

Multilingual Communications Surveillance in Criminal Law

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Multilingual Communications Surveillance in Criminal Law

The Role of Intercept Interpreters-translators

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Preface

In many countries communication surveillance can be used to prosecute and perhaps even convict suspects for serious criminal offenses – even if that communication took place in a language that cannot be understood by the law enforcement agencies or the courts. This is made possible by individuals with the necessary language skills who are commissioned by the police to covertly intercept their conversations.

[...] and toward the end you feel kinda like a little ghost behind the guys, like a fly buzzing around the guys in the house and you say, “me, I’m also there, at your place, I’m also present”, you’re there with the people. It, it’s kinda the part where you say to yourself, “I’m with you but I have no face [...]”. (IIT8)

Yet transferring this foreign-language communication into useful information or valid evidence is extremely difficult and liable to many possible sources of error, especially when it concerns spoken language in which dialects, slang, or secret codes are used.

Professionals with special competences are needed for this undertaking. It also requires translationally and legally well-founded work processes to minimize the risk of misinterpretations and other errors and to make the activity verifiable. The task of interpreting and translating in the context of covert communication surveillance (below referred to as intercept interpreting-translation) therefore presents a considerable challenge whose significance is often underestimated.

Remarkably, both academics and practitioners have thus far invested little in identifying and analyzing the problems posed by intercept interpreting-translation in criminal proceedings. The research conducted in the disciplines involved – including law, interpreting and translation studies, and linguistics and sociolinguistics – is limited. This book therefore aims to close this research gap.

What makes this book unique is that it takes a genuinely interdisciplinary approach and is the result of a kind of study that has never before been conducted. However, this has also meant that some of the explanations from the perspective of legal or translation studies have been unable to cover every single detail. Instead, we have included a helpful list of specialized literature in

which such details can be found. Our aspiration with this book was to present the information such that it would be understood by anyone and everyone interested in the subject.

This book is the result of a collaboration between three researchers, one specializing in law, one in interpreting, one in translation, who carried out empirical and theoretical analyses of intercept interpreting-translation in an interdisciplinary research project¹ together with another legal academic, sociologists, and a linguist.

This book incorporates the ideas and results we published in peer-reviewed academic journals during the research project. However, articles in academic journals can only present fragments of comprehensive research work. With this book, we are now able to combine our previously published findings, enriching them with our extensive material and interdisciplinary outcomes and giving new insights and overarching perspectives. All our articles, which form the foundation of each respective chapter, are listed alongside other references in the bibliography at the outset of every chapter.

Our findings are based on a multitude of sources, such as judicial decisions, criminal files, participant observation, and interviews with intercept interpreters-translators (IITs) and members of the police. Furthermore, an online survey of IITs was carried out.

The empirical data were collected in Switzerland. At the same time, we also contacted IITs and academics in other countries in order to make comparisons with and add to the findings of our Swiss project. In this way we were able to ensure that the book would focus on aspects of intercept interpreting-translation that can be observed in all legal systems, such as the role of IITs, the difficult context of their work and the multifarious nature of their tasks, to name but a few.

This book is aimed at the academic community, lawyers, police departments, judicial authorities, and IITs themselves. Every chapter begins with a list of the relevant literature that is the source of the information we present in that chapter. References were avoided in the running text in the interests of better legibility.

The introduction (1) contains explanations of our research project (1.1), the features unique to the work of IITs (1.2), as well as a spotlight on their profile (1.3). As in the field of intercept interpreting-translation – this itself is a new term – consistent terminology has yet to be established, we have also included a glossary (1.4).

¹ The project was funded by the Swiss National Science Foundation from December 2019 to September 2023 (project no. 10001_184896).

The next chapter explores the legal context (2) since this has a considerable influence on the practice of intercept interpreting-translation. It concentrates on the two principal purposes of intercept interpreting-translation (2.1) and three of the fundamental rights that must be respected in criminal proceedings, including in intercept interpreting-translation (2.2).

A comprehensive chapter is dedicated to an essential aspect of intercept interpreting-translation: the translational process (3). It begins with an explanation of the processes involved depending on the kind of source information (3.1). This is followed by the important steps of (de-)contextualizing and recontextualizing conversation content (3.2). Two key features unique to intercept interpreting-translation complete this chapter: the prioritization of information (3.3) and the different types of cooperation (3.4). A separate chapter is dedicated to the products of intercept interpreting-translation (4). As is the case in practice, we differentiate here between oral *translata* (4.1) and written *translata* (4.2). The quality of the product can be measured according to the reliability of the translated intercept evidence (TIE) and the written *translata* produced for investigative purposes. After all, it is doubtless true of every legal system that, if these products are not reliable, then they must not be used as evidence in criminal proceedings. For this reason, we devote an entire chapter to the reliability criterion (5), in which we return to the legal aspects from chapter 2, while also discussing impartiality (5.1), verifiability (5.2), and how to deal with deficient reliability (5.3). The two final chapters on competences (6) and on qualifications and definitions of the role in intercept interpreting-translation (7) once again take a close look at the specific activities of IITs and demonstrate how wide-ranging their competence and how important the future development of a clear understanding of the role are.

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We would like to thank our team members Dr iur. Elodie Bally, Dr rer.soc. Franziska Hohl Zürcher, Dr phil. Christina Grisot, and Dr rer. pol. Damian Rosset for their good teamwork on the project from December 2019 to August 2023. The knowledge they gleaned had a significant influence on this book.

Our special thanks go to the Swiss police officers, members of the courts and departments of public prosecution, and the many IITs who gave us their time and access to the documents and practice of intercept interpreting-translation. Without their cooperation and their willingness to let us look over their shoulders, this book would not have been possible.

We thank Maria Slater (<https://www.mariaslater.com/>) for her support with the English text.

1. Understanding *Multilingual Communications Surveillance in Criminal Law*

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1.1 THE RESEARCH PROJECT “INTERCEPTING WITH INTERPRETERS”

Intercept interpreting-translation takes place in a complex context that is difficult to research.

This book is based both on established findings from academic literature and on the findings of our own research project. In order to forge a bridge between the two, we begin by providing an overview of the data we gathered and our methodological approaches. Indeed, this book can draw on real-world data, which in the field of covert communication surveillance is very unusual. For instance, the data comprise audio recordings of surveilled conversations and criminal files, observations of intercept interpreter-translators (IITs) in action, survey responses from individuals who are actively involved in intercept interpreting-translation, as well as interviews with IITs and police officers.

We collected data in various languages. The questionnaire was in German, French, and English, while the interviews and file analysis were conducted in both German and French. The real-world audio material was textualized in the original languages of Serbian and Bosnian before being rendered in German and then English. In order to prevent inferences being drawn about the original data, both the criminal files and the interview data were pseudonymized. The names of places and people mentioned in the data were also anonymized.

Abbreviations were used to name the data. The observation data were labeled with the abbreviation “OBS”. The interviews with investigators were marked “POL” and those with IITs “IIT”. In this book, the results of the online survey can be identified by the question asked, which is preceded by the letter “Q”. Both the questionnaire and the interview guidelines (translated into English from the original German and French) can be viewed in the Appendix.

1.1.1 Overview of Criminal Files

- Twenty-two criminal files, 14 from two French-language cantons and eight from two German-language cantons.
- A total of 58 518 scanned pages.

The prelude to this project was access to the criminal files, which provided the foundation for the qualitative and quantitative file analysis.

The criminal files were selected according to clear specifications. For example, they had to concern concluded criminal proceedings that had commenced in 2011 or later, and those proceedings had to have involved communication surveillance measures that required the use of IITs. However, it is important to note that both the final selection and the provision of the files ultimately lay in the hands of the law enforcement agencies.

The criminal acts served as data for a qualitative content analysis in the framework of a subproject investigating whether and under what conditions intercept *translata* constitute evidence from the perspective of Swiss criminal procedure law. This entailed checking, for example, whether the involvement of IITs in the communication surveillance was even documented in the criminal files. Where this was the case, we examined whether the file stated which IIT(s) had worked on the case. In a third step, we explored whether it was recorded in the criminal files what brief the IITs had received from the police. In addition to the criminal files, a legal analysis of relevant case law enabled us to deduce the documentation requirements.

Furthermore, the criminal files served as data for another study that analyzed both quantitatively and qualitatively how police officers, public prosecutors, and judges use the intercept *translata*. To this end, we gathered data about, on the one hand, the document types in a criminal file that made reference to the intercept *translata* (police reports, records of interrogations, bills of indictment, verdicts), and, on the other hand, the form in which the references were made (verbatim quotations, quotations with emphasis, excerpts of quotations, indirect quotations, summaries of translated intercept records (TIRs), etc.). For example, one of the aims was to determine the visibility of an IIT’s involvement over the course of the entire criminal proceeding.

A first insight into IITs' field of practice took place in August 2020 via an open participant field observation during ongoing communication surveillance in a police station. Over a period of five days, a researcher observed the IITs and their interactions with the police officers.

1.1.2 Overview of the Observational Data

- Handwritten field notes including retrospective recordings of personal experiences that were reported in informal conversations.
- Seventy standard pages of transcriptions.
- Thirty-five photographs (workstations, screenshots).

In the course of these observations, information on the workstation, working environment and working conditions of IITs was collected. Handwritten field notes were produced that recorded personal impressions and findings from informal conversations. To resolve unanswered questions from the first descriptive observational study, a two-hour “focused observation” was undertaken in March 2021. In subsequent stages of the research project, the observational data were analyzed in connection with other data sets.

1.1.3 Overview of the Online Survey

- 157 questions: 83 open-ended, 74 closed.
- Forty-six completely filled-out questionnaires.
- Anonymous participation; compensation: CHF 70 (equal to the hourly rate for intercept interpreting-translation).

As no central register of IITs existed as of 2020, it was not possible to contact our target group directly. For this reason, the online survey between December 2020 and August 2021 could only be carried out thanks to the active support of the Swiss law enforcement agencies. Of 89 completed questionnaires, 46 were answered in full – 34 of these in German, two in English, and ten in French – and were hence suitable for analysis. Of the 46 respondents, 30 were female, 14 male, one gave their gender identity as other, and one person left the question unanswered. The estimated time it took to answer the 157 questions was approximately one hour. To pay them for their time, the law enforcement agencies gave their consent for us to interview some IITs during their working hours. Others were given the option of compensation or gift certificates in the amount of CHF 70, which equates to the customary hourly rate for IITs. The only criterion participants had to meet was that they had to have worked in intercept interpreting-translation during investigative proceedings in the past

four years. The age of the respondents ranged from 23 to 63 years, with only five participants being younger than 35. The participating IITs named a range of countries of origin; in response to question Q130 about where they had grown up, the following countries were named: “Ex-Yugoslavia”, Serbia, Bosnia, Croatia, Kosovo, Albania, Macedonia, North Macedonia, Mali, Cameroon, Nigeria, Kenya, Botswana, Zimbabwe, South Africa, Austria, Germany, Turkey, Morocco, England, USA, Ukraine, Russia, Latvia, Romania, Spain, Portugal, and Brazil. In total, 28 percent of respondents had grown up exclusively in Switzerland, Germany, or Austria. This shows that almost a third are second-generation citizens and hence largely learned their first language in the family environment. The survey data provided the first-ever opportunity to systematically analyze IITs and their work from their own perspective. The analysis of the questionnaire was both quantitative and qualitative.

1.1.4 Overview of the Interview Data

- Semi-structured interviews with 14 IITs and ten police officers (a total of seven French speakers and 17 German speakers).
- Thirty hours of audio recordings.
- 901 standard pages (1500 characters) of transcriptions.

Between December 2020 and June 2021, expert interviews were conducted with IITs and investigators from various German- and French-speaking cantons. Referring to a guideline for the police and another for IITs, we inquired about the expectations and demands of the IITs, as well as their work processes. In line with the methods of semi-structured interviews, the questions were not prearranged in a strict order but rather were asked naturally over the course of the conversation. The interviews were conducted at the respondents’ workstations, i.e. in separate rooms in the police stations. With the interviewees’ consent, the audio of the interviews was recorded. Due to the COVID-19 pandemic, some interviews had to be conducted via an online meeting tool. In these cases, both audio and video recordings were made of the meetings and saved on a secure university server. The interview data were largely evaluated in line with qualitative content analysis. Their coding in the qualitative data analysis software Atlas.ti was carried out by two team members depending on the research questions. Due to the interdisciplinary research perspectives and the small cohorts, the intercoder reliability was guaranteed by coding four interviews in parallel in an initial round of coding on the basis of previously established basic categories. After the consensus coding process, regular discussions took place in which we jointly determined and agreed on further categories and their detailed description in a coding guideline. All other interviews

were then analyzed according to the coding guideline. Furthermore, during every instance of cooperative research, a research diary was written in which changes, questions and answers between the researchers, and the analytical process were documented in chronological order.

1.1.5 Overview of the Audio Files

- Ninety intercepted telephone conversations (from under three to 30 minutes' duration) were made available on DVD.
- Language: Serbian, Bosnian.
- Transcription in Serbian and Bosnian.
- Translation into German.

The multimodal interaction analysis of the translational transfer processes called for the evaluation of the real-world audio files. For this qualitative analysis, an intralingual textualization of 17 selected conversations was carried out on the premises of the criminal court for reasons of data confidentiality. Finally, the transcribed data comprised 14 conversations with a duration of under three minutes, as well as one conversation lasting eight, another 11, and another 30 minutes. In a second step, the material thus produced was translated into the target language. In a third step, the *translata* from the two-step method (Section 3.2.1.1.2) were compared with the real-world translated intercept records (TIRs) from the criminal files. One of the research objectives was to document the process of (de-)contextualization and recontextualization and to identify strategies.

The analyses of these multifarious data, as well as the triangulation of the academic perspectives represented in our research project, build the foundation for the following sections.

1.2 THE TRANSLATIONAL ACTIVITY OF INTERCEPT INTERPRETER-TRANSLATORS (IITS): UNDER A CLOAK OF INVISIBILITY

Secret communication surveillance has existed for a long time: it dates back to the erection of the first telegraph poles in 1840. The possibilities for surveillance have grown with each technical innovation since then. It is no exaggeration to claim that our use of technical devices has enabled an unprecedented amount of communication to take place – and the potential for surveilling all that communication is vast. At the same time, there is a “communications race” between law enforcement agencies and criminal organizations: each side is constantly trying to outdo the other with superior encryption and decryption

technologies. However, these technical aspects are not relevant to this book; its focus instead is on the underlying problem that can bring even technically feasible surveillance to its knees: how should the law enforcement agency proceed when suspects are communicating in a foreign language? Or when rare dialects of a foreign language are being spoken? Or even gang slang or a special code? Only with the aid of intercept interpreter-translators (IITs) are the police able to access the intelligence hidden within such communications.

“Since early April 2021 the employees of AG Achilles have been working to analyze thousands of chats. Several million chats have yet to be reviewed. That is an inconceivable quantity of datasets that simply cannot be managed without expanding the workforce. For that reason, we are looking for interpreters who ideally have Serbo-Croatian language skills,” explains the head of AG Achilles in the Federal Criminal Police Office, Undersecretary Dieter Csefan, BA MA.

Romana Tofan (2021), *Öffentliche Sicherheit. Magazin des Bundesministerium Inneres*, 11–12, p. 11 (original text in German).

After the September 11, 2001 attacks, the FBI and U.S. intelligence agencies were widely and repeatedly criticized for failing to have enough linguists, especially for languages spoken in the Middle East, Pakistan and Afghanistan. [...] “Failing to hire an adequate number of linguists in a timely manner adversely affects the FBI’s ability to manage the growing translation workload and reduce the current backlog of unreviewed material,” Justice Department inspector general Glenn Fine said in the report.

Jeremy Pelofsky (2009), “FBI lagging on translation efforts: report”, *Reuters U.S. News*, October 26.

The intelligence gained with the help of IITs is not only used for police investigations but also serves as evidence for the department of public prosecution and in court. Research into many issues in this context remains rudimentary, and adequate answers to numerous questions have yet to be found. These questions concern the legal requirements of such evidence, the translation processes and methods as well as their reliability, and of course, the IITs themselves, their profile and the competences required of them.

The reason knowledge of this area is fragmentary is that the translational activity of IITs is not an easy topic for researchers to gain access to. It takes place in the context of police investigations that aim to find out more details about criminal activity, suspects’ backgrounds and connections, and the allocation of tasks within a criminal organization. Disclosing investigation strategies, tactics, and obstacles is not in the interest of the police, who consequently limit researchers’ access to this topic. Furthermore, IITs are bound by a strict official code of secrecy and are often anxious to preserve their anonymity and keep their work a secret, even from friends and family. Although the

Italian bon mot “traduttore traditore” actually concerns the age-old dilemma of whether translators should stay true to the original or depart from it, IITs frequently experience the phrase in a very literal sense: those who help the police to convict their compatriots are soon ostracized as traitors.

Because our compatriots, [...], don't understand that we're just doing our job. They, they consider us part of the police. And in [country] the police is/ it's corrupt. That they don't understand that the police here, they're different and they work differently. They don't understand that. [...]

[That's true] for everyone, but it's worst for interpreters and translators, so when intercepting phone calls, intercepting communication. Because they say, yeah, we betrayed them. For court interpreters they look at you askance, but they say, “Oh, he's gotten another job. He just comes here and [helps out] sometimes”. But for us, those of us who work at/ for the police, they say: “They're the traitors. Because without their help the police wouldn't have convicted us”. (IIT2)

The secrecy of the job also contributes to its invisibility. Despite this, an increasing amount of attention has been paid to interpreting in the justice system over recent years – at least in terms of certain fields of application. For instance, EU Directive 2010/64/EU lays down rules concerning the right to access interpreting and translation services during criminal proceedings. That being said, it does not mention the secret translational activity of IITs. Unsurprisingly, therefore, the jurisprudence concerning problems associated with the secret translational activity of IITs reveals a considerable lack of knowledge and uncertainty as to how to deal with this matter in criminal proceedings. A lack of knowledge leads to a lack of awareness of problems and in turn to a lack of evidence-based solutions. Practitioners who are confronted with these problems on a daily basis consequently have to develop unprofessional and informal adaptation strategies, feel obliged to accept that quality will suffer, and seek tenuous, ad hoc solutions.

1.3 SHEDDING LIGHT ON THE PROFILE OF IITs

This book sheds light on every aspect of the work of IITs. In this chapter, however, the main focus is the profile of IITs themselves according to the results of our research. Eighty-nine people took part in the online survey we conducted between December 2020 and July 2021, of whom 46 met the inclusion criteria and answered the questionnaire in full (Section 1.1). Their responses provide an interesting insight into the multifaceted educational backgrounds and broad vocational spectrum of IITs. The answers to the questions concerning their appointment and recruitment will follow in Section 2.3.1, as these aspects are particularly interesting in the context of IITs' role in criminal proceedings.

1.3.1 Educational Background

Over 40 percent of the survey respondents (n=46) completed a university degree, ten of them (22 percent) a bachelor's and ten a master's degree. A total of 34 percent completed vocational training in Switzerland or another country (see Figure 1.1).

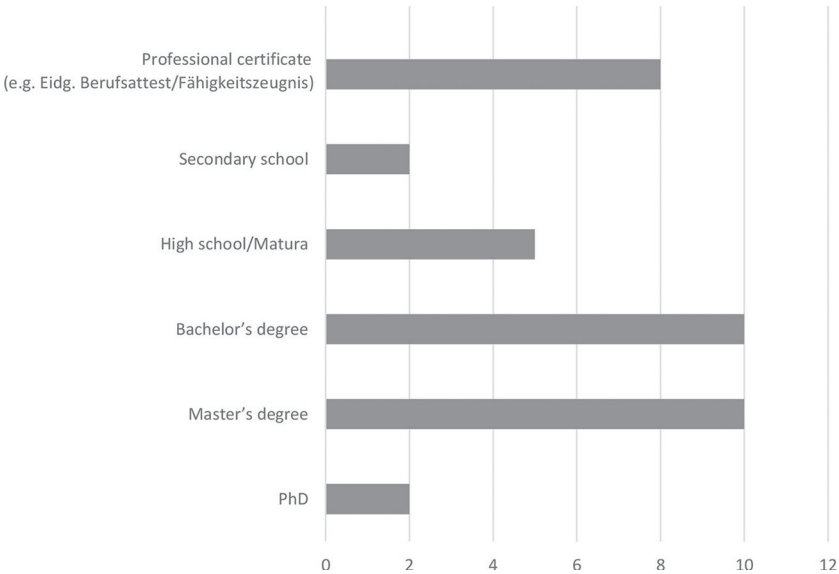


Figure 1.1 Q143 What is your highest educational degree? (n=46)

However, only four people with a university degree said that they had graduated in translation and/or interpreting; the remaining bachelor's or master's degrees were awarded in other disciplines, such as journalism and communication studies, business, law, the arts, political and social sciences, pedagogy, or languages without any specialization in translation or interpreting (Q146–147).

Despite largely lacking any training in translation or interpreting, these people have worked regularly and for many years in precisely these fields. It therefore becomes apparent that in investigations, mere knowledge of the language or a specific dialect, as well as availability and good character, appear to be more important requirements than being qualified via a specialist degree, as we will discuss in detail in Chapter 6.

1.3.2 Work Experience

The survey questions concerning IITs' work experience reveal that the majority of respondents had already been working in the field of communication surveillance for over five and up to 20-plus years (See Figure 1.2.)

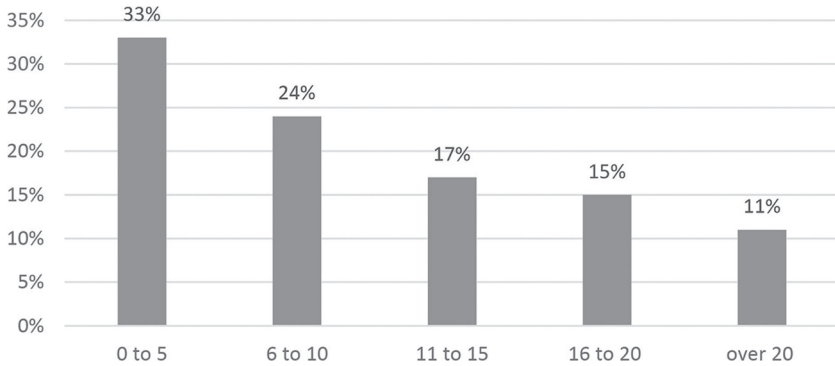


Figure 1.2 *Q9_1 How long have you been working as an interpreter of intercepted communication? (in years, n=46)*

Indeed, professional experience can be an important criterion when appointing an IIT, as the following statement illustrates:

So to put it bluntly, we don't take greenhorns. Because they're usually young and that's less appropriate. Meaning the risk is a bit [too] big. And that's why proven skills in the languages, having experience is of course a prerequisite, and then obviously relevant references. (POL10)

That experiential knowledge, which is especially important for the translational activity of IITs, is due, among other things, to the competences and expertise demanded of them, some of which can only be acquired on the job. This is particularly true of investigative and forensic competences, on which the police are forced to rely if they do not understand the conversations themselves. This includes identifying the voices of suspects or recognizing them from previous surveillance operations, or placing statements in a context that may include cases going back many years, for example. This experiential knowledge is valuable and indispensable for investigators. For this reason, in interviews, IITs still considered themselves to be greenhorns even after working in communication surveillance for four or five years, whereas an IIT who

had been active in the field for decades can be considered an undisputed expert despite having only limited translational competences and skills in the target language.

1.3.3 Membership of a Professional Association for Translators and Interpreters

In the survey, only 20 percent of respondents declared they were members of a Swiss professional association for translators and interpreters (See Q20 in Figure 1.3).

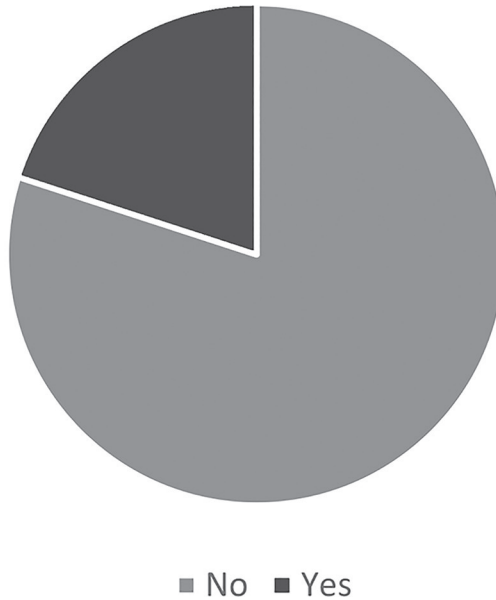


Figure 1.3 Q20 Membership in a professional association

Consequently, only a minority are professionally organized or perhaps feel that they belong to a translational profession. Considering their status as freelance language service providers and their altogether insecure job situation, it begs the question why IITs show so little interest in professional self-organization. After all, those who have no representation and no voice will not be able to represent their interests in the face of other professional groups and institutions, which then deepens the power imbalance between contracting institutions and individual contractors.

The reasons for a lack of professional organization are manifold. On the one hand, it is a hidden profession, and many IITs do not even inform their private connections about their work.

Only my wife. But OK. If a really good friend of mine asks what I do, I say: “I’m a translator”. And if he wants to know more, then either I don’t answer or I [say] “Hospitals, weddings”, blah-blah. [Disclosing one’s] identity, to be honest I don’t find that so great. Because the [...] people [from the region] have a bit of a different mentality and in most cases, it’s not them who’s to blame, they look to blame someone else. And the IITs, [I] think are the weakest link in that whole spiral. (IIT8)

It is therefore unlikely that IITs would join a specialized organization for their profession due to security concerns alone. However, another reason may be a lack of awareness that the translational activity of IITs is an independent branch of the translation profession. Their non-specialist educational backgrounds (Section 1.3.1), as well as the fact that many of them work as IITs alongside other, non-translational roles (Section 6.5), may be an obstacle to joining, e.g. an association for court and public service interpreters or translators. In addition, some IITs do not meet the admission criteria for some professional associations due to their non-translational training or main professions.

Precisely because of the unique nature of the profession, the fact that it is embedded in the translatorial settings at the court and with the police, and its practitioners’ not unproblematic status as freelancers who are heavily dependent on a single customer, organization in the form of a professional association would be a welcome step and would help improve IITs’ occupational profile and status and enable them to establish their own ethical standards and qualifications.

1.3.4 Other Work besides Communication Surveillance

Intercept interpreting-translating assignments for law enforcement agencies may be few and far between and concern isolated conversations or extend over several weeks or even years. Yet even with long-term surveillance operations, the work available for IITs cannot be planned in advance and may cease from one day to the next. The latter may be the case, for example, if the surveillance operation is not authorized by the courts, if a suspect leaves the country, or if the decision is made to abandon the operation due to low chances of success or to shift the focus to other suspects and hence potentially to other languages. The insecurity caused by this inability to plan may be one reason why many IITs do not rely on communication surveillance as their sole source of income. As our survey revealed, for the majority of IITs, translational activity in this context is just one occupation among others.

Most IITs also work in other translational and non-translational fields. For instance, two-thirds of respondents said that intercept interpreting-translating is just a side income, and almost half (48 percent) stated that the income from their translational activity as an IIT only amounts to a quarter of their total household income (Q45, 46). Fewer than a quarter of respondents are able to rely on a minimum monthly income from translational activity in this field (Q47). These figures prove that the insecure and highly volatile nature of such assignments makes intercept interpreting-translating an unreliable source of income.

Almost three quarters (72 percent) of respondents also work in other translational professions (Q19). This includes work for the police besides communication surveillance (e.g. interpreting during interrogations), for the health sector, justice system, or other authorities, such as registry offices or victim support bodies. Six of 46 respondents (13 percent) also interpret in the asylum sector, while two individuals work (among other things) for diplomatic institutions in addition to communication surveillance. Some 21 percent also work in the private sector and trade and a quarter said that they worked in “other” translational professions that were not further specified.

Some 48 percent (22 of 46) stated that they earn a substantial proportion of their income from non-translational work (Q16). These individuals work in the healthcare system, education and teaching, social work, commerce, the food service industry, manual work, or even as a police officer.

Regardless of whether their translational work as IITs supplies the majority or minority of their income, their second occupation provides financial security and prevents them from attempting to extend assignments or generate new ones in order not to lose this source of income. As the problem of IITs’ financial dependence on their customers is closely connected to the issue of impartiality, the topic is discussed in more detail in Section 2.3.

Although diversification may seem reasonable from a financial and indeed professional perspective, there are also jobs that, when combined with translational work in the context of secret communication surveillance, the police would deem risky. This is the case when a job may potentially lead to an accumulation of sensitive information when combined with work in intercept interpreting-translation. Understandably, in such circumstances, the police may be concerned that IITs may – intentionally or unintentionally – unlawfully leak the intelligence gained during their communication surveillance work while working in their other roles. For example, if an IIT works simultaneously for the police and the embassy of their home country, they may have too many sources of information, which they may then combine with potentially problematic results. This risk is also present when an IIT simultaneously works at a victim support body where victims of the surveilled suspects may be being housed and counseled. Obviously, in such constellations, the unauthorized

flow of information feared by the police would be prevented by compliance with the official oath of secrecy. Nevertheless, from one job or the other, IITs would have access to intelligence that may be inconsistent with the impartiality demanded of their translational work as an IIT and inherently increases the risk of an – intentional or unintentional – violation of their official oath of secrecy.

1.4 GLOSSARY

To improve understanding and provide clarity for researchers and practitioners in the various disciplines, in this section we differentiate between some key terms.

Communication surveillance

In *communication surveillance* the content of written and oral communication by individuals suspected of serious criminal offenses is intercepted by the police within the framework of a coercive measure authorized by criminal procedure. The aim is to collect information and gather evidence for the criminal investigation.

Interpreting

Interpreting is understood as the transfer of a one-off, generally oral text from the source language into a text in the target language, for which the possibilities for verification and correction are limited due to its temporary nature and/or a lack of time.

Translation

Translation generally involves a written source text. We therefore understand translation to mean the transfer of a text in the source language, which is constant and consequently permanently available or can be accessed as often as necessary, into a target-language text that can be verified at any time and corrected any number of times.

Translational work/translational activity

Translational work/translational activity is used as an umbrella term for interpreting, translation, and intercept interpreting-translation. In this book, a translational activity involves a piece of information in the form of oral or written source information being transferred from a source language into a target language, i.e. interlingually, to produce an oral or written target text.

Hybrid translational forms

Hybrid translational forms are amalgams of translation and interpreting. They arise when cognitive techniques from both forms are applied in a single translational action. In communication surveillance, hybrid translational forms are used e.g. when an oral source text is rendered as a written target text, as with a translated intercept record (TIR), or when content from a written text message from a WhatsApp chat is rendered orally in the target language for an investigator during sight-translation.

Intercept interpreting-translation/translational activity of IITs

Intercept interpreting-translation or translational activity of intercept interpreter-translators (IITs) refers to a special form of hybrid translational activity. Intercept interpreting-translation can comprise not just transferring source information interlingually but also identifying information relevant to an investigation or perceiving forensic clues. In communication surveillance, recorded or real-time audio of conversations is the main source of information. However, the source information can also be texts from messages shared, e.g. via a messaging service like Telegram or WhatsApp.

Operative interpreting

Operative interpreting is a special form of intercept interpreting-translation. Here, the main task is to listen to source-language conversations in real time and to identify relevant information that must then be communicated to the investigator immediately. To this end, the IIT summarizes the content orally in the target language.

Translatum, intercept translatum

In this book, the product of the translational activity of IITs is referred to as a *translatum* or *intercept translatum*. The *translatum* varies depending on the aim and purpose of the intercept interpreting-translation. It can take different forms, i.e. it can be an oral product or a written product.

Translatum, adapting

The *adapting translatum* is a kind of translational activity with a very weak relationship to the source text. In communication surveillance, the short note is an *adapting translatum*.

Translatum, instrumental and customizing

The *instrumental and customizing translatum* can be understood in the target culture without any additional explanations. It takes into consideration idiomatic expressions and the conventions of the target language, and the target

text appears so natural that its readers do not notice that it comes from a different language and culture.

Translatum, documenting and preserving

The priority with a *documenting and preserving translatum* is to produce an exact and verbatim rendering. In addition to transferring the spoken text verbatim, all the meta- and contextual information is also reproduced, such as intonation, register, background noise, and sociocultural clues.

Intercept interpreter-translator (IIT)

Intercept interpreter-translators (IITs) are commissioned by law enforcement agencies to carry out all the activities listed in this glossary that pertain to intercept interpreting-translation and to produce different intercept *translata* depending on the purpose of the target text.

Transcription (intralingual)

The term *transcription* describes the exclusively intralingual textualization of an oral source text. That means that the oral conversation is textualized in the same language. The chronological order is preserved and all the linguistic, paralinguistic, and extralinguistic reference information is reproduced verbatim and in full.

Translated intercept record (TIR)

With a *translated intercept record (TIR)*, an oral source text is transferred into and textualized in the target language without the intermediary step of transcription.

Translated intercept evidence (TIE)

Translated intercept evidence (TIE) is not a separate kind of *translatum* but rather describes the performative and legal function that *translata* take on when they no longer serve purely investigative purposes but are used as evidence in criminal proceedings.

Reliability

In science and research, *reliability* generally means that a result is well grounded, i.e. has been achieved using accepted methods and in a transparent way. This condition must also be met and checked in intercept interpreting-translation. In this context, reliability stems from the interplay of legal and translational requirements. Accordingly, reliability calls for agreement concerning what is possible from a translational perspective and necessary from a legal perspective.

2. The legal context

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2.1 INTRODUCTION TO CHAPTER 2

This book focuses exclusively on the translational activity of intercept interpreters-translators (IITs) in the context of criminal proceedings that serve to uncover serious crimes and to prosecute the perpetrators. This criminal context is highly significant to the translational activity of IITs because the work they do and the assessment of what they produce are determined by the legal requirements and the aims of the criminal proceedings.

The translational activity of IITs has two main aims: first, it enables the gathering of information for ongoing investigations to which law enforcement agencies otherwise have no access due to a lack of appropriate language skills. Second, it serves to compile the evidence needed in the subsequent criminal prosecution.

In most cases, the intercept interpreting-translating takes place in the context of criminal proceedings conducted by the state on its own territory. However, it may also occur in the framework of a transnational cooperation between the law enforcement agencies of two or more countries, for example in the context of the Judicial Network of the European Union. Furthermore, it

may be conducted as legal assistance when other states have requested support in the form of communication surveillance in the respective country. Finally, it is conceivable (depending on the language combination) that already created intercept *translata*, such as a translated intercept record (TIR) of an audio recording (Section 4.3.3) or the translation of a chat between suspects (Section 3.3), travel from one legal framework to another. In other words, translated intercept evidence (TIE) produced in one country may in certain circumstances be used as evidence not only in that country but also in another country. It would therefore be important for states to agree on minimum standards concerning this specific type of evidence.

The subsequent remarks are intended as a contribution to the development of such a minimum standard. It is also for this reason that the principle of a fair trial was chosen as our guiding principle. It has already proven its potential in the context of international case law to overcome the traditional polarizations in inquisitorial and adversarial criminal justice systems with their associated divergences. Moreover, it is necessary to explain the fundamental aspects of the legal context without becoming lost in the details of its practical implementation in individual legal frameworks.

The first section in this chapter explains how the translational activity of IITs is legally embedded in criminal proceedings (2.2). In the second section, we present the principle of a fair trial as our guiding principle. This guiding principle determines the legal requirements pertaining to the translational activity of IITs (2.3).

2.2 THE TRANSLATIONAL ACTIVITY OF INTERCEPT INTERPRETERS-TRANSLATORS (IITS): A SERVICE IN THE CONTEXT OF CRIMINAL PROCEEDINGS

Criminal proceedings serve to establish the facts of a harmful incident if it is suspected that the case may be liable to criminal prosecution. In the context of the criminal proceedings, facts and evidence are collected that are intended to help ascertain what happened and whether the suspects are criminally liable for those incidents. What is so unique about communication surveillance in the context of criminal proceedings is that the subject of the investigation is not just what happened in the past (e.g. drug deals that have already been conducted) but that events are being surveilled as they unfold and, in some cases, future crimes or activities can even be anticipated (for instance, imminent drug deliveries). Furthermore, it is part of a stage of the inquiry that must be kept secret from the parties involved. Only in a later stage of the criminal inquiry, once the secret communication surveillance has come to an end, can (and must) it be disclosed to the involved parties that it took place.

For this reason, the IITs' obligation to maintain secrecy is crucially important to the integrity of any such investigation. In most countries, this obligation is established by law and any violation is a punishable offense.

Compliance with this oath of secrecy has an impact on the way IITs organize their work. Their assignments have to be planned and carried out carefully in order to ensure the confidentiality of the information is guaranteed. The ideal solution is for IITs to work on-site, i.e. on the premises of the police or other investigative authorities. This makes it possible not only for IITs to communicate with investigators directly but also minimizes the risk of information being leaked. It is easier for them to remain cognizant of their duty to maintain absolute secrecy, to minimize contact with the outside world, and to uphold the separation between their work as an IIT and their other occupation(s).

However, in practice, this is not the only model of working. For instance, an IIT may be provided with a secure police computer in order to work from home. This computer is to be used exclusively for translational activities in this context. Other models permit IITs to access police systems from their own private computers via a secure connection. The riskiest method from a safety perspective is to send audio or text files via email so that the IIT can translate their content into the target language and then deliver this translation again via email. Each of these models entails certain risks, especially when the work is conducted in a private setting where, on the one hand, family members or others who may have access to the computer or be able to see the screen present a considerable security risk. On the other hand, it is common knowledge that even when safety precautions are carefully observed, private computers and email programs are particularly vulnerable to cyberattacks.

The obligation to secrecy and the associated threat of criminal sanctions facing IITs in the event of them violating this secrecy are vital tools for maintaining the integrity of investigations. Nevertheless, it is largely the responsibility of the contracting institutions to organize the way in which the service is provided such that maximum security is guaranteed. Relocating the job to the private homes or offices of the IITs delegates considerable responsibility to these individuals. Considering their status as freelance service providers, however, they are hardly capable of setting up a secure workplace on police premises by themselves – nor indeed are they able to reject a job purely due to data security concerns.

Once the secret surveillance has been completed and the material is being prepared for trial, the damaging effect of an information leak may be reduced, but the underlying principles of confidentiality and security remain unchanged. For this reason, it is imperative that investigative authorities consider very carefully the balance between efficient task execution through outsourcing and the security of highly sensitive information.

2.2.1 For Investigative Purposes

When law enforcement agencies have to resort to intercept interpreting-translation, they generally do so for two reasons: for investigative purposes and to gather evidence. Investigative purposes concern collecting information about the criminal activities, the roles of the individuals involved, their contributions, motives, actions, and relationships to one another. This information is mostly of immediate relevance and flows straight into the criminal inquiry. For example, if the translational activity of IITs provides the law enforcement agency with intelligence that drugs are currently being parceled out and repackaged, officers can take an immediate decision to carry out a raid to make arrests and confiscate the drugs (see Section 3.1.2).

As communication surveillance is a measure that invades the privacy of those surveilled and is therefore legitimized exclusively in the interest of criminal investigations, law enforcement agencies are required to disregard any surveilled content that is presumed to bear no relevance to the criminal proceedings. An important first step when assessing surveilled communications is therefore the task of eliminating such content. When the persons under surveillance communicate in a foreign language, the only persons capable of conducting this filtering task are IITs (see Section 3.5).

When the translational activity of IITs is exclusively for investigative purposes, the oral and written *translata* initially remain with the law enforcement agencies and no material is generated a priori that directly enters the criminal proceedings as translated intercept evidence (TIE). However, in practice it is not always possible to draw a clear line between investigative purposes and gathering evidence, as will become clear below (Chapter 5). Taken as a whole, the translational activity of IITs may in some circumstances have a profound influence on the criminal inquiry, seeing as it serves not only to translate the content of conversations from one language into another but also to prioritize information at every stage and thus guide the course of the investigation. Consequently, from the very outset of the investigation, the translational activity of IITs may prove determinative in shifting suspicion from one individual to another or the focus of investigations from one criminal act to another about which there had been no prior knowledge. On the other hand, misleading intercept interpreting-translating may result in bad decisions being made concerning raids or even incarcerations.

2.2.2 To Gather Evidence

In many countries, certainly all member states of the EU, the USA, the states of South America, Canada, Australia, New Zealand, and Switzerland, intercept interpreting-translation is also conducted for the purpose of gathering

evidence. That even applies to the United Kingdom and Ireland, where evidence from communication surveillance is generally inadmissible. In truth, however, there are numerous exceptions to this rule that ultimately do make it possible for such evidence to be considered. For instance, evidence from communication surveillance is admissible if it concerns telephone conversations from prisons or conversations recorded by bugging devices for rooms or with the aid of foreign law enforcement agencies. Its customary dismissal as evidence obviously rests primarily in the concern that their admittance would necessarily entail the disclosure of police methods.

Generally speaking, TIE is presented in combination with other forms of evidence. For example, a surveilled conversation may contain a confession of rape and hence help to convict a perpetrator who had not previously been a suspect or against whom prior evidence had only been circumstantial. In this case, the audio recording of the conversation would be the primary evidence. However, if the recording were conducted in an Indonesian dialect, the translated intercept record (TIR) written by the IIT (secondary evidence) would be used instead, as this alone can be understood by law enforcement agencies and courts outside of Indonesia.

In addition, the translational activity of IITs can generate evidence that, in combination with other evidence or clues, can help prove actual criminal acts. For instance, the fact that someone frequently flies between São Paulo and Zurich is obviously not in itself evidence of drug trafficking. However, if those flights coincide with chat messages discussing the import and distribution of cocaine, the translated chat messages become a useful piece of evidence.

As a general rule, legal systems require higher standards of the intercept *translata* that serve as evidence than of those that serve investigative purposes. We discuss and define these requirements, which are of a legal and a translational nature, in Chapter 5.

2.3 THE FAIR TRIAL AS A GUIDING PRINCIPLE

When the translational activity of IITs is intended to assist with investigations or produce evidence, care must be taken to adequately safeguard the fundamental rights outlined below. The rights selected here all stem from the universally acknowledged guiding principle of a fair trial during criminal proceedings and are widely supported around the world. Indeed, the right to a fair trial is laid down in various international treaties: in the European Convention on Human Rights (Art. 6), in the American Convention on Human Rights (Art. 8), in the International Covenant on Civil and Political Rights (Art. 14), in the African Charter on Human and Peoples' Rights, and in the African Commission on Human and Peoples' Rights' Resolution on the Right to a Fair Trial and Legal Aid in Africa.

The principle of a fair trial is also closely connected to the rules governing evidence in each of the legal frameworks. As mentioned in the introduction to this chapter, in this book we refrain from expounding on its implementation and inclusion in the criminal procedure law of individual legal systems. In view of their sheer variety and detailed differences, that would be a virtually insurmountable task. Rather, our aim is to offer universal assistance on the basis of a fundamental legal concept guided by the principle of a fair trial.

The basic idea behind the principle of a fair trial is to establish a balance between the interests of the state and those of the individual. Both interests can be severely compromised during criminal proceedings by shortcomings in the translational activity of IITs. By contrast, respecting the following rights and their impact on the translational activity of IITs protects, on the one hand, the interests of the state, which for instance avoids the risk of lengthy and costly investigations ultimately foundering on an inadmissible (and therefore unusable) piece of TIE. On the other hand, respecting a fundamental legal concept based on the principle of a fair trial also protects the individual by reducing the risk of wrongful arrest or a miscarriage of justice.

The fundamental right to have access to an independent and impartial court is indisputably the central right derived from the principle of a fair trial. However, it would be wrong to infer that the principle of a fair trial applies only to court proceedings: in fact, it comprises the entire criminal proceedings, including the investigation and criminal prosecution stages. Consequently, both the investigation and the gathering of evidence must be guided by this principle. After all, it is hard to imagine how a trial could be deemed fair if the preceding stages of the proceedings had already contravened the principle of a fair trial. Furthermore, the field of application for the principle of a fair trial would be severely limited if it were only to apply to court proceedings. It should not be forgotten that public prosecutors settle many criminal proceedings in the criminal justice system by arbitration and the court plays only a marginal role.

In the context of the translational activity of IITs, we postulate that three rights in particular, which can be derived from the principle of a fair trial, require special consideration. In the first instance, the right to an impartial and balanced criminal inquiry must be observed (Section 2.3.1). That has various implications, especially on the role of IITs and their integration into criminal proceedings. The right of defense is another principal starting point as it has a direct impact on the way the translational activity of IITs is organized. For instance, it establishes the defendants' right to be informed about the intercept interpreting-translating and the resulting TIE. Indeed, an effective defense is only possible when the defendant and their defense are granted access to the results of the translational work (Section 2.3.2). Finally, the principle of a fair trial necessitates adherence to the equality of arms principle, which in terms

of the translational activity of IITs leads to the demand for it to be possible to review the results of their intercept interpreting-translation and for appropriate review mechanisms to be in place (Section 2.3.3).

2.3.1 The Right to an Impartial Investigation

And that's the way it is/ it always used to be the case that the interpreter basically steered the proceedings. To put it very simply. The interpreter steered the proceedings. And gave himself work in that way. Of course. Always generated assignments for himself. He stretched the proceedings out, and out, and out. Easy for us. We could/ we were successful. We were successful. We kept having arrests, we were always/ it was never wrong. But we had/ you never had to wonder what's the next step? Have we achieved our goal? What did we/ did we even set ourselves a goal? That's always first. // Setting a goal. // Drawing up a hypothesis. And what's the goal and how much are we going to spend on it? And then pursue that goal. That/ that never happened. It was just done, done, done, done. And then the interpreter said, "Yeah, it's getting a bit much now, it's getting a bit much now, we need someone/ we need someone else. Otherwise I can/ otherwise I can ask my colleague Jimmy and he, he works too you see, he's not working to capacity at the moment. Maybe he has some time, he's really good". And in most cases we know the person and say, "Yeah, that's OK". Then he called him and got his colleague involved and then/ // we didn't/ // they did the job together. And then he translated for us and we didn't have to do anything for it. So they gave each other jobs too. Definitely. Or/ so/ that time isn't over, but that role is/ it is somehow/ well, there is still/ well [name of the IIT] for example is someone from that old school who likes to stretch out the proceedings. And then we have to slam on the brakes, right. And he obviously has good contacts too. (POL3a)

This quote from a police officer shows one of the various forms that bias can take in the context of translation and interpreting during communication surveillance operations. In this chapter, we cover a number of such forms after first explaining what impartiality actually means when it comes to the translational activity of IITs.

The right to an impartial investigation in essence means that both incriminating and exculpatory factors must be taken into account during criminal proceedings. Regarding intercept interpreting-translation and the external language service providers involved in that task, legal practice endeavors to guarantee impartiality by making requirements of the IIT, the investigative process with IITs, and the translational service they provide. However, these endeavors can be only moderately successful so long as the predominant understanding within the criminal justice system is that IITs are siloed and therefore deliver *translata* in a manner entirely detached from the context of criminal investigation and prosecution processes. Yet from the perspective of the sociology of law and of translation studies, this notion approximates to fiction. It is probably the result of IITs being ascribed the status of independent experts, which is the

case in Switzerland and Australia, for example, as the following excerpts from judicial decisions reveal.

Swiss judicial decision:

The status of the interpreter is in fact comparable to that of an expert [Art. 182 ff. of the Swiss Criminal Procedure Code (StPO), authors' note]. Consequently, in addition to the legality of the surveillance, it must be ensured that the translation is conducted in line with the rules that apply to expert assessments. In particular, the interpreter must swear an oath in accordance with standard procedures and be made aware that s/he is criminally liable for any incorrect translations. (Swiss Federal Criminal Court SK.2007.27, judgment from 30 October 2008, E. 5.2.3; original text in French)

Australian judicial decision:

55. Mr Y Lee's translations of the Kakao Talk messages were challenged in a number of respects. As I perceived the challenge, it was not to the witness's impartiality, but to the accuracy of some of the translations and his methodology. More generally, it could be said that the challenge was to Mr Y Lee's reliability as an expert.

56. In any event, I am satisfied that Mr Y Lee approached his task impartially. In cross-examination he was prepared to acknowledge that alternative translations were open when they were put to him and, upon reflection, he considered them to be reasonable. I am also satisfied that generally his translations were accurate, and where there was ambiguity he indicated that in a translator's note. (Supreme Court of Western Australia, *R -v- YANG* [2016] WASC 410)

Several formal requirements result from attributing to IITs the role of an independent expert. Ideally, the law enforcement agencies will have checked the language service providers' good character, potential conflicts of interest, and freedom from debt prior to entrusting them with intercept interpreting-translation assignments. Being free from debt is crucial for IITs to prevent them from being susceptible to blackmail and thus revealing secrets of the case to third parties.

Our data show that only three of 46 survey respondents had applied to work as an IIT in response to an official job advertisement (Q23). In the vast majority of cases, the respondents stated that they had been encouraged by private or professional contacts to send an unsolicited application or had been contacted directly by the department of public prosecution or the police. Procuring assignments for oneself or an acquaintance or recommending acquaintances for such assignments, as illustrated by the quote at the beginning of this section, is mentioned in various interviews with police officers. Evidently, it is common practice to ask tried and tested IITs whether they know anyone who speaks a required language or dialect so that the police can contact that person directly. Just 30 percent (14 of 46) of the IITs who responded to our online

survey were invited to an in-person meeting before being awarded their first assignment, and only 7 percent underwent a recruitment test. Others were merely interviewed over the phone or were given their first job immediately without any interview whatsoever (Q23).

Alarminglly, a third of the IITs we asked responded that they were hired without any systematic checks of their language skills being conducted. Alternatively, in some cases, their language skills and those translation competences specifically required for intercept interpreting-translation were checked by experienced IITs, e.g. in the form of them proofreading the first *translata* produced by the new recruit. These in any case rudimentary checks on their qualifications are virtually nonexistent when there is only a very limited number of IITs or none at all for a specific language or if, in urgent cases, tried and tested individuals are already working to capacity. In such an event, it may even come to pass that the investigators responsible have to do without good skills in the target language or even basic general knowledge or skills.

Well, when we have interpreters who for example can't work a computer, then a police officer[r] has to [sit] next to them [and] write it down. So the interpreter talks, translates it from the foreign language into [official language of the country] and then the police officer writes it down. // If the // interpreter can't type. (POL1)

[...] it's not as if it was a dialect that none of the others understood, it really was just [official language of the country] and that wasn't a problem. And then he wrote in [official language of the country] and then there was the colleague, but then they said: "It's better to write it in [official language of the country], because what you're writing in [official language of the country] I can't understand". (POL4)

Another important reason why IITs' skillsets or suitability may not always be checked beforehand is that communication surveillance operations cannot be planned and the need for such an operation and the resulting volume of work can change spontaneously. The high degree of availability required of IITs can therefore present a problem for both sides:

Of course, that person may also say, "I don't want to do any communication surveillance, for example" or "I don't want/ I only do written translations" or "I can only do during the day" or "I can never work weekends" or "I can ONLY work weekends", that's these/ and that's shown in the register of interpreters. And we, we obviously need people who, I'll exaggerate, are available 24/7. That's what we need. And then our choices are pretty limited. And then there's a handful of interpreters or rather language service providers who can do that, and that's why we've been working with certain people for virtually decades. (POL3a)

From the IITs' perspective, half of the respondents to our survey (52 percent) stated that they generally have to be available within a maximum of two days, while 39 percent are normally contacted three to seven days before a new

assignment starts (Q64). A third of all respondents (31 percent) said that they are very frequently contacted in urgent cases, whereas for the majority of IITs (46 percent) this is seldom the case (Q69). However, if they are needed urgently, they have to be ready immediately or within just a few hours. This makes it clear that IITs who are particularly busy – and, of course many of them often also work in other areas in and outside of the justice system (Section 1.3) – are not able to meet these requirements, meaning that the police are then obliged to find ad hoc solutions. In such situations, checking that a person has a good character or no debt may only take place after the event.

Coming back to the matter of ensuring impartiality, it is therefore necessary to take several factors into consideration. As already mentioned, potential conflicts of interest are significant in this context. Even the mere semblance of bias compromises an IIT's ability to assume the role of an independent expert. Consequently, wherever practicable, the law enforcement agency must check any conflicts of interest that the IIT may have at the beginning of the inquiry, or at least while proceedings are still ongoing. For instance, such partiality exists if the IIT is related to, friends with, or has a hostile or other relationship with the target. A clear case would be if the IIT recognizes that the target is their brother-in-law. More difficult questions are raised by constellations involving political conflicts or clan criminality: should a Tamil-speaking Tamil who fled the civil war against the Liberation Tigers of Tamil Eelam paramilitary organization in Sri Lanka continue working as an IIT if it comes to light that the target was a member of that enemy paramilitary organization? Should a Turkish IIT be given the job if it transpires that they live in the neighborhood where the targets are trafficking drugs?

This requirement that the IIT is independent affects not only the content of the investigation but also the nature of their relationship with the commissioning law enforcement agency. As elaborated above, IITs have to be extremely flexible. The translational activity of IITs is contingent upon their ability to be on standby and start work with little prior notice, including at unusual times. Added to this is the fact that the duration and volume of such jobs tend to vary and can increase, decrease, or even stop with little warning, since it is determined by the law enforcement agencies' needs and the course of the criminal proceedings. As the language service providers are almost always freelancers working on a contractual basis, their intercept interpreting-translation assignments must be organized around other professional obligations – sometimes for a considerable period of time and almost always for an unknown duration. Asked how long their lengthiest assignment in the context of an investigation lasted, IITs' answers ranged from just a few hours to several days, weeks, or months and up to five years (Q51). Assignments that last several years generally comprise several subsequent and related operations. Furthermore, the time spent on such assignments can vary greatly within these time periods,

from several hours a day to just a few times a month. It is thus hardly surprising that only about a third of respondents declared their translational activities as an IIT to be their main source of income. Over half (57 percent) of respondents stated that they are given no information as to why an operation has come to an end or why they are no longer needed (Q54). When the reasons are known, the translational activities usually end with the arrest of the targets and the conclusion of the investigation. As already explained in Section 1.3.4, however, it may also be the case that an investigation is abandoned because it has proven inconclusive, the surveillance of an individual is no longer authorized, or, when there are several IITs with the same language combination, not all of them are needed any longer. All this gives rise to an insecure work situation and associated financial insecurity, and, consequently, strong competition among IITs, especially when it becomes clear that an operation is coming to an end or being scaled back and therefore fewer IITs will be required (Q129).

From our point of view, the situation as it stands poses three risks. One risk to impartiality consists of “doing favors”, namely when an IIT thinks the law enforcement agency is better served when they pay particular attention to incriminating content and choose the more incriminating interpretation when the source material is unclear, perhaps because it is acoustically or linguistically difficult to understand (Section 6.2.4).

Another risk pertains to the uncertain scope and duration of the interpreting-translating assignment (Section 6.2.4). The quote from a police officer in the introduction to this chapter makes plain the danger that IITs may actively voice recommendations about surveilling new targets in order to broaden or extend an operation that may otherwise have been coming to an end. This risk is especially present when IITs have become financially dependent on an operation due to its substantial demands on their time and its long duration. A third risk that will be discussed from various perspectives in the following sections occurs when there is no clear differentiation between the interpreting-translation assignment and the police investigation. Especially when there is close communication and at times long-standing cooperation with the police, there is the risk that IITs may conceive of themselves as “auxiliary police officers”. The literature refers to empirical studies that have demonstrated that objectivity can be significantly diminished when an additional person is required to write things down and perhaps even carry out translations, as this inevitably involves that person construing or reinterpreting what the IIT has said. If that person then believes they are able to infer certain meanings based on their knowledge of the investigation, it can lead to interpretation errors with serious consequences. This is illustrated by the following case in which it subsequently became clear that the term “the boys” (“die Burschen”) overheard in a telephone conversation had been consistently translated as “people asking to be smuggled” (“Schleppungswillige”) because the inquiry had commenced

due to suspicion of smuggling taking place on a professional scale within a criminal organization.

The witness [the IIT working on the wiretapping] was forced to admit that he had incorporated arbitrary additions and interpretations. For instance, in the original a speaker could be heard to say “tell them that he is the smuggler”—here the translator arbitrarily inserted a name from the file. He was also reprimanded for his use of the term “Schleppungswilliger” [person asking to be smuggled] in the wiretapping records, which had in fact never been uttered in the audio recordings played here today, as the three interpreters here present, who are under oath, confirmed. (6 July 2023, original text in German, accessed 26 June 2024 at <https://www.vienna.at/wiener-neustaedter-schlepper-prozess-dolmetscher-am-6-tag-befragt/3952531>)

In the example cited above, the IIT let himself be influenced by an idea that he himself or the police mooted, thereby misrepresenting the statements of those involved in the conversation by presenting his own personal – and erroneous – interpretation as evidence. That being said, we must question whether it is ever possible to deliver a translational service without context.

After all, the notion of the IIT being an independent expert who conducts their translational activity impartially is inconsistent with the fact that the IIT and the police investigators depend on one another to carry out their tasks.

And the whole [unintelligible; poss. tech?] of, of cryptocurrency, that was new to us too. So it was new to the interpreters as well. And then they had to get their heads around it and ask certain things. And so they asked us. We researched it together, pooled our knowledge/ well it/ read up on it a bit or shared information so that we were all equally well informed. So that we knew when we were talking about something that everyone understood what we were talking about, roughly how it works. Because then the conversation/ because the people we had under surveillance, some of them were throwing around technical terms. And so that we could get a fix on them, so that we could interpret what the conversation was about, we obviously had to acquire some background knowledge. And that was/ precisely, an interpreter has to do that too. Because if they say, “I only write down what I hear”, that’s not exactly helpful. Right? (POL6)

Despite the mentioned risks, close cooperation with law enforcement agencies is vital in order to gain an overall picture by pooling the diverse sources of information to which each party has exclusive access (Section 3.5). In this respect, the criminal justice system’s notion of translational activity being entirely independent of the work of criminal prosecution bears little resemblance to reality. Therefore, the question arises whether and to what extent IITs should be provided with background information and specific facts of the case. In the following quote, an investigator voices their concerns about sharing prior information with the IIT.

Nevertheless, the interpreter is and remains a private citizen who is working for the police, so we try not to tell them too much. And two, we try not to influence them too much. You see? But all the information we have for the other methods of the investigation, the translator doesn't necessarily know that, so actually when they're uncertain about something, they say, "what do you think, is that important? He's talking about traveling to Luxembourg, you think that's important? Because to me [...]". To them that may not be important, he's going there/ you see he says he's going to Luxembourg to see his mother, but us, maybe we know that when he [the suspect] says, "I'm going to see my mother in Luxembourg", that he's actually going to see his banker to launder some money. You see? And then we say, "OK listen, translate word for word because that's interesting", you see? And then they translate it word for word, et cetera, and that's the contact we have with the interpreter. (POL7)

However, what the investigator does not seem to be aware of is that this approach may result in a delay and possibly even misjudgments of intercepted content initially going undetected. As the IIT in the example cited above has not been informed that Luxembourg plays an important role in that investigation, they may filter out those conversations as being irrelevant (Section 3.4), meaning that they would then be overlooked and their relevance may only later come to light. Informing the IIT beforehand would, on the one hand, avoid the risk of misjudgment and, on the other, prevent time from being lost during the ongoing investigation while the IIT gathers this information.

Legal practitioners often cling to the fiction that IITs simply transfer what they hear or read from the source language into the target language and that they are able to conduct this task neutrally and objectively if they have no knowledge of the case. This fiction is particularly persistent when it comes to producing the TIE. From a legal perspective, the IIT who produces the transcript in the source language or the TIR, both of which are intended to serve as evidence, must not have been involved in the intercept interpreting-translating previously conducted for the purposes of the investigation.

This fiction stands up neither to the reality of translational activity in general nor to the translational activity of IITs in particular; nor does it reflect the fact that IITs already understand the context, are made aware of, or are already party to police intelligence. For example, they may already have worked on a related case and therefore recognize the targets' voices (Section 3.5), or the IIT may hear noises in the background and share this information by connecting it with what is said (e.g. hearing a rustling and construing it to be the rustling of foil used as packaging when parceling out drugs). However, it may also be the case that the police have informed the IIT about certain terms or the IIT has experience with the topic and has interpreted an expression to have a certain meaning (e.g. that 420 – "four twenty" – refers to cannabis or, to take an example from German, that "Do you have five minutes?" means "Do you have five grams of cocaine?"). Only with this knowledge may a *translatum* make

sense, whereas a verbatim translation – though exact – would be an inaccurate rendering of the content.

In summary, the right to an impartial criminal investigation in the context of intercept interpreting-translating is significant in a number of respects: first in relation to the IITs (their impeccable character, their qualifications), second in relation to their role during the inquiry (the question of their independence), and third in relation to the expectation that their *translata* will be accurate. The following sections discuss these aspects in detail. Only with the additional knowledge conveyed therein can the right to an impartial investigation actually be brought to bear when it comes to the translational activity of IITs.

2.3.2 The Right to Effective Defense

The situation described above demonstrates the importance of the second fundamental right, which is particularly relevant in connection with the translational activity of IITs. Effective defense against accusations of having committed criminal acts necessitates that a fair hearing be respected by guaranteeing that notice is given about the evidence on which the law enforcement agency has based its case.

The defense's access to such information is a sensitive subject in every legal system, and the right to be notified of evidence is effectuated differently depending on the underlying nature of the criminal proceedings. Due to the fact that criminal proceedings in Continental Europe, which tend to be of an inquisitorial nature, are principally organized around case files, an effective defense necessitates access to the case file, meaning that notice of evidence must be given to guarantee a fair hearing. By contrast, in legal systems based on common law, which tend to be of a more adversarial nature, disclosure rules ensure that notice of the evidence is given. What is crucial when it comes to enforcing the right to be notified of evidence in the context of intercepted and translated communications is both the timing and the volume of material shared.

The focus here is first and foremost the TIR, meaning IITs' written work, as the audio recordings of the intercepted conversations are not generally understood by the defense. There are two conditions without which an effective defense in this context is not possible. First, information about the identity of the IITs and the fact of their being duly informed of their duties (duty to maintain secrecy and to testify, as well as their duty as experts to deliver an accurate *translatum*) must be known. This information makes it possible to check their impartiality. Second, in this context, guaranteeing an effective defense is contingent upon the defense having access to an interpreter. This access is important to put them in the position of being able to check whether the TIR renders the content of the intercepted conversation accurately, whether

important content has been omitted, or whether the content under consideration has been misinterpreted (Chapter 5).

While the defense is understandably keen to be notified of such evidence as soon as possible, law enforcement agencies generally seek to defer its release. Especially in the case of TIRs, however, it may also be in the law enforcement agencies' own best interests not to wait until the end of the criminal inquiry, shortly before the indictment, to test their quality as evidence (Section 6.2.3). In practice, at a certain point in the investigation, police officers and prosecutors inform the defense and the accused during a hearing that their communications had been intercepted and provide them with a TIR. This may or may not be accompanied by the relevant excerpt of the audio recording of the intercepted conversation being played. The interpreter mandated for interpreting the hearing is then faced with the task of also translating the content of the TIR back into the original language so that the accused can be notified of its content.

If TIRs are disclosed on a larger scale, the defense may in some circumstances be presented with the problem of having to deal with a mass of material: if ten thousand hours of recorded telephone conversations amassed over a period of 20 months' surveillance are made available, then being effectively notified of all that evidence is difficult. The timing of the notice also plays a key role: if the defense only receives the material shortly before the arraignment, the processing of that material can only be cursory or may even be entirely impracticable. Moreover, notice is impossible if the defense has no knowledge of the source language and the suspect has no knowledge of the language of proceedings. These aspects bring us to the third fundamental right, namely the right to equality of arms, for which the verifiability and effective verification of the translational activity of IITs is a prerequisite.

2.3.3 The Right to Equality of Arms

The right to equality of arms in criminal proceedings essentially means that both the law enforcement agency and the defense must be able to set forth their view of events. Yet, in early stages of the inquiry, the defense's right to see the results of the investigation may be limited. Equality of arms must be observed at the latest when the evidence is presented in court. In connection with the translational activity of IITs, the right to equality of arms leads to the legal requirement for it to be possible to express doubts about the intercept interpreting-translation. This should lead to an *ex officio* review being launched, or the defense should be able, upon adequate statement of grounds, to legally demand such a review.

As the original-language content of intercepted communications can only be understood with the support of an IIT and the translational activities already

completed can only be reviewed by an IIT, it is self-evident that this cannot be one and the same person. Moreover, if new renderings of certain passages need to be produced in the target language, it is mandatory that these too be disclosed to the parties involved. That means that the parties must be notified of these *translata* and any related information. Producing new renderings of disputed TIRs is time-consuming and costly, as it requires listening to the audio recordings to which it relates once again. For time and financial reasons, some legal systems allow for new renderings of the disputed passages to be produced during the trial at court by the interpreter present. However, we advise against doing this because the poorer audio quality as a result of the material being played via loudspeaker, the time pressure, and the considerable psychological pressure on the interpreter owing to the trial setting are more likely to impair rather than improve the impartiality of the interpreted-translated product. The cost factor is an important point when it comes to equality of arms. As it is definitely in the interest of the criminal justice system for *translata* to be reviewed when there are indications of discrepancies in order to uphold the caliber of the criminal justice system, passing these costs on to the party that called for the review would be unjust and would greatly undermine the right to equality of arms. When it comes to *translata* being challenged as well as the traceability of the translational service, in terms of procedural economy, the ideal solution would be to first transcribe the recorded conversation in the original language before translating the transcript into the target language in a second step (see two-step method). However, few legal systems have the time and resources available to facilitate such a process. This makes a review all the more important. Which raises the question on what grounds and under what circumstances and conditions should and can a review actually be undertaken?

Grounds for the review are usually given by the defense and the accused. These cannot be limited to blanket criticism but must demonstrate the nature and extent of alleged inaccuracies by reference to specific examples. Yet, such a review and criticism are only possible when the aforementioned documentation of the IITs' work is available. For example, if the criticism is leveled that certain expressions are used as code words ("Frieden kommt" ["peace is coming"]) for an upcoming drug delivery; "car" or "tire" for finger cots filled with cocaine), the criticism is justified if the interpretations are undeclared because such interpretations can call the soundness of the evidence into question. By contrast, according to the principle of the free evaluation of evidence, in the case of declared interpretations, the court is free to decide whether they deem the interpretation appropriate on the basis of a diligent review.

It may be advisable to call the IIT as an expert witness, to present the challenges to their translational activity to them directly. That is certainly more appropriate than questioning police officers about communication content that they themselves are unable to understand in the original. If need be, police

officers could be questioned about their choice of IIT, how they briefed them, the nature of their collaboration, and how certain excerpts from the TIRs were integrated into the case files.

We feel it is important to emphasize once again that the review is part of the law enforcement agencies' obligation to exercise diligence, and that a review must therefore be carried out of the authority's motion even if no criticism is voiced by the accused but the law enforcement agency itself has doubts.

3. The translational process

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3.1 INTRODUCTION TO CHAPTER 3

When the term “translational process” is used, it can refer to very diverse kinds of process. On the one hand, the term refers to the cognitive processes activated during the interlingual transfer. A second related definition describes the steps taken by the intercept interpreter-translator (IIT) while they are working, in the sense of the translatorial strategy that the IIT employs to carry out that specific translational assignment. A third meaning focuses on the cooperation between those involved in the translational process and the resulting workflows. As all three types of process are important for translational work in communication surveillance, we will begin by defining them. Differentiating and describing the translational processes in detail enables us to identify the main features of translational work in communication surveillance that make it distinct from other translatorial activities and require not just general translational skills but also specific abilities and competences (Chapter 6). As already

mentioned, these features reside in the hybrid nature of the translatorial activity and in the non-translatorial demands made of IITs.

The first kind of translational processes comprises the cognitive processes activated during the interlingual transfer. The latter can be divided into reception, transfer, and production stages, with different cognitive processes being activated in each stage. However, these stages are not entirely distinct and consecutive but rather merge and overlap. Before describing the individual stages in more detail, it is important at this point to emphasize the importance of the brief given to the IIT by the investigator responsible, because it has a considerable impact on all three stages. For example, if the IIT is instructed to watch out for anything that might suggest the suspects were planning to rob a jewelry store in the course of a spate of burglaries, or to categorize all nighttime conversations as either relevant or irrelevant to the investigation, that will influence the IIT's perception and the subsequent stages of transfer and production.

In the narrower sense, therefore, the reception stage comprises all the actions and processes from the first stimulus to the conscious sensing and processing of, and response to, the specific source information. In the broader sense, however, it starts before that, at the point when the IIT is being briefed by the investigator. It continues when the IIT moves into their workplace and puts on their headphones to listen to the intercepted conversation or opens the file containing the text messages compiled for translation. Different reception processes are activated depending on whether the source information is oral or in writing. With audio information, the brain processes not just the spoken word but also other audible phenomena, such as para- and metalanguage (e.g. laughing or shouting), prosody (vocal rhythm and intonation), and extralinguistic information on the conversational setting and context (e.g. background noise). When the source information is presented in writing, the brain also processes the typeface and graphic characters.

During the transfer stage, the information heard or read in the source language is processed and the interlingual transfer prepared, i.e. decision-making processes take place concerning how to render in the target language the content heard or read in the source language. The way the verbal information is processed and rendered in the target language is influenced by the aforementioned para- and extralinguistic phenomena. Furthermore, depending on the brief, the IIT will make a selection as to what information they will render and in what way in the target language (Section 3.4).

Finally, in the production stage, the processed information is rendered in the target language. The end product consists of an oral or written *translatum*. Different cognitive processes are activated depending on whether the target text is rendered orally or in writing (Chapter 4).

Common to all these cognitive processing stages is that they are both automatic processes, such as sensing and processing the input signal, and conscious

processes, such as opting for one expression in the target language rather than an alternative.

The second kind of translational process concerns the operative steps taken by the IIT. Although they are closely related to the cognitive processes, they are nevertheless a distinct kind of process because the focus here is on the translatorial strategies employed to carry out the specific translational assignment. Depending on the brief – whether the IIT is required to produce a short note, a summary, or a translated intercept record (TIR) – the nature and sequence of the steps taken will vary. Whereas for a short note the IIT simply listens and makes a decision about the conversation's relevance to the investigation, different analytical processes are involved when the IIT is instructed to write a summary and has to decide which aspects of the conversation are important for the investigators and should therefore be summarized (Section 4.3). This differs again from the analytical processes involved in the production of a TIR. At the same time, the IIT is carrying out operative steps, by e.g. opening specific windows or programs on their computer to enter the text summary in the target language. Moreover, problem-solving strategies are also part of this translational process. For example, the IIT may decide to listen to certain passages of an audio recording twice or even three times in order to understand speech that is not clearly enunciated or muffled by background noise. Or they may research unfamiliar place-names on the internet in order to render them accurately in the TIR.

The third kind of process concerns the outermost circle in our diagram of the translational activity of IITs: the way the complex of actions is shared between the various actors involved and cooperating in the entire surveillance and translational process. Essentially, this process revolves around the division of tasks and the collaboration between IITs and investigators.

These three kinds of translational processes can be illustrated as shown in Figure 3.1

As translational work in communication surveillance – as with other translatorial activities – is a holistic process in which the three kinds of processes described above intertwine, in subsequent sections we treat the different kinds of translational process and the sequence of translatorial stages as an overall process and explain how these process types can influence each other. We differentiate first between the translational processes involved in oral and written source information (Section 3.2). Then we elaborate on the processes of contextualizing and recontextualizing the intercepted conversations, which are key aspects of translational work in communication surveillance. Finally, Section 3.5 describes, on the basis of the results of our research project, the complex of actions between IITs and investigators that constitutes the framework of all other translatorial processes. The nature of this framework differs depending on the stage of the investigation, the individuals involved with

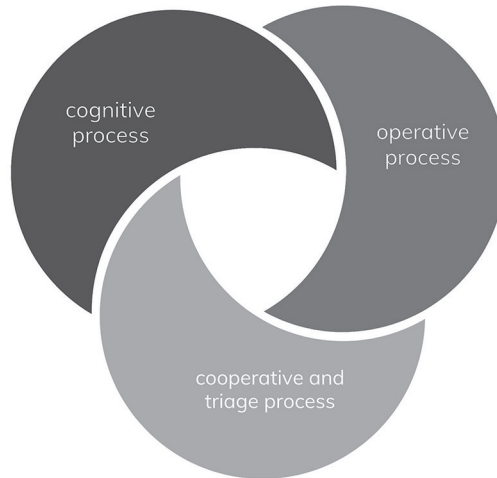


Figure 3.1 Three kinds of translational processes

their unique ways of working, the urgency, and the requirements of the police and the department of public prosecution, as well as the intended use of the *translata*.

3.2 TRANSLATIONAL PROCESSES ACCORDING TO THE TYPE OF SOURCE INFORMATION

As described in the introduction, the nature of the source information to be rendered in the target language plays a significant role in determining which cognitive processes are activated and which steps are undertaken. As in other forms of translational work, in communication surveillance the source text may be oral or in writing, and the rendering carried out by the IIT results in an oral or written *translatum* in the target language. What differentiates intercept interpreting-translation from these other forms is its unique combination of several factors:

- its hybrid form comprises both translation and interpreting processes;
- the fact that aural source information can be perceived exclusively via the auditory channel, while nonverbal information like gestures, positioning, or kinesics, which aid understanding in natural communication settings, are not available;

- the relevance of para- and extralinguistic phenomena that are part of the source information and whose rendering in the target language may be instrumental in understanding conversations; and
- the fact that IITs carry out not only translatorial but also non-translatorial tasks.

In the following sections, we present the various cognitive processes, transfer strategies, and work processes, which differ depending on the source information. We start with the processes that tend to take place during the interlingual processing of intercepted communication, regardless of whether the conversations have been recorded or are being listened to in real time. Then we introduce the processes specific to the type of audio information (Section 3.2). Finally, the cognitive processes triggered by written source information are discussed (Section 3.3).

3.2.1 Processes Involved when Source Information is Aural

The way the brain receives and processes aural source texts differs from its response to written source information. As mentioned above, the reception stage begins at the point of being briefed and primarily features the processes of sensing, processing, and comprehending aural information. Below, these subprocesses are subsumed under the term “listening process”, which is fundamental in communication surveillance when the source information is aural.

The translational process changes depending on whether the source information is provided in the form of recordings or in real time. For instance, audio recordings can be replayed an unlimited number of times, in order to aid the IIT’s understanding of unclear passages. By contrast, rendering audio input into the target language in real time puts IITs under considerable time pressure as the content of the conversation must be understood and conveyed in the target language instantaneously, and it is not possible to listen to the conversation again during the rendering process.

The second important factor influencing the processes is whether the transfer should result in an oral or written product. In other words, IITs can convey the intercepted content to investigators orally with various levels of detail (Section 4.2), or they can write it down and this written text can serve various purposes (Section 4.3).

Transferring audio information to a written target text requires IITs to employ strategies from both translational forms – interpreting and translating. Hybrid translational strategies are needed because different modalities of language are processed jointly during the translational assignment. We therefore deem the translational activity of IITs a hybrid field of translational work.

A common characteristic of all aural source information in communication surveillance is that it is intercepted from a distance and generally without the knowledge of the persons under surveillance. For the translational processes, this presents specific challenges that are unique in their combination; they are listed here by way of an overview and elucidated below:

- the unstructured nature of spontaneous communication;
- the lack of visual information to aid understanding;
- ambient noise and acoustic shortcomings;
- temporal and/or spatial distance from the intercepted conversation; and
- covert communication as a deliberate tactic to impede understanding.

Spontaneous communication between individuals is unstructured and rife with mutual interruptions and incomplete sentences, which can prove difficult even in natural settings. In the surveillance setting, matters are complicated further by the fact that, generally speaking, information can only be perceived via the auditory channel, meaning that visual information concerning gestures, facial expressions, and body language is lacking. It should therefore be assumed that the conversation cannot be perceived in its entirety. Added to this is the fact that IITs are unable to ask any questions to clarify unintelligible expressions or concepts. They have no opportunity to check whether their auditory perception is correct. Especially when ambient noise or poor acoustics make it difficult to hear what is being said, IITs have to work under exceptionally adverse conditions. For example, their ability to listen is severely inhibited when the surveilled individuals talk in undertones or whispers and are drowned out by loud music in the background or other sources of noise, which moreover may start suddenly and unexpectedly, thereby potentially damaging the IIT's hearing.

The apartment is bugged, exactly. // ((laughs)) Behind the coffee machine, AH! Every time I look out the window and suddenly it starts up or something, then it makes me jump out of my skin, "AH! Yet another noisy machine". Yeah, you don't expect it and then we asked the special electronics people: "Where did you put it? It's startled us hundreds of times"—"Yeah, behind the coffee machine, there was no other way". (IIT5)

Another factor that influences the reception and transfer process is that the IIT is always spatially distanced from the communication, which makes it difficult to contextualize the conversational setting. In the case of recorded audio information, the IIT is also temporally distanced from the conversation (Section 3.2.1.1): the intercepted communication is already over at the point when the IIT is analyzing it, meaning that the conversation is being processed retrospectively. In order to contextualize the conversation, it is therefore necessary to

gather chronological information. In other words, the content of a conversation may not be understood the first time it is heard and may only make sense when combined with the conversations intercepted beforehand and afterward.

When the suspects' communication is transmitted in real time, the IIT is spatially distanced from the scene while simultaneously under immense time pressure to convey the content of the conversation as it happens (Section 3.2.1.1). They are thus expected to overcome all the aforementioned obstacles to understanding immediately and without the possibility for content to be repeated or replayed. It should not be forgotten that this form of translational work in communication surveillance is primarily used in situations where the surveillance supports or leads to the preparation of other police measures, for instance when the police are planning to carry out a raid as soon as the drugs are handed over (Section 4.2).

In addition, individuals under surveillance deliberately communicate in such a way as to prevent or hinder third parties from understanding them when they suspect they are being surveilled or merely fear that they could be surveilled. In such cases, their utterances are encoded or reduced to a minimum to make it harder for the content of their conversations to be understood.

It is true of any communication that prior knowledge is crucial to understanding the message contained therein. Prior knowledge gives rise to expectations of content or forms of communication; so-called presuppositions. These presuppositions are the foundation of every reception process. In the case of communication surveillance, the IIT proceeds on the assumption that they will hear lots of background noise and often several different speakers when a bug is fitted in a kitchen. When a cell phone is wiretapped, they know that the individuals will often be moving around during the telephone conversation and may be on the street or in other public places. These presuppositions influence and steer their perception.

Precisely because of the impediments described above and the purpose of intercept interpreting-translation in the context of criminal prosecution, prior knowledge has an enormous impact on the linguistic perception and rendering of utterances by the surveilled individuals. Here, prior knowledge should be understood as a broad term that includes general knowledge, world knowledge, and taught knowledge, but also knowledge gained through experiential and procedural knowledge, i.e. know-how. Prior knowledge can be saved in the memory as explicit or implicit knowledge. Implicit or tacit knowledge is acquired over the course of a person's life and is closely related to that person's surroundings. This prior knowledge determines a person's perception as well as the way they process the language and hence also the content of intercepted audio information. When an acoustic signal is heard, it is combined with the listener's prior knowledge. Intercept interpreting-translation relies heavily on prior knowledge acquired during preceding investigations or previous

surveillance operations. This knowledge may relate to actions typical of an offense (for example, in drugs trafficking, dividing and parceling up drugs into smaller portions) or even the personal characteristics of the surveilled individuals, their communicative behaviors, or their approach.

Although prior knowledge and presuppositions are necessary for information to be understood and contextualized, knowledge of an investigation may lead to IITs having certain expectations and their perception being distorted by so-called priming. In this case, there is the risk that, for example, prior knowledge gained during a previous surveillance operation concerning a spate of burglaries results in the conversations heard and other phenomena perceived on a recording being interpreted exclusively and perhaps erroneously as pointing to another robbery (Section 2.3.1).

The listening process is central to communication surveillance. However, listening is a selective process during which we only perceive the information that we deem relevant to the communication in order to be able to process the information without distractions. As in communication surveillance the brief has a determining influence on the listening process, it may come to pass that only a fraction of the audio information is actually processed. Consequently, so-called listening filters play a crucial role in the listening process.

Listening filters are unique to an individual and are influenced by various factors, including age and mental or emotional state. For instance, a person's hearing capacity may diminish with age or be impaired by stress, hunger, or tiredness. Listening filters affect our attention span. When one listening filter commands more of our attention, our processing capacity may be exhausted more quickly, and our hearing capacity diminishes. The listening process itself is affected by various factors, such as the listener, the surveilled individuals, and the conversational setting. Listening filters may have a positive or negative impact on a person's hearing capacity and can be divided into two categories: internal and external listening filters.

Internal listening filters are individual and context-related factors that affect the listener directly, such as their personal attitudes or their prior knowledge. External listening filters, by contrast, concern factors unrelated to the listener that may influence the listening process. They include a speaker's dialect or speech impediment, background noise, or the technical equipment used for the communication surveillance. It is clear that prior knowledge in particular, as well as the aforementioned listening filters, have an impact on the listening processes involved in communication surveillance.

To optimize the listening process, both the internal and external listening filters must be minimized as much as possible. This would enable an efficient and unimpeded listening process, which is decisive for high-quality communication surveillance. Various strategies can be employed to improve listeners' ability to hear the audio recording – whether in its entirety or simply in part.

3.2.1.1 Translational processes: recorded audio information

If the surveillance is not being conducted in real time (Section 3.2.1.2), e.g. when the police are planning to carry out a raid, the oral source information is made available to IITs in the form of audio information recorded via wiretapping (telephones) or bugging (e.g. rooms or vehicles) and listened to retrospectively. However, it may also be the soundtrack of video recordings of rooms, offices, or even restaurants. The acoustic quality of these recordings can vary greatly depending on various external factors like the location, the number of people present or speaking, the position of a bug, or a suspect's unique speech patterns, such as poor enunciation, speech tempo, or speech impediments.

During the listening activity, the source information is checked constantly, in the course of which automatic and nonautomatic cognitive processes take place depending on the IIT's experience and ability. Nonautomatic processes demand more cognitive capacity, whereas automatic processes can take place alongside other processes and consume less cognitive energy. Attention plays a key role in every process. On the one hand, focused attention enables IITs to process the aural information, and on the other, they filter the information in the course of this processing.

Focused and attentive listening is particularly necessary when the audio features several people or background noise. Indeed, depending on the kind of recording, the audio may include not just the content of oral conversations but also background noise that may partly or even entirely drown out the conversations. Furthermore, in the event of several speakers or even just several people in a room, overlapping speech may make it difficult to attribute an utterance to the correct speaker or even hinder the acoustic perception of the individual utterances. Attributing utterances to specific voices, and hence individuals, is a fundamental aspect of IITs' work (Section 3.2). Especially with regard to the surveilled content's further use by investigators, the department of public prosecution, or the court and the possible use of the *translata* as evidence, it is of course imperative that the utterances are attributed to the correct voices.

A considerable advantage of recorded source information is the possibility to replay the content as often as needed, for example, to better understand unclear passages. This makes the listening process much easier and hence greatly facilitates the understanding of information. Processing purely aural information is a particular challenge as it poses higher cognitive demands than visual or audiovisual information. Purely aural source information, therefore, requires IITs to carry out a "provisional" contextualization. Processing purely aural information influences the anticipation and embedding of the conversation's content in a broader context. In this situation, playing the recordings repeatedly is extremely helpful. Where possible, IITs may also listen again to the entire conversational setting before producing the target text. Other strategies that may improve the listening process are playing the recording

repeatedly after some time has passed or alternating between headphones and loudspeakers. With unclear words or phrases, or malapropisms, it may help to verbalize the word or phrase. In this way, a potential malapropism can be resolved.

At this point, it should be emphasized that during a translational process on the basis of recorded audio information, it is possible to work on the source material in several consecutive steps, with each step building on the one before (Section 4.3). In each of these steps, the source information is filtered and selected, which also influences the translational process in the subsequent step. Due to the importance of this filtering process – which is an integral part of the translational activity – to the investigation and the entire criminal proceedings, a separate subsection is dedicated to the topic of prioritizing information (Section 3.4).

If the IIT's brief is to produce a TIR, i.e. to render the entire conversation in the target language (Section 4.3.3), then the IIT will employ one of two methods: the one-step or the two-step method. Both are described in detail below. Which method is used generally depends on the human, time, and financial resources available, or legal requirements.

3.2.1.1.1 One-step method

We use the term one-step method to refer to the direct rendering of the surveilled communication in the target language without first writing down what has been heard in the source language.

For IITs, this task presents a particular challenge: perceiving and understanding the aural source information, rendering it in the language of proceedings, and then writing down the target language text.

Here, the reception, transfer, and production stages are not isolated but rather merge into one another. Listening, processing, and understanding the content and carrying out the interlingual transfer are internal and hence invisible processes conducted by the IIT. The visible part of the translational process is the production of the text in the target language, i.e. the *translatum*, which may be, e.g. a short note, summary, or TIR (Section 4.3). These *translata* are usually entered into dedicated software belonging to the law enforcement agency.

The cognitive perception of the audio information activates the reception and transfer stages, which may also be employed when interpreting. These stages incorporate anticipating, inferring, chunking, and segmenting the information. Anticipating means embedding the content of the intercepted conversation in a larger context. Inferring helps IITs to deduce implicit information when certain details are missing, such as the visual clues lacking in most communication surveillance. Segmenting is a comprehension strategy that makes it easier to process recorded source information. It involves rendering the conversation content in the target language in shorter passages, or segments. In

communication surveillance, this may mean replaying the audio recordings several times. Chunking aids the reproduction of the heard content. Here, units are formed and saved in the IIT's memory. The sizes of the chunks are individual and depend on the IIT's memory capacity. This strategy is also used during operational interpreting (Section 4.2). Another memory aid is to make occasional notes in addition to textualizing the conversation in the target language. Notes may also make it easier to understand acoustically challenging sequences. They aid the listening process and take pressure off the memory. This also supports cognitive processing and enables a better classification of the surveilled content. Notes can also be used to record a change of speaker. As already mentioned, registering a change of speaker plays an important role in communication surveillance as the utterances, which may well include incriminating content, must be attributed to the correct speaker.

Transferring an oral source text into a written target text requires the IIT to make numerous decisions. Due to the differences between oral and written modalities, a written rendering cannot be identical to the original oral information, and there is no direct correspondence. It must therefore be borne in mind at all times that textualization is a necessary but incomplete representation of the surveilled conversational setting. Given the intermodal transition from the oral to the written modality, i.e. a verbal linguistic expression in written form, a certain amount of information will always be lost. On the one hand, this is caused by the fact that not everything verbally expressed and aurally perceived can be rendered in writing. On the other hand, it is also due to cognitive stress, which has a considerable influence on the listening process. Our cognitive processing capacity is limited, which means it is a significant source of error. However, possible mistakes are not easy to discover because the process leading up to the textualization is exclusively internal and generally undocumented, with the exception of the aforementioned occasional notes.

Nevertheless, the aim is for the textualized utterances to represent the surveilled communication setting as accurately and traceably as possible. Regarding textualization, it is also worth considering which aspects of what has been heard can be put in writing and which paraverbal, i.e. metatextual or contextual, information is necessary to render what was meant. The aim is to make a record of the pragmatic and semantic effect as well as possible. What is said is therefore transferred to the target language not only on the verbal level but also in terms of the use of language and the function of the utterance. Hence, not only the words used but the actual meaning of those words should be rendered in their textualization. Accompanying linguistic, personal, or extralinguistic reference information can then be written down depending on pragmatic need. For instance, when a speaker is being sarcastic, the emphasis or intonation they use will give a clear indication of how that utterance is to be understood, as with the sentence, "Well, that went well". Emphasizing "well"

with ironic intonation suggests that the opposite is actually intended and the situation did not in fact go well at all.

These explanations of the one-step method show clearly how multifaceted and complex the process is. It is important to spell this out because the production process is not evident in the written product. This fact increases the importance of the brief by and the cooperation with investigators (Section 3.5). Furthermore, in the one-step method, the accuracy of the TIR depends greatly on the aural perception of the person who listens to the intercepted communication. As no separate transcription takes place with this method, unlike with the two-step method described below, the rendering in the target language remains largely undocumented and hence largely untraceable.

3.2.1.1.2 Two-step method

The two-step method is fundamentally different from the one-step method. These differences affect not only the reception and transfer stages but also the production stage. The reason it is a two-step method is that it results in two texts: an intralingual transcript and, on the basis of that transcript, an (interlingual) TIR. As such, in this method, the TIR is produced as a translation of a written source text (Chapter 4).

The sequential approach makes it possible to record utterances more precisely. It means that the audio can be written down with greater accuracy and takes the pressure off the IIT's cognitive processing capacity. With this method, during the first step, the cognitive processes can focus on registering and processing the content perceived aurally without having to produce the interlingual transfer at the same time. This means that the IIT can concentrate fully on rendering the utterances accurately and verbatim in the same language.

Furthermore, the two-step method enables several IITs to be involved in the production stage. They can work independently of one another on one or both of the steps. However, this division of labor could potentially give rise to sources of error, because if one IIT only has access to the transcript that they did not write themselves and is not given access to the original audio information, then they are only able to produce their translation on the basis of the transcript. This creates a fundamental information gap and extends the spatial and temporal distance from the source text.

After being transcribed, the source information is translated into the target language (see also Section 5.3). As such, this task is a case of translation in the narrower sense of the term (Section 1.4). The translation reproduces the written source text in the target language in terms of register and style, whereas the syntax follows the rules of the target language. Moreover, the rendering may contain annotations about implicit messages in the utterances or background information, which are intended to facilitate understanding (Section

5.3). Especially when several IITs are working together using the two-step method, the division of labor may give rise to potential sources of error. To minimize these sources of error, it would be necessary for the same person to work on the source information using the two-step method. However, this approach, with the same person producing both the transcript and the TIR, entails the risk of priming (Section 3.2.1).

It is self-evident that the two-step method inherently enables greater transparency as the textualization in the source language can be employed alongside the translation during the trial, which makes the TIR more traceable and hence verifiable as a product of the surveillance operation. A transcript is not just a reliable source text but also offers more certainty as, in contrast to audio information, a source text recorded in writing deviates only minimally from its rendering in the target language. It also increases the reliability of any TIR generated by means of this two-step method (Section 5.2).

3.2.1.2 Translation processes: real-time audio information

When IITs have to work with audio information in real time, it has a critical influence on their cognitive processes. As explained in the introduction, operative interpreting is a translatorial means of rendering oral source information in an oral target text and occurs in close collaboration with the investigator. As the police want to gather information instantly during real-time surveillance – possibly in order to conduct other investigatory actions like raiding an apartment – the IIT is given clear instructions as to what they should pay special attention to and what information the police need.

Consequently, the IIT's assignment is to direct their attention to specific, case-related clues and to produce a target-language summary of only those passages of the conversation deemed relevant. The IIT is to relay the relevant content with the shortest delay possible. This implies that the target-language reproduction of relevant conversation passages should take place in real time and continuously when the investigator is in the same room. If the investigator is in a different room, the IIT may be instructed to relay the content immediately and orally by telephone or in person, or communicate it in the form of a text message or email.

During operative interpreting, there may be breaks in the audio input if the target is sleeping or not talking, for example. Nevertheless, IITs are not generally permitted to leave their workstation without being replaced by someone else. This means that the IIT has to focus fully on listening to the conversations and the situation on-site, summarizing short passages in between on the computer system that investigators in another room may read in real time.

[The investigator] is currently busy with wiretapping [name of the suspect], but his target sleeps well into the afternoon every day – or so he presumes, because

there are no conversations. The surveillance of the interior (concealing a bug) is supposed to be being prepared with the aid of a wiretap and physical surveillance. Even though no conversations are being had, [IIT] has to stay at their desk and wait.

[...]

Later in the afternoon [target] has “woken up” and moves out of the house. The physical surveillance begins and [IIT] can now listen live and has to notice whether the target has conversations. He informs the investigator what’s being said.

[...]

While listening [the IIT] produces short summaries of the conversations.

The investigators are listening at the same time in another office and go into [the IITs’] office when conversations are being held in another language [...]. That afternoon the investigator comes into the office and has [the IIT] listen to and orally summarize a passage of the conversation. (OBS Day 1)

Operative interpreting can be described as a form of summary interpreting, as used in other surveillance settings, e.g. the surveillance of visits when a suspect is in custody. However, operative interpreting in communication surveillance involves close cooperation between IITs and investigators, as the quotation above shows. In addition to the fact that the rendering in the target language takes place orally and a written *translatum* of the conversations may only be produced at a later point in time, time pressure and the specific brief are important factors that differentiate real-time oral transfer from the processes involved with recorded source information. For example, if the investigator wants to know whether the individuals under surveillance are changing their position, a specific approach to the rendering is required: In this event, the IIT has to change perspective during the rendering. The target’s statement in the first person, “I’m coming to you now”, would be rendered in the third person and reorganized, e.g. by being introduced as “A is saying to B that he is coming to him now”. Here, the only thing that remains identical to the original utterance is the propositional content, whereas the references to time, place, and communication participants are made from the IIT’s perspective in order to convey the speaker’s point of view. The *translatum* the IIT produces is therefore not equivalent in formal terms, but the content is the same, as is the case in summary interpreting.

As the police only task IITs with listening and interpreting in real time when they need up-to-date information urgently, IITs must be capable of identifying and contextualizing the aural content they perceive within just a few seconds. The high spontaneity of communication situations and those involved in a conversation, paired with possibly emotionally challenging conversation content, are difficulties unique to operative interpreting.

What’s very important is how—I’m repeating myself but it’s VERY important—that the trial goes in the right direction. Because at the beginning only one person is bugged and then a lot depends on that, (yeah?) who the next ones will be. The most difficult thing is in the live operative area, again and again there’s situations during the arrest, on the day of the arrest, and then everyone’s mobilized, the case officers, the field operatives who will arrest the criminal. And as an interpreter

you're listening live. And now and then the interpreter is required to say that for example the handover is NOW or now [...] the drug is on the table, the raid has to happen now. Judging that situation correctly and [...] choosing the right moment. When [...] exactly the drug is on the person, yeah. [...] That's the most difficult thing for me. Deciding when the raid should happen. But luckily [...] it's not like that every time. But there've been situations [...] when as an interpreter [...] you do have to be certain. For example, during a raid in this apartment we two are sitting and then you have to say whether there's drugs on the table/ whether it's drugs on the table or not. Like that. Then there's a raid and arrest, yeah. [...] Because it's possible that you say, "OK, raid now", and then there's nothing in the room. And that's a bit difficult. (IIT8)

3.2.2 Processes Involved when Source Information is in Writing

Written source texts in intercept interpreting-translation can be divided into two categories. The first category is the transcripts of the surveilled conversation that IITs produce themselves. However, this source information was originally audio information, meaning that the source information is actually oral and has already been worked on to produce the textualization; this kind of written source text is discussed in Section 3.2.1.2. The second category comprises the text messages intercepted in the course of the communication surveillance or extracted when mobile communication devices are seized. The latter are the subject of this section.

Here, the term "text messages" is used to refer to all manner of communication conducted via internet- and mobile communication-based short messaging services, such as SMS or instant messaging services like WhatsApp, Viber, Telegram, etc. Furthermore, communications may also be surveilled via platforms like Facebook, Instagram, etc. Text messages serve immediate and interactive communication and frequently replace oral communication. The communicative purpose is to relay specific information quickly. Below, we summarize this means of communication under the term "chat" or "chat communication".

The surveillance of written internet- or mobile communication-based messaging and its rendering in another language have increased dramatically all over the world in recent decades. The importance of text messages to investigations and as evidence diminished for some time because law enforcement agencies only had access to them in exceptional circumstances as a result of the improved encryption technologies of the providers of various instant messaging services like Threema, PlayStation, EncroChat, Sky ECC, and ANOM, etc. Thanks to several successful infiltrations and decryptations by the police in various countries, text messages have now once again become an important source of intelligence for police investigations. However, in some cases, the vast quantity of datasets has brought investigations to a standstill due to a

lack of IITs. These enormous amounts of material are generally a challenge in terms of processing chats or SMS messages.

Over 80,000 WhatsApp contacts/activities on the phone have to be analyzed.

[Name of the IIT] goes through every conversation and translates what's relevant.

[Name of the IIT] decides just what is relevant. (OBS Day 4)

As with listening to audio recordings, when there is a mass of data, IITs are delegated the task and responsibility of filtering the messages in terms of their relevance to the investigation (Section 3.4) and translating the source information they deem relevant. Frequently, this involves analyzing a large number of different chats between various individuals who may or may not be known to the law enforcement agencies.

In addition, it is necessary for the investigations that the content of these chats be put into context.

For [IIT] it's important to connect the information from various chats to be able to understand or rather interpret them better. For example, [IIT] can better understand the target's chat with "Ibrahim" because he has already worked on the chat with the target's wife. (OBS Day 4)

Moreover, text messages may contain clues about other sources of information to which the IIT does not have access when they are working on the chat.

For example, the target writes someone that they would call up later because they don't have internet. [IIT] says that's a problem because that part of the communication will be missing. (OBS Day 4)

In such cases, content relevant to the investigation can only be reconstructed through cooperation with investigators who have access to other forms of communication (Section 3.5). Only by surveilling telephone and chat communication simultaneously is it possible to piece the information together instantaneously.

Chat communication presents IITs with a whole range of obstacles to understanding. The unique communicative and situational nature of text messages lies in the fact that the individuals involved are generally known to each other. Only in rare cases is contact established with an as-yet unknown person via a text message rather than a telephone call. That means that the communicating individuals have shared background knowledge, are possibly more closely acquainted, and are frequently in a specific communication context familiar to both parties. This enables those involved in the chat to understand and correctly interpret the specific message aimed at them because they have the necessary inside knowledge. Added to this is the fact that text messages may

refer to oral communication, such as a telephone call or meeting, that took place shortly beforehand. Outsiders, especially investigators or IITs, who often receive these messages with some time delay, have difficulty reconstructing this contextual information. This is the case in the following excerpt from the criminal files we analyzed. It concerns two SMS messages comprising a question from A and the answer or rather counterquestion from B. Without a doubt, A is making reference to shared knowledge, a previous conversation, something that should have happened or been handed over. As mentioned (Section 3.2.2), text messages used as evidence in criminal files are not always embedded in a larger communicative context, which further complicates their retrospective contextualization by the IIT.

A: And? Bw

B: + what?B.w.

A: Should still have a bit from you.

B: I'll do it with axel. [authors' note: name changed] (Criminal File 1)

However, even messages that may at first glance seem unambiguous may in fact prove tricky as they may contain inside knowledge. In response to the instruction, "Don't forget to bring the tomatoes", for example, it is clear to the message recipient that they should bring the tinned tomatoes needed for the pasta dish planned for that evening. A person unfamiliar with the situational context may understand the message as an instruction to bring fresh tomatoes. Generally speaking, the police tend to expect IITs to be proactive, to consider and communicate knowledge that cannot be readily understood.

[IIT] says that messages are sometimes difficult to figure out. In the worst case, he notes down "incomprehensible". As a rule, however, he says he has to try to clarify the content, but ONLY notes down the content when he's certain. (OBS Day 4)

As many text messages are written on the go, other typical characteristics are references to the writer's physical surroundings, as well as spatial and temporal deixis (here, there, this, that). These are elements of oral communication that likewise require all those involved in the conversation to have knowledge of the present communicative setting. Analyzing such local and spatial information is difficult for someone who is not involved but may well prove significant to the police investigation.

One chat reads: "The little girl doesn't have much snow". To be able to interpret that statement, [name of IIT] compares it with the date of the chat messages and notices that the chat took place on January 20. [Name of IIT] says that it could genuinely be about snow but could also be a coded statement. (OBS Day 4)

That this form of communication is characterized by immediacy and reactivity and takes place between people with similar background knowledge ultimately has a fundamental impact on the nature of the language they use. For instance, the short texts closely resemble oral communication, have a high information density, and are grammatically complex. The use of voice recognition, i.e. saying a message out loud that is then transformed into written text by voice recognition software, further blurs the boundary between speech and writing.

Text messages feature nonstandard grammar, a register that, depending on the context, may be colloquial or unique to a group, specially constructed word forms including abbreviations, a lack of punctuation and nonstandard capitalization. These typical characteristics of text messages are also known as “textese”, “texting language” or “internet slang”.

In addition, the language used in text messages is strongly influenced by the writer’s sociolect and idiolect, which may be related on the one hand to the writer’s membership of certain social groups, and on the other to their level of education. For instance, it has been observed that text messages’ proximity to spoken language is greater when their writer is not well educated.

Not only nouns but also verbs, adjectives, and adverbs are often abbreviated. The words may be shortened through the omission of vowels, such as “pls” instead of “please”, or endings, such as “*ich hab*” instead of “*ich habe*” in German, and the replacement of syllables and words with numbers, such as “4u” instead of “for you”. Whereas “u” is a common way to abbreviate “you” in English, an ellipsis by omitting the vowels in “dinner” to create “dnr” can be considered an individual variant. That abbreviations – be they common or individual – can lead to ambiguity even among those involved in the chat is demonstrated by the following example from the criminal files we studied.

A: R u in so?

B: Solothurn u mean yeah [authors’ note: place-name changed] (Criminal File 1)

It is safe to assume that Person B was not certain whether they had correctly understood the official abbreviation for the Swiss city Solothurn, SO. In a brief answer that renders the oral dialect phonetically and omits punctuation, Person B clarifies: “Solothurn u mean”

Other features are spelling words phonetically, i.e. imitating their pronunciation, or using onomatopoeic expressions that can be further emphasized by repeating vowels or consonants, such as *boaahhh*, *brrrrr* or *oops*, and that are often unique to the writer’s language and culture.

A further barrier to understanding occurs when nonstandard orthography gives rise to a different meaning, such as when in English it is unclear whether

“your” is indeed intended as a possessive pronoun or whether the writer meant “you’re”. On the level of syntax, meanings may shift when commas are omitted, such as in the famous example in German: “Wir essen jetzt (,) Opa!” (“Now we’re eating, Grandpa!” vs. “Now we’re eating Grandpa!”). Moreover, when text messages are extremely brief and comprise only a single word, they are difficult to decipher.

It is not uncommon for IITs to be asked to translate chats whose participants come from countries where several local languages are spoken alongside the official language(s). For example, in addition to English, numerous local languages are spoken in Nigeria, such as Efik, Igbo, Hausa, and Yoruba, as well as Nigerian Pidgin. Even though it may be conducted in English, a chat conversation may therefore be influenced by local languages that in some cases may have no written form. The words are then written as they are spoken, with numerous individual variants. However, code-mixing is also a common occurrence when people live in a different country and incorporate standard and dialectal elements of the local vernacular. Multilingual individuals and multilingual chat groups in particular mix the various languages of communication at random. This code-mixing takes various forms: words from another language may be inserted into the language of the chat, entire sentences or clauses may be formulated in another language, or affixes from one language may be added to the words of another.

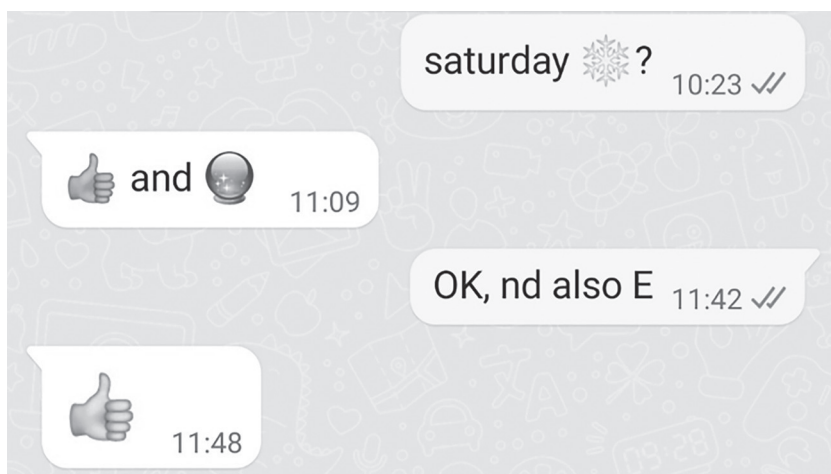
Yine abi aynisini yapıyorsun bide bana diyorsunuz, cebimde yine bi kurus yok annemdede yok, söyledin ich ha uf das ufbaut.

You’re doing the same thing again [sic.], Abi. Then you [plural] tell me such things. I have no money, my mother has none either. You told me something and I’m relying on that. (Criminal File 1)

In this example, the target switches language without punctuation, beginning the message in Turkish and ending it in Swiss German (*ich ha uf das ufbaut*) by writing the spoken dialect phonetically. In the translation, it was rendered in standard German without any annotation, meaning that the switch between languages is only discernible if the translation is compared with the source text. Linguistic “polishing” of this kind is discussed in further detail in Section 3.3.

Besides the typical text message jargon, another challenge is the use of graphic elements like emoticons (combinations of letters and special characters, e.g. ;-)) and emojis, animated pictures, (at times even self-made) stickers, etc. In addition, photos, videos, and voice messages can be sent via messaging services. This results in multimodal texts with the additional difficulty of

interpreting not just the verbal but also the graphic elements as intended by their sender (see Figure 3.2).



Source: Griebel and Hohl Zürcher, 2023.

Figure 3.2 Obstacles to understanding: abbreviations, emojis, ellipses

Graphic elements present IITs with a variety of challenges. They may complement and emphasize or completely replace verbal messages – i.e. strictly speaking they constitute text, as illustrated in Figure 3.2. Here, the initiated will correctly interpret a snowflake as cocaine and a snow globe as methamphetamine. However, the target simultaneously asks for ecstasy using letters because various substances are encoded using not just symbols but also abbreviations. This being said, even emojis may be used and understood differently from person to person, for which reason they may, in certain circumstances, need to be interpreted by the IIT. Added to this is the fact that emojis and other graphic elements have different designs depending on the platform or messaging and cellphone provider used, which may hinder their interpretation. While it might be assumed that this would not present a problem for the translational activity of IITs as the graphic elements could be reproduced as such and hence be presented to the law enforcement agency and judicial personnel in the original, this does not always appear to be the case.

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68. A substantial amount of time was spent in the cross-examination of Mr Y Lee challenging him on the number of ‘ha’s he used in translating the laughing symbols when they appeared in messages. **He admitted that he had used discretion when the character was repeated several times in the one sequence. For instance, where four laughing symbols appeared together, he may have translated the sequence as ‘ha ha’. He had also omitted any reference to the laughing symbols in two messages,** on 11 September 2014 [file source] and 9 November 2014. [file source] The omission in the latter had the potential to affect the tone of an important message in the context of determining the offender’s belief about the nature of the business in which he was involved for Bello.

69. [...] While a translator is entitled (indeed, required) to use judgment as to the manner in which to best convey the content and intent of a message, he is not entitled to use discretion as to whether something like a laughing symbol or character has significance or importance in the context of a particular message, nor whether the number of laughing symbols may have significance in assessing the tone of a message. Those are matters for the tribunal of fact to determine having regard to all the circumstances, including any explanation that may be given by the author of the message.

70. However, any risk of disadvantage to the offender resulting from the translator’s approach to the laughing symbol has been overcome by the fact that the issue was identified by his counsel and I have been mindful, therefore, of the need to consider the significance of its use wherever it appears. **Once the character has been pointed out, it is a character that can be easily recognised by a non-Korean speaking reader.** Therefore, the fact that not all of the laughing symbols were translated has not affected my ability to consider the number of them used in any message and the significance that may have in assessing the tone or intent of the message. **I have noted in bold and square brackets in Annexure 1 where laughing symbols were omitted in the translation of relevant messages.** [emphasis in bold added by the authors]

This excerpt illustrates the manner in which the problem may manifest itself. However, even though the judge indicated that – had the emoji been carried over into the intercept *translatum* – he would have seen the laughing emoji himself and been able to interpret it, it is not always possible to repeat graphic elements as it depends, among other things, on the kind of data transfer. Transferring gifs and other animated pictures into the programs in which the translation is to be produced is particularly difficult. Furthermore, emojis are subject to cultural variations, as is criticized in the verdict above, and may be used and interpreted differently depending on the language and culture of the region. Yet even within the same cultural region, misinterpretations are frequent, especially with anthropomorphic emojis, i.e. the faces most frequently used to express various emotions. Moreover, emotions are depicted differently in the various language regions. For instance, depending on the language, in Western language regions the horizontal depiction is dominant, and emotions tend to be

expressed via the shape of the mouth. In East Asian language regions, by contrast, the vertical depiction is much more common, and emotions are expressed by the eyes, which may be shown as especially large, though English may also influence the depiction. Emoticons comprising a combination of symbols are subject to greater variations and are constantly being developed and individually adapted by users.

As in oral communication, text messages may contain coded messages, whether of a linguistic or graphic nature. The difficulty that arises here with regard to the interlingual and sociocultural rendering and interpretation of codes corresponds in large part to the explanations in Section 3.3. In addition to the markers in linguistic codes that are specific to the group of offenders and the culture, the identification and interpretation of graphic elements is particularly significant. For example, the US Drug Enforcement Administration (DEA) has published lists on the internet of codes that are typical for certain groups of narcotics. Nevertheless, these graphic codes are not necessarily used uniformly around the world and it should be assumed that the semantics of certain graphic elements will be specific to a culture and milieu or group.

Finally, photos or even short videos are often sent in chats. As they are generally related to the text messages, they may contain important information and hence make it easier to decipher incomprehensible verbal messages.

In our research project, we concentrated on chat conversations collected in the context of communication surveillance operations. As mentioned at the beginning, large quantities of data are often gathered in this context as surveilled individuals are in contact with a great number of people via text message and consequently numerous chats conducted in parallel need to be analyzed. Furthermore, chat communication complements the likewise surveilled oral conversations of a target. The translatorial activity is therefore embedded in the investigative context and IITs may already have specific knowledge of the case as a result of their cooperation with the investigators (Section 3.5) or knowledge as a result of the conversations they have listened to with the same target. This makes it easier for them to contextualize messages that are difficult to understand. However, prior knowledge and distance from the case are different when people who are not immediately involved in the communication surveillance operation and who are detached from that context are tasked with translating individual messages or short chat excerpts from a criminal file in the course of criminal proceedings. This may be the case with a homicide within a family, for example, when the department of public prosecution merely has a few messages translated that the victim exchanged with certain individuals moments before the crime was committed. With such translation work outside a communication surveillance operation, the IIT's temporal and spatial distance from the case being investigated is greater, the contextualization of the chat's contents made more difficult, and without cooperation with the law enforcement agency, the translatorial service may at times consist merely of a rudimentary transfer of the content. This difficulty is explained in more detail in the following section.

3.3 CONTEXTUALIZING AND RECONTEXTUALIZING CONVERSATION CONTENT

As already elaborated (Section 3.2), in communication surveillance, conversations have to be recorded with due regard to the conversational setting and the overall context of the conversation and case. All the information may be of forensic relevance if it contains clues about incriminating activities, such as the announcement or execution of, or incitement to, a criminal act.

Consequently, cognitive processes are activated to embed the heard conversation or the read chat in the context of the conversation. This act of understanding and processing is referred to as contextualization. Contextualization is necessary because language is context-dependent and not one-dimensional. In intercept interpreting-translation, gestures and other visual communicative phenomena are lacking, which is why contextualization is only possible to a limited extent. Furthermore, the information gain is dynamic: whereas little is known at the beginning of a surveillance operation, information gradually accumulates and contextualization takes place successively.

The second step after contextualization consists of recontextualizing the intercepted information. During recontextualization, information is removed from its original context and transferred to the requested intercept *translatum*, i.e. into a new context. This re-embedding step takes place during the textualization or, in the case of operative interpreting, during the oral transfer. Consequently, the IIT must ensure while transferring the source information to the intercept *translatum* that as much useful information as possible is available to the investigators. We go into more detail about how that is manifested in the intercept *translatum* when we discuss the products (Chapter 4). Of similar significance for the recontextualization is the brief given by the investigators and the purpose of the *translatum*. Recontextualization is an extremely complex translatorial process in communication surveillance as the transfer goes hand in hand with a language change and a change in modality if a written *translatum* of oral source information is required. When textualized, an utterance is removed from its original context and social interaction, and the language loses its original dynamics and becomes static. With intralingual transcription using the two-step method, there is no transfer from the source to the target language, but even in this case, there is a transfer from one context to another. In order to record the original information as comprehensively as possible during the textualization, embedding the information in the setting is therefore vital. For example, if an IIT listens to a conversation between a woman who is frightened and screaming and a man who is talking aggressively and lisping, where the subject of the conversation is which bus the woman should get on, this paralinguistic and other information must be

included to enable recontextualization and connection with other intelligence related to, e.g. human trafficking.

With auditory source information, contextualization and recontextualization require particularly highly developed listening skills (Section 6.4.3). This includes directing one's focus to the information that can be perceived. We call this "reference information" and below divide the reference information that can be perceived aurally into linguistic and paralinguistic (1), nonlinguistic personal (2), and extralinguistic (3) information. Together with the verbal utterance, they comprise the information supply from which the intercept *translatum* is produced. All three dimensions of reference information must therefore reappear in the *translatum* for the original conversation to be understood in its context.

3.3.1 Linguistic and Paralinguistic Reference Information

Perceiving spoken content involves grasping not just its linguistic content, such as syntax, linguistic style, or grammar, but also the paralinguistic and audible nonverbal information it includes. In addition, other linguistic elements like prosodic and paraverbal reference information are crucial to decoding the information conveyed. Prosodic reference information includes things like pitch, tempo, and lulls in the conversation. Sometimes, speakers may be recognized on the basis of their distinctively croaky or nasal voice. These characteristics also help IITs differentiate between the voices they hear.

Paralinguistic elements comprise a wide range of auditory information beyond purely linguistic information. They include pauses, the voice's volume, and vocal characteristics. Speakers' pitch can range from high to low; their voice might carry, shake, or rasp. The volume – whether pleasant, uncomfortably loud, or even too quiet – can also supply valuable information. The enunciation – whether speech is clear, unclear, or mumbled – may likewise be significant. Furthermore, the emphasis of certain words or phrases may give an indication of the context or importance of the information uttered.

Gestures or expressions of emotion may also coincide with paralinguistic information. Here, the paralanguage provides supplementary information, supporting an utterance or even emphasizing its inherent contradiction. Finally, not only the messages' meanings but also the emotional states of their speakers are expressed via paraverbal elements.

For instance, the utterance "I'm fine" with audible paralinguistic elements, such as a high pitch and dynamic and melodic intonation, will generally imply cheerful and positive emotions. In this case, the lexical content of the utterance is supported by the accompanying paralinguistic elements. However, the use of paralinguistic elements may also express a contradiction: audible paralinguistic elements like a low voice and rising intonation toward the end of the

sentence, which suggest a question, express the opposite of the lexical content. Other paralinguistic elements, like a shaky, seemingly tearful, or fragile voice would also point to the opposite meaning being intended.

Besides language itself, means of expression that are similar to language are also used in communication. They may be produced with different body parts: certain actions can produce different sounds, as is the case with spitting, clapping, or yawning. We produce different sounds when we come into contact with objects, e.g. knocking, hitting, or scratching. Such sounds may even replace a linguistic utterance, such as snapping one's fingers, hissing, or whistling using one's lips. A language-like expression may also be conveyed by verbal hesitation, e.g. by using "hmm" to express agreement or disagreement, sighing, or clicking one's tongue "tut". In the Middle East or the Balkans, clicking one's tongue can be used as a negative answer and repeated tongue-clicking as a language-like expression of amazement.

Another means of expression is a lack of audible utterances: saying nothing or silence. In combination with facial expressions and gestures, saying nothing is used to convey meaning, e.g. through the use of elliptical sentences like "When in Rome...". The significance of pauses and silence differs depending on the culture. The lack of visual information in communication surveillance prevents access to such information and hence to potentially important parts of a conversation.

Code languages in particular are closely linked to the context. Decoding takes place with the aid of knowledge gained through continuously listening to surveilled conversations and through cooperation with investigators; this knowledge is activated when listening to that specific conversational setting. Consequently, the code comprises not just a single word, but rather the use of a word in its context. For example, if two individuals are talking on the phone about whether they are meeting on level one or two at the main station, then the sentence "Then I'll give you the turnips I cooked yesterday" may be syntactically correct but is nonsensical in the context. Yet precisely because the turnips do not seem to fit into the context of the conversation, it may attract the investigators' attention.

3.3.2 Nonlinguistic, Personal Reference Information

The communicative extent of an oral utterance cannot be reduced to verbal elements alone. In addition to linguistic reference information, nonlinguistic clues must also be considered – especially information that may make it possible to identify certain individuals.

In communication surveillance, the intercepted content must be able to be attributed to a specific person to move the criminal prosecution forward. As such, alongside the linguistic content, personal, so-called indexical features

should be identified and recorded where required. Personal elements contain idiosyncratic markers that reflect a person's individuality. These characteristics may also comprise prosodic or paralinguistic patterns and are closely connected to the voice's resonance. Individual reference information may, on the one hand, be related to the speaker and convey certain aspects of their personality, emotional state, or identity. On the other hand, these clues may also be used to register the communicative setting.

Especially when identifying and attributing voices to individuals, listening precisely is essential – particularly when different, at times overlapping, voices can be heard. Furthermore, aural information in the form of voices reveals much more than just the speaker's identity. In the form of verbal, para-, and nonverbal communication and kinesics, like steps, the three-dimensional aural information source discloses significantly more information. On the verbal level, such details as the speaker's cultural milieu, level of education, and social characteristics can be perceived because sociolinguistic factors like gender, age, and level of education influence how we communicate. Sociocultural aspects, which manifest themselves in geographical and linguistic features like accent, dialect, and the use of polycentric languages, likewise influence the way we communicate. Furthermore, the individual speaker profile, which comprises idiosyncratic elements like a speech impediment or a nasal or croaky voice, and is relevant when identifying a change in speaker, is another important factor. In some circumstances, the paraverbal or nonverbal level of communication may disclose information about the speaker's age, gender, health, and emotional state.

Conversations involving several individuals present a challenge for contextualization as well as recontextualization. Communication may be intrapersonal, e.g. when someone is talking to themselves, or interpersonal, when someone is in conversation with one or several others.

Moreover, the purpose of the communication plays an important role, especially in recontextualization. For instance, a conversation may take place for the purpose of making or maintaining contact or to exchange information. The term phatic communication is used to refer to all communication that builds, maintains, or improves social relationships. The purpose of such conversations is not informative but rather relational or emotional. Even these communication passages may be significant to an investigation because they reveal how those involved in the conversation feel about or behave around one another, whether they are well acquainted, whether their relationship is hierarchical, or perhaps even that one is dependent on the other. Typical examples of phatic communication are greetings, farewells, small talk, or instances of politeness. The huge importance of what may seem like mundane components of a conversation should therefore not be underestimated when it comes to the filtering process (Section 3.3) and the recontextualization of the conversation.

3.3.3 Extralinguistic Reference Information

Extralinguistic reference information is also of crucial importance when it comes to putting an intercepted conversation in a broader context. It provides contextual clues that make it possible to pin down the setting. This contextual information includes audible actions by those involved and ambient noise that may provide clues as to their whereabouts.

Some examples of acoustically perceptible reference information about actions are the turning of pages, the clattering of dishes, the hissing of a drink can being opened, the rustling of foil, a knife chopping, the opening and closing of zippers on a bag, a pen on paper, a door banging shut, a car engine, passing traffic, sirens blaring, or a ship sounding its horn.

Reference information that enables conclusions to be made about the specific setting of the conversation includes background music, the physical distance between the speakers, the sound of road traffic in the background, birds tweeting, water babbling, the sound of a train station, or the whirl of machinery. It may also be the case that other people who are not involved in the conversation are audible in the background.

Furthermore, kinesics, especially in the form of ambient noise, provide valuable indications of the whereabouts of those involved in the conversation. Examples of aural clues about kinesics might be the sound of steps, the clattering of dishes, the rushing of the wind when walking outdoors, the honking of a car horn in the background, or the typical clickety-clack of a train. These sounds can help determine whether the surveilled individual themselves is moving during the conversation, e.g. by car or train, while maintaining contact with the other, stationary, person, or whether they are stationary, e.g. in a room in a building, while the other person is moving.

It should not be forgotten that additional contextual knowledge can be researched and absorbed by the IIT in their knowledge management – be that personal or shared with colleagues. This is the case when there are clues in intercepted conversations as to the speaker's/speakers' whereabouts, such as a street name, a reference to a local landmark, or background noise that points to a specific place (e.g., a train station announcement, the atmosphere of a county fair), which make it possible to research the location.

3.4 PRIORITIZING INFORMATION

This and the following section 3.5 focus on the translation processes involved in the third type of process : the complex actions involved in the division of tasks between IITs and investigators. The definition of this process revolves around translational activity being a cooperative process because no translational activity ever takes place in isolation; rather, at the very least, there is

always someone who commissions the translational work because they need a specific *translatum* for a specific purpose, and as such, they are part of the translational process. In intercept interpreting-translation, this other party is usually the law enforcement agencies and, at least indirectly, the accused, if their criticism of the existing translational products leads to a new translational activity being carried out to check the disputed *translatum*. This criticism may concern the quality of the *translatum*, i.e. necessitate a linguistic review, or the choice of passages included in the intercept *translatum*. As every investigation is required to take into consideration not only incriminating but also exonerating evidence (Chapter 2), the translational activity of IITs may also serve to absolve the accused from the suspicion of having participated in a crime. The manner of the collaboration, the specific assignment and the brief given to the IIT, and the resulting division of tasks between those involved in the communication surveillance have a decisive influence on the perception, processing, and transfer of the source information.

Depending on the scope and duration of the investigation and the groups of suspects under surveillance, the quantity of data collected in communication surveillance can be considerable. Analyzing such vast amounts of data is time-consuming and costly, for which reason most legal systems have provisions permitting only a proportion of the surveilled conversations to be rendered in the target language. Rendering an entire conversation in full in the form of a TIR, whether using the one- or two-step method (Section 3.2.1.1), generally only occurs when the chief investigator deems the conversations relevant to the investigative or criminal prosecution process or when they want to use them as evidence.

These various aspects clearly show that a principal task for IITs consists of filtering the initial information. In our study, we identified various triage practices. Depending on the practice, the workflows and the division of tasks and responsibilities between IITs and investigators differ. Below, we show that the investigator responsible may explicitly brief IITs that they should prioritize the information they are given or it may simply be an implicit part of each translational activity with which an IIT is tasked.

IITs may be responsible for their languages in the context of one specific surveillance operation or work on several surveillance operations at the same time. In our survey, 70 percent of respondents (n=46) said they work on several operations in parallel, whereas just 30 percent are mainly involved in just one investigation at a time (Q52, Q53). Yet even in the context of one surveillance operation, it is possible that IITs have to listen to various targets. At the beginning of their working day, they are usually presented with a long list of telephone calls recorded in the meantime, or they are informed that there are several hours' worth of recorded material from a bugged apartment to be listened to. When apartments or vehicles are bugged, the IIT's task is, of course,

to summarize and where necessary transfer to a TIR only those conversations included in this vast amount of audio material that they deem relevant. The cognitive processes of perception and filtering that take place when listening to intercepted phone calls or room surveillance were described above (Section 3.3).

Below we describe how workflows are organized between investigators and IITs and focus on the surveillance of telephones. Due to the fact that a wide variety of conversations with many different people are conducted in various languages via wiretapped telephones, efficient cooperation and prioritizing information are essential. We have identified two basic practices. In the first, IITs receive a list containing only those conversations that the police responsible for the operation have preselected on the basis of the telephone numbers involved or the language(s) used in the intercepted conversation. In this case, the IIT is only given access to the conversations in their working language(s). The task they are to carry out consists of categorizing the audio recordings as relevant or not relevant to the investigation or as conversations that cannot be used for legal reasons, such as a call with the speaker's defense lawyer.

The second practice reported to us is a rather informal process. Here, the IIT is additionally given audio recordings to work on in which the targets are speaking a language that the investigators can understand. In principle, the investigators themselves should listen to these conversations and produce the intralingual transcription (Section 3.2.1.1.2). When this task is informally delegated to the IIT, one reason may be to save the investigator time. Another reason may be that, though the audio material contains conversations in a language that the investigators can theoretically understand, in practice it is either difficult or impossible to follow, for example, because the speaker has a strong accent or switches between several languages mid-sentence (Section 3.2.2).

Yeah, but that's why with people we have to listen to EVERYTHING. Because sometimes [the] chief investigator misses something because his girlfriend is talking and SUDDENLY he says, "You know, you have to receive the man". Then we know, from that moment [she] is no longer girlfriend, but she's complicit. But [the] investigator sometimes doesn't hear, [...] they don't hear that. (IIT2)

When the IIT can listen to all the telephone conversations, they gain a better insight into the overall operation and acquire more knowledge of the investigation, which they automatically use in subsequent translatorial processes. However, it goes without saying that delegating the initial conversation triage to the IIT also devolves a huge responsibility onto them, and their decision as to the possible relevance of the conversation may have an influence on the ongoing investigation.

Depending on the investigator's instructions (Section 4.3.2), conversations prioritized by the IIT as being potentially relevant may be summarized in a second step before being transferred in their entirety into the target language in a third step (Section 4.3.3). Alternatively, the conversation summaries are dispensed with and a TIR is immediately produced of the conversations deemed relevant. When the process takes place in three steps, the IITs entrusted with the TIR not only listen to the audio file but are also presented with the corresponding summary that gives them an idea as to the nature and content of the conversation. According to the interviews we conducted with police officers, it is best for the IITs who produce the summary and the TIR not to be one and the same person. Despite this, dividing assignments in this way is not always possible due to time restraints or a lack of available staff. In both cases, it can be assumed that being presented with a summary will influence the IIT's perception of the conversation on the audio recording due to the prior filtering of information (Section 3.4).

B: And when you produce these 1:1 records, [...] a great deal has already been filtered out, right, I'd say. Or [what] you then do/ then actually you mainly translate.

[...]

I: // What do you mean by // filtered out?

B: Yeah, [identifying] which conversations are relevant. Summaries are produced and on the basis of them, a decision is made whether a verbatim transcription is needed, how much sense that makes and where/ depending on where you are in the operation, exactly.

[...]

By now [...] I also do verbatim transcriptions of conversations that I myself effectively decided were relevant, or rather where I/ for which I [emphasized] produced the summary. [...] [S]o in my experience it's actually quite good, regardless of who did the summary, to [...] every now and then simply [...], if time allows, to listen to the whole conversation. Also the conversation before, the conversation after. That/ that makes a lot of sense. (IIT7)

Besides the fact that the IIT in the quotation is aware that it is important for the contextualization of the conversation content (Section 3.3) not to focus on preselected extracts of information, it is also clear that not having the same IIT carry out all the steps of the process – prioritizing the information and the interlingual rendering – results in an implicit review of the prioritizing decision. Having several individuals work on the source information fundamentally improves the reliability of a TIR (Section 5.3.3).

In addition, our interviews show that experienced IITs in particular do not always wait for specific instructions from the investigator responsible. Instead,

they are often able to gauge by themselves a conversation's relevance in the context of the case and may even draw up a TIR proactively to save the investigators time.

Or when she herself already knows, "Hey I've already written that 1:1". Then I'm pleased, then I don't have to read that through as well and filter it out, "Please do that 1:1", and then I'm really pleased and then she knows that and then: "Hey, great job". Yeah. ((laughs)) Yeah. (POL5)

Consequently, these two main triage practices during ongoing investigations can be represented graphically as a three-step process. As gauging the criminal relevance of conversations is actually the task of the investigators involved in the case, the diagram shows just how much investigative responsibility the law enforcement agencies have to delegate to IITs because they alone are capable of understanding the conversations (see Figure 3.3).

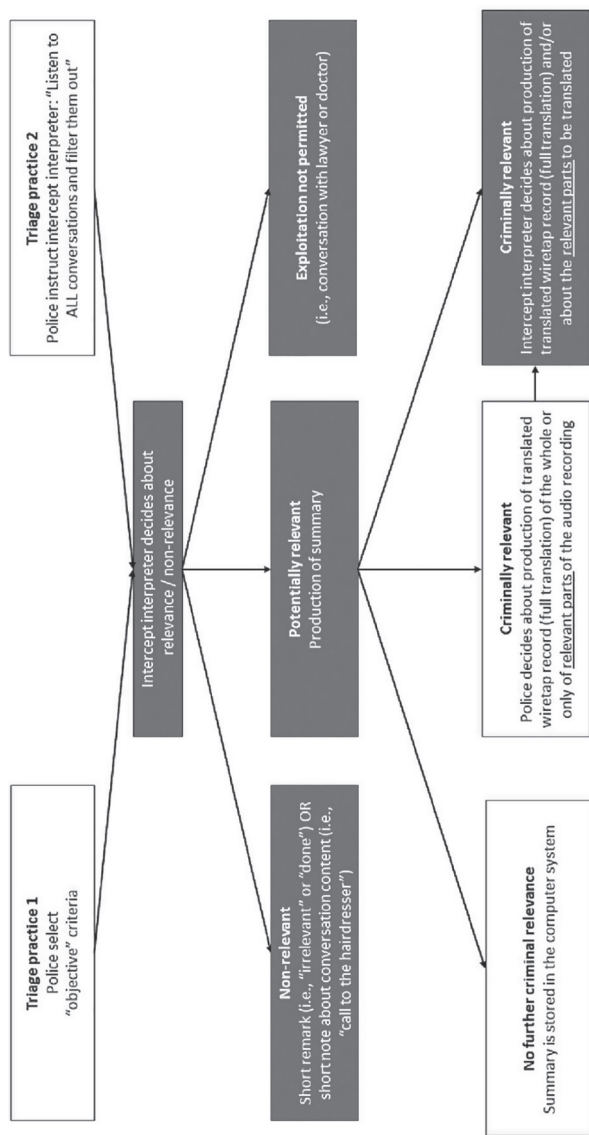
Despite being bound by their brief (Section 2.2), every now and then IITs therefore act on their own authority and triage the conversations themselves. At the same time, Figure 3.3 also reveals a cooperative process whereby the investigators and the IITs filter the information by turns and in communication with one another. This form of cooperation is discussed in the following section (Section 3.5).

Whereas the processes in the upper and middle levels shown in Figure 3.3 always take place while investigations are ongoing, TIRs – which are on the bottom level and conclude the work process – are occasionally only produced once the investigation has finished (Section 4.3.3). At times, they are only needed in a subsequent stage of the criminal proceedings, and the IIT may therefore only be asked to create a TIR after the accused has been arrested or even later. In this case, the temporal distance from the source information is greater, which makes the translatorial processes of contextualization and recontextualization more difficult for the IIT (Section 3.3).

The task of prioritizing information makes it plain that selecting the source material involves processes that go beyond translatorial work, meaning that the translational activity of IITs demands not just translatorial actions, i.e. the production of text, but also investigative competence and knowledge of how investigations are conducted (Section 6.5).

3.5 WORKING IN COOPERATION

In principle, translational work is the production of text for others' use, which is why it requires cooperation with other actors. In communication surveillance, working together with investigators is the starting point and framework of every type of process described in the preceding sections. In Section 3.4, we



Source: Griebel and Hohl Zürcher, 2023.

Figure 3.3 Prioritizing conversations' relevance as evidence

described the cooperation required to organize the work process and revealed that, despite being bound by their brief, IITs nevertheless take on other tasks autonomously, such as producing a TIR without first being asked. For this reason, the organization of workflows and prioritizing information are also cooperative processes in which the clearly defined tasks overlap.

[The IITs] then come too and say/ immediately make the suggestion: “Shall I write that 1:1?” Because they themselves know it’s very important. They have the experience and know they’re speaking so clearly now or it really is about the drug deal, she’s bound to need that, the case investigator or whoever. Then they already come with the suggestion, “shall I write that here like this?” And then we discuss it briefly: “Yeah, of course”. Or maybe we detect something later when reading through the summaries: “Oh, that would actually be important too”. [...] maybe something only comes up later that we [the investigators] then realize, yes, that conversation, it actually is important. Then we discuss that with the interpreters and say: “Write this part for me 1:1 after all”. Maybe something only comes up later, not right from the start. (POL5)

Operative interpreting can be considered a special kind of cooperation. In this case, the collaboration is the result of the specific translational task, which consists of giving investigators real-time information on the target’s actions at a very specific point in the investigation and hence enabling the police to carry out further investigatory actions promptly.

If we’re listening to an offense as it is being committed, of course I work with the investigators around me, because we have had cases, for example, of burglary, and they were in the process of stealing. So, there I am live, the investigators are next to me; I translate orally for them, in the first phase, and I tell them, “They’re saying this, they’re doing that, you have to go there”. (IIT12)

As this is a separate translational form with a clear translational task, we will not go into it in more detail here but rather discuss operative interpreting separately in Section 3.2.1.2 as one of the translational forms involved in intercept interpreting-translation.

In communication surveillance, cooperation with IITs does not mean involving them in investigative actions. Rather, we define it as active sharing of information between investigators and IITs, with each party contributing information to which they alone have access.

Our research shows that this sharing of information consists of a series of everyday, informal, cooperative actions.

The purpose of all the informal forms of cooperation that we identified is to fill both parties’ information gaps because both the IITs and the investigators are cut off from part of the case information. Although the police investigators are better acquainted with the case, they are ignorant of the content

of foreign-language conversations and hence part of the information. On the other hand, IITs acquire this information but have no access to the rest of the inquiry. This can impede the translational activity of IITs because it means the logical connections between the conversations may be lacking. Consequently, the shortage of information affects both parties and leads to mutual dependence. The police can only assess the content and relevance of conversations on the basis of prior translational work, whereas IITs can only determine the relevance of a conversation's content when they are given contextual information by the police.

If he's missing something, he'll actually ask, and then if we can we tell him, if not we don't tell him everything, and so what we do is that at the end of his day or at the end of his morning, he comes and then we do the conversations one after the other. Everything he's written down, we, we'll read, so if we don't have the time, we do it, then it's the next time that we look at it, we say, "But here, you wrote that, that means"/ then we discuss with him about everything he's translated for us. We, we again have an analysis with him, and during that reading that we do ourselves of the translation, we say, "Wow, that, that, that sounds good there", etc. ... Him maybe he doesn't know it, right. Maybe he's translated things that seem trivial to him, but that are interesting for us, so we have him listen again if necessary and we clarify certain things. You see? So there are/ the idea is that we keep control of the analysis, seeing as it's not the interpreter who's telling us what we should do or telling us/ so it could happen that the interpreter tells us, "Guys, if I were you, I think that there's/ there, there's something that's arrived, the guys they're not talking like normal or they're suspicious or [...], me I think if I were you, I'd intervene" [...]. (POL7)

As in principle IITs are not allowed to be involved in investigations and, citing the argument of impartiality, at times efforts are even made to share as little intelligence with them as possible (Section 5.2), informal cooperative actions are always based on information being relayed orally. On seldom and isolated occasions, information may be passed on via text message or email, for instance when the investigator needs to understand the content of a chat message written by the target when the IIT is absent.

However, this type of cooperation requires the IIT to carry out their work in the rooms of the law enforcement authority, as is obligatory in many countries. If IITs provide their service elsewhere, e.g. if the files they should listen to are sent to them via a secure connection or they are given access to a law enforcement agency server, instantaneous collaboration is not possible and the sharing of information will inevitably diminish. Needless to say, this makes it much more difficult for IITs to contextualize what they have heard or read because it isolates them from part of the information.

We take as our starting point the constellation that we came across in our research: the IIT carries out their translational activity on police premises, i.e. either in separate offices or even in offices that are shared with the investigators.

In everyday practice, depending on the point in time and the need for information, more information may be shared orally by IITs or by investigators. The first information transfer frequently takes place when the IIT starts their assignment. Some of the investigators we interviewed consider it necessary not only to brief the IIT on their assignment and the criminal offense that prompted the investigation, but also to give them additional information about the target or group of offenders in order to aid the act of listening and the processing of information by giving them some context.

And in principle the interpreter just has to translate. Just translate. He has no other function and yet sometimes it's also important for the interpreter to get an idea of it for himself/ for his imagination, which is why it can happen/ I'll say/ in principle we're not allowed, but we show him a photo for example. I used to do that too. That helps/ a picture and he says: "Yeah, exactly. That's exactly how I'd imagined [him], or, of that person". [...] He also has a powerful voice, he's a broad man for example. [...] sometimes that helps the interpreters too, [...] to visualize it all. That makes it easier for him and our interpreters can say, "Hey, we've listened to him before. He already had him there, there, and ten years ago". They know these voices so well. (POL3a)

However, the process may also be initiated by the IIT, who may proactively request information about the requirements and work process or to aid their understanding, e.g. information about targets or criminal acts, to make it possible for them to identify relevant conversations (Section 3.4).

Um, every department or every group of police officers works a bit differently. And that's why always, when I have a new/ a new assignment, then I ask of my own accord: "How do you want it putting in writing? What should I pay attention to, what should be in the text?" You do have to get the information yourself. (IIT4)

Conversely, the information IITs require may pertain to specific, incomprehensible conversations or even passages of a conversation that only additional information from the investigators is able to clarify. In this case, knowledge of the investigation is constructed cooperatively to fill the gaps in information on both sides.

Information that IITs deem urgent, or even suspicions of covert communication or the interpretation of utterances – both of which are the responsibility of the law enforcement agencies and are therefore often unwelcome in the written *translata* – are likewise communicated orally. We refer to this as "watercooler chats", during which, for example, the investigator pops by the IIT's office to ask their opinion of a target's personality or behavior. Or the IIT calls on the investigator responsible to tell them that they just heard on an audio recording that the target had arranged a rendezvous point for the following day to hand over "something".

Because [the investigator] obviously firstly wants written feedback from us, the transcriptions of the conversations, but also, if something's urgent, for us to say: "Hey, that's now the nth time that those two have met". And it wasn't just exchanging goods but one of them complained: "You gave me bad goods. I'm giving you it back, blah blah blah". So something's going on. And [the target] has [...] taken a back seat, you may not even have to monitor [them] for a while because [they] obviously don't want to get [their] hands dirty. (IIT5)

Another form of cooperation consists of the IITs participating in the investigative team's meetings. Different degrees of participation were reported to us. Whereas some IITs take part in virtually every single meeting about a specific operation, others are only asked to join occasionally, and yet others are not generally involved in team meetings as a matter of principle. However, such team meetings serve not only to share information between investigators and IITs. Especially in the case of large-scale operations, this kind of cooperation ensures an efficient work process and an uninterrupted flow of information between everyone involved.

Interviewee: The way we started with the [IITs from country X] was that we always had a meeting in the office next door at two o'clock every day. There they recounted, those who worked operatively, recounted everything that had gone on. So that the three who transcribed also know something else is coming to transcribe.

Interviewer: Everyone always took part, all five?

Interviewee: Everyone. All five. That/ we actually wanted all five to be equally well informed, because if someone was missing, vacation or whatever, for everyone to know what had been done by the defendants. And that worked extremely well, that was like a huge family. (POL4)

As these types of cooperation are informal, we assume that they greatly depend on the individual work practices of the investigators themselves or on practices in individual police corps. While some consider informal cooperation vital in order to construct knowledge about the perpetrator(s) and the case by combining information, others make the case for a clear division of tasks by giving instructions and separating the areas of activity. That being said, it was clear in the interviews that, even when investigators stated that they took care to clearly separate tasks, to brief the IITs, and to keep the flow of information to a minimum, their answers to follow-up questions revealed that relaying information and cooperating were inherent in the translational process and vital to investigations. In these cases, it seems less a matter of ad hoc watercooler chats and more customary practice for IITs to relay relevant information that does not make its way into the written *translata* as a kind of synopsis at the end of their working day, for example.

Yeah yeah. In fact every time I come, after having finished my translations, even if I tell them nothing during the translation, in general me I always talk (laughs) at the time, but in any case, when we finish yeah, I take notes on the side and I pass on to them what I've felt, what I've noticed and they tell me, "Oh yeah there's this and that", which is quite interesting because we really do come to agree about the things that I've been able to provide them with afterward, well also the questions for me, to clarify [it] for me, they tell me, "Yeah, it's just because there's that, that, and that" and suddenly me that reassures me a bit in my understanding, in my interpretation, and I know what direction to go in next time. (IIT14)

Furthermore, we observed that the investigators' confidence in the IIT played an important role.

[...] There are some interpreters who've told us that right. They've said, "You have to go break down the door, me I think that they'll have something". You see? For us, afterward, honestly, if we ask ourselves the question, we say, "Yes, after all it's the interpreter who helped us, because him/ it's him who's been listening to the guys for six months, he heard something strange that he can't necessarily put in writing, but in the, in the way that they're behaving, and we intervened and then we found what we needed". You see? So the interpreter he also has that role, right, of telling us "Me, if I were you, I think there's something". There you have it, and either we trust [him] or we say, "No, we know that's not possible", because we have other means of inquiry, we know that he's wrong, but nevertheless/ good interpreters often give us an atmosphere where/ an atmosphere that's important for us. [...] Yeah, the interpreter he has/ it's a little bit the frog in the pan who (laughs), who tells us the forecast sometimes. (POL7)

Thus, IITs who are tasked with translational activities in the context of surveillance operations constantly or regularly for months or even years seem to be asked for their opinion and assessment of individuals and situations more frequently and seem to be better integrated in the team than IITs who are working with that law enforcement agency for the first time, who do so rarely, or only for very short-term communication surveillance operations. In these cases, it seems that the police tend to check the IITs' work more closely and limit their assignment to the purely linguistic transfer of the conversations. Yet there is a contradiction here: after all, if anyone needs more information to enable them to contextualize content and differentiate between important and unimportant conversations, it is new or infrequent IITs, not those with ample experience.

4. The products of intercept interpreting-translation

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4.1 INTRODUCTION TO CHAPTER 4

Having described in Chapter 3 how the *translata* are created, this chapter now concentrates on the results of the intercept interpreting-translating activity, which we refer to as products. It has been shown above that different oral and written products can be created from the same aural source information depending on the law enforcement agencies’ needs. To this are added the products based on written source information, i.e. chat communication (Section 3.2.2). For all these various products of intercept interpreting-translation, we use the umbrella term *translata*, as it covers the various – oral and written – products of interlingual transfer (Section 1.5).

Below we present the categories of *translata* – produced for different purposes – that emerged from our project data: oral and written *translata*, such as short notes, summaries, and translated intercept records (TIRs), as well as the transcript as part of a two-step process (Section 3.2.1.2). These products of intercept interpreting-translation do not exist in the same form in every legal system, but every legal system has to find a solution to the same problem: law

enforcement agencies require different *translata* depending on the stage of the criminal proceedings, the urgency, and their intended use. In certain circumstances, it may even be necessary to combine various categories of *translata*, such as the summary and the TIR.

Our intention behind presenting these *translata* categories is to help define the parameters of possible solutions (Chapter 5). These approaches can then be implemented in every legal system according to the categories of *translata* that are appropriate to the common practice in that country.

Another aim is to name and differentiate the translatorial products that are unique to communication surveillance, because naming and differentiating the products precisely will make it easier to find structured solutions for every single *translatum*. Currently, different, inconsistent, and at times misleading names coexist for one and the same product. Thus, terms like “transcript”, “transcription”, “wiretap record”, or “1:1 record”, which can be found in the interview quotations in the previous chapters, are not only imprecise but also obfuscate the underlying translatorial activity.

As the objective of a criminal trial determines which translational strategy is appropriate to produce the *translatum* needed in each case (oral *translatum*, short note, summary, or TIR), this influences how close the relationship is between the target text and the source text.

Accordingly, the relationship between the target text and the source text can be very weak (short note) or very close (TIR). After all, the purpose of the translational activity dictates which elements from the source information, i.e. the intercepted conversation, are preserved, altered, or processed during the transfer. The relationship between the target text and the source information is illustrated by the following example: during an operative interpreting assignment, the intercept interpreter-translator (IIT) listens to a conversation and relays to the investigator, who in this situation is often in the same room, the parts of the conversation that might be material to an immediate police raid on-site. The significance of the linguistic relationship with the source text is secondary; what is most important is conveying the situational and case-related information in real time. The situation is different when a TIR is to be produced of the same conversation. Indeed, if a TIR is created of the conversation for evidentiary purposes at a later stage in the criminal proceedings, no close linguistic relationship with the source text is required, but situational and metalinguistic elements are added.

Yet even two *translata* with the same level of relationship, such as two TIRs, will differ from one another because everyone perceives, understands, and finally transfers the source information differently according to their personal language skills. Contrary to the widespread fallacy that as verbatim a translation as possible always guarantees the same target text regardless of which IIT produces it, no *translatum* is ever an unequivocal likeness and it always also

contains the IIT's interpretation of the source text, as a result of which the latter can neither be reproduced exactly nor reconstructed by means of back translation.

Finally, it should be mentioned that the *translatum*'s function also changes with its intended use (Chapter 2). If *translata* are produced while an investigation is ongoing in order to make available to the investigators the part of the communication surveillance that they do not understand, the principal purpose is internal. In such instances, we can say that the *translatum* has an *informative function*. When the purpose of the *translata* is to serve as proof and enter the criminal file as translated intercept evidence (TIE) (Section 1.5), they have a *performative function*.

At the same time, the function of the *translata* affects the number and range of people who have access to them. Whereas oral *translata* in communication surveillance serve purely internal purposes, meaning they are only heard by the law enforcement officers involved in the case, have an informative function, and are not documented, written *translata* may serve both internal and external purposes. As soon as written *translata* serve a performative function or are produced especially for performative purposes, they leave the internal realm of police investigations and are reused by other actors involved in the criminal prosecution. All this influences the textualization strategy employed, as elaborated in Section 3.3.

The following sections present the oral and written products of intercept interpreting-translation that were revealed by our research. We describe their main features, their purpose, the function of the text in the context of the criminal prosecution, and the challenges IITs face when producing them in practice.

4.2 ORAL *TRANSLATA*

We discussed oral *translata* in detail in Chapter 3. They are fleeting and one-time products, in contrast to written *translata* that are documented in the law enforcement agencies' system or enter the criminal file as evidence and hence are available indefinitely, i.e. can also be consulted at a later point in time.

As described in Section 3.2.1.2, the product of this translational process is focused on the current investigative setting (e.g. physical surveillance; raid) and is a very abridged oral *translatum* of selected aspects of the conversation's content. In other words, it is a *translatum* with only a weak relationship with the source text. For example, if the field operatives are on-site waiting for the right moment to hide a bug in the target's apartment, the IIT in essence only relays the information conducive to that part of the operation; a possible oral *translatum* might be: "The target is talking with his supplier and arranging a meeting at 3 p.m. His wife is leaving the apartment saying that she's working the late shift and will only be home at 10 p.m". The investigator responsible,

who in such cases is usually standing or sitting nearby, can then pose questions to the IIT, ask for clarification, or request a more detailed interpretation. This is a cooperative process that gives rise to an ephemeral product that is only needed at that moment. The textualization of such conversations in the form of a TIR may take place shortly afterward or with some temporal distance. The second form of oral *translatum* that we detected is that described in Section 3.5: information that is relayed ad hoc. These oral *translata* are very selective and bear little relationship with the source text; they may comprise specific information or an entire passage of the conversation. Usually, the transfer takes place in the middle of a written translational process, for example while listening and writing a summary. The information seems so relevant or urgent to the IIT that they immediately share it with the investigator. More rarely, this ad hoc information is passed on in writing in the form of a short email or text message.

That's the only thing we share with case investigators orally. OK, with the really important conversations, then a summary is made immediately and a 1:1 transcription is made too. If [it's] a very important conversation. For example, a delivery of several kilos is about to be made. And then that's shared immediately and the right measures are undertaken to prevent that or to seize it. (IIT8)

Often, these oral *translata* are connected to case-related or forensic assessments by the IIT, e.g. when they suspect that the “vegetable delivery” arranged for that afternoon is actually the next handover of drugs, or when the target suddenly starts talking to someone who the IIT recognizes from a previous investigation. Here, too, the *translata* are fleeting, produced in the informal context of the investigation, and leave no paper trail, as is the case with operative interpreting. As such, they are of course not traceable and the IIT's translational activity is intentionally hidden. This is very much deliberate: it maintains the fiction that intercept interpreting-translation comprises nothing but an interlingual transfer, without the IIT apprehending any investigative or forensic information.

4.3 WRITTEN *TRANSLATA*

The following sections address the visible *translata* resulting from intercept interpreting-translation that are documented in the law enforcement agency's system. We take as our starting point the written *translata* produced on the basis of aural source information. As the purpose of a transcript created in the context of intercept interpreting-translation is its subsequent interlingual transcription, we also include it as an example of written *translata*. In Section 4.3.3

on TIRs, we explain how TIRs differ depending on whether they are created using the one- or two-step method.

When describing written *translata*, we forge a bridge between translational processes (Chapter 3) and reliability requirements (Chapter 5) by explaining the purpose, the specific features of each *translatum*, and the problems presented by current practices.

As already discussed in the chapter concerning translational processes, communication follows different conventions depending on whether it is oral or written. When rendering oral communication in writing, these conventions merge. Features of orality have to be carried over to the written *translatum*, especially to the TIR. By contrast, in the summary, the discursive character of the intercepted dialogic conversation – whether between two or more speakers – is changed, because it is only rendered indirectly and as a *précis*. As such, it takes the form of monologic information. This means that every conversation and every chat message is entirely divorced from its context, entextualized, and then reconstructed (Section 3.3). The product thus features elements incorporated in the course of the recontextualization, with the IIT adding details on various levels:

- on the linguistic level, for example about the use of a sociolect;
- on the communicative level, notes are made as to those involved in the conversational setting and any names named;
- on the situational level, such as background noise or clues about the relationship between those involved in the conversation, e.g. whether it is hierarchical. Together with the content summary, these para- and extra-linguistic elements enable police officers to holistically, rapidly, and effectively assess the content and setting of a conversation; and
- on the forensic or investigative level, such as coded language, indications of specific criminal acts, paraverbal information like laughing, crying, or a change in vocal pitch, suspicious behavior, or if the IIT has recognized a voice.

Section 3.2.1.1.2 describes the process of interlingual textualization in the context of the two-step method. As mentioned in the introduction, both in the research and the applied literature and in jurisprudence and investigative practice, the term *transcript* is frequently used when what is meant is a *translatum*, mostly a TIR. This not only obfuscates the fact that the interlingual transfer of the source information makes considerable additional cognitive demands of the IIT, but also blurs the line between the different responsibilities of investigators and IITs. After all, in communication surveillance for the most part the intralingual transcription of intercepted conversations should be carried

out by the investigators responsible, though informal exceptions may be made in day-to-day investigative practice. These transcriptions in the language of the law enforcement agencies then immediately serve a performative function.

This is not the case with the intralingual textualizations that IITs produce while they are working as an intermediate step before the TIR. Here, the source information is textualized in the foreign language, and the transcript serves exclusively translational purposes: the subsequent production of a TIR, or potentially to check a *translatum* when its quality is called into question.

This section assumes the transcript's purpose to be translational as part of the two-step method.

As in the one-step method, i.e. the direct transfer and textualization of the source information in the target language, the transcription in the source language must reproduce every aspect of the source information without omissions and in chronological order as a matter of principle. The conversation is presented as a sequence of utterances, which are quoted in direct speech. At times, a phonetic transliteration may be necessary, i.e. writing, for example, the names of people or places as they are spoken.

The following example is taken from our project data and is our own transcription of a conversation passage in Serbian.

Start: #00
MS1: E, Miško!
MS2: E, brate.
MS1: Šta bi?
MS2: Ništa ja sam [-] Ma na pumpi sam, brate. Ne mogu, [...] [Horns can be heard.] poludeću i ja ovde
MS1: [laughing] [...] Na kojoj pumpi si? [...]
MS2: Ja sad krećem, brate.
MS1: Dobro. A de? [Radio playing]
MS2: Treba da se vidim sa Turcima. Odoh za Keln. [...] Šta ću?
 [...]
End: #00

Example 1 Transcript of an intercepted passage

This example shows how information about the speakers and the context is rendered alongside the transcription of the utterances. This information is generally textualized in the language of the law enforcement agencies. Transcripts contain sociolinguistic information, such as the gender of those involved in the conversation (MS – male speaker) to the extent that it is audible, as well as paralinguistic details, i.e. metatextual notes, like pauses or laughter. Metatextual

notes may also comprise information about hesitation, overlapping speech, code-switching, or code-mixing. By contrast, contextual notes supply details about background noise, such as roadway noise or other sounds – in the example above, the radio – that may make it easier to understand the setting. Furthermore, incomprehensible passages or other comments, e.g. concerning the audio quality, are textualized in transcripts in the form of editorial notes.

Without a doubt, transcripts – like TIRs – can contain only a fraction of the linguistic, nonlinguistic, and extralinguistic reference information in the original. As written documents of a spoken source text, they can represent the original utterances as much as possible, but not in their entirety.

A major disadvantage of the transcript as part of the two-step method is certainly the considerable amount of time – and hence financial and personnel costs – involved, which is why many legal systems forgo intralingual textualization. Another disadvantage is that the oral communication in the transcript cannot be represented in full, and this information gap affects the IIT who is in charge of the translation but did not produce the transcript. Consequently, they have to translate a written text without having any aural impression of the conversation, meaning that in this regard they are in the same position as the investigators. This problem is inherent in the modality change and cannot even be solved by adding a multitude of meta- and contextual notes, which in extreme cases could actually impede the reader's understanding of the text.

4.3.1 The Short Note

Short notes are written once the recorded conversations have undergone an initial filtering. In short notes, the intercepted conversations are marked as potentially relevant to the investigation, irrelevant, or not usable. Other investigative decisions depend on this initial prioritization of the information by investigators and IITs (Section 3.4). The fact that it is usually the IIT who conducts the content-based prioritization means they take on investigative tasks that are in principle the responsibility of the police. Recordings marked “irrelevant” or with a similar expression like “inconsequential”, such as a conversation between the suspect and their grandmother, are only saved on the law enforcement agency's system to meet documentation obligations. By contrast, conversations protected by professional secrecy, like a telephone call between the suspect and their lawyer or doctor, are also saved, in this case marked “not usable”; it is prohibited to analyze such conversations beyond this initial classification. Conversations categorized as “relevant” are generally processed immediately.

The short note is therefore an adapting *translatum*, i.e. the interlingual translational process is barely discernible. During its transfer, the content of the source-language conversation is edited and condensed so much that the

product consists more of an analytically evaluating meta-comment about the conversation's content than an interlingual rendering. The short note serves two intended purposes: identifying the information relevant to the present investigation and documenting each step of the communication surveillance operation. It is intended exclusively for internal police use. The fact that IITs are tasked with carrying out a conversation analysis on the basis of investigative clues becomes obvious, bearing in mind that police investigators can instruct IITs to focus their attention on suspicious content (e.g. indications of a planned robbery, discussion of a transaction) and to make a case-dependent selection.

[IIT's name] reflects further: "The moment you write 'inconsequential', you haven't just translated". He contemplates another, more fitting job description and says, maybe "analyst" would be more fitting. (OBS Day 5)

Nevertheless, the approaches reported in the interviews were not uniform. Whereas some IITs only record a meta comment about a conversation's relevance, others supplement the short note with a brief statement of the content, such as "inconsequential, calling his grandmother" or "conversation about his upcoming birthday".

But I always leave an indication of the conversation. With me there's never just an "inconsequential". (IIT13)

When the only note made is a meta comment, the investigator is left completely unaware of the content. This makes it difficult to find the conversation again later, for instance should it transpire that the grandmother is (also) involved in a narcotics offense.

Consequently, these short notes about a conversation's relevance are very important *translata* in communication surveillance. If an IIT misjudges the content of the conversation in these short, analytical file notes, no further notice is taken of this and potentially other related conversations, no other, more detailed *translata* are produced, and misguided investigative decisions may be taken as a result.

4.3.2 The Summary

If a conversation is categorized as relevant during the initial triage, the second step may consist of writing a target-language summary. Although interlingual summaries are an efficient means of documenting a conversation, they are not compulsory. Law enforcement agencies can also have TIRs produced immediately of all conversations classed as relevant.

The summary renders the conversation in such a way that the investigators can gain an overview of the conversation's content and setting, as well as its criminal or investigative relevance. If the conversation is then classified as not immediately relevant, the *translatum* is simply saved on the system. However, if the investigators deem the content relevant to subsequent stages of the investigation and the criminal proceedings, they will request that a TIR be produced of either the entirety or extracts of the conversation (Section 4.3.3).

As described in Section 3.4, producing an interlingual summary is an intermediary step that takes place after the initial prioritization of potentially relevant conversations and generally before the production of a TIR. As subsequent investigative decisions depend on this *translatum*, it is important for police investigators to be provided with information that is as up-to-date as possible. Hence, unlike TIRs, summaries are generally produced promptly. This being said, there are also stages of the investigation, such as during ongoing surveillance by police officers on-site, in which the production of summaries is temporarily deferred as an oral, cooperative translational form (Section 3.5) is required instead.

[IIT] explains, “When the surveillance is ongoing, no interpreter produces summaries so they don’t miss anything.” “With people like [target’s name]” several conversations happened consecutively, all of which had to be listened to. (OBS Day 2)

In principle, summaries serve different purposes, with the function and relevance of the individual conversation also depending on “where one is in the action” (SM7). They serve:

- to help make a decision about further steps of the investigation;
- as a basis for investigators to decide whether to have a TIR produced;
- IITs as a point of reference when producing a TIR;
- as information to be submitted to the department of public prosecution to request the extension of or apply for a new surveillance operation;
- as a point of reference during police interrogations; and
- as evidence – astonishingly so, as explained below.

Consequently, summaries are extremely important during police investigations as they grant investigators their first access to this part of the intelligence gathered via communication surveillance that they are not able to understand by themselves.

The summary, it [...] gives us a short overview. And on the basis of that summary we then have to decide, is the conversation so important, the content, that there’s [...] a 1:1 verbatim transcription, because we need it later for the files, for

an extension, or for an interrogation. And then it comes to a 1:1 transcription. So the summary actually gives us an overview, [...] what's being discussed. (POL6)

So that the investigators can gain this quick overview of the conversation and the conversational setting, in addition to the summary of the conversation's content, further situational and contextual details are noted down, such as background noise (e.g. train station noises, radio, television, roadway noise) or other people who can be heard in the background.

Then [the IIT] shows me the recording of office surveillance so that I can understand how ambient noise is heard and interpreted: in this recording there is no conversation, but it is noted down that [the person under surveillance] is walking back and forth and "rustling of a plastic bag". (OBS Day 4)

Precisely because the summary offers the opportunity to convey important information about the communication setting, it has a powerful impact on the direction taken by the investigation: it influences the investigators' decisions, who not only interpret the summarized conversation in the context of the case but also may draw conclusions about other intercepted conversations that they may have listened to themselves.

In the following example summary from a case file, the IIT adds their own conjecture about the voice heard in the recording, though without clearly marking it as such.

A asks B to give the phone to an unknown male [C]. A tells C that he's going to have a shower and that they'll go.

The voice of C corresponds to [name of the supposed speaker] (Criminal File 2)

Furthermore, a summary – sometimes written long ago – can provide the IITs entrusted with the task of producing TIRs an overview of the conversational setting before they themselves start listening. As the following quotation shows, it may also come to pass that the IIT works on the same conversations again, though it is generally common for different IITs to write the summary and the TIR of the same conversation.

And yeah, sometimes it's also the case that you really get them on paper somehow and then inevitably see them too. [...] But sometimes I simply listen to the conversation for myself. And [...] look at just [...] those [...] marked passages in the summary. (IIT7)

With regard to the translational action, the purpose of the summary is a synthesizing, analytical, target-language rendering of the source-language communication that conveys the conversational setting and is adapted to the

investigation at hand. The relationship with the source text (Section 5.3) is stronger than with a short note, yet like a short note, it is an adapting *translatum* that serves the understanding of the conversation in its entirety, including the conversational setting. The translatorial action consists of an analytical, filtering listening process and a resulting selective rendering of the elements deemed relevant.

[IIT] says: “It’s quite selective, what we mention in the summary”. It was important to carry over all the names, above all if someone introduced themselves with their name. The reason being that during an interrogation people often claimed they weren’t the person speaking. That reminds me of the interrogation on Wednesday, during which the accused likewise claimed he wasn’t the speaker in some conversations he was played. (OBS Day 4)

For this category of *translatum* to serve the intended purpose, the IIT must embed the summary in the overall context of that particular criminal prosecution operation by proceeding as described in the quote above and selecting the elements to be rendered in the target language in such a way as to enable the summary to support the investigators during a potential interrogation at a later point in time.

[...] what we also do [in the interrogation] is to read them the content or the summary of the day from which the conversation has been taken, “There you have it, on that date you have contact with X, you make an appointment in Y, you talk about fifteen jeans, what does that mean?” (POL8)

Our interviews with experienced IITs revealed an awareness that they were carrying out a translational task characterized by selection and filtering when producing a summary and that, depending on the current status of the investigation, their *translatum* may influence the decisions taken by investigators. Depending on the specific case and prior information, this also has an impact on the IIT’s choice of wording in the target language and on the information they select, which is ultimately governed by subjective criteria.

Yeah, [...] that’s due, I’d say, to this type of text, [...] so I think ten people can read a book and if they write a summary, [...] each summary would be different, that’s [just] how it is, I think. (IIT7)

In addition to selecting relevant content and contextual elements, IITs may also incorporate information in summaries that they know from the communication surveillance of other individuals or from colleagues or investigators (Section 3.5). In other words, they use the summary to share additional information and interpretations that they would not include in a TIR.

[The IIT] summarizes the content of a conversation [...]: “[Person under surveillance] tells the person they’re talking to that they [the suspects] have to meet (presumably to organize online poker games)”. Then [the IIT] explains to me that this information only goes into the summary for the case investigator, never into a 1:1 transcription. [The IIT] has the information about online poker from [a colleague] who has frequently listened to the person. Consequently, it is their joint interpretation on the basis of information that they have from other sources. (OBS Day 4)

Moreover, suspicions about the use of coded language are noted in summaries, for example when the speakers are talking about flour, clocks, or bananas.

In terms of the *translatum*'s relationship with the source text, which may be weak or close, it is clear that the summary's relationship with the oral source information is weak and mainly determined by the purpose of the investigation. It is an abstracting, analytical *translatum* that also contains meta- and contextual information. This means that it provides IITs with a format in which they can record all the clues they consider important for the investigator and hence give their own impulses to the investigation.

And the summary, I'll put it like this, the summary ((laughs)) gives you somewhat more more leeway. ((laughs)) Meaning leeway to the advantage of the accused and to the advantage of us too, of course, that we can somehow, I'll put it like this, paraphrase a conversation in two sentences, what it's about, where then maybe, yeah, [it] was summarized somewhat daringly ((laughs)), but depending/ I'll simply say [it] was made up, but it/ yeah, a summary is really just a summary and [...] such short terms or codings don't always come into play in a summary in the way it then comes across in the 1:1 transcription. [...] And exactly, certain details, quantities are then, I'll put it like this, yeah, not always so exact/ so yeah, then you do write 5,000, but you don't write “5K”, but in the summary you're more likely to write “5,000”, because that has an influence on the interpretation, but the word actually spoken, these codings that are then used, never really come into their own in the summary or whatever/ they're never rendered in as much detail in a summary as in the 1:1 transcription. (POL6)

This quote mentions an aspect of this form of *translatum* that was also emphasized in other interviews with investigators and IITs alike: summaries provide the greatest opportunity for interpretations, explanations, and additions, whereas the TIR is strictly aligned with the source text, and when producing it the IIT always has to have an eye to its applicability in the trial and avoid the possibility of an appeal (Section 5.3.3). In essence, summaries are real-time, up-to-date intermediate products that serve as a point of reference for everyone involved – the police, the department of public prosecution, and the other IITs. However, it is also possible for summaries to be used as evidence. Their admissibility as evidence depends on the department of public prosecution and the accused giving their approval, meaning that it is subject to individual preferences.

[...] in part we work with the summary and [...] the 1:1 transcription is then only produced afterward, if it's actually needed. That somewhat depends on the public prosecutor and on the parties involved, whether or not a 1:1 transcription is necessary. Because if an accused person accepts the summary of the conversation and says: "Yeah, I accept th/ the summary with that conversation content that I was played", then [...] there's public prosecutors who agree with that and write such a bill of indictment. And then there's [...] public prosecutors who say: "No. I only accept 1:1 conversations". And that's why it's quite possible that after the arrest conversations then still have to be processed as a 1:1 transcription so that they can be confronted that way in an interrogation. (POL6)

Consequently, as a *translatum* the summary contains numerous sections of text produced independently by the IIT. Due to its purpose both as information to advance the police investigation and as a piece of evidence at a later stage of the criminal procedure, in practice it is difficult for the IIT to determine which metacommunicative and contextual elements they should include in their text, thereby identifying themselves as its author.

When the summary primarily serves an investigative purpose, namely tracking the surveilled individual's movements and actions in real time, the result is a target-language text in which the IIT's authorship is clear, their investigative analyses are recognizable, and their autonomous peri- and extra-translatorial activity is apparent.

However, when the summary is to be used as evidence, the IIT's explanatory additions to produce a holistic overall picture run the risk of overstepping their authority and must always be unambiguously marked as such (Section 5.3.2).

If, in the latter case, the IIT omits paraverbal and situational as well as forensic and investigative details out of a concern that e.g. the department of prosecution will reject their *translatum* or that the accused's lawyer will object, the reduction in information renders their summary meaningless, and it fails to serve its main purpose, namely moving the investigation forward. In such cases, the para- and metalinguistic and contextual information that is crucial to investigators is shifted to the realm of informal oral communication (Section 3.5) and is hence no longer transparent or traceable.

As a result of the interlingual summary's multiple purposes, various authorities' local preferences, and the lack of standards, we identified strongly divergent approaches.

Concerning the level of detail, the criminal files we analyzed contained very short but also very detailed summaries that resembled a TIR, as in the following example in which only the greeting was summarized, with the remainder of the conversation having been rendered chronologically in indirect speech:

Platitudes at the beginning of the conversation.

Then, [the suspect] asks for "an interventio" (intervention).

The other one clarifies "a whole one?"

[the suspect] says yes but he asks at what price he can get away with it because it's for him and that they lend him money.

The speaker asks him if he wants some "good, good, good?"

[the suspect] says "average".

The speaker says that the average is 3–4.

[the suspect] says so many?

The other one says yes, it's 1.5 and something.

[the suspect] repeats so much?

The other one confirms.

[the suspect] says that it's too much.

The speaker says that he'll look elsewhere then.

[the suspect] says that the 05 is arriving.

The other one goes to look for himself.

[the suspect] says that if not they'll look at it together, they'll see "their soldier".

(Criminal File 5)

A chronological rendering of the conversation, structured like a TIR, does not serve the purpose of a summary that is supposed to capture the essence of the surveilled communication.

We also noticed that metatextual and contextual elements are not always mentioned. Some summaries do contain such details, but they are documented in different ways. In the following example, the IIT refers to the voice in the background in parentheses in their summarizing text. The summary itself again renders the conversation chronologically, though in running text.

[Name] asks the MS [male speaker] where they are now? the MS answers Z ... we're now in Z, but we can't find the way. [...] says you can come to [name 2] .. I'm staying at [name 2] .. I'm at his place ... why not come here ... (a woman talks in the background) Finally [name] suggests to them to stop at the train station to take a train ... the conversation is cut short. (Criminal File 7)

By contrast, in the final example, the summary contains a conjecture about part of the conversation that is not named explicitly, namely trading a "car".

B calls A:

A complains because B hadn't called him. A and B talk about a deal (with a car?).

(Criminal File 5)

However, as the interpretation of the conversation content in parentheses is not unambiguously marked as a comment by the IIT, it could be an addition by an investigator. A lack of details of this kind can prove problematic later, during a later stage of the proceedings, for example if it becomes necessary to

explain which actor involved in the communication surveillance was behind a certain interpretation (Section 5.3). As IITs generally work according to the brief given to them by those responsible for the criminal investigation, it can be assumed that the range of summarizing *translata* explicitly requested or accepted by investigators is even greater in practice.

4.3.3 The Translated Intercept Record (TIR)

The third written product delivered by IITs on the basis of the intercepted conversations is the translated intercept record (TIR). In the TIR, the conversation or the transcript of the conversation (Section 3.2.1.1) is transferred chronologically, whether in its entirety or in excerpts, from the source language into the target language. Formally, the product remains the same regardless of whether the one- or two-step method is used. Nevertheless, it should be borne in mind that differences can emerge in the interlingual transfer of the conversation content that are a consequence of the individuals involved in the translational process and the different translational processes involved, as we discussed in detail in Chapter 3. Especially when several individuals are involved in different stages, as may be the case with the two-step method, the sources of error multiply. Mistakes from one stage of the process can be carried over into the next, giving rise to a cascading failure. A source of error can emerge in any stage, but the earlier the error occurs, the greater the cascade effect. Obviously, such a cascading failure can also happen when one and the same person works on various processes if they fail to notice their mistake and unwittingly reproduce it. For example, in the one-step method, a mistake could carry forward if the summary and the TIR are produced by the same person. On the other hand, there is also the opportunity for them to notice the mistake while producing the TIR that they did not identify or understand while producing the initial summary. The cascading failure can be interrupted by the IIT or the investigators provided that they have enough information available. However, if this information is lacking, which is a serious risk especially at the beginning of an inquiry, the cascading failure can carry forward. Although discovering and rectifying this replicated error entails considerable effort, it is absolutely essential if the products are to be reliable (Section 5.3).

In example 1 in Section 4.3 we presented an intralingual transcription. If a TIR is to be produced on the basis of this transcript according to the two-step method, it may look like that in the following Example 2 (see Table 4.1).

Even without being able to understand Serbian, it is clear that an interlingual transfer of the utterances has taken place, whereas the meta- and contextual details from the transcript have been carried over. Yet it would also be conceivable for a target-language product to contain comments on sociolinguistic or cultural characteristics beyond the details already included that may not

Table 4.1 Example 2 Two-step method

Serbian transcript	English translated intercept record
Start: #00:00:04–8# /	Start: #00:00:04–8# /
MS1: E, Miško! /	MS1: Hey, Mishko! /
MS2: E, brate. /	MS2: Hey, brother. /
MS1: Šta bi? /	MS1: What's up? /
MS2: Ništa ja sam [-] Ma na pumpi sam, brate. Ne mogu, [...] [Horns can be heard.] poludeću i ja ovdje. /	MS2: Nothing, I'm [-] I'm at the petrol station, brother. I cannot, [...] [Horns can be heard.] I, too, am going crazy here. /
MS1: [laughing] [...] Na kojoj pumpi si? [...] /	MS1: [laughing] [...] Which petrol station are you at? [...] /
MS2: Ja sad krećem, brate. /	MS2: I'm leaving now, brother. /
MS1: Dobro. A de? [Radio playing] /	MS1: Good. Where to? [Radio playing] /
MS2: Treba da se vidim sa Turcima. Odoh za Keln. [...] Šta ću? /	MS2: I have to meet the Turks. I'm going to Cologne. [...] What else should I do? /
[...] /	[...] /
End: #00:00:29–8#	End: #00:00:29–8#

feature in the transcript. This example also demonstrates something we mentioned above, namely that the translator does not hear the laughter or the sound of the radio in the background themselves, meaning that they do not themselves have direct access to the source information.

With the TIR, the rendering in the target language takes place in direct speech and precisely attributes each utterance to its speaker. Generally, the IIT produces a TIR of an entire conversation or of only the excerpts of the conversation that are relevant for evidential purposes (for the processes and brief by the investigating police officers, see Chapter 3). In the latter case, the product is therefore a mixture of a summary and a TIR.

A TIR is produced for various intended uses. It serves:

- the investigators as a point of reference on the basis of which to reconstruct all the content of the conversation;
- to confront the accused with their alleged crimes during the police interrogation after their arrest;
- the submission of justifications for an extension or commencement of a surveillance operation or other enforcement measures when an application is made to the department of public prosecution; and
- as evidence.

With the prevalent one-step method, the general aim is for a different IIT to produce the TIR from the IIT who wrote the target-language summary

(Section 4.3.2). This reduces the risk of a cascading failure and makes it easier to check both the accuracy of the previous translatorial work and their impartiality. Nevertheless, these requirements cannot always be met, whether due to a lack of time or staff. Especially in the case of languages for which very few IITs are available, on occasion the same individual is responsible for every translatorial step (Section 3.4).

As the TIR is the second or third translatorial step, depending on the approach, the important stages of prioritizing the information have already taken place with the initial filtering and the production of the summary. In addition, knowledge about the case may already have been constructed by the teams of investigators and IITs.

It is not always necessary, for the purpose of fact-finding or for the purpose of evidence-gathering, to document the entire course of the conversation. For example, if two individuals spend several hours talking in a bugged vehicle, the *translatum* comprises summaries as well as complete renderings of sections of the source text, and the IIT is responsible for selecting the passages of the conversation that are deemed relevant to the case. For the subsequent classification of the relevant parts of the conversation, it is important to accurately log the beginning and end of the passages with the aid of time stamps. Yet in practice this does not always happen: depending on the IIT's experience and the precision of the investigator's brief, it is also possible to find TIRs of bugged or wiretapped conversations without any time references.

Accurately documenting which passages of a conversation have been selected is all the more important bearing in mind that it must be made clear that during the selection process, unimportant, exonerating elements have been omitted or that the sections of the conversation rendered in the target language have been taken out of context and hence there is the risk of their interpretation being distorted. Here too, it is crucial for the investigative authority that they do not open themselves to attack and that they present a *translatum* that, for example, cannot be called into question by the defense.

[...] And at the end of that [...] conversation that lasts an hour, maybe/ let's say, a minute is actually important to us. Then the way we do it is that we write "Minute", let's say, or "Until minute twenty-five conversation content inconsequential", for example about school and children or vacations. And then the important section comes and the/ in some circumstances we'll transcribe that/ 1:1, write down every word. And then that section is over and then they're talking about soccer again [...], then we again summarize that. Then [...] it's completely clear and even if later, to take an example, the lawyer says: "No, [...] that's beforehand, afterward there's also/ that's taken out of context". We can obviously [prove] it at any time// Clearly, that always requires a certain amount of effort, but we obviously have the conversations. [...] we have [them] all on a data carrier. We can [do] the other one too, if it's wanted, 1:1. But experience shows that it's actually accepted like that. [...] And you can obviously see it's ultimately been done seriously, right. (POL1)

The law enforcement agencies' requirement that the *translata* produced in intercept interpreting-translation be formally accurate primarily concerns the intelligibility of the target-language texts. As such, perfect written language skills are not necessarily required (Section 6.4.1). Despite the demand for a representative rendering, the syntax and spelling of the target language should obviously be taken into consideration. However, flaws in grammar or expression are also a result of the oral source information itself. In other words, the target text remains faithful to the source-language register and style even if it is rife with linguistic errors or is inconsistent. Words that are repeated, sentences that are full of mistakes, broken off, or even nonsensical tend to be reproduced as such and are not corrected or "polished" with a view to supposedly improving understanding. Yet when the IIT's target-language skills are limited, it is not always obvious whether errors in a target text are due to the IIT lacking written language skills or actually because the source text itself is incoherent, as illustrated by the quote below:

Dude, you saw for yourself the thing I retrieved at your place, I've taken out five now. [...] It's better for me to call to see if we can do something and our toilet is complicated and I've flushed the toilet. [...] (Criminal File 4)

The hybridity of intercept interpreting-translation is particularly manifest in the TIR. Our research confirms the fact reported in the literature from various legal systems that the source information for TIRs generally comprises audio recordings and no prior intralingual transcription in the source language occurs before the interlingual transfer. That means that all subsequent steps of the proceedings essentially build on the *translatum*, without it being possible to draw on a written source text for purposes of comparison. The audio recording itself is only used again on a few occasions, for example during the interrogation or the trial in court when the quality of the *translatum* is contested or challenged.

Section 3.3 already discussed in detail how the written rendering of a conversation can only be understood to its full extent if not only the purely linguistic elements are reproduced, but also if it is also evident in what tone, with what paralinguistic signals, and in what situational context the utterances were made. If to this is added their interlingual – and hence intercultural – transfer, then a communicative event can only be interpreted reliably if the investigator is familiar with the linguistic and cultural markers of utterances or is actively made aware of them by the IIT.

However, in a TIR, the utterances made by those involved in the conversation have to be rendered in the target language as verbatim as possible. This applies in particular to idioms and lexicalized compounds or culturally marked communicative conventions, such as salutations and farewell expressions, forms of

address, etc. Especially the latter, the so-called phatic text elements, can reveal a great deal about the relationship between those participating in a conversation, any hierarchies that may exist, or cultural conventions.

The reason given for this verbatim translational form, despite it potentially hindering the overall understanding of a text, is that the responsibility for interpreting the utterances made by those involved in the conversation lies exclusively with the police (Section 3). In the opinion of the professionals we interviewed, an instrumental, adapting (Section 1.5) transfer that reproduces the semantic and possibly cultural substance of an utterance with para- and metalinguistic as well as contextual details would contradict the law enforcement agencies' demand for a precise rendering of the utterances. In addition, a non-verbatim but idiomatic rendering of the source-language utterance may result in the accused claiming during an interrogation not to have used the words they are charged with having said or not to have intended the semantic content of the *translatum*. Therefore, the solution seems to be a verbatim rather than a communicative rendering. This is taken so far that even an idiomatic rendering of an expression like the German “es regnet Bindfäden” or “es regnet in Strömen” as “it’s raining cats and dogs” is avoided and the literal rendering “it’s raining packthread” or “it’s raining in streams” is preferred in the *translata*.

Even though IITs tend to adopt this translational strategy as stipulated by the authorities, it becomes apparent that in the absence of clear, standardized rules, opinions vary and TIRs are characterized by individual strategies and preferences, as the following interview excerpt illustrates.

- B:* So in the verbatim transcription, now I find it/ you have to write what he says anyway. And then you can orally [...] discuss it with the police officer. What it means, or whatever. So that he knows it himself. But in the verbatim transcription/ after all it is a verbatim TRANSCRIPTION, right? If he says “sun” and I write “sea”, for example, that’s not on. That’s my opinion. Other interpreters see it differently.
- I:* [...] But then afterward the court has and the defense obviously then have these, these verbatim transcriptions with the non-interpreted and non-translated turns of phrase in front of them.
- B:* Exactly.
- I:* Who then gives them the additional information, how [...] something like that CAN be understood?
- B:* I understand what you mean and I’m with you completely. In that point I have to protect myself as an interpreter. Because if I write something that wasn’t said in that way, I can be, um, called out, right. For the court it’d always be better if you were allowed to explain it. But of course we’re not allowed to write

anything in parentheses in the verbatim transcriptions anymore, we were once forbidden from doing that of course. [Now that's] only [allowed] in the summaries. (IIT4)

Rendering coded language proves especially difficult. Explanatory comments on linguistically or culturally marked elements of the conversation may be justified as the IIT's knowledge of the source language. Nevertheless, highlighting utterances as coded messages simply because they suspect a code is being used exceeds the IIT's level of competency. Ultimately, it is the responsibility of the court alone to decipher such codes, and for this reason, it is imperative for the court to find out whether the IITs or the police officers are the source of such conjecture and why the assumption was made. As these judicial inquiries entail additional effort and expense, IITs tend to convey to investigators in an informal, oral way that they suspect a code is being used and leave the "bananas", "shoes", or "clocks" in the TIR without comment.

Frequently, IITs act on the basis of oral information or instructions from the investigating police officers without the source of the information being known, as the following statement indicates.

B: // Exactly. // We're [not] allowed/ we're always being warned against it, that we're not allowed to interpret meaning. In other words write something down that we conjecture.

I: Who warns you about that?

B: The case investigator says that. Because the lawyer obviously jumps down his throat and says that's all what the interpreter's effing read into it, you can't use that in court and so on. (IIT5)

Despite this, we observed in the interviews that IITs' opinions vary when asked whether or not comments are acceptable. As such, TIRs contain indications of coded messages in conspicuously few but nevertheless some case files.

X Hello

A Everything OK?

X It's all good

A How is everything?

X No problem

A What shall we do? Because I want to go get that thing back (get the drug back)

X What?

A How are you for money, I want to go [...] (Criminal File 4)

It is not clear who added the decrypting comment, as a result of which the *translatum* is less reliable and could be contestable (Chapter 5).

Comments on situational details can be significant to an investigation:

But there are cases where you clearly hear someone systematically snorting drugs into their nose for three minutes. And then we mark it with little flags, that section, and say “snorting sounds”, we’re allowed to write that much. Even if we know who’s snorting, I’m not allowed to write [it] down because I can’t see the person. I can’t be a hundred percent that it’s right. Or if we’ve heard something in the previous and subsequent conversations that clarifies the point here, we’re still not allowed to relay it. Because if the police officer only plays this conversation, then that’s not in it, what happened before and what after. [...] We have to be very restrained // in the transcription. And also not say: “That’s now him or that’s now him”. At most we can write “possibly”. “Possibly”, that’s allowed, but we can’t write, “this refers to him”.

[...]

I: So a “That could possibly be that or that” goes in the verbatim transcription or JUST in the summary?

B: Just in the summary. The only things that go in the verbatim transcription are what they say, purely that, what they say. (IIT5)

The interviewee states the shortcoming in the TIR expressly: the conversation is not embedded in the context or setting.

Sometimes it’s very difficult if you solely get the verbatim transcription and the summary isn’t included or [...] vice versa. Because [...] there’s so much in between that they didn’t say, yeah. (IIT5)

The danger is that a *translatum* emerges on the linguistic surface but is isolated and not embedded in the communication situation and information from other sources and as such is not very meaningful. At the same time, practices are heterogeneous as a result of unstandardized, ambiguously documented briefs that are subject to individual preferences, which led to us finding very diverse forms of textualization in the criminal files we analyzed. Both the formal means of textualization and the selection of conversational elements or situational details to be commented on vary tremendously and appear not to be standardized even within one and the same law enforcement agency.

As mentioned above, many IITs refrain from noting down important details about the behavior of those involved in the conversation, their use of coded language, etc. and prefer to remain invisible in the *translatum* in order not

to be accused of exceeding their level of competency. This leads to the paradoxical situation that though everyone involved is aware that no one but the IIT listens to the conversation and hence has access to the information or, for instance, can even recognize coded language, this fact is not apparent in the TIR. Information that is crucial to the investigation is shared with investigators orally and is therefore not traceable. This oral transfer is also no longer visible in subsequent proceedings. This means that in the *translata* saved indefinitely in the file, whose life cycle can extend for years and which may become applicable again in the later stages of the proceedings, the IIT's transfer work is no longer discernible. One could even argue that the *translatum* loses its meaning as time passes, as without annotations that may point to, e.g. the results of other, parallel, or prior investigations, it is extremely difficult to reconstruct the communication situation or criminal act.

This lack of transparency is compounded when the *translatum* is not just a mixture of summary and TIR but is an interprofessional product on which both investigators and IITs have collaborated. For instance, the police structure their presentation and interpretation of the facts they have found in such a way that they use the TIRs previously prepared by the IITs as a template for their police reports.

The following example illustrates such a hybrid product in which a drug courier has to admit a “mishap”. The text comprises two sections – a summary and a transcript – but they are not separated with time stamps and it is not clear at what point in the conversation the relevant sentences were uttered or whether the conversation continued afterward.

[Name] explains to [name 2] that he had some of the drug concealed in his rectum and that he had forgotten it going to the toilet. The goods are lost.

X: Dude, you saw for yourself the thing I retrieved at your place, I've taken out five now. [...] It's better for me to call to see if we can do something and our toilet is complicated and I've flushed the toilet. [...]

0: It's gone, all gone. When you want to go to the toilet, try to put a paper, you understand? (Criminal File 4)

That the short introductory summary was written by an investigator can be gathered from the remarks by the case manager in the criminal file about how the surveillance operation and translational work were carried out:

We now include a not exhaustive batch of conversations exchanged between the various protagonists. They dispel any doubt as to the role of each of them in this trafficking case. We reference it in detail.

[...] In order not to modify the content [of the conversations], they have been rendered as they are and added to the appendix. (Criminal File 4)

Even though the TIRs can be found in the same file in full, it can be assumed that those involved in subsequent stages of the proceedings will mainly have referred to the selected excerpts.

In addition to the introductory summary by the investigators and the selection of a dialogue as in the quotation above, the investigating police officers also create much more intermixed products, as in the following example in which the investigator adds short quotes from the TIR to their summary by way of evidence and immediately interprets them.

[Target's name] must go look for the goods with [a compatriot] nicknamed "dancer".

He clarifies that he will bring back the drug over several journeys ("Even if I'm alone, I'll do it little by little").

[Target's name] is accustomed to this process and expresses it thus: "you know the dancer, if he (=it's him) no problem. We'll do it little by little". [Nickname changed by the authors] (Criminal File 4)

What is happening in these hybrid forms is actually case construction, which we evaluate critically in the reliability chapter (Chapter 5).

4.3.4 Translations of Text Messages

The unique characteristics of text messages, as well as the processes and challenges associated with their transfer into the target language, were discussed in Section 3.2.2. To recapitulate, we understand the term text messages to mean communication via internet- and communication-based short messaging services. The translatorial products related to such text messages are translations in the narrower sense because a written source text is rendered as a written target text.

As a rule, the texts to be translated are presented to IITs in the form of computer files. In addition to the text data, these files also contain metadata, such as the numbers of those involved in the conversation, the numbers of the sender and receiver, and location data. However, in the court records to which we were given access, we observed that both the presentation of the written communication and the presentation and extent of the metadata vary widely between regional police units. Whereas in some files the metadata is consistently reproduced in great detail, in others not even the source language of the text message is stated in the heading of the translation. When the source text comprises SMS messages, in the court records we analyzed they were recorded over the course of the intercepted communication between the two cellphone numbers, being added chronologically at roughly the point in time when the oral and written communication took place. That being said, the chronology is not always precise, meaning that, for example, TIRs from April

4 may appear before the translation of text messages that were sent on March 3 of the same year. This sometimes makes it impossible to reconstruct the connection between the conversations conducted and text messages sent in the same period. Consequently, if those involved in the proceedings later do not put the communications in the correct order, it makes it difficult to contextualize very abbreviated written dialogues like: A: “And?” B: “+What?” (Criminal File 1; Section 3.2.2). The courts then have to assume contexts that are not evident in the file. Ideally, the source text and the target text would be presented next to one another in tabular form. We also identified other formats: sometimes one below the other, and in yet other cases even without the opportunity to compare the two versions, i.e. without the source text. When translating entire chat histories via instant messaging services, the advantage of presenting the source and target texts in parallel in a table is that it makes it possible to compare the translated content with the source-language message and several chat histories with different individuals can be presented in parallel, thereby making it easier to spot the connections between their contents.

While an investigation is ongoing, the purpose of translating messages is to inform investigators about the content of the conversations in a timely manner. Here, it is taken for granted that the target-language text is phrased and presented in such a way that the messages are immediately intelligible to the investigators. As when rendering oral conversations in the target language, the source-language content is generally transferred verbatim wherever possible. It is noticeable that aspects of orality tend to be preserved in the target text.

The following excerpts from criminal files show the elements of code-mixing described in Section 3.2.2, even without knowledge of the respective source language being necessary; here the German-language sections of text were not phrased in standard German but in Swiss German. In the translations, these dialectal elements were “polished” and the entire message content is rendered in standard German. In the first example, the question mark in the final sentence was replaced by a period. Due to the potentially ungrammatical syntax often found in text messages, the utterance originally phrased as a question may now also be understood as a statement.

Abi ne oldu? Bana cikis geldi muess dringend zahle, sisgo birseyler yapa bildimi?

Abi, what’s wrong? I’ve been fired, I’ve gotta pay urgently. The fat man manage to do something. (Criminal File 1)

In the following example, the linguistic “polishing” goes so far as to replace the colloquial “mega” with an unmarked “here”.

Abi ne oldu? Bare bi haber ver, dä stresst mega.

What's wrong, brother? Say something at least, he's stressing out here. (Criminal File 1)

Another interesting aspect in the translations of both text messages is that in the same conversational context the neat term “Abi” was rendered differently: in the first quote with “Abi”, which leads one to assume that the message recipient is called “Abi”. In the second text message, it is translated as “Bruder” (“brother”), which is probably the correct translation. “Abi” is frequently used in Turkish as a form of address, much like “Bruder” or “grosser Bruder” (big brother) are used in colloquial German. If left untranslated and carried over like a first name, and moreover if rendered inconsistently in the target text, the investigators need to have enough knowledge of the culture to be able to decipher the form of address. Correcting punctuation is a practice we observed in many translations; it helps investigators to understand the messages quickly. Other translation strategies can also be identified. For instance, in the following example no sentence segmentation took place. As in this file, the text messages appear without the source text, it can only be assumed that the IIT reproduced the erroneous syntax of the original text message.

A schreibt B:

Gehe zum Bahnhof deines Dorfes wo du die Ticket löst und sie sagen dir welche und wann du die Züge nehmen kannst.

A writes to B:

Go to the train station in your village where you buy the ticket and they tell you which and when you can take the trains. (Criminal File 3)

That this was a decision by the IIT and not a case of them having insufficient language skills can be deduced from the fact that in other regards the translation contains features of standard German (“gehe” is not abbreviated, the genitive is used in “deines Dorfes”). It can therefore be assumed that the linguistic register of the source text was quite low.

The following is an example of code-mixing, where not only were linguistic elements from several languages combined but also the French parts of the sentence were rendered phonetically. The IIT produced the entire sentence in French.

Transcription:

SMS: “Ti vawar si ti don pah mon larsan”.

French Translation SMS : „Tu vas voir si tu donnes pas mon argent“.

English Translation SMS: “You’ll see if you don’t give my money”. (Criminal File 3)

When it comes to representing the source and target languages, we identified divergent approaches even within a single criminal file, with each IIT using their own style. In contrast to the example above, the source text is shown here and the IIT wrote “transcription and translation” to make it absolutely clear which is the source and which is the target text.

In no translation of text messages that we saw was code-switching or code-mixing, i.e. a change in language, explicitly annotated as such. Consequently, such individual characteristics cannot be identified by IITs working on the text at a later stage, especially not when the source text is not reproduced. The presence of code-switching and code-mixing should be specified when the suspects communicate with one another in several languages, but also in the language of proceedings. It may prove crucial, especially with regular use, for this regularity to be made visible in the target language. This may concern, e.g. a certain term being used in a certain language. For instance, in a Serbian source text, the (burglar’s) tool may be named in German while the rest of the sentence remains in Serbian: “Daj mi bohrer” (En. “Give me the drill”).

Be this as it may, linguistic “polishing” and correcting the grammar do improve the intelligibility of the text and thus support investigators when sifting through the messages, which is crucial considering the quantity of data collected during communication surveillance.

However, such “polishing” and corrections also lead to distinctive traits of those involved in the communication being lost. This is especially true of translations that use a higher linguistic register than that of the original message.

As described in Section 3.2.2, some messages cannot be deciphered without knowledge of the context or forensics. Evidently, the following message concerns the handover of narcotics, with the quantity given in colors and the location information abbreviated. The IIT transferred the source text complete with grammatical mistakes and without any further additions, but in the context of the operation and with prior knowledge, the investigators were able to decipher the message.

SMS text: Red 300 naira to oten, oby and 43 red to st. And 100red and 4rs and 19 ug to L.

SMS translation: Red 300 nairas to Oten, Oby and 43 red to St. And 100red and 4rs and 19 ug to L. (Criminal File 6)

In this excerpt, the target text is once again presented beneath the source text; both have been annotated accordingly by the IIT.

Not only in the court records can highly divergent translation strategies be identified; in the interviews, too, the IITs take different stances. Whereas some IITs are of the opinion that it is expedient to reproduce orthographic errors, incorrect sentence structures, or omitted commas, as illustrated above, others

consider it important to ensure the exchange of messages is intelligible and traceable. Similarly, the strategies used by IITs vary when it comes to adding annotations to explain features of the source language, contextual or forensic details, or general comments on the seemingly poor language skills of those involved in the communication. The fact that there is no standardized approach results in very different translations.

5. Reliability of translated intercept evidence (TIE) and other written *translata* used as evidence

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5.1 INTRODUCTION TO CHAPTER 5

The explanations in the previous chapters have made it clear that the oral and written texts produced by intercept interpreters-translators (IITs) emerge in a unique context that cannot be compared to other translatorial activities. What makes the *translata* themselves unique is the fact that they stem from a hybrid translational activity, which furthermore is connected to a criminal investigation and is executed in close cooperation with the other actors involved in that investigation. This very specific operational framework leads to IITs carrying out tasks that go beyond translatorial work (Section 3.4), carrying out investigative and forensic activities, and cooperating with the investigation (Section 3.5). The resulting products serve various purposes, as explained in Section 5: the *translata* either exclusively serve investigative purposes or are used first in the context of the investigation before being employed as evidence. When *translata* are intended for this function, we refer to them as translated intercept evidence (TIE) (Section 1.4).

Due to the specific operational framework and the various purposes of written *translata*, a conflict emerges between the legal, practical investigative and translatorial demands of the *translatum*, and any discussion of the reliability of the overall translational process, as well as the TIE employed during the

criminal proceedings, must take all three perspectives into consideration. In our view, this triangulation gives rise to a concept of reliability that consists of the two elements: impartiality and verifiability. We present these two elements in the following sections and propose solutions for producing written *translata* that serve the purpose of the investigation, satisfy the reliability requirements of both process and product, and are based on generally applicable translatorial principles.

For this reason, our reliability criteria do not include lexical exactitude, the most literal rendering of the words used in the intercepted communications. This decision follows from our acknowledgment that the translational activity of IITs is diverse and varied, comprising much more than the verbatim transfer of the spoken word.

5.2 IMPARTIALITY

One reliability criterion is that the *translatum* is produced impartially. This stems, on the one hand, from the legal requirement that the suspicion of criminal acts be investigated impartially, as we elucidated in Chapter 2. Consequently, criminal investigations must be organized in such a way that both incriminatory and exculpatory factors are taken into consideration and that protective measures exist to prevent a one-sided and hence distortive construction of the case. On the other hand, impartiality is also a translatorial requirement manifested in the aspiration of loyalty to all those affected by the translational activity. We explain these two components in detail below.

A *translatum's* reliability can be checked on the basis of concrete elements, as the aspiration to impartiality determines the criteria for selecting the IIT, the way their activity is organized and of course, the *translata* they produce.

In terms of the impartial translational activity of IITs, we have already discussed how, in legal practice, the effort is made to guarantee impartiality by withholding knowledge of the case and context from the IIT and by the law enforcement agency postulating the IIT's informational independence. However, we have also been able to show that, due to the entanglement of the translational activity with other investigative measures, this postulate is not only an illusion but its effective implementation would even be counterproductive, as only by combining information from the police's investigative activities with that gathered by the IIT is it possible to draw a complete picture of the individual under surveillance and their possibly criminal acts.

Moreover, in Section 1.2, we were able to demonstrate that maintaining the fiction that the translational activity of IITs would be possible without them having knowledge of the case or making sociocultural, linguistic, situational, and contextual assessments simply leads to key activities conducted by the IIT being rendered invisible in their *translatum* and hence not traceable. In

other words, while relevant information, assessments, and aids to understanding continue to be shared between police officers and IITs, this takes place in an informal and invisible manner as it is intentionally left undocumented (Section 3.5). In our opinion, the result guarantees not impartiality but rather nontransparency.

Therefore, in the interests of a reliable *translatum*, carrying out interpret-translating impartially should not be simulated by the forced – and illusory – ignorance on the part of IITs and by rendering IITs' interventions untransparent to lawyers, public prosecutors, and judges. Furthermore, a *translatum* loses reliability when individual parts of it are interwoven in the police report at the discretion of the police in order to construct the case instead of reconstructing events.

Reliability can only be achieved by disclosing and rendering transparent in the *translatum* the translational activity of the IIT as an independent contribution.

This transparency is crucial to the reliability of a *translatum* because the court, whose responsibility it is to evaluate the evidence put before it, needs to be able to recognize when sections of the *translatum* are, for example, aids to interpretation, and especially for what reason the IIT came to the interpretation given. For example, if an IIT suggests a specific interpretation (e.g. “passport”, even though the word “cardboard” was used in the conversation), they can increase the reliability of their *translatum* by noting down the reason for this decision. In other words, they can suggest the interpretation because they know the intended meaning of the term from previous cases (their own experiential knowledge), because the police told them so (police knowledge), or because there simply is no other word for passport in the source language and cardboard is the common general-language term (linguistic and cultural knowledge).

The inclusion of such information can render an interpretation plausible, enable the court to reject it, or decide whether to consult a case-independent expert on the soundness of the interpretation.

Disclosing the translational activity by clearly marking any additions or interpretations as such – as proposed in the following sections – would enable the courts to judge the impartiality, i.e. neither to the advantage nor disadvantage of the surveilled individuals, of the translational activity conducted by IITs.

In our study, it was evident that many IITs are committed to the principle of impartiality, which can be characterized as a general and fundamental loyalty among translators and interpreters to both the producers of the source text and the users of the target text. Loyalty can be described as an intrinsic moral obligation inherent in any translational activity and consists of translators and interpreters guaranteeing a relationship with the source text in accordance

with their assignment and enabling their partners to rely on their work fulfilling the defined purpose and on them having carried out the assignment to the best of their knowledge and ability. In the case of covert communication surveillance, loyalty means, on the one hand, that the IIT delivers accurately produced *translata* of adequate quality to the investigating police officers and other law enforcement agencies at the time they are needed and in line with their brief. On the other hand, however, the IIT also has an obligation to those involved in the communication in the intercepted source-language setting. These surveilled individuals must be able to rely on the IIT passing no judgment on their conversations or utterances and not taking sides when they render the content of the conversation in the target language. The interviews we conducted revealed that IITs are aware of this loyalty to the persons under surveillance, even though their work is commissioned by and serves the purposes of the law enforcement agencies.

But it shouldn't be routine for the interpreters, that should never happen. I must always translate consciously. Consciously, that means: translating correctly, translating precisely, translating exactly, translating fairly, treating [people] fairly, and so on [...]. That means I also have to interpret or translate the exculpatory conversations precisely, right. So that later the court sees: Aha, according to these conversations, the defendant is effectively not guilty or whatever. That's what "fair" means to me, fair – translating justly. (IIT1)

In our opinion, such a transparent approach is imperative in order to ensure reliability because intercepted communication always entails the difficulty of the source information comprising more than just the spoken word. Consequently, the impartiality of IITs can only be verified, at least to some extent, if they render the source information as holistically as possible and necessary, by including situational, contextual, and paralinguistic elements, and furthermore by marking these details accordingly.

5.3 VERIFIABILITY

A *translatum* is only reliable if it is also verifiable. This follows from our finding that the activity of IITs consists of more than just the verbatim transfer of the spoken word and hence must be produced in a way that transparently documents the various sources and interactions with other actors. For this reason, in this section we show how the verifiability of the translational activity of IITs can be guaranteed in a manner that complies with judicial economy as much as possible. In doing so, we reveal that the aspiration to a reliable *translatum* demands different methods depending on the type of *translatum* required. This relates to the fact that, as explained in Chapter 4, *translata* serve different purposes, reach different audiences, and their relationship with the source text

may be stronger or weaker. These factors determine the extent and nature of the documentary, representative translational activity in each product, which is why we elucidate the implementation of the documentary requirements of each specific *translatum* in the following sections.

To begin with, it should be remembered that the duty of disclosure applies to the entire surveillance operation, including the translational activity. The items to be disclosed are the evidence, e.g. the TIE, the details that identify the IIT and the relevant information about how the *translata* were produced, the individuals involved, and their brief, for instance, concerning the selection of information, the interlingual textualization, and the documentation of interpretations and aids to understanding. In addition, access to the audio recordings must be guaranteed. In the *translata* themselves, it must be apparent which individuals were involved in producing the *translata* and which individuals were involved at what times in making changes to the products of the intercept interpreting-translation (e.g. retrospective additions or changes to the *translatum* by the investigators responsible). It is the duty of the state to guarantee genuine verifiability; checking the quality of a *translatum* should not be delegated to the defense. In other words, in the interests of the principle of a fair trial, the entire translational process must be traceable, and that can only be guaranteed with the aid of careful documentation (Section 2.3).

With regard to the translational process and the *translatum*, therefore, traceability and verifiability mean:

- making visible the translational activity of IITs and their cooperation; and
- employing a “documentary, representative” translational strategy, as discussed below.

In documentary, representative translational work, the target text records or documents the source-language communication activity in the target language, including all additions necessary for understanding and transferring the elements external to the text. As in relation to the interlingual products of communication surveillance legal practice only considers a *translatum* traceable when it renders the source text verbatim, the IIT must document the semantic content of utterances, i.e. what was actually intended. This concerns possible sociocultural content as well as situational, contextual, and other details (Section 3.3).

In terms of IITs’ duty to be impartial and loyal, their task is to deliver as holistic a picture of the communication situation as possible. Only then can their partners, i.e. the police officers and lawyers involved, mentally reconstruct and understand the source-language setting, identify content that is relevant to the case and, in the case of the courts, evaluate the probative

value of conversations and utterances. Loyalty to the persons under surveillance follows from this in terms of rendering conversations impartially. Hence the utterance, “I can’t give you the money today” is an unmarked statement. However, prosody, e.g. emphasizing “today” by raising the voice, changes the semantics of the sentence. Paraverbal markers, such as heavy breathing or a strained voice atypical of an individual, may point to the surveilled person being under considerable pressure during a conversation. It is not for the IIT to judge whether this is the case. But it is only the explanatory note about this paralinguistic phenomenon, clearly marked as a clue by the IIT, that makes these elements identifiable to those individuals who are responsible for making such assessments and who have not listened to the conversations themselves.

Below is a list of suggestions as to how to ensure the verifiability of each kind of *translatum* – the short note, summary, translated intercept record (TIR), and the translation of text messages.

5.3.1 Ensuring Verifiability in a Short Note

The huge importance of the short note for identifying information that is relevant to the investigation became clear in Section 4.3.1. These very short meta comments about the conversation manifest the aural, investigative, and forensic processes that take place when the IIT listens to and analyzes the intercepted content.

However, in order for these processes to be activated, IITs need fundamental information about the case, potentially the case history and details about the suspects involved at that point in time. Only with prior knowledge is it possible to assess suspicious conversation content because the selection criteria change with each case, such as a burglary being planned, a drug delivery arriving, or a meeting being arranged to make a payment.

Consequently, a short note can only be reliable if the brief given to the IIT is clearly formulated, case-specific, and transparent. This reliability requirement arises as a result of the fact that IITs generally are not qualified police officers and thus do not have investigative competences and are not authorized by criminal procedure law to conduct this investigative work.

For instance, their brief may contain answers to the following questions: which case is being investigated and what conversation content may be relevant in this context? What should the IIT pay attention to? Which of the surveilled individual’s contacts are already known to the police?

Furthermore, the IIT needs to know whether the police investigators have prescreened the conversations or whether they are to evaluate all the conversations recorded in a particular time frame.

Only if the short note written by the IIT contains the following information is its filtering purpose reliably met:

- It specifies the content deemed relevant, such as the number, gender, and, if known, names of the individuals involved in the conversation.
- It mentions the content even when the conversation is irrelevant or not usable in order to ensure that the conversation is traceable should it subsequently transpire that it may indeed be relevant (for example, “irrelevant – conversation with his grandmother”, “not usable – conversation with defense attorney”).
- Should several languages or dialects be used, this fact is noted.

This basic information enables investigators to instantly assess the conversation, instigate further procedural or translational steps, and find conversations again at a later point in time should they subsequently prove relevant. To return to the cascading failures mentioned in Section 4.3.3, a conversation erroneously categorized as irrelevant, about which no details of its content are documented, can be buried in the mountain of communications saved in the law enforcement agencies’ systems. However, should such a conversation contain exculpatory details, e.g. the boss telling the drug courier that his family members will face reprisals if he does not undertake two more journeys, this initial error can be carried over to the conviction of the target, i.e. the drug courier, and the extenuating circumstances will not be taken into consideration.

5.3.2 Ensuring Verifiability in a Summary

We described the summary as the *translatum* in intercept interpreting-translation with the highest density of information; it serves several purposes, has both an informative and a performative function and the range and size of its audience differs (Chapter 4). The summary should provide a target-language overview of the conversation and conversational setting so that the investigators can quickly gain a general idea of its content and relevance to take subsequent decisions concerning the investigation and whether to have a TIR of the conversation produced. For this reason, textualizing the source information demands linguistic, sociocultural, investigative, and forensic analysis and precise, grammatically correct, and hence comprehensible target-language formulations.

As in the short note, it is therefore sensible for IITs to be given basic prior information about the case that will enable them to understand and assess the utterances correctly.

Given its primary purpose, namely to supply the police with easily graspable clues concerning the investigation, the order and labeling of important information in the *translatum* are crucial to its reliability. As such, the following key details should be included first and presented clearly:

- the number of individuals involved in the conversation;
- their gender (where identifiable);

- their names (where known);
- the language(s) or dialect(s) spoken; and
- where the conversation took place (where identifiable, e.g. if train station noises can be heard in the background).

For investigators to assess a conversation's relevance, they not only need an insight into the source text in the narrower sense but also into the entire source situation. Consequently, in this stage of the investigation, an information transfer takes place on several levels (Section 3.3). Below, we first elaborate on these various levels and then explain how conversation content should be summarized and which elements in the summary should be marked as additions by the IIT in order to enable verification and hence ensure adequate reliability.

The first level of information is the text level, i.e. the level of the utterances made in the conversation. These utterances should be summarized without recounting the entire course of the conversation. However, when individual utterances are particularly relevant, they can be rendered in direct or indirect speech, such as "Male Speaker (MS; if identity unknown) or Steve (if known) says he had always been able to rely on George".

The second level contains the meta- and paralinguistic details, e.g. prosodic information like laughter, crying, or changes in pitch, the use of sociolects, code-mixing, and code-switching (Section 3.3).

The third level is the situational, contextual, and communicative level. It comprises details about any conspicuous behavior by those involved in the conversation, any hierarchical relationships between them, or clues as to ambient noise that may change over the course of a conversation.

Finally, the fourth level is the forensic and investigative level, which is closely connected to the other three levels. At this level, what the IIT has perceived is identified and interpreted in the context of the specific case being investigated, such as the suspicion that coded language is being used to encrypt information or that specific criminal acts are being discussed.

Textualization strategies that are uniform and transparent for everyone involved improve readers' understanding and the reliability of the summary. As already mentioned, the reliability requirement gains importance when the summary is given a performative function, such as when it is to be used to apply for new surveillance measures or as evidence.

As explained in Section 4.3.2, the summary is a *translatum* that is only loosely related to the source text, which reports the intercepted conversation in its specific conversational setting and with the investigation in mind. In addition to a synopsis of the utterances made by the individuals under surveillance,

it thus also includes descriptions of linguistic, situational, or contextual phenomena, as well as the addition of explanations and aids to understanding or interpretation by the IIT. Using different conventions is therefore appropriate to textualize the details on the four aforementioned levels of information.

The details on the first three levels require no further labeling by the IIT. As the summary is an adapting *translatum* whose relationship with the source text is indirect, it is transparent to all its users that it is an independent text written by the IIT in which they render the source information interlingually, intersemiotically, and intermodally. In other words, the IIT documents all the phenomena audible on the audio recording. The documentation of these phenomena is an inextricable component of their target-language text.

Matters differ when it comes to the forensic and investigative assessments, which according to formal specifications (Section 2.2) are not the responsibility of IITs. Nevertheless, the preceding chapters have demonstrated beyond doubt that in practice criminal trials generally – and surveillance operations in particular – would not be successful without IITs supplying these investigation-specific explanations and aids to understanding and interpretation. Concerning the reliability requirement of verifiability, the solution lies in visibly marking aids to interpretation or comments of an investigative or forensic nature. Thus, assessments of behavior (“seems nervous, voice strained”), of conversation content (“Already set their sights on the villa on Station Road in last week’s conversations”), or of linguistic codes (“Talking about vegetable deliveries, but that might mean various drugs”) should be explicitly marked as the IIT’s own comments; such labels could be placed in square brackets “[IIT’s note: ...]”. To clearly identify the person who produced the *translatum* and added the notes and aids to understanding, the IIT’s personal ID number or initials could be added to their comment: “[note by IIT XYZ: ...]”.

Visibly and uniformly marking the additions made by the IIT to the intercepted source information serves not least procedural economy. It enables investigators to immediately recognize the IIT’s additions to the *translatum* during the internal investigation stage, at which time the *translatum* still has an informative function, and potentially ask questions or carry out an amendment together with the IIT. Should the summary take on a performative function in the course of the criminal prosecution process, as described in Section 4.3.2, the requirement for additions by the IIT to be verifiably documented would already have been met. Moreover, comments being labeled as such by the translator is common practice in legal translation. Consequently, they would be familiar to the majority of practicing lawyers and their uniform use would meet with broad acceptance.

5.3.3 Ensuring Verifiability in a Translated Intercept Record (TIR)

The primary purpose of the TIR is to serve as evidence, which fulfills a performative function. As we have shown, in the practice of law enforcement agencies it is necessary, especially with the TIR, to adhere to formal requirements (Section 2.2). The vague, not systematically stipulated and documented specifications and the accordingly nonuniform and individual textualization processes result in a multitude of different, at times even almost incomprehensible, *translata*.

Due to its performative function, it is particularly important for uniform conventions to be used in the TIR in order to ensure legal certainty and to prevent the *translatum* from becoming the subject of dispute on formal grounds.

For financial and time reasons, it is difficult to imagine that the highest level of reliability in the form of the two-step method (Section 3.2.1.1.2) will prevail as the general standard. Yet intralingual transcription would definitely improve both the comparability of source and target information and the traceability of the interlingual transfer, hence simplify subsequent quality controls in the event of the *translatum* being criticized.

In spite of this, the two-step method does entail the risk of cascading failures, as described in Section 4.3.3: both when the transcription and translational work are conducted by the same IIT and when these tasks are divided between two different individuals. Avoiding such errors, which are primarily caused by the translator only referring to the written transcript and not being able to reconstruct the communication situation themselves, can be solved by giving the person tasked with producing the *translatum* access to the audio recordings so that they can make their own impression of the conversation and contextualize potentially unclear utterances.

If this access to the original communication is ensured, at least in the following cases, a prior intralingual transcription is advisable:

- when the audio quality of relevant conversations is very poor, as the transcription in the source language can improve perception and problem-solving; and
- when conversations are extremely relevant, in order to produce evidence that is more trustworthy as it enables the instant comparison of source and target information.

The TIR is intrinsically shaped by its hybrid production process, as well as by the verbatim transfer from the source to the target language that law enforcement agencies demand, which largely prevents an instrumental and customized transfer (Section 1.4) that would take idiomatic expressions in the target

language into account. As a result of this verbatim transfer, the conversation loses authenticity and the transfer thus takes place more on the semiotic level than on the semantic level.

However, it is beyond dispute that equivalence between a source- and a target-language text, for example, on the lexical level, is not produced by choosing the same expression in the target language but by choosing an expression of equal value. This is the only way in which what was intended in the source language will be understood. One example is politeness when greeting: if an Arabic speaker is greeted with “Hello, how are you?” the common response is “Alhamdulillah”, which is frequently rendered verbatim as “praise be to God”. Yet when the target language is English, that response is obviously uncommon and unusually religious. The correct rendering according to the conventions of this communicative setting would be “I’m fine, thanks”. However, the first variant would be preferred in a TIR for the reasons mentioned above, namely ostensible precision.

As verbatim renderings have the potential to be not only distracting but also misinforming and misleading, we recommend labeling all cultural, social, and regionally marked linguistic elements with a note by the IIT [note by IIT XYZ: ...]. This lends the *translatum* – now a documentary rendering – higher reliability. In addition, and as mentioned above, this documentation makes it possible to avoid cascading failures that without documentation would only be discovered at a later point in time and resolved at greater cost and effort. For instance, if the IIT’s comments about an utterance’s suspected meaning are not clearly documented as such but rather incorporated as part of a reported utterance, they distort the original utterance. Identifying and resolving this mistake may then only take place once the target has been arrested and is being interrogated.

Even more so than with the summary, which performs several functions (Section 5.3.2), the TIR’s primary function as evidence means that the uniform textualization and labeling of the IIT’s comments according to the conventions with which lawyers are already familiar is advisable and would improve the reliability of the *translatum*.

Comments of this kind would concern:

- Explanations and aids to understanding regarding the content and semantics of the utterances, such as established, lexicalized phrases in individual languages or socioculturally marked turns of phrase like the English “to hit the road” or “not to rat on”. Transferring such expressions at the lexical level alone would not be sufficient.
- Justifiable conjectures regarding the use of linguistic codes, such as “flour” or “vegetables” for certain drugs, or “the red ones”, “five blue ones” for

finger cots used to transport narcotics; when the surveilled individuals keep mentioning the phrases “it’s peacetime” or “peace will come” and this diverges from normal sociocultural communicative conventions, then it is possible to speak of linguistic codes.

- Clues about atypical or conspicuous behavior by those involved in the conversation.

Needless to say, it is not the responsibility of the IIT to construct comprehensibility, to “polish” incoherent, muddled, or repetitive utterances, or to supplement them with conjecture. Such elements of a conversation must be rendered as heard and potentially labeled as unintelligible.

When listening to unintelligible passages, it can be helpful to note down the time stamp in order to find the passages again later, for example, should doubts arise when there is a rapid change in speaker. While drawing up a TIR, it may be necessary for the IIT e.g. to discuss the utterances of a certain individual with investigators (Section 3.5).

As already mentioned on multiple occasions, in the interests of a holistic rendering of the entire source information, what is required is more than just comments to aid understanding. It is also necessary to textualize the para- and metalinguistic, as well as the situational and contextual, elements (Section 3.3). During a documentary, representative rendering, these elements must also be noted in the text and clearly labeled as additions by the IIT, preferably in square brackets. Unlike the aids to understanding mentioned above, here the IIT is documenting phenomena they have perceived on the audio recording or marking unintelligible passages of the conversation. Identifying all such perceived elements with the label “[note by IIT XYZ: ...]” is superfluous and does not seem sensible in the interests of an economical textualization process and improved legibility of the target text. Simply by marking, e.g. unintelligible passages in square brackets ([unint., inarticulate speech]), the IIT’s addition is adequately and traceably documented.

Tables 5.1, 5.2 and 5.3 propose textualization conventions for the transparent and uniform documentation of all elements of intercepted communication. We divide these details into general information, metatextual details, and contextual details. General information covers the number, gender, and potentially names of those involved in the conversation, as well as recording the beginning and end of the textualized conversation or conversation passage, and any long breaks in the conversation. Precisely documenting the beginning and end of the conversation passage that has been rendered in full is especially important when a hybrid *translatum* comprising a summary and a TIR is produced in which irrelevant sections of the conversation are summarized and relevant passages are rendered and textualized in their entirety. With the aid of time

stamps, it is possible to find summarized passages quickly and, when it is subsequently suspected that they might indeed contain relevant content, have a TIR drawn up of them too. With hybrid forms that combine summaries with TIRs, the transition from one form to another should also be documented with time stamps.

Table 5.1 General information about the duration of a conversation, its participants, and breaks

General information	-
Mark the beginning and end of the conversation with time stamps. The time stamps contain details of the hour (HH), minute (MM), and second (SS)	HH:MM:SS
Record a change of speaker	MS1 (male speaker) / FS1 (female speaker) or other abbreviations, such as UP for unknown person or US for an unknown speaker whose gender is not obvious.
Record an overlap during turn-taking	//
Add time stamps after long utterances or breaks to make it easier to find passages of a conversation	HH:MM:SS
Stopping the rendering should also be documented with time stamps	HH:MM:SS / (..) / HH:MM:SS
Record a short break in the conversation	(.)

Depending on the system used, this general information can also be generated automatically, such as the time stamps at the beginning and end of an intercepted telephone conversation.

As explained above, rendering the entire source information comprehensively is necessary for the conversation to be understood. Tables 5.2 and 5.3 consequently contain suggestions for uniformly documenting metatextual and contextual details.

The table suggested here serves as an example and can be added to as needed. For instance, when translating text messages, it may be necessary to contextualize emojis or embedded media, like picture or voice messages. Indeed, in chats, various types of media are shared in addition to text messages. They must be documented in the translation of the text messages (Section 4.3.4) and may themselves need further comments to aid their understanding. Consequently,

Table 5.2 Metatextual details

Metatextual details	Unintelligible passages, including the reason	[unint., too quiet], [unint., too obscure language], [unint., too inarticulate]
-	When the correct spelling of proper nouns or terms is not known, they should be written phonetically	[XYZ]
-	Document any change in source language or code-switching (CS)	[CS]
-	Affirmative or confirmative hesitation sounds, i.e., expressions of hesitation (e.g. “uh-huh”, “mm-hmm”)	[a]
-	Negative hesitation sounds (e.g. “uh-uh”).	[n]
-	Hesitation sounds as break-fillers (e.g. “uh”, “um”)	[p]
-	Questioning hesitation sounds (e.g. “hmm?”)	[q]
-	Aposiopesis, i.e. a sentence or word being broken off abruptly	[-]
-	Verbalization of paralanguage, e.g. laughter, crying	[laughs], [cries]
-	Verbalization of nonlinguistic details, e.g. coughing, sneezing, yawning	[coughs], [sneezes], [spits], [clears throat]
-	Verbalization of conspicuous modes of speaking, e.g. speech impediments or other characteristics unique to a speaker	[stutters], [whispers], [lisps]

even though some of the comments listed above only apply to aural source information, meta- and contextual details in particular are also relevant when it comes to understanding written and multimodal communication.

5.3.4 Ensuring Verifiability in Translations of Text Messages

The key characteristics of short messages sent via SMS, but predominantly via messaging services like WhatsApp, Viber, Telegram, etc. as well as the translation of text messages, were described in Sections 3.2.2 and 4.3.4. The main challenges when it comes to their translation lie in the brevity of the messages, in the abbreviation of nouns, verbs, adjectives, and conjunctions, in their ungrammatical sentence structure, in their increasing multimodality

Table 5.3 Contextual details

Contextual details	-	-
-	Comments about embedded elements like emojis and media files (e.g. image files, voice messages in the chat history)	[IIT's note: image with packets of cocaine], [IIT's note: voice message sent]
-	Comments about geographical information, such as place-names or GPS data	[IIT's note: MS1 is in France whereas MS2 is calling from Spain]
-	Comments about prior knowledge from previous investigations	[IIT's note: group of offenders distributes and organizes marijuana]
-	Verbalization of ambient noise, e.g. music, rustling, or roadway noise, incl. conjectures	[IIT's note: rustling, poss. aluminum foil, parceling sth. up?]
-	Suspected meanings, clearly marked as possible (poss.)	[IIT's note: poss. code for drug], [IIT's note: poss. insult], [IIT's note: poss. term of affection]

(emojis, emojis, GIFs, photos, videos, and voice messages) and in the lack of context for the person who is not involved in the chat.

The short messages that are to be translated may be given to IITs in various formats. Usually, the extracted chat data are prepared by the person responsible before their translation into the target language and presented to IITs, e.g. in the form of tables. These files generally also contain metadata, such as the numbers and potentially names of those involved in the chat, as well as their locations. This enables the translation to be added to the same file, meaning that the source- and target-language message texts are positioned alongside one another. This provides, e.g. investigators with the opportunity to quickly decipher graphic elements or unclear target-language formulations. It also makes the transfer easily traceable for investigators, makes it easier to check the interpretation, and IITs and investigators alike can work together to reconstruct the message content where needed. In addition, when the accuracy of a translation is called into question, quality control is possible without any great effort. However, this ideal presentation is not universal practice. Sometimes text messages are translated without including the source text. Especially in

these cases, the careful documentation of all elements of the source text is crucial in order to guarantee the reliability of the translations.

Like the summary, translations of text messages fulfill several functions: an informative function for police officers in the immediate context of the investigation and a performative function as evidence in subsequent criminal proceedings.

As discussed in relation to the TIR, law enforcement agencies, for the most part, require verbatim translations that are as close to the source text as possible, which comes at the cost of a communicative translation that produces semantic equivalence. In this case, too, we therefore propose a documentary translation, which records the contextual but also investigative and forensic details, as a strategy for translating this form of communication.

Comments by the IIT should be textualized analogously to the summary and the TIR. Comments containing an explanation, aid to understanding, or assessment by the IIT should be marked with the IIT's initials or ID number, preferably in square brackets, as “[note by IIT XYZ: ...]”. While parentheses are used more rarely in text messages than in other written communication, the use of square brackets clearly emphasizes that the included text is an addition by the IIT.

Due to the interconnectedness of chat communication, linking information is particularly important. IITs are in a position to identify connections between information from chats involving different people that they have been given to translate and can thereby gain important insights. However, intertextual connections of this kind are forensic in nature and must therefore be clearly identifiable as comments by the IIT.

One particular challenge is the emojis and emoticons used in text messages (Sections 3.2.2 and 4.3.4). Various strategies are possible for their textualization. If the source and target texts are presented next to one another in the file, a reference to the graphic element used in the source text may suffice to avoid distortions caused by the system displaying the image differently. Where possible, they could also be copied directly into the target text. If this is not possible, the emojis used in the source element should be described (e.g. laughing emoji, crying emoji, shocked emoji). Yet, as already mentioned, emojis and emoticons are culturally specific and may be understood differently elsewhere. Textualizing such intercultural differences is one of the IIT's tasks and is part of a documentary translation. They should therefore be added to the graphic element or its description in a labeled comment by the IIT.

The use of acronyms and abbreviations presents another challenge to translation. Common acronyms and abbreviations in the source language and loanwords from English (lol, asap, pls) can be rendered using corresponding, equally common equivalents in the target language, copied as Anglicisms – to the extent that they are known in the target language – or need to be written

out to ensure they are understood. The textualization conventions suggested for TIRs are advisable here (Tables 5.2 and 5.3). However, abbreviations and acronyms common in chat communication should first be researched if they are not already known.

Linking information from various chats, as described above, can also aid in the clarification and interpretation of incomprehensible messages. For example, the IIT may better understand the target's chat with Person X if they have also read the target's chat with Person Y. Here, too, the fact that information has been connected in this way to clarify incomprehensible messages should be documented by adding "[note by IIT XYZ: ...]". Messages that cannot be deciphered even after research has been conducted due to grammatical and orthographic abnormalities or incoherent content should be labeled unintelligible ("[unint.]") (see Table 5.2).

Incorrect sentence structure that imitates oral communication, omitted punctuation, and fundamentally erroneous language demand a translation strategy that serves the purpose: The aim of translating text messages must be for investigators to grasp the source information as quickly as possible. Even in its function as evidence, the *translatum* must guarantee that the message content is understood. This requires largely correct grammar and orthography in the target language. Errors in the source text that may be the result of participants in the conversation having poor language skills should not, therefore, be reproduced in the target language. When text messages by a participant of a chat are generally riddled with errors, the IIT can add a general comment as this meta information may be interesting for the law enforcement agencies (e.g. [note by IIT XYZ: MS1 has poor written language skills, very flawed orthography, commas missing, etc.]). This documentary translation strategy is thus analogous to transferring aural source information for a TIR. The use of uniform abbreviations in all *translata* guarantees transparency and comprehensibility across all *translata*, communication histories, investigative actions, and files, and thus improves the legal certainty of the *translata*.

5.4 DEALING WITH DEFICIENT RELIABILITY

Translata may have reliability deficiencies and contain cascading failures. Two approaches have become established practice to remedy deficient content. The first approach consists of a kind of ad hoc check, whereby the interpreter present and responsible for interpreting the interrogation or court hearing, who ideally should be someone other than the IIT who produced the previous *translata*, immediately checks the disputed *translata* during the interrogation or hearing. This approach is transparent but places the interpreter under extreme time and psychological pressure: the person interpreting the hearing does not have time to listen to the audio recording calmly and, where necessary, more

than once, but rather must do so in front of all those present in the courtroom and often via a loudspeaker. It is therefore questionable whether they are able to identify, e.g. important contextual clues in such a setting. Utterances or situations on the audio recording that are unpleasant or embarrassing for the accused may also put the interpreter under psychological pressure.

The second approach consists of a subsequent and separate verification. Here, a different IIT is assigned the task of checking the disputed *translata* and potentially producing a new *translatum*. This approach is less instantaneous and makes a more precise verification possible. However, here the problem may arise that the person tasked with checking the *translata* is not familiar with the case and, for example, will find it difficult to assess aids to understanding or interpretation without the same knowledge of the case as the original IIT. To prevent the verification from focusing exclusively on linguistic flaws, it must therefore be ensured that the person checking the *translata* is given as much information about the case as possible.

Consequently, from our perspective, what is most important is to avoid deficiencies and errors. To minimize these deficiencies, standardizing IITs' work steps and assignments is imperative. An important measure would be for institutions to produce internal handbooks or specific guidelines in which general standards about the procedure and textualization are recorded. These documents are useful aids for answering common questions and for quality assurance, regardless of the IIT or investigator involved in a specific case. If these guidelines are developed and adopted by interprofessional panels comprising representatives of the police, the department of public prosecution, courts, and IITs, they will guarantee the transparency of the entire surveillance process while also gaining broad acceptance among legal representatives. For this to be the case, they must of course be accessible to all those involved in the process of criminal prosecution. An integral component of such guidelines would be a table containing specific recommendations for the textualization, as we suggested in Section 5.3.3.

In addition, the implementation of general standards for collaborations between law enforcement agencies and IITs, as well as for IITs' work processes, should undergo frequent checks in the context of regular quality assurance procedures in order for any deficiencies in the ongoing proceedings to be identified and corrected promptly.

Such procedures also involve giving structured feedback. There is consensus in the literature that improving performance depends on several factors, such as setting clear tasks and aims, giving incentives to improve performance, providing the possibility to repeat tasks (i.e. to develop experiential knowledge), and to give feedback. In the case of communication surveillance involving IITs, a feedback culture must therefore develop that flows in two directions: feedback to the investigators responsible for managing and supporting the IITs

working for them, and feedback from investigators to IITs about their work and possible improvements – which should take place before *translata* are disputed by others involved in the proceedings.

Finally, depending on the legal system, every party must be allowed to check the new *translatum* in order to uphold a fair trial in accordance with Art. 6 of the European Convention on Human Rights. It is up to the law enforcement agencies to guarantee this. Furthermore, if deficiencies are related to the duties of documentation, it is the responsibility of the police and the department of public prosecution to collect the missing information and make it available to the court.

6. Competences

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6.1 INTRODUCTION TO CHAPTER 6

The previous chapters have made it clear that the translational activity of intercept interpreters-translators (IITs) is not an intuitive activity that any multilingual person could carry out, but rather it demands pertinent knowledge and specific competences.

In this chapter, we elaborate on these competences and differentiate between translational competences, as required in a similar form in all translational activities, and non-translational abilities, which are instrumental in intercept interpreting-translation. As the use of the term “competence” is very varied, we begin by differentiating between the terms *competence*, *ability*, *skill*, *qualification*, and *expertise*. Only by defining these terms is it possible, in the following sections, to identify the skills and competences that need to be

developed and trained and to distinguish them from the personal abilities and expertise that prospective IITs must possess already.

6.2 THE TERMINOLOGY

Our differentiation between *competence*, *ability*, *skill*, *qualification*, and *expertise* is guided by the European Union's translation competence framework, which establishes the cornerstones of how specialist translators are trained at higher education institutions in the EMT network (European Master's in Translation, EMT).

According to this framework, *competences* are composed, on the one hand, of pre-existing personal abilities that need to be developed, and on the other, of skills and knowledge that need to be acquired through training. While competence can therefore be developed through education and training, certain personal dispositions or abilities must be intrinsic.

The definitions of *abilities* and *skills* are inconsistent in the literature. However, there is consensus that abilities are requirements that can be traced back to both personal aptitudes and things that have been learned, which put a person in a position to carry out certain intellectual or physical actions or to accomplish certain achievements. By contrast, skills are applied and describe knowledge about how to carry out a certain action. Abilities and skills are therefore part of competences and can be summarized and formalized together with knowledge in qualifications for measurement and assessment purposes.

Qualifications describe the results of training or learning obtained during education or training that were tested and confirmed at a certain point in time according to specific criteria. For example, taking as its starting point the competences that need to be trained, the European Qualification Framework establishes the learning outcomes or qualifications that are certified after successfully passing an examination.

Expertise rests on specially developed skills and profound, specific knowledge. What is important here is time. For instance, it is generally accepted that it takes roughly a decade for a person to evolve from a beginner into an expert. This development takes place gradually. Beginners need precise instructions and context-independent rules as to how certain actions should be carried out. As time passes, these initially rigid rules are applied to a growing number of real situations and adapted according to the experiences gained. Only with increasing experience does it become possible to abstract actions from the rules, become involved in the activity, and independently find solutions that are adapted to new situations. In our study, we encountered expertise in line with this definition, especially in the form of investigative experiential knowledge and strong identification with police investigations, especially among IITs who had been doing the job for many years. For their part, there

was consensus among the investigators we interviewed that cooperating with experienced IITs made their work easier. Of particular importance here are flexibility, actively thinking for yourself when it comes to the case, and speed, because the investigators are not capable of verifying the quality of the interlingual transfer themselves and hence have to be able to trust the IIT.

Otherwise, I'm very/ actually always satisfied with the interpreters, it works so well. We have the/ exactly, the very experienced ones. And we like to take them so that we know it'll work well. (POL5)

Indeed, according to a sociological conception of expertise, it could also be a social attribution. Such an attribution takes place within a certain group and outsiders or laypersons may find it difficult to grasp. In other words, the social group determines who is deemed an expert in a topic or a certain field on the basis of criteria applicable in that area. In the case of intercept interpreting-translation, that means that it is not the IITs who determine which activities (must) be included in their translational activity, but rather the law enforcement agencies and the criminal courts. In our interviews with IITs and the police, this social attribution of expertise can be deduced from the answers to the question of what differentiates good IITs from less good ones. Here, experience, knowledge of police investigations, and non-translational knowledge were repeatedly named as features of expertise. Central importance is evidently attached to experiential knowledge, which can only be acquired with time and by cooperating with the police (Section 1.3.2).

That's information that you have to know and like I've said, the best interpreters, um, are those who have the most experience. So those who have listened to, watched, contributed to the most operations. (IIT3)

Young, so university graduates or coming to us straight from interpreting school— um, that's a no. ((laughs)) Well, never say never, but we definitely look for quite experienced people where possible. (POL10)

Accordingly, the criteria for expertise in the context of intercept interpreting-translation are in fact not proven formal qualifications like relevant translational training, but the IIT having contributed to successful investigative work. In practice, this experiential knowledge, which we refer to as expertise, is by and large equated with competence.

The competences are vast. // [Name], he now has so many years' experience and it's impossible to imagine any investigation without him because in some cases he knows the culture and he/ // these individuals, these people/ exactly. He's extremely important to // investigations. These insights, why he's saying this like that and what's the background to this utterance. (POL2)

However, if what is known in the field as competence is based exclusively on many years of experience and personal abilities, on abilities that are called “investigative intuition” and on skills acquired “on the job”, then the expertise is very limited because it applies only to the field of intercept interpreting-translation, and due to a lack of translational training and qualifications, it is difficult to apply it to other translational settings. This compounds IITs’ dependence on their clients, i.e. on the police and/or law enforcement agencies, which is something we discussed in Chapter 2 in connection with the instability of their assignments.

6.3 INTER- AND INTRAPERSONAL ABILITIES

The prerequisites for intercept interpreting-translation are not just competences and skills but also certain personal dispositions or abilities. All translational professions require noncognitive abilities, like the ability to work under pressure, stress management, motivation, creativity, and emotional intelligence alongside well-developed cognitive abilities like powers of concentration, a good memory, and analytical and critical thinking. Our analysis shows that it seems to be primarily these noncognitive abilities that may explain why one IIT is awarded assignments regularly, whereas another IIT is not awarded any follow-on assignments after their contract has come to an end. In the following, we therefore concentrate on certain inter- and intrapersonal abilities that are particularly important to the translational activity of IITs.

“Interpersonal abilities” describes social abilities, such as communication and cooperation abilities, the ability to deal with conflict, empathy, and adaptability. As already shown in several sections, the setting in which IITs work is unique. This is related on the one hand to their field of activity within secret communication surveillance, in which they do not enable communication between parties interested in communicating with one another like interpreters in other fields but rather work primarily for a third party, namely for law enforcement agencies, and do so for the purpose of an investigation. In addition, the cooperation between IITs and investigating police officers is unique and, compared with other translational settings, unusually close (Section 3.5).

However, the ability to cooperate and work in a team is essential not only so that investigative knowledge can be generated together with the investigating police officers, but also so that IITs can work with one another. For instance, in larger investigations, IITs sometimes have to work in teams for long periods, or they may have to adjust to the presence of other IITs at short notice when more manpower is only needed every now and then. Despite the competition revealed in Section 2.3.1, in daily practice it is therefore common for IITs to share information about the case or to support one another, e.g. when audio quality is poor.

[W]hen I can't really hear a conversation, I go to my colleague and say, "I can't understand that. I'm listening [but] I still can't understand", I say, "OK, you do it, what do you hear". It's teamwork. That means everyone has to support operative interpreters. (IIT2)

Hence, IITs must be able to adapt in various ways. As we showed in Section 2.2 and as we will return to in Chapter 7 with reference to how the IIT's role is understood, both the extent and type of cooperation with the investigative team and the request concerning which *translatum* is to be produced when and what each *translatum* should contain depend greatly on the investigators involved. At the same time, it is necessary for an IIT to position themselves within the team of IITs and find the right balance between intraprofessional teamwork and safeguarding their own livelihood.

Adaptability in the sense of flexibility and availability is likewise indispensable in intercept interpreting-translation. While an investigation is ongoing, the time pressure is intense. For that reason, assignments are usually given to those IITs who are available and who have proven themselves in the past. In some surveillance operations, it is necessary to work weekends and evenings. This temporal flexibility is expected in intercept interpreting-translation and can guarantee that an IIT will be awarded assignments time and again.

And we, we obviously need people who, I'll exaggerate, are available 24/7. That's what we need. And then our choices are pretty limited. And then there's a handful of interpreters or rather language service providers who can do that, and that's why we've been working with certain people for virtually decades. (POL3a/3b)

However, temporal flexibility also implies financial flexibility or rather insecurity: as shown in Section 1.3.4, when a surveillance operation comes to an end, high availability can lead to a dramatic loss of income. Yet arranging alternative sources of income would impinge on the flexibility required of an IIT.

Another aspect of flexibility is dealing with the, at times very high, stress involved. Stress management is one of the intrapersonal abilities urgently needed in intercept interpreting-translation. During an investigation, IITs must cope with a high workload and be capable of working swiftly and efficiently under time and investigative pressure, because evaluating the data in a timely manner is crucial. Once a surveillance operation is completed, there is generally more time available for producing translated intercept records (TIRs), for which reason some IITs prefer this activity (Section 1.3). The ability to deal with stress is vital if IITs are to remain productive and consistently deliver good results that serve their intended purpose. After all, considering the enormous volume of work, time is limited, especially for the *translata* required while investigations are ongoing, and correcting and reworking are only possible to a limited extent as new source material is constantly arriving, of which

corresponding *translata* must continuously be produced. Needless to say, a lack of stress management has a negative impact on interpersonal abilities, i.e. the ability to communicate, cooperate, and work in a team.

Additionally, good stress management goes hand in hand with considerable psychological resilience. On the one hand, IITs need to have a sensitive sensorium. On the other hand, they must be able to deal with psychologically demanding content, such as criminal offenses being committed, people using vulgar language, and intimate acts. If a target's home is bugged as part of the investigation, the IIT will also hear the target's most intimate moments by day and by night, as is mentioned by IIT8. Simply the fact of feeling like a "ghost" (IIT12) in the surveilled individual's home and "listening to other people's private conversations, even if they don't concern me" (Q129. What are the three aspects that you dislike most about your work as an interpreter of intercepted communications?) can be perceived as challenging.

You have to have a certain sensibility, but not the kind of sensibility that could frighten you, because we're talking about criminal acts and in the long run you'll come into contact with every criminal act, it might be a felony, I'm talking about someone who has killed, like larceny, [...] So you can't be too sensitive. But on the other hand, you have to listen to the people really closely when they're talking, because people can say a huge amount with just one word. (IIT12)

Being constantly confronted with predominantly demanding situations can even have a negative impact on a person's trust in the people around them (Chapter 2). IITs have a duty of confidentiality that forbids them from talking about their work and stressful experiences with anyone outside their working environment. Moreover, some IITs are even afraid of being considered a traitor and police collaborator in their own circles. This, too, may be stressful. It is not only a question of reputation but also personal safety. Indeed, IITs frequently raised their concern for their safety in the interviews, e.g. that their anonymity may not be guaranteed throughout the entire criminal proceedings. However, caution and secrecy also demand the ability to control one's impulses, as IITs must keep their professional secrets to guarantee the integrity of their work and the confidentiality of the information.

Acknowledging personal limitations, self-assessment, and self-management, as well as sensing and processing one's emotions, are therefore further intrapersonal abilities, often considered part of emotional intelligence, that IITs require in order to remain fit for work in the long term and maintain good mental health.

High stress is also mentioned in connection with urgent situations, such as those involving the prevention of a possible homicide or when an offender is on the run: "That's part of our job" (IIT1). In such situations, it is important to remain calm because it "can do more harm than good" (IIT1). Operative

interpreting in particular significantly raises the pressure on IITs to work quickly and to succeed as they must interpret in real time and supply vital information for an ongoing surveillance operation, on the basis of which concrete decisions will be made (Sections 3.2.1.2 and 4.2). This high level of responsibility may provoke the “fear” of “having misunderstood” something (Q129). Strategies for dealing with stressful situations and controlling one’s impulses are especially important in such situations. However, prospective IITs must already possess these strategies: they are not taught in the context of intercept interpreting-translation but rather are taken for granted.

Furthermore, psychological resilience must be sustained over long periods in order to distance oneself and switch off from the activity outside of work hours.

At first I struggled a bit, because I could almost hear the voice when I was sleeping. [...] And with the really big and difficult people, it’s possible that you’re listening to them for a whole year, a year, and then you know that person better than your wife or your brother. And then, like I said, some tragedies, blows of fate can have a bit of an effect on you. But not like at first, no. It gets increasingly/ you toughen up. ((laughs)) Unemotional. ((laughs)) With this work. (IIT8)

In our survey, only 7 percent of respondents (three of 46) answered in the affirmative to the question of whether they are offered psychological support (Q57). Yet more than a third (33 percent) of respondents would welcome such accompanying measures (Q59).

Many inter- and intrapersonal abilities help IITs not only to carry out their translational activities and build working relationships but also to listen to the intercepted conversations. For instance, emotional intelligence in the sense of the ability to recognize one’s own and others’ emotions, to understand them, and to use them to adapt thoughts and behavior, can also improve their ability to identify the behavior and emotions of the individuals under surveillance and hence gather important information for the investigation (Section 3.3).

Noncognitive abilities, such as emotional intelligence, the ability to work under pressure, stress management, motivation, and creativity, have a significant influence on cognitive abilities and hence not least on the quality of IITs’ work. Furthermore, they encourage IITs to act responsibly and independently, which, as we have shown on various occasions, investigators expect. We maintain that these abilities help to determine whether – regardless of any translational training – an IIT develops expertise in the sense of increasing involvement in the activity and assuming responsibility for their own actions.

6.4 TRANSLATIONAL COMPETENCE

To our knowledge, in no country are the job titles “translator” and “interpreter” protected. This means that anyone can offer their translational services if they speak several languages and deem themselves capable of carrying out translational activities. Yet bilingualism, which may include multiple second languages, does not automatically qualify a person to translate or interpret. Translational competence differs from mere bilingualism because it is in fact an independent competence that must be trained and developed. Translational competence is an interactive system of specific competences that are activated during every translatorial action.

Defining the competences to be developed and the proof of qualifications thus plays an important part in academic education and vocational training. They are the prerequisites for entering the profession.

Translational competence in the sense of professional transfer competence is specialist knowledge. It is comprised of various specific competences that are to be applied purposefully during any translatorial action in order to carry out a specific translation assignment in a specific situation for an intended purpose and in cooperation with various partners. This set of trained specific competences and their purposeful activation differentiates professional translational competence from the natural, intuitive transfer between two languages conducted by multilingual people, and hence from a lay activity. Furthermore, in intercept interpreting-translation there are some special aspects that have already been mentioned and led to us speaking of a hybrid translational activity in relation to intercept interpreting-translation (Section 1.4). Its uniqueness lies on the one hand in the different intermodal transfer processes involved (Section 3.2.1) and on the other in the interplay of specific translational and non-translational tasks resulting from its setting within police investigations. As has become clear in several places above, IITs need not only translational competences but also investigative and forensic competences in order to supply the investigating police officers with the information that they themselves are unable to collect because they lack knowledge of the language and culture. Some competences are of a general translational nature and correspond to those needed, e.g. when interpreting in court or translating judicial decisions. By contrast, other translational and non-translational competences are required specifically for intercept interpreting-translation.

Translational competence is based both on declarative knowledge (knowledge of facts and the world, including knowledge of various specialist areas) and on procedural or methodological knowledge, i.e. knowledge about how to carry out an action. Particularly due to this combination of very diverse competences, it is difficult to find suitable people. For example, those who

understand Gheg, an Albanian dialect, extremely well, may have less linguistic competence in the target language of German, despite good written and oral language skills being required of IITs. Those who speak Igbo, one of the many languages of Nigeria, may have trouble typing, even though textualization is one of IITs' main tasks. Someone who has graduated from university in conference interpreting and who has excellent Spanish skills may not understand the group language of the South American drug mafia as well as they thought and may also not know that Tina in some circumstances is not a woman's name but a drug.

Translational activities are generally cooperative by nature because translational work always takes place to meet the needs of third parties. This is particularly true of intercept interpreting-translation, in which cooperation with investigators is a vital prerequisite for a successful surveillance operation (Section 3.5). Alongside declarative and procedural knowledge, IITs therefore need communicative abilities, the ability to cooperate and to deal with conflict, and good self-assessment, as well as a willingness to develop and the ability to self-manage (Section 6.3). The development and professionalization of these personal abilities is part of basic translational training. According to our survey data and interviews, however, no small number of IITs lack such general training. In our online survey, only 8 percent of respondents (four of 46) said they had a bachelor's or master's degree in translation or interpreting (Q145, 147). That means that most IITs were bilingual individuals with a non-translational educational background, i.e. individuals with vocational training, a university degree in another discipline, or individuals who had not completed any training.

In addition, it is not rare for a person's first assignment in communication surveillance to be awarded via personal contacts and at times ad hoc, especially when an IIT is being sought for a rare language or dialect. Systematically checking a person's competence by proving their qualifications or carrying out quality controls and giving structured feedback during their assignment does not always take place. According to our findings, even competence development, e.g. in the form of continuous education, is not a mandatory requirement and is not offered systematically or on an obligatory basis. In our online survey, we posed several questions about offers of and interest in specific continuous education in intercept interpreting-translation. The question about offers of continuous education (Q38) was answered no by 76 percent of respondents (n=46). In response to question Q33, "Did you receive training for the job from the police?", 52 percent did answer yes. However, a positive answer required the respondent to state what the training measure consisted of; this revealed that it most frequently comprised a short introduction to the computer system or being advised of their legal obligations or of the need for "complete and correct translation". Furthermore, courses on a cantonal level or certification

courses broadly concerning court and public service interpreting were understood as training for intercept interpreting-translation.

When asked about their interest in such offers (Q39), 61 percent responded yes, only 15 percent no, while 24 percent gave no answer. Where there was interest in offers of continuous education (Q40), the requests ranged widely, from “detailed guidelines about summarizing conversation content” and legal information, e.g. on the judicial system and cultural circumstances in Switzerland, to the use of technology (“innovations in intercept interpreting-translation systems”), from psychological support and being informed of risks to communication with other IITs, from the understanding of their role to self-protection and supervision.

The following answer to Q40 reveals something that was also touched on in interviews, namely the desire to be perceived not just as an intercept interpreter-translator but also as a cultural mediator and to be able to make this knowledge available to law enforcement agencies.

Generally yes. Mostly we “simply” translate. We are informed of the specific subject and “get cracking”. Not necessarily according to a system. More special (police) knowledge generally wouldn’t hurt. As I’ve already worked in the police in my home country, I still benefit from that. But that seems to be an exception. Plus you notice here and there that the client isn’t necessarily well informed about geography. You’re repeatedly confronted with “ex-Yugoslavia”, but that country hasn’t existed for a long time. Interpreters could do their bit there and, for example, design some continuous education for the client? (Answer to Q40)

Despite a lack of theoretical and practical foundations, many IITs nevertheless develop many of the required skills over the years and do successful work to the satisfaction of the law enforcement agencies. However, both the law enforcement agencies’ expectations and the IITs’ performance standards are extremely heterogeneous since there is a lack of generally agreed minimum requirements concerning the quality of translational work and the production process for the various *translata*. Consequently, both are heavily dependent on the person. Furthermore, due to a lack of practical professional and ethical rules, IITs are in a weaker position and are reliant on the rules and specifications, as well as the nonspecialist definition of translation, of their clients (Section 2.2).

Discussed multiple times above, the fiction among those who do not work in the translational sector that intercepted conversations could be transferred verbatim into the language of proceedings without any meaning or information being lost, makes the application of translation technologies using artificial intelligence (AI) attractive. They are taken into consideration as not only cost-effective but also a time-saving alternative to IITs; for example, if vast quantities of chat messages need to be analyzed, often in a very short space of

time. At the time we collected our data, i.e. in the years 2019 to 2022, tools for speech recognition or for translating text messages were still immaterial due to their poor results. Needless to say, the possibility cannot be ruled out that in future machine translation and speech recognition will accelerate the process when it comes to the scanning, rough textualization, or initial, tentative interlingual transfer of data. However, as in all translational areas in which AI is already being used, it will inevitably be necessary for the machine-produced material to be reworked or postedited by IITs. This is particularly conceivable in the case of group-specific sociolects, dialects, or frequent code-switching or code-mixing within a conversation or a chat message. AI is incapable of textualizing contextual and situational information in the manner we have described (Chapter 5). Moreover, the forensic and investigative requirements will present a particular challenge. It is safe to assume that these are the areas in which law enforcement agencies will suffer the greatest loss of information if they seek to replace IITs with AI. Ultimately, it is common knowledge that postediting requires specific qualifications, considering that the interlingual transfer by AI runs the risk of errors or inaccuracies caused by the machine being overlooked. It is therefore unlikely that the requirements of IITs will reduce with the introduction of AI; indeed, they are likely to increase in order to enable the information relevant to the investigation to be identified.

That means that, regardless of technological developments, the requirements of IITs identified in our analysis will remain unchanged. In the following sections, we elaborate on the individual specific competences that are demanded of IITs by law enforcement agencies and/or are essential prerequisites for the job. In the process, we also reveal the existing discrepancies between the skills and abilities currently demanded and the actual competences, and the false conclusions made as a result. Here, it should be borne in mind that one of our proposed reliability criteria (Section 5.3) is to use qualified IITs who can prove that they have relevant translational and communication surveillance-specific competences.

6.4.1 Bilingualism

Bilingual competence in the context of translational work is in essence procedural knowledge that enables a person to communicate in two languages and to adhere to the lexis, grammar, and conventions of each language when switching between them or when transferring content from the source into the target language.

According to our study, one of the most common false conclusions in the practice of communication surveillance occurs in the context of bilingual competence, namely that competences equate with abilities or skills. With regard to bilingual competence, the assumption is widespread that simply mastering

two or more languages makes a person capable of translational work. This leads in some cases to police officers bringing in bilingual relatives to conduct intercept interpreting-translation. However, as revealed in the introduction, common practice mainly consists of assigning intercept interpreting-translation jobs to laypersons who qualify for the role solely because they understand or speak several languages (Section 1.3).

Yet bilingualism, as this competence chapter makes evident, is just one of several specific competences that together constitute the overarching translational competence. For instance, in the context of translational work, a bilingual competence also comprises a specific transfer competence, the targeted activation of general and technical lexis in the source and target language, the consideration of the purpose of the translational activity and the ability to render in the target language the actual meaning of the source text rather than transferring individual words or even sentences – and hence to take into account idiomatic language, as well as conventions specific to a language and text type.

In other words, bilingualism in the context of translational work means steering interference processes. Language interference refers to deviations from the norm that may arise when multilingual individuals e.g. reproduce the sentence structure or lexis of language A in language B and thereby go against the rules of language B. Steering these processes often takes place unconsciously in natural communication situations. However, during the translational process, conscious decisions are also necessary that make it possible not only to carry over into the target language the semantic, grammatical, and idiomatic features and, with oral translational work, also the phonological and extralinguistic signals, like facial expressions and gestures, of the source language but rather to select adequate features in the target language. For this reason, linguistic knowledge includes pragmatic, sociolinguistic, grammatical, and lexical, as well as textual, knowledge. Knowledge of dialects, linguistic registers (including jargon, sociolects, and group languages), and sociolinguistic conventions plays an important part in intercept interpreting-translation.

Needless to say, oral and written competence in two languages is the prerequisite for any translatorial action. Yet, depending on the law enforcement agencies' specific requirements, it is also possible for an IIT to be accepted whose command of the target language is only rudimentary. As a general rule, a differentiation must be made between a person's competence level in their first language (L1), usually their mother tongue or first language of schooling, i.e. the one with which a person grows up, and their competence level in their acquired languages (L2, L3, L_x), which are learned at a later point in time. With all translational activities, the direction of linguistic transfer is important. Different cognitive processes of reception and production take place and different transfer problems occur depending on whether the interlingual

transfer is from a person's L1 into their L2 or from their L2 into their L1. The direction of the linguistic transfer also has an influence on the linguistic quality of the *translatum*. For instance, a person who can speak Tigrinya fluently can understand the intercepted communication in its entirety and even pinpoint it culturally, but may in some circumstances have difficulty rendering this information in the acquired target language.

Our study shows that the majority of people working in intercept interpreting-listen to conversations in their L1 and then transfer them to their L2, i.e. the language of the law enforcement agencies. In our survey (Q131), only 13 percent of respondents (n=46) named one of the two official languages of Switzerland, German or French, as their mother tongue or the language of their schooling (L1). Just under 9 percent named German or French alongside another language as their L1. This means that some 79 percent of respondents work in intercept interpreting-translation from their mother tongue(s) or the language(s) of their schooling into a foreign language. Moreover, some 22 percent declared that they had just one L2, roughly a third had two acquired languages, almost a quarter three acquired languages, and just under 45 percent even four or five acquired languages in which they also work.

Our interview data also show that the majority of IITs work from several source languages, especially when their L2s are related to their L1, as is the case in the language region of former Yugoslavia with Serbian, Bosnian, Croatian, and Macedonian.

[IIT] says that they would help each other if it's a matter of understanding dialects. With [dialects A and B] [the IIT] only understands 70%, he says that himself. Nevertheless, he often translates from these dialects because no appropriate IIT is available. (OBS Day 2)

It is common knowledge that multilingual individuals do not achieve the same level in all their languages, both in terms of passive understanding and active language use. Yet the concomitant increased risk of misunderstandings and reduced writing quality is often tolerated because, for reasons of organization and procedural economy, a transfer from several source languages may be necessary, for example, to enable the uncomplicated transfer of code-mixing and code-switching, which is a feature of many intercepted conversations.

However, it also comes to pass that law enforcement agencies have to resort to individuals who do not possess the necessary competences in their L1 or L2 if individuals who are competent in the source language are not available or not available quickly enough.

OK, we lower our standards when it comes to quality, but at least we have someone who can more or less translate the language. Because we can't now axe all those we have who don't meet these requirements. (POL1)

A willingness to compromise, particularly with regard to competence in the target language – and especially with regard to written competence – is most notable when individuals have experience in intercept interpreting-translation, which is deemed very important. According to the interviews we conducted, it is occasionally possible for individuals to be awarded an assignment in intercept interpreting-translation whose insufficient knowledge of the language of proceedings led to them not being awarded a general certification for court and public service translation or interpreting. Yet these people are given work in communication surveillance because the assignment is urgently needed, they have the aforementioned knowledge of rare languages or dialects, or they are already known to the police officers for their investigative or forensic abilities (Section 6.5).

He's someone who [...] has also been working for thirty years I believe now, who does nothing but that. Level of schooling I don't know, he can't take part in interrogations anymore because exactly he messed up his exams for the third time but he's very very good at tapping. [...] In any case this colleague they kept him because they've defended him a lot because he's been working for thirty years, he's about to retire, he's been defended because he really is good. [...] Maybe he's not extremely good in [language of proceedings], but in any case he's good at the level of perception in his language and like I said at the start, the people who are in trafficking are people with a [low] level of education, who talk a street slang that maybe he knows it very well and he manages to perceive really well what it is they're doing. [...] it's necessary to have finesse and perception. (IIT6)

A willingness to compromise on the part of the law enforcement agencies is also apparent with regard to writing competence in the target language. As described in Section 3.2.1.1.2, in the two-step method, intercepted conversations can be transcribed first in the source language and then translated from the transcript, which also requires good written language skills in the source language(s). It is more common, however, for the conversations to be transferred into and textualized in the target language straight from the audio recording. If, for example, a translated intercept record (TIR) then becomes translated intercept evidence (TIE) (Section 1.4), then it will be available to a larger number of people involved in the criminal proceedings and the reliability of the evidence will suffer considerably if, e.g. it is riddled with glaring orthographic and grammatical errors in the target language.

Nevertheless, the interviews exposed a “fit-for-purpose” attitude with regard to linguistic quality, with priority being given to conveying information.

A sound [language]. Not perfect, but ultimately it's like [a] business card.
[...]

And it can't be that we then have to correct the mistakes in German too, right. It ought to be a [type of] German that's ultimately also legible. Small mistakes [that] doesn't matter. (POL3a)

Other investigating police officers are prepared to correct *translata* or in extreme cases even textualize them themselves if the IITs' written language skills are insufficient, but it is nevertheless impossible to stop working with them.

We do it before introducing it. Before validating the record, we'll say we'll correct [it]. If it's from word to word, and then that the interpreter himself makes orthographic errors, we generally leave them because after all it also gives credence to say, well, the interpreter who doesn't necessarily have French as his mother tongue, he's made some mistakes, but that doesn't change the context of the sentence, that we leave. If we see that a summary isn't very clear, we ask the interpreter "so, say there it's not [...]"; then we correct it. At that moment, the summary we can correct it, then put a [type of language of proceedings] that's a bit more refined or a bit more comprehensible. The idea is for the whole world to be able to understand [it], because they don't all have a level of [language of proceedings] that's, that's excellent, you know, so sometimes (sighs) there are certain [IITs], they wrote almost phonetically and [with] others we had to be next to them, they didn't know how to write, so the guy he listened, he told us "he said that, that", and then it was us who wrote it down. (POL7)

It has become clear that bilingual competence concerns various aspects of understanding the source language and rendering it correctly in the target language. Yet it is much more important to increase awareness among law enforcement agencies that although every bilingual person has a natural, intuitive, translational competence, conscious and purpose-driven interlingual transfer, and knowledge of target-language, *translata* quality differentiate professional translational competence from lay transfer.

6.4.2 General and Specialized Knowledge

General and specialized knowledge is essentially declarative knowledge, including knowledge of the source-language culture. Added to this are legal knowledge of the criminal proceedings and IITs' rights and duties, knowledge of criminal law, and knowledge of surveillance measures.

Our interviews and the data from our survey show that the IITs we questioned have a very broad body of knowledge, from studying theology, law, the humanities, or the arts to training in care work or commerce, and that they draw on this knowledge in the context of their translational activity as IITs. Indeed, it can be necessary for IITs to have or acquire specialized knowledge

in order to better understand and reconstruct the content of conversations. In such cases, they are required to carry out independent research.

Or [...] during the previous proceedings cryptocurrencies were [...] really a big thing. And then the interpreters also had to get to grips with that/ with that subject matter. They were also interested. Then they gave us feedback too [...]. [After] the weekend they came, said: "Ah, look here, I read it in the newspaper at the weekend. That's another good report". And then they sent good reports our way, [...] that were also indirectly related/bore a relationship to our proceedings. (POL6)

As in every other translational activity, general and specialized knowledge is crucial to understanding the source-language utterances and cannot be separated from the translational activity of IITs (Section 5.2). On the contrary, without relevant knowledge, it may not be possible to understand certain conversation content and the risk increases that the rendering will be distorted or incorrect.

However, it is primarily cultural knowledge, which is closely connected to linguistic knowledge, that IITs require in order to be able to, e.g. assess suspects' behavior, understand structures within groups and communication patterns, and hence interpret intertext content and pinpoint its cultural or social context.

[In order] to understand that, you definitely actually also need/ to understand the other culture, to understand the other mentality. It's not enough to just understand the language. You also need more than just language. There are many examples, but for example the boss is talking with a buyer. One example. And the boss tells a joke and the other person does/ you see, he laughs but not without effort, he laughs in a way that he has to laugh. And that itself shows that the other person is much bigger than the other one. Or among the Balkanites [...] a lot of swear words are used, so "I screw your mom, I screw"/ that's like "good morning". It's very rarely meant seriously. Very, very, very rarely to be taken as a threat. (IIT8)

In the survey, the participants were asked whether they are consulted on matters that are not purely linguistic, e.g. on cultural matters, modes of behavior, habits, etc. (Q116). Eighty percent answered yes, and 20 percent no. The positive answers ranged from "very seldom" to "of course, that's what it's all about!" The respondents stated that the police ask them about religion, celebrations, customs, social and family structures, as well as about sociolinguistic matters.

Consequently, IITs use extralinguistic knowledge on the one hand for their translational activity in order to understand and interpret utterances, and on the other specifically to advise investigators. This information is often shared orally between IITs and investigators while they are working together every day, whereas in written *translata* it must be clearly labeled.

6.4.3 Translational Listening

Translational, forensic, and investigative requirements all converge in translational listening. In communication surveillance, translational listening is part of procedural knowledge. We speak of translational listening because this form of professional listening differs from intuitive listening in natural communication situations as a result of the translational assignment. Attentively listening to and comprehending heard audio information is fundamental to investigative work. Consequently, it is not just an important prerequisite for intercept interpreting-translation but is also demanded of police officers who listen to conversations in the language of proceedings. This investigation-based listening calls for an exceptional ability to anticipate. Especially when it comes to recognizing voices and matching them to the correct speakers, listening closely is essential. For instance, an IIT may be asked to identify different voices, which may even overlap in the recording. Identifying and recognizing voices is also crucial to the investigative work during a surveillance operation. While listening, IITs pay attention to the vocal attributes of the person under surveillance, such as their way of speaking, as well as to any speech impediments. However, they also pay attention to nonlinguistic and extralinguistic reference information that goes beyond the spoken word, as described in the following example.

[...] Is he afraid or is he saying something under pressure? Can you sense that? That definitely is the interpreter's job, sharing [that]. He generally does that too, he shares, "He behaved really weirdly. It seems he was afraid", or "He's doing something under pressure". And you see that though in the verbatim transcription, not in the translation, so [there] you don't see that. But that is shared with us. But that gets lost, that's definitely/ that gets lost [...]. (POL3a/3b)

Knowledge of a voice and the person it belongs to is built up gradually over the course of an investigation. As such, changing IIT means a huge loss of knowledge because essential information about the surveilled individual is lost.

IITs can only acquire knowledge of the individuals, actions, and the overall situation via their aural perception. This presupposes knowledge of human nature, social competences, and attentive listening. Even when what is discussed is inconsequential, constant and intense concentration is necessary. Communication surveillance requires attentive listening, even when there is distracting background noise, because when it is not relevant, it has to be ignored. Aural perception necessitates, as one IIT (IIT2) puts it, "an open attitude", as a certain expectation could steer you in a particular direction.

[...] Well, OK and the job obviously consists to a considerable degree in listening and you can only listen at the speed that the people are speaking. You obviously

can't speed anything up like with reading. You obviously really do have to listen from A to Z exactly at that speed, [...]. (IIT5)

In communication surveillance listening impartially and “openly” is crucial. Several factors have a considerable impact on the listening process and listening behavior, such as context, situation, and the purpose of listening. The surveilled individuals' possible further course of action is supposed to be reconstructed on the basis of the conversations and the atmosphere in the surveilled settings. Recontextualizing what has been heard sometimes requires some imagination, though it must simultaneously be ensured that the original utterance is not distorted (Section 3.3).

And then you really do have to listen very closely then to what they're talking about. And [...] yeah, what all that means, so/ and and/ and also generally not all that/ also keep H in, in sight or in mind, now they're talking about that and that and are, no idea, in the kitchen and before/ yeah, you really have to/ you have to pay attention not to interpret too much into it and exactly, like I said, hear things that weren't said. And you hear them because you're exactly/ because that would fit well there, because it would be good for the investigation. But that's just not the way it is, not always. So I'd/ I have an example: during a conversation that was pretty hard to understand because the/ the range hood was on the whole time and the people were in the, in the kitchen. And, and there words kept being uttered like “two kilos”, “green”, and stuff, “everything for him”. And that/ ((laughs)) simply so VERY suspicious words. So very. And then of course you hear, when you hear it at first: whoa, that's it! Jackpot! Now I've gotten here somehow/ ((laughs)) But you hear it again and again and then you come to the conclusion that/ that they really are making spinach and that they really are [talking] about the bag of spinach/ a kilo or should they [use] so much, because then there's him coming too and stuff, and and that it really is purely and simply about food. Spinach. Period. It just doesn't work. It's not every conversation where you somehow mention two kilos. (IIT6)

Listening and listening capacity are always influenced by expectation. However, when this amounts to priming, i.e. when what is heard is only interpreted with a specific meaning due to prior knowledge (Section 3.3), then it prevents impartial listening. Translational listening should, wherever possible, happen impartially (Section 5.2). No additions are allowed, as IITs remark time and again. This is why listening closely and critically is essential. It is especially challenging to monitor different “storylines” in parallel. IITs form an overview of current events in a surveillance operation and connect the individuals to their actions.

[...] He understands connections. And can even make connections very quickly when he hears something, why something is like that, so he can interpret very/ quite accurately. So, understand what a conversation is actually about. And he also listens quite well. That happens often, that you just understand certain things differently, which you/ sometimes it's just not/ you don't hear it well. Purely and simply

the quality is bad or something. Sometimes it's also because of the language, so because/ yeah/ or whatever. But he has a good ear, so he hears well. And he understands well too. So he understands the connections [...]. (IIT6)

Challenges for listening capacity are presented by unexpectedly high noise pollution and poor acoustics. Especially in offices or homes, as well as when there is background noise, understanding is made more difficult. Another possible obstacle is overlapping utterances or speakers having similar voices, e.g. siblings or other relatives, which can make it difficult to differentiate between them. These sources of interference to listening can be traced back to external factors. By contrast, internal interference factors in the form of tiredness or excessive stress can impair a person's listening capacity. A lack of prior knowledge or being insufficiently prepared for the content may also have a negative influence on a person's understanding of audio content.

[...] And there's something else: if you get very tired after a couple of hours, then you don't hear anything anymore. And then it's helpful if you the next day or after your break—I like to spend my breaks in nature or doing exercise because I simply/ I need the mental hygiene for it, for once getting a proper sweat on and not hearing any noise—and afterward listen to that part or that conversation again. And then: “Oh god, finally I've heard what it is. I've played it back a hundred times”, but it doesn't work after so much/ it gets/ the ear gets full or the brain or whatever. (IIT5)

IITs report having independently developed strategies to increase their listening capacity. Alongside individual mental hygiene strategies, as mentioned in the interview with IIT5, very simple strategies like listening again or listening after some time has passed are tried and tested approaches. In addition, listening capacity depends on the technology used. Accordingly, audio quality has a significant impact on the quality of the translational output. Aural perception is markedly better with headphones than without, as IITs told us, but having the aforementioned background knowledge and being prepared for the content of the case also has a positive influence on listening capacity. Experience plays an important part in communication surveillance because a practiced ear “hears differently” (IIT1), as one IIT commented.

Translational listening is a fundamental skill that poses considerable cognitive demands of IITs. On the one hand, they are required to listen for hours at a time, and on the other, they must identify even the smallest nuances in intonation. Under difficult conditions, such as background noise or acoustic shortcomings, IITs must grasp reference information not only concerning content but also context. They therefore develop coping strategies to improve their listening capacity and ability to spot connections. Even though in the interviews it was frequently mentioned that “different hearing” is required, the experience factor appears to contribute to successful translational listening as

well. A “practiced ear” is better at connecting what it has heard, making out nuances, and even dealing with bad acoustic working conditions.

6.4.4 Media Competence

Every single surveillance operation is recorded in the computer system of the police and the department of public prosecution. IITs, too, tend to work in programs designed for translational work, which requires basic knowledge of IT and typing skills. However, our survey and interviews revealed that formal training is provided neither in how to use the programs nor in how to save and organize the documents in the system of the police and the department of public prosecution; rather, there is merely “training on the job” during an IIT’s first assignment, which is carried out by the person responsible for the surveillance operation or by experienced IITs. Indeed, 37 of 46 respondents (80 percent) to the survey (Q87) stated that they had been familiarized with the software. Of those, only two individuals mention formal training, whereas all the others were introduced to the software either by the investigators responsible or by other IITs. On the other hand, nine individuals (20 percent) were given no introduction whatsoever.

Hence, knowledge about working in these computer programs has to be acquired over the course of the intercept interpreting-translation assignment.

We have some interpreters here now, they come again and again. Because they are maybe common languages that are very often just always needed. Then they know with time how the system [...] It’s a special system to carry out this surveillance. If you’ve never done it, an introduction is needed, you have to explain the system, and that’s not done in five minutes. (POL1)

Yet even if the investigator had assumed that an introduction to the software would only take a few minutes, it should be borne in mind that IITs must work in different systems for wiretapping or indoor surveillance. Additionally, interfaces generally do not only comprise the text box into which the *translatum* is to be entered, but also include a range of metadata (operation, case number, IIT ID, the telephone number of the person under surveillance, keywords, etc.). In vehicle surveillance there is also an interface with the GPS data that enables live tracking of the bugged vehicle. For instance, experienced IITs then know that they sometimes “just [have to] pay attention to the amplitude” (OBS Day 1) to identify whether someone is speaking, or that “train noise [is] the most constant” and hence telephone calls from a train are always recognizable as such (OBS Day 3). This experiential knowledge enables the IIT, on the one hand, to work very efficiently if, e.g. surveilled individuals are traveling in a

bugged vehicle for several hours, and on the other hand to contextualize the conversations, which is very important for the investigation.

Translating various kinds of text messages demands further competences. For instance, before the translation, cell phone data may be processed and made available in various forms. At the same time, the metadata contained in the files must also be identified and used to link the content with that of chats with different individuals because the chats are not presented contiguously (Section 3.3).

However, the interviews revealed that the police do not necessarily take knowledge of IT and typing skills for granted:

Now we're talking about the ideal requirements—the PC, so in terms of IT [IITs must] have a fairly good level, for example. Because, this surveillance is obviously done on computers. And that's where you obviously often have to listen to the conversations and then write [them down]. And if, if the interpreter can do that himself, it makes our job much easier. [...]

So, if we have interpreters who for example can't work a computer, then a police officer has to [sit] next to them [and] write it. So, then the interpreter talks, meaning translates it from the foreign language into the [language of proceedings] and then the police officer writes it down. // If the // interpreter can't write. (POL1)

In response to the interview questions about the use of research tools, the internet was named first and foremost, though at the time the interviews were conducted not all IITs had access to the Internet from their work computers and were obliged to use their private cell phones or laptops to conduct research. In connection with research, contextual information was mentioned most frequently, such as looking up a street name or researching conversation content (e.g. cryptocurrency as a means of payment). Only very rarely were dictionaries mentioned. As such, their competence in their mother tongues was also considered by the IITs themselves to be sufficient to understand the conversations.

For wiretapping we don't really have to prepare anything, after all that's our mother tongue. Once every couple of months there's a dialect/ a dialect word, where we don't understand. Then we say, "Aha, he comes from there, he comes from there, he comes from there. Who could I ask, which of the interpreters?" (IIT5)

By contrast, on the part of the police, we even detected a certain mistrust about the use of bilingual sources:

[...] and then when he arrived here, he explained this to me, then he had the dictionary with [him], voilà, he still passed [as a] translator, but it's not certain that I'll call on him again, unlike someone who is perfectly bilingual. (POL9)

Even in terms of the primarily procedural instrumental knowledge, it can therefore be recognized that these skills are taken for granted, and rudimentary instructions on how to use the programs are considered sufficient. However, it is incontestable that practiced and hence automatic use of, e.g. the surveillance software takes the pressure off cognitive capacities and accelerates translational processes, which ultimately improves translational quality.

Qualified research knowledge, by contrast, consists not only in knowing how to purposefully acquire reliable information; it is also about using adequate research tools with necessary caution. Especially when it comes to researching criminal offenses or groups of offenders online, it is advisable in some circumstances to prevent Internet browsers from tracking the research.

6.4.5 Knowledge of Translation

Knowledge of translation can be described as implicit and explicit declarative knowledge of the various translational activities, applicable standards, understanding of one's role, professional ethics, and the translational strategies and techniques required and associated with the specifications for each assignment. This is specific specialized knowledge that is acquired in the context of translational training, i.e. within the discipline, on the basis of applicable standards and qualifications. The manner and extent of the declarative knowledge of translation have an influence on procedural knowledge, i.e. on the competences to carry out translational activities and on the self-understanding of the individuals carrying it out. In the context of intercept interpreting-translation, it can be observed that knowledge of translation is inadequately developed. This shortcoming manifests itself particularly in the IITs' lack of professional self-understanding and in the inadequately developed standards regarding the practice of this activity.

Knowledge of translation begins with using the correct terms for one's own activity and profession (Section 1.2). Only by clearly defining these terms does one's membership of a professional group and the certification of one's qualifications become outwardly visible. Yet in intercept interpreting-translation it is notable that both for the individuals and activity, as well as for the *translata* they produce, heterogeneous, confusing terms are used – indeed, not just by investigators and the department of public prosecution or in the judgments, but even by the IITs themselves.

That the standards are inadequately developed becomes clear when one considers the “parenthetical notes”, for example. As shown in Section 5.3, even in these comments that are so crucial to the reliability of a *translatum*, a uniform practice is lacking. Instead, it is on the basis of the personal preferences of the IITs or, more commonly, the investigators, the police force, or the department of public prosecution, that the decision is made whether or not the IITs

should add important explanatory notes and aids to understanding and how they should be labeled. When guidelines are sought, it is mainly judicial decisions that are consulted, though they are not systematically collected and then distributed, e.g. as a written handout; rather, in many cases they are merely imparted vaguely in the form of oral information.

[...] so the chief officer meets with the chief investigator and then [talks] with him [about] what difficulties there were at court and how to avoid that in future. Our head of division then told us: "Hey, interpretation orally, but not 1:1", because [...] 1:1 means 1:1 what he said. (IIT2)

That's all [...; an] agreement between the interpreters and the case investigator. That's how they taught us it in the first years when we were doing it. Or now and then when something has been interpreted, they bring the text back and say: "Complaint. That's not allowed to be in it, can you do it differently?" Then I say, "Fine, that goes out, that goes out, that goes out". The lawyer should make sense of it himself. (IIT5)

Briefs that are unclear, not set out in writing, and vary inevitably lead to heterogeneous individual practices, as is evident in the following two answers to the question of whether the IITs annotate their *translata* with aids to understanding:

No. Why should I do that. Why? Is that my task? I don't do that. [...] I've got away with that [not annotating *translata*] really well, haven't I. I've almost never gotten into trouble [for it]. (IIT2)

Just in, dunno, quotes or italics or brackets, it depends. (IIT9)

These divergent, self-developed translational strategies are the result of a lack of knowledge and the development of separate intradisciplinary translational standards and professional rules for intercept interpreting-translation. Added to this is the fact that IITs are subject to the likewise varying "translational theories" of those who do not work in the translational sector but who give them their assignments, i.e. the police, the department of public prosecution, or the courts; as such, the notion doggedly persists that interpreters and translators serve as a mouthpiece and that their task consists of nothing more than transferring language A into language B verbatim.

As mentioned, self-understanding and professional ethics are part of the knowledge of translation and hence of understanding one's own translational assignment. Especially in the interviews, we observed that many IITs' involvement in police work is considerable. Our interviews show that the priority for IITs is for their written *translata* to be accepted by the department of public prosecution and for the lawyers to find no grounds for challenging the TIRs. This is indicative of a strongly client-oriented approach to translation, which

also determines the purpose of the translational activity and the IIT's own image of their role. Thus, one IIT wants to "make it exciting" and attempts to

always step into the shoes of the judge or the police officers. When they read it, how does it come across to them? (IIT9).

Another endeavors to

use as few words [as possible] to express something. The case investigators come in the mornings, have x IITs in their team, and have so much to read. So it has to be expressed economically. (OBS Day 5)

The primary aim is to lead the investigation to success or even someday "be there [during] a big haul" (OBS Day 2). This implies a huge sense of responsibility toward investigators because

if they miss their target, the investigators, then they look stupid, not the interpreter. Which is why the investigator has to rely on his interpreters. (IIT2)

In sum, knowledge of translation uniquely reveals the discrepancy between translational competence and the skills and elements of knowledge acquired solely on the job (Section 1.3), which are perforce dictated by others, are individual, heterogeneous, and fragmentary, and are limited to the snippets of knowledge necessary for individual translational actions. The fact that so many IITs lack knowledge of translation and, hence, of their own position and role in the entire cooperative translational process (Chapter 3) also hinders their development of ability-, experience-, and competence-based expertise. Additionally, it prevents IITs from being in a position to – by virtue of their own standards of professional ethics – differentiate between translational and non-translational activities, avoid potential priming, and guarantee impartial intercept interpreting-translation (Section 5.2).

6.5 NON-TRANSLATIONAL COMPETENCE

Generally speaking, investigations are long-term projects and are affected by many dynamic factors. Intensive work and cooperation between the police and IITs is necessary to enable both parties to react quickly and keep the information flow up to date. For the investigating police officers, intercepting foreign-language conversations also means that they must inevitably delegate to IITs some of the tasks that are, in fact, the responsibility of the police. As explained multiple times above, these tasks perforce include identifying voices and coded language and combining information from prior or simultaneous surveillance operations. This close interprofessional collaboration thus demands

of IITs non-translational competences; however, when they first start working as IITs, they only have these non-translational competences in the form of personal abilities and must independently expand and deepen them over the course of their assignments, whereas the investigating police officers tend to have undergone specific training. In contrast, the IITs who are considered experts in intercept interpreting-translation are precisely those whose strength lies in the non-translational tasks described below. In order to highlight the discrepancy between the required competences and the rather intuitive abilities that are particularly manifest in the non-translational tasks that are specific to communication surveillance, in the following sections, we use the term “forensic abilities” whenever we want to call attention to special forensic and investigative requirements being made of IITs that they are only able to meet with significant personal dedication.

6.5.1 Forensic Competence

Forensic competence is required if IITs are to supply clues about language use, such as identifying voices, recognizing an individual’s idiosyncratic features, sensing and pinpointing extralinguistic details, like ambient noise, or deciphering coded language. Whether and to what extent they are equal to these tasks largely depends on their personality, their experiential knowledge in communication surveillance, as well as their knowledge of the culture and language. For example, when deciphering coded language, it can be helpful for IITs to have knowledge of the technique of swapping syllables or adding pre- and suffixes, as is the case with Verlan in French (tromé instead of métro or bedo instead of daube) and in the youth language Šatrovački jezik in Bosnian, Croatian, and Serbian. In the following quotation, the IIT draws on memories from their youth.

[...] for example, “Cornelia—Liacorne”, so when they talk like that, I understand. Instead of Cornelia—Liacorne and/

I: So when they invert syllables // to code something [...]? //

B: // When they invert syllables. // Yeah and add something else. And I understand that language too. And that’s where I see my advantages and that I’ve been right a lot of the time with my interpretations so far [...]. (IIT8)

At times, decoding can be facilitated by adding semantic placeholders, whereas less obvious codes and fragmentary communication in particular are considerably more difficult to decipher. As the following statement from a very

experienced IIT makes clear, however, this forensic knowledge is primarily based on experiential knowledge.

The reason, back at the beginning when I started, it was a lot easier [was] because people spoke much less conspiratorially. For example [...], Person A says to Person B: "I'll bring you ten loaves". And that isn't that hard to decipher. "Ten loaves" means/ back then it meant ten kilos. Or "The mule's coming tomorrow", that means: "The smuggler's coming tomorrow". And nowadays they talk much less because they've learned something from the police interrogations and arrests. And people in that scene talk to each other about how things go down with the police. And when the police play back the conversations to them [...] as evidence, then they tell [each other] how it works. And that's why they talk a lot less. And there are also lots of apps, phones, like Blackberrys and various apps, where you can communicate with each other covertly, [which] the police still can't monitor and it's getting more difficult. That's why you have to listen really well and pay attention to the smallest details. (IIT8)

IITs who have forensic abilities, a knack or flair, may in some circumstances supply investigating police officers with vital clues on the basis of just a short conversation by, e.g. recognizing a person's position and function within a group, the atmosphere within a group, or the relationships between those involved in a criminal act.

[W]hen we're doing wiretapping and then vehicle surveillance too, then you have to compare the two and the time: Where was he? Who was he with? What did he do? How much was said about what? You have to have it all in your head so that it [the investigation] moves along. (IIT3)

[...] But meta-information was important for the [investigators], above all at the beginning of investigations. For instance, little fish were more often nervous. By contrast, people like [name of the person under surveillance] were different, they were "hardened, you don't hear much with them". [IIT] tells of a dealer [...] who had worked as a taxi driver and always put something in his mouth during relevant conversations. [IIT] says it might have been a prune plum, and laughs. Then both his voice and what he said were difficult to understand. (OBS Day 4)

Especially at the beginning of a surveillance operation, the forensic abilities of IITs can be decisive, namely when much information is still unknown to the police. Yet even with long-lasting surveillance, IITs with these abilities can efficiently support police investigations because they supply clues and hence fill the gaps in information for the police officers (Section 3.5).

[I] can't express it any other way than: you know what makes that person tick, their mannerisms. With time you can tell when they say something whether or not they mean it seriously. With time you can tell [...] if they're nervous with. You can tell that on the phone, can't you. (IIT3)

That's immediately shared [with the] team, that you say: "You know, he seems

somehow a bit tense or nervous”, or, “Now he’s [...] suddenly on edge when normally he’s cool as a cucumber. Now something or other’s out of the ordinary”. And then of course it’s important because if the interpreter comes and says: “You know, he seems so nervous. What’s going on?” That we [can] then [check] the other means of surveillance we have at our disposal and might be using [to be able to say], “Yeah, that makes sense because someone else announced they’re coming on another channel that you’re not listening to. That’s why he’s nervous. Or that’s why he seems stressed”. Because maybe he’s gotten a message that’s making him nervous, not via a channel that we’re monitoring but [...] another way. So we can then disclose: “You know, that’s the reason why he now seems so on edge or nervous”. (POL6)

At times, IITs’ forensic abilities are also used when the conversation is being conducted in a language familiar to the police officers, but their understanding is hindered by an accent, different syntax, or an unusual use of language.

The [investigators] have to do that themselves [authors’ note: listen to conversations in the official language]. We’re not allowed to do that. Although (...) we do ninety-nine percent because we ((laughs)) understand the accents. And the investigator [doesn’t] understand it/ even though it’s in German [when] he says, “Hey, bro. You, you”, so sometimes without any verbs, but we add the verbs because we know/ [...; they are] our compatriots, we know what they’re trying to say. (IIT2)

In principle, forensic tasks are classed as part of the subject of forensic linguistics, more specifically forensic phonetics. As such, they belong to applied linguistics, which focuses on the systematic and scientifically founded analysis of spoken utterances and handwritten or digitally composed texts. These scientific findings are applied for various purposes in the context of a criminal investigation.

However, IITs normally have no such training. Although scientific studies on speaker identification have shown that laypeople are also capable of identifying speakers on audio recordings and recognizing the characteristics of a speaker, the reliability of their judgments remains disputed and depends greatly on the individual’s unique abilities. Another problem is that IITs’ lack of training means that they do not have the technical terminology necessary for forensic analyses. For this reason, whereas with time they can develop into experts in the individuals they are listening to, they are obviously not capable of carrying out and checking their analyses in a way that is supported by scientific criteria.

So I wanted to say, [...] at the beginning of a case, at that time [...] you can’t always tell precisely whose voice is whose. And that was, for example, in [year] there was such a case where I had just started translating the case. And I mixed up two voices and that then led to [...] the police not arresting a person. And then when the police wanted to arrest the person later, then it was somehow too late. And that’s why/

yeah, then a police officer told me: “If back then you’d” – then I said: “Yeah, if back then I’d – that was at the start. I didn’t know the voices back then”. (IIT9)

It is clear that forensic competence is needed as a matter of urgency in the practice of intercept interpreting-translation, but that the criminal justice system is also keen to ignore that in certain areas, IITs overstepping their authority poses risks because IITs cannot draw on qualifications and competence (Section 6.2) but for the most part must rely solely on their intuition.

6.5.2 Investigative Competence

We differentiate between forensic competence and investigative competence. The latter is necessary to complete the following tasks that we identified during our analysis of translational processes: interpreting heard content in the specific context of the criminal offense, connecting information from different sources (e.g. from earlier or simultaneous operations or from audio recordings and text messages), and knowledge (e.g. of power structures within certain milieus), as well as prioritizing conversations that are relevant to the investigation.

So above all [it’s] also that she has that flair, he or she, like [...] the drug dealers in our particular case at the moment, what makes them tick, what they do. That they intuit that, ah, now it’s about a drug deal and not about/ also already having that investigative mindset. And being sensitized to listening to those little nuances. That’s very important for us. (POL5)

Like forensic competence, investigative competence is of crucial importance to the success of communication surveillance. Here, too, a strong sense of responsibility and intense personal involvement can be observed among IITs – traits that experts also possess.

[IIT’s name] reflects further: “The moment you write ‘inconsequential,’ you haven’t just translated”. He contemplates another, more fitting job description and says, maybe “analyst” would be more fitting. (OBS Day 5)

Highly developed intuitive investigative abilities are exhibited, for example by those IITs who are capable of grasping hidden details at the right moment that may, in some circumstances, only be mentioned once. Only a “good interpreter [can] hear [that], because a mediocre interpreter, he does his job” and “he misses quite a lot” (IIT3).

Because I’m reliant on the interpreter who’s doing such surveillance with time actually being able to think like a police officer, shall we say. That he notices that something’s different, that something’s not right [...]. (POL1)

When delegating investigative tasks to IITs, the police officers are aware that, due to the insurmountable language barrier, their investigations are reliant not only on IITs' translational abilities but to a considerable extent also on their investigative abilities.

So that mediatory work by the/ by the interpreter that decides the game. Because without these IITs our proceedings are worth nothing. Because if they don't hear it, if/ we don't hear it of course because we don't understand the language. So the IITs, they're actually more important than us when it comes to clarifying the criminal offenses, because THEY tell us: "Uh, there's something not right here". Because they can sense it then too. (POL6)

It was mentioned repeatedly in the interviews that it was useful for IITs to have personal insight into the milieu so that they could reconstruct and, in the best case, even anticipate in an investigative regard the surveilled individuals' behavior and approach. Not only the police officers but even the IITs themselves come to the conclusion that knowledge of the milieu and familiarity with criminal strategies are markedly more useful, especially while an investigation is ongoing, than academic, ideally translational, training.

For example, now with narcotics offenses the best interpreter would be someone who has sold drugs. THAT'S the best interpreter. Not someone like me who's studied, no. Because I haven't gone into those, um, alleys and asked people how much for fifty grams. No, that wasn't me. I haven't used the lingo that's needed on the street, right? Sure, I mean with time you get the hang of it with the phone calls and so on. (IIT3)

It doesn't matter how many graduates [...], [as] an operative interpreter you have to be able. [When] I remember, [year] or [year], I don't know anymore, [name] was still here. Do you know/ have you heard of [name]? [...] he was a professor in Germany for my mother tongue. He came here and [...] for a couple of days he [unintelligible; gave it a try]—he couldn't [do it]. Operative. But he could write damn [...] well/ stylish German. (IIT2)

However, entrusting IITs with investigative tasks is at variance with the police's investigative authority jurisdiction (Chapter 2) and ignores IITs' lack of training in the field of activities pertaining to criminal investigations. This results in considerably conflicting priorities because the investigating police officers sometimes feel compelled, simply for time reasons, to delegate prioritization tasks for which they themselves are responsible.

With respect to work, it's the case that if I have an interpreter who can work independently, [he] takes from me/ obviously takes on a big proportion of the work. Because he does the whole processing, let's say, or an initial processing of the surveillance. Then he listens to the conversations, he actually makes like a preselection,

what's important, what's not so important, right. And that takes a lot of work off my hands. If I have, let's say, a surveillance [operation] that's in German, then I have/ I have to do that myself. So I have to listen to it. Which is a lot of work. And so we often do it by simply supporting each other, [so] that someone really just listens to the conversations. Because there are always other jobs to do at the same time. That also have to be done. (POL1)

Yet the investigators are fully aware that they are delegating tasks to people with neither the necessary training nor the necessary authority.

Yeah, you do have to [bend the rules] a bit/ I say/ of course they aren't/ of course they aren't strictly police officers, right. [...] I mean, if you look at [name], [...] he's half a police officer ((laughs)) with the knowledge that he's gained [...] over all the years that he's been with us. And [...] it's simply a bit ticklish, how far do we go, what are we allowed to ask? Obviously it's great for us when slowly over time, the longer he's with us, someone becomes more and more familiar with the material [...] and understands it all. That obviously makes it easier for us too, all the work, when he accurately notices: "Oh, [...] I think there's a delivery coming tomorrow". And [...] on the phone he [authors' note: the person under surveillance] doesn't say: "So tomorrow I'll bring you five kilos". That's [...] wishful thinking, you know that of course. But simply, when he's been listening for several weeks, then [...] sooner or later he knows: ah, that's how they work. [...]

[...] the thing is you can join something halfway through and then you get [...] completely the wrong end of the stick. [...] it can also happen that it's then [...] maybe under pressure and, "I have to [find] something, I have to contribute something, I've got to say something [...]". Um, yeah, you can't ask too much of him somehow and hand the whole thing over to him: "Hey, you've gotta tell me now when I [can expect] the delivery, we have to make an arrest!" That's always MY decision as case investigator, [...] that shouldn't be the interpreter's decision. [...] He's [...] our aid in the matter. Not somehow the investigator, yeah. (POL2)

Investigative abilities are particularly imperative when producing summaries (Section 4.3.2). After all, when producing summaries, the guiding principle is to differentiate aspects of a conversation that are important to an investigation from those that are unimportant in order to provide the investigators with an immediate overview of the conversation. This leads to IITs having to assess the surveilled content's significance to the investigation at the point of writing their summary, i.e. at a stage prior to the police. For example, if summaries are too superficial or are missing important elements of the conversation, like places, names, times, or even situational or metalinguistic details (e.g. background noise that suggests that one of the individuals involved was at a train station), there is the danger of important information being lost and time being wasted.

It is incontestable that communication surveillance would come to nothing in many places without IITs' non-translational abilities. However, our study has exposed how building competences in this vital area is paid no attention

whatsoever. It is only by turning a blind eye to this fact that it is possible to sustain the law enforcement agencies' fiction that intercept interpreting-translation consists exclusively of interlingual transfer and that investigative work is conducted exclusively by police officers.

7. Current conceptions of the role of intercept interpreters-translators (IITs) as guides for the future

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7.1 ROLE MODELS AND FINAL REMARKS

The aim of this book is to close the yawning gap in both research and practice and to lift the veil of secrecy surrounding the work of intercept interpreting-translation. To this end, we provided a comprehensive overview of intercept interpreters-translators (IITs) themselves, their work, legal requirements, processes, products, and competences. In many places, we also exposed the discrepancy between expectation and practice and proposed solutions.

By way of conclusion, it is appropriate to reconsider IITs’ diverse tasks and competences in terms of the understanding of their role and to highlight the possibilities we see to develop a new, clear conception of the role in future. In the most general sense, an individual’s role in a social structure can be defined as a set of expectations of their behavior. However, these expectations are not rigid or immutable; rather, they are constantly being renegotiated and reconstructed in interaction with their social environment. The intersection of police work and translational activities in the context of communication surveillance gives rise to complex roles that are shaped by a wide range of factors. A significant part is played in this regard by how the role of IITs is defined by their partners and how much confidence those partners place in them.

We began our study by analyzing the conceptions of the role that IITs have developed for themselves and how they define their self-understanding as well as their role and position in the context of communication surveillance. To this end, they were asked in the survey to describe their role in the team (Q119). In their answers, IITs used several metaphors to illustrate their conception of their role. These figurative expressions are very instructive because metaphors are not just mental constructs but steer individuals’ actions and shape interpersonal relationships. Our analysis of the responses to the survey and interviews yielded the following three role types.

Metaphors like “mouthpiece”, “linguistic bridge”, or “aid” point to the first role type: the distanced IIT who sees themselves as a purely translational actor. IITs with this understanding of their role restrict themselves to the task frequently assigned to them, namely carrying out a “mere” interlingual transfer.

The reasons they cite are that they do not interpret meaning and do not express any opinion on the case or the targets unless they are asked to do so. They are not integrated into the investigation team, and they consider themselves independent service providers. Their main motive is for their *translata* not to be contested.

This role type clearly distances itself from that of the IIT as an auxiliary police officer: IITs with this conception of their role broaden their tasks and responsibilities because they consider themselves part of the investigation team or even driving forces. They are forensically motivated and want to actively have a hand in solving the case. They are usually more closely integrated into the team, see themselves as close cooperation partners and their work as an important contribution to the success of the investigation. Metaphors like “Agent 008”, “enthusiast in the team”, “the ears of the team”, “helm of the operation”, or “expert” are indicative of this understanding of the role.

We call the third role type “master of balance”. IITs with this understanding of their role feel involved in the police work, are dedicated, and undertake various translational and non-translational activities in the framework of intercept interpreting-translation. Despite this, they view their role as distinctly translational and themselves as separate from the investigation team. In the survey, we found descriptions like “important supporting role”, “information broker”, “mediator between suspect and investigator”, “bridge and connecting link”, which we associate with this balanced role type.

Obviously, these conceptions of the role are not entirely discrete but rather the boundaries between them are blurred. The intersection of police work and translational activities in the context of communication surveillance gives rise to complex conceptions of the role that, due to a range of intra- and interindividual and external factors, are not clearly defined and are constantly changing. This is not surprising, seeing as the translational setting in communication surveillance is highly interprofessional. In other words, even more so than with other translational work, intercept interpreting-translation is a cooperative activity and frequently borders on investigative work, which is why there is the risk of IITs identifying with the role of their partners in the case. At the same time, the role of IITs greatly depends on how their partners define it, how much confidence they place in them, and to what degree they allow or desire cooperation, as we have shown.

For instance, we have observed that police officers act as gatekeepers for investigative tasks. As they award the translational assignments and are responsible for the investigative measures, police officers enjoy a status that enables them to grant or deny IITs both greater autonomy to organize their activities and access to investigative tasks, regardless of whether IITs actually want to undertake those tasks. As described above, the amount of time the police officers have worked with the IITs and their confidence in their abilities

play a key part here. That police officers act as gatekeepers is one of the decisive interprofessional factors in the role-making of IITs.

Despite the differences between these conceptions of the role, all three show how deeply involved IITs are in their activity and how great their sense of responsibility is. This is even true of the more distanced role type that we listed first, in which the involvement manifests itself mostly in the pursuit of precision and of a *translatum* of immaculate quality.

This involvement can give rise to a chasm between the high expectations for the translational service and non-translational tasks on the one hand, and the lack of training on the other, which can prove frustrating.

But that was some years ago now that I went back to work as a [job description], [...] and that I reduced the translations a bit. Me I was always suffering a bit from the lack of that training in translations. So I gave a lot and I'm an intellectual person, I need training [...]. I drain myself intellectually doing translations. Me that's what I call it (laughs), I drain myself doing translations and I need to be trained, to have a bit more knowledge, yes to be trained really, have training that replenishes me on the other side. With the translations I didn't have that. So I drained myself over all those years of work I gave everything, I took all the nuances of a sentence whatever it was in [language], trying to put it into [language of proceedings] as well as possible, because it isn't always obvious. (IIT13)

The frustration on the part of IITs and the anxiety on the part of police officers and departments of public prosecution due to the risk of mistakes being made during intercept interpreting-translation or of translated intercept evidence (TIE) being dismissed on the grounds of formal shortcomings, is largely due to the responsibilities and accountabilities concerning some of the tasks carried out by IITs not having been specified, and due to the fact that for some tasks, competences are expected of IITs for which they receive no training.

Of all the diverse findings that we are sharing in this book with interested practitioners and researchers, our most important recommendation is therefore to invest in the comprehensive professionalization of intercept interpreting-translation and make clear IITs' status as expert witnesses. However, on the other hand, the competences of the police officers and judicial authorities must also be expanded for the benefit of a better and more structured cooperation with IITs. This is not just in the interest of improving translational practices, but most importantly it is a matter of upholding the principles of justice and a fair trial in every single criminal proceeding in our multilingual world.

Appendix: intercept with interpreters survey

INFORMED CONSENT

Q1 Welcome to the research study!

We are interested in understanding [STUDY TOPIC]. For this study, you will be presented with information relevant to [STUDY TOPIC]. Then, you will be asked to answer some questions about it. Your responses will be kept completely confidential.

The study should take you around [SURVEY DURATION IN MINUTES] to complete. You will receive [INCENTIVE] for your participation. Your participation in this research is voluntary. You have the right to withdraw at any point during the study. The Principal Investigator of this study can be contacted at [NAME/ EMAIL ADDRESS].

By clicking the button below, you acknowledge:

Your participation in the study is voluntary.

You are 18 years of age.

You are aware that you may choose to terminate your participation at any time for any reason.

Q2 Do you work as an interpreter of intercepted communications?

Yes (1)

No (2)

If Do you work as an interpreter of intercepted communications? = No

Q3 Did you work as an interpreter of intercepted communications in the last 4 years?

Yes (1)

No (2)

Skip to the end of survey if: Did you work as an interpreter of intercepted communications in the last 4 years? = No

If Did you work as an interpreter of intercepted communications in the last 4 years? = Yes

Q4 Please note that the survey is written in the present tense. If you worked as an interpreter for intercepted communications in the last 4 years, but are no longer doing so, please indicate what the situation was like at the time.

Demographics

Q5 In which of the following jurisdictions do you work as interpreter of intercepted communications?

Federal state (Bund/Confédération) (1)

AG (2)

AI (3)

AR (4)

BE (5)

BL (6)

BS (7)

FR (8)

GE (9)

GL (10)

GR (11)

JU (12)

LU (13)

NE (14)

NW (15)

OW (16)

SG (17)

SH (18)

SO (19)

SZ (20)

TG (21)

TI (22)

UR (23)

VD (24)

VS (25)

ZG (26)

ZH (27)

Q6 Sex

Male (1)

Female (2)

Other (3)

Q7 Year of birth

Q8 What is your canton of residence?*AG (1)**AI (2)**AR (3)**BE (4)**BL (5)**BS (6)**FR (7)**GE (8)**GL (9)**GR (10)**JU (11)**LU (12)**NE (13)**NW (14)**OW (15)**SG (16)**SH (17)**SO (18)*

SZ (19)

TG (20)

TI (21)

UR (22)

VD (23)

VS (24)

ZG (25)

ZH (26)

Professional profile – Experience

Q9 How long have you been working as an interpreter of intercepted communications? (in years or months)

Number of months (1) _____

Number of years (2) _____

Q10 Did you already work in the field of interpreting and/or translating before starting your activity as interpreter of intercepted communications?

Yes (1)

No (2)

If Did you work already work in the field of interpreting and/or translating before starting your activity ... = Yes

Q11 Was your previous experience as an interpreter and/or translator within the criminal justice system?

Yes (1)

No (2)

If Was your previous experience as an interpreter and/or translator within the criminal justice system? = No

Q12 What was your previous experience as an interpreter and/or translator?

Q13 Is this activity (interpretation of intercepted communications) your main source of income?

Yes (1)

No (2)

If Is this activity (interpretation of intercepted communications) your main source of income? = Yes

Q14 Do you have other sources of income?

Yes (1)

No (2)

If Do you have other sources of income? = Yes

Q15 What are your other sources of income?

If Is this activity (interpretation of intercepted communications) your main source of income? = No

Q16 What is your main source of income?

Q17 What approximate percentage of your household's revenue comes from your activity as interpreter of intercepted communications?

Q18 Do you work as an interpreter/translator in other contexts?

Yes (1)

No (2)

If Do you work as an interpreter/translator in other contexts? = Yes

Q19 In which other contexts do you work as an interpreter?

Education (schools, day care) (1)

Health sector (2)

Military (3)

Diplomacy (11)

Police (interrogation/examination) (4)

Justice (5)

Administration (6)

Conferences (7)

Asylum (8)

Private sector/trade (9)

Other (10)

Q20 Are you a member of a professional association of translators and/or interpreters?

Yes, please specify (1) _____

No (2)

Work conditions – Recruitment**Q21 How did you first learn about this job (interpretation of intercepted communications)?**

Job offer (1)

Personal network, please specify (2) _____

Other, please specify (3) _____

Q22 How did you apply for this job?

Application letter (1)

Phone call (2)

Personal discussion, please specify (3) _____

Other, please specify (4) _____

Q23 How were you recruited?

Job interview (1)

Assessment (test) (2)

Other, please specify (3) _____

If How were you recruited? = Job interview

Q24 Can you remember what questions you were asked at interview? What seemed particularly important to the interviewer(s)?

If How were you recruited? = Assessment (test)

Q25 What was the object of the assessment?

Language skills in the foreign language(s) (1)

Language skills in official language (2)

Translation/interpreting skills (3)

Capacity to work under pressure (4)

Other aspects, please specify (5) -----

If How were you recruited? = Assessment (test)

Q26 Please briefly describe the assessment test(s).

Q27 Are you officially accredited to work as a police/court interpreter?

Yes (1)

No (2)

If Are you officially accredited to work as a police/court interpreter? = Yes

Q28 For which languages are you accredited?

If Are you officially accredited to work as a police/court interpreter? = Yes

Q29 Do you also work with languages/dialects you are not accredited for?

Yes (4)

No (5)

If Do you also work with languages/dialects you are not accredited for? = Yes

Q30 Please specify the language(s)/dialect(s)

If Are you officially accredited to work as a police/court interpreter? = No

Q31 Does an accreditation process exist at the police department(s) at which you work?

Yes (1)

No (2)

If Does an accreditation process exist at the police department(s) at which you work? = Yes

Q32 Please describe the recruitment procedure if you work in languages/dialects for which you are not accredited.

Work conditions – Training

Q33 Did you receive training for the job from the police?

Yes, please specify (1) _____

No (2)

If Did you receive training for the job from the police? = No

Q34 What instructions were you given before starting to work the first time you interpreted intercepted communications?

Q35 Has any kind of continuous education (Weiterbildung/formation continue) been offered to you in the specific context of interceptions interpreting?

Yes (1)

No (2)

If Has any kind of continuous education (Weiterbildung/formation continue) been offered to you in the ... = Yes

Q36 What type?

If Has any kind of continuous education (Weiterbildung/formation continue) been offered to you in the ... = Yes

Q37 How often did you attend?

If Has any kind of continuous education (Weiterbildung/formation continue) been offered to you in the ... = Yes

Q38 Are there aspects of the job on which you would like to receive further training?

If Has any kind of continuous education (Weiterbildung/formation continue) been offered to you in the ... = No

Q39 Would you like to be offered (additional) continuous education within the context of interceptions interpreting?

Yes (1)

No (2)

If Would you like to be offered (additional) continuous education within the context of interceptions ... = Yes

Q40 On what aspects of the job would you like to receive training?

Work conditions – Conditions

Q41 What is your fiscal status in your occupation as an interpreter of intercepted communications?

Independent (1)

Salaried (2)

Other (3)

Q42 Are you employed on an hourly basis?

Yes (1)

No (2)

If Are you employed on an hourly basis? = Yes

Q43 What is your gross (brutto) hourly rate?

If Are you employed on an hourly basis? = No

Q44 Please specify your employment regime.

Q45 What is your average net monthly income from your activity interpreting intercepted communications? (estimation)

Q46 Is your income from this activity regular over the year?

Yes (1)

No (2)

If Is your income from this activity regular over the year? = No

Q47 Can you generally count on a minimum monthly income from interception interpretation?

Yes (1)

No (2)

If Can you generally count on a minimum monthly income from interception interpretation? = Yes

Q48 What would this income be approximately?

The job – Procedural aspects

Q49 How do the police contact you to intervene in an investigation?

Phone (1)

E-mail (2)

Other, please specify (3) _____

Q50 What is the information you receive with the first contact?

Q51 How long did your longest mandate within one investigation last?

Q52 Are you mandated for several different investigations at the same time?

Yes (1)

No (2)

If Are you mandated for several different investigations at the same time? = Yes

Q53 What is the maximum number of simultaneous investigations you have been involved in?

Q54 Are you informed of the reasons when a mandate is terminated?

Yes (1)

No (2)

If Are you informed of the reasons when a mandate is terminated? = Yes

Q55 What is the usual reason for the termination of a mandate?

If Are you informed of the reasons when a mandate is terminated? = Yes

Q56 Have you experienced other reasons for the termination of a mandate?

Yes, please specify (1) -----

No (2)

Q57 Are you offered psychological support?

Yes (1)

No (2)

If Are you offered psychological support? = Yes

Q58 Did you use it and in what context?

If Are you offered psychological support? = No

Q59 Would you wish for such a service?

Yes (6)

No (7)

Q60 How often are you usually contacted to intervene in a new investigation (per month or year)?

Q61 Do you sometimes refuse an assignment?

Yes (1)

No (2)

If Do you sometimes refuse an assignment? = Yes

Q62 What is the approximate ratio of accepted assignments (%)?

If Do you sometimes refuse an assignment? = Yes

Q63 What are the reasons why you would refuse an assignment?

Q64 How long in advance are you generally contacted?

Less than 24 hours in advance (1)

1–2 days in advance (2)

3–7 days in advance (3)

More than a week in advance (4)

Q65 Are you sometimes called in for an emergency?

Yes (1)

No (2)

If Are you sometimes called in for an emergency? = Yes

Q66 How quickly do you then need to be available in case of an emergency (with regard to interception)?

If Are you sometimes called in for an emergency? = Yes

Q67 How often does it happen?

Q68 Are you sometimes called at night (between 23.00 pm and 07.00 am) or during weekends? (Only with regard to interception)

Yes (1)

No (2)

If Are you sometimes called at night (between 23.00 pm and 07.00 am) or during weekends? (Only with regard to ... = Yes

Q69 How often (per month/year)?

 If Are you sometimes called at night (between 23.00 pm and 07.00 am) or during weekends? (Only with regard to ... = Yes

Q70 How long do you usually work in the context of interception?

The job – Technical aspects

Q71 The interpreting of intercepted communications can be performed on live conversations or on recorded conversations. Do you practice either or both?

One type (1)

Both types (2)

If The interpreting of intercepted communications can be performed on live conversations or on recorded ... = One type

Q72 Which one?

Live interceptions (1)

Recorded conversations (2)

If The interpreting of intercepted communications can be performed on live conversations or on recorded ... = Both types

Q73 Which one do you perform more often?

Live interceptions (1)

Recorded conversations (2)

Q76 What types of translations of intercepted communications do you perform? (multiple options possible)

1:1 transcriptions (word-per-word translation of whole communication) (1)

Transcriptions of extracts of the communications (2)

Summaries of the communications (3)

Notes (such as “trivial”, “irrelevant”) (4)

Other (5) _____

If you have selected more than one option for What types of translations of intercepted communications do you perform? (multiple options possible)

Q77 How do you decide to perform one type of transcription rather than another?

Q74 Do you usually perform translations of all intercepted communications you hear or do you have to select?

Translate all intercepted communications (1)

Translate selected communications (2)

No transcripts at all (3)

If Do you usually perform translations of all intercepted communications you hear or do you have to ... = Translate selected communications

Q75 How do you decide which communications you translate?

Q78 What is the usual procedure for selecting and transcribing extracts of intercepted communications?

Same interpreter selects extracts and performs transcription (1)

Another person selects the extracts to be transcribed (2)

If What is the usual procedure for selecting and transcribing extracts of intercepted communications? = Another person selects the extracts to be transcribed

Q79 Who usually selects the extracts to be transcribed?

If The interpreting of intercepted communications can be performed on live conversations or on recorded ... = Both types

Or Which one? = Live interceptions

Q80 When interpreting live interceptions:

	Select		Comment
	Yes (1)	No (2)	Comment (1)
-			
-			
<i>Do you feel under time pressure? (1)</i>	-	-	-
<i>Can you take breaks? (2)</i>	-	-	-
<i>Can you determine your working pace? (3)</i>	-	-	-
<i>Do you have time to revise your transcriptions before submitting them? (4)</i>	-	-	-

If The interpreting of intercepted communications can be performed on live conversations or on recorded ... = Both types

Or Which one? = Recorded conversations

Q81 When transcribing recorded interceptions:

	Select		Comment
	Yes (1)	No (2)	Comment (1)
-			
-			
<i>Do you feel under time pressure? (1)</i>	-	-	-
<i>Can you take breaks? (2)</i>	-	-	-
<i>Can you determine your working pace? (3)</i>	-	-	-
<i>Do you have time to revise your transcriptions before submitting them? (4)</i>	-	-	-

Q82 Are you provided with all the equipment necessary for your work?

Yes (1)

No (2)

If Are you provided with all the equipment necessary for your work? = No

Q83 What personal equipment do you bring for work and why?

If Are you provided with all the equipment necessary for your work? = Yes

Q84 Do you consider yourself to have all the necessary tools at your disposal?

Yes (1)

No (2)

*If Do you consider yourself to have all the necessary tools at your disposal?
= No*

Q85 What additional tools would you help you in performing your work?

Q86 How do you evaluate the quality of the equipment you are provided with?

Q87 Did you get any instructions on how to use the interception technology on site?

Yes (1)

No (2)

If Did you get any instructions on how to use the interception technology on site? = Yes

Q88 By whom?

Formal training (1)

Police officers (2)

Other interpreters (3)

Others (4)

Q89 Do you work in an office dedicated to the interpretation/translation of intercepted communications?

Yes (1)

No (2)

If Do you work in an office dedicated to the interpretation/translation of intercepted communications? = No

Q90 In what kind of office do you usually work when interpreting/translating intercepted communications?

Q91 Do you work alone in the office?

Yes (1)

No (2)

Q92 Who do you share your office with?

Other interpreter(s) (1)

Police officer(s) (2)

Other(s), please specify (3) _____

Q93 Do you work in direct proximity (next door; same floor) with the police officer(s) investigating the case?

Yes (1)

No (2)

Q94 Please rank the following elements according to how challenging they are in performing your work. (1 most challenging; 4 least challenging)

_____ Technical issues like disturbing noises, interruptions of the line, etc. (1)

_____ Identification of the person speaking (2)

_____ Comprehension of the content of the communication (e.g. pronunciation or use of specific dialect) (3)

_____ Decryption of codes (4)

Q95 Do you get feedback on your delivered transcription?

Yes (1)

No (2)

If Do you get feedback on your delivered transcription? = Yes

Q96 Please specify from whom, when, what kind.

The job – Legal aspects

Q97 Were you informed of any legal obligations as an interpreter in the context of interceptions of communications?

Yes (1)

No (2)

If Were you informed of any legal obligations as an interpreter in the context of interceptions of communications? = Yes

Q98 When and how?

If Were you informed of any legal obligations as an interpreter in the context of interceptions of communications? = Yes

Q99 Are you reminded for each new mandate of the obligations and if so, how?

Q100 Please indicate the three obligations that are most important to you as an interpreter of intercepted communications.

Positionality

Q101 Do you work directly with the police officers investigating the concrete case?

Yes (1)

No (2)

If Do you work directly with the police officers investigating the concrete case? = Yes

Q102 Do you usually interact with one or more officer(s)?

If Do you work directly with the police officers investigating the concrete case? = No

Q103 Who is your contact person?

Q104 Do you usually receive information on the specifics and the procedural developments of the cases on which you work?

Yes (1)

No (2)

If Do you usually receive information on the specifics and the procedural developments of the cases ... = Yes

Q105 What information do you usually receive, please provide examples?

Q106 Do you sometimes receive information on the specific elements that the police are looking for in a specific case?

Yes (1)

No (2)

If Do you sometimes receive information on the specific elements that the police is looking for in a ... = Yes

Q107 Please give an example from a recent experience.

Q108 Do you feel that the expectations towards your job vary depending on the police officers responsible for the investigation?

Yes (1)

No (2)

If Do you feel that the expectations towards your job vary depending the police officers responsible ... = Yes

Q109 Please give an example of different expectations.

Q110 What are the difficulties associated with your position as an interpreter of intercepted communications?

Q111 How do you deal with these difficulties?

Q112 Are the police officers you work with usually sensitive to your needs as an interpreter?

Yes (1)

No (2)

If Are the police officers you work with usually sensitive to your needs as an interpreter? = Yes

Q113 Please provide us with an example when your needs when performing your tasks were met?

If Are the police officers you work with usually sensitive to your needs as an interpreter? = No

Q114 Please provide us with an example when your needs when performing your tasks were not met?

Q115 Are you asked about your opinion/estimation of a situation by the police officer?

Yes, please provide an example (1) _____

No (2)

Q116 Are you asked to give other information than pure linguistic questions – like cultural issues, behavioral habits, etc.? Please provide examples.

Q117 Are you asked to give your opinion about the person under investigation? Please provide examples.

Q118 Do you consider yourself as a member of the investigation team?

Yes (1)

No: why not? (2) _____

If Do you consider yourself as a member of the investigation team? = Yes

Q119 How would you describe your role in this team?

Q120 Do you sometimes follow up (informally) with police officers or other interpreters on cases that you have worked on?

Yes (1)

No (2)

If Do you sometimes follow up (informally) with police officers or other interpreters on cases that ... = Yes

Q121 How often do you follow up on the case?

In almost all cases (1)

Regularly (2)

From time to time (3)

Rarely (4)

If Do you sometimes follow up (informally) with police officers or other interpreters on cases that... = Yes

Q122 Please describe the aspects you're interested in following up on.

Q123 Do you have contact with the prosecutor in charge of the investigation?

Yes: on what occasions? (1) _____

No (2)

Q124 Do you have contact with judges?

Yes: on what occasions? (1) _____

No (2)

Q125 Have you ever been interrogated by the prosecutor and/or judge?

Yes: for what reasons? (1) _____

No (2)

Q126 To your knowledge, has your transcribed interpretation ever been questioned by the defense lawyer or other persons?

Yes. Please provide examples: (1) _____

No (2)

Q127 On a scale between 1 and 5 where 1 is “completely disagree” and 5 is “completely agree”, please locate the following utterances:

	1 (select)	2 (select)	3 (select)	4 (select)	5 (select)	Comment
<i>I am happy with my work conditions as an interpreter of intercepted communications. (1)</i>	-	-	-	-	-	-
<i>I usually find myself under a lot of pressure when performing my tasks as an interpreter of intercepted communications. (4)</i>	-	-	-	-	-	-
<i>I'm satisfied with the quality of work I can deliver. (5)</i>	-	-	-	-	-	-

<i>My contacts with police officers are generally good. (6)</i>	-	-	-	-	-	-
<i>I feel respected as an interpreter of intercepted communications. (7)</i>	-	-	-	-	-	-
<i>The working conditions are adequate to deliver good quality work. (8)</i>	-	-	-	-	-	-
<i>My skills are recognized by the police officers and prosecutors I work with. (9)</i>	-	-	-	-	-	-
<i>My role in the investigation is more than just interpreting from a language to another. (10)</i>	-	-	-	-	-	-

Q128 What are the three aspects that you enjoy most about your work as an interpreter of intercepted communications?

Q129 What are the three aspects that you dislike most about your work as an interpreter of intercepted communications?

Language profile and interpreting competence

Q130 In which country/countries did you grow up?

Q131 Which languages do you speak (including regional and/or minority languages and dialects)? Note: L1 = mother tongue or language of school education; L2 = first foreign language; L3 = second foreign language; etc.

Please fill in at least 2 answers

L1 (1) -----

L2 (2) -----

L3 (3) -----

L4 (4) -----

L5 (5) -----

Q132 At what age did you start learning L1?

Q133 How did you primarily learn L1?

Formal education (1)

In an L1-speaking country (2)

Parents (3)

Other, please specify (4) -----

Q134 At what age did you start learning L2?

Q135 How did you primarily learn L2?

Formal education (1)

In an L2-speaking country (2)

Parents (3)

Other, please specify (4) _____

Q136 For how many years have you been learning L2?

If Which languages do you speak (including regional and/or minority languages and dialects)?... = L3

Q137 At what age did you start learning L3?

If Which languages do you speak (including regional and/or minority languages and dialects)?... = L3

Q138 How did you primarily learn L3?

Formal education (1)

In an L3-speaking country (2)

Parents (3)

Other, please specify (4) _____

If Which languages do you speak (including regional and/or minority languages and dialects)?... = L3

Q139 For how many years have you been learning L3?

If Which languages do you speak (including regional and/or minority languages and dialects)?... = L4

Q140 At what age did you start learning L4?

 If Which languages do you speak (including regional and/or minority languages and dialects)?... = L4

Q141 How did you primarily learn L4?

Formal education (1)

In an L4-speaking country (2)

Parents (3)

Other, please specify (4) -----

If Which languages do you speak (including regional and/or minority languages and dialects)?... = L4

Q142 For how many years have you been learning L4?

Interpreting competence/education – Language profile and interpreting competence

Q143 What is your highest educational degree?

Secondary school (1)

High school/Matura (2)

Professional certificate (e.g. Eidg. Berufsattest/Fähigkeitszeugnis) (3)

Bachelor's degree (4)

Master's degree (5)

PhD (6)

Other, please specify (7) -----

If What is your highest educational degree? = Bachelor's degree

Q144 Do you have a Bachelor's degree in translation and/or interpreting?

Yes (1)

No (2)

If Do you have a Bachelor's degree in translation and/or interpreting? = Yes

Q145 Is the degree in translation or interpreting?

Bachelor in Übersetzen/Bachelor's degree in translation (1)

Bachelor in Dolmetschen/Bachelor's degree in interpreting (2)

If Do you have a Bachelor's degree in translation and/or interpreting? = No

Q146 Do you have a Bachelor's degree in a field other than translation and/or interpreting? Please specify.

If What is your highest educational degree? = Master's degree

Q147 Do you have a Master's degree in translation and/or interpreting?

Yes (1)

No (2)

If Do you have a Master's degree in translation and/or interpreting? = Yes

Q148 Is the degree in translation or interpreting?

Master in Übersetzen/Master's degree in translation (1)

Master in Dolmetschen/Master's degree in interpreting (2)

If Do you have a Master's degree in translation and/or interpreting? = No

Q149 Do you have a Master's degree in a field other than translation and/or interpreting? Please specify.

Q150 Did you complete one or more of the following training(s) in translation and/or interpreting in Switzerland?

Interkulturell Dolmetschende und Vermittelnde (IDV) mit eidgenössischem Fachausweis (1)

Interkulturell Dolmetschende (IKD) mit INTERPRET-Zertifikat (2)

Dolmetschende (IKD) in Ausbildung (besuchen aktuell Modul 1/2 oder haben mindestens einen Einführungskurs sowie eine interne Weiterbildung bei der Vermittlungsstelle absolviert, jedoch nicht länger als 2 Jahre zurückliegend) (3)

No (4)

If Did you complete one or more of the following training(s) in translation and/or interpreting in Switzerland? = No

Q151 Did you complete another translation and/or interpreting training in Switzerland?

Yes, please specify (1) -----

No (2)

Q152 Did you complete a form of training in translation and/or interpreting in another country?

Yes (1)

No (2)

If Did you complete a form of training in translation and/or interpreting in another country? = Yes

Q153 In which country?

[Drop-down menu from which 195 countries could be selected]

If Did you complete a form of training in translation and/or interpreting in another country? = Yes

Q154 What kind of training in translation and/or interpreting did you complete?

Q155 Do you hold a language certificate for any of the languages you use in interpreting intercepted communications (e.g. DELF/DALF; TOEFL; FCE/CAE; DELE; ÖSD/Goethe Zertifikat)?

Yes: Please specify which certificate. (1) _____

No (2)

Q156 What is your current status?

Translation student (1)

Translator/Interpreter (2)

L2 teacher (3)

Bilingual without any translation/interpreting training (4)

Q157 How many hours per week do you engage in translation from

your L1 to L2 (86) _____

Answer options:

If At what age did you start learning L3? Text Response Is Displayed

your L1 to L3 (87) _____

Answer options:

If At what age did you start learning L4? Text Response Is Displayed

your L1 to L4 (88) _____

L2 to your L1 (89) _____

Answer options:

If At what age did you start learning L3? Text Response Is Displayed

L3 to your L1 (90) _____

Answer options:

If At what age did you start learning L4? Text Response Is Displayed

L4 to your L1 (91) _____

Q158 How many hours per week do you engage in interpreting from

your L1 to L2 (86) _____

Answer options:

If At what age did you start learning L3? Text Response Is Displayed

your L1 to L3 (87) _____

Answer options:

If At what age did you start learning L4? Text Response Is Displayed

your L1 to L4 (88) _____

L2 to your L1 (89) _____

Answer options:

If At what age did you start learning L3? Text Response Is Displayed

L3 to your L1 (90) _____

Answer options:

If At what age did you start learning L4? Text Response Is Displayed

L4 to your L1 (91) _____

End of Survey

Thank you for completing the survey. You are entitled to a defrayal of CHF70.

In order to proceed to the payment, we require some further information. In order to anonymise your responses to the survey, we need you to fill your personal details in a separate form. Please click on the following link: http://neuchatel.eu.qualtrics.com/jfe/form/SV_7VTdoloIHbss2DX.

Should you encounter any problem with the link or form, please send an e-mail to XXXXXXXX

If you would like to share any other information about the survey or the topic of our research, please feel free to write it in the box below:

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