

# GERMANY



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## NATIONAL POLICY

Germany attaches very great importance to the fight against terrorism. For this reason, considerable weight is given to effective criminal prosecution and successful prevention within rule-of-law standards. From the German point of view, it is also indispensable to work together closely at international level in the fight against terrorism.

Germany counters terrorism with the "classical" set of tools available in criminal law and with measures to avert dangers. There is no separate law in Germany relating to the fight against terrorism. The German Criminal Code (Strafgesetzbuch) is available on-line: "www.gesetze-im-internet.de".

## LEGAL FRAMEWORK

### Penal law

#### Individual terrorist acts

Individual terrorist acts are punished in accordance with the provisions of the **general criminal statutes** (as a rule, homicide and bodily harm, criminal offences against personal liberty, criminal offences against public order and criminal offences dangerous to the public, such as arson, creating an explosion and poisoning).

Additionally, in August 2009, three new provisions<sup>1</sup> were introduced into the German Criminal Code by the Act on the Prosecution of the Preparation of Serious Violent Acts Endangering the State (Gesetz zur Verfolgung der Vorbereitung von schweren staatsgefährdenden Gewalttaten - GVVG). These new criminal provisions make punishable not only the preparation in certain forms by individuals of serious violent acts which endanger the state,<sup>2</sup> but also the initiating or maintaining of contacts with a terrorist organisation for the provision of instruction to this effect.<sup>3</sup> The distribution of directions for committing a serious violent act

endangering the state is also a punishable offence.<sup>4</sup>

The new provisions in detail:

According to **Section 89a of the Criminal Code**, criminal liability is incurred for preparing a serious violent act endangering the state inter alia by:

- instructing another person or receiving instructions regarding, inter alia, the manufacture or use of firearms, explosives, explosive or incendiary devices, nuclear fuel or other radioactive substances, other substances harmful to health, or special equipment necessary to carry out the act;

- manufacturing, procuring for oneself or another, storing or making available to another weapons, substances or equipment;

- collecting, accepting or making available not merely insubstantial assets for the commission of such an act.

Pursuant to **Section 89b of the Criminal Code** whoever, with the intention of receiving instruction in the commission of a serious violent act endangering the state establishes or maintains contact to a terrorist organisation shall be liable to imprisonment of up to three years or a fine.

The criminal provisions of **Section 91 of the Criminal Code** encompass the dissemination, for example on the Internet, of writings whose content is apt to serve as directions for a serious violent act endangering the state. If the circumstances of disseminating such directions are apt to encourage or cause the willingness of others to commit a serious violent act endangering the state, this conduct is punishable under Section 91 of the Criminal Code with imprisonment of up to three years or a fine. It therefore does not have to be proven that the writings disseminated pertain to a concrete act.

<sup>1</sup> Sections 89a, 89b and 91 of the Criminal Code.

<sup>2</sup> Section 89a of the Criminal Code.

<sup>3</sup> Section 89b of the Criminal Code.

<sup>4</sup> Section 91 of the Criminal Code.

## Terrorist organisations

**Section 129a of the Criminal Code** contains a special provision concerning terrorist organisations. Whoever participates in an organisation as a member or forms an organisation<sup>5</sup>, the objectives or activity of which are directed towards the commission of murder, manslaughter, hostage-taking or other serious criminal offences<sup>6</sup>, shall be punished with one to ten years' imprisonment.

Likewise, whoever participates in an organisation as a member or forms an organisation<sup>7</sup>, the objectives or activity of which are directed towards the inflicting of serious physical or psychological injury on other persons or towards the commission of computer sabotage, arson, certain serious environmental crimes or crimes involving firearms, as well as other criminal offences<sup>8</sup>, shall also face prosecution. Nevertheless, this shall only apply in the event that the purpose of the criminal offence<sup>9</sup> is to seriously intimidate the population, to force an authority or an international organisation to act under duress by use of violence or the threat of violence, or to eliminate the basic political, constitutional, economic or social structures of a state or an international organisation or considerably interfere with them in such a way that the effects of this interference may cause considerable damage to the state or the international organisation.

In the event that the objectives or activity of an organisation are directed towards threatening the commission of certain criminal offences specified in the Criminal Code,<sup>10</sup> this shall be punishable with imprisonment from six months to five years (so-called threatening organisations).<sup>11</sup>

In the event that the perpetrator of these criminal offences<sup>12</sup> is one of the ringleaders or supporters of an organisation, then a prison sentence of no less than three years and, in the case of a so-called threatening organisation,<sup>13</sup> a prison sentence of between one and ten years shall be imposed.<sup>14</sup>

<sup>5</sup> Section 129a subsection (1) of the Criminal Code.

<sup>6</sup> Section 129a subsection (1) Nos. 1 and 2 of the Criminal Code.

<sup>7</sup> Section 129a subsection (2) of the Criminal Code.

<sup>8</sup> Section 129a subsection (2) Nos. 1 to 5 of the Criminal Code.

<sup>9</sup> Named in Section 129a subsection (2) of the Criminal Code.

<sup>10</sup> Section 129a subsections (1) and (2) of the Criminal Code.

<sup>11</sup> Section 129a subsection (3) of the Criminal Code.

<sup>12</sup> Section 129a subsections (1) and (2) of the Criminal Code.

<sup>13</sup> Section 129a subsection (3) of the Criminal Code.

<sup>14</sup> Section 129a subsection (4) of the Criminal Code.

Whoever supports a terrorist organisation as defined in the Criminal Code<sup>15</sup> or recruits members or supporters for such an organisation shall be punishable by six months' to five years' imprisonment.<sup>16</sup> Anyone supporting a so-called threatening organisation<sup>17</sup> shall be punishable by up to five years' imprisonment or by a fine.<sup>18</sup>

The provision set out in **Section 129b of the Criminal Code**, which was effective as of August 2002, enables the prosecution of the founding, membership, supporting and recruiting of members or supporters of criminal or terrorist organisations abroad,<sup>19</sup> that is organisations that do not have at least one independent sub-organisation in Germany.

In the event that the case involves a foreign organisation outside the Member States of the European Union, prosecution shall only be possible in the event that there is a domestic connecting factor set out in law (e.g. the suspect's activity is exercised in Germany, the alleged perpetrator or a victim is a German national or is within Germany).<sup>20</sup> Furthermore, such cases shall only be prosecuted on authorisation by the Federal Ministry of Justice. Such authorisation may be granted for an individual case, as well as in general for the prosecution of future acts relating to a specific organisation.<sup>21</sup>

Furthermore, under certain preconditions the court may order the forfeiture of items which offenders or participants have obtained for or as a result of the criminal offence.<sup>22</sup>

In the same way, under certain circumstances, items produced by the above mentioned criminal offences or used in their commission or preparation or intended for such purpose can be seized.<sup>23</sup>

### Procedural rules

There is no separate procedure in Germany for sentencing persons suspected of having

<sup>15</sup> Section 129a subsections (1) and (2) of the Criminal Code.

<sup>16</sup> Section 129a subsection (5), sentences 1 and 2 of the Criminal Code.

<sup>17</sup> Section 129a subsection (3) of the Criminal Code.

<sup>18</sup> Section 129a subsection (5), sentence 1 of the Criminal Code.

<sup>19</sup> Within the meaning of Sections 129 and 129a of the Criminal Code

<sup>20</sup> Section 129b subsection (1) sentence 2 of the Criminal Code.

<sup>21</sup> Section 129b subsection (1) sentences 3 and 4 of the Criminal Code.

<sup>22</sup> Sections 73 et. seqq., 129b subsection (2), 129a, 129b subsection 1 of the Criminal Code.

<sup>23</sup> Sections 74 et. seqq., 129b subsection (2), 129a, 129b subsection (1) of the Criminal Code.

committed terrorist offences. For this reason, all provisions of the Code of Criminal Procedure which apply to other accused persons before or during trial are in principle to be applied to those suspected of terrorism. In particular, those accused persons have the same rights as all other accused persons during interrogation, in the main hearing and as to the possibility to submit appeals against court rulings.

During the period 1974 to 1978, four statutes were adopted which aimed to make it easier to fight terrorism, by means of which provisions of the Code of Criminal Procedure and of the Courts Constitution Act were adjusted to meet the needs of effective prosecution of terrorist offences.<sup>24</sup> The reason for these legal amendments was several attacks carried out in Germany in the seventies by the so-called "Red Army Fraction", a left-wing terrorist association.

The primary use of most of these amendments is, however, now in the fight against general crime, as well as in the field of organised and politically-motivated crime.

### **The rights of defence counsel**

It should initially be pointed out in this regard that the rights of the defence counsel are primarily not subject to any specific restrictions, but to limitations that also apply to other proceedings regarding serious offences.

These include a limitation to three defence counsels for each accused person and prohibition of joint defence of several accused persons in order to rule out conflicts of interest.

Only a few special regulations apply to proceedings dealing with the offence of "Formation of terrorist organisations".<sup>25</sup> Here, the conditions are to be relaxed under which defence counsel can be excluded from participating in the proceedings (= lesser degree of suspicion) if he/she abuses his/her position as counsel.<sup>26</sup> Also, written and oral communication with the detained accused person may be restricted, in particular with the "separation device" regulation.<sup>27</sup> As yet,

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<sup>24</sup> Supplementary Act to the First Act to Reform Criminal Proceedings (Ergänzungsgesetz zum Ersten Strafverfahrensreformgesetz) of 20.12.1974; Counter-Terrorism Act (Anti-Terrorismusgesetz) of 18.8.1976; Law on the Suspension of Contacts (Kontaktperregesetz) of 1.10.1977, and the Act to Amend the Code of Criminal Procedure (Gesetz zur Änderung der Strafprozessordnung) of 14.4.1978.

<sup>25</sup> Section 129a or 129b of the Criminal Code.

<sup>26</sup> Section 138a subsection (2) of the Code of Criminal Procedure.

<sup>27</sup> Section 148 subsection (2) of the Code of Criminal Procedure.

only a small number of counsels or remand detainees have been affected by these special regulations. The Introductory Act to the Courts Constitution Act<sup>28</sup> created the possibility to impose a time-limited bar on contact on inmates who belong to a terrorist association or whose offences were committed in connection with terrorism, if this is necessary to avert an imminent danger to the life, physical integrity or freedom of an individual, in particular in order to prevent the planning or supporting of offences from prison. This has only been ordered once by the Federal Minister of Justice, on 2 October 1977.

### **Competences**

Under the Courts Constitution Act,<sup>29</sup> the Federal Public Prosecutor General at the Federal Court of Justice has, inter alia, jurisdiction for the prosecution of terrorist criminal offences in respect of the accusation of "forming terrorist organisations" as stipulated in the Criminal Code.<sup>30</sup> The Federal Public Prosecutor General at the Federal Court of Justice is also able to take over the criminal prosecution of crimes under Section 89a of the Criminal Code (Preparation of a serious violent act endangering the state) and Section 89b of the Criminal Code (Initiating contacts for the commission of a serious violent act endangering the state) if the case in hand is one of particular significance.

The investigating judge at the Federal Court of Justice may perform the duties related to preparatory proceedings, in particular the ordering of special investigatory acts.<sup>31</sup> The criminal panel of the Federal Court of Justice with jurisdiction for national security matters rules on complaints against investigatory acts.<sup>32</sup>

Court jurisdiction at first instance (trial court instance) was placed for these proceedings with those Higher Regional Courts in whose districts the Land governments have their headquarters.<sup>33</sup>

These provisions promote the necessary special expertise in prosecuting and trying criminal offences related to terrorist associations, but basically change nothing with regard to the substantive legal framework.

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<sup>28</sup> Sections 31 et seqq. of the Introductory Act to the Courts Constitution Act.

<sup>29</sup> Sections 74a, 120 and 142a of the Courts Constitution Act.

<sup>30</sup> Section 129a of the Criminal Code.

<sup>31</sup> Section 169 subsection (1) sentence 2 of the Code of Criminal Procedure.

<sup>32</sup> Section 135 subsection (2) of the Courts Constitution Act.

<sup>33</sup> Section 120 subsection (1) of the Courts Constitution Act.

## Measures

When investigating and prosecuting offences with a terrorist motivation, the procedural rules contained in the Code of Criminal Procedure applicable to all investigation proceedings are to be applied. In these situations, the following measures in particular may gain significance:

### *Remand detention*

The ordering of **remand detention**<sup>34</sup> is always conditional on "strong suspicion", in other words on a high probability of the accused subsequently being sentenced, as well as on the existence of a reason for detention. Such a reason exists if the accused has already evaded, or if it is probable that he/she will evade the criminal proceedings (risk of flight) or will unfairly influence evidence (danger of prejudicing the course of justice). On suspicion of specific serious crimes, including terrorist offences, lesser preconditions are to be applied concerning the existence of the risk of flight and the danger of prejudicing the course of justice.<sup>35</sup> After being detained by the police, the accused is to be taken without delay, but at the latest on the following day, before a judge, who decides on the ordering of remand detention. Remand detention may only exceed six months on the basis of a special court order.<sup>36</sup>

### *Investigation methods*

i) In case of serious criminal offences, **interception of the telecommunications** of the accused, including via mobile communications, fax, e-mail and internet, may be ordered via a judicial order for a maximum duration of three months.<sup>37</sup> Extensions require renewed judicial approval. Under these preconditions, it is also permissible to intercept the telecommunication equipment of third parties if it can be presumed that these persons are acting as messengers for the accused or that the accused is using their telephone connection. In addition to the collection of traffic data, on the basis of a court ruling, the location of a mobile telephone and the details of the respective mobile end terminal or card number may also be collected.<sup>38</sup>

As a last resort, on the basis of a judicial order, the private speech of the accused (excluding the core area of the private conduct of life) may also

be intercepted and recorded within and outside private premises, including generally accessible office and business premises.<sup>39</sup> As with the monitoring of telecommunications as well as other concealed investigation methods, those concerned are in general to be informed subsequently of the implementation of the measure.<sup>40</sup>

ii) Special technical aids may be employed in the context of **planned observation** relating to criminal offences of substantial significance, such as night-vision equipment, tracking systems and the satellite-guided Global Positioning System (GPS). Furthermore, photographs may be taken and visual recordings made outside premises.<sup>41</sup>

iii) A **search** of the suspect's private and other premises, which on principle must be ordered by a judge apart from cases of exigent circumstances, is permissible where it may be presumed that this will lead to the discovery of specific evidence.<sup>42</sup> Searches in respect of other persons are justified if certain facts are present suggesting that the person to be apprehended or the specific item of evidence being sought is on their premises.<sup>43</sup> Buildings may also be searched in exceptional cases in order to apprehend an accused person strongly suspected of acting for a terrorist association.

iv) Police officers investigating under a changed and lasting identity (cover) may be deployed as **undercover investigators** to solve criminal offences of substantial significance.<sup>44</sup> Other persons may support the investigation authorities by disclosing information of which they have become aware in return for an assurance of confidentiality.

v) Traces found at the crime scene may be **examined using molecular and genetic methods** and compared with stored DNA material obtained from the suspect.<sup>45</sup> Furthermore, in order to investigate and prosecute terrorist offences, an automated data comparison can be carried out to check for certain features manifested by the offender.<sup>46</sup> Finally, in this case, checkpoints can be set up at publicly accessible places.<sup>47</sup>

<sup>39</sup> Section 100c subsection (1) Nos. 2 and 3 of the Code of Criminal Procedure.

<sup>40</sup> Section 101 of the Code of Criminal Procedure.

<sup>41</sup> Section 100h subsection (1) Nos. 1 and 2 of the Code of Criminal Procedure.

<sup>42</sup> Section 102 of the Code of Criminal Procedure.

<sup>43</sup> Section 103 of the Code of Criminal Procedure.

<sup>44</sup> Section 110a et seqq. of the Code of Criminal Procedure.

<sup>45</sup> Sections 81a, 81e and 81g of the Code of Criminal Procedure

<sup>46</sup> Section 98a of the Code of Criminal Procedure.

<sup>47</sup> Section 111 of the Code of Criminal Procedure.

<sup>34</sup> Section 112 of the Code of Criminal Procedure.

<sup>35</sup> Section 112 subsection 3 of the Code of Criminal Procedure.

<sup>36</sup> Sections 121 and 122 of the Code of Criminal Procedure.

<sup>37</sup> Sections 100a et seqq. of the Code of Criminal Procedure.

<sup>38</sup> Sections 100g to 100i of the Code of Criminal Procedure.

## New powers in counter-terrorism

The amendments to the Federal Criminal Police Office Act (Gesetz über das Bundeskriminalamt und die Zusammenarbeit des Bundes und der Länder in kriminalpolizeilichen Angelegenheiten), which entered into force on 1 January 2009, constitute a crucial element of the Federal Republic of Germany's security architecture.

The Federal Criminal Police Office (Bundeskriminalamt) has been given the powers to fight the threat of international terrorism – a task newly allocated to it by the legislator, which has amended the Basic Law for this purpose. The individual powers are based largely on existing regulatory models of the Federal Police Act (Bundespolizeigesetz) and police acts of the Länder.

One noteworthy example of the powers available are those to allow remote search of a computer hard drive. In the framework of such search (**Section 20k of the Federal Criminal Police Act**) the Federal Criminal Police Office is to be given, on specific and very strict conditions, the powers to collect data from information systems by technical means, i.e. via the relevant programmes, in order to avert terrorist threats and to prevent certain criminal offences. After the Federal Constitutional Court found that such a measure is in principle and under certain very tight circumstances in line with our Constitution, it was ensured that the Federal Criminal Police Office can keep pace with state-of-the-art information technologies used by terrorists.

### Practical application

Since 11 September 2001 the fight against terrorism under criminal law in Germany has concentrated on terrorism perpetrated by fundamentalists.

As the situation stood on 31 December 2009, the Federal Public Prosecutor General at the Federal Court of Justice was conducting a total of 195 criminal investigations on the grounds of suspected membership, founding or support of a foreign terrorist organisation with an Islamist background under Sections 129a and 129b of the Criminal Code. Of these, 190 investigations related to terrorist organisations outside of and 5 within the European Union. A further 22 criminal investigations pertained to accused persons involved in Islamist fundamentalism who were members of a terrorist organisation in Germany or who had founded or supported such an organisation. This includes all organisations which

feature at least one independent sub-organisation in Germany.

On 31 December 2009, ten criminal proceedings were pending in the first instance before various higher regional courts, including one case before Dusseldorf Higher Regional Court against the so-called "Sauerland group". The defendants are accused of having been members of the foreign terrorist group the Islamic Jihad Union, who after undergoing terrorist training in Waziristan prepared at least three attacks with home-made hydrogen-peroxide-based explosives against American facilities in Germany, and in doing so aimed to kill 150 American soldiers. Thanks to the timely intervention of German security agencies, the further execution of the crime could be averted.

On 9 December 2008 the Dusseldorf Higher Regional Court sentenced the defendant in the case of the so-called "suitcase-bombings" to life imprisonment for attempted murder and attempting to cause an explosion. On 31 July 2006, the defendant, together with an accomplice who was sentenced in Lebanon, deposited explosive and incendiary devices hidden in suitcases on two regional trains bound for Dortmund and Koblenz, which due to a technical failure did not explode.

### Other relevant legislation

#### Victim protection

People who fall foul of violence on the sovereign territory of the Federal Republic of Germany, as well as their surviving dependants, can assert claims in Germany in accordance with the **Victim Compensation Act** (Opferentschädigungsgesetz) which was created in 1976. Its area of application has been continually expanded throughout the subsequent period: The aim of the Victim Compensation Act is to compensate for the health and economic impact of an intentional and unlawful physical attack. Claims could be filed by German nationals and foreign victims who are legally resident in Germany. With the Third Act to Amend the Victim Compensation Act (Drittes Gesetz zur Änderung des Opferentschädigungsgesetzes), which entered into force on 1 July 2009, the number of people entitled to compensation was extended considerably. Among those newly included were foreign nationals temporarily residing in Germany who fall victim to a violent offence and who are the first, second or third-degree relatives of, or are registered in life partnerships with other foreign nationals residing in Germany permanently. In addition, a right to compensation

was created for Germans, other EU citizens (who enjoy equal legal status to Germans) and foreign nationals living legally in Germany with secure residential status who become the victim of a violent offence abroad.

Germany has ratified the Council of Europe Convention on the Compensation of Victims of Violent Crimes of 24 November 1983 (ETS No. 116), and has also expanded the protective area of the Victim Compensation Act to cover tourists and visitors from Parties to the Convention who are only in Germany for a brief stay.

In the period following the terrorist attack in Djerba (Tunisia) on 11 April 2002, it was made possible in Germany to pay hardship benefits to victims of terrorist offences from the Federal budget. The goal of these hardship payments, to which there is no legal right, is firstly to have aid brought quickly to the victims of such attacks for humanitarian reasons when justice so demands. Secondly, in light of the acute threat posed by terrorism to the entire Western world, a message is to be sent that societies in general will counter this threat with all the means at their disposal, and will help the victims in a spirit of solidarity.

Hardship payments may be paid both to victims of attacks in Germany, and to victims of attacks abroad. In the latter case, however, it is necessary for victims to be German nationals or to have an established residence status in Germany. To date, hardship benefits have been granted above all to victims and surviving dependants of the attacks of 11 September 2001 in the USA, of 11 April 2002 in Djerba, of 12 October 2002 and 2 October 2005 in Bali, of 7 June 2005 in London, of 24 April 2006 in Dahab/ Egypt and of 26 and 29 November 2008 in Mumbai/ India.

### Preventive measures

After 11 September 2001, the Federal Government proceeded to a targeted expansion of the security structures using a number of extensive statutory and administrative measures. Statutory, operative and preventive measures were carefully coordinated with one another.

Two "Security Packages" considerably improved clarification work in the run-up to counter-terrorist activities. For instance, important information was obtained on travel movements, financial flows or the conduct of suspects in changing identities. Clear security gains have been brought about by means of checks on the infrastructure systems, for instance in aviation.

The subject matter of the **Security Package I** was the expansion of the possibilities to impose prohibitions in accordance with the Associations Act to cover extremist religious communities and philosophical societies (in force since 8 December 2001). Accordingly, prohibitions of associations are now also imposed on religious communities and philosophical societies if their objectives or activities aim to commit criminal offences, if they are against the constitutional order or against the concept of understanding between peoples. Hence, the "religious privilege", which had been applicable until then and under which restrictions under the Associations Act were not possible against religious communities, was abolished.

This legal amendment has already been used in Germany. For instance, several organisations have been prohibited, such as "The Caliphe State" (on 8 December 2001), "Al-Aqsa e.V." and "Hizb-ut Tahrir" (on 15 January 2003).

With the Act on Combating International Terrorism (Gesetz zur Bekämpfung des internationalen Terrorismus – Terrorismusbekämpfungsgesetz), **Security Package II**, which entered into force on 1 January 2002, many security statutes and other statutes from a variety of areas were adjusted in line with the new threat.

Changes were made in particular to:

The Federal Act on the Protection of the Constitution, the Military Counterintelligence Service Act, the Federal Intelligence Service Act,<sup>48</sup> the Federal [Border] Police\* Act,<sup>49</sup> the Federal Office of Criminal Police Act,<sup>50</sup> as well as the

<sup>48</sup> Changes to the Federal Act on the Protection of the Constitution, the Federal Intelligence Service Act and the Military Counterintelligence Service Act:

- The Federal Office for the Protection of the Constitution and the Federal Intelligence Service have the right to request information from banks with regard to money transfers and investments; the Federal Office for the Protection of the Constitution also has the right to request information from airline operators with regard to names, addresses and transport services used;

- The Federal Office for the Protection of the Constitution has the right to request information from postal operators with regard to postal services;

- The Federal Office for the Protection of the Constitution, the Federal Intelligence Service and the Military Counterintelligence Service have the right to request information with regard to telecommunication connections data and data on teleservices used;

\* Renamed the "Federal Police" on 1 July 2005

<sup>49</sup> Changes to the Federal [Border]\* Police Act: The possibility of deploying Federal [Border]\* Police officers to ensure and restore safety and security on board German aircraft has been introduced.

<sup>50</sup> Changes to the Federal Office of Criminal Police Act:

- Expansion of the original investigative competency of the Federal Office of Criminal Police to include certain serious cases of data network crime (cybercrime);

Foreigners Act and other regulations pertaining to the law concerning foreign nationals in order to:

- grant the security authorities the necessary legal competences;
- enhance the necessary flow of data between the authorities;
- prevent terrorist criminals entering Germany in the first place;
- improve measures to secure identities during visa procedures;
- allow so-called sky marshals (armed members of the Federal [Border] Police) to be deployed on German aircraft;
- improve the means for carrying out border controls; and
- identify extremists who have already entered the country.

In addition the Security Clearance Check Act,<sup>51</sup> the law on passports, the law on identity cards, the law on private associations,<sup>52</sup> the law on civil aviation, the Federal Central Criminal Register Act, the Social Security Code (Book X) and the emergency security act for the protection and control of energy were amended in order to:

- enable security checks to be carried out on those employed within facilities that are essential to the proper functioning of the country or vital for national defence;
- create the legal basis for incorporating biometric features in passports and identity cards;
- reserve the right to use weapons in civil aircraft to police officers;
- be able to quickly stop the activities of extremist groups of foreigners in Germany;
- improve the efficiency of the automated comparison of data (Rasterfahndung) by including certain social data; and
- guarantee an unrestricted energy supply.

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- Strengthening of the competency of the Federal Office of Criminal Police as the headquarters for both the federal administration and the federal Länder by expanding its authorisation to procure data.

\* Renamed the "Federal Police" on 1 July 2005

<sup>51</sup> Changes to the Security Clearance Check Act: Preventive measures to protect against sabotage by persons have been included by expanding the scope of security clearance checks to cover all those who are employed at security-sensitive positions within facilities that are essential to the proper functioning of the country or that are vital for national defence.

<sup>52</sup> Changes to the Act governing Passports and Identity Cards: - Identifying features may now be incorporated in passports and identity cards in encoded form;

- The definition of 'identifying feature' for the purposes of passports now also includes biometric data of fingers, hands and face (also encoded);

A federal law shall determine which types of biometric data are to be included.

A large number of measures of the Federal Government aim to clarify and avert terrorism before the planned attacks take place. These include in particular steps under the laws on immigration and asylum, such as expansion of prohibitions to enter and stay (no issuance of visas or residence permits to persons who pose a danger to the free, democratic basic order or security of the Federal Republic of Germany, who participate in violent acts in the pursuance of political goals, who publicly call for the use of violence, or who support international terrorism). It is also intended to record biometric data in visa and residence titles, and to use biometric data on entry checks to Germany.

The following measures, amongst others, have been concluded or initiated with the aim of protecting the population and implementing preventive measures, as well as of reducing the vulnerability of the infrastructures. The protection of critical infrastructures is served by a systematic, sectoral risk analysis of the infrastructure areas with regard to physical dangers, protection against IT attacks and the protection of the population. Amendments have been made to the Security Examination Act (Sicherheitsüberprüfungsgesetz) and the Security Examination Determination Ordinance (Sicherheitsüberprüfungsfeststellungsverordnung) has been issued to implement security checks and for preventive personal sabotage protection. There have been further comprehensive measures in the field of aviation safety and the improvement of aviation safety monitoring technology for continuous monitoring of passengers and their luggage. Employees in areas within airports which are relevant to security have been subjected to a reliability check.

To combat the causes of terrorism, the Federal Government has also carried out a large number of measures, such as initiating and promoting an intellectual and political debate on foreign extremism – in particular on fundamentalism.

The tasks involved in prevention of and the fight against terrorism are carried out in Germany both by the Federal Police as a border protection authority, and by the Federal Criminal Police Office in the context of their investigative competences and function as a central agency, as well as by the Land police forces.

### **Prevention of financing of terrorism**

In adopting the Fourth Financial Market Promotion Act (Viertes Finanzmarktförderungsgesetz), which took effect on 1 July 2002, and the Money Laundering Prevention Act

(Geldwäschebekämpfungsgesetz), which took effect on 15 August 2002, Germany has fully implemented the FATF Special Recommendations IV, VI, VII and VIII on Terrorist Financing. With regard to the revision of the 40 + 9 FATF Recommendations and the FATF Methodology of 2003, which are the basis for the 3rd EU Anti-Money Laundering Directive (Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing), the German Money Laundering Prevention Act, the Banking Act and the Insurance Supervisory Act were amended by the Act to enhance the fight against money laundering and financing of terrorism (Act Supplementing the Act to Fight Money Laundering and Terrorist Financing, Geldwäschebekämpfungsergänzungsgesetz) which entered into force and effect on 21 August 2008.

Under **Section 24c of the Banking Act** (Kreditwesengesetz, KWG), a modern data retrieval system has been introduced that gives the Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) electronic access to all key account data held by banks (name and account number of the account holder, names of further persons having the right of disposal and the name of the economic beneficiary). This system also allows to immediately freeze the financial assets of persons and organisations according to the respective regulations.

**Section 25c (2) of the Banking Act** - implementing core principle No. 15 of the Basle Committee "Customer due diligence for banks" of 4 October 2001 - requires financial institutions to deploy an internal data based system to monitor customers, accounts and transactions for irregularities or deviations from a predefined standard pattern of behaviour. If need be, the matter is referred to the Compliance Officer for further processing and inspection. It also requires financial institutions to conduct investigations on a risk based approach. To this end, they must make use of computer-aided systems which permit account and customer profiling on the basis of parameters appropriate to the specific business structure of the institution in question.

In laying down specific organisational requirements for handling cashless payments to or from a state outside the European Union, Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community implements FATF Special

Recommendation VII. As is the case with every EU Regulation, Regulation (EC) No. 1781/2006 is directly applicable and legally binding for all "payment service providers" as defined in Article 2 No. 5. Under Article 5 (1), the originating payment service provider executing cashless payments may use only correct and complete data records. Complete information on the payer shall consist of his name, address and account number. With incomplete data records, the missing information must be provided to make them complete. Intermediary payment service providers shall ensure that all information received on the payer that accompanies a transfer of funds is kept with the transfer (Article 12). According to Article 6, if both the payment service provider of the payer and the payment service provider of the payee are situated in the Community, then transfers of funds shall be required to be accompanied only by the account number of the payer or a unique identifier allowing the transaction to be traced back to the payer. If the payment service provider of the payee becomes aware, when receiving transfers of funds, that required information on the payer is missing or incomplete, it shall either reject the transfer or ask for complete information on the payer. In any event, the payment service provider of the payee shall comply with any applicable law or administrative provisions relating to money laundering and terrorist financing (Article 9). According to Section 25b of the Banking Act, BaFin is the competent national authority for the implementation of this Regulation.

**Section 6a of the Banking Act**, which took effect on 6 November 2003, provides for a broad legal basis for BaFin to freeze assets of suspected terrorists by administrative order. Where facts are known indicating that funds entrusted to a financial institution serve to finance a terrorist organisation, or that a financial transaction, if carried out, would serve that purpose, BaFin has the powers to prohibit the institution from disposing of an account or deposit held at the institution or from carrying out further financial transactions (freezing). Authorities primarily concentrate on financial assets. BaFin's automated account access system allows immediate identification of financial assets that can be potentially frozen, and German law enforcement authorities can freeze accounts for up to nine months. This complementary domestic legislation is also the legal basis for freezing the assets of those suspected terrorists residing inside the EU which are not already covered by the EU Regulations Nos. 2580/2001 and 881/2002.

According to **Section 11 of the Money Laundering Act**, banks, financial institutions and

other designated non-financial businesses and professionals (in particular estate agents, attorneys, notaries, tax consultants and accountants) are also required to submit to the Financial Intelligence Unit reports on suspicious transactions possibly involving the funding of terrorism.

Providers of money transfer services (remittance services) also fall within the scope of the Money Laundering Act, i.e. not only banks but all providers of money transfer services are supervised by BaFin (Special Recommendation VI) and, inter alia, need to obtain a written licence before executing payment orders. The granting of the licence is subject to a number of requirements. It is a criminal offence to provide financial services without the required licence. Moreover, BaFin may apply administrative sanctions to prevent the continuation of the business.

### INSTITUTIONAL FRAMEWORK

In Germany, essentially the following government agencies deal with the fight against terrorism:

The Federal Public Prosecutor General (Generalbundesanwalt - GBA), the Higher Regional Courts (Oberlandesgerichte - OLG) and the Federal Court of Justice (Bundesgerichtshof - BGH) are responsible for the prosecution of terrorist acts. In this connection, see also the section on Competences above. They are supported in this by the Federal Criminal Police Office (Bundeskriminalamt - BKA) and the Land Criminal Police Offices (Landeskriminalämter - LKA).

The Federal Criminal Police Office, the Land Criminal Police Offices and the Federal Police (Bundespolizei - BPol, which used to be called Federal Border Police - BGS) also exercise preventative duties within the framework of fighting terrorism. In this connection, see also the section on Preventive measures above.

The intelligence services also perform duties related to fighting terrorism. These intelligence services include the Federal Intelligence Service (Bundesnachrichtendienst - BND), which is responsible for the acquisition of information abroad, the Federal Office for Protection of the Constitution (Bundesamt für Verfassungsschutz - BfV) and the Military Counterintelligence Service (Militärischer Abschirmdienst - MAD) as domestic intelligence services. In this connection, see also the section on Preventive measures above.

The Federal Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht - BaFin) and the Financial Intelligence Unit – FIU (Zentralstelle für Verdachtsanzeigen), which is part of the BKA, are responsible for essential duties in the area of suppression of the financing of terrorism. In this connection, see also the section on Prevention of financing of terrorism above.

### INTERNATIONAL CO-OPERATION

From a German point of view, international co-operation in the fight against terrorism is highly significant. In this respect, Germany is committed firstly to the area of extradition and mutual assistance, and secondly to membership of the international organisations devoted to the fight against terrorism (such as the United Nations, the G8, FATF and the EU).

#### Mutual assistance and extradition

Germany has taken specific measures to promote co-operation with other states in respect of countering terrorism and other forms of crime, in particular for extradition and mutual assistance. Germany is able to render mutual legal assistance to other states and to extradite foreigners on the basis of its national Law on International Assistance in Criminal Matters. Additionally, Germany is party to a number of bi- and multilateral treaties including the 1957 European Convention on Extradition and the 1959 European Convention on Mutual Assistance in Criminal Matters. The law and the treaties are applicable to requests in terrorist cases.

The 1977 European Convention on the Suppression of Terrorism, which Germany has also signed and ratified, is especially designed to facilitate the extradition of persons having committed acts of terrorism. Germany is currently preparing to ratify the Amending Protocol to this Convention as well as the Convention on the Prevention of Terrorism.

#### Measures at international level

##### United Nations

Germany has signed and ratified all **thirteen United Nations Anti-Terrorism Conventions**.

Germany supports the work of the **UN Security Council** and the obligations from the Resolutions of the UN Security Council on the fight against terrorism have been implemented in Germany. The Al Qaida/Taliban Sanctions Committee (ATSC) has been able to place a large number of terrorist

organisations and members of Al Qaida and the Taliban on its sanctions list, also in response to suggestions made by Germany, thus making it possible to impose the sanctions provided for by the UN Security Council Resolutions.

Germany is also promoting the work of the UN Security Council's Counter-Terrorism Committee (CTC) which examines the implementation of the sanctions in the member States of the UN.

### **Financial Action Task Force against Money Laundering (FATF)**

Germany is also a member of the FATF. The nine special recommendations the FATF has made on combating the funding of terrorism have been implemented in Germany.

### **G8**

In the context of the G8, to which Germany belongs, questions of police and criminal law co-operation are dealt with in the **G8 Lyons and Rome Groups**.

### **Measures in the EU framework**

Germany is also actively committed to the fight against terrorism in the framework of the EU, including the important measures mentioned in the European Council Declaration on the Fight against Terrorism of 25 March 2004 and the Framework Decision of 13 June 2002 on the European arrest warrant. The European arrest warrant entered into force in Germany on 2 August 2006.

<b>Relevant Council of Europe conventions - Germany</b>	<b>Signed</b>	<b>Ratified</b>
European Convention on the Suppression of Terrorism (ETS 90)	27/1/1977	3/5/1978
Amending Protocol (ETS 190)	15/5/2003	
European Convention on Extradition (ETS 24)	13/12/1957	2/10/1976
First Additional Protocol (ETS 86)		
Second Additional Protocol (ETS 98)	8/11/1985	8/3/1991
European Convention on Mutual Assistance in Criminal Matters (ETS 30)	20/4/1959	2/10/1976
First Additional Protocol (ETS 99)	8/11/1985	8/3/1991
Second Additional Protocol (ETS 182)	8/11/2001	
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)		
European Convention on the Compensation of Victims of Violent Crimes (ETS 116)	24/11/1983	27/11/1996
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	8/11/1990	16/9/1998
Convention on Cybercrime (ETS 185)	23/11/2001	9/3/2009
Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189)	28/1/2003	
Council of Europe Convention on the Prevention of Terrorism (ETS 196)	24/10/2006	
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198)		