



Service of judicial documents in criminal matters

Channels of transmission

The *direct service* of judicial documents from abroad is an official act which is permitted only insofar as it is provided for in state treaties or declared permissible by the Federal Council. Under the terms of the Ordinance on International Mutual Assistance in Criminal Matters, with the exception of summonses all documentation may be served directly by post to persons in Switzerland who are not themselves being prosecuted abroad. Documents relating to minor traffic offences may also be served directly by post to recipients in Switzerland.

Where judicial documents are to be *served through official mutual legal assistance channels*, the applicable treaty basis governs whether they are exchanged directly between the authorities in charge, or indirectly via the two countries' ministries of justice. In the absence of any treaty basis, judicial documents must generally be transmitted via diplomatic channels.

Summonses

The summonsing of persons to appear as defendants or witnesses in foreign criminal proceedings is a special type of service. Switzerland requires that summonses for defendants reach the competent Swiss authority at least thirty days before the date set for the defendant's appearance. Persons who have been summoned may not suffer legal or material prejudice in either the requesting or the requested state if they do not comply with the summons. Consequently, anyone accepting a summons is under no obligation to appear before the foreign authority. Summonses containing threats of compulsion will not be served.

Procedure for requests for service

The Federal Office of Justice (Mutual Assistance Unit II) receives the foreign request for service and conducts a summary examination to establish whether or not it meets the formal requirements. The service of documentation or summonses does not constitute a coercive measure. Unlike requests for mutual legal assistance which must be executed by compulsory means, such as the collection and handover of banking documents, a request for service does not have to be checked to ensure that it fulfils the dual criminality condition.

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If the request for service does not immediately appear inadmissible, the FOJ will forward it to the executing cantonal authorities. This authority will then deliver the documents to the recipient either in person or by post. Service is deemed effected if acceptance of the documents or refusal to accept has been confirmed in writing. Pursuant to the decisions of the Federal Supreme Court, neither the instruction to serve documentation to the recipient nor service itself constitutes an official ruling. As a result, the recipient has no means of legal recourse.