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Keeping pace with 5G: updates to Swiss Telecommunications Surveillance Ordinances

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In a press release dated 15 November 2023 (available in [French](#), [German](#) and [Italian](#)), the Federal Council announced amendments to three implementation ordinances based on the Federal Act of on the Surveillance of Post and Telecommunications (SPTA). These updates are intended to reflect technological advancements, eliminate gaps in telecoms surveillance and enable more precise location tracking.

Introduction

The Federal Council's press release highlights the need for the amendments due to rapid advancements in telecoms, particularly with the advent of 5G and developments in IP Multimedia Subsystem (IMS) technologies. The ordinances being amended are:

- Ordinance of 15 November 2017 on the Surveillance of Post and Telecommunication (SPTO);
- Ordinance of 15 November 2017 on the Processing System for Postal and Telecommunications Surveillance (PSO-PTS);
- FJDP Ordinance of 15 November 2017 on the Implementation of Post and Telecommunications Surveillance (OI-PTS); and
- Ordinance of 15 November 2017 on Fees and Payments for Postal and Telecommunications Surveillance (FAO-PTS).

The Federal Council has partly revised the SPTO, PSO-PTS and the OI-PTS. Simultaneously but separately, the Federal Council has completely revised the FAO-PTS by way of introducing the new Ordinance on the Financing of Postal and Telecommunications Surveillance (this is an unofficial translation as there is no official English name yet).

All changes will be effective 1 January 2024.

Organisations affected by these amendments – namely postal and telecom companies, as well as providers of similar services – have 24 months from when the SPTO takes effect to update their systems accordingly.

New provisions and obligations

The updated SPTO introduces three new types of information requests and four new types of surveillance. Two of these request types are aimed at querying identifiers of 5G technology, including one that operates in real-time. Another type of request eliminates specific identification problems with spoofed or unknown telephone numbers. The new surveillance types allow for more precise location tracking in real-time monitoring as well as emergency searches, on a one-time or recurring basis.

Under the revised OI-PTS, some of the deadlines for processing information requests have been reduced, meeting the urgent needs of law enforcement for faster responses (a chart of these can be found on pages 69-73 of this [explanatory statement](#)). For example, organisations on standby duty will have to manually provide information within 6 hours in the future. Additionally, the scope of the OI-PTS has been expanded to now include authorities.

The modifications to the PSO-PTS concern access to the operational status display of the surveillance component in the processing system (PTSS-Dashboard) and the surveillance service's access to data within the processing system. Additionally, the PSO-PTS now foresees that data destruction protocols must be retained for two years.

Consultation procedure and criticism

In the consultation procedure, cantons as well as law enforcement authorities generally welcomed the Federal Council's proposed changes. However, telecom organisations and other affected establishments strongly criticised them, claiming that they did not only serve to update the regulatory framework to better fit 5G technology but to extend general surveillance.

Following the consultation procedure, the Federal Council revised some of the proposed amendments, taking into consideration the feedback of organisations that particularly objected to the new requirement for the automated provision of information. Taking this into account, the Federal Council has now limited this requirement to organisations already providing information automatically as they are equipped to do so without having to further adjust their systems.

The reduced deadlines for processing information requests also faced significant pushback by affected organisations. However, the Federal Council contends in its explanatory statement that this reduction is justified as the previously applicable one-day deadline could result in delayed information and potentially have severe consequences, such as in cases of anonymous bomb threats.

Comment

While the Federal Council has considered the feedback and criticism from affected organisations, adapting some amendments accordingly, the new requirements (especially the new types of information requests and surveillance) are likely to have financial

impacts. The extent of these impacts will largely depend on the technical modifications required in the organisations' systems.

Affected organisations should start reviewing their systems as soon as possible. This will help them in assessing the extent of necessary modifications. Furthermore, it is crucial to plan for adequate staff training, focusing specifically on managing the new types of information requests and adhering to the new deadlines for processing these requests.

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