

Evaluation of international mutual legal assistance in criminal matters

Federal Office of Justice

Key facts

Crime knows no borders. For this reason, prosecution authorities use international mutual legal assistance to obtain evidence located abroad. This assistance is important for Switzerland's reputation, particularly in view of its significance as a financial centre. Switzerland is highly solicited by other countries for assistance in economic matters, and is therefore more likely to provide mutual assistance than to request it. In recent years, it has received more than 2,300 requests per year on average. However, it is not possible to say precisely how many requests Switzerland has received, as direct requests received by the cantons are not recorded in the statistics.

Despite international pressure over the last fifteen years, procedures relating to requests for mutual assistance in Switzerland remain slow. This is the conclusion of this audit by the Swiss Federal Audit Office (SFAO), which also includes an international comparison. Furthermore, it shows that the quality of the work of the Swiss criminal prosecution authorities is commended abroad. Throughout this audit, the SFAO provides statistics that make it possible to assess how mutual assistance requests are processed, including at cantonal level, and illustrates its findings with concrete cases that were made available to it during the course of its research.

A multitude of players and procedures complicate mutual assistance

Mutual assistance is a federal matter. However, the 26 cantonal public prosecutor's offices, the Office of the Attorney General of Switzerland (OAG) and some other federal administrative authorities are responsible for processing mutual assistance requests from abroad. The Federal Office of Justice (FOJ) is in a unique position here. As the central authority for mutual assistance, it is in charge of supervising mutual assistance, but is also responsible for requests from the United States.

Requests for mutual assistance may also be submitted between European countries via a "direct route" from prosecutor to prosecutor. This channel with its multitude of players and diverse procedures has advantages, but it can occasionally hamper the handling of mutual assistance procedures and generate inefficiencies and duplications.

The disparity of resources and the delegation of cases to the enforcement authorities called into question

In small cantonal public prosecutor's offices, prosecutors who receive few requests for assistance are quickly overwhelmed by complex cases. This leads to lengthy procedures and mistakes that sometimes make it impossible to grant mutual assistance. The over-representation of small public prosecutor's offices in the appeals admitted to the Federal Criminal Court (FCC) illustrates this phenomenon. In addition, prosecutors from several cantons sometimes order measures for the same case that was transmitted to them via the direct

route, without the FOJ being notified. This wastes resources and carries an increased risk of appeal that could be avoided by informing the FOJ in a timely manner.

Right of appeal often used as a delaying tactic

Like Luxembourg, Switzerland has a specific right of appeal for the mutual assistance procedure that the other countries do not have. This right is often used to buy time in criminal proceedings abroad. Only 7% of appeals filed with the FCC are admitted, and only in very few cases does this result in a refusal to grant mutual assistance. Typically, these appeals redress a violation of the right to be heard. In the end, however, the evidence is delivered to the requesting state after an average of three to six months. In 90% of the cases where no appeal is filed, this right of appeal results in a delay of at least one month. This can be problematic for urgent requests that are crucial for the progress of an investigation abroad. The early release of information, as provided for in Article 80^{bis} of the draft Mutual Assistance Act, should make it possible to address this problem if the bill is accepted by Parliament.

Insufficient supervision by the Federal Office of Justice

The FOJ has not invested sufficient resources in the development of an effective control system. As a result, the FOJ's data is incomplete and does not allow the status of mutual assistance requests to be adequately monitored. It lacks an overview of ongoing cases and satisfactory implementation of its monitoring concept.

Moreover, a whole area of mutual assistance is beyond its control. This concerns direct Swiss requests from prosecutor to prosecutor and, in part, requests from abroad, about which the FOJ is notified with a delay. Without this overview of exchanges related to mutual assistance, the FOJ finds itself in a weakened position in negotiations with countries that do not offer reciprocity in this area. It is difficult for the FOJ to negotiate without an overview of the exchanges between Switzerland and a particular state. Moreover, the FOJ is very generous in the time given to the enforcement authorities before contacting them. Its monitoring activities show that it does not use all the means at its disposal to push procedures forward.

Finally, the FOJ has both enforcement and supervisory functions, in particular for requests from the United States. This is not in line with good supervisory practice and weakens its position vis-à-vis the enforcement authorities. As it depends on these authorities to enforce the measures it issues, it is more difficult for it to impose its views.

Recommendations to simplify and accelerate the procedure

The SFAO has several recommendations for the FOJ that should help to reduce the processing time for mutual assistance requests. Firstly, the Mutual Assistance Act should be revised to simplify and update it. It is necessary to separate the enforcement and control functions, to introduce the principle of opposition and to better regulate the links between the different legal foundations. Secondly, complex mutual assistance requests should be handled by authorities with sufficient experience. Finally, supervision should be improved in order to be able to intervene earlier and more consistently with enforcement authorities.

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