

# Annual Activity Report 2023

## Mutual Legal Assistance



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Confédération suisse  
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Swiss Confederation

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Division for International Legal Assistance

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Editor:  
Federal Office of Justice, project manager:  
Silvana Schnider Nauwelaerts ([silvana.schnider@bj.admin.ch](mailto:silvana.schnider@bj.admin.ch))

Translation:  
Federal Chancellery, English Translation Service

Administration and Logistics:  
Evelyne Chevalley ([evelyne.chevalley@bj.admin.ch](mailto:evelyne.chevalley@bj.admin.ch))

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Federal Office of Justice, Division for International Legal Assistance  
CH-3003 Bern, +41 58 466 79 10, [evelyne.chevalley@bj.admin.ch](mailto:evelyne.chevalley@bj.admin.ch)

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# Editorial



*Criminals do not stop at borders. They exploit constant advances in communication technology, for example, for their own purposes, along with the freedoms that our societies offer. Increasingly, they operate across borders, whether as individual perpetrators or as organised groups. The state and its law enforcement authorities, on the other hand, must keep within the limits – whether these are national borders or the regulations which, under the rule of law, must be observed as a matter of course when enforcing the law.*

*Often an individual state is hardly able to meet the challenges that arise on its own and becomes in danger of falling behind. Close cooperation with other countries is needed to ensure that this does not happen and that cross-border offences in particular can be better combated and their perpetrators brought to justice. Extensive cooperation with foreign criminal justice authorities, which Switzerland has always sought in a spirit of willingness to provide mutual legal assistance, and which it hopes will be reciprocated by other countries, makes a significant contribution to this.*

*Mutual legal assistance involves a balancing act between the fight against crime on the one hand and the legitimate rights of the persons affected by the mutual legal assistance proceedings on the other. As a consequence, despite its approach of supporting other countries as much as possible, Switzerland does not cooperate at any price. The fundamental principles of the rule of law and our own law must be upheld. In particular, a state requesting legal assistance must comply with certain procedural rules and basic principles relating to human rights. If it does not do so, it will not receive any support. By making the provision of legal assistance subject to conditions in certain cases and by demanding certain guarantees, compliance with which it subsequently monitors, Switzerland ensures that other states also respect the*

*principles that it deems important. This also means that Switzerland can offer support to a state without violating its own international obligations in cases where legal assistance would otherwise have not been possible. Diplomatic guarantees are therefore an important element in the procedures followed by the authorities concerned – not least for the DILA as the Swiss central authority for mutual legal assistance in criminal matters.*

*Alongside information on other current topics and details of a small selection of cases from the reporting year, as well as useful information on the Division, the 2023 Annual Activity Report offers an in-depth insight into the important instrument of diplomatic guarantees. An extradition case with Ecuador illustrates the mechanisms and shows that the guarantees demanded can also be adapted to new developments and current needs in the course of individual proceedings and, if necessary, additional guarantees can be demanded. The instrument is correspondingly complex and time-consuming to use in the DILA's day-to-day work – but it is certainly justified in view of the interests at stake.*

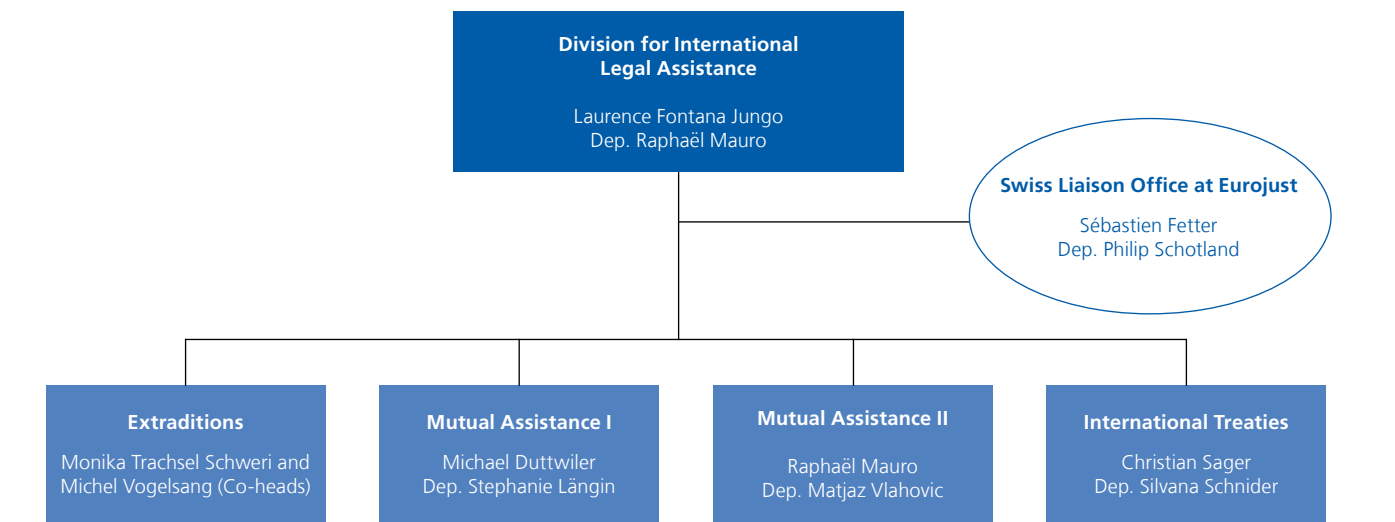
*I hope you enjoy reading the report.*

Laurence Fontana Jungo  
Vice-Director of the Federal Office of Justice,  
Head of the Division for International Legal Assistance DILA



# 1 The Division for International Legal Assistance

**Organisational chart**  
(as at May 2024)



*The DILA Management team: from left to right Michael Duttwiler (Mutual Assistance I), Christian Sager (International Treaties), Monika Trachsel Schweri (Extraditions), Laurence Fontana Jungo (Head of the DILA), Raphaël Mauro (Mutual Assistance II), Michel Vogelsang (Extraditions).*

*Image: Federal Office of Justice*

## 1.1 The Division

- Swiss central authority for international mutual legal assistance in criminal matters
- Four units and Switzerland's Liaison Office at Eurojust
- 50 permanent staff, made up of 29 women and 21 men from all parts of the country, making 43 full-time equivalents (as at May 2024)

### Overview of principal tasks

- Ensuring the rapid provision of international mutual legal assistance in criminal matters.
- Submitting and receiving Swiss and foreign requests for cooperation, unless the authorities concerned are permitted to contact each other directly.
- Making certain decisions with regard to extraditions, mutual legal assistance requests, prosecution and sentence enforcement on behalf of other countries, and transfers of sentenced persons.
- Supervising the execution of requests for mutual legal assistance.
- Developing legislation on international mutual legal assistance in criminal matters.
- Performing various operational duties, including those connected with mutual assistance in civil and administrative matters.

## 1.2 The units and their remits

### Extraditions

- Extradition: decides on search requests. Orders the arrest of a person wanted by another country so that they can be handed over to that country. Decides on the person's extradition in the first instance. Right of appeal against any ruling by the Federal Criminal Court. Arranges for extradition to be carried out. At the request of Swiss prosecutors, enforcement authorities or courts, submits search requests and extradition requests to foreign governments.
- Prosecutions on behalf of other countries: deals with Swiss and foreign requests to take over criminal proceedings in cases in which extradition is not possible or appropriate. Checks whether requests to foreign governments meet the requirements and decides whether they should be submitted. Receives, reviews and forwards foreign requests to the competent Swiss prosecution authorities, and may also decide whether or not to accept the foreign request in consultation with that authority.
- Sentence enforcement on behalf of other countries: receives and submits requests.
- Transfer of sentenced persons to their country of origin to serve the remainder of their sentence: decides in consultation with the competent cantonal authorities.
- Decides on the transfer of persons wanted by an international tribunal, or of witnesses in custody.
- Provides a 24/7 on-call service for the operational units, in collaboration with the Federal Office of Police fedpol (SIRENE/Operations Centre).

### Mutual Assistance I: Seizure and handover of assets

- Mutual legal assistance proceedings in cases involving politically exposed persons (PEP): may also conduct the related domestic proceedings independently.
- Forwards Swiss requests for mutual legal assistance to foreign authorities and, following a preliminary review, delegates foreign requests for assistance in connection with the seizure and handover of assets (asset recovery) to the competent cantonal or federal executive authorities, unless the authorities concerned are permitted to communicate directly. Supervises the execution of the request, and has a right of appeal against the decision of the mutual legal assistance authorities and the Federal Criminal Court.
- May order precautionary measures, e.g. freezing of accounts, in urgent cases.
- Decides on the further use of evidence (doctrine of speciality).
- Works within national and international bodies and working groups on asset recovery-related issues.
- Negotiates with other countries or cantonal and federal authorities on sharing arrangements for forfeited assets at national and international level.
- Provides mutual legal assistance to the International Criminal Court and other international criminal tribunals.
- Handles cases involving the unsolicited provision of evidence and information to foreign criminal prosecution authorities.

### Mutual Assistance II: Obtaining evidence and service of documents

- Forwards Swiss requests for mutual legal assistance to foreign authorities and, following a preliminary review, delegates foreign requests for assistance in connection with obtaining evidence and service of documents to the competent cantonal or federal executive authorities, unless the authorities concerned are permitted to communicate directly. Supervises the execution of the request and has a right of appeal against the decision of the mutual legal assistance authorities and the Federal Criminal Court.
- May order precautionary measures, e.g. freezing of accounts, in urgent cases.
- Central offices for cooperation with the USA and Italy: conduct mutual legal assistance proceedings independently, including asset recovery (generally in the case of the USA; in the case of Italy in complex or particularly important cases concerning organised crime, corruption or other serious offences).
- Decides on the further use of evidence (doctrine of speciality).
- Gives consent for findings transmitted via administrative assistance channels to be forwarded to a foreign prosecuting authority.
- Forwards information to other countries for the purposes of criminal prosecution.
- Processes requests for mutual legal assistance concerning cultural property.
- Processes and forwards requests for service in criminal matters.
- Handles requests for mutual legal assistance to obtain evidence and serve documents in civil and administrative cases.

### **International Treaties**

- Negotiates bilateral treaties and other instruments concerning mutual legal assistance in criminal matters (extradition, accessory mutual legal assistance, transfer of sentenced persons), and participates in negotiations on multilateral conventions in this field. Supports these initiatives as they pass through the political process.
- Drafts and supports legislative projects related to mutual legal assistance in criminal matters.
- Provides input on other legislative instruments and projects having a connection to mutual legal assistance in criminal matters.
- Supports the Division's management as it draws up strategies relating to policy and law-making in all of the DILA's fields of activity.
- Represents the Division on steering committees active in the field of mutual legal assistance in criminal matters, specifically those of the Council of Europe and the UN.

### **Swiss Liaison Office at Eurojust**

- Gathers and provides information, coordinates and establishes direct contact between Swiss prosecuting authorities and those of the EU or third countries represented at Eurojust.
- Organises and participates in coordination meetings and strategic meetings at Eurojust.
- Provides information and advice to the Swiss criminal prosecution and executive mutual legal assistance authorities at cantonal and federal level and to courts about the services and support available from Eurojust.
- Reports to the Eurojust advisory group, which is chaired by the DILA and comprises representatives of the Swiss Conference of Public Prosecutors (i.e. the cantonal prosecution services and the Office of the Attorney General of Switzerland).

## **1.3 Personnel**

### **New head of Mutual Assistance I since March 2024**

At the end of February 2024, Pascal Gossin retired, after many years working in accessory legal assistance in criminal matters. He was head of the Mutual Assistance Unit for 14 years and, following its separation into two units, Mutual Assistance I and II, head of Mutual Assistance I for a further 8 years. Michael Duttwiler succeeded him in March 2024. Michael Duttwiler has extensive experience in the field of international mutual legal assistance in criminal matters. Since 2016, he has worked as a legal officer in Mutual Assistance II. His previous positions include working for the International Tribunal for the Former Yugoslavia in The Hague. Special qualifications in the fields of cyber and financial investigations round off his experience profile.



## 2 Topics

### 2.1 The EU's e-evidence package and the FOJ's e-evidence report

In the 2021 Activity Report, we mentioned various instruments and initiatives dealing with the cross-border collection of electronic evidence. In particular, we dealt with the US Cloud Act and the related report by the FOJ. In June 2023, the EU adopted a package of legislation on the collection of electronic evidence (e-evidence). The FOJ has also analysed this.

The package adopted by the EU Council and Parliament consists of a directive, which sets out the most important principles, and a regulation with detailed provisions. As this package is also likely to have an impact on certain Swiss digital service providers, the FOJ has set out the legal situation, possible effects and options for action in Switzerland in a report similar to that on the US Cloud Act. This report (see link p. 27) was published on the FOJ website in December 2023. We briefly summarise the content of the report below.

#### *Content of the e-evidence package*

The new provisions enable law enforcement authorities in EU Member States to request data directly from digital service providers in other Member States in connection with criminal proceedings ('production orders'). They can also request the retention of data for up to 60 days ('data retention orders'). These regulations affect, among others, providers of services that enable electronic communication between users, and providers of domain names and IP numbering services.

In future, service providers based outside the EU will have to establish a branch office (an 'establishment') in the EU or appoint a legal representative in an EU member state if they wish to continue offering their services in the EU. The establishment or legal representative must have access to all of the company's data, regardless of where it is stored. This creates an alternative mechanism to the current system of mutual legal assistance.

#### *Impact on Swiss providers of digital services*

The new regulations are likely to have a significant impact on Switzerland, as service providers based here who offer their services in the EU will be subject to these regulations, under certain conditions. This is the case in particular if they offer a service that is covered by the EU's package and have a large number of users in at least one Member State or if their activities are focused on one or more Member States. It is therefore possible that Swiss communication services such as Threema or Protonmail could be affected by the new regulations. The regulations could also affect other digital services offered by Swiss companies. As mentioned above, the companies concerned would then have to appoint a legal representative in the EU who can produce data directly on the order of a public prosecutor's office in an EU member state – even if this data is stored in Switzerland.

#### *The EU's e-evidence package and the US Cloud Act: Similarities and differences*

Like the US Cloud Act, the EU's e-evidence package also aims to facilitate access to electronic evidence.

In contrast to the extraterritorial system of the US Cloud Act, the EU system 'domesticates' the data by requiring service providers to have an establishment in the EU or to appoint a legal representative in the EU. However, the establishment or representative will require access to all of the company's data, regardless of where the data is stored – including data located outside the EU. This indirectly results in extraterritorial access.

As under the US Cloud Act, orders under the EU system are served directly on the service provider. The authorities in the country in which the service provider is located are not involved. However, this mechanism is made weaker under the EU system, as the authorities of the state in which the service provider has established its EU point of contact must be informed of the order, at least where marginal/traffic data (who communicated with whom and when?) and content data is sought. Both the authorities and the service providers can invoke certain narrowly defined grounds for refusal, which are listed exhaustively in the Regulation. In addition, EU data protection provisions and the guarantees laid down in the European Convention on Human Rights (ECHR, SR 0.101) must be complied with. The person affected by the disclosure of data must have the opportunity to take legal action against the disclosure. In these respects, the EU system appears to be more compatible with Swiss law than the US Cloud Act.

However, even under the EU system, the country in which the data subject is domiciled or resident is not notified. If, for example, France requests data on a person resident in Switzerland from the legal representative of a Swiss service provider who has established its EU point of contact in Germany, the Swiss authorities will not be informed of this.

#### *Switzerland's options*

The FOJ already considered Switzerland's position when drafting the Cloud Act report. With the adoption of the EU's e-evidence package, the need for action has intensified. The new e-evidence legislation will come into force on 28 July 2026. Switzerland must therefore quickly work out a solution to avoid the risk of a conflict of laws with the new EU system. Possible options range from an adaptation of Swiss law to legitimise foreign data access to the development of an independent solution similar to the EU system, which would also allow Swiss law enforcement authorities easier access to data relating to Switzerland. Furthermore, the opportunity of an association with the EU system, which appears to be more compatible with the Swiss legal system than the strongly Anglo-American system of the US Cloud Act, should be considered. However, it must be borne in mind that Switzerland must not jeopardise its achievements. The rule of law, the rights of data subjects and data pro-



Electronic data are volatile and can be moved across borders very quickly – collecting these data as evidence poses a considerable challenge. The EU's e-evidence package is intended to provide a remedy.

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tection must be guaranteed. Against this backdrop, a broad public consultation on the various options for action was launched in February 2024. Based on the findings, the federal government will determine how to proceed.

## 2.2 Diplomatic guarantees in terms of Article 80p of the Mutual Assistance Act

Switzerland has always stressed its readiness to offer mutual legal assistance in criminal matters. Cooperation should be encouraged and assistance granted whenever possible. For this reason, the Swiss authorities should not simply refuse to provide legal assistance if there is an *a priori* reason for exclusion in terms of Article 2 of the Mutual Assistance Act (IMAC, SR 351.1). Rather, they should examine whether the defect can be remedied by obtaining appropriate assurances so as to allow mutual legal assistance to be given. In that sense, these guarantees can be seen as a means of encouraging the provision of mutual legal assistance in general.

Article 2 IMAC prohibits cooperation if the proceedings abroad do not comply with the procedural principles laid down in the ECHR or the International Covenant on Civil and Political Rights (UN Covenant II, SR 0.103.2). Cooperation must also be refused if the foreign proceedings aim to prosecute or punish a person on account of their political views, their membership of a particular social group or on grounds of race, religion or ethnicity. Likewise, assistance has to be refused if the foreign proceedings could make the person's circumstances more difficult for any of the reasons specified or if they have other serious shortcomings. This provision is intended to prevent Switzerland from granting mutual legal assistance or extradition in proceedings that do not guarantee the suspect the minimum standard of protection that is customary under the law of democratic states. If there are serious grounds for believing that there is a risk of treatment contrary to the ECHR or UN Covenant II in a state, Switzerland would be in breach of its international obligations if it cooperated.

In order to avoid the aforementioned dangers and thus the accusation of violating a peremptory norm (*ius cogens*), but also in an endeavour to grant legal assistance whenever possible, states have developed the practice of 'diplomatic guarantees'. These guarantees and the associated rules have evolved primarily in connection with extradition cases. However, they also apply in the field of accessory or specific legal assistance (assistance aimed at supporting criminal proceedings abroad according to Part 3 of the IMAC).

### *Basis and purpose of diplomatic guarantees*

Article 80p IMAC forms the basis for diplomatic guarantees in Swiss law. It codifies the practices developed by the criminal justice authorities in Switzerland and abroad prior to its entry into force on 1 February 1997. The option for states to attach conditions to the granting of international legal assistance in criminal matters also arises from various international agreements to which Switzerland is a party. These include the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (AP II ECMA, SR 0.351.12) and the United Nations Convention against Corruption (UNCAC, SR 0.311.56).

However, neither Article 80p IMAC nor the case law provides a definition of diplomatic guarantees. Rather, they are defined by their purpose, their effect and their content.

The conditions on which the requested state may make its cooperation dependent are generally aimed at ensuring the lawfulness of the proceedings and the compliance with human rights and international public policy in the requesting state. These conditions are non-negotiable and apply to all authorities of the requesting state that offers the guarantees to the requested state. In accordance with the principle that agreements must be kept (*pacta sunt servanda*), these guarantees take precedence over regulations to the contrary in the requesting state. If the requesting state does not honour the guarantees, it may be held liable under international law.

### *Diplomatic guarantees under Swiss law*

Swiss law is designed so that, depending on the stage of the mutual legal assistance proceedings, either the executing authority (in particular a cantonal public prosecutor's office or the Office of the Attorney General of Switzerland), the appeal authority (the Federal Criminal Court or the Federal Supreme Court) or the DILA is responsible for making the granting of mutual legal assistance wholly or partially subject to conditions (Art. 80p para. 1 IMAC).

It should be noted that Article 80p IMAC only regulates the procedure. However, Swiss law does not specify particular cases or conditions under which diplomatic guarantees may be required, nor does it specify the exact content of these guarantees.

The Federal Supreme Court has developed case law on this over time. It has established three categories of states in order to determine the cases in which diplomatic guarantees should be obtained. A distinction is made between:

- States that have a democratic tradition and a proven culture of the rule of law, in which there is no fundamental fear of human rights being violated. Generally speaking, therefore, no guarantees in terms of Article 80p IMAC need be obtained;

- States in which there is a serious and specific risk that the principles and rights enshrined in the ECHR or in UN Covenant II will not be respected. Nevertheless, legal assistance can be granted in these cases based on specific guarantees aimed at eliminating the risk;
- States with which cooperation must be refused because there is a genuine risk of unlawful treatment that cannot be remedied by diplomatic guarantees.

To determine which category a state belongs to, the competent authority must assess compliance with fundamental rights in the requesting state and the risk posed to the person concerned by the mutual legal assistance proceedings. This requires a value judgement on the internal affairs of the requesting state, in particular on its political system, institutions and understanding of fundamental rights and their actual observance, as well as on the independence and impartiality of its judiciary. In order to form an opinion, the authority may take the international agreements ratified by the requesting state into account. It may also consider public sources of information such as reports from the United Nations, other international bodies, or international or non-governmental human rights organisations such as Amnesty International or Human Rights Watch. When the DILA conducts this review, it regularly consults with the Federal Department of Foreign Affairs (FDFA) in assessing the 'level' of respect for human rights in the requesting state. However, the FDFA's assessment, which plays an important role in the DILA's evaluation, is not binding. The DILA remains free to make its own decision. The classification of a state should be made by taking all the circumstances of the specific case into account. It does not automatically apply to future mutual legal assistance cases, and may change depending on the development of the human rights situation in the country concerned.

If the competent authority concludes in the course of its assessment that diplomatic guarantees are necessary, it must specify the exact content (see box). The wording of the guarantees is de-

termined by the circumstances of the individual case and by the risks and deficiencies that make it necessary to link the legal assistance with conditions. The guarantees must be given by an authority that is able to bind the requesting state, in the same form as the request for mutual legal assistance, i.e. in writing, and – if no other means of transmission is possible – normally through diplomatic channels (hence the name).

Once the competent authority has established the necessary guarantees, the requesting state must declare its acceptance so that the mutual legal assistance proceedings can continue. This procedure is partially regulated in Article 80p IMAC. In accordance with its paragraph 2, the DILA informs the requesting state of the conditions as soon as the ruling on the granting and scope of mutual legal assistance or the final ruling with the relevant conditions takes effect. It sets a suitable deadline for the requesting state to declare its acceptance or refusal. The conditions are non-negotiable: they must be accepted *tel quel* by the requesting state.

If a response is received from the requesting state within the deadline, in accordance with Article 80p paragraph 3 IMAC, the DILA will examine whether it fulfils the requested conditions. It gives the parties the opportunity to comment on this. The DILA may consult the FDFA as part of its review, and often does so in practice. In addition, the European Court of Human Rights has defined eleven criteria in its case law for assessing the quality of diplomatic guarantees in connection with international mutual legal assistance proceedings in criminal matters. These criteria include, for example, the conditions under which the guarantee was given, the author of the guarantee and their capacity to bind the requesting state, and whether the guarantee originates from a signatory state to the ECHR.

Under Article 80p paragraph 4 IMAC, the DILA's decision regarding the assurances given by the requesting state can be contested within ten days of written notification by filing an appeal

It is impossible to list all the conceivable diplomatic guarantees that the Swiss authorities could demand from other states. However, the Federal Supreme Court and the Federal Criminal Court have considered the content of such guarantees on various occasions. A distinction can be made between two types, which in practice are often both requested:

- Guarantees of *respect for human rights*: These guarantees, which are generally formulated in general and abstract terms, are intended to ensure that the rights enshrined in the ECHR and UN Covenant II are respected in the requesting state. These are, in particular, guarantees relating to conditions of detention, procedural rights, the prohibition of the death penalty and the prohibition of torture and inhuman or degrading treatment or punishment. The conditions of detention must meet a standard guaranteed by international law. With regard to procedural rights, the person concerned must have the right to a fair trial in the requesting state, as provided for in Article 6 ECHR, among

other legal texts. This includes, for example, the prohibition of extraordinary courts and the right to a defence. Switzerland refuses extradition or mutual legal assistance if the suspect faces the death penalty in the requesting state. The death penalty may neither be called for, imposed nor enforced. The requesting state must expressly guarantee this.

- Guarantees on *monitoring*: The requested state must be able to verify compliance with the assurances given by the requesting state at all times. To this end, a monitoring system should be set up and its mode of operation defined. A representative of the requested state must be able to visit the person concerned at any time and unsupervised, to check compliance with the guarantees and to obtain information on the progress of the case abroad. In Switzerland's case, this task is usually entrusted to its diplomatic representatives in the requesting state and carried out under the DILA's supervision.

with the Appeals Chamber of the Federal Criminal Court. It should be noted that the review procedure under Article 80p paragraph 4 IMAC does not affect the decision previously taken regarding the granting of mutual legal assistance, which also determines the content of the guarantees. It allows only the assessment made by the DILA of the assurances given by the requesting state to be challenged.

Under Article 80p paragraph 4 IMAC, the decision of the Appeals Chamber of the Federal Criminal Court is final, so no appeal to the Federal Supreme Court is possible – in contrast to the ruling on the conclusion of mutual legal assistance proceedings (Art. 80d IMAC), which is issued before the ruling pursuant to Article 80p paragraph 4 IMAC. This ends the procedure for obtaining diplomatic guarantees.

### Conclusion

Diplomatic guarantees are an important instrument for both accessory legal assistance and extradition. They make a significant contribution to combating international crime by enabling Switzerland to cooperate with states in which the rights enshrined in the ECHR and UN Covenant II are not yet fully entrenched.

It is to be expected that the Swiss courts will be regularly confronted with diplomatic guarantees in the coming years and that this complex but interesting instrument will continue to develop.



*Assurances from the requesting state in the form of diplomatic guarantees can enable mutual legal assistance to be granted in cases where this would otherwise not be possible.*

*Image: paylessimages via Getty Images*

### Review of Switzerland by the UN Committee against Torture (CAT) in the reporting year

The UN Convention against Torture (SR 0.105) requires states parties to prevent torture and make it a criminal offence. Every four years, states must submit a report to the CAT on the measures they have taken to comply with the Convention. Switzerland acceded to the Convention on 2 February 1986 and has submitted eight reports since then.

Switzerland's eighth periodic report on the implementation of the Convention against Torture was examined by the UN Committee in Geneva on 12 and 13 July 2023. The subject of this examination included issues relating to the criminalisation of torture under Swiss law, the practices of the Swiss authorities responsible for asylum and return and the possibility of extradition with guarantees. The report that has now been examined answered a total of 28 questions previously raised by the CAT and served as a basis for reviewing the situation

in Switzerland. The DILA had already contributed to the preparation of this report in 2019. However, its assessment in Switzerland had to be postponed because of the COVID-19 pandemic.

A Swiss delegation led by the FOJ travelled to Geneva for the review. In addition to specialists from the FOJ, the delegation comprised experts from the State Secretariat for Migration and the Federal Departments of Foreign and Home Affairs and the federal and cantonal police and prosecution authorities. The DILA representative had the opportunity to answer in detail the CAT's questions on Swiss practices and case law relating to obtaining guarantees in extradition proceedings. Once the review was completed, the CAT published its final report (see link p. 27) with its recommendations.



### 2.3 Challenges with common law countries in connection with mutual legal assistance

The 2019 Activity Report contained a section on mutual legal assistance in criminal matters between civil and common law countries. The challenges faced by the Swiss public prosecutor's offices back then were still relevant in 2023. They are briefly discussed below and the status quo and possible solutions are explained.

When drafting a request for legal assistance to a common law country concerning the freezing of bank accounts and the seizure of assets, a **Swiss prosecutor** encountered the following problem because of the different role played by the public prosecutor:

- In Switzerland, public prosecutors have extensive powers. They head the investigation, order compulsory measures and give orders to the police. In contrast, in common law countries, the police investigate independently. The public prosecution service there is only responsible for preparing cases for court and is purely a prosecuting authority. The prosecution and the defence present evidence directly in court. Compulsory measures such as seizures can only be ordered by a court, and not by the public prosecutor. Therefore, a Swiss prosecutor who wishes to have assets seized in a common law country may have to provide a decision (approval for the measure) issued by a Swiss court in support of a request for mutual legal assistance. However, this was not possible under Swiss law until the end of 2023.
- The new Article 55a of the Criminal Procedure Code (CrimPC, SR 312.0), which came into force on 1 January 2024, has closed this loophole: in mutual legal assistance cases in which the requested state – as is customary in certain common law countries – requires a court order for a compulsory measure, the new provision designates the compulsory measures court as having jurisdiction to approve the measure.

If the **public prosecutor in a common law country** requests mutual legal assistance from Switzerland, it faces the following challenge:

- In Switzerland, the person affected by a request for mutual legal assistance has the right to be heard. The transmission of information may be postponed, but the person concerned must be informed at the latest by the time the final ruling is issued so that their right to be heard is guaranteed. The person concerned then has a right of appeal. By contrast, in common law countries, the person concerned only has a right of access to the file once the judicial phase of the proceedings commences. This is usually the case at the end of the investigation, once the file is handed over by the police to a prosecutor. The secrecy of the investigation is essential. If an authority in a common law country submits a request for mutual legal assistance to Switzerland, the public prosecutor's office in Switzerland must inform the person concerned by the request before issuing the final ruling and forwarding the files to the requesting state. The person concerned will therefore be aware of what has happened in every case. In view of this, the Swiss authorities cannot honour a foreign request to guarantee confidentiality. The requesting authority in a common law country should therefore limit the information contained in the request for mutual legal assistance to Switzerland to what is strictly

necessary in order to prevent the person concerned from gaining unnecessary and premature access to information originating from the criminal proceedings. Prior consultation with the Swiss mutual legal assistance authorities can help to determine the information required. The authorities in both countries should contact each other as soon as possible. The DILA and the central authority in the requesting state can establish a contact of this kind.

- However, the new Article 80d<sup>bis</sup> IMAC provides for an exception to the right to be heard. In certain very limited cases, the competent cantonal or federal authority may order the early transmission of information or evidence before issuing the final ruling. Legislation permits this under certain conditions in cases of organised crime or terrorism or in cases where there is a serious and imminent danger, in particular from a terrorist offence. The offence that is being prevented or prosecuted must be extraditable. Transmission may be unsolicited or in response to a request. If transmission is unsolicited, the competent authority only sends the non-personal data necessary to assess the situation until it has received the guarantees provided for in Article 80d<sup>bis</sup> paragraph 4 IMAC.

When requesting and providing mutual legal assistance, **public prosecutors in Switzerland and common law countries** are confronted with the following problem:

- Requests for mutual legal assistance cannot be transmitted directly from one public prosecutor's office to another. For example, Switzerland communicates with Canada, the United States of America and the United Kingdom – the three most important common law countries for Switzerland in terms of legal assistance – via the central authority in each of these countries. The other common law countries also have a central authority for legal assistance. However, certain countries, such as the Republic of Ireland, allow direct transmission to the requested authority. Scotland also allows direct transmission. Although it is a constituent part of the United Kingdom, Scotland has always had its own legal system and can make its own laws in certain areas such as mutual legal assistance; in-



*Working with a country with a different legal system, such as the common law system in the UK or USA, is not always easy. A basic understanding of the other system can help in finding solutions.*

*Image: Zerbor via Getty Images*



deed, it has a mutual legal assistance system similar to that of Switzerland.

- Although communication via the central authorities may seem unnecessarily complicated, it is justified. Because of the complexity of their legal systems, the common law countries have asked the Swiss authorities to deal with their central authorities rather than directly with prosecutors. The problem is that often an authority in one country has no direct equivalent in the other, as the systems differ so much. For example, in the United Kingdom, the police are responsible for matters that are dealt with by the public prosecutor's office in Switzerland. As a result, if the direct route was chosen, requests for mutual legal assistance would regularly end up with an authority that has no jurisdiction.

## 3 Selected cases

### **Extradition of a suspected sex offender to Ecuador**

In July 2021, Ecuador requested Switzerland to extradite an Ecuadorian national. The request indicated that the Ecuadorian authorities were looking for a 58-year-old man on suspicion of sexual offences with children. He was accused of abusing two sisters aged seven and nine.

At the request of the DILA, the Ecuadorian authorities provided diplomatic guarantees, as is the practice. These concerned compliance with the procedural rights in UN Covenant II, the prohibition of extraordinary courts, the death penalty and inhuman and degrading treatment, the principle of speciality, acceptable detention conditions, the right of the Swiss representatives to visit (monitoring) and the disclosure of the place of detention to the Swiss authorities.

In March 2022, the DILA ordered the suspect's detention pending extradition. He was subsequently arrested at his home in the canton of Vaud. He had lived there secretly with his wife before taking steps to obtain a residence permit. As the man refused to consent to a simplified extradition, the DILA initiated ordinary extradition proceedings.

Based on an opinion from the FDFA's Directorate of International Law, the DILA applied for and received an additional guarantee in April 2022 regarding the suspect's place of detention in the event of extradition. According to this guarantee, the suspect would be held in a specific prison and could only be transferred to another prison with the prior consent of the Swiss authorities. After the suspect was able to respond orally and in writing on the extradition request and the additional guarantees provided by the Ecuadorian authorities, the DILA authorised his extradition to Ecuador in June 2022.

In November 2022, the Federal Criminal Court dismissed an appeal filed against this decision. In particular, it held that although the prison system in Ecuador was in a serious crisis, the requesting state had nevertheless taken a series of measures to deal with the situation. With diplomatic guarantees, an extradition to Ecuador, a democratic country, could take place despite the difficulties. The detention conditions in Ecuador had been examined in detail. The Federal Criminal Court concluded that the guarantees provided, which were adapted to changes in the prison situation in Ecuador as the proceedings progressed, were sufficient to prevent the risk of torture and other cruel, inhuman or degrading treatment or punishment. The suspect challenged this decision before the Federal Supreme Court and applied to be released.

At the same time, the suspect submitted an application to the DILA for a reconsideration of the extradition decision made in June 2022. He claimed that new unrest had broken out in Ecuador, particularly in the prison to which he would be taken on his extradition. In November 2022, the DILA concluded that the reconsideration request could not be granted. However, in January 2023, the Federal Criminal Court overturned this decision and re-

ferred the matter back for a new decision. Based on this and taking into account the new unrest at the prison in question in Ecuador, the DILA decided, on the recommendation of the Directorate of International Law, to adapt the diplomatic guarantees and to specify a different place of detention both for remand and for the prison sentence in the event of conviction. The DILA considered the new assurances provided by the Ecuadorian authorities in April 2023 to be sufficient and partially approved the reconsideration request in May 2023.

The Federal Criminal Court dismissed the appeal filed by the suspect in July 2023, referring to its first decision regarding the granting of extradition to Ecuador based on diplomatic guarantees; an appeal had been filed against this decision in the Federal Supreme Court. Taking into account new reports, namely from Amnesty International in 2022/2023 and the US State Department, the Federal Criminal Court held that despite the prison crisis, the Ecuadorian authorities had taken specific and effective measures to fulfil their human rights obligations, control their prisons and improve the prisoners' living conditions. The Federal Supreme Court dismissed the appeals against the decisions of the Federal Criminal Court in September 2023.

In the same month, the DILA approved the extradition. The suspect applied to the European Court of Human Rights for interim measures (Art. 39 of the Rules of Procedure of the European Court of Human Rights, SR 0.101.2) to suspend the execution of the extradition to Ecuador. As the Court did not issue any interim measures, the DILA continued preparations to execute the extradition.

The suspect was handed over to the Ecuadorian authorities at Zurich Airport in October 2023.

### **Case P. – extradition to the USA in an alleged case of computer crime**

Between May 2009 and September 2010, P., also known as 'Tank' or 'Father', is believed to have been a leading member of the 'Jabber Zeus Crew'. This group is alleged to have used malware called Zeus or Zbot to infiltrate numerous IT systems and steal millions of dollars from bank accounts in the United States of America. The 'Jabber Zeus Crew' is said to have infected thousands of company computers with malware for this purpose. It then allegedly used the stolen data to steal millions of dollars from bank accounts and transfer the funds to the accounts of 'money mules'. They withdrew the money and transferred it abroad.

The United States had been searching round the globe for this suspect since 2014 on charges of extortion, bank fraud and identity theft, among other things. Under Swiss criminal law, the acts in question amount to data theft and commercial computer fraud.

According to information from the American authorities, P. was believed to be living in Switzerland under a false identity. In July

2022, the United States filed an extradition request to obtain the suspect's arrest and extradition. Based on the information contained in the American request, the DILA managed to establish that the person concerned lived in the canton of Geneva with his wife and two children.

In execution of an extradition warrant issued by the DILA in August 2022, P. was arrested in the canton of Geneva in October 2022 in an operation that attracted a great deal of media attention. He was subsequently questioned by the public prosecutor in the canton of Geneva and refused to agree to simplified extradition to the United States. After considering the defence submissions, which argued that the US extradition request should be rejected, the DILA approved the extradition in November 2022 for all the matters that were the subject of the extradition request of July 2022. It was also decided to hand over the items (of an electronic nature) that could be used as evidence that had been seized during the suspect's arrest at his home.

In February 2023, the Federal Criminal Court dismissed the appeal filed by the suspect against the DILA's extradition decision. No further appeal to the Federal Supreme Court was filed.

In December 2022, while the initial extradition proceedings were ongoing, the United States submitted a second extradition request in connection with the suspect's prosecution for offences similar to those in the first extradition request but committed later, between 2018 and 2022. After further questioning by the public prosecutor's office in the Canton of Geneva and consideration of the defence arguments, the DILA also approved the extradition in January 2023 for all matters that were the subject of this second extradition request. This second decision was not contested.

In February 2023, the suspect was extradited to the United States.

### **Extradition of a suspected drug trafficker from Thailand to Switzerland**

Extraditions from Thailand to Switzerland are rather rare, but the trend is increasing. In the last ten years, around one person per year has been extradited from Thailand to Switzerland. The extradition process generally works very well, mainly thanks to the active co-operation of the Swiss police attaché in Thailand. The task of police attachés is to ensure an exchange of information between Switzerland and the host country and to support the Swiss police and prosecution authorities in the fight against serious crime. There was also a case relating to Thailand in 2023:

In September 2018, at the request of the Public Prosecutor's Office II of the Canton of Zurich, the DILA issued an international warrant for the arrest of a Swiss national for offences under the Narcotics Act. In particular, the suspect was accused of organising two drug deliveries, each of at least 2,000 methamphetamine pills, to Switzerland in autumn 2016.

On 14 February 2023, the Swiss police attaché in Thailand informed the DILA via the fedpol operations centre that the suspect had entered Thailand. The Thai authorities agreed to allow the suspect to enter the country for the time being and to arrest him only after receiving a Swiss extradition request. On entering



*Suspected smuggling of methamphetamine pills: Extradition of a Swiss national from Thailand to Switzerland in 2023.*

*Image: KEYSTONE/Edi Engeler*

Thailand, the suspect indicated that he had booked a flight from Thailand to Vietnam for 12 May 2023.

Due to delays and various misunderstandings in the preparation of the extradition documents, there was not enough time to file the extradition request with the Thai authorities by the day the suspect left the country. This meant that the DILA first had to submit an urgent detention request to Thailand. Thanks to the support of the Swiss police attaché in Thailand, this was done in time. The suspect was eventually arrested at Bangkok Airport on 12 May 2023 as he was checking in for his flight to Vietnam.

He subsequently agreed to a simplified extradition to Switzerland. A 30-day appeal period then had to elapse before the Thai authorities authorised the extradition in July 2023.

The suspect was extradited to Switzerland in August 2023 and, after landing, was handed over to the local police authorities, who then transferred him to Public Prosecutor's Office II of the Canton of Zurich.

### **Operation AnyKey: How the Swiss Liaison Office at Eurojust is supporting the Swiss prosecution authorities in a major case of online investment fraud**

The number of cases of investment fraud has grown exponentially in recent years. Criminal groups rake in eye-watering sums of money, while the victims lose their entire investment. The perpetrators, who are spread across several countries, often contact their victims by telephone in their native language. They offer investment opportunities – increasingly in the area of cryptocurrencies – and promise high returns. In reality, however, these call centre calls aim simply to persuade their victims to hand over money. The amounts received are quickly transferred to other countries, where they are laundered via a series of companies set up for this purpose. The victims usually never see the money they have invested ever again.

Both public prosecutors and investigators face numerous challenges when it comes to gathering evidence from different jurisdictions, identifying offenders, stopping call centre operations,

taking down websites with investment offers and recovering the proceeds of the frauds. After several years of persistent investigation between 2019 and 2023, the public prosecutor's office and the police in the canton of Bern finally succeeded in uncovering a criminal network operating in this field. The Swiss authorities worked with the Ukrainian and Georgian authorities to close call centres and seize assets in various countries. This kind of approach often requires simultaneous or coordinated cooperation between several countries. In such cases, the EU agencies Europol and Eurojust provide valuable support to the Swiss authorities. Europol makes it possible to identify similar *modi operandi*, common victims and parallel proceedings in different countries more easily. Eurojust networks the public prosecutors and facilitates international legal assistance through various instruments.

The Swiss Liaison Office at Eurojust, which is affiliated to the DILA, supported the measures initiated by the Canton of Bern. Through several coordination meetings, it facilitated a direct exchange between those in charge in the various countries at the headquarters of the EU agency in The Hague. This allowed an agreement to be concluded setting up a joint investigation team between the public prosecutor's office in Bern and the Ukrainian Prosecutor General's Office and the transmission of requests for mutual legal assistance to more than twenty countries in Europe and further afield. In addition to this rapid exchange with foreign authorities, the Liaison Office also supported the Bern public prosecutor's office with assistance and information on foreign legal systems, which allowed the mutual legal assistance measures to be executed in a more targeted and efficient manner. Without the support of a European judicial platform such as Eurojust, the Swiss prosecution authorities would have had great difficulty arranging simultaneous measures in various legal systems, both in neighbouring and more distant countries.

In this investment fraud, in which the victims suffered substantial losses, the public prosecutor's office in Bern and the investigators managed to dismantle a large part of the criminal organisation operating from Ukraine and Georgia thanks to their determination and expertise in the field of cybercrime – a success also due to Eurojust's international coordination role.



*The dream of big money is over – tricked by unscrupulous investment fraudsters, the victims don't just miss out on the big profits they were promised, they also lose their investments.*

*Image: oatawa via Getty Images*

### **Operation AnyKey from the perspective of the Bern public prosecutor**

Under the oversight of the Cantonal Public Prosecutor's Office for Special Tasks in Bern, the Digital Crime Unit of the Bern Cantonal Police has been conducting extensive investigations since the end of 2019 into a group suspected of committing online investment fraud as part of a professionally organised scheme. The perpetrators have set up an extensive structure with shell companies and associated bank and cryptocurrency accounts and operate well over a hundred allegedly fraudulent websites in connection with online investments. To date, these alleged frauds have resulted in financial losses totalling many millions, with tens of thousands of victims across Europe.

The investigation was triggered by a criminal complaint from a fraud victim in Bern, and it emerged that with technical expertise and a little luck, substantial investigative successes can be achieved. The need for international cooperation quickly became apparent, as the digital leads pointed in the direction of Ukraine, and further victims were identified in Germany.

In order to plan the procedure and a joint day of action, the Swiss Liaison Office at Eurojust organised two coordination meetings. These were held in December 2020 and April 2021 as 'COVID-19-compliant' video conferences. Representatives from Ukraine, Germany, Switzerland, Europol and Eurojust took part. In the months that followed, however, a 'joint day of action' could not be arranged for various reasons. Finally, the Bern prosecution authorities requested a meeting at Eurojust in The Hague in early autumn 2021. The Swiss Liaison Office made the arrangements. The meeting on 19 October 2021 was attended by a team from Bern comprising the officer in charge of the police investigation, the forensic scientist involved in the case and the public prosecutor responsible. It became clear that Ukraine was extremely interested in a day of action at the earliest opportunity. Thanks to the productive cooperation at Eurojust, an agreement on a Joint Investigation Team was concluded within a few months between the Ukraine Prosecutor General's Office and the Canton of Bern Public Prosecutor's Office. This allowed a simplified exchange of information so that the planned day of action could go ahead in March 2022.

However, the start of the Russian war of aggression against Ukraine at the end of February 2022 made the day of action impossible, with the result that investigations in Bern in the months that followed focused increasingly on analysing fi-

nancial flows and evaluating computer data. The findings led to the decision to apply by way of mutual legal assistance for the freezing of a large number of bank and cryptocurrency accounts, in addition to taking specific steps in Switzerland. Towards the end of 2022, it became clear that Ukraine would be able to muster the resources to take part in a day of action despite the circumstances. As a result, a coordinated day of action was again initiated with the help of the Swiss Liaison Office. The Liaison Office played a crucial role by providing dedicated support in various ways. At the end of April 2023, the time had come: over 20 countries took part in the day of action, many of them 'live' via the video conference hosted by Eurojust. The results of this operation are currently still being analysed.

The Bern prosecution authorities were subsequently able to prove that new call centres set up by the same group of suspects were operating from Georgia. In establishing contact with the Georgian authorities and when making the subsequent reciprocal requests for legal assistance, the Swiss Liaison Office once again played an important role as an intermediary thanks to the rapid response times and direct communication with colleagues at Eurojust and Europol. In the summer of 2023, another day of action was held in Tbilisi, with police officers from the Bern Cantonal Police also travelling to Georgia to take part. As a result, it was time to go public with the results of the investigations up to that point and once again warn against fraudulent online investments. The Bern prosecution authorities prepared a statement and shared the draft with their foreign partners, once again via the Liaison Office, which enabled a coordinated announcement to be made to the media in November 2023.

This outline of events shows that the Swiss Liaison Office at Eurojust is of vital importance to law enforcement in Switzerland, particularly because it can speed up procedures and contribute first-class expertise. Its visibility should be further promoted and the benefits of constructive and collegial cooperation should be widely communicated in order to achieve increasing success in the international fight against (cyber-) crime.



## 4 Legal basis for cooperation

### 4.1 The Ljubljana-The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and other International Crimes

On 26 May 2023, the Ljubljana-The Hague Convention was adopted in Ljubljana (Slovenia); the Convention obliges states to cooperate in the investigation and prosecution of crimes under international law. It closes a loophole in international criminal law and represents an important step in the fight against impunity for some of humankind's most serious crimes. The DILA also took part in the conference that led to the adoption of the Convention.

Around ten years ago, a group of countries (the Netherlands, Belgium, Senegal, Slovenia, Argentina and Mongolia, known as the Core Group) joined forces with the aim of creating a new instrument under international law to facilitate the prosecution and investigation of international crimes. The Core Group's original plan to negotiate the instrument within the UN failed relatively early on. Integration into the framework of the International Criminal Court (ICC) was also rejected, as its member group was considered too narrow. A diplomatic initiative was therefore launched to develop the new instrument outside the UN and ICC framework.

After years of preliminary work, several preparatory meetings and COVID-related delays, a diplomatic conference was held from 15 to 26 May 2023 in Ljubljana in order to negotiate the new agreement. The instrument adopted on 26 May 2023 as the 'Ljubljana-The Hague Convention' contains substantive criminal law provisions, including definitions of crimes modelled on those of the Rome Statute of the International Criminal

Court, an obligation to criminalise and prosecute crimes, and a provision on universal jurisdiction. It also contains provisions on international cooperation in criminal matters. The latter are based on provisions of various international instruments to which Switzerland is already a party (including the European Convention on Mutual Assistance in Criminal Matters and its Second Additional Protocol).

The conference was the largest international event of its type ever held in Slovenia. The importance Slovenia attached to the event was correspondingly high. Both the Slovenian Deputy Prime Minister and the Slovenian Minister of Justice were personally present at the closing ceremony to honour the conclusion of the Convention. Delegates from 68 countries and numerous representatives of non-governmental organisations took part in the negotiations. In addition to almost all European countries, African countries in particular were also represented in large numbers.

The Swiss delegation was made up of experts from the DILA, the Criminal Law Division at the FOJ and the Directorate of International Law at the FDFA, with the delegation being led by the DILA. The various subject areas of the Convention were first discussed and negotiated in working groups before the provisions were discussed in a plenary session and then adopted. The Swiss delegation took an active part in the negotiations, both in the working groups and in the plenary session, and acted as a constructive bridge-builder on several occasions by mediating between parties holding differing views. The negotiations were largely constructive. On certain points, particularly with regard to the grounds for refusal of mutual legal assistance and extradition as well as the issue of universal jurisdiction, there was a need for discussion and it took some time to reach a compromise.

As mentioned, the Ljubljana-The Hague Convention closes a loophole relating to the prosecution of international crimes. Previously, there was no multilateral instrument regulating intergovernmental co-operation in the prosecution of such crimes, although prosecution of these crimes regularly involves several states and requires close co-operation between judicial authorities. Evidence, witnesses, victims, suspects and law enforcement authorities are often located in different countries. Although the Rome Statute contains an obligation to cooperate, this is limited to the cooperation of the member states with the International Criminal Court. Until now, there have been no instruments to regulate such cooperation.

Although Switzerland itself can cooperate with any other state on the basis of its Mutual Assistance Act, if it conducts its own proceedings against suspected offenders under international law, it is regularly dependent on legal assistance from other states. The Convention allows those states that require a treaty basis for cooperation to provide mutual legal assistance or to extradite a person. This meant that the Swiss authorities were also



*In May 2023, the Ljubljana-The Hague Convention was negotiated in Slovenia; the DILA was closely involved. It closes a loophole in international criminal law.*

*Image: Anze Malovrh/STA*

set to benefit from increased international cooperation if Switzerland ratified the Convention – and enough other countries did the same.

The new Convention therefore represents an important step in the fight against impunity for some of humankind's worst crimes. However, the success of the Convention naturally depends on how many states decide to ratify it. Switzerland signed the Convention along with 32 other countries at the signing ceremony in The Hague on 14 and 15 February 2024. As is customary in Switzerland with such new instruments, interested parties will be invited to comment on the Convention as part of a consultation process. The instrument must then be approved by Parliament before it can be ratified.

#### **4.2 Expanding the network of cooperation agreements: Treaty on mutual legal assistance in criminal matters with Panama**

In March 2023, Switzerland signed a bilateral treaty on mutual legal assistance in criminal matters with Panama, its seventeenth treaty of this kind with another state or territory to date. The DILA had negotiated the treaty the year before. Switzerland shares strategic interests with Panama, which is an important financial centre, particularly in the area of combating financial market crime.

The negotiation of the treaty helps to implement Switzerland's strategic decision to conclude mutual legal assistance treaties with other important financial and economic centres. In addition to meeting the specific practical needs of law enforcement authorities, this aids Switzerland's efforts to maintain a clean financial centre and protect it from criminal exploitation. Among other things, this is intended to counter the threat of reputational damage. In addition, a level playing field will be created by including other important financial centres in the international regulatory framework for combating international financial crime and preventing them from benefiting if they do not cooperate.

The focus is on combating financial and white-collar offences, money laundering and fraud. Like all Swiss mutual legal assistance treaties, however, the treaty with Panama is not limited to these offences, but has a broad scope of application. It creates a binding basis for cooperation between the criminal justice authorities in both countries in relation to the investigation, prosecution and punishment of criminal acts in general.

Like the mutual legal assistance treaties concluded before it, the treaty is based on the principles of Swiss mutual legal assistance law and is modelled on the European Convention on Mutual Assistance in Criminal Matters and its Second Additional Protocol. In terms of content, it is in line with these previously negotiated agreements. However, a new provision provides for the electronic transmission of requests for legal assistance, provided that the national law of both countries permits this. The prerequisite for this is that the contracting states can verify the authenticity of the request and that a secure transmission channel is available. The treaty was approved by the Federal Assembly in the spring session of 2024. The deadline for requesting a referendum on the treaty is 4 July 2024.



*Closer cooperation with another important financial centre: In 2023, Switzerland signed a treaty on mutual legal assistance in criminal matters with Panama (pictured: Panama City).*

*Image: Nicolas Weschta via Getty Images*

## 5 Overview of the electronic tools on the DILA website

**For all areas of international mutual legal assistance in criminal matters: FOJ website ([www.bj.admin.ch](http://www.bj.admin.ch) > Security > International Mutual Legal Assistance > International Mutual Legal Assistance in Criminal Matters)**



- General information: contact address, activity reports, statistics.
- Legal basis.
- Overview of the various types of procedures in the field of international mutual legal assistance in criminal matters.
- Cooperation with the International Criminal Court and other international criminal tribunals.
- Information on the network of international treaties.
- Links to the Mutual Legal Assistance Guide and the database of Swiss place names and courts, ELORGE (both described in detail below) as well as to the European Judicial Network (EJN) and Eurojust.

**In addition at [www.rhf.admin.ch](http://www.rhf.admin.ch) > Stafrecht you will find:**

- Links (available in German, French and Italian) to guidelines, checklists and circulars, legal principles, legal bases, case-law and authorities.

**Specifically for accessory mutual legal assistance: Mutual Legal Assistance Guide (in German, French and Italian, at [www.rhf.admin.ch](http://www.rhf.admin.ch) > Rechtshilfeführer)**



- Tools for the Swiss authorities for submitting requests for obtaining evidence and service of documents in other countries.
- Country pages: an overview of the key requirements for requests to individual countries for assistance with criminal, civil and administrative cases.
- Model requests, as well as forms relating to obtaining evidence and service of documents.

**Database of Swiss place names and courts ([www.elorge.admin.ch](http://www.elorge.admin.ch))**

- This website is aimed primarily at foreign authorities which, by entering a postcode or place name, are able to find the competent local Swiss authority for international accessory mutual legal assistance in criminal and civil matters, and thus, where applicable, make direct contact.
- It also contains a list of those Swiss authorities which have the authority to enter into direct mutual legal assistance relationships with foreign partner authorities to provide and receive accessory mutual legal assistance.

## 6 Selected decisions by Swiss courts relating to international mutual legal assistance in criminal matters

### 6.1 Extradition

- Decision of the Federal Criminal Court, Appeals Chamber, RR.2023.42 of 15 June 2023: extradition to Poland, rights of defence in proceedings in absentia.
- Federal Supreme Court judgment 1C\_180/2023 of 20 June 2023: extradition to Serbia, separation of penalties and prohibition of discrimination (*Raugevicius practice*).
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2023.89+RP.2023.30 of 20 July 2023: extradition to Ecuador, approval of extradition based on guarantees, reference to decision RR.2022.138+RH.2022.13 + RP.2022.34+RP.2022.43 of 2 November 2022. Dismissal of the appeals against the decisions of the Federal Criminal Court by Federal Supreme Court judgment 1C\_592/2022, 1C\_370/2023 of 4 September 2023.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2023.95 of 9 August 2023: extradition to Serbia, statute of limitations issues and detention situation in Serbia.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2023.71+RR.2023.73 of 4 September 2023: extradition to Russia, compensation and coverage of costs.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2023.148 of 26 October 2023: extradition to Romania, detention situation in Romania.

### 6.2 Accessory mutual legal assistance

- Decisions of the Federal Criminal Court, Appeals Chamber, RR.2022.51 and RR.2022.62 of 27 February 2023: use of documents exchanged within the framework of a joint investigation team (Art. 20 AP II EUeR); decision that there was no violation of the rules on the unsolicited transmission of information (Art. 67a IMAC); confirmed by Federal Supreme Court judgments 1C\_115/2023 and 1C\_127/2023 of 5 June 2023.
- Decisions of the Federal Criminal Court, Appeals Chamber, RR.2022.195 and RR.2022.197 of 22 March 2023: foreign forfeiture and handover of assets (Art. 74a IMAC); right to be heard of non-accused persons in foreign forfeiture proceedings; no violation of Art. 2 let. a IMAC.
- Federal Supreme Court judgment 1C\_624/2022 of 21 April 2023: handover of assets (Art. 74a IMAC); no legal loophole: It is not possible to hand over assets to a foreign state to enforce a claim for compensation; on the other hand, enforcement while safeguarding the rights of creditors in accordance with the principles of Swiss debt enforcement law is possible

within the framework of exequatur proceedings pursuant to Art. 94ff. IMAC; the appeal was partially upheld.

- Federal Supreme Court judgment 1C\_148/2023 of 25 April 2023: proof of a lawyer's right to represent the appellant; exaggerated formalism; appeal upheld.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2022.206-214 of 23 May 2023: mutual legal assistance to Russia; appeal against denial of justice; request for release of frozen assets; appeal upheld.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2022.226 of 2 August 2023: removal of seals; appeal by the FOJ against the final ruling and the previous decision by the compulsory measures court to remove seals; appeal upheld and referred back to the compulsory measures court for reassessment of the enforcement authority's unsealing request.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2022.183 of 27 September 2023: mutual legal assistance to Russia; guarantee of ownership, principle of expeditiousness; decision not to suspend legal assistance proceedings and refuse mutual legal assistance; lifting of the account freeze ordered through mutual legal assistance. In judgment 1C\_543/2023 of 7 March 2024, the Federal Supreme Court upheld the appeal against the decision filed by the FOJ insofar as it considered its substance. The contested decision was quashed and referred back to the previous instance for reassessment.
- Federal Supreme Court judgment 1C\_450/2023 of 27 September 2023: expansion of speciality; admissibility of an appeal to the Federal Supreme Court against consent to the further use of classified information already transmitted; the reservation of speciality does not constitute a fundamental procedural guarantee, the possible violation of which in foreign proceedings would constitute a particularly significant case pursuant to Art. 84 para. 2 Federal Supreme Court Act (FSCA); Art. 84 para. 2 FSCA relates to fundamental procedural principles within the meaning of Art. 2 IMAC, in particular serious violations of the procedural guarantees of the ECHR and UN Covenant I; the principle of speciality does not belong in this category.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2023.70 of 26 October 2023: house searches, collection of electronic data; triage of records by using keywords; reasonable period of time for the person concerned to comment.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2023.123 of 13 November 2023: violation of the right to be heard; access to the document containing the unsolicited

transmission of information (Art. 67a IMAC) that led to the request for mutual legal assistance; appeal upheld.

- Federal Supreme Court judgment 1C\_604/2023 of 17 November 2023: redacting the names of bank employees; fundamental denial of the party status of bank employees who are mentioned in account documents; exceptional derogation from this principle in the case of interests particularly worthy of protection, which were not present here.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2023.61 of 29 November 2023: proportionality of legal assistance measures (house searches; forcible opening of the apartment door, use of a stun grenade, handcuffs and blindfolds).



## 7 Important statistical information about international mutual legal assistance 2019–2023

Group	Type	2019	2020	2021	2022	2023
Extradition requests to foreign countries		272	204	179	174	<b>216</b>
Extradition requests to Switzerland		321	285	312	314	<b>430</b>
Provisional arrest requests to foreign countries		268	207	178	219	<b>206</b>
Provisional arrest requests to Switzerland		36 511	31 535	28 046	28 425	<b>29 827<sup>1</sup></b>
Transfer of proceedings requests to foreign countries		221	227	232	256	<b>353</b>
Transfer of proceedings requests to Switzerland		142	132	154	181	<b>191</b>
Sentence execution requests to foreign countries	Custodial sentences	3	7	9	4	<b>9</b>
Sentence execution requests to Switzerland	Custodial sentences	4	8	6	7	<b>8</b>
	Fines and monetary penalties		4	4	10	<b>10</b>
Prisoner transfer to foreign countries	at the request of the sentenced person	54	36	60	46	<b>44</b>
	under the Additional Protocol	1	1	1		<b>4</b>
Prisoner transfer to Switzerland	at the request of the sentenced person	24	15	12	12	<b>12</b>
Provisional arrest requests for international tribunals						<b>3</b>
Legal assistance requests to Switzerland	Obtaining evidence in criminal matters	1270	1279	1375	1201	<b>1350</b>
	Obtaining evidence in criminal matters: supervision	1260	1205	1266	1394	<b>1430</b>
	Obtaining evidence in criminal matters: own case	71	67	100	50	<b>67</b>
	Asset recovery	19	30	36	17	<b>20</b>
	Asset recovery: own case	2	6	2	3	<b>5</b>
	Obtaining evidence in civil matters <sup>2</sup>	57	48	64	51	<b>48</b>
Legal assistance with international courts and tribunals	International Criminal Court		7	3	6	<b>3</b>
	Ad hoc Tribunals <sup>3</sup>	2	4		4	<b>2</b>
	Fact-finding missions and mechanisms					

Group	Type	2019	2020	2021	2022	2023
Legal assistance requests to foreign countries	Obtaining evidence in criminal matters	935	845	995	948	<b>1069</b>
	Obtaining evidence in criminal matters: direct transmission <sup>4</sup>				1930	<b>2205</b>
	Asset recovery	20	12	6	12	<b>11</b>
	Obtaining evidence in civil matters <sup>2</sup>	23	18	19	33	<b>23</b>
Secondary legal assistance	for use in criminal proceedings	17	13	15	13	<b>13</b>
	Transmission to third country	9	4	6	4	<b>7</b>
Spontaneous transmission of information and evidence	to foreign countries (Art. 67a IMAC)	127	168	116	128	<b>117</b>
	to Switzerland	3	3	6	21	<b>9</b>
Document service requests to Switzerland	under criminal law	213	161	225	177	<b>205</b>
	under civil law <sup>2</sup>	536	324	381	323	<b>315</b>
	under administrative law	190	188	208	233	<b>190</b>
	under administrative law (Convention No 94) <sup>5</sup>	22	34	51	46	<b>33</b>
Document service requests to foreign countries	under criminal law	559	616	342	501	<b>781</b>
	under civil law <sup>2</sup>	821	689	701	598	<b>622</b>
	under administrative law	543	427	411	321	<b>311</b>
	under administrative law (Convention No 94) <sup>5</sup>	15	33	28	5	<b>18</b>
Sharing of forfeited assets (Sharing)	International Sharing (Swiss forfeiture decision)	11	12	15	15	<b>11</b>
	International Sharing (foreign forfeiture decision)	17	9	11	10	<b>13</b>
	National Sharing	70	55	50	39	<b>62</b>
Swiss Liaison Office at Eurojust <sup>6</sup>	Requests Eurojust-CH	141	143	154	176	<b>160</b>
	Requests CH-Eurojust	165	173	100	65	<b>98</b>
Instruction to the Federal Department of Justice and Police FDJP	Authorisations under Art. 271 Criminal Code	1			1	<b>1</b>

<sup>1</sup> Of which alerts in the Schengen Information System (SIS; number from fedpol): 17 522, INTERPOL 12 260 ("Red Corners"; number from INTERPOL) and 44 requests sent directly to the FOJ. This does not include 11 709 "diffusion" alerts via INTERPOL, for which there is no precise information on how many of these were also addressed to Switzerland. It should also be noted that a concrete check of the alerts in the SIS and via INTERPOL is only carried out in about 20% of the cases, namely if a concrete connection to Switzerland is recognizable or when the wanted person is stopped in Switzerland.

<sup>2</sup> Does not include requests sent or received directly by authorities in the cantons, for which the FOJ has no information.

<sup>3</sup> Former International Criminal Tribunals for Rwanda and the former Yugoslavia and other ad hoc tribunals.

<sup>4</sup> Cantons BE, BS, GE, LU, SG, SZ, TG, VD, ZG, ZH and federal authorities Office of the Attorney General of Switzerland, Federal Tax Administration, Federal Department of Finance and Swissmedic.

<sup>5</sup> Since 1.10.2019, Convention No 94 (SR 0.172.030.5) has been in force for Switzerland.

<sup>6</sup> Eurojust including third countries and existing cases extended to Switzerland.

**Judicial decisions**

Court	2019	2020	2021	2022	2023
Federal Criminal Court	230	294	203	189	208
Federal Supreme Court	66	83	61	44	49
<b>Total</b>	<b>296</b>	<b>377</b>	<b>264</b>	<b>233</b>	<b>257</b>

## Links

FOJ report on the EU's e-evidence proposal (only in German and in French):  
<https://www.bj.admin.ch/bj/de/home/publiservice/publikationen/berichte-gutachten/2023-10-24.html>



CAT final report on the 8th Periodic Report of Switzerland: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/CHE/CO/8&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/CHE/CO/8&Lang=en)



