1. BASIS FOR COOPERATION

Switzerland’s Mutual Legal Assistance (MLA) system is governed by the Federal Act on International Mutual Assistance in Criminal Matters (IMAC).

Switzerland is a Party to a number of multilateral conventions on the basis of which MLA can be provided, including the Council of Europe Convention on Mutual Assistance in Criminal Matters, and its Second Additional Protocol, the Convention Implementing the Schengen Agreement and the Council of Europe Convention on Cybercrime (Budapest Convention). Furthermore, requests can also be made on the basis of the principle of reciprocity.

Further useful information regarding Switzerland can also be found on the European Judicial Network (EJN) website.

MLA TREATIES TO WHICH SWITZERLAND IS A PARTY

A list of the countries with which Switzerland has established bilateral mutual assistance relationships can be found [here](#). A list of multilateral treaties with MLA obligations to which Switzerland is a party can be found [here](#) and in the Annex.

2. SCOPE OF ASSISTANCE

Depending on the applicable legal basis between Switzerland and the requesting country, Switzerland can provide various types of MLA, including, but not limited to:

- Service of documents;
- Obtaining evidence, and in particular searching persons and rooms, seizure, orders to produce, expert opinions, conducting hearings and confrontations of persons;
- Production of documents and papers; and
- Handing over of objects or assets with a view to forfeiture or for restitution to the entitled person.

WHAT DATA CAN BE REQUESTED?

MLA procedures allow for the preservation and production of all types of stored electronic data (subscriber data, traffic data and content data).

However, competent authorities are advised to make use of police-to-police cooperation channels in order to obtain subscriber data. For more information on this matter, see the SIRIUS Best Practices Guidelines on Police-to-Police Cooperation for Data Requests to Service Providers.

Furthermore, while it is possible to request real-time interception of data via MLA, the data will be stored, but not handed over in real time, as all internal procedures have to be concluded before the handover of data. Additionally, competent authorities should consider the substantial costs associated with conducting real-time interceptions in Switzerland.

3. REQUIREMENTS FOR REQUESTS

A- GENERAL REQUIREMENTS

All MLA requests to Switzerland must be made in writing. They shall be transmitted to the Swiss Central Authority (see Central Authority section), unless direct contact between the foreign authority and the competent Swiss authority is provided for by the applicable treaty (e.g. between States Parties to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters or the Convention Implementing the Schengen Agreement). Requests which are addressed to an inappropriate authority will be forwarded ex officio to the correct competent authority.

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authority. The requesting authority shall be duly notified.

For country-specific requirements and potential legal bases for requests, see Länderindex (admin.ch) (available in German, French and Italian).

MLA requests and their enclosures shall be submitted in German, French or Italian or be accompanied by a translation into one of these languages. Translations must be officially certified.

While MLA requests or translations thereof in either one of the three aforementioned languages will be accepted, in order to speed up the process, it is recommended to provide a translation into the official language of the place where the requested measure is to be executed in Switzerland, whenever known.

DATABASE OF SWISS LOCALITIES AND COURTS

A database of all Swiss localities and courts (searchable by postcode or name of the location) can be found here: https://www.elorge.admin.ch/elorge/

This database contains information about each respective competent cantonal authority, its contact details, the legal basis on which judicial cooperation can be requested, as well as the official language(s) used.

By means of exception, very urgent requests may also be considered in English when a proper translation is provided later on. In emergency situations, competent authorities are advised to establish pre-contact with the Central Authority via e-mail (see Central Authority section) or, if applicable, through their representatives at Eurojust.

Unless otherwise provided for by the legal basis between Switzerland and the requesting country, in accordance with the IMAC, an MLA request must include or be accompanied by the following information:

- A precise description of the essential facts of the case (place, time and circumstances of the offence);
- The name of the authority making the request;
- The object of the foreign proceedings and the reason for the request (description of the official acts requested, including the connection between the foreign proceedings and the requested measure);
- The identifying data on the person who is the object of the criminal proceedings, whenever available;
- The legal designation of the offence in the requesting country; and
- For requests for search of persons or rooms, for seizure or handing over of objects, confirmation that these measures are permitted in the requesting country.

Failure to comply with the formal requirements is not a ground for refusing the request. If an MLA request does not meet the applicable formal requirements, the Swiss Central Authority will ask the requesting country to rectify or amend the request. This does not affect the ordering of provisional measures.

Including a precise description of the main facts of the case, as well as the object of the proceedings and the reason for the request is essential in order to obtain MLA from Switzerland in a timely manner.

While the requesting authority may not be required to explain precisely what it wishes to establish with its request, it must present reasonable grounds for suspicion. “Fishing expeditions” are heavily frowned upon. Evidence may not be collected at random and without material clues (for example, the freezing of all assets in Switzerland and the handover of banking documents without information on the whereabouts of these assets). Particularly in order to obtain documents covered by bank secrecy, precise information regarding the name of the account holder and the relevant bank, or the account number, will be required, as well as fulfilment of the double criminality requirement (see also Grounds for refusal section).

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1 IMAC, Article 76(c).
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The Swiss Central Authority may also request any necessary additional information from the requesting country.

In urgent cases, the Swiss Central Authority may order provisional action – such as the freezing of accounts or seizure of assets – as soon as notice of a request has been given. It will then set a deadline for the requesting country to submit the formal request.

I- COMPLETION OF MLA PROCEDURE: NOTIFICATION REQUIREMENT

Swiss authorities will notify any person(s) concerned of the measures taken against them.

Such notification can be delayed upon request by the requesting authority, allowing for certain provisional measures (e.g. a seizure) to be carried out without prior notification of the person concerned. Such a request for delayed notification should be clearly included and motivated in the MLA request.

Moreover, holders of documents, including electronic data, have the right to inform their clients of the existence of a request and of all the facts relating thereto unless the competent Swiss authority has, as an exception, expressly prohibited this⁴.

However, it should be noted that, prior to the notification of the person concerned and the expiry of internal remedies, the Swiss MLA procedure is not completed and legally binding. Therefore, any information so obtained cannot be transmitted by the competent Swiss authority according to Swiss legislation.

II- EXCEPTION: EARLY TRANSMISSION OF INFORMATION OR EVIDENCE

By way of exception, the competent cantonal or federal authority may, if solicited by the requesting authority, order the early transmission of information or evidence gathered before a final ruling on an MLA request is issued, specifically where:

- Foreign investigations in cases relating to organised crime or terrorism would be made disproportionately difficult without the execution of an MLA request, in particular where there is a risk of collusion or in order to safeguard the confidentiality of the proceedings; or
- In order to avert a serious and immediate danger, and in particular the commission of a terrorist offence⁵.

Early transmission is conditional on the requesting authority providing an undertaking in advance that:

- The information or evidence will be used solely to assist with investigations, and under no circumstances for the purpose of requesting, justifying or issuing a final decision;
- It will inform the competent cantonal or federal authority as soon as the foreign proceedings permit that the person concerned may be notified of the early transmission so that he or she can respond before the final ruling is issued; and
- It will remove the information or evidence obtained through early transmission from the files for the foreign proceedings if mutual assistance is refused⁶.

B- SPECIFIC REQUIREMENTS

I- REQUESTS PURSUANT TO THE BUDAPEST CONVENTION

States Parties to the Budapest Convention can make use of the possibilities for expedited preservation of data pursuant to Article 16 (Expedit ed preservation of stored computer data), Article 17 (Expedited preservation and partial disclosure of traffic data), Article 29 (Expedited preservation of stored computer data) and Article 30 (Expedited disclosure of preserved traffic data) of the Convention.

⁴ IMAC, Article 80n.
⁵ IMAC, Article 80dbis(1)
⁶ IMAC, Article 80dbis(4).
For preservation requests on the basis of Articles 29 and 30, Switzerland has designated the following 24/7 Network point of contact:

**Operations Center Fedpol**  
Nussbaumstrasse 29  
CH-3003 Bern  
Switzerland

Templates for requests pursuant to the Budapest Convention

Parties to the Budapest Convention can use the Council of Europe **MLA template** for expedited preservation of data under Article 29 of the Convention (including a number of bilingual templates) and the **MLA template** for the production of subscriber information under Article 31 of the Convention (including a number of bilingual templates).

Please note that, even if a preservation request has been registered, retrospective (i.e. non-real time) data shall be collected only for six months before the judicial order is issued. For such data, competent authorities are therefore advised to submit a request for the preservation of data as soon as possible. For more information about preservation requests, see **SIRIUS General Guidelines on Cross-Border Access to Electronic Evidence**.

### 4. GROUNDS FOR REFUSAL

Where a treaty applies, MLA will be granted under the terms laid down in that treaty. The IMAC applies only insofar as the applicable treaty does not provide either explicitly or implicitly for a different solution. Also, Switzerland cannot refuse mutual assistance on the grounds of its domestic laws if these grounds are not set out in the treaty which binds it to the requesting country.

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#### A- MANDATORY GROUNDS FOR REFUSAL

Pursuant to the IMAC, a request for cooperation in criminal matters **shall not be granted or shall be rejected if**:

- The request is for a **coercive measure** (e.g. search and seizure, serving summonses with a warning of arrest in the event of non-appearance, interviewing witnesses and lifting confidentiality obligations, including bank secrecy obligations) and the offence described in the request is not punishable in Switzerland (principle of dual criminality);
- There are serious shortcomings in the foreign proceedings, which either: (i) **do not meet the procedural requirements** of the **European Convention for the Protection of Human Rights and Fundamental Freedoms**, or the **International Covenant on Civil and Political Rights**; (ii) are being conducted so as to **prosecute or punish** a person on account of their **political opinions**, belonging to a certain social group, **race**, **religion**, or **nationality** or could result in aggravating the situation of the defendant for any of the aforementioned reasons; or (iii) have other **serious defects**;
- The subject of the foreign proceedings is an **act which, in the Swiss view, is of a predominantly political nature**, constitutes a **violation of the obligation to perform military or similar service**, or appears to **be directed against the national security or military defence** of the requesting country;
- The subject of the proceedings is an **offence which appears to be aimed at reducing fiscal duties or taxes** or which violates regulations on currency, trade or economic measures (i.e. the evasion of genocide, crimes against humanity, or war crimes, or if the act appears particularly reprehensible because the offender, for the purpose of extortion or duress, has endangered or threatened to endanger the life or limb of persons, especially by hijacking aircraft, using means of mass extermination, causing a catastrophe or taking hostages (IMAC, Article 3(2)).

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1 IMAC, Article 1(1).
2 IMAC, Article 64(1). In the absence of dual criminality, coercive measures shall be allowed only for the exoneration of a defendant or the prosecution of offences involving sexual acts with minors (IMAC, Article 64(2)).
3 IMAC, Article 2.
4 IMAC, Article 3(1). The plea that an act is of a political nature shall not be taken into account under any circumstances in cases of genocide, crimes against humanity, or war crimes, or if the act appears particularly reprehensible because the offender, for the purpose of extortion or duress, has endangered or threatened to endanger the life or limb of persons, especially by hijacking aircraft, using means of mass extermination, causing a catastrophe or taking hostages (IMAC, Article 3(2)).
10 IMAC, Article 3(1).
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5. CENTRAL AUTHORITY

The Swiss Federal Office of Justice is the competent authority for judicial cross-border assistance.

MLA requests addressed to the Central Authority should be sent to:

Federal Office of Justice
International Legal Assistance Division
Bundesrain 20
CH-3003 Bern
Switzerland

Phone: +41 58 462 1120
Fax: +41 58 462 5380
E-mail: irh@bj.admin.ch

Requests sent via e-mail are only accepted as pre-information and in emergency situations.

If no treaty is in place between the requesting country and Switzerland, requests can also be transmitted to the Federal Office of Justice through diplomatic channels.

6. PRINCIPLE OF SPECIALITY: LIMITATIONS ON USE OF PROVIDED EVIDENCE

In accordance with the applicable treaties and conventions and Articles 63 and 67 of the IMAC, the evidence and information obtained through MLA from Switzerland can be used in the following ways:

- Use permitted

The evidence and information obtained through MLA from Switzerland can, in the requesting State, be used for investigative purposes and be introduced as evidence in the criminal procedure for which assistance has been requested, as well as for any other criminal procedure, subject to the limitations set out below.

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12 Ibid
13 IMAC, Article 4.
14 IMAC, Article 5(1).
15 IMAC, Article 6(1).
16 IMAC, Article 6(2).
17 IMAC, Article 1a.
18 IMAC, Article 66(1).
19 IMAC, Article 66(2).
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- **Use not permitted**

  The evidence and information obtained through MLA from Switzerland may not be used, neither directly or indirectly, in a criminal procedure concerning an offence for which assistance is not admissible.

  Assistance is not admissible if the criminal procedure concerns:

  - An act which, under Swiss law, is qualified as a political or military offence or which violates regulations concerning monetary, trade or economic policy; or
  - An act which, under Swiss law, is qualified as a fiscal offence (i.e. any act which appears to be aimed at reducing fiscal duties or taxes).

- **Use permitted after prior consent**

  After prior consent by the Swiss Central Authority (see Central Authority section), the evidence and information obtained through MLA from Switzerland may be used:

  - For the prosecution of acts which are qualified as tax fraud according to Swiss law; and
  - For Schengen States: for the prosecution of offences mentioned in Article 50 of the Convention on the Implementation of the Schengen Agreement.

**Schengen Agreement** (infringements of laws and regulations on excise duties, value added tax and customs duties), under the conditions of Article 51 of the Convention.

Subject to prior consent by the Swiss Central Authority (see Central Authority section) is also:

- Any other transmission of evidence and information, in particular to a third State or an international institution; and
- Any other use in a procedure other than the criminal procedure for which assistance has been requested, in particular in administrative or civil procedures. However, for Schengen States, no prior consent is necessary for civil actions joined to criminal proceedings according to Article 49(d) of the Convention on the Implementation of the Schengen Agreement.

**ADDITIONAL RESOURCES ON MLA REQUESTS TO SWITZERLAND**

Additional information regarding the MLA process to Switzerland can be found here:

International Mutual Legal Assistance in Criminal Matters (admin.ch)
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ANNEX: INTERNATIONAL AGREEMENTS ON THE BASIS OF WHICH MUTUAL LEGAL ASSISTANCE FROM SWITZERLAND CAN BE REQUESTED

- **Convention Implementing the Schengen Agreement** (1990)
- **Cooperation Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part, to combat fraud and any other illegal activity to the detriment of their financial interests** (2009)
- **Council of Europe Convention on Mutual Assistance in Criminal Matters** (1959) and its **Second Additional Protocol** (2001)
- **Council of Europe Convention on Cybercrime** (2001)
- **Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse** (2007)
- **Council of Europe Convention on Action against Trafficking in Human Beings** (2005)
- **Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime** (1990)
- **Council of Europe European Convention on the Suppression of Terrorism** (1977)
- **United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances** (1988)
- **United Nations International Convention Against the Taking of Hostages** (1979)
- **United Nations Convention on Offences and Certain Other Acts Committed on Board Aircraft** (1963)
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- **Convention on the Prevention and Punishment of the Crime of Genocide** (1948)