



Permanent Mission  
of the Federal Republic of Germany  
to the Office of the United Nations and  
to the other International Organizations  
Geneva

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### Note Verbale

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organisations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and – referring to the joint communication sent on 29 August 2016, ref.: OL DEU 2/2016, by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. David Kaye, the Special Rapporteur on the situation of human rights defenders, Mr. Michel Forst, and the Special Rapporteur on the independence of judges and lawyers, Ms Mónica Pinto, to His Excellency Mr. Hans-Joachim Daerr, Ambassador, Chargé d'affaires a.i. - has the honour to transmit herewith the response of the Federal Republic of Germany, as follows:

On 28 June 2016, the Federal Cabinet approved a draft law on strategic surveillance of communications between non-German citizens abroad by the Federal Intelligence Service. This draft law does not expand the authority of the Federal Intelligence Service, but primarily puts in more clear terms the current legal framework for the Federal Intelligence Service's strategic surveillance, from within Germany, of communications abroad between non-German citizens.

The purpose of the draft law is to establish a clear legal framework for Federal Intelligence Service strategic surveillance of communications between non-German citizens abroad. The draft law aims at enshrining a series of new protective provisions. It for the first time places all communication of EU citizens and of the institutions and organisations of EU member states under special protection. Moreover, it explicitly prohibits economic espionage and establishes a special body to monitor Federal Intelligence Service strategic surveillance of communications between non-German citizens abroad. The draft law is far more restrictive than similar legislation on strategic communications intelligence in other countries.

Protection of human rights in connection with strategic surveillance of communications between non-German citizens abroad is guaranteed in particular by the provisions of the draft law, as well as by the principle of proportionality that is enshrined in the Basic Law. The Federal Intelligence Service is required to observe this principle in all of its activities, regardless of the nationality of the person in question. In the view of the Federal Government, there is no reason to fear that this draft law endangers the freedom of the press or the freedom of opinion.

To the  
Office of the High Commissioner for Human Rights  
Palais Wilson  
Geneva

The draft law is currently pending approval by the German Bundestag. Out of respect for parliamentary sovereignty further details cannot be provided at this time as discussions in the German Bundestag are still in progress. As soon as the parliamentary procedure has been completed, we shall gladly transmit to the General Rapporteur the final version of the law, as adopted by the German legislator. As is the case with all draft laws, the competent authorities have conducted examinations to ensure that it is compatible with Germany's Basic Law, as well as with Germany's European legal and human rights obligations. More information can be found in the explanatory memorandum of the draft law.

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its utmost consideration.

Geneva, 21 October 2016

