



## **Serious criminal offences, as defined in sect. 100a StPO, in Germany according to police crime statistics**

### **Introduction**

The EU data retention directive 2006/24 requires telecommunications companies to store data about all of their customers' communications in order to facilitate "the investigation, detection and prosecution of serious crime, as defined by each Member State in its national law."

The German Federal Constitutional Court allowed access to retained traffic data only for the investigation and prosecution of serious crime as defined in the wiretapping section of the German code of criminal procedure (sect. 100a StPO). This section encompasses the following types of crime:

**1) Crimes against peace (sect. 80-80a StGB), high treason (sect. 81-82 StGB), endangering the democratic Rule of Law (sect. 84-86, 87-89 StGB), treason and endangering external security (sect. 94-100a StGB)**

Not covered by police statistics.

**2) Bribery of a member of parliament (sect. 108e StGB)**

Only the total of sect. 108e and 331-335 StGB offences was recorded up until 2005.

**3) Crimes against the national defence (sect. 109d-h StGB)**

Not covered by police statistics.

**4) Crimes against public order (sect. 129-130 StGB)**

Statistics cover sect. 130 StGB offences only:

Year	Reg. cases	Clear. quota
2003	2,202	67.9%
2004	2,649	68.9%
2005	2,812	69.8%
2006	3,096	71.3%
2007	3,168	71.4%
2008	3,354	65.6%
2009	3,430	65.6%

**5) Counterfeiting money and official stamps (sect. 146, 151-152, 152a subject. 3, sect. 152b subject. 1-4 StGB)**

Statistics reveal the total of sect. 146, 147-149, 151-152, 152a subject. 1, 2, 4, 5, sect. 152b subject. 5 StGB offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

**6) Crimes against sexual self-determination (sect. 176a, 176b, 177 subject. 2 no. 2, sect. 179 subject. 5 no. 2 StGB)**

Sect. 176a subject. 2 no. 1 StGB offences:



Year	Reg. cases	Clear. quota
2003	1,554	94.7%
2004	1,589	95.0%
2005	1,435	96.7%
2006	1,279	96.3%
2007	1,243	95.3%
2008	1,015	95.1%
2009	926	94.5%

Sect. 176a subsect. 3 StGB offences:

Year	Reg. cases	Clear. quota
2003	169	85.2%
2004	182	93.5%
2005	138	84.1%
2006	106	96.6%
2007	103	89.3%
2008	81	92.6%
2009	98	88.8%

Other sect. 176a StGB offences:

Year	Reg. cases	Clear. quota
2003	1,107	95.5%
2004	1,265	95.2%
2005	1,185	95.9%
2006	1,114	94.8%
2007	1,228	95.0%
2008	1,457	94.1%
2009	1,441	93.8%

Sect. 176b StGB offences:

Year	Reg. cases	Clear. quota
2003	3	100.0%
2004	4	75.0%
2005	0	0.0%
2006	0	0.0%
2007	1	100.0%
2008	0	0.0%
2009	2	100.0%

Sect. 177 subsect. 2 no. 2 offences:

Year	Reg. cases	Clear. quota
2003	234	31.2%
2004	224	43.3%
2005	190	40.0%
2006	238	29.8%
2007	215	32.1%
2008	198	38.4%
2009	193	32.6%

Sect. 179 StGB offences: Statistics reveal the total only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

**7) Dissemination, purchase and possession of pornographic writings involving children and juveniles (sect. 184b subsect. 1-3, sect. 184c subsect. 3 StGB)**

Statistics reveal the total of sect. 184b subsect. 1-4 StGB only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.



## 8) Murder and manslaughter (sect. 211, 212 StGB)

Statistics reveal the total of sect. 211, 212, 213, 216 StGB offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

## 9) Crimes against personal liberty (sect. 232-233a, 234-234a, 239a-b StGB)

Sect. 232 StGB offences:

Year	Reg. cases	Clear. quota
2003	?	?
2004	?	?
2005	78	84.6%
2006	712	91.7%
2007	655	95.2%
2008	704	89.6%
2009	811	88.7%

Sect. 233 StGB offences:

Year	Reg. cases	Clear. quota
2003	?	?
2004	?	?
2005	3	66.7%
2006	78	96.2%
2007	92	94.6%
2008	27	81.5%
2009	24	95.8%

Sect. 233a StGB offences:

Year	Reg. cases	Clear. quota
2003	?	?
2004	?	?
2005	3	66.7%
2006	52	96.2%
2007	55	94.5%
2008	26	80.8%
2009	49	89.8%

Sect. 234 StGB offences:

Year	Reg. cases	Clear. quota
2003	?	?
2004	?	?
2005	?	?
2006	18	66.7%
2007	4	55.0%
2008	6	100.0%
2009	11	54.5%

Sect. 239a StGB offences:

Year	Reg. cases	Clear. quota
2003	102	83.3%
2004	94	85.1%
2005	95	89.5%
2006	90	77.8%
2007	73	79.5%
2008	71	85.9%
2009	89	84.3%

Sect. 239b StGB offences:

Year	Reg. cases	Clear. quota
2003	88	95.5%
2004	66	92.4%
2005	69	94.2%
2006	53	96.2%
2007	68	92.6%
2008	44	86.4%
2009	55	96.4%

## 10) Gang theft and aggravated gang theft (sect. 244 subsect. 1 no. 2, sect. 244a StGB)

Statistics reveal the total of sect. 243-243a StGB offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

## 11) Robbery and extortion (sect. 249-255 StGB)



Statistics reveal the total of sect. 249-252, 255, 316a StGB offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

Sect. 253 StGB offences:

Year	Reg. cases	Clear. quota
2003	5,804	84.1%
2004	6,172	84.0%
2005	5,872	86.0%
2006	5,838	83.4%
2007	5,551	84.4%
2008	5,185	84.5%
2009	5,776	84.8%

## **12) Commercial or gang handling of stolen goods (sect. 260, 260a StGB)**

Sect. 260 subsection. 1 no. 1, 2, sect. 260a StGB offences:

Year	Reg. cases	Clear. quota
2003	2,436	100.1%
2004	2,538	99.2%
2005	3,114	98.4%
2006	3,191	98.8%
2007	1,952	97.0%
2008	2,562	96.9%
2009	2,650	97.8%

Note: Clearance rates higher than 100 % can be explained in part by the fact that cases from previous years were cleared up during the period under review.

## **13) Money laundering or concealment of unlawfully acquired assets (sect. 261 subsection. 1, 2, 4 StGB)**

Statistics reveal the total of sect. 261 StGB offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

## **14) Fraud and computer fraud (sect. 263 subsection. 3 sent. 2, sect. 263 subsection. 5, sect. 263a subsection. 2 StGB)**

Statistics reveal the total of sect. 263, 263a, 264, 264a, 265, 265a, 265b StGB offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

## **15) Subsidy fraud (sect. 264 subsection. 2 sent. 2, sect. 264 subsection. 3 in conjunction with sect. 263 subsection. 5 StGB)**

Statistics reveal the total of sect. 264 StGB offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

## **16) Forgery (sect. 267 subsection. 3 sent. 2, sect. 267 subsection. 4, also in conjunction with sect. 268 subsection. 5 or sect. 269 subsection. 3, as well as sect. 275 subsection. 2 and sect. 276 subsection. 2)**

Statistics reveal the total of sect. 267-271, 273-279, 281 StGB offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

## **17) Aggravated bankruptcy (sect. 283a sent. 2 StGB)**



Statistics reveal the total of sect. 283a StGB offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

**18) Crimes against competition (sect. 298, sect. 299 in conjunction with sect. 300 sent. 2 StGB)**

Year	Reg. cases	Clear. quota
2003	302	95.0%
2004	137	87.6%
2005	155	94.2%
2006	218	96.3%
2007	98	92.9%
2008	166	94.6%
2009	106	96.2%

**19) Endangering of public safety (sect. 306-306c, sect. 307 subsection. 1-3, sect. 308 subsection. 1-3, sect. 309 subsection. 1-4, sect. 310 subsection. 1, sect. 313-314, sect. 315 subsection. 3, sect. 315b subsection. 3, sect. 316a, sect. 316c StGB)**

Arson: Statistics reveal the total of sect. 306-306d and sect. 306f subsection. 1, 2 StGB offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

Causing a nuclear explosion: No offences registered.

Causing an explosion: Statistics reveal the total of sect. 308 StGB offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

Abuse of ionising radiation: Statistics reveal the total of sect. 309 StGB offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

Preparing to cause an explosion or radiation offence: Statistics reveal the total of sect. 310 StGB offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

Causing flooding: not covered by statistics.

Causing a common danger by poisoning:

Year	Reg. cases	Clear. quota
2003	22	40.9%
2004	16	50.0%
2005	10	50.0%
2006	8	50.0%
2007	10	40.0%
2008	8	37.5%
2009	7	42.9%

Disruption of rail, ship and air traffic, disruption of road traffic: not covered by statistics.

Attacking a driver for the purpose of committing a robbery:

Year	Reg. cases	Clear. quota
2003	549	53.2%
2004	581	49.1%
2005	493	51.9%
2006	419	52.5%
2007	448	49.1%
2008	393	55.5%
2009	417	51.3%

Attacks on air and maritime traffic:



Year	Reg. cases	Clear. quota
2003	3	66.7%
2004	1	100%
2005	3	0%
2006	1	100%
2007	2	100%
2008	0	100%
2009	0	100%

**20) Taking and offering a bribe (sec. 332, 334 StGB)**

Covered by statistics as of 2006:

Year	Reg. cases	Clear. quota
2003	?	?
2004	?	?
2005	?	?
2006	780	94.2%
2007	824	93.2%
2008	726	90.3%
2009	729	92.4%

**21) Tax evasion, commercial, violent and gang smuggling, handling tax-evaded property (sec. 370 subsec. 3 sent. 2 no. 5, sec. 373, sec. 374 subsec. 2 AO)**

Not covered by statistics.

**22) Pharmaceutical products offences (sec. 95 subsec. 1 no. 2a in conjunction with sec. 95 subsec. 3 sent. 2 no. 2b AMG)**

Statistics cover the total number of AMG offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

**23) Abusive application for asylum (sec. 84 subsec. 3, sec. 84a AsylVfG)**

Statistics reveal the total of sec. 84, 84a, 85 AsylVfG offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

**24) Smuggling of aliens (sec. 96 subsec. 2, sec. 97 AufenthG)**

Statistics reveal the total of sec. 96, 97 AufenthG offences as of 2005 only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

**25) Foreign trade and payments offences (sec. 34 subsec. 1-6 AWG)**

Not covered by statistics.

**26) Narcotic and drug offences (sec. 29 subsec. 3 sent. 2 no. 1, sec. 29a, sec. 30 subsec. 1 no. 1, 2, 4, sec. 30a, sec. 30b BtMG)**

Statistics reveal the total of sec. 29a subsec. 1 no. 1, 2, sec. 30 subsec. 1 no. 1, 2, sec. 30a StGB offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

**27) Raw materials suited to make drugs surveillance act offences (sec. 19 subsec. 3 sent. 2 GÜG)**

Not covered by statistics.



**28) War weapons control act offences  
(sec. 19 subsec. 1-3, sec. 20 subsec. 1-2,  
sec. 20a subsec. 1-3, sec. 21  
KrWaffKontrG)**

Statistics reveal the total of all KrWaffKontrG offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

**29) International criminal code (sec. 6-12  
VStGB)**

Not covered by statistics.

**30) Weapons act (sec. 51 subsec. 1-3, sec.  
52 subsec. 1 no. 1, 2 c, 2 d, sec. 52 subsec.  
5, 6 WaffG)**

Statistics reveal the total of WaffG offences only. This total is not taken into account as it covers, to a large degree, offences that are not serious within the meaning of sect. 100a StPO.

**31) TOTAL**

Year	Reg. cases	Clear. quota
2003	14,575	84.5%
2004	15,518	84.2%
2005	15,655	85.7%
2006	17,291	85.4%
2007	15,790	84.4%
2008	16,023	83.4%
2009	16,814	83.5%





## Conclusion

The analysis reveals that with data retention legislation in force, more serious criminal acts (2009: 16,814) were registered by German police than before (2007: 15,790), and serious offences were cleared less often (2009: 83.5%) than before the retention of all communications data (2007: 84.4%).

While data retention is but one possible cause for this development, the coming into effect of data retention legislation in Germany has certainly not lead to a larger share of registered crime being cleared than in previous years. There is no proof that the number of cleared cases, the crime rate or the number of convictions, acquittals or closed cases significantly depends on whether a blanket data retention scheme is in operation in a given country or not. There is no evidence that countries using targeted investigation techniques clear less crime or suffer from more criminal acts than countries operating a blanket communications data retention scheme.

Blanket data retention can actually have a negative effect on the investigation of criminal acts. In order to avoid the recording of sensitive personal information under a blanket data retention scheme, citizens increasingly resort to Internet cafés, wireless Internet access points, anonymization services, public telephones, unregistered mobile telephone cards, non-electronic communications channels and such like. This avoidance behaviour can not only render retained data meaningless but even frustrate targeted investigation techniques (e.g. wiretaps) that would possibly have been of use to law enforcement in the absence of data

retention. Because of this counterproductive effect, the usefulness of retained communications data in some investigation procedures does not imply that data retention makes the prosecution of serious crime more effective overall. All in all, blanket data retention can actually be detrimental to the investigation of serious crime, facilitating some investigations, but frustrating many more.

In view of the harmful side-effects of blanket communications data retention, a coalition of more than 100 civil liberties, data protection and human rights associations as well as crisis line and emergency call operators, professional associations of journalists, jurists and doctors, trade unions, consumer organisations and industry associations is lobbying the Commission to “propose the repeal of the EU requirements regarding data retention in favour of a system of expedited preservation and targeted collection of traffic data”. They have recently been joined by the German Minister of Justice Sabine Leutheusser-Schnarrenberger who is also advocating an opening of the data retention directive to a targeted investigative approach, involving the collection of data on suspect communications only. The German example proves that such targeted investigations can, overall, be just as effective as collecting information on the entire population's contacts, movements and Internet use.

Data source: Police Crime Statistics published by the Federal Crime Agency (BKA).

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