



Deutscher Bundestag
Parlamentarisches Kontrollgremium,
G10-Kommission
- Sekretariat -

The Intelligence Services and Parliamentary Control in Germany

A. Intelligence services and their coordination

I. Definition

In German, the **term "intelligence service"** is used to describe an organisation which gathers and evaluates information on foreign, internal and security policy situations. An intelligence service has no executive powers and must not be attached to any police authority (so called separation principle). It may restrict basic rights only where the law permits it to do so, and is subject to strict control by Parliament and other bodies.

II. The German intelligence services

In the Federal Republic of Germany **intelligence services exist at both federal and Land level**. Specifically, the following services exist:

- The **Federal Office for the Protection of the Constitution**, or **Bundesamt für Verfassungsschutz** (BfV)

The **Federal Office for the Protection of the Constitution**, or **BfV**, is a **domestic-intelligence service**. It is a higher federal authority which **comes under the jurisdiction of the Federal Ministry of the Interior**.

The BfV may not be attached to any police authority.

The BfV's **task** is to gather and evaluate information on extremist and security-endangering activities by nationals and non-nationals, as well as the activities of hostile intelligence services. In view of the new terrorist threats and their international nature, the BfV has also been tasked with monitoring activities directed against international understanding or peaceful coexistence.

The **legal basis** for the BfV's work is the **Federal Protection of the Constitution Act**, or *Bundesverfassungsschutzgesetz*.¹ Its powers to intercept telecommunications or postal communications are regulated in the Act Restricting the Privacy of Correspondence, Posts and Telecommunications (abbreviated: Article 10 Act, or G10).²

The BfV currently employs approximately **2500 members of staff**.

Each of the 16 German *Länder*, or federal states, is required to establish an Office for the Protection of the Constitution. The *Länder* have fulfilled this obligation and set up **State Offices for the Protection of the Constitution**, which carry out within the *Land* in question identical tasks to those of the BfV at federal level.

Further information is available at: www.verfassungsschutz.de

- The **Federal Intelligence Service**, or *Bundesnachrichtendienst (BND)*
The **BND** is a **foreign-intelligence service**. It is a higher federal authority which falls within the **remit of the Head of the Federal Chancellery**. The BND, too, may not be attached to any police authority.

The BND's **task** is to collect information about foreign countries which is of foreign- and security-policy relevance to the Federal Republic of Germany. The BND acts as the Federal Government's early warning system for developments abroad, particularly when German interests are affected. As a service-provider for the Federal Government, the BND's reconnaissance focuses on areas and aims set by the Federal Government. Crisis-prone regions and regions where members of the Federal Armed Forces are deployed are of particular interest. High priority is given to monitoring dangers such as international terrorism, proliferation and illegal technology transfers, international organised crime, the international arms trade, international drug trafficking, money laundering and illegal migration.

¹ <http://www.gesetze-im-internet.de/bundesrecht/bverfschg/gesamt.pdf>.

The **legal basis** for the BND's work is the BND Act.³ Its powers to intercept telecommunications or postal communications are regulated in the Article 10 Act.

The BND currently employs approximately **6000 members of staff**.

Further information is available at: www.bundesnachrichtendienst.de

- The **Military Counterintelligence Service**, or **Militärischer Abschirmdienst (MAD)**

The **MAD** is part of the armed forces and a **domestic-intelligence service**, which carries out within and for the Federal Armed Forces those tasks carried out externally by the Offices for the Protection of the Constitution. The MAD, which is a higher federal authority, comes under the jurisdiction of the **Federal Ministry of Defence**. The MAD, too, may not be attached to any police authority.

The MAD has the **task** of collecting and evaluating information about extremist and security-endangering activities, as well as clandestine actions for a foreign power carried out by members of the Federal Armed Forces or directed against the Federal Armed Forces. Additionally, the MAD is involved in measures relating to the protection of classified material; this includes carrying out security clearance checks on members of the Federal Armed Forces, as well as advising the heads of offices within the Federal Armed Forces on organisational and technical security measures to protect sensitive information.

The **legal basis** for the MAD's work is the **Military Counterintelligence Act**.⁴ Its powers to intercept telecommunications or postal communications are regulated in the Article 10 Act.

² Gesetz zur Beschränkung des Brief-, Post- und Fernmeldegeheimnisses (Artikel 10-Gesetz – G10), http://www.gesetze-im-internet.de/bundesrecht/g10_2001/gesamt.pdf.

³ Gesetz über den Bundesnachrichtendienst (BND-Gesetz – BNDG), <http://www.gesetze-im-internet.de/bundesrecht/bndg/gesamt.pdf>.

⁴ Gesetz über den Militärischen Abschirmdienst (MAD-Gesetz – MADG), <http://www.gesetze-im-internet.de/bundesrecht/madg/gesamt.pdf>.

The MAD currently employs approximately **1300 members of staff**.

Further information is available at:

www.bundeswehr.de/forces/streitkraeftebasis/militaerischerabschirmdienst

All **three intelligence services** obtain their information from publicly available sources, openly conducted investigations and questioning, and from information passed on to them from other sources. Additionally, the services have the **power** in special cases to obtain information using clandestine means. These include covert investigations, the use of undercover agents in certain cases, surveillance, mail interception and wire-tapping.

III. Coordination of the intelligence services

The Commissioner for the Federal Intelligence Services is responsible for coordination between the federal intelligence services, and for their coordination with other authorities and agencies. In accordance with an organisational decree issued by the Federal Chancellor, this task is assigned to a Minister of State or State Secretary within the Federal Chancellery.

B. Parliamentary control of the intelligence services

The Federal Government's actions are, in accordance with the principle of the separation of powers, subject in principle to parliamentary control. The actions of the intelligence services are no exception. In addition to general forms of parliamentary control, as exercised via debates in the Bundestag, questions put by a parliamentary group or individual Members, reports to a parliamentary committee (such as the Committee on Internal Affairs, the Committee on Foreign Affairs or the Defence Committee) or in certain cases to a specially established committee of inquiry, the German parliament has set up a special body which allows for the special nature of control of the intelligence services (the need to maintain confidentiality and protect sources). This is the

Parliamentary Control Panel

(Parlamentarisches Kontrollgremium).

Additionally, there are two other parliamentary or quasi-parliamentary bodies which exercise control. First, for control of the intelligence services' budgets, there exists the

Confidential Committee of the Budget Committee

(Vertrauensgremium)

and second, restrictions of the privacy of correspondence, posts and telecommunications are scrutinised by the

G 10 Commission

(G10 Kommission),

a quasi-judicial body whose members are appointed by the members of the Parliamentary Control Panel.

I. The Parliamentary Control Panel

1. Legal basis and subject of the Parliamentary Control Panel's control

The legal basis for the Parliamentary Control Panel's work is **Article 45d of the Basic Law** and the **Act governing the Parliamentary Control of Intelligence Activities by the German Federation, or Control Panel Act**.⁵ This gives the Panel responsibility for scrutinising the Federal Government as regards the activities of the federal intelligence services.

2. Election of the members and composition of the Control Panel

The number of members, composition and working procedures of the Control Panel are not regulated in the Act itself. The Control Panel Act stipulates that the German Bundestag shall elect the members of the Panel from amongst its Members at the beginning of each electoral term, and that it must set out the number of members, composition and working procedures of the Panel in a resolution of establishment. A **majority of the Members of the Bundestag** is required for the election of each individual member of the Parliamentary Control Panel.

The Panel's composition reflects the strengths of the parties in the Bundestag's plenary. In the 17th electoral term (since 2009) it consists of **11 members** (4 CDU/CSU, 3 SPD, 2 FDP, 1 The Left and 1 Alliance 90/The Greens).

3. Convening and chairmanship

The Control Panel must, by law, meet at least once a quarter. In practice, however, the Panel meets **at least once a month**. The dates of the meetings are set at the beginning of each year. Additionally, each member and the Federal Government can also call for the Panel to convene at short notice.

⁵ Gesetz über die parlamentarische Kontrolle nachrichtendienstlicher Tätigkeit des Bundes (Kontrollgremiumsgesetz – PKGrG), <http://www.gesetze-im-internet.de/bundesrecht/ndkontrg/gesamt.pdf>.

The **chairmanship** of the Panel alternates annually – on 1 January – between a member nominated by the parliamentary majority and a member nominated by the minority.

4. **Scope and limits of control**

Under the Control Panel Act the Federal Government is obliged to report comprehensively to the Panel on the **general activities of the intelligence services** and on **matters of particular significance** of its own accord. Additionally, the Federal Government must report on **any other matters** if requested to do so by the Panel.

The Federal Government's obligation to report extends only to information and subjects which fall within the remit of the federal intelligence services.

The **Federal Government** may only **refuse to give a report** when this is necessary for compelling reasons relating to the source of the intelligence or in order to protect the privacy of third parties, or if core areas of executive responsibility are touched upon. Reasons must be given for the refusal.

Besides the above-mentioned obligations contained in the Control Panel Act there are a number of other more specific **reporting duties** stipulated by the laws establishing the special powers of the intelligence services. Thus, the Government must report to the Parliamentary Control Panel

- on interceptions of postal communications and telecommunications, based on the Article 10 Act, at intervals of no more than six months
- on requests of data from credit institutions, financial institutions, airline companies and companies providing postal services, telecommunications services and teleservices, at intervals of no more than six months

- on the use of technical means for the purpose of identifying the position of an activated cell phone terminal and serial numbers and card codes, at intervals of no more than six months
- on the use of clandestine technical means for the purpose of eavesdropping on and recording of private conversations
- on any other case of the collection of data, the nature and importance of which is tantamount to a restriction of the privacy of correspondence, posts and telecommunications
- on internal regulations of the intelligence services on the use of methods, materials or instruments for the clandestine collection of information.

5. Special powers of control

The Control Panel has the following special powers of control:

- **Right to view documents and files / right to visit the intelligence services**

At the request of the Parliamentary Control Panel or an authorised member of the Panel, the Federal Government must permit the Panel to view its documents or files and make it possible for visits to be paid to the intelligence services.

- **Questioning of staff in the services**

Upon request, the Federal Government must enable the Panel to question staff in the services.

- **Appointment of an expert**

The Panel, acting on behalf of a two-thirds majority of its members, may appoint an expert to investigate individual cases.

Additionally, the following means exist of obtaining information about any potential undesirable developments in the intelligence services:

- **Staff in the intelligence services** may make **submissions to the Parliamentary Control Panel** concerning the work of the services. They may not do this for personal gain, but only with the aim of improving the services' performance of their duties.
- **Submissions from citizens** may be presented to the Panel for its information.

6. Confidentiality

The Panel's **discussions** are **confidential**. The members of the Panel and other persons who attend its meetings (e.g. representatives of the Federal Government and members of staff from the Panel's Secretariat) are obliged to maintain strict confidentiality. Failure to maintain confidentiality may result in criminal proceedings.

The staff of the Federal Government and of the Parliamentary Control Panel's Secretariat undergo strict **security checks**. As elected representatives of the people, the members of the Control Panel are not obliged to undergo any special security checks.

7. Disclosure of information to the public

The Control Panel Act contains one **exception to the rule of strict confidentiality**. The Panel may vote by a majority of two thirds of the members present to undertake a public **appraisal of certain issues** following the meeting. Additionally, there are special requirements regarding the disclosure of information on certain subjects.

8. Duty to report

The **Control Panel presents a report on the work it has carried out to the German Bundestag** in the middle and at the end of each electoral term.

Furthermore, the Panel has a range of **additional duties to report**, particularly on restrictions in the privacy of correspondence, posts and telecommunications by the intelligence services, as well as on the new powers assigned to the intelligence services in 2002 under the Counter-Terrorism Act (e.g. the right of services to inspect bank accounts, flight documents or telecommunications connection data). Additionally, the federal states are obliged to report to the Panel annually on the measures they have taken in this field.

9. Additional control duties

Discussion of the intelligence services' budgetary plans

The Control Panel plays an **advisory role in discussions on the intelligence services' budgetary plans**. The results of its deliberations are **communicated** in a statement to the **Confidential Committee of the Budget Committee**, which is responsible for scrutinising the intelligence services' budgetary plans. Furthermore, the Federal Government must report to the Panel on the **implementation of the intelligence services' budgetary plans**. The members of the Parliamentary Control Panel and the Confidential Committee are able to take part in each other's meetings in an advisory capacity when the budgetary plans of the intelligence services are discussed.

b) Controls in the field of telecommunications surveillance

Parliamentary and political control in the field of postal and telecommunications surveillance is exercised by the Parliamentary Control Panel, in accordance with the Law adopted by virtue of Article 10 of the Basic Law. In addition to the duty to report annually to the German Bundestag on measures restricting the privacy of posts and telecommunications, as well as the nature and scope of these measures, the Panel also appoints the members of the G 10 Commission and gives its consent to the Commission's Rules of Procedure. Furthermore, the Control Panel's consent is required before international telecommunications traffic may be restricted by "strategic surveillance measures."

10. Jurisdiction of the Federal Constitutional Court

Disputes between the Panel and the Federal Government can be brought before the Federal Constitutional Court (*Bundesverfassungsgericht*) on the application of the Government or of at least two thirds of the members of the Panel.

11. Secretariat

The Parliamentary Control Panel is assisted by a Secretariat, currently composed of seven members of staff, which provides organisational and academic support for the Panel's work. The Secretariat is also responsible for supporting the G 10 Commission.

Further information:

www.bundestag.de/parlament/kontrollgremien/parlkon/index

II. Other parliamentary bodies exercising control

1. The Confidential Committee of the Budget Committee

In carrying out their duties, the intelligence services follow confidential budgetary plans. Responsibility for approving the budgetary plan and scrutinising expenditure lies with a body composed of members of the German Bundestag's Budget Committee (**Confidential Committee**). The Parliamentary Control Panel may participate in approving the budgetary plans and scrutinising expenditure in an advisory capacity (see above).

The members of the Confidential Committee are elected by the Bundestag from amongst the members of the Budget Committee at the start of every electoral term.

2. The G 10 Commission

The G 10 Commission is a quasi-judicial body which supervises the actions of the intelligence services as regards postal and telecommunications surveillance, in accordance with the Act adopted by virtue of Article 10 of the Basic Law concerning the Restriction of the Privacy of Posts and Telecommunications and in accordance with the Counter-Terrorism Act adopted in 2002 and amended in 2007. In criminal proceedings, it is a judge who has to give approval for such measures – in cases dealt with by the intelligence services it is the G 10 Commission. Its decisions are binding upon the intelligence agencies and the government. If the Commission does not give its approval, the surveillance measure may not take place.

The G 10 Commission is an independent body which is not bound by instructions. It consists of four members and four substitute members chosen by the Parliamentary Control Panel for the duration of an electoral term. They may be Members of the German Bundestag, but do not necessarily have to be.

The Commission meets once a month. It takes its decisions ex officio or in response to complaints about the admissibility and necessity of measures

restricting the privacy of correspondence, posts and telecommunications. In this context, the G 10 Commission scrutinises the entire process of the collection, processing and use of the personal data obtained by the federal intelligence services under the Law adopted by virtue of Article 10 of the Basic Law. The Commission and its staff have the right to be provided with information in response to their questions, to inspect all documentation and records - in particular stored data and data-processing programmes - and to have access to all official premises at all times.

The Commission's supervisory powers also extend to the decision on whether to inform the party concerned. As a general rule, the persons affected by a surveillance measure have to be notified after its termination. This enables them to contest the legality of the measure before an administrative tribunal. However, there is an exception. The notification may be withheld as long as it cannot be ruled out that a notification might jeopardize the purpose of the measure or as long as any general disadvantages to the interests of the Federation or of a Federal state are foreseeable.

The Counter-Terrorism Act which entered into force on 1 January 2002 and was amended in 2007 assigned a range of new powers to the intelligence services following the terrorist attacks of 11 September 2001. Within the framework of these legislative changes the G 10 Commission's powers of control were also extended to cover the security agencies' new powers. So the G10-Commisson must give its prior approval to requests for data from companies providing postal services, telecommunications services and teleservices and on the use of technical means for the purpose of identifying the position of an activated cell phone terminal and serial numbers and card codes.

C. Other institutions and bodies involved in control of the intelligence services

- **Legal and technical supervision by the ministries responsible for each organisation**

The intelligence services are subject to the legal and technical supervision of the ministries responsible for them. This supervision relates to the legality of the activities of the intelligence services as well as to the effectiveness of these activities.

- **Federal Data Protection Commissioner**

The Federal Data Protection Commissioner scrutinises the intelligence services, like other federal authorities, to ensure that the Federal Data Protection Act and other specific data-protection regulations are observed. The Commissioner provides the Bundestag with a report on his or her activities every two years.

- **Federal Court of Audit**

The Federal Court of Audit checks the intelligence services' annual accounts and budgetary and financial administration. The checks are carried out by a so-called "college of three". The Court of Audit informs both the Confidential Committee of the Budget Committee and the Parliamentary Control Panel about the results of its checks.

- **Judicial control**

With the exception of measures taken under the Law adopted by virtue of Article 10 of the Basic Law, which can only be the subject of court proceedings once the party affected has been informed, citizens may take direct legal action against all state intelligence operations.