Nothing doing? Taking stock of data trawling operations in Germany after 11 September 2001 by Martina Kant

After 11.9.01, nationwide data-trawling operations based on profiling (*Rasterfahndung**) led to the collection and classification of personal data from around 8.3 million people. This infringed the constitutional data protection right to "self-determination about personal data" (*Grundrecht auf informationelle Selbstbestimmung*) of every tenth inhabitant of the Federal Republic of Germany. What for? That the *Rasterfahndung* was accompanied by failures and mishaps is revealed in a classified report of by Federal Crime Police Authority (*Bundeskriminalamt* - BKA).

"The aim of detecting more "sleepers" in Germany has not been achieved yet", concludes the BKA Commission for State Security in their evaluation, which is still classified [1]. The BKA's Commission for State Security was assigned to analyse the experiences of regional data-trawling operations and the so-called consolidation of information (*Informationsverdichtung*) or data comparison, carried out by the BKA after 11.9.01. A reading of the evaluation not only allows for a reconstruction of events but also reveals the extensive problems encountered during implementation. The conclusions drawn by the BKA do not point towards a decline in these operations, but the contrary: the future of data protection rights appears to be bleak.

Flashback: eight days after the horrendous attacks in New York and Washington, the Berlin and Hamburg interior authorities were the first to authorise data-trawling in search of alleged terrorist "sleepers". The chief public prosecutor had refused to initiate a nationwide database trawl based on the Criminal Procedural Act (*Strafprozessordnung*). Introduced by the regional states (*Bundesländer*), it was based on the police hypothesis that Germany was harbouring more anonymous potential "Islamic" terrorists who were planning attacks. Criteria for data collection by profile, or so-called grids, were defined on the basis of evidence the security services had collected on some of the Hamburg cell around Mohammed Atta. Other regional states started with slightly different criteria. The Coordination Group on International Terrorism (KG IntTE) [2] was created on 26 September 2001 and its "Sub-Working Group Grid" was responsible for establishing uniform criteria to be applied at the national level: age: 18-40, male, (former) student, resident in the regional state the data was collected from, religious affiliation: Islam [3], legal residency in Germany and nationality or country of birth from a list of 26 states with predominantly Muslim population, or stateless person or nationality "undefined" or "unknown". This data was to be collected by regional authorities on the basis of their respective police regulations from the databases of registration offices (*Einwohnermeldeämter* - EMÄ), universities/polytechnics and the German database on foreigners, and the Central Foreigners Register (*Ausländerzentralregister* - AZR). A problem arose immediately as Schleswig-Holstein and Lower Saxony had no powers for data-trawling in their police regulations; Bremen had abolished the relevant powers in August 2001 with the reform of its police regulation. This "shortcoming" was, however, remedied by 24 October [4].

Data on those persons who appeared in all three databases (EMÄ, Uni, AZR) and who met the criteria were passed on by the regional authorities to the BKA. Their data was stored there - as so-called "base stock" - in a specially created database on "sleepers" called "*Verbunddatei Schläfer*". However, some *Länder* did not follow the grid pattern. Data that obviously did not correspond to the profile had to be "sorted out" by the BKA,

"partly automated but in large part manually". The "sleeper" database contained almost 32,000 data entries that corresponded to the criteria, (see table below). Also, from the BKA's perspective, the so-called "investigation cases" (*Prüffälle*) proved unmanageable due to the quantity of data and had to be "limited by means of further labour intensive comparisons".

Number of "base stock" entries in the BKA database of "sleepers"

Land/LKA	Data entries
Baden-Württemberg	3,800
Lower Saxony	2,588
Bavaria	2,053
North-Rhine Westphalia	11,004
Berlin	710
Reinland Pfalz	1,792
Brandenburg	333
Saarland	416
Bremen	546
Sachsen	1,317
Hamburg	811
Sachsen-Anhalt	1,292
Hessen	3,739
Schleswig-Holstein	534
Mecklenburg-Vorpommern	895
Thuringia	158
	31,988

First "automated consolidation of information" ...

To reduce the number of data entries, the *Länder* and the BKA collected more information to compare the base stock. According to the terrorism working group KG IntTE, additional data needed to be collected from persons who had received information relevant for an attack, who had access to special resources that could be used for an attack or who had been present at potential targets for attack. Even personal data on visitors to the Berlin parliament or nuclear power stations would be collected. Bavaria actually passed on data on people visiting nuclear power stations, but it was not used in the comparison.

Ninety-six different data sets were ultimately included in the comparison. They included personal data on people holding flight licenses, flight students, users of flight simulators, members of flying associations and even the customer database of a company distributing aeronautical supplies. The Goethe Institutes also delivered data because many foreign students receive their German language certificate required for their studies there. Data from license holders authorised to transport dangerous goods and airport employees, nuclear power stations, 24 chemical companies, the German railway, biological laboratories and research institutes were collected. Alongside police data gathered from the INPOL system [5] information gathered from police searches of the "Taliban offices" in Frankfurt/Main on February and June 2001 was used as well. The office was suspected of having constituted a sort of consulate for the Taliban regime in Afghanistan, but there were no facts indicating terrorist links [6]. Here also, the data trawling did not deliver a single "hit".

Altogether, the comparison data amounted to 4 million entries; and this excludes police data held in the INPOL, PIOS and DOK systems. On 8 March 2002, six months after the attacks, the BKA began to compare the comparison data sets against the "base stock".

...then "manual" comparison
After the computerised comparison, 101,314 entries of both data sets initially correlated. This refers to the correlation of at least two parts of one name and the date of birth. These "hits" were sent back for examination to the *Land* from which the data entry originated. The data entries were then, by means of manual selection and further clarifications, reduced to 3,450 "personal identities". 1,926 of these were marked as possible suspects; because of double entries, 1,689 persons were individually examined by regional police forces. A closer look at the suspects uncovers the nonsense that the data-trawl produced: of the 1,926 data entries, 825 (42%) come from the Goethe Institutes' databases. The BKA evaluation report sheepishly admits that some of the hits from the Goethe data entries had not been marked as suspects as they did not fulfil any profile criteria other than that of being a "student". So what was the point of this exercise? A similarly large proportion of the suspects (744 marked entries) resulted from a comparison of INPOL databases, but almost exclusively related to records created after the 11 September attacks. Here also, there was no indication of terrorist suspects.

The BKS's "consolidation of information" took over a year; on 31 March 2003, the authority stated that the exercise had ended. The "sleeper" database was erased on 30 June 2003, as was all of the comparative data on 21 July 2003.

Failures and flops
The BKA report lists a long series of problems that arose during the 20 month long database trawl. The extensive time frame is one of them, which "required considerable resources"; the evaluation does not provide precise figures. It is known from North-Rhine Westphalia that up to 2002, nearly 400 officers had been deployed for the operation and related inquiries and were therefore unavailable for regular police investigations [7].

The report points out that there were serious shortcomings in the preliminary phases of the operation which led to "considerable additional work in the coordination". Concretely, the BKA criticises the far-reaching and ill-defined criteria which, it is said, was a result of time pressure. In future it "is imperative to ensure there is sufficient time for planning". The criteria of being resident in the relevant regional state from where the data originates also proved unsuitable as many students did not live and study in the same state. This led to laborious coordination of remits amongst the regional states. One of the biggest problems during the collection of the data was the fact that date of birth, an essential element in the identification of a person, was not held on every database. There were also different spellings of first and surnames of the same person. Data was also sent to the BKA in different formats with different software on different data carriers. Sometimes, complete data bases were delivered without preliminary classification. In other words, the BKA had to deal with chaotic data compilation which thwarted the benefits of computerised data comparison, such as the swift filtering of a small number of "suspects" from vast amounts of data.

In order for this failure not to be repeated, the report demands a "sensible stocking of data" in the future. This means, alongside technical harmonisation, the harmonisation of content in order to be able to swiftly provide the police with necessary data - all within the "the framework of legal possibilities", of course. This refers to, for example, registration office data, which should start using standardised fields. (What kind of data the report refers to here can only be guessed. To date, there is no harmonised collection of data on religious affiliation, for example). Further, it is suggested that authorities should only store data which can be cross-checked with official documents to guarantee the correct spelling of names and an accurate date of birth. To leave no doubt, the "introduction/creation of unambiguous identifiers is necessary (e.g. biometric data, social security numbers...)". A personal identification or registration number (PKZ) was declared unconstitutional by the Federal Constitutional Court in 1969 and again in 1983 in the decision on the population census, because it would allow for the creation of personality profiles of a person by linking different database entries [8]. Further, centralised registration and the recording of the population with definite PKZ's, as it was practised in the German Democratic Republic, was abolished after reunification on the grounds of being in violation of Germany's constitution [9].

The BKA faced additional difficulties with regard to the comparison data. It had collected some of it on its own - illegally - by contacting umbrella organisations which in turn passed on the request to their members [10]. Of the 4,000 associations contacted, 212 provided their databases. The quality of the data left much to be desired; either it was not related to the search for terrorists or it had not been pre-selected. Even the comparative data provided by the regional states had to be revised - it had evidently not always been defined according to its purpose. Further, the data used for the security checks entered the authority at the same time, with the result that no one knew exactly "which sets of data had been delivered and for what purpose". The confusion was complete.

The limitless "wishlist" of the BKA
The BKA wants better cooperation with security services in future trawling exercises. Although the working group on international terrorism (KG IntTE) had agreed that only "suspicious cases" would lead to a request for additional information from the internal security service (*Verfassungsschutz* - Office for the Protection of the Constitution) and the Foreign Intelligence Service (*Bundesnachrichtendienst* - BND), this was not an agreement that would last: "it would be desirable to have a complete comparison of the information collected by police from the data-trawl". The BKA does not seem to think this requires the slightest justification, it simply "appears necessary to interlock the data from the services and the police". A thorn in the BKA's side is not only the principle of separate remits but also the principle of discriminate collection of data for a specific purpose. The Sub-Group Grid had suggested that it pass on all the comparative data collected by the BKA to the regional states - in contravention of the law - for additional comparison. This idea was discarded. What followed though, were efforts to harmonise regional police regulations. Guidelines drawn up by the Ad Hoc Working Group Grid of the AK II, were adopted by the interior ministers' conference on 31 May 2002. They included, amongst other things: harmonised data-trawling controls with low prerequisites with regard to the required "threat", powers of initiation to be given to the police instead of judges and the obligation of public and private authorities to provide the data demanded. The BKA further recommends that the regional states harmonise their laws on long-term observation, surveillance of telecommunications, bugging and the use of undercover officers or informers. The "hits" resulting from these controls should then be checked at a "standardised nationwide level".

The BKA must have been very unhappy with the development and the results of the data-trawling operation. It appears that the regional states did not fully comply and relinquish their powers to the BKA. Some of them examined their "hits" on their own accord without waiting for the results of the BKA comparison. The BKA disappointedly found that "the

result of information consolidation [...] in the end received little attention" and that "the data entries of the [sleepers] database that were marked with great effort [...] were deleted as a whole in 2003".

General uncertainty

Gloating in the face of the database-trawl failure is not appropriate. It has, after all, not only resulted in immense financial expense but also massive civil liberties "expenses". Those who were presented in the media as quasi-'apersonal' "hits" experienced the police investigation directly in the form of a summons, surveillance of their social environment, questioning of their employers etc. This occurred despite the fact that there was no tangible evidence against them - they merely fitted a certain profile.

In the framework of the database-trawl, the BKA has given itself a role which, legally, it has no powers to carry out; it has exceeded its support function, and thereby made itself a master of procedures. Simultaneously, it is spearheading legal developments in which data protection and the right to self-determination about personal data are being sacrificed for a purportedly efficient fight against crime and the prevention of crime.

Despite the embarrassing outcome, the BKA, police and interior ministers continue to sell database trawling as an appropriate means of finding potential terrorists. The "deterrent effect" and the "investigation pressure" has led to "insecurity" in fundamentalist groups and this is seen as an achievement [11]. That is what it's like in a democratic state.

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[1] Bundeskriminalamt, Kommission Staatsschutz: Evaluation der Rasterfahndung der Länder und der Informationsverdichtung im Bundeskriminalamt anlässlich des 11.09.01; unless otherwise indicated, all citations are from this report.

[2] The KG IntTE was set up on decision of a Working Group (AK II) of the Interior Ministers' conference (IMK); it is chaired by the BKA and includes the subcommittee "leadership, operations and fight against crime (UA FEK), AG Krip, Federal Border Guards, Foreign Intelligence Service, internal intelligence service, chief public prosecutor and army representatives.

[3] As categories of collected data currently only include "Catholic", "Protestant" and "Other", the profile of the databank included the category "Other".

[4] See, also for the further development of the control operation: Bürgerrechte & Polizei/CILIP 70 (3/2002), pp. 28-34 (33); Bürgerrechte & Polizei/CILIP 71 (1/2002, pp. 69-75; Bürgerrechte & Polizei/CILIP 73 (3/2002), p. 89.

[5] Here: INPOL, APIS, APR, APOK, SPUDOK-USA, DOK-DOMESCH, DOK-money laundering and a data base on "persons loosing passports".

[6] Compare Die Welt 28.9.2001.

[7] Speech by interior minister Fritz Behrens at the press conference presenting police crime statistics in Düsseldorf on 17.3.2003.

[8] BverfGE 27,1 (Mikrozensus), BverfGE 64, 1 (population census).

[9] Compare Deutsche Vereinigung für Datenschutz: Presseerklärung 3.12.2003.

[10] On the legal problem with the role of the BKA see 16th Activity report 2001/2002 of the data protection officer of Lower Saxony, pp. 85-87.

[11] Prondzinsky, P.v.: Rasterfahndung, in Deutsches Polizeiblatt 2002, issue 6, pp. 15-18 (18).

* Literally: 'grid search', a Raster is a grid pattern by which large amounts of information can be classified and separated. The grid pattern here refers to profiles of suspected terrorists that are created according to certain criteria they are believed to have in common.