

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

FRANCE

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# Summary

[1]. As stated in the European Parliament report of 2013, ‘France’s communications, surveillance, and collection architecture rest primarily on a supercomputer operated by the DGSE in Paris.’<sup>1</sup> The source of this statement is an article published in *Le Monde* on 4 July 2013. This newspaper continues publishing on this topic. It recently affirmed that there is close cooperation between the DGSE and the French telecommunications operator.<sup>2</sup> Other newspapers reveal that the DGSE is the ‘heart of secret services’ in France.<sup>3</sup>

## I. Legal framework for surveillance

[2]. The legal framework for surveillance in France is mainly established by the Code of interior security,<sup>4</sup> recently modified by the Order (*Ordonnance*)<sup>5</sup> of 12 March 2012<sup>6</sup> and law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security of 18 December 2013.<sup>7</sup> On 18 September 2014 the National Assembly adopted a Bill aiming to strengthen the provisions on the fight against terrorism presented by the government on 9 July 2014 under which the records resulting from security interceptions of electronic communications would be destroyed in 30 days instead of 10 days.<sup>8</sup> However, the Senate introduced restrictions to the extension of this term.<sup>9</sup> The Joint Committee, composed of seven deputies and seven senators (*Commission Mixte Paritaire*), prepared a new version of the Bill removing the above-mentioned provision from

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<sup>1</sup> European Parliament (2013) National programmes for mass surveillance of personal data in EU Member States and their compatibility with EU law, p.63, available at: [www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493032/IPOL-LIBE\_ET(2013)493032\_EN.pdf]. Accessed on 27 October 2014.

<sup>2</sup> France, Follorou, J. (2014) 'Espionnage : comment Orange et les services secrets coopèrent', *Le Monde*, 20 March 2014, available at: [www.lemonde.fr/international/article/2014/03/20/dgse-orange-des-liaisons-incestueuses\_4386264\_3210.html]. Accessed on 27 October 2014.

<sup>3</sup> France, Cornevin, C. (2014) 'DGSE au coeur de nos services secrets', *Le Figaro*, 12 July 2014, available at: [www.lefigaro.fr/actualite-france/2014/07/11/01016-20140711ARTFIG00201-dgse-au-coeur-de-nos-services-secrets.php]. Accessed on 27 October 2014 ; France, Le Point (2014) 'La DGSE bavarde, mais pas trop', 14 July 2014, available at: [www.lepoint.fr/editos-du-point/jean-guisnel/la-dgse-bavarde-mais-pas-trop-14-07-2014-1845993\_53.php]. Accessed on 27 October 2014.

<sup>4</sup> France, Code of interior security (*Code de la sécurité intérieure*), available at: [www.legifrance.gouv.fr/affichCode.do?jsessionid=829D9B84D66A0C7086732A93D39C5D88.tpdjo15v\_3?cidTexte=LEGI-TEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>5</sup> An Order is a measure that is normally the preserve of statute law, but taken by the Government in order to implement its programme with the authorization of the Parliament and after consultation with the State Council.

<sup>6</sup> France, Ordonnance no. 2012-351 concerning legislative dispositions of the Code of interior security (*Ordonnance n° 2012-351 relative à la partie législative du code de la sécurité intérieure*), 12 March 2012, available at: [www.legifrance.gouv.fr/affichTexte.do?jsessionid=0626995237)B87088235AE5D725CE10B5.tpdjo07v\_2?cidTexte=JORF-TEXT000025498645&dateTexte=20120313]. Accessed on 7 August 2014.

<sup>7</sup> France, Law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Loi n° 2013-1168 relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), 18 December 2013, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&dateTexte&categorieLien=id]. Accessed on 7 August 2014.

<sup>8</sup> France, Bill aiming to strengthen the provisions on the fight against terrorism in the version adopted by the National Assembly on 18 September 2014 (*Projet de loi renforçant les dispositions relatives à la lutte contre le terrorisme adopté par l'Assemblée Nationale le 18 septembre 2014*), article 15, available at: [www.assemblee-nationale.fr/14/ta/ta0406.asp]. Accessed on 1 October 2014.

<sup>9</sup> France, Bill aiming to strengthen the provisions on the fight against terrorism in the version modified by the Senate on 16 October 2014 (*Projet de loi renforçant les dispositions relatives à la lutte contre le terrorisme modifié par le Sénat le 16 octobre 2014*), article 15, available at: [www.senat.fr/leg/tas14-003.html]. Accessed on 27 October 2014.

the text.<sup>10</sup> This version of the text will be discussed by the Joint Committee on 4 November 2014. The final version of the text did not retain this proposition, however.

#### *Types of security services and bodies involved*

- [3]. According to recommendations of the 2008 White Paper (*Livre blanc de 2008*)<sup>11</sup>, the governance of intelligence services was reorganized around the National intelligence coordinator (*Le coordonnateur national du renseignement*)<sup>12</sup> appointed by the Decree in the Council of ministers (*Décret en conseil des ministres*). The advisor of the President of the Republic, the National intelligence coordinator, coordinates the activities of the intelligence services and ensures their cooperation.<sup>13</sup>
- [4]. The National intelligence coordinator, the Prime minister, ministers, and heads of specialized intelligence services, whose presence is required by the agenda, sit on the National Intelligence Council (*Conseil national du Renseignement, CNR*), chaired by the President of the Republic. The CNR should ensure the strategic guidance of intelligence and establish the planning of human and technical resources for intelligence services. This is a specialized committee of the Council for Defence and National security (*Conseil de défense et de sécurité nationale*).<sup>14</sup>
- [5]. Cooperation between the different services has also been encouraged by the emergence of an ‘intelligence community’.<sup>15</sup> The intelligence community is composed of the National intelligence coordinator, the Intelligence Academy (*Académie du renseignement*), as well as six intelligence services: two with a general remit, the DGSE (external security) and the DGSI (General Directorate of Interior Security)<sup>16</sup> which replaced the DCRI (Central Directorate of Interior Intelligence), and four specialised services, the DRM (Directorate of Military Intelligence), the DPSD (Directorate for Defence protection and Security), the DNRED (National Directorate of Customs Intelligence and Investigations) and TRACFIN (Intelligence Analysis and Action against Clandestine Financial Networks).<sup>17</sup>

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<sup>10</sup> France, Bill aiming to strengthen the provisions on the fight against terrorism, Joint Committee text (*Projet de loi renforçant les dispositions relatives à la lutte contre le terrorisme, texte de la Commission mixte paritaire*), article 15, available at: [www.senat.fr/leg/pj114-038.html]. Accessed on 27 October 2014.

<sup>11</sup> France (2008) White Paper on Defence and National Security (*Le Livre blanc. Défense et la Sécurité nationale*), available at: [www.ladocumentationfrancaise.fr/var/storage/rapports-publics/084000341/0000.pdf]. Accessed on 10 September 2014.

<sup>12</sup> France, Order (*Arrêté*), 28 July 2008, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000019290230]. Accessed on 10 September 2014.

<sup>13</sup> France, Code of Defence (*Code de la Défense*), articles R 1122-7 and R1122-8, available at: [www.legifrance.gouv.fr/affichCode.do?jsessionid=4106C6391188306D70F80BE7C083163A.tpdjo12v\_1?idSectionTA=LEGISCTA000021544340&cidTexte=LEGITEXT000006071307&dateTexte=20140910]. Accessed on 10 September 2014.

<sup>14</sup> France, Decree no. 2009-1657 on the Council for Defence and National Security and on the General Secretariat for Defence and National Security (*Décret n° 2009-1657 relatif au conseil de défense et de sécurité nationale et au secrétariat général de la défense et de la sécurité nationale*), 24 December 2009, available at: [www.legifrance.gouv.fr/affichTexte.do?jsessionid=2E0762D5C165A5807B4C07C1539A6BA4.tpdjo12v\_1?cidTexte=JORFTEXT000021533568&categorieLien=id]. Accessed on 12 September 2014.

<sup>15</sup> France (2013) White Paper on Defence and National Security (*Le Livre blanc. Défense et la Sécurité nationale*), available at: [www.defense.gouv.fr/actualites/articles/livre-blanc-2013]. Accessed on 12 September 2014.

<sup>16</sup> France, Decree no. 2014-445 on the tasks and organization of the General Directorate of Internal Security (*Décret n° 2014-445 relatif aux missions et à l'organisation de la direction générale de la sécurité intérieure*), 30 April 2014, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028887486&categorieLien=id]. Accessed on 12 September 2014.

<sup>17</sup> France, Code of Defence (*Code de la Défense*), article R1122-8-1, available at: [www.legifrance.gouv.fr/affichCode.do?jsessionid=4106C6391188306D70F80BE7C083163A.tpdjo12v\_1?idSectionTA=LEGISCTA000021544340&cidTexte=LEGITEXT000006071307&dateTexte=20140910]. Accessed on 10 September 2014.

- [6]. The Intelligence Academy, created in 2010 and placed under the authority of the Prime Minister, is tasked in particular with designing, organizing and rolling out initial and continued training programmes for intelligence service personnel.<sup>18</sup>
- [7]. According to the 2013 White Paper on defence, this intelligence community is the backbone of a more global structure which can, where required, call on numerous other State services and departments.<sup>19</sup>
- [8]. Security interceptions are conducted by the Interministerial control group (*le groupement interministériel de contrôle*), which is a service of the Prime Minister's office.<sup>20</sup>

*The extent of their powers*

- [9]. The intelligence services have **access to data held by private operators** and can conduct **security interceptions**. It should also be noted that the French intelligence services have the **right to access administrative data bases** where personal data is kept.

*Purposes, conditions and stages of surveillance procedure. Control/oversight mechanisms*

- [10]. A certain number of surveillance measures were initially authorized in order to fight against terrorism. The recent laws introduced additional justifications to access personal data and this access was provided to a larger number of persons.

Access to data held by private operators

- [11]. Article L222-2 of the Code of interior security<sup>21</sup>, created by Order no. 2012-351 of 12 March 2012<sup>22</sup>, codified the right of authorized agents of the *gendarmerie* and national police, including services and units within the General Directorate of Interior Security,<sup>23</sup> specifically charged with the **prevention of acts of terrorism to access data held by electronic communication operators** (any natural or legal person operating an electronic communications network open to the public or providing electronic communications services to the public).<sup>24</sup>

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<sup>18</sup> France, Decree No. 2010-800 establishing the Intelligence Academy (*Décret n° 2010-800 portant création de l'académie du renseignement*), 13 July 2010, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022481056&fastPos=1&fastReqId=112354695&categorieLien=id&oldAction=rechTexte]. Accessed on 12 September 2014.

<sup>19</sup> France (2013) White Paper on Defence and National Security (*Le Livre blanc. Défense et la Sécurité nationale*), available at: [www.defense.gouv.fr/actualites/articles/livre-blanc-2013]. Accessed on 12 September 2014.

<sup>20</sup> France Code of interior security (*Code de la sécurité intérieure*), article R 242-1, available at: [www.legifrance.gouv.fr/affichCode.do?jsessionid=7A9EC703BCDDA4461FA59A655B179E18.tpdjo12v\_1?idSectionTA=LEGISCTA000028287184&cidTexte=LEGITEXT000025503132&dateTexte=20140911]. Accessed on 12 September 2014.

<sup>21</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L222-2, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508315&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>22</sup> France, Ordinance no. 2012-351 concerning legislative dispositions of the Code of interior security (*Ordonnance n° 2012-351 relative à la partie législative du code de la sécurité intérieure*), 12 March 2012, available at: [www.legifrance.gouv.fr/affichTexte.do?jsessionid=0626995237B87088235AE5D725CE10B5.tpdjo07v\_2?cidTexte=JORFTEXT000025498645&dateTexte=20120313]. Accessed on 7 August 2014.

<sup>23</sup> France, Order for application of Article 33 of Law No. 2006-64 of 23 January 2006 on the fight against terrorism and containing various provisions relating to security and border controls (*Arrêté pris pour l'application de l'article 33 de la loi n° 2006-64 du 23 janvier 2006 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers*), 7 May 2012, available at: [www.legifrance.gouv.fr/affichTexte.do?jsessionid=D30D3A3A239C898194FCFAE20E0C3805.tpdjo14v\_2?cidTexte=JORFTEXT000025836069&dateTexte=20140915]. Accessed on 10 September 2014.

<sup>24</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article L. 32, available at:

[12]. Although data concerning this traffic should normally be erased or made anonymous<sup>25</sup>, some technical data can be stored in certain cases, in particular:

– for one year maximum, if there is a need to research and pursue criminal offences or a breach of obligations defined in Article L. 336-3 of the Code of intellectual property; for the purpose of prevention of harm to the automated processing of data, punishable under Articles 323-1 to 323-3-1 of the Criminal Code, and for the sole purpose to provide them, if needed, to the judicial authority, to the high authority referred to in Article L. 331-12 of the Code of intellectual property or to the national authority in charge of information system security, referred to in Article L. 2321-1 of the Code of defence;<sup>26</sup>

- for the purposes of billing and payment, technical data can be stored until the end of the period during which the bill may be lawfully challenged, or a prosecution to obtain payment can be executed<sup>27</sup> (one year maximum).<sup>28</sup>

- operators can also perform processing of traffic data for marketing purposes with the customers' express consent and if the period is specified.

- certain data can be stored by operators in order to ensure the security of their networks<sup>29</sup> for 3 months maximum.<sup>30</sup>

[13]. Data on location of the user's terminal equipment cannot be stored and processed after the completion of the communication without the consent of the subscriber, except in cases of investigations.<sup>31</sup>

[14]. If the data stored and processed concerns the identification of users, technical aspects of the communications, or location of terminal equipment under the

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[www.legifrance.gouv.fr/affichCode.do;jsessionid=7E46BA919CD5CE0228646ACCD07559FF.tpdjo15v\_1?idSectionTA=L  
EGISCTA000006150658&cidTexte=LEGITEXT000006070987&dateTexte=20141003]. Accessed on 10 October 2014.

<sup>25</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article L. 34-1 II, available at:

[www.legifrance.gouv.fr/affichCode.do;jsessionid=23258CF0D0746454475B101AC80EBFC8.tpdjo09v\_2?idSectionTA=LE  
GISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140905]. Accessed on 5 September 2014.

<sup>26</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article L. 34-1 III, available at:

[www.legifrance.gouv.fr/affichCode.do;jsessionid=23258CF0D0746454475B101AC80EBFC8.tpdjo09v\_2?idSectionTA=LE  
GISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140905]. Accessed on 5 September 2014.

<sup>27</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article L. 34-1 IV, available at:

[www.legifrance.gouv.fr/affichCode.do;jsessionid=23258CF0D0746454475B101AC80EBFC8.tpdjo09v\_2?idSectionTA=LE  
GISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140905]. Accessed on 5 September 2014.

<sup>28</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article R. 10-14 III, available at:

[www.legifrance.gouv.fr/affichCode.do;jsessionid=0A212AA94EFBD5903C9407DBE46E7B0F.tpdjo09v\_2?idSectionTA=LE  
EGISCTA000006165962&cidTexte=LEGITEXT000006070987&dateTexte=20140908]. Accessed on 8 September 2014.

<sup>29</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article L. 34-1 IV, available at:

[www.legifrance.gouv.fr/affichCode.do;jsessionid=23258CF0D0746454475B101AC80EBFC8.tpdjo09v\_2?idSectionTA=LE  
GISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140905]. Accessed on 5 September 2014.

<sup>30</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article R. 10-14 IV, available at:

[www.legifrance.gouv.fr/affichCode.do;jsessionid=0A212AA94EFBD5903C9407DBE46E7B0F.tpdjo09v\_2?idSectionTA=LE  
EGISCTA000006165962&cidTexte=LEGITEXT000006070987&dateTexte=20140908]. Accessed on 8 September 2014.

<sup>31</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article L. 34-1 V, available at:

[www.legifrance.gouv.fr/affichCode.do;jsessionid=23258CF0D0746454475B101AC80EBFC8.tpdjo09v\_2?idSectionTA=LE  
GISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140905]. Accessed on 5 September 2014.

above-mentioned conditions, they cannot contain the content of exchanges or the information consulted.<sup>32</sup>

- [15]. According to article 6 II of Law no. 2004-575 of 21 June 2004 on confidence in the digital economy, providers of access to public communication services online should retain and store the data allowing the identification of anyone who has contributed to the creation of the content of the services provided by them.<sup>33</sup> Decree no. 2011-219 of 25 February 2011 specified that these providers should store for each connection of their subscribers: identifier of the connection; identifier assigned to the subscriber; identifier of the terminal used for the connection; date and time of start and end of the connection; characteristics of the subscriber connection.<sup>34</sup> If they are usually collected, the data provided while subscribing to a contract or creating an account should also be stored (identifier of connection at the moment of account creation; full name or business name; address; pseudonyms used; e-mail addresses or associated accounts; telephone numbers and data used to verify or modify the password), as well as the data concerning each operation of payment for subscribing to a contract or creating an account (type of payment, its reference, amount, date and time of transaction).<sup>35</sup> The above-mentioned data are stored for one year. The starting point of this period varies depending on the nature of the data.<sup>36</sup> The storage of data is submitted to the provisions of Law no. 78-17 relating to information technology, files and freedoms of 6 January 1978.<sup>37</sup> Decree no. 2011-219 of 25 February 2011 shall apply throughout the territory of the French Republic.<sup>38</sup>

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<sup>32</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article L. 34-1 VI, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=23258CF0D0746454475B101AC80EBFC8.tpdjo09v\_2?idSectionTA=LEGISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140905]. Accessed on 5 September 2014.

<sup>33</sup> France, Law no. 2004-575 on confidence in the digital economy (*Loi n° 2004-575 pour la confiance dans l'économie numérique*), 21 June 2004, II of Article 6, available at: [www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=63FE08B5AE4037BD86B32B9938416E79.tpdjo15v\_1?cidTexte=JORFTEXT00000801164&idArticle=LEGIARTI000006421546&dateTexte=&categorieLien=cid]. Accessed on 10 October 2014.

<sup>34</sup> France, Decree no. 2011-219 on the conservation and communication of data allowing the identification of any person who contributed to the creation of online content (*Décret n° 2011-219 relatif à la conservation et à la communication des données permettant d'identifier toute personne ayant contribué à la création d'un contenu mis en ligne*), article 1, 1°, 25 February 2011, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=7B8B1D40549CBBFAD5E1AA77ECF140EC.tpdjo15v\_1?cidTexte=JORFTEXT000023646013&dateTexte=20141003]. Accessed on 10 October 2014.

<sup>35</sup> France, Decree no. 2011-219 on the conservation and communication of data allowing the identification of any person who contributed to the creation of online content (*Décret n° 2011-219 relatif à la conservation et à la communication des données permettant d'identifier toute personne ayant contribué à la création d'un contenu mis en ligne*), article 1, 25 February 2011, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=7B8B1D40549CBBFAD5E1AA77ECF140EC.tpdjo15v\_1?cidTexte=JORFTEXT000023646013&dateTexte=20141003]. Accessed on 10 October 2014.

<sup>36</sup> France, Decree no. 2011-219 on the conservation and communication of data allowing the identification of any person who contributed to the creation of online content (*Décret n° 2011-219 relatif à la conservation et à la communication des données permettant d'identifier toute personne ayant contribué à la création d'un contenu mis en ligne*), article 3, 25 February 2011, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=7B8B1D40549CBBFAD5E1AA77ECF140EC.tpdjo15v\_1?cidTexte=JORFTEXT000023646013&dateTexte=20141003]. Accessed on 10 October 2014.

<sup>37</sup> France, Decree no. 2011-219 on the conservation and communication of data allowing the identification of any person who contributed to the creation of online content (*Décret n° 2011-219 relatif à la conservation et à la communication des données permettant d'identifier toute personne ayant contribué à la création d'un contenu mis en ligne*), article 4, 25 February 2011, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=7B8B1D40549CBBFAD5E1AA77ECF140EC.tpdjo15v\_1?cidTexte=JORFTEXT000023646013&dateTexte=20141003]. Accessed on 10 October 2014.

<sup>38</sup> France, Decree no. 2011-219 on the conservation and communication of data allowing the identification of any person who contributed to the creation of online content (*Décret n° 2011-219 relatif à la conservation et à la communication des données permettant d'identifier toute personne ayant contribué à la création d'un contenu mis en ligne*), article 12, 25 February 2011,

- [16]. According to article L 222-2 of the Code of interior security, data held by electronic communication operators can be accessed under the conditions of article L. 34-1-1 of the Post and Electronic Communications Code<sup>39</sup>. This article was introduced by law no. 2006-64 of 23 January 2006 on the fight against terrorism, providing the national police and *gendarmerie* with the right to access electronic communications initially for a limited period of time. The access is given without the preliminary intervention of a judge.<sup>40</sup>
- [17]. The following data can be accessed: technical data concerning identification of subscription numbers or numbers of connections to electronic communications services; identification of all subscription numbers or numbers of connections of a designated person; data on location of the equipment used; and technical data on communications (list of incoming and outgoing numbers, duration and date of communication).<sup>41</sup>
- [18]. According to article L. 34-1-1 of the Post and Electronic Communications Code, agents must be individually designated in order to access the above-mentioned data. The Code also specifies that the communication of data can be required from electronic communication operators and also from persons offering a connection for online communication via network access. This can be their main or accessory occupation, including if it is free of charge. This provision was introduced by law no. 2006-64 of 23 January 2006 on the fight against terrorism, containing various provisions relating to security and border controls.<sup>42</sup>
- [19]. Article L. 34-1-1 of the Post and Electronic Communications Code specifies that identifiable and specific costs incurred to answer requests for data are subject to financial compensation<sup>43</sup>.
- [20]. If the above-mentioned data are provided, they can be recorded and stored for a maximum period of three years in automated processing implemented by the Ministry of the interior.<sup>44</sup>

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available at:

[[www.legifrance.gouv.fr/affichTexte.do;jsessionid=7B8B1D40549CBBFAD5E1AA77ECF140EC.tpdjo15v\\_1?cidTexte=JORFTEXT000023646013&dateTexte=20141003](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=7B8B1D40549CBBFAD5E1AA77ECF140EC.tpdjo15v_1?cidTexte=JORFTEXT000023646013&dateTexte=20141003)]. Accessed on 10 October 2014.

<sup>39</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article L. 34-1-1, available at:

[[www.legifrance.gouv.fr/affichCode.do;jsessionid=0626995237B87088235AE5D725CE10B5.tpdjo07v\\_2?idSectionTA=LEGISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140721](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=0626995237B87088235AE5D725CE10B5.tpdjo07v_2?idSectionTA=LEGISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140721)]. Accessed on 7 August 2014.

<sup>40</sup> France, Law no. 2006-64 on the fight against terrorism, containing various provisions relating to security and border controls (*Loi n° 2006-64 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers*), 23 January 2006, article 6, available at:

[[www.legifrance.gouv.fr/affichTexte.do;jsessionid=0626995237B87088235AE5D725CE10B5.tpdjo07v\\_2?cidTexte=JORFTEXT000000454124&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=0626995237B87088235AE5D725CE10B5.tpdjo07v_2?cidTexte=JORFTEXT000000454124&categorieLien=id)]. Accessed on 7 August 2014; France, Rees, M. (2013) 'Comment va s'organiser la surveillance d'Internet en France', *Nextimpact*, 3 December 2013, available at: [[www.nextinpact.com/news/84680-comment-va-sorganiser-surveillance-dinternet-en-france.htm](http://www.nextinpact.com/news/84680-comment-va-sorganiser-surveillance-dinternet-en-france.htm)]. Accessed on 7 August 2014.

<sup>41</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article L. 34-1-1, available at:

[[www.legifrance.gouv.fr/affichCode.do;jsessionid=0626995237B87088235AE5D725CE10B5.tpdjo07v\\_2?idSectionTA=LEGISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140721](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=0626995237B87088235AE5D725CE10B5.tpdjo07v_2?idSectionTA=LEGISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140721)]. Accessed on 7 August 2014.

<sup>42</sup> France, Law no. 2006-64 on the fight against terrorism, containing various provisions relating to security and border controls, (*Loi n° 2006-64 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers*), 23 January 2006, article 6, available at:

[[www.legifrance.gouv.fr/affichTexte.do;jsessionid=0626995237B87088235AE5D725CE10B5.tpdjo07v\\_2?cidTexte=JORFTEXT000000454124&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do;jsessionid=0626995237B87088235AE5D725CE10B5.tpdjo07v_2?cidTexte=JORFTEXT000000454124&categorieLien=id)]. Accessed on 7 August 2014.

<sup>43</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article L. 34-1-1, available at:

[[www.legifrance.gouv.fr/affichCode.do;jsessionid=0626995237B87088235AE5D725CE10B5.tpdjo07v\\_2?idSectionTA=LEGISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140721](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=0626995237B87088235AE5D725CE10B5.tpdjo07v_2?idSectionTA=LEGISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140721)]. Accessed on 7 August 2014.

- [21]. According to article L222-3 of the Code of interior security<sup>45</sup>, created by Order no. 2012-351 of 12 March 2012, authorized agents of the *gendarmerie* and national police, including services and units within the General Directorate of Interior Security,<sup>46</sup> specifically charged with the **prevention of acts of terrorism, can access data held by providers of online public communication services and by persons storing signals, writings, images, sounds or messages of any kind (even for free), provided by recipients of online public communication services (hosting services for providers of sites, blogs, social networks)<sup>47</sup>, (*hébergeurs*), under the conditions of law no. 2004-575 of 21 June 2004 on confidence in the digital economy (IIb of Article 6<sup>48</sup>).**
- [22]. According to article 6 II of Law no. 2004-575 of 21 June 2004 on confidence in the digital economy, the data allowing the identification of anyone who has contributed to the creation of the content provided by the above-mentioned persons and services should be retained and stored.<sup>49</sup> Decree no. 2011-219 of 25 February 2011 specified that for each operation of creation the following should be stored: identifier of the communication connection; identifier assigned to the content, subject of the operation; types of protocols used to connect to the service and for the transfer of content; nature of the operation, the date and time of the transaction; identifier used by the author of the operation when it was provided.<sup>50</sup> If they are usually collected, the data provided while subscribing to a contract or creating an account should also be stored (identifier of connection at the moment of account creation; full name or business name; address; pseudonyms used; e-mail addresses or associated accounts; telephone numbers and data used to verify or modify the password), as well as the data concerning each operation of payment for subscribing to a contract or creating an account (type of payment,

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<sup>44</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article R 10-19, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=0A212AA94EFBD5903C9407DBE46E7B0F.tpdjo09v\_2?idSectionTA=LEGISCTA000006165962&cidTexte=LEGITEXT000006070987&dateTexte=20140908]. Accessed on 5 September 2014.

<sup>45</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L222-3, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508315&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>46</sup> France, Order for application of Article 33 of Law No. 2006-64 of 23 January 2006 on the fight against terrorism and containing various provisions relating to security and border controls (Arrêté pris pour l'application de l'article 33 de la loi n° 2006-64 du 23 janvier 2006 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers), 7 May 2012, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=D30D3A3A239C898194FCFAE20E0C3805.tpdjo14v\_2?cidTexte=JORFTEXT000025836069&dateTexte=20140915]. Accessed on 10 September 2014.

<sup>47</sup> France, Agency for entrepreneurship (*Agence pour la création d'entreprises*) (2014), Create its own website-Legal obligations (*Créer son site Internet – Obligations légales*), available at: [www.apce.com/pid2766/les-obligations-legales.html?espace=3#obligation-de-conservation-de-donnees-personnelles-pour-les-hebergeurs-et-fourisseurs-d-acces-a-internet]. Accessed on 10 October 2014.

<sup>48</sup> France, Law no. 2004-575 on confidence in the digital economy (*Loi n° 2004-575 pour la confiance dans l'économie numérique*), 21 June 2004, II bis of Article 6, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000801164&dateTexte=&categorieLien=id]. Accessed on 7 August 2014.

<sup>49</sup> France, Law no. 2004-575 on confidence in the digital economy (*Loi n° 2004-575 pour la confiance dans l'économie numérique*), 21 June 2004, II of Article 6, available at: [www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=63FE08B5AE4037BD86B32B9938416E79.tpdjo15v\_1?cidTexte=JORFTEXT00000801164&idArticle=LEGIARTI000006421546&dateTexte=&categorieLien=cid]. Accessed on 10 October 2014.

<sup>50</sup> France, Decree no. 2011-219 on the conservation and communication of data allowing the identification of any person who contributed to the creation of online content (*Décret n° 2011-219 relatif à la conservation et à la communication des données permettant d'identifier toute personne ayant contribué à la création d'un contenu mis en ligne*), article 1, 2°, 25 February 2011, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=7B8B1D40549CBBFAD5E1AA77ECF140EC.tpdjo15v\_1?cidTexte=JORFTEXT000023646013&dateTexte=20141003]. Accessed on 10 October 2014.

reference no., amount, date and time of transaction).<sup>51</sup> These data are stored<sup>52</sup> by providers of online public communication services and by persons storing signals, writings, images, sounds or messages of any kind (even for free), provided by recipients of online public communication services, for one year. The starting point of this period varies depending on the nature of the data.<sup>53</sup> The storage of data is submitted to the provisions of Law no. 78-17 relating to information technology, files and freedoms of 6 January 1978.<sup>54</sup> Decree no. 2011-219 of 25 February 2011 shall apply throughout the territory of the French Republic.<sup>55</sup>

- [23]. The Paris court of first instance, examining the case against the American corporation operating the social networking platform Twitter, by way of a summary procedure (*en référé*), decided that it was not submitted to the obligation of data storage under the French law. The NGOs soliciting data communication did not prove that this corporation is established in France or uses processing systems that are located in France (criteria of Law no. 78-17 relating to information technology, files and freedoms of 6 January 1978, article 5, I, 2°). It however ordered the communication of data allowing the identification of the authors of anti-Semitic tweets on the basis of article 145 of the Code of civil procedure under which if there is a legitimate reason to preserve or to establish, before any legal process, the evidence upon which the resolution of the dispute depends, legally permissible preparatory inquiries may be ordered at the request of any interested party, by way of a petition or by way of a summary procedure.<sup>56</sup>
- [24]. This was criticized by several persons who outlined that Law no. 2004-575 of 21 June 2004 on confidence in the digital economy does not distinguish between national and foreign hosting service providers when requiring retention and

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<sup>51</sup> France, Decree no. 2011-219 on the conservation and communication of data allowing the identification of any person who contributed to the creation of online content (*Décret n° 2011-219 relatif à la conservation et à la communication des données permettant d'identifier toute personne ayant contribué à la création d'un contenu mis en ligne*), article 1, 3° and 4°, 25 February 2011, available at:

[[www.legifrance.gouv.fr/affichTexte.do?jsessionid=7B8B1D40549CBBFAD5E1AA77ECF140EC.tpdjo15v\\_1?cidTexte=JORFTEXT000023646013&dateTexte=20141003](http://www.legifrance.gouv.fr/affichTexte.do?jsessionid=7B8B1D40549CBBFAD5E1AA77ECF140EC.tpdjo15v_1?cidTexte=JORFTEXT000023646013&dateTexte=20141003)]. Accessed on 10 October 2014.

<sup>52</sup> France, Law no. 2004-575 on confidence in the digital economy (*Loi n° 2004-575 pour la confiance dans l'économie numérique*), 21 June 2004, II of Article 6, available at: [[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000801164&dateTexte=&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000801164&dateTexte=&categorieLien=id)]. Accessed on 8 September 2014.

<sup>53</sup> France, Decree no. 2011-219 on the conservation and communication of data allowing the identification of any person who contributed to the creation of online content (*Décret n° 2011-219 relatif à la conservation et à la communication des données permettant d'identifier toute personne ayant contribué à la création d'un contenu mis en ligne*), 25 February 2011, article 3, available at: [[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023646013&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023646013&categorieLien=id)]. Accessed on 8 September 2014.

<sup>54</sup> France, Decree no. 2011-219 on the conservation and communication of data allowing the identification of any person who contributed to the creation of online content (*Décret n° 2011-219 relatif à la conservation et à la communication des données permettant d'identifier toute personne ayant contribué à la création d'un contenu mis en ligne*), article 4, 25 February 2011, available at: [[www.legifrance.gouv.fr/affichTexte.do?jsessionid=7B8B1D40549CBBFAD5E1AA77ECF140EC.tpdjo15v\\_1?cidTexte=JORFTEXT000023646013&dateTexte=20141003](http://www.legifrance.gouv.fr/affichTexte.do?jsessionid=7B8B1D40549CBBFAD5E1AA77ECF140EC.tpdjo15v_1?cidTexte=JORFTEXT000023646013&dateTexte=20141003)]. Accessed on 10 October 2014.

<sup>55</sup> France, Decree no. 2011-219 on the conservation and communication of data allowing the identification of any person who contributed to the creation of online content (*Décret n° 2011-219 relatif à la conservation et à la communication des données permettant d'identifier toute personne ayant contribué à la création d'un contenu mis en ligne*), article 12, 25 February 2011, available at: [[www.legifrance.gouv.fr/affichTexte.do?jsessionid=7B8B1D40549CBBFAD5E1AA77ECF140EC.tpdjo15v\\_1?cidTexte=JORFTEXT000023646013&dateTexte=20141003](http://www.legifrance.gouv.fr/affichTexte.do?jsessionid=7B8B1D40549CBBFAD5E1AA77ECF140EC.tpdjo15v_1?cidTexte=JORFTEXT000023646013&dateTexte=20141003)]. Accessed on 10 October 2014.

<sup>56</sup> France, Paris court of first instance (*Tribunal de grande instance de Paris*), Ordinance (*Ordonnance de référé*) no.13/50262, 13/50276, 24 January 2013 available at: [<http://static.pcinpact.com/medias/ordonnance-tgi-paris-24-janvier-2013-uejf-vs-twitter.pdf>]. Accessed on 10 October 2014.

storage of identification data.<sup>57</sup> 'If major global hosting service providers such as Twitter or Facebook are not submitted to article 6, II of Law no. 2004-575 of 21 June 2004 on confidence in the digital economy, they will not be required to store the customer identification data and could therefore claim that they do not have them... Fortunately, in this case, Twitter has not denied having the identification data'.<sup>58</sup>

- [25]. If the above-mentioned data are provided, they can be recorded and stored for a maximum period of three years in automated processing implemented by the Ministry of the interior and the Ministry of Defence.<sup>59</sup>
- [26]. Law no. 2006-64 of 23 January 2006 on the fight against terrorism, containing various provisions relating to security and border controls, introduced provisions concerning requests for data mentioned in article L222-2 and L222-3 of the Code of interior security.
- [27]. In particular, justified by the prevention of acts of terrorism,<sup>60</sup> requests for the above-mentioned data are submitted by agents to a qualified person appointed for three years by the National Commission for control of security interceptions (*Commission nationale de contrôle des interceptions de sécurité*, CNCIS), acting on the proposal by the Minister of the Interior. This qualified person now formally acts under the authority of the Prime Minister (see art. L246-2 II). The CNCIS may carry out inspections relating to operations of technical data communication at any time. If it finds a breach of the rules set out in article L. 34-1-1 of the Post and Electronic Communications Code, or infringements of rights and freedoms, it makes a recommendation to the Minister of the Interior. The Minister of the Interior must inform the CNCIS about measures taken to remedy any deficiencies found within fifteen days<sup>61</sup>.
- [28]. The above-mentioned qualified person establishes an annual activity report for the attention of the National Commission for control of security interceptions.<sup>62</sup>

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<sup>57</sup> France, Robitaille, A. (2013) '*Liberté* d'expression et racisme: Twitter condamné à communiquer les données de nature à permettre l'identification des internautes', La Revue des droits de l'Homme, 3 February 2013, available at: [<http://revdh.org/2013/02/03/liberte-expression-twitter-lidentification-des-internautes/>]. Accessed on 6 October 2014.

<sup>58</sup> France, Darrier, R., Barbezieux, M. (2013) 'Affaire Twitter: l'oiseau mis en cage mais pour combien de temps?' *Village de justice*, 17 April 2013, available at: [[www.village-justice.com/articles/Affaire-Twitter-oiseau-combien-temps,14291.html](http://www.village-justice.com/articles/Affaire-Twitter-oiseau-combien-temps,14291.html)]. Accessed on 6 October 2014.

<sup>59</sup> France, Decree no. 2011-219 on the conservation and communication of data allowing the identification of any person who contributed to the creation of online content (*Décret n° 2011-219 relatif à la conservation et à la communication des données permettant d'identifier toute personne ayant contribué à la création d'un contenu mis en ligne*), no. 2011-219, 25 February 2011, article 8, available at: [[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023646013&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023646013&categorieLien=id)]. Accessed on 8 September 2014.

<sup>60</sup> France, CNCIS (2013) 2012-2013 Activity report (Rapport d'activité 2012-2013), p. 69, available at: [[www.ladocumentationfrancaise.fr/var/storage/rapports-publics/144000007/0000.pdf](http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/144000007/0000.pdf)]. Accessed on 6 October 2014.

<sup>61</sup> France, Law no. 2004-575 for confidence in the digital economy (*Loi n° 2004-575 pour la confiance dans l'économie numérique*), 21 June 2004, article 6 II bis, available at: [[www.legifrance.gouv.fr/affichTexteArticle.do?cidTexte=JORFTEXT000000801164&idArticle=LEGIARTI000006421546&dateTexte=&categorieLien=cid](http://www.legifrance.gouv.fr/affichTexteArticle.do?cidTexte=JORFTEXT000000801164&idArticle=LEGIARTI000006421546&dateTexte=&categorieLien=cid)]. Accessed on 7 August 2014; France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article L. 34-1-1, available at: [[www.legifrance.gouv.fr/affichCode.do?jsessionid=55C38585F28223FAE9B3319A2678C744.tpdjo14v\\_2?idSectionTA=LEGISC TA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140718](http://www.legifrance.gouv.fr/affichCode.do?jsessionid=55C38585F28223FAE9B3319A2678C744.tpdjo14v_2?idSectionTA=LEGISC TA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140718)]. Accessed on 7 August 2014.

<sup>62</sup> France, Law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Loi n° 2013-1168 relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), 18 December 2013, article 20, available at: [[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&dateTexte&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&dateTexte&categorieLien=id)]. Accessed on 7 August 2014.

The requests for data as well as their motivation are also communicated to the CNCIS, which takes this data into account when publishing its own report.

- [29]. Under article L244-2 of the Code of interior security, courts competent to order interceptions according to the Code of Criminal Procedure, the Prime Minister, or, in case of radio transmissions, the Minister of Defence and the Minister of the Interior, may collect information or documents necessary for the realization of interceptions authorized by law (interceptions ordered by judicial authority or security interceptions) from persons or entities operating electronic communications networks, or providers of electronic communication services. The provision of such information or documents does not constitute an abuse of their purpose (criminal offence consisting in misappropriation of personal data by the person holding them).<sup>63</sup> A refusal to provide the requested information or documents or providing false information is punished by six months' imprisonment and a €7,500 fine.<sup>64</sup>
- [30]. Basing its interpretation on the 1991 Law on the secrecy of correspondence, the quoted article was read by the CNCIS since 2010 as allowing the intelligence services to request, via the Interdepartmental control group, persons or entities operating electronic communications networks and providers of electronic communication services to provide data in the framework of preparatory security interceptions phases. Thus, according to this interpretation, the request can be justified not only by the purpose of prevention of terrorism, but also by another four reasons for security interceptions: finding information relating to national security, protection of essential elements of scientific and economic potential of France, prevention of organized crime and restoration or maintenance of dissolved groups. The CNIS controls these requests *a priori* and *a posteriori*.<sup>65</sup>
- [31]. Law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security introduced a new chapter, 'Administrative access to connection data', to the Code of interior security that enters into force from the 1 January 2015. These provisions will replace the provisions of articles L 222-2 and L 222-3 of the Code of interior security from the 1 January 2015. Within the changes, the Law will not only modify the access modalities to administrative files dealt under the authority of the Prime Ministry, but will also include new access to files criminal record (see art. 19 of Law 2013-1168). Article L. 34-1-1 of the Post and Electronic Communications Code and article 6 IIb of law no. 2004-575 of 21 June 2004 on confidence in the digital economy will be abrogated.<sup>66</sup>

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<sup>63</sup> France, Code of interior security (*Code de la sécurité intérieure*), article 244-2, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508207&cidTexte=LEGITEXT000025503132&dateTexte=20120618]; France, Criminal code (*Code pénal*), article 226-21, available at: [www.legifrance.gouv.fr/affichCodeArticle.do?jsessionid=F0FD254CB467E3A41DF6EE63DA53DB7D.tpdjo09v\_2?cidTexte=LEGITEXT000006070719&idArticle=LEGIARTI000006417978&dateTexte=&categorieLien=cid]. Accessed on 7 October 2014.

<sup>64</sup> France, Code of interior security (*Code de la sécurité intérieure*), article 245-3, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508198&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>65</sup> France, CNCIS (2013) 2012-2013 Activity report (*Rapport d'activité*), p. 69, available at: [www.ladocumentationfrancaise.fr/var/storage/rapports-publics/144000007/0000.pdf]; France, Inquiry commission (2013) Report on the operations of French intelligence services in monitoring and surveillance of radical armed movements (*Rapport sur le fonctionnement des services de renseignement français dans le suivi et la surveillance des mouvements radicaux armés*), p. 50, available at: [www.assemblee-nationale.fr/14/pdf/rap-enq/r1056.pdf]. Accessed on 6 October 2014.

<sup>66</sup> France, Law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Loi n° 2013-1168 relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la*

- [32]. Under the new article, L246-1<sup>67</sup>, individually designated and authorized agents of the Minister in charge of interior security, the Minister of Defence, and the Minister of the Economy and Budget services will be able to ask for access to information collected on documents processed or held by electronic communication services and networks of electronic communication operators, persons offering a connection for online communication via network access, persons storing (even for free) signals, writings, images, sounds or messages of any kind provided by recipients of public online communication services.<sup>68</sup>
- [33]. This information may be collected and accessed for purposes listed under article L 241-2 if the Code of interior security: not only in order to **prevent terrorism**, but also in order to **find information relating to national security, protection of essential elements of scientific and economic potential of France, prevention of organized crime and restoration or maintenance of dissolved groups** under Article L. 212-1 of the Code of interior security.
- [34]. The list of data that can be accessed stays the same: technical data concerning identification of subscription numbers or numbers of connections to electronic communications services; identification of all subscription numbers or numbers of connections of a designated person; data on location of equipment used; and technical data on communications (list of incoming and outgoing numbers, duration and date of communication).
- [35]. The request for data must be grounded by the above-mentioned reasons (§30) and should be submitted to a qualified person appointed for three years by the National Commission for control of security interceptions acting on the proposal of the Prime Minister. The above-mentioned qualified person establishes an annual activity report for the attention of the National Commission for control of security interceptions.<sup>69</sup> The requests for data as well as their motivation are also communicated to the CNCIS, which takes this data into account when publishing its own report.
- [36]. Under the new article, L 246-3, the above-mentioned (§32) information and documents can be collected for the same purposes and sent to the above-mentioned agents in real time. Here, certain observers point out the broad character of the notion of access.<sup>70</sup>

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*défense et la sécurité nationale*), 18 December 2013, article 20, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&dateTexte&categorieLien=id]. Accessed on 7 August 2014.

<sup>67</sup> France, Law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Loi n° 2013-1168 relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), 18 December 2013, article 20, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&dateTexte&categorieLien=id]. Accessed on 7 August 2014.

<sup>68</sup> France, Law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Loi n° 2013-1168 relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), 18 December 2013, article 20, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&dateTexte&categorieLien=id]. Accessed on 7 August 2014.

<sup>69</sup> France, Law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Loi n° 2013-1168 relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), 18 December 2013, article 20, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&dateTexte&categorieLien=id]. Accessed on 7 August 2014.

<sup>70</sup> France, Rees, M. (2013) 'Comment va s'organiser la surveillance d'Internet en France', *Nextimpact*, 3 December 2013,

- [37]. The CNIL outlines that “access to connection data in real-time means access to information on the location of mobile terminals (smartphones, etc.) and of people in real-time”.<sup>71</sup> “Fortunately, the article limits the possibility of massive and direct extraction of data by the intelligence services, as communication operators intervene themselves on relevant networks”.<sup>72</sup>
- [38]. In this case the access to information and documents is given by the Prime Minister upon a written request, justified by the reasons mentioned in § 30, from the Minister in charge of interior security, the Minister of Defence, the Minister of the Economy and Budget or especially designated persons. Access is given for thirty days, but this period can be renewed. The Chairman of the National Commission for control of security interceptions is informed about this decision within forty-eight hours. If the Chairman considers that the legality of that decision is not certain, the CNCIS rules within seven days. If the CNCIS decides that the data collection has been authorized in breach of the legal provisions, it recommends the Prime Minister suspend it. This recommendation is also addressed to the attention of the Minister who proposed the data collection and the Minister responsible for electronic communications. The CNCIS will be able to check the legality of the collection of information and documents and address its recommendations to the Prime Minister. The Prime Minister will have 15 days to inform the CNCIS of the actions taken following its recommendations.<sup>73</sup>

### Security interceptions

- [39]. Under article L241-1 of the Code of interior security<sup>74</sup>, electronic communications are confidential. However, the following articles contain some exceptions to this principle.
- [40]. In particular, according to article L241-2<sup>75</sup>, the interception of correspondence sent through electronic communication may be authorized in **exceptional cases** if it aims to **find information relating to national security, protection of essential elements of scientific and economic potential of France, prevention of terrorism, organized crime and restoration or maintenance of dissolved groups** under Article L. 212-1 of the Code of interior security.<sup>76</sup>

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available at: [www.nextinpact.com/news/84680-comment-va-sorganiser-surveillance-dinternet-en-france.htm]. Accessed on 7 August 2014.

<sup>71</sup> France, CNIL (2013) 'Loi de programmation militaire : la CNIL déplore de ne pas avoir été saisie des dispositions relatives à l'accès aux données de connexion', CNIL, 26 Novembre 2013, available at : [www.cnil.fr/linstitution/actualite/article/article/loi-de-programmation-militaire-la-cnil-deploire-de-ne-pas-avoir-ete-saisie-des-dispositions-rela/]. Accessed on 10 October 2014.

<sup>72</sup> France, CNIL (2013) 'Promulgation de la loi de programmation militaire : la CNIL fait part de sa position', CNIL, 20 December 2013, available at : [www.cnil.fr/linstitution/actualite/article/article/promulgation-de-la-loi-de-programmation-militaire-la-cnil-fait-part-de-sa-position/]. Accessed on 10 October 2014.

<sup>73</sup> France, Law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Loi n° 2013-1168 relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), 18 December 2013, article 20, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&dateTexte&categorieLien=id]. Accessed on 7 August 2014.

<sup>74</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L241-1, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508253&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>75</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L241-2, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508253&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>76</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L212-1, available at: [www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000025503132&idArticle=LEGIARTI000025505191&dateTexte=&categorieLien=cid]. Accessed on 7 August 2014.

- [41]. The authorization is given by the Prime Minister or one of two persons especially delegated by him. This decision must be written and justified. It is issued following a written and justified proposal of the Minister of Defence, the Minister of the Interior or the Minister responsible for customs. The proposal should contain one of the legal reasons listed in article L241-2 of the Code of interior security (§35) and the presentation of the reasons that justify a security interception.<sup>77</sup> Each Minister can also delegate this power to two persons. The Prime Minister organizes the centralized undertaking of authorized interceptions.<sup>78</sup>
- [42]. This authorization is granted for a maximum period of four months. It can be renewed under the same conditions of form and duration (several times for four months each time).<sup>79</sup> However, the maximum number of interceptions that may be practiced simultaneously is established by the Prime Minister.<sup>80</sup>
- [43]. The Interdepartmental control group (*le groupement interministériel de contrôle*), a service of the Prime Minister, is charged with security interceptions.<sup>81</sup>
- [44]. A list of interceptions and recordings is established under the authority of the Prime Minister. It includes the date and time when they started and when they ended.<sup>82</sup> Only information related to one of the objectives listed in Article L. 241-2 of the Code of interior security can be transcribed.<sup>83</sup>
- [45]. Records are destroyed under the authority of the Prime Minister in ten days.<sup>84</sup> The Bill under which records should be destroyed in 30 days was presented on 9 July 2014 and adopted by the National Assembly on 18 September 2014.<sup>85</sup> However, the Senate introduced restrictions to the extension of this term.<sup>86</sup> The Joint Committee, composed of seven deputies and seven senators (*Commission Mixte Paritaire*), prepared a new version of the Bill removing the above-mentioned

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<sup>77</sup> France, CNCIS (2013) 2012-2013 Activity report (*Rapport d'activité 2013-2013*), p. 54, available at:

[[www.ladocumentationfrancaise.fr/var/storage/rapports-publics/144000007/0000.pdf](http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/144000007/0000.pdf)]. Accessed on 10 October 2014.

<sup>78</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L242-1, available at:

[[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618)]. Accessed on 7 August 2014.

<sup>79</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L242-3, available at:

[[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618)]. Accessed on 7 August 2014.

<sup>80</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L242-2, available at:

[[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618)]. Accessed on 8 October 2014.

<sup>81</sup> France Code of interior security (*Code de la sécurité intérieure*), article R 242-1, available at:

[[www.legifrance.gouv.fr/affichCode.do?jsessionid=7A9EC703BCDDA4461FA59A655B179E18.tpdjo12v\\_1?idSectionTA=LEGISCTA000028287184&cidTexte=LEGITEXT000025503132&dateTexte=20140911](http://www.legifrance.gouv.fr/affichCode.do?jsessionid=7A9EC703BCDDA4461FA59A655B179E18.tpdjo12v_1?idSectionTA=LEGISCTA000028287184&cidTexte=LEGITEXT000025503132&dateTexte=20140911)]. Accessed on 12 September 2014.

<sup>82</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L242-4, available at:

[[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618)]. Accessed on 7 August 2014.

<sup>83</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L242-5, available at:

[[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618)]. Accessed on 7 August 2014.

<sup>84</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L242-6, available at:

[[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618)]. Accessed on 7 August 2014.

<sup>85</sup> France, Bill aiming to strengthen the provisions on the fight against terrorism (*Projet de loi renforçant les dispositions relatives à la lutte contre le terrorisme*), article 15, available at: [[www.assemblee-nationale.fr/14/projets/pl2110.asp](http://www.assemblee-nationale.fr/14/projets/pl2110.asp)]. Accessed on 7 August 2014.

<sup>86</sup> France, Bill aiming to strengthen the provisions on the fight against terrorism in the version modified by the Senate on 16 October 2014 (*Projet de loi renforçant les dispositions relatives à la lutte contre le terrorisme modifié par le Sénat le 16 octobre 2014*), article 15, available at: [[www.senat.fr/leg/tas14-003.html](http://www.senat.fr/leg/tas14-003.html)]. Accessed on 27 October 2014.

provision from the text<sup>87</sup> – however, the final version of the text did not retain this proposition. Transcripts of interceptions must be destroyed under the authority of the Prime Minister as soon as they are no longer necessary to achieve the purposes referred to in Article L. 241-2.<sup>88</sup> The collected information can be used only for the purposes mentioned in Article L. 241-2 of the Code of interior security, but any authority, any public officer or servant who, in the exercise of his/her duties, becomes aware of an offence is required to give notice without delay to the Prosecutor and to send him/her all related information, records and documents.<sup>89</sup>

- [46]. The Prime Minister's authorization of interceptions is communicated within forty-eight hours to the Chairman of the National Commission for control of security interceptions. If the Chairman considers that the legality of that decision is not certain, the CNCIS rules within seven days. If the CNCIS decides that the interception has been authorized in breach of the legal provisions, it recommends the Prime Minister suspend this interception. This recommendation is also addressed to the attention of the Minister who proposed the interception and the Minister responsible for electronic communications. The CNCIS can make a recommendation on the maximum number of interceptions performed simultaneously to the Prime Minister. The Prime Minister shall immediately inform the CNCIS of the actions taken following its recommendations.<sup>90</sup>
- [47]. According to article L243-9 of the Code of interior security, the CNCIS can proceed to check the legality of security interceptions on its own initiative or on a complaint of any person having a direct and personal interest. If the Commission considers that the security interception is performed in violation of the Code of interior security, it recommends to the Prime Minister to suspend this interception. This recommendation is also addressed to the attention of the Minister who proposed the interception and the Minister responsible for electronic communications. The Prime Minister shall immediately inform the Commission of the actions taken following its recommendations.<sup>91</sup>
- [48]. If the check is carried out following a complaint, the complainant is informed that the necessary checks were carried out. The Commission informs the public prosecutor of any breach of the present provisions revealed during the check without delay.<sup>92</sup>

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<sup>87</sup> France, Bill aiming to strengthen the provisions on the fight against terrorism, Joint Committee text (*Projet de loi renforçant les dispositions relatives à la lutte contre le terrorisme, texte de la Commission mixte paritaire*), article 15, available at: [www.senat.fr/leg/pjl14-038.html]. Accessed on 27 October 2014.

<sup>88</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L242-7, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>89</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L242-7, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>90</sup> France, Code of interior security (*Code de la sécurité intérieure*), article 243-8, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508218&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>91</sup> France, Code of interior security (*Code de la sécurité intérieure*), article 243-9, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508218&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>92</sup> France, Code of interior security (*Code de la sécurité intérieure*), article 243-11, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508218&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

- [49]. Opinions on the sufficient nature of these guarantees are diverging. Some commentators regret that according to the legal provisions, the CNCIS can only make checks *a posteriori*. According to the Parliamentary Delegation on intelligence, the CNCIS's control functions are satisfactory.<sup>93</sup> According to the CNCIS, *ex ante* oversight exists in practice: it is consulted before the request for the authorisation of the Prime Minister).<sup>94</sup>
- [50]. Article L244-1 of the Code of interior security specifies that natural or legal persons providing services of encryption to ensure privacy are required to submit data allowing decryption to agents authorized in accordance with Article L. 242-1, at their request.<sup>95</sup> This obligation results from a decision of the Prime Minister or of a person delegated by him/her.<sup>96</sup> The President of the National Commission for control of security interceptions is informed about this decision without delay.<sup>97</sup>
- [51]. If the request is not fulfilled, this inaction is punished by two years' imprisonment and a €30,000 fine.<sup>98</sup>
- Article L241-3 of the Code of interior security<sup>99</sup> codified the most controversial provision of the law of 10 July 1991, providing that public authority measures aiming at monitoring and controlling radio transmissions (*voice hertzienne*) in order to protect national interests are not subject to the above-mentioned legal provisions. Thus, there is no independent control in this area.<sup>100</sup> The CNCIS mentions in its report a "general monitoring mission for the electronic and radio communications field" and "random frequency scanning operations".<sup>101</sup>

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<sup>93</sup> France, Achilleas, P. and Binet, L. (2014), 'Un an de régulation du marché des communications électroniques', *Communication commerce électronique*, no.5, mai 2014, chron.5.; France, Parliamentary Delegation on intelligence (*Délégation parlementaire au renseignement*) (2013) Activity report (*Rapport d'activité*), available at: [www.assemblee-nationale.fr/14/rap-off/i1886.asp]. Accessed on 14 September 2014.

<sup>94</sup> France, CNCIS (2013) 2012-2013 Activity report (*Rapport d'activité*), p. 50, available at: [www.ladocumentationfrancaise.fr/var/storage/rapports-publics/144000007/0000.pdf]; France, Inquiry commission (2013) Report on the operations of French intelligence services in monitoring and surveillance of radical armed movements (*Rapport sur le fonctionnement des services de renseignement français dans le suivi et la surveillance des mouvements radicaux armés*), available at: [www.assemblee-nationale.fr/14/pdf/rap-enq/r1056.pdf]. Accessed on 6 October 2014.

<sup>95</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L244-1, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508207&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>96</sup> France, Code of interior security (*Code de la sécurité intérieure*), article R 244-1, available at: [www.legifrance.gouv.fr/affichCode.do?jsessionid=7E01EF84EA31AC1E1639614154234F8E.tpdjo08v\_3?idSectionTA=LEGISCTA000028287169&cidTexte=LEGITEXT000025503132&dateTexte=20140731]. Accessed on 7 August 2014.

<sup>97</sup> France, Code of interior security (*Code de la sécurité intérieure*), article R 244-2, available at: [www.legifrance.gouv.fr/affichCode.do?jsessionid=7E01EF84EA31AC1E1639614154234F8E.tpdjo08v\_3?idSectionTA=LEGISCTA000028287169&cidTexte=LEGITEXT000025503132&dateTexte=20140731]. Accessed on 7 August 2014.

<sup>98</sup> France, Code of interior security (*Code de la sécurité intérieure*), article 245-2, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508198&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>99</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L241-3, available at: [www.legifrance.gouv.fr/affichCode.do?jsessionid=702D32177C347ADB11C559F73ECFA7A.tpdjo03v\_3?idSectionTA=LEGISCTA000025508253&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>100</sup> France, Pech, L. (2014), 'Secret de la défense nationale', *JurisClasseur*, p.21.

<sup>101</sup> France, CNCIS (2013) 2012-2013 Activity report (*Rapport d'activité*), p. 50, available at: [www.ladocumentationfrancaise.fr/var/storage/rapports-publics/144000007/0000.pdf]; France, Inquiry commission (2013) Report on the operations of French intelligence services in monitoring and surveillance of radical armed movements (*Rapport sur le fonctionnement des services de renseignement français dans le suivi et la surveillance des mouvements radicaux armés*), available at: [www.assemblee-nationale.fr/14/pdf/rap-enq/r1056.pdf]. Accessed on 6 October 2014.

[52]. If a person involved in the security interception reveals the existence of this measure, he/she incurs a criminal penalty (one year imprisonment and a €15,000 fine, additional penalties can also be applied).

#### Access to administrative data

[53]. According to article L222-1 of the Code of interior security<sup>102</sup>, under the conditions laid down by law no. 78-17 of 6 January 1978 relating to information technology, files and freedoms,<sup>103</sup> specifically authorized and individually designated agents of the national police and *gendarmerie*<sup>104</sup>, as well as individually designated and authorized agents of the intelligence services (before the entering into force of the Law of 18 December 2013, the Code of interior security specified that the intelligence services of the Ministry of Defence and of the Ministry of the Interior could access these data; under the current version of the Code,<sup>105</sup> the State Council decree should determine which intelligence services have access (still pending)<sup>106</sup>) can access the following data without any court warrant:

- a) The national registration file (*fichier national des immatriculations*);
- b) The national system of driving licence management;
- c) The management system of national identity cards;
- d) The management system of passports;
- e) The computerized system of management of foreign national case files in France;
- f) The personal data relating to foreign nationals who do not fulfil the entry requirements when crossing the border, referred to in Articles L. 611-3 to L. 611-5 of the Code of Entry and Stay of Aliens and Asylum;
- g) The personal data referred to in Article L. 611-6 of the Code of Entry and Stay of Aliens and Asylum.

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<sup>102</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L222-1, available at: [www.legifrance.gouv.fr/affichCode.do?jsessionid=B0F9C70B999328A0FE1904E7C0C54CF4.tpdjo07v\_2?idSectionTA=LEGISCTA000028344896&cidTexte=LEGITEXT000025503132&dateTexte=20140721]. Accessed on 7 August 2014.

<sup>103</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000886460]. Accessed on 7 August 2014.

<sup>104</sup> In France, interior security is guaranteed by the national police (State civil service), national gendarmerie (State military service) and local police (civil service in communes). The national police is under the authority of the Ministry of the Interior, while the local police is under the mayor's authority. The gendarmerie is under the authority of the Ministry of the Interior and of the Ministry of Defence. The gendarmerie is usually responsible for security in rural and sub-urban areas, while the national police is responsible for security in urban areas even if both services have their jurisdiction over the entire territory of the country. The national police has administrative (prevention of public order violations) and judiciary functions (criminal law violations, search for evidence and criminals) while the gendarmerie is also in charge of some military missions.

<sup>105</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L222-1 II, available at: [www.legifrance.gouv.fr/affichCode.do?jsessionid=B0F9C70B999328A0FE1904E7C0C54CF4.tpdjo07v\_2?idSectionTA=LEGISCTA000028344896&cidTexte=LEGITEXT000025503132&dateTexte=20140721]. Accessed on 7 August 2014.

<sup>106</sup> France, Senate (2014), Control for the enforcement of law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Contrôle de l'application de la loi relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), available at: [www.senat.fr/application-des-lois/pjl12-822.html]. Accessed on 10 September 2014.

- [54]. The list of purposes for which surveillance can be carried out was significantly expanded by law no. 2013-1168 of 18 December 2013 on the military programme for the years 2014-2019 and concerning national defence and security.<sup>107</sup>
- [55]. Before this law came into force agents of the national police and *gendarmerie* could access the above-mentioned data in order to prevent and punish actions against the independence of the Nation, against the integrity of its territory, its security, the republican form of its institutions, its means of defence and diplomacy, against its population in France and abroad, acts against the essential elements of its scientific and economic potential, as well as to prevent and punish acts of terrorism. Agents of the Ministry of Defence intelligence services had the same privilege in order to prevent acts of terrorism.
- [56]. The law of 18 December 2013 generalized the reasons for access to these data. Specifically, authorized and individually designated agents of the national police and *gendarmerie* became able to access these data in order to prevent and punish violations of the Nation's fundamental interests, and acts of terrorism. Moreover, individually designated and authorized agents of the intelligence services can henceforth access them in order to prevent violations of the Nation's fundamental interests and acts of terrorism. The State Council decree on the terms of their access has not been published yet.<sup>108</sup> The notion of the 'Nation's fundamental interests' can be found in the Criminal code under which it includes the Nation's independence, territorial integrity, security, the republican form of its institutions, its means of defence and diplomacy, the safeguarding of its population in France and abroad, the balancing of its natural environment and the essential elements of its scientific and economic potential, and of its cultural heritage.<sup>109</sup>

#### *Geographical scope of surveillance*

- [57]. The surveillance can be conducted on the French territory and abroad. In particular, the DGSE is charged with finding and exploiting the information relevant to the safety of France, as well as to detecting and preventing espionage activities against French interests outside the national territory.<sup>110</sup>
- [58]. Under article 68 of Law no. 78-17 relating to information technology, files and freedoms, a person responsible for personal data processing can transfer these data to a country not belonging to the European Union only if this State provides an adequate level of protection of privacy and fundamental rights and freedoms of individuals.<sup>111</sup> However, this restriction does not apply if the transfer is

<sup>107</sup> France, Law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Loi n° 2013-1168 relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), 18 December 2013, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&dateTexte&categorieLien=id]. Accessed on 7 August 2014.

<sup>108</sup> France, Senate (2014), Control for the enforcement of law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Contrôle de l'application de la loi relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), available at: [www.senat.fr/application-des-lois/pj112-822.html]. Accessed on 14 September 2014.

<sup>109</sup> France, Criminal code (*Code pénal*), article 410-1, available at: [www.legifrance.gouv.fr/affichCode.do?jsessionid=DA87E0783C36CC168D2E843072628A1A.tpdjo12v\_1?idSectionTA=L EGISCTA000006136044&cidTexte=LEGITEXT000006070719&dateTexte=20140910]. Accessed on 11 September 2014.

<sup>110</sup> France, Code of Defence (*Code de la Défense*), article D3126-2, available at: [www.legifrance.gouv.fr/affichCode.do?jsessionid=727BB3DC95C9CFDA3F25DD6D3984255B.tpdjo12v\_1?idSectionTA= LEGISCTA000019840911&cidTexte=LEGITEXT000006071307&dateTexte=20140910]. Accessed on 11 September 2014.

<sup>111</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi no. 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 68, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000886460]. Accessed on 11 September 2014.

necessary in the public interest and only concerns a specific exchange of data.<sup>112</sup> Whenever such derogation concerns repeated exchange of data, the transfer ban can only be lifted by a decree of the Council of State and in relation with data processed in the framework of art. 26 of Law no. 78-17 relating to information technology, files and freedoms.

- [59]. Under the Code of interior security, the personal data processed by the national police and *gendarmerie* can be sent to the organizations of international police cooperation or to foreign police under the conditions of international commitments regularly introduced into the domestic legal order, and if they represent an adequate level of protection of privacy, freedoms and fundamental rights of individuals. National police and *gendarmerie* can receive data from organizations of international police cooperation or foreign police.<sup>113</sup> Under Decree no. 2014-445 of 30 April 2014,<sup>114</sup> the General Directorate of Interior Security is a service of the national police.
- [60]. National police, *gendarmerie* and intelligence services (to be determined by the State Council<sup>115</sup>) can have access to the computerized system of management of foreign national case files in France and to personal data relating to foreign nationals who do not fulfil the entry requirements when crossing the border, referred to in Articles L. 611-3 to L. 611-5 of the Code of Entry and Stay of Aliens and Asylum.<sup>116</sup> The same bodies can also have access to personal data referred to in Article L. 611-6 of the Code of Entry and Stay of Aliens and Asylum, in particular, to the collected, stored and processed fingerprints and photos of foreigners asking for a French visa or a visa of another State party to the Schengen convention at a consulate or at the external border of the States Parties.<sup>117</sup>
- [61]. Automatic processing of AGDREF2 personal data (system of management of foreign national case files in France) of the Minister for Immigration can be consulted by agents of international cooperation bodies in the area of the fight against illegal immigration.<sup>118</sup>

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<sup>112</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi no. 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 69, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000886460]. Accessed on 11 September 2014.

<sup>113</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L235-1, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508261&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>114</sup> France, Decree no. 2014-445 on tasks and organization of the General Directorate of Interior Security (*Décret n° 2014-445 relatif aux missions et à l'organisation de la direction générale de la sécurité intérieure*), 30 April 2014, article 1, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028887486&categorieLien=id]. Accessed on 10 October 2014.

<sup>115</sup> France, Senate (2014), Control for the enforcement of law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Contrôle de l'application de la loi relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), available at: [www.senat.fr/application-des-lois/pj112-822.html]. Accessed on 10 September 2014.

<sup>116</sup> France, Code of Interior Security (*Code de la sécurité intérieure*), article L 222-1, available at: [www.legifrance.gouv.fr/affichCode.do?jsessionid=2E5D3E406ACD602C9D9CE25D144F73B3.tpdjo12v\_1?idSectionTA=L EGISCTA000028344896&cidTexte=LEGITEXT000025503132&dateTexte=20140911]. Accessed on 12 September 2014.

<sup>117</sup> France, Code of Entry and Stay of Aliens and Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article L 611-6, available at: [www.legifrance.gouv.fr/affichCode.do?jsessionid=205D7B4E3FAA8CE344AF251AB9C8CD71.tpdjo09v\_2?idSectionTA=LEGISCTA000006134417&cidTexte=LEGITEXT000006070158&dateTexte=20140905]. Accessed on 8 September 2014.

<sup>118</sup> France, Code of Entry and Stay of Aliens and Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article R -611 - 7, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000024149380&cidTexte=LEGITEXT000006070158&dateTexte=20140911]. Accessed on 8 September 2014.

- [62]. The Parliamentary Delegation on intelligence notes in its report that according to the President of the Republic, ‘a dialogue was initiated at the highest level to establish a ‘code of conduct’ among allies in the field of interception of personal data’. It outlines that cooperation between services shall limit the collection of information to what is strictly necessary for the fight against terrorism and the security of France, in order to protect the privacy and personal data of citizens.<sup>119</sup>
- [63]. The White Paper on Defence and National Security outlines that France must take care to preserve an intelligence-gathering and processing platform commensurate with its international ambitions and the threats with which it is confronted. It must devote the resources necessary to pursuing the efforts already made to secure an intelligence gathering and exploitation capability essential for autonomous assessment of situations. It must also pursue pooling of technical intelligence acquisition resources, a key principle for equipping its services, while also taking care to strengthen the associated human expertise.<sup>120</sup>
- [64]. According to the European Parliament study ‘National programmes for mass surveillance of personal data in EU Member States and their compatibility with EU law’<sup>121</sup> ‘there is a gap in the legal framework regarding the large-scale interception and storage of data, leaving a degree of legal uncertainty which intelligence services appear to have exploited’. Under the Deputies Information report to the National Assembly in 2013, ‘the activity of the intelligence services, which is secret by its essence and necessity, continues to be a part of a ‘para-legal’ or ‘extra-legal’ environment which is extraordinarily vague...There are numerous decrees, orders, instructions and circulars classified as ‘secret’ that govern the activity of intelligence services, their internal organization, the status of their employees and their missions...The legal framework related to the intelligence services is unclear; it is the result of a process that nobody took action to rationalize because of the secrecy that surrounds this activity...Due to a lack of legislation suited to some aspects of their activities, the intelligence services in France may be forced to act outside any legal framework’.<sup>122</sup>

## II. Safeguards

- [65]. Law no. 78-17 relating to information technology, files and freedoms, modified by Law no. 2004-801 of 6 August 2004 transposing the Directive 95/46/CE, put in place general and specific conditions for the legality of personal data processing and established the independent administrative authority, the National Commission on Informatics and Liberties (*Commission Nationale de l’informatique et des libertés*, CNIL), which gives its opinion for ‘risky’ or

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<sup>119</sup> France, Parliamentary Delegation on intelligence (*Délégation parlementaire au renseignement*) (2013) Activity report (*Rapport d’activité*), available at: [www.assemblee-nationale.fr/14/rap-off/i1886.asp]. Accessed on 14 September 2014.

<sup>120</sup> France (2013) White Paper on Defence and National Security (*Le Livre blanc. Défense et la Sécurité nationale*), available at: [www.defense.gouv.fr/actualites/articles/livre-blanc-2013]. Accessed on 12 September 2014.

<sup>121</sup> European Parliament (2013) *Study on National programmes for mass surveillance of personal data in EU Member States and their compatibility with EU law*, available at: [www.europarl.europa.eu/RegData/etudes/etudes/join/2013/493032/IPOL-LIBE\_ET(2013)493032\_EN.pdf]. Accessed on 1 October 2014.

<sup>122</sup> France, Information report to the National Assembly in conclusion of the work of the information mission on assessment of the legal framework applicable to intelligence services (*Rapport d’information à l’Assemblée nationale en conclusion des travaux d’une mission d’information sur l’évaluation du cadre juridique applicable aux services de renseignement*), 23 May 2013, available at: [www.assemblee-nationale.fr/14/pdf/rap-info/i1022.pdf]. Accessed on 1 October 2014.

sensitive data processing relevant to security, defence or public safety<sup>123</sup>, has inspection roles, and the power to impose sanctions and give recommendations on draft legislation relating to data protection.<sup>124</sup>

- [66]. The CNIL also provides indirect access of concerned persons to data relating to State security, defence or public safety upon their requests aiming to rectify, complete, update, block or erase the inaccurate, incomplete, ambiguous, or outdated personal data or personal data whose collection, use, disclosure or storage is prohibited<sup>125</sup>. In particular, data in intelligence services files can be accessed and checked via the CNIL.<sup>126</sup> Decree no. 2007-914 of 15 May 2007 limits the right of the CNIL to access premises and information (art. 44 of Law of 6 January 1978) relating to automated processing of personal data concerning State security, defence or public safety, made by DGSI, DGSE, DPSD and DRM.<sup>127</sup> If State data processing results in violations of rights and freedoms, the CNIL can inform the Prime Minister who may take measures to stop the violation.<sup>128</sup>
- [67]. There is no right to be informed if the collected data are used for the processing implemented on behalf of the State and is in order to protect State security, defence, public safety or aiming at the enforcement of criminal sentences or security measures, if such a restriction is necessary to meet the purposes of the processing.<sup>129</sup> The data subject is not informed if the data are used for processing aiming at the prevention, identification and prosecution of criminal offences.<sup>130</sup>
- [68]. Another independent administrative authority, the National Commission for control of security interceptions (*Commission nationale de contrôle des interceptions de sécurité*, CNCIS), carries out inspections relating to operations of communication of data held by private operators, and has the power to make a recommendation to the Minister of the Interior who must inform on the measures taken to remedy any deficiencies found within fifteen days. It also examines the legality of the Prime Minister's authorization of interceptions and has the power to recommend he/she suspend the interception. The CNCIS makes recommendations on the maximum number of interceptions performed

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<sup>123</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, articles 11, 26, 27, available at:

[[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460)]. Accessed on 7 August 2014.

<sup>124</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, articles 11 4°, available at:

[[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460)]. Accessed on 7 August 2014.

<sup>125</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 41, available at:

[[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460)]. Accessed on 7 August 2014.

<sup>126</sup> France, CNIL, Main files relating to the procedure of indirect access (*Les principaux fichiers relevant de la procédure de droit d'accès indirect*), available at: [[www.cnil.fr/vos-droits/vos-droits/le-droit-dacces-indirect/principaux-fichiers-en-acces-indirect/](http://www.cnil.fr/vos-droits/vos-droits/le-droit-dacces-indirect/principaux-fichiers-en-acces-indirect/)]. Accessed on 10 October 2014.

<sup>127</sup> France, Decree no. 2007-914 for application of article 30 I of Law no. 78-17 relating to information technology, files and freedoms (*Décret n°2007-914 pris pour l'application du I de l'article 30 de la loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés*), 15 May 2007, available at:

[[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000649189](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000649189)]. Accessed on 12 September 2014.

<sup>128</sup> France, CNIL, Sanctions from A to Z (*Les sanctions de A à Z*), available at: [[www.cnil.fr/institution/missions/sanctionner/les-sanctions-de-a-a-z/](http://www.cnil.fr/institution/missions/sanctionner/les-sanctions-de-a-a-z/)]. Accessed on 10 October 2014.

<sup>129</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 32 V, available at:

[[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460)]. Accessed on 7 August 2014.

<sup>130</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 32 VI, available at:

[[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460)]. Accessed on 7 August 2014.

simultaneously to the Prime Minister. The CNCIS checks the legality of security interceptions on its own initiative or on a complaint of any person having a direct and personal interest. The Commission can address any observations which it judges useful to the Prime Minister at any time.

- [69]. Both administrative authorities (CNCIS and CNIL) were consulted on modalities of access to data held by private operators established by Decree no. 2006-1651 of 22 December 2006.<sup>131</sup>
- [70]. According to Law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security, modalities of administrative access to connection data entering into force on 1 January 2015 will be defined by the State Council Decree issued after consultation with these both independent administrative authorities: CNIL and CNCIS.<sup>132</sup> Moreover, the law will give new access authorities to files criminal record (art. 19 of Law 2013-1168).
- [71]. Since the entering into force of the Law of 18 December 2013, the Parliamentary Delegation on intelligence, common to the National Assembly and the Senate, has been charged with the parliamentary scrutiny of government action in terms of intelligence, and evaluation of public policy in the area of intelligence (previously, the Delegation's mission was just to follow the overall activity and the means of specialized services).
- [72]. Information related to the intelligence service budget, overall activity and organization, national intelligence strategy and elements from the national plan on orientation of intelligence should be provided to the Delegation. It may request inspection reports concerning intelligence services from the Prime Minister, hold hearings of the Prime Minister, competent ministers, the General Secretary of National Defence and Security, heads of intelligence services, the National intelligence coordinator, the Director of the Intelligence Academy, and heads of central administration having knowledge of intelligence service activities. It can ask for reports from the Consultative Commission on National Defence Secrets (*Commission consultative du secret de la défense nationale*) and from the National Commission for control of security interceptions.
- [73]. The Parliamentary Delegation makes its recommendations and observations to the President of the Republic and to the Prime Minister that are sent to the Chair of the National Assembly and the Senate. Since the Law of 18 December 2013, the Delegation exercises the powers of Audit Commission (*Commission de vérification*) which oversees the expenses of the special funds (including funding of intelligence services) in the framework of the 'Coordination of government work' programme.<sup>133</sup>

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<sup>131</sup> France, Decree (*Décret*) no. 2006-1651 of 22 December 2006, available at: [www.legifrance.gouv.fr/affichTexte.do?jsessionid=431A169A01432564D40CA1AA72358286.tpdjo09v\_2?cidTexte=JORFTEXT000000821598&dateTexte=20061223]. Accessed on 10 October 2014.

<sup>132</sup> France, Law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Loi n° 2013-1168 relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), article 13, 18 December 2013, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&dateTexte&categorieLien=id]. Accessed on 7 August 2014.

<sup>133</sup> France, Order no. 58-1100 on the functioning of parliamentary assemblies (*Ordonnance n° 58-1100 relative au fonctionnement des assemblées parlementaires*), 17 November 1958, article 6 nonies, available at: [www.legifrance.gouv.fr/affichTexteArticle.do?jsessionid=F5875EDA8AFC81BDE703443E3D380F36.tpdjo05v\_2?cidTexte=JORFTEXT000000705067&idArticle=LEGIARTI000006530065&dateTexte=&categorieLien=cid]. Accessed on 11 September 2014.

- [74]. However, the Parliamentary Delegation on intelligence is neither informed about ongoing operations of the intelligence services, instructions given by the government in this regard, nor on exchanges with foreign services or with international bodies competent in the field of intelligence.<sup>134</sup>
- [75]. The Inspectorate of intelligence services (*Inspection des services de renseignement*) was created by Decree no. 2014-833 of 24 July 2014<sup>135</sup>, and was put under the direct authority of the Prime Minister. This inspectorate is made up of personnel from existing inspectorates (the General Inspectorate of Finance, the General Administration inspectorate, the Army control inspectorate and the General Council of the economy, industry, energy and technologies) and will occasionally exercise the tasks of monitoring, auditing, research, consulting and assessments of services forming the French intelligence community. Members of the inspectorate are appointed by the Prime Minister, after consultation with the National intelligence coordinator.
- [76]. The Code of interior security provides access to data held by private operators and to administrative data, as well as allowing security interceptions without any judicial warrant according to legal provisions described above.
- [77]. However, it contains some limits concerning these measures of surveillance.
- [78]. In particular, data provided by electronic communication operators and persons offering a connection for online communication via a network access can be recorded and stored for a maximum period of three years in automated processing implemented by the Ministry of the interior. Data provided by providers of online public communication services and by persons storing signals, writings, images, sounds or messages of any kind, provided by recipients of online public communication services can be recorded and stored for a maximum period of three years in automated processing implemented by the Ministry of the interior and the Ministry of Defence. The access to these data must be approved by the qualified person appointed by the CNCIS.
- [79]. Security interceptions of electronic communications must be authorized by the Prime Minister or one of two persons especially delegated by him. Authorization is granted for a maximum period of four months, but can be renewed. Records are destroyed in ten days<sup>136</sup>. Transcripts are destroyed if they are no longer necessary for the purposes indicated.
- [80]. The Code of interior security does not contain any specific time limits of access to administrative data. However, there are some time limits for storing such administrative data. In particular, the Code of Entry and Stay of Aliens and Asylum limits the period for storing personal data on foreigners that can be consulted:

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<sup>134</sup> France, Order no. 58-1100 on the functioning of parliamentary assemblies (*Ordonnance n° 58-1100 relative au fonctionnement des assemblées parlementaires*), 17 November 1958, article 6 nonies, available at: [www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=F5875EDA8AFC81BDE703443E3D380F36.tpdjo05v\_2?cidTexte=JORFTEXT000000705067&idArticle=LEGIARTI000006530065&dateTexte=&categorieLien=cid]. Accessed on 11 September 2014.

<sup>135</sup> France, Decree no. 2014-833 on the Inspectorate of intelligence services (*Décret n° 2014-833 relatif à l'inspection des services de renseignement*), 24 July 2014, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029290787&dateTexte=&categorieLien=id]. Accessed on 11 September 2014.

<sup>136</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L242-6, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

- Data in AGDREF2 (system of management of foreign national case files in France) should be erased generally in five years if there have not been any updates;<sup>137</sup>
- Data in VISABIO automatic processing of personal data (on foreigners applying for visa) of the Ministry of Foreign Affairs and the Ministry of Immigration are stored for five years.<sup>138</sup>

[81]. The safeguards put in place by the Code of interior security do not apply to the public authority measures aimed at monitoring and control of radio transmissions (*voie hertzienne*) in order to protect national interests.

### III. Remedies

[82]. Any concerned person can file a complaint concerning the implementation of personal data processing to the CNIL. When data processing concerns State security, defence or public safety, the CNIL undertakes all necessary checks and modifications upon the requests to provide information, to rectify, complete, update, block or erase inaccurate, incomplete, ambiguous, or outdated personal data, or personal data whose collection, use, disclosure or storage is prohibited (indirect right of access).<sup>139</sup>

[83]. Any person having a direct and personal interest has a right to file a complaint on the legality of the interception with the National Commission for control of security interceptions, and is informed that the necessary checks were carried out.<sup>140</sup>

[84]. The legality of an administrative decision relating to data processing can be challenged before an administrative court.<sup>141</sup> The legality of Orders of the President of the Republic, decrees, regulatory acts of Ministers and other authorities with national jurisdiction and their general circulars and instructions, as well as the legality of decisions taken by certain supervisory or regulatory authorities, including the National Commission on Informatics and Freedoms and the National Commission for control of security interceptions, can be challenged before the State Council (*Conseil d'Etat*).<sup>142</sup> If there is a serious and manifestly illegal violation of a fundamental freedom (e.g. right to respect for privacy) by a legal entity or a body responsible for managing a public service committed in the

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<sup>137</sup> France, Code of Entry and Stay of Aliens and Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article R 611-7-1, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000024149389&cidTexte=LEGITEXT000006070158&dateTexte=20140911]. Accessed on 10 September 2014.

<sup>138</sup> France, Code of Entry and Stay of Aliens and Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article R 611-11, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006163296&cidTexte=LEGITEXT000006070158&dateTexte=20140911]. Accessed on 10 September 2014.

<sup>139</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, articles 11, 39-41, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000886460] ; France, CNIL (2014) Indirect right of access (*Le droit d'accès indirect*), available at: [www.cnil.fr/vos-droits/vos-droits/le-droit-d'accès-indirect/]. Accessed on 7 October 2014.

<sup>140</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L243-9, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=5F6B7B44930C72BF0553B5BD1FAA473F.tpdjo09v\_2?idSectionTA=LEGISCTA000025508218&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 12 September 2014.

<sup>141</sup> France, Code of administrative justice (*Code de justice administrative*), article L 311-1, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=B03EF9E37D454501EA8992A00E608EB6.tpdjo08v\_3?idSectionTA=LEGISCTA000006150395&cidTexte=LEGITEXT000006070933&dateTexte=20140802]. Accessed on 12 September 2014.

<sup>142</sup> France, Code of administrative justice (*Code de justice administrative*), article R 311-1, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=B03EF9E37D454501EA8992A00E608EB6.tpdjo08v\_3?idSectionTA=LEGISCTA000006150442&cidTexte=LEGITEXT000006070933&dateTexte=20140802]. Accessed on 12 September 2014.

exercising of their powers, a 'petition for civil liberties' (*référé-liberté*) can be filed before the judge for urgent applications. The judge takes a temporary measure to bring an end to the offence within forty-eight hours in such an urgent situation.<sup>143</sup>

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<sup>143</sup> France, Code of administrative justice (*Code de justice administrative*), article L 521-2, available at: [[www.legifrance.gouv.fr/affichCode.do;jsessionid=18FD5D06934F0E72076CC0D06A4308F7.tpdjo08v\\_3?idSectionTA=LEGISCTA000006150399&cidTexte=LEGITEXT000006070933&dateTexte=20140802](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=18FD5D06934F0E72076CC0D06A4308F7.tpdjo08v_3?idSectionTA=LEGISCTA000006150399&cidTexte=LEGITEXT000006070933&dateTexte=20140802)]. Accessed on 12 September 2014.

## Annex 1 – Legal Framework relating to mass surveillance

### A- Details on legal basis providing for mass surveillance

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
<p><i>Full name in English and national languages indicating its type – Act of parliament, Government order, etc.</i></p>			<p><i>National security, economic well-being, etc....</i></p>	<p><i>Indicate whether any prior/ex post judicial warrant or a similar permission is needed to undertake surveillance and whether such approval/warrant needs to be regularly reviewed</i></p>	<p><i>See for example the principles developed by the European Court of Human Rights in the case of Weber and Saravia v. Germany, (dec.) no.54934/00, 29 June 2006, para. 95</i></p> <p><i>Steps could include collecting data, analysing data, storing data, destroying data, etc.</i></p>	<p><i>Clearly state if there are any existing limitations in terms of nationality, national borders, time limits, the amount of data flow caught etc.</i></p>	<p><i>Please, provide details</i></p>

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
<p><b>Article L222-1 of the Code of interior security (Code de la sécurité intérieure)</b><sup>144</sup> (act of parliament)</p> <p><b>Access to administrative data:</b> national registration file, national system of driving licence management; management system of national identity cards; management system of</p>	<p>French citizens and foreigners within the French territory or those asking for a French visa or a visa of another State party to the Schengen convention at a consulate or at the external border of the States Parties (their fingerprints and photos can be</p>	<p>Risk of violations of the Nation's fundamental interests and risk of acts of terrorism.</p>	<p>In order to prevent and punish violations of the Nation's fundamental interests and acts of terrorism</p>	<p>No judicial warrant is needed.</p>	<p>National police, gendarmerie and intelligence services can access collected and stored administrative data in order to use and analyse them. (before the entering into force of the Law of 18 December 2013, the Code of interior security specified that the intelligence services of the Ministry of Defence and of the Ministry of the Interior could access these data; under the current version of</p>	<p>Access is provided to specifically authorized and individually designated agents of the national police, gendarmerie, and intelligence services</p> <p>Geographical scope: data can be collected on the French territory, at the external border of the States Parties. The law does not specify any time limits</p>	<p>The Code of interior security contains provisions on international cooperation in the area of automated processing of personal data.<sup>151</sup></p>

<sup>144</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L222-1, available at:

[[www.legifrance.gouv.fr/affichCode.do?jessionid=B0F9C70B999328A0FE1904E7C0C54CF4.tpdjo07v\\_2?idSectionTA=LEGISCTA000028344896&cidTexte=LEGITEXT000025503132&dateTexte=20140721](http://www.legifrance.gouv.fr/affichCode.do?jessionid=B0F9C70B999328A0FE1904E7C0C54CF4.tpdjo07v_2?idSectionTA=LEGISCTA000028344896&cidTexte=LEGITEXT000025503132&dateTexte=20140721)]. Accessed on 7 August 2014.

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
passports; computerized system of management of foreign national case files in France; personal data relating to foreign nationals who do not fulfil the entry requirements	collected, stored and processed). <sup>145</sup>				the Code, <sup>146</sup> the State Council decree should determine which intelligence services have access (still pending) <sup>147</sup>	for access. The State Council decree on the terms of intelligence service access to these administrative data has not been published yet. <sup>148</sup>  However, there are limits of	

<sup>151</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L235-1, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=1E8B71603BE142BCE359E7D6BEE6802D.tpdjo08v\_3?idSectionTA=LEGISCTA000025508261&cidTexte=LEGITEXT000025503132&dateTexte=20140731]. Accessed on 7 August 2014.

<sup>145</sup> France, Code of Entry and Stay of Aliens and Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article L 611-6, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=205D7B4E3FAA8CE344AF251AB9C8CD71.tpdjo09v\_2?idSectionTA=LEGISCTA000006134417&cidTexte=LEGITEXT000006070158&dateTexte=20140905]. Accessed on 8 September 2014.

<sup>146</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L222-1 II, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=B0F9C70B999328A0FE1904E7C0C54CF4.tpdjo07v\_2?idSectionTA=LEGISCTA000028344896&cidTexte=LEGITEXT000025503132&dateTexte=20140721]. Accessed on 7 August 2014.

<sup>147</sup> France, Senate (2014), Control for the enforcement of law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Contrôle de l'application de la loi relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), available at: [www.senat.fr/application-des-lois/pj112-822.html]. Accessed on 10 September 2014.

<sup>148</sup> France, Senate (2014), Control for the enforcement of law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Contrôle de l'application de la loi relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), available at: [www.senat.fr/application-des-lois/pj112-822.html]. Accessed on 10 September 2014.

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
when crossing the border, referred to in Articles L. 611-3 to L. 611-5 of the Code of Entry and Stay of Aliens and Asylum; personal data referred to in Article L. 611-6 of the Code of Entry and Stay of Aliens and Asylum.						storing some personal data, in particular: generally a five-year period for the system of management of foreign national case files (AGDREF2) if there have not been any updates; <sup>149</sup> five years for automatic processing of VISABIO personal data (on foreigners	

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<sup>149</sup> France, Code of Entry and Stay of Aliens and Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article R 611-7-1, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000024149389&cidTexte=LEGITEXT000006070158&dateTexte=20140911]. Accessed on 10 September 2014.

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
						applying for a visa). <sup>150</sup>	
<b>Articles L 241-2, R 242-1-R 242-8 of the Code of interior security (Code de la sécurité intérieure)<sup>152</sup> (act of parliament)</b>	Code does not distinguish between situations concerning nationals or foreigners	Necessity of public interest when provided by law <sup>153</sup>	<i>Under article L 241-2 of the Code of interior security, security interceptions of electronic communications can be authorized in order to search information relating to</i>	Under authorization of the Prime Minister or one of two persons especially delegated by him.	Data are collected, analysed and processed. Records are destroyed in ten days <sup>154</sup> (under the Bill presented on 9 July 2014 and adopted by the National Assembly on 18 September 2014, it was	Authorization is granted for a maximum period of four months, but can be renewed (several times). However, the maximum number of interceptions that may be practiced	The law does not specify if security interceptions can be carried out in another country. The order of interception must include all

<sup>150</sup> France, Code of Entry and Stay of Aliens and Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), article R 611-11, available at:

[[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006163296&cidTexte=LEGITEXT000006070158&dateTexte=20140911](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000006163296&cidTexte=LEGITEXT000006070158&dateTexte=20140911)]. Accessed on 10 September 2014.

<sup>152</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L241-2, available at:

[[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000028345101&cidTexte=LEGITEXT000025503132&dateTexte=20140801](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000028345101&cidTexte=LEGITEXT000025503132&dateTexte=20140801)]. Accessed on 7 August 2014.

<sup>153</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L241-1, available at:

[[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000028345101&cidTexte=LEGITEXT000025503132&dateTexte=20140801](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000028345101&cidTexte=LEGITEXT000025503132&dateTexte=20140801)]. Accessed on 8 September 2014.

<sup>154</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L242-6, available at:

[[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508244&cidTexte=LEGITEXT000025503132&dateTexte=20120618)]. Accessed on 7 August 2014.

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
<b>Security interceptions of electronic communications</b>			<i>national security, protection of essential elements of scientific and economic potential of France, prevention of terrorism, organized crime and restoration or maintenance of dissolved groups</i>		proposed to destroy records in 30 days <sup>155</sup> , but this proposition was not retained). Transcripts are destroyed if they are no longer necessary for the indicated purposes.	simultaneously established by the Prime Minister.	elements of its identification. <sup>156</sup>
<b>Article L241-3 of the Code of interior security (Code de la sécurité intérieure)</b> <small>157</small>	Code does not distinguish between situations concerning nationals or	No specific circumstances mentioned	In order to protect national interests	No judicial warrant is needed	No information	No information	No information

<sup>155</sup> France, Bill aiming to strengthen the provisions on the fight against terrorism (*Projet de loi renforçant les dispositions relatives à la lutte contre le terrorisme*), article 15, available at: [www.assemblee-nationale.fr/14/projets/pl2110.asp]. Accessed on 7 August 2014.

<sup>156</sup> France, Code of interior security (*Code de la sécurité intérieure*), article R242-5, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000028287179&cidTexte=LEGITEXT000025503132&dateTexte=20141007]. Accessed on 7 October 2014.

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
(act of parliament) <b>Monitoring and control of radio transmissions (voie hertzienne)</b>	foreigners						
<b>Article L 222-2 of the Code of interior security (Code de la sécurité intérieure)<sup>158</sup> and article L 34-1-1 of Post and Electronic Communications Code (Code des postes et des</b>	French citizens and foreigners	Risk of acts of terrorism  Necessity of security (from the 1 January 2015)	In order to prevent acts of terrorism  Law no. 2013-1168 widens the range of purposes, adding to prevention of terrorism the necessity to find information relating to	No judicial warrant is needed	<i>Gendarmerie</i> and national police, including services and units within the General Directorate of Interior Security, <sup>161</sup> can access collected and stored data in order to use and analyse them.  From the 1 January	- A limited list of data that can be accessed (article L34-1-1 of Post and Electronic Communications Code);  - Limited right of access to certain persons.  There are time limits for storing	No specific information  The request should contain the nature of data that must be provided. <sup>163</sup>

<sup>157</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L241-3, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=B5A968DE2AF2738F2A3327FA8969A5D2.tpdjo05v\_2?idSectionTA=LEGISCTA000025508253&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>158</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L222-2, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=17D13000BE5A727C043B9AAB2B72447F.tpdjo08v\_3?idSectionTA=LEGISCTA000028344896&cidTexte=LEGITEXT000025503132&dateTexte=20140802]. Accessed on 7 August 2014.

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
<p><i>communications électroniques</i>)<sup>159</sup></p> <p>(Act of parliament)</p> <p>Articles R10-12-R10-22 of Post and Electronic Communications Code (<i>Code des postes et des communications électroniques</i>)<sup>160</sup></p>			<p>national security, protection of essential elements of scientific and economic potential of France, prevention of organized crime and restoration or maintenance of dissolved groups. These provisions</p>		<p>2015 access to these data could be asked for by individually designated and authorized agents of the Minister in charge of interior security, the Minister of Defence, and the Minister of the Economy and Budget services.<sup>162</sup></p>	<p>data that can be accessed (from three months up to one year depending on the purpose, except cases of customers' express consent – for more details see the summary). If the data are</p>	

<sup>161</sup> France, Order for application of Article 33 of Law No. 2006-64 of 23 January 2006 on the fight against terrorism and containing various provisions relating to security and border controls (*Arrêté pris pour l'application de l'article 33 de la loi n° 2006-64 du 23 janvier 2006 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers*), 7 May 2012, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=D30D3A3A239C898194FCFAE20E0C3805.tpdjo14v\_2?cidTexte=JORFTEXT000025836069&dateTexte=20140915]. Accessed on 10 September 2014.

<sup>163</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article R 10-17, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=E245F3CBB43CF58A53BC0EA92771083C.tpdjo09v\_2?idSectionTA=LEGISCTA000006165962&cidTexte=LEGITEXT000006070987&dateTexte=20141007]. Accessed on 10 October 2014.

<sup>159</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article L34-1-1, available at: [www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006070987&idArticle=LEGIARTI000006465793&dateTexte=&categorieLien=cid]. Accessed on 7 August 2014.

<sup>160</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), articles R10-12-R10-22, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=C3FBB3DE5D854FB38F213523A146B2B2.tpdjo09v\_2?idSectionTA=LEGISCTA000006165962&cidTexte=LEGITEXT000006070987&dateTexte=20141009]. Accessed on 7 August 2014.

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
<p><i>(Act of executive power)</i></p> <p><b>Access to data held by electronic communication operators and persons offering a connection for online communication via network access</b></p>			<p>enter into force from the 1 January 2015.</p>			<p>provided, they can be recorded and stored for a maximum period of three years in automated processing implemented by the Ministry of the interior.</p> <ul style="list-style-type: none"> <li>- Request should be submitted to the qualified person appointed by the CNCIS.</li> <li>- CNCIS may carry out</li> </ul>	

<sup>162</sup> France, Law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Loi n° 2013-1168 relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), 18 December 2013, article 20, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&dateTexte&categorieLien=id]. Accessed on 7 August 2014.

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
						inspections relating to operations of technical data communication at any time.	
<b>Article L222-3 of the Code of interior security (<i>Code de la sécurité intérieure</i>)<sup>164</sup> and Article 6, IIb of Law no. 2004-575 of 21 June 2004 on confidence in the</b>	French citizens and foreigners	Risk of acts of terrorism Necessity of security (from the 1 January 2015) [85].	In order to prevent acts of terrorism Law no. 2013-1168 widens the range of purposes, adding to prevention of terrorism the necessity to find information	No judicial warrant is needed	<i>Gendarmerie</i> and national police, including services and units within the General Directorate of Interior Security, <sup>166</sup> can access collected and stored data in order to use and analyse them, at the present	- Limited right of access to certain persons. Data allowing the identification of authors of information shall be stored for one year. If these data are provided on	As above

<sup>164</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L222-3, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=17D13000BE5A727C043B9AAB2B72447F.tpdjo08v\_3?idSectionTA=LEGISCTA000028344896&cidTexte=LEGITEXT000025503132&dateTexte=20140802]. Accessed on 7 August 2014.

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
<p><b>digital economy</b><sup>165</sup>. (Act of parliament)</p> <p><b>Decree no. 2011-219 on the conservation and communication of data allowing the identification of any person who contributed to the creation of online content (Décret no. 2011-219 relatif à la</b></p>			<p>relating to national security, protection of essential elements of scientific and economic potential of France, prevention of organized crime and restoration or maintenance of dissolved groups. These provisions enter into force from the 1</p>		<p>time.</p> <p>From the 1 January 2015 access to these data may be asked for by individually designated and authorized agents of Minister in charge of interior security, the Minister of Defence, and the Minister of the Economy and</p>	<p>request, they can be recorded and stored for a maximum period of three years in automated processing implemented by the Ministry of the interior and the Ministry of Defence.</p> <p>- Request should be submitted to a qualified</p>	

<sup>166</sup> France, Order for application of Article 33 of Law No. 2006-64 of 23 January 2006 on the fight against terrorism and containing various provisions relating to security and border controls (*Arrêté pris pour l'application de l'article 33 de la loi n° 2006-64 du 23 janvier 2006 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers*), 7 May 2012, available at: [www.legifrance.gouv.fr/affichTexte.do?jsessionid=D30D3A3A239C898194FCFAE20E0C3805.tpdjo14v\_2?cidTexte=JORFTEXT000025836069&dateTexte=20140915]. Accessed on 10 September 2014.

<sup>165</sup> France, Law no. 2004-575 on confidence in the digital economy (*Loi n° 2004-575 pour la confiance dans l'économie numérique*), 21 June 2004, II bis of Article 6, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000801164&dateTexte=&categorieLien=id]. Accessed on 7 August 2014.

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
<p><i>conservation et à la communication des données permettant d'identifier toute personne ayant contribué à la création d'un contenu mis en ligne</i>), 25 February 2011</p> <p>(Act of executive power)</p> <p><b>Access to data held by providers of</b></p>			January 2015.		Budget services. <sup>167</sup>	<p>person appointed by the CNCIS</p> <ul style="list-style-type: none"> <li>- The CNCIS can carry out inspections relating to operations of technical data communication at any time.</li> </ul>	

<sup>167</sup> France, Law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Loi n° 2013-1168 relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), 18 December 2013, article 20, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&dateTexte&categorieLien=id]. Accessed on 7 August 2014.

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
online public communication services and by persons storing signals, writings, images, sounds or messages of any kind, provided by recipients of online public communication services.							
Article L244-2 of the Code of interior security ( <i>Code de la sécurité intérieure</i> ) <sup>168</sup>	Code does not distinguish between situations concerning nationals or foreigners	Preparation for security interceptions	<i>According to the interpretation by the CNIS of article L 244-2, access can be authorized in order to search</i>	The CNIS should be consulted according to its recommendation	Data are collected for analysis and in order to decide if a security interception is needed	No specific legal provisions	No specific legal provisions

<sup>168</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L 244-2, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=349829ED2E67D67526A6EACF8FE3D6EE.tpdjo09v\_2?idSectionTA=LEGISCTA000028345086&cidTexte=LEGITEXT000025503132&dateTexte=20141008]. Accessed on 8 October 2014.

Name and type of the mass surveillance-related law	A definition of the categories of individuals liable to be subjected to such surveillance	Nature of circumstances which may give rise to surveillance	List purposes for which surveillance can be carried out	Previous approval / need for a warrant	List key steps to be followed in the course of surveillance	Time limits, geographical scope and other limits of mass surveillance as provided for by the law	Is the law allowing for mass surveillance in another country (EU MS or third countries)?
<p><i>(Act of parliament)</i></p> <p>Access to information or documents from persons or entities operating electronic communications networks, or providers of electronic communication services</p>			<p><i>information relating to national security, protection of essential elements of scientific and economic potential of France, prevention of terrorism, organized crime and restoration or maintenance of dissolved groups</i></p>				

B- Details on the law providing privacy and data protection safeguards against mass surveillance

<p><b>Please, list law(s) providing for the protection of privacy and data protection against unlawful surveillance</b></p>	<p><b>List specific privacy and data protection safeguards put in place by this law(s)</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only to nationals or also to EU citizens and/or third country nationals</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only inside the country, or also outside (including differentiation if EU or outside EU)</b></p>
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<p><b>Please, list law(s) providing for the protection of privacy and data protection against unlawful surveillance</b></p>	<p><b>List specific privacy and data protection safeguards put in place by this law(s)</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only to nationals or also to EU citizens and/or third country nationals</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only inside the country, or also outside (including differentiation if EU or outside EU)</b></p>
<p><i>Include a reference to specific provision and describe their content</i></p>	<p><i>e.g. right to be informed, right to rectification/deletion/blockage, right to challenge, etc.</i></p>	<p><i>Please, provide details</i></p>	<p><i>Please, provide details</i></p>
<p>Declaration of Human and Civil Rights (<i>Déclaration des droits de l'homme et du citoyen</i>), 26 August 1789<sup>169</sup></p>	<p>Under the case law of the Constitutional Council, respect for privacy stems from the freedom proclaimed by Article 2 of the Declaration: 'The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, Safety and Resistance to Oppression'.<sup>170</sup></p>	<p>Rules apply to nationals, EU citizens and third country nationals</p>	<p>Rules apply inside the country</p>
<p>Law no. 78-17 relating</p>	<p>Articles 6 and 7 of this law<sup>173</sup></p>	<p>The rules apply to nationals, EU</p>	<p>The rules on protection of privacy and</p>

<sup>169</sup> France, Declaration of Human and Civil rights (*Déclaration des droits de l'homme et du citoyen*), 26 August 1789, available at: [www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank\_mm/anglais/cst2.pdf]. Accessed on 8 October 2014.

<sup>170</sup> France, Constitutional Council (*Conseil constitutionnel*), Decision no.99-416 DC of 23 July 1999, available at: [www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/1999/99-416-dc/decision-n-99-416-dc-du-23-juillet-1999.11847.html] ; France, Constitutional Council (*Conseil constitutionnel*), Decision no. 2005-532 DC of 19 January 2006, available at: [www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/download/2005532DC2005\_532dc.pdf]. Accessed on 8 October 2014.

<p><b>Please, list law(s) providing for the protection of privacy and data protection against unlawful surveillance</b></p>	<p><b>List specific privacy and data protection safeguards put in place by this law(s)</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only to nationals or also to EU citizens and/or third country nationals</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only inside the country, or also outside (including differentiation if EU or outside EU)</b></p>
<p>to information technology, files and freedoms (<i>Loi no. 78-17 relative à l'informatique, aux fichiers et aux libertés</i>), 6 January 1978,<sup>171</sup> modified by Law no. 2004-801 of 6 August 2004<sup>172</sup></p>	<p>put in place <b>general conditions of the legality of personal data processing:</b></p> <ul style="list-style-type: none"> <li>- Data must be collected and processed in a fair and lawful manner;</li> <li>- Data are collected for specified, explicit and legitimate purposes and cannot be further processed in a way incompatible with</li> </ul>	<p>citizens and third country nationals</p>	<p>data protection apply:</p> <ul style="list-style-type: none"> <li>- If a person responsible for data processing is established in France.<sup>186</sup></li> <li>- If a person responsible for data processing uses processing means located on French territory without being established on its territory nor on the territory of another EU Member State (processing used</li> </ul>

<sup>173</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 6, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>171</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>172</sup> France, Law no. 2004-801 on the protection of individuals with regard to the processing of personal data and amending Law no. 78-17 of 6 January 1978 relating to information technology, files and freedoms (*Loi n° 2004-801 relative à la protection des personnes physiques à l'égard des traitements de données à caractère personnel et modifiant la loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés*), 6 August 2004, available at: [www.legifrance.gouv.fr/affichTexte.do?jsessionid=17D13000BE5A727C043B9AAB2B72447F.tpdjo08v\_3?cidTexte=JORFTEXT000000441676&dateTexte=20040807]. Accessed on 7 August 2014.

<sup>186</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 5, I, 1°, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<p><b>Please, list law(s) providing for the protection of privacy and data protection against unlawful surveillance</b></p>	<p><b>List specific privacy and data protection safeguards put in place by this law(s)</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only to nationals or also to EU citizens and/or third country nationals</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only inside the country, or also outside (including differentiation if EU or outside EU)</b></p>
	<p>those purposes (excepting the cases where they are further processed for statistical, scientific or historical purposes);</p> <ul style="list-style-type: none"> <li>- Data must be adequate, relevant and not excessive in relation to the purposes for which they were collected and their subsequent processing;</li> <li>- Data must be accurate, complete and, if necessary, updated;</li> <li>- Data must not be kept in a form permitting personal</li> </ul>		<p>only for transit in France or in another EU Member State are excluded).<sup>187</sup></p>

<sup>187</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 5, I, 2°, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

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	<p>identification for a period exceeding the time required for the purposes of collection and processing.</p> <p>Processing of personal data is done:</p> <ul style="list-style-type: none"> <li>- with the consent of the concerned person, or</li> <li>- if a person responsible for processing has to observe such a legal obligation, or</li> <li>- in order to save the life of the concerned person, or</li> <li>- if a person responsible for processing or a person receiving the data has to carry out such a public service mission, or</li> <li>- in order to carry out a contract signed by the concerned person or another preliminary</li> </ul>		

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	<p>obligation requested by the concerned person, or</p> <ul style="list-style-type: none"> <li>- if a person responsible for processing or a person receiving the data has a legitimate interest which does not disregard the interests or fundamental rights and freedoms of the person concerned.</li> </ul> <p>Some <b>specific conditions of the legality of personal data processing</b> are put in place by the following articles:</p> <p>1) There is a principle of a general ban on collecting or processing personal data revealing, directly or indirectly, racial or ethnic origin, political, religious or philosophical opinions, trade union membership or data related to</p>		

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	<p>health or sexual life.<sup>174</sup> Some exceptions are put in place by article 8, II (consent of the concerned person; processing necessary in order to save a life; processing put in place by associations under certain conditions; data were made public by the concerned person; processing necessary and related to legal claims; in the area of health, statistics under certain conditions, etc.).<sup>175</sup></p> <p>Data processing justified by the <b>public interest</b> is not subject to</p>		

<sup>174</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 8 I, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>175</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 8 II, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

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	<p>the above-mentioned ban if it is approved by the CNIL<sup>176</sup> or by the Decree after consultation of the Council of State (<i>décret pris en Conseil d'Etat</i>) and of the CNIL whose opinion is published.<sup>177</sup></p> <p>2) Article 9 establishes a list of persons with the right to process personal data relating to offences, sentences and security measures (<i>mesures de sûreté</i>).<sup>178</sup></p> <p>Moreover, under article 38 of this law, any person has the <b>right to oppose</b>, for legitimate reasons,</p>		

<sup>176</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, articles 8 IV and 25 I, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>177</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, articles 8 IV and 26 II, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>178</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 9, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

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	<p>his/her personal data being processed, if this processing does not represent a legal obligation or does not result from an explicit act.<sup>179</sup></p> <p>Any person can ask the person responsible for data processing to provide a certain amount of <b>information</b> concerning him/her, in particular, the confirmation that his/her personal data are or are not subject to the data processing; purposes of the processing; categories of personal data processed; recipients or categories of recipients to whom the data are disclosed; if applicable, information on planned transfers of personal</p>		

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<sup>179</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 38, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

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	<p>data to a State outside the European Union; communication of his/her personal data and information on their sources; information on the logic of the automatic processing that allows a challenge to the processing in case of a decision taken on the basis of the processing which has legal effects in respect of the person concerned (article 39).<sup>180</sup></p> <p>However, the subject is not informed if the collected data are used for processing implemented on behalf of the State and is in order to protect State security, defence, public safety or aiming at the enforcement of criminal</p>		

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<sup>180</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 39, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

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	<p>sentences or security measures, if such a restriction is necessary to meet the purposes of the processing.<sup>181</sup> The subject is not informed if the data are used for processing aiming at the prevention, identification and prosecution of criminal offences.<sup>182</sup></p> <p>Any person has the right to ask to <b>rectify, complete, update, block or erase</b> inaccurate, incomplete, ambiguous, or outdated personal data or personal data whose collection, use, disclosure or storage is prohibited (article 40)<sup>183</sup>.</p>		

<sup>181</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 32 V, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>182</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 32 VI, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>183</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 40, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

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	<p>When data processing concerns State security, defence or public safety, the request must be filed to the CNIL which does all the necessary checks and modifications.<sup>184</sup></p> <p>A complaint concerning the implementation of processing of personal data can be filed to the CNIL.<sup>185</sup></p>		
<p>Code of interior security (<i>Code de la sécurité intérieure</i>)</p>	<p>According to article <b>L222-1 of the Code of interior security</b><sup>188</sup>, agents of the national police,</p>	<p>The rules apply to nationals, EU citizens and third country nationals (see above). Code does not distinguish between situations</p>	<p>The personal data processed by the national police and gendarmerie can be sent to the organizations of</p>

<sup>184</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 41, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>185</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 11, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 8 October 2014.

<sup>188</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L222-1, available at: [www.legifrance.gouv.fr/affichCode.do?jsessionid=B0F9C70B999328A0FE1904E7C0C54CF4.tpdjo07v\_2?idSectionTA=LEGISCTA000028344896&cidTexte=LEGITEXT000025503132&dateTexte=20140721]. Accessed on 7 August 2014.

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	<p><i>gendarmerie</i> and of intelligence services can access the administrative data mentioned in this article under the conditions laid down by law no. 78-17 of 6 January 1978 relating to information technology, files and freedoms (see above).  <sup>189</sup> (Before the entering into force of the Law of 18 December 2013,</p>	<p>concerning nationals and foreigners.</p>	<p>international police cooperation or to the foreign police under the conditions of international commitments regularly introduced into the domestic legal order and if they represent an adequate level of protection of privacy, freedoms and fundamental rights of individuals. National police and <i>gendarmerie</i> can receive data from organizations of international police cooperation or foreign police.<sup>190</sup> Under Decree no. 2014-445 of 30 April 2014,<sup>191</sup> the General Directorate of</p>

<sup>189</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT00000886460]. Accessed on 7 August 2014.

<sup>190</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L235-1, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508261&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>191</sup> France, Decree no. 2014-445 on tasks and organization of the General Directorate of Interior Security (*Décret n° 2014-445 relatif aux missions et à l'organisation de la direction générale de la sécurité intérieure*), 30 April 2014, article 1, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028887486&categorieLien=id]. Accessed on 10 October 2014.

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	<p>the Code of interior security specified that the intelligence services of the Ministry of Defence and of the Ministry of the Interior could access these data; under the current version of the Code, the State Council decree should determine which intelligence services have access (still pending)) Under article L 243-8 of the Code</p>		<p>Interior Security is a service of the national police. For example, services of national police charged with the prevention of acts of terrorism include services and units within the General Directorate of Interior Security <sup>192</sup></p> <p>The Parliamentary Delegation on intelligence notes in its report that according to the President of the Republic, ‘a dialogue was initiated at the highest level to establish a ‘code of conduct’ among allies in the field of interception of personal data’. It</p>

<sup>192</sup> France, Order for application of Article 33 of Law No. 2006-64 of 23 January 2006 on the fight against terrorism and containing various provisions relating to security and border controls (*Arrêté pris pour l'application de l'article 33 de la loi n° 2006-64 du 23 janvier 2006 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers*), 7 May 2012, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=D30D3A3A239C898194FCFAE20E0C3805.tpdjo14v\_2?cidTexte=JORFTEXT000025836069&dateTexte=20140915]. Accessed on 8 October 2014.

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	<p>of interior security, the Prime Minister's authorization of <b>interception</b> is communicated within forty-eight hours to the Chairman of the National Commission for control of security interceptions (CNCIS). The CNCIS can also check the legality of a security interception on its own initiative or on a complaint of any person having a direct and personal interest. It can make a recommendation to suspend the interception or on the maximum number of interceptions performed simultaneously to the Prime Minister. The Prime Minister shall immediately inform the Commission of the actions taken</p>		<p>outlines that cooperation between services shall limit the collection of information to what is strictly necessary for the fight against terrorism and the security of France, in order to protect the privacy and personal data of citizens.<sup>193</sup></p>

<sup>193</sup> France, Parliamentary Delegation on intelligence (*Délégation parlementaire au renseignement*) (2013) Activity report (*Rapport d'activité*), available at: [www.assemblee-nationale.fr/14/rap-off/i1886.asp]. Accessed on 12 September 2014.

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	<p>following its recommendations. The complainant is informed that the necessary checks were carried out. The Commission informs the public prosecutor of any breach revealed during the control without delay.</p>		
<p><b>Post and Electronic Communications Code</b> (<i>Code des postes et des communications électroniques</i>)</p>	<p>In order to access data held by electronic communication operators or persons offering a connection for online communication via a network access, agents of the national police and <i>gendarmerie</i> charged with the prevention of acts of terrorism should submit their request to a qualified person appointed by the National Commission for control of security interceptions (CNCIS). The CNCIS may carry out</p>	<p>The Code does not distinguish between situations when data concern nationals or EU citizens or third country nationals.</p>	<p>The personal data processed by the national police and <i>gendarmerie</i> can be sent to the organizations of international police cooperation or to the foreign police under the conditions of international commitments regularly introduced into the domestic legal order and if they represent an adequate level of protection of privacy, freedoms and fundamental rights of individuals. National police and <i>gendarmerie</i> can receive data from</p>

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	<p>inspections relating to operations of technical data communication at any time. If it finds a breach of the rules set out in article L. 34-1-1 of the Post and Electronic Communications Code or an infringement of rights and freedoms, it makes a recommendation to the Minister of the Interior who must inform it about measures taken to remedy any deficiencies found within fifteen days.<sup>194</sup></p>		<p>organizations of international police cooperation or foreign police.<sup>195</sup> Under Decree no. 2014-445 of 30 April 2014,<sup>196</sup> the General Directorate of Interior Security is a service of the national police. For example, services of national police charged with the prevention of acts of terrorism include services and units within the General Directorate of Interior Security<sup>197</sup></p> <p>The Parliamentary Delegation on intelligence notes in its report that</p>

<sup>194</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article L. 34-1-1, available at: [www.legifrance.gouv.fr/affichCode.do?jsessionid=0626995237B87088235AE5D725CE10B5.tpdjo07v\_2?idSectionTA=LEGISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140721]. Accessed on 7 August 2014.

<sup>195</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L235-1, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508261&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>196</sup> France, Decree no. 2014-445 on tasks and organization of the General Directorate of Interior Security (*Décret n° 2014-445 relatif aux missions et à l'organisation de la direction générale de la sécurité intérieure*), 30 April 2014, article 1, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028887486&categorieLien=id]. Accessed on 10 October 2014.

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			<p>according to the President of the Republic, ‘a dialogue was initiated at the highest level to establish a ‘code of conduct’ among allies in the field of interception of personal data’. It outlines that cooperation between services shall limit the collection of information to what is strictly necessary for the fight against terrorism and the security of France, in order to protect privacy and personal data of citizens.<sup>198</sup></p>
<p><b>Law no. 2004-575 of 21 June 2004 on confidence in the</b></p>	<p>In order to access data held by providers of online public communication services and by</p>	<p>The Law does not distinguish situations when data concern nationals or EU citizens or third</p>	<p>The personal data processed by the national police and gendarmerie can be sent to the organizations of</p>

<sup>197</sup> France, Order for application of Article 33 of Law No. 2006-64 of 23 January 2006 on the fight against terrorism and containing various provisions relating to security and border controls (*Arrêté pris pour l'application de l'article 33 de la loi n° 2006-64 du 23 janvier 2006 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers*), 7 May 2012, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=D30D3A3A239C898194FCFAE20E0C3805.tpdjo14v\_2?cidTexte=JORFTEXT000025836069&dateTexte=20140915]. Accessed on 8 October 2014.

<sup>198</sup> France, Parliamentary Delegation on intelligence (*Délégation parlementaire au renseignement*) (2013) Activity report (*Rapport d'activité*), available at: [www.assemblee-nationale.fr/14/rap-off/i1886.asp]. Accessed on 14 September 2014.

<p><b>Please, list law(s) providing for the protection of privacy and data protection against unlawful surveillance</b></p>	<p><b>List specific privacy and data protection safeguards put in place by this law(s)</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only to nationals or also to EU citizens and/or third country nationals</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only inside the country, or also outside (including differentiation if EU or outside EU)</b></p>
<p><b>digital economy (Loi no. 2004-575 pour la confiance dans l'économie numérique).</b></p>	<p>persons storing signals, writings, images, sounds or messages of any kind (even for free), provided by recipients of online public communication services, agents of the national police and <i>gendarmerie</i> charged with the prevention of acts of terrorism, should submit their request to a qualified person appointed by the National Commission for control of security interceptions (CNCIS). The CNCIS may carry out inspections relating to operations of technical data communication at any time. If it finds a breach of the rules set</p>	<p>country nationals.</p>	<p>international police cooperation or to the foreign police under the conditions of international commitments regularly introduced into the domestic legal order and if they represent an adequate level of protection of privacy, freedoms and fundamental rights of individuals. National police and <i>gendarmerie</i> can receive data from organizations of international police cooperation or foreign police.<sup>199</sup> Under Decree no. 2014-445 of 30 April 2014,<sup>200</sup> the General Directorate of Interior Security is a service of</p>

<sup>199</sup> France, Code of interior security (*Code de la sécurité intérieure*), article L235-1, available at:

[[www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508261&cidTexte=LEGITEXT000025503132&dateTexte=20120618](http://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508261&cidTexte=LEGITEXT000025503132&dateTexte=20120618)]. Accessed on 7 August 2014.

<sup>200</sup> France, Decree no. 2014-445 on tasks and organization of the General Directorate of Interior Security (*Décret n° 2014-445 relatif aux missions et à l'organisation de la direction générale de la sécurité intérieure*), 30 April 2014, article 1, available at: [[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028887486&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028887486&categorieLien=id)]. Accessed on 10 October 2014.

<p><b>Please, list law(s) providing for the protection of privacy and data protection against unlawful surveillance</b></p>	<p><b>List specific privacy and data protection safeguards put in place by this law(s)</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only to nationals or also to EU citizens and/or third country nationals</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only inside the country, or also outside (including differentiation if EU or outside EU)</b></p>
	<p>out in the article L. 34-1-1 of the Post and Electronic Communications Code or infringement of rights and freedoms, it makes a recommendation to the Minister of the Interior who must inform it about measures taken to remedy any deficiencies found within fifteen days.</p>		<p>national police. For example, services of national police charged with the prevention of acts of terrorism include services and units within the General Directorate of Interior Security <sup>201</sup></p> <p>The Parliamentary Delegation on intelligence notes in its report that according to the President of the Republic, ‘a dialogue was initiated at the highest level to establish a ‘code of conduct’ among allies in the field of interception of personal data’. It outlines that cooperation between services shall limit the collection of information to what is strictly necessary for the fight against</p>

<sup>201</sup> France, Order for application of Article 33 of Law No. 2006-64 of 23 January 2006 on the fight against terrorism and containing various provisions relating to security and border controls (*Arrêté pris pour l'application de l'article 33 de la loi n° 2006-64 du 23 janvier 2006 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers*), 7 May 2012, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=D30D3A3A239C898194FCFAE20E0C3805.tpdjo14v\_2?cidTexte=JORFTEXT000025836069&dateTexte=20140915]. Accessed on 8 October 2014.

<p><b>Please, list law(s) providing for the protection of privacy and data protection against unlawful surveillance</b></p>	<p><b>List specific privacy and data protection safeguards put in place by this law(s)</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only to nationals or also to EU citizens and/or third country nationals</b></p>	<p><b>Indicate whether rules on protection of privacy and data protection apply:</b></p> <p><b>only inside the country, or also outside (including differentiation if EU or outside EU)</b></p>
			<p>terrorism and the security of France, in order to protect privacy and personal data of citizens.<sup>202</sup></p>

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<sup>202</sup> France, Parliamentary Delegation on intelligence (*Délégation parlementaire au renseignement*) (2013) Activity report (*Rapport d'activité*), available at: [www.assemblee-nationale.fr/14/rap-off/i1886.asp]. Accessed on 14 September 2014.

## Annex 2 – Oversight bodies and mechanisms

<b>Name of the body/mechanism</b>	<b>Type of the body/mechanism</b>	<b>Legal basis</b>	<b>Type of oversight</b>	<b>Staff</b>	<b>Powers</b>
<i>in English as well as in national language</i>	<i>e.g. parliamentary, executive/government, judicial, etc.</i>	<i>name of the relevant law, incl. specific provision</i>	<i>ex ante / ex post / both/ during the surveillance/etc. as well as whether such oversight is ongoing/regularly repeated</i>	<i>including the method of appointment of the head of such body AND indicate a total number of staff (total number of supporting staff as well as a total number of governing/managing staff) of such body</i>	<i>e.g. issuing legally binding or non-binding decisions, recommendations, reporting obligation to the parliament, etc.</i>
National Commission on Informatics and Freedoms ( <i>Commission Nationale de l'informatique et des libertés, CNIL</i> )	Independent administrative authority	Law no. 78-17 relating to information technology, files and freedoms ( <i>Loi no. 78-17 relative à l'informatique, aux fichiers et aux libertés</i> ), 6 January 1978, modified by law no. 2004-801 of 6 August 2004.  (articles 11-21)	Ex ante (obligation to report to the CNIL, to ask for the CNIL's opinion or approval depending on the nature of data) and ex post oversight (checks)	The CNIL is composed of 17 members :  - 4 parliamentarians (2 MPs ( <i>députés</i> ) and 2 senators appointed by the National Assembly and the Senate respectively);  - 2 elected members of the Economic, Social and Environmental Council;  - 2 elected members of the	The CNIL checks data relating to State security, defence or public safety upon requests of concerned persons (it is an indirect right of access). <sup>204</sup> The CNIL drafts and publishes standards aimed at simplifying the disclosure requirement, after receiving, if applicable, the proposals put forward by the representatives of the

<sup>204</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 41, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

				<p>State Council;</p> <p>- 2 elected members of the Court of cassation;</p> <p>- 2 elected members of the Court of Auditors;</p> <p>- 5 qualified board members appointed by the Chairman of the National Assembly (1 board member), by the President of the Senate (1 board member), at a meeting of the Cabinet presided over by the President of the Republic of France (3 board members).</p> <p>The term of office of the commissioners is 5 years or, in the case of the parliamentarians, as long as their electoral mandate lasts.</p>	<p>representative organisations.<sup>205</sup></p> <p>In the case of data processing or the most current and least dangerous personal data files, the CNIL will draft text frames to which personal data controllers must refer in order to complete the simplified reporting formalities<sup>206</sup> or be exempt from them.<sup>207</sup></p> <p>‘Risky’ or sensitive data processing is subject to approval from the CNIL (including information on certain genetic data, data leading to the deprivation of a right, installation of a video protection system if its records will be used in automated processing or put in structured files allowing the identification</p>
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<sup>205</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 11 b, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>206</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, articles 11, 23, 24 I, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>207</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, articles 22, 24 II, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

				<p>The Public Defender of rights body participates in its work as an advisor.</p> <p>The CNIL elects a President from its members.</p> <p>The total number of staff in 2013 was 178 people. 7 more posts will be created during the current year.<sup>203</sup></p>	<p>of individuals, directly or indirectly,<sup>208</sup> etc.)<sup>209</sup> or the CNIL's opinion (data relevant to the security, defence or public safety; aiming at the prevention, investigation, detection and prosecution of offences (<i>infractions pénales</i>) or the execution of criminal sentences or security measures, etc.).<sup>210</sup></p> <p>The CNIL staff can carry out checks and obtain copies of any documents or materials useful to its missions<sup>211</sup> and have a right to access the premises where the data processing takes place. If a person responsible for the premises opposes this visit, the CNIL</p>
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<sup>203</sup> France, CNIL (2013), Activity report, 2013 (*Rapport d'activité, 2013*), available at: [www.cnil.fr/fileadmin/documents/La\_CNIL/publications/CNIL\_34e\_Rapport\_annuel\_2013.pdf]. Accessed on 7 August 2014.

<sup>208</sup> France, Code of interior security (*Code de la sécurité intérieur*), article L252-1, available at: [www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000025503132&idArticle=LEGIARTI00002550426&dateTexte=&categorieLien=cid]. Accessed on 7 August 2014.

<sup>209</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, articles 11, 25, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>210</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, articles 11, 26, 27, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>211</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 11 2°f, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

					<p>staff can access premises with the authorization of a judge.<sup>212</sup> In cases of emergency, if a serious situation arises or there is a risk of destruction or concealment of documents, the visit may take place without such a preliminary warning upon the authorization of a judge.<sup>213</sup> The Decree of the State Council on data processing relating to the security of the State can provide that the regulatory act authorizing the processing will not be published and that the CNIL will not have right of access to premises and information.<sup>214</sup> The list of these acts is established by Decree no. 2007-914 of 15 May 2007.<sup>215</sup></p>
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<sup>212</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 44, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>213</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 44, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>214</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 44 IV, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 12 September 2014.

<sup>215</sup> France, Decree no. 2007-914 for application of article 30 I of Law no. 78-17 relating to information technology, files and freedoms (*Décret n°2007-914 pris pour l'application du I de l'article 30 de la loi n° 78-17 du 6 janvier 1978 relative à l'informatique, aux fichiers et aux libertés*), 15 May 2007, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000649189]. Accessed on 12 September 2014.

					<p>The CNIL supervises compliance with the law by inspecting IT systems and applications. The CNIL may issue a warning against the person responsible for data processing if they do not meet legal obligations. If data processing results in violations of rights and freedoms, the CNIL can decide to lock some of the personal data for a maximum period of three months or to inform the Prime Minister who may take measures to stop the violation. In the case of a serious and immediate violation of rights and freedoms, the president of the CNIL may ask, through an urgent court hearing, that the competent court order any necessary security measures. Violations of the French data protection legislation</p>
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					<p>are reported to the prosecutor.<sup>216</sup></p> <p>The CNIL suggests legislative and regulatory measures to the government that may adapt protection of freedoms and privacy to fit in with technological developments. The government consults the CNIL before passing on draft legislation relating to data protection to Parliament.<sup>217</sup></p>
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<sup>216</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, articles 45 and 46, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>217</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, articles 11 4°, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<p>National Commission for control of security interceptions (<i>Commission nationale de contrôle des interceptions de sécurité, CNCIS</i>)</p>	<p>Independent administrative authority</p>	<p>Code of interior security (<i>Code de la sécurité intérieure</i>)  Articles L243-1 – L243-12 and R244-1-R244-6.</p>	<p>Ex post oversight in the area of data held by private operators :</p> <p>Ex post oversight in the area of security interceptions (L246-4)</p> <p>The ex-ante oversight is undertaken by the qualified person that acts under the authority of the Prime Minister (see art. L246-1).</p> <p>Requests for the technical data communication are submitted to a qualified person appointed for three years by the National Commission for control of security interceptions; to be</p>	<p>The National Commission for control of security interceptions is chaired by a person designated for six years by the President of the Republic. A list of 4 candidates is established jointly by the Vice-President of the State Council and the first President of the Court of Cassation. It includes one MP (<i>député</i>) appointed by the President of the National Assembly and one senator appointed by the President of the Senate. The member of the Commission cannot be a member of the Government.</p> <p>There are five people working as supporting staff: the commission is assisted by 2 agents (since its creation, these are recruited among the judiciary, although it is not a formal obligation), has 2 secretaries and a security officer.<sup>219</sup></p>	<p>- carrying out inspections relating to operations of technical data communication, power to make a recommendation to the Minister of the Interior who must inform on the measures taken to remedy any deficiencies found within fifteen days.<sup>220</sup></p> <p>- examining the legality of the Prime Minister's authorization of interception, power to recommend the Prime Minister suspend the interception. Power to make a recommendation on the maximum number of interceptions performed simultaneously to the Prime Minister. The Prime Minister shall immediately inform the CNCIS of the actions taken following its recommendations.<sup>221</sup></p> <p>- checking of the legality of</p>
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<sup>219</sup> France, CNCDH (2014), Interview with J.-M. Delarue, Chairman of the CNCIS, 2 September 2014; France, CNCIS (2013) Activity report 2012-2013 (*Rapport d'activité 2012-2013*), available at: [www.ladocumentationfrancaise.fr/var/storage/rapports-publics/144000007/0000.pdf]. Accessed on 9 September 2014.

			<p>noticed, though, that inspections can be carried out at any time by the CNCIS</p> <p>Ex-ante oversight also exists in practice for the CNCIS, as it is consulted before the request for the authorisation of the Prime Minister<sup>218</sup></p>		<p>security interceptions on its own initiative or on a complaint of any person having a direct and personal interest, power to recommend to the Prime Minister to suspend the interception. The Prime Minister shall immediately inform the CNCIS of the actions taken following its recommendations.<sup>222</sup> The CNCIS informs without delay the public prosecutor of any breach revealed during the check.<sup>223</sup></p> <p>The annual public activity report to the Prime Minister includes the number of recommendations to the</p>
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<sup>220</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article L. 34-1-1, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=0626995237B87088235AE5D725CE10B5.tpdjo07v\_2?idSectionTA=LEGISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140721]. Accessed on 7 August 2014.

<sup>221</sup> France, Code of interior security (*Code de la sécurité intérieure*), article 243-8, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508218&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>218</sup> France, CNCIS (2013) 2012-2013 Activity report (*Rapport d'activité*), p. 50, available at: [www.ladocumentationfrancaise.fr/var/storage/rapports-publics/144000007/0000.pdf]; France, Inquiry commission (2013) Report on the operations of French intelligence services in monitoring and surveillance of radical armed movements (*Rapport sur le fonctionnement des services de renseignement français dans le suivi et la surveillance des mouvements radicaux armés*), available at: [www.assemblee-nationale.fr/14/pdf/rap-enq/r1056.pdf]. Accessed on 6 October 2014.

<sup>222</sup> France, Code of interior security (*Code de la sécurité intérieure*), article 243-9, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508218&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>223</sup> France, Code of interior security (*Code de la sécurité intérieure*), article 243-11, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508218&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

					<p>Prime Minister and to the Minister of the Interior and the data on actions taken following these recommendations.</p> <p>The Commission can address any observations which it judges useful to the Prime Minister at any time.<sup>224</sup></p> <p>The qualified person (which acts under the authority of the Prime Minister) establishes an annual activity report for the attention of the National Commission for control of security interceptions.<sup>225</sup></p>
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<sup>224</sup> France, Code of interior security (*Code de la sécurité intérieure*), articles L243-1-L243-7, available at: [www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000025508230&cidTexte=LEGITEXT000025503132&dateTexte=20120618]. Accessed on 7 August 2014.

<sup>225</sup> France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), article L. 34-1-1, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=55C38585F28223FAE9B3319A2678C744.tpdjo14v\_2?idSectionTA=LEGISCTA000006165910&cidTexte=LEGITEXT000006070987&dateTexte=20140718]. Accessed on 7 August 2014.

<p>Parliamentary Delegation on intelligence, common to the National Assembly and the Senate (<i>Délégation parlementaire au renseignement, commune à l'Assemblée nationale et au Sénat</i>)</p>	<p>Parliamentary</p>	<p>Order no. 58-1100 on the functioning of parliamentary assemblies (<i>Ordonnance no. 58-1100 relative au fonctionnement des assemblées parlementaires</i>), 17 November 1958, modified by law no. 2013-1168 of 18 December 2013<sup>226</sup></p>	<p>Ex ante and ex post oversight</p>	<p>The delegation is composed of four deputies and four senators including chairpersons of the standing committees of the National Assembly and Senate respectively charged with internal security affairs and defence, who alternately hold the position of chair of the delegation for one year. Other members of the delegation are appointed by the Chair of the National Assembly and the Senate.</p>	<p>- parliamentary scrutiny of government action in terms of intelligence and evaluation of public policy in the area of intelligence since the law of 18 December 2013</p> <p>(previously, the Delegation's mission was to follow the overall activity and the means of specialized services)</p> <p>The law of 18 December 2013 expanded the list of documents that must be provided to the Delegation: besides information related to the intelligence service budget, overall activity and organization, it must also receive the national intelligence strategy and elements from the national plan on orientation of intelligence. The annual report on the budget</p>
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<sup>226</sup> France, Order no. 58-1100 on the functioning of parliamentary assemblies (*Ordonnance n° 58-1100 relative au fonctionnement des assemblées parlementaires*), 17 November 1958, article 6 nonies, available at: [www.legifrance.gouv.fr/affichTexteArticle.do;jsessionid=F5875EDA8AFC81BDE703443E3D380F36.tpdjo05v\_2?cidTexte=JORFTEXT000000705067&idArticle=LEGIARTI000006530065&dateTexte=&categorieLien=cid]. Accessed on 7 August 2014.

					<p>dedicated to intelligence services must be comprehensive. The delegation may request inspection reports concerning intelligence services from the Prime Minister.</p> <p>Since the Law of 18 December 2013, the Delegation can hold hearings not only of the Prime Minister, competent ministers, the General Secretary of National Defence and Security, and heads of intelligence services, but also hearings of the National intelligence coordinator, the Director of the Intelligence Academy, and heads of central administration with knowledge of intelligence service activities. It can also ask for reports from the Consultative Commission on National Defence Secrets (<i>Commission consultative du secret de la défense nationale</i>) and from the</p>
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					<p>National Commission for control of security interceptions</p> <ul style="list-style-type: none"><li>- recommendations and observations to the President of the Republic and to the Prime Minister, sent to the Chair of the National Assembly and the Senate</li><li>- Since the Law of 18 December 2013, the Delegation exercises the powers of Audit Commission (<i>Commission de verification</i>) which oversees the expenses of the special funds (including funding of intelligence services) in the framework of the 'Coordination of government work' programme.</li></ul>
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<p>Inspectorate of intelligence services (<i>Inspection des services de renseignement</i>)</p>	<p>Executive</p>	<p>Decree (Décret) no. 2014-833 of 24 July 2014<sup>227</sup></p>	<p>Ex ante and ex post</p>	<p>Made up of personnel from existing inspectorates (the General Inspectorate of Finance, the General Administration inspectorate, the Army control inspectorate and the General Council of the economy, industry, energy and technologies) who exercise their missions occasionally (it is not a body).<sup>228</sup> Members of the inspectorate are appointed by the Prime Minister, after consultation with the National intelligence coordinator.</p> <p>No concrete data on a total number of staff. The national coordination of intelligence services is in charge of its secretariat.<sup>229</sup></p>	<p>Monitoring, auditing, research, consulting and assessments of services forming the French intelligence community</p>
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<sup>227</sup> France, Decree no. 2014-833 on the Inspectorate of intelligence services (*Décret n° 2014-833 relatif à l'inspection des services de renseignement*), 24 July 2014, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029290787&dateTexte=&categorieLien=id]. Accessed on 11 September 2014.

<sup>228</sup> France, Council of Ministers, Minutes (*Compte rendu*), 23 July 2014, available at: [www.gouvernement.fr/conseil-des-ministres/2014-07-23/inspection-des-services-de-renseignement]. Accessed on 8 October 2014.

<sup>229</sup> France, Decree no. 2014-833 on the Inspectorate of intelligence services (*Décret n° 2014-833 relatif à l'inspection des services de renseignement*), 24 July 2014, article 5, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029290787&dateTexte=&categorieLien=id]. Accessed on 8 October 2014.

## Annex 3 – Remedies<sup>230</sup>

Law no. 78-17 relating to information technology, files and freedoms ( <i>Loi no. 78-17 relative à l'informatique, aux fichiers et aux libertés</i> ), 6 January 1978				
Stages of surveillance process	Is the subject informed?	Does the subject have a right of access to the data collected on him/her?	List remedies available to an individual concerned	Legal basis for using the available remedies
	<i>Yes/No</i>	<i>Yes/No, please provide details if needed</i>	<i>Please list the type of remedial action that can be taken: e.g.: claims lodged with court(s), claims lodged with the oversight body, request to the surveillance authority, etc. AND please specify also the name (e.g. Supreme Court) and type of the body (e.g. judicial, executive, parliamentary) providing such remedies.</i>	<i>Violation of data protection, private life, specific legislation, etc.</i>
<b>Collection*</b>	No. The subject is not informed if the collected data are used for processing implemented on behalf of the State in order	Yes, but the right of access is implemented indirectly. When data processing concerns State security, defence or public safety, the request to access the collected data must be	- <b>right to file the request to the CNIL asking for the provision of data</b> listed by article 39 (see above), <b>rectification, completion, updating,</b> <b>blocking or erasing</b> inaccurate, incomplete, ambiguous, or outdated personal data or personal data	Articles 39, 40 and 41

<sup>230</sup> In case of different remedial procedures please replicate the table for each legal regime.

\* For the definitions of these terms, please refer to the FRA/CoE (2014), *Handbook on European data protection law*, Luxembourg, 2014, pp. 46-47, available at: <http://fra.europa.eu/en/news/2014/council-europe-and-eu-fundamental-rights-agency-launch-handbook-european-data-protection>

	<p>to protect State security, defence, public safety or aiming at the enforcement of criminal sentences or security measures, if such a restriction is necessary to meet the purposes of the processing.<sup>231</sup> The subject is not informed if the data are used for processing aiming at the prevention, identification and prosecution of criminal offences.<sup>232</sup></p>	<p>filed to the CNIL (article 41). Thus, there is an ‘indirect right of access’.<sup>233</sup> If the CNIL and the person responsible for data processing decide that the communication of information does not undermine the goals of processing, State security, defence or public safety, the data can be communicated to the applicant. The regulatory act allows for information to be communicated to the applicant directly by the data controller if the communication of this information does not jeopardise the purpose of the data processing. (Article 41).</p>	<p>whose collection, use, disclosure or storage is prohibited. The CNIL does all necessary checks and asks for modifications.</p> <p>- <b>right to file a</b> complaint concerning the implementation of processing of personal data to the CNIL</p>	<p>Article 11</p>
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<sup>231</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 32 V, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<sup>232</sup> France, Law no. 78-17 relating to information technology, files and freedoms (*Loi n° 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, article 32 VI, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460]. Accessed on 7 August 2014.

<b>Analysis*</b>	As above	As above	As above	As above
<b>Storing*</b>	As above	As above	As above	As above
<b>Destruction*</b>	As above	As above	As above	As above
<b>After the whole surveillance process has ended</b>	As above	As above	As above	As above

**Code of Administrative Justice (*Code de justice administrative*)**

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<sup>233</sup> France, CNIL (2014) Indirect right of access (*Le droit d'accès indirect*), available at: [[www.cnil.fr/vos-droits/vos-droits/le-droit-daccès-indirect/](http://www.cnil.fr/vos-droits/vos-droits/le-droit-daccès-indirect/)]. Accessed on 9 September 2014;  
France, CNIL (2010) Guide "Right of access" (*Guide "Droit d'accès"*), available at: [[www.cnil.fr/fileadmin/documents/Guides\\_pratiques/Livrets/droit\\_d-acces/files/assets/downloads/publication.pdf](http://www.cnil.fr/fileadmin/documents/Guides_pratiques/Livrets/droit_d-acces/files/assets/downloads/publication.pdf)]. Accessed on 9 September 2014.

Stages of surveillance process	Is the subject informed?	Does the subject have a right of access to the data collected on him/her?	List remedies available to an individual concerned	Legal basis for using the available remedies
<b>Collection</b> *	N/A	N/A	<p>Right to challenge the legality of an administrative decision before an administrative court</p> <p>Right to challenge the legality of Orders of the President of the Republic, decrees, regulatory acts of Ministers and other authorities with national jurisdiction and their general circulars and instructions, as well as the legality of decisions taken by certain supervisory or regulatory authorities including the National Commission on Informatics and Freedoms and the National Commission for control of security interceptions before the State Council (<i>Conseil d'Etat</i>)</p>	<p>Article L311-1 of the Code of Administrative Justice<sup>234</sup></p> <p>Article R 311-1 of the Code of Administrative Justice<sup>235</sup></p> <p>Article L. 521-2 of the Code of Administrative Justice<sup>236</sup></p>

\* For the definitions of these terms, please refer to the FRA/CoE (2014), *Handbook on European data protection law*, Luxembourg, 2014, pp. 46-47, available at: <http://fra.europa.eu/en/news/2014/council-europe-and-eu-fundamental-rights-agency-launch-handbook-european-data-protection>

<sup>234</sup> France, Code of administrative justice (*Code de justice administrative*), article L 311-1, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=B03EF9E37D454501EA8992A00E608EB6.tpdjo08v\_3?idSectionTA=LEGISCTA000006150395&cidTexte=LEGITEXT000006070933&dateTexte=20140802]. Accessed on 7 August 2014.

<sup>235</sup> France, Code of administrative justice (*Code de justice administrative*), article R 311-1, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=B03EF9E37D454501EA8992A00E608EB6.tpdjo08v\_3?idSectionTA=LEGISCTA000006150442&cidTexte=LEGITEXT000006070933&dateTexte=20140802]. Accessed on 7 August 2014.

<sup>236</sup> France, Code of administrative justice (*Code de justice administrative*), article L 521-2, available at: [www.legifrance.gouv.fr/affichCode.do;jsessionid=18FD5D06934F0E72076CC0D06A4308F7.tpdjo08v\_3?idSectionTA=LEGISCTA000006150399&cidTexte=LEGITEXT000006070933&dateTexte=20140802]. Accessed on 7 August 2014.

			Right to the 'petition for civil liberties' ( <i>référé-liberté</i> ): the judge for urgent applications may order any action necessary to protect a fundamental freedom from a serious and manifestly illegal violation that a legal entity or a body responsible for managing a public service may have committed in the exercise of their powers. The judge will make a decision within forty-eight hours. This procedure presupposes both an urgent situation and a serious and manifestly illegal violation of a fundamental freedom (e.g. right to respect for privacy) and provides a temporary measure to bring an end to the offence.	
<b>Analysis*</b>	<i>N/A</i>	<i>N/A</i>	As above	As above
<b>Storing*</b>	<i>N/A</i>	<i>N/A</i>	As above	As above
<b>Destruction*</b>	<i>N/A</i>	<i>N/A</i>	As above	As above
<b>After the whole surveillance process has ended</b>	<i>N/A</i>	<i>N/A</i>	As above	As above

## Annex 4 – Surveillance-related case law at national level

Please provide a maximum of three of the most important national cases relating to surveillance. Use the table template below and put each case in a separate table.

French human rights NGOs (FIDH and LDH) filed complaints to the Paris prosecutor's office following the Snowden revelations, claiming infringements of personal liberties through automated data processing. They challenged the fraudulent access to an automated data processing system, collection of personal data by fraudulent means, wilful violation of the intimacy of private life, and the use and conservation of recordings and documents obtained through such means. The investigations are still ongoing.<sup>237</sup>

<b>Case title</b>	Decision no. 334188
<b>Decision date</b>	11 March 2013
<b>Reference details (type and title of court/body; in original language and English [official translation, if available])</b>	Conseil d'Etat (Council of State)
<b>Key facts of the case (max. 500 chars)</b>	<p>The legality of Decree no. 2009-1250 of 16 October 2009, establishing personal data processing relating to administrative investigations related to public safety, was challenged with regard to the executive power's ability to create data processing allowing the collection of data to check whether a person's behaviour and character may be incompatible with public or private sector jobs they may be recruited for - even if this data collection includes information on political, religious, or philosophical beliefs or links to the membership of a trade union – which is in breach of article 17-1 of the Law of 21 January 1995.</p> <p>The legality of the Decree was also challenged as it allowed the interference of the public authority in private life, breached the principle of equal access to public services and the principle of freedom of conscience guaranteed to civil servants, and provided an excessive period of data storage and a large list of persons having the right of access.</p>

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<sup>237</sup> France, FIDH (2013) 'FIDH and LDH file a complaint for infringement of personal data', 11 July 2013, available at:

[[www.fidh.org/en/europe/france/fidh-and-ldh-file-a-complaint-for-infringement-of-personal-data-13648](http://www.fidh.org/en/europe/france/fidh-and-ldh-file-a-complaint-for-infringement-of-personal-data-13648)]. Accessed on 12 September 2014. Information given by the FIDH's lawyer on 16 September 2014.

<p><b>Main reasoning/argumentation (max. 500 chars)</b></p>	<p>It results from the combined provisions of article 8, I and IV and of article 26, II of the Law relating to information technology, files and freedoms of 6 January 1978 that the personal data processing implemented on behalf of the State concerning State security, defence or public safety, may reveal racial or ethnic origin, political, religious or philosophical opinions or trade union membership or data on health or sexual life if it is approved by decree after consultation of the Council of State (<i>décret pris en Conseil d'Etat</i>) and the National Commission on Informatics and Liberties, whose opinion is published. In this case the procedure was observed. This interference of the public authority in private life is legal as it has a clearly announced legitimate purpose to protect public security and selection, collection and processing of data are performed appropriately and correspond to the aims pursued.</p> <p>Although the data processing allows collecting of data on behaviour incompatible with the exercise of the planned functions or missions, even if it has a political, religious, or philosophical belief or is linked to the membership in a trade union, it does not allow collecting of data on political, religious, philosophical or trade union opinions or activities. Thus, in making its decision, the administrative authority does not take into account political, religious, or philosophical or trade union opinions of the concerned person, but only behaviour incompatible with the exercise of the planned functions or missions, whatever the motivation for this behaviour.</p> <p>The 5 year period of data storage does not exceed the time required to meet the purposes of the processing. The Decree contains a limited list of persons having the right of access, they must be individually designated and have special authorization.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</b></p>	<p>A large amount of data that could be processed for the purposes of State security, defence or public safety.</p>
<p><b>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</b></p>	<p>The legality of the challenged Decree was confirmed by the Council of the State. It was abrogated by Decree no. 2013-1113 of 4 December 2013, which reproduced the challenged provisions introducing articles R 236-1 – R 236-10 to the Code of interior security.</p>

<b>Case title</b>	Decision no. 347349
<b>Decision date</b>	20 November 2013
<b>Reference details (type and title of court/body; in original language and English [official translation, if available])</b>	Conseil d'Etat (Council of State)
<b>Key facts of the case (max. 500 chars)</b>	The legality of Decree no. 2011-219 of 25 February 2011 on the conservation and communication of data allowing the identification of any person who has contributed to the creation of online content was challenged with regard to the breach of the ban on data interception, as well as rules on information and consent of the concerned persons.
<b>Main reasoning/argumentation (max. 500 chars)</b>	Under recital 15 of Directive 2000/31/EC of 8 June 2000, Member States must prohibit any kind of interception or surveillance of such communications by anyone other than the senders and receivers, except when legally authorised. Under article 7 of the law of 6 January 1978, personal data processing can be performed without the consent of the concerned person if it is a legal obligation. There is no obligation to inform the concerned person if the processing is implemented on behalf of the State and is in order to protect State security, defence, public safety or aiming at the enforcement of criminal sentences or security measures, if such a restriction is necessary to meet the purposes of the processing and if the processing aims at the prevention, identification and prosecution of criminal offences. The communication of technical data in the course of judicial or administrative requisitions, allowing the identification of any person who has contributed to the creation of online content under provisions of article 6, II and IIb of law no. 2004-575 of 21 June 2004 transposing the Directive, must be regarded as affecting security, defence or public safety. The Decree contains a limited list of data that has to be stored, duration of their conservation and the conditions of their communication, and was adopted after consultation with the National Commission on Informatics and Freedoms, and the National Commission for control of security interceptions.
<b>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</b>	There is no obligation either to inform or ask for consent of the persons concerned by data processing aiming at communication of technical data in the course of judicial or administrative requisitions, allowing for the identification of any person who has contributed to the creation of online content.
<b>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</b>	The legality of the challenged Decree was confirmed.

## Annex 5 – Key stakeholders at national level

Please list all the key stakeholders in your country working in the area of surveillance and divide them according to their type (i.e. public authorities, civil society organisations, academia, government, courts, parliament, other). Please provide name, website and contact details.

<b>Name of stakeholder</b> (in English as well as your national language)	<b>Type of stakeholder</b> (i.e. public authorities, civil society organisations, academia, government, courts, parliament, other)	<b>Contact details</b>	<b>Website</b>
National Commission on Informatics and Freedoms ( <i>Commission Nationale de l'informatique et des libertés, CNIL</i> )	Public authority	8, rue Vivienne CS 30223 75083 Paris cedex 02 Tel : +33 1 53 73 22 22 Fax : +33 1 53 73 22 00	<a href="http://www.cnil.fr">www.cnil.fr</a>
National Commission for control of security interceptions ( <i>Commission nationale de contrôle des interceptions de sécurité</i> )	Public authority	35, rue Saint-Dominique 75700 Paris SP 07 Tel : +33 1 45 55 70 20 Fax :+33 1 45 51 08 71 secretariat.cncis@pm.gouv.fr	<a href="http://lannuaire.service-public.fr/services_nationaux/autorite-administrative-independante_172128.html">http://lannuaire.service-public.fr/services_nationaux/autorite-administrative-independante_172128.html</a>
French Association of Data Protection	Civil society	1 rue de Stockholm	<a href="http://www.afcdp.net">www.afcdp.net</a>

Correspondents ( <i>Association Française des Correspondants à la Protection des Données à Caractère Personnel, AFCDP</i> )	organisation	75008 Paris  delegue.general@afcdp.net secretaire-general@afcdp.net	
League of Human Rights ( <i>Ligue des droits de l'Homme</i> )	Civil society organisation	138 rue Marcadet, 75018 Paris Tel. 01 56 55 51 00 ldh@ldh-france.org	<a href="http://www.ldh-france.org/contact/">www.ldh-france.org/contact/</a>
Group for information and support for immigrants ( <i>Groupe d'information et de soutien des immigrés, GISTI</i> )	Civil society organisation	3 villa Marcès, 75011 Paris 01 43 14 84 84 gisti@gisti.org	<a href="http://www.gisti.org">www.gisti.org</a>
ONG Imagine a unified internet network ( <i>Association Imaginons un réseau internet solidaire, IRIS</i> )	Civil society organisation	40 rue de la Justice 75020 Paris Tel.01 44 74 92 39 contact@iris.sgdg.org	<a href="http://www.iris.sgdg.org/">www.iris.sgdg.org/</a>
ONG Internet without borders ( <i>Association Internet sans frontière</i> )	Civil society organisation	archippe@internetsansfrontieres.org	<a href="http://www.internetsansfrontieres.org">www.internetsansfrontieres.org</a>
Senior Officer for Defence and Security ( <i>Haut fonctionnaire de</i>	Public authority	Tel. 01 57 53 26 42	<a href="http://www.economie.gouv.fr/hfds/service-secretaire-general-haut-fonctionnaire-defense-et-securite">www.economie.gouv.fr/hfds/service-secretaire-general-haut-fonctionnaire-defense-et-securite</a>

défense et de sécurité, HFDS)			
Directorate General for External Security, Ministry of Defence ( <i>Direction générale de la sécurité extérieure, Ministère de la Défense</i> )	Public authority	14 Rue Saint-Dominique 75700 Paris 01 56 06 34 80	www.defence.gouv.fr/dgse
Digital and Freedoms Observatory ( <i>Observatoire des libertés et du numérique</i> )	Civil society organisation	138 rue Marcadet, 75018 Paris Tel. 01 56 55 51 11 contact-oln@ldh-france.org	-
Centre of studies on Citizenship, Informatization and Freedoms ( <i>Centre d'Études sur la Citoyenneté, l'Informatisation et les Libertés</i> )	Civil society organisation	20 rue St Nicolas 75012 Paris contact@lececil.org	www.lececil.org
ONG Creis-Terminal ( <i>Association Creis-Terminal</i> )	Civil society organisation	<a href="mailto:contact@lecreis.org">contact@lecreis.org</a>	www.lecreis.org/?page_id=994
Secretary General of Defence and National Security ( <i>Secrétariat général de la défense et de la sécurité nationale,</i>	Public authority	51, boulevard de la Tour-Maubourg 75700 Paris - 07 SP  Tel. 01 71 75 80 11	www.sgdsn.gouv.fr/

SGDSN).			
National Intelligence Council ( <i>Conseil national du Renseignement, CNR</i> )	Public authority	Palais de l'Élysée 55, rue du Faubourg-Saint-Honoré 75008 Paris	<a href="http://lannuaire.service-public.fr/services_nationaux/conseil-comite-commission-organisme-consultatif_187246.html">http://lannuaire.service-public.fr/services_nationaux/conseil-comite-commission-organisme-consultatif_187246.html</a>
National intelligence coordinator ( <i>Le coordonnateur national du renseignement</i> )	Public authority	Palais de l'Élysée 55, rue du Faubourg-Saint-Honoré 75008 Paris Tel. 01 42 92 80 12	<a href="http://lannuaire.service-public.fr/services_nationaux/conseil-comite-commission-organisme-consultatif_187246.html">http://lannuaire.service-public.fr/services_nationaux/conseil-comite-commission-organisme-consultatif_187246.html</a>
Intelligence Academy ( <i>Académie du renseignement</i> )	Public authority	57, rue de Varenne 75700 Paris SP 07 Tel. 01 42 75 80 00	<a href="http://www.gouvernement.fr">www.gouvernement.fr</a>
Advisory Committee on confidentiality of national defence ( <i>Commission consultative du secret de la défense nationale</i> )	Public authority	35, rue Saint-Dominique 75007 Paris Tel. 01 42 75 75 00	<a href="http://lannuaire.service-public.fr/services_nationaux/autorite-administrative-independante_172100.html">http://lannuaire.service-public.fr/services_nationaux/autorite-administrative-independante_172100.html</a>
Interdepartmental control group ( <i>Groupement interministériel de contrôle</i> )	Public authority		<a href="http://www.gouvernement.fr/premier-ministre/organismes-directement-places-sous-l-autorite-du-premier-ministre">www.gouvernement.fr/premier-ministre/organismes-directement-places-sous-l-autorite-du-premier-ministre</a>
FIDH	Civil society	17 Passage de la Main d'Or 75011 Paris abernard@fidh.org	<a href="http://www.fidh.org/fr/">www.fidh.org/fr/</a>
French research	Research centre	21 Boulevard Haussmann	<a href="http://www.cf2r.org/">www.cf2r.org/</a>

centre on intelligence (Centre français de recherche sur le renseignement)		75009 Paris info@cf2r.org Tel. 33 1 53 43 92 44 Fax 33 1 53 43 92 92	
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## Annex 6 – Indicative bibliography

### National legislation

- France, Code of interior security (*Code de la sécurité intérieure*), available at:  
[[www.legifrance.gouv.fr/affichCode.do;jsessionid=829D9B84D66A0C7086732A93D39C5D88.tpdjo15v\\_3?cidTexte=LEGITEXT00025503132&dateTexte=20120618](http://www.legifrance.gouv.fr/affichCode.do;jsessionid=829D9B84D66A0C7086732A93D39C5D88.tpdjo15v_3?cidTexte=LEGITEXT00025503132&dateTexte=20120618)]
- France, Code of the Defence (*Code de la Défense*), available at:  
[[www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071307](http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071307)].
- France, Post and Electronic Communications Code (*Code des postes et des communications électroniques*), available at:  
[[www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070987](http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070987)]
- France, Criminal code (*Code pénal*), available at: [[www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719](http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070719)]
  
- France, Code of criminal procedure (*Code de procédure pénale*), available at:  
[[www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071154](http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006071154)]
  
- France, Code of administrative justice (*Code de justice administrative*), available at:  
[[www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070933](http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070933)]

  - France, Code of Entry and Stay of Aliens and Asylum (*Code de l'entrée et du séjour des étrangers et du droit d'asile*), available at:  
[[www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158](http://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006070158)]
  - 

- France, Law no. 2013-1168 on the military programme for the years 2014-2019 concerning national defence and security (*Loi no. 2013-1168 relative à la programmation militaire pour les années 2014 à 2019 et portant diverses dispositions concernant la défense et la sécurité nationale*), 18 December 2013, available at:  
[[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&dateTexte&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028338825&dateTexte&categorieLien=id)]
  
- France, Law no. 78-17 relating to information technology, files and freedoms (*Loi no. 78-17 relative à l'informatique, aux fichiers et aux libertés*), 6 January 1978, available at: [[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000886460)]

- France, Law no. 2006-64 on the fight against terrorism, containing various provisions relating to security and border controls, (*Loi no. 2006-64 relative à la lutte contre le terrorisme et portant dispositions diverses relatives à la sécurité et aux contrôles frontaliers*), 23 January 2006, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=0626995237B87088235AE5D725CE10B5.tpdjo07v\_2?cidTexte=JORFTEXT000000454124&categorieLien=id]
- France, Law no. 2004-575 on confidence in the digital economy (*Loi no. 2004-575 pour la confiance dans l'économie numérique*), 21 June 2004, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000801164&dateTexte=&categorieLien=id]
- France, Law no. 95-73 on guidance and programming of security (*Loi no. 95-73 d'orientation et de programmation relative à la sécurité*), 21 January 1995, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=C8E2B6801EC89F1289A0C528F528F155.tpdjo02v\_1?cidTexte=JORFTEXT000000369046&dateTexte=20120430]
- France, Law no. 2011-267 on guidance and programming for the performance of interior security (*Loi no. 2011-267 d'orientation et de programmation pour la performance de la sécurité intérieure*), 14 March 2011, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=C8E2B6801EC89F1289A0C528F528F155.tpdjo02v\_1?cidTexte=JORFTEXT000023707312&dateTexte=20120430]
- France, Ordonnance no. 2012-351 concerning legislative dispositions of the Code of interior security (*Ordonnance no. 2012-351 relative à la partie législative du code de la sécurité intérieure*), 12 March 2012, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=0626995237B87088235AE5D725CE10B5.tpdjo07v\_2?cidTexte=JORFTEXT000025498645&dateTexte=20120313]
- France, Order no. 58-1100 on the functioning of parliamentary assemblies (*Ordonnance no. 58-1100 relative au fonctionnement des assemblées parlementaires*), 17 November 1958, available at: [www.legifrance.gouv.fr/affichTexte.do;jsessionid=3B0939E5E052BB9C0498271ED6751FC8.tpdjo05v\_2?cidTexte=JORFTEXT000000705067&dateTexte=20140807]
- France, Decree no. 2014-445 on the tasks and organization of the General Directorate of Internal Security (*Décret n° 2014-445 relatif aux missions et à l'organisation de la direction générale de la sécurité intérieure*), 30 April 2014, available at: [www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028887486&categorieLien=id]

- France, Decree no. 2014-833 on the Inspectorate of intelligence services (*Décret n° 2014-833 relatif à l'inspection des services de renseignement*), 24 July 2014, available at:  
[[www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029290787&dateTexte=&categorieLien=id](http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029290787&dateTexte=&categorieLien=id)]
  
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