

GERMANY: EVOLUTION OF NATIONAL COUNTER-TERRORISM MEASURES TO TACKLE ISLAMIST TERROR THREAT

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Since the beginning of 2018, a series of reports were issued by German security authorities demonstrating the **evolution of national counter-terrorism policies** since the Berlin truck attack in December 2016, which clearly marked a turning point in Germany's approach to the threat posed by Islamist terrorists. The first part of this briefing provides an **overview of recently implemented counter-terrorism strategies** and the second part outlines some **challenges in relation to women and child returnees** from areas (formerly) controlled by jihadists.

According to the International Centre for Counter-Terrorism, the first reports of European residents traveling abroad to join a terrorist group have emerged in the summer of 2012. The phenomenon is not new, however, for Europeans have fought for different jihadist groups in the Greater Middle East since the 1980s as Peter R. Neumann outlines in his 2015 book on IS jihadists (original title: *Die neuen Dschihadisten. IS, Europa und die nächste Welle des Terrorismus*). Although the phenomenon of European foreign fighters is not new, **the number of people who traveled to Iraq or Syria for terrorist activities has increased significantly in recent years**. To clarify, European foreign fighters are not necessarily European nationals but usually have spent most of their lives in a European country. Additionally, the term 'Islamic State' or 'IS' is used in this briefing in its broadest sense to refer to all Salafist jihadist terrorist groups currently operating in Syria and Iraq. Although most European foreign fighters support indeed the Islamic State organization, some European jihadists nevertheless join other groups such as Al-Nusra Front.

The most recent data regarding the number of German foreign fighters (FF) were published by the Federal Office for the Protection of the Constitution (Bundesamt für Verfassungsschutz) on February 9, 2018. **Thus, there are currently 970 people known to security authorities who left Germany to support IS or other terrorist groups in Iraq or Syria**. Around 150 people are assumed to have died in Syria or Iraq and approximately a third of the 970 people have returned to Germany in the meantime. According to data collected by German security authorities published in a paper of the Egmont Royal Institute for International Relations, only 10 % of foreign fighters returned to Germany because they wished to abandon the Islamic State. Most returnees indicated that they grew disillusioned or frustrated with their situation or that they followed calls of family members.

With respect to the profile of German foreign fighters, **the majority of the 970 FF are younger than 30 and about a fifth is female**. 12 % of the foreign fighters are believed to have converted to Islam. While 40 % of the foreign fighters have the German citizenship, 40 % of FF are foreign nationals and the remaining 20 % have dual citizenship. In addition, most German FF are assumed to have been unemployed prior to their departure or have been employed in the low-paid/skilled employment sector. Two-thirds had been investigated for criminal offenses. Additionally, most foreign fighters have been members of Salafist movements prior to their departure.

As far as Islamist terrorists currently residing in Germany are concerned, SÜDDEUTSCHE ZEITUNG reported that **there are about 720 potential Islamist terrorists ("Gefährder") countrywide**, according to information provided by the state police forces and the Federal Criminal Office in

December 2017. **Nearly half of the 720 Gefährder are deemed to be high-risk individuals.** In addition, most of the potential Islamist terrorists in Germany are in possession of the German citizenship, as reported by ZEIT ONLINE, based on a partially classified report provided by the German government following a brief inquiry of the far-right political party Alternative for Germany.

The 2016 truck attack in Berlin marked a turning point for Germany's security authorities and their counter-terrorism strategies. In a report published in October 2017, a special investigator criticized the police forces of Berlin, North Rhine-Westphalia, and Baden-Württemberg strongly and revealed that grave mistakes were made in the case of Anis Amri – the man behind the 2016 truck attack. Apparently, the authorities failed to prosecute Amri, although he violated the law numerous times and communicated with IS members in Syria. Amri was being monitored by the security authorities but the assessment of his risk potential was inadequate. The special investigator also reprimanded the collaboration of German authorities in general.

One year after the terrorist attack in Berlin, the Federal Minister of the Interior, Thomas de Maizière, announced that significant progress has been made in the fight against terrorism. The following section reviews some of the changes that were implemented in 2017 and early 2018; including the deportation and electronic tag monitoring of potential terrorists, the storage of passenger data by airline companies, the use of spy software and risk assessment tools used by German authorities.

In February 2017, the Federal Criminal Office published a press release describing **a new risk assessment tool called RADAR-iTE**, which they had developed with forensic psychologists from the University of Constance. The tool uses a set of standardized questions and response categories to assess an individual's risk level. The assessment is based only on behavior that can be observed and information that is available on the person's lifestyle. The assessed person is then assigned to one of three risk levels – high risk, conspicuous and moderate risk. Based on the assessment, the relevant service tailors their intervention measures to the individual accordingly. The Federal Criminal Office announced that RADAR-iTE will be introduced in summer 2017. It was further announced that **another risk analysis system called RISKANT is currently being developed to make police intervention more adequate.** RISKANT will be able to provide action guidance specifically adapted to the perceived areas of concern of high-risk individuals.

Furthermore, Germany's federal cabinet approved a bill to regulate the use of Passenger Name Record (PNR) data for the prevention, detection, investigation, and prosecution of terrorist offenses and serious crime in February 2017. The directive was approved by the EU parliament on April 21, 2016. **The bill obliges airlines to hand EU countries their passengers' data to help the authorities to fight terrorism and serious crime.** The directive was disputed for 5 years but objections significantly lessened after the November 2015 terrorist attacks in Paris. The bill is to be transposed into German national law and to come into force before May 25, 2018. Authorities can keep the personal details up to six months and can exchange them only under strict conditions.

In June 2017, federal parliament approved a new law regulating computer and network surveillance. This new law will pave the way for the hacking of computers by authorities, the wiretapping of smartphones and the monitoring of messaging applications such as WhatsApp. WELT reported in February 2018 that the Interior Ministry authorized the potential use of a software to monitor encrypted communication on mobile phones by the Federal Criminal Office for the first time on January 10, 2018. The software FinSpy must be installed on the device of the monitored person and can thereby record chats and other messages, and transmit them to security authorities. So far, the Criminal Police Office has never made use of the FinSpy software for investigative purposes, however.

In November 2017, SPIEGEL ONLINE reported that **there are currently 96 men in Germany wearing electronic tags.** Those men are being monitored by the Joint Centre for Electronic Monitoring or 'Gemeinsame elektronische Überwachungsstelle der Länder' in German (GÜL). 70 of those men are under surveillance for having committed a sex crime, 24 for violent crimes and 2 for being potential Islamist terrorists. The legislation to enable security authorities to monitor potential terrorists via electronic shackles became effective on July 1, 2017, but has so far played a minor role in terrorism prevention.

Moreover, there have been issues concerning the use of electronic tags, as the following case exemplifies: On October 11, 2017, a Syrian refugee classified as potential Islamist terrorist from Bavaria flew from

Hamburg to Athens – while wearing the electronic shackles. The authorities were no longer able to locate the man because the shackles ceased to transmit any signal after a while. It later emerged that the authorities may have accepted the departure of the man knowingly, for the airport police in Hamburg did not notify the Federal Police of the man's departure. As of January 24, 2018, the man has not returned to Germany. Nonetheless, the state police of Lower Saxony plan a significant extension of their terrorism prevention measures, including electronic tags for potential Islamist terrorists. The relevant legislation is to be passed this year.

While the law to deport foreign criminals has existed for many years, security authorities have rarely applied that law. As ESISC reported in January 2018, **36 people have been deported in 2017 for posing a potential terrorist threat**. In a further 24 cases, individuals were deported not only because they posed a terrorist threat but also because they had violated the law. However, deportations cannot be carried out in cases where asylum seekers might face inhumane treatment in their home countries. Such cases remain pending and asylum seekers who cannot be deported consequently stay in Germany.

German security authorities also introduced a series of measures adapting police structures to the current terrorist threat level. **The elite unit of the Federal Police, GSG9, is expanding their staffing level by approximately a third of the current personnel** (the total headcount of the GSG9 is, for tactical reasons, not disclosed). In January 2018, GSG9 commander Fuchs explained in the newspaper FRANKFURTER ALLGEMEINE that the goal of the staff expansion is to improve their counter-terrorism operations in Berlin in terms of response time. GSG9 was created in 1972 as a consequence of the attack during the 1972 Summer Olympics in Munich, where 11 Israeli Olympic team members were taken hostage and killed (the attack was carried out by the Palestinian terrorist group 'Black September').

Another measure that is increasingly used by German authorities is the delivery of special identification documents for Gefährder whose passports were confiscated to prevent them from traveling to international jihadist areas. The measure was already introduced in 2015, but its effectiveness cannot be evaluated due to lack of data. On January 28, 2018, WELT reported that the federal government is unable to specify in how many cases the passports of potential terrorists were confiscated. Responding to a brief inquiry from the Green parliamentary group, a government representative explained that the state government, not the federal government, is responsible for the issuance of identity documents. WELT consequently contacted the Interior Ministry of Saxony-Anhalt but the state authorities could not provide any data on how many special identification documents have been issued by them. However, it is not known if WELT contacted other state authorities; therefore, it is difficult to assess how often the state authorities employ this specific security measure.

In summary, challenges resulting from Germany's federal structure are a recurring theme in the assessment of counter-terrorism strategies. There are significant differences between individual states with regards to security measures such as the interception of phone calls. Moreover, data protection and privacy laws are comparably strict in Germany, which can limit security authorities in employing intervention measures significantly, although considerable progress has been made in that regard. A total of 36 federal and state agencies including police forces and domestic intelligence services are tasked with counter-terrorism efforts in Germany (excluded are the prosecuting authorities, customs authorities, and others). **To coordinate the efforts of the individual agencies and to provide a platform through which intelligence can be shared, the Joint Counter-Terrorism Center (GTAZ) was set up in 2004. A newly formed unit within the GTAZ also provides risk assessments for individuals,** using the RADAR-iTE software described above. Additionally, in March 2018, the German government announced **plans to open an anti-terrorism center in Berlin in 2020.** The Special Operations Command, the Mobile Task Force and the Department for Combating Islamic Terrorism, which equals a total of about 1200 employees, are all to move to the planned center. **The planned anti-terrorism center is not only a solution to the current shortage of office space for the people involved in counter-terrorism efforts but will also allow different actors to cooperate more efficiently.**

Having outlined recently implemented counter-terrorism strategies, the following part of the briefing addresses the challenges in relation to jihadist returnees. Since little is left of the Islamic State's territorial control in Syria and Iraq, German authorities have become increasingly concerned with the security threat posed by returnees from areas (formerly) controlled by jihadist groups. In December 2017, Hans-Georg Maaßen, head of the Federal Office for the Protection of the Constitution, told the newspaper SÜDDEUTSCHE ZEITUNG that women and children are currently returning from jihadist-controlled areas. Maaßen believes that European foreign fighters have become concerned for their family's safety and therefore send women and children back to their European home countries. **He repeatedly warned that IS child soldiers and their mothers might pose a serious security threat. Maaßen asserted that IS children are particularly dangerous because they were socialized and indoctrinated by Islamic State members.** The following section of this briefing hence focuses on the issue of women and children returning from jihadist-controlled areas.

It is important to clarify that while returning jihadists can pose a significant threat, the masterminds behind most terrorist attacks carried out in Europe in recent years never joined terrorist groups in Syria or Iraq (a phenomenon that is often referred to as 'homegrown terrorism').

As outlined above, approximately **240 of the 970 known German foreign fighters are women.** In terms of German foreign fighters currently in detention, German security authorities know of **approximately 30 German IS fighters and 6 children, who are currently detained in the Middle East** after they were arrested by local, mainly Iraqi, law enforcement bodies. The German government has consular access to at least 7 of them. WELT reported that nearly every female returnee is either pregnant or has had a child while residing on IS territory, which would suggest that the number of German IS children is not negligible. However, exact numbers on how many children were born on IS territory do not exist since children born abroad are not registered. In addition, security authorities are legally not allowed to keep data on people younger than 14. Thus, the authorities are unable to monitor how many children under 14 have left and/or returned to the country. In January 2018, WELT reported that **German security authorities expect the number of child returnees to be in the low hundreds and they assume that most of those children are very young.**

Until recently, authorities carried out criminal investigations against most male returnees, while women rarely became subject to criminal investigations. In December 2017 it was announced that **henceforth prosecuting authorities will no longer distinguish between returnees on the base of gender.** 24 legal cases were opened against female IS members in Germany in 2017. By contrast, 1007 cases were opened against male IS members in 2017 (notwithstanding, 564 of those cases were closed due to lack of evidence or because the crimes were not considered to compromise the national security of Germany, as reported by SÜDDEUTSCHE ZEITUNG on January 27, 2018). **In line with a more repressive approach towards returning IS women, Attorney General Peter Frank announced that Federal Prosecutors are intending to prosecute more IS women.** According to the Federal Prosecution, women fulfill an important function within the terrorist group even if they do not partake in armed conflict, murder, and torture. Peter Frank asserted that women have strengthened the Islamic State from the inside.

A similar view has been put forward by Verena Schäffer, a Green Party Parliamentarian quoted in WELT, who stated that **a high proportion of extremist women demonstrates that the movement is getting stronger.** She draws a comparison to right-wing-extremist circles and explains that right-wing extremist men often abandoned their ideology when they met women outside the extremist scene. However, as the movement expanded and started to include women, men were more likely to remain members of the extremist scene since their female partner shared their ideology. In addition, women with extremist ideologies can indoctrinate their children, which can represent an additional challenge. **In December 2017, the UN Security Council unanimously passed a resolution to strengthen strategies to tackle the threat posed by IS returnees. Moreover, the resolution puts forward that women who assist terrorists should be prosecuted, and children should be de-radicalized and re-socialized.** Germany already adopted key changes in its criminal code which enable law enforcement agencies to launch criminal investigations into individuals, or groups, allegedly linked to terrorist organizations. The legislation covers a wider range of terrorist-related activities including membership in a terrorist organization, distribution of terrorist propaganda or providing training possibilities for terrorist organizations (non-exhaustive list).

By way of illustration, WELT reported on January 26, 2018, that a Karlsruhe court currently processes a case that is a legal precedent – the case of Sibel H. from Hesse, who could be the first woman to be charged for IS membership while being imprisoned in Iraq. The 30-year-old woman traveled to Syria and Iraq several times in recent years. She is thought to be a staunch IS supporter and martyr widow. Presently, she is imprisoned in northern Iraq, alongside her second husband. Their 14-months-old son was recently brought to Germany and is now living with his grandfather. The child was born on IS territory and has an IS birth certificate. Both Iraqi and German authorities currently investigate against the parents on suspicion of having engaged in acts of terrorism. The trial against Sibel H. in Iraq is still pending. Hence, the conviction of German foreign fighters on (former) IS territory is another key challenge that German authorities must address.

For instance, a case that repeatedly made the headlines is that of a 17-year-old girl from Pulsnitz, state of Saxony. The girl received a 6-year prison sentence in Baghdad for being a member of Islamic State and illegal entry into Iraq on February 18, 2018. Linda W. traveled to Syria in the summer of 2016 at the age of 16. One year later, she was arrested by Iraqi soldiers and brought to a prison in Baghdad. Linda W. was tried by a Youth Court since she is a minor. Representatives of the German Embassy were reportedly present during the trial. The extradition of Linda W. to Germany is considered unlikely since there is no extradition agreement between Iraq and Germany. The Federal Foreign Office has not yet commented on the conviction of Linda W.

Linda W. was arrested alongside other women, including two German women, Fatima M. and Lamia K. 30-year-old Fatima M. followed her husband to the Islamic State and does reportedly not have any extremist sentiments, as remarked by the Federal Criminal Office. She received a 1-year prison sentence for illegally entering Iraq on February 15, 2018.

Lamia K., a 50-year old German woman from Mannheim, was sentenced to death by a court in Baghdad, Iraq, in January 2018. Lamia traveled to Syria with two of her daughters in August 2014 to join the Islamic State. WELT reported at the end of January 2018 that the Federal Foreign Office in Berlin might appeal the verdict. WELT predicts that the death sentence could result in a diplomatic scandal, should it indeed be carried out.

Lamia's 21-year old daughter Nadia received a 1-year prison sentence and a monetary fine for entering the country illegally at the age of 17, alongside her mother. The court did not find her to be an IS supporter. Nadia married a French jihadist in Syria and later gave birth to a baby. Nadia, too, is imprisoned with her baby in Baghdad.

Nadja R., a 31-year old German woman from Baden-Württemberg traveled to Syria in 2014 to join Islamic State, after leaving her children with her companion in Germany. In September 2017, ZEIT ONLINE published a video of her appealing to chancellor Merkel to bring her back to Germany. On the video, she is seen holding a young baby. Shortly after arriving in Raqqa, Nadja married an IS soldier and together they had three children. Nadja declares in the video that she does not pose any risk and that she is not a terrorist. Her trial is pending.

Many other European countries deal with similar cases of returning foreign fighters. Considering the returnee issue on a European level, data published by The Hague Centre for Strategic Studies shows that the returnee rate is much higher in Northern European countries than in Southern European countries. This variance is likely to be the result of the different approaches taken by European countries in respect to the prosecution of returning foreign fighters. Northern European, especially Scandinavian countries, tend to focus more on the reintegration and rehabilitation of returnees. It is believed that this 'soft' approach lowers the threshold for disillusioned jihadis wanting to return to their home country. The prospects of returning to normal life in countries such as France, which take a more repressive and strict approach towards returnees, are limited, especially with regards to the high probability of penalties upon return. France, for example, can strip returning fighters of their French citizenship and sentence them to long prison terms.

Another point to consider is that returning to Europe is difficult since traveling from Syria or Iraq can be a challenging and dangerous undertaking. Further, repressive terrorist groups such as IS do not tolerate desertions. Regardless, Danish foreign fighters are actively repatriated by their government. The Dutch authorities require foreign fighters to report to an embassy before they are being repatriated. **Compared with other European countries, Germany's returnee rate is midrange** considering that about a third of their foreign fighters have returned (in Finland more than half of IS

fighters have returned, while in Italy only about 10 % have returned). **Therefore, the German government neither takes a soft approach that actively supports the repatriation and reintegration of foreign fighters nor has it introduced more severe measures such as stripping returnees of their citizenship.**

In terms of radicalization prevention, WELT reported in January 2018 that **the Joint Counter-Terrorism Center set up a task force on de-radicalization which functions as a liaison office between security authorities and state departments.** The Federal Office for Migration and Refugees has a counseling center for the relatives of returnees. The government plans to set up more such projects. The Ministry of Family reportedly spent more than 100 million € on the prevention of extremism in 2017. **The development of educational de-radicalization programmes for children is also becoming more relevant.** Yet, there is no standard procedure in dealing with the children of returnees and most youth services develop approaches tailored to the needs of the individual.

On a local level, **security authorities currently monitor 11 female Gefährder in North Rhine-Westphalia** (and an additional 34 women who potentially support terrorists), as reported by WELT on February 6, 2018. The state of North Rhine-Westphalia has the highest number of Salafists and Islamist terrorists in Germany; 255 people from North Rhine-Westphalia have left to join IS during the past few years, 72 of whom are women. The monitoring of women has played a secondary role until recently, so the surveillance of women in North Rhine-Westphalia shows that **prevention efforts targeting women are deemed increasingly important.**

Regarding the monitoring of children, the Interior Minister of Bavaria, Joachim Herrmann, proposed that even children under the age of 14 should be monitored by German security authorities; the legal threshold to monitor minors was lowered from 16 to 14 only in 2016 as a response to the current terrorist threat. The proposal concerning the monitoring of people younger than 14 has so far not received much support, however.

To conclude, a complex counter-terrorism strategy has been implemented in the past years by German authorities in a relatively swift manner. **It demonstrates that improved cooperation of the numerous actors involved in terrorism prevention is required to employ counter-terrorism responses effectively.**

Moreover, the conviction of German foreign fighters in Iraq creates new challenges for German authorities. Newspaper TAZ reported on February 12, 2018, that the German government will only intervene in cases involving convicted German nationals who are either underage or in cases where the courts pass a death sentence. Thus, the next weeks and months will show how German authorities will respond to such cases, including the case of Lamia K. who received a death sentence and the case of 17-year-old Linda W. from Saxony. **The convictions of Linda W. and Lamia K. represent specific challenges since there are no extradition agreements between Germany and Iraq; the death sentence of Lamia K. could potentially result in a diplomatic scandal.**

Further, German authorities expect a few hundred children of German foreign fighters to return to Germany. So far, the government has only returned one child and in that specific case, the grandfather sought the repatriation of the child. An issue to address therefore is whether children who are imprisoned alongside their parents and whose relatives in Germany do not actively seek their repatriation, will return to Germany at the sole initiative of the German government - a prospect which has so far been deemed rather unlikely, although this would align with the humanitarian approach towards the children of foreign fighters which the German government has recommended.

Finally, a consolidated and countrywide approach involving de-radicalization interventions has not been put forward yet. Comprehensive strategies that include local prevention programmes to address the radicalization of young people are also advised.

