

Report on Impact of E-evidence Package on Switzerland



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News

In a report of 24 October 2023, the Swiss Federal Office of Justice (*Bundesamt für Justiz*) examined the impact of the EU e-evidence package (→ [eu-crim 2/2023, 165-168](#)) on service providers based in Switzerland and on mutual legal assistance between Switzerland and the EU/EU Member States. The new EU e-evidence rules consist of [Regulation \(EU\) 2023/1543](#) on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings and [Directive \(EU\) 2023/1544](#) laying down harmonised rules on the designation of designated establishments and the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings.

The report also deals with the differences between the EU e-evidence package and the US CLOUD Act which both aim at facilitating access to electronic information that can be used as evidence in criminal proceedings as well as at making cross-border cooperation more effective. The report analyses the differences with regard to territoriality and transnational access to data, the protection of personal data and fundamental rights, procedural aspects, and the handling of conflicts of law.

Lastly, the report provides options for Switzerland on how the country should react to these recent legislative developments. A unilateral Swiss solution should not be pursued, rather Switzerland should seek cooperation with other countries in the area of electronic evidence, the report notes. It is recommended that Switzerland revises its national law and then seeks agreements for judicial cooperation in criminal matters. According to the Federal Office of Justice, Switzerland should not jeopardise its rule-of-law achievements while striving for a solution which enables Swiss law enforcement authorities to get access to service providers based in other countries.

For a detailed comparison of the solution adopted in the EU concerning cross-border access to electronic evidence and the Swiss law applicable in this area, and an analyses on the opportunity for Switzerland to coordinate its rules with those of European law, → the recent [eucri](#)m article by [M. Ludwiczak Glassey](#), [Preuves électroniques: état de la situation en Suisse face à l'avancée majeure du droit européen](#).

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