APPENDIX D
North Rhine-Westphalia/ Germany

Inhoudsopgave

I   Summary

The Federal Republic of Germany consists of sixteen constituent states (*Länder*) with a corresponding State Police (*Länderpolizei*). Article 30 of the German Constitution states that *"Except as otherwise provided or permitted by this Basic Law, the exercise of state powers and the discharge of state functions is a matter for the Länder."* Historically, the states have almost exclusively been responsible for policing, except for the period between 1939 until 1945, during which a centralized police force exercised control. As such, there exists only a relatively small federal police force (*Bundespolizei*), which is subordinate to the Federal Ministry of the Interior and consists of about 49,000 employees. Its tasks mainly revolve around border security, counter-terrorism, and the protection of federal buildings.

The State Police in North Rhine-Westphalia (NRW) consists of about 42,000 police officers as of 2020 and is organised on two levels. On the top level, there is the Ministry of Internal Affairs of NRW exercising oversight over the various State Police bodies such as the State Criminal Police Office (*Landeskriminalamt*) and the 47 District Police Offices (*Kreispolizeibehörden*), which are – contrary to their nomenclature – state authorities even though a Kreis is akin to the district-level in other federal republics and consists of multiple municipalities. The Police Organisation Law (*Polizeiorganisationsgesetz*) and the Police Law (*Polizeigesetz*) of NRW are the relevant legal frameworks. Primarily, the police are tasked with averting dangers to public order and safety (*Gefahrenabwehr*), that is preventing crime and acting as a first-responder until the relevant authority can act.

In Germany, the monopoly on the use of force is a prerogative of the state and the core of internal security such as criminal prosecution is immune to privatisation (*privatisierungsfester Kernbereich der inneren Sicherheit*). However, it is not entirely clear what this *Kernbereich* entails and following the trend in other countries, private security has stepped in for tasks such as the protection of public events, municipal patroling, ensuring safety for public transportation or shopping malls and security checks at airports. By far the most important task for private security providers in Germany has been property protection with about 50 per cent of the 9 billion euros revenue being attributed to it.

About 53,425 private security guards by 764 companies were employed in NRW in 2019, which are being regulated by general commercial law (*§ 34a Gewerbeordnung, Bewachungsverordnung*). Private security personnel does not enjoy any special competences compared to everyone else.

Hence, they are mainly limited to everyman's rights of exercising property rights of their clients, self-defence, and the right to private citizen's arrest including the obligation to immediately contact the security police. However, there is a special provision in the law on firearms (*§ 28 Waffengesetz*), relating to acquiring, owning, and carrying a gun under certain conditions during a task if the need for a firearm can be substantiated i.e. because of a person or object at risk.

a.   **Overview in numbers**

Police (Source: Polizei NRW – Organisation)
about 42,000 police officers in total (2019)
234 police officers per 100,000 inhabitants (2019)
1,227,929 police reports in 2019
447,847 suspects discovered by the police in 2019
53.3 per cent clear-up rate (number of solved cases) in 2019

Cybercrime (Source: Polizeiliche Kriminalstatistik 2019)
60,365 cybercrime cases reported in 2019
The NRW State Police distinguishes between multiple categories of cybercrime:
– Cybercrime in the narrower sense: attacks on networks themselves
  • 6,034 criminal cases in 2019
– Cybercrime in the broader sense: IT as a tool for crime
  • 58,426 criminal cases in 2019

Private security industry (Source: BDSW 2020)
262,000 private security guards in Germany in 2019
– 53,425 private security guards in NRW in 2019
about 6,500 companies in 2019 in Germany (leading: Securitas, Kötter, NWSG)
– 764 companies in 2017 in NRW
about 9 billion euros revenue in 2019 in Germany
– 2.6 billion euros revenue in NRW in 2017
As of December 2020: regulated by general commercial law (*§ 34a Gewerbeordnung, Bewachungsverordnung*) – new draft law (*Sicherheitsdienstleistungsgesetz*) in the making, which will reform private security industry regulation significantly and is scheduled to be enacted until the Bundestag elections 2021. No special competences, only rights which apply to every person (*Jedermannsrechte*).

General provision regarding firearms if the need can be substantiated i.e., person or object at risk; allow the carrying of arms only during specific tasks e.g. transporting valuables (*§ 28 Waffengesetz*)

II   Policing in North-Rhine Westphalia / Germany

a.   **Policy papers**

Germany's security architecture is characterised and heavily influenced by its federalistic structure, which appears fragmented to an outside observer. Thus, policy is also being developed in parallel, mainly on the federal and state-level. Political coordination and cooperation takes place in the form of a regular Conference of Interior Ministers. Policy on the federal level is mainly driven by the government programme of the competent political parties i.e., the coalition agreement between the center right and center left parties for the current legislative period until 2021.[1] In the same way, policy for state policing in the 16 German states is also being mainly determined by the political party or parties in charge.

Furthermore, Germany has a developed police science research field[2] in which both the police with its academic faculties and also external researchers participate lively. However, the WRR has also found that collaboration and data-sharing with external researchers proves difficult if a research proposal might lead to negative publicity for the police, with one of the interviewees even using the term science-adverse (*wissenschaftsfeindlich*). Considering the other surveyed countries i.e., Austria, England and Wales and Belgium, which were all very forthcoming in interview requests, the WRR project group's inquiries for interviews with official authorities in Germany were met with refusal, scepticism and extensive additional requests regarding the WRR as an institution, its project group and the explorative research itself. At the very least, a veil of intransparency and heistancy to share data with researchers is noticeable according to multiple interviewees.

Coalition agreement for the 19th legislative period (2017 – 2021)

On the federal level, the coalition agreement between the center right and center left parties (CDU/CSU and SPD) is of importance and the provisions concerning policing and private security have been mentioned by all of our conversation partners. Among other things, the political parties promised a massive recruitment effort consisting of 15,000 new job positions for federal and state security agencies in Germany and 2,000 new jobs within the

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1   Coalition agreement for the 19th legislative period available at https://www.bundesregierung.de/breg-de/themen/koalitionsvertrag-zwischen-cdu-csu-und-spd-195906 (last accessed 5 December 2020)
2   For an in-depth look see Stierle et al. 2017.

Federal Ministry of Justice and Consumer Protection.[3] Next to this significant increase in numbers, which one interviewee attributed to large extent to terror attacks in Europe including the 2016 Berlin truck attack, the government has promised better equipment for the police forces, increased digitalisation including improved cyberdefence and equivalent competences for the physical and digital world, a noteworthy reform for the private security industry, which is being seen as an important pillar for security[4] and an updated model police law (*Musterpolizeigesetz*) to further harmonize the cluttered federalistic police structure in Germany.

Coalition agreement for North-Rhine Westphalia (2017-2022)[5]

The security chapter of the government programme emphasises overall that the police presence on the streets should be increased noticeably. In order to achieve that, more police officers are being hired and bureaucracy is being delegated to so-called police administrative assistants with the overall aim to focus on core tasks of the police including preventive patrolling. On the technical side, the state government aims to equip every police officer with duty smartphones, every police car with a laptop or tablet including a data-sharing network between vehicles and to develop a police messenger service. Criminal priorities for the state police in nrw are organised crime such as gangs ('Rocker'), (middle eastern) family clans, terrorism and radicalisation prevention and left and right wing extremism. In matters of plural policing the government introduced regular security conferences with all relevant stakeholders and team patrols together with various officials such as youth welfare personnel, public order personnel or social workers. Furthermore, the government announced investments in the significant bolstering of cyber-, economic and financial

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3   "Wir stärken die Sicherheit in Deutschland: Pakt für den Rechtsstaat mit 15,000 neuen Stellen für die Sicherheitsbehörden in Bund und Ländern und 2,000 neuen Stellen in der Justiz. Stärkere Bekämpfung von Alltagskriminalität. Bessere Ausstattung für die Polizei, konsequente Digitalisierung, Ausweitung DNA-Analyse. Effektive und moderne Verfahren in allen Bereichen. Bessere und schnellere Rechtsdurchsetzung. Gleichwertige Befugnisse im Internet wie außerhalb. Ausbau der Cyberabwehr. Verbesserte Zusammenarbeit der Behörden bei der Bekämpfung von Terrorismus etwa durch mehr Sicherheitskooperation in Europa. Musterpolizeigesetz für bundesweit einheitliche hohe Standards. Ausbau der Programme gegen jede Form von Extremismus." – Chapter X of the Coalition agreement for the 19th legislative period available at https://www.bundesregierung.de/breg-de/themen/koalitionsvertrag-zwischen-cdu-csu-und-spd-195906 (last accessed 5 December 2020).

4   "Private Sicherheitsbetriebe leisten einen wichtigen Beitrag zur Sicherheit. Durch die Neuordnung der Regelungen für das private Sicherheitsgewerbe in einem eigenständigen Gesetz werden wir die Sicherheitsstandards in diesem Gewerbezweig verbessern und so für noch mehr Sicherheit und Verlässlichkeit sorgen." Chapter X of the Coalition agreement for the 19th legislative period available at https://www.bundesregierung.de/breg-de/themen/koalitionsvertrag-zwischen-cdu-csu-und-spd-195906 (last accessed 5 December 2020).

5   Coalition agreement NRW 2017-2022, available at https://www.cdu-nrw.de/koalitionsvertrag-fuer-nordrhein-westfalen-2017-2022 (last accessed 5 December 2020).

crime departements. Finally, nrw has concluded a small-scale project of predictive policing and plans on possibly implementing such strategies state-wide. Moreover, an increased focus on monitoring online sales platforms, for instance for stolen goods, is being emphasised. The latter goes hand in hand with improving cyber-capabilities and an IT-security strategy.

Final report of the governmental committee for more security in NRW[6]

An expert governmental committee appointed by the state governor started convening in 2018 with the aim of proposing measures for improving the security architecture in NRW after a careful analysis of the status quo. Two years later, in March 2020, the final report has been published, containing a plethora of recommendations.

Interestingly, the committee came to the conclusion that the shift towards challenges such as terrorism, cybercrime and event security can not be made by the police, which either leads to an overburdened police or a security gap. As a result, communal order authorities have significantly expanded their role and request even more tasks, which has led to a conflict with the police authorities stating that they should focus on their assigned communal tasks, complementing the police instead of replacing it. The committee called for a clear delineation of competencies. Finally, political leadership might also consider the implementation of city police units, which are already existent in the state of Hessen. Private security is not explicitly mentioned in the relevant chapter, yet it should be highlighted that those communal order authorities might possibly employ or contract with private security businesses to carry out these tasks.

Moreover, the committee also recommended an equality of competences for the surveillance of traditional telecommunications vis-a-vis messenger services such as WhatsApp. Additionally, in order to be able to force international telecommunication services into complying with German law, the local market principle for such services should be implemented into the legal framework.

The report highlights the criminal priorities which are mostly congruent with the federal strategy report, for instance right-wing extremism, Islamic extremism, hate crime, cybercrime and organised crime. In matters of cybercrime, the committee did not deal with any fundamental or particularly new issues and focused on measures such as the need for public authorities to catch up with

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6   Abschlussbericht der Regierungskommission 'Mehr Sicherheit für Nordrhein-Westfalen', available at https://www.land.nrw/sites/default/files/asset/document/abschlussbericht.pdf (last accessed 4 December 2020).

technological developments, unifying systems and the strengthening of public informational security. The committee advocated against a legal obligation to provide security authorities with an encryption key in order to be able to access encrypted contents.

b.   **Fundamental questions**

In the current strategy report on the federal level, so-called 'Priority 1' topics encompass right- and left-wing extremism, Islamic terrorism, and cybercrime. Consequently, two new departments have been established, one for cybercrime consisting of about 150 employees and one for terrorism consisting of about 800 employees. Overall, especially since the 2016 Berlin truck attack, the Federal Ministry of the Interior has focused significantly on recruiting more personnel; about 500 new employees entered the service every year.

c.   **Plural policing**

Curiously, one interviewee noted a trend regarding the uniforms. Whereas the police was easily discernible from private security actors in the past, nowadays almost all security actors wear blue uniforms. However, it was the police that changed their uniforms from green and other colours to blue in all German states and not the private security industry, which always chose blue. As such, all security actors appear similarly uniformed at first glance.

Interestingly, the German railway company (*Deutsche Bahn AG*) also has its own security company as a subsidiary (*Deutsche Bahn Sicherheit GmbH*), which consists of 4,000 employees responsible for corporate security. The security personnel routinely patrol together with federal police officers and their competences are limited to everyman's rights. Personnel working for the DB Sicherheit GmbH or assigned to conduct baggage checks in airports receive special training.

III   Digitalisation and cybercrime law enforcement

Over the past few years, a lot has happened in the realm of dealing with cybercrime in Germany, such as the establishment of a department on the federal level consisting of 150 employees. It must be highlighted though, that the federal level only has jurisdiction in significant incidents fulfilling certain criteria (see § 4 of the *Bundeskriminalamtgesetz* – BKAG). Thus, for day-to-day cybercrime under a particular threshold, the sixteen state police forces are responsible. Recruitment efforts for cyber experts on the federal level are focusing more on patriotism hand in hand with moderate bonus schemes in order to offset the disadvantages of the public salary schemes compared to private businesses. The Federal Criminal Police Office also introduced a new career path to train IT-experts with a relevant degree in two years into cybercriminalists who enter the civil service after successful completion.

One of the most controversially discussed topics relating to the digital realm in Germany has been Germany's Network Enforcement Act (*Netzwerkdurch-setzungsgesetz*), which went into effect in June 2017. Big platforms with more than two million users are being obligated to check posts for evident criminal liability and delete them consequently within 24 hours. In addition, the affected user is able to press criminal charges with the police. Critics lament that those platforms do not have the skilled personnel to adhere to the standards of the German criminal law, the possibility of censorship and overblocking and that those companies have their own code of ethics (i.e., posts relating to right-wing extremism are deleted more thoroughly than those relating to left-wing extremism). Fines for not complying reach up to 50 million euros. It appears that a majority of legal scholars considers the law unconstitutional. In June 2020 the German parliament passed an amendment to the law, which introduced a reporting obligation for certain types of criminal content straight to the Federal Criminal Police Office. According to one of the interviewees, the police is not in favour of the NetzDG since it may lead to an incredible workload.

a.   Fundamental questions
A main principle and demand echoed regularly by the German police relates to equal legal powers in the physical and digital sphere, meaning that current legislative provisions regarding powers in the digital sphere need to be expanded in order to meet their physical counterparts, for instance the surveillance of communication via messenger services or online searches of devices.

German police forces have also engaged regularly in online patrols (*virtuelle Streifenfahrten; anlassunabhängige Recherche im Internet*) since the 1990s[1], for instance looking through social media platforms such as Facebook using fake profiles in order to spot corpus delicti. As such, those online patrols do not violate any legal rights and are very much comparable to patrols in the physical world. Once certain thresholds need to be overcome, for instance access to a closed group using a cover story or if specific personal data is being saved, the legal debate is controversial.

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[1]   17/5835 Antwort der Bundesregierung auf die Kleine Anfrage 17/5674: https://dipbt.bundestag.de/dip21/btd/17/058/1705835.pdf.

IV   Private security, its legal basis and public presence

Germany sees the private security industry as a pillar of the security architecture, a change in perspective which goes back to the 2000s when the business started to take off according to two interviewees. One hypothesis is that because of the low market entry barrier – the simplicity to establish companies and generate business – the branch has continuously increased their revenue over the last decades. Moreover, those private security companies looked for new business opportunities and business took off in the late 90s when outsourcing (*Fremdvergabe*) of safety tasks became more prevalent against the backdrop of neoliberal tendencies. Additionally, whereas in the past events took care of security itself, nowadays the law requires certain standards to be fulfilled, which lead to an increased demand for professionalised services such as musical or sport events, large demonstrations.

So far, the private security industry in Germany has been regulated by general commercial law under the umbrella of the Federal Ministry for Economic Affairs and Energy. The private security industry desired to be regulated by the Federal Ministry of the Interior and according to our conversation partner, that has been enacted as of 1 July 2020. Additionally, a draft law – the *Sicherheitsdienstleistungsgesetz* – has been circulated by the BDSW (Federal Association of the Security Industry in Germany), which contains long held demands by the private security sector. The drafters within the Federal Ministry of the Interior are considering the public's interest next to the industry's demands meaning that a market shakeout to reduce competition for the big players is definitely not in the interest of the general public. There is no draft text available yet, but, among other things, the law aims to increase the standards for the whole industry, which now formally resides under the Federal Ministry of the Interior. According to the Federal Minister of the Interior *"the competences have now been concentrated within the Federal Ministry of the Interior, Building and Community in order to improve the quality of and the citizen's trust in the private security industry"*.[1]

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[1]   Bundesinnenminister Horst Seehofer: "Private Sicherheitsunternehmen leisten einen wichtigen Beitrag für die Sicherheit in Deutschland. Mit dem Übergang der Zuständigkeit für das Bewachungs-recht in mein Ministerium bündeln wir die Kompetenzen in diesem Bereich. Wir werden gemeinsam an höheren Sicherheitsstandards für das Sicherheitsgewerbe arbeiten. Damit steigern wir die Qualität und das notwendige Vertrauen in die Branche." – Press release of the Federal Ministry of the Interior, Building and Community, available at https://www.bmi.bund.de/SharedDocs/pressemitteilungen/ DE/2020/06/bewachungsunternehmen.html (last accessed 5 December 2020).

The private security industry is suffering from a bad image in the eyes of the general population, especially referring to the stereotype of a security guard, who did not fulfill the criteria to become a police officer. Interestingly though, research relating to the variety of security actors yields contrary results, that is: the general population is in favour of more security actors, yet when asked on a case-by-case basis they would prefer the police and not private security personnel. Private security personnel is allowed to be armed on duty but adheres to the general law without any special provisions. Also, the association is not asking for further privileges.

Interestingly, private security is responsible for the protection of around 300 military objects in Germany. The Ministry of Defence usually concludes five-year contracts for that task. Another area protected by the private sector are nuclear plants in Germany, with corresponding legal provisions in the Atomic Energy Act (*Atomgesetz*). The air safety law (*Luftsicherheitsgesetz*) stipulates that security checks at the airport are still a prerogative of the state, yet allows for the execution by private security personnel. In some German states such as Hessen private security is also assisting state authorities in prison services such as catering, education, facility management in general and also in transporting prisoners. Tasks relating to the possible use of force are reserved for state authorities (*Hoheitliche Aufgaben*). Interestingly, similar projects were not followed up on by the private security industry.

During the COVID-19 pandemic, public authorities soon realized that the execution of new norms is next to impossible due to the extent and lack of resources, which is also where private security tried to step in. Moreover, the BDSW also asked for the authority to conduct identity checks and send off potential troublemakers since the private security personnel would still need to call the police if the situation escalated. The police are heavily against any such encroachments into matters revolving around the monopoly on the use of force.

The most important area for revenue streams is property protection, which accounts for about 50 per cent of total revenues, followed by airport security (11 per cent) and emergency control centers (10 per cent), for instance in case of break-ins.[2]

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2   See *Statistiksatz – Sicherheitswirtschaft in Deutschland*, available at https://www.bdsw.de/die-branche/zahlen-daten-fakten (last accessed 10 December 2020) .

Security research project OSiMa[3]

The three-year long security research project titled OSiMa (*Organization and Regulation of the Civil Security Market*) sponsored by the Federal Ministry of Education and Research explored the various facets of security provided by the private industry and the cooperation between public authorities and the private security industry in depth between 2016 and 2019. 68 per cent of the surveyed private security businesses answered the question "Has your company cooperated with public authorities in the past ten years?" affirmatively.[4] When asked about the form of cooperation, about 87 per cent of businesses responded with having concluded a contract as the main contractor. 71 per cent of businesses which have cooperated with public authorities would assess their cooperation as at least somewhat important for the success of their company. Furthermore, 7 per cent would classify the cooperation as rather good. OSiMa also assessed the different quality dimensions of private security.[5]

a.   Fundamental questions

Private security industry in Germany is in the process of being reformed due to the change of competence to the Ministry of the Interior and the corresponding new legal framework, which should be enacted until the next general elections scheduled for 2021. As of December 2020, no draft text is publicly available. The initiative for the change of competence and a new corresponding legal reform stems from the Federal Association of the Security Industry and, according to our interviewees, its strong political lobbying efforts, which results in the inclusion of these initiatives into the current coalition agreement.[6] Among other things, the industry is especially looking for unified standards for training, certification and qualification and shifting away from lowest price criteria for public call for tenders. One demand in fact tries to enter the state's use-of-force prerogative, that is for *"minimal transferred competences"* to increase communal security by allowing private security personnel to enfore identification checks and banning from public places for which there is no domestic authority so far.

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3   For all OSiMa publications see https://www.infoportalsicherheit.de/?page_id=220 (last accessed 10 December 2020).

4   Ansmann and Nitze 2018. Also see https://www.uni-potsdam.de/fileadmin/projects/ls-verwaltung/OSiMa_Working_Paper_01_2018_Die_Kooperation_von_%C3%B6ffentlichem_Sektor_und_privater_Sicherheitswirtschaft.pdf (last accessed 10 December 2020).

5   See Bretschneider 2019.

6   For an overview of the demands of the BDSW see its strategy paper including seven specific areas for reform, available at https://www.bdsw.de/images/aktuell/2019/DSD_03-2019_Beilage_BDSW_Eckpunktepapier.pdf (last accessed 10 December 2020).

Furthermore, in 2020 the industry repeated this demand in the context of the overstrained authorities during the COVID-19 pandemic and concurrent restrictive norms, which had to be enforced somehow. The argument revolves around the notion that the police has to be consulted until now, meaning that the every man's rights requirements for stopping someone have to be fulfilled, otherwise the person could just walk away. Moreover, the industry sees performance disadvantages in having to wait for the police. However, the police in Germany appear to strictly draw the line when it comes to the possible use of force in order to enforce a competence by non-police personnel. As such, according to our interviewees, it appears highly unlikely that such a provision will be contained in the upcoming law.

Other than the change of competence and the corresponding new legal framework, private security does not generate further noticeable fundamental discussions among scholars or practitioners.

V   List of interviewees

Prof. Dr. **Frank Braun** is a Professor at the University of Applied Sciences for Public Administration and management of North Rhine-Westphalia (HSPV NRW), specialised in constitutional and administrative law.

Prof. Dr. **Bernhard Frevel** is a Professor at the University of Applied Sciences for Public Administration and management of North Rhine-Westphalia (HSPV NRW), specialised in sociology and political sciences.

Dr. **Nathalie Hirschmann** is conducting research at the Faculty of Political Science of the University of Münster, specialised in police sciences, criminology and criminal sociology.

Dr. **Harald Olschok** has been the CEO of the *Bundesverband der Sicherheitswirtschaft* (BDSW, Federal Association of the Security Industry in Germany) for over 20 years.

Martin von Simson oversees the department ÖS I 1 within the Federal Ministry of the Interior, which is responsible for elemental questions of policing and law enforcement (Referat: *Grundsatz Polizei und Strafverfolgung*).

Birgitta Lodde works in the department ÖS I 1 responsible for elemental questions of policing and law enforcement and is tasked with drafting a new law regulating the whole private security industry in Germany (*Sicherheitsdienstleistungsgesetz*).

VI   Literature

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