

# Annual Activity Report 2022

## Mutual Legal Assistance



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Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

Swiss Confederation

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# Editorial



*Good cooperation requires solid foundations. To this end, legal principles are created and cooperation agreements and conventions are negotiated and concluded. There is no difference when it comes to international mutual legal assistance in criminal matters. In Switzerland, the Federal Office of Justice (FOJ) is responsible for negotiating mutual legal assistance agreements. This brings legal*

*certainty, predictability and transparency, which is in the interest not only of the contracting parties but also of those subject to the law.*

*In the international community of nations, which comprises the widest variety of cultures, values and legal traditions, comprehensive multilateral criminal law conventions (such as UNTOC or UNCAC) are created with this in mind. Transglobal organisations like the UN, regional institutions and other bodies devoted to specific priorities pursue the goal of defining certain standards that can be generally applied to cooperation. The FOJ makes a contribution to this within the scope of its own responsibilities.*

*The principles that are laid down, however good they may be, cannot properly fulfil their purpose if they are not applied in practice and if the agreed standards are not maintained. They lose their value. It is in the interests of the international community to ensure that this does not happen. The successful cooperation that allows the overarching goals to be achieved, such as combating serious crime more effectively, is primarily based on trust: trust that contracting partners will do what has been agreed and honour the commitments that they have made.*

*Recognising this, various organisations have put mechanisms in place to verify whether their member states are complying with their treaty obligations and implementing recommendations. Often contracting states evaluate each other in peer reviews based on precisely specified and sometimes very complex procedures. Individual states are called upon to provide experts for this purpose; Switzerland is also required to do this on a regular basis. The DILA makes its contribution when needed: the Swiss expert on mutual legal assistance who was seconded to an evaluation of this kind under the auspices of the Financial Action Task Force that was concluded last year reports and takes stock of his experiences.*

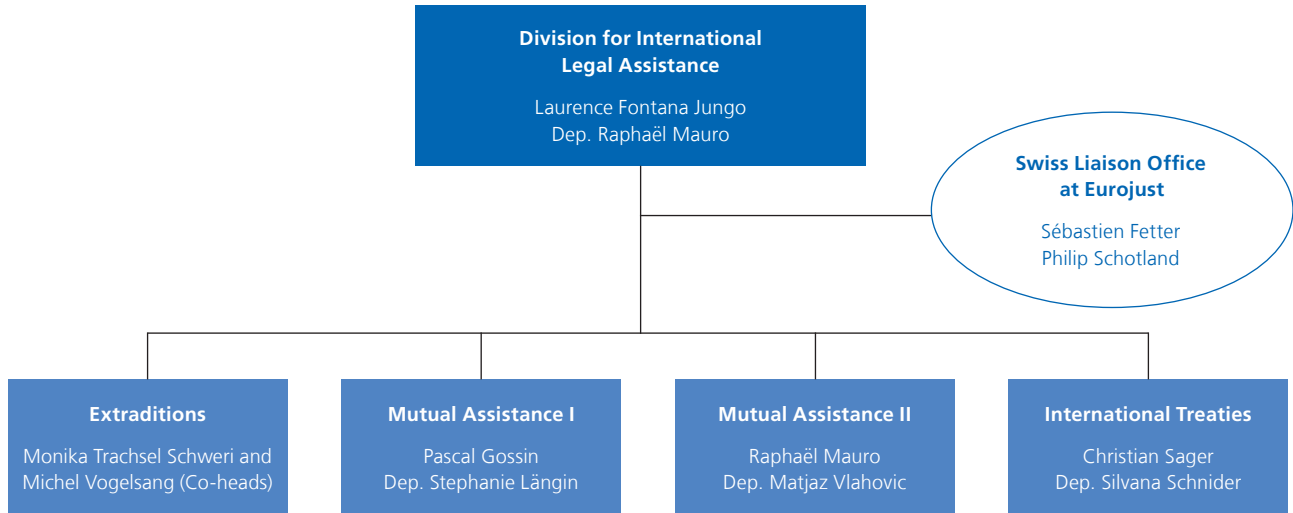
*The DILA's operational activities were once again marked by a challenging environment in which progress was made in various major cases, and numerous other cases, both substantial and minor, were brought to a successful conclusion. As in previous years, this Annual Report presents a small selection of these cases.*

*I wish you an interesting and illuminating read!*

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

# 1 The Division for International Legal Assistance

## Organisational Chart



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

Photograph: Erwin Jenni (eje@bluewin.ch)

## 1.1 The Division

- Swiss central authority for international mutual legal assistance in criminal matters
- four Units and Switzerland's Liaison Office at Eurojust
- 49 permanent staff, made up of 30 women and 19 men from all parts of the country, making 41.9 full-time equivalents (May 2023)

### 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 legal 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, transfers 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 heads of the Extraditions Unit**

In September 2022, Erwin Jenni retired after heading the Extraditions Unit for around 30 years. Monika Trachsel Schweri and Michel Vogelsang took over in October 2022 as co-heads of the Unit. Both have already worked for many years in the Extraditions Unit and have a wealth of experience in this field. Monika Trachsel Schweri has in particular specialised in the transfer of sentenced persons. Michel Vogelsang has been the deputy head of the Unit since 2003.

### **New deputy head of the Mutual Assistance I Unit**

Since April 2023, Stephanie Längin, whose duties include responsibility for the national and international sharing of forfeited assets, has been the new deputy head of the Mutual Assistance I Unit. She has taken over from Julia Volken, who has moved to a new position within the FOJ.

### **New Deputy Liaison Prosecutor at the Swiss Liaison Office at Eurojust**

In July 2022, Philip Schotland was appointed the new Deputy Liaison Prosecutor, taking over from Silvia Hänzi, who was leaving The Hague after three years to take up her former position as a public prosecutor with the canton of Bern. Philip Schotland previously worked as a public prosecutor in the general division of the public prosecutor's office in the canton of Basel-Stadt.



## 2 Topics

### 2.1 Review of multilateral obligations in relation to mutual legal assistance

For the states involved, negotiating, signing and ratifying international treaties or drawing up codes of conduct as members of certain international organisations does not mark an end to the work. Various international instruments provide for the review of compliance with obligations or the implementation of recommendations. Regular evaluations aim to ensure that treaties do not just remain empty words and that states uphold the values of the organisations of which they are members.

Switzerland is also the subject of regular reviews to check that it is complying with its obligations. This occurs for example in terms of the Group of States against Corruption (GRECO), a Council of Europe organisation, whose tasks include monitoring compliance with the Council of Europe's anti-corruption standards, or the OECD's review mechanism for the Convention against the bribery of foreign public officials, which regularly evaluates implementation by the states parties.

There is also a review mechanism for the UN Convention against Corruption (UNCAC, SR 0.311.56). The best-known example, however, is the review by the Financial Action Task Force (FATF), which regularly verifies the implementation of its recommendations by member states. These two review mechanisms, which also cover mutual legal assistance, are explained in more detail in the following remarks. In the case of the FATF, the Swiss expert from the DILA who was called in to evaluate France in relation to mutual legal assistance also reports on his experiences and takes stock of the situation.

#### The UNCAC review mechanism

The UNCAC review mechanism was established in 2009 in order to assess the implementation of treaty obligations by individual member states. The review is carried out by means of a peer review mechanism: the contracting states review each other. In each case, two contracting states are selected at random to jointly evaluate another contracting state. In order to support and improve the country reviews, an Implementation Review Group has been established that is intended to assist the contracting states as a forum for exchanging experiences and for evaluating the country reports.

The assessment is primarily based on questionnaires that are completed by the states themselves. In a direct dialogue with the reviewing states, the responses in these questionnaires can be expanded, made more precise and corrected. The results are compiled as country reports that include recommendations to the states concerned. The states under review are required as a minimum to publish a summary of the final country report. In line with its commitment to transparency, Switzerland voluntarily publishes all the relevant documents. As soon as they are available, the related questionnaires for self-assessment, the country

reports as well as the executive summaries are published on [Switzerland's UNCAC country profile page](#)<sup>1</sup>.

The review mechanism under the UNCAC comprises two five-year cycles, in each of which two thematic chapters of the Convention are reviewed. In the first cycle from 2012, Switzerland was reviewed by Finland and Algeria with regard to compliance with Chapter III (Criminalization and law enforcement) and IV (International cooperation). A recommendation relating to Chapter III was to reconsider the necessity of a criminal complaint in connection with the offence of bribery of private individuals. In its dispatch on the amendment of the criminal provisions on corruption, the Federal Council referred to this country report and proposed removing the requirement of a complaint, which was then done.

At present Switzerland is in the second review cycle. This has since June 2020 involved an evaluation of whether Switzerland is implementing Chapter II (Preventive measures) and V (Asset recovery) properly and fully. Switzerland submitted its self-assessment questionnaire in September 2020 and was then reviewed by Bangladesh and Sweden. After delays because of the COVID-19 pandemic, which affected the entire second cycle, and following a phase of dialogue, the experts from Bangladesh and Sweden were able to pay a country visit to Switzerland from 18 to 20 October 2022. The next step will be the draft review report in the first half of 2023, which will define a series of good practices and make specific recommendations for action, on which Switzerland will comment comprehensively.

The review mechanism does not so far require states to issue a response to the recommendations made to them or to comment on or justify how they are implementing the recommendations concerning them. However, various states, including Switzerland, are currently calling for a third cycle in which the implementation of the recommendations is reviewed.

#### The review mechanism of the Financial Action Task Force (FATF)

Just as Switzerland is reviewed on a regular basis by other states with regard to its compliance with the obligations to which it is subject in terms of international treaties or – as in the case of the FATF – its implementation of recommendations as part of its membership of this organisation, it also participates in the evaluation of other states. In this connection, it is also requested to provide experts to conduct related reviews.



The Financial Action Task Force (FATF) is an international body set up in 1989, whose aim is to set international standards and to develop and promote national and international strategies for combating money laundering, terrorist financing and funding for the proliferation of weapons of mass destruction. The [FATF recommendations](#)<sup>2</sup> are recognised as international standards in the fight against money laundering and terrorist financing.

#### *The FATF Peer Reviews in theory*

The process of peer reviews, i.e. of mutual evaluation of and by member states, is a fundamental part of the FATF's work, as it thereby monitors the implementation of the recommendations in its member states and assesses the general effectiveness of its systems for combating money laundering and the financing of terrorism (AML/CFT). For this purpose, a special [evaluation methodology](#)<sup>3</sup> has been developed.

The member states of the FATF must provide a certain number of assessors for each review cycle. The fourth review cycle is currently underway; Switzerland was evaluated in 2016.

In terms of its fourth peer review cycle, the FATF is, based on specific criteria, evaluating technical conformity with its recommendations and the effectiveness of the national AML/CFT systems. The evaluation is accordingly being carried out in two phases.

In the *technical compliance assessment*, the specific requirements of the FATF recommendations are considered, mainly in relation to the legal and institutional framework of the country concerned and the powers and procedures of the responsible authorities. These elements form the basis for an AML/CFT system. In this written procedure, the assessors verify whether the legislation of the country under review meets the requirements of the 40 FATF recommendations and their interpretive notes and whether the related laws, regulations and other measures are being applied. The review is carried out on the basis of the answers that the country being evaluated has given to a standardised questionnaire.

The *effectiveness assessment* is fundamentally different from the technical compliance assessment. It aims to evaluate the standard of implementation of the FATF recommendations and establish the extent to which a country achieves a predefined series of results that are essential to the effectiveness of an AML/CFT system. The effectiveness assessment measures how far the legal and institutional framework achieves the desired results. It is conducted on the basis of the answers given by the country evaluated to a second questionnaire. This is subdivided into defined targets ('immediate outcomes'; IOs) in various subject areas (IO 2 for example relates to international cooperation, IO 8 to confiscation or forfeiture), which are in turn subdivided into several 'core issues'. In this way the results achieved in using the legislation to combat money laundering and terrorist financing are assessed.

### **Review of France in practice – the Swiss expert for mutual legal assistance reports on his experiences as an assessor in the 4th cycle Peer Review of France**

The review of France was carried out between December 2019 and April 2022 (one year was lost to the pandemic). The assessment team comprised eight assessors from various countries and three members of the FATF Secretariat. The review was preceded by a week of training in the centre run by the Guardia di Finanza in Ostia, Italy.

The review was structured in two parts, the technical compliance assessment and the effectiveness assessment, according to the aspects described above.

France's answers to the questionnaires were analysed and then discussed with the authorities and sectors concerned (including justice and police, banks and casinos, lawyers and notaries, real estate and luxury goods) during a visit to the French Finance Ministry in Paris Bercy that lasted from the end of June until mid-August 2021. During this very intense period, the assessors conducted more than 140 interviews.

The results of these interviews and the answers given formed the basis for a draft report. This was sent to France, which was then able to respond with its comments. The remaining differences of opinion were then discussed in a face-to-face meeting between the assessors and France from 7 to 10 December 2021 at the OECD headquarters in Paris.

The FATF plenary meeting resolved the final differences (on ratings) in March 2022 and thereafter approved the report. Its [final version](#)<sup>4</sup> (in English and French) was published on 17 May 2022.

#### **Appraisal**

Working as an FATF assessor is a very rewarding experience, as it gave me a comprehensive view of the efforts made by a country to combat money laundering and terrorist financing. It also gives the country being assessed the opportunity to tell the assessors what risks from money laundering and terrorist financing it is exposed to and how it manages these risks.

The work in the team (assessors and FATF Secretariat) allowed me to compare my own ideas with those of my colleagues and to feel that I had their support in my contacts with the various representatives of the country being assessed.

The task of an assessor is, however, also very demanding and requires you to expend a considerable amount of time and energy, in particular if you are doing it on top of a full-time job. Having said that, accepting the challenge is well worth it.

## Conclusion

Even though the recommendations that result from the review mechanisms are not actual obligations, Switzerland has an interest in implementing them. This is because failing to do so carries a potential reputational risk and also because it would otherwise lose credibility. For if Switzerland does not implement the basic recommendations that it receives, it can hardly insist that other states properly implement the obligations incumbent on them. International standards are only effective if countries comply with them.

## 2.2 Bilateral consultations with foreign authorities

Consultations with other states offer the opportunity to take stock of international relations. Depending on the needs arising from the intensity and quality of the existing relationships, the DILA also meets with foreign partner authorities within the framework of bilateral consultations, sometimes at regular intervals, sometimes only sporadically and selectively. These consultations are a way of assessing cooperation and, if need be, to consolidate, expand or improve it in practice. They help to improve knowledge of and mutual understanding for the legal systems concerned and can be used to discuss matters related to cooperation. Such meetings allow representatives of the authorities involved to forge or deepen personal relationships. This again helps to create a situation of mutual trust, which is essential for effective cooperation and for tackling and solving any problems that arise.

Even if these meetings may take different forms depending on the circumstances of the case or the specific event, they all have one thing in common: in this setting no internal documents obtained by way of mutual legal assistance or other evidence relating to specific cases are shared with the other country. This is reserved exclusively for formal mutual legal assistance proceedings.

After no face-to-face consultations were possible for two years because of the COVID-19 pandemic, a number of personal meetings were again held in the report year, such as that in April 2022 with representatives of the Office of International Affairs (OIA) of the US Department of Justice in relation to accessory mutual legal assistance.

The central authorities in Switzerland and the USA, i.e. the Federal Office of Justice and the US Department of Justice, as designated in the bilateral treaty on mutual assistance in criminal matters between the two states (SR 0.351.933.6), normally meet about every three years. They discuss the interpretation, application and implementation of the treaty and exchange information on legal developments. Issues that have arisen can also be discussed, and personal relationships can of course also be developed. As already mentioned, when these opportunities arise, there is no sharing of evidence nor are internal documents that are part of Swiss mutual legal assistance proceedings disclosed to the US authorities. The meetings, known in the jargon as 'consultations', are expressly provided for in Article 39 of the treaty, which covers the exchange of views between the central authorities in the two countries.

Following several postponements related to the COVID-19 pandemic, DILA representatives met with a delegation from the OIA in the course of the report year, the previous consultations having taken place back in 2017. Discussions were open and cordial as usual, with representatives on both sides not hesitating to point out possible stumbling blocks that stand in the way of their prosecution authorities and the smooth conduct of mutual legal assistance in general.

The USA is a very important partner for Switzerland on mutual legal assistance in criminal matters, whether this involves executing Swiss requests for mutual legal assistance in the USA or American requests in Switzerland. This fact demonstrates how important it is to cultivate relations between the members of the two central authorities. They can prove invaluable in certain circumstances. The meetings between the central authorities expressly mentioned in the treaty with the USA, the oldest agreement on mutual legal assistance that Switzerland has with another country, are a clear expression of this.

### 2.3 Mutual legal assistance with Russia

The question of whether mutual legal assistance with Russia could continue in view of its attack on Ukraine on 24 February 2022 was a serious concern for the DILA in the report year. The date marked a profound turning point in bilateral relations, which also affected international mutual legal assistance in criminal matters.

The Committee of Ministers of the Council of Europe suspended Russia as a member of the Council of Europe on 25 February 2022, and excluded Russia from the organisation with immediate effect on 16 March 2022 (CM/Res(2022)2). On 22 March 2022, the European Court of Human Rights decided that on expiry of a six-month-period of notice, Russia would from 16 September 2022 no longer be a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (see also the Resolution of the Committee of Ministers CM/Res(2022)3 of 23 March 2022). The Russian government had already announced on 15 March 2022 to the General Secretariat of the Council of Europe that it intended to withdraw from the Council of Europe and from the ECHR.

The situation has consequences for international mutual legal assistance in criminal matters, just as it does in countless other areas. CM/Res(2022)3 states that Russia, despite its exclusion from the Council of Europe, remains a contracting party to the Council of Europe conventions that it has ratified, which non-member states of the Council of Europe can also accede to (they are known as 'open' instruments). The European Convention on Mutual Assistance in Criminal Matters (SR 0.351.1), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (SR 0.311.53) and the European Convention on Extradition (SR 0.353.1), the most important international treaties for Switzerland with regard to judicial cooperation in criminal matters with Russia, are this type of instrument. In theory, they continue to apply in dealings with Russia. However, according to the resolution mentioned, the exact modalities for Russia's continued participation in each of these instruments have still to be agreed.

In March 2022, the FOJ informed the federal and cantonal authorities responsible for prosecutions and executing mutual legal assistance requests that it had decided to suspend cooperation with Russia on mutual legal assistance and extradition matters until the position under international law is settled. This suspension took place primarily because mutual legal assistance in criminal matters is based to a decisive extent on respect for the rule of law and human rights, as the ECHR in particular stipulates.

In May 2022, the Federal Criminal Court spoke out on the issue of further mutual legal assistance with Russia in various appeal cases related to the disclosure of evidence. In three decisions, it basically held that the requirements for international mutual legal assistance under the legislation and case law could no longer be met, with the result that – even if diplomatic guarantees were given – Russia cannot be trusted to comply with international law, in particular in relation to human rights. As a consequence, Russia has to be refused mutual legal assistance (decisions of the Federal Criminal Court RR.2021.84 and RR.2021.91, both of

13 May 2022, and RR.2021.239+RR.2021.246 of 17 May 2022). The decisions have become legally binding.

In August 2022, the Federal Criminal Court allowed a further appeal. It related in particular to the question of whether an order to freeze assets issued before 24 February 2022 by way of mutual legal assistance should be revoked. The Federal Criminal Court answered this question in the affirmative, revoked the (partial) final ruling of the cantonal prosecutor's office concerned and ordered the accounts to be unfrozen (decision of the Federal Criminal Court RR.2021.76 of 30 August 2022). The DILA appealed against this decision to the Federal Supreme Court. It did so because it took the view, firstly, that there was a fundamental question here that had to be answered by the Supreme Court: whether mutual legal assistance proceedings in which a Russian request for the freezing of accounts had been granted before 24 February 2022 were only suspended, with the result that the accounts should remain frozen, or whether mutual legal assistance should be refused and the accounts should therefore be unfrozen. And secondly because the decision would also have repercussions for a significant number of mutual legal assistance proceedings in which assets had been frozen at Russia's request before its invasion of Ukraine.

In January 2023, the Federal Supreme Court allowed the appeal. It referred the matter back to the Federal Criminal Court so that it would suspend the proceedings; the account was to remain frozen. The Federal Supreme Court justified this in essence with the argument that if the order freezing the assets were to be lifted, the assets might no longer be available if a subsequent request was made following normalisation of relations. It also noted that the freezing order had not been in place for an especially long time. In addition, it was still possible that the seizure of the same assets might be ordered by the competent Swiss authorities in the course of Swiss criminal proceedings (Judgment of the Federal Supreme Court 1C\_477/2022 of 30 January 2023).

## 3 Selected cases

### 1MALAYSIA DEVELOPMENT BERHAD (1MDB): Specific aspects of mutual legal assistance

The main features of this case, which involves the misappropriation of funds from the 1MDB Malaysian Sovereign Wealth Management Fund and which has received a great deal of media attention, were already outlined in the DILA's 2021 Annual Report. Senior managers of the fund, assisted by Malaysian and foreign accomplices, had embezzled billions of dollars from the fund. Two specific aspects of this case are highlighted below: expert opinions in connection with paintings seized through mutual legal assistance and secondary mutual legal assistance:

#### *An unusual mutual legal assistance measure: the appraisal of paintings under the DILA's supervision*

The 1MDB case saw an interesting development: two works of art were discovered in Switzerland that had been purchased for several million dollars and had allegedly been acquired in order to launder assets embezzled from the 1MDB Fund.

The two paintings, one by Claude Monet and the other by Andy Warhol, were seized by the DILA in 2021 in response to a request from the USA, to be, potentially, confiscated and forfeited.

In order to execute the request for mutual legal assistance, an appraisal of the works of art on Swiss soil was arranged in order to establish their condition and whether they were genuine. The expert opinion would determine what the DILA would do next in the mutual legal assistance proceedings being conducted in Switzerland.

In presence of an officer from the DILA, a Swiss art expert designated by the US authorities examined the paintings in June 2022 at the Geneva Freeport.

After the expert submitted his report and photographs of the paintings to the DILA, these documents were forwarded with consent of the owner of the works of art by means of mutual



*In the course of the investigations in the 1MDB case, two paintings stored in the duty-free warehouse in Geneva were seized at the request of the US Justice Department. Photograph: KEYSTONE/Martial Trezzini*

legal assistance to the US Department of Justice, so they could be used as evidence by the US authorities in their investigations.

To this day, the paintings remain seized by the DILA, pending their potential confiscation and/or forfeiture.

#### *Secondary mutual legal assistance with Malaysia*

As part of the efforts to return the misappropriated 1MDB funds to the Malaysian people, the Malaysian authorities filed a request for 'extending speciality' with the DILA at the start of 2022. They asked for permission to submit a large number of documents to the High Court in London in civil proceedings; the documents had previously been transmitted by the Office of the Attorney General of Switzerland to Malaysia in execution of various requests for mutual legal assistance.

The DILA may permit this under the Mutual Assistance Act and according to the case-law subject to certain requirements. To this end, it looks into the subject matter of the civil proceedings, in particular who the parties to the proceedings are and what the connection is between the case in London and the criminal proceedings in Malaysia that underlie the mutual legal assistance that has been given by Switzerland. In order for the DILA to reach a decision, it must also be given a detailed list with all the documents that Switzerland transmitted by way of mutual legal assistance that are affected by the request for extending speciality. The DILA must also assure itself that these documents will be used exclusively for the purposes of the civil proceedings in London. Malaysia has already provided the relevant guarantees in its request.

In February 2023, the DILA issued its decisions. After they have become final, the documents can be used in the civil proceedings in London.

#### **'The Camille affair'**

On 22 February 2022, a French citizen who had been stopped at a routine check by traffic police in the canton of Vaud was placed in detention pending extradition on the instructions of the DILA. She had been on the French authorities wanted list since 2019, in particular because she had evaded serving two custodial sentences – one of three years for the French offences of failing to return a child to the person with lawful custody and then abducting the child and one of two years for the French offence of false accusation. It further emerged that the woman had been living illegally in Switzerland for more than ten years with her daughter, who was still a minor and who was placed in the care of the child protection authority in the canton of Vaud following her mother's arrest. The matter became known in the media as 'the Camille affair'.

At the start of March 2022, the office responsible for international mutual legal assistance in criminal matters at the French Ministry of Justice (Bureau de l'Entraide Pénale Internationale, BEPI) submitted a formal extradition request for the wanted

woman to the DILA. It filed the request by email in accordance with Article 6 paragraph 1 of the Fourth Additional Protocol to the European Convention on Extradition (SR 0.353.14). In April 2022, the request from the French authorities also arrived by post.

At the end of April 2022, after submissions from the woman's defence lawyer, who opposed extradition, had been considered, the DILA authorised her extradition to France in respect of all the offences of which she had been convicted. These were regarded as equivalent to the offences under Swiss criminal law of neglecting the duties of care, supervision or education of a minor, abduction of a minor and false accusation. The requirement of double criminality under the criminal law was therefore met and the woman was thus eligible for extradition. In addition, the timing of the electronic transmission of the extradition documents ensured that France complied with the 18-day deadline in Article 16 paragraph 4 of the European Convention on Extradition for filing its extradition request. Lastly, the physical distance between mother and daughter – who had provisionally been made a Swiss resident by the Office of the Justice of the Peace in the Canton of Vaud – was no obstacle to extradition, as they could continue to communicate by telephone or mail.

In Decision RR.2022.90+RP.2022.23 of 5 July 2022, the Federal Criminal Court rejected the appeal filed by the person concerned against the decision on extradition taken by the DILA. The Federal Supreme Court held that the appeal against this decision was inadmissible in Judgment 1C\_404/2022 of 26 July 2022.

The wanted woman was handed over to the French authorities in August 2022.

### **Extradition of one of Europe's most wanted criminals to Belgium**

In October 2022, the 'finger chopper', as F.B. is known in the media, was extradited from Switzerland to Belgium. He was one of the most wanted criminals in Europe. The Belgian authorities were seeking his arrest in order for him to serve a four-year custodial sentence (for assault and false imprisonment) and to prosecute him on charges set out in various arrest warrants. In particular, he is alleged from January 2019 to have been a member of an international drugs ring that imported vast amounts of cocaine into Europe from South America (such as 3.2 tonnes of cocaine in April 2020 and further 476 kg of cocaine in August 2020). F.B. is suspected of having ordered the narcotics from a Brazilian intermediary and thereafter of arranging its sale in Europe.

Following an intensive search, F.B. was located in an apartment in Zurich, where he was living under a false name with his wife and child. On 16 February 2022, he was arrested as part of Swiss criminal proceedings and placed in pre-trial detention. The following day, the DILA issued a (subsidiary) detention order. As the wanted man did not agree to his simplified extradition, the DILA began ordinary extradition proceedings. In March 2022, the Belgian authorities formally requested Switzerland for his extradition. After F.B. had been given the opportunity to argue his case verbally and in writing, the DILA ordered his extradition to Belgium in May 2022. In a decision dated 15 September 2022 (RR.2022.122), the Federal Criminal Court rejected F.B.'s appeal

against extradition. The proceedings involved a detailed assessment of detention conditions in Belgium in particular; they were deemed adequate. F.B. subsequently chose not to appeal to the Federal Supreme Court. In October 2022, the FOJ authorised his extradition to Belgium. He was released from pre-trial detention in Switzerland and handed over to the Belgian authorities at Zurich Airport on 14 October 2022. Because of the potential risk that he posed, he was flown to Belgium in a Belgian military aircraft.

### **Grandchild or nephew scams/Police scams**

Cantonal prosecution services regularly request the DILA to instigate an international search for grandchild/nephew or police scam fraudsters who have been identified but are no longer in Switzerland. Victims of these kinds of scams are usually elderly people. Other European states who are involved with the Schengen Information System (SIS) regularly issue international alerts to try to locate the suspected perpetrators of these types of fraud. The offences appear to be widespread at both national and international levels. The cantonal authorities regularly publicise these crimes in order to raise public awareness and alert potential victims.

The DILA not only supports the cantonal authorities by initiating international searches, but also works with other countries when a suspected offender is found in Switzerland and extradition proceedings can be brought. An international wanted person search does not always require an alert in the SIS. If the suspect's exact whereabouts are known, Switzerland and the country in question can cooperate directly through Interpol.



*A wide variety of scams have become prevalent in recent years, causing many people substantial financial losses.*

*Photograph: Yurchello108 via Getty Images*

In 2022, the DILA successfully provided support in a case of this kind, which began in the canton of Ticino (see below) and ended with the arrest of one of the suspected perpetrators in Germany. He was extradited to Switzerland in October 2022, where he is now awaiting the outcome of the criminal proceedings brought by the Ticino public prosecutor's office.



*Often organised in gangs, fraudsters deliberately and mercilessly exploit the fears of unsuspecting victims (re-enacted image).*

*Photograph: KEYSTONE/imageBROKER/Jan Tepass*

### **How police scams are carried out – a public prosecutor from Ticino reports:**

In this type of fraud, criminal organisations make money by tricking elderly people. It can be seen as a variation on the so-called 'grandchild' or 'nephew' scam. The perpetrators are often the same. Using their wealth of criminal experience, they have modified certain elements of this scam in order to make the con even more devious and unscrupulous.

Whereas the grandchild or nephew scams frequently involve an urgent demand for money to buy a car or a property, the perpetrators of this new 'version' pretend to be police officers and lead their victims, usually elderly people, to believe that a close relative's life is in danger or that a relative is facing a prison sentence for committing a serious crime. This news causes the victim such an immediate shock that they become almost defenceless. The perpetrators select their victims by carefully seeking them out on the internet. They then contact them by telephone and give them terrible news about a close relative, normally their son or daughter. The victims are kept on the telephone and told to switch off any other telephones. This stops the victim from calling anyone else to find out about their relative's true situation. The victims agree to the perpetrators' demands because they want to help the person who is allegedly in difficulties at any cost. They are no longer able to assess the situation objectively.

### **Tried and tested formula**

The calls proceed according to a tried and tested formula. First of all, the elderly person is told that their financial assistance is needed. In some cases, it is explained that a close relative is seriously ill and requires urgent treatment or an operation to stop their condition from deteriorating or prevent them from dying. In other cases, they are told that a close relative has caused a road accident in which another person has been seriously injured or even killed. To prevent their relative from going to prison, the victim is asked to provide a large sum of money as security for bail.

As the caller subtly and unscrupulously embellishes the shocking news with further worrying details, the victim is driven into a state of utter panic.

### **Systematic plan of action**

The investigations carried out by the criminal investigation police in Ticino, along with a wealth of further information that the police in other cantons and countries have compiled, suggest that the perpetrators follow a systematic plan of action.

First of all, they carefully select potential victims from online telephone directories. They concentrate on forenames that they know from their longstanding experience of this type of fraud are generally those of more elderly people. This task is carried out by the 'callers', who decide which form of the scam to use in consultation with other accomplices, known as the 'pick-up persons', whose job it is to visit the victims and collect the money.

In this process, which has been observed in countless cases, the role of the pick-up person has significantly changed. They are the most at risk of being caught by the police. In fact, thanks to cooperation from the victims and the large number of CCTV cameras, it is often possible for the police to identify the pick-up persons – sometimes even at the point when they collect the money from the victim's home.

Determined to see their plan through, the perpetrators therefore send a taxi instead of an accomplice to a place where the money is to be handed over. With cunning and persistence, the taxi driver is persuaded to collect an envelope with documents at a certain address and take it across the cantonal or national border on the same day. The taxi driver is first given only an unspecific destination (the name of a town), but once on the way is gradually given further details and ultimately the exact address. A member of the criminal gang will be waiting there for the taxi driver in order to accept the envelope.

By moving the handover of the money to another canton or country, the perpetrators aim to prevent the police from intervening. At the same time, the individual participants are assigned clearly defined tasks, so that in the event that an arrest is made, they are not in possession of any evidence that might help to identify the head of the criminal organisation.

#### **A case in Ticino**

The public prosecutor's office in the canton of Ticino recently dealt with a case in which a police scam was successfully thwarted. An elderly woman was informed by telephone that her daughter had caused a serious road accident by driving through a red light; another person had been killed. In order to secure her daughter's release, she had to deposit bail of CHF 75,000 in cash. This would also apparently ensure that the media were not informed about the accident. The news

of the fatal accident caused the woman to panic to such an extent that she went to her bank with the intention of withdrawing her life savings.

Thanks to the foresight and cooperation of the bank clerk, who alerted the police, a tail could be placed on the taxi driver. He had been instructed by the perpetrators to drive to Berlin to hand over the envelope he had been given. Cooperation with the German police ultimately resulted in the arrest and identification of the pick-up man in Berlin, who was supposed to receive the money. At the same time, quick work by the DILA led to extradition proceedings in which the suspect's detention pending extradition was requested through Interpol in Wiesbaden based on an arrest warrant from the Ticino public prosecutor's office. The pick-up man from Berlin was extradited to Switzerland on 11 October 2022.

#### **Argentinian asset manager agrees to simplified extradition to the USA**

Based on a request for an arrest from the US Department of Justice, in June 2022 the DILA ordered the detention pending extradition of an Argentinian asset manager, who was in Switzerland on business at the time. He was arrested by the Zurich Cantonal Police on leaving a bank building.

The US authorities accuse the 51-year-old of laundering bribes for his clients in a case connected with the bribery scandal involving the Venezuelan petroleum company *Petróleos de Venezuela S.A. (PDVSA)*.

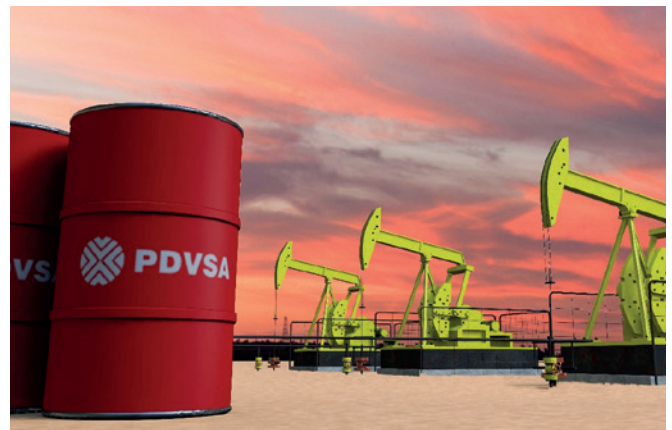
The perpetrators, some of whom have been identified, are alleged to have exploited Venezuela's currency exchange system, in which the Venezuelan government exchanges the national currency, the bolivar, into US dollars at a fixed rate. For many years, the fixed rate of exchange was considerably lower than the actual commercial rate.

In order to exploit this difference between the fixed and actual rate of exchange, various public officials and consultants at the largest Venezuelan petroleum company are alleged to have been bribed into agreeing to a loan agreement between a Venezuelan letterbox company and the PDVSA. In the agreement, the Venezuelan letterbox company ostensibly granted the PDVSA a loan of 7.2 billion bolivars, which at the time had an actual market value of around €35 million. The letterbox company then assigned its rights as the creditor under the loan agreement to a company outside Venezuela that was apparently also controlled by the suspects. As a result, the PDVSA was obliged to repay the loan to the new creditors in US dollars or euros, which on the state-run foreign exchange market meant the loan was worth around €510 million. By exploiting the system, the suspects are alleged to have made a profit of well over €400 million.

Subsequently various suspects contacted the Argentinian asset manager, his Swiss superior and a third asset manager. They are alleged to have concealed the origin of the funds obtained by bribery and distributed the money among the perpetrators. It is claimed that the asset managers received a lump sum of USD 1.5

to 2 million for setting up a financial mechanism plus a further 10% of each additional transaction. Some of the money, which was transferred in various tranches to an account held by another suspect at a bank in Florida, was apparently used to buy an apartment in Miami. After this scheme came to the attention of the US prosecution authorities, they opened criminal proceedings against the suspect and others on suspicion of money laundering.

On receiving the formal extradition request, the DILA instructed the public prosecutor's office in Zurich to interview the suspect. At his interview, he announced that he wanted to dispense with ordinary extradition proceedings and be transferred as quickly as possible to the USA. As a result, immediately after the interview the DILA was able to authorise the extradition of the Argentinian asset manager to the USA under Article 54 of the Mutual Assistance Act (IMAC, SR 351.1).



*The bribery scandal involving the Venezuelan petroleum company PDVSA has had a wide range of ramifications. In the report year, an Argentinian asset manager was extradited to the USA on suspicion of money laundering. Photograph: Wirestock via Getty Images*



### The end of a long story: extradition from Costa Rica to Switzerland

The report year saw the first extradition from Costa Rica to Switzerland, bringing an end to a long story. The 2020 Annual Report contained a report on the arrest in Costa Rica of a now 62-year-old Swiss man who is accused by the public prosecutor in the canton of Aargau of having defrauded two companies based in Switzerland of USD 12 million in 2012.

After several years of extensive efforts, the wanted man was finally tracked down in Costa Rica, where he was living under a false identity. In spring 2020, the DILA requested the Costa Rican authorities to arrest him, and following his arrest, filed a formal request for his extradition. It was the first case in which Switzerland had asked Costa Rica to extradite a wanted person. The two countries are not bound to assist each other by an extradition treaty. However, both Costa Rica and Switzerland can authorise extraditions under their respective national laws.

The authorities in the 'Switzerland of Central America' were also conducting criminal proceedings against the wanted Swiss man, on charges of illegal entry and residence under a false identity, in parallel with the extradition proceedings. The Swiss embassy in San José informed the DILA regularly on how the extradition proceedings were progressing.

In November 2022, the Justice Ministry in Costa Rica informed the DILA that the extradition had been authorised. After two years of intensive cooperation between the authorities in both countries, a process involving considerable trouble and expense for the DILA, the first extradition from Costa Rica to Switzerland finally took place in December 2022: an escort from the Aargau Cantonal Police collected the suspect in San José and took him to Switzerland, where he now faces criminal proceedings for fraud in the canton of Aargau.

### Hostage taking and robberies at watch companies in Bassecourt and Le Locle – more effective cross-border cooperation thanks to joint investigation teams

On 3 November 2021 and 6 January 2022, heavily-armed criminals from neighbouring France carried out robberies at watch companies in Bassecourt (JU) and Le Locle (NE) respectively. They threatened people, took hostages, and stole gold and other precious metals from the safes. In the incident in the canton of Jura, the perpetrators were able to escape to France with the several dozen kilos of booty, including valuable watch components, after releasing their hostages in a forest and setting fire to their vehicles. In the canton of Neuchâtel, they were forced to flee empty-handed after security officers intervened. On leaving the premises, two of the perpetrators forced a female motorist at gunpoint to give them her car. Following a car chase, the French police managed to arrest them in Pontarlier (France).

It is not easy to gather, collate and share evidence of such offences across national borders. This requires mutual legal assistance proceedings. The gravity of the offences, the danger to the persons abducted or threatened at gunpoint, and the unparalleled violence of the perpetrators compelled the prosecution authorities to make use of a special instrument in the interests of achieving efficient and dynamic cooperation: forming joint investigation teams. The Swiss public prosecutors' offices concerned and the French examining magistrates involved entered into agreements to do this, based on the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (SR 0.351.12). Support from Eurojust, the EU agency for criminal justice cooperation, and operational meetings at its headquarters in The Hague enabled the joint investigation teams to conduct targeted investigations in full knowledge of the current developments in gathering evidence on both sides of the border. As a result, the prosecution authorities in both countries were able to coordinate their investigations and ultimately establish a connection between the robberies committed in the cantons of Jura and Neuchâtel. The joint efforts over several months were a success: in a police operation in France in October 2022, several persons who had taken part in the offences in Switzerland were arrested.



*If serious offences are committed in border areas and the perpetrators then flee abroad, particularly close cooperation between the prosecution authorities is required on both sides of the border.*

*Photograph: KEYSTONE/Christian Beutler*

Joint investigation teams are a useful and important instrument for combating serious forms of cross-border crime. By deferring certain formal aspects of the mutual legal assistance proceedings, they make it possible to conduct faster and more efficient investigations. They facilitate the categorisation and exchange of vital information and evidence between investigative and judicial authorities and thereby increase the effectiveness of cross-border prosecution. In this way they help to ensure that crime cannot be committed with impunity. The support of an agency like Eurojust with these investigations makes contact between the prosecution services in the countries concerned easier. It improves understanding of the various legal and investigation systems and helps to develop a cross-border perspective and a joint strategy for national investigations. In addition to organising operational meetings, Eurojust can also provide financial support for certain operations that are carried out by the joint investigation teams.

In another high-profile case in the report year, which involved Switzerland and Hungary, Eurojust provided support in setting up a joint investigation team. The case related to human trafficking and sexual exploitation.

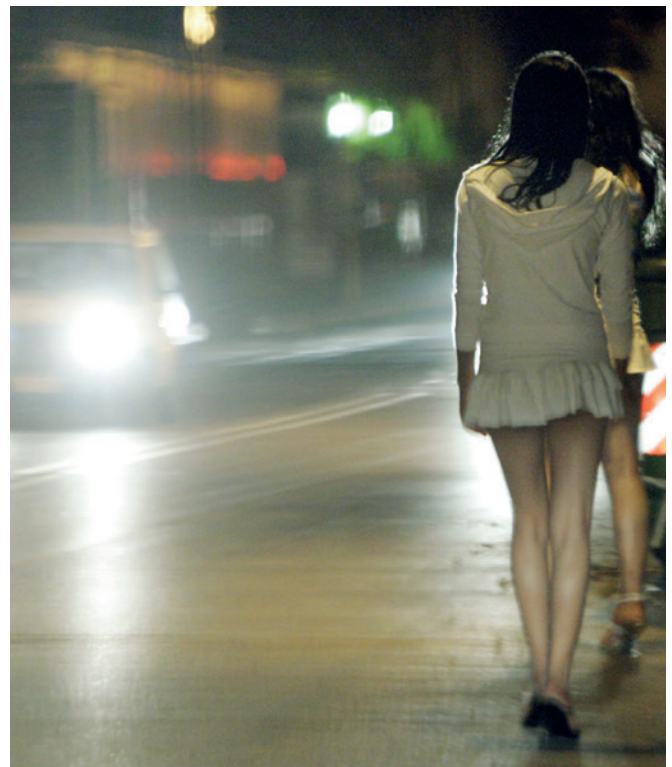
### **Smashing a Hungarian human trafficking network**

Human trafficking is the recruitment, transportation, transfer, harbouring or receipt of people through force, threats, coercion, deception or abuse of a position of vulnerability, with the aim of exploiting them for profit. Often this exploitation is sexual in its nature. For the authorities, it is regularly a major challenge to actually recognise that a person is a victim of human trafficking. This is because the persons concerned, who in most cases are dependent on the traffickers, often appear at first glance to be working in the sex trade of their own free will.

Following the first signs of an exploitative network of this kind in Zurich and subsequent months of preliminary investigations in the red-light district by the Zurich City Police, the Canton of Zurich public prosecutor contacted the Swiss Liaison Office at Eurojust at the beginning of 2022. With support from Eurojust, the aim was to compare the results from the investigations carried out by the Zurich authorities with those of the Hungarian authorities that were also investigating the same group at the time. The assumption was that the network of human traffickers that brought Hungarian women to Switzerland was operating from Hungary. At the first coordination meeting at Eurojust, instigated by Switzerland, findings were exchanged and the prosecution authorities discussed the next steps. It was decided to set up a joint investigation team.

As part of this close cooperation with the Hungarian investigation and prosecution authorities, important information was obtained that ultimately led to a joint operation in Switzerland and in Hungary in November 2022. The coordinated operation on a joint action day enabled the Hungarian and Zurich authorities to arrest four suspects and search four houses in both countries. In the process, assets worth several thousand francs and a number of properties were seized.

Thanks to the cooperation between the Hungarian and the Swiss authorities and the support from Eurojust, the network of human traffickers was broken up. The authorities in Hungary and Switzerland will continue to work closely together in their respective criminal investigations, once again with support from Eurojust.



*Often forced into prostitution: victims of human trafficking (re-enacted image). Photograph: KEYSTONE/API/Andrew Medichini*

## 4 Legal basis for cooperation

### 4.1 Expanding the network of cooperation agreements

#### Treaty on Mutual Legal Assistance in Criminal Matters with Kosovo

With Kosovo's declaration of independence on 17 February 2008 and its recognition by the Federal Council 10 days later, the international treaties that had been in force up to that time with Kosovo as a part of the Republic of Serbia ceased to apply. From that point, according to the opinions held by both Switzerland and Kosovo, mutual legal assistance procedures with Kosovo in relation to extradition, accessory mutual legal assistance in criminal matters and prosecution and sentence enforcement on behalf of another state became based on their respective national laws.

In 2018, Kosovo asked Switzerland to begin negotiations on a mutual legal assistance treaty. Due to the pandemic, not to mention several changes of government in Kosovo, it was the end of October 2021 before these negotiations could be concluded. The treaty was signed on 5 April 2022. It creates a binding basis for cooperation between the judicial authorities in both countries in relation to the investigation, prosecution and punishment of criminal acts.

The treaty is based on the principles of Swiss mutual legal assistance law and is in line with the European Mutual Assistance Convention and its Second Additional Protocol. It is also aligned with the mutual legal assistance treaties that Switzerland has previously negotiated. Like these, it sets out the mutual legal assistance measures that are permitted and the modalities of their implementation, regulates the conditions for providing mutual legal assistance and the grounds for refusing to do so, and lays down the requirements for a request and the basic rules on the applicable procedure. For the first time in a bilateral mutual legal assistance treaty, the text includes a provision on the criminal liability of legal persons.

The treaty with Kosovo is an important instrument in the fight against cross-border crime and should lead to more efficient cooperation. The Federal Council approved the dispatch on the treaty on 24 August 2022. On 17 March 2023, the treaty was approved by Parliament. The deadline for requesting a referendum runs until 6 July 2023. If no referendum is requested, the treaty can then be brought into force.



*Dialogue in the interest of prosecution: Switzerland and Kosovo signed a treaty on mutual legal assistance in criminal matters in 2022.*

*3D Illustration: klenger via Getty Images*

#### Treaty with Brazil on the Transfer of Sentenced Persons

At the end of 2015, Switzerland and Brazil signed a treaty on the transfer of sentenced persons. It provides a legal basis for Swiss and Brazilian citizens to be able to serve out custodial sanctions (sentences or measures) that were imposed in the other country in their home country.

In addition to its humanitarian aims, the treaty serves to achieve one of the most important goals of Swiss criminal law policy: improving the reintegration of offenders into society after they have served a sentence. It is assumed that the rehabilitation of convicted offenders is more likely to be achieved if, provided they so wish, they can serve a sentence imposed in another country in their home country and thus in the social and cultural environment to which they are accustomed. In contrast, communication difficulties in foreign prisons due to linguistic and cultural barriers can place foreign prisoners at a disadvantage compared with other inmates. The opportunities for rehabilitation and successful reintegration into society after serving the sentence are thereby reduced.

A request for a transfer may be made either by the country that imposed the sentence or by the offender's home country. Both countries and the person concerned must agree to the transfer. It is left to the discretion of the countries as to whether they wish to comply with an offender's wish to be transferred to his or her home country. There is no obligation to transfer an offender, and the person concerned therefore cannot derive any right from the treaty to be able to serve a sentence in their country of origin.

The treaty (SR 0.344.198) follows the Council of Europe's Convention on the Transfer of Sentenced Persons (SR 0.343), which now applies between 68 European and non-European states, and is in line with the bilateral prisoner transfer treaties that Switzerland has already entered into. Only the prisoner transfer treaty with Kosovo goes further in its scope, because, in accordance

with the Additional Protocol to the Council of Europe Convention (SR 0.343.1), it also allows the enforcement of sanctions in the country of origin against the will of the person concerned in certain scenarios. A provision of this type would not have been possible with Brazil, which regards the consent of the convicted person as essential.

As the treaty with Brazil adopted the principles of the Prisoner Transfer Convention, the Federal Council had the power to conclude it on its own, based on the delegation provision in Article 8a IMAC, i.e. without having to submit it to Parliament for approval. Switzerland ratified the treaty in 2016. However, it was only in the report year that Brazil ratified it.

The treaty came into force on 1 January 2023. Already one Brazilian citizen who is in prison in Switzerland has asked to serve the remainder of his sentence in Brazil. In February 2023, the DILA sent a related transfer request to the Brazilian authorities.



*The new prisoner transfer treaty between Switzerland and Brazil makes it possible in certain circumstances for citizens of one country to serve a custodial sentence imposed in the other country in their home country.*

*Photograph: andriano\_cz via Getty Images*

### Requirements for a transfer

Article 5 of the treaty sets out the requirements for a transfer:

- The sentenced person is a national of the state (the administering state) in which they are to be transferred in order to serve the remainder of the sentence imposed in the sentencing state.
- The judgment is final and no other criminal proceedings are pending in the sentencing state against the sentenced person.
- On receipt of the request for transfer, at least 12 months of the sentence must remain to be served or the sentence must be indeterminate. In exceptional cases, a transfer may also be possible if the time to be served is shorter.
- The sentenced person agrees to their transfer.
- Double criminality: the act or omission for which the sentence was imposed is also a criminal offence under the law of the administering state.
- The sentencing and administering states have agreed to the transfer.

## 4.2 New ordinance in order to enable cooperation with the European Public Prosecutor's Office

Creating a new prosecution authority brings its own challenges. The 2021 Annual Report provided an introduction to the European Public Prosecutor's Office (EPPO). This EU prosecution authority is responsible for combating offences directed against the EU's financial interests (fraud, corruption and cross-border VAT offences).

The EPPO began its work in June 2021. Since then, the Swiss authorities have already received several requests for mutual legal assistance. These had to be declined as they lacked the required legal basis. The rejection of such requests for mutual legal assistance, however, carries the risk that the Swiss financial system may be misused for criminal ends, which is contrary to Switzerland's goal of combating cross-border crime, and Switzerland's interest in providing a law-abiding financial centre. As a consequence, in the report year, Switzerland has given closer consideration to how best to cooperate with this new authority.

One solution considered was cooperation based on the Council of Europe's instruments. These developments were explained in more detail in the 2021 Annual Report. Switzerland is campaigning within this forum for the creation of a binding international instrument for regulating cooperation with the EPPO. However, since there was no sign that a rapid solution could be achieved within the Council of Europe and in view of the deadlocks and protracted discussions within this body, Switzerland has decided to introduce national legislation enabling cooperation with the new authority.

The 2020 Annual Report explained the revision of Article 1 IMAC, which extends the scope of the Act to include cooperation with international courts or other inter- or supranational bodies with criminal justice functions. The EPPO is not directly covered by Article 1 paragraph 3<sup>bis</sup> IMAC; this regulates cooperation with such international courts and bodies that prosecute serious offences under international criminal law or that have their basis in a United Nations resolution and that prosecute other offences. Under Article 1 paragraph 3<sup>ter</sup> IMAC, the Federal Council is given

the option of specifying in an ordinance that the Act also applies by analogy to cooperation procedures in criminal matters with other international courts or inter- or supranational bodies with criminal justice functions. In order to issue an ordinance of this type, three requirements must be met: the court or body concerned must have a legal basis that clearly sets out its substantive and procedural powers; the procedure before the court or body guarantees compliance with the principles of the rule of law; and cooperation serves to safeguard Switzerland's interests.

The EPPO was established by Regulation (EU) 2017/1939 of 12 October 2017. This regulation was approved by the Council of the EU in accordance with a constitutional procedure and meets the IMAC's criteria. It provides detailed regulations on the substantive law powers and the procedures that the EPPO applies. The first requirement is therefore met. The EPPO must also respect the EU's Charter of Fundamental Rights, the standards of which correspond overall with those of the European Convention on Human Rights. The principles of the rule of law are thus guaranteed. And lastly it is in Switzerland's interests that the offences prosecuted by the EPPO do not go unpunished and that Switzerland's financial centre is not misused for criminal purposes. The requirements of Article 1 paragraph 3<sup>er</sup> IMAC are thus met.

In view of this, on 21 December 2022 the Federal Council adopted the Ordinance on Cooperation with the European Public Prosecutor's Office (SR 351.13). The Swiss authorities now have a legal basis for cooperation with this new authority. The ordinance enables the IMAC to be applied analogously to cooperation with the EPPO. As a result, the procedures set out in the IMAC may also be used in dealings with the EPPO, without the entire Act having to be amended. The EPPO thus has the same rights and obligations as a state, and all the terms used in the IMAC in relation to a state may be understood as if they also include the EPPO. However, as stated in Article 1 paragraph 4 IMAC, the Swiss authorities are not obliged to cooperate.

The ordinance was submitted to the parliamentary legal affairs committees for consultation before it was adopted by the Federal Council. It came into force on 15 February 2023.

The introduction of the ordinance does not mean that Switzerland has withdrawn its declaration in relation to the European Mutual Assistance Convention. Cooperation with the EPPO is based exclusively on the IMAC. The reasons set out in the 2021 Annual Report as to why Switzerland made a declaration in response to the declarations made by the states participating in the EPPO are still valid. The withdrawal of this declaration will be considered as soon as the Council of Europe has adopted legislation to regulate cooperation with the EPPO.

## 5 Advanced training and other services

### 5.1 Mutual legal assistance conference 2022: prosecution on behalf of another state

On 19 May 2022, the DILA mutual legal assistance conference on the subject of prosecution on behalf of another state was held in Bern after being postponed several times due to the COVID-19 pandemic. The topic was Swiss and foreign requests in this field, their legal principles and the extent of responsibilities. Practical problems were discussed, solutions explained and the rights of the parties involved illuminated. Specific examples from practical experience were used to illustrate the complexity of the issue.

The conference was structured in the form of presentations by members of staff from the DILA and by external specialists. The DILA placed the focus on the one hand on the procedure on receipt of a foreign request of this kind and on the other explained what has to be done if a Swiss prosecution authority wants to hand over criminal proceedings to another state. A checklist that the DILA has recently drawn up formed the basis for the remarks on this subject. This is intended to make it clear to Swiss prosecution authorities whether and how a request can be made to the DILA with a view to submitting an application for transfer of proceedings to another state. The DILA is not only responsible for accepting requests to take over prosecution from foreign partner authorities, but also for submitting such requests to other states on behalf of Swiss prosecution authorities. Direct contact between authorities is only permitted with Germany, Austria and Italy, based on agreements with these countries.

The event was rounded off by an example from the standpoint of a cantonal authority, the views of a lawyer from Geneva with practical experience in this field in relation to the rights and interests of the parties to the proceedings, and a presentation from the Swiss Liaison Office at Eurojust on how it can assist.

The aim of the conference was to familiarise the participants with the complex issue of prosecution on behalf of another state and broaden their understanding of this mutual legal assistance instrument, as well as to explain the DILA's role in this area. The DILA has not only made the checklist already mentioned available on its website but also other documents that should be of practical assistance, in particular a detailed factsheet and model letters ([complete documentation in French, German and Italian](#))<sup>5</sup>.



*A complex matter is explained to practitioners: prosecution on behalf of another state, subject of the most recent mutual legal assistance conference.*  
 Photograph: nathaphat via Getty Images

#### **Request to another state to take proceedings: practical aspects**

The following example illustrates the various difficulties and issues that can arise in practice in connection with a request to another state to take proceedings:

A cantonal prosecution service filed a request in 2020 to the Italian Ministry of Justice to take proceedings in a specific case. The Ministry confirmed that it had passed on the request to the competent local court. When the cantonal prosecution service did not receive any response from Italy, it contacted the DILA in 2022 and asked it to intervene with the Italian authorities.

#### **The facts of the case**

The cantonal prosecution service was conducting criminal proceedings against unknown perpetrators on suspicion of fraud. The victim had offered an item of furniture for sale on [tutti.ch](#). An unidentified person, 'A', contacted the victim and initially expressed an interest in buying the furniture. He persuaded the victim to pay a certain sum into a German account in the name of 'B', primarily to cover transport costs and charges. As the money that the victim had transferred had allegedly been held up, further payments were needed. When even more demands for money came, the victim refused to make any further payments. Police investigations so far indicate that B, the unknown person (account holder), could be guilty of money laundering. In the course of a request to Germany to take proceedings, it was established that B was living in Italy. The

money laundering could therefore have been committed in Italy. For this reason, the cantonal prosecution service was seeking to delegate the prosecution to Italy.

#### The issues that arise

The DILA advised the cantonal prosecution service that with regard to the application of Article 88 IMAC in relation to the scenario described the following issues arise:

- A request to another state to take proceedings with regard to the prosecution of unknown persons is not permitted; the suspect has to be identified before the matter can be taken further;
- There is a question as to whether any fraud was actually committed as the predicate offence to money laundering, because the circumstances described in the request do not quite amount to fraud; in particular, there seems to be an absence of wilful deceit;
- If the money laundering was committed solely in Germany or in Italy, the Swiss have no jurisdiction to prosecute. As a result, the requirements under Article 88 IMAC for filing a request to take over the prosecution cannot be met, neither for Germany nor for Italy;
- The issue of proportionality also arises (it was only afterwards that it came to light through information received verbally that the amount of money involved was CHF 6,000).

The cantonal prosecutor was also advised that although a direct approach to Italy in order to request to take proceedings is permitted in accordance with the additional treaty (Treaty between Switzerland and Italy to Complement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and to Facilitate its Application, SR 0.351.945.41), the request must be submitted not to the Italian Ministry of Justice, but to the competent local Italian prosecutor.

The procedure was subsequently terminated, primarily because the perpetrator could not be identified.

#### Support from the DILA

In addition to the support provided in the form of the documents published on the FOJ website, Swiss prosecution authorities can contact the DILA at any time if they have any questions in connection with the filing of a request to another state to take proceedings. This also applies, even if, as in the case described, a treaty allows for direct contact between authorities. In the event of any uncertainties, the DILA advises prosecutors to get in touch.

## 5.2 An 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 individual processes involved in 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 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 assistance in criminal matters

## 6.1 Extradition

- Judgment of the Federal Supreme Court 1C\_116/2022 dated 21 March 2022: extradition to Armenia; detention conditions for persons who are seriously ill.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2021.243 dated 6 April 2022: extradition to Poland; rights to a proper defence in proceedings in absentia.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2021.215 dated 21 April 2022: extradition to Kosovo; requirements to be met for the FOJ to dispense with obtaining guarantees.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2022.114 dated 5 July 2022: extradition to Kosovo; conditions requiring acceptance; guarantees; detention conditions; language of the request.

## 6.2 Accessory mutual legal assistance

- Decision of the Federal Criminal Court, Appeals Chamber, RR.2021.79 dated 18 January 2022: right to appeal against handover of documents obtained from the tax office and commercial register office; legal persons pleading grounds for inadmissibility (Art. 2 and Art. 3 IMAC).
- Judgment of the Federal Supreme Court 1C\_782/2021 dated 25 January 2022: violation of the right to be heard; inspection of files in parallel/connected mutual legal assistance proceedings that may be relevant to the question of whether there are grounds for inadmissibility (Art. 2 IMAC); appeal allowed.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2021.267-268+269 dated 10 February 2022: right to be heard; no violation of the right to be heard if bank records/detailed supporting documents are obtained after the statement of the person concerned and ordered to be handed over to the requesting state in the final ruling.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2021.245 dated 1 March 2022: '*entraide sauvage*'; request for mutual legal assistance by a Swiss prosecution authority to another country while transmitting complex documentation at the same time; denial of '*entraide sauvage*'.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2022.22 dated 30 March 2022: illegal export of cultural property (Art. 24 of the Federal Act on the International Transfer of Cultural Property, SR 444.1), money laundering. Absence of double criminality; appeal allowed.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2022.30 dated 18 May 2022: right of appeal of a person

providing information interviewed by way of mutual legal assistance.

- Decisions of the Federal Criminal Court, Appeals Chamber, RR.2021.84 and RR.2021.91 dated 13 May 2022 and RR.2021.239+RR.2021.246 of 17 May 2022: breaches of Article 2 of the UN Charter and disregard for the Budapest Memorandum of 5 December 1994 by Russia as well as withdrawal from the Council of Europe and removal as a contracting party from the European Convention on Human Rights from 16 September 2022; general refusal of mutual legal assistance to Russia.
- Judgment of the Federal Supreme Court 1C\_342/2022 dated 15 June 2022: handover of assets; bank not acting in good faith in accordance with Article 74a paragraph 4 letter c IMAC.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2021.76 dated 30 August 2022: mutual legal assistance with Russia; transmission of evidence, freezing of assets. Refusal of mutual assistance, order to freeze assets quashed. In Judgment 1C\_477/2022 dated 30 January 2023, the Federal Supreme Court subsequently allowed the appeal filed by the FOJ against the FCC decision and referred the matter back to the lower court for suspension of the proceedings; assets to remain frozen.
- Judgment of the Federal Supreme Court 1C\_349/2022 dated 30 August 2022: mutual legal assistance to Angola; grounds for inadmissibility under Article 2 IMAC; obtaining diplomatic guarantees; appeal allowed in part.
- Partial decision by the Federal Criminal Court, Appeals Chamber, RR.2020.245 dated 11 November 2022: handover of assets for the purpose of settling a claim for compensation; Federal Criminal Court closes a loophole: enforcing a claim for compensation under Article 74a IMAC is permitted, provided it is not expressly excluded by the Act (e.g. enforcing tax claims) and provided there is no danger that creditors in Switzerland will be disadvantaged when compared with those in the requesting state. In Judgment 1C\_624/2022 of 21 April 2023, the Federal Supreme Court subsequently partially allowed the appeal.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2022.89 dated 22 November 2022: potential relevance; admissibility of the disclosure to the requesting state of a money laundering report that MROS has transmitted to the mutual assistance authority.
- Decision of the Federal Criminal Court, Appeals Chamber, RR.2022.15 dated 9 December 2022: invalid consent to simplified execution under Article 80c IMAC; violation of the right to a fair hearing and of the principle of proportionality (triage); appeal allowed.



## 7 Important statistical information about international mutual legal assistance 2018–2022

Group	Type	2018	2019	2020	2021	2022
Extradition requests to foreign countries		252	272	204	179	<b>174</b>
Extradition requests to Switzerland		350	321	285	312	<b>314</b>
Provisional arrest requests to foreign countries		249	268	207	178	<b>219</b>
Provisional arrest requests to Switzerland		34 151	36 511	31 535	28 046	<b>28 425*</b>
Transfer of proceedings requests to foreign countries		225	221	227	232	<b>256</b>
Transfer of proceedings requests to Switzerland		135	142	132	154	<b>181</b>
Sentence execution requests to foreign countries	Custodial sentences	5	3	7	9	<b>4</b>
Sentence execution requests to Switzerland	Custodial sentences	5	4	8	6	<b>7</b>
	Fines and monetary penalties	1		4	4	<b>10</b>
Prisoner transfer to foreign countries	At the request of the sentenced person	57	54	36	60	<b>46</b>
	Under the Additional Protocol	2	1	1	1	
Prisoner transfer to Switzerland	At the request of the sentenced person	15	24	15	12	<b>12</b>
Provisional arrest requests for international tribunals						
Legal assistance requests to Switzerland	Obtaining evidence in criminal matters	1 163	1 270	1 279	1 375	<b>1 201</b>
	Obtaining evidence in criminal matters: supervision	1 146	1 260	1 205	1 266	<b>1 394</b>
	Obtaining evidence in criminal matters: own case	80	71	67	100	<b>50</b>
	Asset recovery	23	19	30	36	<b>17</b>
	Asset recovery: own case	3	2	6	2	<b>3</b>
	Obtaining evidence in civil matters	66	57	48	64	<b>51</b>
Legal assistance for international courts and tribunals	International Criminal Court	10		7	3	<b>6</b>
	Ad hoc Tribunals	1	2	4		<b>4</b>
	Investigative commissions and mechanisms	1				

Group	Type	2018	2019	2020	2021	2022
Legal assistance requests to foreign countries	Obtaining evidence in criminal matters	850	935	845	995	<b>948</b>
	Asset recovery	4	20	12	6	<b>12</b>
	Obtaining evidence in civil matters	13	23	18	19	<b>33</b>
Secondary legal assistance	For use in criminal proceedings	15	17	13	15	<b>13</b>
	Transmission to third country	7	9	4	6	<b>4</b>
Spontaneous transmission of information and evidence	To foreign countries (Art. 67a IMAC)	164	127	168	116	<b>128</b>
	To Switzerland	1	3	3	6	<b>21</b>
Document service requests to Switzerland	Under criminal law	265	213	161	225	<b>177</b>
	Under civil law	534	536	324	381	<b>323</b>
	Under administrative law	249	190	188	208	<b>233</b>
	Under administrative law (Convention No 94)**		22	34	51	<b>46</b>
Document service requests to foreign countries	Under criminal law	548	559	616	342	<b>501</b>
	Under civil law	798	821	689	701	<b>598</b>
	Under administrative law	552	543	427	411	<b>321</b>
	Under administrative law (Convention No 94)**		15	33	28	<b>5</b>
Sharing of forfeited assets	International sharing (Swiss forfeiture decision)	14	11	12	15	<b>15</b>
	International sharing (foreign forfeiture decision)	6	17	9	11	<b>10</b>
	National sharing	41	70	55	50	<b>39</b>
Swiss Liaison Office at Eurojust***	Requests Eurojust-CH	138	141	143	154	<b>176</b>
	Requests CH-Eurojust	105	165	173	100	<b>65</b>
Instruction to the FDJP	Authorisations under Art. 271 CC	1	1			

\*Of which alerts in the Schengen Information System (SIS; number from fedpol): 16 941, INTERPOL 11 282 ("Red Corners"; number from INTERPOL) and 202 requests sent directly to the FOJ. This does not include 12 478 "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.

\*\*Since 1.10.2019 (entry into force of Convention No 94 for Switzerland)

\*\*\*incl. third states

**Judicial decisions**

<b>Court</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Federal Criminal Court	235	230	294	203	189
Federal Supreme Court	82	66	83	61	44
<b>Total</b>	<b>317</b>	<b>296</b>	<b>377</b>	<b>264</b>	<b>233</b>

**Endnotes – Links**

- <sup>1</sup> Switzerland's UNCAC country profile page  
[www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fche.html](http://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fche.html)
- <sup>2</sup> FATF recommendations  
[www.fatf-gafi.org/en/topics/fatf-recommendations.html](http://www.fatf-gafi.org/en/topics/fatf-recommendations.html)
- <sup>3</sup> Evaluation methodology FATF  
[www.fatf-gafi.org/en/publications/Mutualevaluations/Fatf-methodology.html](http://www.fatf-gafi.org/en/publications/Mutualevaluations/Fatf-methodology.html)
- <sup>4</sup> FATF Evaluation report France  
[www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-france-2022.html](http://www.fatf-gafi.org/en/publications/Mutualevaluations/Mer-france-2022.html)
- <sup>5</sup> Prosecution on behalf of another state: checklist, factsheet, model letters  
[www.rhf.admin.ch/rhf/de/home/strafrecht/wegleitungen.html](http://www.rhf.admin.ch/rhf/de/home/strafrecht/wegleitungen.html)

