

# Germany: new law allows more extensive government monitoring of phone calls and email

Alexander Boulerian  
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The Social Democratic Party (SPD)-Green Party coalition government in Germany has agreed on a new law governing state organised wiretaps, bugging and the interception of e-mail.

The Gesetz zur Beschränkung des Brief-, Post- und Fernmeldegeheimnisses (law restricting postal and telecommunications secrecy) will regulate the ability of the German secret services to listen in on telephone calls and intercept faxes and e-mail. The law is a crucial step in strengthening the state's powers and a further restriction of fundamental democratic rights, whereby the SPD-Green federal government is continuing the work of its conservative predecessors.

The new regulation is known as the “G-10” law, named after Article 10 in the German constitution: “The secrecy of the mail and telecommunications is inviolable. However, legal restrictions may be imposed.” The new regulations became necessary when, in 1999, the Supreme Court ruled sections of the 1994 law dealing with these issues to be unconstitutional and called for juridical clarity, particularly in relation to the handling of personal data.

SPD Prime Minister Schroeder has used the Supreme Court ruling to greatly expand the powers of the secret services. Although the regulations dealing with personal data are more strictly drawn in the new bill—the authorities must now inform each person who is subject to a “bugging” order as soon as the data relating to him has been stored, whereas previously such data could be used secretly for three months—the regulations covering the monitoring activities of the G-10 Commission have been extended.

In future, the secret service can begin bugging if suspicion to commit racial incitement exists and “other ways to investigate the facts offer no prospects or would be substantially more difficult”. The monitoring of persons under suspicion is to be simplified. While previously someone could only be bugged if he were suspected of belonging to a terrorist organisation—which required the involvement of at least three alleged culprits—in future, one suspect is enough. The government sees the danger coming particularly from “extremist individuals or small groups” who might employ “explosives or firearms”.

Moreover, the secret services now have permission to spy on telephone calls and e-mails that are carried over optical fibre cables (apparently, the most frequently used transmission technology today). Previously, they were only permitted to listen in on satellite and radio relay links.

The powers of the secret services are further expanded, in that they can listen in where suspicion exists of terrorism, drug dealing, illegal

arms exports or hostage-taking abroad, if “the interests of the Federal Republic of Germany are directly affected”. According to an article in *Der Spiegel* magazine, a special task force designed to act in the event of a crisis has already been formed within the secret services.

For the first time, with this law, a new statute came into effect before being formally passed by the federal parliament (Bundestag). In the case of the German Wallert family, who had been kidnapped by Muslim rebels on the Philippine island of Jolo, the Bundestag Committee for Intelligence Services listening operations rapidly approved a bugging operation because of the “danger to life and limb of the hostages”.

In addition, the results of telephone monitoring will expressly become acceptable as proof in “procedures to prohibit unconstitutional parties and extremist associations.” Previously this was the case only in criminal proceedings. This means that secret, classified telephone logs and reports of undercover agents can in the future play a crucial role in court actions.

The intention to use such logs in pending Supreme Court proceedings against the neo-Nazi Nationale Partei Deutschlands (NPD) has caused particular concern on the part of the Green party, which does not want to give the impression that a “Lex NPD” is being established. In reality, the initiators of the law only distanced themselves because the special committee dealing with the preparation of an NPD ban complained that such dossiers were not necessary for a prohibition.

Those pushing for the new law included Guenther Beckstein, interior minister in Bavaria's Christian Social Union state government, who for some time has agitated for such provisions. His proposals now appear almost word for word in the legal text. This right-wing political hard-liner, renowned for his draconian actions against asylum-seekers, immigrants and supporters of minority religions, was also the first to push for an NPD ban. Beckstein and Federal Interior Minister Otto Schily (SPD) have from the start been passing the ball back and forth between one another.

The law is primarily being justified with reference to the “fight against the extreme right”. This justification is being used to gain the agreement not only of parliament, but also of broad layers of the population. This exemplifies the unscrupulous manner in which the powers of state organs of coercion are being expanded in the name of a more aggressive posture against the extreme right. For those in charge of the state and politics, it is less a matter of the fight against the right wing—as witnessed by the use of so-called undercover secret service investigators as agents provocateurs in the neo-Nazi scene (a

recent article in the *Frankfurter Rundschau* was headlined “The undercover policeman as model Nazi”)—than of creating new means for spying and monitoring the general population.

Even though a substantial social protest movement does not exist at present, social tensions are unmistakably growing. With wealth concentrated in ever fewer hands, living conditions for broad social layers are becoming increasingly intolerable. As a result, the probability increases that discontent with official policies will express itself politically.

The extent of concern about this situation within influential circles in politics and the media is revealed in the ongoing debate about the past of two Green party ministers in the Schroeder government: Foreign Minister Joschka Fischer and Environment Minister Juergen Trittin. Former street fighter Fischer and ex-Maoist Trittin, who have both undergone a complete about-face, repudiating the radicalism of their youth, are the ostensible targets of this campaign. In reality, however, it is directed at anyone who questions national authority—the real sin of the 1968 protest movement, in the eyes of the powers-that-be.

In a strict sense, Fischer and Trittin did not really belong to this movement, but with their boundless opportunism today's thoroughly loyal Green ministers have provoked certain circles into undertaking a general settling of accounts: any challenge to state authority is to be pilloried and punished with excommunication—retroactively and at the same time preventively. Other former left-wing political activists are providing their own menial assistance to this campaign.

*Der Spiegel* magazine writes: “The anti-authoritarian notions of the 1968 generation, regarded as a radical-democratic renewal of the republic, degenerated into an attack on the state monopoly of force—which was the greatest error of the Apo [Extra-parliamentary Opposition], and is why Joschka Fischer is now feeling the whip.”

Any use of force is the prerogative of the state alone! On this the prominent protagonists in the debate are united: this includes those who are demanding that Fischer and Trittin dissociate themselves even more expressly from their rebellious past, and are calling for the two ministers to resign, as well as Fischer's and Trittin's defenders, who stress that the two leading Greens' reformation is proof of the “democratic state's” power of integration. The message is clear: state authority is inviolable, its strengthening and confirmation a holy “democratic” commandment.

Interior Minister Otto Schily long took over the leading role of strengthening and confirming this authority. According to Schily, it is no longer a question of protecting the individual from the state, but rather protecting him from organised crime. This is also how Schily explained his point of view when he was merely a parliamentary deputy—a view that has clearly changed since the days when, as a lawyer, he defended members of the RAF (Red Army Fraction).

Schily's state-authoritarian position corresponds to the standpoint of many prominent SPD politicians, indicated by their earlier agreement to the introduction of wire-tapping. But also within the Green party, a conception of the state based on civil liberties has long since given way to a general affirmation of state authority. Even critical Greens like Cem Oezdemir and Hans Christian Stroebel gave their blessings to the draft bill reforming the G-10 law, justifying their support by saying the advantages of introducing controls and data security would counterbalance the disadvantages of the new law.

Since 1968, with the passage of Emergency Laws that, together with the brutal US war in Vietnam, inflamed student protests, the state's apparatus of force has been continuously expanded. At the same time,

elementary civil liberties and fundamental rights have increasingly come under attack.

Milestones in this process were Willi Brandt's Radikalenerlass of 1972, which introduced the Berufsverbot, banning Communist Party members or others deemed hostile to the constitution from holding jobs in the public service, and which affected over 10,000 people by 1988. Another was the prohibition of the multiple defence in criminal proceedings. With the hunting down of “sympathisers”, the Stammheim trial and then the astonishing “suicides” of RAF leaders Meinhof, Baader, Ensslin and Raspe, the internal strengthening of the state achieved a high point in the 1970s.

This process continued to intensify in the 1990s: Now the opponents are no longer the RAF and left-wing terrorism, but “organised crime”, “religious sects” and right-wing violence. They provide the pretext and general justification for an ever-greater expansion of police and secret service powers at the expense of basic civil rights.

While the debate on amending the constitution in 1996/1997 to introduce new wire-tapping and bugging powers found a broad echo in the media, the other measures strengthening the security authorities hardly gained public notice. In particular, in recent years, and unnoticed by the public, an abundance of new powers of intervention for the security services was created both at the federal and state level, in laws governing the police, criminal procedures and the secret services.

Altogether, they evince a continuous tendency to introduce harsher laws, expanding the latitude of existing regulations as well as creating new possibilities of state intervention.

It is characteristic that the measures extending police powers at a state level have been implemented irrespective of whether the state was ruled by the Christian Democrats or the SPD. After conservative-ruled Bavaria and Baden-Wuerttemberg in western Germany (and Saxony in the East), the leading role seems now to have been taken by SPD-governed Lower Saxony, which has introduced newly created powers enabling the police to carry out ID checks in all public places, regardless of whether there is any suspicion of a crime being committed.



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