

(3) Where data was transmitted on data media these shall be returned without delay once matching has been completed. Personal data transferred to other data media shall be deleted without delay once it is no longer required for the criminal proceedings.

(4) Upon completion of a measure pursuant to Section 98a, the agency responsible for monitoring compliance with data protection rules by public bodies shall be notified.

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### **Section 98c** **[Comparison of Data to Clear Up a Criminal Offence]**

In order to clear up a criminal offence or to determine the whereabouts of a person sought in connection with criminal proceedings, personal data from criminal proceedings may be automatically matched with other data stored for the purposes of criminal prosecution or execution of sentence, or in order to avert danger. Special rules on use presenting an obstacle thereto, being provisions under Federal law or under the corresponding *Land* law, shall remain unaffected.

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### **Section 99** **[Seizure of Postal Items]**

Seizure of postal items and telegrams addressed to the accused which are held in the custody of persons or enterprises providing, or collaborating in the provision of, postal or telecommunications services on a commercial basis shall be admissible. Seizure of postal items and telegrams shall also be admissible where known facts support the conclusion that they originate from the accused or are intended for him and that their content is of relevance to the investigation.

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### **Section 100** **[Jurisdiction]**

(1) Only the court and, in exigent circumstances the public prosecution office, shall be authorized to implement seizure (Section 99).

(2) A seizure ordered by the public prosecution office, even if it has not yet resulted in a delivery, shall become ineffective if it is not confirmed by the court within three working days.

(3) The court shall have the authority to open the delivered post. The court may transfer this authority to the public prosecution office insofar as this is necessary so as not to endanger the success of the investigation by delay. The transfer shall not be contestable; it may be revoked at any time. So long as no order has been made pursuant to the second sentence, the public prosecution office shall immediately forward the delivered postal items to the court, leaving any unopened postal items sealed.

(4) The court competent pursuant to Section 98 shall decide on a seizure ordered by the public prosecution office. The court which ordered or confirmed the seizure shall decide whether to open an item that has been delivered.

(5) Postal items in respect of which no order to open them has been made are to be forwarded to the intended recipient without delay. The same shall apply insofar as there is no necessity to retain the postal items once opened.

(6) Such part of a retained postal item as does not appear expedient to withhold for the purposes of the investigation is to be transmitted to the intended recipient in the form of a copy.

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### **Section 100a** **[Conditions Regarding Interception of Telecommunications]**

(1) Telecommunications may be intercepted and recorded also without the knowledge of the persons concerned if

1. certain facts give rise to the suspicion that a person, either as perpetrator or as inciter or accessory, has committed a 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 or has prepared such an offence by committing a criminal offence; and
2. the offence is one of particular gravity in the individual case as well; and
3. other means of establishing the facts or determining the accused's whereabouts would be much more difficult or offer no prospect of success.

(2) 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 to 82, 84 to 86, 87 to 89a and 94 to 100a;
- b) taking of bribes by, and offering of bribes to, mandate holders pursuant to section 108e;
- c) crimes against the national defence pursuant to sections 109d to 109h;
- d) crimes against public order pursuant to sections 129 to 130;
- e) counterfeiting money and official stamps pursuant to sections 146 and 151, in each case also in conjunction with section 152, as well as section 152a subsection (3) and section 152b subsections (1) to (4);
- f) crimes against sexual self-determination in the cases referred to in sections 176a, 176b, 177 subsection (2), number 2, and section 179 subsection (5), number 2;
- g) dissemination, purchase and possession of pornographic writings involving children and involving juveniles, pursuant to section 184b subsections (1) to (3), section 184c subsection (3);
- h) murder and manslaughter pursuant to sections 211 and 212;
- i) crimes against personal liberty pursuant to sections 232 to 233a, 234, 234a, 239a and 239b;
- j) gang theft pursuant to section 244 subsection (1), number 2, and aggravated gang theft pursuant to section 244a;
- k) crimes of robbery or extortion pursuant to sections 249 to 255;
- l) commercial handling of stolen goods, gang handling of stolen goods and commercial gang handling of stolen goods pursuant to sections 260 and 260a;
- m) money laundering or concealment of unlawfully acquired assets pursuant to section 261 subsections (1), (2) and (4);
- n) fraud and computer fraud subject to the conditions set out in section 263 subsection (3), second sentence, and in the case of section 263 subsection (5), each also in conjunction with section 263a subsection (2);
- o) subsidy fraud subject to the conditions set out in section 264 subsection (2), second sentence, and in the case of section 264 subsection (3), in conjunction with section 263 subsection (5);
- p) criminal offences involving falsification of documents under the conditions set out in section 267 subsection (3), second sentence, and in the case of section 267 subsection (4), in each case also in conjunction with section 268 subsection (5) or section 269 subsection (3), as well as pursuant to sections 275 subsection (2) and section 276 subsection (2);
- q) bankruptcy subject to the conditions set out in section 283a, second sentence;
- r) crimes against competition pursuant to section 298 and, subject to the conditions set out in section 300, second sentence, pursuant to section 299;
- s) crimes endangering public safety in the cases referred to in sections 306 to 306c, section 307 subsections (1) to (3), section 308 subsections (1) to (3), section 309 subsections (1) to (4), section 310 subsection (1),

sections 313, 314, 315 subsection (3), section 315b subsection (3), as well as sections 361a and 361c;

t) taking and offering a bribe pursuant to sections 332 and 334;

2. pursuant to the Fiscal Code:

a) tax evasion under the conditions set out in section 370 subsection (3), second sentence, number 5;

b) commercial, violent and gang smuggling pursuant to section 373;

c) handling tax-evaded property as defined in section 374 subsection (2);

3. pursuant to the Pharmaceutical Products Act:

criminal offences pursuant to section 95 subsection (1), number 2a, subject to the conditions set out in section 95 subsection (3), second sentence, number 2, letter b;

4. pursuant to the Asylum Procedure Act:

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

b) commercial and gang inducement to make an abusive application for asylum pursuant to section 84a;

5. 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;

6. pursuant to the Foreign Trade and Payments Act:

wilful criminal offences pursuant to sections 17 and 18 of the Foreign Trade and Payments Act;

7. pursuant to the Narcotics Act:

a) criminal offences pursuant to one of the provisions referred to in section 29 subsection (3), second sentence, number 1, subject to the conditions set out therein;

b) criminal offences pursuant to section 29a, section 30 subsection (1), numbers 1, 2 and 4, as well as sections 30a and 30b;

8. pursuant to the Precursors Control Act:

criminal offences pursuant to section 19 subsection (1), subject to the conditions set out in section 19 subsection (3), second sentence;

9. pursuant to the War Weapons Control Act:

a) criminal offences pursuant to section 19 subsections (1) to (3) and section 20 subsections (1) and (2), as well as section 20a subsections (1) to (3), each also in conjunction with section 21;

b) criminal offences pursuant to section 22a subsections (1) to (3);

10. 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;

11. pursuant to the Weapons Act:

a) criminal offences pursuant to section 51 subsections (1) to (3);

b) criminal offences pursuant to section 52 subsection (1), number 1 and number 2, letters c and d, as well as

section 52 subsections (5) and (6).

(3) Such order may be made only against the accused or against persons in respect of whom it may be assumed, on the basis of certain facts, that they are receiving or transmitting messages intended for, or transmitted by, the accused, or that the accused is using their telephone connection.

(4) If there are factual indications for assuming that only information concerning the core area of the private conduct of life would be acquired through a measure pursuant to subsection (1), the measure shall be inadmissible. Information concerning the core area of the private conduct of life which is acquired during a measure pursuant to subsection (1) shall not be used. Any records thereof shall be deleted without delay. The fact that they were obtained and deleted shall be documented.

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### **Section 100b** **[Order to Intercept Telecommunications]**

(1) Measures pursuant to Section 100a may be ordered by the court only upon application by the public prosecution office. In exigent circumstances, the public prosecution office may also issue an order. An order issued by the public prosecution office shall become ineffective if it is not confirmed by the court within three working days. The order shall be limited to a maximum duration of three months. An extension by not more than three months each time shall be admissible if the conditions for the order continue to exist, taking into account the information acquired during the investigation.

(2) The order shall be given in writing. The operative part of the order shall indicate

1. where known, the name and address of the person against whom the measure is directed;
2. the telephone number or other code of the telephone connection or terminal equipment to be intercepted, insofar as there are no particular facts indicating that they are not at the same time assigned to another piece of terminal equipment;
3. the type, extent and duration of the measure specifying the time at which it will be concluded.

(3) On the basis of this order all persons providing, or contributing to the provision of, telecommunications services on a commercial basis shall enable the court, the public prosecution office and officials working in the police force to assist it (section 152 of the Courts Constitution Act), to implement measures pursuant to Section 100a and shall provide the required information without delay. Whether and to what extent measures are to be taken in this respect shall follow from the Telecommunications Act and from the Telecommunications Interception Ordinance issued thereunder. Section 95 subsection (2) shall apply *mutatis mutandis*.

(4) If the conditions for making the order no longer prevail, the measures implemented on the basis of the order shall be terminated without delay. Upon termination of the measure, the court which issued the order shall be notified of the results thereof.

(5) The *Länder* and the Federal Public Prosecutor General shall submit a report to the Federal Office of Justice every calendar year by the 30<sup>th</sup> June of the year following the reporting year, concerning measures ordered pursuant to Section 100a within their area of competence. The Federal Office of Justice shall produce a summary of the measures ordered nationwide during the reporting year and shall publish it on the Internet.

(6) The reports pursuant to subsection (5) shall indicate:

1. the number of proceedings in which measures were ordered pursuant to Section 100a subsection (1);
2. the number of orders to intercept telecommunications pursuant to Section 100a subsection (1), distinguishing between
  - a) initial and follow-up orders, as well as
  - b) fixed, mobile and Internet telecommunication;
3. in each case the underlying criminal offence by reference to the categories listed in Section 100a subsection (2).