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## **Answer**

**of the Federal Government**

**to the Minor Interpellation tabled by the Members of the Bundestag Andrej Hunko, Jan Korte, Christine Buchholz, other Members of the Bundestag and the Left Party parliamentary group**  
**- Printed paper 17/9007 -**

### **Concerning secretly operating international networks of police forces**

Preliminary remarks of the questioners

It is only thanks to several parliamentary initiatives taken by the Left Party parliamentary group in the German Bundestag that it has become clear over the last 12 months how German police authorities are organised in numerous informal international working groups (Bundestag Printed Papers 17/4333, 17/5133, 17/5677, 17/5736, 17/7567, 17/7584, 17/8279; Minutes of Bundestag Plenary Proceedings 17/138, 17/154). Many of these networks meet in secret; no national or international legal entity mandated their establishment. Some of these working groups were unknown to either parliamentarians or the public. It is particularly problematic that these informal, secret networks deliberate on extensive encroachments of fundamental rights: the deployment of undercover investigators, the use of Trojans by the state, surveillance technology and the amendments to the relevant legislation necessary for these purposes. Furthermore, as the Federal Government admits, some of the secret working groups deliberate on 'politically motivated criminality'. In addition to this, there is the fact that in several cases private companies or institutions have participated in such discussions as well. The German Federal Government has wrapped itself in silence on this point: Neither have any names been made public nor is there any intention that the public should be informed about the purpose of these companies and institutions' involvement.

Police authorities from almost all the EU Member States coordinate their activities in the European Cooperation Group on Undercover Activities (ECG). However, this is not an EU organ, and its membership also extends beyond the EU states: As is evident from the response of the German Federal Government to the minor interpellation answered in Bundestag Printed Paper 17/5736, Albania, Croatia, Macedonia, Norway, Russia, Serbia, Switzerland, Turkey and Ukraine are also 'represented as members'. The ECG therefore does not operate under the auspices of any specific institution. Instead, it was established in October 2001 'at the suggestion of several national agencies in Western European states that use undercover investigators' (response of the Federal Government to question 4a of the minor interpellation answered in Bundestag Printed Paper 17/5736). From Germany, the Federal Criminal Police Office (BKA) and the Central Office of the German Customs Investigation Service (ZKA) take part in the ECG. The reason given, somewhat tersely, for this is Germany's interest 'in effective action to combat crime'. Consequently, the minutes of the ECG's meetings are only distributed to the participants. At most, direct parliamentary scrutiny can be carried out by national parliaments. In Germany, however, nothing was known about the existence of the ECG.

The ECG's annual meetings feature, among other things, 'regular accounts of each country's national situation' and 'discussions of aspects of international cooperation when undercover

investigators are deployed on the basis of case studies'. Supposedly, no operative deployments are discussed in the ECG ('a pure communication platform without executive powers'). However, from the point of view of the questioners, it may be assumed that subsequent deployments are initiated as a result of, for instance, the exchange of contacts or what has been learned about the situations in other countries. This is confirmed by the fact that issues around the 'application of operational logistics' were discussed at the group's most recent meeting. Although it is claimed Europol does not take part in the ECG, the presentation of a 'platform for communication' at Europol featured on the agenda on that occasion as well

Apart from the ECG, the BKA and ZKA are also members of the International Working Group on Police Undercover Activities (IWG). According to Minutes of Bundestag Plenary Proceedings 17/154, the IWG has met seven times since 2007. This source indicates it has been attended by 'police authority representatives from European states, as well as from Australia, Canada, Israel, New Zealand, South Africa and the USA'. Interpol too was present at these meetings. In addition to this, research institutions and private firms that work in security technology and logistics have been invited to attend and presented papers on individual topics. The Federal Government wishes to keep it secret from the public what these firms and institutions spoke about (response to written question 22 in Bundestag Printed Paper 17/8637). They may have discussed surveillance technology of the kind known about from the operations of uncovered British and Austrian spies. Conversations conducted in a room were listened to and recorded by the spies' handlers. As with the ECG, the purpose of the IWG is described as the 'international exchange of experience on all matters related to the covert deployment of police officers'. In addition to this, according to the Federal Government, there are also discussions of 'forensic science'. Furthermore, the IWG operates an International Business Secretariat (IBS), a subworking group whose 'membership is made up to a very great extent of the same states' and that has met five times since 2007. According to Minutes of Bundestag Plenary Proceedings 17/154, the IBS deliberates on 'issues in the field of legend building' and the 'creation and maintenance of cover identities'. However, the response to written question 17 in Bundestag Printed Paper 17/8637 states that the IBS is not a legal entity. It is also claimed that it has neither premises nor staff. As far as the IBS's mandate is concerned, the Federal Government has rowed back, stating that the IBS does not support 'either confidentiality or the organisation of cover identities'. It remains nebulous what its work consists of in concrete terms.

As is evident from the 'Europol general report 2009', there is a Cross-Border Surveillance Working Group (CSW) that has the aim of driving ahead international cooperation and the development of surveillance technologies (Council Document 10099/10). Europol is a member of the CSW. Nevertheless, the CSW is, once again, not an EU working group. As far as the questioners are aware, it is not required to account for its activities to a Council working party or any other EU body either. The Federal Government is non-committal when it comes to the CWS and merely states that this 'platform for discussions' is intended to help develop secure and effective surveillance technologies (response of the Federal Government to question 22 of the minor interpellation answered in Bundestag Printed Paper 17/5133). It states the projects undertaken are conceived in response to demand and relate to, for instance, 'dialogue about technological questions'. The response of the Federal Government to the minor interpellation answered in Bundestag Printed Paper 17/5677 supplies more detail, stating that 'technical papers on cross-border observation and associated problems' are given (response of the Federal Government to question 20 of the minor interpellation answered in Bundestag Printed Paper 17/5677). The participating countries talk about their own 'mobile observation personnel' and operations against 'organised and general criminality'.

An international working group specifically dedicated to the deployment of Trojans by public agencies has been in existence since 2008, and was actually set up at the suggestion of the BKA. The Federal Government admitted this first in response to a query (response of the Federal Government to question 22 of the minor interpellation answered in Bundestag Printed Paper 17/7584). This was the purpose for which the Remote Forensic Software User Group was set up, a group attended by 'representatives of security agencies' from Switzerland, the Netherlands, Belgium, Baden-Württemberg and Bavaria. The Remote Forensic Software User Group was put in place to promote the competitive position of the German Trojan designer DigiTask and was initially called the DigiTask User Group (Minutes of Bundestag Plenary Proceedings 17/138). Although the German Federal Constitutional Court sets high hurdles for searches of whole computer systems (what are known as 'online searches') in Germany, this very issue is dealt with as a priority by the User Group. According to the Federal Government, other police authorities of

the German Federation have supposedly not engaged in any international dialogue about surveillance software.

The Federal Government describes one of the ECG's covertly acting working groups, for instance, as 'a communication platform without executive powers'. In contrast, the police critic Heiner Busch quotes a BKA official with the words, 'Informal, personal relationships' are 'of decisive significance for the secondment of undercover investigators' (Heiner Busch with Elker Schäfer, Britta Grell and Wolf-Dieter Narr: *Polizeiliche Drogenbekämpfung: Eine internationale Verstrickung*, Münster, 1999). The questioners also view these informal networks as legally and politically dubious groupings that have established themselves far removed from any parliamentary and public control. Even if their official purpose is stated to be dialogue, the personal contacts that are made at their meetings and the 'chats that take place in the corridor' are of great significance for concrete deployments.

### Preliminary remarks of the Federal Government

1. The covert deployment of German and foreign police officers has been the subject of a large number of parliamentary questions over the last two years. In these questions, the group of public employees in question have been referred to regularly and consistently by the questioners as 'spies' or 'police spies'. The Federal Government pointed out most recently in its response to question 12 of the minor interpellation of the Left Party parliamentary group in the German Bundestag that it is not aware of any such category of persons (Bundestag Printed Paper 17/7567 of 31 October 2011).

The term 'police spy' is used once again in the minor interpellation that is the subject of these remarks. Once again, the Federal Government objects expressly to this terminology. It requests that care be taken in any future questions to ensure the language used does adequate justice to both the duties, the standing and the personal rights of German and foreign police officers, and the appropriate exercise of the constitutionally anchored right to submit parliamentary questions.

The officers in question are only selected if they are outstandingly well qualified for deployments of this sort. In their operations, they sometimes take major personal risks that put their lives and health in danger while neglecting private concerns to a significant extent. At the same time, the Federal Republic of Germany relies on their dedication and specialist expertise when it comes to combatting the most serious of crimes. Organised crime groups with a strong propensity for violence that do not even shy away from the gravest capital offences, such as murder, manslaughter and aggravated robbery, can only be opposed effectively by the German state if there are such officers who express a willingness to undertake covert operations. The deployment of undercover investigators is the only way of penetrating closed, highly insular circles of the kind to be met with in, for instance, trafficking in human beings, whose activities cause incalculable suffering among the victims they affect and damage that is tremendously difficult to quantify.

When the work of these officers, their dedication and their acceptance of risk is disparaged indiscriminately on a consistent, regular basis from among the ranks of the German Bundestag (against the background of whatever individual cases and for whatever motives), this is unjust to them and shows a failure to acknowledge the significance their work has for those who wish to live securely in the Federal Republic of Germany.

Furthermore, the Federal Government is of the opinion that the terminology under discussion here does not do adequate justice to the role the constitutional order grants to the right to submit parliamentary questions within the Germany's system of government. In the opinion of the Federal Government, the relationship of the legislative and the executive should be characterised by reciprocal respect and mutual courtesy, especially in connection with parliament's rights to scrutinise the executive. From the point of view of the Federal Government, the form in which these questions have been put does not live up to this aspiration.

2. In so far as the minor interpellation that is the subject of these remarks concerns substantive policing matters that relate to concrete questions about covert deployments of German and foreign police officers, the Federal Government is not able to deal with them in the part of the answer that can be viewed by the public for reasons of confidentiality. The same applies to substantive content that goes beyond general information about the Cross-Border Surveillance Working Group (CSW), the European Cooperation Group on Undercover Activities (ECG) and the International Working Group on Police Undercover Activities (IWG), and/or has been discussed confidentially by their members. The responses of the Federal Government to these questions must be categorised as 'confidential – classified material'. These parts of the answer may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

In this respect, the Federal Government is following the judgements of the Federal Constitutional Court, according to which effective precautions may be put in place to prevent official secrets being disclosed in order to take account of confidentiality aspects when the Federal Government fulfils its duty to provide information to parliament (cf. *BVerfGE*, 124, p. 161, para. 193; concerning the provision of information to a committee of enquiry: cf. *BVerfGE*, 124, p. 78, paras. 123 f.). Such precautions include the application of the Rules on Document Security of the German Bundestag.

As a matter of principle, the parliamentary right to obtain information involves the questions that have been put being answered in the public sphere (cf. *BVerfGE*, 124, p. 161, para. 193). In this case, however, with a view to the wellbeing of the state, categorisation as classified material is necessary and appropriate for the following reasons in order to satisfy parliament's interest in obtaining information while preserving the Federal Government's justified interests in confidentiality:

First of all, the revelation of information about covert deployments of German and foreign police officers to the public would significantly damage the interest – worthy of protection as it is – the Federal Republic of Germany has in effective action to combat crime and terrorism, and therefore undermine the wellbeing of the state. The publication of these matters would mean divulging sensitive police methods and tactics in an extremely threatening field. The covert activities discussed here are only implemented in areas of criminality where it is necessary to assume a particular degree of clandestinity, damage to public goods and willingness to use violence. If criminal or terrorist circles were to obtain information about the issues addressed, this would have extraordinarily disadvantageous impacts both on the state's performance of its function averting threats and on the assertion of the state's right to enforce the law. In addition to this, there is the fact that the publication of substantive content that went beyond general

information on the CSW, the ECG and the IWG, and/or had been discussed confidentially by their members would permanently shake the confidence of international cooperation partners in the integrity of German police work and significantly impede further cooperation in the field of covert police activities.

At the same time, with the Rules on Document Security of the German Bundestag, an instrument has been created that makes it possible for the Members of the German Bundestag to consult the relevant information. As a result, justice is done to the parliamentary right to scrutinise the executive.

3. With regard to questions about classification requirements in the intelligence field, reference is made to the comments of the Federal Government on the individual questions.

1. Since when has the International Working Group on Police Undercover Activities or a similar grouping been in existence (for instance, Heiner Busch dates its establishment to 1989)?

The IWG has been in existence since 1989. The Federal Government is not aware of a 'similar grouping'.

- a) Is it true that the establishment of the IWG was instigated by the Dutch police unit responsible for infiltration activities?
- b) If not, at whose initiative was the IWG established?

For reasons of confidentiality, the Federal Government is not able to respond to these questions in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The response to this question is therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

- c) Since when have which German agencies taken part (even temporarily) in the IWG or similar predecessors?

The Federal Criminal Police Office (BKA) has been a member of the IWG since 1989, the Central Office of the German Customs Investigation Service has been a member since 2000.

- d) Which central national agencies in Germany are engaged in what ways with the handling of undercover investigators and the organisation of their deployments?
- e) Which divisions of its German members are involved in cooperation with the IWG?
- f) Which concrete agencies of the governments of Australia, Canada, Israel, New Zealand, South Africa and the USA have participated since when (even temporarily) in the IWG (please list as far back in time as possible)?

For reasons of confidentiality, the Federal Government is not able to respond to these questions in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The responses to these questions are therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on

## Document Security.

- g) Why did the Federal Government make no public mention of Switzerland's participation in the IWG (Minutes of Bundestag Plenary Proceedings 17/154), although the Swiss themselves have admitted that they are on board with the IWG ([steigerlegal.ch/2012/02/24/schweizer-schnueffelstaat-mit-internationaler-vernetzung/](http://steigerlegal.ch/2012/02/24/schweizer-schnueffelstaat-mit-internationaler-vernetzung/))?

As the Federal Government understands it, being 'on board' is not a category of state action. In so far as this question relates to Switzerland's involvement in the IWG, the Federal Government is not able to perceive any contradiction to its comments on oral question 85 put by Andrej Hunko, Member of the German Bundestag (The Left Party), in Bundestag Printed Paper 17/8404, which are reproduced in Minutes of Bundestag Plenary Proceedings 17/154 of 25 January 2012 (Annex 65, first paragraph). In this context, it was stated that 'representatives of police authorities from European states' have taken part in the IWG. Switzerland also counts as one of the European states.

- h) Which agencies of other governments are or have temporarily been involved in the IWG (please list as far back in time as possible)?
- i) To what extent have private firms or institutions ever collaborated on IWG activities, and what more detailed information can the Federal Government provide on such activities?
- j) At what meetings has the IWG dealt with the phenomenon of what are described by the President of the Federal Criminal Police Office as purported 'Euroanarchists' (SPIEGEL ONLINE, 19 February 2011)?
- k) To what extent have authorities from Iceland ever taken part in international working groups or meetings concerned with undercover investigations, as far as the Federal Government is aware?

For reasons of confidentiality, the Federal Government is not able to respond to these questions in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The responses to these questions are therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

### 2. What organisational arrangements are in place for the work of the IWG?

The IWG's work is regulated by its 'terms of reference'.

- a) Who decides the agenda for each meeting, and how are the meetings prepared?

The agenda is determined by the chair on the basis of the topics proposed by the members or open agenda points that remain to be dealt with conclusively. The agenda is sent out by the chair with the invitations to the meeting. It is incumbent upon the participants to prepare themselves appropriately on the basis of the agenda itself.

- b) What arrangements are in place for the appointment of the group's chair?

The terms of reference provide for a rotating chair elected by the IWG's members. In order to ensure the consistent conduct of the group's business, the current chair is supported by their predecessor in this post and the deputy chair (who will succeed them at the end of their term).

- c) To whom are reports or minutes addressed?

Reports or minutes are addressed to the participants in the meetings.

3. What other subworking groups does the IWG have at present or has it had in the past, and what are or were their functions?
- a) How is the chair of a subworking group appointed and what organisational arrangements are in place for this?
  - b) What agencies of other governments are or have temporarily been involved in which IWG subworking groups (please list as far back in time as possible)?

For reasons of confidentiality, the Federal Government is not able to respond to these questions in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The responses to these questions are therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

4. What constitutes the concrete work of the International Business Secretariat (IBS)?
- a) What IBS meetings or telephone conferences have taken place when, where and chaired by whom, and what was the agenda of each of these gatherings?
  - b) Which agencies of which governments attend the IBS's meetings or make use of its other communication channels?
  - c) Who suggested the establishment of the IBS?
  - d) What agenda do the meetings of the IBS have, and what has been discussed via other channels of communication, including electronic channels?
  - e) In what way is the IBS concerned with the 'issues in the field of legend building' and the 'creation and maintenance of cover identities' (please indicate concrete activities) that were mentioned in Minutes of Bundestag Plenary Proceedings 17/154?

For reasons of confidentiality, the Federal Government is not able to respond to these questions in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The responses to these questions are therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

- f) How does the Federal Government come to the conclusion in its response to written question 17 in Bundestag Printed Paper 17/8637 that the IBS does not 'support either confidentiality or the organisation of cover identities', although its purpose was previously described as the 'creation and maintenance of cover

identities’?

The Federal Government’s comments on oral question 85 put by Andrej Hunko, Member of the German Bundestag (The Left Party), in Bundestag Printed Paper 17/8404, which are reproduced in Minutes of Bundestag Plenary Proceedings 17/154 of 25 January 2012 (Annex 65, third paragraph), and the first paragraph of the response of the Federal Government to written question 17 put on 8 February 2012 by Herbert Behrens, Member of the German Bundestag (The Left Party), in Bundestag Printed Paper 17/8637 of 10 February 2012 continue to apply.

The Federal Government did not ‘previously’ describe the purpose of the International Business Secretariat (IBS) ‘as the “creation and maintenance of cover identities”’ (as claimed in this question).

Rather, in its comments on the question put by Andrej Hunko, Member of the German Bundestag, the Federal Government stated that the IBS deals ‘separately with issues in the field of legend building, i.e. the creation and maintenance of cover identities for operational purposes.’ The second half of this sentence therefore serves not to specify the purpose for which the IBS is intended, but merely to explain the term ‘legend building’.

In its response to the question put by Herbert Behrens, Member of the German Bundestag, the Federal Government therefore stated that the IBS contributes to ‘the international exchange of experience about policing without being a legal entity in its own right’. Furthermore, the Federal Government has stated that, in consequence, the IBS also does not support ‘either confidentiality or the organisation of cover identities’.

It is therefore maintained that the purpose of the IBS is not the ‘creation and maintenance of cover identities’. Rather, as is evident from the agendas that are being made available (in classified form) in response to Question 4a, the purpose of the IBS’s meetings is merely the discussion of specialised policing issues that arise from this area of police tactics (e.g. technological options, legend building instruments, dangers of cover being compromised, etc.). By contrast, confidentiality and the organisation of cover identities in concrete individual cases are not dealt with in the IBS.

- g) To what extent is the IBS used in practice as a ‘platform for the international exchange of information’ by ‘competent psychologists’?

For reasons of confidentiality, the Federal Government is not able to respond to this question in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government’s preliminary remarks. The response to this question is therefore categorised as ‘classified material – confidential’ and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

5. What was the aim of the establishment of the European Cooperation Group on Undercover Activities (ECG), and who took the initiative for this, given that to date the Federal Government has merely been prepared to state this was done ‘at the suggestion of several national agencies’?



The primary aim of the establishment of the ECG was the promotion of international cooperation by law enforcement agencies at the European level with respect to the deployment of undercover investigators to combat organised crime.

For reasons of confidentiality, the Federal Government is not able to respond to the second part of this question in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The response to this part of the question is therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

- a) If it is not known who took the initiative, which 'national agencies' were involved?

Reference is made to the comments on Question 5.

- b) What organisational arrangements are in place for the work of the ECG?

The ECG's work is regulated by its terms of reference.

- c) Who determines the agenda for each meeting, and how are the meetings prepared?

The agenda is determined by the chair on the basis of topics proposed by the members or outstanding open agenda points. The agenda is sent out by the chair with the invitations to the meeting. It is incumbent upon the participants to prepare themselves appropriately on the basis of the agenda itself.

- d) What arrangements are in place for the appointment of the group's chair?

The terms of reference provide for a rotating chair elected by the members.

- e) How have participants been invited to the next meeting of the ECG in 2012 and by whom?
- f) What agenda has been sent out for this meeting.
- g) What papers do German agencies intend to give at the ECG in 2012, and what other contributions do they intend to make?

For reasons of confidentiality, the Federal Government is not able to respond to these questions in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The response to this question is therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

6. What other subworking groups does the ECG have at present or has it had in the past, and what are or were their functions?

For reasons of confidentiality, the Federal Government is not able to respond to this

question in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The response to this question is therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

- a) How is the chair of a subworking group appointed, and what organisational arrangements are in place for this purpose?

The chair and the organisation of a subworking group are determined by the members of the ECG.

- b) What divisions or other units of the BKA were involved in the working group that drew up a draft template for a Memorandum of Understanding for the Use of UC Officers in 2003?

For reasons of confidentiality, the Federal Government is not able to respond to this question in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The response to this question is therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

7. What contributions have Russia, Switzerland, Serbia, Turkey, Belgium, Denmark, France, the UK, Italy, Austria, Poland, Romania and Spain made at the seven meetings of the ECG over the last five years?
  - a) Which subworking groups have the different countries chaired and which topics have they been involved in discussing?

For reasons of confidentiality, the Federal Government is not able to respond to these questions in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The responses to these questions are therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

- b) At which meetings was the work of the British spy Mark Kennedy ('Mark Stone') raised from 2003 onward, something the Federal Government mentions for instance as having happened in 2011?

The covert deployment of the British police officer Mark Kennedy was raised at the ECG meeting in 2011.

8. What concrete issues in the fields of 'combatting organised crime' and 'politically motivated criminality' have been dealt with in the last five years?
  - a) What contributions have been made on these topics by which participants?
  - b) Can the Federal Government give two anonymised examples from the fields of organised crime and politically motivated criminality that illustrate what is meant by the discussion of 'concrete aspects of international cooperation' on the basis

of 'case studies'?

- c) At which meetings has the ECG deliberated on the phenomenon of purported 'Euroanarchists'?
- d) For what purpose has the police organisation Interpol been present at which meetings of the IWG or ECG, and what contributions has it made?
- e) To what extent have 'training measures' been discussed at the meetings of the ECG, and what were the concrete activities in question?
- f) Have private firms or institutions ever been invited to meetings of the ECG, and if not why not?
- g) Under what circumstances are private firms or institutions also invited to meetings of the ECG?

For reasons of confidentiality, the Federal Government is not able to respond to these questions in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The responses to these questions are therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

9. What was the agenda for the ECG's meeting in Germany in September 2006?

- a) What 'deliberations undertaken by different bodies to examine appropriate options for optimisation as a result of this case' did the Federal Government present at the ECG in 2011 in a contribution it describes as a brief account of the 'Mark Kennedy/Mark Stone' issue (Bundestag Printed Paper 17/7567)?
- b) What 'developments in the field of biometric applications' were discussed at this meeting?
- c) What concrete 'application[s] of operational logistics' for operations by undercover investigators were discussed in the paper given in 2011?

For reasons of confidentiality, the Federal Government is not able to respond to these questions in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The responses to these questions are therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

- d) What conclusions has the Federal Government drawn from the deployment of the uncovered British police spy Mark Kennedy, for example as it presented, drawing on his example, in the ECG under the title 'Deployment of Foreign Undercover Officers to Germany for Legend Building'?

Reference is made to the response of the Federal Government to question 10 of the minor interpellation answered in Bundestag Printed Paper 17/7567. The proposals mentioned in this response were adopted by the Standing Conference of the Interior Ministers of the Länder in the Federal Republic of Germany (IMK) at its autumn meeting in December 2011.

10. Is it true that 'informal, personal relationships' are 'of decisive significance for the secondment of undercover investigators', in the words of a BKA official reported by the police critic Heiner Busch (Heiner Busch with Elker Schäfer, Britta Grell and Wolf-Dieter Narr: *Polizeiliche Drogenbekämpfung: Eine internationale Verstrickung*; Münster; 1999)?

Personal contacts are an important building block in the field of international police cooperation, as they are in all forms of professional cooperation. This applies especially for the covert deployment of police officers, and also against the background of the special confidentiality requirements and the heightened threats associated with this field of work. Mutual confidence, both between the participating authorities at the organisational level and between their individual personnel, plays an important role here, but is not of 'decisive significance'.

Rather, it is the rules, limits and parameters that are imposed by national and international law, internal police regulations, specialised technical and empirical knowledge of policing issues, and the case-specific assessment of particular circumstances that are decisive for international cooperation in the field that is the subject of this question. In each individual case, the examination of these constraints is incumbent upon the competent police authorities, public prosecution services and courts irrespective of any 'informal, personal relationships' of the kind mentioned in the question.

- a) Can the Federal Government confirm the statement made by the BKA official quoted as saying that, the 'network put in place by the working group makes it possible to select the right undercover investigator with the necessary profile for each situation'?

No. The existence of the ECG and the IWG as international bodies and the personal contacts that may have been made at their meetings do not relieve the competent authorities of their obligation to make formal enquiries in order to ascertain whether a police officer who is to be deployed undercover can operate with the necessary technical and personal profile. In this respect, reference is made to the comments on Question 10.

- b) Does the Federal Government share the questioners' view that in this context the meetings of the IWG, like those of the ECG, certainly prepare the ground for concrete deployments, although the Federal Government asserted the opposite in this respect in earlier answers to parliamentary interpellations and sought to depict them merely as examples of the 'international exchange of experience on all matters relating to the covert deployment of police officers', accordingly claiming that 'no coordination or arrangement of cross-border operations' takes place in the ECG?

No.

- c) If not, why not?

The 'coordination or arrangement of cross-border operations' does not take place in the IWG and the ECG because these matters do not fall within the remits of these groups. The planning and conduct of deployments of undercover investigators are incumbent upon the competent authorities of the states in question. The exchanges of information that take place in the above groups serve the fundamental examination

of relevant topics relating to the deployment of undercover investigators, not the coordination of concrete operational situations.

11. In what way can the work of the IWG and the ECG be subjected to public or parliamentary scrutiny in Germany?

With regard to the ECG, reference is made to the response of the Federal Government to question 4m of the minor interpellation answered in Bundestag Printed Paper 17/5736. These comments also apply for the IWG.

a) What bodies of the Federal Government have received reports about these groups' work on a regular basis or in individual cases?

The Federal Government does not have any bodies concerned with this area of activity.

b) If reports are not submitted regularly, how has it actually been possible since the establishment of the IWG (or similar informal networks) and the ECG for parliamentarians to inquire about their existence and then obtain information about their work?

The parliamentary right to put questions also covers the activities of the Federal Government in the ECG and the IWG. Further to this, reference is made to the comments on Question 11.

c) Since the IWG and the ECG were established, what consideration has been given to the idea of placing them under the auspices of other institutions, for instance EU or United Nations bodies?

d) If such ideas have been considered, what militated against them?

For reasons of confidentiality, the Federal Government is not able to respond to these questions in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The responses to these questions are therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

12. How much new information has come to light concerning the criminal prosecution of the former British police spy Mark Kennedy, who committed arson in Berlin, a prosecution that is still being obstructed and on which the Federal Government has merely stated that it has 'discussed' these 'matters with the competent agencies on the British side' (Bundestag Printed Papers 17/5736 and 17/7567)?

The Federal Government has no new information concerning this issue. In particular, the Federal Government objects to the insinuation made in the question that justice is being obstructed in this case. As far as this is concerned, reference is made to the comments on Question 12a.

a) How does the Federal Government arrive at its conclusion that the two criminal offences committed by Mark Kennedy have already been prosecuted (response of the Federal Government to question 27b of the minor interpellation answered in Bundestag Printed Paper 17/5736)?

The Federal Government stated before the Committee on Internal Affairs of the German Bundestag (30th session of 26 January 2011, Minutes of the Committee on Internal Affairs No. 17/30) and in its response to question 27b of the minor interpellation answered in Bundestag Printed Paper 17/5736 that, as far as it is aware, appropriate investigations have been conducted and concluded into the two criminal offences committed by Mark Kennedy or Mark Stone that were revealed by media reports. In its comments on question 9 of the minor interpellation answered in Bundestag Printed Paper 17/7567, the Federal Government therefore stated that, to its knowledge, the two criminal offences committed by Mark Kennedy or Mark Stone had already been prosecuted.

- b) Why does the Federal Government's account of the matter not acknowledge that when at least one of the two crimes was taken to court the defendant used a false identity, 'Mark Stone', in his dealings with the Berlin public prosecution service and the offence was therefore not attributed to Mark Kennedy, as a consequence of which this crime has therefore not been prosecuted?

Reference is made to the comments on Question 12c.

- c) To what extent is it legally possible for an individual to have themselves prosecuted and sentenced by German public prosecution services and courts under a false name (without the knowledge of the institutions in question), and what regulations are there in this regard?

The Code of Criminal Procedure (StPO) does not contain any provision that permits the public prosecution service to bring charges against investigators employed by foreign police authorities under altered identities when they have been operating covertly and are legally to be classified in Germany as confidential informants (in this respect, reference is made to the response of the Federal Government to question 2 of the minor interpellation answered in Bundestag Printed Paper 17/4333). Nor does the Code of Criminal Procedure contain any provision that permits a criminal court to sentence a covertly operating investigator employed by a foreign police authority under an altered identity.

*De facto*, however, it cannot be ruled out that an individual may allow themselves to be prosecuted and sentenced under an identity they have assumed. A criminal sentence is imposed upon the individual against whom the charge or charges have been brought and who was actually present in court, even if the personal details they have provided are incorrect. The legal validity of a criminal sentence is not affected if the correct defendant took part in the trial under a false name (cf. Federal Court of Justice, *NStZ-RR*, 1996, p. 9; Düsseldorf Higher Regional Court, *NStZ*, 1994, p. 355; Beulke, in: Löwe/Rosenberg, *StPO* (26th edition), '§ 155', notes 5 and 10; Schoreit, in *KK-StPO*, 6th edition, '§ 155', note 7).

- d) What substantive information did the British Home Office supply when it 'constructively answered individual questions concerning the legal situation and structure of the authorities in Britain' for the Federal Ministry of the Interior (cf. Bundestag Printed Paper 17/7567, response of the Federal Government to Question 9b of the minor interpellation)?

In a letter dated April 2011, the British Home Office provided the Federal Government with information about the functions of the Association of Chief Police Officers (ACPO) and the National Public Order Intelligence Unit (NPOIU), as well as the legal parameters for 'undercover operations', and informed the Federal

Government of an investigation into the case of 'Mark Kennedy or Mark Stone' that was still ongoing at that time.

- e) What other, new information has been supplied since then on the internal police investigation into the case of 'Mark Kennedy or Mark Stone', for instance concerning the examination of the criminal offences he committed in Germany?

The Home Office subsequently drew the Federal Government's attention to the fact that the investigation mentioned in the comments on question 12d had been completed and the report on the matter was now being published by HM Inspectorate of Constabulary (HMIC). The final report, *A review of national police units which provide intelligence on criminality associated with protest*, was then published on 2 February 2012 at [www.hmic.gov.uk/media/review-of-national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-20120202.pdf](http://www.hmic.gov.uk/media/review-of-national-police-units-which-provide-intelligence-on-criminality-associated-with-protest-20120202.pdf).

- f) To what extent will the BKA continue to work for the crimes committed by Mark Kennedy in Germany and other countries to be punished and clearly attributed to Mark Kennedy so that they are taken into consideration for sentencing purposes if he commits arson again in future?

Within the federal system of the Federal Republic of Germany, the competence for criminal prosecution lies as a matter of principle with the Länder, and the BKA holds no special powers of investigation in the case under discussion. The BKA is not responsible for criminal prosecutions in other states.

13. To what extent are foreign police spies able to enter residences in Germany?

As concerns the permissibility of the entry of private residences by covertly operating investigators employed by a foreign police authority, reference is made with regard to repressive measures to the response of the Federal Government to question 2c of the minor interpellation answered in Bundestag Printed Paper 17/4333. The same applies for the field of police action to avert threats.

- a) In what cases is a judicial decision necessary for this?

With regard to repressive measures, reference is initially made to the response of the Federal Government to question 2c of the minor interpellation answered in Bundestag Printed Paper 17/4333. Since it is merely the consent of the occupant that is crucial to the permissibility of the entry of a private residence by covertly operating investigators employed by a foreign police authority, such an action does not require a judicial decision. The same applies for the field of police action to avert threats.

- b) In what cases may residences be entered without an official order?

Reference is made to the comments on Question 13a.

- c) In policing practice, how is a distinction drawn between the entry of a residence for the purposes of investigations and the entry of a residence for the purposes of what is known as 'legend building'?

Since in both cases it is the occupant's consent that is crucial to the permissibility of the entry of the residence, no such distinction is drawn in practice.

- d) How are the individuals affected or, indeed, parliamentarians to comprehend

this supposed distinction in retrospect?

Any measures taken are documented in the files, with their aims, the course of events and their results being recorded.

- e) To what extent can individuals affected by the prying of foreign police spies obtain legal security concerning the possibly illegal entry of their residences if they are not subsequently informed about these activities (please give concrete information)?

Since it is not a statutory power, but solely the consent of the occupant that is crucial to the permissibility of the entry of a private residence by covertly operating police officers employed by a foreign police authority, the person affected already knows that their residence has been entered.

- 14. What arrangements are in place to determine in general and in individual cases the conditions under which foreign undercover investigators may use hidden recorders, for instance for the constant transmission of the conversations that take place in a room via a switched-on mobile telephone or a modified watch, the use of which the former police spy Mark Kennedy has mentioned several times in the press?

Reference is made to the response of the Federal Republic to question 1b of the minor interpellation answered in Bundestag Printed Paper 17/5736. It is evident from this response that, with regard to repressive measures, the consent of the individual affected is crucial to the permissibility of such activities. The same applies for the field of police action to avert threats.

- a) Is the Federal Government aware whether Mark Kennedy or other British undercover investigators used hidden recorders in Germany?

For reasons of confidentiality, the Federal Government is not able to respond to this question in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The response to this question is therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

- b) In so far as the Federal Government first found out about these activities from subsequent reports, what regulations or laws would then have been contravened?

Since the consent of the persons affected is crucial to the permissibility of the deployment of the recording devices mentioned in question 14a, the contravention of a particular criminal procedural regulation can be ruled out. However, if the individual in question acted without permission, i.e. unlawfully (cf. Fischer, *StGB*, 59th edition, '§ 201', note 9), the crime defined in Section 201 of the Criminal Code (*StGB*), in particular Section 201(1)(1) *StGB*, may have been committed as a result of the use of hidden recording devices.

- 15. To what extent is the Federal Government aware of other legal or human rights opinions concerning the deployment of foreign undercover investigators, and the question of whether they infringe human rights and the right to privacy, or contravene other legislation at the national and EU levels (if known, please give references or enclose copies)?



The Federal Government is not aware of any relevant human rights standards specifically concerned with the deployment of foreign police officers who operate covertly. The European Court of Human Rights has repeatedly delivered judgements on the general permissibility of the deployment of undercover investigators. The issue has been examined in the light of the standard of the right to a fair trial, which is laid down in the first sentence of Article 6(1) of the European Convention on Human Rights (ECHR). In this respect, the European Court of Human Rights has ruled that the deployment of undercover investigators is permissible in principle (cf. the arguments set out in Meyer-Ladewig, *Handkommentar EMRK*, 3rd edition, 2011, 'Artikel 6', note 158). However, there must be an unambiguous and predictable procedure for the approval, conduct and monitoring of investigative measures.

Further legal opinions on the covert deployment of foreign police officers can be found in e.g. the following sources:

- Schomburg, Lagodny, Gleß, Hackner: *Internationale Rechtshilfe in Strafsachen*, 5th edition, C. H. Beck, Munich; 2012.
- Hackner, Schomburg, Lagodny, Wolf: *Internationale Rechtshilfe in Strafsachen: Ein Leitfaden für die Praxis*, C. H. Beck, Munich, 2003.
- Nack, in: *Karlsruher Kommentar zur Strafprozessordnung*, 6th edition, C. H. Beck, Munich, 2008, 'zu § 110a'.
- Federal Court of Justice, decision of 20 June 2007 – 1 StR 251/07, *NStZ*, 2007, p. 713.

16. Since when and at whose initiative has the Cross-Border Surveillance Working Group been in existence?

The first meeting of the CSW took place in 2005.

For reasons of confidentiality, the Federal Government is not able to respond to the second element of this question in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The response to this element of the question is therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

a) Which governments or other institutions (including private companies) take or have taken part (even temporarily) in the CSW and its meetings?

At present, representatives of mobile operations teams (or comparable units) from 12 EU Member States (apart from Germany, Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Spain and the UK) and Switzerland attend the CSW. Furthermore, Europol sends one representative to this group. Private companies have not taken part in its meetings to date.

b) What concrete substantive issues are discussed in the CSW?

- c) What 'secure and effective surveillance technologies' have been subjects of its meetings since the CSW was founded (Bundestag Printed Paper 17/5133; if all this information cannot be provided, please list for at least the last five years)?
- d) What concrete 'training content (fact-finding trips)' has the CSW previously discussed or proposed (please state content and provider)?
- e) To what extent are politically motivated cases also raised in the CSW in addition to 'organised and general criminality'?

For reasons of confidentiality, the Federal Government is not able to respond to these questions in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The responses to these questions are therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

17. What topics have been on the agenda at the CSW's meetings over the last five years?

- a) What problems or other phenomena that have required regulation have arisen as a result of 'cross-border observation' activities and have been discussed in the CSW as what the Federal Government terms 'associated problems' (Bundestag Printed Paper 17/5677)?
- b) To what extent is the CSW able to contribute to the 'optimisation of working procedures' in this field?
- c) What 'operative and tactical options' has the Federal Government most recently reported on to the CSW, given that Bundestag Printed Paper 17/5677 merely mentions that 'specific working methods of the participating countries' were raised?

For reasons of confidentiality, the Federal Government is not able to respond to these questions in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The responses to these questions are therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

- d) What 'legal parameters' are of significance in this context?

The legal foundations for the deployment of a mobile unit include, above all, the Code of Criminal Procedure (StPO), the Federal Criminal Police Office Act (BKAG), the Act on the Federal Police (BPolG) and the Customs Investigations Service Act (ZFdG); in addition to this, there are international treaties that, among other things, regulate cross-border observation operations.

- e) What 'mobile observation personnel' does the Federal Government employ who can be used for cross-border observation?

Within the province of the Federal Government, the BKA, the Federal Police and the Customs Investigation Service have mobile observation personnel. They only hold the power to engage in cross-border observation within the framework of valid laws

and regulations.

- f) What are the 'controlled deliveries' whose optimisation is dealt with by the CSW?

For reasons of confidentiality, the Federal Government is not able to respond to this question in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The response to this question is therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

- g) Since when and for what purpose has Europol been a member of the CSW?

To the knowledge of the Federal Government, Europol sends a representative to meetings of the CSW in order to contribute Europol's technical perspective.

- h) What contributions has the agency made in the last five years?

For reasons of confidentiality, the Federal Government is not able to respond to this question in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The response to this question is therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

18. At whose instigation did the meetings between the BKA and agencies from Belgium, Canada, France, Israel, Liechtenstein, Luxembourg, the Netherlands, Switzerland, the UK and the USA on the deployment of malicious software ('Trojans') by public agencies come about, meetings that are mentioned by the Federal Government in its response to written question 10 in Bundestag Printed Paper 17/8958?

- a) What further contacts concerned with the deployment of malicious software by public agencies have taken place in individual cases as a result of the meetings with agencies from Belgium, Canada, France, Israel, Liechtenstein, Luxembourg, the Netherlands, Switzerland, the UK and the USA?

The meetings were not just concerned with malicious software, but were also incident-related contacts (at the working level) between the BKA and foreign security agencies to discuss the deployment of surveillance software within the framework of the statutory constraints.

Working meetings on the deployment of surveillance software for the conduct of telecommunications interception at source:

- Date: 22/23 September 2010  
Attended by: BKA, Austria (Federal Criminal Police Office), Switzerland (Berne Cantonal Police/Federal Criminal Police), Luxembourg (Grand Ducal Police), Liechtenstein (National Police KRIPO/KOM VS)  
The BKA gave a single presentation on its experiences of the first operations involving telecommunications interception at source during the Expert Meeting on

Network Forensics at the BKA. The Expert Meeting on Network Forensics primarily serves the transfer of knowledge in the field of network forensic investigations.

Arranged by:

The Expert Meeting on Network Forensics is organised by the BKA.

Further contacts:

The event did not lead directly to any further contacts with the participating foreign security services on particular topics or individual cases.

- Date: 22/23 October 2010

Attended by: Germany (BKA, Bavarian Land Criminal Police Office (BKLA)), the Netherlands (Digital Investigations Group/DSRT-ULI), Belgium (Federal Police/NTSU)

The software products marketed by Gamma Group were presented by company representatives at a working meeting in Belgium.

Arranged by:

Belgium invited the participants to the working meeting.

Further contacts:

The event did not lead directly to any further contacts with the participating foreign security services on particular topics or individual cases.

- Date: 27 September 2011

Attended by: Germany (BKA, Federal Office for the Protection of the Constitution (BfV)), France (DCRI)

The BKA gave a paper on the conduct of telecommunications interception at source within the BKA at a working meeting in Germany.

Arranged by:

France invited the participants to the working meeting.

Further contacts:

The event did not lead directly to any further contacts with the participating foreign security service on particular topics or individual cases.

- Date: 30 January-1 February 2012

Attended by: Federal Ministry of the Interior (BMI), BKA, Israel Police (LAHAV)

The BKA gave a technical paper on operations involving telecommunications interception at source in Germany during a conference on 'law enforcement' in Israel.

Arranged/initiated by:

Israel invited the participants to the conference.

Further contacts:

The event did not lead directly to any further contacts with the participating foreign security service on particular topics or individual cases.

Working meetings with foreign security agencies on the deployment of surveillance software for the conduct of online searches:

- Date: 19/20 February 2008

Attended by: BKA, Canada (RCMP)

Fundamental exchange of experience concerning the legal preconditions for, and technological and tactical aspects of online searches.

Arranged/initiated by:

The initiative for the exchange of experience came from the German side.

Further contacts:

The event did not lead directly to any further contacts with the participating foreign security service on particular topics or individual cases.

- Date: 22 February 2008  
Attended by: BKA, USA (FBI)  
Fundamental exchange of experience concerning legal preconditions.  
Arranged/initiated by:  
The initiative for the exchange of experience came from the German side.  
Further contacts:  
The event did not lead directly to any further contacts with the participating foreign security service on particular topics or individual cases.
- Date: 15 May 2008  
Attended by: BKA, Netherlands (KLPD)  
Fundamental exchange of experience concerning legal preconditions.  
Arranged/initiated by:  
The initiative for the exchange of experience came from the German side.  
Further contacts:  
The event did not lead directly to any further contacts with the participating foreign security service on particular topics or individual cases.
- Date: 6 June 2008  
Attended by: BKA, Switzerland (FedPol)  
Fundamental exchange of experience concerning the legal preconditions for, and technological and tactical aspects of online searches.  
Arranged/initiated by:  
The initiative for the exchange of experience came from the German side.  
Further contacts:  
The event did not lead directly to any further contacts with the participating foreign security service on particular topics or individual cases.
- Date: 25 June 2008  
Attended by: BKA, Austria (Ministry of the Interior/Federal Criminal Police Office)  
Fundamental exchange of experience concerning legal preconditions.  
Arranged/initiated by:  
The initiative for the exchange of experience came from Austria.  
Further contacts:  
The event did not lead directly to any further contacts with the participating foreign security service on particular topics or individual cases.
- Date: 6 July 2008  
Attended by: BKA, UK (SOCA)  
Fundamental exchange of experience concerning the legal preconditions for, and technological and tactical aspects of online searches.  
Arranged/initiated by:  
The initiative for the exchange of experience came from the German side.  
Further contacts:  
The event did not lead directly to any further contacts with the participating foreign security service on particular topics or individual cases.

- b) To what extent was the participation of the British company Gamma in the meeting on 22/23 October 2010 fundamental to the subsequent procurement of malicious software from this company by the BKA?

The assessment of FinSpy, the software product for the implementation of telecommunications interception at source presented at the working meeting in Belgium (22/23 October 2010), was fundamentally positive from a technical point of view. Following this event, as part of the BKA's usual market observation activities, it was therefore examined whether the software complied with the relevant legal, technical and technological standards and expectations, and was in principle suitable for the conduct of telecommunications interception at source within the BKA. For this purpose, the BKA purchased a licence for the FinSpy software for a limited period of time for test purposes in early 2011.

- c) With regard to the 'exchange of information' among international police authorities, what are the differences between
- i) technological,
  - ii) legal and
  - iii) tactical aspects?

The subjects covered by exchanges of experience on technological, legal and tactical aspects can be outlined as follows:

- Technological aspects: discussion of technological parameters for the deployment of surveillance software in telecommunications interception at source or online searches.
- Legal aspects: discussion of the legal foundations for the performance of telecommunications interception at source and online searches, including statutory provisions to ensure IT security and data protection.
- Tactical aspects: discussion of approaches to the installation and covert operation of surveillance software during telecommunications interception at source or online searches on target systems.

- d) What would be covered by a BKA 'technical paper' of the kind given to the Israel Police in February 2012.

The technical paper dealt with the following aspects of telecommunications interception at source in a compressed form:

- Definition
- Why it is needed
- Legal foundations
- Implementation of measures within the BKA
- Action to ensure information security within the BKA
- Categorical differentiation from online searches

In addition to this, the technical paper contained information on the recent progress that has been made within the BKA on the establishment of a Competence Centre for Information Technology-Based Surveillance, the tasks associated with this project and the concept for its implementation within the BKA.

- e) To what extent did the BKA 'technical paper' delivered to the Israel Police take account of the public debate about the legality and proportionality of the deployment of malicious software by the state, a debate that has been influenced by the media for weeks on end in Germany, Switzerland and Austria with reports and articles on the subject that support the authorities' line?

The paper did not discuss malicious software, but the deployment of surveillance software within the framework laid down by the statutory standards. Its legal foundations, which also include the legality and proportionality of the deployment, were components of the paper.

19. To what extent do German secret services or other agencies of the German Federation cooperate with the European Joint Situation Center (SitCen)?

- a) Which working groups or subworking groups exist for this purpose, and what arrangements are there for the issue of invitations to meetings, their preparation and their conduct?
- b) What if any informal working groups for the 'exchange of experience' or 'pure communication platforms' are there in addition to this?
- c) In what way are the German Land offices for the protection of the constitution involved in the working groups' cooperative activities?
- d) What information is exchanged between the participating agencies?
- e) What arrangements are there for the exchange of 'assessed intelligence' and 'raw intelligence'?
- f) To what extent does the SitCen assess 'open sources', and what tools are used for this purpose?

The publication of the information requested on the European Union Intelligence Analysis Center (INTCEN, previously: European Joint Situation Center (SITCEN)) is out of the question for reasons of confidentiality.

This is information that would allow inferences to be drawn concerning the work of the BfV and the Federal Intelligence Service (BND), as well as their performance of their statutory duties. The publication of this information would permanently disrupt the intelligence work of the BfV and BND, and impair their functionality. The concern is that intelligence activities to combat terrorism could be significantly impeded and consequently the wellbeing of the state threatened. The necessary consideration of the interest in confidentiality on the one hand and the fundamentally comprehensive parliamentary right to ask questions on the other hand therefore leads to the conclusion that information categorised as 'classified material – confidential' may only be supplied to the Document Security Office of the German Bundestag. The responses to these questions may therefore be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

20. What is the substantive content of the 'situation assessment' that was drawn up by the SitCen on the phenomenon of 'anarchism' in October 2011 (Bundestag Printed Paper 17/8279)?

- a) What was the content of the contribution made by the Federal Office for the

Protection of the Constitution (BfV) on this topic?

Reference is made to the Federal Government's response to written question 27 put by Andrej Hunko, Member of the German Bundestag (The Left Party), in Bundestag Printed Paper 17/8279 of 30 December 2011.

- b) On what topics has the BfV made contributions in the last two years?

The publication of the information requested does not come into question for reasons of confidentiality. Reference is made to the comments on Question 19. The response to this question may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

21. What cooperation is there between German institutions and the Civilian Intelligence Cell (CIC) of the SitCen and the 'Club de Berne'?

- a) What is the composition of the CIC in particular, and what role do agencies and personnel of the Federal Government and the EU play in this connection?
- b) In particular, what is the composition of the 'Club de Berne', and what role do agencies and personnel of the Federal Government and the EU play in this connection?
- c) Which agencies of the Federal Government and the EU take part in the Club de Berne's Counter Terrorism Group (CTG)?

The publication of the information requested is out of the question for reasons of confidentiality. Reference is made to the comments on Question 19. Furthermore, the information requested in questions 21a to 21c cannot be published on account of the restrictions imposed by what is known as the 'third-party rule'. The third-party rule applies to the international exchange of information by intelligence services of the kind that takes place within the Counter Terrorism Group (CTG). Information is only exchanged between intelligence services provided the source of the information and the information itself will not be disclosed. Any failure to comply with this rule would result in the international exchange of information between intelligence services ceasing to be possible in this field. The composition of the CTG is also information covered by the third-party rule because it would allow inferences to be drawn about cooperative activities to combat terrorism. None of these pieces of information may be passed on to a third party without the permission of the intelligence service or state from which they originate: depending on the information, permission for its dissemination may have to be given by more than one intelligence service or state. Disclosure to 'third parties' of the kind that would ensue if it were published in a Bundestag Printed Paper is ruled out as a matter of principle. The responses to these questions may therefore only be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

- d) How often do the CIC and CTG meet, and how are their meetings prepared?
- e) What substantive issues have been on the agenda for meetings of the CTG and CIC in the last two years?
- f) To whom are the 'threat analyses' drawn up by the CIC or CTG, or other findings communicated, and what procedural rules are there for this?
- g) What other institutions or agencies do the CIC and CTG regularly cooperate



with in joint working groups?

The provision of detailed information on cooperation and substantive work with the CTG and the Civilian Intelligence Cell (CIC) that goes beyond the responses to Questions 21a to 21c is out of the question – even in a classified form – for reasons of its evident sensitivity.

This is information that would allow inferences to be drawn concerning the BfV's work and its performance of its statutory duties. The publication of this information would permanently disrupt the intelligence work of the BfV and impair its functionality. The concern is that intelligence activities to combat terrorism would be significantly impeded and consequently the wellbeing of the state threatened. Due to the fundamental significance of the BfV's cooperation with the CTG/CIC and the evident sensitivity of the individual pieces of information requested, even a negligible risk of this information being disclosed is also to be avoided. The necessary consideration of the interest in confidentiality on the one hand and the fundamentally comprehensive parliamentary right to ask questions on the other hand therefore leads to the conclusion that even the classified provision of this information to the Document Security Office of the German Bundestag is out of the question in the present instance.

22. To what extent do German agencies cooperate with the Financial Action Task Force (FATF), which has its headquarters at the Organisation for Economic Cooperation and Development?

As a founder member, Germany is engaged in the working groups of the Financial Action Task Force (FATF) and takes part in the meetings of the FATF Plenary.

- a) What is the FATF's function, and what roles do its headquarters, secretariats or other organisational units have?
- b) What arrangements are there for cooperation between the FATF's members?

The FATF is an international body with a budget and staff that is based at the Organisation for Economic Cooperation and Development (OECD) in Paris.

The main functions of the FATF include drawing up and further developing standards for action to combat money laundering, and the financing of terrorism and proliferation ('FATF Recommendations'). In this respect, FATF consults the private sector and civil society, i.e. affected or interested industry associations and non-governmental organisations, both regularly via the FATF Private Sector Consultative Forum and in response to particular incidents. Furthermore, the FATF monitors the implementation of its Recommendations, to which the FATF members have committed, using what are known as peer reviews conducted by teams of inspectors that are primarily made up of experts from the FATF member states. When these reviews are carried out, the FATF also identifies non-cooperative jurisdictions and other countries where grave deficiencies have been detected in the measures adopted to prevent money laundering and terrorist financing, and coordinates the action taken by its members to achieve better protection against the risks caused by such deficiencies and stronger compliance with the FATF standards. Apart from this, the FATF analyses trends and methods of money laundering and terrorist financing, as well as other threats to the integrity of the financial system.

The FATF itself has 36 members at present. Well over 180 countries are involved in the implementation of the FATF Recommendations through a global network of regional bodies organised on the FATF model (what are known as FATF-style regional bodies). Founded by the G7 in 1989, the FATF works on the basis of a regularly renewed mandate from the ministers of the FATF members, to whom it also reports. The FATF's decision-making organ is the Plenary, which meets three times a year. The Plenary is chaired by the FATF President, while the presidency rotates each year between the organisation's members. The President and the entire FATF are supported by the FATF Secretariat. The FATF's working groups meet to prepare plenary decisions, deliberating on the discussion papers drawn up by the FATF Secretariat about numerous topics related to the prevention of money laundering, and the prevention of the financing of terrorism and proliferation, and submitting proposals to the plenary for decisions within the framework laid down by the organisation's mandate. The meetings of the FATF working groups are open to all its members.

- c) To what extent is the FATF concerned with the implementation of new laws and powers for law enforcement agencies, the procurement of new surveillance technologies or police cooperation arrangements, and to what extent does it draw up expert opinions, rankings or other kinds of report?
- d) To what extent does the FATF exert pressure on governments to adopt new laws and powers for law enforcement agencies, procure surveillance technologies or conclude police cooperation arrangements, as described in the report by Statewatch and the Transnational Institute (TNI) entitled *Counter-terrorism, 'policy laundering' and the FATF: legalising surveillance, regulating civil society* (February 2012).

The FATF merely sets standards that are adhered to in a general form, and prescribe the measures countries have to provide for in principle within the framework of their criminal and regulatory legislation, and the due diligence obligations to be fulfilled by financial institutions, and other enterprises and professional groups, put in place requirements concerning transparent ownership and control structures for legal entities and legal constructs, demand the establishment of competent agencies with appropriate functions and powers to combat money laundering and terrorist financing, and contain provisions for cross-border cooperation in these fields. It is primarily FATF Recommendations 30 and 31, as they were adopted in February 2012 following a review of the FATF standards, that are relevant at the substantive level as far as police investigations and law enforcement are concerned. From the point of view of the FATF, the changes made have created clarity with regard to the role and functions of the agencies responsible for the fight against money laundering and terrorist financing, and lay down the range of investigative methods and powers that these agencies should have at their disposal.

The FATF is aware that states have different legal systems and therefore cannot be obliged to take identical measures to counter the risks of money laundering, and the financing of terrorism and proliferation. When a peer review is carried out, the FATF consequently investigates whether the legislative, regulatory or operative measures taken by the state effectively achieve the goals set in the FATF Recommendations or fall short of them. The mutual evaluation reports summarise the results and highlight areas where the FATF sees a need for improvement. The FATF does not draw up either rankings or expert opinions on individual issues. In the follow-up procedure that takes place after the peer review, the FATF assesses the extent to which the

state has made progress in addressing the deficiencies detected. Should the progress made be insufficient, this can result in the imposition of enhanced reporting obligations, or graduated measures such as letters to the competent ministers in a country, visits by high-ranking delegates that draw attention to the FATF's concerns or public calls for countermeasures to reduce the risks that result from deficiencies, such as rules that require financial institutions to apply specific elements of strengthened due diligence obligations when processing transactions with the country in question, potentially going as far as the suspension of a country's membership or its exclusion from the FATF.

23. In what ways are German agencies cooperating with the United Nations Office on Drugs and Crime (UNODC)?

Within the UN system, UNODC is the central partner for international action to fight criminality. Germany therefore uses financial grants to support various projects conducted by UNODC to combat organised crime, trafficking in drugs and human beings, money laundering, corruption and terrorism. Appropriate project applications are forwarded by UNODC through diplomatic channels to the Federal Government, which examines these applications individually. If an application is assessed positively, a grant agreement is concluded.

a) What working groups or subworking groups exist for this purpose?

To the knowledge of the Federal Government, the UNODC has no working groups or subworking groups.

b) What if any informal working groups for the 'exchange of experience' or 'pure communication platforms' are there in addition to this?

To the knowledge of the Federal Government, the UNODC has no informal working groups or subworking groups.

c) What are the arrangements for the preparation and conduct of any meetings or research projects?

Reference is made to the comments on questions 23a and 23b.

24. What topics were addressed in the individual papers given at the conference 'Travel movements by terrorist networks', which was held by the Federal Ministry of the Interior on 23 and 24 June 2011 in Berlin (Bundestag Printed Paper 17/8279).

The following blocks of themes were dealt with at the conference 'Travel movements by terrorist networks – Which instruments help European security authorities prevent attacks':

- Travel movements of terrorist networks: threat assessment (networks, developments, methods, examples)
- Available instruments
- Possible new instruments: passenger name records, electronic system for travel authorisation, etc.

a) What instruments to identify and prevent attacks from international terrorist networks using information about their travel movements did German security

agencies present at the conference?

German security agencies presented information on the consultations that take place between security agencies and the central authorities of other states under Article 22 of Regulation (EC) 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code).

- b) What security agencies and ministries of the 25 EU Member States took part in the conference?

The conference was attended by participants from 16 EU Member States: Germany, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, France, Hungary, Italy, Lithuania, the Netherlands, Poland, Romania, Spain, Sweden and the UK. Some representatives came from ministries of the interior/home affairs, foreign affairs, defence and justice, some from embassies and some from security agencies with police and intelligence functions.

- c) What security agencies of the German Federation were present at the Conference?

The conference was attended by representatives of the Federal Ministry of the Interior, the BfV, the BKA, the BND and Military Counterintelligence (MAD).

25. What if any informal working groups for the 'exchange of experience' or 'pure communication platforms' exist at the level of the EU police agency Europol, and which agencies of the Federal Government take part in them?

- a) To what extent do which Europol departments concern themselves with 'informant experts, 'cross-border surveillance' and 'controlled deliveries experts' (Bundestag Printed Paper 17/5133)?
- b) How do the participants communicate on these topics, and what meetings take place to discuss them?
- c) What individual 'expert websites' have been set up to date by the Europol Platform for Experts (EPE), and how do agencies of the Federal Government contribute to them?

For reasons of confidentiality, the Federal Government is not able to respond to these questions in the part of the answer to this minor interpellation that is intended for publication. Reference is made to the comments in section 2 of the Federal Government's preliminary remarks. The responses to these questions are therefore categorised as 'classified material – confidential' and may be consulted at the Document Security Office of the German Bundestag in accordance with the Rules on Document Security.

26. Does the BKA official who was present recall at least some of the companies who took part in the conference on the monitoring of animal rights activism held by Europol and Eurojust on 18 July 2011, given that the Federal Government has hitherto maintained silence about those in attendance because there is supposedly no list of participants (Bundestag Printed Paper 17/8677).

The Federal Government objects to the insinuation that it possess a list of participants but does not wish to reveal its contents.

The above conference, which incidentally took place on 12 and 13 July 2011 (and not on 18 July 2011), was attended by representatives of pharmaceutical companies and the fur industry, representatives of their industry associations and representatives of companies that have been targeted by violent animal rights activists in the past. The BKA official who attended the conference can recall representatives from Novartis, GlaxoSmithKline, Sanofi-Aventis, AstraZeneca, the European Fur Breeders Association (EFBA), and the European Federation of Pharmaceutical Industries and Associations (EFPIA).

- a) Given that the official who was present seems unable to recall a single one of the 35 participating companies just eight months later, how can the questioners obtain a complete list of the representatives of the animal processing industry who attended the event?

Since the Federal Government does not have the information requested at its disposal, the questioners are recommended to put their inquiry directly to Europol or Eurojust. Apart from this, reference is made to the comments on Question 26.

- b) What subjects addressed in the papers delivered by representatives of the pharmaceutical or animal processing industries can the BKA official who was present recall, since the Federal Government merely refers to them as surveys of the current situation?

The representatives from pharmaceutical companies, the fur industry and their industry associations gave overviews of past and present activities by militant animal rights extremists that have been damaging to their companies (the 'state of play').

27. On what topics did the delegations from Greece, Italy, the UK, France and Spain speak at the meeting on Violent Single Issue Terrorism organised by Eurojust on 13 April 2011, which the Federal Government mentions in Bundestag Printed Paper 17/8961 (please attach the titles of the papers and a rough summary of their contents)?

The Federal Government does not have any information on the topics and contents of the papers mentioned. Representatives of Eurojust's German Desk and the Public Prosecutor General at the Federal Court of Justice (GBA) attended the exchange of experience. However, no notes were made by the German participants who were present.

- a) What specific questions were asked in the questionnaire circulated by Eurojust on 'VSIE/T' (please attach original questionnaire)?

The questions in the questionnaire were as follows:

1. Have you conducted prosecutions in cases of violent single issue extremism? If yes, which criminal offences were charged? (e.g. for acts of arson attack, mail bombs, blackmailing, product contamination, violence against property and physical integrity, other)
2. Is VSIE considered an act of terrorism in your country?
3. Do you have relevant court decisions in these cases (statistics, available judgements) which you can share?

4. What good practices have you identified during investigations and prosecutions in criminal proceedings?
5. What legal and practical obstacles have you identified at these stages?
6. Do you consider your domestic legislation sufficient to address the issues identified as VSIE/T? Do you see a need for legislative changes, including a legal definition of VSIE/T?
7. Do national surveys or statistics exist on the phenomenon of VSIE/T in your country?
8. Have you encountered obstacles with regard to international cooperation in VSIE/T cases? Can you please provide examples?
9. Have you referred or considered referring cases involving VSIE/T to Eurojust for coordination?
10. Have you established special police, judicial or other units to counter VSIE/T? Which good practices have you identified here?
11. Is there cooperation with the private sector to counter VSIE/T? Are there specific protection programs?
12. Do you have any other comments or remarks?

b) What did Germany's Federal agencies reply in the questionnaire?

The questions were answered by Eurojust's German Desk. Questions 1 to 3 and 6 to 12 were all answered 'no'. No answers were given to questions 4 and 5.

28. Which states and institutions has the EU agency Eurojust previously concluded working agreements with, and what other states and institutions is it in contact with in connection with future planned agreements?

With regard to existing and planned Eurojust cooperation or working agreements, the Federal Government refers to the recent account in Council Document 6758/12 JAIEX 6 of 1 March 2012.

a) What is the substantive content of the draft memorandums of understanding (MoUs) with the police organisation Interpol and the Council of Europe Group of States against Corruption (GRECO)?

The Federal Government has no more detailed information concerning the substantive contents of the drafts that are mentioned.

To date, the Federal Government has not seen a proposed text on formalised cooperation with the Council of Europe Group of States against Corruption (GRECO). The Member States of the European Union have not been involved in this process by Eurojust; the Federal Government became aware of the project because it was mentioned in Council Document 6758/12 JAIEX 6 of 1 March 2012. However,

there have already been contacts between Eurojust and the GRECO Secretariat at the Council of Europe since 2009. In this context, according to the information at the Federal Government's disposal, there is also a desire to demonstrate a willingness to engage in reciprocal cooperation. Such cooperation would not encompass any exchange of operative information or personal data. This cooperation should be compatible with the European Union's involvement in GRECO as foreseen in the Stockholm Programme.

With regard to the memorandum of understanding (MoU) between Eurojust and Interpol, the Member States were informed at the meeting of the Council's JAIEX working party on 17 February 2012 by a representative of the Eurojust Administration that Eurojust intends to take up negotiations with Interpol on this MoU. A proposed text was not presented to the Member States at that time, and the Federal Government has not been aware of one to date either. In response to a query from the German delegation at the JAIEX meeting as to whether the draft MoU was intended to provide for any exchange of personal data between Eurojust and Interpol, the representative of Eurojust stated that this was not the case.

- b) Who took the initiative for the draft MoU with Interpol, and which unit has been entrusted with this matter?

The Federal Government has no information about who took the initiative for the MoU between Eurojust and Interpol. The Eurojust Administration and, within the Administration, the Legal Service and the Eurojust External Relations Team, which also includes members of some of Eurojust's national desks, are engaged with the conduct of the negotiations.

- c) How was it established that this step was necessary?

The Federal Government does not have any more detailed information on this question. In response to a query about this issue from the German Delegation at the Council's JAIEX working party on 17 February 2012, the representative of the Eurojust administration explained that Article 26a(1)(b)(iii) in conjunction with Article 26a(2) of Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime (OJ, L 138, 4 June 2009, p. 14) expressly provides for an agreement concerning cooperation with Interpol.

- d) Is there a written document on this matter that has been issued by the Joint Supervisory Body, which has to give its approval to any such MoU?

The Federal Government is not aware of a written document. As a matter of principle, Eurojust's Joint Supervisory Body (JSB) provides information about all negotiations with third states or other institutions. However, the JSB is only required to deliver a formal opinion prior to the conclusion of an agreement as provided for by Article 26(2) of the Eurojust Decision. In the case of an MoU that does not provide for any operative cooperation or any exchange of personal data, Eurojust's practice to date has been for no opinion to be delivered. All written opinions issued by the JSB are published on the Internet (<http://eurojust.europa.eu/doclibrary/Eurojust-framework/jsb/Pages/opinions.aspx>).

- e) If no written document exists, how can the consent of the Joint Supervisory

Body be understood by the questioners?

Reference is made to the comments on question 28d.

- f) What further institutions or other agencies does Eurojust cooperate with regularly in joint working groups?

The Federal Government has only incomplete information about the institutions or other agencies Eurojust cooperates regularly with in joint working groups. Eurojust is an independent EU body that determines its working methods itself within the framework of the provisions laid down in European law. The Eurojust Decision makes no provision for the formal involvement of European Union Member States in the establishment or business of the organisation's working groups. However, the Federal Government is able to confirm that representatives of Eurojust – some of whom come from the Eurojust College, others from the Eurojust administration – attend meetings of Council working parties when they discuss topics that fall within Eurojust's sphere of responsibility.

29. What is the substantive content of the draft for the planned MoU between the European Commission and the EU agency Eurojust?

The Federal Government has no recent information concerning the substantive content of the MoU between Eurojust and the Commission. At present, the MoU is still under negotiation and has therefore not yet entered into force. The Federal Government is not involved in the negotiations. According to the draft text dated October 2011 with which the Federal Government is familiar (see Council Document 15962/11 COPEN 288), the MoU is to contain general arrangements that create a formal basis for the cooperation between Eurojust and the European Commission that has been taking place for ten years now. There is no intention to establish new legal obligations. In particular, no operative cooperation between Eurojust and the Commission is to be provided for as far as the Federal Government is aware.

- a) What character is the agreement intended to have?

The term 'memorandum of understanding' may denote either an informal understanding, such as a declaration of intent, or a binding legal agreement. The Federal Government tends to the opinion that, in view of the formal features and substantive content that have been made public to date, the MoU that has been put forward is to be regarded as a binding agreement. Article 11(3) of the Eurojust Decision provides for Eurojust to be able to make the necessary practical arrangements to enhance its cooperation with the Commission.

- b) What fields of work are to be covered by the MoU?

The MoU will deal in particular with the reciprocal exchange of information about administrative matters (cf. Articles 4 to 7 and 12 to 16) and dialogue about current developments in legal policy (cf. Articles 8, 9, 10 and 11). The MoU will not deal with Eurojust's law enforcement activities and the work of the Member States' national desks. In so far as Article 2 provides for the periodic participation of Commission representatives in the meetings of the Eurojust College, the express intention is that this should only apply if no operative questions are to be discussed.