

*English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.*

## **Federal Act on International Mutual Assistance in Criminal Matters (Mutual Assistance Act, IMAC)**

of 20 March 1981 (Status as of 1 July 2021)

---

*The Federal Assembly of the Swiss Confederation,*

based on Articles 54 paragraph 1, 123 paragraph 1 and 173 paragraph 2 of the Federal Constitution<sup>1,2</sup>

and having considered the Dispatch of the Federal Council of 8 March 1976<sup>3</sup>,

*decrees:*

### **Part One     General Provisions**

#### **Chapter 1    Scope of Application**

##### **Section 1    Subject and Limits of Cooperation**

###### **Art. 1       Subject matter**

<sup>1</sup> Unless other federal acts or international agreements provide otherwise, this Act shall govern all procedures of international cooperation in criminal matters, and in particular:<sup>4</sup>

- a. the extradition of persons who are the subject of criminal prosecution or have been convicted (Part Two);
- b. assistance aimed at supporting criminal proceedings abroad (Part Three);
- c. the transfer of proceedings and punishment of offences (Part Four);
- d. the execution of foreign criminal judgments (Part Five).

<sup>2</sup> ...<sup>5</sup>

<sup>3</sup> This Act applies only to criminal matters in which recourse to the courts is permitted under the law of the requesting State.

<sup>3bis</sup> Unless other legislation or international agreements provide otherwise, this Act applies by analogy to proceedings for cooperation in criminal matters with international courts or other inter- or supranational bodies with criminal justice functions if the proceedings relate to:

- a. offences under the Twelfth Title<sup>bis</sup>, Twelfth Title<sup>ter</sup> or Twelfth Title<sup>quater</sup> of the Swiss Criminal Code<sup>6</sup>; or

AS 1982 846

<sup>1</sup> SR 101

<sup>2</sup> Amended by No I of the FA of 18 Dec. 2020, in force since 1 June 2021 (AS 2021 233; BBl 2019 7413).

<sup>3</sup> BBl 1976 II 444

<sup>4</sup> Amended by Art. 59 No 1 of the FA of 22 June 2001 on Cooperation with the International Criminal Court, in force since 1 July 2002 (AS 2002 1493; BBl 2001 391).

<sup>5</sup> Repealed by No I of the FA of 4 Oct. 1996, with effect from 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

- b. offences under other provisions of the criminal law and the court or the body concerned is established by a resolution of the United Nations that is binding on or supported by Switzerland.<sup>7</sup>

<sup>3ter</sup> The Federal Council may also stipulate in an ordinance that this Act applies by analogy to procedures for cooperation on criminal matters with other international courts or other inter- or supranational bodies with criminal justice functions if:

- a. the court or body is established on the basis of legal provisions that clearly define the powers of court or body in terms of criminal law and criminal procedure;
- b. the procedure before the court or body guarantees compliance with the principles of the rule of law; and
- c. cooperation serves to safeguard Switzerland's interests.<sup>8</sup>

<sup>4</sup> This Act confers no right to cooperation in criminal matters.<sup>9</sup>

#### **Art. 1a**<sup>10</sup> Limitation of cooperation

In the application of this Act, Swiss sovereignty, security, public order or similar essential interests must be taken into account.

## **Section 2 Inadmissibility of Requests**

#### **Art. 2** Foreign proceedings<sup>11</sup>

A request for cooperation in criminal matters shall not be granted if there are reasons to believe that the foreign proceedings:

- a.<sup>12</sup> do not meet the procedural requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950<sup>13</sup>, or the International Covenant on Civil and Political Rights of 16 December 1966<sup>14</sup>;
- b.<sup>15</sup> are being conducted so as to prosecute or punish a person on account of his political opinions, his belonging to a certain social group, his race, religion, or nationality;
- c. could result in aggravating the situation of the defendant for any of the reasons mentioned under letter b; or
- d. have other serious defects.

#### **Art. 3** Nature of the offence

<sup>1</sup> A request shall not be granted if the subject of the proceedings is an act which, in the Swiss view, is of a predominantly political nature, constitutes a violation of the obligation to perform

<sup>6</sup> SR 311.0

<sup>7</sup> Inserted by No I of the FA of 18 Dec. 2020, in force since 1 June 2021 (AS 2021 233; BBl 2019 7413).

<sup>8</sup> Inserted by No I of the FA of 18 Dec. 2020, in force since 1 June 2021 (AS 2021 233; BBl 2019 7413).

<sup>9</sup> Amended by No I of the FA of 18 Dec. 2020, in force since 1 June 2021 (AS 2021 233; BBl 2019 7413).

<sup>10</sup> Inserted by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

<sup>11</sup> Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

<sup>12</sup> Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

<sup>13</sup> SR 0.101

<sup>14</sup> SR 0.103.2

<sup>15</sup> Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

military or similar service, or appears to be directed against the national security or military defence of the requesting State.

<sup>2</sup> The plea that an act is of a political nature shall not be taken into account under any circumstances:

- a. in cases of genocide;
- b. in cases of crimes against humanity;
- c. in cases of war crimes; or
- d. if the act appears particularly reprehensible because the offender, for the purpose of extortion or duress, has endangered or threatened to endanger the life or limb of persons, especially by hijacking aircraft, using means of mass extermination, causing a catastrophe or taking hostages.<sup>16</sup>

<sup>3</sup> A request shall not be granted if the subject of the proceedings is an offence which appears to be aimed at reducing fiscal duties or taxes or which violates regulations on currency, trade or economic measures. However, a request may be granted:

- a. for mutual assistance under Part Three of this Act if duty or tax fraud is the subject of the proceedings;
- b. under any part of this Act if aggravated duty or tax fraud as defined in Article 14 paragraph 4 of the Federal Act of 22 March 1974<sup>17</sup> on Administrative Criminal Law is the subject of the proceedings.<sup>18</sup>

#### **Art. 4** Minor cases<sup>19</sup>

A request shall be rejected if the importance of the offence does not justify conducting proceedings.

#### **Art. 5** Extinction of the right to prosecute

<sup>1</sup> A request shall not be granted if:<sup>20</sup>

- a.<sup>21</sup> in Switzerland or in the State where the offence was committed, the court
  1. has acquitted the defendant or abandoned the proceedings for material reasons, or
  2. has permanently or provisionally dispensed with imposing a sentence;
- b.<sup>22</sup> the sentence was executed or cannot be executed under the laws of the State where sentence was passed;
- c.<sup>23</sup> its execution requires compulsory measures and the prosecution or execution of the sentence was absolutely time barred under Swiss law.

<sup>16</sup> Amended by No I 4 of the FA of 18 June 2010 on the Amendment of the Federal Legislation in Implementation of the Rome Statute of the International Criminal Court, in force since 1 Jan. 2011 (AS 2010 4963; BBl 2008 3863).

<sup>17</sup> SR 313.0

<sup>18</sup> Second paragraph amended by No I 3 of the FA of 3 Oct. 2008 on the Implementation of the Revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361 367; BBl 2007 6269)

<sup>19</sup> Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

<sup>20</sup> Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

<sup>21</sup> Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

<sup>22</sup> Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

<sup>23</sup> The amendment in accordance with Art. 97 ff. of the Swiss Criminal Code (SR 311.0) contains a new system of time limits (AS 2006 3459; BBl 1999 1979).

<sup>2</sup> Paragraph 1 letters a and b do not apply if the requesting State claims that there are grounds for a review of the final sentence within the meaning of Article 410 of the Criminal Procedure Code of 5 October 2007<sup>24</sup> (CrimPC).<sup>25</sup>

#### **Art. 6** Concurrency of inadmissibility and admissibility of cooperation

<sup>1</sup> If the act of which the defendant is accused constitutes an offence under two or more provisions of Swiss criminal law, the request may be granted only in respect of those offences for which there are no reasons for inadmissibility and if there is a guarantee that the requesting State will respect the conditions imposed.

<sup>2</sup> Cooperation shall not be permitted if the proceedings concern an act that constitutes an offence under two or more provisions of Swiss or foreign criminal law and if, with regard to one of these offences, which covers the act in all its aspects, a request may not be granted.

### **Section 3 Special Provisions**

#### **Art. 7** Swiss nationals

<sup>1</sup> No Swiss national may, without his written consent, be extradited or surrendered to a foreign State for prosecution or for the execution of a sentence. Consent may be withdrawn up to the time when the surrender is ordered.

<sup>2</sup> Paragraph 1 does not apply to transit or return of a Swiss national who is temporarily surrendered by a third State to the Swiss authorities.

#### **Art. 8** Reciprocity

<sup>1</sup> As a rule, a request shall be granted only if the requesting State guarantees reciprocity. The Federal Office of Justice<sup>26</sup> of the Federal Department of Justice and Police (Federal Office) shall obtain a guarantee of reciprocity if this is considered necessary.

<sup>2</sup> Reciprocity is in particular not required for the service of documents or if the execution of a request:

- a. seems advisable due to the type of offence or to the necessity of combating certain offences;
- b.<sup>27</sup> is likely to improve the situation of the defendant or the prospects of his social rehabilitation; or
- c. serves to clarify an offence against a Swiss national.

<sup>3</sup> The Federal Council may, within the scope of this Act, provide other States with a guarantee of reciprocity.

<sup>24</sup> SR 312.0

<sup>25</sup> Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

<sup>26</sup> The designation of the administrative unit has been adapted according to Art. 16 para. 3 of the O of 17 Nov. 2004 on official publications (AS 2004 4937).

<sup>27</sup> Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

**Art. 8<sup>a28</sup>**      Bilateral treaties

The Federal Council may conclude bilateral agreements with foreign States regarding the transfer of sentenced persons provided those agreements respect the principles of the European Convention of 21 March 1983<sup>29</sup> on the Transfer of Sentenced Persons.

**Art. 9**            Protection of privacy

In the execution of requests, protection of privacy shall be governed by the provisions on the right of witnesses to refuse to testify. Articles 246–248 CrimPC<sup>30</sup> apply by analogy to the search and to the placing under seal of documents.<sup>31</sup>

**Art. 10<sup>32</sup>****Art. 11**            Legal definitions

<sup>1</sup> A defendant under this Act is any person under suspicion, subject to criminal proceedings or on whom a sentence has been imposed.<sup>33</sup>

<sup>2</sup> A sentence is any penalty or other measure.

**Chapter 1a<sup>34</sup> Personal Data, File and Process Management System****Art. 11a**

<sup>1</sup> The Federal Office of Justice shall run a personal data, file and process management system that may contain sensitive personal data obtained through forms of cooperation governed by this Act. This data may be processed in order to:

- a. identify whether data on a particular person is being processed;
- b. process data on processes;
- c. organise work procedures rationally and efficiently;
- d. conduct a process check;
- e. compile statistics.

<sup>2</sup> In order to comply with the processing purposes mentioned in paragraph 1, the system shall contain:

- a. personal details of persons on whom data is being processed;
- b. data necessary for the localisation and proper administration of the dossier;
- c. documents on electronically stored processes and entries.

<sup>28</sup> Inserted by No I of the FA of 21 June 2002, in force since 1 Nov. 2002 (AS 2002 3333; BBl 2001 4687)

<sup>29</sup> SR 0.343

<sup>30</sup> SR 312.0

<sup>31</sup> Second sentence Amended by Annex I No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

<sup>32</sup> Repealed by No I of the FA of 4 Oct. 1996, with effect from 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

<sup>33</sup> Amended by No I of the FA of 4 Oct. 1996, in force since 1 Feb. 1997 (AS 1997 114; BBl 1995 III 1).

<sup>34</sup> Inserted by Annex I No 7 of the FA of 13 June 2008 on the Federal Police Information Systems, in force since 5 Dec. 2008 (AS 2008 4989; BBl 2006 5061).