NATIONAL SECURITY AND DATA RETENTION

From the ruling in La Quadrature du Net C-511/18 we know now that there is a definition of national security in Union law, which is already an astonishing achievement.

In point 135 the Court defines national security. The Grand Chamber says:

"...Article 4(2) TEU provides that national security remains the sole responsibility of each Member State. That responsibility corresponds to the primary interest in

protecting the essential functions of the State and

the fundamental interests of society

and encompasses the **prevention and punishment of activities capable of seriously destabilising the fundamental constitutional, political, economic or social structures of a country** and, in particular, of directly threatening society, the population or the State itself, such as terrorist activities."

Now this definition remains necessarily broad but considering that this is such a delicate and sensitive field for the Member States, the field where they feel the most their quality as Masters of the Treaties and constituting entities of the Union, its importance is evident and cannot be understated.

Note however, to nuance, that this of course does not come out of the blue: elsewhere in the same ruling the Court could already remind established case-law according to which

the mere fact that a national measure has been taken for the purpose of protecting national security cannot render EU law inapplicable and exempt the Member States from their obligation to comply with that law (see, to that effect, judgments of 4 June 2013, *ZZ*, C-300/11, EU:C:2013:363, paragraph 38; of 20 March 2018, *Commission* v *Austria (State printing office)*, C-187/16, EU:C:2018:194, paragraphs 75 and 76; and of 2 April 2020, *Commission* v *Poland, Hungary and Czech Republic (Temporary mechanism for the relocation of applicants for international protection)*, C-715/17, C-718/17 and C-719/17, EU:C:2020:257, paragraphs 143 and 170).

However, this is more 'classical' case law in the sense that it constitutes a traditional defence of Union law from being made inapplicable by Member States simply resorting to the 'wild card' of national security to avoid obligations of

Union law. For instance, a Member State cannot simply invoke national security to avoid to apply provisions on the relocation of refugees (joined cases C-715/17).

Likewise, Member States cannot avoid their obligations stemming from Union rules on public procurement just by invoking a national security exception. (Elitaliana?)