

# Requesting Mutual Legal Assistance in Criminal Matters from Switzerland



## 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<sup>1</sup>.



### 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](#))<sup>2</sup>. Requests which are addressed to an inappropriate authority will be forwarded ex officio to the correct competent

<sup>1</sup> IMAC, Article 63(2).

<sup>2</sup> If the requested measures are to be carried out in different cantons, it is advisable for the MLA request to always be

transmitted to the Central Authority, who will then forward it to the competent cantonal judicial authorities for execution.



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authority. The requesting authority shall be duly notified.



For country-specific requirements and potential legal bases for requests, see [länderindex \(admin.ch\)](https://www.admin.ch/laenderindex) (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<sup>3</sup>.

**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).

<sup>3</sup> IMAC, Article 76(c).

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 this<sup>4</sup>.

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 offence<sup>5</sup>.

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 refused**<sup>6</sup>.

## 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 (Expedited 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.

<sup>4</sup> IMAC, Article 80n.

<sup>5</sup> IMAC, Article 80dbis(1)

<sup>6</sup> IMAC, Article 80dbis(4).

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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<sup>7</sup>. 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.

<sup>7</sup> IMAC, Article 1(1).

<sup>8</sup> 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)).

<sup>9</sup> IMAC, Article 2.

<sup>10</sup> 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

## 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<sup>8</sup> (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**<sup>9</sup>;
- 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<sup>10</sup>;
- 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**<sup>11</sup> (i.e. the evasion of

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)).

<sup>11</sup> IMAC, Article 3(3).

taxes, customs duties or other public levies); however, assistance will be granted if the subject of foreign proceedings is an act which would be classified in Switzerland as duty or tax fraud<sup>12</sup>;

- The importance of the offence does not justify conducting proceedings<sup>13</sup>; or
- The person has already been **acquitted of or served a sentence for the same offence or has benefitted from proceedings being dismissed** in either Switzerland or in the state where the offence was committed<sup>14</sup>.

If the act of which the defendant is accused constitutes an offence under two or more provisions of Swiss criminal law, the request may be granted only in respect of those offences for which there are no reasons for inadmissibility and if there is a guarantee that the requesting country will respect the conditions imposed<sup>15</sup>. Cooperation shall not be permitted if the proceedings concern an act that constitutes an offence under two or more provisions of Swiss or foreign criminal law and if, with regard to one of these offences, which covers the act in all its aspects, a request may not be granted<sup>16</sup>.

## B- DISCRETIONARY GROUNDS FOR REFUSAL

Pursuant to the IMAC, a request for cooperation in criminal matters **may be denied** if:

- The execution of the request is likely to prejudice Switzerland's **sovereignty, security or similar essential interests**<sup>17</sup>; or
- The **defendant resides in Switzerland and proceedings are already pending there** regarding the offence to which the request relates<sup>18</sup>; however, assistance may be granted if the proceedings carried out abroad are not directed solely against the defendant who is residing in Switzerland, or if the execution of the request serves to exonerate him or her<sup>19</sup>.

<sup>12</sup> *Ibid.*

<sup>13</sup> IMAC, Article 4.

<sup>14</sup> IMAC, Article 5(1).

<sup>15</sup> IMAC, Article 6(1).

<sup>16</sup> IMAC, Article 6(2).

<sup>17</sup> IMAC, Article 1a.

## 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 11 20

Fax: +41 58 462 53 80

E-mail: [irh@bj.admin.ch](mailto: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<sup>20</sup>:

- **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.

<sup>18</sup> IMAC, Article 66(1).

<sup>19</sup> IMAC, Article 66(2).

<sup>20</sup> <https://www.rhf.admin.ch/dam/rhf/en/data/strafrecht/wegleitungen/formular-spezialtaetsvorbehalt-e.doc.download.doc/formular-spezialtaetsvorbehalt-e.doc>.

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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](#)** (infringements of laws and regulations on excise duties, value added tax and customs duties), under the conditions of Article 51 of the Convention<sup>21</sup>.

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 \(admin.ch\)](#)

<sup>21</sup> Article 51 of the Convention on the Implementation of the Schengen Agreement states: "The Contracting Parties may not make the admissibility of letters rogatory for search or seizure dependent on conditions other than the following: (a) the act giving rise to the letters rogatory is punishable under the law of both Contracting Parties by a penalty involving deprivation of liberty or a detention order of a maximum period of at least six months, or is punishable under the law of one of the two

Contracting Parties by an equivalent penalty and under the law of the other Contracting Party by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters; (b) execution of the letters rogatory is consistent with the law of the requested Contracting Party."

## 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 Criminal Law Convention on Corruption](#) (1999) and its [Additional Protocol](#) (2003)
- [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 International Convention for the Suppression of Acts of Nuclear Terrorism](#) (2005)
- [United Nations Convention against Corruption](#) (2003)
- [United Nations Convention against Transnational Organised Crime](#) (2000), its [Protocol against the Smuggling of Migrants by Land, Sea and Air](#) (2000), and its [Protocol to Prevent, Suppress and Punish the Trafficking in Persons, especially Women and Children](#) (2000)
- [United Nations International Convention for the Suppression of the Financing of Terrorism](#) (1999)
- [United Nations International Convention for the Suppression of Terrorist Bombings](#) (1997)
- [Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions](#) (1997)
- [United Nations Convention on the Marking of Plastic Explosives for Detection](#) (1991)
- [United Nations Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation](#) (1988) and its [Protocol](#) (1988)
- [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 the Physical Protection of Nuclear Material](#) (1979)
- [United Nations Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents](#) (1973)
- [United Nations Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation](#) (1971) and its [Protocol](#) (1988)
- [United Nations Convention on Offences and Certain Other Acts Committed on Board Aircraft](#) (1963)
- [United Nations Single Convention on Narcotic Drugs](#) (1961) and its [Protocol](#) (1961)

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- [Convention on the Prevention and Punishment of the Crime of Genocide](#) (1948)
- [United Nations Slavery Convention](#) (1926) and the [Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery](#) (1956) [United Nations Convention for the Suppression of the Unlawful Seizure of Aircraft](#) (1970)