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Striking Back: Germany Considers Counterespionage Against US

By SPIEGEL Staff

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Unsatisfied with the lack of answers provided by Washington in the NSA spying scandal, officials in Berlin are considering a new approach. Germany might begin counterespionage measures aimed at allies.

The question seemed out of place, especially when asked three times. A female journalist from a satire magazine wanted to know if Thomas de Maizière liked cheese snacks. "Questions like that are more appropriate for breakfast television than here," the minister snapped back. It was de Maizière's first visit as interior minister to the Federal Office for the Protection of the Constitution, Germany's domestic intelligence agency. And he was in no mood for jokes.

Instead, the minister preferred to focus on the basics during the appearance two weeks ago, with counterespionage at the top of his list. The issue, he warned, shouldn't be underestimated, adding that the question as to who was doing the spying was but of secondary importance.

In other words: Germany intends to defend itself against all spying efforts in the future, even if they are perpetrated by supposed friends.

While the minister's words may have sounded innocuous, they marked nothing less than the start of a political about-face. Away from the public eye, the German government is moving toward

implementing plans to turn its own spies against partner countries like the United States, putting allies on the same level as the Chinese, Russians and North Koreans.

Humiliating Revelations

The stubbornness of the Americans, who have answered few relevant questions from Germany during the National Security Agency spying scandal, has angered the new government, comprised of Chancellor Angela Merkel's conservatives and the center-left Social Democratic Party (SPD). Now, pressure is growing for Germany to find its own answers to the questions Washington has been ignoring. "They're like cowboys who only understand the language of the Wild West," sources in Merkel's party say, referring to the Americans' intractability. Two government agencies are at the center of the strategy to restore respect that has been lost over months of humiliating revelations that the US has been spying on Germany: the Office for the Protection of the Constitution and the Federal Prosecutor's Office.

De Maizière's new assertiveness first became clear at the Munich Security Conference earlier this month. During a panel discussion, he raised the issue with Mike Rogers, chairman of the US House Permanent Select Committee on Intelligence and called the NSA's relentless collection of data "boundless". He said he couldn't even say how bad the political damage was because he was still lacking vital information.

Indeed, on many key issues, the German government is still flying just as blindly as it was last June when whistleblower Edward Snowden first went public with his revelations about the NSA's efforts to spy on Europe and other parts of the world. In response to the allegations surrounding the documents he leaked, both the Interior Ministry and the Justice Ministry sent extensive lists of questions to the US. At the end of October, they sent a pleasant reminder as well. But even still, after months of waiting, no satisfactory answers have been provided.

Diplomats Leave Washington Empty-Handed

A number of high-level German delegations have traveled to Washington on fact-finding missions, but they have also returned empty-handed for the most part. The Americans did provide around 1,000 pages of documents that were declassified this autumn, but they are essentially endless paragraphs about procedures and regulations. The rest is either blacked out or irrelevant.

A so-called Germany package that was to contain all the data copied by Snowden relating to Germany was promised but not delivered. And no progress whatsoever has been made on a "no-spy agreement," despite months of back and forth on the issue. A version of the paper, which is intended to lay out rules for cooperation between German and US intelligence agencies, has been shelved by Washington. It is likely to remain there as well.

Last week, US President Barack Obama himself rejected any form of a "no-spy agreement". "There's no country where we have a no-spy agreement," Obama said in a press conference during a visit by French President François Hollande. The French leader, who had expressed similar wishes to those of the Germany, was forced to travel back to Paris empty-handed.

US Wants to 'Turn Page'

Between the White House and the Capitol Building, people seem to be rolling their eyes at the Germans. They say they've had enough of the moaning. Sources close to Secretary of State John Kerry, especially, are pushing to move forward from the spying scandal. "Let's turn the page," Kerry reportedly said during private meetings with Merkel and Foreign Minister Frank-Walter Steinmeier.

A new chapter is coming, but it won't be quite as Kerry envisioned it. The Social Democrats are increasingly irritated by the Americans' apparent ignorance over just how sensitive Germany is regarding the NSA affair. "The Iraq war was tiddlywinks compared to the blow to our relations suffered through the NSA affair," says Dietmar Nietan, a member of the German parliament who has been active on the issue of German-American relations for years now.

Members of Merkel's conservatives share similar opinions. They also fear the chancellor will suffer a massive blow to her image if she simply accepts the fact that her cell phone was spied on.

Against that backdrop, it would actually suit both the conservatives and the SPD if Federal Public Prosecutor Harald Range were to move ahead and open an official investigation into espionage activities in Germany. Germany's attorney general hasn't made a decision on taking the case yet, but pressure is mounting in Berlin. In informal talks, the government's SPD ministers -- Heiko Maas at the Justice Ministry, Steinmeier at the Foreign Ministry and Sigmar Gabriel in the Economics Ministry-- have reached an agreement with their CDU colleagues Peter Altmeier in the Chancellery and de Maizière to not stand in the way of an investigation. On the contrary. Range, who has long felt there were good reasons for an investigation, is now being explicitly encouraged to take action.

Letting Spies Off the Hook

Recently, officials at Maas' Justice Ministry signaled to the Federal Prosecutor's Office that it would be incomprehensible to forego investigations just because few expect it to produce any results. "It cannot be that we go hunting for common handbag thieves but do not even attempt to investigate when the chancellor's cell phone has been tapped," Maas is reported to have said during an internal discussion.

Still, as much as the new government wants to show its toughness, it is unlikely that an investigation would bear much fruit. Thus, Berlin is also seriously considering breaking a taboo by spying on its own friends. Its vehicle of choice would be Section 4 at the Office for the Protection of the Constitution (BfV), which is responsible for Germany's counterespionage efforts.

The BfV, based in Cologne, has long divided the spying world into good and bad. The Russians, Chinese, Iranians and North Koreans have always been assigned to the bad side, and the office has specifically dealt with these threats. But the Americans, the British and the French have essentially considered to be off limits.

'One Can't Ignore Allied Countries'

Domestic policy experts from all parties would like to change that. "We have to end the unequal approach and put them all on the same level," says CDU politician Clemens Binniger, the new head of the Parliamentary Control Panel, which is responsible for oversight of intelligence agencies in the Bundestag.

"We have to protect ourselves, no matter where the threats come from," agrees SPD domestic affairs expert Michael Hartmann. And even the Christian Social Union, which is traditionally very friendly towards the US, is concerned. "One can't ignore allied countries," says Stephan Mayer, the domestic affairs spokesman for the CSU, which shares power in government and is the Bavarian sister party to Merkel's CDU.

The plans for monitoring allies are already well developed. Section 4 in the Federal Office for the Protection of the Constitution, where just 100 specialists had been employed, is to be significantly expanded. In addition, a form of "observation-light" is planned: Western partners won't be the targets of the full spectrum of intelligence tools available, such as telephone monitoring, source acquisition or direct observation. But German authorities will do all they can to keep an eye on the goings on at embassies and consulates, learn more about who works there and determine the extent of their technical capabilities. In short, they want to know, for example, if German government offices are being monitored by the US Embassy in Berlin.

Hans-Georg Maassen, head of the Office for the Protection of the Constitution, has already gotten started. He has requested that the US Embassy supply names and data pertaining to intelligence personnel who are in Germany with diplomatic accreditation. He has also asked for information regarding private companies the US cooperates with in Germany on intelligence issues. According to sources in the Office of the Protection of the Constitution, the agency already has a better overview of what is going on than it did just a few months ago.

Even the smallest of Germany's three intelligence agencies, the Military Counterespionage Service (MAD), which is situated within Germany's military and performs some domestic intelligence operations, finds itself contemplating a new approach. Ulrich Birkenheier, who heads MAD, is currently examining whether his organization should be paying closer attention to allied intelligence agencies.

Teaching the US a Lesson

The changes mean that, nine months after the NSA affair, the German government is steering towards a serious confrontation with the US. It would mark a break with the decades-long practice of allowing Western partners to essentially do as they please in Germany. There are, to be sure, several voices -- most of them in the Chancellery and Interior Ministry -- that have warned that increased monitoring of allies could trigger unforeseen consequences and potentially cause damage to existing intelligence partnerships. Other high-ranking government officials, however, say that without such a change in focus, the US wouldn't completely understand the full ramifications of the NSA affair.

A definitive decision has not yet been made. The Foreign Ministry, the Interior Ministry and the Chancellery are still in the process of arriving at a common position. That too is one reason for the delay in Merkel's visit to Washington. Originally, March was considered, but now it is only said that the chancellor will make the trip "in the spring."

It could be later. Government sources say that Merkel will only make the trip once Berlin has reached a common position on intelligence. And when it is clear before she gets on the plane that she will be able to return with a clear success. Merkel needs a scalp. It remains unclear exactly what it will look like.