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Demarcation of duties between international mutual legal assistance in criminal law (FOJ) and police cooperation (fedpol)

This demarcation table contains generalised examples of typical cases and services in international mutual legal assistance in criminal law and police cooperation. It is a tool to help the competent authorities or even private persons to understand which category a given request falls into from a Swiss perspective.

International mutual legal assistance is judicial cross-border cooperation in criminal matters to support criminal proceedings in Switzerland or abroad. It involves in particular the extradition of persons prosecuted or convicted under criminal law or 'accessory' (minor) mutual legal assistance. In mutual legal assistance, requests for the execution of coercive measures in criminal proceedings (lifting of secrecy protected by law, search, seizure of property and assets, etc.) may also be made and accepted. The Federal Office of Justice (FOJ), International Legal Assistance Division, is the competent federal authority for this area of responsibility (contact details: see www.bj.admin.ch)

International police cooperation involves all forms of assistance between police and civil security authorities in different countries in the prevention, detection and investigation of criminal offences, the prevention of danger and in carrying out police tasks. Police cooperation includes the exchange of information for investigative purposes or mutual operational support in police operations and measures. International police cooperation is possible wherever countries are not required by national or international law only to provide mutual legal assistance. The contact and coordination point for international police cooperation is the Federal Office of Police (fedpol), International Police Cooperation Division (contact details: see www.fedpol.admin.ch).

Demarcation table

<u>Area of cooperation</u>	<u>Judicial legal assistance</u>		<u>Police cooperation</u>
	<u>Extradition</u>	<u>Minor legal assistance</u>	
Questioning / Interrogation	Interrogation of defendants facing extradition	Formal interviewing of witnesses (obligation to appear, testify and tell the truth); Formal questioning of accused persons	Police questioning of persons
Identification service	Ordering identification searches in extradition proceedings	Compulsorily ordered procurement of material concerning the identity of a person (photo, fingerprints, DNA data, etc.)	Release of information immediately available to the authorities about the identity of a person (photo, fingerprints, DNA data, etc.)
Release of files and information	--	Release of entire court files or criminal convictions in the original/certified copy; Release of extracts from criminal records to foreign authorities (FOJ responsibility)	Exchange of police information or information on preliminary proceedings against a person as well as police certificates of good conduct, information from public registers

Seizure/freezing and handing over/return of objects and assets (incl. vehicles)¹	Seizure/freezing and handing over of objects, also in the context of a request for assumption of responsibility for legal proceedings	Seizure/freezing and handing over of objects and assets under Art. 74 and Art. 74a of the Federal Act on International Mutual Assistance in Criminal Matters (IMAC)	Return of unlawfully obtained objects and assets to the entitled person without the use of coercive means of criminal proceedings
Observation	Authorisation for observation / surveillance of persons for the purpose of localisation (of more than 30 days or using technical surveillance equipment in accordance with Art. 280 of the Code of Criminal Procedure (CrimPC) or if such requests are received from non-Schengen states with which Switzerland has not concluded a police cooperation treaty that provides for this measure).	Authorisation for observation / surveillance of persons for the purpose of collecting evidence (of more than 30 days or using technical surveillance devices in accordance with Art. 280 CrimPC or if such requests are received from non-Schengen states with which Switzerland has not concluded a police cooperation treaty that provides for this measure).	Authorisation of observations / surveillance of persons (up to 30 days) without the use of technical surveillance devices in accordance with Art. 280 CrimPC within the framework of police cooperation under Schengen and other international treaties that provide for this measure; planning and operational implementation of these cross-border observations
Cross-border pursuit	Ordering the detention and extradition proceedings against persons stopped following a cross-border pursuit	Mutual assistance in criminal proceedings following cross-border pursuit	Authorisation and operational coordination of cross-border pursuit

¹ Civil law proceedings to establish ownership may be conducted.

Controlled delivery	--	Processing of a request for legal assistance for controlled delivery	Operational coordination of controlled delivery
Telecommunication surveillance measures	Ordering a surveillance measure for the purpose of search and arrest with a view to extradition	Surveillance measures; compulsory collection of further information (e.g. secret numbers) ordered by a judicial authority	Disclosure of monitored persons, IP addresses and technical secondary data that can be accessed without judicial coercion; Information on P.O. box holders and hotel registration slips
Requests for the assumption of responsibility for legal proceedings/criminal charges/spontaneous legal assistance	Making and receiving requests for the acceptance of responsibility for legal proceedings/bringing charges for the purpose of criminal prosecution (Art. 85ff IMAC)	Spontaneous transmission of information and/or evidence from Swiss criminal proceedings (Art. 67a IMAC)	Spontaneous transmission of information within the framework of police cooperation
Undercover investigations	--	Processing requests for mutual legal assistance for the deployment of foreign undercover investigators in Switzerland	Planning and managing the deployment of foreign undercover investigators in Switzerland
Presence of foreign representatives of the authorities	Presence of foreign authorities within the framework of extradition proceedings (e.g. when arrests are made prior to extradition)	Presence of foreign litigants when requests for assistance are made (prosecutors and investigating judges, police officers, defence lawyers, etc.)	Police visits/deployment

<p>Tracing of wanted persons</p>	<p>Searches made for the purposes of arrest in other countries for Switzerland and in Switzerland for other countries, ordering of detention pending extradition, etc.</p>	<p>--</p>	<p>Search for a wanted person's abode, witnesses, persons subject to proceedings or asked to give information; in agreement with the FOJ: taking supporting measures with the purpose of arresting persons wanted for extradition; withdrawal of Swiss identity documents pursuant to Art. 7 of the Identity Documents Act</p>
<p>Lifting of legally protected secrecy</p>	<p>--</p>	<p>Request for compulsory lifting of secrecy</p>	<p>Exchange of information previously collected by means of lifting legally protected secrecy, with the consent or on behalf of the ordering judicial authority and in accordance with the procedures laid down by law</p>