

CCBE SURVEY regarding the meaning and use of 'national security' as a legal concept in European states

1. In your jurisdiction, is there a legal concept of 'national security'?

Austria	<p>There is no legal definition of "National Security). However, the Government of the Republic of Austria supplied the parliament in 2011 a report of a new Austrian security strategy. On July 3rd 2013 the parliament (National Council) has accepted a <u>resolution</u> on account of this report by majority decision.</p> <p>Besides, the Government was asked to form the Austrian security policy after the general recommendations agreed in the resolution as well as the recommendations to the internal security, to foreign-policy aspects of the security policy and defence policy¹.</p>
Belgium	Oui
Czech Republic	<p>The term "National security" is not defined in the Czech legal system. However, it can be derived from the Constitutional Act on the security of the Czech Republic which in Article 1 stipulates that <i>"It is the State's basic duty to ensure the Czech Republic's sovereignty and territorial integrity, the protection of its democratic foundations, and the protection of lives, health and property."</i></p> <p>The aforementioned Act also defines three types of emergency regimes that may be declared in accordance with the intensity, territorial extent and character of the situation. These are 1) a state of emergency; 2) a condition of threat to the State; 3) a state of war.</p> <p>The security of the Czech Republic is to be ensured by its armed forces, the armed security corps, rescue corps and emergency services. State authorities, bodies of self-governing territorial units and natural and legal persons are obliged to participate in safeguarding the Czech Republic's security.</p> <p>The National Security Council - a standing body responsible for coordinating the Czech Republic's security issues and preparing draft measures to ensure the country's security, was also set up by this Constitutional Act. The National Security Council comprises the Prime Minister and other members of the Government in accordance with a Government decision.</p> <p>The national security is further outlined in „The Security Strategy of the Czech Republic" which defines general security risks, long-term plans and measures aimed at the security of the Czech Republic and its citizens. With the rise of cyberattacks in recent years act on Cyber Security and "The National Cyber Security Strategy" were adopted.</p>
France	<p>Oui, par exemple, l'article L1111-1 du Code de la défense, par déduction.</p> <p>La notion de sécurité nationale est définie (depuis la loi du 29 juillet 2009) par l'article L.1111-1 du Code de la Défense :</p> <p>« La stratégie de sécurité nationale a pour objet d'identifier l'ensemble des menaces et des risques susceptibles d'affecter la vie de la Nation, notamment en ce qui concerne la protection de la population, l'intégrité du territoire et la permanence des institutions de la République, et de déterminer les réponses que les pouvoirs publics doivent y apporter.</p> <p>L'ensemble des politiques publiques concourt à la sécurité nationale. (...) »</p> <p>On peut également considérer que la notion pénale des « intérêts fondamentaux de la Nation » (article 410-1 du Code pénal) définit indirectement le périmètre de la sécurité nationale :</p> <p>« Les intérêts fondamentaux de la nation s'entendent au sens du présent titre de son indépendance, de l'intégrité de son territoire, de sa sécurité, de la forme républicaine de ses institutions, des moyens de sa défense et de sa diplomatie, de la sauvegarde de sa population en France et à l'étranger, de l'équilibre de son milieu naturel et de son environnement et des éléments essentiels de son potentiel scientifique et économique et de son patrimoine culturel. »</p>

¹ <https://www.bka.gv.at/sicherheitsstrategie>

<p>Germany</p>	<p>In Germany, there is no single law comprehensively addressing the issue of "National Security". Due to the federal system in Germany, both state and federal law together form the way how the German jurisdiction addresses "National security". Security issues are addressed in various regulations that are shaped in accordance with the specifics of the particular area of life. The German constitution ("Grundgesetz") addresses National security in a narrower sense when it comes to armed forces for defense and the exceptional use of armed forces at home in case of imminent danger to the existence or free democratic basic order of the Federation or a state (Article 87a German Basic Law). The same level of danger is addressed in Article 91 ("internal emergency") in order to rely on police forces from other federal states, or personnel and facilities of other administrative authorities and of the Federal Border Police.</p> <p>In terms of federal law, the Bundesverfassungsschutz-Gesetz ("BVerfSchG" – Code on the German Federal Office for the Protection of the Constitution, i.e. the Domestic Secret Service) is addressing the issue of "National Security" and gives a definition in its section 4. The Federal Intelligence Agency collects information with significance for foreign and security policy (section 1 of the Code on the Federal Intelligence Agency).</p> <p>Some actions that endanger key elements of "National security" are criminal actions under sections 81 ff. German Criminal Code (e.g. high treason against the Federation, Sabotage).</p> <p>Some of these regulations refer to the security of the Federal republic of Germany, which is defined as external or internal security (section 92 German Criminal Code). Of course, also other criminal laws that do not directly address state security issues as well as criminal prosecution in sum contribute to state security. Some regulations specifically address attacks on security by terrorism such as the Law on Aviation Security.</p> <p>Under state laws which regulate the general prevention of danger, there is the general standard "Öffentliche Sicherheit und Ordnung" (public safety and order) which includes elements of national security (see below). Relevant regulations are the general police laws. Some areas are specifically regulated, such as the legislation on weapons.</p> <p>For certain actions of the police, however, a higher standard of "National Security" applies which needs to be fulfilled in order to justify a police action. This also applies to the interception of telecommunication. In the state of Hamburg, to take an example, the legal circumstances under which lawful interception of telecommunication by the police may take place, is regulated under sections 10a ff. of the Hamburg Police Data Processing Law ("HmbPolIDVG"); for such measures, very strict rules apply which are very similar in wording to the definitions in section 4 BVerfSchG².</p>
<p>Greece</p>	<p>In the context of the privacy of communications, national security is one of the two reasons to which the privacy may succumb. More specifically, Article 19 of the Hellenic Constitution provides that:</p> <p><i>"Secrecy of letters and all other forms of free correspondence or communication shall be absolutely inviolable. The guaranties, under which the judicial authority shall not be bound by this secrecy for reasons of national security or for the purpose of investigating especially serious crimes, shall be specified by law."</i></p> <p><i>Article 19 further reads:</i></p> <p><i>"2. Matters relating to the constitution, the operation and the functions of the independent authority ensuring the secrecy of paragraph 1 shall be specified by law.</i></p> <p><i>3. The use of evidence obtained in violation of this Article and of Articles 9 and 9A is prohibited."</i></p>
<p>Hungary</p>	<p>National security as a legal concept exists</p>

² The federal Code on Penal Procedure ("StPO") and its sections 100a ff. are addressing the issue of interception of telecommunication in the case of criminal prosecution. Furthermore sections 94 ff. address the issue of seizure, which can include seizure of communication on record (e.g. letters, CDs); sections 102 ff. permit searches. The StPO contains a particular article regarding the legal admissibility of investigation measures directed at attorneys, stating that measures expected to produce information that was entrusted to an attorney or became known to him/her in this capacity is unlawful and such information may not be used as evidence in trial (see sec. 160a StPO). This prohibition is without exception.

The issue of "National Security", however, does not play a central role in criminal prosecution, but mostly relates to danger prevention. In this regard there are no specific rules regarding the legal admissibility of the interception of communication between lawyers and their clients.

Italy	"National security" is not defined in law. A listing merely indicative of the elements falling within the scope of national security, according to the "Glossary Intelligence" (https://www.sicurezza nazionale.gov.it/sisr.nsf/wp-content/uploads/2013/12/Glossario-intelligence-2013.pdf) includes: independence, integrity and sovereignty of the Republic, the community of which it is an expression, democratic institutions established by the Italian Constitution, the international rule of the State, fundamental freedoms and constitutionally guaranteed rights of citizens as well as political, military, economic, scientific and industrial interests of Italy. A definition of national security it can also be found in some Constitutional Court judgments in which reference is made to the territorial integrity of the nation, to its independence and to its survival. In addition, a definition of public security may be indirectly found in Law 124/2007 (Articles 6 and 7) where national security is generically defined as independence and integrity of defense against foreign threats.
Poland	No but there is a legal concept of "state security" recalled in the constitution and "public security" or "common security" recalled in other statutes. These concepts can be treated as an equivalent of "national security".
Spain	Yes, there is a legal concept.
United Kingdom	Yes

2. How is that concept deployed (for example, in derogation from legal rights, either in domestic law or in connection with the European Convention on Human Rights)?

Austria	The parliamentary resolution of July 3rd 2013 (on a new security strategy for Austria), asked the Government to shape its security policy in a way that the principles mentioned in the resolution are reflected. Also, in context of Austria's security policy, internal security policy, foreign policy and defence policy, framework conditions shall be shaped accordingly. ³ Alas even if resolutions passed by one of the houses of parliament have political weight, there is no legal obligation for the government to implement them. They are seen as recommendations and may, as such, contribute to controlling or correcting the course of action pursued by the government.
Belgium	A ma connaissance, essentiellement pour réduire les autorisations de séjour des étrangers
Czech Republic	Depending on an emergency regime that is declared, the Constitutional Act on the security of the Czech Republic in Article 6 stipulates that the government must specify which Fundamental Rights and Basic Freedoms, be restricted, and to what extent, and which duties shall be imposed, and to what extent. Emergency regimes may be declared only for the stated reasons, for a fixed period, and in relation to a designated territorial area. Detailed provisions are laid down in the Act on Crisis Management (Crisis Act). According to the Crisis Act, during a state of emergency or a condition of threat to the State, the following rights could be limited, for the period and to the extent unavoidably required: <ol style="list-style-type: none"> 1. the right to inviolability of a person and habitation during evacuation from the place, where his/her life and health are endangered, 2. the right to property and the enjoyment right of legal and natural entities related to their property in case of forced restriction of their property and enjoyment rights for the reason of protection of life, health, property or environment, endangered by the crisis situation, whereas the adequate compensation is provided, 3. freedom of movement and residence within the restricted area endangered or affected by the crisis situation, 4. the right to free assembly within the restricted area endangered or affected by the crisis situation, 5. the right to operate the business that would endanger executed crisis measures or disrupt or preclude their realization, 6. the right to strike in case it would lead to disruption or restraint of rescue and disposal operations.

³ <http://archiv.bundeskanzleramt.at/DocView.axd?CobId=52251> (S.17ff)

<p>France</p>	<p>Le concept est développé comme l'un des buts permettant la mise en œuvre de prérogatives exorbitantes de puissance publique, notamment en matière de police, en matière de défense, en matière de lutte contre le terrorisme, et en tant que de besoin en matière de réglementation d'entrée sur le territoire des étrangers, apatrides ou réfugiés.</p> <p>Et en droit français, c'est une erreur de concevoir l'exigence de sécurité nationale comme une atteinte aux droits de l'homme, il y a un équilibre à respecter entre les droits individuels et les exigences de protection de la société, sans laquelle les droits individuels perdent tout sens.</p> <p>En droit français, ce concept englobe l'ensemble des politiques publiques dédiées à la protection de la nation. Sont ainsi concernées toutes les dispositions législatives impliquées dans la mise en œuvre de ces politiques telles que :</p> <ul style="list-style-type: none"> • la sécurité extérieure par la diplomatie et la défense du territoire ; • la protection de la nation contre les menaces majeures (telles que le terrorisme, l'espionnage, le crime organisé, ou encore les atteintes aux « intérêts économiques, industriels et scientifiques majeurs de la France » - article L811-3 du code de la sécurité intérieure) • le maintien de l'ordre public ; • la justice ; • la souveraineté monétaire ; • la souveraineté budgétaire ; • la santé publique ; • la sécurité civile. <p>La sécurité intérieure est une illustration des pouvoirs régaliens de l'État. La défense nationale participe également à la sécurité intérieure. Ainsi l'article L.1111-1 du Code de la défense prévoit en son alinéa 3 que : « La politique de défense a pour objet d'assurer l'intégrité du territoire et la protection de la population contre les agressions armées. Elle contribue à la lutte contre les autres menaces susceptibles de mettre en cause la sécurité nationale. Elle pourvoit au respect des alliances, des traités et des accords internationaux et participe, dans le cadre des traités européens en vigueur, à la politique européenne de sécurité et de défense commune ».</p> <p>Ainsi, voit-on au fur et à mesure de la mise en œuvre des « stratégies de sécurité nationale » s'affiner la notion de sécurité nationale.</p> <p>Il en va ainsi de la création, par l'ordonnance du 12 mars 2012, du Code de la sécurité intérieure entrée en vigueur le 1er mai 2012 qui a vocation, en autres domaines, à régir :</p> <ul style="list-style-type: none"> - « ... la sécurité en veillant, sur l'ensemble du territoire de la République, à la défense des institutions et des intérêts nationaux, au respect des lois, au maintien de la paix et de l'ordre public, à la protection des personnes et des biens. » (article L.111-1) , - les services de renseignement, qui « concour[en]t à la stratégie de sécurité nationale ainsi qu'à la défense et à la promotion des intérêts fondamentaux de la Nation ». (Article L.811-1 du code de la sécurité intérieure). La loi n° 2015-912 du 24 juillet 2015 relative au renseignement, dont est issu cet article, est venu compléter le dispositif existant et a précisé (dans l'article L.811-3 du code de la sécurité intérieure) la nature des objectifs de sécurité nationale qui justifient le recours à des techniques de recueil de renseignement pouvant affecter les libertés fondamentales, et en particulier le droit au respect de la vie privée. <p>Il en va de même de la loi n° 55-385 du 3 avril 1955 relative à l'état d'urgence et des lois de prorogations votées depuis la vague d'attentats perpétrés sur le sol français rendus nécessaires « soit en cas de péril imminent résultant d'atteintes graves à l'ordre public, soit en cas d'événements présentant, par leur nature et leur gravité, le caractère de calamité publique » . Ces lois d'exceptions peuvent être prises sur tout ou partie du territoire métropolitain et d'outre-mer.</p> <p>On peut également citer pour exemple, la loi n° 2016-731 du 3 juin 2016 renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale qui vient préciser la stratégie de sécurité nationale en matière pénale.</p>
----------------------	--

	<p>L'ensemble de ces lois tendent au même objectif de sécurité nationale et permettent au législateur de prendre des dispositions dérogatoires au droits communs ou de modifier ou compléter le droit commun existant. Il en va ainsi des dispositions qui permettent à la police administrative d'avoir des pouvoirs équivalents à la police judiciaire en période d'état d'urgence.</p> <p>Néanmoins si le législateur peut légiférer ainsi, le droit français organise le contrôle de ces dispositions au regard de la hiérarchie des normes et de leurs atteintes possibles aux libertés conventionnellement garanties et applicables en droit interne français. La Cour de cassation rappelle que « selon notre organisation judiciaire, à défaut d'un recours direct à un juge constitutionnel, qui examinerait la conformité des lois et règlements internes à la Convention européenne de sauvegarde des droits de l'homme, regardée comme une norme à valeur supra législative, il incombe à tout juge, judiciaire ou administratif, à quelque niveau qu'il se trouve, de procéder à ce contrôle de « conventionnalité » qui peut aller jusqu'à l'éviction de la loi nationale non conforme à la Convention. Il le fait évidemment, dans l'ordre interne, sous le contrôle de la Cour de cassation ou du Conseil d'État, dans le cadre des voies de recours nationales et, dans l'ordre supranational, sous celui de la Cour européenne des droits de l'homme saisie par voie de recours direct ».</p> <p>Enfin, la France a récemment eu recours à l'article 15 de la Conv. EDH, qui permet aux États partis de « prendre des mesures dérogeant aux obligations prévues par la Convention « en cas d'état d'urgence ». La Cour exerce néanmoins un contrôle a posteriori de l'application de cet article. Généralement, elle n'exige qu'un risque raisonnablement perceptible pour justifier l'engagement des mesures dérogatoires.</p>
Germany	<p>In Germany resulting from the rule of law, every action interfering with private rights performed by a public authority must be based on valid provisions set out by law. Any such action performed without being based on a law is illegal. This principle applies even in times of crisis and no exemptions shall be made, as public authorities must obey the law. An interference with private rights for the purpose of "National Security" can therefore only be made where it is stated by law. This, as one would expect, is the case with regard to danger prevention. To be valid a law permitting interference with private rights also has to respect the principle of proportionality. Most danger prevention laws grant discretionary power. In consequence, the authorities usually have to weigh the relevant interests (private rights and importance of security aspects) in each individual case to decide if and how to act.</p> <p>Provisions of international law such as those set out in the European Convention on Human Rights have been incorporated into domestic law, so they have to be respected as such by all public authorities.</p>
Greece	<p>Law 2225/1994 as amended and in force provides the specific procedure for the containment of the privacy of communications, which is subject to the competence of the Appeals Court State Attorney in matters of National Security, and of the judicial council in the case of very serious crimes. The protection of personal data is secured in article 9A of the Constitution and can only be restricted by law by application of the principle of proportionality provided in article 25 of the Constitution.</p>
Hungary	<p>It is a concept with an origin in domestic law, based on Article 46 of the Basic Law of Hungary, from a viewpoint of entities of constitutional law, defining police and national security services, and requiring that such activities of national security have to be set down in a "cardinal act" of the Parliament (requiring qualified majority).</p> <p><i>(6) A cardinal act shall regulate the detailed rules of the organisation of police and national security services, their operation, and the rules on using national security tools and methods, and also the rules related to national security activities.</i></p> <p>In procedural laws (e.g. criminal procedure code), national security only appears indirectly, together with some of the procedural guarantees of secret information gathering during the criminal procedure phase. Most of the details are regulated in the Act on National Security Services (Act CXXV of 1995). So there are no provisions in procedural laws stating when a certain method of secret information gathering is made lawful by, e.g. a national security exemption.</p> <p>Beyond the National Security Services Act, important provision on fulfilling requirements of national security services are defined in sectoral regulation like those involving telecommunications service providers or "application service providers" (e.g. SaaS cloud service providers) – these law set out details of what kind of information certain service providers have to retain, what is the process of handing over such data, what kind of cooperation is required between them and the designated technical body of national security services.</p>
Italy	<p>Given the complexity of the phenomenon, it is difficult to give a clear answer to the question. The concept of national security, in its various forms, can be invoked by certain rules to exclude or limit the exercise of certain rights: for example, transparency in public administration, to privacy...</p>
Poland	<p>The concept of "state security" is deployed in the constitution in limiting such a right like:</p> <ul style="list-style-type: none"> - upon the exercise of constitutional freedoms and rights (art. 31 item 3)

	<ul style="list-style-type: none"> - the public nature of hearings (art. 45 item 2) - the freedom to publicly express religion (art. 53 item 5) - the right to obtain information on the activities of organs of public authority as well as persons discharging public functions (art. 61 item 3).
Spain	The concept is based on a domestic law.
United Kingdom	<p>It appears in a number of contexts:</p> <ul style="list-style-type: none"> ▪ as the basis for the authorisation of activities by security and intelligence agencies; ▪ for administrative matters, such as decisions on admission to the UK; ▪ for the development of services or capabilities, such as the creation, maintenance of protection of critical national infrastructure; ▪ as derogations or limitations on obligations (such as s28 Data Protection Act 1998, or s132 Communications Act 2003) <p>Overall, there are over 200 references to 'national security' in various pieces of legislation (usually as exceptions to certain requirements on restrictions to certain rights). However, these references do not offer further insight as to the definition of 'national security.'</p>
3. Is 'national security' defined in law?	
Austria	There is no definition of "National Security" in Austrian law.
Belgium	Pas à ma connaissance
Czech Republic	See reply to Question No.1.
France	<p>Oui, l'article L1111-1 du Code de la défense, qui peut être complété par la notion pénale des intérêts fondamentaux de la Nation (article 410-1 du code pénal). Le rapport parlementaire, annexé à la loi de programmation militaire du 18 décembre 2013, au paragraphe 1.2.1, indique « le livre blanc de 2013 a confirmé le concept de « sécurité nationale », introduit dans la stratégie française en 2008, et inscrit par la loi dans le code de la défense en 2009 ».</p> <p>L'article L.1111-1 du Code de la Défense constitue la définition de principe de la notion de « sécurité nationale ». Néanmoins, à sa lecture cette disposition encadre l'objet, les moyens et la portée de cette notion sans en apporter une définition littérale.</p> <p>En France, depuis 2008 et la mise sous tutelle du ministère de l'intérieur du corps de la gendarmerie nationale, cette notion a été introduite dans le Code de la défense en 2009 et s'est largement substituée à celle de « défense nationale » définie dans l'ordonnance du 7 janvier 1959 portant organisation générale de la défense.</p> <p>Sont ainsi précisés, à l'article L.1111-1 du Code de la Défense, l'objet de « la stratégie de sécurité nationale » (al.1), les moyens qui « concourt » à cette sécurité que sont les politiques publiques (al.2) et est redéfinie l'objet plus restreint de la politique de défense (al.3).</p> <p>La notion de « sécurité nationale », telle que définie, permet d'élargir le champ des politiques publiques de l'État initialement réservées à la défense nationale à celles destinées à protéger le pays contre « des menaces et des risques susceptibles affecter la vie de la Nation, notamment en ce qui concerne la protection de la population, l'intégrité du territoire et la permanence des institutions de la République, et de déterminer les réponses que les pouvoirs publics doivent y apporter » (al. 1 article L.1111-1).</p>
Germany	<p>Federal law contains a definition of "National Security" in section 4 BVerfSchG:</p> <p>"Im Sinne dieses Gesetzes sind</p> <p>a) Bestrebungen gegen den Bestand des Bundes oder eines Landes solche politisch bestimmten, ziel- und zweckgerichteten Verhaltensweisen in einem oder für einen Personenzusammenschluß, der darauf gerichtet ist, die Freiheit des Bundes oder eines Landes von fremder Herrschaft aufzuheben, ihre staatliche Einheit zu beseitigen oder ein zu ihm</p>

	<p>gehörendes Gebiet abzutrennen (<i>Activities against the existence of the Federal Republic or a federal state</i>);</p> <p>b) Bestrebungen gegen die Sicherheit des Bundes oder eines Landes solche politisch bestimmten, ziel- und zweckgerichteten Verhaltensweisen in einem oder für einen Personenzusammenschluß, der darauf gerichtet ist, den Bund, Länder oder deren Einrichtungen in ihrer Funktionsfähigkeit erheblich zu beeinträchtigen (<i>Activities against the security of the Federal Republic or a federal state</i>);</p> <p>c) Bestrebungen gegen die freiheitliche demokratische Grundordnung solche politisch bestimmten, ziel- und zweckgerichteten Verhaltensweisen in einem oder für einen Personenzusammenschluß, der darauf gerichtet ist, einen der in Absatz 2 genannten Verfassungsgrundsätze zu beseitigen oder außer Geltung zu setzen (<i>Activities against the German Constitution</i>)."</p> <p>These definitions will also be taken into account by the courts when they interpret the similar provisions in the state police laws. The broader term public security, which is used in many danger prevention laws, is generally understood to contain the integrity of the objective legal order, subjective rights and subjective objects of legal protection as well as the functionality of the state and its organisations and events. The fulfilment of this broader term public security is not sufficient to justify the interception of telecommunication.</p>
Greece	<p>The term "National Security" is not specified in the Constitution or in the law. However it is understood to refer to national integrity and the protection of the country, its territory and its independence from external risks. This is confirmed by the definition of the term "National Defense" in law 2292/1995 on the organization of the Ministry of Defense and of the armed forces, pursuant to which National Defense includes all operations and activities deployed by the State, which aim at the protection of territorial integrity, national independence and sovereignty, and the security of the citizens against any external offense or threat, as well as the support of the national interests.</p> <p>The notion differs from that of "National Order", which is understood to concern internal state organization issues and relevant risks.</p>
Hungary	<p>No.</p> <p>We have a definition for "interests of national security" in the National Security Services Act (74. § a)), which could be the closest one to such a definition:</p> <p>a) The protection of the independence and the lawful order of Hungary, within the framework of this:</p> <p>aa) detection of malicious attempts against the country's independence and territorial integrity,</p> <p>ab) discovery and prevention of covert attempts that harm or threaten the political, economic and military interests of the country,</p> <p>ac) obtaining of information concerning foreign countries or of foreign origin that are necessary for the governmental decisions;</p> <p>ad) detection and prevention of covert illegal attempts to alter or disrupt - the country's legal order to ensure the exercise of fundamental human rights, - the representative multi-party democracy system of and the functioning of legal institutions;</p> <p>e) detection and prevention of acts of terrorism, of illegal arms and drug trafficking, and illicit trafficking of internationally controlled products and technologies.</p>
Italy	No
Poland	No
Spain	Yes, National Security is defined by law.
United Kingdom	We are not aware of the established / confirmed definition of 'national security.' However, the existing case law seems to attempt to further specify the term.
4. If so:	
a) Is there a single definition for all purposes or different definitions for different purposes?	

<p>b) Is the definition (or are the definitions) found in (i) legislation or (ii) case law or (iii) both? c) What is that definition; or are those definitions?</p>	
Austria	---
Belgium	----
Czech Republic	See reply to Question No.1.
France	<p>a) Comme précisé précédemment, il existe une définition dans le Code de la défense déclinée en fonction des stratégies de sécurité nationale mise en œuvre. Cette définition et celles afférentes telles que les notions de sécurité intérieure, de défense nationale, de renseignement ou d'intérêts fondamentaux de la nation (pénalement protégés), concourent toutes au même objectif de sécurité nationale.</p> <p>Exemple : « Art. L.811-1 du Code de la sécurité intérieure : « La politique publique de renseignement concourt à la stratégie de sécurité nationale ainsi qu'à la défense et à la promotion des intérêts fondamentaux de la Nation. Elle relève de la compétence exclusive de l'État. » (Art. 2 de la loi n° 2015-912 du 24 juillet 2015 relative au renseignement)</p> <p>b) C'est la loi, le juge n'a qu'une compétence interprétative.</p> <p>Comme précédemment indiqué (A), la loi donne une définition de la notion de sécurité. La jurisprudence, qui la met en œuvre devant nos juridictions nationales permet, quand cela est nécessaire, de l'interpréter ou de la compléter.</p> <p>Ce sont les moyens mis en œuvre afin de préserver la sécurité nationale qui suscitent le contentieux et donc le développement de la jurisprudence.</p> <p>c) « Article L1111-1 (Modifié par loi n°2009-928 du 29 juillet 2009 - art. 5) La stratégie de sécurité nationale a pour objet d'identifier l'ensemble des menaces et des risques susceptibles d'affecter la vie de la Nation, notamment en ce qui concerne la protection de la population, l'intégrité du territoire et la permanence des institutions de la République, et de déterminer les réponses que les pouvoirs publics doivent y apporter. L'ensemble des politiques publiques concourt à la sécurité nationale. La politique de défense a pour objet d'assurer l'intégrité du territoire et la protection de la population contre les agressions armées. Elle contribue à la lutte contre les autres menaces susceptibles de mettre en cause la sécurité nationale. Elle pourvoit au respect des alliances, des traités et des accords internationaux et participe, dans le cadre des traités européens en vigueur, à la politique européenne de sécurité et de défense commune. »</p>
Germany	<p><u>a. Is there a single definition for all purposes or different definitions for different purposes?</u> There is not a single definition of "National Security" and different laws contain different terms and wording. The most prominent definition is the one in the BVerfSchG), but the courts will interpret "National Security" differently depending on the different contexts in which the issue is raised, even if the relevant law uses a similar wording. In addition, as pointed out above, many regulations refer to the broader term of public security which has been given a generally accepted meaning by courts and judicial science.</p> <p><u>b. Is the definition (or are the definitions) found in (i) legislation or (ii) case law or (iii) both?</u> With regard to the Domestic Secret Service, there is a definition in a federal law (the BVerfSchG). With regard to the police laws there is no statutory definition in the state laws, but the courts, when interpreting the term "National Security" in the context of interception of telecommunication, will most likely recur to the definition in the BVerfSchG. In any case, unlike in the Anglo-American system, the German case law is merely an interpretation of the codified law and not a process of creating law.</p> <p><u>c. What is that definition; or are those definitions?</u></p>

	<p>The definition of “National Security” in section 4 BVerfSchG</p> <ul style="list-style-type: none"> • Existence of the Federal Republic or a federal state: The freedom of the Federal Republic or a federal state from foreign rule, the unity of the Federal Republic or a federal state or the integrity of their territories; • Security of the Federal Republic or a federal state: The Federal Republic, a federal state or their institutions are severely impeded in their proper functioning; • The German constitution: Certain articles of the constitution which are enumerated are eliminated or rendered inapplicable. <p>For the definition of public security see point 3. Laws addressing specific security aspects may refer to different definitions (see point 1.).</p>
Greece	---
Hungary	---
Italy	---
Poland	---
Spain	<p>a) Yes, there is a single definition</p> <p>b) Definition is found in both, legislation (Article 3 of the Law 36/2015, 28th September) and in case law (ruling of the Constitutional Court, 3 November of 2016)</p> <p>c) National Security is defined as the State action aimed at:</p> <ul style="list-style-type: none"> • Protecting the liberty, the rights and the welfare of citizens; • Ensuring the defence of the State and its principles and constitutional value, and; • Contributing together with States’ allies and partners to guarantee international security in compliance with commitments made.
United Kingdom	<p>As mentioned above, in the absence of the established definition of ‘national security’ the further specification of its potential characteristics can be found in case law:</p> <ul style="list-style-type: none"> ▪ Paragraphs 14 to 17, 50 of Secretary of State for the Home Department v Rehman [2001] UKHL 47 (Para 14 makes references to the Johannesburg Principles on national security, freedom of expression and access to information) ▪ Paragraph 45 of Baker v. SoS HD, before the Information Tribunal: “the protection of national security (whatever the precise meaning of that phrase)” ▪ Paragraph 23 of Norman Baker v the Information Commissioner and the Cabinet Office (2006) before the Information Tribunal, summarising <i>Rehman</i>: <p><i>“(i) “national security” means “the security of the United Kingdom and its people.” (para 50 per Lord Hoffman);</i> <i>(ii) the interests of national security are not limited to action by an individual which can be said to be “targeted at” the UK, its system of government or its people (para 15 per Lord Slynn);</i> <i>(iii) the protection of democracy and the legal and constitutional systems of the state is a part of national security as well as military defence (para 16 per Lord Slynn);</i> <i>(iv) “action against a foreign state may be capable indirectly of affecting the security of the United Kingdom” (paras 16-17 Lord Slynn); and</i> <i>(v) “reciprocal co-operation between the United Kingdom and other states in combating international terrorism is capable of promoting the United Kingdom’s national security” (para 17 Lord Slynn).”</i></p> <p>A definition of “national security” was proposed by Baroness Jones of Moulsecoomb in the course of the passage of the Investigatory Powers Bill through the House of Lords.</p> <p>The Baroness moved for an amendment (236A), comprising:</p> <p><i>““national security” means the protection of the existence of the nation and its territorial integrity, or political independence against force or the threat of force,”</i></p> <p>She withdrew her amendment, following vigorous rejection from other peers.</p> <p>In particular, Lord Pannick considered that the proposed definition was too narrow, but welcomed a definition from the government.</p>

	<p>Lord Brown of Eaton-under-Heywood was less welcoming:</p> <p><i>"[national security] is a well-recognised term which, as the noble Lord has pointed out, is enshrined in the European convention. It was the term used, undefined and unrestricted by definition, in RIPA, which this law will effectively replace. It has a necessarily somewhat flexible meaning to cater for a great many situations."</i></p> <p>Baroness Hayter of Kentish Town argued:</p> <p><i>"I do not think it is wise to try to define national security in the Bill, not simply because of the complications but because the definition changes. I know that it is a long time since I was born, but even over the next five years the definition will change again."</i></p> <p>Earl Howe dealt the final blow to the amendment:</p> <p><i>"it has been the policy of successive Governments not to define national security in statute. National security is one of the statutory purposes of the security and intelligence agencies. Threats to national security are, as we have heard, constantly evolving and difficult to predict, and it is vital that legislation does not constrain the security and intelligence agencies in their ability to protect the public from new and emerging threats."</i></p> <p>...</p> <p><i>I think the key point is that to define national security in statute could have the unintended effect of constraining the ability of the security and intelligence agencies to respond to new and emerging threats to our national security."</i></p>
--	--

5. If not, how does your law have regard to 'national security'?

Austria	<p>"National security" has to be interpreted by the legal practitioners. In Austrian case law there are some judgments which include the opinion of the court that "National Security" might be affected. E.g. in article 229 of the Austrian code of criminal procedure (StPO) the concept of "National Security" circumscribes the interest of the state to protect his value continuance against menaces, and concerns especially the foreign affairs, security policy and defence policy.</p>
Belgium	<p>Loi du 10 août 2015, modifiant la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers en vue d'une meilleure prise en compte des menaces contre la société et la sécurité nationale dans les demandes de protection internationale</p> <p>"[Si l'étranger qui a introduit une demande d'asile conformément aux articles 50, 50bis, 50ter ou 51, constitue, ayant été condamné définitivement pour une infraction particulièrement grave, un danger pour la société ou lorsqu'il existe des motifs raisonnables de le considérer comme un danger pour la sécurité nationale, le ministre ou son délégué transmet sans délai tous les éléments en ce sens au Commissaire général.</p> <p>Le Commissaire général aux réfugiés et aux apatrides peut refuser de reconnaître le statut de réfugié si l'étranger constitue un danger pour la société, ayant été condamné définitivement pour une infraction particulièrement grave, ou lorsqu'il existe des motifs raisonnables de le considérer comme un danger pour la sécurité nationale. Dans ce cas le Commissaire général aux réfugiés et aux apatrides émet un avis quant à la compatibilité d'une mesure d'éloignement avec les articles 48/3 et 48/4.]"</p>
Czech Republic	See reply to Question No.1.
France	---
Germany	---
Greece	Please see section 3 above.
Hungary	<p>In the procedural laws, these rights are defined in general as secret information and secret data gathering rights, and they refer to separate laws that entitle certain institutions to carry out such activities. The actual bodies entitled to do carry out such activities are defined in the legislative-institutional framework of law enforcement agencies (Act on Police) and national security services (see above). The modus operandi for police forces and national security services are defined in such institutional laws and to a certain further detail, in the provisions on electronic communications service providers and "application service providers" (from the side of the obligee). Where the National Security Services Act defines the legal basis for secret information gathering, they simply refer back to <i>all</i> tasks of the national security service providers. Therefore, anything they do, per definition, falls within the scope of "national security"</p>

Italy	See answer to question no. 2
Poland	---
Spain	---
United Kingdom	---
6. Is 'national security' referred to in legislation or case law, even if not defined?	
Austria	Yes, the "National Security" is mentioned in legislation ⁴ and case law ⁵ several times.
Belgium	---
Czech Republic	See reply to Question No.1.
France	Quelques lois récentes font mention de la sécurité nationale, par exemple loi sur le renseignement du 24 juillet 2015, les lois de programmation militaire...
Germany	In the context of state law, it is referred to in legislation and not defined. Section 10b HmbPolDVG is the central act in this regard for the state of Hamburg. Similar acts exist in other state laws, e.g. sec. 17 PolG NRW, sections 34 and 34a PAG (Polizeiaufgabengesetz Bayern). In the context of federal law, it is referred to and defined in section 4 BVerfSchG. In Germany, there is no case law as such, but the term "National Security" is subject of interpretation by the courts (see above No. 4 b).
Greece	Please see section 3 above.
Hungary	Legislation: yes, "national security" as a concept is referred to in many pieces of law, mainly as part of the name of "service providers" (i.e. bodies entrusted with such powers), see the most important under section 11 below. Of the Case Law, most probably decision 32/2013. (XI. 22.) of the Constitutional Court should be mentioned. This decision was made based on a request filed by a human right "watchdog" organisation who – they argued – were subject to unlawful surveillance. They considered that section 56 of the Act on National Security Services lacked the necessary guarantees against intrusion in privacy that are present in the field of law enforcement: – secret surveillance is not only possible in case of serious crime (like in case of law enforcement), – if the surveillance is not related to a specific crime, there is no judicial warrant required, only a prior approval of the justice minister is needed in case of recording conversations, which is not of the same value (i.e. the judge is professional in this area, the minister is not, the minister is a party politician);– in case of law enforcement agencies, any recording not necessary for the surveillance or any data of third parties not involved have to be destroyed; The Constitutional Court found that the claims are unfounded. In their opinion, the justice minister is subject to oversight by the Parliamentary committee of national security (twice by year and on request for a specific event), and also by the ombudsman. They found that a political decision is needed to prevent or protect against national security risks, therefore this falls within the power of the executive branch. Also, while in criminal law, there is a codified definition of what is a crime, no such framework exists for defining what is national security and based on what the minister of justice should bring the decision on approving a request for secret information gathering.

⁴ § 19 Zusammenarbeit mit dem Internationalen Strafgerichtshof, idF BGBl I 135/2002; Art 52a B-VG, idF BGBl I 100/2003; § 46b FPG, idF BGBl I 87/2012.

⁵ BVwG W125 1404642-1. ECLI:AT:BVWG:2015:W125.1404642.1.08.

	Also, while there is no clear requirement for the minister of justice to lay down detailed reasoning for its decision, that would make any further review impossible. Requirements of such data gathering being an ultima ratio (based on 53. § (3) – to be used only where no other means exist) makes it necessary for the minister of justice to lay down specific reasoning to enable any further review.
Italy	You can find several references - as mentioned above - to individual aspects of what can be defined generically as "national security."
Poland	"State security", "public security" or "common security" is referred to in constitution, criminal and administrative law.
Spain	Spanish law considers the legislative provisions on national defence, public security and external action as key components of national security. However, the Constitutional Court considered that National Security is no a new competence but it is integrated into the state competencies of defence and public security.
United Kingdom	The concept of 'national security' is referred to in both in legislation and in case law (see answer to question 4).
7. Are there any rules governing the circumstances under which 'national security' may be invoked?	
Austria	See Answer 4.
Belgium	---
Czech Republic	As stipulated in the Constitutional Act on the security of the Czech Republic and in the Crisis Act.
France	<p>Le concept de sécurité nationale peut être soumis à l'appréciation du juge, dans tous les contentieux où il est opposé par la puissance publique à un justiciable. Pour les personnes publiques ou les administrations, uniquement dans les cas où la loi s'y réfère. Par exemple, la loi relative au renseignement, du 24 juillet 2015, utilise la notion de sécurité nationale, comme l'une des finalités justifiant de recourir aux techniques de renseignements prévues par la loi.</p> <p>Le Code pénal prévoit des sanctions pour des circonstances dans lesquelles les intérêts fondamentaux de la nation sont atteints et pour des cas de terrorisme.</p> <p>Le titre I du Livre IV du Code pénal traite des atteintes aux intérêts fondamentaux de la nation.</p> <p>D'après l'article 410-1 du Code pénal « les intérêts fondamentaux de la nation s'entendent au sens du présent titre de son indépendance, de l'intégrité de son territoire, de sa sécurité, de la forme républicaine de ses institutions, des moyens de sa défense et de sa diplomatie, de la sauvegarde de sa population en France et à l'étranger, de l'équilibre de son milieu naturel et de son environnement et des éléments essentiels de son potentiel scientifique et économique et de son patrimoine culturel». Cette notion rejoint donc celle de sécurité nationale.</p> <p>Il est précisé aux articles 701 et 702 du Code de procédure pénale que les crimes et délits contre les intérêts fondamentaux de la Nation sont instruits et jugés par les juridictions des forces armées en temps de guerre et par les juridictions de droit commun en temps de paix.</p> <p>Les articles 421-1 et suivants du Code pénal définissent la notion d'actes de terrorisme et les peines qui y sont associés. Les articles 706-16 à 706-25-14 du Code de procédure pénale régissent la poursuite, l'instruction et le jugement des actes de terrorisme.</p>
Germany	"National Security" may always be invoked when the factual prerequisites are given in the individual case.
Greece	As mentioned in section 2 above, Law 2225/1994 elaborates on the procedures that must be met for the containment ("lifting") of communications privacy. National security as a reason for such containment may be combined with certain especially serious crimes against national security. Furthermore, presidential decree 47/2005 as amended and in force provides for the kinds (means) and the particular characteristics of communications which may be contained. It further specifies the means and methods which shall be used as well as the obligations of the providers of communications services and networks. With respect to electronic communications, the Hellenic Authority for Communication Security and Privacy ("ADAE") which has been established by law 3471/2006 in harmonisation of Directive 2002/58/EC, receives the orders of the competent judicial authority and monitors the compliance of the conditions and the procedures of the privacy lifting.
Hungary	---

Italy	See answer to question no. 6
Poland	No
Spain	National Security may be invoked in those areas of particular concern to the State. This can be done by following the rules specified in the law and under the framework of the National Security System.
United Kingdom	National security is invoked among others in relation to the authorisation frameworks in the context of investigatory powers (for example, s20(2)(a), s61(7)(a), s63(3)(b) and (c), or s102(1)(a) (per s102(5)(a)) of the Investigatory Powers Act 2016).
8. How often is 'national security' invoked?	
Austria	"National Security" is rather seldom invoked in Austrian court rulings alas the number of convictions regarding terrorism is rising.
Belgium	-----
Czech Republic	So far, only the state of emergency was invoked in the Czech Republic. During the 2002 and 2006 floods the government issued restrictions on property rights, on the right to the integrity of the person and to the inviolability of the home, on the freedom of movement and residence in evacuated territories for 11, respectively 7 days. ⁶ In 2007, in the aftermath of the windstorm Kyrill, the government ordered a prohibition of entry to affected forests for two weeks. ⁷
France	Au regard des textes cités : - Loi relative au renseignement : 1 fois - Code la défense : 11 chapitres ou sections se rapportent directement à cette notion - Loi de 1955 sur l'état d'urgence et prorogeant l'état d'urgence : zéro - Loi de lutte contre la criminalité organisé... : zéro
Germany	If the question refers to the number of laws mentioning the term, these are many or few, depending on whether one refers to the broad definition of public security (which is used quite often) or the narrower terms used in the BVerfSchG and the HmbPolDVG with regard to the interception of telecommunication and similar measures. If the question refers to the number of court cases or the number of times the term is invoked by public authorities I am not aware of any official figures.
Greece	We have not seen relevant statistical data.
Hungary	---
Italy	It's not possible give an answer because, for example, in the case of classified information you cannot understand how it is invoked one or more aspects of national security.
Poland	"State security" is invoked 9 times in the constitution and "public security" or "common security" is invoked in several statutes mentioned below in item 11.
Spain	---
United Kingdom	It is very difficult, if not impossible to answer. In any case, the quantitative analysis would not provide sufficient information on the scale of referring to national security in legislation and in case law. This is because even one derogation to an important provision may have a more profound impact than ten references to minor provisions.

⁶ Gov. decree. no. 373/2002 <http://aplikace.mvcr.cz/sbirka-zakonu/ViewFile.aspx?type=c&id=3950> and Gov. decree no. 121/2006 Sb. <http://aplikace.mvcr.cz/sbirka-zakonu/ViewFile.aspx?type=c&id=4887> (in Czech only)

⁷ Gov. decree 11/2007 <http://aplikace.mvcr.cz/sbirka-zakonu/ViewFile.aspx?type=c&id=5096> (In Czech Only)

9. In what circumstances is it invoked?	
Austria	A strict interpretation is to be carried out. The different rules determine similar circumstances under which the "National Security" is in danger, such as the publishing of state secrets or matters of the military. Even if the concept of the „National Security" can be very wide and grant the authorities a big discretionary power, his borders may not be stretched after his natural meaning. ⁸ For example the Supreme Administrative Court (Verwaltungsgerichtshof, VwGH) has ruled that Austria may expel a person against whom the urgent suspicion of the secret service activity for a foreign nation exists.. ⁹ . the national security trumps the foreigner's right of residence.
Belgium	Également en matière environnementale
Czech Republic	A state of emergency may be declared by the Government in cases of natural catastrophe, ecological or industrial accident, or other danger which to a significant extent threatens life health, or property or domestic order or security. A condition of threat to the state may be declared by the Parliament on the government's proposal if the State's sovereignty, territorial integrity, or democratic foundations are directly threatened.
France	Le concept est invoqué en matière de terrorisme, en matière d'entrée et de maintien sur le territoire d'un étranger, d'un apatride, voir aussi d'un réfugié, mais également concernant l'accès aux archives (loi du 3 janvier 1979). Dans tous les domaines régaliens de l'État qui s'y rapportent. On peut encore noter que la sécurité nationale peut être invoquée pour refuser de communiquer les informations demandées par un État membre dans le cadre de l'entraide judiciaire (article 695-9-41 du Code de procédure pénale). La sécurité nationale justifie également que lorsque le témoignage d'un agent d'un service de renseignement est requis dans une procédure judiciaire, celui-ci soit effectué de manière anonyme, sans que son identité réelle puisse apparaître (article 656-1 du Code de procédure pénale).
Germany	In the circumstances in which a public authority wants to take certain measures which, according to statutory law, require the existence of a danger to the "National Security".
Greece	---
Hungary	---
Italy	See answer to question no. 2
Poland	"State security", "public security" or "common security" is invoked whenever there is an interference into freedoms and human rights or whenever duties and rights of legal persons public and private liable for public security in the state are regulated.
Spain	It can be invoked, for instance, as regards cybersecurity, terrorism, organize crime, financial and economic security, maritime security, energy security, health security or environmental preservation.
United Kingdom	It is not possible to give a complete list, but it might be possible to point to examples where orders have been issued on the basis of national security, which might give some context. For example, a number of directions under s94 Telecommunications Act 1984 have been avowed, including the bulk acquisition by intelligence agencies of communications data from communications service providers, in support of the agencies' missions.

⁸ EGMR 24.04.2008, Bsw1365/07.

⁹ VwGH 03.12.1993, 92/18/0310.

10. Please add any other relevant observations.	
Austria	None
Belgium	---
Czech Republic	---
France	Le droit français connaît les notions de "sécurité intérieure", de « sécurité extérieure », de «sécurité publique », l'articulation entre ces notions et la notion de droit européen devrait être étudiée, sinon votre enquête manque de fond. Et rien ne prouve que la notion de "sécurité nationale", telle qu'utilisée dans certains textes de droit français, correspondre à celle que vise l'article 4(2) du TUE. Une même dénomination ne signifie pas une identité de concept juridique. De même, la notion juridique opérante de "sécurité nationale" est relativement récente par rapport à celle d'ordre public, vous pourriez vous intéresser aux champs de convergence entre ces deux notions.
Germany	As of the historic past of Germany during the "Weimar Republic", its current constitution was built to prevent similar proceedings in which a single person could unite all powers of state. Therefore, each action of a public authority has to be based on an authorization granted by law and is subject to judicial review. This also applies to situations in which "National Security" is at stake. In addition, the profession of lawyers in Germany occupies a rather important role in society and its jurisdiction. Therefore legal interventions are to be kept on a low level, especially when it concerns the relationship between the lawyer and his clients. Any measures which are undertaken by the authorities that intend to intrude this relationship must comply with German constitutional, federal and state law. Therefore, any intrusions of the communication between lawyers and their clients based on "National Security", are unlikely and probably rare.
Greece	---
Hungary	---
Italy	---
Poland	---
Spain	In Spain, the National Security is understood as a public service and subject to a State policy.
United Kingdom	As noted by Sir Richard Dearlove in The Oxford Handbook of National Security Intelligence , our own understanding of 'national security' seems to evolve in the world where the national executives now rely more heavily on coordinated international action. He further observes that the imprecision of the term may be useful in managing citizens' perceptions of risk but it does not allow sufficient attention to more specific national security concerns of relevant services (he gives an example of hostile espionage). In trade agreements, the references to national security are made on a regular basis in a number of contexts. See for example: <ul style="list-style-type: none"> ▪ Article 28.6 on national security in CETA which reads '<i>Nothing in this Agreement shall be construed: (a) to require a Party to furnish or allow access to information if that Party determines that the disclosure of this information would be contrary to its essential security interests [...]</i>'. Some restrictions in the same agreement refer to national security and appear in relevant annexes, for example in context of investment; ▪ Article 29.2 of TPP Finally, it is worth mentioning that the House of Commons has recently completed its inquiry on national security in a digital world (pointing out to practical examples in the modern world of where the threats to national security may arise).
11. Please provide appropriate references to legislation and to case law	
Austria	See FNs.
Belgium	---
Czech Republic	Constitutional Act No. 110/1998 Coll., on the security of the Czech Republic (only in Czech language) https://www.zakonyprolidi.cz/cs/1998-110 Act No. 240/2000 Coll., on Crisis Management (only in Czech language)

	<p>https://www.zakonyprolidi.cz/cs/2000-240</p> <p>Act No. 181/2014 Coll., on Cyber Security (only in Czech language) https://www.zakonyprolidi.cz/cs/2014-181</p> <p>Security Strategy of the Czech Republic (2015) http://www.mzv.cz/public/2a/57/16/1375879_1259981_Security_Strategy_CZ_2015.pdf</p> <p>National Cyber Security Strategy 2015 – 2020 https://www.enisa.europa.eu/topics/national-cyber-security-strategies/ncss-map/CzechRepublic_Cyber_Security_Strategy.pdf</p>
France	<p>- Autre source législative :</p> <ul style="list-style-type: none"> • Décret n° 2009-1657 du 24 décembre 2009 relatif au conseil de défense et de sécurité nationale et au secrétariat général de la défense et de la sécurité nationale • Ancienne loi no 91-646 du 10 juillet 1991 relative au secret des correspondances (abrogée par la loi du 24 juillet 2015 relative au renseignement): selon l'article 3, les interceptions de sécurité pouvaient, tout d'abord, être réalisées pour rechercher des renseignements intéressant la sécurité nationale • Nouvel article L.6341-4 du Code des transports, concernant les vols en provenance de l'étranger et à destination des aéroports français: « En cas de menace pour la sécurité nationale, l'autorité administrative peut imposer aux entreprises de transport aérien desservant le territoire national au départ d'aérodromes étrangers la mise en œuvre de mesures de sûreté dont la durée d'application ne peut excéder trois mois. Ces mesures peuvent être reconduites dans les mêmes conditions ». • Article L.621-15, IV bis du Code monétaire et financier qui rappelle que la séance de la Commission des sanctions est par principe publique mais qu'une demande de huis clos peut être formulée par le président de la Commission ou par l'une des personnes mises en cause dans l'intérêt de l'ordre public, de la sécurité nationale ou lorsque la protection des secrets d'affaires ou de tout autre secret protégé par la loi l'exige. <p>- Autres sources doctrinales :</p> <ul style="list-style-type: none"> • Le cadre juridique des relations entre défense et sécurité nationale, Cahiers de la sécurité, n° 14, INHESJ, décembre 2010, pp. 61-67 • Conseil d'État, avis consultatif du 19 mars 2015 sur le projet de loi relatif au renseignement. • Sécurité nationale et jurisprudence européenne - Coe - Conseil de l ... • Notion de sécurité nationale et ingérence des États Jurisprudence de la CJUE 2015: Décisions et commentaires
Germany	<p>Regarding the definition of "National Security", the relevant norm is section 4 BVerfSchG.</p> <p>Regarding the interception of communication, the relevant norms are – on the state level with regard to danger prevention – 10a ff. HmbPolDVG and – on the federal level with regard to criminal prosecution – sections 100a ff, 160a StPO.</p>
Greece	<p>Please see above references to law and regulation.</p>
Hungary	<p>Basic Act of Hungary Article 46.</p> <p>Act on National Security Services of CXXV of 1995, 4-9. § and 53-66. §</p> <p>Act on Electronic Communications of C of 2013; 76. § (8), 92. §, 156. § (16) and (18), 159/A. § (data retention),</p> <p>Government Decree 180/2004. (V. 26.) on the order of cooperation of organisations performing electronic communications tasks and organisations entitled to carry out secret information gathering or secret data gathering</p> <p>Government Decree 185/2016. (VII. 13.) on the order of cooperation between application service providers enabling encrypted communications and the organisations entitled to carry out secret information gathering</p> <p>Decision 32/2013. (XI. 22.) of the Constitutional Court</p>
Italy	<p><u>Case law:</u> Cost. sent. n. 86/1977, n. 82/1976, n. 110/1998, n. 106/2009, n. 40/2012, n. 24/2014</p> <p><u>Legislation:</u> L. 124/2007</p>

Poland	<ul style="list-style-type: none"> (1) The Constitution of the Republic of Poland of 2.04.1997 (2) The Criminal Code of 6.06.1997 (3) Acts of governmental administration of 4.09.1997 (4) The provincial government act of 5.06. 1998 (5) The district government act of 5.06. 1998 (6) The communal government act of 8.03.1990 (7) The Police act of 6.04.1990 (8) The Internal Security Agency and intelligence organization act of 24.05.2002 (9) The anti-terrorist operations act of 10.06.2016 (10) The act of exchanging information with investigative authorities of UE member states of 16.09.2011 (11) The Central Anti-Corruption Bureau act of 9.06.2006 (12) The military counterintelligence service and military intelligence service act of 9.06.2006 (13) The act of state of war and competences of General Commander of Armed Forces and rules of its subordination to constitutional authorities of the Republic of Poland of 29.08.2002 (14) The security of mass events act of 20.03.2009 (15) The act of protection of persons and property of 22.08.1997 (16) The detective services act of 6.07.2001 (17) The act of protection of state border of 12.10.1990 (18) The act of protection of personal data of 29.08.1997 (19) The economic freedom act of 2.07.2004 (20) The act of guarantees of freedom of conscience and faith of 17.05.1989 (21) The act of granting protection of foreigners on the territory of the Republic of Poland of 13.06.2003 (22) The Foreigners act of 13.06.2003 (23) The Postal law of 12.06.2003 (24) The act of arm and munition of 21.05.1999 (25) The Aviation law of 3.07.2002 (26) The Telecommunication law of 16.07.2004
Spain	<ul style="list-style-type: none"> - Law 36/2015 on National Security. - The Spanish Constitutional Court judgment, dated June 28 of 2016.
United Kingdom	<p>Legislation:</p> <ul style="list-style-type: none"> Investigatory Powers Act 2016 Telecommunications Act 1984 <p>Case law:</p> <ul style="list-style-type: none"> Secretary of State for the Home Department v Rehman [2001] UKHL 47 Baker v Secretary of State for the Home Department [2001] UKIT NSA2 Norman Baker v the Information Commissioner and the Cabinet Office (2006) <p>Other materials:</p> <ul style="list-style-type: none"> Johannesburg Principles on national security, freedom of expression and access to information The Oxford Handbook of National Security Intelligence

