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25th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE

Sofia (9-10 October 2003)

- **INTERNATIONAL CO-OPERATION IN THE
FIGHT AGAINST INTERNATIONAL
TERRORISM AND IMPLEMENTATION OF
THE RELEVANT INSTRUMENTS OF THE
COUNCIL OF EUROPE**

- **THE RESPONSE OF THE JUSTICE SYSTEM
- CIVIL AND CRIMINAL - TO TERRORISM**

Report presented by the Minister of Justice of

GERMANY

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No state can effectively combat international terrorism on its own. The most important prerequisite for successfully combating terrorism is close co-operation between states that is based on trust. For Germany this is no mere intention: Germany is co-operating closely with other states, both in terms of mutual judicial assistance in investigating and prosecuting acts of terrorism as well as in measures to prevent terrorist attacks.

The Federal Government is actively involved in numerous international committees with the aim of improving the preconditions for co-operation regarding the criminal prosecution and prevention of terrorist attacks. Our goal is to create a range of legal tools for combating terrorism such that terrorists have nowhere to seek refuge. Along with effectively combating terrorist activity we need to safeguard human rights, protect the rights and interests of victims and also uphold the perpetrators' right to proceedings based on the rule of law.

Particular prominence in this is given to the work of the Council of Europe. The "Multidisciplinary Group on International Action Against Terrorism (GMT)", which the Committee of Ministers established on 8 November 2001, successfully fulfilled its mandate at the end of last year. The results of the group's work and its recommendations are now being implemented. In addition, Germany has initiated a series of new statutes and supplements to German legislation to ratify United Nations Security Council Resolutions 1267 (1999), 1333 (2000), 1390 (2002), 1455 (2003) and 1373 (2001). These are outlined in part two of this report.

1. International co-operation in the fight against international terrorism and implementation of the Council of Europe's most important tools

The Federal Government has closely followed the work of the "Multidisciplinary Group on International Action Against Terrorism (GMT)" since it was established.

- a) Revision of the Convention on the Suppression of Terrorism of 1977

During discussions on the Protocol amending the European Convention on the Suppression of Terrorism of 27 January 1977 the Federal Government was particularly committed to extending the scope of this Convention to cover other criminal acts with a terrorist background and the dropping of the "plea of a political act" when extraditing persons on the grounds of terrorist acts.

The Federal Republic of Germany has ratified the European Convention on the Suppression of Terrorism of 27 January 1977. It was also one of the first signatories, on 15 May 2003, to the Protocol amending the Convention.

The 1977 Convention sets out that, pursuant to a series of international conventions listed in the Convention, certain acts are to be classed as a punishable offence for the purposes of extradition between contracting states. Furthermore, extradition may not be refused on account of a particular act being regarded as a political offence. However, the Convention also provides the possibility of effecting a reservation against this regulation.

The Protocol amending the Convention broadens the range of offences justifying extradition by including further international agreements and further delimits the possibility of effecting a reservation. States making use of the right to effect a reservation must submit extensive justification for refusing a request for extradition in each individual case. Furthermore, the reservation is limited with regard to time; it must be submitted anew after a period of three years.

The Federal Government is currently preparing to ratify the Protocol amending the Convention. In our view it is regrettable that it has not been possible to reach agreement such that the possibility of declaring reservations be dropped altogether. The fact that the option of declaring a reservation has been curtailed and a time limit imposed is an improvement on the 1977 Convention. However, we would have greatly welcomed a more decisive signal from the member states of the Council of Europe by them declaring that terrorism was a criminal not a political act.

The Federal Government does not intend to make use of the option of declaring reservations against the Protocol. Anyone taking part in acts of terrorism or supporting these in any way must face criminal prosecution – without reservation. Thus, extradition of perpetrators to other signatory states based on the Convention must be possible without restriction.

Since Germany has ratified all those agreements which, based on the Protocol to amend the Convention, now fall within the scope of the Convention on the one hand and such criminal acts are, pursuant to German law, criminal acts justifying

extradition on the other, the ratification of the Protocol amending the Convention will not necessitate any changes to national legislation.

b) Recommendations of the GMT and the work of the groups of experts

In the Federal Government's view, the GMT's recommendations on the effective suppression of terrorism, which were approved by the 110th Committee of Ministers held on 2/3 May 2002 in Vilnius, constitute a solid foundation for further work in the Council of Europe on individual aspects of the suppression of terrorism. In particular we welcome the fact that priority is to be given to the following issues:

- Punishability of inciting others to commit acts of terrorism and incitement to hatred ("incitement to terrorism"),
- International co-operation regarding criminal prosecution,
- Questions regarding the security of identity documents.

The Federal Government sets particular store by the work of the two groups of experts regarding the question of protection of witnesses (PC-PW) and by special investigation techniques in proceedings with a terrorist background (PC-TI) which the Committee of Ministers agreed to set up on the recommendation of the GMT. Germany is represented in both groups by experts from the judicial field. After putting the more "legislative" measures in place it is now important to ensure that the "technical/judicial" preconditions for the international prosecution of acts of terrorism are fulfilled. It is a particular concern of ours that the rights of victims of terrorism be upheld and that they be able to promote their interests.

Finally, all measures for combating terrorism must guarantee that human rights are safeguarded. The "Guidelines on Human Rights and the Fight against Terrorism" put forward by a group of experts from the Steering Committee for Human Rights provide an essential benchmark in this respect.

2. Reactions by the judicial system to the challenges posed by terrorism

The ratification of United Nations Security Council Resolutions 1267 (1999), 1333 (2000), 1390 (2002), 1455 (2003) and 1373 (2001) constitutes the starting point for a series of new laws and measures in Germany.

a) Ratification of 12 UN anti-terrorism conventions

UN SC Resolution 1373 (2001) obligates the UN Member States, amongst other things, to ratify and implement a total of 12 UN conventions on the fight against terrorism. Germany has already ratified all these UN conventions, with the exception of the International Convention for the Suppression of the Financing of Terrorism. The Bundestag is currently deliberating the federal law to ratify the International Convention for the Suppression of the Financing of Terrorism. It is to be expected that this Convention will also be ratified soon.

Germany has, however, already implemented the contents of the International Convention for the Suppression of the Financing of Terrorism. The new Section 129b of the Criminal Code ensures that providing support to terrorist associations abroad shall be punishable in Germany. The statute entered into force on 30 August 2002. Providing support to criminal or terrorist associations was already a punishable offence in Germany pursuant to the previous Section 129b of the Criminal Code even before the attacks of 11 September 2001. However, the precondition was that the association had at least one sub-organisation within Germany.

b) Suppressing the financing of terrorism

Along with the criminal prosecution of terrorist groups in Germany and abroad it is imperative that the financing of terrorist activities be suppressed. The main tool for doing so is the "freezing" of assets and the controlling of financial transactions.

aa) "Freezing" assets

Insofar as UN SC Resolution 1373 (2001) provides for the blocking of assets belonging to suspected terrorists and other such organisations, this duty is largely fulfilled by EU statutory regulations applying directly. Insofar as the EU is not responsible in a particular case (for so-called "EU-internal" terrorists and terrorist groups), this is covered by national measures. It has been possible to freeze bank accounts in Germany for a long time pursuant to the Foreign Trade Act (AWG), insofar as the matter relates to foreign trade. The newly created Section 6a of the Act Regulating Banking and Credit Business (KWG), furthermore, provides the Federal Financial Supervisory Authority (BaFin) with the power to better monitor and, if necessary, to stop financial transactions.

bb) Monitoring financial transactions

The aim of the 4th Financial Market Promotion Act and the Anti-Money Laundering Act is to create greater transparency regarding financial transactions. The Bundestag has thus put in place better controls on financial operations and the possible use of money for terrorist purposes.

The new Section 24c of the Act Regulating Banking and Credit Business (KWG) provides for the creation of a modern data recall system which will improve the means by which the Federal Financial Supervisory Authority will have access to information regarding bank accounts. The banks' own security systems also need to be improved. Banks and other institutes providing financial services will in future be required to develop suitable internal security systems for combating money laundering and fraudulent activities based on the principle of "know your customer". In addition, the banks have been obligated to pass on to the receiving bank comprehensive details regarding persons making a bank transfer to a foreign bank outside of the EU, in order to facilitate tracing back the so-called paper trail in suspicious cases.

The Anti-Money Laundering Act amends the Money Laundering Act (GWG) such that financial institutions are now also obligated to inform the criminal investigation authorities if they suspect that a particular financial transaction serves to support a terrorist organisation.

c) Changes to administrative law

The religious privilege of associations which existed prior to 11 September 2001 has been lifted. Consequently, extremist religious groups and associations pursuing a particular ideology may be banned just like other associations if they plan terrorist attacks or incite followers to commit criminal offences whilst purporting to constitute a religious group. The aim in tightening this law has been to stop extremist groups providing the breeding ground for terrorist activities and a support base for such organisations that are active abroad.

The powers of the Federal Office of Criminal Police (BKA) and the intelligence services have been extended. The Federal Intelligence Service (BND) and the Federal Office for the Protection of the Constitution (BfV) now have the right, within the scope of combating terrorism, to obtain information on bank accounts and account holders, other authorised persons, monetary transactions, the flow of funds and investments from banks, institutions providing financial services and financial businesses, subject to predetermined conditions. They also have the right to obtain information, within a legally predetermined scope, from airlines and companies providing communications and telecommunications services.

The tasks of the German Border Police (BGS) have also been extended. Thus, officers of the German Border Police are to be deployed, with the prior agreement of pilots, onboard German aircraft for the purpose of increasing air traffic safety.

The goal of all these measures is to protect people from terrorist attacks and to secure the arrest of terrorists. In all our efforts to increase security we should, however, not lose sight of the fact that our actions must be based on the rule of law and subject to revision in the courts.

