

Minor Interpellation tabled by the Member of the Bundestag Andrej Hunko, further Members of the Bundestag and the Left Party parliamentary group.

EU project on covert installation of surveillance equipment under the direction of the Federal Criminal Police Office (BKA)

Bundestag Printed Paper 17/10575

Preliminary remarks of the questioners:

As of 2009 members of the police forces of a number of EU governments have been meeting as part of the International Specialist Law Enforcement project (ISLE). The aim of the project is to exchange and share expertise on "specialist techniques" – covert entry into premises and vehicles and the infiltration of electronic devices, for the purpose of installing surveillance equipment there. Forensic capabilities for reading data from digital media are also to be improved.

The International Specialist Law Enforcement project is, at the instigation of the European Commission, managed by the United Kingdom's Serious Organised Crime Agency (SOCA). The joint Steering Group includes representatives of the BKA and the Commissioner-General's Office – Directorate of Special Units (CGSU) in Belgium. Also involved is the EU police force Europol which, amongst other things, provides electronic communications infrastructure through its Europol Platform for Experts (EPE). The project will end in November of this year. The final three months are being spent on the preparation of evaluation reports. The project is funded by the participating agencies. Further funding is provided under the EU Programme on the Prevention of and Fight Against Crime, which launched in 2007. But a first meeting to prepare for the International Specialist Law Enforcement project was held already in 2006, before the EU Programme on the Prevention of and Fight Against Crime started.

Another aim of the International Specialist Law Enforcement project is to build a permanent working group of "practitioners" which will continue to operate long-term into the future. To this end a seminar was held in London in 2011. The Federal Government made no mention of the existence of the International Specialist Law Enforcement project in response to earlier initiatives by the questioner regarding exchanges between German and foreign police forces on the use of digital spyware (oral question 55, minutes of plenary proceedings 17/138, Annexes 27 and 28, written question 22 in BT Printed Paper 17/7584, answer of the Federal Government to the Minor Interpellation tabled by The Left Party parliamentary group in Printed Paper 17/5677). Members thus had no means of knowing that the project even existed. The SOCA website has no information about it, and neither does that of the BKA. Consequently Members of the Bundestag were not able to monitor its progress. The International Specialist Law Enforcement project is thus one of

the clandestine, cross-border police networks which have come to public attention only after numerous enquiries by the Left Party parliamentary group (www.andrej-hunko.de/component/content/article/7-beitrag/1085-von-digitalentsunamis-und-sciroccos):

- *European Cooperation Group on Undercover Activities (ECG): spychiefs from EU Member States and e.g. Russia, Switzerland, Turkey, Ukraine;*
- *International Working Group on Undercover Policing (IWG): spychiefs from European countries as well as from countries such as the US, Israel, New Zealand and Australia;*
- *International Business Secretariat (IBS): discusses legal status and false identities of undercover investigators in countries of origin and deployment;*
- *Cross-Border Surveillance Working Group (CSW): mobile taskforces from twelve Member States of the EU and Europol specialising in surveillance techniques;*
- *Remote Forensic Software User Group (formerly the DigiTask User Group): created by the Bundeskriminalamt to promote the sale of German Trojan software abroad.*

None of these networks are tied to any national or EU institution so they operate in a grey area. Ostensibly they are not used for the planning of repressive operations, it is true. But they are of fundamental importance, because their regular meetings provide contacts which the questioners believe are essential to subsequent cross-border coercive measures. The Federal Government has developed the habit of not giving public answers to many questions about covert police networks and their operations. The questioners believe, however, that these operations should be the subject of the widest possible public debate. The very fact that the International Specialist Law Enforcement project also covers the exchange of methods for bugging electronic devices or private dwellings demands a high degree of transparency on the part of the Federal Government and its enforcement agencies.

Preliminary remark of the Federal Government:

The EU's International Specialist Law Enforcement project (ISLE) was implemented between March 2010 and March 2012 with the participation of the Federal Criminal Police Office (BKA) and has now been completed. The specific aims of the ISLE project are set out below.

The questioners' allegation that the networks in question are not tied to any national institution and thus operate in a grey area seeks to create the false impression that these networks include persons who have no official authority, and who conduct operations for which there is no clear mandate. The Federal Government robustly repudiates this. The participating Member States assigned staff from their law enforcement agencies to cooperate on the project. For Germany it

was BKA personnel who took part. The project was not concerned with concrete operations; the focus was rather on the sharing of information and the finding of interlocutors. The BKA acted at all times in accordance with its statutory powers.

The questioners also talk on a number of occasions about "law enforcement agencies". The Federal Government assumes that the reference here is to the German criminal prosecuting authorities, whose remit is to prevent and solve specific crimes and not to pursue individuals or groups of individuals.

Regarding the Federal Government's criteria for categorising the content of its answers as classified, reference is made to Printed Paper 17/10538 (answer in Printed Paper 17/10655).

1. *What is the purpose of the International Specialist Law Enforcement project?*
 - a) *What specific capabilities does it aim to develop or provide?*
 - b) *To what extent is the project also geared to specific cross-border cooperation by law enforcement agencies?*

Ad 1.

The purpose of the project was to improve information sharing by police forces in the Member States of the European Union (EU) and European Economic Area (EEA) which employ technology to bypass the security systems that protect moveable objects (e.g. vehicles) and fixed objects (e.g. apartments, houses).

This intention was to make it possible for criminal prosecution authorities to exchange information on capacities and capabilities in the interests of "best practice". The primary interest was technology, and the focus here was on the pooling of expertise, not cross-border cooperation.

2. *To what extent is the International Specialist Law Enforcement project concerned with covert entry to premises or vehicles, in order to place surveillance equipment there?*
 - a) *What are the specific localities and vehicles concerned?*
 - b) *Which specific devices does the International Specialist Law Enforcement project seek to infiltrate (please give a list)?*

Ad 2.

The purpose of the project is to share information on how to bypass technically complex security systems where this is required for the conduct of police operations. Specific individual cases were not discussed. See also the answer to question 1.

3. To what extent is it part of the remit of the International Specialist Law Enforcement project to infiltrate computer systems and other electronic devices and analyse material obtained in this way?

- a) What specific techniques are used to do this?*
- b) Why, since 2007, has the Federal Government made no mention of the existence of the project in response to earlier initiatives by the questioners regarding exchanges between German and foreign police forces on the use of digital spyware (minutes of plenary proceedings 17/138, Printed Papers 17/7584 and 17/5677)?*
- c) To what extent, regarding the infiltration of computer systems, has the BKA taken on board the Federal Constitutional Court's 2007 judgment which sets stringent conditions for use by the state of Trojans and other malicious software?*

Ad 3.

Infiltration of computer systems and other electronic devices or analysis of the material obtained in that way was not part of the project. The questions quoted are thus not pertinent.

4. To what extent does the BKA share its experience of products made by the firms Micro Systemation, Cellebrite, Oxygen Software GmbH, COMPELSON, Gamma or DigiTask under the International Specialist Law Enforcement project?

Ad 4.

There are no connections between these firms and the objectives of the ISLE project. So the BKA has not shared its experience of these firms' products.

5. Who are the partners and other participants in the International Specialist Law Enforcement project?

- a) What specifically is the contribution made by the Bundeskriminalamt (BKA), the UK's Serious Organised Crime Agency (SOCA) and the Commissioner General's Office – Directorate of Special Units (CGSU) in Belgium?*
- b) Which EU Member States or other governments are involved and through which agencies or institutions?*

- c) *To what extent are political or diplomatic entities also tied in to the project?*
- d) *To what extent have private-sector firms or establishments also participated?*
- e) *When did each of the partners to the project join it?*
- f) *To what extent do the participants divide into “ordinary” and “lead” representatives or some other hierarchy?*

Ad 5.

As project manager, the UK's Serious Organised Crime Agency (SOCA) had overall responsibility for the project, including its administration and budget. As partners in the project SOCA, BKA and the Commissioner-General's Office – Directorate of Special Units (CGSU) in Belgium together made up the Steering Group. The job of the Steering Group is to ensure that the project progresses in accordance with its stated objectives.

Police forces from the following countries were also involved in the project:

- Austria
- Czech Republic
- Finland
- France
- Hungary
- Ireland
- Italy
- Netherlands
- Norway
- Slovenia
- Spain

No private-sector firms or establishments participated. Likewise, no political or diplomatic entities were involved in the project.

The BKA announced on 9 February 2009 that it would be taking part in the project. The Federal Government does not know when the other countries joined.

There were no hierarchies or categories of seniority.

6. Which EU institutions are involved in the International Specialist Law Enforcement project?

- a) *To what extent is the involvement of other EU institutions contemplated or recommended by*

participants in the project?

- b) What specifically is the contribution of the EU police authority Europol (with regard to data collection and transmission and the use of specific products)?*

Ad 6.

Europol was involved in the project, which was funded by the European Commission, and it provided the platform and the technical requirements for secure communications between the project participants. It is not known at present if other EU institutions are involved.

7. How do the outcomes of the International Specialist Law Enforcement project feed through into the work of Germany's police forces and intelligence services?

- a) Which BKA department is involved in the International Specialist Law Enforcement project and what resources are allocated to it?*
- b) To what extent are police forces in the Länder or other agencies also a part of the specific work of the project or the flow of information?*
- c) What meetings have been held in Germany and what was the subject of them?*

Ad 7:

During a second phase, the network formed under the project will explore solutions and methods for bypassing the technically complex security systems encountered in practical police work.

Two officers from the BKA's central criminal investigation department (ZD) took part in the project. Police forces or other (police) authorities played no part in the work or the flow of information.

During preparation of the project SOCA, as project manager, held a meeting with BKA, later a partner in the project, to present and discuss this EU project. In Germany a meeting of the Steering Group was also held during the planning stage to talk about how the project would proceed.

8. How is the International Specialist Law Enforcement project financed, and what are the sums involved?

- a) What specific costs have been incurred under the project?*

- b) *How much has been provided by the European Union and from what sources?*
- c) *What role does the European Commission play in allocating or administering the funds?*

Ad 8.

In 2009 SOCA received funding for the project from the European Commission, drawn from the Programme on the Prevention of and Fight Against Crime. Allocation and administration of the funds were handled by the European Commission. The Federal Government does not have the final report and budget information required by the European Commission.

9. From what date and how was the International Specialist Law Enforcement project prepared?

- a) *What preparatory meetings or seminars were held?*
- b) *Who took part?*
- c) *Who initiated and prepared the meetings?*
- d) *How many German personnel took part in each meeting and which agencies did they represent?*
- e) *What was the contribution of the BKA and other German agencies each time?*
- f) *How initially was the project to be funded, since the EU Programme on the Prevention of and Fight Against Crime was only agreed after the preparatory meetings?*

Ad 9.

In 2006 an international "pilot seminar" was held in the United Kingdom at the instigation of SOCA, to exchange information. At this seminar SOCA put forward the idea of a joint EU project on the subject. Concrete preparations for the project began in spring of 2009 when SOCA, as project manager, held discussions with the proposed partners BKA and CGSU.

Before the project began a preparatory meeting, instigated and prepared by the SOCA project management team, was held with the intended partner BKA to discuss operational aspects of the EU project. The preparatory meeting in Germany was attended by one officer from SOCA and two officers from BKA's central criminal investigation department (ZD).

The BKA's contribution consisted simply in describing the department's organisation, its work and responsibilities.

The intention right from the start was that the project, if it happened, would be funded by the EU. Specific preparations for the project only began once applications for assistance under the relevant EU programme had been invited (see also the answer to question 8).

10. To what extent does the International Specialist Law Enforcement project cooperate with other cross-border police networks and/or make use of their findings?

- a) Which existing partnerships does the project build on?*
- b) To what extent is there any overlap or cooperation with the objectives or practices of the following networks or working groups that are not linked to any institution: Cross-Border Surveillance Working Group (CSW), European Cooperation Group on Undercover Activities (ECG), International Working Group on Undercover Policing (IWG), Remote Forensic Software User Group (formerly the DigiTask User Group)?*

Ad 10.

There were no links to other cross-border police forces so the project does not build on any such links.

There was never any planned or actual cooperation by the aforementioned groups with ISLE, since their areas of interest do not coincide.

11. How has the International Specialist Law Enforcement project evolved since its beginnings?

- a) Whose initiative was it?*
- b) Which new capabilities have been developed as part of the International Specialist Law Enforcement project?*

Ad 11.

For the origins of the project see the answer to question 9. The purpose of the project was to share information and not to develop new capabilities.

12. To what extent will the International Specialist Law Enforcement project pave the way for a permanent working group later?

- a) Where will any institutionalised cooperation subsequently have its base?*
- b) If no institutional link is intended, what are the reasons of the Federal Government or BKA for not wanting one?*

Ad 12.

The exchange of technical information will continue. To date there have been no suggestions as to how this should be organised and structured.

13. What conditions must the project partners or other participants satisfy, and to what extent did the BKA make it clear, before taking part, that its cooperation would not entail any breaches of human rights?

Ad 13.

Respect for human rights is one of the eligibility criteria for EU assistance. All participants in a project must confirm their commitment to human rights.

14. To what extent was or is it the plan to build a working group of "practitioners" following on from the International Specialist Law Enforcement project?

- a) What exactly is the intention here?*
- b) What further details can the Federal Government give about a seminar held in London in 2011, which dealt with future long-term cooperation?*
- c) Who are the members of this or any comparable working group?*
- d) What role will be played here by the BKA, SOCA and the CGSU?*
- e) What other working groups, subgroups or secretariats are there operating in the field of "international specialist law enforcement"?*

Ad 14.

The purpose of the project was information sharing. The participants communicate with each other to exchange technical expertise in this specialist field.

As part of the EU's ISLE project a joint seminar was held in 2011 in the United Kingdom which, for the first time, included all participants in the project. At this seminar the fundamentals of a long-term programme of reciprocal information exchange for the future were discussed. It was attended by all participating countries (see the answer to question 5). At the seminar Europol also gave a presentation of the communications platform to be used in future information exchange. The BKA and CGSU supported the seminar organised by SOCA.

There were no other working groups, subgroups or secretariats under the ISLE project.

15. To what extent are agencies, organisations or other bodies from non-EU countries

involved in the International Specialist Law Enforcement project?

Ad 15.

Agencies and organisations from outside the EU were not involved, apart from project member Norway which is a member of the EEA.

16. How do Federal agencies cooperate with US agencies on entry to vehicles and premises or the infiltration of electronic devices, or what training has been given in this?

- a) What is the legal basis for cooperation with the USA here?*
- b) To what extent is the Federal Government aware of undercover investigators from the USA using hidden microphones or cameras during operations in Germany?*
- c) What justification in law would there be for such snooping operations, and what would be the rules for notifying German authorities of them?*
- d) With which US agencies do Federal agencies cooperate on the exchange of undercover investigators?*
- e) To what extent were undercover investigators or informers operating in Germany on behalf of US agencies at the time of the 2007 G8 summit in Heiligendamm or the 2009 climate conference in Copenhagen?*
- f) Does the Federal Government know which US agencies the British undercover investigator Mark Kennedy was working for in Germany and to which agencies he supplied information?*
- g) Was the BKA informed of the presence of British undercover investigators at the time of the G8 summit in 2007?*
- h) If BKA chief Jörg Ziercke is right in saying that Mark Kennedy was in Berlin simply "to buttress his cover story" and did not file any reports from there (SPIEGEL ONLINE, 26 January 2011), who then was Mark Kennedy working for in Berlin?*
- i) Who paid for his various stays in Berlin?*
- j) What agency can be held accountable for Mark Kennedy's breaches of the law and against whom can civil-law claims arising from his activities whilst "buttressing his cover story" in Berlin, which he must answer, be brought?*

Ad 16.

Germany's Federal agencies do not cooperate with US agencies on covert entry into vehicles and dwellings or the infiltration of electronic devices.

The Federal Government has no knowledge of undercover investigators from the USA using hidden microphones or cameras during operations in Germany. Undercover foreign investigators operating in Germany with a view to a criminal prosecution have the legal status of a "person of trust", who have no authority, under the Code of Criminal Procedure,

to take measures of that kind. The same applies to Federal operatives engaged in preventive crime-fighting.

German agencies liaise on the exchange of undercover investigators with the Federal Bureau of Investigation (FBI), the Drug Enforcement Agency (DEA) and US Immigration and Customs Enforcement (ICE).

The Federal Government has no information on questions f) and i). Concerning questions g) and h) reference is made to the statement of the BKA President at the 30th meeting of the German Bundestag's Committee on Internal Affairs on 26 January 2011 (minutes of the Committee on Internal Affairs No. 17/30).

The Federal Government has, moreover, stated its position several times already on possible breaches of the law by Mark Kennedy. Thus the Federal Government has stated, to the German Bundestag's Internal Affairs Committee (30th meeting of 26 January 2011, minutes of the Committee on Internal Affairs No. 17/30), in its answer in BT Printed Paper 17/5736 to question 27b of Minor Interpellation BT Printed Paper 17/5139, in its answer in BT Printed Paper 17/7567 to question 9 of Minor Interpellation BT Printed Paper 17/7079 and in its answer in BT Printed Paper 17/9844 to questions 12 and 12a) of Minor Interpellation BT Printed Paper 17/9007, that as far as it is aware appropriate investigations have been conducted and concluded into the two criminal offences committed by Mark Kennedy that were revealed by media reports.

The Federal Government has no knowledge of any facts to justify civil-law claims against Mark Kennedy in respect of his activities whilst "buttressing his cover story" in Berlin, which the questioners believe he must answer. Consequently the Federal Government cannot say against whom any such claims might be brought.

On the matter of question 16e), moreover, because of the risks entailed in possibly revealing the identity of any persons engaged in covert operations, the Federal Government cannot give a simple yes or no answer in the context of a minor interpellation (even in the context of a "classified" answer).

According to the case-law of the Federal Constitutional Court, the Federal Government's duty to inform may end if the information in question is so important that not even the slightest chance of its disclosure can be risked (cf. BVerfGE 124, 78 [139]). Parliament's power of scrutiny must be weighed here against the interests at stake, which may require information to be withheld (cf. BVerfGE 124, 161 [193]).

Where a specific deploying country is named in connection with a specific covert operation, considerations of the public good and the protection of third parties' basic rights (in particular the legally protected interests of the individuals deployed) exceptionally take precedence over parliamentary powers of scrutiny.

Persons working undercover operate or have previously operated in criminal and terrorist circles, amongst people who live at arm's length from the state and have a high propensity towards criminal, aggressive and violent behaviour. Because of its significant attendant risks, undercover work entails a high degree of confidentiality and secrecy. If it were possible to draw conclusions about the circumstances of such deployments and particularly the true identity of these individuals, and certainly if their identity were to be revealed, this would expose them and their families to a direct and very real threat to life, limb and liberty from the circles in which they operate or have previously operated.

As the Federal Government already stated in BT Printed Papers 17/5736 and 17/7567, answering question 11 in Minor Interpellation BT Printed Paper 17/5139 and question 4 in Minor Interpellation BT Printed Paper 17/7079, the provision of information about deployments in and around a specific event, in this case the G8 summit of 2007 or the climate conference of 2009, with specific times and places and naming a specific deploying country, in this instance the USA, always carries the risk that specific individuals deployed might be identifiable from the context. For this reason the specific operational details are known only in-house to a very restricted group of people.

17. How do Federal agencies cooperate with agencies in Belarus on entry to vehicles and premises or the infiltration of electronic devices, or what training has been given in this?

- 1. What exactly was the substance of the training "in biometrics and risk and crime analysis" and "operational analysis" which, according to Südwestrundfunk (27 August 2012, 1.26 p.m.) and the Federal Government (Bundestag Printed Paper 16/13897), was given to Belarussian agencies (please attach copies of presentations or workshop programme)?*
- 2. What specific applications (soft- and hardware) were covered in the training, and to what extent were specific manufacturers and their products named?*
- 3. To what extent did the Belarussian participants in these training events indicate the use that would be made of the applications "in biometrics and risk and crime analysis" and "operational analysis", or to what extent was this obvious from the department they represented?*
- 4. Which German agency actually provided the training (for each module please give the name of the trainer and his/her department)?*
- 5. To which other countries has the Federal Government given help with training "in biometrics and risk and crime analysis" over the last five years?*

Ad 17.

Germany's Federal agencies do not cooperate with agencies in Belarus on covert entry into vehicles and dwellings or the infiltration of electronic devices.

The course on "Police processing of information: basics and methods" is referred to as "operational analysis" for short and it covers basic methods and techniques which can help the police to process information in the pursuit of criminal investigations (for example data assessment, structured observation of data in matrices or similar, and visualisation techniques, hypothesising, etc).

The BKA's International Coordination Division (IK) delivered this course in Minsk from 1-7 June 2009. The training officer in charge was the deputy head of unit for basic and advanced training of foreign police officers. The entire course consisted of presentations and of exercises which were paper-based. Participants were selected by the Belarusian police on the basis of the proposed course content and came from a variety of departments. This routine practice is an appropriate subject for the crime-related course in question because it is not specific to any one type of offence and can be used in almost all areas of criminal police work. At no point did participants have direct contact with computers and/or software applications or support. At the end of the course the lecturer used the i2 Analyst's Notebook application to demonstrate a number of application tools. During this half-hour participants simply observed and did no hands-on work.

The BKA also supported a multinational course on biometrics in the United Arab Emirates from 3 to 7 March 2008. In addition, the BKA took part in 2008 in a seminar on biometrics for the Naif Arab University in Riyadh.

Training measures in the areas of Federal police responsibility focused in every case on the recognition of forged or falsified documents, including biometric passports. Risk analysis seminars on the control of illegal migration sought to establish overviews of illegal migration (for example flows and routes). Measures of this kind were provided for the following countries as well as Belarus:

Turkey, Russia, Ukraine, China, Estonia, Georgia, Croatia, Serbia, Azerbaijan and Montenegro.

In answering parliamentary questions the Federal Government has no obligation to supply documents. The Federal Government thus declines to provide additional documents such as seminar texts.

18. How is the International Specialist Law Enforcement project finishing?

a) What reports are being prepared on it and to whom will these be sent?

b) What is the BKA's input to these reports?

Ad 18.

The project launched on 9 November 2009 and was due to run for a maximum of 36 months, including three months for compilation and submission of the final report.

For the BKA the project finished at the end of the London seminar in 2011.

Project reports have been drawn up by SOCA and forwarded to the European Commission. The BKA had no input here.

19. In which bodies of the German Bundestag had the Federal Government previously dealt with the International Specialist Law Enforcement project?

a) If it was not dealt with, how were Bundestag Members supposed to know anything at all about the project?

b) If no written reports by individual working groups are forthcoming following completion of the project, how are Bundestag Members to inform themselves about what it contained and how it unfolded?

Ad 19.

The project has not previously been dealt with in the German Bundestag. For Federal agencies, participation in discussions and cooperation on projects in pursuit of their statutory remit is part of their everyday work. Where these forms of cooperation create a need for specific legislative measures (for example national or European legislation, international agreements, budgetary relevance), the Federal Government lays these measures before the Bundestag using the prescribed procedure. Members' ability to obtain information from the Federal Government derives from the powers of scrutiny conferred on them by the Bundestag's Rules of Procedure, in particular Parliament's right to ask questions.