

**unofficial translation 351.11**

**Ordinance  
on International Mutual Assistance in Criminal Matters  
(Ordinance on International Assistance, O-IMAC)**

of 24 February 1982 (status as of 5 December 2006)<sup>1</sup>

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*The Swiss Federal Council,*

based on articles 31, paragraph 4, 68, paragraph 2, and 111 of the Act on International Criminal Assistance of 20 March 1981<sup>2</sup> (IMAC),<sup>3</sup>

*decrees [as follows]:*

## **Chapter 1: General Provisions**

### **Section 1: Scope of Application; Applicable Law**

#### **Art. 1** Reciprocity

Reciprocity shall also be regarded as guaranteed if assistance can be obtained without support from the authorities in the other State.

#### **Art. 2** Separation of Documents<sup>4</sup>

<sup>1</sup> If a document contains information whose transmission to a foreign State is not permitted, the executing authority shall make a copy or photocopy on which the information which has to be kept secret has been omitted.<sup>5</sup>

<sup>2</sup> The executing authority shall indicate on the document the fact and place of the omission, as well as the reason therefore, and shall certify that the document is a true copy of the original in all other respects.

<sup>3</sup> The complete, unaltered version has to be submitted to the Federal Office of Justice<sup>6</sup> (Federal Office) if the Office so requests.

<sup>4</sup> These rules shall apply to other containers of information by analogy.

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<sup>1</sup> Unofficial translation based on the official text published in the SR [Classified Compilation of the Federal Law]. Words in parentheses [...] have been inserted for the sake of clarity.

<sup>2</sup> SR 351.1

<sup>3</sup> Version according to section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS 1997 132).

<sup>4</sup> Version according to section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS 1997 132).

<sup>5</sup> Version according to section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS 1997 132).

<sup>6</sup> The designation of the administration unit has been adapted according to art. 4a of the Ordinance of 15 June 1998 on official publications (SR 170.512.1).

## Section 2: Procedure

### Art. 3 Supervision

The Federal Office shall supervise the application of the Act on International Criminal Assistance. In cases of political importance, it shall take action after discussion of the matter with the competent direction of the Federal Department of Foreign Affairs.

### Art. 4 Procedure in Case of Federal Jurisdiction

<sup>1</sup> In criminal cases in which there is jurisdiction of the Federal Criminal Court, and which are not delegated to a cantonal authority (art. 18 of the Act on Federal Criminal Procedure<sup>7</sup>), the Prosecutor for the Confederation or the Federal Investigating Judge shall make applications for extradition to the Federal Office (Part 2 of the IMAC) and requests for assistance to other States (Part 3 of the IMAC).

<sup>2</sup> The Prosecutor for the Confederation shall make the application if a foreign State is to be requested to assume prosecution of the offence or execution of the criminal judgment (Parts 4 and 5 of the IMAC).

<sup>3</sup> The cantonal authorities shall make their decisions on the execution of foreign requests for other assistance (Part 3 of the IMAC) with the agreement of the Office of the Prosecutor for the Confederation.

<sup>4</sup> The Federal Office shall decide, after consultation with the Office of the Prosecutor for the Confederation, whether foreign requests for transfer of proceedings or execution are accepted.

### Art. 5<sup>8</sup> Communications to the Federal Office

The decrees of cantonal and federal authorities in the field of international mutual assistance in criminal matters as well as the decisions of the Appeals Chamber of the Federal Criminal Court shall be communicated to the Federal Office.

### Art. 6 Consent

If a measure of assistance is subject to consent by the person concerned (arts. 7, 54, 70 and 101 IMAC), he shall be given notice of the possibility to retract his consent and of the deadline for doing so. The giving of notice shall be placed on the record.

### Art. 7 Transfer to Federal Authorities

Executing authorities shall transfer the files to the appropriate federal authority if a decision on a matter under article 17 of the Act on International Criminal Assistance has to be made.

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<sup>7</sup> SR 312.0

<sup>8</sup> Version according to subpara. II.25 of the Ordinance of 8 November 2006 on the adaptation of Federal Council ordinances to the overall revision of the organisation of the administration of federal justice, in force since 1 January 2007 (AS 2006 4705).

**Art. 8** Choice of Procedure

<sup>1</sup> When the choice of procedure (art. 19 IMAC) is made, the following shall be taken into consideration:

- a. the relation of the person pursued to the requesting State and to Switzerland;
- b. the likelihood of his deportation from Switzerland;
- c. the economy of procedure;
- d. in case of several offences their assessment as a whole.

<sup>2</sup> If Switzerland has been requested to extradite an alien and if the preconditions for assuming the prosecution or execution are met (art. 85, para. 2, and art. 94 IMAC), the Federal Office shall make its decision following the principles of paragraph 1 and with the agreement of the cantonal authorities. The person pursued shall be heard before such decision.

**Art. 9** Address for Service

A party or its counsel who lives abroad shall designate an address for service of process in Switzerland. If they do not do so, service may be omitted.

**Art. 9a<sup>9</sup>** The Person Concerned

Personally and directly affected within the meaning of article 21, paragraph 3, and article 80h IMAC are in particular:

- a. when information regarding accounts is obtained[:] the holder of the account;
- b. when rooms are searched[:] the owner or tenant;
- c. when measures regarding motor vehicles are taken[:] the holder.

**Art. 10** Summary of the Facts

<sup>1</sup> The summary of the facts may be contained in the request or in its enclosures.

<sup>2</sup> At least, it shall state the manner, place and time of the perpetration of the offence.

**Art. 11** Swiss Requests

<sup>1</sup> Insofar as the requested State does not set other standards, articles 27 to 29 of the Act on International Criminal Assistance apply to Swiss requests by analogy.

<sup>2</sup> The requests and their enclosures shall contain no statements which

- a. would be likely to aggravate the situation of persons in the requested State because of their political opinions, belonging to a certain social group, race, religion or nationality; or

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<sup>9</sup> Inserted through section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS 1997 132).

- b. may give rise to objections in the requested State.

**Art. 12** Charge of Costs to Foreign States

<sup>1</sup> The Swiss authorities may require that the requesting State reimburse all expenses incurred in the execution of the request.

<sup>2</sup> They may charge their expenditure of work if it amounts to more than a day and if Switzerland cannot obtain free assistance from the requesting State.

<sup>3</sup> Costs that total up to less than 200 francs shall never be charged.

**Art. 13** Sharing of Costs between the Confederation and the Cantons

<sup>1</sup> As a rule, federal and cantonal authorities shall ask from each other no fees or compensation for expenditure of time or work for dealing with matters under the Act on International Criminal Assistance.<sup>10</sup>

<sup>1bis</sup> Costs arising to the [Swiss] Confederation in application of article 79a, letter b IMAC are awarded to the canton.<sup>11</sup>

<sup>2</sup> If a federal authority orders detention, the [Swiss] Confederation will defray the costs of the following measures:

- a. the detention (arts. 47, 72, para. 2, and 102, para. 2 IMAC);
- b. the transport and escort of prisoners;
- c. the designation of official counsel (art. 21, para. 1 IMAC);
- d. the indispensable medical treatment of the prisoner.

**Art. 14**<sup>12</sup> Pre-examination

When the Federal Office has to examine whether the prerequisites for cooperation with a foreign State are met (arts. 78, para. 2, 91, para. 1, and 104 IMAC), no separate appeal is available for the mere acceptance and transmittal of a request to the executing authority.

<sup>10</sup> Version according to section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS 1997 132).

<sup>11</sup> Inserted through section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS 1997 132).

<sup>12</sup> Version according to section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS 1997 132).

## Chapter 2: Extradition

### Section 1: Repatriation of Persons Under 20 Years

#### Art. 15

<sup>1</sup> Competent juvenile authorities (art. 33, para. 1 IMAC) are the authorities designated by the cantons according to article 369 of the [Swiss] Penal Code<sup>13</sup>.

<sup>2</sup> The cantonal authorities shall immediately inform the Federal Office if a foreign authority directly requests them to repatriate an alien under 20 years and if they know that in the foreign State, because of a crime or misdemeanor, he is the subject of criminal proceedings undertaken or of a sanction which has not yet been fulfilled.

<sup>3</sup> If the repatriation under article 33 of the Act on International Criminal Assistance takes place, the Federal Office shall inform the requesting State as to its effects.

### Section 2: Procedure

#### Art. 16 Contact with Foreign Consular Representations

Every arrested alien shall be immediately notified that he is entitled to have the competent consular representation of his native country informed and to communicate with it (art. 36 of the Vienna Convention of 24 April 1963 on Consular Relations<sup>14</sup>).

#### Art. 17 Right to Be Heard

The extradition procedure shall be explained to the person pursued at the hearing in a language that he is able to understand. The Federal Office shall make available written explanations in German, French, Italian, English and Spanish.

#### Art. 18 Procès-verbal

<sup>1</sup> A procès-verbal of the hearing shall be made. Mention shall be made therein:

- a. whether a counsel or interpreter was retained;
- b. what documents and provisions the person pursued took note of (art. 52, para. 1 IMAC);
- c. what explanations he was given and in what language (art. 52, para. 1 IMAC);
- d. what he states about his personal situation and what objections to the extradition of the warrant of arrest he makes (art. 52, para. 2 IMAC);

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<sup>13</sup> SR 311.0

<sup>14</sup> SR 0.191.02

- e.<sup>15</sup> if he consents to extradition under article 7 or to simplified extradition under article 54 of the Act on International Criminal Assistance (art. 6);
- f. that his attention was drawn to his right to communicate freely with the consular representation of his native country (art. 16).

<sup>2</sup> If the person pursued refuses to sign, this fact and the reason put forward therefore shall be noted in the procès-verbal.

#### **Art. 19** Detention Awaiting Extradition

The Federal Office may order the arrest for extradition even by telex or telephone. This order shall be immediately confirmed with the written warrant of arrest with a view to extradition (art. 47 IMAC), which warrant shall be served on the person pursued.

#### **Art. 20** Execution of Detention

<sup>1</sup> As a rule, detention shall be executed according to the rules issued by the canton. The Federal Office may, after consultation with the canton order measures deviating therefrom if the circumstances so require. Alleviations of the detention may be granted only with the prior consent by the Federal Office.

<sup>2</sup> The Federal Office, after consultation with the canton, shall decide who shall control the correspondence of the person in detention.

<sup>3</sup> This article shall also apply if detention awaiting extradition is ordered in addition to custody awaiting trial or serving a sentence.

#### **Art. 21**<sup>16</sup> Simplified Extradition

The permission for informal surrender [i.e. simplified extradition] shall make reference to the conditions of article 38 of the Act on International Criminal Assistance.

#### **Art. 22** Execution of the Decision

The personal property of the person who will be extradited and the objects and assets seized may be handed over to the authorities of the requesting State without explicit request. This applies to objects and assets even if they are found after the extradition took place or if the extradition of the person pursued cannot be executed.

#### **Art. 23** Fiscal Liens

<sup>1</sup> Fiscal liens may be claimed if the objects that have to be handed over:

- a. were to be forfeited to the requesting State;

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<sup>15</sup> Version according to section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS 1997 132).

<sup>16</sup> Version according to section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS 1997 132).

- b. belong to a requesting State which does not waive its fiscal liens in a similar case.

<sup>2</sup> The [Swiss] Customs Administration shall decide whether to waive the fiscal liens (art. 60 IMAC).

## Chapter 3: Other Acts of Assistance

### Section 1: Conditions

#### Art. 24 Duty or Tax Fraud

<sup>1</sup> If the application of compulsory process is necessary, assistance according to article 3, paragraph 3 of the Act on International Criminal Assistance shall be granted in case of offences which correspond to a duty or tax fraud under article 14, paragraph 2 of the Administrative Penal Law<sup>17</sup>.

<sup>2</sup> A request may not be refused solely on the ground that the Swiss law does not impose the same kind of duty or tax or does not contain the same kind of regulations on duties or taxes.

<sup>3</sup> If there are doubts as to the characteristics of the duties or taxes mentioned in the request, the Federal Office or the cantonal authority of execution shall ask the Federal Tax Administration to make comments on it.

#### Art. 25 Official Acts

The supervision of conditionally sentenced or conditionally released offenders shall also be considered to be an official act (art. 63, para. 1 IMAC).

#### Art. 26 Presence of Persons Who Are Parties to the Foreign Proceedings<sup>18</sup>

<sup>1</sup> ...<sup>19</sup>

<sup>2</sup> The executing authority shall decide on the right of the persons who are parties to the foreign proceedings to ask questions and to apply for certain additional enquiries.<sup>20</sup>

<sup>3</sup> If a foreign authority charged with undertaking penal proceedings requests the Swiss authorities to allow them to perform official acts in Switzerland themselves, the Federal Decree of 7 July 1971<sup>21</sup> on the Authorization of the Departments and the Federal Chancellery to independently grant permissions under article 271, paragraph

<sup>17</sup> SR 313.0

<sup>18</sup> Version according to section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS 1997 132).

<sup>19</sup> Repealed by section I of the Ordinance of 9 December 1996 (AS 1997 132).

<sup>20</sup> Version according to section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS 1997 132).

<sup>21</sup> [AS 1971 1053. AS 1999 1258, art. 34]. Today: art. 31 of the Ordinance of 25 November 1998 on the government and administration organization (SR 172.010.1).

1 of the [Swiss] Penal Code<sup>22</sup> shall be applicable. The permission shall be granted after consultation with the cantonal authorities concerned.

**Art. 27<sup>23</sup>** Affirmation of Statements

An oath shall also be considered incompatible with Swiss law (art. 65, para. 2 IMAC) if the law leaves the choice to the witness or expert whether to affirm his statement by oath or affirmation of truth, and if he refuses to swear.

**Art. 28<sup>24</sup>**

## **Section 2: Specific Acts of Assistance**

**Art. 29** Proof of Service

A dated acknowledgement of receipt signed by the recipient or a statement made by the official effecting service shall be forwarded as proof of service, where form and date of service and, if necessary, refusal to accept the document are attested.

**Art. 30<sup>25</sup>** Direct Service

<sup>1</sup> Documents addressed to persons who have residence in Switzerland and who are not prosecuted in the foreign State [where the document was issued] may be served by mail directly upon the recipient in Switzerland. Thereof except are summons.

<sup>2</sup> Documents in penal proceedings for violation of traffic rules may be served by mail directly upon the recipient in Switzerland.

**Art. 31** Confirmations Regarding Law

<sup>1</sup> The confirmation that a measure is permitted under Swiss law in case of Swiss requests for search of persons or rooms, seizure or handing over of objects (art. 76, letter c IMAC) may be issued only by an authority which may order that measure in Switzerland.

<sup>2</sup> The warrant for search and seizure enclosed with the request by a foreign authority shall be regarded as confirmation that the measure is permitted.

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<sup>22</sup> **SR 311.0**

<sup>23</sup> Version according to section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS **1997** 132).

<sup>24</sup> Repealed by section I of the Ordinance of 9 December 1996 (AS **1997** 132).

<sup>25</sup> Version according to section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS **1997** 132).



### Section 3: Procedure

#### Art. 32 Escort of Prisoners

Foreign official may escort a prisoner during transit.

#### Art. 33 Handing Over of Valuables

The executing authority shall take care that objects of great value are safely kept before handing over and insured against damage and loss during transport.

#### Art. 33<sup>a26</sup> Duration of Seizure of Assets

If the handing over of assets intervenes only based on a final and executable order of the requesting State (art. 74a, para. 3 IMAC), the assets will remain seized until such order is issued or the requesting State notifies the competent executing authority that such an order may no longer be issued, in particular because of lapse of time.

#### Art. 34 Conditions

<sup>1</sup> If the requesting foreign authority has not given any assurance, the competent Swiss authority shall draw their attention to the facts that

- a. the information may not be used in any proceeding for which assistance is not permitted;
- b. the permission of the Federal Office has to be sought for any further use of the information.

<sup>2</sup> The same shall apply if a foreign authority is granted access to Swiss files outside an assistance proceeding.

#### Art. 34<sup>a27</sup> Execution of Decrees by the Federal Office

If the Federal Office, based on article 79a of the Act on International Criminal Assistance decides itself (art. 80a IMAC), it shall designate the authority charged with the execution of the request.

#### Art. 35 Assistance Dealt with by the Police

<sup>1</sup> ...<sup>28</sup>

<sup>2</sup> The competent police authorities shall communicate with foreign States through the intermediary of the Interpol National Central Bureau in Berne. They abide by the statutes of the International Criminal Police Organization (ICPO-Interpol)<sup>29</sup>. Except-

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<sup>26</sup> Inserted through section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS **1997** 132).

<sup>27</sup> Inserted through section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS **1997** 132).

<sup>28</sup> Repealed by section I of the Ordinance of 9 December 1996 (AS **1997** 132).

<sup>29</sup> SR **351.21**, Appendix 1

tions may be made in cases of urgency, of minor importance, of violations of traffic rules or of contact between contiguous police forces.<sup>30</sup>

## Chapter 4: Transfer of Proceedings

### Art. 36 Information

<sup>1</sup> The competent authority shall inform the Federal Office:

- a. whether the request for undertaking a criminal proceeding is granted or not;
- b. on the sanction imposed;
- c. when the sanction was executed;
- d. on a stay of proceedings;
- e. on the decision as to the procedure to be followed if the person pursued is a fugitive from justice.

<sup>2</sup> The Federal Office shall inform the foreign State.

### Art. 37 Foreign Official Documents

Official documents of the State which requested that penal prosecution be assumed are considered equal to corresponding Swiss documents in a penal proceeding.

## Chapter 5: Execution of Criminal Judgments

### Section 1: Assumption by Switzerland

#### Art. 38 Execution when the Offence Was Perpetrated in Switzerland

If several offences, some of which were perpetrated in Switzerland, are the subject of the foreign conviction, the criminal judgment may be executed in Switzerland

- a. if a comprehensive sentence was passed; or
- b. if Switzerland requested that the other State assume the prosecution.

#### Art. 39 Accessory Penal Measures

The execution of an accessory penal measure (art. 96, letter b IMAC) is not excluded solely on the ground that under Swiss law it may only be ordered as an administrative measure.

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<sup>30</sup> Version according to section I of the Ordinance of 9 December 1996, in force since 1 February 1997 (AS 1997 132).

**Art. 40** Sentence in Absence

Penal sentences confirmed or imposed in the State of judgment after the convict has made objections or appealed are not considered to be issued in his absence.

**Art. 41** Utilization of Swiss Institutions by Foreign States

<sup>1</sup> The utilization of Swiss institutions (art. 99 IMAC) shall be subject to the authorization by the competent authority of the canton in charge of the institution that should be utilized. The authorization may be given in general or in a particular case.

<sup>2</sup> The condition that an other State is unable to execute a sanction shall be considered fulfilled if there is no institution on his territory meeting the standards for execution.

<sup>3</sup> The authorities of the State which requested his confinement into the institution are competent to authorize the conditional, probational or final release, the return into prison and the interruption of the execution.

<sup>4</sup> The convict shall be surrendered to the Swiss authorities at the border. At the same time, a complete copy of the decision which forms the basis for the confinement into the Swiss institution and a confirmation that the decision is final shall be handed over.

<sup>5</sup> If the convict escapes, the authorities of the canton on whose territory the institution lies shall take the measures immediately necessary for recapturing him and inform the authorities of the State that confined him into the institution.

<sup>6</sup> The State who ordered the confinement of the convict shall assume its costs.

**Section 2: Effects of a Transfer to a Foreign State****Art. 42**

If the convict is in Switzerland, the transfer shall take effect (art. 102 IMAC) at the moment when the competent cantonal authority receives the declaration of the requested State that it grants the request.

**Section 3: Procedure****Art. 43** Handling of the Request by the Federal Office

<sup>1</sup> The Federal Office may suggest to the requesting State that the proceedings be transferred instead of the execution if the sanction imposed surpasses the limits set forth by Swiss law or is manifestly more severe than the one that would be imposed in a similar case.

<sup>2</sup> If the Federal Office does not accept the request or if the judge rules that the [foreign] criminal judgment cannot be executed, the Federal Office shall examine whether the conditions for a transfer of proceedings under part four of the Act on International Criminal Assistance are met. If this is the case, the Federal Office shall

suggest that transfer of proceedings be requested instead of execution of the criminal judgment when it informs the requesting State that the request is rejected or that acceptance is retracted.

<sup>3</sup> If the judge notices that the legal requirements for execution are not met in regard to all offences, the Federal Office shall ask that the requesting State designate that part of the sanction corresponding to the offences for which the conditions are met.

**Art. 44**            Determination of the Sanction to Be Executed

<sup>1</sup> If the judge rules that the [foreign] judgment may be executed (art. 106 IMAC), he shall determine which sanction under Swiss law corresponds best with the one imposed abroad and shall convert a fine into Swiss francs according to the current rate of exchange.

<sup>2</sup> Two complete copies of the final decision regarding the exequatur shall be sent to the Federal Office.

**Art. 45**            Execution of the Sanction

<sup>1</sup> The competent cantonal authorities shall inform the Federal Office on the commencement of the execution.

<sup>2</sup> The competent authorities shall send the Federal Office an attestation of the execution, which it shall forward to the requesting State.

## **6. Entry into Force**

**Art. 46**

This ordinance shall enter into force on 1 January 1983.