

Italian requests for mutual assistance

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Most asset recovery between Italy and Switzerland runs through Italian criminal proceedings and requests for mutual assistance. The legal basis is the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (SR 0.351.1), supplemented between the two countries by the Agreement of 10 September 1998, which facilitates its application (SR 0.351.945.41) and has been in force since 1 June 2003.¹ The Agreement allows direct transmission of requests between the judicial authorities, so that the public prosecutor in Como can address the Ticino Public Prosecutor's Office without going through ministries. The Federal Office of Justice publishes the list of Swiss authorities that may correspond directly with foreign judicial authorities.² On the Swiss side, the Federal Act on International Mutual Assistance in Criminal Matters (IMAC) of 20 March 1981 governs the procedure.

A recent example shows the typical pattern. In 2023 the public prosecutor at the Tribunale di Como requested assistance in an investigation for fraudulent bankruptcy and tax offences. It asked for the bank documents of two accounts held by a company at Swiss banks, for searches of offices and for the examination of a witness. The Ticino Public Prosecutor's Office executed the request. An architect connected with the company appealed to the Federal Criminal Court in Bellinzona, which declared the appeal inadmissible on 12 March 2024 because he was neither the holder of the accounts, nor the tenant of the searched premises, nor the person examined.³ Under Article 80h IMAC and Article 9a of the IMAC Ordinance, only the account holder has standing to contest the transmission of bank documents. Beneficial owners, authorized signatories and persons named in the documents do not.

The fiscal reservation is the main limit of assistance in tax matters. Under Article 3(3) IMAC, Switzerland grants no assistance in proceedings concerning an offence that appears to be aimed at reducing fiscal duties.

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Assistance under the third part of the Act, which covers the production of bank documents and other measures of judicial assistance, may nevertheless be granted for tax fraud (German *Abgabebetrug*). Every form of assistance is available for qualified tax fraud within the meaning of Article 14(4) of the Federal Act on Administrative Criminal Law. For tax fraud in consumption taxes, value added tax and customs duties, treaty obligations towards the contracting states concerned take precedence over the fiscal reservation.⁴ Italian requests in tax matters therefore need to show deceit, for instance the use of false documents, and Swiss authorities attach a reservation of speciality to the transmitted documents. Chapter G.IV discussed the cooperation in tax matters, including administrative assistance under the double taxation convention, which has largely replaced judicial assistance as the channel for tax information.

1 Notes

1. Federal Criminal Court, decision RR.2023.189 of 12 March 2024, https://bstger.weblaw.ch/pdf/20240312_RR_2023_189.pdf (citing the European Convention on Mutual Assistance in Criminal Matters, SR 0.351.1, and the Swiss–Italian Agreement of 10 September 1998, SR 0.351.945.41, in force since 1 June 2003). ↩
2. FOJ, "Elenco delle autorità svizzere che possono corrispondere direttamente con le autorità giudiziarie estere", <https://www.e-doc.admin.ch/dam/rhf/it/data/strafrecht/behoerden/direktverkehr-i.pdf.download.pdf/direktverkehr-i.pdf>. ↩
3. Federal Criminal Court, RR.2023.189 (above). ↩
4. Omnilex, commentary on Art. 3 IMAC, <https://app.omnilex.ai/en/sources/commentaries/ch-fedlex--351.1--3>; Federal Act on International Mutual Assistance in Criminal Matters of 20 March 1981 (IMAC), SR 351.1, Art. 3(3), second sentence in the version in force since 1 February 2009, at [droit-bilingue.ch](https://www.droit-bilingue.ch/de-it/3/35/351.1-3-7.html), <https://www.droit-bilingue.ch/de-it/3/35/351.1-3-7.html>. ↩

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