

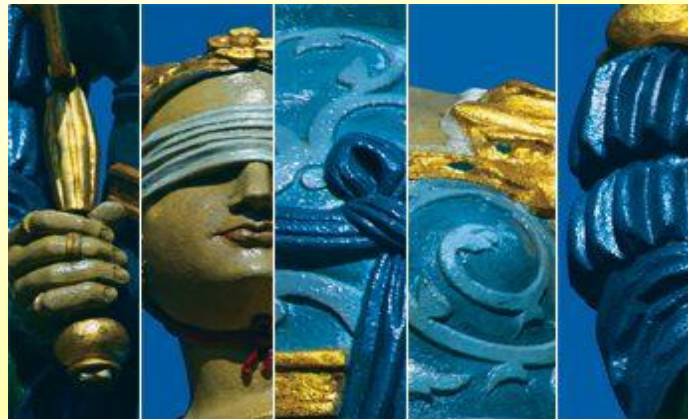


Schweizerische Eidgenossenschaft  
Confédération suisse  
Confederazione Svizzera  
Confederaziun svizra

Federal Department of Justice and Police FDJP  
**Federal Office of Justice FOJ**  
Division for International Legal Assistance

# COOPERATION IN FREEZING AND SEIZURE

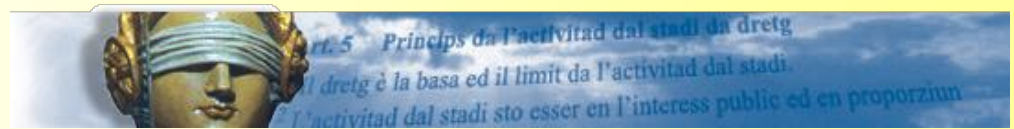
## SWITZERLAND





# Overview of freeze possibilities in Switzerland

1. **Governmental freeze** based on article 184 para.3 Swiss Constitution (Tunisia, Egypt....PEP related)  
Superprovisional measure securing subsequent MLA freezes
2. **UN and EU sanctions** implemented by Swiss Federal Act on embargos (goal: economic pressure on foreign State) 2002
3. **MLA freeze** based on art. 18 Swiss Federal Act on International Mutual Legal Assistance in criminal matters(IMAC)1983



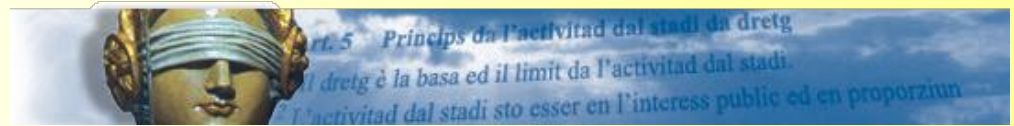
# Request to Switerland Asking for Restrain (freeze)

## I. Basic requirements

**Requesting authority:** any foreign authority which leads an investigation in criminal matters in which an appeal to the judge can be made.

**Reciprocity:** should be guaranteed by the requesting State if not bound to Switzerland by a international agreement.

**Dual Criminality:** the facts under investigation should also constitute an offence under Swiss law.



## II. Form Requirements

**Written request**

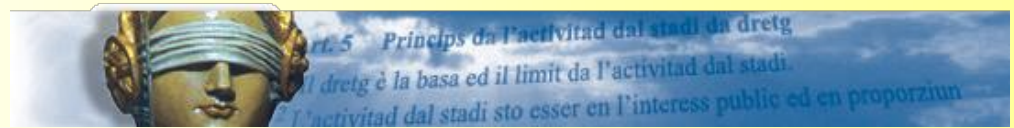
only (fax; (secured)  
E-mail possible)

**English accepted**

(but translation  
German, French or  
Italian has to follow)

**Sum up of the facts** is sufficient

(but enough to  
check if assistance  
is not obviously  
inadmissible or  
inappropriate)



# Cooperation in Freezing and Seizure Swiss Legal Assistance Proceeding

## I. Law provision: 18 IMAC (provisional measures)

**Administrative order:** no difference between restrain and seizure

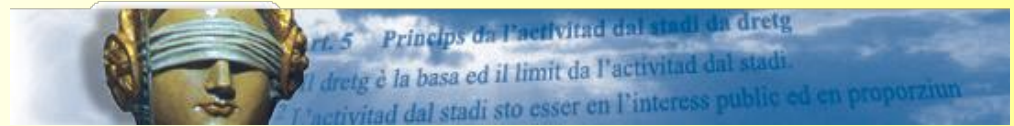
**Based** on the principle of trust in the requesting State.

**No evidence requirements**

**Reliance as a rule** in the facts described in the request for freeze (unless obviously inadmissible or inappropriate)

**but**

**Deadline** set for submitting the «complete(d)» request

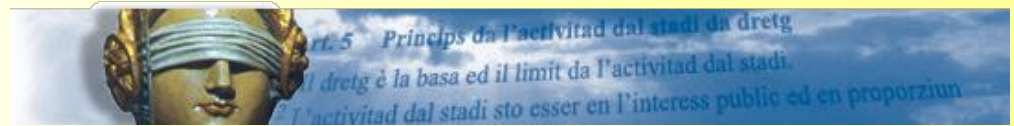


# Cooperation in Freezing and Seizure Swiss Legal Assistance Proceeding

## Additional powers

**Art.18a IMAC (2002)**  
**(Surveillance of postal and telecommunications traffic)**

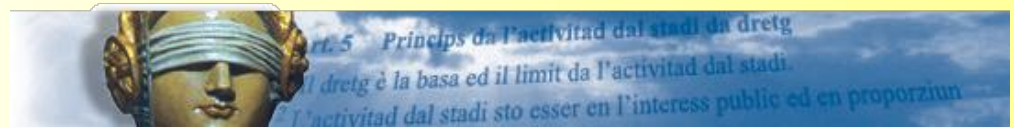
**Art. 18b IMAC (2012)**  
**(Electronic communications traffic data)**



# Cooperation in Freezing and Seizure Swiss Legal Assistance Proceeding

## II. Competent authorities

1. **Judicial investigative authorities** of the Swiss cantons and of the federal level (Swiss General Attorney)
2. **Federal administrative authorities** (Federal Office of Justice, Swiss Customs)



# Cooperation in Freezing and Seizure Swiss Legal Assistance Proceeding

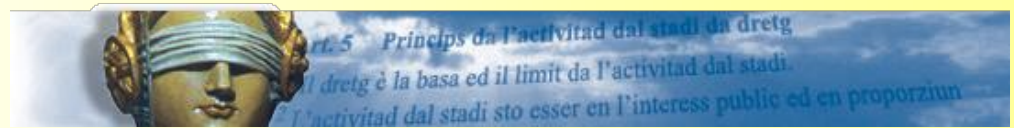
## III. Proceeding principles

**Purposes:** a) to preserve the existing situation b) to safeguard threatened legal interests c) to protect jeopardized evidence

**Restrain order:** incidental nature (before the conclusive decree)

**Appeal:** as a rule against the conclusive decree but possible within ten days if immediate and irreparable prejudice, basically no suspensive effect, two stages





# ***Cooperation in Freezing and Seizure Swiss Legal Assistance Proceeding***

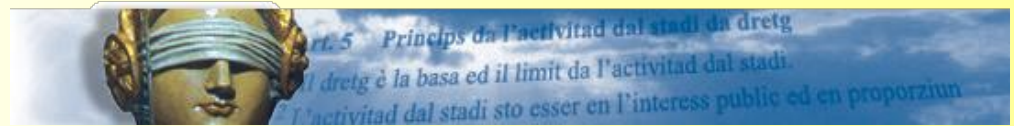
**Duration:** kept in place until

- a) the issuing (*within a reasonable periode of time*) of a final and executable order of confiscation in the requesting State **and**
- b) the issuing of a final and executable decision of return in the requested State

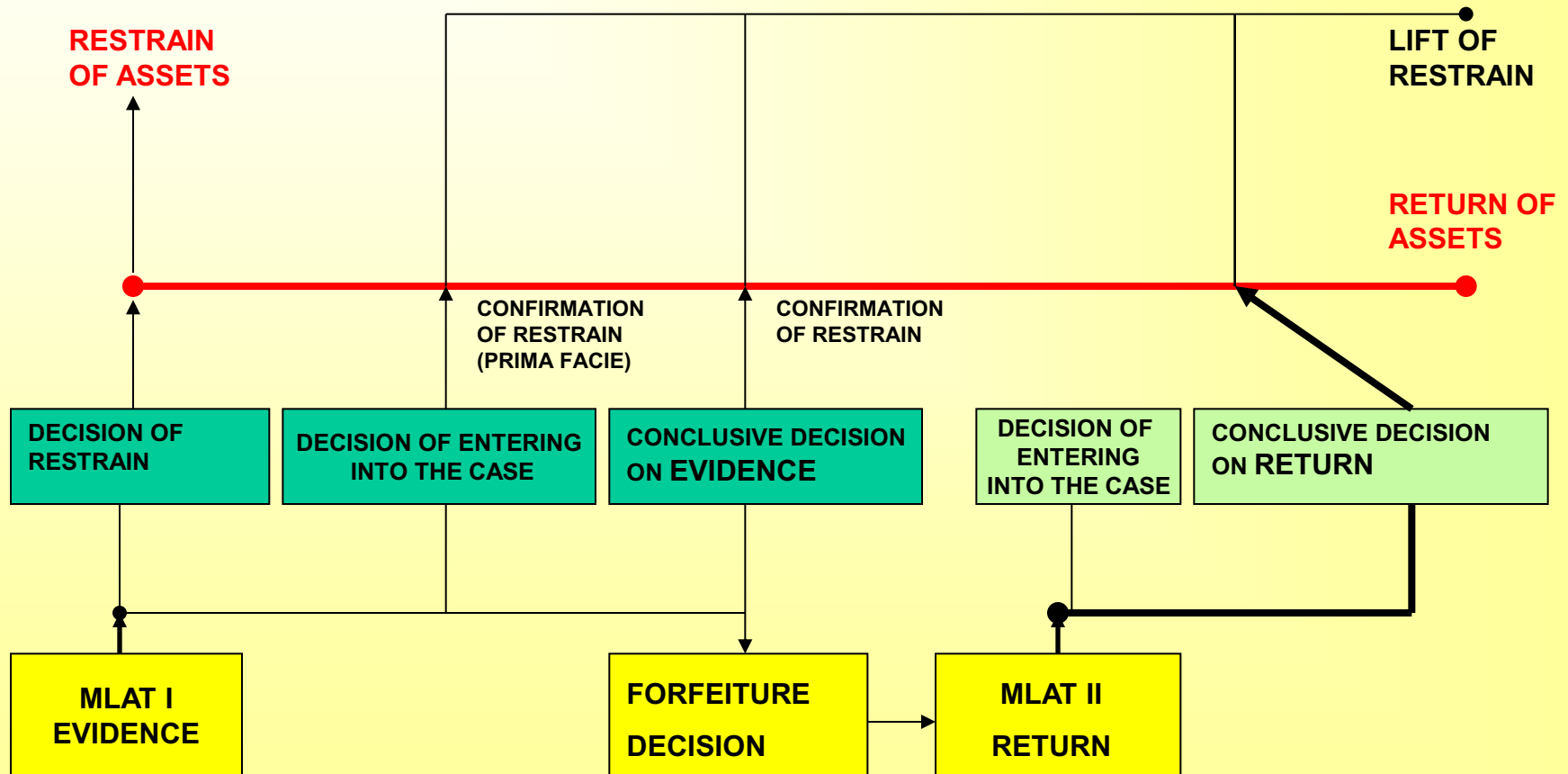
**or**

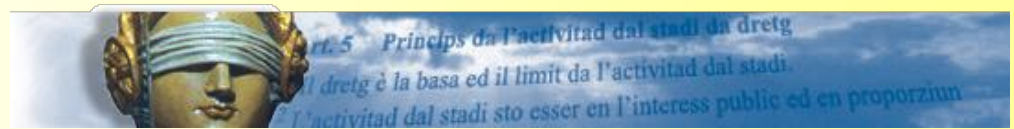
- c) The notification from the requesting State that such an order can no longer be issued.

**Maintenance costs:** the requesting State can be charged with the costs linked to the return of assets for purpose of restitution.



# Mutual Legal Assistance Proceeding: Restraining Assets in Switzerland



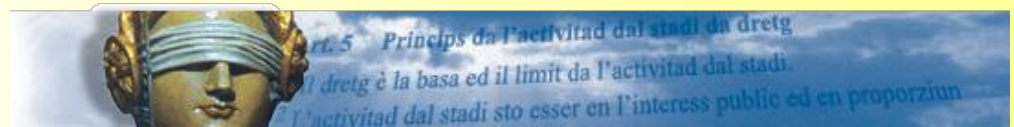


## **Art. 184 Swiss constitution: Foreign relations**

**<sup>1</sup> The Federal Council is responsible for foreign relations, subject to the right of participation of the Federal Assembly; it represents Switzerland abroad.**

**<sup>2</sup> It signs and ratifies international treaties. It submits them to the Federal Assembly for approval.**

**<sup>3</sup> Where safeguarding the interests of the country so requires, the Federal Council may issue ordinances and rulings. Ordinances must be of limited duration**

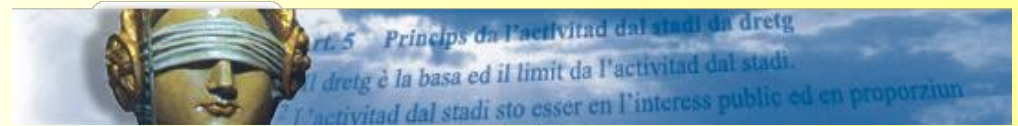


## **Art 18 IMAC: Provisional measures**

**<sup>1</sup> At the express request of another State, provisional measures may be taken by the competent authority to preserve the existing situation, to safeguard threatened legal interests or to protect jeopardised evidence unless the proceedings under this Act clearly appear to be inadmissible or inappropriate.**

**<sup>2</sup> If any delay would jeopardise the proceedings and if there is sufficient information to determine whether all the conditions are met, the Federal Office may likewise order provisional measures as soon as a request is announced. Such measures shall be revoked if the foreign State does not make the request within the deadline set.**

**<sup>3</sup> Appeals filed against rulings based on this Article do not have suspensive effect.**



# Questions?

