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ANNEX

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NOTE

from: General Secretariat

to: Working Party on Terrorism

Subject : Evaluation of National Anti-Terrorist Arrangements
Report about Germany, 8-12 December 2003 and 9-12 February 2004

Evaluation of Germany , 8-12 December 2003 and 9-12 February 2004

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1. Terrorism Situation

Terrorism in Germany is defined¹, in particular as a sustained fight for political aims to be reached with attacks against life, body and property, in particular by committing serious crimes as murder, manslaughter, kidnapping, arson or bomb attacks.

1.1 Domestic Terrorism

As the most significant form of left-wing-terrorism, since the ending of the 60ies, for almost 20 years the RAF² tried to jeopardise the existing order of the German State and the society by committing murders and bomb attacks with almost 40 people killed and more than 100 injured persons.

The right-wing-terrorism had a hot phase from 1977 until 1982. In 2003 a grouping was cracked down, which, according to current investigation findings, had been planning an attack with explosives. Though consequently prosecuted further plans or attacks by groups or single persons cannot be excluded.

1.2 International Terrorism

Germany's experience with international terrorism started in 1972 with the attack of the Black September, a Palestinian terrorist organisation, against the Israeli Olympic team. In 1986, Libyan terrorists committed an explosive attack on a Berlin discotheque, when 3 people died and 200 were injured.

¹ By law most notably in Article 129a of the Federal Penal Code in accordance with the Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism

² Red Army Fraction - Rote Armee Fraktion - the former Baader-Meinhof-Group (1970 - 1998)

9/11 stands for a new dimension of the threat of Islamist terrorism, followed by further attacks³, which all clearly show that the international community of States still is and in future will be threatened by attacks of Islamistic terrorist groups. The most dangerous of these organisations, the Arab Mudjahedin are composed of small groups and single persons of Al Qaeda as well as the non-aligned-Mudjahedin. These networks have a highly developed infrastructure and are supported by money, false identification documents and mobile phones. On the law enforcement level there are no doubts that the 9/11 attacks have been planned and committed by offenders of the environment of Usama Ben Ladin, the leading personality in the international network of the Arab Mudjahedin whose aim is the Jihad⁴.

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For the time being, there have been no terrorist attacks in Germany of the Arab Mudjahedin. Germany however must not only be seen as a place of rest and retreat for terrorist groups but as a place for the preparation of attacks too. According to investigations, three of the 9/11 offenders were staying in Germany for a while. German security agencies assume that there still might be a number of members, supporters and followers of Arab Mudjahedin, Al Qaeda or their environment staying in Germany.

The USA still are seen as the priority aim, followed by its allies in the IRAQ war. As a consequence of the internationalisation of the Jihad however, Germany as well as other European states might become aims of attacks as well. In March 2003, 4 members of the so called Meliani-group in the Frankfurt/Main-area have been sentenced to imprisonment between 10 and 12 years because of being part of a terrorist organisation as non-aligned-Mudjahedin and preparing an explosive attack on the Christmas market in Strasbourg/France.

³ E.g. Djerba/Tunisia in April 2002, Bali/Indonesia in October 2002, Madrid/ Spain in March 2004

⁴ Holy war against all unbelievers

2. Structure of Authorities

2.1 General Structure

The Federal Republic of Germany is not a unitary but a federal state, made up of its constituent parts, the 16 Bundesländer, and the Federation. Matters of the external security of the State are within the competence of the Federation. Matters of the internal security are in principle the responsibility of the Länder, however the basic law in certain areas gives restricted responsibilities to the Federation.

Germany, being divided since World War II and reunited in 1990, today has a total population of around 82,5 million inhabitants. The Basic Law, valid since 1949, is since the reunion in force for the whole of Germany.

On the international level, Germany has signed all 12 UN-Counter-Terrorism Conventions and ratified 11. It supports the work of the UN Security Council and has implemented the obligations from the Resolutions on the fight against terrorism. It promotes the work of the UN Security Council's Counter-Terrorism Committee and is member of the Financial Action Task Force against money laundering and terrorism financing, of which all 40 recommendations against money laundering and 8 special recommendations have been implemented. Moreover, Germany belongs to the G8, dealing with questions of police and criminal law cooperation as well as the exchange of information between criminal prosecution authorities **NOT DECLASSIFIED**.

In the framework of the EU, Germany actively participates in the fight against terrorism, including the measures mentioned in the EU Council Decision on the Fight against Terrorism of 25 March 2004 and the Framework Decision of 13 June 2002 on the European arrest warrant.

2.2 Political and Security Structure

Organs of the Federation such as the "Bundestag" (Federal Parliament) and the "Bundesregierung" (Federal Government) exist side-by-side with those of the Länder - the Land Parliaments and Governments, for example. This federal structure - to be understood within the context of Germany's historical evolution - has the effect of allocating state authority between the federal and the Land levels. The Länder participate in the legislative work and administration of the Federation by taking their place in the "Bundesrat" (Senate which comprises members of the Land governments).

Länder Level

Since matters of the internal security referring to the German Constitution basically are a concern of the 16 Länder, the security services, the police forces and the prosecutors of the Länder are responsible for law and order, for the prevention and law enforcement in respect of criminal offences that occur on their territories.

Federal Level

Since the German Constitution has given special responsibility to the Federation, as refers to the cooperation of the Federation and the Länder on matters of internal security, special law enforcement and security agencies have been developed at federal level to deal with these items.

The Federal Chancellery and the Federal Ministries of Interior and Justice are in the lead for combating and preventing terrorism.

Law Enforcement Agencies on Federal and on Länder Level

- the Federal Public Prosecutor General⁵, subordinated to the Federal Ministry of Justice, the Higher Regional Courts⁶ and the Federal Court of Justice⁷ are competent for the prosecution of terrorist acts;
- on the level of the Länder, the Public Prosecutors Offices⁸ are subordinated to the respective Land Ministry of Justice;
- the Federal Criminal Police Office⁹, subordinated to the Federal Ministry of Interior and inter alia, responsible for the collection and analysis of police data and investigations in cases of terrorism;
- at the level of the Länder, the Länder Criminal Police Offices¹⁰ are subordinated to the Länder Ministries of Interior;
- the Federal Border Police¹¹, subordinated to the Federal Ministry of Interior, inter alia assists federal as well as Länder authorities with special task forces and exercises preventive actions within the framework of fighting terrorism,
- the Customs Criminological Office¹², subordinated to the Federal Ministry of Finance, and competent for the export control and investigations in cases of proliferation of CBRN-weapons of mass destruction.

⁵ Generalbundesanwalt beim Bundesgerichtshof - GBA

⁶ Oberlandesgericht - OLG

⁷ Bundesgerichtshof - BGH

⁸ Staatsanwaltschaft - StA

⁹ Bundeskriminalamt - BKA

¹⁰ Landeskriminalamt - LKA

¹¹ Bundesgrenzschutz - BGS

¹² Zollkriminalamt - ZKA

Security/Intelligence Services on Federal and on Länder Level

- the Federal Intelligence Service¹³, responsible for the collection and analysis of intelligence abroad and attached to the Federal Chancellery;
- the Federal Office for the Protection of the Constitution¹⁴, subordinated to the Federal Ministry of Interior and responsible for domestic intelligence;
- at the level of the Länder, the Länder Offices for the Protection of the Constitution¹⁵ are subordinated to the Länder Ministries of Interior;
- the Military Counter-Intelligence Service¹⁶, which is subordinated to the Federal Ministry of Defence and responsible for intelligence matters concerning the army. (This Service is, however, not covered by the scope of the evaluation.)

3. Summary of the Evaluation

The sovereignty of the Länder referring to internal security on their territory also applies in principle to terrorism covered by state security. However, the legal situation is that the Federation is responsible for the law enforcement of terrorist offences at national level under the lead of the Federal Public Prosecutor General. The federal structure frequently requires the participation of Länder representatives in regular meetings or those held where necessary. Representatives of the judicial authorities often participate in the meetings as well because of their responsibilities and powers in criminal investigation procedures.

The number of services dealing with the fight against terrorism as well as the federal legal system make a good cooperation and exchange of information between all relevant bodies indispensable. To that end, German authorities have developed a considerable number of coordination mechanisms at all levels.

¹³ Bundesnachrichtendienst - BND

¹⁴ Bundesamt für Verfassungsschutz - BfV

¹⁵ Landesamt für Verfassungsschutz - LfV

¹⁶ Militärischer Abschirmdienst - MAD

3.1 Good Practices

3.1.1 Biometric Features in Identification Documents, Automatic Comparison of Data

The German State's reactions to terrorism have varied over the past 30 years. Repeatedly laws, structures and measures have been adapted to changing circumstances and experiences, with the aim of effectively combating terrorism. Currently especially are to be mentioned the efforts

- to create the legal basis for incorporating biometric features in passports and identity cards and
- to improve the efficiency of the automated comparison of data¹⁷ by including certain social data.

3.1.2 Security Service Surveillance Methods

To covertly gather intelligence, especially about conspirationally acting terrorist organisations, the German Security Services at federal and Länder level are legally allowed to use a wide range of intelligence methods. **NOT DECLASSIFIED**

3.1.3 Police Surveillance Methods

The same applies for the Federal and Land police forces, which under certain circumstances, carry out surveillance, monitor telecommunications and by undercover technical means intercept and record the spoken word not uttered in public. **NOT DECLASSIFIED** To match the high degree of specialised professional and technical know-how the police forces of the Länder and the Federal police have at their disposal specially trained units with a corresponding level of equipment.

¹⁷ Profile search (Profilfahndung);

3.1.4 Competences of the Federal Office for the Protection of the Constitution

As a consequence of the 9/11 attacks, the LfVs and the BfV have gained some competencies to - under certain conditions - collect the information needed and available at banks, at post and mail companies about names, addresses and mail-boxes, at telecommunication-providers about e.g. phone identification data and numbers, dates and positions, and for certain aims use the so called IMSI-Catcher¹⁸. They are also allowed to check information at airline companies about passengers, routes and other data.

3.1.5 Competencies of the Federal Criminal Police Office

The State Security Department set up within the BKA is competent to fight terrorism and extremism at national and international level and to support the Länder police forces in the prevention and prosecution of transnational, international or major state security crimes. The focus is on multi-case analysis projects that concentrate on selected offences, regions or structures. It collates, assesses and analyses all the requisite information on the basis of the reporting obligations of the Länder.

Since the BKA is responsible for handling such matters and also has the necessary expertise to conduct complex investigations that require a large investment of time and resources, in almost all cases involving serious politically motivated offences in Germany the competent prosecution office puts the State Security Department in charge of the investigations.

3.1.6 Information Board

The rapid exchange, completion and use of the data in the Information Board made it possible to address personal enquiries fully and speedily with the relevant authority, issue warnings rapidly and facilitate the direct exchange of intelligence and the coordination of on-going investigations, and thus has led to a considerable improvement in Germany's capacity to effectively combat international terrorism.

¹⁸ Equipment to identify the numbers of mobile phones and cards

3.1.7 "Analyseboards"

Various "Analyseboards" link special items into project work, aiming at the assessment of special strategic and methodical questions related to the fight against Islamic terrorism.

3.1.8 Competencies of the Public Prosecutor General

The Federal Public Prosecutor General has nation-wide jurisdiction for the prosecution of terrorist acts. The investigating judge at the BGH has special jurisdiction for judicial investigative measures. These provisions promote the necessary special public prosecution, as well as judicial expertise in prosecuting criminal offences related to terrorist organisations.

3.1.9 Intelligence as Evidence in Court

In cases where the security services can make supporting documents available in a form that can be used by the court, this information is produced in criminal proceedings through the reading of official reports and/or the hearing of officials of the respective security service as (expert) witnesses.

3.1.10 Competencies of the Customs Criminological Office

To prevent the proliferation of precursors and CBRN-weapons of mass destruction the ZKA plays a key-role especially referring to the export control and law enforcement. To that end it has far reaching legal competencies and powers in the law enforcement sector, in particular in special cases when it takes over the investigations itself. If there are indications on links to terrorism in a proliferation case, it is presented to the GBA in view of opening an investigation procedure. The GBA may instruct the BKA, ZKA and/or a LKA to undertake an investigation.

3.2 Recommendation

3.2.1 Data Base for the Information Board

For the time being the services involved in the Information Board have not the legal possibility to use a common data base or to have reciprocal access to the data bases of the other bodies but exchange - within the current legal setting - all information orally and on the basis of their respective reports. German authorities should reflect how to improve this kind of cooperation and exchange of information, e. g. by creating the legal possibilities for a structured and permanent electronic data exchange for the purpose and duration of an “Information Board”. At present the setting up of a common database with both reading and writing access for all involved bodies in the Information Board is under consideration at ministerial level.

3.2.2 Data Base for the "Analyseboards"

At present, the request of the security and law enforcement authorities cooperating in the „Analyseboards“ for a common database with both reading and writing access for all of them, is under consideration at ministerial level. German authorities are encouraged to improve this kind of cooperation and exchange of information, e.g. by creating the legal possibilities for a structured and permanent electronic data exchange for the purpose and duration of an “Analyseboard”.

3.2.3 National Data Base on Terrorism, Security Service Access to Relevant Data Bases

For the time being, the law enforcement agencies and the security services do not have the legal possibility for using a common data base nor do they have reciprocal access to their individual data bases.

German authorities should reflect how to improve this kind of cooperation and exchange of information by creating the legal possibility for a structured and permanent electronic data exchange on this special item of combating terrorism, e.g. by creating a national data base for all services involved.

Moreover, in order improve the means to detect and identify terrorist as well as their plans and activities at a very early stage, Germany should reflect about legislation allowing the domestic security service (BfV) to have access to law enforcement and other national relevant administrative databases to cross information from various sources while respecting data protection requirements.

3.2.4 Cooperation between the Customs Criminological Office and the Federal Criminal Police Office

The ZKA has the investigation competencies as regards export control and proliferation. In specific cases they might partly overlap with those of other law enforcement agencies, especially those of the BKA, German authorities should reflect how to improve cooperation, e.g. with the increased use of common investigation teams in suitable cases.

3.3 Recommendation on EU / International Level

3.3.1 Intelligence Index System on EU Level

German security services reported the bilateral cooperation with the security services of the EU Member States as being very well developed and effectively working. Regarding the fight against international terrorism, they did not expressively complain about the cooperation between security services on the EU level but argued that cooperation and exchange of information especially as refers to operational intelligence might be speeded up by creating a common index system.

3.3.2 Identification data on UN-Lists

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