

German interior minister seeks to massively step up police state powers

Wolfgang Weber
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Two bills drafted by the Interior Ministry (BMI) will provide the Federal Criminal Investigation Authority (BKA) and the Federal Police with new powers. They represent a milestone in the establishment of a totalitarian police state.

The BMI cites the “implementation of the EU directive on data exchange between police authorities” of the various EU countries as the official reason for the new BKA law. However, the 80-page draft law, which www.netzpolitik.org has published in full, provides for far more measures than “just” this gigantic exchange of data within the EU.

The three most important innovations are, first, the BKA’s authorisation to break into private homes and plant state-operated Trojan software in computer equipment; second, permission to compare biometric photos of persons available to the police authority with photos or video snippets from the internet and social media such as Facebook, X, Instagram, TikTok; third, the power to analyse the data collected in this way or already available in the authorities’ huge databases using AI-based tools.

As a detailed examination will show, this law provides the BKA with extremely wide-ranging powers and continues the large complex of police and secret service laws that the grand coalition of Christian Democrats (CDU/CSU) and Social Democrats (SPD) passed in the summer of 2021, shortly before being voted out of office.

1. Secret break-ins to plant state-operated Trojan software

In future, BKA officers will be allowed to break into the homes of German and foreign citizens, to search them “covertly” and to implement state-operated Trojan software on computers and smartphones, without the owner having committed a criminal offence or having an investigation pending against him or her.

The mere suspicion that the owner of the property or a co-tenant has an “anti-constitutional attitude” or could be considering a terrorist or other serious offence such as “extremism” is enough to legitimise the break-in.

In the view of the BMI, this has become necessary because the extraction of private data through online searches, in which state Trojans are infiltrated into smartphones and computer devices via the internet, has proven to be “impractical.” The powerful antivirus programmes available on the market today and the anonymisation of movements on the internet using special browsers such as TOR are too great an obstacle for police access via the internet. Hence the “more practical” resort to the traditional lock pick and crowbar.

Until now, a citizen’s home has been considered a particularly protected space and worthy of legal protections, because it also contains the intimate sphere, the person’s innermost thoughts, and the personality of the person concerned. In the age of computer technology, this “core area of private life” also includes private smartphones and computer devices with their

data, as the Supreme Court formulated in its judgement of May 2020.

If the police plan to search a house today, they must apply to a public prosecutor for authorisation and must specifically name the accused and the offence with which they are charged, as well as the findings they hope to make during the search.

The public prosecutor must then submit this application to the investigating judge for approval. The person concerned must be informed in advance so that he has the opportunity to be present during the search or to be represented by a person of his choice. Exceptions to these regulations are formally only possible in the event of imminent danger, which in real life can always be declared by the police without difficulty.

In future, however, the adoption of the Faeser Act in the Bundestag (parliament) will sweep aside all these restrictions on the protection of a citizen’s privacy.

Even if there is only a vague suspicion of someone having a position disliked by the state authorities, the police authorities will be able to break into people’s homes secretly. Such criminal activities by the justice system have so far been reserved for the secret services.

For example, the Interior Ministry and the Federal Office for the Protection of the Constitution (*Verfassungsschutz*), as Germany’s domestic secret service is called, under its then right-wing extremist president Hans-Georg Maassen, declared the Sozialistische Gleichheitspartei (Socialist Equality Party, SGP) to be “left-wing extremist.” The BMI rejected a legal complaint by the SGP on the grounds that “the struggle for a democratic, egalitarian, socialist society” stood in contradiction “to the central values of the constitution.” The *Verfassungsschutz* is authorised to carry out any kind of secret service surveillance, including covert surveillance, such as home invasions and cyberattacks, against the SGP and any other organisation classified as “left-wing extremist.”

But this “privilege” of the *Verfassungsschutz* and the other secret services is now to be abolished.

The strict separation of the police and the secret services, introduced after the collapse of Hitler’s Third Reich as a “lesson learned from this totalitarian dictatorship,” has thus been finally eliminated after decades of systematic erosion. The Federal Criminal Police and the other police authorities of the federal states will in future act as a “secret state police,” even if they will not bear this name, which is burdened by the monstrous crimes of the Gestapo.

To conceal this fact, the interior minister and the defenders of her bill insist that the planned police searches would be carried out “only within the framework and in compliance with the constitutional order.”

What is hidden behind these empty phrases is the fact that the Supreme Court has already overturned several previously planned police laws, for example with its ruling of May 2020 on a police law by Horst Seehofer (CSU, Christian Social Union), then interior minister in the grand coalition of CDU/CSU and Social Democratic Party (SPD) led by Angela Merkel.

This law already provided for the mass storage of telecommunications data through online searches, in which state Trojans were to be deployed on the victims' computer systems via the internet with the support of telecommunications companies such as Telekom, O2, etc.

The Supreme Court expressly did not object to this mass surveillance. However, it did demand that the "core area of private life" should not be violated, or only under certain circumstances.

In reality, however, the mere installation of state Trojans constitutes a violation of this core area.

Furthermore, according to the court, online searches must be authorised by a judge (except in cases of "danger in delay") and, in addition, "carefully recorded and documented." The latter "hurdle" is easily overcome by the police clerks, and the so-called "judicial reservation" is also no obstacle.

The observance of these formalities, which involve little effort, is what lies behind the impressive legal formula "within the framework and in compliance with the constitutional rules." In other words: a sham.

2. Matching biometric police data with data from the internet

The second significant and far-reaching extension of the BKA's powers is that in future, the police authorities will be able to compare the biometric photos of ID cards, passports, driver's licences and police-wanted photos stored by them, with photos and video clips that have been downloaded from the internet and stored in huge databases, which are also biometrically categorised for this purpose. This will enable the BKA to deduce the whereabouts, movements and behaviour of individuals.

This procedure has not been permitted under data protection laws to date because those affected have not given their consent for their photos to be used, not to say misused, from the internet. This obstacle is now to be removed.

The draft law explicitly does not provide for authorisation for real-time biometric searches. This means that there will be no real-time comparison of passers-by in railway stations or large public places with search databases. The focus is rather on the retrospective analysis of image material, not on real-time surveillance. At least this is what the interior minister repeatedly asserts.

But this definitional distinction is intended to deceive and reassure. Above all, it is intended to take the wind out of the sails of the protests and constitutional concerns against ubiquitous real-time surveillance.

The trick is that even a processing delay of just a few seconds after real-time data has been captured by surveillance cameras at airports and railway stations constitutes "retrospective data processing." In reality, however, it is equivalent to real-time data utilisation.

3. AI-supported analysis of biometric data

The full impact of the biometric comparison of photos held by the authorities with data from the internet will only be realised through the use of instruments that are defined as "permitted" in the third core area of the planned BKA law:

- Tools based on artificial intelligence can and may enable BKA officers to recognise the whereabouts and movements of individuals, even complex patterns and connections between the movements of several people that are not obvious to humans.
- Mental states and characteristic behaviour, such as the way people

walk, can also be recognised with such AI tools and used to filter out these people from a sea of data.

- The insights gained from AI analyses of connections can also enable predictions of actions, encounters with other people or public protest demonstrations.

According to the draft law, these capabilities are to be used in the fight against terrorism and, above all, extremism.

In its ruling of February 16, 2023 on the unconstitutional Hesse Police Act and the "HessenData" analysis software, the Supreme Court declared the automated, AI-based analysis of large amounts of data extracted from the internet and/or already available in the databases of the police authorities to be fundamentally constitutional, but made a number of constitutional requirements for this:

- *Intensity* of the intervention: The court classifies automated data analysis as particularly intrusive. The broader and deeper the insights into individuals, the higher the intensity of the intervention.
- *Proportionality*: The lower the requirements for the reason for the analysis, the higher the technical qualifications for the method of data analysis must be, as it is easy to carry out mass data analyses. Minor offences such as parking violations or theft of low-value items should not lead to false accusations too often.
- *Purpose limitation*: The purposes of data analysis must be clearly and precisely defined in law.
- *Protection of the core area of private life*: It must be ensured that no data from the core area of private life is included in the analysis.
- *Transparency and control*: The methods of data analysis must be comprehensible and controllable. The court sees particular challenges in terms of comprehensibility and susceptibility to error in AI-based systems.
- *Threshold values*: Specific threshold values must be defined for the use of the analysis software, for example with regard to the severity of the crimes to be prevented.
- *Procedural safeguards*: Sufficient procedural safeguards such as documentation and deletion obligations must be provided for.

These are all good sounding provisions. The only snag is that the Supreme Court has not prescribed a neutral and competent authority to monitor compliance with these provisions, as is the case, for example, with the data protection officer in relation to compliance with data protection regulations.

And where there is no control, there are no restrictions on the police in the "conscientious exercise of their duties."

It should be emphasised that some of the above-mentioned constitutional requirements do not apply to the biometric recording and AI-based analysis of personal data of refugees from the outset, and this is for "security reasons," as stated in the draft law.

Refugees are fair game for the Interior Ministry and are defenceless against the activities of the police. There are no laws in Germany that regulate the protection of the fundamental rights and freedoms of refugees when their biometric data is processed.

Lawyers critical of such breaches of basic democratic rights regard the general authorisation to use refugee data under the pretense of security requirements as a violation of the principle of *purpose limitation* and the prohibition of discrimination on the basis of nationality.

So much for the BKA authorisation law of Interior Minister Nancy Faeser.

"Restructuring of the Federal Police Act"

The imagination of the bureaucrats in the Interior Ministry when it comes to inventing euphemistic names for legal amendments of serious

substantive importance is boundless. This law has little to do with “restructuring the Federal Police Act”; rather, it is a law that grants the Federal Police extensive powers to restrict the fundamental rights of a citizen they have in their sights.

Nancy Faeser had this law passed by the federal cabinet in November 2023 and then introduced it in the Bundestag.

It provides for the following extended powers for telecommunications surveillance by the Federal Police:

- The federal police will in future be able to access telecommunications connection data even if there is only a suspicion of “smuggling” and “extremism.” This includes information about who has phoned or exchanged text messages with whom.

- Under certain circumstances, especially “in cases of imminent danger,” it should also be possible to monitor ongoing telecommunications.

- The federal police will also be authorised to identify and locate SIM cards and mobile devices.

These measures should only be permitted in the event of “danger to life and limb.” In addition, they require the approval of a judge, which, as is usually the case, is only a formality and is only a nuisance for the police because of the associated paperwork.

The federal police are not authorised to carry out source telecommunications surveillance, i.e., to infiltrate devices with state Trojans, as this is the responsibility of the Federal Criminal Investigation Authority (BKA).

The federal police have also been given the new power to impose reporting requirements, bans on entering and residence bans for entire municipalities or municipal districts. This is intended to prevent people from travelling to large events or demonstrations where, in the police’s estimation, they could “commit crimes of considerable significance.”

In Bavaria, which is always miles ahead of the federal government when it comes to police state measures and has armed the state police with these powers since August 1, new fines have even been introduced for violations of reporting requirements.

Green politicians as a “democratic fig leaf”

Interior Minister Nancy Faeser is determined to have both laws, the BKA and the Federal Police Act, passed in the Bundestag, and can rely not only on the support of the parties in the coalition government (SPD, Greens and Liberal Democrats, FDP), but also on that of the opposition CDU/CSU, as well as the Left Party and its BSW offshoot and the fascist Alternative for Germany (AfD), who all support the stepping up of the powers of the state apparatus.

The deputy parliamentary party leader of the Greens in the Bundestag, Konstantin von Notz, has already justified the new laws, including the abolition of the separation between the police and the secret services, to the RedaktionsNetzwerk Deutschland (RND).

For many years, von Notz has acted as a democratic fig leaf for the stepping up of state powers and the surveillance carried out by the secret services in Germany, posing “critical” questions as a member, and since 2021 as chairman, of the Parliamentary Control Committee (PKGr) supposed to “monitor” the intelligence and secret services, asking “critical” questions about the activities of the *Verfassungsschutz*, the Federal Intelligence Service (BND, responsible for foreign intelligence operations) and the Military Counter-Intelligence Service (MAD).

All of this, of course, is done in the strictest of secrecy, because this committee, the PKGr, only meets behind closed doors. Even after each meeting, its members are obliged to maintain the strictest secrecy about

what was discussed. Naturally, this means no one can control the controllers, which is extremely convenient for everyone involved.

Von Notz justified the police breaking into private homes without the existence of a criminal offence or preliminary proceedings with the argument: “We are living in serious times. The police need effective and modern investigative powers and means.”

The Green politician did not specify what exactly he meant by “serious times.” In view of the plummeting poll ratings for the parties in the coalition government—without the CDU/CSU being in a significantly better position—it is reasonable to assume that he means the enormous popular opposition to all Bundestag parties, against their pro-war policies and their policy of social cuts.

And the “investigation methods” that Faeser wants to legalise with her laws cannot exactly be called “modern.” These were the methods of Hitler’s Gestapo and have always been the methods of all secret services, all police and military dictatorships.

Establishing police state powers—an international phenomenon

In this context, it is important to understand that establishing police state powers is not a specifically German phenomenon. It is taking place in all capitalist countries around the world. To name just two examples:

In the UK, the recruitment of former members of the military into the police force has been intensified for years. Above all, however, the police have been massively equipped with military weapons throughout the country, and their deployment against protest demonstrations or during raids is organised using military tactics.

The 2012 Olympic Games in London were the largest police and military security operation in peacetime in the history of the United Kingdom: 13,500 soldiers were deployed, 5,000 of whom were deployed to support the police in searches of homes and buildings. The Royal Navy operated on the Thames and at the venues for the sailing competitions, the Royal Air Force was on standby and surface-to-air missiles were stationed at six locations throughout London, including on residential buildings.

The French president followed this example at the Olympic Games in Paris a few weeks ago, and even exceeded it. As the WSWS reported, more than 80,000 riot police and military police and soldiers were deployed on the ground, in the water and in the air, supported by helicopters, drones and snipers. The whole of Paris was divided into different security zones, the borders of which could only be crossed after strict controls by police or soldiers. These measures put Paris under a state of siege.

In both cases, it is clear that these were large-scale manoeuvres to train the police and military apparatus for use against large crowds of people protesting against the massive social cuts and the pro-war policies of their governments and taking class-struggle measures.

As in these two large neighbouring countries of Germany, the two planned laws on massively stepping up police state powers are also justified here by Faeser with the “fight against international terrorism.” But like all laws that are passed and have been passed under the pretext of the “fight against right-wing extremism” or the “fight against terrorism,” these laws are ultimately also directed against the working class, which will unite internationally in its struggle against mass redundancies, factory closures, social cuts and war.

The governments of all the countries concerned, inside and outside the EU, will have no difficulty in declaring this international unity and the joint struggle of the workers as “international terrorism.”

But it is precisely the struggles of the working class that will be able to thwart the plans of the ruling capitalist class and its police state

manoeuvres in every country. To do this, they must be coordinated internationally and armed with a socialist programme.



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