

The Swiss–Italian agreement of 1998

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The bilateral agreement of 10 September 1998 aimed to simplify and accelerate the application of the European Convention between the two States. It allowed direct transmission of requests between the competent judicial authorities, permitted the presence of foreign magistrates at the execution of requests, provided for joint investigation teams and regulated the spontaneous transmission of information.¹ Its ratification in Italy caused a political controversy. The Italian implementing law of 2001 introduced rules on the form and usability of documents obtained abroad, which critics feared would allow defendants in pending corruption trials to have Swiss bank evidence declared inadmissible. The Swiss side insisted that the agreement itself had been designed to facilitate cooperation.² The agreement entered into force on 1 June 2003. Chapter H.IV describes how it is applied today in asset tracing and recovery across the border.

Common misconception. It is often said that Swiss banking secrecy prevented Italian prosecutors from obtaining bank records in the 1980s and 1990s. In criminal matters this is incorrect. Article 47 BankA has never protected bank data against a Swiss criminal investigation or against the execution of a foreign request for mutual assistance for an offence punishable in Switzerland. What blocked Italian requests was the fiscal exception in Article 3(3) IMAC, the requirement of dual criminality and, until 1997, the length of the appeal procedure. For drug trafficking, Mafia offences, fraud and corruption, Italian prosecutors obtained Swiss bank documents in a large number of cases throughout the period.

1 The language factor

One feature of Swiss–Italian cooperation was specific to Ticino. Requests from Italy could be executed by Ticino authorities in Italian, by prosecutors who knew the Italian legal system and often had studied or practised in Italy. The documents seized in Lugano banks were usually in Italian and

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could be transmitted without translation. When a request concerned a bank in Zurich or Geneva, the Italian request had to be translated and the Swiss decisions were taken in German or French. Chapter J.II returns to the significance of the Italian language in federal criminal justice, which since 2004 has had its seat in Bellinzona.³

2 Notes

1. Content of the agreement of 10 September 1998 (direct transmission, presence of foreign officials, joint investigation teams, spontaneous transmission), SR 0.351.945.41. ↩
2. Source as cited in the printed edition. ↩
3. Federal Criminal Court, "Cronistoria", <https://www.bstger.ch/de/il-tribunale/cronistoria.html> ("Das Bundesstrafgericht nimmt seine Tätigkeit auf", 1 April 2004). See Chapter J.II. ↩

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