

The defence perspective

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For defence counsel the location and the language rules of the court shape strategy from the first day of an investigation. A complaint against the choice of language must be lodged at the outset, because a change later in the proceedings is admissible only exceptionally. Counsel from German- or French-speaking Switzerland who defend in an Italian-language case must work in Italian or engage Ticino colleagues. The reverse applies to Ticino lawyers in German or French cases. Interpretation and translation are guaranteed for the accused, but counsel must ensure that the documents essential to the defence are actually translated. Complaints against seizures and other coercive measures are heard by the Board of Appeal in Bellinzona within short time limits.

Italian lawyers who advise clients in Swiss proceedings face an additional question, which is whether they may appear themselves. Nationals of EU and EFTA member states who are entitled to practise as lawyers in their home state under one of the professional titles listed in the annex may represent parties before Swiss courts in the free provision of services under the Federal Act on the Free Movement of Lawyers. They are not entered in the cantonal registers of lawyers, and where representation by a lawyer is mandatory they must act in conjunction with a lawyer entered in a cantonal register.¹ In practice Italian clients in Bellinzona are usually represented by Swiss counsel, often from Ticino, with Italian lawyers coordinating the parallel proceedings in Italy. Chapter G.III described the joint investigation teams and parallel proceedings in Catanzaro, Milan and Reggio Calabria, in which this coordination is essential.

For the practitioner. When a federal criminal investigation touches a client in Lugano: - check whether the case falls under federal jurisdiction (Arts. 23–24 CrimPC) or remains with the Ticino Public Prosecutor's Office, and raise doubts about jurisdiction early, - verify the language chosen by the OAG under Art. 3 StBOG and complain at once if it disregards the language

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skills of the persons involved or the language of the essential documents, - request interpretation and the translation of the essential documents (Art. 68 CrimPC, Art. 6(3) ECHR), - for an institution, prepare for the possibility of proceedings under Art. 102 SCC, including a penalty order, and document the organizational measures in place at the time of the facts, - consider the effect of a merger or restructuring on pending criminal proceedings in the light of the decision of 8 April 2026, which was not final, - in mutual assistance cases, argue the case fully before the Board of Appeal, because a further appeal to the Federal Supreme Court is admissible only in particularly important cases, - coordinate with Italian counsel where Italian proceedings run in parallel, and ensure that documents exchanged between the proceedings are used within the limits of the principle of speciality.

1 Notes

1. Federal Act on the Free Movement of Lawyers of 23 June 2000 (Lawyers Act, BGFA/LLCA), SR 935.61, Art. 21(1) and (2) and Art. 23, <https://www.droit-bilingue.ch/de-it/9/93/935.61-21-25.html> and <https://www.droit-bilingue.ch/de-it/9/93/935.61-23-27.html>. ↩

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