

The German BND and American NSA Cooperate More Closely than Thought

SPIEGEL Staff, DER SPIEGEL : 17-21 minutes

Three months before Edward Snowden shocked the world with his revelations, members of NSA's "Special Source Operations department" sat down for a weekly meeting at their headquarters in the US state of Maryland. The group, considered internally to be particularly efficient, has several tasks, one of which is overseeing the intelligence agency's delicate relationship with large telecommunications firms. It is the department that Snowden referred to as the "crown jewels" of the NSA.

At this particular meeting, one significant slip-up was on the meeting agenda. On March 14, 2013, an SSO member had reported a potentially damaging incident. "Commercial consortium personnel" had apparently discovered the program "Wharprdrive," for which SSO had tapped a fiber-optic cable. "Witting partner personnel have removed the evidence," he explained further, "and a plausible cover story was provided." According to an internal NSA document to which SPIEGEL has access, a team was quietly put together to to reinstall the program.

The NSA, apparently, did not perform the highly sensitive operation on its own. All signs indicate that the agency had help from Germany's Bundesnachrichtendienst (BND), the country's foreign intelligence agency. The code name Wharprdrive appears in a paper drafted in preparation for a BND delegation's visit to NSA headquarters in Fort Meade, and which instructs NSA leaders to "thank the BND for their assistance with the trilateral program." It also makes clear that the German agency plays a leadership role in the Wharprdrive program, with the NSA providing only technical assistance.

It isn't clear from the document exactly where the BND and NSA accessed the fiber-optic cable nor is there any indication of the operation's target. Neither agency responded to questions about Wharprdrive. What appears obvious, however, is that the BND cooperates closely with NSA in one of its most sensitive areas of operation.

Germany's collaboration with US intelligence, which Berlin officials agreed to in the wake of the Sept. 11, 2001 terror attacks, is opaque and convoluted: opaque because the German parliament and public are unable to review most of what is delivered to the United States; convoluted because there are questions about its legality.

Constitutionally Unacceptable

Leading constitutional law experts have their doubts. In testimony before the NSA investigation committee in the Bundestag, Germany's parliament, heavyweight constitutional law experts Hans-Jürgen Papier, Wolfgang Hoffmann-Riem and Matthias Bäcker stated that the BND is potentially violating the German constitution by working with data received from the NSA. Furthermore, they argued that basic constitutional rights such as the privacy of correspondence, post and telecommunications apply to Germans abroad and to foreigners in Germany. That would mean that surveillance performed by the BND and NSA is constitutionally unacceptable.

German intelligence agencies, for their part, consider their cooperation with the NSA to be indispensable -- for counter-terrorism efforts, for the fight against the proliferation of weapons of mass destruction and for the battle against organized crime. According to a classified paper created by the government in response to a query from the opposition, the BND does not keep official statistics on the amount of telephone, email and text message metadata that is shuttled to American agencies. "All metadata" collected at the NSA site in Bad Aibling in Bavaria "is made available," the response states. In 2012 and 2013, some 3 million items of content data, or intercepted conversations and messages, were sent to the United States each month.

These facts and figures, until now available only to select parliamentarians, offer a window into German-American intelligence cooperation. [Documents](#) SPIEGEL has seen from the archive of whistleblower Edward Snowden, when combined with SPIEGEL's own reporting, open up [a much broader panorama](#) .

They show that the exchange of data, spying tools and know-how is much more intense than previously thought. Given this close partnership, BND statements claiming they knew little about the programs and methods used by the NSA are, at minimum, startling.

One location in Germany is particularly illustrative of the trans-Atlantic pact. It is located in the Alpine foothills, in the beautiful valley of Mangfalltal. For decades, the NSA maintained its largest listening post in Germany in Bad Aibling, population 18,000. The agency once had up to 1,800 workers stationed here: They frequented Chicken Joe, a bar near the American base, and Johnny's Bowling. And they cruised through town in American off-road vehicles sporting US license plates.

The Americans' affection for the town can be seen in "A Little Bad Aibling Nostalgia," a document that NSA employees posted on the agency's intranet. They reminisced wistfully about "free bier" emails and leberkäse, a bologna-like substance "made neither of liver nor cheese." German locals were fond of the agents, in part because they were reliable tenants. "Two men who specialized in Arabic dialects lived at my place," recalled jeweler Max Regensburger. "Nice people." Everyone, from baker to butcher to carpenter, profited from the Americans. When they left the base in 2004, Bad Aibling residents waved American flags in farewell.

The Tin Can

But the NSA did not completely abandon Bad Aibling. The BND took over most of the facilities on site, including nine white Radomes, the oversized golf ball-like structures crucial to many surveillance operations. But one small NSA special unit remained active and joined BND agents in the Mangfall Kaserne. The Americans built a specially constructed windowless building with an exterior of black-painted metal.

BND agents refer to the American complex, which houses the "Special US Liaison Activity Germany," or SUSLAG, as the "Tin Can." The unit's very existence is classified information. But it is clear that the Germans and Americans who work there know each other and value one-another's presence.

The official nature of the cooperation between Germany and the US in Bad Aibling is documented in a contract, written two years prior to the NSA's official departure, drafted under the auspices of then-Chancellery Chief of Staff Frank-Walter Steinmeier, now Germany's foreign minister. The "Memorandum of Agreement," signed on April 28, 2002, is six pages long and marked Top Secret. It is not from Snowden's material.

Much of the document consists of broad declarations of "good cooperation," but the important points can be found in the 74-page appendix. There, the two sides agree on joint espionage areas and targets, such as counter-terrorism, and the battles against organized crime and proliferation of weapons of mass destruction.

Surveillance as such isn't mentioned, at least initially. The treaty signatories, instead, commit to respecting fundamental rights such as the privacy of correspondence, post and telecommunications and agree not to conduct surveillance on German or American citizens. The deal is valid both for "real" and "legal entities," meaning it applies to companies and associations as well.

But even in this memorandum, the crux is in the small print -- the addenda and exceptions. In the case of "terrorist activity," the taboos mentioned earlier no longer apply. Should it become clear that intercepted information originated from a German citizen, it can still be used as long as the partner agency is informed and agrees. The same is true in cases where the end point of monitored communications is located in a foreign country.

'Exciting Joint Ventures'

According to the German constitution, the BND is not allowed to perform surveillance on German citizens. But does the memorandum's small print open up a back door? Does the NSA provide information about radicals that the German intelligence agency is not permitted to have access to?

The BND denies the existence of such channels and says, "At no time has there been a deviation from the legal framework."

It seems doubtful that the Germans know exactly what their NSA colleagues are doing in Bad Aibling. According to the agreement, the NSA is allowed to carry out its own surveillance operations and only has to allow the German partners to look at its task assignments and operational details if asked.

In any case, internal documents indicate that the NSA is pleased with the Bad Aibling facility. "Two exciting joint ventures" are carried out there. One involves teams for working on joint surveillance (referred to as "Joint SIGINT Activity") and the other for the analysis of captured signals (Joint Analysis Center or JAC). Snowden's documents hint at what precisely the trans-Atlantic allies were collaborating on. In 2005, for example, five NSA employees worked "side-by-side" with BND analysts on a BND operation called Orion. Its targets lay outside NATO's eastern border.

According to the documents, most of the targets monitored jointly by the BND and NSA are in Africa and Afghanistan. One document, though, reveals something else. Stemming from 2009, it includes a list of companies and organizations with domain endings such as .com, .net and .org that are explicitly to be removed from the surveillance efforts because they are German web addresses. Among them are basf.com and bundeswehr.org, but also such domains as orgelbau.com and feuerwehr-ingolstadt.org.

German Aid for US Drone Attacks?

The list includes addresses that appear to have fallen into the surveillance crosshairs and were only later revealed to be German. This indicates that the filtering system the BND reportedly uses does not reliably prevent German targets with .com and .org domain names from being monitored, and that those names must be removed retroactively.

In response to questioning about the close cooperation in Bad Aibling, the BND said that the Joint SIGINT Activity and the Joint Analytical Center were discontinued "in 2012 and 2011, respectively." In addition, the BND noted in a statement, no joint surveillance took place prior to the facility's discontinuation: "Even before, signals intelligence was performed exclusively by the BND."

The NSA documents, though, tell a different tale, for example in a document pertaining to the one-year anniversary of the Tin Can. In reference to the JSA, the document notes that the cooperation is "unique as a jointly manned, jointly tasked DNI site," with DNI referring to Digital Network Intelligence. An American document referring to levels of secrecy from 2005 notes that "the fact that NSA and BND ... perform SIGINT collection at Mangfall Kaserne" must remain confidential.

Bad Aibling also plays a central role in the question of whether the NSA is collecting data in Germany. A map from the spy program Boundless Informant, published by SPIEGEL in the summer of 2013, indicates that the NSA collects vast amounts of data in Germany and points to primary metadata collection points (or "SIGADS"), identified by the codes US-987LA and US-987LB.

The document shows that these two SIGADS sent some 500 million points of metadata from Germany to NSA databases during a four-week period from the end of 2012 to the beginning of 2013. One document, which explains the program, says that data is collected "against" a target country.

The NSA has never explicitly commented on the two collection sites, but according to the BND, there is an explanation that refutes the accusation that the US spied on Germany. The BND believes "that the SIGADS US 987-LA and US 987-LB refer to Bad Aibling and to a signals intelligence site in Afghanistan." That would mean, the BND says, that the 500 million data points might have been collected by the BND outside of Germany and then transferred to the NSA. Still, the German

intelligence agency noted that it couldn't say for sure whether that would account for all of the data listed by the NSA.

Should the BND's explanation be correct, it would mean that the formulation used by "Boundless Informant" -- and SPIEGEL's [own interpretation](#) -- were misleading. But it would also provide yet more evidence for the enormous exchange of information between Germany and the NSA.

In the Wharpdrive program, BND specialists are taking the lead. According to one document from the Snowden archive, Germany's cooperation with the NSA's Special Source Operations is meant to provide "unconventional special access" to fiber-optic cables.

'High Interest Target Areas'

In that same document, the Americans express their respect, praising the Germans for operations undertaken "under risky conditions" and noted that the BND "offered NSA unique accesses in high interest target areas."

A 2006 document verifies that the BND and the NSA not only work closely together, but that they are also often on equal technological footing. At the time, US intelligence workers visited a BND office in the town of Schöningen, Lower Saxony. The office is just a few kilometers away from the city center's half-timbered houses. The site's location near the former border with East Germany used to help the BND eavesdrop on its communist neighbors.

As Germany got consumed by hosting the World Cup in the summer of 2006, BND analysts gave presentations to their American colleagues about which electronic tools they used. The equipment, the Americans noted in meeting minutes, were sometimes more effective than the NSA's own.

As far back as 2006, the BND was working in Schöningen on algorithms that could detect patterns or anomalies and thus enable it to exploit social networks for intelligence purposes. With a subject line on meeting notes reading "Visitors impressed with software demos," the Americans expressed high regard for their German colleagues. They also praised the intercepts from Afghanistan that the "BND shares on a daily basis."

Indeed, NSA staff seemed to be pleased with much of what the BND does in Afghanistan. There is no other issue in Snowden's documents that is the subject of as much praise for the BND, the role it plays and what it shares. There are numerous instances in which the agency lauds the Germans for leadership and for the monitoring of additional civilian and military targets that they have taken on.

A presentation on the cooperation among 14 intelligence services in Afghanistan shows that the partners have the ability to exchange intelligence in "near real time," including the contents of encrypted mobile phone conversations and so-called "target packages" containing information on targets.

Difficult Questions

When SPIEGEL reported last summer on the sharing of target information, the BND did not deny this activity. But it did challenge the conjecture that the data might serve as the basis for American drone attacks. The situation remains a complicated one: It's not possible to target a drone attack based on a mobile phone number's having accessed a cell phone base station, but drones can be turned into flying mobile phone base stations by equipping them with what are known as IMSI catchers -- phones then automatically connect to an IMSI catcher when the drone flies overhead. This also means that metadata supplied through BND surveillance could very well contribute to guiding the deadly drones to their targets. Indeed, the former head of NSA and CIA Michael Hayden recently confirmed, "We kill people based on metadata."

New documents also indicate the high significance of German surveillance to the US military in Afghanistan. Germany and 13 of its allies deliver intelligence to a unit on the American military base in Bagram. This is home to the NSA's "Cryptologic Services Group," a unit that feeds intelligence to

controversial units like the secret Task Force 373, who had the mission of capturing or killing high-value Taliban or al-Qaida targets.

These connections between the BND and NSA raise difficult questions about the German government and its foreign intelligence service, such as whether Germany participated indirectly in death squad operations, which can result in the deaths of civilians or police.

The government has declined to comment on such questions. So far, there have merely been general statements, like the one made most recently by German Interior Minister Thomas de Maizière at an event in Berlin. He described the United States as Germany's most important ally and said, "If it were up to us, we would continue it in absolute terms and even intensify it."

There is substantial evidence in Snowden's documents that German authorities are trying to do just that. In April 2013, a BND delegation led by an official named Dietmar B. visited the NSA. The BND "is eager to present its SIGINT capabilities ... with the goal of expanding the partnership," an NSA document notes. The document says that officials welcome "the BND's eagerness to strengthen and expand cooperation with NSA."

Smooth Sailing

Other documents state that the BND offers "language assistance" in African languages. It is also clear that the BND shares the results of its monitoring of two foreign ministries as well as Internet telephony originating from a crisis-plagued country in the Middle East.

These days, tensions between the upper echelons of government in Germany and the United States are at their highest in years, but these documents suggest a smooth relationship between the eager BND and the covetous NSA.

There was only one point on which the United States expressed reserve: A request by the Germans to use information from NSA surveillance in "open court." The document, from April 2013, said there were concerns that the disclosure of surveillance capabilities in a German court could have ramifications and that the "desired and planned level of cooperation" could not be maintained.

In this instance, Germany's adherence to its own constitution seems bothersome to the Americans.

By Hubert Gude, Andy Müller-Maguhn, Laura Poitras, Marcel Rosenbach, Jörg Schindler and Fidelius Schmid