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# The German election campaign is marked by the US secret services

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The telecommunication surveillance in Germany launched by the US National Security Agency, the NSA, is still fuelling controversy. On 19 July, at the traditional press conference before her holiday leave, Chancellor Angela Merkel responded with restraint to the news that the NSA had been collecting telecommunication data from private individuals and politicians as part of the PRISM programme on a mass scale. Merkel is insisting that she found out about these US agency activities from the press. She stressed during the conference that Germany is not a police state and that all actions taken by secret services must be based on the law applicable in Germany. Information on the surveillance of German citizens, most likely with the consent and knowledge of German agencies and politicians, is being revealed in the middle of the campaign ahead of the election to the Bundestag scheduled for September. This has put the federal government and the chancellor herself in an embarrassing situation, and the opposition is trying to take advantage of it. However, the PRISM scandal will not affect the election results.

## Germany under US surveillance

In early June, Edward Snowden, a former contractor for the US intelligence agency, the NSA, leaked information that the NSA was involved in mass-scale telecommunication surveillance outside the US using the PRISM programme. German public opinion was outraged by the fact that Germany was one of the most intensely tapped countries as part of the programme. According to information from the weekly *Der Spiegel*, US services monitor approximately 500 million telephone calls, text messages and e-mails monthly. On 17 July, the *Bild Zeitung* daily newspaper cited sources with close links to the US administration in reporting that PRISM had also been used as part of the ISAF mission in Afghanistan to collect data on individuals suspected of terrorist activity. The newspaper reports that the Bundeswehr and the German secret services were aware of this. Referring to information from the Federal Intelligence Service - BND, the government's spokesman, Steffen Seibert, announced that despite the similarity of the names, this programme had been used by NATO troops (including the Bundeswehr) exclusively for military purposes and had nothing to do with the NSA's spying on civilians and politicians. In turn, according to the

report by the secretary of state at the Ministry of Defence, Rudiger Wolf, which was published on 18 July, the programme used in Afghanistan was available only to the US army, and the Bundeswehr could receive data gathered by it upon filing a relevant motion to the IJC command centre in Kabul. On 21 July, *Der Spiegel*, on the basis of US military intelligence secret documents, that the collaboration between the German and US secret services is much closer than has previously been thought. The BND and the Federal Office for the Protection of the Constitution - BfV use the US programme known as XKeyscore, which enables the tapping of telecommunication services. Hence the NSA's access to German data collected this way.

**Response from the federal government and the secret services**

Since it was revealed that PRISM had been in use in Germany, government representatives have insisted that they had not been aware of the programme itself and the scale to which it had been used. The Liberals, in whose political agenda the protection of personal data and civil rights is granted high priority, reacted with protest and demanded that the USA should provide an immediate explanation. The Christian Democrats reacted significantly less firmly. The argumentation used by Chancellor Merkel and the Minister of Internal Affairs, Hans-Peter Friedrich, was based upon appeals to respect the law applicable in Germany and emphasised the positive sides of co-operation between the German and the US services, especially preventing several terrorist attacks planned in Germany.

The BND has emphasised that the surveillance in Germany is taking place within the limits set by law, and that the secret service has not been participating in the NSA's actions with regard to German citizens, and that data collected by German services are made available to the USA only in certain cases. The BfV has admitted that it is currently testing the US programme, but has not used it on a large scale.

**PRISM as a new issue in the election campaign**

The response by Merkel and Friedrich sparked sharp criticism from the opposition, especially the SPD and the Green Party. These parties are accusing the Christian Democrats of negligence and a failure to make a sufficient reaction or to take care of citizens' security. They are also criticising the silence from the secret service coordinator at the Chancellery, Ronald Pofalla. Peer Steinbruck, the SPD's candidate for chancellor has accused Merkel of breaking the chancellor's oath as regards taking care of citizens' welfare. The opposition is claiming that the government must have known about the NSA's operation in Germany before. German public opinion believes the same: according to a poll commissioned by *ARD* television, over 73% of respondents think so. Only 22% of Germans are of the opinion that the government is taking sufficient action in this case and that it is making sufficient efforts to clear up the circumstances of the NSA's operation in Germany. However, more than half

of the respondents believe that the government has been unable to counteract the use of PRISM in Germany. This has been reflected in the pre-election polls. Support for political parties has remained at a stable level despite the PRISM scandal: 41% of respondents supported the Christian Democrats, while 22% and 12% backed the Social Democrats and the Greens, respectively.

**The collaboration between the German and US secret services**

Information is shared between the German and the US secret services on the grounds of regulations dating back to as early as the 1960s. These are the Agreement to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces of 1963, the Act of 1968 on Restrictions on the Secrecy of Mail, Post and Telecommunications and an administrative agreement entered into in the same year. Pursuant to these regulations, US intelligence services are authorised to the extent necessary to ensure security to their citizens (originally, the troops stationed in the bases in Germany) to use the data collected by the BND as part of telecommunication service surveillance or to take action independently in order to collect data. The co-operation between the US and the German secret services has been a fact in the public sphere since at least 2007, when information obtained from the USA made it possible to prevent a series of terrorist attacks, including one against the US military base in Ramstein and the airport in Frankfurt am Main, plotted by the 'Sauerland Group' (whose members included two ethnic Germans who had converted into Islam). The BND also sought assistance from the USA when German citizens were kidnapped in Afghanistan and Yemen. Pursuant to the Act of 1968 on Restrictions on the Secrecy of Mail, Post and Telecommunications, the BND can also monitor up to 20% of the telephone and Internet communications between Germany and other countries. However, the present technical possibilities allow it to exercise these powers only to 5%. Since German intelligence has no adequate Internet surveillance programmes, it is forced to co-operate with the secret services from other countries and to use their programmes. This entails the need to make the information collected available to the agencies they co-operate with.

**Conclusions**

1. The evasive statements heard from Chancellor Merkel and other politicians from the government coalition on PRISM are an effect of their political calculations amidst the hottest phase of the campaign preceding the election to the Bundestag. Since the German and US secret services have been co-operating for many years, it seems unlikely that the federal government (especially Chancellor Merkel) could be under-informed about the NSA's operations in Germany. This would be proof of poor information flow at the Chancellery, the lack of control of the secret services coordinator's work and, above all, of the inability to

guarantee the security of data of German citizens.

2. For the opposition, the PRISM scandal and the government's restrained reaction have offered an opportunity to reduce the gap in support between them and the Christian Democrats, and to undermine Chancellor Merkel's position, which has been unshakeable in pre-election polls so far. As proven by public opinion polls, actions taken by the opposition to this effect are insufficient to change the poll results. The Christian Democrats' behaviour, and especially their arguments pointing to the benefits of collaboration with the USA and the need for telecommunication surveillance in combating terrorism, fit in with the restrictive stance taken by the CDU and the CSU on internal security, which is one of the key issues on the agenda of these parties. The Christian Democrats also support a controlled restriction of civil liberties for the benefit of security, which appears to meet the expectations of a great part of the German public.

3. The disclosure of the information on PRISM will accelerate the planned development of the BND's section in charge of cyber security. Within the next few years, 100 million euros is to be allocated to reinforce the technical capabilities of collecting and processing the data of Internet service users, including those from outside Germany, with the aim of preventing terrorist attacks. It can be expected that what has been a controversial project so far will gain more acceptance among German politicians and that it will be possible to present it to public opinion as a means of making the German services independent from information obtained by foreign intelligence services. However, in practice, co-operation between the German and the US services will continue.