

<p>Estland</p>	<p>”Tilladelse til aflytninger reguleres i den estiske kriminallovgivning i paragrafferne 126<sup>5</sup> - 126<sup>9</sup> :  § 126<sup>5</sup>. Covert surveillance, covert collection of comparative samples and conduct of initial examinations, covert examination and replacement of things  (1) A prosecutor’s office shall issue a permission for covert surveillance of persons, things or areas, covert collection of comparative samples and conduct of initial examinations and covert examination or replacement of things for up to two months. The prosecutor’s office may extend the term of the permission for up to two months at a time.  (2) In the course of the surveillance activities specified in this section, the information collected shall be, if necessary, video recorded, photographed or copied or recorded in another way.  § 126<sup>6</sup>. Covert examination of postal items  (1) Upon covert examination of a postal item, information derived from the inspection of the item is collected.  (2) After the covert examination of a postal item, the item shall be sent to the addressee.  (3) In the course of the activities specified in this section, the information collected shall be, if necessary, video recorded, photographed or copied or recorded in another way.  (4) In the course of covert examination of a postal item, the item may be replaced.  (5) A preliminary investigation judge grants permission for the surveillance activities specified in this section for up to two months. After expiry of the specified term, the preliminary investigation judge may extend this term by up to two months.</p>
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months.”

§ 126<sup>7</sup>. Wire-tapping or covert observation of information

(1) Information obtained by wire-tapping or covert observation of messages or other information transmitted by the public electronic communications network or communicated by any other means shall be recorded.

(2) Information communicated by a person specified in § 72 of this Code or information communicated to such person by another person which is subject to wire-tapping or covert observation shall not be used as evidence if such information contains facts which have become known to the person in his or her professional activities, unless:

- 1) the person specified in § 72 of this Code has already given testimony with regard to the same facts or if the facts have been disclosed in any other manner;
- 2) a permission has been granted with respect to such person for wire-tapping or covert observation; or
- 3) it is evident on the basis of wire-tapping or covert observation of another person that the specified person commits or has committed a criminal offence.

(3) A preliminary investigation judge grants permission for the surveillance activities specified in this section for up to two months. After expiry of the specified term, the preliminary investigation judge may extend this term by up to two months.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

§ 126<sup>8</sup>. Staging of criminal offence

(1) Staging of a criminal offence is the commission of an act with the elements of a criminal offence with the permission of a court, taking into account the restrictions prescribed in subsection 126<sup>1</sup> (3) of this Code.

(2) If possible, a staged criminal offence shall be photographed, filmed or audio or video recorded.

(3) A preliminary investigation judge grants permission for the surveillance activities specified in this section for up to two months. After expiry of the specified term, the preliminary investigation judge may extend this term by up to two months.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]

§ 126<sup>9</sup>. Use of police agents

(1) Police agent for the purposes of this Act is a person who collects evidence in a criminal proceeding by using a false identity.

(2) A prosecutor's office shall issue a written permission for the use of police agents. Permission for the use of a police agent is granted for up to six months and this term may be extended by six months at a time.

(3) A police agent has all the obligations of an official of a surveillance agency in so far as the obligations do not require disclosure of the false identity.

(4) The statements of a police agent are used as evidence pursuant to the provisions of this Code concerning witnesses.

(5) Based on an order of a prosecutor's office, the fact of using a police agent or the identity of a police agent shall also remain confidential after completion of surveillance activities if disclosure may endanger the life or health, honour and good name or property of the police agent or the persons connected with him or her or his or her further activities as a police agent.

[RT I, 29.06.2012, 2 - entry into force 01.01.2013]"

<p>Grækenland</p>	<p>“Article 3 Lifting of secrecy for national security reasons</p> <ol style="list-style-type: none"> <li>1. Request for waiver of confidentiality may submit only judicial or other political, military or police public authority whose competence the matter of national security that is subject to the lifting.</li> <li>2. The application is submitted to the Appeals Prosecutor of the place of the applicant authority or of the place where the remedy is to be imposed. The Prosecutor of Appeals decides within twenty four (24) hours to remove or not confidential by order of which contains references mentioned in paragraph 1 of Article 5 elements. If in its discretion, upon the recommendation of the applicant authority, special national security circumstances impose failure or summary of some of these elements, specifically mentioned in the provision.</li> </ol> <p>Article 4 Lifting of secrecy for crimes calibration</p> <ol style="list-style-type: none"> <li>1. The lifting of confidentiality is allowed for the calibration of the crimes provided by: a) Articles 134 (high treason), 135 Paragraphs 1-2 (preparatory acts of high treason), 135<sup>A</sup> (attacks against life actors state functions), 137<sup>A</sup> (torture and other offenses against human dignity), 137B (separate cases of torture and other offenses against human dignity), 138 (attempt on the integrity of the country), 139 (offense against international peace in the country), 140, 143 (military service to the enemy), 144 (support of the war the enemy force), 146 (violation of state secrets), 148 paragraph 2 (espionage), 150 (distortion of evidence), 151 (insult to a foreign state and the leader of), 157 paragraph 1 (violence against a political body or government), 159 (bribery), 159<sup>A</sup> bribing political officials), 168 paragraph 1 (insults against the President of the Republic - insults against the President of the Republic), 187 Paragraphs 1-2 (criminal organization), 187A Paragraphs 1 and 4 (terrorism - terrorist acts), 207 (forgery - counterfeit), 208 paragraph 1 (circulation of counterfeit currency), 235 paragraph 2 (passive bribery), 236 paragraph 2 (active bribery), 237 paragraph 2 and 3 (Judge bribe), 264 cases v` and g` (arson at risk for humans or if death occurred), 270 (explosion), 272 (offenses</li> </ol>
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relating to explosives), 275 event v` (lifting insurance facilities), 291 paragraph 1 cases b` and g` (disruption of rail safety, ships and aircraft), 299 (manslaughter with intent), 322 (abduction), 323A Paragraphs 1 - 2 - 4 - 5 and 6 (human trafficking), 324 Paragraphs 2 and 3 (child abduction), 336 against minors (rape against a minor), 338 paragraph 1 against minor (Indecent assault), 339 paragraph 1 cases a` and v`, 342 paragraphs 1 and 2 (children seduction), 348A paragraph 4 (child pornography), 348C paragraph 1 cases a` and b` (pornographic representations of minors), 349 paragraphs 1 and 2 (bawdiness), 351 paragraphs 1 - 2 to 4 and 5 (trafficking), 351A paragraph 1 cases a` and v` and 3 (lewdness with a minor with fee), 374 (aggravated theft), 380 (robbery), 385 paragraph 1 cases a` and v` (extortion) of the Hellenic Penal Code, b) Articles 15 (treachery), 16 (position tradition), 17 (capitulation to non-fortified position), 18 (infidelity Greek military), 19 (transport damage), 20 (damage to electronic and other means of information), 21 (damage to military affairs), 22 (improper collection of information), 23 (Entering prohibited places), 24 (enemy entrance into forbidden places), 28 (assistance to spy), 29 (offer to treason and espionage ), 30 (attempt and preparing treason and espionage), 46 (rebellion), 47 (collective insubordination), 59 (violence against upper or lower), 140 (unsealing, or destruction of documents or other objects) and 144 (transmitting military secrets) of the Military Penal Code, c) Article 15 par. 1 of Law 2168/1993 (aggravated the Law on Weapons), d) Articles 20, 22 and 23 of Law 4139/2013 (Narcotics Act), e) Article 157 paragraph 1 of Law. 2960/2001 (smuggling), f) Article 3 case ie of Law 3691/2008 (prevention and suppression of money laundering and terrorist financing), in conjunction with the second article of Law 2656/1998, g) Article 3 par. 2 of Law 2803/2000 (Ratification of the Convention on the protection of the financial interests of the European Communities and Protocols related to it), h) Article 45 paragraph 1 cases a`, v` and g` of Law 3691/2008 (prevention and suppression of money laundering and terrorist financing), i) Article 28 of Law 1650/1986 (environmental protection). It also allowed the lifting of secrecy for the calibration of the preparatory acts for the crime of currency counterfeiting - Currency counterfeiting under Article 211 of the Criminal Code, as well as crimes of paragraphs 1 case g` and 4 of Article 339 (seduction of children), par. 3 of article 342 (abuse of minors in lechery), Article 348 (facilitating debauchery other), paragraphs 1, 2 and 5 of Article 348 ^ (child pornography), Article 348B (attracting children to genital reasons), of par. 1 cases c` and d` Article 348C (pornographic representations of minors) and par. 1 case c` Article 351A (trafficking) of the Criminal Code.

	<p>1a. The lifting of confidentiality is also permissible for calibration infringements of Articles 3-7, 29 and 30 of Law 3340/2005 (on the protection of the Capital of insider holding inside information and market manipulation). In the cases of paragraph 1 of this article the withdrawal may be requested by the HCMC, by decision of the Executive Commission to be submitted to the competent appellate court prosecutor or investigator, who shall submit to the Board of Appeals.</p> <p>1b. Also allowed the lifting of secrecy for the calibration of the crimes provided by Law 3028/2002 "For the Protection of Antiquities and Cultural Heritage", as the law is concerned apply.</p> <p>2. The removal in such cases is permissible only if justified by the competent judicial council determines that the investigation of the case or to verify the defendant's place of residence is impossible or difficult without it.</p> <p>3. The removal is only directed against a specific person or persons linked to the matter under investigation or where the basis of specific facts, that receive or convey specific messages concerning or arising from the accused or used as the connectors.</p> <p>4. The lifting of confidentiality in cases of this Article shall be imposed by the Council or the provision of Appeals Misdemeanors in the material and territorial jurisdiction of which the calibration of the crime subject to which the waiver relates.</p> <p>5. The request for the waiver submitted to the Council by the material and place competent prosecutor, who supervises or acts preliminary investigation or preliminary investigation and the investigating judge, who regularly questioning acts for the above crimes. The Council shall within twenty four (24) hours to remove or not confidentiality, with his order, which contained the in paragraph 2 of Article 5 items.</p> <p>6. <u>In extremely urgent cases remedy may order the prosecutor acting in the preliminary investigation or preliminary</u></p>
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	<p>investigation and the investigating judge acting regular questioning. In any case, however, the prosecutor or the investigating judge are obliged to introduce the issue with their request to the Council within three (3) days. The validity of a provision of prosecutor or investigator to remove ceases at the end of this three-day period or if the matter in due time entered, the adoption of the relevant provision of the Council.</p> <p>7. In cases of crimes within the jurisdiction of military courts to lift the confidentiality imposed by decision of the judicial council of the material and place competent military tribunal at the request of the Office of the prosecution or the investigating judge acting interrogation tactics.”</p>
<p>Italien          I Det bemærkes, at den danske ambassade i Rom har oplyst, at der er tale om en uofficiel oversættelse udarbejdet af ambassaden.1</p>	<p>”Art. 266 Grænser for tilladelighed (uddrag)</p> <p>Aflytning af telefonsamtaler eller -kommunikation og andre former for telekommunikation er tilladt i forbindelse med efterforskningen vedrørende følgende forbrydelser:</p> <p>a) Forbrydelser, der ikke er uagtsomme, som straffes med livstid eller fængsel med en øvre strafferamme på over 5 år, fastsat i henhold til art. 4;</p> <p>b) Forbrydelser mod offentlige myndigheder, der straffes med fængsel med en øvre strafferamme på ikke under 5 år, fastsat i henhold til art. 4;</p> <p>c) Forbrydelser vedrørende euforiserende og psykotrope stoffer;</p> <p>d) Forbrydelser vedrørende våben og sprængstoffer;</p> <p>e) Forbrydelser vedrørende smugling;</p> <p>f) Forbrydelser vedrørende injurier, trusler, åger, udnyttende finansiel virksomhed, udnyttelse af beskyttede oplysninger, kursmanipulation, forulempning eller forstyrrelse af personer ved anvendelse af telefon;</p>

	<p>...</p> <p>Art. 267 Betingelser og former for foranstaltninger</p> <p>1. Anklagemyndigheden anmoder dommeren for den indledende efterforskning om tilladelse til at foretage de i art. 266 nævnte tiltag. Tilladelsen udstedes ved begrundet dekret, når der er stærke indicier for forbrudelse, og aflytningen er fuldstændig uomgængelig for at kunne fortsætte efterforskningen. ...</p> <p>Dertil kommer en række bestemmelser i art. 266-bis Aflytning af IT- og telekommunikation, art. 267 Betingelser og former for foranstaltninger, art. 268 Fremgangsmåde, art. 269 Bevarelse af dokumentation, art. 270 Anvendelse i andre processer, art. 270-bis Meddelelser fra sikkerhedstjenesterne, art. 271 Forbud mod anvendelse, art. 294 Afhøring af personer, der er underlagt personlige rejsbevarende foranstaltninger, art. 295 Rapport om efterforskning uden resultat, art. 343 Tilladelse til at fortsætte, art. 103 Beskyttelse af forsvarsadvokater og art. 240 Anonyme dokumenter og akter fra ulovlige aflytninger.”</p>
Litauen	<p>”Kriterierne for tilladelse til aflytning defineres af artikel 154 i den litauiske Kriminalret (Lithuanian Code of Criminal Procedures) samt artikel 10 i Loven om Kriminal Efterforskning (Law on Criminal Intelligence).</p> <p><u>Kriminalretten. Artikel 154: Kontrol, optagelse og oplagring af information</u></p> <p>§ 1) Hvis der foreligger en retskendelse, er det tilladt for en efterforsker at udføre aflytning, optagelse og oplagring af samtaler, der er transmitteret via elektroniske kommunikationsnetværk, såfremt der er grund til at tro, at det kan føre til anskaffelsen af beviser for planlægning eller udførelse af graverende, alvorlig eller mindre alvorlig kriminalitet, som defineret i Kriminalretten Artikel 152.1; 162 del 2; 170; 1982 del 1 og 309 del 2, eller hvis der er risiko for at ofre, vidner eller andre personer udsættes for vold, afpresning eller anden ulovlig aktivitet.</p> <p>§ 3) Information transmitteret via elektroniske kommunikationsnetværk, eksklusiv indhold, kan kontrolleres og optages i overensstemmelse med proceduren angivet i § 1, såfremt der er grund til at tro, at det kan føre til anskaffelsen af</p>



beviser for mindre lovovertrædelser som defineret i Kriminalretten Artikel 166, 1981 og 309 del 1.

§ 4) Perioden for aflytning, optagelse, oplagring og anden kontrol med information må ikke overstige seks måneder. I komplicerede tilfælde, eller hvis der er tale om vidtrækkende kriminelle aktiviteter, kan perioden forlænges med tre måneder. Forlængelse kan kun bevilges én gang.

§ 7) Aflytning, optagelse, oplagring og anden kontrol med samtaler mellem den mistænkte eller anklagede og dennes forsvarer er forbudt.

Referencer til Kriminalretten:

- Artikel 1521: Forførelse af personer under 16 år.
- Artikel 162: Udnyttelse af børn til pornografiske formål.
- Artikel 170: Tjuskyndelse til vold mod nationale, raceæmæssige, etniske, religiøse eller andre grupper.
- Artikel 1981-2.: Ulovlig forbindelse til informationssystemer af strategisk vigtighed for national sikkerhed eller væsentlig betydning for regeringen, statens økonomi eller den finansielle sektor.
- Artikel 309, del 2: Produktion, promovering eller distribuering af pornografisk materiale med børn.
- Artikel 166: Krænkelser af retten til personlig korrespondance.
- Artikel 309, del 1: Produktion og distribuering af pornografisk materiale.

Loven om Kriminel Efterforskning, Artikel 10:

Anvendelse af tekniske efterforskningsmidler, herunder aflytning, kræver tilladelse fra domstole motiveret af en ændring fra en anklagemyndighed på baggrund af beviser fremlagt af efterretningstjenesten for nødvendigheden af at udføre en sådan aktivitet. I særlige hastesager, hvis menneskers liv eller sundhed, ejendom såvel som den offentlige eller statslige sikkerhed er truet, kan en anklagemyndighed give tilladelse til aflytning.”

<p>Malta</p>	<p>”Aflytning kan finde sted i henhold til reglerne i den malesiske lov om Sikkerhedstjenesten, der ifølge statsadvokaturen finder anvendelse i forbindelse med de såkaldte alvorlige forbrydelser, der er defineret i lovens artikel 2(3). Udstedelse af tilladelser henhører under Indenrigsministerens kompetence. De generelle betingelser for aflytning fastsættes i lovens art. 6-7.</p> <p><b>SECURITY SERVICE ACT</b></p> <p>2. (1) In this Act-</p> <p>(3) For the purposes of this Act conduct which constitutes or, if it took place in Malta, would constitute one or more offences shall be regarded as serious crime if, and only if –</p> <p>6. (1) No entry on or interference with property shall be unlawful if it is authorised by a warrant issued by the Minister under this article.</p> <p>(2) No interception of or interference with communications in the course of their transmission by post or by means of a radiocommunications or telecommunication system or by any other means shall be unlawful if it is authorised by a warrant issued by the Minister under this article.</p> <p>(3) The Minister may, on an application made by the Security Service, issue or modify a warrant under this article authorising the taking of such action as is specified in the warrant in respect of any property so specified or in respect of any communications so specified if the Minister -</p> <p>(a) thinks it necessary for the action to be taken on the ground that it is likely to be of substantial value in assisting the Service in carrying out any of its functions under this Act; and</p> <p>(b) is satisfied that what the action seeks to achieve cannot reasonably be achieved by other means; and</p>
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(c) is satisfied that satisfactory arrangements are in force under this Act with respect to the disclosure of information obtained by virtue of this article and that any information obtained under the warrant will be subject to those arrangements.

7.

(1) Subject to subarticle (2), the interception or interference with communications required by a warrant shall be the interception of or interference with -

(a) such communications as are sent to or from one or more addresses specified in the warrant, being an address or addresses likely to be used for the transmission of communications, to or from -

(i) one particular person specified or described in the warrant; or

(ii) one particular set of premises so specified or described; and

(b) such other communications (if any) as it is necessary to intercept or interfere with in order to intercept or interfere with communications falling within paragraph (a).

(2) Subarticle (1) shall not apply to a warrant if -

(a) the interception or interference required by the warrant is the interception or interference, in the course of their transmission by means of a radiocommunications or telecommunication system, of -

(i) such external communications as are described in the warrant; and

(ii) such other communications (if any) as it is necessary to intercept or interfere with in order to intercept or interfere

	<p>with such external communications as are so described; and</p> <p>(b) at the time when the warrant is issued, the Minister issues a certificate certifying the descriptions of information the examination of which he considers necessary as mentioned in article 6(3)(a).”</p>
<p>Nederlandene</p> <p>[Det bemærkes, at den danske ambassade i Haag har oplyst, at der er tale om en uofficiel oversættelse modtaget fra det nederlandske Justitsministerium.]</p>	<p>“Code of Criminal Procedure</p> <p>Section 67</p> <p>[1.] A pre-trial detention order may be issued on the basis of suspicion of:</p> <p>a. a serious offence which carries a statutory term of imprisonment of at least four years;</p> <p>b. any of the serious offences defined in sections 132, 138a, 138b, 139c, 139d(1) and (2), 141a, 161sexies(1)(1°) and (2), 137c (2), 137d(2), 137e(2), 137g(2), 184a, 254a, 248d, 248e, 285(1), 285b, 300(1), 321, 323a, 326c(2), 350, 350a, 351, 395, 417bis and 420quater of the Criminal Code;</p> <p>c. any of the serious offences defined in: section 122(1) of the Animal Health and Welfare Act [Gezondheids- en Welzijnswet voor Dieren]; section 175(2)(b) or (3) in conjunction with (1)(b) of the Road Traffic Act 1994; section 30(2) of the Civil Authority Special Powers Act [Wet Buitengewone Bevoegdheden Burgerlijk Gezag]; sections 52, 53(1) and 54 of the Conscientious Objections against Military Service Act [Wet Gewetensbezwaren Militaire Dienst]; section 31 of the Betting and Gaming Act [Wet op de Kansspelen]; section 11(2) of the Opium Act [Opiumwet]; section 55(2) of the Weapons and Ammunition Act [Wet Wapens en Munitie]; sections 5:56, 5:57 and 5:58 of the Financial Supervision Act [Wet op het Financieel Toezicht]; section 11 of the Temporary Home Exclusion Order Act [Wet Tijdelijk Huisverbod].</p> <p>2. The order may also be issued if it cannot be established that the suspect has his permanent place of residence or abode in the Netherlands and he is suspected of a serious offence which is tried by the District Courts and which car-</p>

ries a statutory term of imprisonment.

[3.] The preceding subsections of this section shall apply only if it can be shown on the basis of facts or circumstances that there are serious suspicions against the suspect.

4. In derogation of subsection (3), serious suspicions shall not be required for a remand in custody order in the case of suspicion of a terrorist offence.

#### Section 126I

1. In the case of suspicion of a serious offence as defined in section 67(1), which serious offence in view of its nature or the relation to other serious offences committed by the suspect constitutes a serious breach of law and order, the public prosecutor may, if urgently required in the interest of the investigation, order an investigating officer as referred to in section 141(b) and (c) to record confidential communications by means of a technical device.

2. The public prosecutor may, in the interest of the investigation, determine that an enclosed place, not being a dwelling, will be entered without the consent of the person entitled to use the premises for the purpose of executing the warrant, if urgently required in the interest of the investigation and in the case of a serious offence which carries a statutory term of imprisonment of at least eight years, he may determine that a dwelling will be entered without the consent of the person entitled to use the premises for the purpose of executing the warrant. Section 2(1, last sentence) of the General Act on Entry into Dwellings shall not apply.

3. The warrant to record confidential communications shall be in writing and shall state:

a. the serious offence and if known, the name or otherwise the most precise description possible of the suspect;

b. the facts or circumstances which show that the conditions, referred to in subsection (1) and, if subsection (2, second

	<p>sentence) applies, the conditions referred to in subsection (2), have been met;</p> <p>c. at least one of the persons who participate in the communications, or, if the warrant relates to communications in an enclosed place or in a means of transport, one of the persons who participate in the communications or the most precise description possible of that place or that means of transport;</p> <p>d. in the application of subsection (2), the place to be entered;</p> <p>e. the manner in which the warrant will be executed, and</p> <p>f. the term of validity of the warrant.</p> <p>4. The warrant may only be issued following authorisation to be granted by the examining magistrate on application of the public prosecutor. The authorisation shall relate to all elements of the warrant. If a dwelling may be entered for the purpose of executing the warrant, that power shall be explicitly stated in the warrant.</p> <p>5. The warrant shall be issued for a period of maximum four weeks. The term of validity may be extended for a period of maximum four weeks each time.</p> <p>6. Section 126g(6) to (8) inclusive shall apply <i>mutatis mutandis</i>, on the understanding that the public prosecutor shall require authorisation from the examining magistrate for amendment, supplementation or extension. If the public prosecutor determines that a dwelling will be entered for the purpose of executing the warrant, the warrant may not be issued verbally. As soon as the conditions, referred to in subsection (2, second sentence), are no longer met, the public prosecutor shall determine that the execution of the warrant is terminated.</p> <p>7. In the case of urgent necessity, authorisation from the examining magistrate, referred to in subsections (4) and (6), may be granted verbally, unless subsection (2, second sentence) is applied. In that case the examining magistrate shall put the authorisation in writing within three days.</p>
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8. An official report on the recording shall be prepared within three days.

Section 126m

1. In the case of suspicion of a serious offence as defined in section 67(1), which serious offence in view of its nature or the relation to other serious offences committed by the suspect constitutes a serious breach of law and order, the public prosecutor may, if urgently required by the investigating officer to record by means of a technical device non-public communications which are conducted by use of the services of a provider of a communication service.

2. The warrant shall be in writing and shall state:

- a. the serious offence and if known, the name or otherwise the most precise description possible of the suspect;
  - b. the facts or circumstances which show that the conditions, referred to in subsection (1), have been met;
  - c. where possible, the number or another indication by means of which the individual user of the communication service is identified as well as, insofar as is known, the name and the address of the user;
  - d. the term of validity of the warrant;
  - e. a description of the nature of the technical device or the technical devices by means of which the communications are recorded.
3. If the warrant relates to communications which are conducted through a public telecommunication network or by use of a public telecommunication service within the meaning of the Telecommunications Act, the warrant shall – unless such is impossible or is not permitted in the interest of the criminal proceedings – be executed with the assistance of the provider of the public telecommunication network or the public telecommunication service and the warrant shall

	<p>be accompanied by the request for assistance from the public prosecutor to the provider.</p> <p>4. If the warrant relates to communications other than the communications referred to in subsection (3), the provider shall – unless such is impossible or is not permitted in the interest of the criminal proceedings – be given the opportunity to assist in the execution of the warrant.</p> <p>5. The warrant, referred to in subsection (1), may only be issued following written authorisation to be granted by the examining magistrate on application of the public prosecutor. Section 126l(5) to (8) inclusive shall apply mutatis mutandis.</p> <p>6. Insofar as is specifically required in the interest of the investigation, the person, who may be reasonably presumed to have knowledge of the manner of encryption of the communications, may be requested, if subsection (1) is applied, to assist in decrypting the data by either providing this knowledge, or undoing the encryption.</p> <p>7. The request referred to in subsection (6) shall not be directed to the suspect.</p> <p>8. Section 96a(3) and section 126l(4), (6) and (7) shall apply mutatis mutandis to the request referred to in subsection (6).</p> <p>9. Rules pertaining to the manner in which the order referred to in subsection (1) and the requests referred to in subsections (3) and (6) may be given and the manner of compliance with such requests shall be set by Governmental Decree.”</p>
Portugal	<p>“CAPÍTULO IV</p> <p>Das escutas telefónicas</p>



Artigo 187.º  
Admissibilidade

1 - A interceptação e a gravação de conversações ou comunicações telefónicas só podem ser autorizadas durante o inquérito, se houver razões para crer que a diligência é indispensável para a descoberta da verdade ou que a prova seria, de outra forma, impossível ou muito difícil de obter, por despacho fundamentado do juiz de instrução e mediante requerimento do Ministério Público, quanto a crimes:

- a) Puníveis com pena de prisão superior, no seu máximo, a 3 anos;
- b) Relativos ao tráfico de estupefacientes;
- c) De detenção de arma proibida e de tráfico de armas;
- d) De contrabando;
- e) De injúria, de ameaça, de coacção, de devassa da vida privada e perturbação da paz e do sossego, quando cometidos através de telefone;
- f) De ameaça com prática de crime ou de abuso e simulação de sinais de perigo; ou
- g) De evasão, quando o arguido haja sido condenado por algum dos crimes previstos nas alíneas anteriores.

2 - A autorização a que alude o número anterior pode ser solicitada ao juiz dos lugares onde eventualmente se puder efectivar a conversação ou comunicação telefónica ou da sede da entidade competente para a investigação criminal, tratando-se dos seguintes crimes:

	<p>a) Terrorismo, criminalidade violenta ou altamente organizada;</p> <p>b) Sequestro, rapto e tomada de reféns;</p> <p>c) Contra a identidade cultural e integridade pessoal, previstos no título iii do livro ii do Código Penal e previstos na Lei Penal Relativa às Violações do Direito Internacional Humanitário;</p> <p>d) Contra a segurança do Estado previstos no capítulo i do título v do livro ii do Código Penal;</p> <p>e) Falsificação de moeda ou títulos equiparados a moeda prevista nos artigos 262.º, 264.º, na parte em que remete para o artigo 262.º, e 267.º, na parte em que remete para os artigos 262.º e 264.º, do Código Penal;</p> <p>f) Abrangidos por convenção sobre segurança da navegação aérea ou marítima.</p> <p>3 - Nos casos previstos no número anterior, a autorização é levada, no prazo máximo de setenta e duas horas, ao conhecimento do juiz do processo, a quem cabe praticar os actos jurisdicionais subsequentes.</p> <p>4 - A interceptação e a gravação previstas nos números anteriores só podem ser autorizadas, independentemente da titularidade do meio de comunicação utilizado, contra:</p> <p>a) Suspeito ou arguido;</p> <p>b) Pessoa que sirva de intermediário, relativamente à qual haja fundadas razões para crer que recebe ou transmite mensagens destinadas ou provenientes de suspeito ou arguido; ou</p> <p>c) Vítima de crime, mediante o respectivo consentimento, efectivo ou presumido.</p> <p><b>5 - É proibida a interceptação e a gravação de conversações ou comunicações entre o arguido e o seu defensor, salvo se o</b></p>
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	<p>juiz tiver fundadas razões para crer que elas constituem objecto ou elemento de crime.</p> <p>6 - A interceptação e a gravação de conversações ou comunicações são autorizadas pelo prazo máximo de três meses, renovável por períodos sujeitos ao mesmo limite, desde que se verificarem os respectivos requisitos de admissibilidade.</p> <p>7 - Sem prejuízo do disposto no artigo 248.º, a gravação de conversações ou comunicações só pode ser utilizada em outro processo, em curso ou a instaurar, se tiver resultado de interceptação de meio de comunicação utilizado por pessoa referida no n.º 4 e na medida em que for indispensável à prova de crime previsto no n.º 1.</p> <p>8 - Nos casos previstos no número anterior, os suportes técnicos das conversações ou comunicações e os despachos que fundamentaram as respectivas interceptações são juntos, mediante despacho do juiz, ao processo em que devam ser usados como meio de prova, sendo extraídas, se necessário, cópias para o efeito.”</p>
Slovakiet	<p>”Criminal Procedure</p> <p>According to Section 115 of the Code of Criminal Procedure there may „be issued a warrant for the interception and recording of telecommunication operations in criminal proceedings on a crime, corruption, a criminal offence of abuse of authority of a public official, a criminal offence of money laundering or another intentional criminal offence, the performance of which is bound by an international treaty, if it may be reasonably assumed that it will aid in obtaining all the facts relevant to the criminal proceedings.</p> <p>The warrant for the interception and recording of telecommunication operations shall be issued by the presiding judge,</p>

before the onset of the criminal prosecution, or in the preliminary hearing upon the petition of the public prosecutor, by the judge for the preliminary hearing.

The warrant must be issued in writing and must be justified by its merits, specifically for each user address or device.

The warrant must include the determination of the user address or device and the person, if their identity is known, that the interception and recording of telecommunication operations concerns, and the period during which the interception and recording of telecommunication operations will be performed. The interception and recording period may last up to six months. If it is required by the circumstances of the case this time can be extended.

In criminal proceedings for other intentional criminal offence than referred in the first sentence, the presiding judge, before the commencement of the criminal prosecution or in the preliminary hearing, the judge for the preliminary hearing upon the petition of the public prosecutor, may issue a warrant for the interception and recording of telecommunication operations, but only with the consent of the user of the intercepted or recorded telecommunication device.“

Out of Criminal Procedure (Intelligence, Police Forces, Tax Office):

Regulation Act – Act No. 166/2003 Coll. on Protection against Interception. This Act does not apply to use information and technical resources in criminal proceedings according to the Code of Criminal Procedure.

Section 4 para 1 sets out: „Information and technical resources can be used only with the prior written consent of the judge only for the necessary time period not exceeding six months“.

Section 4 para 3 of aforementioned law:

“The request of using information and technical resources (hereinafter referred to as “request”) shall be submitted in

	<p>writing to the competent court pursuant to § 4a. The request must contain:</p> <ul style="list-style-type: none"> <li>a) the type of information and technical resource to be used, the place of using it, the proposed duration of use, data on the person against whom they are the means used,</li> <li>b) information about the previous ineffective or substantially more difficult detection and documentation of the activity for which the request is submitted,</li> <li>c) the reasons for the use of information and technical resources.</li> </ul> <p>The court cannot decide on a request, that does not fulfil legally imposed requirements. In such case a request shall be returned to the applicant.</p> <p>Section 4 para 6 of aforementioned law: „The judge who gave permission to use information and technical resources is obliged to continuously examine the duration of the reasons for their use. If the reasons no longer exist, he is obliged to immediately decide to stop their use“</p>
<p>Spanien          (Det bemærkes, den danske ambassade i Madrid har oplyst, at der er tale om en uofficiel oversættelse foretaget af ambassaden.1</p>	<p>”Strafferetsplejeloven, Kapitel VIII</p> <p>§ 579.</p> <ol style="list-style-type: none"> <li>1. En dommer kan beslutte tilbageholdelsen af privat korrespondance, pr. post eller telegrafisk, som den sigtede måtte modtage eller afsende, samt åbningen og undersøgelse af denne, hvis der er indiciet på at dette kan føre til opklaring eller stadfæstelse af væsentlige kendsgerninger eller omstændigheder i sagen.</li> <li>2. Dommeren kan ligeledes gennem en begrundet domstolsafgørelse beslutte en intervention af den sigtedes telefoniske kommunikation, hvis der er indiciet på at dette kan føre til opklaring eller stadfæstelse af væsentlige kendsgerninger.</li> </ol>

	<p>ger eller omstændigheder i sagen.</p> <p>3. På samme vis kan en dommer, når det drejer sig om en person mistænkt for at have et strafferetligt ansvar, gennem en begrundet domstolsafgørelse beslutte overvågning i en periode i op til tre måneder, der kan forlænges med tre måneder ad gangen, af dennes kommunikation pr. post, telegrafisk og telefonisk, ligesom af andre former for kommunikationsmidler, som anvendes til at udføre de ulovlige handlinger.</p> <p>4. I presserende tilfælde, når undersøgelse foretages for at opklare forbrydelser relateret til væbnede grupper eller terror eller oprørselementer, kan foranstaltningen fastsat i stk. 3 i nærværende § iværksættes af Justitsministeren, eller den øverst ansvarlige for Statens sikkerhed, idet dette øjeblikkeligt kommunikeres gennem en begrundet skrivelse til den kompetente dommer, der ligeledes gennem begrundet skrivelse annullerer eller stadfæster beslutningen inden 72 timer fra det øjeblik overvågningen blev beordret.</p> <p>§ 580.</p> <p>§§ 563 og 564 kommer til anvendelse ved tilbageholdelse af korrespondance.</p> <p>Denne praksis kan også delegeres til Direktøren for Postvæsenet, eller den ansvarlige for det postkontor, hvor korrespondance kommer.</p> <p>§ 581.</p> <p>Den ansatte som tilbageholder korrespondancen skal øjeblikkeligt videresende denne til sagens undersøgelsesdommer.</p>
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§ 582.

Dommeren kan beordre et hvilken som helst telegrafisk kontor at fremsende kopier af alle modtagne og afsendt telegrammer, hvis disse måtte kunne bidrage til opklaringen af sagen.

§ 583.

Den begrundede domstolsafgørelse, der vedtager tilbageholdelsen og overvågningen af korrespondancen eller udleveringen af kopier af telegrammer, skal fastsætte hvilken korrespondance, der skal tilbageholdes og registreres, eller hvilke kopier af telegrammer, der skal udleveres, gennem angivelsen af de personer i hvis navn de er udsendt, eller gennem andre lignende og konkrete omstændigheder.

§ 584.

Ved åbning og registrering af brevkorrespondance indkaldes den interesserede.

Den interesserede, eller en person som denne har udpeget, kan overvære operationen.

§ 585.

Hvis den sigtede er udeblevet, eller hvis vedkommende efter indkaldelse til åbningen af korrespondancen ikke ønsker at være til stede, og heller ikke ønsker at udpege en anden til at gøre det, vil undersøgelsesdommeren åbne korrespondancen.

§ 586.

Det er dommeren selv, der åbner korrespondancen, og efter selv at have læst den, lægger han den del til side, som han sætter i relation til sagens omstændigheder og hvis bevaring han skønner nødvendig.

Efter at dommeren har taget de nødvendige notater for at iværksætte andre retshandlinger, som korrespondancen måtte give anledning til, attesterer og forsegler dommerfuldmægtigen korrespondancens kuverter og papirer, og gemmer dem i en anden behørig mærket kuvert, der gemmes væk under den dommerfuldmægtiges ansvar, imens undersøgelsen pågår.

Dommeren kan åbne denne lukkede kuvert lige så mange gange han skønner det nødvendigt, men den interesserede skal indkaldes.

§ 587.

Den korrespondance, der ikke kan relation til sagen, udleveres øjeblikkeligt til den interesserede eller dennes repræsentant.

Hvis den interesserede er udeblevet, udleveres korrespondance et myndigt familiemedlem.

Hvis der ikke er kendskab til nogen påtørende til den interesserede, bevares den lukkede kuvert under den dommerfuldmægtiges ansvar indtil der findes en person, til hvem den kan udleveres, som det er fastsat i denne §.

§ 588.



	<p>Abningen af korrespondancen noteres i en retsbog, hvor hele forløbet anføres.</p> <p>Denne retsbog underskrives af undersøgelsesdommeren, dommerfuldmægtigen og de resterende tilstedeværende.”</p>
Tjekket	<p>“Intercepting and recording the telecommunication operation</p> <p>Section 88</p> <p>(1) If criminal proceedings are conducted for an especially serious intentional crime or for any other intentional crime the prosecution of which is an obligation resulting from a promulgated international treaty, the presiding judge and in pre-trial proceedings the judge based on motion of the public prosecutor may order to intercept and record the telecommunication operation (traffic, transmissions) provided that there is a justified assumption that any fact significant for the criminal proceedings would be communicated through it. It is not allowed to execute any interception or record of telecommunication operation between (defence) counsel and the charged person. If the police body ascertains from the interception and records of the telecommunication operation that the charged person communicates with his/her counsel, the police body is obliged to discontinue the intercepting immediately, destroy the record of the contents, and abstain from using in any way the information it has gained in this connection.</p> <p>(2) An order to intercept and record telecommunication traffic shall be issued in written form and justified. At the same time the period of interception and recording of telecommunication traffic must be stipulated, which can not be longer than 6 months with possibility of (repeated) prolongation for another 6 months by judge. Judge immediately forwards the copy of an order to a public prosecutor. The Police of the Czech Republic carries out interceptions and recordings of the telecommunication operations (traffic) for the purposes (needs) of all bodies active in (responsible for) the criminal proceedings.</p> <p>(3) Without an order under the subsection 1 of this provision the agency can order an interception and recording of the telecommunication operations or carry out it itself even in the cases not mentioned in the subsection 1, if a user of</p>

tapped telecommunication station agrees.

(4) If the tapping and registration of telecommunication traffic is to be used as an evidence, it is necessary to attach to it the protocol with the data on the place, time, ways and content of registration, and about the person who made the recording as well. Other records shall be marked and reliably archived; it is necessary to write down in the protocol attached to file where the record is archived. It is possible to use as an evidence the record of telecommunication traffic in another criminal case than in the case in relation to which the record has been made if a prosecution in this another case is conducted also for criminal offence mentioned in subsection 1 of this provision or if user of tapped telecommunication station agrees.

(5) If during the interception and recording of telecommunication traffic no facts important for criminal proceedings were find out, it is necessary to destroy the records in prescribed way.

Provision 88a

(1) If it is necessary, for the purposes of clarification of the circumstances significant for the criminal proceedings, to identify the data of the telecommunication traffic (transmissions) made, which are subject to the telecommunication secrecy or to which the protection of personal and mediation data applies, the chairman of panel (presiding judge), and the judge in the preparatory proceedings, shall order that the legal entities or natural persons performing the telecommunication services disclose these information to him, or to a public prosecutor or police agency in the preliminary proceedings. The order to identify the data of the telecommunication traffic must be issued in writing including its grounds (justification).

(2) No order in accordance with subsection 1 is required if the user of the telecommunication device, which the data of the telecommunication traffic are to apply to, gives the consent to disclose the data.”

<p>Tyskland</p> <p>[Det bemærkes, at den danske ambassade i Berlin har oplyst, at der er tale om den officielle engelske oversættelse af den tyske rejsplejelov].</p>	<p><u>"Telefonovervågning</u></p> <p><i>§ 100a beskriver de forudsæmninger, der kræves, for at tillade afhøring af telefoner:</i></p> <p><b>Section 100a</b></p> <p>[Conditions Regarding Interception of Telecommunications]</p> <p>(1) Telecommunications may be intercepted and recorded also without the knowledge of the persons concerned if</p> <p>1. certain facts give rise to the suspicion that a person, either as perpetrator or as inciter or accessory, has committed a serious criminal offence referred to in subsection (2) or, in cases where there is criminal liability for attempt, has attempted to commit such an offence or has prepared such an offence by committing a criminal offence; and</p> <p>2. the offence is one of particular gravity in the individual case as well; and 3. other means of establishing the facts or determining the accused's whereabouts would be much more difficult or offer no prospect of success.</p> <p>(2) Serious criminal offences for the purposes of subsection (1), number 1, shall be:</p> <p>1. pursuant to the Criminal Code:</p> <p>a) crimes against peace, high treason, endangering the democratic state based on the rule of law, treason and endangering external security pursuant to sections 80 to 82, 84 to 86, 87 to 89a and 94 to 100a;</p> <p>b) taking of bribes by, and offering of bribes to, mandate holders pursuant to section 108e;</p> <p>c) crimes against the national defence pursuant to sections 109d to 109h;</p> <p>d) crimes against public order pursuant to sections 129 to 130;</p> <p>e) counterfeiting money and official stamps pursuant to sections 146 and 151, in each case also in conjunction with section 152, as well as section 152a subsection (3) and section 152b subsections (1) to (4);</p> <p>f) crimes against sexual self-determination in the cases referred to in sections 176a, 176b, 177 subsection (2), number 2, and section 179 subsection (5), number 2;</p> <p>g) dissemination, purchase and possession of pornographic writings involving children and involving juveniles, pursuant to section 184b subsections (1) to (3), section 184c subsection (3);</p> <p>h) murder and manslaughter pursuant to sections 211 and 212;</p>
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	<ul style="list-style-type: none"> <li>i) crimes against personal liberty pursuant to sections 232 to 233a, 234, 234a, 239a and 239b;</li> <li>j) gang theft pursuant to section 244 subsection (1), number 2, and aggravated gang theft pursuant to section 244a;</li> <li>k) crimes of robbery or extortion pursuant to sections 249 to 255;</li> <li>l) commercial handling of stolen goods, gang handling of stolen goods and commercial gang handling of stolen goods pursuant to sections 260 and 260a;</li> <li>m) money laundering or concealment of unlawfully acquired assets pursuant to section 261 subsections (1), (2) and (4);</li> <li>n) fraud and computer fraud subject to the conditions set out in section 263 subsection (3), second sentence, and in the case of section 263 subsection (5), each also in conjunction with section 263a subsection (2);</li> <li>o) subsidy fraud subject to the conditions set out in section 264 subsection (2), second sentence, and in the case of section 264 subsection (3), in conjunction with section 263 subsection (5);</li> <li>p) criminal offences involving falsification of documents under the conditions set out in section 267 subsection (3), second sentence, and in the case of section 267 subsection (4), in each case also in conjunction with section 268 subsection (5) or section 269 subsection (3), as well as pursuant to sections 275 subsection (2) and section 276 subsection (2);</li> <li>q) bankruptcy subject to the conditions set out in section 283a, second sentence;</li> <li>r) crimes against competition pursuant to section 298 and, subject to the conditions set out in section 300, second sentence, pursuant to section 299;</li> <li>s) crimes endangering public safety in the cases referred to in sections 306 to 306c, section 307 subsections (1) to (3), section 308 subsections (1) to (3), section 309 subsections (1) to (4), section 310 subsection (1), sections 313, 314, 315 subsection (3), section 315b subsection (3), as well as sections 361a and 361c;</li> <li>t) taking and offering a bribe pursuant to sections 332 and 334;</li> </ul> <p>2. pursuant to the Fiscal Code:</p> <ul style="list-style-type: none"> <li>a) tax evasion under the conditions set out in section 370 subsection (3), second sentence, number 5;</li> <li>b) commercial, violent and gang smuggling pursuant to section 373;</li> <li>c) handling tax-evaded property as defined in section 374 subsection (2);</li> </ul> <p>3. pursuant to the Pharmaceutical Products Act:</p> <ul style="list-style-type: none"> <li>criminal offences pursuant to section 95 subsection (1), number 2a, subject to the conditions set out in section 95 subsection</li> </ul>
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	<p>(3), second sentence, number 2, letter b;</p> <p>4. pursuant to the Asylum Procedure Act:</p> <p>a) inducing an abusive application for asylum pursuant to section 84 subsection (3);</p> <p>b) commercial and gang inducement to make an abusive application for asylum pursuant to section 84a;</p> <p>5. pursuant to the Residence Act:</p> <p>a) smuggling of aliens pursuant to section 96 subsection (2);</p> <p>b) smuggling resulting in death and commercial and gang smuggling pursuant to section 97;</p> <p>6. pursuant to the Foreign Trade and Payments Act:</p> <p>willful criminal offences pursuant to sections 17 and 18 of the Foreign Trade and Payments Act;</p> <p>7. pursuant to the Narcotics Act:</p> <p>a) criminal offences pursuant to one of the provisions referred to in section 29 subsection (3), second sentence, number 1, subject to the conditions set out therein;</p> <p>b) criminal offences pursuant to section 29a, section 30 subsection (1), numbers 1, 2 and 4, as well as sections 30a and 30b;</p> <p>8. pursuant to the Precursors Control Act:</p> <p>criminal offences pursuant to section 19 subsection (1), subject to the conditions set out in section 19 subsection (3), second sentence;</p> <p>9. pursuant to the War Weapons Control Act:</p> <p>a) criminal offences pursuant to section 19 subsections (1) to (3) and section 20 subsections (1) and (2), as well as section 20a subsections (1) to (3), each also in conjunction with section 21;</p> <p>b) criminal offences pursuant to section 22a subsections (1) to (3);</p> <p>10. pursuant to the Code of Crimes against International Law:</p> <p>a) genocide pursuant to section 6;</p> <p>b) crimes against humanity pursuant to section 7;</p> <p>c) war crimes pursuant to sections 8 to 12;</p> <p>11. pursuant to the Weapons Act:</p> <p>a) criminal offences pursuant to section 51 subsections (1) to (3);</p>
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b) criminal offences pursuant to section 52 subsection (1), number 1 and number 2, letters c and d, as well as section 52 subsections (5) and (6).

(3) Such order may be made only against the accused or against persons in respect of whom it may be assumed, on the basis of certain facts, that they are receiving or transmitting messages intended for, or transmitted by, the accused, or that the accused is using their telephone connection.

(4) If there are factual indications for assuming that only information concerning the core area of the private conduct of life would be acquired through a measure pursuant to subsection (1), the measure shall be inadmissible. Information concerning the core area of the private conduct of life which is acquired during a measure pursuant to subsection (1) shall not be used. Any records thereof shall be deleted without delay. The fact that they were obtained and deleted shall be documented.

*En telefonovervågning kan kun tilkendes via en anmodning fra statsadvokaten til domstolen, kun ved overhængende fare har statsadvokaten en såkaldt "hastekompetence" (Eilkompetenz). Omstændighederne herfor er specificeret i § 100b*

#### Section 100b

[Order to Intercept Telecommunications]

(1) Measures pursuant to Section 100a may be ordered by the court only upon application by the public prosecution office. In exigent circumstances, the public prosecution office may also issue an order. An order issued by the public prosecution office shall become ineffective if it is not confirmed by the court within three working days. The order shall be limited to a maximum duration of three months. An extension by not more than three months each time shall be admissible if the conditions for the order continue to exist, taking into account the information acquired during the investigation.

(2) The order shall be given in writing. The operative part of the order shall indicate

1. where known, the name and address of the person against whom the measure is directed;
2. the telephone number or other code of the telephone connection or terminal equipment to be intercepted, insofar as there are no particular facts indicating that they are not at the same time assigned to another piece of terminal equipment;
3. the type, extent and duration of the measure specifying the time at which it will be concluded.

(3) On the basis of this order all persons providing, or contributing to the provision of, telecommunications services on a commercial basis shall enable the court, the public prosecution office and officials working in the police force to assist it (section 152 of the Courts Constitution Act), to implement measures pursuant to Section 100a and shall provide the required information without delay. Whether and to what extent measures are to be taken in this respect shall follow from the Telecommunications Act and from the Telecommunications Interception Ordinance issued thereunder. Section 95 subsection (2) shall apply *mutatis mutandis*.

(4) If the conditions for making the order no longer prevail, the measures implemented on the basis of the order shall be terminated without delay. Upon termination of the measure, the court which issued the order shall be notified of the results thereof.

(5) The *Länder* and the Federal Public Prosecutor General shall submit a report to the Federal Office of Justice every calendar year by the 30<sup>th</sup> June of the year following the reporting year, concerning measures ordered pursuant to Section 100a within their area of competence. The Federal Office of Justice shall produce a summary of the measures ordered nationwide during the reporting year and shall publish it on the Internet.

(6) The reports pursuant to subsection (5) shall indicate:

1. the number of proceedings in which measures were ordered pursuant to Section 100a subsection (1);
2. the number of orders to intercept telecommunications pursuant to Section 100a subsection (1), distinguishing between
  - a) initial and follow-up orders, as well as
  - b) fixed, mobile and Internet telecommunication;
3. in each case the underlying criminal offence by reference to the categories listed in Section 100a subsection (2).

#### Aflytning

*Aflytning af ikke-offentlige samtaler er reguleret i § 100c. Forudsætningerne herfor er beskrevet som følger:*

Section 100c

[Measures Implemented Without the Knowledge of the Person Concerned]

	<p>(1) Private speech on private premises may be intercepted and recorded using technical means also without the knowledge of the person concerned if</p> <ol style="list-style-type: none"><li>1. certain facts give rise to the suspicion that a person, either as perpetrator or as inciter or accessory, has committed a particularly serious criminal offence referred to in subsection (2) or, in cases where there is criminal liability for attempt, has attempted to commit such an offence; and</li><li>2. the offence is one of particular gravity in the individual case as well; and</li><li>3. on the basis of factual indications it may be assumed that the surveillance will result in the recording of statements by the accused which would be of significance in establishing the facts or determining the whereabouts of a co-accused; and</li><li>4. other means of establishing the facts or determining a co-accused's whereabouts would be disproportionately more difficult or offer no prospect of success.</li></ol> <p>(2) Particularly serious criminal offences for the purposes of subsection (1), number 1, shall be:</p> <ol style="list-style-type: none"><li>1. pursuant to the Criminal Code:<ol style="list-style-type: none"><li>a) crimes against peace, high treason, endangering the democratic state based on the rule of law, treason, and endangering external security pursuant to sections 80, 81, 82, 89a, pursuant to section 94, section 95 subsection (3) and section 96 subsection (1), in each case also in conjunction with section 97b, as well as pursuant to section 97a, section 98 subsection (1), second sentence, section 99 subsection (2), section 100 and section 100a subsection (4);</li><li>b) formation of criminal groups pursuant to section 129 subsection (1) in conjunction with subsection (4), second part of the sentence, and formation of terrorist groups pursuant to section 129a subsections (1), (2), (4) and subsection (5) first sentence, first alternative, in each case also in conjunction with section 129b subsection (1);</li><li>c) counterfeiting money and official stamps pursuant to sections 146 and 151, in each case also in conjunction with section 152, as well as pursuant to section 152a subsection (3) and section 152b subsections (1) to (4);</li><li>d) crimes against sexual self-determination in the cases referred to in section 176a subsection (2), number 2, or subsection (3), section 177 subsection (2), number 2, or section 179 subsection (5), number 2;</li><li>e) distribution, acquisition and possession of pornographic writings involving children in the cases referred to in section 184b subsection (3);</li><li>f) murder and manslaughter pursuant to sections 211 and 212;</li></ol></li></ol>
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- g) crimes against personal liberty pursuant to section 234, section 234a subsections (1) and (2), sections 239a and 239b, and trafficking in human beings for the purpose of sexual exploitation and for the purpose of exploitation of labour pursuant to section 232 subsection (3), subsection (4) or subsection (5), section 233 subsection (3), in each case to the extent that it concerns a felony;
- h) gang theft pursuant to section 244 subsection (1), number 2, and aggravated gang theft pursuant to section 244a;
- i) aggravated robbery and robbery resulting in death pursuant to section 250 subsection (1) or subsection (2), section 251;
- j) extortion resembling robbery pursuant to section 255 and a particularly serious case of extortion pursuant to section 253 under the conditions set out in section 253 subsection (4), second sentence;
- k) commercial handling of stolen goods or gang handling of stolen goods or commercial gang handling of stolen goods pursuant to sections 260 and 260a;
- l) a particularly serious case of money laundering or concealment of unlawfully acquired assets pursuant to section 261 under the conditions set out in section 261 subsection (4), second sentence;
- m) a particularly serious case of taking and offering bribes pursuant to section 335 subsection (1) under the conditions set out in section 335 subsection (2), numbers 1 to 3;
2. pursuant to the Asylum Procedure Act:
- a) inducing an abusive application for asylum pursuant to section 84 subsection (3);
- b) commercial or gang inducement of an abusive application for asylum pursuant to section 84a subsection (1);
3. pursuant to the Residence Act:
- a) smuggling of aliens pursuant to section 96 subsection (2);
- b) smuggling resulting in death and commercial and gang smuggling pursuant to section 97;
4. pursuant to the Narcotics Act:
- a) a particularly serious case of a criminal offence pursuant to section 29 subsection (1), first sentence, numbers 1, 5, 6, 10, 11 or 13, subsection (3) subject to the requirements of section 29 subsection (3), second sentence, number 1;
- b) a criminal offence pursuant to section 29a, section 30 subsection (1), numbers 1, 2, and 4, or section 30a;
5. pursuant to the War Weapons Control Act:
- a) a criminal offence pursuant to section 19 subsection (2), or to section 20 subsection (1), in each case also in conjunction

	<p>with section 21;</p> <ul style="list-style-type: none"><li>b) a particularly serious case of a criminal offence pursuant to section 22a subsection (1) in conjunction with subsection (2);</li></ul> <p>6. pursuant to the Code of Crimes against International Law:</p> <ul style="list-style-type: none"><li>a) genocide pursuant to section 6;</li><li>b) crimes against humanity pursuant to section 7;</li><li>c) war crimes pursuant to sections 8 to 12;</li></ul> <p>7. pursuant to the Weapons Act:</p> <ul style="list-style-type: none"><li>a) a particularly serious case of a criminal offence pursuant to section 51 subsection (1) in conjunction with subsection (2);</li><li>b) a particularly serious case of a criminal offence pursuant to section 52 subsection (1), number 1, in conjunction with subsection (5).</li></ul> <p>(3) The measure may be directed only against the accused and may be implemented only on the private premises of the accused. The measure shall be admissible on the private premises of other persons only if it can be assumed on the basis of certain facts that</p> <ul style="list-style-type: none"><li>1. the accused named in the order pursuant to Section 100d subsection (2) is present on those premises; and that</li><li>2. applying the measure on the accused's premises alone will not lead to the establishment of the facts or the determination of a co-accused person's whereabouts.</li></ul> <p>The measures may be implemented even if they unavoidably affect third persons.</p> <p>(4) The measure may be ordered only if on the basis of factual indications, in particular concerning the type of premises to be kept under surveillance and the relationship between the persons to be kept under surveillance, it may be assumed that statements concerning the core area of the private conduct of life will not be covered by the surveillance. Conversations on operational or commercial premises are not generally to be considered part of the core area of the private conduct of life. The same shall apply to conversations concerning criminal offences which have been committed and statements by means of which a criminal offence is committed.</p> <p>(5) The interception and recording is to be interrupted without delay if during the surveillance indications arise that statements concerning the core area of the private conduct of life are being recorded. Recordings of such statements are to be deleted without delay. <u>Information acquired by means of such statements may not be used. The fact that the data was obtained</u></p>
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and deleted is to be documented. If a measure pursuant to the first sentence has been interrupted, it may be re-continued subject to the conditions set out in subsection (4). If in doubt, a court decision on the interruption or continuation of the measures should be sought without delay; Section 100d subsection (4) shall apply *mutatis mutandis*.

(6) In the cases referred to in Section 53 a measure pursuant to subsection (1) shall be inadmissible; if during or after implementation of the measure it becomes apparent that a case referred to in Section 53 is applicable, subsection (5), second to fourth sentences, shall apply *mutatis mutandis*. In the cases referred to in Sections 52 and 53a, information acquired through a measure pursuant to subsection (1) may only be used if, taking into consideration the significance of the underlying relationship of trust, this is not disproportionate to the interest in establishing the facts or determining the whereabouts of an accused person. Section 160a subsection (4) shall apply *mutatis mutandis*.

(7) Insofar as a prohibition on use pursuant to subsection (5) is conceivable, the public prosecution office shall obtain a decision without delay from the court which made the order, as to whether the information acquired may be used. Insofar as the court does not approve such use, the decision shall be binding for the further proceedings.

*Tilladelse kan som udgangspunkt kun gives af landsretten. Ved overhængende fare dog også af retters øverste dommer.*

#### Section 100d

[Jurisdiction]

(1) Measures pursuant to Section 100c may be ordered only upon the application of the public prosecution office by the division of the Regional Court stipulated in section 74a subsection (4) of the Courts Constitution Act in the district where the public prosecution office is located. In exigent circumstances the order may also be issued by the presiding judge. His order shall become ineffective unless confirmed by the criminal division within three working days. The order shall be limited to a maximum duration of one month. An extension of the measure for subsequent periods of up to one month shall be admissible providing the conditions for the measure continue to exist, taking into account the information acquired during the investigation. If the duration of the order has been extended for a total period of six months, the Higher Regional Court shall decide on any further extension orders.

(2) The order shall be in writing specifying

	<ol style="list-style-type: none"><li>1. where known, the name and address of the accused against whom the measure is directed;</li><li>2. the alleged offence, on the basis of which the measure is being ordered;</li><li>3. the private premises or rooms to be kept under surveillance;</li><li>4. the type, extent and duration of the measure;</li><li>5. the type of information to be acquired by the measures and their significance for the proceedings.</li></ol> <p>(3) In its reasons the order or extension order shall specify the requirements and main considerations underlying the decision. In particular, it shall state in relation to each individual case</p> <ol style="list-style-type: none"><li>1. the particular facts on which the suspicion is based;</li><li>2. the essential considerations concerning the necessity and proportionality of the measure;</li><li>3. the factual indications as stated in section 100c subsection (4), first sentence.</li></ol> <p>(4) The court making the order shall be informed as to the progress and results of the measure. If the conditions for the order no longer exist, the court shall order the termination of the measures, unless termination has already been initiated by the public prosecution office. Termination of the measure may also be ordered by the presiding judge.</p> <p>(5) Personal data obtained by means of acoustic surveillance of private premises may be used for other purposes subject to the following conditions:</p> <ol style="list-style-type: none"><li>1. The usable personal data obtained through a measure pursuant to Section 100c may be used in other criminal proceedings without the consent of the persons being monitored only for the purposes of resolving a criminal offence in respect of which measures pursuant to Section 100c could have been ordered, or to establish the whereabouts of a person accused of such a criminal offence.</li><li>2. The use of personal data obtained through a measure pursuant to Section 100c, even such data as is acquired pursuant to Section 100c subsection (6), first sentence, second part of the sentence, for the purposes of averting danger is only admissible to avert an existing danger of death in an individual case or to avert an imminent danger to the life or liberty of a person or to objects of significant value which serve to supply the population, are of culturally outstanding value, or are referred to in section 305 of the Criminal Code. The usable personal data obtained through a measure pursuant to Section 100c may also be used to avert an imminent danger to other significant assets in individual cases. If the data is no longer required for the purposes of averting the danger or for a pre-judicial or court examination of the measures implemented to avert the danger,</li></ol>
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	<p>recordings of such data are to be deleted without delay by the institution responsible for averting the danger. The fact of deletion is to be documented. Insofar as deletion is postponed merely for an eventual pre-judicial or court examination, the data may be used solely for this purpose; access is to be denied for any use for other purposes.</p> <p>3. Insofar as usable personal data has been obtained by means of a respective police measure, such data may not be used in criminal proceedings without the consent of the person under surveillance by virtue of such measure, except for the purpose of clearing up a criminal offence in respect of which the measure pursuant to Section 100c could have been ordered, or to determine the whereabouts of a person accused of such criminal offence.”</p>
<p>Ungarn</p>	<p><b>Bilag 1:</b>  <b>“Article 200 – Covert data gathering subject to judicial permit</b>  <b>General rules</b></p> <p>(1) In order to establish the identity, locate or arrest the perpetrator or to find means of evidence, from the time the investigation is ordered until the records thereof are presented, subject to a judicial permit, the prosecutor and the investigating authority may, without informing the person concerned</p> <p>a) keep under surveillance and record the events in a private home with a technical device,</p> <p>b) open, check and record with a technical device the contents of mail consignments and closed consignments which can be connected to an identified person, as well as learn and record with a technical device the contents of communications made by way of electronic telecommunication service,</p> <p>c) learn, record and use data transmitted or stored by way of a computer tool or system (hereinafter: covert data gathering).</p> <p>(2) <u>After the order for the investigation has been issued, the prosecutor and the investigating authority shall perform</u></p>

cover data gathering which is subject to a judicial permit in compliance with this Act.

(3) The provisions set forth in this Title shall not apply to covert intelligence gathering performed prior to the order for an investigation, which is subject to a judicial permit or the permit of the minister in charge of justice; such activity shall be conducted by authorised organisations in compliance the rules governing them and separate legal regulations.

(4) If covert intelligence gathering has commenced under a separate legal regulation issued pursuant to a judicial permit or the permit of the minister in charge of justice prior to the order for an investigation, but then an investigation is ordered, thereafter covert intelligence gathering may only be continued in compliance with the provisions of this Act as secret data gathering.

(5) For the purposes of paragraph (1) a) "private home" means a home (holiday home, summer-house or other premises used for dwelling, establishment, object), premises, establishment or enclosed area belonging to the home but not intended to be used for dwelling, as well as any other premises or areas not open for the (general) public, or vehicle excluding community transport vehicle.

#### Article 201

(1) Covert data gathering may be applied to

- a) a criminal offence committed intentionally and punishable by up to five years' or more severe imprisonment,
- b) a criminal offence committed in a business-like manner or in a criminal conspiracy and punishable by up to three years' imprisonment,
- c) illegal possession of new psychoactive substances, living on earnings of prostitution, violation of the freedom of

	<p>conscience and religion, criminal offences with ozone-depleting substances, abuse of authority,</p> <p>d) falsification of health care products, trafficking in human beings, pandering, procuring for prostitution or sexual act, child pornography, damaging of the environment, damaging the natural environment, violation of waste management regulations, harboring a criminal, active bribery, passive bribery of a public official, passive bribery of a public official, illegal immigrant smuggling, when punishable by up to three years' imprisonment,</p> <p>e) criminal offences against classified data and public records and registers recognized as national assets,</p> <p>f) an attempt of the criminal offences identified in paragraphs a)-e), further – if the law orders any preparations punishable – the preparation of the above.</p> <p>(2) If the investigation is conducted by the prosecutor, cover data gathering may also be performed in the following cases apart from the criminal offences listed in paragraph (1):</p> <p>a) assault on a public official or threatening to commit assault of an internationally protected person punishable by imprisonment for up to three years where the violence committed to the injury of a person enjoying immunity due to holding a public office or a person enjoying immunity under international law,</p> <p>b) assault on a public official punishable by imprisonment for up to three years where the violence committed to the injury of judge, a prosecutor, a court clerk, a junior prosecutor, a legal trainee of the court or the prosecutor's office, an independent bailiff and a bailiff at a tribunal or their respective deputies, a notary public or an assistant notary public, a professional member of the police, Parliamentary Guard, National Tax and Customs Administration, or a financial investigator employed by the National Tax and Customs Administration in governmental service legal relationship, further, corruption criminal offences punishable by imprisonment for up to three years committed in relation of the</p>
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above;

- c) criminal offences against the administration of justice specified in Article 29 e), with the exception of misleading of authority,
- d) criminal offences against the foreign public official,
- e) criminal offences subject to military criminal law, listed in paragraphs a)-d).

#### Article 202

- (1) The subject of covert data gathering may primarily be the suspect, or the person who may be suspected of having committed the criminal offence based on the available data of the investigation.
- (2) Other persons may be subjected to covert data gathering if data indicate that they have culpable communications with the person specified in paragraph (1) or there is reasonable ground to suspect the same. The fact that an outsider is unavoidably affected shall not be an obstacle to covert data gathering.
- (3) Covert data gathering may only be conducted in the private home and office of a lawyer acting as the defence counsel in the case, and in connection with the telephone line, other means of communication and correspondence (including electronically transmitted mail) of the lawyer if there is reasonable ground to suspect that the lawyer has committed a criminal offence related to the case in progress against the defendant.
- (4) Covert data gathering may be conducted in the visitors' room for lawyers within a police detention room or in a penal institution if there is reasonable ground to suspect that the lawyer has committed a criminal offence related to the



case in progress against the defendant.

(5) The provisions set forth in paragraphs (3) and (4) shall also apply to persons who may not be questioned as a witness pursuant to Article 81 (1) a) and those who may refuse to testify under Article 82 (1).

(6) Even in the cases specified in Article 201 and paragraphs (1) to (5), covert data gathering may only be conducted if obtaining evidence by other means reasonably appear to be unlikely to succeed if tried or would involve unreasonable difficulties, and there is probable cause to believe that evidence can be obtained by covert data gathering.

#### Article 203 - Judicial permit

(1) Covert data gathering shall be permitted by the court at the motion of the prosecutor in compliance with the procedure set forth in Title VI of this Chapter.

(2) The motion shall contain the following:

- a) the name of the prosecutorial body or investigating authority conducting the investigation, the date of the order for the investigation, the case number,
- b) the location planned to be subjected to covert data gathering, including, in the case of eavesdropping, the phone number,
- c) the name or data suitable for the identification of the person planned to be subjected to covert data gathering, as well as the description of the means and method of covert data gathering to be applied against this person,

	<p>d) the starting and ending time when covert data gathering is planned to be maintained, specified in calendar days and hours,</p> <p>e) detailed description substantiating the conditions for the application as specified in Articles 201 and 202, thus especially the description of the underlying criminal offence and the data establishing suspicion that the criminal offence has been committed, the circumstances justifying that covert data gathering is indispensable, the objective thereof and facts establishing probable cause to believe that the evidence may be obtained by the means or method to be applied in the course of covert data gathering,</p> <p>f) if applicable, the reason for and the date of an exigent order [paragraph (6)].</p> <p>(3) The supporting documents shall be attached to the motion. Upon the submission of a motion for prolongation, the documents produced since the previous permit shall also be presented.</p> <p>(4) The court shall adopt a decision within seventy-two hours following the submission of the motion. When the court fully or partially accepts the motion, it shall determine the subject person, the means and methods of covert data gathering and the time period for which the above means and methods may be applied in respect of such subject person.</p> <p>(5) Covert data gathering may be permitted for a maximum period of ninety days; upon a repeated motion, this period may be extended for a further maximum ninety days on one occasion. If the court accepts the motion and by the time of the permit the starting day of covert data gathering as indicated in the motion has already passed, the actual starting day shall be the date of the permit.</p> <p>(6) If the permission procedure caused a delay that would jeopardise the success of covert data gathering, the prosecutor may, for a maximum period of seventy-two hours, order covert data gathering (exigent order). In this case, simult-</p>
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taneously with the order, the motion for the permit shall also be submitted. If the court has rejected the motion, a new exigent order may not be issued based upon the same facts.”

**Biilag 2:**

**“Article 204 - Performance of covert data gathering**

(1) Covert data gathering is performed by the organisation specified in a separate Act. If the subject of covert data gathering ordered in the course of an investigation conducted by the prosecutor’s office is a criminal offence committed by a professional member of the national security services the prosecutor may also request the affected national security service to perform covert data gathering.

(2) The organisations forwarding, processing and managing communications services, pieces of mail and computer data stored in an information system shall be obliged to provide for the conditions of performing covert data gathering and co-operate with the authorities authorised to perform covert data gathering. The obligations of organisations providing communications services and forwarding mail and the detailed rules of co-operation are set forth in a separate legal regulation.

(3) Covert data gathering shall be forthwith terminated by the prosecutor or the head of the investigating authority if

- a) in the case of an exigent order, the court has rejected the motion,
- b) the objective specified in the permit has been achieved,
- c) the time period specified in the permit has lapsed,

- d) the investigation has been terminated,
- e) its maintenance is unlikely to yield any result.

(4) Within eight days following the end of covert data gathering, the prosecutor or investigating authority having performed covert data gathering shall destroy the data which had been recorded but are of no interest for the objective of this covert data gathering, as well as the recorded data of persons not concerned in the case, with the exception of the data that may be used pursuant to Articles 206 (4)-(5). If paragraph (3) a) applies, the data recorded so far shall be immediately destroyed.

(5) A report (Article 168) shall be compiled on the performance of covert data gathering, detailing the process thereof, thus especially, the means and methods applied, the time period and location of the application, the natural persons, legal entities and organisations without a legal person that had been affected by the covert data gathering – except for the covert investigator (Article 178) –, and the data obtained in the course of covert data gathering – and not destroyed pursuant to paragraph (4) –, as well as the method, source, place and time of obtaining the data. The report shall allow to establish whether the provisions in the court permit have been complied with. The report shall also state whether covert data gathering has achieved its objective, or if not, the reason for failure. The report shall be signed by the head of the prosecutorial body or investigating authority having performed the covert data gathering.

#### Article 205 – Disclosure of the results of covert data gathering

(1) Protection of the data produced and recorded during covert data gathering shall be the responsibility of the prosecutor or the investigating authority having performed the covert data gathering, in compliance with the provisions of the Act on the Protection of Certified Data.

(2) While covert data gathering is in progress and thereafter until the report thereon is filed by the prosecutor with the documents, the fact of performing covert data gathering, as well as the data produced and recorded in the course thereof may be disclosed only to the judge having issued the permit, the prosecutor and the investigating authority, further, by the superior (senior officer) of the prosecutor and the investigating authority. Court documents related to the permission of covert data gathering may also be disclosed to the superior in charge of distribution of cases of the judge having issued the permit, as well as the administrative superior of the same judge, as specified in Article 207 (1).

(3) At the request of the judge having issued the permit for covert data gathering, the prosecutor shall present the data obtained by covert data gathering until the time of such request. Should the judge establish that the permit has been misused, he shall, while in the event of other breach of law, he may terminate the covert data gathering. Such ruling may not be appealed.

(4) The results of covert intelligence gathering performed prior to the investigation under a separate legal regulation [Article 200 (3)] – until they are used in the criminal proceedings – may be disclosed to the persons specified in separate acts.

(5) After the conclusion of the covert data gathering, the prosecutor shall inform the person concerned by the judicial permit of the fact that covert data gathering had been performed, unless criminal proceedings have been instituted against such person and unless such notification jeopardises the success of the criminal proceedings.

#### Article 206 – Using the results of covert data gathering

(1) If the prosecutor intends to use the result of covert data gathering as evidence in the criminal proceedings, the motion for the permit of the covert data gathering, the court decision and the report on the performance of covert data gathering shall be attached to the files of the investigation. If the documents are attached after disclosing the files of

the investigation (Article 193), the suspect and the defence counsel shall be notified thereof and be allowed to examine the attached documents.

(2) After being attached to the files of the investigation, the report concerning the performance of covert data gathering may be used as evidence in accordance with the rules pertaining to documents (Article 116).

(3) The results of covert data gathering may only be used for evidencing the criminal offence due to which, and against the person for whom, the court permitted covert data gathering.

(4) If the court permitted covert data gathering against a specific person, the result of covert data gathering may also be used to evidence a criminal offence that was not designated in the permit, provided the conditions of covert data gathering stipulated in this Act (Article 201) also apply to this latter criminal offence.

(5) The results of the covert data gathering may be applied for evidencing the criminal offence concerning which the court permitted covert data gathering against all the perpetrators.

(6) The results of covert data gathering may not be admitted as evidence if covert data gathering was terminated pursuant to Articles 204 (3) a) or e) or Article 205 (3), or if the person concerned by the covert data gathering – without a court permit – is the defence counsel acting in the case, or a person who may not be questioned as a witness or may refuse to testify under Article 82 (1).

Article 206/A - Using the results of covert information collection

(1) The result of the covert information collection for criminal law enforcement purposes and of the covert information collection for other than criminal law enforcement purposes subject to authorisation by a judge or by the minister re-

	<p>sponsible for justice matters can be used as an evidence in the criminal procedure only, if</p> <ul style="list-style-type: none"><li>a) the conditions of covert data gathering stipulated in this Act (Article 201) are met concerning the criminal offence subject to evidencing, and</li><li>b) the body asking for the authorisation of covert information collection has ordered the investigation or has fulfilled its obligation to lodge a complaint promptly after funding all the conditions for the initiation of a criminal procedure stipulated in this Act.</li></ul> <p>(2) The body asking for the authorisation of covert information collection initiates at the prosecutor the procedure on establishing the appropriateness of the using the result of the covert information collection at the same time of the initiation of the criminal procedure or the lodge of the complaint, if</p> <ul style="list-style-type: none"><li>a) the data emerged and recorded during the covert information collection for criminal law enforcement purposes is related to a person and/or a criminal offence not described in the authorisation,</li><li>b) the data emerged and recorded during the covert information collection for other than criminal law enforcement purposes is related to a person not described in the authorisation.</li></ul> <p>(3) In order to get the decision on the appropriateness of using the result of the covert information collection the prosecutor turns to the investigative judge within 72 hours. The use of result of covert information collection is appropriate, if the conditions stipulated in paragraph (1) are met, and there are reasonable grounds to presume that the collection of evidence otherwise would be beyond hope, or it would cause unjustifiable difficulties. The investigative judge decides in a ruling with an explanation of the reasons on the appropriateness of use. The decision on the appropriateness of use is without prejudice to the classified nature of the data emerged and recorded during the covert information collection. <u>If the appropriateness of the use of the result of covert information collection is established, the data concerned shall</u></p>
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only be destroyed if the prosecutor does not motion the use of it as an evidence according to paragraph (4).

(4) The prosecutor may motion – after ordering the investigation – the use of the result of covert information collection, if the conditions stipulated in paragraph (1) are met. The investigative judge decides on the motion.

(5) The fact of the covert information collection subject to authorisation by a judge is verified by the president of the regional court. The verification contains the naming of the court, the number and subject of the case subject to authorisation, the name of the person subject to authorisation, the framework of the authorisation.

Act XXXIV of 1994 on the Police

Chapter VII

*SECRET COLLECTION OF INFORMATION*

Section 63 (1) The Police shall be entitled to secretly collect information for the purposes of preventing, investigating, stopping the commission of criminal acts; finding the identity, capturing of perpetrators; finding persons under warrant or their whereabouts; or to gain evidence.

(2) The data obtained during the secret collection of information - until they are used as evidence; and the identity of persons cooperating with the Police and of cover investigators; the fact and the technical details of the information collection shall qualify as state secrets.

(3) The measures taken under paragraphs (1)-(2) and the data of the natural persons, legal entities and unincorporated organisations affected thereby shall not be disclosed.

(4)

(5) The authorised unit of the Police and, in respect of the data collected and the fact of information collection, the prosecutor and the judge shall be entitled to inspect protected state secrets without a special permit during the secret collection of information. The data and information specified in paragraph (2) may be disclosed to international and foreign criminal prosecution and judicial authorities on the basis of an international convention, treaty or agreement or, in lack thereof, on the basis of reciprocity if it is necessary for eliminating a serious and direct danger or preventing a



serious criminal act, provided that the conditions of handling personal data are met by the foreign data handling organisation in respect of each data.

*Secret Collection of Information not subject to a Court Permit*

Section 64 (1) In order to discharge its criminal tasks set out in paragraph (1) Section 63, the Police may

- a) employ informers, trustees or other persons secretly cooperating with the Police;
  - b) gather and check information concealing the purpose of the procedure or employing cover investigators;
  - c) issue or use cover documents and establish and maintain cover organisations to conceal its own staff or persons cooperating with it and the police nature of the same;
  - d) watch and gather information from persons suspected of a criminal act and other persons related therewith as well as premises, buildings, other objects, land and road sections, vehicles and events which may be connected with the criminal act, and record its observations by sound, image, other signal or trace recording technical devices (hereinafter: technical devices);
  - e) use a trap not causing injury or detriment to health to detect the perpetrator of a criminal act or to get evidence;
  - f) employ informers, trustees or other persons secretly cooperating with the Police or cover investigators to make sample purchases; and - subject to a permit from the prosecutor – cover investigators to make false purchases, confidence purchases, infiltrate in a criminal organisation and - also subject to the provisions of paragraph (4) of Section 2 -to perform a controlled delivery.
  - g) If there are no other means of preventing or detecting crime or capturing or identifying the perpetrator, it may substitute the victim - in order to protect his/her life and corporeal integrity - employing a police officer.
- (2) In order to perform the tasks set out in paragraph (1), the Police may enter into secret cooperation agreements with natural persons, legal entities or unincorporated organisations. As part of such agreements, the Police may initiate the employment of the employees of such organisations who are important for the fight against crime as a regular police officer, public service or public servant (hereinafter: employment).
- (3) In order to discharge its tasks set out in this Act, the Police may initiate employment - for a term set out in a relevant agreement - at the organisations referred to in paragraph (2).

	<p>(4) The Police shall not be entitled to initiate employment at a court of justice, prosecutor's office, the Constitutional Court, the State Audit Office, the Office of Ombudsmen, the Office of the President of the Republic and the Office of the Parliament.</p> <p>(5) The special rules relating to the police nature of the employment shall be contained in the special agreement made between the Police and the organisation concerned, subject to the provisions of the relevant laws. The police nature of the employment shall be a state secret unless the parties to the agreement provide otherwise.</p> <p>(6) In the case of threat to life, corporeal integrity or property or blackmailing or abetting to a criminal act, the Police may, at the user's written request and using technical devices, monitor and record telephone calls made on the user's line within the period set out in such request. Any irrelevant information obtained and recorded in the case shall be promptly destroyed.</p> <p>(7) Law enforcement organisations and national security services may be used as cover organisations and their documents may be used as cover documents only after informing the relevant Minister and the national-level chief of the relevant organisation.</p> <p>(8) In order to protect informers, trustees or other persons secretly cooperating with the Police, cover investigators, cover documents and cover institutions, the Police may place cover data in various public records including the personal data and home address registry, the personal identity certificate registry, the birth and death registry, the travel documents registry, the drivers' licence and motor vehicles registry, the real estate registry and the corporate registry. The placement of such cover data and the document or other data carrier containing the order for the placement shall be deemed state secret. The cover data shall be deleted after the underlying interest of criminal prosecution has ceased to exist.</p> <p>(9) Compensation for damage caused to third parties by informers, trustees or other persons secretly cooperating with the Police during the secret collection of information shall be governed by the provisions in paragraph (2) of Section 67.</p> <p><i>Secret Collection of Information subject to a Court Permit</i></p> <p>Section 69 (1) To attain the criminal prosecution objective set out in paragraph (1) of Section 63 and subject to a court permit, the Police shall be entitled in the case of serious criminal acts to</p>
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	<p>a) secretly search a private home (secret search) and record its findings;</p> <p>b) to observe and record the events taking place in a private home using technical devices;</p> <p>c) to get access to and record the information contained in letters, other postal sendings, or transmitted through telephone lines or equivalent telecommunications systems;</p> <p>d) to get access to and use data and information generated by E-mail messages exchanged on the Internet or using other computer technology.</p> <p>(2) Information collected using the devices set out in sub-paragraphs c)-d) of paragraph (1) relating to persons obviously not affected by the procedure on which the secret collection of information is based shall be promptly destroyed and shall not be processed and used any longer.</p> <p>(3) The Police shall be entitled to use the devices and techniques of secret information collection (hereinafter: special devices) referred to in paragraph (1) according to the provisions set out therein for the purpose of finding a person searched under the suspicion of a criminal act and if the criminal act not mentioned in paragraph (1)</p> <p>a) can be connected with cross-border crime;</p> <p>b) is aimed at a minor;</p> <p>c) is perpetrated in series or in an organised manner;</p> <p>d) is connected with drugs or other narcotic substances;</p> <p>e) is connected with the counterfeiting of banknotes or securities;</p> <p>f) is perpetrated with arms;</p> <p>g) is a terrorist act or act of terrorist type;</p> <p>h) seriously disturbs public security.</p> <p>(4) Detecting criminal acts against the State (Chapter X CC), criminal acts against humanity (Chapter XI CC), desertion (Section 343 CC), mutiny (Section 352 CC), endangering of combat-readiness (Section 363 CC) shall be the competence of the national security services until an investigation is ordered.</p> <p>(5) Detecting terrorist acts (Section 261 CC) shall be the competence of the Police if the relevant report is submitted to the Police or if it became known to the Police.</p> <p>(6) In the case of sub-paragraph c) of paragraph (1), the telecommunications or postal organisation shall give assis-</p>
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tance falling within its competence.

(7) For the purposes of sub-paragraphs a)-b) of paragraph (1), 'private home' shall be deemed to include all other premises and locations open to the public in addition to sub-paragraph c) paragraph (1) of Section 97.

Section 70 (1) The request for the application of special devices shall be submitted by the head of the investigation authority of the Police having competence and powers (hereinafter: the investigation authority).

(2) The request shall contain the following:

- a) the place of application of the special device, the name and any other data suitable for identification, and available to the Police, of the person affected by its application;
- b) the description of the special device to be used;
- c) the starting and ending date and time of the application;
- d) the reasons providing the legal grounds of the application.

Section 71 (1) The application of special devices is authorised by a judge of the local court competent according to the head office of the investigation authority requesting the permit who is appointed by the Chairman of the county (capital) court (hereinafter: judge).

(2) The judge shall make a decision within 72 hours after submitting a request for permitting the application of a special device; he/she shall either approve the request or reject it in the lack of lawful grounds.

(3) The judge may authorise the use of a special devices on a case-by-case basis for up to 90 days and may extend the permit by additional 90 days subject to a request set out in paragraph (2) of Section 70.

Section 72 (1) If the permit procedure for the use of a special device would cause such a delay which would obviously injure the interest of criminal prosecution in the given case, the head of the investigation authority may order the secret investigation and the use of the special device for a period of 72 hours (urgency order).

(2) In the case of an urgency order the request for permit shall be promptly submitted. If the request is rejected, the urgency order shall not be repeated for the same purpose, on the same grounds or matter of fact.

	<p>Section 73 (1) The head of the investigation authority shall promptly order to stop the use of a special device if</p> <ol style="list-style-type: none"> <li>a) it has attained the goal specified in the request;</li> <li>b) the deadline set out in the permit has expired;</li> <li>c) it is obvious that no result is expected from any further use thereof;</li> <li>d) its use based on an urgency order was not permitted by the judge.</li> </ol> <p>(2) In the case of sub-paragraph d) of paragraph (1), any information recorded using the special device shall be promptly destroyed.</p> <p>(3) Any information irrelevant to the objective of the investigation and the data of persons not connected with the case shall be destroyed within 8 days after the conclusion of the operation using a special device.</p> <p>Section 74 The permitting judge shall be entitled to inspect the data obtained and recorded during the secret collection of information subject to a <u>special permit</u>.”</p> <p>”§ 136 Optische und akustische Überwachung von Personen</p> <p>(1) Die optische und akustische Überwachung von Personen ist zulässig.</p> <ol style="list-style-type: none"> <li>1. wenn und solange der dringende Verdacht besteht, dass eine von der Überwachung betroffene Person eine andere entführt oder sich ihrer sonst bemächtigt hat, und sich die Überwachung auf Vorgänge und Äußerungen zur Zeit und am Ort der Freiheitsentziehung beschränkt,</li> <li>2. wenn sie sich auf Vorgänge und Äußerungen beschränkt, die zur Kenntnisnahme eines verdeckten Ermittlers oder sonst einer von der Überwachung informierten Person bestimmt sind oder von dieser unmittelbar wahrgenommen werden können, und sie zur Aufklärung eines Verbrechens (§ 17 Abs. 1 StGB) erforderlich scheint oder</li> <li>3.</li> </ol>
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	<p>wenn die Aufklärung eines mit mehr als zehn Jahren Freiheitsstrafe bedrohten Verbrechens oder des Verbrechens der kriminellen Organisation oder der terroristischen Vereinigung (§§ 278a und 278b StGB) oder die Aufklärung oder Verhinderung von im Rahmen einer solchen Organisation oder Vereinigung begangenen oder geplanten strafbaren Handlungen oder die Ermittlung des Aufenthalts des wegen einer solchen Straftat Beschuldigten ansonsten aussichtslos oder wesentlich erschwert wäre und</p> <p>a. die Person, gegen die sich die Überwachung richtet, des mit mehr als zehn Jahren Freiheitsstrafe bedrohten Verbrechens oder eines Verbrechens nach § 278a oder § 278b StGB dringend verdächtig ist oder</p> <p>b. auf Grund bestimmter Tatsachen anzunehmen ist, dass ein Kontakt einer solcherart dringend verdächtigen Person mit der Person hergestellt werde, gegen die sich die Überwachung richtet.</p> <p>(2) Soweit dies zur Durchführung einer Überwachung nach Abs. 1 Z 3 unumgänglich ist, ist es zulässig, in eine bestimmte Wohnung oder in andere durch das Hausrecht geschützte Räume einzudringen, wenn auf Grund bestimmter Tatsachen anzunehmen ist, dass der Beschuldigte die betroffenen Räume benutzen werde.</p> <p>(3) Die optische Überwachung von Personen zur Aufklärung einer Straftat ist überdies zulässig,</p> <p>1. wenn sie sich auf Vorgänge außerhalb einer Wohnung oder anderer durch das Hausrecht geschützter Räume beschränkt und ausschließlich zu dem Zweck erfolgt, Gegenstände oder Örtlichkeiten zu beobachten, um das Verhalten von Personen zu erfassen, die mit den Gegenständen in Kontakt treten oder die Örtlichkeiten betreten, oder</p> <p>2. wenn sie ausschließlich zu dem in Z 1 erwähnten Zweck in einer Wohnung oder anderen durch das Hausrecht geschützten Räumen erfolgt, die Aufklärung einer vorsätzlich begangenen Straftat, die mit Freiheitsstrafe von mehr als einem Jahr bedroht ist, ansonsten wesentlich erschwert wäre und der Inhaber dieser Wohnung oder Räume in die Überwachung ausdrücklich einwilligt.</p>
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(4) Eine Überwachung ist nur zulässig, soweit die Verhältnismäßigkeit (§ 5) gewahrt wird. Eine Überwachung nach Abs. 1 Z 3 zur Verhinderung von im Rahmen einer terroristischen Vereinigung oder einer kriminellen Organisation (§§ 278a und 278b StGB) begangenen oder geplanten Straftaten ist überdies nur dann zulässig, wenn bestimmte Tatsachen auf eine schwere Gefahr für die öffentliche Sicherheit schließen lassen.

#### § 278b StGB Terroristische Vereinigung

(1) Wer eine terroristische Vereinigung (Abs. 3) anführt, ist mit Freiheitsstrafe von fünf bis zu fünfzehn Jahren zu bestrafen. Wer eine terroristische Vereinigung anführt, die sich auf die Drohung mit terroristischen Straftaten (§ 278c Abs. 1) oder Terrorismusfinanzierung (§ 278d) beschränkt, ist mit Freiheitsstrafe von einem bis zu zehn Jahren zu bestrafen.

(2) Wer sich als Mitglied (§ 278 Abs. 3) an einer terroristischen Vereinigung beteiligt, ist mit Freiheitsstrafe von einem bis zu zehn Jahren zu bestrafen.

(3) Eine terroristische Vereinigung ist ein auf längere Zeit angelegter Zusammenschluss von mehr als zwei Personen, der darauf ausgerichtet ist, dass von einem oder mehreren Mitgliedern dieser Vereinigung eine oder mehrere terroristische Straftaten (§ 278c) ausgeführt werden oder Terrorismusfinanzierung (§ 278d) betrieben wird.“