

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



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Opening session

*The repercussions on intelligence oversight of a rapidly
changing world*

Key issues

- Detailed and up-to-date legal frameworks: **pre-condition for safeguarding fundamental rights.**
- Remedies ensure the effectiveness of fundamental rights safeguards: **individuals should be able to obtain proper redress.**
- Effective and comprehensive oversight systems.

Standards: UN and ECHR converging human rights standards

- In accordance with the law (quality of law)
 - Safeguards:
 - Adequate oversight (incl. approval)
 - Effective remedies
- Principles of necessity and proportionality
- Discrimination

} UN

Remedies - overview of avenues

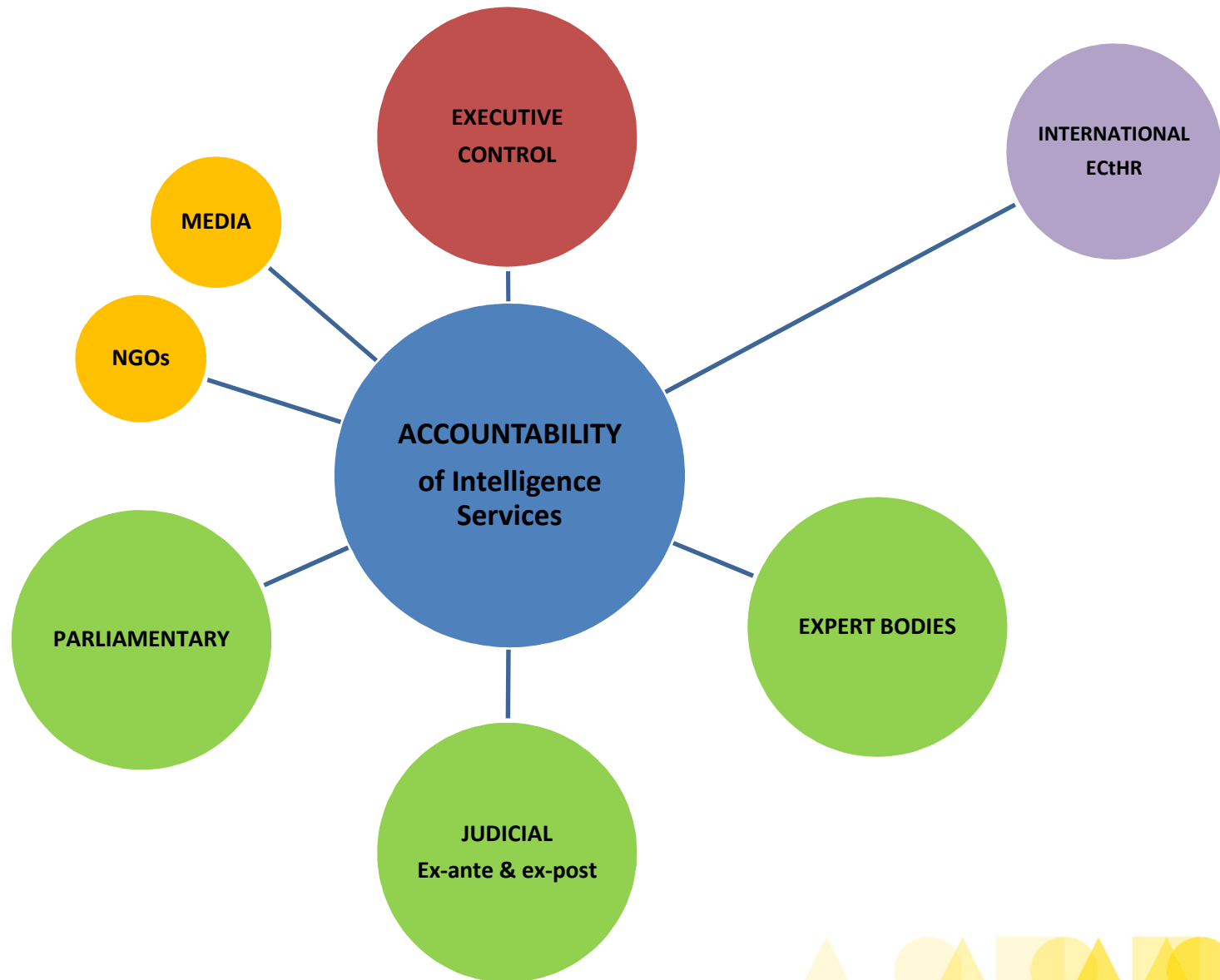
- **Judicial**

- National courts (across EU 28)
- Specialised courts/tribunals

- **Non-judicial**

- Parliamentary committees
- Executive bodies
- Expert bodies, incl. DPAs
- Other bodies (e.g. ombudsperson institutions)

Oversight of intelligence services



Approval of targeted surveillance measures

- Different surveillance measures require different approval procedures across the EU.
- **Judiciary:** 17 MS
- Alternatives:
 - **Expert bodies:** 3 MS
 - **The executive:** 7 MS
- **None:**
 - No prior approval certain surveillance measures: 2 MS.
 - Szabo and Vissy v Hungary compliant with ECtHR standards?

Disclaimer: this data is based on current FRA research and might be subject to modifications.

Approval of signals intelligence

- Germany: strategic interception of international communication: **Parliamentary Control Panel / G10 Commission** authorisation .
- Sweden: monitoring and collecting signals intelligence over the airways and by fibre optic cables: **Foreign Intelligence Court** authorisation.
- The Netherlands:
 - untargeted interception of non-cable bound telecoms: **no authorisation**.
 - applying keywords or 'selectors': **ministerial approval**.
- The United Kingdom: interception of external communications via telecommunications during transmission: **Secretary of State authorisation**.

Parliamentary oversight

24 MS have parliamentary committees that oversee intelligence services. Of these, **21 MS** are specialised committees.

Basic powers:

- receiving reports from the intelligence services
- reporting to parliament

Enhanced powers:

- receiving complaints
- issuing recommendations/issuing binding decisions

Not all committees are given unrestricted access to classified information.

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Specialised expert bodies

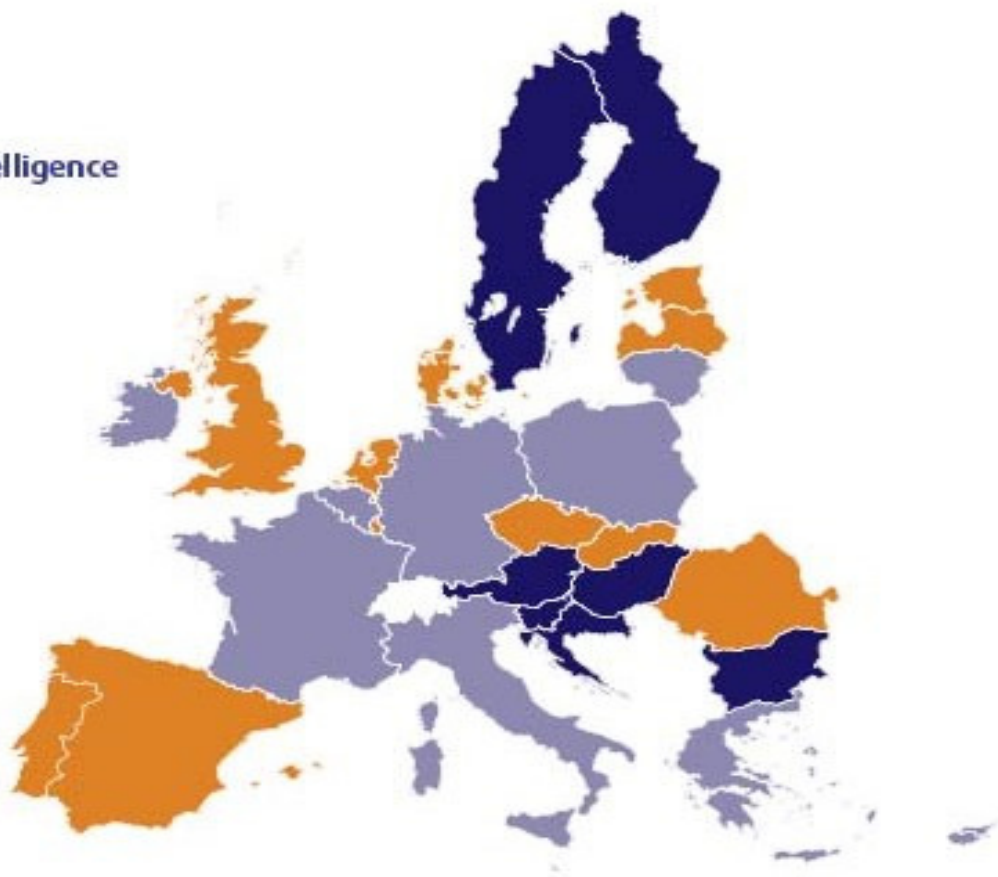
- Expert bodies must have **adequate powers, expertise, resources, and independence**.
- **14 MS** have specialised expert bodies.
- Powers:
 - Advising parliament and/or the executive
 - Supervising intelligence operations/measures
 - Investigating complaints

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Competences of data protection authorities over intelligence services

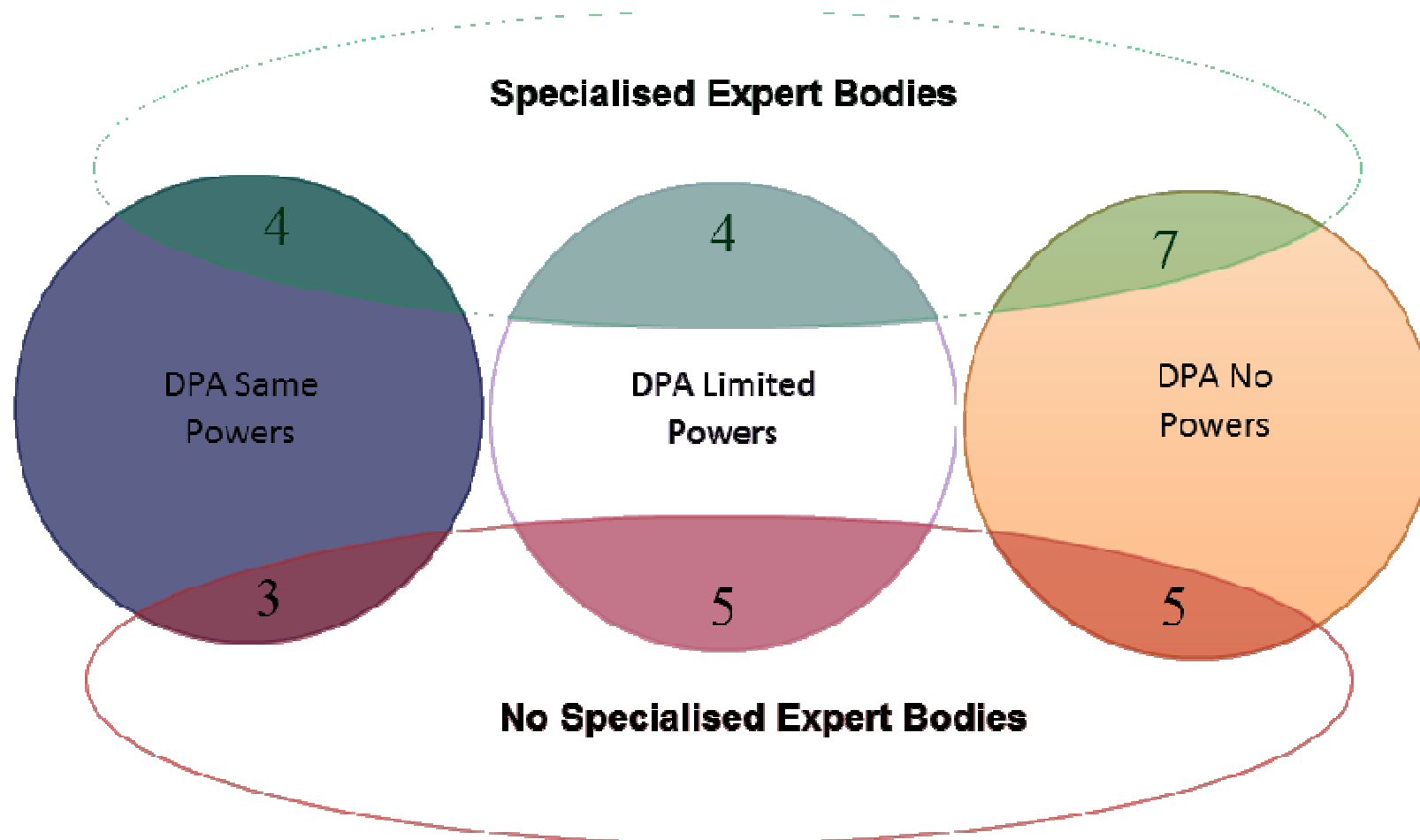
DPAs' powers over national intelligence services, by EU Member State

-  Same powers
-  Limited powers
-  No powers



Disclaimer: this map is based on current FRA research and might be subject to modifications.

Specialised expert bodies and DPAs across the EU



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Next steps: qualitative social fieldwork

- Interviewing representatives of key actors.
- Assessing whether the legal frameworks are fundamental-rights compliant:
 - Day-to-day work of oversight bodies
 - Effectiveness of remedies

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Thank you for your
attention!



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