

German interior minister tables Intelligence Services ‘Enabling Act’

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The “Ermächtigungsgesetz” (Enabling Act) introduced by the Nazis in March 1933 provided Hitler with dictatorial powers. Now, Germany’s Interior Minister Horst Seehofer (Christian Social Union, CSU) has introduced a draconian draft bill euphemistically titled, “For the Harmonization of the Secret Service Law”.

This provides the three intelligence agencies—the domestic secret service, the Federal Intelligence Service (BND) responsible for foreign counter-intelligence, and the Military Counter-intelligence Service (MAD)—with almost unlimited powers to monitor and spy on domestic and foreign citizens. The draft was published by netzpolitik.org a few days ago.

The law planned by Seehofer also removes the remaining restrictions on the activities of the secret services, which were anchored in the constitution and laws of the Federal Republic after the terror of the Third Reich. Basic rights such as postal and telecommunications secrecy and the inviolability of the home are being undermined.

In future, the BND will not only spy on foreign companies, citizens and governments, but also monitor German and foreign citizens inside Germany. Although this was already common practice, especially against opposition party politicians and left-wing government opponents, now it would be legalized and declared a core task of the BND.

The Office for the Protection of the Constitution, as the domestic secret service is called, and the BND are to be given the power to use state-developed malicious software (“State Trojans”) against “German nationals”, “domestic legal persons” and “persons resident in the Federal Republic” in prosecuting crimes. Previously, this was reserved for the police. With this software, computers and mobile phones can be spied on unnoticed by the owner, the inputting of text recorded live and camera and microphone outputs intercepted.

Target objects are not only mobile phones, laptops and other IT systems, but also cars with Internet access, so-called connected cars. IT specialists have warned in vain that such hacker attacks on the electronic systems of a car could cause fatal accidents, something that has already occurred. Interventions affecting the vehicle’s driving behaviour to liquidate the driver or other occupants ostensibly though an accident are thus made possible.

In addition to online searches, the state trojans can also be used for so-called source telecommunications monitoring. In this case, encrypted communication is picked up before encryption or after decryption and transmitted to the secret service. In this way, social media like WhatsApp, Skype and secure messaging services like Signal or Telegram can be cracked.

The draft places the hitherto illegally practiced use of state trojans “or comparable technical means” from Germany against foreign citizens and institutions abroad on a legal footing through a “clarifying license”.

The bill gives the green light for such hacker attacks to the Chancellery and not, as previously when used by the police, to a judge. They are always to be permitted if “serious criminal offences” or “matters presenting special dangers for the Federal Republic or its population” exist. According to Seehofer’s plans, the BND does not even have to present a reasoned initial suspicion, so that in this respect, it is basically not subject to any restrictions.

In principle, the use of state trojans would be allowed if “a conceivably more remote possibility” exists that a cyber-attack originates from a foreign intelligence service.

Regular reports before the Parliamentary Control Committee would largely be dropped—presumably to save time and resources, because this Bundestag committee was always nothing more than a “democratic” fig leaf for the murky affairs of the secret services.

The age limit from which people may be spied upon is also being abolished. In 2016, the government had lowered this from 16 to 14 years. Now, this age limit is to disappear completely, so that young pupils with their mobile phones and even small children with electronic toys can become target objects of the BND and end up in the data storage system of the secret services. According to the Interior Ministry, this measure is to emphasize the “holistic approach of the secret services”.

What seems rather grotesque at first glance, is a recognition that participants in demonstrations are getting younger and younger. This was evident in the protests against the new police laws; the anti-climate demonstrations saw those as young as 12 and 13 participating.

The number of businesses that are obliged on request to

transmit their customers' communication and movement data to the BND or the secret service, is being extended. In future, this will include the providers of telecommunications services as well as rail, bus, taxi and car-sharing companies.

In order to prepare the deployment of a state trojan into private telecommunications or computer equipment, BND agents and secret service agents may secretly break into homes in the absence of the target person. The basic right of the inviolability of the home is thus abolished with a stroke of the pen.

The bill also eliminates hitherto existing restrictions on the recruitment and employment of Confidential Informants (CI). It starts with the money and ends with protecting criminals. In the past, the law prescribed that a CI should not be paid so much money that it provided the greatest part of their livelihood. This was to prevent CIs from inventing stories in order to secure their living. According to a report by the *Süddeutsche Zeitung* on 30 March, the BND should in future be "free to pay whatever it wants".

Even more serious is that BND CIs who are criminals will enjoy official and "legal" protection against prosecution. If the BND receives information that a CI is committing crimes in Germany, they no longer have to report them. Instead, it is up to the "management" to decide what to do. If the CI still becomes involved with the police or prosecutors, the BND can intervene with the judiciary. The prosecutors "should" refrain from prosecution, it says in the draft law; so far, this was just an option for them.

In future, the BND is to be allowed to recruit already convicted criminals—unless the crimes are murder and manslaughter.

Since their formation in the 1940s and 1950s, the BND, secret service and MAD have repeatedly acted as a supralegal state-within-the-state. These agencies were founded and built by leading SS and Gestapo people, who also selected and trained the personnel according to old Nazi traditions. But despite all attempts at cover-ups, the activities of the secret services and their CIs continually come before the courts and are recorded in the files. Seehofer wants to put an end to this with the new law.

The strict separation of the intelligence agencies and police, introduced after 1945 due to the bad experiences with the Gestapo (Secret State Police), is to be lifted. In Seehofer-speak, cooperation between the secret service and police is called, "ongoing administrative assistance". The BND would work as a "service provider" for the police, performing online hacker attacks for them, evaluating and making the results available to the police.

All data collected by the intelligence services would not only be evaluated by them, but also passed on to third parties, in particular to the Federal Criminal Police Office (BKA) and other police departments, to government agencies, but also to foreign secret services such as the American NSA.

The close cooperation between the BND, the secret service

and the MAD is to be institutionalized and "perpetuated" by the establishment of a so-called "expanded intelligence information network". The Federal Office for Information Security (BSI) would also be involved. Collaboration with foreign intelligence services, including the construction and evaluation of centralized data storage, which previously took place in a legal grey area, is to be made the task of the secret services.

This is just a partial list of the provisions of the bill. But it shows the five most important elements:

- Use of the BND within Germany against its own citizens.
- Protection of criminal activities of intelligence agents against criminal prosecution.
- Full use of State Trojans and other attack software to hack and tamper with private communications and data and to interfere with vehicles.
- Lifting the separation of the intelligence services and police.
- Consolidating all intelligence services into an "enhanced intelligence information network" that provides police and government agencies with a "technical service" for obtaining secret or private data from citizens and businesses.

Like all the laws to build a police state, these are justified in the name of the alleged "fight against terrorism", against "drug crime" and against "cybercrime". In reality, it is about monitoring and controlling the entire population.

In the face of growing social tensions, the ruling class fears a sharpening of the class struggle. The size of this concern is shown by the sheer dimensions of planned intelligence operations and surveillance facilities. The German government has already decided to spend billions on equipping the secret services with state-of-the-art information technology.

The floorspace of the recently opened 1.4 billion Euro BND headquarters in the centre of Berlin is as big as 36 football pitches, far larger than the parliamentary and government district in front of the Reichstag building. To monitor mobile phone calls and other communications, the BND operates a total of seven gigantic listening stations, each with several giant satellite dishes.

The structure and bureaucratic language of Seehofer's bill seeks to make this incomprehensible to normal people. Its aim is to free the intelligence services from all legal and criminal shackles. It is an intelligence service enabling act, in the tradition of the Nazis.



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