

Annual Activity Report 2024

Mutual Legal Assistance



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Editorial



Ten years of activity reports from the Division for International Legal Assistance (DILA) at the Federal Office of Justice: since 2015, the DILA has used this publication to explain what it does and present aspects of its daily work to an interested audience in Switzerland and abroad. Selected topics, cases and projects that have occupied the DILA over the years illustrate the varieties of activity and the challenges that characterise a legal field which, though based on long-established legal principles, cannot and does not want to ignore the changing times.

In recent times, the DILA has been increasingly confronted with the issue of whether to refuse legal assistance on the grounds that an offence is political in nature. Contrary to what one might think, the 'political offence exception' does not simply apply as a safeguard against authoritarianism or arbitrary action by certain states that differ greatly from ours in terms of their values and legal systems. As a case concluded by the DILA in the year under review shows, the exception may also apply to a country that is firmly anchored in the European community of values. Where a state seeks to prosecute political offences, others, especially neutral states such as Switzerland, will be wary of interfering in sensitive criminal proceedings. Our Mutual Assistance Act therefore stipulates that, other than in the case of a few clearly defined, very serious offences, cooperation will be refused for offences that Switzerland considers to be primarily political in nature.

In practice, such cases are rare: Switzerland is seldom required to refuse legal assistance for this reason. However, if it does, this can make waves in the requesting state, in politics, in the media and in society. This is what happened in the case we report on. In this kind of situation, a great deal of explanation and tact is required to smooth things over.

And clear foresight and particular caution are required to anticipate and counteract any potential turbulence in bilateral relations.

In the case in question, coordination and close cooperation with the Federal Department of Foreign Affairs and above all with the Swiss embassy concerned, which is very familiar with the conditions on the ground, were essential both in the run-up to and during the actual proceedings.

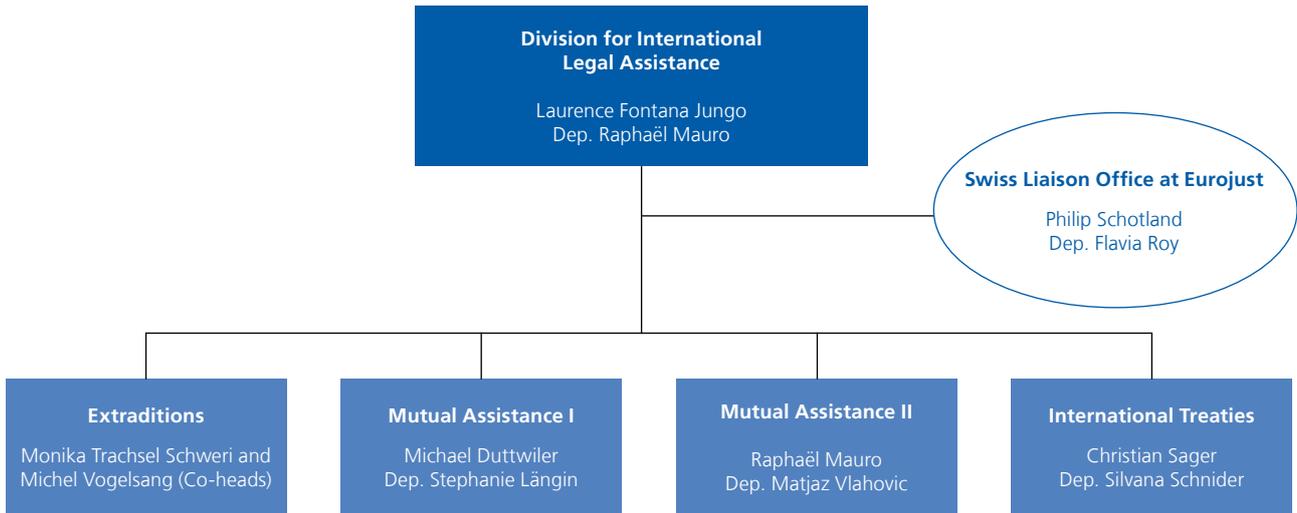
Whether, as in that particular case, it is a matter of sophisticated communication in sensitive proceedings where legal assistance must be refused, or more generally when providing legal assistance in the interests of efficiently combating crime, good and trusting cooperation with our partner authorities, whether at federal or cantonal level or with our partners abroad, is essential if we are to carry out the tasks we are entrusted with to the best of our abilities. Once again, we would like to take this opportunity to thank our partner authorities for their support and commitment!

I hope you enjoy reading this report.

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

1 Division for International Legal Assistance (DILA)

Organisational chart (as at May 2025)



The DILA Management team: from left to right Michael Duttwiler (Mutual Assistance I), Raphaël Mauro (Mutual Assistance II), Laurence Fontana Jungo (Head of the DILA), Monika Trachsel Schweri (Extraditions), Christian Sager (International Treaties), 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
- 51 permanent staff, with 31 women and 20 men from throughout Switzerland, making 43.8 full-time equivalents (as at May 2025)

Overview of principal tasks

- Ensuring the rapid provision of international mutual legal assistance in criminal matters.
- Submitting and receiving Swiss and foreign requests for assistance, 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 and Alarm Centre).

Mutual Assistance I: Seizure and handover of assets

- Mutual legal assistance proceedings in cases involving politically exposed persons (PEPs): 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 (principle 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 agreements 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 major cases concerning organised crime, corruption or other serious offences).
- Decides on the further use of evidence (principle 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 proposals 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 the President of the Swiss Conference of Public Prosecutors and the Attorney General of the Swiss Confederation.

1.3 Personnel

New Liaison Prosecutor and new Deputy Liaison Prosecutor for Switzerland at Eurojust

In September 2024, Philip Schotland, previously Deputy Liaison Prosecutor for Switzerland at Eurojust, succeeded Sébastien Fetter as Liaison Prosecutor. Sébastien Fetter has returned to the canton of Vaud as a public prosecutor.

Flavia Roy took up her position as Deputy Liaison Prosecutor in November 2024. She previously worked as a public prosecutor in the canton of Aargau.

2 Topics

2.1 Political offences: Refusal of legal assistance for offences of a predominantly political nature

In principle, Switzerland is always open to providing legal assistance in criminal matters, i. e. legal assistance is provided wherever possible. However, there are limits to how much cooperation can be given in certain areas. One restriction, which affects both extradition proceedings and accessory mutual legal assistance, applies to the prosecution of offences of a predominantly political nature. This is where the *political offence exception* applies.

The Swiss understanding of the political offence exception

Under Article 3 paragraph 1 of the Mutual Assistance Act (IMAC, SR 351.1), mutual legal assistance will not be provided if the subject matter of the underlying proceedings is an offence which, in the Swiss view, is primarily political in nature – irrespective of the legal interpretation of the circumstances under foreign law. This is the case, for example, if the request for mutual legal assistance addressed to Switzerland concerns a foreign national who is being prosecuted for planning a coup against the government of the requesting state.

The IMAC also prohibits the Swiss authorities from requesting assistance that they would not be permitted to provide themselves – i. e. they in turn may not submit requests for mutual legal assistance to foreign states in cases that are mainly political in character.

Justification for the political offence exception

According to the Federal Council's dispatch on the IMAC, by prosecuting political offences the state is fighting '*not so much against crime as against its policies being thwarted*'. Thus the state is both the victim of the political acts directed against it and the judge of these acts. The state in question may therefore lack impartiality and there is no guarantee that those prosecuted will receive a fair trial. This goes some way to explaining why Switzerland does not support such prosecutions.

However, international judicial cooperation on offences of a predominantly political nature is not excluded solely in order to safeguard against authoritarianism or arbitrariness in certain states. It is also based on the conviction that, in principle, any state may feel compelled to prosecute a person for political offences in exceptional situations; in such cases, other states will generally prefer not to interfere in these prosecutions because they are highly sensitive in political terms. This applies in particular to a neutral state such as Switzerland.

Cooperation on offences of a predominantly political nature is not only excluded under Swiss law, but also under the national law of many other countries and in numerous conventions that bind recognised democratic states.



Cooperation is normally refused if the criminal proceedings in the requesting state involve political offences.

Image: Tero Vesalainen via Getty Images

Acts of a predominantly political nature

Neither international law nor Swiss law directly define what an '*offence of a predominantly political nature*' is. The Swiss authorities therefore have a considerable degree of discretion when it comes to determining whether an act may be regarded as political.

Swiss expert opinion and case law distinguish between three types of acts that may be regarded as '*offences of a predominantly political nature*' and for which international mutual legal assistance in criminal matters is not granted, subject to the exceptions explained further below:

- *Absolute political offences*, i. e. criminal acts that are directed exclusively against the state and in particular its social and political organisation, whereby this purpose must be part of the constituent elements of the offence. Absolute political offences are therefore directly related to political processes. These include acts aimed at overthrowing the state, such as sedition, coup d'état and high treason, as well as the offence of espionage or political intelligence gathering. Most absolute political offences are found in the thirteenth to sixteenth titles of the Swiss Criminal Code (SR 311.0). According to the Federal Supreme Court, the participation of an Italian citizen in organisational activities of the Red Brigades, which planned to overthrow the Italian state, could in principle constitute an absolute political offence; in the specific case, however, the Federal Supreme Court did not apply the political offence exception, as the Red Brigades had committed violent acts that '*nullified*' the political nature of the corresponding offences (BGE 125 II 569 E. 9 and 10).
- *Relative political offences*, i. e. any common offences that are predominantly political in character because of the political nature of the circumstances, motives and objectives that prompted the offender to act. The offence must always have been committed in the context of a struggle for power in the state and be closely related to the object of this struggle. In

addition, the violation of legal interests must be proportionate to the objective pursued, and the political interests at stake must be important and legitimate enough to make the offence appear at least reasonably understandable (for more detail, see BGE 131 II 235 E. 3.2 and 3.3 with references).

- *Acts connected with a political offence*, i.e. acts generally regarded as criminal offences for which a certain degree of immunity is also granted because they were committed in parallel with an (absolute or relative) political offence, often in order to prepare, facilitate, ensure or conceal the commission of such an offence, or to secure impunity for it later. However, the mere fact that a common offence was committed in a certain political context, that it attracted a great deal of public attention, caused a certain amount of political unrest or was committed by a politically exposed person does not confer any special protection. As far as can be seen, the Swiss courts have so far never been required to consider how an 'offence connected with a political offence' is defined.

The exception to the exception: 'depoliticisation'

Under Swiss law and according to Swiss case law, certain acts must be 'depoliticised' due to their seriousness, so that they are excluded from the protection granted for acts of a predominantly political nature; they are as follows:

- Acts that can be defined under Swiss law as genocide, crimes against humanity, war crimes or other particularly reprehensible acts; acts are considered especially reprehensible if the perpetrator has killed or injured or threatened to kill or injure people for the purpose of extortion or duress, in particular by hijacking an aircraft, using weapons of mass destruction, causing a disaster or taking hostages (Art. 3 para. 2 IMAC).
- Certain acts that are specifically criminalised in certain international conventions and for which refusal of mutual legal assistance on political grounds is not permitted. Examples include offences under the International Convention for the Suppression of the Financing of Terrorism (SR 0.353.22) or the offences listed in the Additional Protocol to the European Convention on Extradition (SR 0.353.11).
- Serious violent offences, in particular homicide, even if they would not fall within the scope of Article 3 paragraph 2 IMAC. For example, the protection conferred by political character has been denied in the case of offences committed by a person belonging to an organisation that carries out politically motivated terrorist bomb attacks on civilian targets. However, this rule is not absolute and there are exceptions, for example in the event of a civil war or if the offence in question would be the only practicable means of achieving important humanitarian goals (see BGE 131 II 235 E. 3.3 and 3.5 with references).

The scope of the political offence exception is further restricted by the IMAC, which permits mutual legal assistance to be granted in the prosecution of a political offence if the assistance is likely to exonerate the person being prosecuted.

The political offence exception in international law

The political offence exception is widely applied at an international level, even if it is becoming less significant as the principles of the rule of law themselves become more widely applied.

In contrast to the provisions of the IMAC, the political offence exception is generally a discretionary provision in the multilateral agreements ratified by Switzerland. This is the case, for example, in the European Convention on Mutual Assistance in Criminal Matters (SR 0.351.1), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (SR 0.311.53) or the Convention on Cybercrime (SR 0.311.43). The political offence exception can also be found in numerous bilateral mutual legal assistance treaties that Switzerland has concluded with non-European states as discretionary grounds for refusing mutual legal assistance. When Switzerland is the requested state, in practice it refuses to provide legal assistance on the basis of Article 3 paragraph 1 IMAC.

To our knowledge, no international legislation or treaty contains an obligation to grant mutual legal assistance specifically for offences of a political nature. However, there are a number of conventions that deny the status of a political offence to certain types of conduct with regard to mutual legal assistance – including the aforementioned Convention on the Suppression of the Financing of Terrorism.

Conclusion

It is rare that the Swiss authorities have to refuse to cooperate on the grounds that the offences being prosecuted in the requesting state are of a political nature. In part, this is because in practice very few requests relating to the prosecution of such offences are filed. According to the data available to the DILA, the Swiss authorities have rejected 17 foreign requests for mutual legal assistance in the past ten years because they concerned offences of a predominantly political nature. During the same period, the DILA only had to refuse to transmit a Swiss request abroad once for an offence of this nature.

Adopting international agreements also helps to reduce the scope of the political offence. Certain legal experts take the view that the political offence exception should only apply if cooperation is demanded by a totalitarian state or a state in which arbitrariness prevails.

The DILA occasionally has to consider requests for mutual legal assistance in high-profile foreign criminal proceedings that divide public opinion and provoke very strong reactions. In such cases, the DILA still acts exclusively in accordance with the national and international legal requirements that apply to granting international mutual legal assistance. It also anticipates possible diplomatic repercussions by coordinating matters at an early stage with the Federal Department of Foreign Affairs (FDFA). These contacts can provide valuable information on the legal and political aspects of a case in the foreign state requesting cooperation and, if necessary, also help to ward off any media criticism. The following is a case that has led to major tensions in Spanish society in recent years and in which the DILA was called on to provide mutual legal assistance:



'Everyone to the airport' – the call from the Catalan independence movement led to the occupation of Barcelona Airport in 2019.

Image: caesarjulivis/Shutterstock.com

Tsunami Democràtic: A mutual legal assistance case with Spain makes waves

In this case, the Spanish prosecution authorities sent the DILA several requests for mutual legal assistance concerning criminal proceedings against activists in the Catalan independence movement, some of whom were living in Switzerland. They were charged with terrorism under the Spanish Criminal Code for allegedly being involved in planning various acts of civil disobedience against the Spanish central government via the Tsunami Democràtic platform, a campaign which culminated in the occupation of Barcelona Airport in 2019. An initial request was rejected by the DILA in March 2020, at the onset of the pandemic. Spain did not react. A second request made in November 2023, which was based on almost the same facts and was therefore answered identically by the DILA, generated great interest in the media and provoked a reaction from the requesting Spanish authority. In a formal letter, the DILA first requested additional information on the exact nature of the mutual legal assistance sought, and also on an amnesty law then being drafted, which had been the subject of reports in the Spanish media. The letter was leaked to various Spanish media outlets, which published it and either welcomed or criticised it, depending on their political standpoint. Not all the journalists understood that the letter was not a definitive rejection of the request for mutual legal assistance. However, notice that the request had been rejected was issued several months later, as the additional information provided was deemed insufficient for granting mutual legal assistance. The decision echoed the initial refusal and was based on the same two factors:

- The DILA is required by law to summarily examine requests for mutual legal assistance received, which primarily involves verifying whether the formal requirements have been met. However, before the DILA can refer a request to a Swiss public prosecutor's office for execution, it must also ensure that foreign requests are not inadmissible. After a

thorough examination of the request, the DILA concluded that the Spanish criminal proceedings related to political offences – grounds for refusing mutual legal assistance under Swiss law – as the activists' actions, although sometimes constituting criminal offences such as damage to property, were intended to harm the Spanish state as such.

- In a second step and as part of its summary examination, the DILA also considered whether there were legal grounds for not applying the political offence exception. As already mentioned, the Swiss law on mutual legal assistance excludes certain particularly serious offences from the protection afforded by this exception. The DILA therefore had to analyse whether the facts described by the requesting Spanish authority constituted an offence under the Swiss Criminal Code, and in particular its provisions on criminal and terrorist organisations. This was clearly not the case, as there was not a sufficient degree of criminal violence – in particular, there was no suggestion of murder or other homicide offences, robbery, extortion, deprivation of liberty, kidnapping or similar offences.

The DILA's handling of this delicate matter has shown that the internal warning signs worked well, as did the networking between the offices involved – the FDFA, the Swiss Liaison Office at Eurojust and the DILA. The fact that the requesting authority was given the opportunity to present its arguments and that these were considered so carefully in the decision to refuse mutual legal assistance undoubtedly helped to reduce tensions. It later transpired that the criminal proceedings on which the requests for mutual legal assistance were based were dropped because of procedural irregularities and because the Spanish amnesty law had been brought into force. However, the DILA took its responsibilities seriously and reached its decision without waiting for the Spanish criminal proceedings to develop, which would have delayed the mutual legal assistance proceedings.

2.2 The exequatur procedure for the enforcement of compensation claims

A decision of the Federal Supreme Court from 2023 requires the exequatur procedure to be used to enforce a compensation claim. This triggers a whole series of questions. The following is an attempt to explain a technical subject in a generally understandable way.

International mutual legal assistance in criminal matters makes a significant contribution to combating cross-border crime more effectively. It supports law enforcement authorities in effectively prosecuting offenders and enforcing penalties across national borders. The aim is to ensure that offenders do not benefit from their crimes in another country and are unable, for example, to successfully hide criminally acquired assets from law enforcement authorities by moving them abroad. This is where the execution of foreign requests by way of international mutual legal assistance comes into play.

Under Swiss law, two measures are available to prevent offenders from gaining a financial advantage from the assets they have obtained through their crimes:

- The first measure is *forfeiture* in accordance with Article 70 of the Swiss Criminal Code. The aim here is to take permanent control of certain assets obtained through criminal offences, such as a car or money in a bank account.
- The second measure is the *compensation claim*. If the assets acquired through the offence are no longer available, under Swiss law the offender must pay a corresponding sum of money to the state. The amount to be paid may not exceed the proceeds that the offender has obtained from the offence.

In its ruling 1C_624/2022 of 21 April 2023, the Federal Supreme Court decided how claims for compensation from abroad can be enforced in Switzerland through international mutual legal assistance, i.e. in accordance with the IMAC. It stated that foreign compensation claims must be enforced in Switzerland in accordance with the provisions of Article 94 ff. IMAC. The process in which the DILA submits the foreign decision to a Swiss criminal court for review and enforcement is known as the exequatur procedure.

The court responsible for the decision examines whether a foreign criminal judgment can be recognised and enforced in Switzerland. This ensures that the criminal judgment complies with Swiss and international legal standards. If enforcement would violate important principles, for example because the offence is time-barred under Swiss law, the judgment is not recognised. If the court recognises the judgment, it is enforced in Switzerland.

If a Swiss court responsible for the exequatur procedure declares a foreign compensation claim to be enforceable, it becomes a Swiss enforcement order and a debt collection agency can enforce the claim. A debt enforcement procedure is then carried out in accordance with the Federal Act on Debt Enforcement and Bankruptcy (DEBA, SR 281.1). If the offender does not pay voluntarily, enforcement proceedings are begun in which the offender's assets are realised and the proceeds distributed to their creditors. The foreign state has no preferential right to the money.

Until the Federal Supreme Court decision mentioned above, claims for compensation could in principle be enforced via Article 74a IMAC. Switzerland was therefore able to use forfeited assets directly to cover the compensation claim and hand them over in full to the foreign state. In its decision of April 2023, however, the Federal Supreme Court ruled against direct surrender to the foreign state in the case of a claim for compensation. It came to the conclusion that because compensation claims are not expressly mentioned in Article 74a IMAC, the legal basis for this form of surrender is insufficient. It also considered that the settlement of the compensation claim via Article 94 ff. IMAC must take equal account of the rights of all the offender's creditors.

The protection of these rights in enforcement proceedings is one of the key issues. However, there are still unanswered questions, such as:

- Which cantonal court conducts the exequatur procedure? What is the situation at federal level if a federal authority is responsible for prosecuting the offence?
- How can it be ensured in realisation proceedings that all of the convicted person's creditors participate in the proceedings and share in the realisation proceeds?
- Does Switzerland have to hand over to the foreign authority the compensation it has obtained by enforcing the claim? If so, what is the legal basis for doing this?

Conclusion

To summarise, the exequatur procedure makes it possible to enforce claims for compensation in Switzerland that are based on foreign court orders. However, the Federal Supreme Court judgment on the enforcement of the compensation claim via the exequatur procedure also raises key questions that need to be clarified in practice. In particular, the responsibilities of the Swiss authorities must be clearly defined in order to ensure that the procedure is applied uniformly. It must also be clarified how the rights of all creditors can be taken into account equally to ensure that each of them can participate in the realisation procedure. The question of whether Switzerland should only enforce the foreign judgment or hand over the money also still needs to be clarified. These points are crucial to ensure the effectiveness of international mutual legal assistance and fairness in Swiss mutual legal assistance proceedings in the long term.

3 Selected cases

Developer of 'WhatsApp for criminals' arrested in Switzerland and extradited to France

In the mid-2010s, the communications provider EncroChat developed specially secured mobile phones and an encrypted communications platform. The offer included full end-to-end encryption of messages and a wipe function, which made it possible to delete the data on the mobile phone remotely or by entering an incorrect PIN. These functions made the communication service particularly attractive to criminals seeking to encrypt their communications and protect themselves from detection by law enforcement agencies.

In 2020, French law enforcement authorities succeeded in cracking EncroChat's security protocols. They were able to access users' communications in real time. For months, the French authorities collected the chat messages of EncroChat users. They did this until the operators of the communication service realised that their system had been compromised. The operators subsequently warned users that state authorities had taken control of EncroChat and asked them to delete the data on their mobile phones and dispose of the phones.

Analysis of the intercepted communications revealed a shocking picture: over 90 per cent of the conversations on EncroChat were related to illegal activities, in particular narcotics trafficking, money laundering and organised crime. The evidence obtained led to spectacular law enforcement operations around the globe: a total of over 170 tonnes of drugs, including 100 tonnes of cocaine, 900 weapons and 500 million euros in cash and other assets and goods were seized. Over 5,700 suspects were arrested.

In July 2024, the DILA received an extradition request from the French Ministry of Justice regarding a Canadian national resident in the canton of Zug. The French authorities alleged he was one of the three leading figures behind EncroChat, the technical director responsible for the development and architecture of the platform. They also claimed he was responsible for the administration and payment of invoices and for logistics. He was said to be aware that EncroChat was mainly used for illegal activities.

A few days later, the Canadian was arrested at his home on the orders of the DILA, and at the end of September 2024, the latter ordered his extradition to France. It regarded the activities he was alleged to have carried out as aiding and abetting drug trafficking and commercial theft as well as supporting a criminal organisation, assisting offenders and money laundering. What is particularly noteworthy here is that activities that are in themselves legal (such as offering a crypto mobile phone that enables encrypted communication) can become a criminal offence if the person providing support knows or at least accepts the possibility that their assistance could help someone to commit a crime.

The Federal Criminal Court dismissed an appeal by the Canadian against the DILA's extradition decision. After the Federal Supreme Court dismissed his appeal against that decision, the DILA authorised his extradition. In March 2025, the Canadian was handed over to the French authorities.



Members of criminal gangs were among the most eager to take advantage of EncroChat's services in their lucrative lines of business.

Image: Ascannio/Shutterstock.com

From EncroChat to Sky ECC: Major blow against international drug gangs

After EncroChat closed down its system in 2020, criminal organisations looked around for alternative solutions and found what they were looking for in the Sky ECC communication service. This also offered end-to-end encryption and apparent protection from law enforcement agencies. In 2021, however, thanks to close cooperation between the Dutch and Belgian police, Europol and others, it was possible to access the Sky ECC servers and decrypt and read the messages sent via this service in real time.

When taken with the conversation data seized in the EncroChat case, investigators throughout Europe suddenly found themselves with an immense volume of evidence of criminal activities at their disposal, which enabled them to dismantle numerous criminal structures, both large and small. As a result, the DILA also had to respond to mutual legal assistance and extradition requests based on EncroChat and Sky ECC data.

For example, in November 2023 the Baden-Württemberg Ministry of Justice requested the extradition of two German citizens who were suspected of being part of a drug gang that trafficked marijuana, hashish, amphetamines, cocaine and MDMA on a large scale in the German-Swiss border region. The DILA handed over one of the suspects to Germany at the end of November 2023 after he had agreed to the simplified extradition procedure. The second suspect contested his extradition all the way to the Federal Supreme Court, but without success. He was also extradited to Germany in March 2024.

At the beginning of 2024, the Austrian Ministry of Justice submitted several requests for mutual legal assistance and extradition concerning a gang that was believed to be active primarily in the Austrian-Swiss border region. In a co-ordinated operation, the St Gallen Cantonal Police and Austrian police officers searched 13 houses in Switzerland and Austria and arrested twelve suspects, three of whom were detained in Switzerland on the orders of the DILA. The criminal organisation was accused of selling around 100 kilograms of cocaine and half a tonne of cannabis to customers in Austria, Germany and Switzerland. It was believed that the cocaine was mainly imported from the Netherlands and Belgium, and the cannabis mainly from Spain, but that some of the cannabis was also produced on specially established 'farms' in Switzerland and Austria.

One suspect arrested in Switzerland agreed to simplified extradition, while the other two filed unsuccessful appeals against the DILA's extradition decisions with the Federal Criminal Court and the Federal Supreme Court. The last suspect was extradited to Austria in August 2024.

Two main questions arose in all of these extradition proceedings: can suspects be extradited even though the admissibility of the Sky ECC evidence is disputed? And can they also be extradited for the offences they are alleged to have committed in Switzerland?

The DILA and the appeal courts answered both questions in the affirmative. Whether evidence has been validly collected and can be used in foreign criminal proceedings depends on the foreign procedural law and must be assessed by the competent foreign courts.

Extradition requests involving offences that are subject to Swiss criminal jurisdiction may be granted on various grounds in accordance with the IMAC, the applicable international treaties and the case law of the Federal Supreme Court. This applies in particular where foreign authorities have been investigating the case for several years and are in possession of the evidence. A further argument in favour of extradition is the interest in prosecuting several accused together for reasons of procedural economy and preventing contradictory verdicts. The competent Swiss law enforcement authorities agreed with this.

This major success against international drug-related crime impressively demonstrates the importance of international cooperation in the digital age.

Extradition to France for attack on two social workers and arson at a shelter for unaccompanied minors

In a facility for unaccompanied minors in La Tour (Haute-Savoie, France), an asylum seeker living there threatened two social workers with a knife on 5 June 2024, holding them hostage. He then set fire to his bed and stabbed one of the social workers several times. The fire spread to two of the three floors of the asylum centre before it was finally brought under control. The police had to use their service weapons to wound the young man in order to detain him. The social worker and the asylum seeker were taken to hospital with serious injuries, the latter being transferred to Geneva University Hospital.

On 7 June 2024, the French authorities issued an alert in the Schengen Information System for the arrest of the young man with a view to his extradition, and on the same day, the DILA ordered his arrest. France subsequently submitted an extradition request to Switzerland. As soon as his state of health permitted, the young man, still in hospital, was interviewed by a public prosecutor from the Canton of Geneva regarding the extradition request. The DILA appointed a public defence lawyer for the young man. When interviewed, he refused to agree to extradition to France in a simplified extradition procedure.

After considering the defence submissions on the extradition request, the DILA ordered extradition to France in September 2024. The defence objection that extradition should be made dependent on formal guarantees to safeguard the fundamental rights of the young man was not accepted. In the meantime, he had been discharged from hospital and moved to Champ-Dollon prison pending extradition with appropriate supervision for a minor.

The young man did not appeal against the DILA's extradition decision and was handed over to the French authorities in October 2024. They had previously been informed about his state of health and requested to take all the measures required to ensure his appropriate care in France, both in medical terms and with regard to his conditions of possible detention.

In the reporting year, the DILA was once again not only able to arrange extraditions to other countries: at the request of Swiss courts and public prosecutors' offices, it also arranged for suspects to be extradited from other countries to Switzerland in a number of cases, some of which attracted media attention. Here are some examples:

Alleged millionaire fraudster fights tooth and nail against his extradition from the UK to Switzerland, but in vain

The public prosecutor's office of the Canton of Zurich accused a 51-year-old man of extorting CHF 28.1 million from 23 victims. As the whereabouts of the accused were unknown, the public prosecutor's office requested the DILA to issue an international alert for the wanted man; the DILA issued a Europe-wide arrest request in July 2022.

In November 2022, INTERPOL Manchester reported that the wanted man had been arrested in the UK in response to the Swiss alert. The DILA subsequently requested the UK authorities through diplomatic channels to extradite the alleged fraudster.

The UK extradition procedure is rather protracted and has comparatively high formal requirements. The Crown Prosecution Service repeatedly asked the DILA to submit additional information in order for authorisation for the extradition of the suspect from the English courts to be granted. In close consultation with the public prosecutor's office in the canton of Zurich, the requested information was provided, with the result that Westminster Magistrates Court ruled in July 2023 that there were no legal obstacles to the suspect's extradition.

Based on this decision, the UK Home Office ordered the extradition of the suspect in a second phase of the extradition proceedings. The High Court of Justice dismissed the appeal against this decision. The extradition order thus became legally binding. Nevertheless, the alleged fraudster continued to take legal action to try to prevent his extradition.

To this end, he turned simultaneously to the European Court of Human Rights (ECHR) and to the Swiss authorities. The ECHR rejected the application for interim measures, while the DILA declared that it was not competent to hear the application to withdraw the extradition request and referred the matter to the cantonal prosecution authorities, which rejected the suspect's applications. He appealed against this to the High Court of the Canton of Zurich, which also rejected his application for interim measures. Finally, the Federal Supreme Court ruled in a landmark decision that a person prosecuted by Switzerland must in principle raise their objections to extradition in the foreign extradition proceedings and that no legal remedies are available in Switzerland against a foreign extradition order that has become legally binding (Federal Supreme Court ruling 7B_981/2024 of 20 September 2024).

This meant that nothing stood in the way of the suspect's extradition. At the end of September 2024, an escort from the Zurich cantonal police picked him up in London and brought him before the public prosecutor in the canton of Zurich, where he now has to answer the serious charges against him.

After his extradition, the Swiss Ghost Rider makes a detailed confession

A motorcyclist from Valais known as the *Swiss Ghost Rider* caused quite a stir from 2015 onwards, racing over the picturesque Grimsel, Susten and Furka passes at breakneck speed and filming his daredevil manoeuvres around the bends. He uploaded three videos of his breath-taking rides to YouTube, incontrovertible evidence of 18 very serious and 61 serious road traffic offences.

But these were not the only crimes that the *Swiss Ghost Rider* committed. As early as 2014, while driving his motorbike at excessive speed and under the influence of alcohol and drugs, the man from Valais tried to evade a police check, accelerating his bike straight towards a police officer and running him over. The officer sustained injuries to his leg, while a second police officer was punched in the face.

The Valais prosecutors also charged the Ghost Rider with other traffic offences, two burglaries and importing 600 grams of cannabis. Not content with that, in February 2016, the Ghost Rider threatened his girlfriend's cousin with violence, carrying out his threats in May 2016. Armed with an iron bar, he forced his way into the victim's flat, where he found him asleep, and attempted to kill him by striking him on the head and upper body. The victim was seriously injured and is still undergoing psychological treatment for post-traumatic stress disorder. The accused is said to have committed the offence out of hatred and revenge because his victim had reported him to the police for his crimes.

In April 2021, the Upper Valais District Court found the Ghost Rider guilty of these offences, including attempted homicide and multiple serious and aggravated violations of road traffic regulations, and sentenced him to six and a half years' imprisonment. Neither the Upper Valais public prosecutor's office nor the accused accepted the judgment, and both appealed to the Valais Cantonal Court.

After the appeal hearing, the Ghost Rider claimed on local TV that the public prosecutor was pursuing a personal vendetta against him. Shortly afterwards, he went into hiding and fled abroad.

At the request of the Valais Cantonal Court, in September 2022 the DILA issued a Schengen alert for the arrest of the fugitive. It was suspected that he might be in Spain with his family. In the meantime, the cantonal court increased his sentence significantly, imposing a total of twelve years' imprisonment for the offences committed. The defendant's lawyer filed an appeal against this with the Federal Supreme Court.



A motorcyclist from Valais known as the Swiss Ghost Rider caused quite a stir.
Image: VR19 via Getty Images

In September 2023, one year after his escape, the Ghost Rider was located in Spain, arrested and remanded in custody pending extradition. In response, the DILA submitted an extradition request to the Spanish Ministry of Justice, which authorised his extradition, and in April 2024 he was escorted back to Switzerland by the Valais cantonal police.

Shortly afterwards, however, the Federal Supreme Court partially upheld his appeal and referred the case back to the lower court for a new decision, on the grounds that the cantonal court had failed to justify the sentence adequately.

However, this was not the last twist in this story. At the new hearing, the Ghost Rider, who had denied the offences for the previous eight years, made a full confession. In October 2024, he was sentenced to nine years and nine months in prison by the Valais Cantonal Court, a decision that is now final.

Successful search for Switzerland's most famous prisoner

The story of the once juvenile offender, who ran up dozens of criminal convictions by the age of 17 and was made notorious by the SRF documentary *'Der Jugendanwalt'*, a programme about the former Head of the Juvenile Prosecution Service in the canton of Zurich, still attracts media attention more than a decade later.

After seven long years in prison, he was released in November 2023, only to fall foul of the authorities again a few months later, in May 2024. He was accused of beating up an influencer on camera following a public dispute with the alleged victim on social media and was also said to have incited violence against the victim. Despite these accusations, the competent Zurich court authorised his release in July 2024 – under strict conditions.

Only a short time later, at the beginning of August 2024, he apparently became involved in another altercation on social media. This time he is said to have asked a friend to beat up a rival in retaliation for alleged insults. The planned attack failed because the rival did not open his door. Nevertheless, he is said to have continued with his threats – he is alleged to have publicly threatened to kill his opponent in the boxing ring. This escalation led to new accusations: the Zurich public prosecutor's office charged him with attempted incitement to commit serious assault and threatening behaviour.

Instead of turning himself in to the authorities, he decided to flee. At the request of the Zurich public prosecutor's office, the DILA published an arrest request in the Schengen Information System at the beginning of August 2024. Thanks to the support given in the search by the Zurich cantonal police, the wanted man was tracked down and arrested in Germany the day after the request was issued. He agreed to his simplified extradition to Switzerland, where he was handed back to the Zurich authorities at the end of August 2024.

A double murderer from Ittigen briefly on the run – a rapid end to the search

In the early morning of 10 November 2023, there was a violent confrontation in Ittigen, a suburb of Bern, with fatal consequences: two people died in hospital, despite the efforts of the emergency services. Another person was seriously injured. The

alleged perpetrator was quickly targeted by the Bern law enforcement authorities. A cantonal prosecutor for the Bern Mittelland Region immediately issued a warrant for his arrest and contacted the DILA's round-the-clock service to organise an international search as quickly as possible. A few hours later, an international alert was issued for the suspect to be arrested pending extradition.

After only seven days on the run, the suspect was detained in Hungary and remanded in custody pending extradition to Switzerland. In November 2023, the DILA submitted a request to the Hungarian authorities under the European Convention on Extradition. The cantonal prosecutor for the Bern Mittelland Region issued two further arrest warrants for the suspect in December 2023, as investigations had brought to light further offences that he had allegedly committed in connection with the offences in Ittigen, and also earlier. The DILA also requested the Hungarian Ministry of Justice to authorise the extradition of the suspect based on these arrest warrants.

In the second half of January 2024, the DILA received authorisation for the extradition from the Hungarian authorities: the suspect had agreed to simplified extradition to Switzerland in the Hungarian extradition proceedings, and the extradition could therefore be organised. In February 2024, the suspect was transferred from Hungary to Switzerland escorted by four officers from the Bern police. Just over three months after the offences in Ittigen, he was handed over to the Bern prosecution authorities.

First sharing agreement with Kosovo

Seizing and securing the forfeiture of assets acquired by criminal means is a vital way of combating crime effectively. The forfeiture of illegally acquired assets follows the principle, familiar around the globe, that crime should not pay, i.e. that the proceeds of crime must not remain in the hands of the perpetrators. Securing forfeiture often requires cooperation with several countries. To encourage this cooperation, it is international practice, as recommended by international agreements, for the states involved to share the forfeited assets if there are no injured parties. This creates an additional incentive for cooperation and thus assists in the fight against international crime. The new Treaty on Mutual Assistance in Criminal Matters with Kosovo (SR 0.351.947.5), which has been in force since 2023, also addresses international sharing: Article 24 requires the widest possible cooperation permitted under national law and provides for the conclusion of a sharing agreement for each individual case.

The Federal Act on the Division of Forfeited Assets (FADA, SR 312.4) regulates both national and international sharing and the conclusion of sharing agreements. The DILA is responsible for arranging the sharing of assets in both national and international proceedings. In the reporting year, it concluded its first sharing agreement with Kosovo.

The conclusion of these agreements is particularly important in cross-border cooperation, as it is becoming increasingly rare for criminals to restrict their activities to remain within national borders. A coordinated campaign against organised crime requires cooperation between states, not only in ongoing cases, but also in all future cases. The conclusion of the above-mentioned

mutual legal assistance treaty is a clear sign of the desire to strengthen cooperation between the two countries. This also has an impact on sharing. The sharing agreement signed in February 2024 (see box) shows that the collaboration is working well and bearing fruit.

In a case relating to international drug trafficking and organised crime, the Swiss authorities ordered the forfeiture of assets located in Kosovo. Legal assistance proceedings enabled the assets to be returned to Switzerland. Kosovo's cooperation was crucial in ensuring that the assets were forfeited, and it would have been impossible to conclude an agreement on sharing without the return of the assets.

The FADA provided the guidelines for negotiating the agreement.

Firstly, the Swiss authorities involved were informed that a proposal for sharing would be submitted to Kosovo and that the forfeited assets would be divided equally between Switzerland and Kosovo, as provided for by the FADA as a general rule. The consent of the Swiss authorities originally dealing with the case must be obtained before contact is made with the foreign authority.

After the Swiss authorities had given their approval, the DILA sent a letter to the Kosovar authorities with the proposal for sharing and the formula according to which the assets were to be divided. This marked the start of the negotiations.

The proposal for sharing was accepted and a draft sharing agreement was then drawn up. The challenge in this phase of the negotiations is not only to reach a decision with the foreign state on the content of the agreement; it is also important to discuss possible differences in the respective legal systems so that a pragmatic solution can be found and the agreement can be concluded as simply as possible and without excessive administrative effort.

Excellent cooperation between Switzerland and Kosovo throughout the process ultimately led to success, and the first sharing agreement between Switzerland and Kosovo was signed on 19 February 2024.

Putting a stop to a network of traffickers

Criminal gangs also seek the opportunity to profit financially from people who wish to travel through Europe unrecognised and without authorisation. As a transit country, Switzerland is also affected by this criminal activity.

In the course of 2023, based on information provided by national and international partners, the Office of the Attorney General of Switzerland opened proceedings against five Russian nationals based on Article 27 paragraph 2 of the Criminal Procedure Code (SR 312.0) on suspicion of facilitating unlawful entry, exit and residence (Art. 116 para. 3 of the Foreign Nationals and Integration Act, SR 142.20). The Federal Office for Customs and Border

Security (FOCBS), various cantonal police forces and Europol were among the authorities that pointed to a trafficking network from France operating on Swiss territory. Due to the close links between the French and Swiss proceedings, representatives of the two countries agreed to set up a joint investigation team following a coordination meeting at Eurojust. For the first time, the Swiss investigation team was made up solely of specialists from fedpol's Central Office for Human Trafficking/People Smuggling, which acted in close consultation with several cantons. The cooperation, also supported by the Swiss Liaison Office at Eurojust, ultimately led to police operations in France in May 2024 in which several suspects were arrested.

World literature as a business model for a criminal gang: theft of valuable books from libraries across Europe

It is not only passionate readers who consider world literature to be one of civilisation's treasures; criminal gangs have also recognised the monetary value of historical editions of such works. The works of the Russian writer Alexander Sergeyevich Pushkin (1799–1837) were particularly favoured by one group of thieves.

The group specialised in stealing valuable books printed during Pushkin's lifetime from library collections. On their raids through reading rooms between Riga and Lyon, the thieves sometimes stole dozens of these rarities. After a library in Geneva also fell victim to their cunning, Switzerland became involved in international police and judicial cooperation on the case. On account of parallel criminal investigations, a joint investigation team was set up between Switzerland, France, Lithuania, Poland, Georgia and Europol with the support of Eurojust and the Swiss Liaison Office. When information was obtained that the perpetrators might be in Georgia, efforts were again made via Eurojust to initiate a joint action day between the states involved. To this end, Eurojust set up a coordination centre on the day of action, which supported the forces deployed simultaneously in Latvia and Georgia. Thanks to the coordination centre, all the authorities involved quickly received comprehensive updates on the progress of operations. On the day in question, 27 locations in Latvia and Georgia were raided, four suspects were arrested in Georgia and numerous books were seized.



A library becomes a crime scene: several European libraries fell victim to the thefts carried out by a criminal gang.

Image: Sean Fleming via Getty Images

At the Swiss Liaison Office at Eurojust: Field report by a visiting professional about his assignment in The Hague

For some time now, federal and cantonal public prosecutors have had the opportunity to complete an internship lasting for several months at the Swiss Liaison Office at Eurojust in The Hague. This allows them to gain first-hand experience of working within the EU agency Eurojust with the liaison prosecutors of member states and third countries stationed there. Various *visiting professionals* have already taken advantage of this opportunity. What follows is a report on his experiences from Matthias Rikenmann, who joined the Swiss Liaison Office team in the last quarter of 2024:

‘Have fun on the beach!’ These and similar were words of farewell I received when I left my ‘normal’ job as a public prosecutor in the canton of Zurich at the end of September 2024 for a two-and-a-half-month stint at the Swiss Liaison Office at Eurojust in The Hague.

Before I went to the Netherlands, I had the opportunity to spend four exciting introductory days in Bern at the beginning of October with the newly appointed deputy liaison prosecutor, Flavia Roy, where we got to know our future colleagues at the DILA. Meetings were also held with the divisions responsible for international cooperation at the Office of the Attorney General of Switzerland, fedpol and the Federal Office for Customs and Border Security. The Swiss Liaison Office at Eurojust is an important partner for all of these, and so meeting the people responsible in person was really useful.

On 5 October 2024, having packed my Donatsch commentary on international legal assistance and, even more vital in the Netherlands, a bicycle, I set off for The Hague. The city welcomed me with mild autumn weather and a calm North Sea.

On my first day at work, I received an extremely warm welcome from the Swiss Liaison Prosecutor Philip Schotland and was given a Eurojust laptop. My colleagues from the 27 EU countries and the 11 other non-EU countries represented at Eurojust also gave me a friendly welcome and I quickly felt a strong spirit of cooperation: everyone is going the extra mile to help international legal assistance in criminal matters get results quickly and easily.

I immediately became fully immersed in the varied work of the Swiss Liaison Office:

I responded to enquiries from cantonal public prosecutors and the Office of the Attorney General of Switzerland after consulting my colleagues from the countries concerned. These involved, for example, general questions on legal assistance in certain countries or speeding up the response to specific requests for legal assistance. I also answered my foreign colleagues’ questions about the Swiss legal assistance procedure, which was not always easy. I was surprised at how quickly Eurojust enabled me to get the right information, which helped the requesting authorities to obtain answers to their questions on legal assistance thanks to the short official channels. The personal contact, which helps to create an increased sense of commitment, often made it possible to speed up legal assistance procedures significantly. In complex or urgent cases above all (e. g. where a suspect was in pre-trial detention or the application of the statute of limitations was imminent), the route via Eurojust thus brought a decisive advantage.

I was also able to welcome delegations of Swiss prosecutors and investigators who had travelled to The Hague for coordination meetings with their foreign colleagues and to attend those meetings with them. It made me realise how important personal contact is, even in the digital age. Face-to-face coordination meetings create valuable trust and an understanding of the criminal law situation and the workings of law enforcement authorities in other countries. In cases involving a large number of countries in particular, these meetings make it easier to coordinate measures taken by the various prosecuting authorities more efficiently.

I was also in regular contact with the Swiss police attachés at Europol, who have their offices just across the street. Enquiries to the Swiss Liaison Office related to judicial cooperation could often be profitably combined with prior enquiries via the police SIENA channel.

As the EU agency for judicial cooperation in criminal matters, Eurojust also regularly organises specialist conferences on a variety of current topics. I had the opportunity to attend some of these conferences and pick up on the latest developments for the Swiss Liaison Office to report back to Switzerland.

The highlight of my stay was certainly Federal Councillor Beat Jans’ visit to Eurojust. The team from the Swiss Liaison Office took this opportunity to show him how important cooperation at Eurojust is for cantonal public prosecutor’s offices and for the Office of the Attorney General of Switzerland.

Even at a cantonal public prosecutor’s office, there are more and more cases with an international dimension, and questions about mutual legal assistance are now part of everyday life. My time at Eurojust showed me the great added value that the Swiss Liaison Office can provide, especially for cantonal public prosecutors’ offices. I was able to expand my knowledge and make interesting contacts, which will also help me in my own investigations at home in Zurich. Eurojust and the Swiss Liaison Office there play a key role in ensuring that requests for mutual legal assistance do not come to nothing, unlike the footprints on the beach in Scheveningen, located not far from the Eurojust building.

Many thanks to the team at the Swiss Liaison Office for this unique opportunity to gain an insight into their exciting work.’



Not something that happens every day: Federal Councillor Beat Jans (on the left) pays a visit to Eurojust. A highlight for the then visiting professional to the Swiss Liaison Office at Eurojust. Image: © Eurojust

4 Legal basis for cooperation

Memorandum of Understanding with Kazakhstan on mutual legal assistance in criminal matters

Located in the heart of Eurasia, Kazakhstan is the ninth largest country in the world in area and has a population of more than 20 million. It is the leading emerging country in Central Asia. Of the five Central Asian republics, Kazakhstan is Switzerland's most important trading partner.

The signing of a Memorandum of Understanding (MoU) with Kazakhstan in the field of mutual legal assistance in criminal matters – a first for our country in Central Asia – is part of a broader strategy to optimise the instruments available to combat cross-border crime more effectively.

An MoU is a cooperation instrument that is more flexible than an international treaty. Although it is not legally binding, this does not mean that it has no effect; on the contrary, it signals that two countries have decided to move closer together and step up cooperation in a specific area.

An MoU offers many advantages when it comes to mutual legal assistance in criminal matters. This form of alignment with another state facilitates closer and more effective cooperation without directly establishing mutual rights and obligations. An MoU also enables more flexible access to a legal system that differs from one's own legal system, for example in terms of its understanding of the rule of law and human rights.

Switzerland and Kazakhstan both have national legislation that enables cooperation on mutual legal assistance in criminal matters even without a corresponding international treaty. These laws continue to form the legal basis for cooperation, and all the grounds for refusal of assistance under the IMAC continue to apply.

The MoU with Kazakhstan, however, brings many benefits and genuine progress. The most important innovation is of a technical nature: in future, the mutual legal assistance authorities in Switzerland and Kazakhstan will be able to cooperate directly via their national central authorities. The latter serve as a point of contact for the transmission, receipt and processing of requests for mutual legal assistance and are in direct contact with each other – there is no need to go through the respective diplomatic representations. To further simplify cooperation, the annex to the MoU contains a model request that meets the formal requirements of both countries. In the event of uncertainties when drafting a request, the central authority in the requesting state may consult its counterpart in the other state at this stage. In this way, subsequent, potentially time-consuming follow-up enquiries to the other state can be avoided.

Even if the MoU does not impose any new legal obligations, it has the potential to usher in a new era in bilateral cooperation in relation to mutual legal assistance between Switzerland and Kazakhstan at a technical level. Direct contact between the cen-



The Memorandum of Understanding with Kazakhstan, signed in 2024, is a first for Switzerland in the Central Asian region.

Image: naruedom via Getty Images

tral authorities of the two countries enables coordination from the moment that mutual legal assistance is requested. This ensures that a request complies with international standards and is drafted in a form that meets the requirements of the requested state.

The MoU between Switzerland and Kazakhstan helps to strengthen our country's relations with a major Central Asian state. The improved cooperation on mutual legal assistance intended by this instrument can also reinforce Switzerland's efforts to provide a clean financial centre.

The MoU was signed on 5 November 2024, becoming directly applicable on that date.

Note: Mutual legal assistance treaty with Panama entered into force

The Mutual Assistance Treaty in Criminal Matters with Panama entered into force on 31 December 2024 (SR 0.351.962.7). This means that Switzerland is now linked to another major financial and economic centre in terms of mutual legal assistance by an international treaty, which should make cooperation more rapid and efficient. Switzerland and Panama have common interests, particularly in combating financial crime.

Third Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

The Third Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, drawn up within the framework of the Council of Europe's Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC), contains important innovations that should bring useful operational progress for Switzerland. The negotiations in the PC-OC were successfully concluded in November 2024, with Switzerland actively shaping the content of the Third Additional Protocol.

Specifically, the provisions concern the electronic transmission of requests for mutual legal assistance, hearing by videoconference, the use of technical recording devices on the territory of another contracting party, the interception of telecommunications, the time limits for executing requests for mutual legal assistance, as well as costs and reservations.

The proposals put forward by Switzerland are particularly noteworthy:

Recording devices (GPS trackers, audio, etc.) used by the authorities in criminal investigations are effective tools in the fight against serious forms of cross-border crime. However, Swiss case law and the work of Eurojust show that there are often legal obstacles in Europe to using such devices. In smaller countries in particular, it is not always possible to predict whether and when a recording device installed by the authorities in a country will leave the territory of that country.

Failure to comply with various national regulations may result in important evidence not being admissible. To overcome these obstacles, the new legal framework introduces common minimum requirements. The new rules stipulate that, as a general rule, requests to use recording devices on foreign territory must be made by way of mutual legal assistance. However, recording devices used in the context of criminal investigations on the orders or with the authorisation of a judicial authority may remain active even if the recording device (with the target person) enters the territory of another contracting party, provided that the state concerned consents. The new rules are based on existing conventions, including the EU Convention on Mutual Legal Assistance.

Also at Switzerland's initiative, the Third Additional Protocol contains a provision on monitoring telecommunications on the basis of a mutual legal assistance request. In addition to the European Convention on Mutual Assistance in Criminal Matters and its Second Additional Protocol, which already allow for this form of cooperation as Switzerland understands it, the formal requirements for such requests are specified. In addition, it is ensured that such requests can be rejected where the same form of monitoring is not also possible in the requested state. Monitoring may be made subject to additional conditions, in particular the retrospective notification of the person being monitored. The introduction of these requirements ensures that monitoring can meet the requirements of the domestic law of the requested state and thus guarantees that fundamental rights will be respected.

In addition, the option of transmitting requests for mutual legal assistance electronically could become a matter of great practical significance in the future if the states can agree on transmission channels that guarantee sufficient security and authentication.

Following the adoption of the Third Additional Protocol by the PC-OC, the Committee of Experts on Criminal Law Matters (CDPC) also adopted the Third Additional Protocol in November 2024, but the Council of Ministers have yet to approve it. Adoption by the competent body of the Council of Europe will have no direct influence on the potential signature and ratification of the Third Additional Protocol by Switzerland. Ratification takes place in accordance with the national procedure provided for this purpose, with the involvement of Parliament in particular.

Developments at a global level: the United Nations Convention against Cybercrime

In August 2024, the responsible Ad Hoc Committee (AHC) of the United Nations adopted the United Nations Convention against Cybercrime after a process lasting several years. The DILA was represented in the Swiss delegation throughout the negotiations on the parts relevant to mutual legal assistance. The UN General Assembly adopted the Convention on 24 December 2024.

The Convention is based on intergovernmental mutual legal assistance, allowing cooperation within a broad framework and, like the Council of Europe's Budapest Convention, going beyond the conventional bounds of cybercrime. It introduces grounds for refusal of mutual legal assistance that are based on the Convention against Transnational Organised Crime (UNTOC) and the Convention against Corruption (UNCAC). In addition, the Convention contains a 'new' ground for refusal, which permits the refusal of a request for mutual legal assistance made on the basis of the Convention if the request is made for the purpose of prosecuting or punishing a person on account of that person's sex, race, language, religion, nationality, ethnic origin or political opinions, or if its execution could lead to the situation of the person concerned being adversely affected in relation to any of these grounds. The DILA takes the view that sufficient opportunities to reject requests for mutual legal assistance analogous to the standards laid down in the IMAC remain.

The adoption by the UN General Assembly has no direct effect on any signature and ratification by the individual states. The competent Swiss bodies will consider the steps to take in accordance with the procedure provided for in Switzerland and decide on them in due course.

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 > 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 procedures for international mutual legal assistance in criminal matters.
- Cooperation with the International Criminal Court and other international criminal tribunals.
- Information regarding the state treaty framework.
- Links to the Mutual Legal Assistance Guide and 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 > Staufrecht 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 > 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)

- 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 and transfer

- Decision of the Federal Criminal Court, Lower Appeals Chamber, RR.2023.187 of 27 February 2024: Extradition to Romania, rights of defence in proceedings in absentia, detention conditions in Romania.
- Judgment of the Federal Supreme Court 1C_398/2024 of 15 August 2024: Extradition to the USA, extradition where Swiss criminal jurisdiction applies, protection of family life.
- Judgment of the Federal Supreme Court 1C_368/2024 of 17 September 2024: Forced transfer to Kosovo, detention conditions in Kosovo, question of requesting guarantees in transfer proceedings.
- Decision of the Federal Criminal Court, Lower Appeals Chamber, RR.2024.100 of 24 October 2024: Extradition to Belgium, detention conditions in Belgium, requesting guarantees.
- Decision of the Federal Criminal Court, Lower Appeals Chamber, RR.2024.93 of 13 November 2024: Extradition to France, health problems as an obstacle to extradition, requesting guarantees.
- Decision of the Federal Criminal Court, Lower Appeals Chamber, RR.2024.105 of 21 November 2024: Extradition to Italy, translation of the extradition request, request for recusal.

6.2 Accessory mutual legal assistance

- Decision of the Federal Criminal Court, Lower Appeals Chamber, RR.2022.54 of 29 January 2024: Legal assistance to Kuwait; capacity to be a party and right of appeal of the community of heirs; right to file objections under Art. 2 IMAC; providing guarantees under Art. 80p IMAC; renunciation to request a declaration of reciprocity under Art. 8 IMAC, in particular when applying the UNCAC.
- Decision of the Federal Criminal Court, Lower Appeals Chamber, RR.2023.93, RR.2023.117 of 30 January 2024: Legal assistance to Ukraine; Art. 2 IMAC cannot be invoked by legal entities domiciled in Switzerland that are not defendants in the foreign criminal proceedings; the current situation in Ukraine does not preclude mutual legal assistance, even though martial law has been declared there; confirmed by the judgment of the Federal Supreme Court 1C_101/2024 of 15 February 2024 (with considerations on reciprocity under Art. 8 IMAC).
- Judgment of the Federal Supreme Court 1C_540/2023 of 2 February 2024: Legal assistance to Brazil; right to file objections under Art. 2 IMAC in the event of the handover of assets under Art. 74a IMAC; proportionality of the seizure of assets for 22 years affirmed on the basis of the specific circumstances of the case.

- Decision of the Federal Criminal Court, Lower Appeals Chamber, RR.2023.8 of 7 March 2024: No new sealing right after consulting files from previous criminal and mutual legal assistance proceedings; no violation of the principle of good faith in the case of a request for mutual legal assistance based on stolen data; confirmed by the judgment of the Federal Supreme Court 1C_184/2024 of 5 April 2024.
- Judgment of the Federal Supreme Court 1C_543/2023 of 7 March 2024: Legal assistance to Russia; right to file objections under Art. 2 IMAC in the event of a seizure of assets; no violation of the guarantee of ownership; the lower court's decision is contrary to Art. 2 IMAC and the guarantee of ownership; the FOJ's appeal was upheld.
- Decision of the Federal Criminal Court, Lower Appeals Chamber, RR.2023.169 of 18 June 2024: Handover of valuables under Art. 74a IMAC; no bona fide acquisition of rights by a person not involved in the offence.
- Decision of the Federal Criminal Court, Lower Appeals Chamber, RR.2022.163 of 25 June 2024: Notice of the final ruling (Art. 80m IMAC) and notification of the client by the holder of the documents (Art. 80n IMAC); start of the period for filing an appeal.
- Judgment of the Federal Supreme Court 1C_345/2024 of 3 July 2024: Unsolicited transmission of evidence and information; admissible transmission of information that is subject to the rules on secrecy; difference between information and evidence; restrictions on use.
- Judgment of the Federal Supreme Court 1C_348/2024 of 26 August 2024: Legal assistance to Russia; duration of the seizure of assets; the question of whether the duration of the preceding seizure in the national criminal proceedings should be taken into account when examining the proportionality of the duration of the seizure by way of legal assistance is left open; confirmation of the proportionality of the seizure of the assets despite the suspension of mutual legal assistance with Russia for two years.
- Decision of the Federal Criminal Court, Lower Appeals Chamber, RR.2024.2 of 19 September 2024: Question of capacity as a party of the beneficial owner of a defunct company (account holder); a notarised confirmation that the company was liquidated and that the person was the beneficiary of this liquidation is sufficient evidence; appeal upheld.

7 Important statistical information about international mutual legal assistance 2020–2024

Group	Type	2020	2021	2022	2023	2024
Extradition requests to foreign countries		204	179	174	216	231
Extradition requests to Switzerland		285	312	314	430	514
Provisional arrest requests to foreign countries		207	178	219	206	248
Provisional arrest requests to Switzerland		31 535	28 046	28 425	29 827	33 962¹
Transfer of proceedings requests to foreign countries		227	232	256	353	356
Transfer of proceedings requests to Switzerland		132	154	181	191	251
Sentence execution requests to foreign countries	Custodial sentences	7	9	4	9	9
Sentence execution requests to Switzerland	Custodial sentences	8	6	7	8	9
	Fines and monetary penalties	4	4	10	10	12
Prisoner transfer to foreign countries	at the request of the sentenced person	36	60	46	44	43
	under the Additional Protocol	1	1		4	4
Prisoner transfer to Switzerland	at the request of the sentenced person	15	12	12	12	12
Provisional arrest requests for international tribunals					3	2
Legal assistance requests to Switzerland	Obtaining evidence in criminal matters	1279	1375	1201	1350	1324
	Obtaining evidence in criminal matters: supervision	1205	1266	1394	1430	1602
	Obtaining evidence in criminal matters: own case	67	100	50	67	64
	Asset recovery	30	36	17	20	10
	Asset recovery: own case	6	2	3	5	3
	Obtaining evidence in civil matters ²	48	64	51	48	48
Legal assistance with international courts and tribunals	International Criminal Court	7	3	6	3	
	Ad hoc Tribunals ³	4		4	2	
	Fact-finding missions and mechanisms					

Group	Type	2020	2021	2022	2023	2024
Legal assistance requests to foreign countries	Obtaining evidence in criminal matters	845	995	948	1069	1187
	Obtaining evidence in criminal matters: direct transmission ⁴			3249	3742	4037
	Asset recovery	12	6	12	11	1
	Obtaining evidence in civil matters ²	18	19	33	23	31
Secondary legal assistance	for use in criminal proceedings	13	15	13	13	9
	Transmission to third country	4	6	4	7	9
Spontaneous transmission of information and evidence	to foreign countries (Art. 67a IMAC)	168	116	128	117	154
	to Switzerland	3	6	21	9	9
Document service requests to Switzerland	under criminal law	161	225	177	205	224
	under civil law ²	324	381	323	315	479
	under administrative law	188	208	233	190	181
	under administrative law (Convention No 94) ⁵	34	51	46	33	36
Document service requests to foreign countries	under criminal law	616	342	501	781	788
	under civil law ²	689	701	598	622	680
	under administrative law	427	411	321	311	321
	under administrative law (Convention No 94) ⁵	33	28	5	18	17
Sharing of forfeited assets (Sharing)	International Sharing (Swiss forfeiture decision)	12	15	15	11	10
	International Sharing (foreign forfeiture decision)	9	11	10	13	6
	National Sharing	55	50	39	62	33
Swiss Liaison Office at Eurojust ⁶	Requests Eurojust-CH	143	154	176	160	137
	Requests CH-Eurojust	173	100	65	98	81
Instruction to the Federal Department of Justice and Police FDJP	Authorisations under Art. 271 Criminal Code			1	1	

Judicial decisions

Court	2020	2021	2022	2023	2024
Federal Criminal Court	278	200	181	205	134
Federal Supreme Court	83	60	44	49	47
Total	361	260	225	254	181

¹ Of which alerts in the Schengen Information System (SIS; number from fedpol): 18400, INTERPOL 15548 ('Red Corners'; number from INTERPOL) and 14 requests sent directly to the FOJ. This does not include 10773 '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.

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

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

⁴ All cantons and federal authorities Office of the Attorney General of Switzerland, Federal Tax Administration, Federal Department of Finance and Swissmedic.

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

⁶ Eurojust including third countries and existing cases extended to Switzerland.

