

The European Influence on German Anti-Terrorism Law

By *Anneke Petzsche**

A. Introduction

The international context plays a role in the fight against terrorism that is not to be underestimated. On the one hand, international law poses legal obligations that lead and limit the national legislator in his actions. On the other hand, it has become clear that terrorism nowadays is an international problem that concerns not only individual states but the whole international community. The states have recognized that in order to counter the terrorist threat, an approach only on the national level cannot suffice. As a result, the fight against terrorism has shifted increasingly to the international and supranational level. For Germany the European influence is of particular importance. Therefore, the assessment of the European Commission regarding the handling of terrorist threats gains relevance:

Modern terrorism is eminently global. The dissemination of propaganda aiming at mobilization and recruitment as well as instructions and online manuals intended for training or planning of attacks via the Internet have an intrinsic international and cross-border character. The threat is international, and so must be at least part of the answer.¹

Consequently, the answer has been international. Not only the European Union but also the Council of Europe has actively passed legislation in the area of anti-terrorism law. In recent years one can list the Framework Decision 2002/475/JHA on combating terrorism in 2002, the Council of Europe Convention on the Prevention of Terrorism in 2005,² and the Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism. But these are only recent developments,

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¹ Commission, Proposal for a Council Framework Decision amending Framework Decision 2002/475/JHA on combating terrorism, Com 650, at 6 (2007).

² Council of Europe Convention on the Prevention of Terrorism (1977), ETS No. 196, available online at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/196.htm> (last accessed: 31 August 2012).

in fact the fight against terrorism on a European level can be traced back to 1977 when the “European Convention on the Suppression of Terrorism” was negotiated.³

Different areas of law were influenced by European law – not only substantial criminal law.⁴ However, this paper will concentrate only on the European influence on German substantive criminal law.

B. Substantive Criminal Law

In the area of anti-terrorism law the substantive criminal law in Germany is strongly influenced by European law. To illustrate this point, first some specific examples of the influence will be given. Second, the influence of the Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism will be examined more deeply by taking a look at one specific section that was created in reaction to the European requirements.⁵

Noteworthy in this regard is s. 129b of the German Criminal Code (StGB), which is the first section specifically introduced in order to implement European law.⁶ S. 129b StGB deals with criminal and terrorist organizations abroad.⁷ The extension of national law to foreign terrorist organizations was a specific request of the Joint Action of 21 December 1998

³ Europe Convention on the Suppression of Terrorism, 16.5.2005, ETS No. 090, available online at: <http://conventions.coe.int/Treaty/EN/Treaties/Html/090.htm> (31 August 2012).

⁴ On the new German legislation as a response to the terrorist threat see Christoph Safferling, *Terror and Law – German Responses to 9/11*, 4 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 1152 *et seq.* (2006).

⁵ On the influence of the Council of Europe Convention on the Prevention of Terrorism and the Council Framework Decision 2008/919/JHA in Great Britain see CLIVE WALKER, *THE ANTI-TERRORISM LEGISLATION* para. 6.56 (2nd ed. 2009); ALUN JONES, RUPERT BOWERS, HUGO LODGE, *BLACKSTONE’S GUIDE TO THE TERRORISM ACT* at para. 1.20, 2.02 *et seq.* (2006); David Barnum, *Indirect incitement and freedom of speech in Anglo-American law*, 3 EUROPEAN HUMAN RIGHTS LAW REVIEW 259 *et seq.* (2006); on the influence in Spain, see Manuel Cancio Meliá, *Delitos de organización: criminalidad organizada común y delitos de terrorismo (Crimes of organization: common organized crime and terrorist offenses)*, in ESTUDIOS SOBRE LAS REFORMAS DEL CÓDIGO PENAL 662 *et seq.* (DÍAZ-MAROTO Y VILLAREJO ed., 2011).

⁶ It was the first one introduced in the context of anti-terrorism law. It was implemented by the “34. Strafrechtsänderungsgesetz vom 22. August 2002” (BGBl. I S. 3390); see further MATTHIAS KRAUB, in LEIPZIGER KOMMENTAR STGB (LEIPZIG PENAL CODE COMMENTARY, HEINRICH LAUFHÜTTE, RUTH RISSING-VAN SAAN & KLAUS TIEDEMANN eds., 12th ed.) 430 (2009).

⁷ S. 129b StGB regulates the application of German national criminal law, see, on the problematic relation with the general sections on jurisdiction, s. 3 *et seq.* StGB, see MARK ZÖLLER, *TERRORISMUSSTRAFRECHT (Criminal Terrorist: a Guide)* 333 *et seq.* (2009). On Al Qaida as a terrorist group under German law, see Christoph Safferling, *Prosecuting Terrorism Financing in Germany: Bundesgerichtshof (German Federal Court of Justice), Judgement of 14 August 2009 – 3 StR 552/08*, 11 GERM. L. J. 1296 *et seq.* (2010), available online at: <http://www.germanlawjournal.com/index.php?pageID=11&artID=1298> (last accessed: 31 August 2012).

adopted by the Council, making it a criminal offence to participate in a criminal organization in the Member States of the European Union.⁸ Before s. 129b StGB was implemented, the forming of foreign terrorist organizations was only an offence if a subdivision of the organization existed within Germany.⁹

In addition to that, the offence of forming a terrorist organization – laid down in s. 129a StGB – was restructured and changed in 2003 to implement the Framework Decision 2002/475/JHA on combating terrorism.¹⁰ The changes were the following:¹¹ In s. 129a StGB there is a catalogue of offences at which the aims or activities of a (terrorist) organization must be directed. This catalogue was amended substantially by adding the following offences:¹²

[C]ausing serious physical or mental harm to another person, namely within the ambit of section 226 StGB (computer sabotage);
s. 303b StGB (destruction of buildings);
s. 305 StGB (disruption of communication facilities);
s. 317 para. 1 StGB (causing a severe danger by releasing poison), and
s. 330a StGB (violations of the Weapons of War (Control) Act and the Weapons Act.)

Along with the changes of the catalogue the legislator added two further prerequisites:

(a) a specific intent and (b) as an objective requirement the possibility of seriously damaging a state or an international organization.¹³

⁸ Adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union (1), 98/733/JHA.

⁹ MATTHIAS KRAUß, *supra* note 6.

¹⁰ See Gesetz zur Umsetzung des Rahmenbeschlusses des Rates vom 13. Juni 2002 zur Terrorismusbekämpfung und zur Änderung anderer Gesetze vom 22. Dezember 2003 (Act to implement the Framework Decision of the Council of 13 June 2002 on combating terrorism and amending other laws of 22 December 2003) *Bundesgesetzblatt* (FEDERAL LAW GAZETTE) BGBl I, 2836.

¹¹ MATTHIAS KRAUß, *supra* note 6. 390 *et seq.*

¹² For all cited offences of the German Criminal Code the official translation by the Federal Ministry of Justice is used; Bundesministerium der Justiz, *German Criminal Code*, available online at: http://www.gesetze-im-internet.de/englisch_stgb/index.html (last accessed: 31 August 2012).

¹³ See s. 129a (2) "... [I]f one of the offences stipulated in Nos. 1 to 5 is intended to seriously intimidate the population, to unlawfully coerce a public authority or an international organisation through the use of force or the threat of the use of force, or to significantly impair or destroy the fundamental political, constitutional, economic or social structures of a state or an international organisation, and which, given the nature or consequences of such offences, may seriously damage a state or an international organisation."

These are substantial changes to the structure and one can also observe that the composition of the offence was much more complicated after the amendments.

The above mentioned examples illustrate the continuing influence of European law on German substantive criminal law by causing the formation of new offences and restructuring already existing ones. Yet, the greatest change made to substantive criminal law so far has been the introduction of the "Law for the prosecution of the preparation of serious violent offences endangering the state" (GVVG) in 2009.¹⁴ This act introduced three new offences into the German Criminal Code.¹⁵ Its origin can be traced back to the specifications laid out by the Council of Europe Convention on the Prevention of Terrorism 2005 and the Council Framework Decision 2008/919/JHA.¹⁶ The European influence on this specific law will be examined more deeply in the following sections.

C. Background of the GVVG

The necessity of introducing new offences into the German Criminal Code was stressed by the German government in reference to the high threat posed by international terrorism.¹⁷ They also referred to the European obligations, specifically those posed by the Council of

¹⁴ BGBl. I p. 2836.

¹⁵ Gesetz zur Verfolgung der Vorbereitung von schweren staatsgefährdenden Gewalttaten (The preparation of severe subversive violence), GVVG; see ANNA OEHMICHEN, TERRORISM AND ANTI-TERROR LEGISLATION: THE TERRORISED LEGISLATOR? para. 8.5 (2009); Mark Zöller, Terrorisstrafrecht (Terrorist Criminal law) 394 *et seq.*, 562 *et seq.* (2009). The new offences are s. 89a StGB "preparation of a serious violent offence endangering the state," s. 89b StGB "establishing contacts for the purpose of committing a serious violent offence endangering the state" and s. 91 StGB "encouraging the commission of a serious violent offence endangering the state."

¹⁶ See Deutscher Bundestag, *Gesetzentwurf der Bundesregierung: Entwurf eines Gesetzes zur Verfolgung der Vorbereitung von schweren staatsgefährdenden Gewalttaten* (The federal government bill: Draft law for prosecution of preparation of severe subversive violence) No. 16/12428, 1, available online at: <http://dip21.bundestag.de/dip21/btd/16/124/1612428.pdf> (last accessed: 31 August 2012).

¹⁷ One case by the Kammergericht Berlin was especially referred to in order to stress the necessity of the law: The accused had planned bomb attacks against U.S. and Israeli institutions, and had already made preparations to that effect. He had, among other things, participated in a terrorist training camp and already purchased several items that could serve to build a bomb. Nevertheless, in the opinion of the court he could neither be convicted under s. 129a StGB - for lack of the structures necessary to have a terrorist organisation - nor under s. 30 para 2 StGB - as the necessary specification of the planned action had not been given. He was therefore only convicted for violating the Arms Act and for tax evasion. See Deutscher Bundestag, *Gesetzentwurf der Fraktionen der CDU/CSU und SPD: Entwurf eines Gesetzes zur Verfolgung der Vorbereitung von schweren staatsgefährdenden Gewalttaten* (bill by the CDU / CSU and SPD: Draft law to pursue the preparation of heavy seditious violence) No. 16/11735, 9 *et seq.* available online at: <http://dip21.bundestag.de/dip21/btd/16/117/1611735.pdf> (last accessed 31 August 2012).

Europe Convention on the Prevention of Terrorism 2005 and the Framework Decision 2008/919/JHA.¹⁸

Both were shaped to counter the (new) threat of terrorism and stressed the necessity in a globalised world for the affected countries to work together and counter an international problem by acting together internationally.¹⁹ The three years that lie between the adoption of the former and the latter might suggest a development of the content, but no such thing can be detected as the Framework Decision explicitly refers to the Convention, and the differences in phrasing can be neglected.²⁰ The focus will be on the sections relevant for the German implementation criminalizing the “preparation of a serious violent offence endangering the state” (Vorbereitung einer schweren staatsgefährdenden Gewalttat) as one of the three new offences introduced by the GVG.²¹

Both Art. 7 Council of Europe Convention on the Prevention of Terrorism as well as Art. 3 (2) lit.c) European Framework Decision 2008/919/JHA require the Member States to penalize the “training for terrorist purposes”. Both also indicate what exactly is meant by that: Art. 7 (1) Council of Europe Convention on the Prevention of Terrorism, states the following: “For the purposes of this Convention, ‘training for terrorism’ means to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence, knowing that the skills provided are intended to be used for this purpose.” The Council Framework Decision features the exact same wording – apart from one negligible difference.²²

¹⁸ See Deutscher Bundestag, BT-Drs. No. 16/12428, *supra* note 16, at 1; the Council Framework Decision itself refers to the Council of Europe Convention, see 2008/919/JHA, 2.

¹⁹ See the introductions to the Council Framework Decision 2008/919/JHA MN 3 “The terrorist threat has grown and rapidly evolved in recent years, [...]” and MN 6 “a global response is required to address terrorism.”

²⁰ The main difference is that the Convention usually refers to the “terrorist offence” whereas the Framework Decision refers to the “offences listed in Article 1(1)(a) to (h)” though it would go beyond the scope of this paper to discuss the Council of Europe Convention on the Prevention of Terrorism and the European Framework Decision 2008/919/JHA in their full dimension.

²¹ In addition to s. 89a StGB, it also introduced the new s. 89b StGB “Establishing contacts for the purpose of committing a serious violent offence endangering the state” and s. 91 StGB “Encouraging the commission of a serious violent offence endangering the state” into the German Criminal Code (StGB).

²² In contrast to the Council of Europe Convention, Art. 3 (1) c specifies the included terrorist offences by referring to the regulations in the same Framework Decision: “training for terrorism” shall mean “providing instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of committing one of the offences listed in Article 1(1)(a) to (h), knowing that the skills provided are intended to be used for this purpose.”

Whether there is a real clarification provided by this description may be doubted. The extensiveness is striking, especially when considering the scope of the wording of the definition. The exemplification in Art. 7 (1) Council of Europe Convention on the Prevention of Terrorism and Art. 3 (1) c European Framework Decision 2008/919/JHA may indicate which actions are supposed to be criminalized, but the wide scope of the phrasing still leaves room for the national legislator to fill. To illustrate this statement one only has to take a look at the wording of Art. 7 Council of Europe Convention on the Prevention of Terrorism: “[...] to provide instruction in [...] other specific methods or techniques” gives hardly any indication of what action is supposed to meet this description.²³

Still, an implementation into German law was needed and realized. This will be considered next.

D. The Implementation into German Law: s. 89a StGB

The GVVG introduced into the German Criminal Code the new crime “preparation of a serious violent offence endangering the state”. This new offence, found in s. 89a StGB, penalizes preparatory acts for serious offences against life or personal freedom (cf. ss. 211, 212 StGB: murder and manslaughter, and ss. 239a, 239b StGB: abduction for the purpose of blackmail and taking hostages) that have a certain objective (“which under the circumstances is . . . capable of”) and subjective (“which under the circumstances is intended to”) reference to state security. These serious offences are crimes punishable with imprisonment of a minimum of five years or even life sentence, and belong to the inner core of the offences that are typically committed by terrorists.²⁴

The offence under s. 89a of the German Criminal Code requires that a person prepares a serious offence endangering the state. S. 89a (1) 2 StGB specifies that “a serious violent offence endangering the state shall mean an offence against life under ss. 211 or 212 or against personal freedom under sections 239a or 239b, which under the circumstances is intended to impair and capable of impairing the existence or security of a state or of an international organization, or to abolish, rob of legal effect or undermine constitutional principles of the Federal Republic of Germany.” However, s. 89a (2) StGB clarifies that only certain acts of preparations fall under the offence:

“(2) Subsection (1) above shall only be applicable if the offender prepares a serious violent offence endangering the state by instructing another person or receiving instruction in the production or the use of firearms, explosives, explosive

²³ Similar problems pose Art. 3 (2) lit. a “public provocation to commit a terrorist offence” and “recruitment for terrorism” b EFD.

²⁴ Only in the case of murder, s. 211 StGB; life sentence means in Germany a minimum imprisonment of 15 years, afterwards there is the possibility of a release on parole, s. 57a StGB.

or incendiary devices, nuclear fission material or other radioactive substances, substances that contain or can generate poison, other substances detrimental to health, special facilities necessary for the commission of the offence or other skills that can be of use for the commission of an offence under subsection (1) above, producing, obtaining for himself or another, storing or supplying to another weapons, substances or devices and facilities mentioned under No. 1 above, obtaining or storing objects or substances essential for the production of weapons, substances or devices and facilities mentioned under No. 1 above, or collecting, accepting or providing not unsubstantial assets for the purpose of its commission.”

The list of possible acts in s. 89a (2) StGB is exhaustive. Notably, the person committing the preparatory act and the person planning to commit the serious offence required by s. 89a StGB do not have to be one and the same.²⁵ Whereas “instructing another person in the use of firearms” (No. 1), the “supplying to another weapons” (No. 2) or the “providing [of] not unsubstantial assets” (No. 4) are typical actions aimed at supporting somebody else in committing such an offence, the person preparing and the one committing can also be identical.²⁶ This will typically be the case when a person receives instruction in the use of explosives (No. 1) for example in a terrorist training camp in order to use the learned skills in a terrorist attack.

It shall not remain unmentioned that these actions alone do not suffice. They need to amount to a threat to national security. The clause in s. 89a (1) 2 StGB specifies that prerequisite for “a serious violent offence endangering the state” is that the action “is intended to impair and capable of impairing the existence or security of a state or of an international organization, or to abolish, rob of legal effect or undermine constitutional principles of the Federal Republic of Germany.” This clause is a reference to s. 120 (2) 1 No. 3 a) and b) of the Courts Constitution Act,²⁷ which is problematic as the latter is a procedural norm determining the judges’ competences for the various offences whereas s. 89a StGB as a criminal norm possesses a different quality.²⁸

²⁵ See Deutscher Bundestag, BT-Drs. No. 16/12428, *supra* note 16, at 14; Detlev Sternberg-Lieben, in StGB, s. 89a MN 9 (Adolf Schönke & Schröder (eds.), 28th ed., 2010).

²⁶ Sternberg-Lieben, in: StGB, s. 89a MN 9 (Schönke/Schröder eds. 28. ed. 2010).

²⁷ *Gerichtsverfassungsgesetz*; see Deutscher Bundestag, BT-Drs. No. 16/12428, *supra* note 16, at 12.

²⁸ Nikolaos Gazeas, Thomas Grosse-Wilde & Alexandra Kießling, *Die neuen Tatbestände im Staatsschutzstrafrecht, 11 Versuch einer ersten Auslegung der §§ 89a, 89b und 91 StGB* (The new criminal offenses in the state protection- a first attempt to interpret of §§ 89a, 89b and 91 of the Penal Code), 29 (11) NEUE ZEITSCHRIFT FÜR STRAFRECHT (NStZ) 595 (2009); Bettina Weißer, *Über den Umgang des Strafrechts mit terroristischen Bedrohungslagen* (About the use of criminal law to terrorist threats), 121 ZEITSCHRIFT FÜR DIE GESAMTE STRAFRECHTSWISSENSCHAFT (ZStW) 131, 148 (2009).

The prescribed sentence for s. 89a StGB is imprisonment from six months to ten years. A possibility for mitigation offers s. 89a (5) StGB “in less serious cases” with a penalty ranging from three months to five years of imprisonment. Additionally, in cases of active repentance (“tätige Reue”) “the court in its discretion may mitigate the sentence (section 49(2) [StGB]) or order a discharge for the offence under this provision”. This is possible under s. 89a (7) “if the offender voluntarily gives up the further preparation of the serious violent offence endangering the state, or averts or substantially reduces a danger caused and recognized by him that others will further prepare or commit the offence, or if he voluntarily prevents the completion of the offence. If the danger is averted or substantially reduced regardless of the contribution of the offender or the completion of the serious violent offence endangering the state prevented, his voluntary and earnest efforts to achieve that object shall suffice.”

Not only the objective requirements of the offence are complex, the subjective requirements are multiple. The mens rea-element has three points of reference: intent is required regarding

- (a) the preparatory act,²⁹
- (b) the later commission of the serious offences against life or personal freedom, and
- (c) the suitability of the later offence to impair state security (“is intended to impair”).³⁰

For the *mens rea* component, contingent intent (“*dolus eventualis*”) is sufficient. This is the lowest possible intent requirement in German criminal law.³¹ It means that the offender acts even though he or she thinks the realization of the offence is possible.³² Thus, there is no special intent needed as opposed to comparable norms that also penalize certain preparatory acts, i.e. s. 30 (2) StGB that criminalizes “conspiracy”³³ and requires a special intent concerning the planning of the offence (“*Tatplan*”).³⁴

²⁹ S. 89a (1) in conjunction with (2) StGB.

³⁰ Hans-Ulrich Paeffgen, in *NOMOS KOMMENTAR STGB*, s. 89A MN 20 *et seq.* (Ulfrid Neumann, Hans-Ulrich Paeffgen eds., 3rd ed., 2010); disagreeing Detlev Sternberg-Lieben, in *StGB*, s. 89a MN 17 (Adolf Schönke & Horst Schröder eds. 28th ed., 2010).

³¹ Not to leave a wrong impression, it is the usual intent-requirement in German Criminal Law and also applies to other grave offences like manslaughter and murder.

³² Kristian Kühl in *StGB*, s. 15 MN 23 (KARL LACKNER, KRISTIAN KÜHL eds., 27th ed. 2011); Detlev Sternberg-Lieben, in *StGB*, s. 15 MN 72 (Adolf Schönke & Horst Schröder eds., 28th ed. 2010).

³³ S. 30 (2) A person who declares his willingness or who accepts the offer of another or who agrees with another to commit or abet the commission of a felony shall be liable under the same terms.

³⁴ See BGH NSTZ 2007, at 697.

E. Assessment

Now, having examined the new offence, the question arises whether s. 89a StGB is a “mere” implementation of European requirements. It is supposed to penalize “training for terrorism” as both required by Art. 7 Council of Europe Convention on the Prevention of Terrorism as well as Art. 3 (2) lit.c) European Framework Decision 2008/919/JHA. As shown, training for terrorism is defined as “provid[ing] instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques.”³⁵

By using the phrasing “instructing another person [...] in the production or the use of firearms, explosives, explosive or incendiary devices, nuclear fission material or other radioactive substances, substances that contain or can generate poison, other substances detrimental to health, special facilities necessary for the commission of the offence or other skills that can be of use for the commission of an offence under subsection (1) above,” in s. 89 a (2) 1 No. 1 StGB the German legislator restricted itself to an implementation of the above definition. The offence may not feature the exact same wording, yet the Framework Decision, especially “in other specific methods or techniques”, deliberately allows for the national legislators to adapt it to the domestic legal system.

In contrast to that, in s. 89a (2) 1 No. 1 StGB the German legislator seized the opportunity and went even further than a mere implementation. The new offence also includes as *actus reus* “receiving instruction”, which clearly goes beyond the scope of the European requirements. The Framework’s original restriction to the provision of instruction – the key part of the legal definition – means a form of assistance on the preparation of a terrorist attack that is provided, but not received.³⁶ While this seems like a minor addition, it considerably widens the scope of the offence. One particularly striking example would have been the possible criminal liability of young extremists drafted into compulsory military service, where they naturally would have learned how to use firearms and explosives, and hence would have fulfilled the requirements as long as they were planning on using these skills in a later terrorist attack.³⁷ This examples shows an act that would not be criminalized by either the Council of Europe Convention on the Prevention of Terrorism or the Council Framework Decision 2008/919/JHA.

³⁵ Art. 7 (1) Council of Europe Convention on the Prevention of Terrorism; Art. 3 (1) c) Council Framework Decision 2008/919/JHA.

³⁶ Cf. Frank Zimmermann, *Tendenzen der Strafrechtsangleichung in der EU – dargestellt anhand der Bestrebungen zur Bekämpfung von Terrorismus, Rassismus und illegaler Beschäftigung* (Trends in criminal law harmonization in the EU - illustrated by the efforts to combat terrorism, racism and illegal employment) 1 ZIS 1, 2 (2009).

³⁷ An example that, to an extent, has become obsolete in Germany, because the draft to compulsory military service has recently been deferred.

It has become clear that the influence of European law in the field of anti-terrorism law in Germany is – and has been for many years now – strong. It especially affects the area of substantive criminal law. Not only are existing offences restructured because of the demands posed by European law, but also new offences are created – offences whose creation is often viewed critically.³⁸

Another development can also be observed: Because of the wide margin left by the European obligations, the national implementation tends to go even further in criminalizing certain acts. The legislator – in making new laws – often refers to the European obligation as a justification and only a thorough analysis by criminal doctrine can reveal the extent to which the obligations differ from the new law and whether the criminalization goes even further than what is demanded.³⁹

³⁸ See only on the discussion about the Katrin Gierhake, *GVVG: Gierhake, Zur geplanten Einführung neuer Straftatbestände wegen der Vorbereitung terroristischer Straftaten* (On the planned introduction of new offenses because of the preparation of terrorist offenses) 9 ZIS 397 (2008); Gazeas, Grosse-Wild & Kießling, *supra* note 28, at 593; Mark Zöller, *Willkommen in Absurdistan - Neue Straftatbestände zur Bekämpfung des Terrorismus* (Welcome to Absurdistan - New offenses to combat Terrorism), 11 GOLTDAMMER'S ARCHIV FÜR STRAFRECHT (GA) 607 (2010), with further references.

³⁹ As seen, this can be observed in the criminalization of s. 89a StGB. See also Frank Zimmermann, *Tendenzen der Strafrechtsangleichung in der EU – dargestellt anhand der Bestrebungen zur Bekämpfung von Terrorismus, Rassismus und illegaler Beschäftigung* (Trends in criminal law harmonization in the EU - illustrated by the efforts to combat terrorism, racism and illegal employment), 1 ZIS 6, 10 (2009). Whether this can be seen as a general development is certainly a question that needs to be examined further.