

Section 100c
[Measures Implemented Without the Knowledge of the Person Concerned]

(1) Private speech on private premises may be intercepted and recorded using technical means also without the knowledge of the person concerned if

1. certain facts give rise to the suspicion that a person, either as perpetrator or as inciter or accessory, has committed a particularly serious criminal offence referred to in subsection (2) or, in cases where there is criminal liability for attempt, has attempted to commit such an offence; and
2. the offence is one of particular gravity in the individual case as well; and
3. on the basis of factual indications it may be assumed that the surveillance will result in the recording of statements by the accused which would be of significance in establishing the facts or determining the whereabouts of a co-accused; and
4. other means of establishing the facts or determining a co-accused's whereabouts would be disproportionately more difficult or offer no prospect of success.

(2) Particularly serious criminal offences for the purposes of subsection (1), number 1, shall be:

1. pursuant to the Criminal Code:
 - a) crimes against peace, high treason, endangering the democratic state based on the rule of law, treason, and endangering external security pursuant to sections 80, 81, 82, 89a, pursuant to section 94, section 95 subsection (3) and section 96 subsection (1), in each case also in conjunction with section 97b, as well as pursuant to section 97a, section 98 subsection (1), second sentence, section 99 subsection (2), section 100 and section 100a subsection (4);
 - b) formation of criminal groups pursuant to section 129 subsection (1) in conjunction with subsection (4), second part of the sentence, and formation of terrorist groups pursuant to section 129a subsections (1), (2), (4) and subsection (5) first sentence, first alternative, in each case also in conjunction with section 129b subsection (1);
 - c) counterfeiting money and official stamps pursuant to sections 146 and 151, in each case also in conjunction with section 152, as well as pursuant to section 152a subsection (3) and section 152b subsections (1) to (4);
 - d) crimes against sexual self-determination in the cases referred to in section 176a subsection (2), number 2, or subsection (3), section 177 subsection (2), number 2, or section 179 subsection (5), number 2;
 - e) distribution, acquisition and possession of pornographic writings involving children in the cases referred to in section 184b subsection (3);
 - f) murder and manslaughter pursuant to sections 211 and 212;
 - g) crimes against personal liberty pursuant to section 234, section 234a subsections (1) and (2), sections 239a and 239b, and trafficking in human beings for the purpose of sexual exploitation and for the purpose of exploitation of labour pursuant to section 232 subsection (3), subsection (4) or subsection (5), section 233 subsection (3), in each case to the extent that it concerns a felony;
 - h) gang theft pursuant to section 244 subsection (1), number 2, and aggravated gang theft pursuant to section 244a;
 - i) aggravated robbery and robbery resulting in death pursuant to section 250 subsection (1) or subsection (2), section 251;
 - j) extortion resembling robbery pursuant to section 255 and a particularly serious case of extortion pursuant to section 253 under the conditions set out in section 253 subsection (4), second sentence;
 - k) commercial handling of stolen goods or gang handling of stolen goods or commercial gang handling of stolen goods pursuant to sections 260 and 260a;

l) a particularly serious case of money laundering or concealment of unlawfully acquired assets pursuant to section 261 under the conditions set out in section 261 subsection (4), second sentence;

m) a particularly serious case of taking and offering bribes pursuant to section 335 subsection (1) under the conditions set out in section 335 subsection (2), numbers 1 to 3;

2. pursuant to the Asylum Procedure Act:

a) inducing an abusive application for asylum pursuant to section 84 subsection (3);

b) commercial or gang inducement of an abusive application for asylum pursuant to section 84a subsection (1);

3. pursuant to the Residence Act:

a) smuggling of aliens pursuant to section 96 subsection (2);

b) smuggling resulting in death and commercial and gang smuggling pursuant to section 97;

4. pursuant to the Narcotics Act:

a) a particularly serious case of a criminal offence pursuant to section 29 subsection (1), first sentence, numbers 1, 5, 6, 10, 11 or 13, subsection (3) subject to the requirements of section 29 subsection (3), second sentence, number 1;

b) a criminal offence pursuant to section 29a, section 30 subsection (1), numbers 1, 2, and 4, or section 30a;

5. pursuant to the War Weapons Control Act:

a) a criminal offence pursuant to section 19 subsection (2), or to section 20 subsection (1), in each case also in conjunction with section 21;

b) a particularly serious case of a criminal offence pursuant to section 22a subsection (1) in conjunction with subsection (2);

6. pursuant to the Code of Crimes against International Law:

a) genocide pursuant to section 6;

b) crimes against humanity pursuant to section 7;

c) war crimes pursuant to sections 8 to 12;

7. pursuant to the Weapons Act:

a) a particularly serious case of a criminal offence pursuant to section 51 subsection (1) in conjunction with subsection (2);

b) a particularly serious case of a criminal offence pursuant to section 52 subsection (1), number 1, in conjunction with subsection (5).

(3) The measure may be directed only against the accused and may be implemented only on the private premises of the accused. The measure shall be admissible on the private premises of other persons only if it can be assumed on the basis of certain facts that

1. the accused named in the order pursuant to Section 100d subsection (2) is present on those premises; and that

2. applying the measure on the accused's premises alone will not lead to the establishment of the facts or the determination of a co-accused person's whereabouts.

The measures may be implemented even if they unavoidably affect third persons.

(4) The measure may be ordered only if on the basis of factual indications, in particular concerning the type of

premises to be kept under surveillance and the relationship between the persons to be kept under surveillance, it may be assumed that statements concerning the core area of the private conduct of life will not be covered by the surveillance. Conversations on operational or commercial premises are not generally to be considered part of the core area of the private conduct of life. The same shall apply to conversations concerning criminal offences which have been committed and statements by means of which a criminal offence is committed.

(5) The interception and recording is to be interrupted without delay if during the surveillance indications arise that statements concerning the core area of the private conduct of life are being recorded. Recordings of such statements are to be deleted without delay. Information acquired by means of such statements may not be used. The fact that the data was obtained and deleted is to be documented. If a measure pursuant to the first sentence has been interrupted, it may be re-continued subject to the conditions set out in subsection (4). If in doubt, a court decision on the interruption or continuation of the measures should be sought without delay; Section 100d subsection (4) shall apply *mutatis mutandis*.

(6) In the cases referred to in Section 53 a measure pursuant to subsection (1) shall be inadmissible; if during or after implementation of the measure it becomes apparent that a case referred to in Section 53 is applicable, subsection (5), second to fourth sentences, shall apply *mutatis mutandis*. In the cases referred to in Sections 52 and 53a, information acquired through a measure pursuant to subsection (1) may only be used if, taking into consideration the significance of the underlying relationship of trust, this is not disproportionate to the interest in establishing the facts or determining the whereabouts of an accused person. Section 160a subsection (4) shall apply *mutatis mutandis*.

(7) Insofar as a prohibition on use pursuant to subsection (5) is conceivable, the public prosecution office shall obtain a decision without delay from the court which made the order, as to whether the information acquired may be used. Insofar as the court does not approve such use, the decision shall be binding for the further proceedings.

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