

How a request from Milan was executed in Lugano

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The procedure that the Ticino prosecutors followed can be described in a sequence of steps. A request from an Italian prosecutor or investigating judge reached the Swiss authorities either through the Federal Office of Police or, where the treaty allowed it, directly. The Ticino prosecutor examined whether the request met the formal requirements, whether the facts described would be punishable under Swiss law and whether an exception applied, above all the fiscal exception. If he admitted the request, he issued an order to the bank to produce the documents for the accounts named in it, often for a period of several years and for all accounts in which the same persons had signing authority.

The bank then had to collect the opening documents, the account statements, the transfer orders and the correspondence. The prosecutor sorted these documents and decided which of them were relevant to the facts described in the request. The account holder, through his lawyer, had the right to be heard and to object that particular documents were irrelevant or served a fiscal purpose. Only when the decision on transmission had become final could the documents be sent to Italy, accompanied by a reminder of the principle of speciality. In complex cases the Swiss prosecutor also questioned bank employees as witnesses, and the Italian magistrate could attend the hearing.¹

Every step took time. The production order could take weeks to execute. The sorting of thousands of pages took months, and appeals could add a year or more. For the Italian investigators, who were often working against the limitation periods of Italian criminal law, these delays could be decisive. For the account holders, the procedure was a guarantee that only what was necessary for a legitimate criminal investigation would reach the Italian authorities. The revision of 1996 tried to strike a new balance between these two interests.

1 The revision of 1996

The revision of the IMAC adopted on 4 October 1996 and in force since 1 February 1997 answered the criticism that Swiss procedure protected account holders at the expense of foreign investigations. It concentrated the remedies on the final decision of the executing authority, limited the right of appeal to persons personally and directly affected, and revised the principle of speciality.² It also introduced Article 74a IMAC, which allows Switzerland to hand over seized assets to the requesting State for forfeiture or restitution to the injured party, normally on the basis of a final and enforceable foreign decision.³ For Italian cases this meant that money seized in a Lugano bank could be returned to Italy once an Italian court had ordered its confiscation. The Federal Act on the Division of Forfeited Assets of 19 March 2004 later added rules on the sharing of confiscated assets between Switzerland and the requesting State.⁴

2 Notes

1. The description follows the structure of the IMAC in its current form: Art. 64 (coercive measures only where the facts contain the objective elements of a Swiss offence), Art. 65a (presence of persons participating in the foreign proceedings) and Art. 80e (appeal against the final ruling together with the preceding interim rulings), all as above. The practice of the Ticino authorities is described in general terms. ↩
2. Art. 67 IMAC, history note (Federal Act of 4 October 1996, in force since 1 February 1997, AS 1997 114; BBl 1995 III 1), <https://www.droit-bilingue.ch/en-de/3/35/351.1-67-86.html>. For the concentration of remedies and the limitation of standing see Art. 80e and 80h IMAC (as above), current versions. ↩
3. Art. 74a IMAC, inserted by the Federal Act of 4 October 1996, in force since 1 February 1997, <https://www.droit-bilingue.ch/en-de/3/35/351.1-74a-95.html>. ↩
4. Art. 74a(7) IMAC, inserted by the Federal Act of 19 March 2004 on the Division of Forfeited Assets, in force since 1 August 2004 (as above). ↩

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