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## Germany: New Anti-Terrorism Legislation Entered Into Force

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(Jul 10, 2015) On June 20 and on June 30, 2015, new anti-terrorism legislation entered into force in Germany. The new law makes it a crime to travel outside the country with the intent to receive terrorist training, adds a new section on terrorism financing to the Criminal Code, and creates national identity card and passport restrictions on foreign fighters. ([Gesetz zur Änderung der Vorbereitung von schweren staatsgefährdenden Gewalttaten \[GVVG-Änderungsgesetz- GVVG-ÄndG\]](#) [Act to Amend the Crime of Preparation of a Serious Violent Offense Endangering the State] (June 12, 2015), BUNDESGESETZBLATT [BGBl.] I at 926; [Gesetz zur Änderung des Personalausweisgesetzes zur Einführung eines Ersatz-Personalausweises und zur Änderung des Passgesetzes](#) [Act to Amend the Act on Identity Cards and to Introduce a Substitute Identity Card and to Amend the Passport Act] (June 20, 2015), BGBl. I, 970.)

This legislation implements the "Foreign Terrorist Fighters" resolution of the United Nations Security Council (UNSC). ([Resolution 2178 \(2014\)](#) (Sept. 24, 2014); see LAW LIBRARY OF CONGRESS, [TREATMENT OF FOREIGN FIGHTERS IN SELECT JURISDICTIONS](#) (Dec. 2014).)

### *Background*

According to the German Federal Ministry of the Interior, the total number of Germans travelling abroad to join the Islamic State (IS) or other terrorist organizations has rapidly risen from 550 in January 2015 to approximately 700 in June 2015. (Press Release, [Verfassungsschutz unverzichtbar – Freiheit gegen Radikalisierung aller Art](#) [Protection of the Constitution Is Essential – Freedom Against Radicalization of All Kinds] (June 30, 2015), German Federal Ministry of the Interior website.) In addition, the "Foreign Terrorist Fighters" resolution of the UNSC mandates that all U.N. member states prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents. (Resolution 2178.)

In 2014, Germany had already enacted anti-terrorism measures that included the power given to the authorities to revoke or refuse to issue a national identity card for IS supporters, as well as a ban on IS itself and on all activity in support of IS in Germany. ([IS-Vereinsverbot](#) [Ban of the IS Association], Bundesministerium des Inneren [Federal Ministry of the Interior] (Sept. 12, 2014) [scroll down to link to download .pdf file].)

### *Features of the New Criminal Code Provisions*

Originally, section 89a of the German Criminal Code made it a crime to instruct another person or to receive terrorist training in order to prepare a serious offense endangering the state a crime, punishable by imprisonment from six months to ten years. ([German Criminal Code](#) (promulgated on Nov. 13, 1998) , BGBl. I at 3322, as amended, GERMAN LAWS ONLINE (unofficial English translation).) The new legislation goes one step further and makes traveling outside Germany with the intent to receive terrorist training a criminal offense punishable according to section 89a (*Id.* § 89a, ¶ 2a.)

Furthermore, a new section 89c on terrorism financing is inserted into the Criminal Code which replaces and expands the current section 89a, paragraph 2, number 4. The former equivalent section criminalized collecting, accepting, or providing substantial assets for the purpose of preparing a serious violent offense endangering the state. The new provision does not contain a materiality threshold ("substantial assets") anymore. In addition, it applies to all kinds of terrorism financing, not only financing for the purpose of preparing a serious violent offense endangering the state. These new measures implement recommendations by the Financial Action Task Force (FATF) to combat terrorism financing. The FATF is an intergovernmental body that sets international standards for combating money laundering, terrorist financing, and other related threats to the integrity of the international financial system. ([About Us](#), FATF website (last visited July 7, 2015).)

### *Features of the Identity Card Act and Passport Act Amendments*

Changes to the Identity Card Act and the Passport Act are supposed to prevent the travel of foreign terrorist fighters and to make it easier for other countries to identify them. ([Act on Identity Cards and Electronic Identification \(Identity Card Act\)](#) (June 18, 2009), BGBl. I at 1346, as amended, GERMAN LAWS ONLINE (unofficial translation); [Passport Act](#) (Apr. 19, 1986), BGBl. I at 537, as amended, GERMAN LAWS ONLINE (unofficial translation).)

Under the new legislation, national identity cards and passports of German citizens who constitute a threat to the internal or external security or to other significant interests of Germany may be revoked. Instead of national identity cards they will be issued substitute identity cards, accompanied by the words "not valid for travel outside of Germany." (Identity Card Act, § 6a.) According to the German Minister of the Interior, this will prevent foreign fighters from traveling to Syria or other countries by way of third (Schengen) countries for which they only require a national identity card. ([Rede des Bundesministers des Innern, Dr. Thomas de Maizière](#) [Speech of the Federal Minister of the Interior, Dr. Thomas de Maizière] (Jan. 14, 2015), German Federal Government website.)

#### Reactions to the Legislation

Representatives of the opposition parties and some criminal attorneys have criticized the legislation as unconstitutional, because, in their view, it makes a crime of a moment too far in advance of an actual criminal act or an attempt and thereby criminalizes neutral behavior. (Constantin Baron van Lijnden, [Regierung beschließt Entwurf neuer Anti-Terror-Gesetze. Strafbarkeit im Vorfeld des Vorfeldes?](#) [Government Agrees on Draft for New Anti-Terrorism Legislation. Criminal Liability for Preparation of Preparatory Behavior?], LTO.DE (Feb. 4, 2015).) Furthermore, they point out the possible difficulties of providing evidence of the intent to receive terrorist training. ([Bundestag verschärft Anti-Terror-Gesetze. Ausbildung im Terrorcamp wird strafbar](#) [Bundestag Expands Anti-Terrorism Legislation. Training in a Terrorist Camp Will Become a Crime], STERN.DE (May 28, 2015).)

The German government, on the other hand, maintains that foreign fighters and other sympathizers of terrorist organizations have been more than eager to share their intentions of joining or supporting a terrorist organization on social media. In addition, the German Minister of Justice says the new legislation was needed to close a loophole in the existing Criminal Code. (*Id.*) The parliamentarian Dirk Wiese of the German Social-Democratic Party (SPD) stated, "no government should be allowed to ignore the fact that its citizens bring death and misery to the world. Terrorism shall not become an export commodity." ([Bundestag verschärft Anti-Terror-Gesetze](#) [Bundestag Expands Anti-Terrorism Legislation], WELT.DE (Apr. 23, 2015).)

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