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Ordinance on the Surveillance of Post and Telecommunications (SPTO)

of 15 November 2017 (Status as of 3 December 2019)

The Swiss Federal Council,

based on the Federal Act of 18 March 2016¹ on the Surveillance of Post and Telecommunications (SPTA),
on Articles 269^{bis} paragraph 2, 269^{ter} paragraph 4 and 445 of the Criminal Procedure Code (CrimPC)²
and on Articles 70^{bis} paragraph 2, 70^{ter} paragraph 4 and 218 of the Military Criminal Procedure Code of 23 March 1979³ (MCPC),

ordains:

Chapter 1 General Provisions

Section 1 Introduction

Art. 1 Subject matter and scope of application

¹ This Ordinance regulates the organisational aspects of and procedure for the surveillance of post and telecommunications and the provision of information on postal and telecommunications services.

² It applies to:

- a. ordering authorities and the authorities directing proceedings;
- b. approval authorities;
- c. federal, cantonal and communal police forces;
- d. the Federal Intelligence Service (FIS);
- e. the State Secretariat for Economic Affairs (SECO);
- f. federal and cantonal authorities competent to deal with administrative criminal cases;

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¹ SR 780.1

² SR 312.0

³ SR 322.1

- g. the Post and Telecommunications Surveillance Service (PTSS);
- h. postal service providers (PSPs);
- i. telecommunications service providers (TSPs);
- j. the providers of services based on telecommunications services and that enable one-way or multi-way communication (providers of derived communication services);
- k. operators of internal telecommunications networks;
- l. persons who allow third parties to use their access to a public telecommunications network;
- m. professional retailers of cards and similar means of gaining access to a public telecommunications network.

Art. 2 Terms and abbreviations

The terms and abbreviations used in this Ordinance are defined in the Annex.

Section 2 Surveillance Order

Art. 3 Submissions to the PTSS

¹ The ordering authority shall use one of the following transmission channels to submit surveillance orders and orders for their extension or termination to the PTSS and to notify it of the access rights to be established:

- a. a secure means of transmission authorised by the PTSS;
- b. post or fax, if a means of transmission in accordance with letter a is unavailable for technical reasons; or
- c. telephone in urgent cases, provided the surveillance order is submitted in accordance with letter a or b within 24 hours.

² The PTSS may replace the means of transmission of submissions in accordance with paragraph 1 letter a with online-access to the Service's processing system.

Art. 4 Conduct of surveillance

¹ The PTSS shall determine in specific cases the technical and organisational measures for conducting surveillance, unless these are directly specified in the applicable regulations, in particular for standardised types of information and surveillance.

² If as a result of operational problems a person or entity required to cooperate is unable to meet its obligations for the surveillance of post or telecommunications, it shall report this to the PTSS without delay and thereafter submit a written statement of the reasons. The PTSS shall inform the person or entity required to cooperate

without delay if surveillance cannot be carried out because of operational problems on its side.

³ Irrespective of where the cause of the error lies, the person or entity required to cooperate must temporarily store at least the undelivered secondary telecommunications data from real-time surveillance and deliver it without delay. If the secondary telecommunications data from real-time surveillance is no longer available or incomplete, the person or entity required to cooperate must deliver without delay the secondary telecommunications data from retroactive surveillance in accordance with the instructions of the PTSS.

Art. 5 Protection of official or professional secrecy

If the PTSS establishes that the surveillance relates to a holder of official or professional secrets but that the statutory measures to protect these secrets have not been taken, it shall in the following situations notify the ordering authority and the approval authority without delay and initially shall not allow the former and the persons named in the surveillance order access to the surveillance data:

- a. if surveillance has been ordered by a civilian prosecution authority: in the case of persons from the professional groups specified in Articles 170–173 CrimPC unless measures have been taken in accordance with Article 271 CrimPC;
- b. if surveillance has been ordered by a military prosecution authority: in the case of persons from the professional groups specified in Article 75 letter b MCPC unless measures in accordance with Article 70b MCPC have been taken;
- c. if surveillance has been ordered by the FIS: in the case of persons from the professional groups specified in Articles 171–173 CrimPC unless measures have been taken in accordance with Article 58 paragraph 3 of the Intelligence Service Act of 25 September 2015⁴ in conjunction with Article 23 of the Intelligence Service Ordinance of 16 August 2017⁵.

Art. 6 Duty of confidentiality

The surveillance or the provision of information shall be carried out so that neither the person concerned nor unauthorised third parties are aware of it.

Art. 7 Technical data sorting (filtering)

The PTSS shall at the request of the ordering authority carry out automated filtering if it is technically able to so and the cost and workload involved is not disproportionate.

⁴ SR 121

⁵ SR 121.1

Art. 8 Recording telephone calls as evidence

¹ The PTSS shall record as evidence the telephone calls made in connection with its duties.

² Any evaluations of the recording shall be carried out by Data Protection Commissioner or the PTSS Data Protection Commissioner.

³ The PTSS shall retain the recorded telephone calls for two years and thereafter destroy the recordings.

Art. 9 Surveillance file

¹ The PTSS shall open a file in the processing system for each surveillance order.

² The file contains all the documents on the case concerned, namely:

- a. the surveillance order and its attachments;
- b. the surveillance assignment or assignments issued to the relevant person or entity required to cooperate;
- c. the confirmation or confirmations of when the assignment was issued to the person or entity required to cooperate;
- d. the written acknowledgment from the person or entity required to cooperate that the surveillance assignment or assignments has or have been carried out;
- e. the rulings from the approval authority on the approval or non-approval of the surveillance order together with any appeal decisions;
- f. any extension orders and rulings from the approval authority;
- g. the termination order;
- h. the correspondence relating to the measure;
- i. the protection measures specially ordered;
- j. the accounting records.

³ The surveillance data shall be stored in accordance with Article 11 SPTA and destroyed in accordance with Article 14 of the Ordinance of 15 November 2017⁶ on the Processing System for the Surveillance of Post and Telecommunications (PSO-PTSS).

Section 3 Working Hours and On-Call Arrangements**Art. 10** Normal working hours and public holidays

¹ Normal working hours for the PTSS and the persons or entities required to cooperate are Monday to Friday continuously from 8am to 5pm.

⁶ SR 780.12

² Normal working hours do not apply on public holidays. These are 1 and 2 January, Good Friday, Easter Monday, Ascension Day, Whit Monday, 1 August, 24 December from noon, 25 and 26 December and New Year's Eve (31 December) from noon.

Art. 11 Services outside the normal working hours

¹ Outside normal working hours and on public holidays, the PTSS shall provide the following on-call services:

- a. the forwarding of requests for information specified in Articles 35–43;
- b. issuing assignments for the activation of real-time surveillance in accordance with Articles 54–59;
- c. issuing assignments for the conduct of retrospective urgent surveillance activities in accordance with Articles 60–63, 65 and 66;
- d. issuing assignments for missing and wanted person searches in accordance with Articles 67 and 68, with the exception of the network coverage analysis in preparation for an antenna search in accordance with Article 64;
- e. the rectification of faults.

² The TSPs, with the exception of those with reduced surveillance duties in accordance with Article 51, and providers of derived communication services with more extensive surveillance duties in accordance with Article 52 must be able to support the PTSS so that it may provide the services in accordance with paragraph 1 at any time. The PTSS must be able to contact them at any time.

³ The ordering of special surveillance activities and requests for special information (Art. 25) shall not be accepted or processed outside normal working hours.

Section 4 Statistics

Art. 12 Statistics on surveillance measures and information

¹ The PTSS shall publish statistics every year about the surveillance activities ordered in the previous calendar year and the information provided. These shall indicate in particular the number:

- a. of surveillance measures in real time;
- b. of retroactive surveillance measures;
- c. of instances in which information was provided;
- d. of missing person searches;
- e. of wanted person searches.

² The statistics in accordance with paragraph 1 shall indicate:

- a. the type of offence;