

Telecommunications Act (TKG)

Section 110 Implementation of intercepts, provision of information

(1) Any person operating a telecommunications system by means of which publicly available telecommunications services are provided, shall,

1. from the time of beginning operation, at their own expense, provide technical facilities with which to implement telecommunications interception measures provided for by law and make organisational arrangements for the implementation, without undue delay, of such measures;
- 1a. in cases where interceptability can only be ensured through the interworking of two or more telecommunications systems, make available the necessary automated control functions for the recording and transmission of the telecommunications to be intercepted in their telecommunications system and enable such control;
2. without undue delay after beginning operation, vis-à-vis the Bundesnetzagentur,
 - a) declare that they have made the arrangements in accordance with para 1; and
 - b) nominate a body located in the Federal Republic of Germany to receive judicial orders destined for them, relating to telecommunications interception;
3. demonstrate to the Bundesnetzagentur, at no charge, that the technical facilities and organisational arrangements in accordance with para 1 are compliant with the provisions of the ordinance issued by virtue of subsection (2) and the technical directive drawn up in accordance with subsection (3); to this end, they shall, without undue delay but no later than one month after beginning operation,
 - a) send to the Bundesnetzagentur the documents needed to prepare the checks the Bundesnetzagentur carries out to verify compliance; and
 - b) agree with the Bundesnetzagentur a date for demonstrating and verifying compliance; they shall assist the Bundesnetzagentur in the checks required for verifying compliance;
4. allow the Bundesnetzagentur, at its special request in a given, justified instance, to recheck, at no charge, their technical and organisational arrangements; and
5. tolerate the installation and operation on their premises of equipment for the implementation of measures under sections 5 and 8 of the Article 10 Act or under sections 6, 12 and 14 of the Federal Intelligence Service Act and grant staff of the office responsible for such measures and, in the case of measures under sections 5 and 8 of the Article 10 Act, members and staff of the G10 Commission (section 1(2) of the Article 10 Act) access to such equipment for the discharge of their legal functions.

Any person offering publicly available telecommunications services without themselves operating a telecommunications system to do so shall, when choosing the operator of the telecommunications system to be used for doing so, make certain that the latter can carry out judicial orders relating to telecommunications interception without undue delay in compliance with the ordinance issued by virtue of subsection (2) and the technical directive drawn up in accordance with subsection (3), and notify the Bundesnetzagentur without undue delay after beginning to provide service of which telecommunications services they are offering, by whom judicial intercept orders

concerning their subscribers are to be carried out and to which body located in the Federal Republic of Germany judicial orders relating to telecommunications interception are to be addressed. Any changes in the data on which the notifications in accordance with sentence 1 para 2 b) and sentence 2 are based are to be notified to the Bundesnetzagentur without undue delay. In cases where provisions in accordance with subsection (3) are not yet available, the person with obligations shall configure the technical facilities referred to in sentence 1 paras 1 and 1 a) in agreement with the Bundesnetzagentur, which shall make relevant determinations in consultation with the authorised bodies. Sentences 1 to 4 do not apply where the ordinance issued by virtue of subsection (2) provides for exemptions with regard to the telecommunications system. Section 100b(3) sentence 1 of the Code of Criminal Procedure, section 2(1) sentence 3 of the Article 10 Act, section 51(6) sentence 1 of the Act on the Bundeskriminalamt, section 8(1) sentence 1 of the Federal Intelligence Service Act and the relevant state regulations on preventive telecommunications interception by the police remain unaffected.

(2) The federal government shall be empowered

1. to make arrangements concerning
 - a) the technical essential requirements and the organisational key elements for the implementation of intercepts and provision of information, including the implementation of intercepts and provision of information by a person acting on behalf of the person with obligations;
 - b) the extent of the arrangements in the technical directive drawn up in accordance with subsection (3);
 - c) demonstration of compliance as required by subsection (1) sentence 1 paras 3 and 4; and
 - d) details of the obligation of tolerance as required by subsection (1) sentence 1 para 5; and
2. to determine
 - a) the cases in which and the conditions under which compliance with certain technical requirements can be dispensed with on a temporary basis;
 - b) that the Bundesnetzagentur may, for technical reasons, allow exemptions in respect of meeting particular technical requirements; and
 - c) in respect of which telecommunications systems and associated service offers technical facilities need not be offered or organisational measures need not be taken, in derogation of subsection (1) sentence 1 para 1, on account of basic technical considerations or for reasons of proportionality, by ordinance having the force of law and requiring the consent of the German Bundesrat.

(3) The Bundesnetzagentur shall stipulate, in a technical directive to be drawn up in consultation with the authorised bodies and with the participation of industry associations and manufacturers, the technical details required to guarantee a full record of telecommunications intercepts and for the provision of information as well as for configuration of the point of handover to the authorised bodies. International technical standards are to be taken into consideration; reasons for deviations from the standards are to be stated. The technical directive is to be published by the Bundesnetzagentur on its website; publication is to be made known by the Bundesnetzagentur in its Official Gazette.

(4) Any person manufacturing or distributing technical facilities for the implementation of intercepts may require the Bundesnetzagentur to verify, by testing the interworking of a type sample with particular telecommunications systems, whether or not the legal and technical provisions of the ordinance issued by virtue of subsection (2) and the technical directive drawn up in accordance with subsection (3) have been met. The Bundesnetzagentur may, after due assessment of the circumstances, allow deviations from the technical requirements on a temporary basis, provided that implementation of the intercepts is secured in principle and only insignificant adjustments to the technical facilities of the authorised bodies are required. The Bundesnetzagentur is to notify the manufacturer or distributor in writing of the test results. The test results are noted by the Bundesnetzagentur in connection with the demonstration of compliance of the technical facilities with the applicable technical provisions which the person with obligations is required to provide in accordance with subsection (1) sentence 1 para 3 or 4. Consent to the framework concepts presented by manufacturers given by the Federal Ministry of Economics and Technology prior to the entry into force of this provision is deemed notification within the meaning of sentence 3.

(5) Any person obliged under subsection (1) in conjunction with the ordinance issued by virtue of subsection (2) to make arrangements is to meet the requirements of the ordinance and the technical directive drawn up in accordance with subsection (3) no later than one year following their publication, unless a longer period has been determined for particular obligations in the ordinance or the technical directive. Defective-free technical facilities configured to this directive for telecommunications services already offered by the person with obligations shall, in the event of an amendment to the directive, meet the modified requirements no later than three years following the taking effect of the amendment. Where shortcomings in the technical or organisational arrangements of the person with obligations are found in the process of compliance in accordance with subsection (1) sentence 1 para 3 being demonstrated or a recheck in accordance with subsection (1) sentence 1 para 4 being made, the person with obligations is to eliminate such shortcomings within a reasonable period of time as provided for by the Bundesnetzagentur; where shortcomings are found during operations, notably when intercepts are carried out, the person with obligations is to eliminate such shortcomings without undue delay. If type samples have been tested as provided for by subsection (4) for the technical facilities and deadlines set for the elimination of shortcomings, the Bundesnetzagentur shall take these deadlines into account in its specifications on the elimination of shortcomings in accordance with sentence 3.

(6) Every operator of a telecommunications system renting to third parties network termination points in their telecommunications system under their publicly available service offer shall undertake to make available to the bodies authorised by law to carry out telecommunications intercepts, without undue delay and as a matter of priority, at the bodies' request, network termination points for transmission of the information obtained under an intercept. The technical configuration of such termination points may be laid down in the ordinance issued by virtue of subsection (2). With the exception of special tariffs or surcharges for priority or early provision or fault repair, the tariffs payable by the general public apply in respect of such provision and use. Any special contractually agreed discounts remain unaffected by sentence 3.

(7) Telecommunications systems operated by legally authorised bodies and by means of which intervention in the privacy of telecommunications or in network operation is to be brought about, are to be technically configured in agreement with the Bundesnetzagentur. The Bundesnetzagentur is to comment on the technical configuration within a reasonable period of time.

(8) (deleted)

(9) (deleted)