

Summary

Control of defence intelligence operations
(RiR 2015:01)



Control of defence intelligence operations

Audit background

Swedish defence intelligence operations are run by the *Swedish Armed Forces, the National Defence Radio Establishment, the Swedish Defence Research Agency and the Defence Materiel Administration*. One important task of these agencies is to supply the central government leadership with unique and strategic information.

The operations are for natural reasons protected by strict secrecy and restricted transparency. In operations with such restricted transparency there is a risk that uncertainty may arise among the general public concerning the content and methods of these activities. In light of this, effective control is very important.

In recent years measures have also been taken to strengthen control, for example by reorganising the control agency, the Swedish Foreign Intelligence Inspectorate (Siun) and giving it new tasks and a clearer mandate.

Purpose

The purpose of the audit is to assess whether Siun's control of defence intelligence operations is effective. The audit is based on the following questions:

- Has the Government created conditions for effective control activities?
- Are the control activities conducted effectively?
- Does the control agency report the results of its control as intended to the defence intelligence agencies and to the Government?
- Do decisions resulting from controls lead to action by the defence intelligence agencies?

Implementation

The Swedish National Audit Office has identified statements on the objectives and purpose of control activities in reports, government bills and Riksdag decisions, as well as decisions by the Riksdag and the Government concerning the tasks of the organisation. The Swedish National Audit Office has also examined which other enabling conditions in the form of finances etc. that the control agency has obtained to enable it to perform its tasks. Moreover the Swedish NAO has examined the control agency's policy documents, its working procedures, decisions and reports, as well as supplemented the documentation studies with in-depth interviews primarily with the agency's office, but also with its decision-making committee.



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The Swedish NAO has audited all control cases in which Siun issued a decision, as well as a selection of cases in which Siun did not issue any decision. The Swedish NAO also participated in part of a control conducted by Siun of the Swedish Armed Forces. The Swedish NAO was thereby able to observe how Siun works during an ongoing control.

The Swedish NAO also audited how Siun reports its decisions to the defence intelligence agencies and how Siun reports its activities to the Government. The Swedish NAO also submitted questions to the Ministry of Defence on the conditions applicable to Siun's activities and on Siun's reporting.

In all cases in which Siun issued a decision the Swedish NAO followed up how the decision was received and the measures taken.

Conclusions of the Swedish NAO

The overall conclusion of the Swedish NAO is that the control agency, the Swedish Foreign Intelligence Inspectorate, has been given the enabling conditions to conduct control activities effectively. The conclusion of the Swedish NAO is also that Siun carries out its tasks in accordance with law and ordinances.

The Swedish NAO's audit shows that the defence intelligence agencies take Siun's decisions seriously and implement measures in accordance with Siun's decisions.

The audit shows that Siun meets most of the criteria regarded by the Swedish NAO as prerequisites for effective control activities. However, Siun's documentation of control activities is sparse, which means that it is difficult for the Swedish NAO to assess whether Siun could conduct its control activities more effectively than at present. The Swedish NAO's audit also shows that there are parts of the control activities that need development, such as documentation of the work process and control cases, as well as clarity of decisions.

The control agency has been given the enabling conditions for conducting its activities effectively

The Swedish NAO's assessment is that Siun has been given the enabling conditions for conducting control activities effectively.

The audit indicates that the legislation and regulatory framework applicable to control activities is fit for purpose. The tasks Siun has are specified in the legislation and the agency's instructions. However, there is no clearly formulated objective for what Siun is to achieve with its control activities. The audit also shows that Siun has received the funds it has requested. At the same time Siun has not used the entire appropriation in any year.

As regards Siun's organisational form, the Swedish NAO considers that the composition of its committee of parliamentarians and legal experts provides good conditions for enabling the agency



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to be an effective supervisory body. At the same time it cannot be ignored that the solution of a committee and chair not in constant attendance means that decisions and consultations cannot be made as rapidly as for an agency with a management that is permanently present. The confidentiality surrounding the operations also constitutes an obstacle to communication on cases when the chair and committee are not convened.

There is some uncertainty as to the scope of the activities

The Swedish NAO's audit shows that Siun carries out controls in all areas specified in the legislation. The Swedish NAO therefore concludes that Siun carries out its tasks in accordance with law and ordinances.

To determine what oversight is needed Siun must know where defence intelligence operations are conducted and where the boundary lies in relation to other activities. The defence intelligence agencies also have a responsibility to be aware of whether the operations they conduct are to be described as defence intelligence operations. This is crucial, for example as regards the legislation applicable when processing personal data. It is also crucial to know whether an activity falls under Siun's control and thus also ultimately the scope of Siun's remit and the requirements this makes regarding the size of the agency.

The control cases followed by the Swedish NAO in the Swedish Armed Forces indicate that in some cases it still remains for the agencies involved to assess whether an activity at the Swedish Armed Forces is to be regarded as part of defence intelligence operations or not.

The Swedish NAO understands that it requires time to establish where the boundaries are to be drawn for each part of the organisation, as it is exposed to an ongoing change. However, the Swedish NAO considers it important that Siun and the Swedish Armed Forces take action to clear up the uncertainties that may exist.

Siun's priorities are based on the legislation

The audit shows that Siun's operational planning is based on the legislative provisions and the agency's instructions. One of the organisation's focuses is on control of search terms as well as destruction and reporting in signals intelligence operations. The agency also gives priority to controls in areas where it assesses the risk of violation of privacy to be greatest. These priorities are in line with the statements in the preparatory works and the agency's instructions.

The documentation is sparse and confidentiality has taken precedence

The Swedish NAO's audit shows that Siun's documentation of the methods used in its control activities is limited. A practice has emerged for how the controls should be performed, but there is no documentation as to the methods employed by the agency. In the opinion of the Swedish NAO, the lack of documented methods of control is a deficiency that risks leading to inconsistent



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assessments in controls of the same areas. It also makes the agency vulnerable in regard to staff changes.

The Swedish NAO's audit of control cases shows that this documentation is also sparse. The reason is that Siun wants to avoid storing data that is classified as secret. The consequence of this is that there is no history at the agency of how they worked, the questions put and the grounds on which assessments were made. In the opinion of the Swedish NAO this documentation is important to enable Siun to evaluate its activities and develop its methods.

It also means that it is difficult for the Swedish NAO to obtain supporting material to assess whether Siun could conduct its control activities more effectively than at present. The Swedish NAO therefore considers that new procedures should be drawn up concerning which documentation should be included in the case file. Consideration should not just be given to security needs, but also to the need for reference material to enable monitoring, evaluation and learning from the activities.

The Swedish NAO notes that Siun's operational plan for 2014 includes documenting working methods. This work had not been completed at the time of the audit and the Swedish NAO was therefore not able to learn or assess how it was implemented.

The controls require considerable preparation and quality assurance

Siun controls compliance with legislation in the area of defence intelligence. The controls refer to the interpretation and application of current legislation and other regulation of defence intelligence activities by the defence intelligence agencies. The controls are ex post and refer to circumstances at a given time. Siun never gives advance rulings and does not consult with the agencies being controlled concerning interpretations of legislation.

The regulatory framework combined with the working process applied by Siun means that it is the information that emerged at the time of the actual inspection that constitutes the grounds for the committee's decision. This makes considerable demands that the preparatory work will enable all relevant information to be presented at the time of inspection. Thus a great responsibility lies with the agency being controlled to be able on one occasion to provide a correct picture of its activities, as well as to be able to answer the questions put by Siun.

As regards preparations for the inspection and quality assurance of the decision-making documentation, the Swedish NAO found that these processes have developed during the years of Siun's existence. The agencies being controlled have also expressed that the process functions well in general and that they conduct a close dialogue with Siun's office during the work of preparation.



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Siun's reporting complies with requirements, but decisions could be clearer

The Swedish NAO's assessment is that Siun submits decisions to the agencies being controlled as well as providing decisions after control at the request of individuals, in accordance with the provisions of laws and ordinances.

It is important for the defence intelligence agencies that the decision states whether Siun is critical and whether a deficiency has been identified. The audit shows that doubt has sometimes arisen at the agency being examined as to what Siun means by the formulations and terms it uses in its decisions. The Swedish NAO therefore considers that Siun should be clear as to the meaning and differences between the terms used, for example observation and decision.

As regards controls at the request of an individual the Swedish NAO has not found anything to indicate otherwise than that these decisions are prepared as intended taking into account the secrecy provisions. In the opinion of the Swedish NAO Siun's reporting to the Government complies with the requirements set up.

The defence intelligence agencies process Siun's decisions

The Swedish NAO's audit shows that the defence intelligence agencies all have a procedure for receiving and processing Siun's decisions. The agencies have also expressed a positive view of the control and consider that it helps them develop their operations.

The Swedish NAO's audit of all control cases where Siun issued a decision shows that the defence intelligence agencies take Siun's decisions seriously and when necessary implement changes in their operations.

Recommendations

- The Swedish NAO recommends that where necessary Siun and the Swedish Armed Forces, on the basis of their respective responsibilities, assess where defence intelligence operations are conducted within the Swedish Armed Forces.
- The Swedish NAO recommends that Siun draws up documentation of the methods used in its control operations. It should be possible to use the documentation as internal guidance for how the agency should work with different types of control.
- The Swedish NAO recommends that Siun prepares new procedures to determine in each control case what documentation should be included and saved in the case file. Consideration should not just be given to security needs, but also to the need for reference material to enable monitoring, evaluation and learning from the activities.
- The Swedish NAO recommends that Siun reviews the formulations in its decisions to make them clearer for the defence intelligence agencies.

