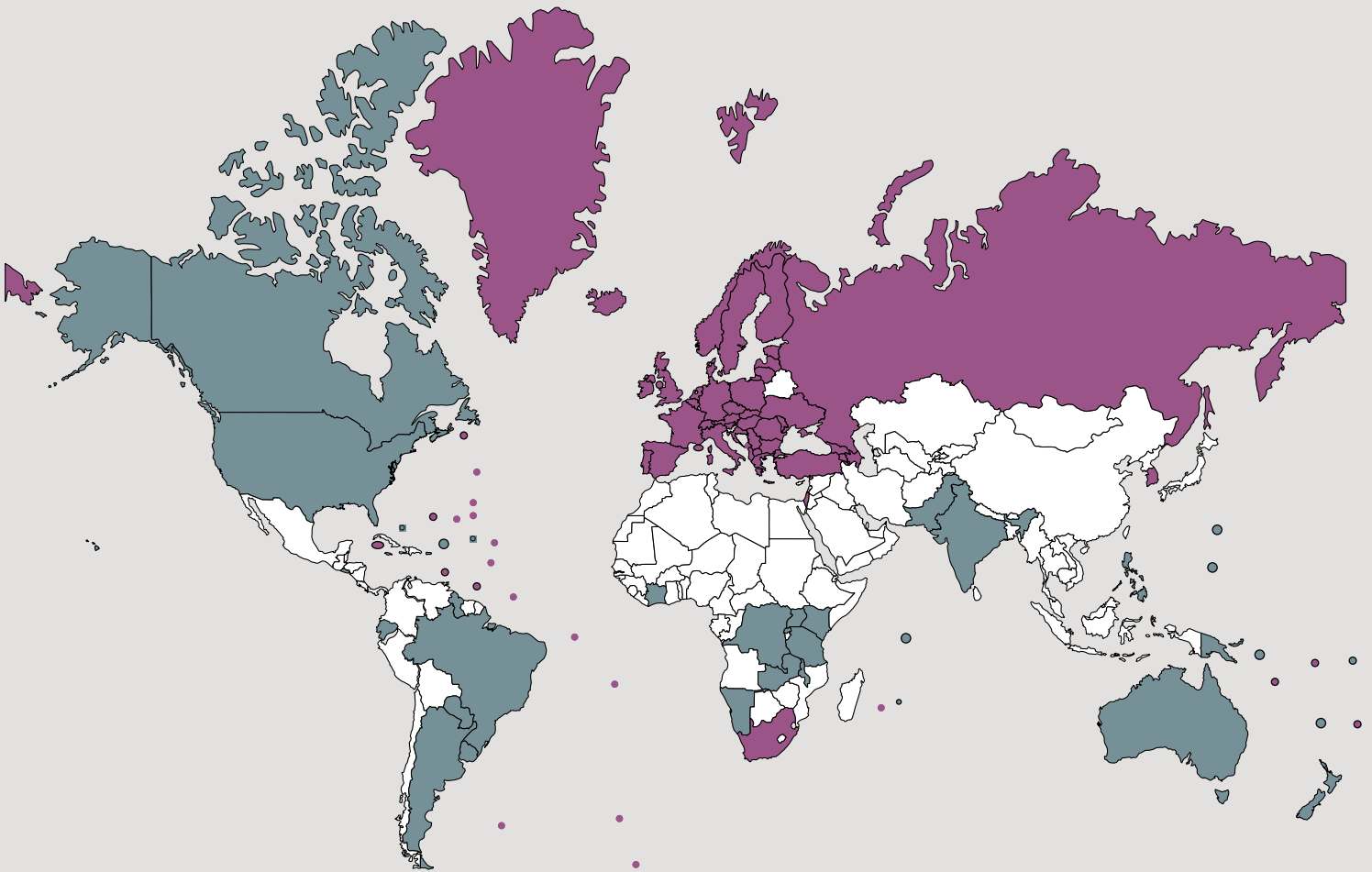


# Annual Activity Report 2015

## Mutual Legal Assistance



Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

Swiss Confederation

Federal Department of Justice and Police FDJP  
**Federal Office of Justice FOJ**  
Division for International Legal Assistance

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Switzerland is connected to many states around the world as part of an extensive network of treaties on international mutual legal assistance in criminal matters. The cover page illustrates the extradition treaty network. The countries marked in purple are those which, like Switzerland, have acceded to the European Convention on Extradition. Those marked in green-grey are states with which Switzerland has concluded a bilateral extradition treaty.

June 2016

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# Editorial



*There are those rare times in which international legal assistance suddenly finds itself in the spotlight: for instance, when members of the FIFA Executive Committee are arrested before dawn in a Zurich hotel on the basis of a request from the USA. It is then that the activities of our Division capture the public interest, both at home and far beyond our national borders. Such cases are the*

*exception, however. In the great majority, international mutual legal assistance in criminal matters is little-noticed behind-the-scenes work.*

The Federal Office of Justice Division for International Legal Assistance (DILA) is Switzerland's central point of contact for questions concerning mutual support in the investigation and prosecution of criminal cases. It is a typical example of a field in which the Confederation and the cantons work together closely. Its public face – those in the spotlight, centre-stage – are often others, however: the public prosecutors at federal and cantonal levels, and the police. In this sense, the DILA provides the backstage team – the set-builders, the prompter, and the producer. For the partnership between those on stage and those behind the scenes to function effectively, they must work together hand in hand on a basis of trust and reciprocal transparency.

*This first annual activity report from the DILA ventures a look at what really goes on away from the spotlight. We introduce the Division and explain our varied, challenging and exciting role. It is also extremely important work, especially in a geographically small country, but one with an economic network that spans the world. In Switzerland's border regions, around Basel, Geneva and in the Ticino for example, an enormous number of the offences that are under prosecution have an international connection. The country is a hub for European transport and global trade, not to mention a major financial centre. While this is all positive, it does mean that Switzerland is confronted with more than its fair share of cross-border crime. It would be impossible for the Swiss authorities to pursue many of these cases without being networked with their counterparts in other countries, without the handover of persons sought under criminal law, and without the facility for evidence-gathering abroad. In return, the legal assistance and extradition work of the Swiss authorities provides vital support for the fight against crime internationally – thus making an important contribution to global security.*

*In view of the geographical situation, cooperation within Europe is particularly important. Some 80% of Switzerland's extradition and legal assistance cases involve other European states. A large proportion of these cases generate little, if any, media interest, and thus never appear in the public arena for the international fight against crime. Now and again, however, legal assistance does venture into the world spotlight. The FIFA cases mentioned above attracted particular attention over the past year, as did those connected with the restitution of assets frozen in the context of the Arab Spring and the Ukraine conflict. Whether attention-grabbing or not, in reality our field of work often requires a great deal of time and patience until we are able to achieve legitimate results that come to the public's attention.*

*The composer Gustav Mahler once said: «tradition means passing on the flame, not worshipping the ashes». And what is true of music and theatre also applies to the legal assistance stage. We must always be thinking ahead if we are to wage a successful war against international crime. The criminals of the modern world are mobile, adaptable, and fast-moving. Legislation on legal assistance must therefore keep pace with them. Here, the DILA is working on the basis for the Federal Department of Justice and Police FDJP's treaty strategy. The unwavering aim of the Division is strategically to extend the network of bilateral treaties on legal assistance, extradition and the handover of convicted offenders, and to keep multilateral legal assistance instruments, as well as their basis in national law, up to date. This report also offers an insight into this work – the script we are writing for ourselves.*

*This annual report illustrates that success stories in cross-border criminal prosecutions can be achieved only with the steadfast, professional commitment of the partner authorities involved and those within the DILA who are in charge of those cases. For that, you have all earned an enormous vote of thanks and recognition.*

*Wishing you an informative and stimulating read,*

Susanne Kuster,  
Vice-Director FOJ, Head of the ILA Division

# 1

## The DILA in the spotlight: Who we are

### 1.1 Division for International Legal Assistance: Liaison office between domestic and international criminal justice systems

#### Overview

The Division for International Legal Assistance (DILA) is one of five divisions within the Federal Office of Justice FOJ. Its remit is to ensure the rapid provision of international mutual legal assistance in criminal matters. It decides on requests for mutual assistance, extraditions, transfers and on criminal prosecution and sentence enforcement on behalf of another state.<sup>1</sup> The DILA is also responsible for the ongoing development of the legal foundations for all of these areas. In addition, it has a variety of operational duties in connection with legal assistance in civil and administrative matters.

#### Organisation

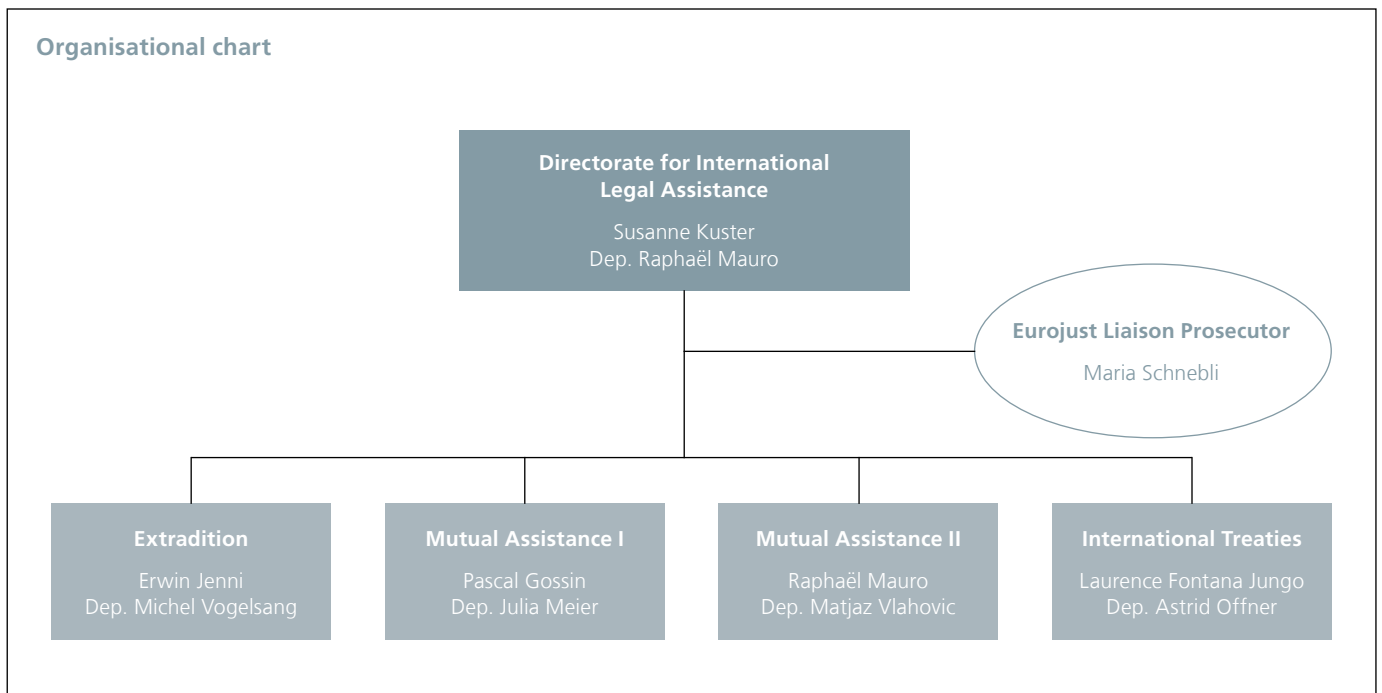
The DILA is headed by Vice-Director Susanne Kuster. Her deputy is Raphaël Mauro. The Division has a total staff of 45, 32 of whom are lawyers, with 12 administrative staff and one financial analyst. Around half work part-time. The staff of the DILA – 31 women and 14 men – are drawn from all of Switzerland's different language regions. They work principally in the Confederation's three official languages (German, French and Italian), and English. The DILA is structured into four specialist units. Three of these handle day-to-day operations by processing requests, and the fourth is concerned primarily with the development of law. Switzerland's liaison prosecutor at Eurojust, the European Union's judicial cooperation unit, is also attached to the Division.



The Federal Office of Justice is the central point of contact for questions concerning mutual legal assistance in criminal matters.

Picture: FOJ DILA

<sup>1</sup> cf. Art. 7 para. 6a of the Organisation Ordinance of 17 November 1999 for the Federal Department of Justice and Police (OrgO-FDJP), SR 172.213.1. These areas of law will be referred to collectively below as 'mutual assistance in criminal matters'.



### Remit

The DILA is Switzerland's central authority for international mutual assistance in criminal matters. In this capacity, it receives foreign requests and also submits Swiss requests to foreign governments, unless the authorities concerned are able to contact each other directly.

In Switzerland, responsibility for criminal prosecutions, and thus also for the execution of legal assistance measures, lies primarily with the cantons. The DILA therefore operates in close cooperation with the criminal prosecution authorities at both cantonal and federal levels. As a service provider, it supports these authorities in fulfilling their own remits. However, it also has a supervisory function, and in certain areas bears direct responsibility itself for deciding whether or not to accommodate requests. In addition to a good network of contacts at home and abroad, criminal prosecution work in an international context demands specialist expertise, tact in dealing with political sensitivities, and an in-depth knowledge of the human rights situation in the states concerned. Amid these sensitivities, the DILA acts as an intermediary between the judicial authorities at home and abroad.

### 1.2 Extraditions Unit: International search and extradition; requests for criminal prosecution and sentence enforcement; transfer of sentenced persons

#### Overview

The Extraditions Unit is the Swiss authority responsible for the handover of persons who are facing prosecution or who have been sentenced under criminal law, as well as for administering criminal justice on behalf of another state. Its main tasks are the following:

- extraditions, including international searches for wanted persons with a view to their arrest for extradition;
- criminal prosecution on behalf of another state;
- sentence enforcement on behalf of another state, and the transfer of sentenced persons;
- transfer of persons wanted by an international criminal court, or of witnesses in custody.

#### Organisation

The Extraditions Unit is headed by Erwin Jenni; his deputy is Michel Vogelsang. The Unit employs eight further lawyers, two specialists in the search for wanted persons, and two assistants.

#### Remit

##### Extradition

The principal task of the Extraditions Unit is to process extraditions. Extradition refers to the compulsory handover of a wanted person from one state to another to face criminal proceedings or to serve a sentence that restricts their liberty in some way. Specifically, the Extraditions Unit will decide whether or not individuals who are being sought by a foreign state are to be arrested in Switzerland. This requires a close working relationship with the Federal Office of Police (fedpol), because most search requests are made via the international criminal police organisation Inter-



pol or the Schengen Information System. If an arrest is made in Switzerland, the Extraditions Unit will issue an extradition warrant, and decide on a person's extradition as the court of first instance. It is supported in this by the cantonal authorities, which will detain the person pending extradition and interview them, etc. If the wanted person appeals against the decisions made by the FOJ, the DILA will set out the Office's position for submission to the Federal Criminal Court or Federal Supreme Court. The Division may itself appeal against Federal Criminal Court decisions to the Federal Supreme Court. Should a wanted person agree to simplified extradition proceedings (which happens in around 50 percent of cases), or once a legally enforceable extradition ruling has been made, the Extraditions Unit approves the extradition and arranges for it to be carried out. If a person can only be extradited on the basis of a guarantee that their human rights will be respected, the Extraditions Unit and the Federal Department of Foreign Affairs FDFA will ensure that these guarantees are subsequently fulfilled by the requesting state. At the request of Swiss public prosecutors or enforcement authorities, the Extraditions Unit will submit search requests and, where necessary, formal extradition requests to foreign governments. It also offers advice to the criminal justice authorities in particularly complex cases. If the requested state ultimately approves the extradition, the Extraditions Unit will arrange for it to be carried out.

#### *Criminal prosecution on behalf of another state*

The Extraditions Unit is also responsible for requests for the assumption and transfer of criminal proceedings between Switzerland and foreign states. Since many states do not extradite their own nationals, and extradition proceedings will not be considered for certain, less serious offences, transferring criminal proceedings offers a means of closing gaps in the system of

prosecution. The documentation relating to the criminal proceedings, as well as the evidence that has been gathered, are handed over to the requested state so that it is able to conduct proceedings on behalf of the state in which the offence was committed.

#### *Sentence enforcement on behalf of another state, and the transfer of sentenced persons*

In the same way as requests to assume criminal proceedings, the object of sentence enforcement on behalf of another state is to close the gaps that exist where extradition is not possible, or would be disproportionate to the offence. However, this form of cooperation concerns only a minor number of cases. Many states are able to enforce sentences passed abroad only in very narrowly defined circumstances, such as where the sentenced person has escaped from sentence enforcement in the state in which the offence was committed.

The transfer of offenders to their country of origin to serve the remainder of their sentence is intended to allow them to do so in their own social environment. Transfer is made primarily at the request of a sentenced person, who may be transferred against their will only in exceptional cases. Where these cases arise, the Extraditions Unit works closely with the cantonal enforcement authorities, because only when the latter support such a transfer can proceedings be concluded successfully.

#### *Transfer of persons to international criminal courts*

Finally, very rarely the Extraditions Unit will handle a case involving a transfer to an international criminal court, on the basis of a crime against international law. The transfer of witnesses in custody so that they can give evidence or identify a person before an international criminal court is also an isolated occurrence.



### 1.3 Mutual Assistance Unit I: Seizure and handover of assets

#### Overview

Mutual Assistance Unit I is the centre of asset recovery expertise within the Division for International Legal Assistance. It deals primarily with requests for mutual assistance concerning the seizure or handover of assets. Its primary tasks are the following: independent conduct of mutual assistance proceedings concerning politically exposed persons (PEP)<sup>2</sup>;

- delegation of requests for legal assistance in the areas covered by Mutual Assistance Unit I to the cantonal or federal authorities responsible for execution, and supervision of such execution;
- negotiations with other states and authorities about sharing arrangements for confiscated assets;
- providing legal assistance to the International Criminal Court and to other international criminal tribunals;
- handling cases involving the unsolicited provision of evidence and information;
- representing asset recovery-related issues within national and international bodies.

#### Organisation

Mutual Assistance Unit I is headed by Pascal Gossin. His deputy is Julia Meier. The Unit employs four further lawyers, as well as one financial analyst, one paralegal and one assistant.

#### Remit

##### PEP

Mutual Assistance Unit I is responsible for requests for legal assistance concerning politically exposed persons (PEPs). In certain cases, the Unit will conduct its own legal assistance proceedings and decide on the grant of any legal assistance, and its scope. Furthermore, in urgent cases, the Unit may order provisional measures (such as the freezing of accounts) as soon as notice of a request has been received.

##### Asset recovery

Mutual Assistance Unit I is the centre of expertise on all legal assistance matters concerning asset recovery. In this capacity, it also shares its specific knowledge in national and international bodies, such as the Working Group on Asset Recovery under the United Nations Convention Against Corruption, UNCAC<sup>3</sup>, and the EU's Asset Recovery Offices. Here, the Unit also works closely with the other official agencies involved, in particular the FDFA's Task Force Asset Recovery.

#### Delegation/supervision

Furthermore, Mutual Assistance Unit I is the authority which supervises the application of the Federal Act of International Mutual Assistance in Criminal Matters (Mutual Assistance Act, IMAC)<sup>4</sup>, mainly in legal assistance proceedings concerning the seizure and handover of assets. If direct contact between judicial authorities is not possible, the Unit forwards Swiss requests for mutual assistance to foreign governments, conducts a summary examination of incoming foreign requests, and delegates them to the competent mutual assistance authority for execution. Furthermore, it is responsible for extending the doctrine of speciality in cases which fall within its authority. This is known as secondary legal assistance. Mutual Assistance Unit I also advises Swiss criminal prosecution and legal assistance authorities, as well as contacts abroad, and makes every effort to ensure that the obligation to execute foreign requests for mutual assistance promptly is fulfilled. As a supervisory authority, Mutual Assistance Unit I may appeal before the Federal Criminal Court and the Federal Supreme Court against orders and decisions issued by executing mutual assistance authorities, and will be invited to a hearing as part of the appeal proceedings.

#### Sharing (national and international)

Mutual Assistance Unit I conducts negotiations with foreign states to conclude sharing agreements for confiscated assets. This is sharing at the international level. It is also responsible for distributing the Swiss portion between the Confederation and the cantons. This is sharing at the national level.

#### Cooperation with international criminal courts

The Unit is responsible for mutual assistance proceedings benefiting the International Criminal Court and international tribunals.

#### Unsolicited provision of evidence

Mutual Assistance Unit I handles cases involving the unsolicited provision of evidence and information to foreign criminal prosecution authorities.

<sup>2</sup> For the legal definition of politically exposed persons in federal law, please refer to Art. 2a of the Federal Act of 10 October 1997 on Combating Money Laundering and the Financing of Terrorism in the Financial Sector (Anti-Money Laundering Act, AMLA), in force since 1 January 2016, SR 955.0.

<sup>3</sup> SR 0.311.56.

<sup>4</sup> SR 351.1

## 1.4 Mutual Assistance Unit II: Obtaining evidence and service of documents

### Overview

Mutual Assistance Unit II is principally responsible for Swiss and foreign requests for mutual assistance in criminal matters which do not concern the seizure or handover of assets, i.e. it concentrates on gathering evidence and serving documents. Its main tasks are the following:

- Central Offices for cooperation with the USA and Italy: independent conduct of mutual assistance proceedings;
- delegation of requests for mutual assistance to the cantonal or federal authorities responsible for execution, and supervision of such execution;
- processing and forwarding Swiss and foreign requests for service;
- handling of requests for mutual assistance to gather evidence and serve documents in civil cases.

### Organisation

Mutual Assistance Unit II is headed by Raphaël Mauro. His deputy is Matjaz Vlahovic. The Unit employs seven further lawyers, as well as three paralegals and one assistant.

### Remit

#### *Central Offices*

The Central Office for cooperation with the USA conducts independent mutual assistance proceedings with the United States. These also include asset recovery. In complex or particularly important cases concerning organised crime, corruption or other serious offences, the Central Office for coordination with Italy may also decide for itself on the grant of mutual assistance, including asset recovery. In addition, Mutual Assistance Unit II is responsible for all requests for mutual assistance concerning cultural property.

#### *Delegation/supervision*

Apart from operating its Central Offices, if direct contact between judicial authorities is not possible, Mutual Assistance Unit II forwards Swiss requests for mutual assistance to foreign governments, conducts a summary examination of incoming foreign requests, and delegates them to the competent cantonal legal assistance authority or to the Office of the Attorney General of Switzerland (OAG) for execution. In such cases, Mutual Assistance Unit II will also decide on whether or not to extend the doctrine of speciality. This is known as secondary legal assistance. In addition, the Unit's powers include forwarding information for the purposes of criminal prosecution, as described in Art. 21 of the European Convention on Mutual Assistance in Criminal Matters (ECMA)<sup>5</sup> for example, and granting consent for findings transmitted via official assistance channels to be forwarded to a foreign prosecuting authority. Mutual Assistance Unit II acts in a supervisory capacity in all of the legal assistance proceedings for which it is responsible. In this capacity, it advises Swiss criminal prosecution and legal assistance authorities, as well as contacts abroad, and makes every effort to ensure that the obligation to execute foreign requests for legal assistance promptly is fulfilled. As a supervisory authority, Mutual Assistance Unit II may appeal against orders and decisions before the Federal Criminal Court and the Federal Supreme Court, and will be invited to a hearing as part of the appeal proceedings.

#### *Service of documents*

Mutual Assistance Unit II also handles Swiss and foreign requests for the service of documents. If it is not possible to serve documents to the competent judicial authorities or addressees directly, the Unit will forward the request for service to the foreign government concerned or, in the case of foreign requests, to the competent Swiss authority. It is also responsible for transmitting the confirmation of service to the requesting authority.

#### *Service of documents in civil cases*

Finally, Mutual Assistance Unit II handles requests for mutual assistance to gather evidence and to serve documents in civil cases. It forwards Swiss requests to foreign governments, examines incoming foreign requests and forwards these to the competent executing authority in Switzerland.

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<sup>5</sup> SR 0.351.1

## 1.5 International Treaties Unit: Centre of expertise for the development of law

### Overview

The International Treaties Unit is the DILA's centre of expertise in the development of the legal framework surrounding mutual assistance. It has three main tasks:

- preparing and conducting negotiations on international treaties concerning mutual assistance in criminal matters, and supporting these treaties as they pass through the political process;
- drafting and supporting further legislative projects in the areas mentioned above;
- undertaking conceptual work for the entire Division, and representing it on domestic and international bodies.

### Organisation

The International Treaties Unit is headed by Laurence Fontana Jungo. Her deputy is Astrid Offner. The Unit employs three further lawyers, and is supported administratively by the Division assistant. The Unit's head also fulfils the role of Swiss chief-negotiator for treaties in the field of mutual assistance in criminal matters.

### Remit

#### *International treaties*

Based on the international treaties strategy determined by the FDJP, the International Treaties Unit expands Switzerland's network of bilateral treaties on mutual assistance in criminal matters. It may take the initiative itself, or respond to approaches from abroad. It conducts its business in close consultation with, and with the support of, the other specialist units of the DILA, as well as the Federal Department of Foreign Affairs FDFA services which also have vested interests in the field.

In addition to bilateral treaties themselves, the Unit's focus in recent years has increasingly turned to bilateral memoranda of understanding (MoU). These MoUs, which are not legally binding, offer a useful means of first approach to states with which, for a variety of reasons, no binding treaty can yet be concluded. By setting down certain administrative and organisational agreements, they provide a framework for improving international cooperation on criminal matters.

The International Treaties Unit also provides input to negotiations on multilateral treaties in this area, and takes the lead where such conventions mainly concern its particular areas of law. Where a treaty only contains certain mutual assistance elements in addition to its other objects, the Unit will provide input as part of the Swiss negotiating delegation.

#### *Other legislative projects*

The International Treaties Unit takes the lead on legislative initiatives concerning mutual assistance in criminal matters, specifically amendments to the IMAC, and to the laws governing cooperation with international criminal tribunals. It also provides input for other federal government legislative projects that have a bearing on mutual assistance.

#### *Conceptual work*

Finally, the International Treaties Unit supports the Division's management with drawing up strategies relating to policy and legislation in the DILA's fields of activity. It drafts background notes, as well as framework and strategy papers, and represents the Division on the steering committees of international organisations active in the field of mutual assistance in criminal matters, specifically the Council of Europe's Committees of Experts, and the Commissions of the UN Office on Drugs and Crime.

## 1.6 Liaison Prosecutor at Eurojust

### Overview



A cooperation agreement<sup>6</sup> between Switzerland and Eurojust, which is headquartered in The Hague, has been in effect since 2011. The object of the agreement is to strengthen cooperation between Switzerland and EU member states in the fight against serious forms of international crime. The DILA is Switzerland's point of contact for matters

concerning the implementation of the cooperation agreement. Cooperation between Switzerland and Eurojust was stepped up on 1 March 2015 with the secondment of a liaison prosecutor to The Hague.

### Organisation

The role of liaison prosecutor is fulfilled by Maria Schnebli. She is stationed at the Eurojust offices in the Netherlands, and reports to DILA management. She also holds the diplomatic status of an attaché at the Swiss embassy in The Hague.

### Remit

- Independent information-gathering, coordinating and establishing direct contact where there are enquiries from Swiss prosecuting authorities or from Eurojust concerning cross-border criminal investigations;
- Organising and participating in coordination and strategic meetings;
- Providing information and advice to the Swiss criminal prosecution and executing mutual assistance authorities at cantonal and federal level about the services and support available from Eurojust and/or the liaison prosecutor;
- Reporting to the Eurojust advisory group, which is chaired by the DILA and comprises representatives of the Swiss Conference of Attorneys General, the cantonal public prosecutors' offices and the OAG.

<sup>6</sup> Agreement between Switzerland and Eurojust of 27 November 2008, in force since 22 July 2011, SR 0.351.6.

## 2

# On the world stage and behind the scenes: Key cases and issues in 2015

It is impossible for this section to cover every single aspect of the operations of the Division for International Legal Assistance in 2015. Instead, individual cases have been chosen to illustrate the diversity of the DILA's remit. In addition to cases which have attracted considerable media coverage, this selection also includes issues that were important behind the scenes, or which are particularly significant from the legal perspective.

## 2.1 FIFA and related proceedings – a perfect example of teamwork

Anyone who googles 'Federal Office of Justice' and 'FIFA' will get 299,000 hits. This figure offers no direct clues as to the workload involved in this case, but it does give an idea of the time and energy which the DILA and many other authorities devoted to this series of legal proceedings in 2015. Major cases like these can only be handled on the basis of teamwork at all levels. The FIFA-related proceedings were a prime example of this.

### 'Operation Soccer'

The Attorney General's Office for the Eastern District of New York has been investigating current or former members of the FIFA Executive Committee for many years. Some of these individuals are, or were, also members of the executive committees of their continental football associations, or otherwise occupied leading offices within their national associations. They are suspected of accepting over 100 million US dollars in bribes and kickbacks between the early 1990s and today. It is alleged that sports media and sports marketing companies made payments under a number of guises so that they would be awarded the relevant contracts in connection with the staging of soccer tournaments in North, Central and South America. Representatives of these marketing firms are thus also under investigation.

As the proceedings progressed, the USA requested legal assistance from Switzerland. After a number of preparatory discussions, in their legal assistance request dated 6 March 2015 the US authorities formally asked for the handover of documentation concerning over 50 accounts with Swiss banks, through which the bribes are alleged to have passed. A supplementary request then applied for 35 of these accounts to be frozen. In a further submission on 21 May 2015, the USA requested the arrest of several individuals for the purpose of their extradition.

The DILA then issued the extradition warrants against the persons concerned, and instructed the Zurich cantonal police to take the latter into custody. Seven individuals were arrested at a Zurich hotel on 27 May 2015. On the same day, the DILA issued orders to ten Swiss banks to freeze a number of accounts and to release banking records.

On 1 July 2015, the USA made a formal request for Switzerland to extradite those who had been arrested. In addition, in response to a further request from the US authorities a further two high-ranking FIFA officials were arrested on 3 December 2015. As in the past, the arrests were made on the basis of extradition warrants issued by the DILA. Of the total nine individuals arrested in Switzerland, five had accepted their extradition by 31 December 2015. Four have been extradited to the USA, and one to Uruguay.

In the mutual assistance proceedings, the frozen assets amount to approx. 80 million US dollars. The freezes have been imposed with a view to the assets being confiscated by the US authorities. Also in response to a request from the USA, in addition to the issue of banking documentation, in the autumn of 2015 a further order was issued for the release of Swiss criminal records connected with the proceedings in the USA. After some of this enormous body of evidence had been examined and the initial orders had become legally enforceable, a first batch of banking documents was handed over to the USA at the end of December 2015.



FIFA-related proceedings dominated work in 2015. Picture: Keystone, Pascal Mora

First and foremost, teamwork means effective communication between those involved, and the inclusion of all important actors. Where Operation Soccer was concerned, a number of issues had to be clarified in advance: how were the content and timing of the extradition and legal assistance proceedings to be coordinated with the criminal investigations conducted by the OAG? When should the account freezes be ordered to avoid jeopardising the arrests for the extradition proceedings? How and when should the media be informed? What resources did the authorities concerned need to make available? The Extraditions Unit and Mutual Assistance Unit II within the DILA, as well as the Zurich cantonal police, bore primary responsibility for providing legal assistance in the FIFA case. They were in constant contact with the US authorities and the communications offices responsible.

To date, feedback on this close working relationship has been extremely positive. Transparent two-way communication within individual areas of responsibility proved highly effective. All of the authorities concerned were exemplary in fulfilling their allocated roles. The operation was nonetheless marred slightly by the leak by the New York Times, which resulted in journalists already being on the scene in Zurich as the arrests were taking place. It is not known who might have been responsible for the indiscretion. Fortunately, it did not jeopardise the final outcome of the operation.

## 2.2 It is sometimes a long path between search request and extradition

A total of 397 extradition requests were received by the DILA in 2015. This was slightly higher than the previous year's 364, and shows the persistently high extradition-related workload that Switzerland faces. By far the largest proportion of the requests – around three quarters – came from within the Schengen area. This evidences Switzerland's close involvement in cross-border criminal prosecutions, especially those involving its neighbours.

With all of these extradition cases, it generally makes sense to be able to take and execute the necessary decisions as quickly as possible. Where extradition is concerned, the obligation to execute requests for foreign assistance promptly is designed to ensure that the individuals concerned do not have to spend too long in custody pending extradition, and quickly to establish legal certainty about his or her situation. It also allows the authorities to deploy their financial and human resources efficiently. That said, it is not always easy to process an extradition swiftly, especially in cases in which domestic and foreign criminal proceedings collide. This is true even if there are no special circumstances, or any special legal problems to resolve. A case in point is that of a Croatian citizen who was wanted in Germany for burglary.



### Germany one way – but the way might be longer than you think!

On 7 November, the DILA through Interpol received an arrest request. A Croatian citizen, who lived in Switzerland, was to be sought upon the application of the Munich public prosecutor's office for a series of break-ins at jewellers' shops. A review of the wanted man's personal details revealed that he had been remanded in custody in the canton of Basel-Stadt, where he was under investigation by the local public prosecutor, also for burglary. On 13 November 2013, secondarily to remand, the DILA ordered that the man be held in detention pending extradition. This means that he would have remained in detention even if he had technically been released from remand. At his first hearing, conducted by the public prosecutor's office of the canton of Basel-Stadt on behalf of the DILA on 15 November 2013, the wanted man stated that he refused to be extradited to Germany. Formal extradition proceedings were then instituted as a result.

A short time later, the DILA received the formal extradition request from the Bavarian State Ministry of Justice. Further to this request, the Division arranged for a hearing so that the wanted man could respond. Enquiries with the Basel-Stadt public prosecutor's office indicated that a custodial sentence of one to three years could be expected from the proceedings in Basel. After the wanted man's legal representative had been able to respond in writing to the extradition request, the

DILA issued its ruling on 16 January 2014. It ordered that, after he had served his sentence in Switzerland, the wanted man was to be extradited to Germany. In February 2014, the man lodged an appeal against this decision with the Federal Criminal Court, which rejected all points of it on 29 April 2014. Since this decision was not referred to the Federal Supreme Court, at the end of May 2014 the DILA authorised extradition to the Bavarian State Ministry of Justice, on condition that the Swiss prison sentence was served first.

A subsequent enquiry with the Basel-Stadt public prosecutor's office revealed that, in the meantime, the wanted man had already begun to serve the Swiss sentence, before it had been formally imposed. It was expected that the man would be charged in court in the summer of 2014, and that he would subsequently be sentenced to around three years in prison. On 6 March 2015, the man was sentenced by the court of first instance in the canton of Basel-Stadt to three and a quarter years in prison. He appealed against this sentence. On 17 December 2015, the Basel-Stadt Court of Appeal upheld the original judgment. By that point, the man had already served three quarters of his sentence. The president of the Court of Appeal ordered that he be released from the early completion of his sentence, subject to safeguards that he be handed over to the German authorities, thus fulfilling the extradition ruling. On the DILA's instructions, the man was finally handed over to Germany on 21 December 2015.

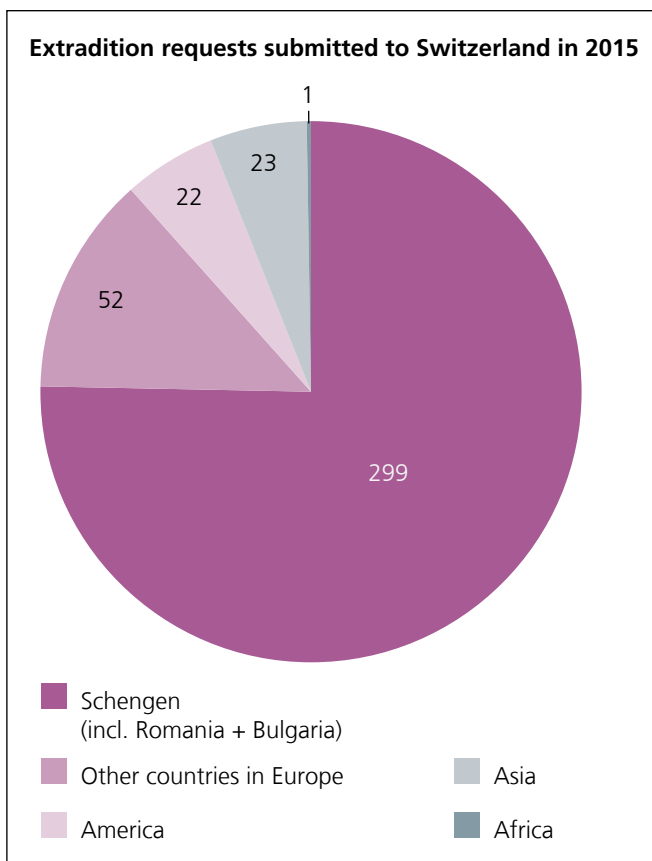


Figure: FOJ DILA

Extradition proceedings in this case were slowed down by the fact that there were two different criminal prosecutions – one in Switzerland and one abroad. As a rule, the sentence passed in Switzerland must be served before the DILA can close the case and archive it. Instead of the six months or so that extradition proceedings with European states usually take, this means that the case continues to occupy the Division for longer, and for many years in some cases. Specifically, the completion of the sentence in Switzerland must be coordinated smoothly with the actual extradition. It is therefore essential that such cases are reviewed regularly, and that an effort is made to foster communication between all of the authorities involved. This is one of the reasons that the Division operates an electronic case monitoring system, to support the Units in this task.





Having served a custodial sentence in Switzerland, a Croatian citizen was extradited to Germany, where he was to appear in court charged with a series of break-ins at jewellers' shops. Picture: Keystone

### 2.3 How different legal systems interact in extradition proceedings

Extradition law is not the only area in which a very general distinction can be drawn between two main legal traditions worldwide. The first of these is the continental European tradition of civil law. Civil law states include the majority of European countries, between which the extradition process is relatively straightforward. All that is required is an arrest warrant and a sufficiently clear description of the alleged offence. Evidence in the formal sense does not have to be presented. This is not the case in cooperation with common law states, such as Canada, Australia or New Zealand. Coming from the Anglo-Saxon legal tradition, these states require much more than the suspicion that an offence has been committed before they will embark upon extradition proceedings. Before a person can be arrested and extradited, evidence must be presented to demonstrate that a conviction is likely. Furthermore, in many cases only certain, precisely

defined forms of evidence are permitted, as prescribed by national law. This means that requests for legal assistance to states with an Anglo-Saxon tradition of law involve much more work for Switzerland, and their chances of success are less certain.

The specific requirements for the presentation of evidence that are applied by the potential extraditing state are a key element of the decision on whether or not Switzerland should prepare an arrest and extradition request. The DILA therefore always works in close contact with the Swiss prosecuting authorities to decide exactly what action should be taken, bearing in mind the time and effort required, and the expected costs.

The Division was occupied by particularly complex extradition proceedings with New Zealand in 2015. This example illustrates the problem of the demanding requirements for evidence set by common law states.

**One murder, two legal systems...**

Alberto Fabbri, Chief Public Prosecutor of the canton of Basel-Stadt, reports:

On 13 December 2000, a young Tamil woman was murdered in her own apartment in Basel. Two days later, the public prosecutor's office of the canton of Basel-Stadt issued a warrant for the arrest of the woman's former partner S.C., also a Sri Lankan national, on suspicion of murder or voluntary manslaughter. At the request of the public prosecutor's office, the DILA placed the prime suspect on the international wanted list.

It was not until eleven years later, on 17 August 2011, that Interpol Wellington reported that S.C. had been found living in New Zealand under the name S.B. Using forged identity documents, he had travelled from Paris, via Seoul and Fiji, to New Zealand in 2001. He had since been living in Auckland.

Via the DILA, the Basel-Stadt public prosecutor's office informed the New Zealand authorities that it upheld the arrest warrant, and would seek to have S.C. extradited to Switzerland. And so began extremely complex and costly extradition proceedings.

One of the first obstacles was that New Zealand law requires an arrest warrant to be issued by a court – and not by a public prosecutor's office. Expert opinions about the jurisdiction and powers of a Swiss public prosecutor's office had to be submitted to the New Zealand authorities. These had to contain detailed explanations about its power to issue arrest warrants, to order enforcement measures, and to interview witnesses. These extensive statements on the position and remit of the public prosecutor's office under the Swiss law of criminal procedure were drawn up specially for the extradition dossier by both the Federal Office of Justice and the Court of Appeal of the canton of Basel-Stadt.

A further difficulty was that all of the evidence had to be prepared once more for the extradition request to New Zealand. All of the interview records and reports for the extradition dossier had to be submitted to all witnesses and experts once again, and their confirmation obtained. One

important witness had to be flown specially to Switzerland from abroad. Each individual document then had to be translated into English, and confirmed in a sworn statement before a representative of New Zealand, the Legal Attaché at the New Zealand embassy in Geneva.

After several attempts, the DILA submitted the final extradition request on 16 June 2014, via the Swiss representation in New Zealand. On the instructions of the New Zealand Minister of Justice on 18 August 2014, the competent court in Auckland issued an arrest warrant for S.C. on 22 August 2014. The suspect was then arrested on 26 August 2014, and appeared before Auckland District Court. Subsequently, however, he was released on bail until his extradition hearing.

Before this court hearing, at the request of the New Zealand Ministry of Justice further investigations had to be conducted, and a variety of supplementary documents formally submitted by the Federal Office of Justice in Switzerland. On 22 May 2015, the competent judge finally decided that the evidence that had been submitted contained sufficient prima facie indications to try S.C. for murder, and also fulfilled the other criteria for extradition. The New Zealand judge then issued the necessary arrest warrant.

After the New Zealand Minister of Justice had ordered the extradition to be carried out, plans could be made for the suspect's handover to Switzerland. This, too, resulted in an enormous amount of administrative work at many levels. In particular, transit permits had to be obtained from the USA and Germany. The extradition itself could not have proceeded smoothly without very close cooperation with a wide variety of authorities.

Approximately four years after S.C. had been found in New Zealand, and after an extremely complicated legal process, the suspect was finally extradited to Switzerland on 25 August 2015, accompanied by a team from the Basel-Stadt cantonal police. S.C. is currently facing a murder charge in the canton of Basel-Stadt, and is on remand awaiting his trial.

Despite the initial challenges presented by the law of evidence, after a great deal of time and effort extradition was finally achieved in this case. It should nonetheless be remembered that the interplay of different systems of law remains difficult, and is a fundamental problem that will have to be resolved in the future.

It is therefore imperative that the specialists at the DILA monitor any developments in the law of evidence in relevant states, and that they foster contact with local experts. Furthermore, where possible the DILA makes an effort to address the issue at the multilateral level, such as at the Council of Europe, or in bilateral consultations.



In the case of S.C., all of the evidence had to be prepared again for the extradition request. By sealing it with the FDJP seal, the FOJ also fulfilled one of the formal requirements laid down in older extradition treaties. Picture: FOJ DILA

#### 2.4 Right of appeal in the case of criminal prosecution on behalf of another state

In the real-world practice of law, the facility to transfer the prosecution of a criminal offence which essentially falls under Swiss jurisdiction to a foreign prosecuting authority is of considerable importance. In 2015, the FOJ forwarded 199 requests from Swiss authorities that cases be prosecuted by foreign authorities on their behalf (2014: 220). It is estimated that a further 200 or so requests per year are submitted directly to Germany, Austria and Italy by the cantonal public prosecutors' offices, without involving the DILA.

Despite these approximately 400 requests annually for the assumption and transfer of criminal proceedings, there have been very few judicial rulings in this field. The main reason for this are the special and very strict conditions defining the group of people who are permitted to take legal action. The Federal Criminal Court<sup>7</sup> passed a landmark ruling on this very issue in 2015, which was subsequently upheld by the Federal Supreme Court<sup>8</sup>.

The case concerned criminal proceedings which the OAG had commenced against A, a Brazilian citizen living in Brazil. At the request of the Office of the Attorney General, the DILA submitted a request to Brazil for its authorities to prosecute A on Switzerland's behalf. A and two further individuals lodged an appeal against this request with the Federal Criminal Court. However, the Court refused to consider the appeal because under Art. 25 para. 2 IMAC the appellants had no right of appeal. They were neither habitually resident in Switzerland, nor did they otherwise have sufficient ties with the country. Furthermore, the case did not classify as an exception which would have permitted an appeal. Such an exception would be granted, for example, if a non-Swiss resident who would be affected by the transfer of prosecution in the same way as they would be affected by a legal assistance measure. This was not true of the case in question, however. The appellants had not demonstrated that the transfer of criminal proceedings to Brazil would result in the handover of items or assets to which they themselves or third parties are entitled. The Federal Supreme Court consequently itself refused to hear the appeal against the decision of the Federal Criminal Court.

Case law upholds the current practice of the DILA. The effect of the courts' rulings is to recognise that criminal proceedings abroad should not be blocked or delayed before they have even begun by appeals against the request from Switzerland. Otherwise the foreign authorities might not have sufficient time for precautionary action to secure evidence, or to arrest the alleged offender. Current practice therefore enables the criminal justice authorities to make a swift substantive assessment of the allegations.

This does not mean, however, that evidence can be handed over to foreign authorities along with the request for the assumption and transfer of proceedings, if this would not also be permitted in mutual assistance proceedings. This is an aspect which the Swiss prosecuting authorities and of course also the DILA must review *ex officio* when such a request is submitted to a foreign state.

<sup>7</sup> Decision of the Federal Criminal Court RR.2015.275 / RP.2015.61 + 62, RR.2015.276 / RP.2015.63 + 64, RR.2015.277 / RP.2015.65 + 66 of 29 October 2015.

<sup>8</sup> Decision of the Federal Supreme Court, 1C\_595/2015 of 19 November 2015.



## 2.5 The enforcement abroad of sentences passed in Switzerland

In practice, the conditions for a sentence passed in Switzerland to be enforced abroad, i.e. almost always in the sentenced person's country of origin, are very seldom fulfilled. In the main, this form of cooperation is possible with countries whose legal systems are similar to that in Switzerland, such as Germany or Austria. The national law of most other states does not permit them to enforce foreign sentences at all, or only if provided for in a treaty. The Convention Implementing the Schengen Agreement, CISA<sup>9</sup> and the Additional Protocol to the Convention on the Transfer of Sentenced Persons<sup>10</sup> provide for sentence execution on behalf of another state in one very specific case, namely if the sentenced person evades their sentence by escaping to their country of origin. In 2015, one such case involving France attracted a great deal of media attention.

### The dangers of loopholes ...

In its decision of 2 April 2014, the Court of Appeal at the Vaud Cantonal Court sentenced French citizen L.S. to 14 years in prison for murder. The judgment became final and absolute in October 2014. The Federal Supreme Court had previously quashed the same court's initial decision of 29 November 2012, which imposed a 16-year custodial sentence. L.S. was not present when the Cantonal Court's ruling was read on 30 November 2012, although he has attended the hearing the day before and, according to the public prosecutor's office of the canton of Vaud, has explicitly said that he would be there for the judgment on the following day. Instead, L.S. has already travelled to France.

He could not be extradited back to Switzerland because France – like Switzerland – does generally not extradite its own citizens. At the request of the canton of Vaud, on 6 January 2015 the DILA thus submitted a request to the French Ministry of Justice that France execute L.S.'s sentence on Switzerland's behalf. The French authorities were not able to accommodate the Swiss request for legal reasons, chiefly because the judgment of 2 April 2014 did not become legally enforceable until after L.S. was already in France. The French authorities therefore declined to execute the sentence on Switzerland's behalf.



A sentence passed in Switzerland can be enforced by another state on behalf of the Swiss authorities only under very strict conditions.

Picture: Keystone

In this case, the conditions laid down in Art. 68 CISA and Art. 2 of the Additional Protocol to the Convention on the Transfer of Sentenced Persons were not fulfilled. The person concerned had left Switzerland between two court dates, i.e. before judgment had been passed. However, both provisions expressly state that there must be a final and absolute judgment before any request can be made for sentence execution to be transferred. In other words, they require the convicted person to have evaded the execution of their sentence.

The Council of Europe is currently revising the aforementioned Additional Protocol. One of its objectives is to expand the scope of Art. 2 so that, in the future, the Protocol also covers cases in which the offender travels legally to their home country while criminal proceedings are ongoing or after judgment has been passed, and does not subsequently return to the sentencing state.

<sup>9</sup> Legally binding on Switzerland on the basis of the Agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the latter's association in the implementation, application and development of the Schengen acquis of 26 October 2004 (Schengen Association Agreement, SIA), SR 0.362.31.

<sup>10</sup> Additional Protocol of 18 December 1997 to the Convention of 21 March 1983 on the Transfer of Sentenced Persons, SR 0.343.1.

## 2.6 Duration of transfer proceedings

In 2015, the FOJ Division for International Legal Assistance again recorded a relatively high number of requests from foreign nationals sentenced to prison in Switzerland who wished to serve out their sentence in their home country (2015: 48; 2014: 47). The majority of these applications were examined on the basis of the Convention on the Transfer of Sentenced Persons<sup>11</sup>, since almost all of those concerned originated from other European countries.

Two new transfer treaties were applied for the first time in 2015. The DILA submitted three transfer requests to the Kosovan authorities on the basis of the Treaty between the Swiss Confederation and the Republic of Kosovo<sup>12</sup>, which has been in force since 11 May 2014. Furthermore, one sentenced person applied to serve the remainder of their sentence in the Dominican Republic, their home country.<sup>13</sup>

There were just two cases in which cantonal prison services applied to have a sentenced foreign national transferred to their country of origin against their will. These concerned one Romanian and one German citizen.

The number of applications from Swiss nationals who had been sentenced abroad and wished to serve the remainder of their sentence in Switzerland remained low in 2015 (2015: 13; 2014: 14). The great majority of these are serving sentences in another European country. However, the DILA also pursued a number of proceedings with non-European countries in 2015. These included Thailand, Venezuela, Peru, and Trinidad and Tobago. Progress in these cases is generally halting, and has proven time-consuming. The geographical distance, language differences and complicated jurisdiction rules in these countries are just a few of the reasons that proceedings go on for a very long time. In such cases, the DILA is regularly able to count on the support of the local Swiss consulate or embassy.

Although the Convention provides for transfer for a residual sentence of as little as six or three months, the time-consuming process often means that the transfer never actually happens. The legal proceedings often take longer than the remaining term of the sentence. There are a variety of reasons for this. The Swiss authorities themselves need a great deal of time to carefully review the application of a person who wishes to be transferred. Collating the necessary documents, their translation (sometimes involving large volumes of text) and naturally also the channels



Under the terms of the bilateral transfer treaty, the FOJ submitted three requests to the Kosovan authorities for sentenced persons to serve out the remainder of their sentences in their home country. Picture (Dubrava prison): SRF, cameraman Gazmend Idrizi

<sup>11</sup> SR 0.343.

<sup>12</sup> SR 0.344.475.

<sup>13</sup> Treaty of 16 January 2013 on the Transfer of Sentenced Persons between Switzerland and the Dominican Republic, in force since 1 October 2014, SR 0.344.318.

of transmission all require time and effort. In many cases, however, the authorities of the person's home country take even longer to review the application. One of the reasons for this may be that if a person is transferred, their home country then becomes responsible for executing the sentence, and must therefore assume the related costs. Judicial proceedings to recognise

the validity of a foreign criminal judgment can also be particularly costly and time-consuming. Should the sentencing and executing states finally reach an agreement, and if the sentenced person still wishes to be transferred, it may still – for reasons that are generally unclear – take a long time before the executing state actually takes custody of the person concerned.

### **Successful handover!**

The transfer of a Serbian citizen in November 2015 had a four-and-a-half-year back story.

On 5 October 2009, an individual who had been convicted and was serving a prison sentence in Switzerland applied to the DILA to be transferred to their home state of Serbia. It was initially unclear whether the applicant held Serbian or Kosovan citizenship. A previous application for a transfer to Kosovo had been rejected owing to the absence at the time of a treaty basis. In February 2010, the competent cantonal prisons authority was asked to submit the documents required for the transfer. To establish the applicant's nationality, the Division contacted the authorities in both Serbia and Kosovo. These investigations took approximately a year. It emerged that the sentenced person held both Serbian and Kosovan nationality. At the beginning of March, the cantonal prisons authority declared its willingness to pursue the appli-

cation for transfer. The necessary transfer documents, as well as a translation into Serbian, were submitted to the DILA in October 2011.

On 14 October 2011, the DILA submitted the formal transfer request to the Serbian Ministry of Justice. With its letter of 11 September 2015, the Ministry then returned the court ruling on the enforceability of Switzerland's request. Further information, such the conditions for an early release on parole, had to be obtained. Finally, on 5 and 27 May 2014 respectively, the sentenced person and the cantonal prisons authority agreed to the conditions of transfer. On 12 September 2014, the DILA was able to send formal consent to the transfer to the Serbian Ministry of Justice. It then took a further 14 months, until 17 November 2015, until a Serbian police escort travelled to Switzerland to collect the prisoner.

The transfer process is often complex and wide-ranging. For this reason in itself, the costs and potential gains of proceedings must be weighed up at an early stage. The DILA fulfils an important advisory function when the cantonal prison authorities are con-

ducting their initial reviews of transfer requests. Moreover, regular positive contact between the DILA and the executing state can help to speed up the processing of these requests.

## 2.7 Close cooperation with the USA

Switzerland and the USA have a long history of effective cooperation in international mutual assistance in criminal matters. The USA was the first state with which Switzerland concluded a bilateral legal assistance treaty.<sup>14</sup> Recent years have seen a steady increase in legal assistance dealings with the USA. At three times the number of US applications, the high number of Swiss requests is particularly striking. Quantitatively, the Swiss prosecuting authorities thus benefit much more often from cross-border support from their US counterparts than vice-versa.

Where active legal assistance (Swiss requests to the USA) is concerned, after a level phase up to 2010 there has been a steady increase in requests in recent years. In fact, the number of Swiss requests almost doubled in the five years to 2015 (2015: 96, 2014: 81, 2010: 50). There is a specific reason for this trend: the enormous rise in the everyday use of electronic communication via the internet also leads to abuses, primarily property crime and sexual and defamation offences. As a result, recent years have seen a rising number of criminal cases in these areas. Since the largest and most widely-used internet service providers are based in the United States, the data and evidence required for these prosecutions must also be obtained in the USA. This requires the Swiss prosecuting authorities to submit a request for legal assistance to the US authorities. The greater part of these requests ask for assistance in the form of securing and handing over the content of the electronic communication via the US internet service provider, as well as ancillary data. The entry into force of the Convention on Cybercrime with effect from 1 January 2012<sup>15</sup>, which also applies to legal assistance dealings with the USA, has also resulted in an increase in the number of requests.

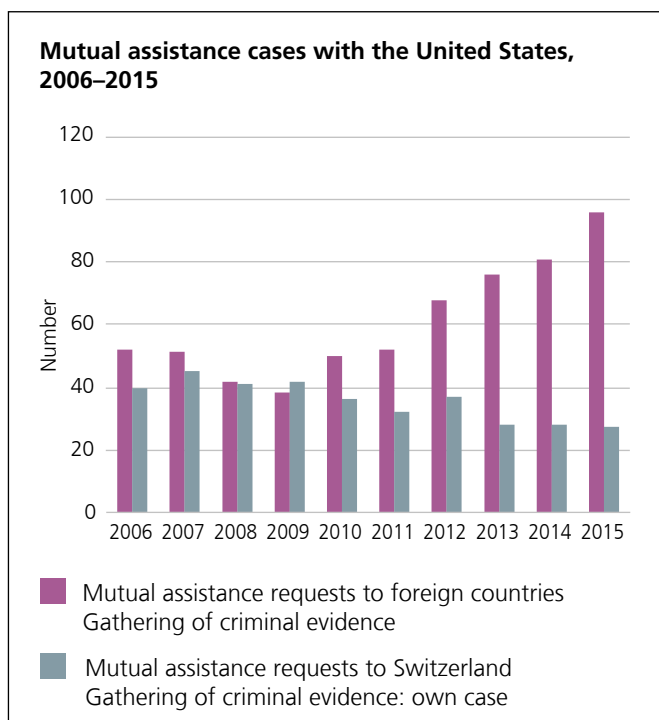


Figure: FOI DILA

Meanwhile, there has been a slight decline in the number of requests for legal assistance from the USA in the past five years. One of the main reasons for this is that the US stock exchange supervisory authority, the Securities and Exchange Commission (SEC) is submitting fewer requests to the DILA. Although the SEC is essentially an administrative authority, under the legal assistance treaty with the USA it has the power to submit requests for legal assistance to Switzerland. It made use of this option for many years, but for some time now it has been requesting the information it needs from Switzerland not via legal assistance channels, but through the mechanisms of administrative assistance. Amendments to the provisions on administrative assistance in a number of specialist laws mean that the SEC's requests can be fulfilled relatively quickly by the competent Swiss administrative authorities. In many cases, there is thus no need to submit a request for legal assistance, and this has influenced the case numbers in recent years. 2015 was no exception (2015: 27, 2014: 28, 2010: 36).

Although the actual number of legal assistance requests from the USA has declined slightly, those that are received involve increasingly complex cases. More and more often, this is due to the scale and complexity of the underlying criminal proceedings, where corruption is concerned, for example. At the same time the requests frequently necessitate – or demand – a whole series of legal assistance measures. Often, the request will target a large number of bank accounts held by several individuals. Furthermore, where Switzerland is conducting its own investigations in the same context, many requests apply for the handover of Swiss criminal records. The related steps in the process, such as the examination of these documents, and the grant of a legal hearing to all of the persons concerned before such requests can be fulfilled, must be conducted with great care and are extremely time-consuming. In 2015 it was also interesting to observe the considerable volume of assets that the USA asked to be frozen under requests for legal assistance. In some cases, their value stretched into nine figures.

In addition to the requests for legal assistance in connection with FIFA, much of the DILA's time was occupied by three other requests based on complex criminal cases involving the payment of bribes to foreign officials. Two legal assistance cases, linked to some degree, concerned the corruption of Venezuelan officials in connection with energy and steel contracts. The DILA provided legal assistance by obtaining banking records and ordering a large number of accounts frozen. In the third case (please refer to the box below), the request was also based on an important criminal case involving the corruption of foreign officials. This latter case was also linked to a politically-exposed person<sup>16</sup>.

<sup>14</sup> Treaty of May 25, 1973 between the Swiss Confederation and the United States of America Concerning Mutual Legal Assistance in Criminal Matters (T-US), SR 0.351.933.6.

<sup>15</sup> SR 0.311.43

<sup>16</sup> cf. footnote 2 above.



### On the trail of corruption

Since 2006 the US authorities have been conducting criminal proceedings on the grounds of the corruption of foreign officials. Most recently the daughter of the president of a former Soviet republic is said to have profited from bribes. They are alleged to have been paid by several foreign companies, with some of them routed through accounts in Switzerland. The companies had hoped to secure access to the former Soviet republic's markets. Other criminal proceedings are pending in the same case, including those being conducted by the OAG. As part of the US investigation, the US authorities requested legal assistance from Switzerland. The DILA agreed to this request in 2014, and issued the necessary decree accommodating it, and the final ruling.

The Federal Criminal Court rejected appeals against the request, and the banking records that had been obtained, as well as the Swiss criminal files on the case, could be handed over to the US authorities.

Having reviewed the banking records, in 2015 the US authorities asked the DILA to freeze a number of bank accounts. Legal assistance was granted, and assets of 350 million US dollars were frozen. These assets had already been seized by the OAG as part of its own proceedings. The assets will remain frozen until the USA or Switzerland orders their confiscation. Should this happen, the confiscated assets might also be shared between the two states.

To fight crime effectively, the supporting legal assistance must also be provided quickly. Close cooperation and coordination between the states concerned is key. It is the only way to move the criminal proceedings forward, and to seize the alleged proceeds of crime so that they can be confiscated. As a financial centre, this is in Switzerland's interests, particularly. In view of the developments of recent years, the DILA can expect further com-

plex requests for legal assistance from the USA, as well as other states. It is thus especially important not only that it has sufficient staff, but also that they have the right expertise. For this reason, since 2015 the DILA has also employed a financial analyst, who examines the financial flows involved in complex legal assistance cases, and determines their importance to the criminal proceedings abroad.



Legal assistance proceedings with the USA, in particular, often involve obtaining large volumes of evidence, especially banking records. They also tend to affect a large number of individuals, who must also be involved in the proceedings. Picture: FOJ DILA

## 2.8 Procedure for providing information for prosecutions abroad in the absence of Swiss jurisdiction

In 2015, the FOJ's Division for International Legal Assistance devoted particular attention to the issue of providing information for use in criminal prosecutions abroad. The question as to whether and how such information can be forwarded to the state in which the crime was committed was answered in DILA Circular No. 4, of 20 March 2015<sup>17</sup>. Where a legal foundation

exists (such as Art. 21 ECMA or a provision in a bilateral treaty), the information is forwarded to the foreign state – in most cases by the DILA. Conditions apply, however: the Swiss public prosecutor's office must have formally established that Switzerland does not have any jurisdiction over the case, the victim of the crime must have expressly wanted the information forwarded, and the crime in question must be a serious one.

### Foreign crime, Swiss justice?

Nicolas Cruchet, Deputy Public Prosecutor of the canton of Vaud, reports:

Three examples illustrate the problem of making a criminal complaint to foreign authorities:

- a) A family (all of whom are Italian citizens living in Switzerland) drive to France on holiday. On the highway, they are victims of a car-jacking. Threatening the family with weapons, the perpetrators force them to leave their car, before fleeing with it.
- b) A student holding Spanish nationality is living in the Lausanne area. She goes to spend a few days with friends in Belgium. In Brussels, the young woman is attacked by a stranger and raped. In her attempt to defend herself, she pulls out a clump of her attacker's hair. She has the presence of mind to keep this hair and to hand it to the local police when she returns to Switzerland.
- c) A foreign couple living in Switzerland and crossing the border to work leave their two small girls in the care of an uncle during the school holidays. The uncle lives in France and is also not Swiss. While the under-age girls are with him, he violates their sexual integrity.

These three examples have one thing in common: the offences were committed abroad, but they are reported in Switzerland, to prosecuting authorities (the policy or public prosecutor's office) familiar to the victims. Where a serious offence is suspected, the Swiss prosecuting authorities will generally take urgent investigative action. This is the only way to secure the necessary evidence (e.g. conserving the Brussels rapist's clump of hair for a subsequent DNA analysis). The absence of Swiss jurisdiction nonetheless makes it impossible to pursue charges. The inevitable ruling is that proceedings must be halted. Under the principle of territoriality, criminal acts must, in principle, be prosecuted by the state on whose territory they were committed. Consequently, the Swiss prosecuting authorities are not responsible for prosecuting offences committed abroad – unless the victim or the perpetrator is a Swiss citizen (the active/passive personality principle).

Yet how should a Swiss public prosecutor's office without jurisdiction fulfil its moral responsibility at least to enable the foreign judicial system to prosecute a particularly serious crime? This was the question asked by the public prosecutor's office of the canton of Vaud, and others, of the Federal Office of Justice. In response, in March 2015 the FOJ issued a Circular which set out a satisfactory solution to this practical problem.

The Office of the Public Prosecutor of the canton of Vaud welcomes this outcome.

Initial experience following the issue of the Circular has been positive. The new practice meets one of the victims' needs: it is important that the foreign authorities are at least informed of any offence, so that they are in a position to begin investigations.

<sup>17</sup> Available on the internet at: [www.bj.admin.ch](http://www.bj.admin.ch) > Sicherheit > Internationale Rechtshilfe in Strafsachen > Rechtshilfeführer > Strafrecht > Wegleitungen und Checklisten [German, French and Italian].

## 2.9 Handover of illicitly acquired assets, and the particular challenges of the Arab Spring

As one of the world's major financial centres, Switzerland has been confronted for many years with requests for legal assistance that concern the location, confiscation and handover of assets acquired illicitly in their country of origin. In such cases, the quality of the support provided by the Swiss authorities in charge of executing legal assistance is of crucial importance to the reputation of the Swiss financial industry. Switzerland has been – and continues to be – a pioneer in the international recovery of illicitly acquired assets. In addition to handover under civil law, which is possible at any time, assets may also be recovered in legal assistance proceedings pursuant to Art. 74a IMAC. Furthermore, the facility under Swiss law to have an account frozen on a provisional basis substantially increases the chances of subsequent forfeiture and handover under the same article.

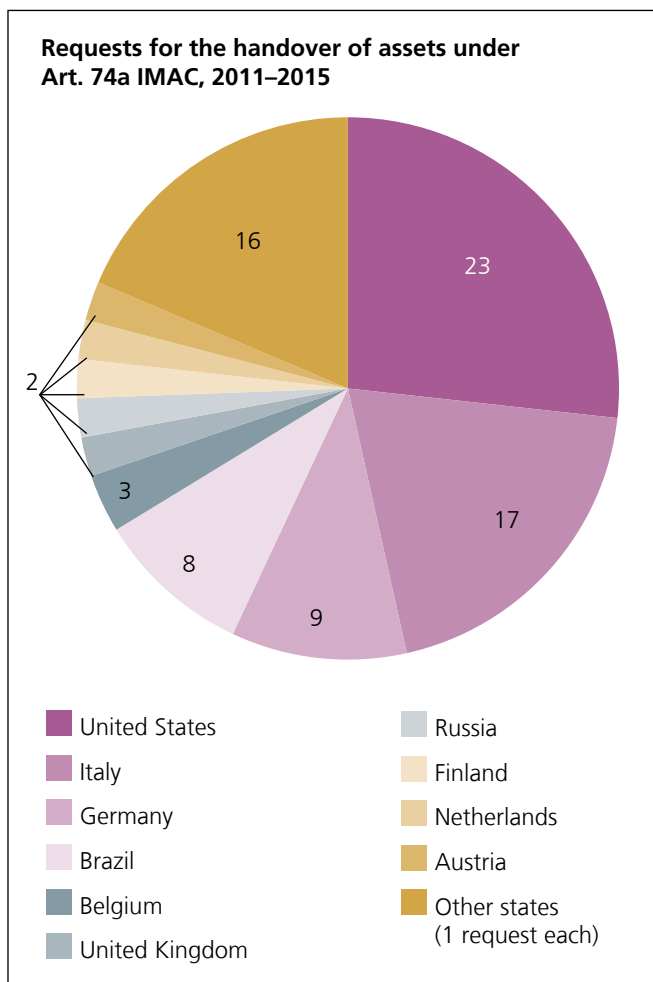


Figure: FOJ DILA

The aim of Art. 74a IMAC is the straightforward return of incriminated assets in Switzerland, in the form of a legal assistance measure. In many instances, this option is faster and easier than the formal execution of a foreign forfeiture ruling. Over the past five years the DILA received a total of 86 requests for the handover of assets, thereof 18 in 2015 (2014: 17). The majority of these requests were made by the United States, followed by Italy and Germany.

It takes a great deal of time to examine a request for the handover of illicitly acquired assets to their country of origin or to another entitled claimant. First, the evidence must be handed over to the requesting state. This enables it to conclude its own criminal proceedings. In turn, the Swiss authorities require a forfeiture order before they are able to hand the assets over.

Cases involving politically exposed persons (PEPs) are often particularly complex and time-consuming. PEPs are primarily current or former heads of state and government, high-ranking national politicians, or high-ranking officials in the government, judicial system, military and political parties at the national level. In addition to their political significance, such PEP cases often differ from regular asset recovery cases in terms of the level of assets that have been frozen, and the number of financial institutions concerned.

In 2015 the DILA and other authorities, specifically the Office of the Attorney General and the FDFA's Task Force Asset Recovery, continued to work hard to resolve the cluster of cases associated with the Arab Spring. A large number of requests for legal assistance has been received since protests in a number of Arab countries – such as Tunisia, Egypt and Morocco – began in 2010. These requests primarily reflect the new governments' efforts to secure the return of assets acquired by the members of the old regimes, through corruption or unlawful enrichment, for example. Switzerland's political strategy is to assist the new governments of the Arab world in their efforts, and attaches the greatest importance to the swift return of illicitly acquired assets. The related proceedings are often highly complex, however, and must be adapted continuously to political developments in the countries concerned, some of which are undergoing rapid change. For these reasons, it is not possible to return assets as quickly as the populations of the affected countries would like.

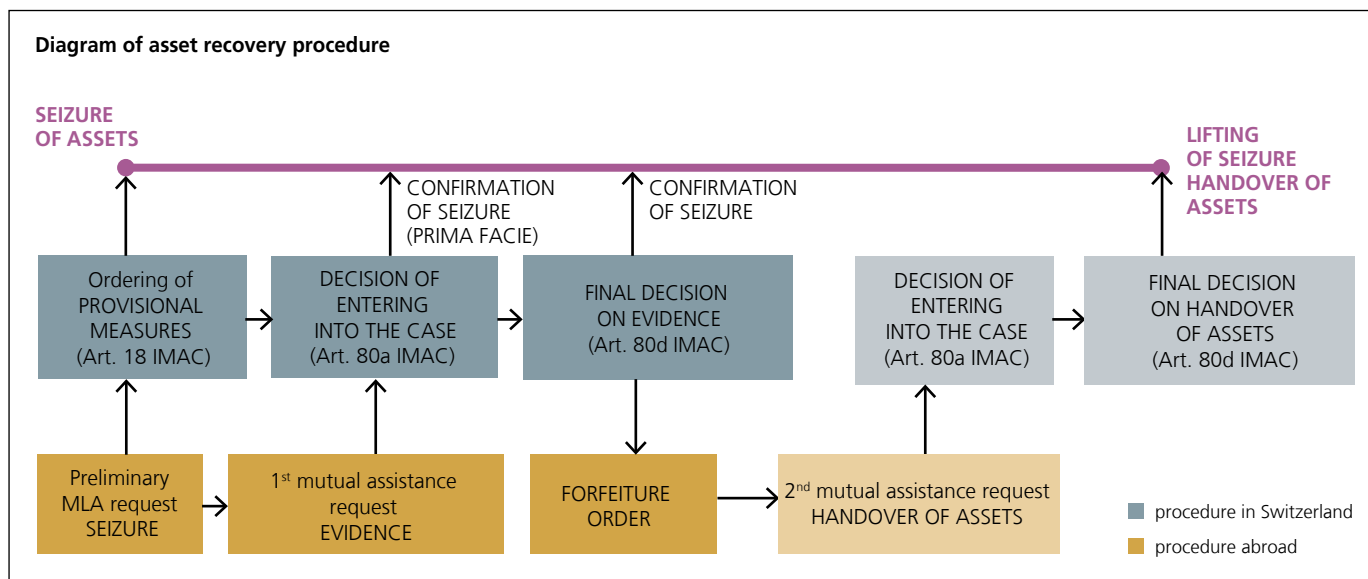


Figure: FOJ DILA

### Spring in the Arab world – the case of Tunisia

Tunisia requested legal assistance from Switzerland after the fall of former President Ben Ali in 2011. The DILA delegated the petitions for the handover of evidence (mainly banking records) to the OAG for further processing and, where appropriate, execution.

The requests for legal assistance were then dealt with step by step until final rulings were issued. Many of these rulings were the subject of unsuccessful appeals to the Federal Criminal Court or Federal Supreme Court.

Once the final rulings had become legally enforceable, and after guarantees had been obtained about respect for fundamental procedural rights in Tunisia, the key evidence could be handed over to the Tunisian authorities by the end of January 2015. It is now for the Tunisian prosecuting author-

ities to conduct the necessary criminal proceedings and to obtain the forfeiture orders for the handover of the assets that remain frozen in Switzerland.

However, in two cases the OAG, as the authority appointed to execute legal assistance, decided in April 2014 to order the early handover of assets under Art. 74 para. 3 IMAC. According to Federal Supreme Court precedent, frozen assets may be handed over before any final and executable forfeiture order has been issued in certain cases in which the burden of proof can be reversed. In one of the cases, the final ruling became legally enforceable because the appellant was found to have no right of appeal. In the other, the Federal Criminal Court heard the appeal and admitted it on the grounds of insufficient substantiation. Consequently, in this second case the assets cannot be handed over at this stage.

This case is a perfect example of the many legal and practical obstacles to the return of assets that are thought to have been acquired illicitly, however politically desirable this is. It is particularly difficult to establish a clear link between the offences committed abroad and the assets that have been located in Switzerland. In many cases, the events that are under investigation occurred many years previously, and their appraisal frequently proves to be extremely complex.

An additional complication in the Tunisia case was the need to coordinate legal assistance proceedings with the OAG's parallel criminal investigation into money laundering by members of deposed President Ben Ali's clan. In such situations, it is especially important that communications with the Tunisian authorities and the public are transparent and consistent at all times. To this end, the authorities involved, i.e. primarily the OAG, the DILA as the supervisory authority, and the FDFA's Task Force Asset Recovery, work closely together, each within the scope of its own authority.

This coordinated effort is entirely in keeping with Switzerland's Asset Recovery Strategy<sup>18</sup>, as adopted by the Federal Council in 2014. With the strategy, the Federal Council is pursuing four aims: 1. to return assets as swiftly as possible, in accordance with applicable law, 2. an international commitment to levelling the playing field (avoiding distortions of competition) 3. the agreement of transparent, carefully selected arrangements for the restitution of assets, and 4. clear and active communication about these aims. The activities of the DILA play a major part in fulfilling the first of these aims.

<sup>18</sup> The Asset Recovery Strategy is available in German, French and Italian on the FDFA website at: [www.eda.admin.ch](http://www.eda.admin.ch) > Aussenpolitik > Finanzplatz und Wirtschaft > Unrechtmässig erworbene Vermögenswerte von politisch exponierten Personen > Strategie der Schweiz zur Sperrung, Einziehung und Rückführung von Potentatengeldern ('Asset Recovery'). Click 'Andere Sprachen' for French and Italian.



## 2.10 The DILA's authority in complex or particularly important cases

A number of instruments have been created to achieve the first aim in the Federal Council's Asset Recovery Strategy. Of these, the possibility of concentrating legal assistance with the DILA is particularly relevant from the Division's perspective. Art. 79a let. c IMAC permits the Division to conduct legal assistance proceedings centrally on its own authority, especially in complex or particularly important cases, and also to make the key decisions in those proceedings. In 2015, the Division decided to make greater use of this authority. The legal assistance proceedings with

Ukraine in connection with former President Yanukovich represents the first application of this strategy. The experience gained will enable specific details to be finalised. Specifically, by conducting proceedings itself instead of being involved at a distance via the executing authority, as its delegating and supervisory body, the DILA aims to simplify coordination with the other authorities involved, with the requesting state and also, increasingly, with organisations such as the International Centre for Asset Recovery (ICAR) at the Basel Institute on Governance. As part of the legal assistance proceedings involving Ukraine, in 2015 the Division thus stepped up cooperation with ICAR significantly.

### Ukraine: A case for the DILA

On 28 February 2014, the Federal Council froze assets belonging to former Ukrainian President Yanukovich and his associates. This resulted in the first contact between the DILA and the Ukrainian prosecuting authorities, when Switzerland agreed to support investigations into assets that might be located in Switzerland. Bearing in mind the Federal Council's Asset Recovery Strategy, the Division decided to conduct the corresponding legal assistance proceedings itself under Art. 79a let. c IMAC.

The first requests for assistance were received a short time later, but did not satisfy requirements and had to be denied.

It soon emerged that, in the light of the political situation and their working conditions, the Ukrainian criminal prosecution authorities were finding it extremely difficult to build a case around the allegations of corruption, and especially to establish a connection between the alleged offences and any assets that might be in Switzerland. For the first time, the DILA thus coordinated very closely with ICAR, which had been engaged by the Ukrainian public prosecutor to provide it with support. In the spring of 2015, Switzerland was able to respond to the first request for legal assistance from the Ukrainian authorities, freezing assets belonging to a high-ranking representative of the previous regime, and ordering the issue of banking records.

The DILA's experience with conducting its own proceedings and cooperating with ICAR in 2015 was very positive. ICAR is supporting the Ukrainian criminal prosecution authorities in particular with formulating their requests for legal assistance. The fact that ICAR also has a specific technical knowledge of Swiss international mutual assistance law, and that it can also act as a

cross-border bridge-builder, makes it easier for the Ukrainian authorities to amend and complete their requests in response to the DILA's questions. It is important for a number of reasons – not least to keep the financial costs of proceedings down – to eliminate legal problems as far as possible right at the beginning of the legal assistance process.



After former Ukrainian President Viktor Yanukovich had been overthrown, the DILA had the banking records of several of his entourage seized, and accounts frozen. Image (Yanukovich's dacha): Keystone

## 2.11 An important role on the European stage: The Swiss liaison prosecutor at Eurojust

Switzerland's liaison prosecutor began work at Eurojust in the spring of 2015. Her priority in the first year of her secondment to The Hague was to raise awareness of Eurojust as an institution, and of the function of a liaison prosecutor, among the Swiss criminal prosecution authorities. The aim is for the Swiss authorities to be able to benefit from Eurojust support for their own cross-border investigations in future.

In 2015, 47 new files were opened at Eurojust in response to case-related enquiries from Swiss criminal prosecution authorities. A further 103 files with a link to Switzerland were opened by other national representations at Eurojust, resulting in the corresponding enquiries with the liaison prosecutor.

The Coordination Meeting is an important element of work at Eurojust. It is where the investigating public prosecutors and police investigators from the states concerned can meet around the same table. The objective is to plan joint investigation strategies and to discuss upcoming problems relating to the execution

of requests for legal assistance, or other legal issues. Moreover, these meetings help to build relationships of trust and encourage direct contact between the prosecutors concerned. Experience has shown that this direct contact decisively improves the chances of a successful cross-border investigation. In principle, in day-to-day business a liaison prosecutor from a third state has the same status within Eurojust as National Members, i.e. the public prosecutors of the EU member states. This means that she is not only permitted to take part in Coordination Meetings, and thus represent a Swiss prosecuting authority or provide support to Swiss public prosecutors, but also has the right to convene such meetings herself. All in all, the liaison prosecutor attended 24 Coordination Meetings in 2015, and organised one.

The first year of the liaison prosecutor's secondment has shown that, as a coordination platform, Eurojust is becoming an increasingly important player in the fight against crime in Europe. The continuous exchange of information between the states concerned, beginning at an early stage, is absolutely key to efficient cross-border criminal prosecutions. With this in mind, the Swiss liaison prosecutor plays an important role on the European stage.



A Coordination Meeting at Eurojust, Image: Eurojust

## 3

## Our own script: Treaty negotiations

The Division for International Legal Assistance manages a series of negotiation portfolios at both bilateral and multilateral levels. These are all at different stages, and are progressing at different speeds for reasons that are beyond the DILA's control. Over the past 20 years, Latin America has been one of the regions on which the DILA has focused to expand Switzerland's network of international mutual assistance treaties. Other areas of emphasis have been European states and Eurojust, as well as Asian and North African states.

Under the Federal Department of Justice and Police's current treaty strategy, adopted in 2012, work to expand Switzerland's network of treaties on international mutual assistance in criminal matters will now concentrate on the world's emerging financial centres. Most current bilateral dossiers therefore concern states in Asia and the Persian Gulf. The DILA has also been making initial approaches to states in sub-Saharan Africa to establish a basis for mutual assistance.

Under the IMAC, Switzerland can essentially cooperate with any state on mutual assistance in criminal matters. The practical need for closer cooperation is complicated by the fact that the Swiss legal system differs – significantly, in some areas – from the systems of law in other states. Switzerland therefore makes its initial approach using softer instruments of cooperation which are not legally binding. A number of different negotiations on memoranda of understanding (MoUs) – primarily declarations of political intent – are thus being conducted at present.

In March 2015, the Federal Council adopted the first Swiss mutual assistance MoU with Tanzania. The principal effect of this is to permit direct contact between the central offices in the ministries of justice of both states. In Switzerland's case, this function is performed by the DILA. It also contains an annex which sets out a number of model requests covering the most important legal assistance measures.

#### Mutual assistance MoU with Tanzania

Every year, the Swiss National Bank (SNB) publishes statistics for each country on the foreign assets and liabilities held with Swiss banks.<sup>19</sup> The statistics for 2012 caused a stir in Tanzania, as they revealed that Swiss banks were holding CHF 221.8 million in Tanzanian assets. Supported by Swiss NGOs, this resulted in the opinion being voiced loudly in Tanzanian media that no Tanzanian could have acquired so much money and placed it in Switzerland by legal means. However, the Tanzanian judicial authorities were not able to find sufficient evidence domestically against specific individuals. They therefore asked Switzerland for assistance.

The Tanzanian authorities were nonetheless unable to provide any information to add to the SNB's statistics. Since the grant of legal assistance requires at least the name of the alleged account-holder, and the bank concerned, legal assistance channels initially remained closed in this case.

This prompted Tanzania to approach Switzerland in 2013 with a draft memorandum of understanding on mutual assistance in criminal matters. It was received positively. Swiss practice is to support foreign criminal prosecution authorities as much as possible with locating foreign assets within the Swiss financial system that have allegedly been acquired by illicit means – and ensuring their return to their rightful owners. The final version of the MoU was negotiated and finally approved by the Federal Council in March 2015.

<sup>19</sup> For 2014, please refer to Banks in Switzerland, section 1.5, available at [www.snb.ch](http://www.snb.ch) > Statistics > Statistical publications > Banks in Switzerland.





There was no doubt in the minds of the Tanzanian people that no Tanzanian could have acquired so much money by legal means. Picture (market in Zanzibar): Keystone.

The new MoU facilitates direct contact between the Swiss and Tanzanian ministries of justice. This means that, in future, the legal assistance authorities on both sides can be in touch with each other even as requests are being drafted. As a result, it is more likely that future requests will satisfy the legal requirements of the Swiss justice system and, in particular, that futile 'fishing expeditions' can be avoided. Legal assistance requests from Tanzania will nonetheless continue to be handled on the basis of the IMAC.

In the light of its experience with Tanzania, in the autumn of 2015 Switzerland also responded positively to a similar enquiry from Qatar about establishing an instrument of mutual assistance. Negotiations on a comparable MoU were concluded just a short time later, in November 2015. Here, too, in addition to the declaration of political will, the emphasis is on direct contact between the central authorities of both countries.

As a further step in the implementation of the FDJP's treaty strategy, the first round of negotiations on a legal assistance treaty with Indonesia began in April 2015. A number of points remain to be resolved, such as the possible extension of legal assistance to tax-related matters, as well as provisions on data protection.

Other important bilateral dossiers include China and the United Arab Emirates. In these cases, the Division is holding preliminary talks with a view to drafting legal assistance instruments.

In addition, Switzerland has been able to conclude a treaty with Brazil on the transfer of sentenced persons. It was signed by both states on 23 November 2015. As soon as the treaty enters into force, sentenced persons from both states will have the opportunity for the first time to apply for a transfer to serve their prison sentence in their home state.

The DILA's activities were not confined to the bilateral level in 2015, however. Progress on the continued development of mutual assistance was also made at the multilateral level. The Federal Council moved ahead with a key project by adopting its Dispatch on the Third and Fourth Additional Protocols to the European Convention on Extradition<sup>20</sup>. Since Switzerland has already ratified both the Convention and the first two Additional Protocols<sup>21</sup>, and that they have proven themselves to be a sound basis for cooperation in practice, accession to the Third and Fourth Additional protocols is the logical next step. The essential aim of these two protocols is to update the legal foundations for extradition between member States, with regard to a variety of

<sup>20</sup> SR 0.353.1

<sup>21</sup> Additional Protocol of 15 October 1975, SR 0.353.11, and the Second Additional Protocol of 17 March 1978, SR 0.353.12.

practical aspects, in particular. The Third Additional Protocol codifies simplified extradition proceedings at the multilateral level. Simplified proceedings are already a feature of domestic Swiss law. The Fourth Additional Protocol provides for the technical aspects of cooperation to be updated, such as permitting the electronic transmission of extradition documents, and also introduces a number of time limits to speed up extradition proceedings.

In addition, the DILA is collaborating within the Council of Europe on the revision of the Additional Protocol to the Convention on the Transfer of Sentenced Persons.



Expanding Switzerland's network of mutual assistance treaties is one of the Federal Council's security policy priorities.  
Image (negotiations in Indonesia): FOJ DILA

# 4

## Our programmes: Electronic guides to international legal assistance

### 4.1 FOJ website ([www.bj.admin.ch](http://www.bj.admin.ch))

The FOJ website provides information on international mutual legal assistance in criminal matters in its broadest sense.<sup>22</sup> In addition to its general scope, with organisational charts, media releases and information on the various Units, the website also gives an overview of the legal foundations for mutual assistance. Individual summaries are provided of extradition (including international searches for wanted persons), mutual legal assistance, criminal prosecution and sentence execution on behalf of another state, and the transfer of sentenced persons to other states or to international courts. Added to this are guidelines, checklists and model documents, as well as links to useful legal assistance guides (see below). There is also an overview of current projects to expand the legal framework, such as treaty negotiations and legislative projects.

### 4.2 The Legal Assistance Guide ([www.rhf.admin.ch](http://www.rhf.admin.ch))

In practical terms, the Legal Assistance Guide is the FOJ's most important online tool for accessory legal assistance. It offers Swiss authorities and courts practical support with evidence-gathering and official document submissions for their requests to foreign judicial authorities. Its individual country pages provide an easily-digestible overview of the key requirements for submissions to the state in question for assistance with both civil and criminal cases. The site also contains model requests, forms and direct links to the applicable legal foundations in each case. Much of this documentation is available in English, although in view of its domestic target group, the site itself is in German, French and Italian only.

### 4.3 Database of Swiss localities and courts ([www.elorge.admin.ch](http://www.elorge.admin.ch))

The Elorge website contains a directory of those Swiss authorities which have the power to enter into direct legal assistance relationships with foreign partner authorities to provide and receive accessory legal assistance. The main feature of Elorge is aimed primarily at foreign authorities, however. By entering a postcode or place name, they can find out for anywhere in Switzerland which local authorities are able to enter into such direct relationships.

<sup>22</sup> Available on the internet at [www.bj.admin.ch](http://www.bj.admin.ch) > Security > International Mutual Legal Assistance > International Mutual Legal Assistance in Criminal Matters.



## 5

# Selected decisions by Swiss courts on international mutual assistance in criminal matters

## 5.1 Extradition and transfer

- Decision of the Federal Criminal Court RR.2014.333 + RP.2014.81 of 21 January 2015: statute of limitations as an obstacle to extradition, prima facie classification as murder;
- Decision of the Federal Supreme Court 1C\_126/2015 of 26 March 2015: adjudication on a particularly important case pursuant to Art. 84 of the Federal Supreme Court Act;
- Decision of the Federal Criminal Court RR.2014.297 + RP.2014.76 of 21 April 2015: transfer of a convicted offender against his will under Art. 3 of the Additional Protocol to the European Convention on the Transfer of Sentenced Persons.
- Decision of the Federal Criminal Court RR.2014.328 of 23 April 2015: respect for human rights as a condition of extradition; extradition subject to the provision of the corresponding guarantees; obligation to monitor such guarantees;
- Decision of the Federal Supreme Court 1C\_173/2015 of 27 April 2015: adjudication on the right to respect for private and family life pursuant to Art. 8 of the European Convention on Human Rights;
- Decision of the Federal Criminal Court RR.2014.208 of 7 May 2015: competition between asylum and extradition proceedings / political offence and decision of the Federal Supreme Court 1C\_274/2015 of 12 August 2015: interesting deliberations on admissibility, torture, political offence, deliberations of the asylum authorities are decisive in extradition proceedings;
- Decision of the Federal Criminal Court RR.2015.117 of 13 August 2015: ne bis in idem.

## 5.2 Mutual legal assistance cases

- Decision of the Federal Criminal Court RR.2014.280 + RP.2014.73 of 15 January 2015: interplay of the IMAC and Code of Criminal Procedure in the sealing of documents;
- Decision of the Federal Criminal Court RR.2014.236 of 16 January 2015: conditions which must be accepted (guarantees);
- Decision of the Federal Criminal Court RR.2015.37-38 of 9 February 2015: monitoring of telecommunications;
- Decision of the Federal Criminal Court RR.2014.217 of 3 March 2015: service of orders and beginning of set periods;
- Decision of the Federal Criminal Court RR.2014.261 of 23 March 2015 and RR.2014.262 of the same date: inadmissibility of legal assistance in the case of offences of a purely fiscal nature;
- Decision of the Federal Criminal Court RR.2015.20 of 22 April 2015: monitoring of telecommunications;
- Decision of the Federal Criminal Court RR.2015.116-118 of 13 May 2015: compensation upon reconsideration of a final ruling;
- Decision of the Federal Criminal Court RR.2015.11 of 22 June 2015: conditions which must be accepted (guarantees);
- Decision of the Federal Criminal Court RR.2015.275-277 of 8 July 2015: accuracy required in the presentation of facts in legal assistance proceedings;
- Decision of the Federal Criminal Court RR.2015.94 of 9 July 2015: right of appeal of an individual heir;
- Decision of the Federal Criminal Court RR.2015.58 + RR.2015.60 of 5 August 2015: a legal entity cannot invoke the reasons for the inadmissibility of legal assistance set out in Art. 2 IMAC;
- Decision of the Federal Criminal Court RR.2015.71 of 12 August 2015: right of appeal of companies that have been dissolved;
- Decision of the Federal Supreme Court 1C\_464/2014 of 18 August 2015: seizure of assets; termination of criminal proceedings in the requesting state;
- Decision of the Federal Criminal Court RR.2015.54 + RP.2015.9 of 15 September 2015: importance of the human rights situation in the provision of accessory legal assistance, legal assistance subject to the provision of guarantees.
- Decision of the Federal Criminal Court RR.2015.142 of 30 October 2015: monitoring of telecommunications;
- Decision of the Federal Criminal Court RR.2015.196-198 of 18 November 2015: nullity of the legal assistance ruling despite the absence of a right of appeal.

## 6

## Hard facts: Important statistical information on international legal assistance, 2011–2015

Action group	Type of action	2011	2012	2013	2014	2015
Extradition requests to foreign countries		177	186	216	259	257
Extradition requests to Switzerland		338	358	413	364	397
Search requests to foreign countries		173	202	251	289	278
Search requests to Switzerland		22 088	19 999	21 862	24 940	29 664
Prosecution transfer requests to foreign countries		196	171	225	220	199
Prosecution transfer requests to Switzerland		81	55	65	113	110
Sentence execution requests to foreign countries	Custodial sentences	5	16	6	4	5
Sentence execution requests to Switzerland	Custodial sentences	4	2	2	6	
	Fines	1			2	
Prisoner transfer abroad	at the request of the sentenced person	34	31	51	47	48
	under Additional Protocol	1	1		2	3
Prisoner transfer to Switzerland	at the request of the sentenced person	24	18	18	14	13
Suspect search for international tribunals		4	2	1	0	1
Legal assistance requests to Switzerland	Gathering of criminal evidence	1 189	987	1 088	1 173	1 180
	Gathering of criminal evidence: supervision	936	1 091	1 089	1 033	1 113
	Gathering of criminal evidence: own case	36	35	24	33	43
	Handover of assets	8	10	15	13	16
	Handover of assets: own case	6	4	8	4	2
	Gathering of civil evidence	69	74	61	44	43
Legal assistance for international tribunals	International Criminal Court	5	5	1	2	
Legal assistance requests to foreign countries	Gathering of criminal evidence	792	853	869	1052	900
	Handover of assets	2	5		5	5
	Gathering of civil evidence	50	44	29	23	13
Secondary legal assistance	For use in criminal proceedings	6	7	10	11	10
	For forwarding to third country	3	4	7	3	10

Unsolicited legal assistance	To foreign countries (Art. 67a IMAC)	109	118	133	88	105
	To Switzerland	3	3	8	2	3
Document service requests to Switzerland	Criminal law	346	227	257	368	306
	Civil law	9 333	8 190	577	579	586
	Administrative law	119	79	79	50	59
Document service requests to foreign countries	Criminal law	660	606	744	629	549
	Civil law	1 023	981	952	990	924
	Administrative law	129	258	673	587	588
Sharing	International sharing (Swiss forfeiture ruling)	7	10	3	6	1
	International sharing (foreign forfeiture ruling)	8	3	5	8	5
	National sharing					120*
Instruction to the FDJP	Limitation of cooperation (Art. 1a IMAC)				1	
	Authorisations under Art. 271 of the Swiss Criminal Code.	1		1	6	
<b>Total</b>		<b>37 969</b>	<b>34 653</b>	<b>29 751</b>	<b>32 989</b>	<b>37 556</b>

\* Authority for national sharing was only transferred to the DILA from the FOJ Criminal Law Division in 2015.

#### Judicial decisions

Court	2011	2012	2013	2014	2015
Federal Criminal Court	194	208	257	265	242
Federal Supreme Court	46	50	61	50	67
<b>Total</b>	<b>240</b>	<b>258</b>	<b>318</b>	<b>315</b>	<b>309</b>

