

Performance audit of the surveillance of telecommunications in the case of criminal proceedings

Federal Department of Justice and Police

Key facts

To investigate criminal offences, the prosecution authorities (police, public prosecutors) and the Federal Intelligence Service may order various measures for the surveillance of post and telecommunications (TS). In this regard, the Post and Telecommunications Surveillance Service (PTSS) acts as an interface between the prosecution authorities and telecommunications service providers (parties obliged to cooperate)¹. The PTSS is partly financed by fees from prosecution authorities.

Based on a mandate from the Finance Delegation, the Swiss Federal Audit Office (SFAO) conducted an audit in the area of TS in a bid to create an overall view of the benefits, costs and financing. It emerged that TS measures are useful for investigating criminal offences, whereby the benefits cannot be quantified and the full costs of all those involved cannot be precisely calculated. This situation has existed for several years.

Great benefits for prosecution in the case of unencrypted communication

Although the number of TS measures ordered is tending to fall, they are still an important element in investigations for prosecution authorities. They are particularly useful in the case of offences against life and limb, drug-related offences, criminal damage and generally as evidence of criminal intent. TS measures are usually not decisive in themselves, but they lead to success when combined with other measures.



The growing encryption of communications, e.g. with Skype, WhatsApp or Telegram, is reducing the benefits of TS. Only a fraction of the information can be obtained from encrypted data. There is a risk that TS measures will increasingly be dispensed with or that other investigative measures will be resorted to, which would reduce the funding base of the PTSS.

Total costs of the telecommunications surveillance system unknown

TS costs are incurred by all players involved. However, it was not possible to determine the amount of the total costs, as much of them are not collected or clearly allocated by the prosecution authorities and parties obliged to cooperate. The parties obliged to cooperate were unable to provide detailed figures at the SFAO's request. The PTSS reported costs of CHF 29.3 million for 2017.

¹ The telecommunications service providers most concerned are Swisscom, Sunrise, Salt and Lycamobile.

The prosecution authorities share in the costs of the other players and pay a fixed levy depending on each TS measure. In 2017, the payments amounted to CHF 13 million. The PTSS collects this levy. It is entitled to some of this itself (2017: CHF 4.1 mn), and it passes the remainder on to the parties obliged to cooperate (2017: CHF 8.9 mn). These are thus partly compensated for TS-specific operating expenditure.

PTSS with limited cost control

The compensation for the parties obliged to cooperate is shown as an expense at the PTSS. A further CHF 12.9 million of its costs are charged to the PTSS by the IT Service Centre of the Federal Department of Justice and Police, to which the PTSS is attached. However, a written service level agreement that defines these costs and the associated services does not exist. This means that the PTSS can have only a limited influence on almost 75% of its costs. Consequently, the SFAO recommends drawing up a service level agreement.

Target value of the cost coverage rate questionable

According to the objectives of the Federal Council, 70% of the costs of the PTSS should be covered. However, this objective is far from being achieved. Officially, the cost coverage rate for 2017 was 49%. In net terms, excluding the compensation passed on to the parties obliged to cooperate, the figure is even as low as 27%.

In order to achieve the desired level of cost coverage, the rates were adjusted several times in the past in a bid to increase the share of fees in favour of the PTSS. Its expenses will continue to rise in the years ahead due to investment-related costs. It is thus foreseeable that the target value of the cost coverage rate will not be reached even with the new increase. The SFAO thus recommends reviewing this target value and adjusting it if necessary.

Amount of levies influences decisions on the implementation of TS measures

The decision of prosecution authorities to order a TS measure depends primarily on the prospect of success and the available human resources. However, levies can also be a decisive criterion and have already caused such measures to be dispensed with in some cases. Although the fees and compensation to be paid account for only a small proportion of the total cost of prosecution for the authorities, they represent about half of their external costs according to a survey.

As the amount of fees and compensation increases, it will become more likely that prosecution authorities will resort to other investigative measures. There is thus a risk that prosecution would be less effective and that the funding base of the PTSS would be reduced.

Financing model as a political decision

Various solutions are possible for financing TS. A look at other Western European countries shows that a division of costs among the various players involved is widespread. It is a political decision whether the parties obliged to cooperate are compensated.

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