

Audit of the supreme supervision of debt enforcement and bankruptcy

Federal Office of Justice

Key facts

The debt enforcement and bankruptcy offices play an essential role in the proper functioning of the economy. They allow creditors to pursue their claims on debtors as part of legal enforcement proceedings. In 2019, around 3 million claims were reported and 16,000 bankruptcy proceedings were opened by debt enforcement and bankruptcy offices operating in Switzerland, of which there are over 400. The cantons are responsible for organising and supervising the debt enforcement and bankruptcy offices. The Federal Office of Justice (FOJ) is responsible for the supreme supervision of the consistent application of the Federal Act on Debt Enforcement and Bankruptcy (DEBA).¹ The FOJ has half an FTE for this activity.

The Swiss Federal Audit Office (SFAO) examined the supreme supervision exercised by the FOJ. The audit revealed a lack of information and the absence of risk analysis that would allow supervisory activities to be prioritised.

A supreme supervision concept and organisation that need adapting to the risks

The FOJ does not have enough relevant, up-to-date and reliable information to perform its supreme supervision mandate. The reports from the cantonal supervisory authorities are its main source of information. However, they are submitted only every two years and are not very user-friendly. The lack of uniformity in terms of form and content renders any comparison virtually impossible. Moreover, there are no common indicators that would allow an assessment of whether the DEBA is being consistently applied.

Thus, the FOJ's risk analysis does not capture all risks. It needs to be refined so that supervisory tasks can be prioritised. In addition, the FOJ must ensure that its supervisory concept, as well as the organisation and resources put in place, address the identified risks.

The different units in charge of supervisory activities at the FOJ have no standard models, such as a supervisory concept, risk analysis or monitoring that would provide a framework for their supervisory tasks. Harmonising these essential supervisory tools would ensure a consistent approach.

The cantons realise profits thanks to fee tariffs

The tariffs for debt enforcement and bankruptcy procedures are set out in a federal ordinance. These fee tariffs are applied consistently throughout Switzerland. In principle, fees serve to cover the cost of services. However, the majority of cantons that publish their accounts are making a profit.

¹ The FOJ does not deal with complaints and appeals relating to the application of the DEBA. These are within the purview of the cantonal courts, and thereafter the Federal Supreme Court.

This finding calls for some nuance, given that most cantons publish partial cost data and that the bankruptcy offices systematically report a deficit. Nonetheless, the SFAO considers that the tariffs do not take sufficient account of advances in digitalisation, the actual cost of services and the public interest.

As regards digitalisation, the debt enforcement and bankruptcy offices made great strides with the introduction of the e-DEBA system in 2005. In 2019, over 60% of debt enforcement procedures were submitted to the debt enforcement and bankruptcy offices via data transfer. By contrast, the absence of networking for the FOJ databases poses a problem regarding completeness of data, for example for extracts from the debt collection register. The project to create a national address register, based on social security numbers, could be the precursor to such networking over the long term.

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