesul penal*), 11 March 2016, Art. I(2), available at: <http://lege5.ro/Gratuit/geydcmrwgi2q/ordonanta-de-urgenta-nr-6-2016-privind-unele-masuri-pentru-punerea-in-executare-a-mandatelor-de-supraveghere-tehnica-dispuse-in-procesul-penal>.

⁶⁸ Romania, Law no. 14/1992 concerning the Organisation and Functioning of the Romanian Intelligence Service (*Legea nr. 14/1992 privind organizarea si functionarea Serviciului Roman de Informatii*), 24 February 1992, Art. 8(2), available at: <https://www.sri.ro/fisiere/legislatie/Legea14.pdf>.

⁶⁹ Romania, Law no. 14/1992 concerning the Organisation and Functioning of the Romanian Intelligence Service (*Legea nr. 14/1992 privind organizarea si functionarea Serviciului Roman de Informatii*), 24 February 1992, Art. 13, available at: <https://www.sri.ro/fisiere/legislatie/Legea14.pdf>.

⁷⁰ Manolea, B. (2016), 'Domnule prim-ministru, așteptăm calendarul discuțiilor așezate. Și pe pre-pay, și pe interceptari, și pe securitate cibernetică', *ApTI*, 30 March 2016, available at: <https://privacy.apti.ro/2016/03/30/domnule-prim-ministru-asteptam-calendarul-discutiilor-asezate-si-pe-pre-pay-si-pe-interceptari-si-pe-securitate-cibernetica>.

parties and the civil society. Currently, there is a package of three main laws under preparation, on amending the Counter-Terrorism Law (*Legea nr. 535/2004 privind prevenirea și combaterea terorismului*),⁷¹ on the purchase of prepaid SIM cards and on cyber security, respectively.⁷²

FRA key findings

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

Romania is not specifically mentioned in the key findings, which references no particular Member State. In summary, the country has established different intelligence services bodies for civil and military matters. The civil services are further sub-divided into one service with a domestic mandate and one with a foreign mandate. All intelligence services are regulated by law. The primary aim of the intelligence services is to protect national security, but the term is not defined. While a regulatory framework exists for surveillance in general, the Romanian legislation only regulates in detail targeted surveillance, the applicable rules being set out in the Code of Criminal Procedure (*Codul de procedură penală*).

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.*

The references to Romania in the report are accurate, with the exceptions set out below.

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

2.1 Executive control

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

Control over the activity of the Romanian Intelligence Service and over the activity of the Foreign Intelligence Service is performed by the Romanian Parliament. The Romanian Intelligence Service activity and the Foreign Intelligence Service activity are coordinated by the Supreme Council for Defence of the Country (*Consiliul Suprem de Apărare a Țării*, CSAT).

⁷¹ Romania, Law no. 535 of 25 November 2004 on Preventing and Combating Terrorism (*Legea nr. 535 din 25 noiembrie 2004 privind prevenirea și combaterea terorismului*), 25 November 2004, available at: <https://www.sri.ro/fisiere/legislatie/legea535.pdf>.

⁷² President of Romania (*Președintele României*) (2016), Press statement, 13 April 2016, available at: <http://www.presidency.ro/ro/media/agenda-presedintelui/declaratia-de-presa-a-Presedintelui-Romaniei-domnul-Klaus-Iohannis-13-04-2016>.

2.2 Parliamentary oversight

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

The references to Romania in the report are accurate, with the exceptions set out below.

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

2.2.1 Mandate

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

The reference in the text at page 35 is accurate, with the exception of the reference in footnote 233 to Law No. 1/1998 concerning the Organisation and Functioning of the Foreign Intelligence Service (*Legea nr. 1/1998 privind organizarea si functionarea Serviciului de Informatii Externe*), 6 January 1998, Art. 6 (a), (e) and (f). The correct reference is Romania, Decision no. 44/1998 of the Romanian Parliament concerning the Organisation and Functioning of the Joint Permanent Commission of the Senate and the Chamber of Deputies for the Exercise of Parliamentary Control over the Activity of the Foreign Intelligence Service (*Hotărârea nr. 44/1998 a Parlamentului României privind organizarea și funcționarea Comisiei comune permanente a Camerei Deputaților și Senatului pentru exercitarea controlului parlamentar asupra activității Serviciului de Informații Externe*), 28 October 1998, Art. 6 (a), (e) and (f).

The reference in the table at page 36 is accurate.

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

2.2.2 Composition

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

The reference at page 39 to the Parliament being the appointing authority applies *mutatis mutandis* to Romania.

2.2.3 Access to information and documents

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

Romania's Joint Standing Committee on the Exercise of Parliamentary Control of the Romanian Intelligence Service is an example of oversight committees that has unrestricted access to information.⁷³

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.*

The reference at page 35 is accurate.

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

2.3 Expert oversight

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

The reference in the table at page 42 is accurate.

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

2.3.1 Specialised expert bodies

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

The references in the table at page 42 is accurate.

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

2.3.2 Data protection authorities

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

The references in the text at page 47, in the table at page 49 and in figure 4 at page 50 are accurate.

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

⁷³ Council of Europe, Commissioner for Human Rights (2015), 'Democratic and effective oversight of national security services', Issue paper, Strasbourg, Council of Europe, p. 44, 5 June 2015, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2796355&SecMode=1&DocId=2286978&Usage=2>.

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

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.*

The references in the table at page 52 and in the text at page 54 are accurate.

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

See above the developments on new legislation in the area of surveillance.

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

FRA key findings

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

Romania is not specifically mentioned in the key findings, which references no particular Member State. Surveillance measures by the intelligence services are submitted to executive control and parliamentary oversight, but not to any form of expert scrutiny. Parliamentary committees have wide powers, including the handling of complaints and the right to issue binding decisions. Despite such wide powers, reports by monitoring bodies question the effectiveness of parliamentary oversight over intelligence services in Romania.

3 Remedies

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

The references to Romania in the report are accurate, as explained in more detail below.

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.*

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.*

The references in the text at pages 62-63 are accurate. See also section 1.3(1).

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.*

3.2 Judicial remedies

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

In order to assess better the efficacy of judicial oversight, FRANET expert filed a request for information with the High Court of Cassation and Justice (*Înalta Curte de Casație și Justiție*, ICCJ), asking for statistical data for the relevant period regarding the number of surveillance-related applications made, and warrants issued, on the basis of the Code of Criminal Procedure (*Codul de procedură penală*) and of Law no. 51/1991 on National Security (*Legea nr. 51/1991 privind siguranța națională a României*), respectively.⁷⁴ However, FRANET expert received no response. This came as a surprise since a somewhat similar request for information had been previously granted. In a letter to a third party dated 9 October 2015, the ICCJ indicated that it had issued, pursuant to Law no. 51/1991 on National Security (*Legea nr. 51/1991 privind siguranța națională a României*), 2692 wiretapping warrants in 2014 and 2020 in 2015 (until 30 September 2015). The number of authorizations granted on the basis of the Code of Criminal Procedure (*Codul de procedură penală*) was 1867 in 2014 and 1463 in 2015 (until 22 September 2015).⁷⁵

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

3.2.1 Lack of specialisation and procedural obstacles

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

Any person claiming a violation of fundamental rights and freedoms as a result of surveillance activities may file a complaint, as the case may be, with the parliamentary commission overseeing the activity of the respective intelligence service, with courts or with the criminal investigation bodies, or apply in court for damages incurred as a result of such activities.⁷⁶

3.2.2 Specialised judges and quasi-judicial tribunals

1. *If your Member State is mentioned in this chapter/section/sub-section, please check the accuracy of the reference.*
2. *If your Member State is mentioned, please update the data (new legislation, new report etc.)*

⁷⁴ Request for information sent by FRANET expert to the High Court of Cassation and Justice, Information and Public Relations Office, on 18 January 2016.

⁷⁵ Letter no. 189/E/P sent by the High Court of Cassation and Justice, Information and Public Relations Office, to Mr George Tărăță, special reporter with *Lumea Justiției* (Justice World), 9 October 2015, available at: http://www.luju.ro/static/files/2015/octombrie/11/raspuns_iccj_luju.pdf.

⁷⁶ Romania, Law no. 51/1991 concerning the National Security of Romania (*Legea nr. 51/1991 privind securitatea națională a României*), 29 July 1991, Art. 22.

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 Romania there are no specialised judges or courts to deal with cases in the area of surveillance. In accordance with Law no. 51/1991, art 15 (6), the request to authorize information gathering activities which involve restrictions of the exercise of fundamental human rights and freedoms is analysed, with urgency, in the council chamber, by a judge specifically appointed by the High Court of Cassation and Justice. Judges handling classified information must however obtain a security certificate from the SRI.⁷⁷ Law no. 182/2002, art.7 (4), guarantees the access of judges to classified information state secret and restricted information (*secret de serviciu*) provided his/her validation, election or appointment and oath taking.

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.*

The references to Romania in the report are accurate, as explained in more detail below.

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.*

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.*

The reference in the text at page 70 is accurate.

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

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.*

The reference in the text at page 72 is accurate. In a press conference which took place on 13 April 2016, the President of Romania (*Președintele României*) underscored the necessity for the members of the parliamentary commissions ensuring intelligence oversight to gain professional expertise in the area of national security.⁷⁸

⁷⁷ Romania, Law no. 182 of 12 April 2002 on the Protection of Classified Information (*Legea nr. 182 din 12 aprilie 2002 privind protecția informațiilor clasificate*), 12 April 2002, Art. 13, available at: <https://www.sri.ro/fisiere/legislatie/legea182.pdf>.

⁷⁸ President of Romania (*Președintele României*) (2016), Press statement, 13 April 2016, available at: <http://www.presidency.ro/ro/media/agenda-presedintelui/declaratia-de-presa-a-Presedintelui-Romaniei-domnul-Klaus-Iohannis-13-04-2016>.

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.*

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.*

The statements in the text at page 72 and in the table at page 73 are accurate. A footnote should reference Decision no. 30/1993 of the Romanian Parliament concerning the Organization and Functioning of the Joint Permanent Commission of the Senate and the Chamber of Deputies for the Exercise of Parliamentary Control over the Activity of the Romanian Intelligence Service (*Hotărârea nr. 30/1993 a Parlamentului României privind organizarea și funcționarea Comisiei comune permanente a Camerei Deputaților și Senatului pentru exercitarea controlului parlamentar asupra activității Serviciului Român de Informații*), 23 June 1993, Art. 5 (b) and (c), as well as Decision no. 44/1998 of the Romanian Parliament concerning the Organization and Functioning of the Joint Permanent Commission of the Senate and the Chamber of Deputies for the Exercise of Parliamentary Control over the activity of the Foreign Intelligence Service (*Hotărârea nr. 44/1998 a Parlamentului României privind organizarea și funcționarea Comisiei comune permanente a Camerei Deputaților și Senatului pentru exercitarea controlului parlamentar asupra activității Serviciului de Informații Externe*), 28 October 1998, Art. 6 (e) and (f).

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

FRA key findings

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

Romania is not specifically mentioned in the key findings, which references no particular Member State. Only judicial remedies are available, as indicated above.

Conclusions

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

Romania is not specifically mentioned in the conclusions. As a general rule, Romanian courts apply the case law of the ECtHR at all levels. They are, therefore, expected to apply also the most recent case law developed in the context of signals intelligence.⁷⁹

⁷⁹ ECtHR, Grand Chamber, *Roman Zakharov v. Russia*, No. 47143/06, 4 December 2015; ECtHR, *Szabó and Vissy v. Hungary*, No. 37138/14, 12 January 2016.

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

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

- Please, delete all lines not referring to your country in the table below (see Annex p. 93 of the FRA Report)
- Check accuracy of the data

The data in the table is accurate.

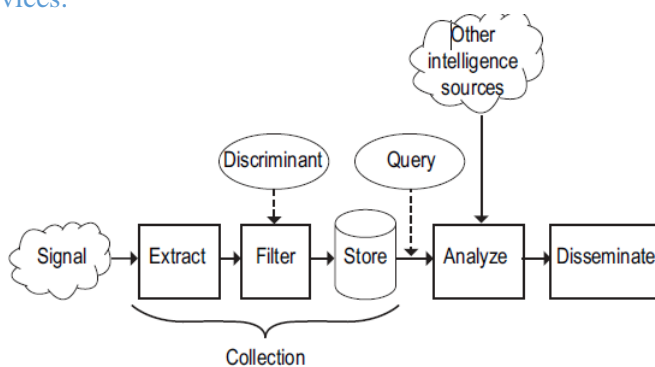
- Add in track changes any missing information (incl. translation and abbreviation in the original language).
- Provide the reference to the national legal framework when updating the table.

	Civil (internal)	Civil (external)	Civil (internal and external)	Military
RO	Romanian Intelligence Service/ <i>Serviciul Roman de Informatii</i> (SRI) Department for Information and Internal Protection/ <i>Departamentul de Informații și Protecție Internă</i> (DIPI)	Foreign Intelligence Service/ <i>Serviciul de Informații Externe</i> (SIE)		Defense General Directorate for Information/ <i>Direcția Generală de Informații a Apărării</i> (DGIA)

1.5.2 Figure 1: A conceptual model of signals intelligence

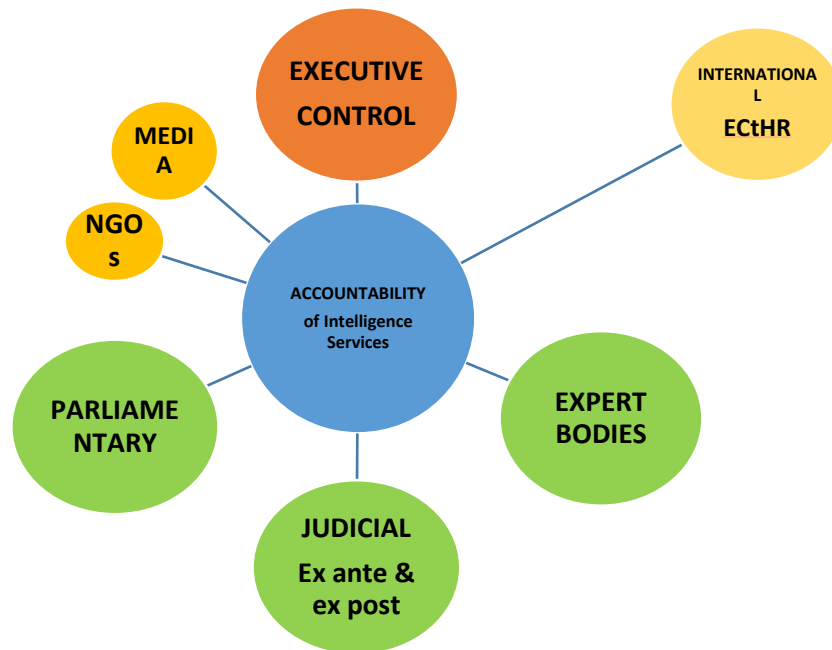
- Please, provide a reference to any alternative figure to Figure 1 below (p. 16 of the FRA Report) available in your Member State describing the way signals intelligence is collected and processed.

There is no available information concerning SIGINT collection by Romanian intelligence services.



1.5.3 Figure 2: Intelligence services' accountability mechanisms

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

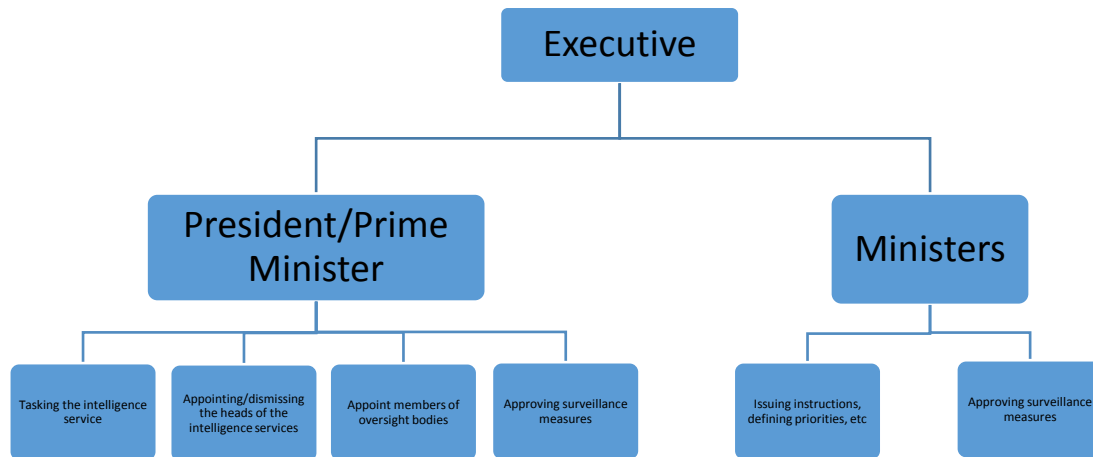


There are no expert bodies in Romania with oversight powers over the intelligence services, as already mentioned in the report so the green bubble on Expert bodies should be deleted.

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

Please confirm that Figure 3 below (p. 33 of the FRA Report) properly captures the executive control over the intelligence services in your Member State. If it is not the case, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

Control over the activity of the Romanian Intelligence Service and over the activity of the Foreign Intelligence Service is performed by the Romanian Parliament. The Romanian Intelligence Service activity and the Foreign Intelligence Service activity are coordinated by the Supreme Council for Defence of the Country (*Consiliul Suprem de Apărare a Țării*, CSAT). Also the appointment of the heads of the intelligence services is not done by the PM as indicated below. The Romanian Constitution in Article 65 (2) f) provides that the heads of the SIE and SRI are voted by the Parliament following the proposal made by the President. The appointment in 2015 of a new head for SIE disclosed a lack of clarity and coherence given that Law no. 1/1998 concerning the Organisation and Functioning of the Foreign Intelligence Service (*Legea nr. 1/1998 privind organizarea si functionarea Serviciului de Informații Externe*), 6 January 1998, provides that the CSAT will send the appointment for the vote of the Parliament based on the proposal of the President.⁸⁰



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

Please, delete all lines not referring to your country in the table below (see p. 36 of the FRA Report)

Please check the accuracy of the data. Please confirm that the parliamentary committee in your Member State was properly categorised by enumerating the powers it has as listed on p. 35 of the FRA Report. Please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

The data provided in the table below is accurate.

Member States	Essential powers	Enhanced powers
---------------	------------------	-----------------

⁸⁰ Romania, Law no. 1/1998 concerning the Organisation and Functioning of the External Intelligence Service (*Legea nr. 1/1998 privind organizarea si functionarea Serviciului de Informații Externe*), 6 January 1998, available at: <https://www.sie.ro/pdf/legislatie/1.pdf>.

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

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

Please, delete all lines not referring to your country in the table below (p. 42 of the FRA Report). Please check the accuracy of the data. In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

The data provided in the table below is accurate.

EU Member State	Expert Bodies
RO	N.A.

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

Please, delete all lines not referring to your country in the table below (p. 49 of the FRA Report). Please check the accuracy of the data. In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

The data provided in the table below is accurate.

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

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

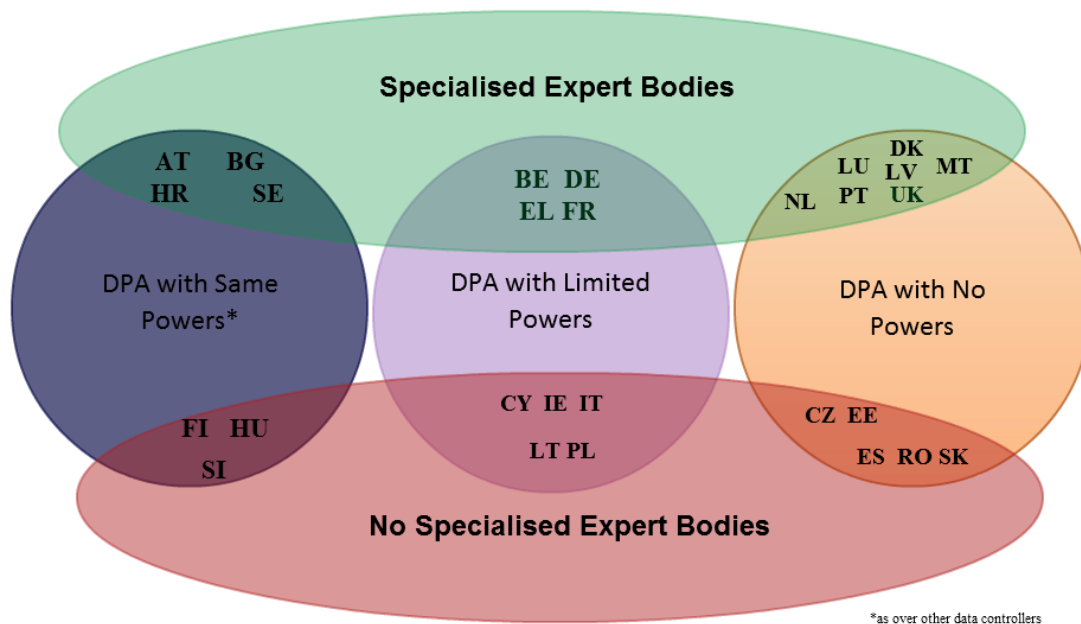
Same powers: refers to DPAs that have the exact same powers over NIS as over any other data controller.

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.

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

Please check the accuracy of Figure 4 below (p. 50 of the FRA Report). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

The information provided in Figure 4 below is accurate.



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

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

The data provided in the table below is accurate.

EU Member State	Judicial	Parliamentary	Executive	Expert bodies	None
RO	X				

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

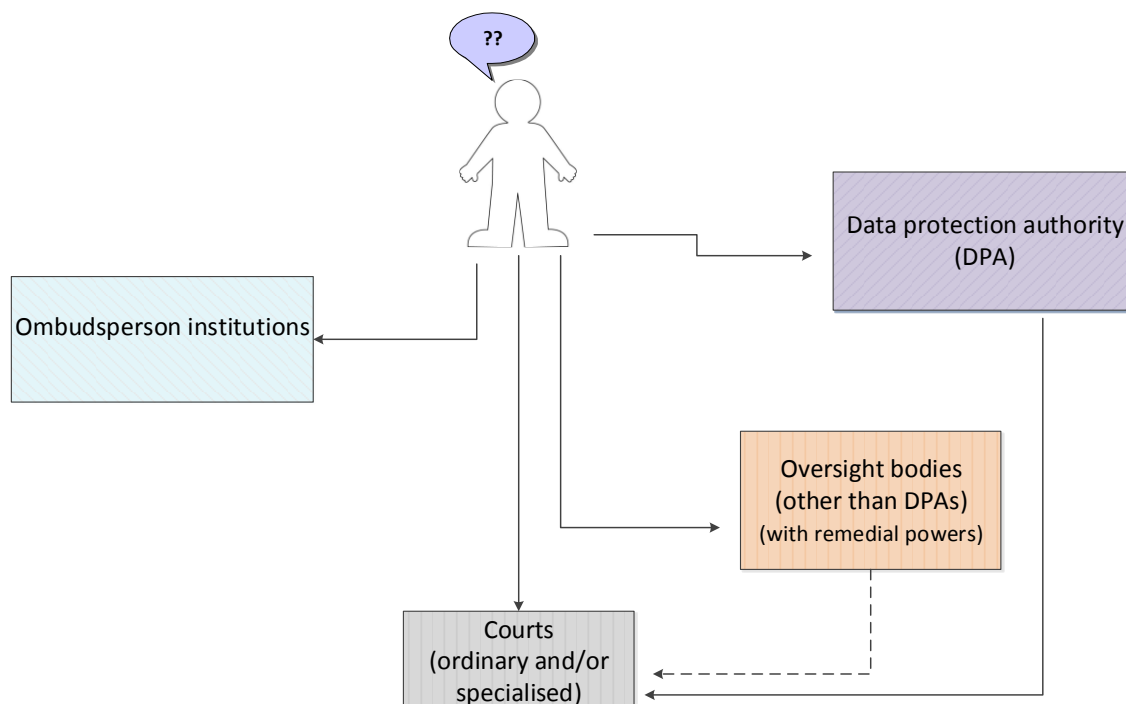
Please check the accuracy of Table 5 below (p. 55 of the FRA Report). In case of inaccuracy, please suggest any amendment(s) as appropriate and substantiate it/them with specific reference to the legal framework.

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

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.

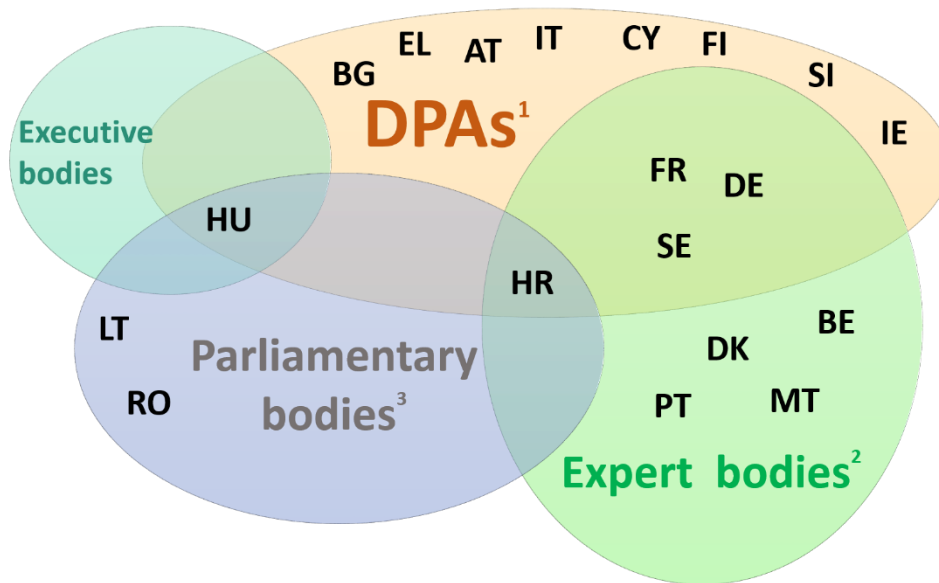
In Romania, remedies in the area of surveillance exist before the relevant parliamentary commissions and before ordinary courts.



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

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

The data provided in Figure 6 below is accurate.



Notes: 1. The following should be noted regarding national data protection authorities: In Germany, the DPA may issue binding decisions only in cases that do not fall within the competence of the G 10 Commission. As for 'open-sky data', its competence in general, including its remedial power, is the subject of on-going discussions, including those of the NSA Committee of Inquiry of the German Federal Parliament

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.