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Cabinet adopts amendment to BKA Act

"The draft legislation adopted by the Federal Cabinet today (4 June 08) represents a key building block in the security architecture of the Federal Republic of Germany. As promised in the coalition agreement, we are giving the Federal Criminal Police Office the powers it needs to fight international terrorism," the Federal Minister of the Interior, Dr Wolfgang Schäuble, said in Berlin after the Cabinet meeting.

"As part of the first phase of reforming our federalist system, a constitutional amendment gave the Federal Criminal Police Office [BKA] the task of preventing threats arising from international terrorism. The BKA must have the necessary powers to carry out this task. The draft legislation adopted today adds to the Act on the Federal Criminal Police Office [BKAG] all the tools the BKA needs for its new task of preventing threats arising from international terrorism."

In accordance with Germany's constitution, the proposed legislation limits the BKA's authority in cases of international terrorist threat to those cases which extend across state borders, those in which no state police force has jurisdiction, and those which the highest state authority asks it to take on. The BKA's involvement will not affect the powers of the German states. To coordinate measures, the BKA will be required to keep the responsible state and federal authorities informed without delay and to work in consultation with them. "This is an enhancement in harmony with the federalist nature of law on threat prevention," the Federal Minister stressed.

Federal Minister Schäuble added:

"The individual powers are largely modelled on existing regulations in the Act on the Federal Police and state laws on the state police forces. So I found the public debates in recent weeks somewhat odd, for example concerning the rules on visual surveillance in homes – rules which are already included in the state police laws as a general measure of threat prevention, whereas the BKA may use it only to prevent threats from international terrorism.

"A new measure that deserves special mention is the power to conduct remote searches of computer hard drives. Here, the BKA will be permitted, under certain strict conditions, to use technical means, that is, special software programmes, to collect data from information technology systems in order to prevent terrorist threats and related crimes. After the Federal Constitutional Court ruled that such a measure does not violate our constitution, this power makes sure that the BKA can keep up with terrorists using the latest information technologies. I see this as significant progress.

"The proposed legislation is of course in line with the Basic Law and agrees with the rulings of the Federal Constitutional Court, in particular its latest rulings [on surveillance of private homes, preventive telecommunications surveillance, remote searches of computer hard drives and the temporary order on preventive data retention]. The proposed legislation therefore contains specific rules to protect the inviolable core of the private sphere and persons entitled to refuse to give evidence, as well as reporting requirements.

"In my view, the Federal Government has presented a balanced draft which will put the BKA in a position to effectively perform its duty of preventing the threat of international terrorism."

Today's Cabinet decision opens the way for parliamentary debate on the proposed amendment to the Act on the Federal Criminal Police Office.
