

# SWITZERLAND



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## NATIONAL POLICY

### Switzerland and Counter-terrorism

Terrorism is a threat to world peace and international security and as such it also threatens the freedom and security of Switzerland and its interests at home and abroad. It threatens Switzerland's resident population, basic rights, the rule of law and the democratic system. Switzerland aims to protect itself and its interests against terrorism. To that end, it fights it using all means at its disposal under the rule of law, while safeguarding human rights and fundamental freedoms. Switzerland has been fighting terrorism for many years in co-ordinated efforts with its security partners at all levels, at home and abroad.

In 2015, Switzerland adopted a Counter-Terrorism Strategy.<sup>1</sup> This strategy sets out the activities and processes established at the federal and cantonal levels and thus creates a common basis for the fight against terrorism. In accordance with this strategy, Switzerland's counter-terrorism efforts are structured around the following four areas: prevention, law enforcement, protection and crisis management.

The aim of the strategy is defined as follows: no terrorist acts will be perpetrated on Swiss territory; Swiss territory will not be used for the purposes of financing or providing logistical support for terrorism or for planning terrorist acts at home or abroad. The fight against terrorism is conducted in compliance with the Federal Constitution and public international law, with particular regard for basic and human rights. Switzerland is careful to maintain a balance between freedom and security, giving precedence to freedom in case of doubt. Internationally, Switzerland is viewed as a trustworthy and prudent player that is committed to international law.

In 2017, Switzerland developed a National Action Plan to Prevent and Counter Radicalisation and Violent Extremism (NAP). The NAP contains measures for the maintenance of security both internal and external. Through international exchanges, Switzerland

cultivates the exchange and transfer of knowledge with other states. In addition, Switzerland's foreign policy makes a contribution towards addressing the causes of and conditions for violent extremism.

Switzerland attaches the utmost importance to respect for international law. As a member of the UN, it supports the Global Counter-Terrorism Strategy adopted by the United Nations General Assembly in 2006 and implements the relevant UN Security Council resolutions.<sup>2</sup> In conformity with the four pillars of the UN's Global Counter-Terrorism Strategy and Plan of Action to Prevent Violent Extremism, Switzerland has developed its international co-operation and a wide range of effective instruments to combat terrorism and the financing of terrorism, organised crime and money laundering.

Switzerland is actively involved in development programmes worldwide, as well as in peace-keeping and peace-building processes, ensuring for example mediation in various conflict zones. It supports numerous initiatives at the level of international or regional organisations, including the Global Counterterrorism Forum (GCTF). In addition, Switzerland acts on the Recommendations of the Financial Action Task Force (FATF) related to money laundering and terrorist financing, and has effective legislation that allows rapid co-operation in the sphere of mutual legal assistance in criminal matters, in particular for the purpose of freezing funds. It has also introduced federal legislation on the allocation of confiscated assets (LVPC),<sup>3</sup> which lays down the procedure for dividing those assets between Switzerland and foreign states. Switzerland is encouraging and strengthening international and inter-agency co-operation and co-ordination, supporting global or regional initiatives and events related to prosecution and bringing terrorists to justice.

## Threat assessment

The terrorist threat in Switzerland remains high. It stems mainly from jihadists, primarily isolated

<sup>1</sup> <https://www.fedlex.admin.ch/eli/fga/2015/1784/fr>

<sup>2</sup> See below: "Participation in international bodies".

<sup>3</sup> RS 312.4; <https://www.fedlex.admin.ch/eli/cc/2004/468/fr>

individuals acting autonomously. Among them, there is a growing number of mentally ill people. The most plausible terrorist threat consists of attacks requiring little logistical support, directed at so-called easy targets and carried out by a single individual or a small group. The threat to Switzerland from Islamist terrorism and ethno-nationalist terrorism is still an issue.<sup>4</sup>

## LEGAL FRAMEWORK

### Criminal law

#### Individual terrorist acts

Individual terrorist acts are dealt with on the basis of the provisions of the Swiss Criminal Code<sup>5</sup> and the associated criminal legislation. The relevant provisions are, in particular, those governing the offences of homicide and offences against life and limb;<sup>6</sup> offences against freedom;<sup>7</sup> serious or minor offences which create danger to the public;<sup>8</sup> public health offences;<sup>9</sup> public order offences;<sup>10</sup> and also offences against the administration of justice.<sup>11</sup> Where the offender had a particularly odious intention, for example where the offence was committed with terrorist motives, the courts take that fact into account when determining the sentence.<sup>12</sup>

Penalties are also laid down for any person convicted of participating in those offences by incitement or complicity,<sup>13</sup> and also for attempting to commit such offences.<sup>14</sup> In the case of a number of serious offences,<sup>15</sup> the criminal provisions also cover preparatory acts.<sup>16</sup>

#### Criminal or terrorist organisations

Under Article 260<sup>ter</sup> of the Criminal Code, anyone convicted of participating in a criminal or terrorist organisation or of providing supporting to such an organisation may be sentenced to up to ten years' imprisonment. If the offender exercises a decisive influence within the organisation, he or she will be

liable to a prison sentence ranging from three to twenty years.<sup>17</sup>

A "criminal" organisation is defined as one whose aim is to commit criminal acts of violence or to obtain funds by criminal means. A "terrorist" organisation is defined as one whose aim is to commit acts of criminal violence aimed at intimidating the population or coercing a state or an international organisation to act or refrain from acting.<sup>18</sup>

According to the practice of the Federal Supreme Court, the Italian Red Brigades, the Basque group ETA, the international network Al-Qaeda and the Islamic State, among others, are criminal organisations for the purposes of Article 260<sup>ter</sup> of the Criminal Code. In 2012, the Federal Criminal Court and the Federal Supreme Court held that the central armed structures of the Kurdish PKK – the People's Defence Force (HPG) and the Kurdistan Freedom Falcons (TAK) – were criminal organisations within the meaning of Article 260<sup>ter</sup> of the Criminal Code.

"Participation" in a criminal or terrorist organisation presupposes that the perpetrator becomes integrated into the organisation and active in relation to the organisation's criminal purpose. There is no need for a link with a specific offence committed within the organisation. "Support" for a criminal or terrorist organisation is considered to consist of making any decisive contribution which reinforces the organisation, for example by providing an element of the logistical infrastructure. It is sufficient that the perpetrator supported the organisation's activities in a general manner. As with participation (see above), there is no need for a direct link between this support and a specific offence. The provision on support for a criminal or terrorist organisation does not apply to humanitarian services provided by an impartial humanitarian organisation such as the International Committee of the Red Cross (ICRC).<sup>19</sup>

In addition, Art. 2 of the Federal Act on the Proscription of the Groups "Al-Qaeda" and "Islamic

<sup>4</sup> More detailed information on the terrorist threat can be found, for example, in the situation reports of the Federal Intelligence Service (FIS), cf. e.g.: Report "The Security of Switzerland 2021": <https://www.vbs.admin.ch/content/vbs-internet/fr/vbs/organisation-des-vbs/die-verwaltungseinheiten-des-vbs/-der-nachrichtendienst-des-bundes.detail.nsb.html/83889.html>

<sup>5</sup> RS 311.0;

[https://www.fedlex.admin.ch/eli/cc/54/757\\_781\\_799/fr](https://www.fedlex.admin.ch/eli/cc/54/757_781_799/fr)

<sup>6</sup> Art. 111 et seq. Criminal Code, in particular Articles 111, 112, 122, 123 and 129; the maximum penalty is life imprisonment.

<sup>7</sup> Art. 180 et seq. Criminal Code, in particular Articles 181, 183, 184 and 185; the maximum penalty is 20 years' imprisonment.

<sup>8</sup> Art. 221 et seq. Criminal Code, in particular Articles 221, 223, 224, 226, 226<sup>bis</sup> and 226<sup>ter</sup>; the maximum penalty is 20 years' imprisonment.

<sup>9</sup> Art. 230<sup>bis</sup> et seq. Criminal Code, in particular Articles 230<sup>bis</sup> and 231; the maximum penalty is 10 years' imprisonment.

<sup>10</sup> Art. 258 et seq. Criminal Code, in particular Articles 258, 259, 260<sup>bis</sup> and 260<sup>quater</sup>; the maximum penalty is 5 years' imprisonment.

<sup>11</sup> Art. 303 et seq. Criminal Code, in particular Articles 305<sup>bis</sup> and 305<sup>ter</sup>; the maximum penalty is 5 years' imprisonment.

<sup>12</sup> Art. 47 Criminal Code.

<sup>13</sup> Articles 24 and 25 Criminal Code.

<sup>14</sup> Attempt and failure to commit an offence; Articles 21 and 22 Criminal Code.

<sup>15</sup> For example murder, serious physical injury, abduction, hostage-taking.

<sup>16</sup> Art. 260<sup>bis</sup> Criminal Code: "...specific provisions of a technical or organisational nature". The maximum penalty is 5 years' imprisonment.

<sup>17</sup> New wording in force since 1 July 2021.

<sup>18</sup> Art. 260<sup>ter</sup>, paragraph 1, let. a, ch. 1 and 2, Criminal Code.

<sup>19</sup> Art. 260<sup>ter</sup>, paragraph 2, Criminal Code.

State” and Associated Organisations<sup>20</sup> punishes participating in or providing support for a group or organisation covered by that legislation. On the basis of Art. 74 of the Federal Intelligence Act,<sup>21</sup> furthermore, the Federal Council may ban a specific terrorist organisation, provided that the United Nations has issued a ban or sanctions against it. Participating in and providing support for such an organisation is punishable under paragraph 4 of this provision.

### **Financing of terrorism / Recruiting, training and travelling for terrorism purposes**

Under Art. 260<sup>quinquies</sup> of the Criminal Code, it is an offence to finance terrorism.<sup>22</sup> Since 1 July 2021 moreover, the Criminal Code contains a specific provision on recruiting, training and travelling for terrorism purposes (Art. 260<sup>sexies</sup> of the Criminal Code). This provision was introduced as part of a criminal law bill implementing the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005 and its Additional Protocol of 22 October 2015.<sup>23</sup> The same piece of draft legislation also implements United Nations Security Council Resolution 2178.

## **Procedural rules**

### **Criminal procedure**

In Switzerland, offences committed with terrorist intent are dealt with according to the same procedural rules as ordinary offences. 1 January 2021 saw the entry into force of the Code of Criminal Procedure,<sup>24</sup> which replaces the 26 cantonal codes of criminal procedure and the Federal Act on Federal Criminal Procedure. The aim was not to alter the allocation of jurisdiction between the Confederation and the cantons, but to ensure that the same procedural rules apply at Confederation and at cantonal level. Isolated offences committed with terrorist intent will continue to be prosecuted and tried by the cantons, while the prosecution and punishment of terrorism linked with organisations will remain within the jurisdiction of the Confederation.

The Swiss Code of Criminal Procedure provides for measures of protection for persons participating in proceedings, in particular for witnesses and accused persons, where there is reason to fear that the lives or physical safety of those persons, or one of their

close relatives, might be in serious danger or that they might be exposed to some other serious harm.<sup>25</sup> The protective measures set out in the Code are not exhaustive: they include ensuring the anonymity of the person to be protected, altering his/her appearance or his/her voice, and hearing the persons concerned in camera or in the absence of the parties.<sup>26</sup> The Code also provides that the cantons or the Confederation may take protective measures outside the proceedings.<sup>27</sup>

### **Investigative methods**

#### *DNA analysis*

In order to investigate a crime or lesser offence, the collection of a sample and the creation of a DNA profile, for example from the accused or from biological material relevant to the offence, may be ordered.<sup>28</sup> The DNA profile is registered in the DNA profile information system and compared with other profiles already in the database.

#### *Surveillance of postal correspondence and telecommunications*

The monitoring of postal correspondence and telecommunications – including monitoring of portable telephones, fax or electronic messaging – may be ordered by the compulsory measures court. It is also possible, under a court order, to obtain details of the location of the apparatus used or the number of the calling card.<sup>29</sup>

#### *Observation / other technical surveillance measures*

Surveillance using special technical devices may be ordered in connection with certain particularly serious offences.<sup>30</sup> Observation outside dwelling places may be carried out in connection with crimes or lesser offences.<sup>31</sup>

#### *Surveillance of banking transactions*

The Code of Criminal Procedure provides for the possibility of monitoring relations between a bank or bank-type institution and a suspect in order to elucidate crimes or offences, subject to authorisation by the compulsory measures court.<sup>32</sup> The purpose of this surveillance is to obtain from the bank information

<sup>20</sup> RS 122; <https://www.fedlex.admin.ch/eli/cc/2014/764/fr>

<sup>21</sup> RS 121; <https://www.fedlex.admin.ch/eli/cc/2017/494/fr>

<sup>22</sup> For further details, see below: “Prevention of terrorist financing”.

<sup>23</sup> For further details, see:

<https://www.parlament.ch/fr/ratsbetrieb/suche-aria-vista/geschaefte?AffairId=20180071>

<sup>24</sup> RS 312.0; <https://www.fedlex.admin.ch/eli/cc/2010/267/fr>

<sup>25</sup> Art. 146, paragraph 1, Code of Criminal Procedure.

<sup>26</sup> Art. 149, paragraph 2, Code of Criminal Procedure.

<sup>27</sup> Art. 156 Code of Criminal Procedure.

<sup>28</sup> Art. 255 Code of Criminal Procedure.

<sup>29</sup> Art. 269 et seq. Code of Criminal Procedure.

<sup>30</sup> Articles 280 and 281 Code of Criminal Procedure.

<sup>31</sup> Articles 282 and 283 Code of Criminal Procedure.

<sup>32</sup> Articles 284 and 285 Code of Criminal Procedure.

and documents which are not yet in its possession but are thought to be due to reach it.

### *Undercover investigations*

According to the Swiss Code of Criminal Procedure,<sup>33</sup> police officers may be employed under a false identity as undercover agents in order to investigate particularly serious offences. Other persons may be temporarily appointed as undercover agents in order to perform an investigative role.

### *Undercover inquiries*

In undercover inquiries, police officers may be deployed for short periods in such a way that their true identity and function remain concealed.<sup>34</sup> The police may order covert investigations of this nature for a maximum duration of one month, beyond which they require the authorisation of the public prosecutor's office.

## **Other relevant legislation**

### **Assistance to victims**

Victims of offences committed on Swiss territory whose physical, mental or sexual integrity has been harmed as a result of this offence are entitled, under certain conditions, to the support provided for in the Federal Act on Assistance to Victims of Offences (LAVI).<sup>35</sup> This Act provides for counselling, immediate and longer-term assistance, and also pecuniary and non-pecuniary compensation. Cantonal advice centres are responsible for providing victims with assistance, in particular medical, psychological and legal assistance. The victim has a number of rights in criminal proceedings, which are enshrined in the Swiss Code of Criminal Procedure. The victim's close relatives have similar rights to those of the victim. Subject to certain conditions, assistance under the LAVI may also be obtained where the offence was committed abroad. Assistance within the meaning of the LAVI may also be available even where no criminal proceedings are instituted or no one is convicted.

### **Witness protection**

The Witness Protection Service, coming under the federal criminal investigation police at the Federal Police Office (Fedpol), became operational

on 1 January 2013 with the entry into force of the Federal Act on Extra-Procedural Protection of Witnesses.<sup>36</sup> This service implements measures to protect people who assist in the investigation of offences at considerable risks to their own safety. To date, extra-procedural protection measures have been taken in Switzerland for the benefit of individuals providing witness testimony in cases involving offences committed against life and limb, offences against property, offences against freedom (e.g. trafficking in human beings) and public order offences.

### **Prevention of terrorist financing**

Following the attacks of 11 September 2001, Switzerland adopted measures to ensure that the existing legislation on money laundering would also cover the financing of terrorism. The Swiss Criminal Code, under which it was already an offence to participate in or to support a criminal organisation (Art. 260<sup>ter</sup>), was supplemented by a provision criminalising the financing of terrorism.<sup>37</sup> Since 1 July 2021, terrorist organisations are specifically mentioned in Art. 260<sup>ter</sup> too.<sup>38</sup> This change in the law is likewise reflected in the Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector (LBA)<sup>39</sup> with particular reference to the reporting obligation (see below).

In addition to these criminal law provisions, and the ones relating to the seizure and confiscation of assets, there are other regulations aimed at preventing the financing of terrorism. For example, any financial intermediary<sup>40</sup> and also traders, if they accept more than 100 000 Swiss Francs in cash in a commercial transaction,<sup>41</sup> must inform the Money Laundering Reporting Office of Switzerland (MROS) without delay if they know or have reasonable grounds to suspect that the assets involved in a business transaction are connected with one of the offences mentioned in Articles 260<sup>ter</sup> (participation in or support for a criminal or terrorist organisation) or 305<sup>bis</sup> of the Criminal Code (money laundering); are the proceeds of crime or a tax offence within the meaning of Art. 305<sup>bis</sup>, chapter 1, of the Criminal Code; are subject to the power of disposal of a criminal or terrorist organisation; or serve to finance terrorism (Art. 260<sup>quinquies</sup>, paragraph 1 of the Criminal Code).<sup>42</sup> The Reporting Office analyses the cases reported to it and, if the financial intermediaries' suspicions are confirmed, passes on the details to the prosecution authorities without delay. In that event,

<sup>33</sup> Article 285<sup>a</sup> et seq. Code of Criminal Procedure.

<sup>34</sup> Art. 298<sup>a</sup> et seq. Code of Criminal Procedure.

<sup>35</sup> RS 312.5; <https://www.fedlex.admin.ch/eli/cc/2008/232/fr>

<sup>36</sup> RS 312.2; <https://www.fedlex.admin.ch/eli/cc/2012/814/fr>

<sup>37</sup> Art. 260<sup>quinquies</sup> Criminal Code, entered into force on 1 October 2003.

<sup>38</sup> See above: "Legal framework"/"Criminal law".

<sup>39</sup> LBA, RS 955.0;

[https://www.fedlex.admin.ch/eli/cc/1998/892\\_892\\_892/fr](https://www.fedlex.admin.ch/eli/cc/1998/892_892_892/fr)

<sup>40</sup> Art. 2, paragraphs 2 and 3, LBA. Entities deemed to be financial intermediaries include notably: banks, boards of funds, life insurance institutions, securities dealers, casinos, credit institutions, payment traffic service providers, credit card and traveller's cheque issuers, currency exchange offices, precious metals or commodities dealers, asset managers and investment advisers.

<sup>41</sup> Art. 8a, paragraph 1, LBA.

<sup>42</sup> Art. 9 LBA.



the financial intermediary is required to freeze the assets entrusted to them for five working days.<sup>43</sup>

Swiss lawmakers have made provision for the MROS to have direct access to judicial and police databases and the right to ask any federal, cantonal or local authority for any information of relevance to its analysis.<sup>44</sup> In this way, the Reporting Office can provide the prosecution authorities with comprehensive analyses, as well as information received by the Office in exchanges with its foreign counterparts.

In the Ordinance of the Swiss Financial Market Supervisory Authority on the Prevention of Money Laundering and the Financing of Terrorism (OBA-FINMA<sup>45</sup>), the Federal Financial Market Supervisory Authority (FINMA) specifically introduced a ban which prevents financial intermediaries from accepting assets which they know or have reason to believe are proceeds of crime or a tax offence, even if it was committed abroad,<sup>46</sup> and from maintaining business relations with companies or individuals whom they know or have reason to believe finance terrorism or constitute a criminal or terrorist organisation, are members of such an organisation or support it.<sup>47</sup> Violating the provisions of the OBA-FINMA or self-regulation arrangements recognised by the FINMA may call into question the financial intermediary's guarantee of irreproachable business conduct.<sup>48</sup> Pursuant to Art. 33 of the Financial Market Supervision Act (LFINMA), serious offences may result in a professional ban and, under Art. 35 of the LFINMA, confiscation of the proceeds.

Furthermore, financial intermediaries intentionally violating the regulations could render themselves criminally liable for supporting a criminal or terrorist organisation.

All lists of organisations and physical persons suspected of links with terrorist networks compiled in United Nations Security Council resolutions are swiftly and regularly circulated to financial intermediaries.

Remittance services and virtual currency (bitcoin, etc.) dealing are subject to the LBA and its requirements without exception. Companies offering these types of services are bound to affiliate themselves with a

recognised self-regulation body supervised by the Financial Market Supervisory Authority (FINMA). If illegal activities are detected, the FINMA may take measures that can go as far as winding up the establishment concerned.

The most important players in the not-for-profit sector are subject to state or private supervision. If cases of abuse on the part of not-for-profit bodies which tend to favour the financing of terrorism come to light in the course of a tax inspection, the cantonal or federal authorities have a legal framework at their disposal that allows them to disclose their suspicions to the competent criminal authorities.

In addition, Art. 11a, paragraph 2<sup>bis</sup>, LBA, which entered into force on 1 July 2021, allows the Reporting Office to obtain information from financial intermediaries in response to a request for information from a foreign financial intelligence unit.

Switzerland has a comprehensive and effective mechanism for combating money laundering and terrorist financing, therefore. The Interdepartmental Co-ordinating Group on combating money laundering and the financing of terrorism (GCBF) was set up in 2013 and has published three reports on the financing of terrorism.<sup>49</sup>

### **Maintenance of internal and external security**

Since 2017, Switzerland has had the Federal Intelligence Act.<sup>50</sup> This regulates and clarifies the tasks, legal limits and oversight of the Federal Intelligence Service (SRC) and provides the necessary framework for identifying risks and threats to the country in good time. It enables the FIS to take new intelligence-gathering measures (e.g. surveillance of postal and telecommunications traffic) to counteract terrorism, espionage and proliferation, respond to attacks against sensitive infrastructure or protect other key interests.

The Federal Police Office (Fedpol) may, in accordance with the Federal Act on Foreigners and Integration (LEI)<sup>51</sup> and in collaboration with the SRC, ban individuals from entering Swiss territory if they are liable to compromise the country's internal and

<sup>43</sup> Art. 10 LBA.

<sup>44</sup> Art. 29, paragraph 2, LBA.

<sup>45</sup> RS 955.033.0;

<https://www.fedlex.admin.ch/eli/cc/2015/390/fr>

<sup>46</sup> Art. 7, paragraph 1, OBA-FINMA.

<sup>47</sup> Art. 8, lit. a, OBA-FINMA.

<sup>48</sup> Art. 9, paragraph 1, OBA-FINMA.

<sup>49</sup> "Blanchiment d'argent et financement du terrorisme par le biais d'organismes à but non lucrative" [Money laundering and terrorist financing through non-profit organisations]; "Le risque de blanchiment d'argent et de financement du terrorisme par les crypto-assets et le crowdfunding" [Risk of money laundering and

terrorist financing posed by crypto assets and crowdfunding]; "National Risk Assessment (NRA): Rapport sur l'utilisation du numéraire et les risques inhérents d'utilisation abusive pour le blanchiment d'argent et le financement du terrorisme en Suisse" [Report on the use of cash and the risks of its being misused for money laundering and terrorist financing in Switzerland]. The reports are available at:

<https://www.sif.admin.ch/sif/fr/home/finanzmarktpolitik/integritat-des-finanzplatzes.html>

<sup>50</sup> RS 121; <https://www.fedlex.admin.ch/eli/cc/2017/494/fr>

<sup>51</sup> Art. 67 LEI, RS 142.20;

<https://www.fedlex.admin.ch/eli/cc/2007/758/fr>

external security.<sup>52</sup> This measure makes it possible to prohibit entry into and stay in Switzerland by known or suspected members of organisations that have violated security and public order in Switzerland or may constitute a threat thereto. Fedpol may also, after consulting the SRC, deport a foreigner in the interests of Switzerland's internal or external security.<sup>53</sup>

On humanitarian grounds or for other important reasons, Fedpol may refrain from imposing an entry ban or temporarily or definitively suspend it. An entry ban associated with deportation may be temporarily lifted if there are compelling reasons to do so.

The amendments to the Federal Act on Measures for the Maintenance of Internal Security (LMSI<sup>54</sup>), which were passed by parliament and approved by referendum in 2021, will provide the police with new preventive measures to combat terrorist threats once the amendments come into force. The new arrangements allow the police to act when there are concrete and current indications that a person poses a terrorist threat. They include the obligation to report to a police station or other authority at specified times and to attend interviews, a ban on leaving the country, a ban on contact, a geographical ban (the person concerned may not enter or leave a specified area) and house arrest (which is to be considered a last resort).<sup>55</sup>

According to the Asylum Act (LAsi),<sup>56</sup> asylum is to be denied to refugees who have committed reprehensible acts or who have harmed or threatened the internal or external security of Switzerland. Similarly, asylum is to be revoked in the case of refugees who have undermined or jeopardised Switzerland's internal or external security, or if they have committed particularly reprehensible criminal acts. The State Secretariat for Migration (SEM) may also decide to provisionally admit a foreigner, asylum seeker or refugee whose asylum has been revoked, if execution of a deportation order is not possible, is not lawful or cannot reasonably be required.

However, if the execution of a deportation order is not possible or cannot reasonably be required, the State Secretariat for Migration may withdraw temporary

admission status, if the person represents a threat to internal or external security.<sup>57</sup>

In addition, under the Swiss Nationality Act (LN),<sup>58</sup> the SEM may withdraw the Swiss nationality of persons with dual nationality. Swiss citizenship is withdrawn if the conduct of the person concerned seriously damages the interests or reputation of Switzerland. A person directly or indirectly involved in terrorist activities, for example, can expect to have his or her Swiss citizenship withdrawn. In principle, withdrawal presupposes a valid criminal conviction. Exceptions are made in cases in which criminal proceedings would not be successful because the state in which the acts were committed is unwilling or unable to carry out criminal proceedings.

Lastly, the LEI also provides for the possibility of refusing or revoking a residence permit or leave to remain on the grounds that the person poses a threat to Switzerland's internal or external security.<sup>59</sup>

## INSTITUTIONAL FRAMEWORK

As regards co-operation at national level, all federal and cantonal authorities involved in the fight against terrorism co-ordinate and optimise their actions with the support of Operational Co-ordination TETRA (TErrorist TRacking). This was created in 2017 to carry on the work of the former TETRA Task Force, set up in 2014.<sup>60</sup>

The Office of the Attorney General of Switzerland (OAG) and the federal police conduct criminal investigations at federal level. They deal with a variety of cases, relating *inter alia* to recruitment, financing, propaganda and attacks planned or committed in Switzerland or abroad.

## INTERNATIONAL CO-OPERATION

### Mutual legal assistance and extradition

As regards mutual legal assistance in criminal matters, the procedure is governed by the Federal Act on International Mutual Assistance in Criminal Matters (EIMP).<sup>61</sup> The Federal Office of Justice is the authority competent for receiving and transmitting requests for

<sup>52</sup> Art. 67, paragraph 4, LEI.

<sup>53</sup> Art. 68 LEI.

<sup>54</sup> RS 120;

<sup>55</sup> Federal Act on Police Measures to Combat Terrorism: <https://www.fedlex.admin.ch/eli/fga/2020/2004/fr>

<sup>56</sup> Art. 53 LAsi, RS 142.31;

<https://www.fedlex.admin.ch/eli/cc/1999/358/fr>

<sup>57</sup> Art. 83, paragraph 7, let. b, LEI.

<sup>58</sup> Art. 42 LN, SR 141.0;

<https://www.fedlex.admin.ch/eli/cc/2016/404/fr>

<sup>59</sup> See for example Articles 62 and 63 LEI.

<sup>60</sup> Headed by Fedpol, TETRA encompasses the Federal Intelligence Service, the Office of the Attorney General of Switzerland, the Crisis

Management Centre of the Federal Department of Foreign Affairs, the Federal Customs Administration, the State Secretariat for Migration, the Federal Office of Justice, the Canton Police Joint Staff and the Conference of Cantonal Police Commanders of Switzerland. Where necessary, TETRA can include other authorities, such as those responsible for the execution of sentences.

<sup>61</sup> RS 351.1;

[https://www.fedlex.admin.ch/eli/cc/1982/846\\_846\\_846/fr](https://www.fedlex.admin.ch/eli/cc/1982/846_846_846/fr); further information is available at:

<https://www.bj.admin.ch/bj/fr/home/sicherheit/rechtshilfe/strafsachen.html>

international mutual assistance. In the area of terrorism, that office delegates the execution of requests for international mutual assistance to the Office of the Attorney General of Switzerland (OAG), since it is the latter which is competent for the prosecution of such offences in Switzerland. The decisions of the OAG may be challenged in the Federal Criminal Court and then the Federal Supreme Court in the cases provided for in Art. 84 of the Act on the Federal Supreme Court.<sup>62</sup>

Switzerland regularly executes requests for mutual assistance in connection with terrorism. So far, the Federal Criminal Court, and on final appeal the Federal Supreme Court, have always upheld requests for mutual assistance in connection with terrorism and the financing of terrorism as being admissible and ruled in favour of co-operating with foreign states making such requests.

The Swiss authority competent for extradition is the Federal Office of Justice. The related procedure is governed *inter alia* by the aforementioned EIMP. The decisions taken by the Office on detention and extradition may be challenged before the Federal Criminal Court and, on final appeal in Switzerland, before the Federal Supreme Court if the conditions set out in Art. 84 of the Act on the Federal Supreme Court are met. The Federal Criminal Court also rules on questions relating to political offences or when prosecutions are brought for political motives; here too, an appeal before the Federal Supreme Court is then possible if the conditions of Art. 84 of the Act on the Federal Supreme Court are met. Where an asylum procedure runs parallel to an extradition procedure, the Federal Supreme Court rules, at last instance, on the granting of refugee status and the possibility of extradition.

Switzerland recently amended its legislation in order to improve its capacity to co-operate in the fight against terrorism, including by making possible some new mutual assistance measures such as the advance transmission of information and joint investigation teams.<sup>63</sup>

Switzerland regularly extradites individuals (1 to 2 per year) suspected of – *inter alia* – acts of terrorism, in particular on the basis of the European Convention on Extradition of 13 December 1957 and its four additional protocols, as well as the European Convention on the Suppression of Terrorism of 27 January 1977, the International Convention for the Suppression of Terrorist Bombings of 15 December 1997 and the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999. Notable cases included the extradition in 2012 and in 2029 of two Turkish

nationals to Germany for belonging to or providing support to the central armed structures of the Kurdistan Workers' Party (PKK).

In 2008, Switzerland signed a co-operation agreement with Eurojust. The first liaison prosecutor took office in 2015.

### **Police co-operation**

At operational level, Switzerland has concluded a number of bilateral co-operation agreements in the area of policing. Among other things, these agreements allow exchanges of information and different forms of co-operation in the fight against terrorism. In addition, Switzerland has concluded a co-operation agreement with the European Police Office, Europol, which entered into force on 1 March 2006 and also covers the exchange of information and co-operation in the fight against terrorism.

### **Co-operation on intelligence**

Switzerland is part of the Counter Terrorism Group, CTG, an informal grouping of security and intelligence agencies from EU countries, the United Kingdom, Norway and Switzerland, working to combat Islamist terrorism.

## **Measures at international level**

Switzerland's international efforts in the fight against terrorism are facilitated by the Swiss CT Co-ordination of the Federal Department of Foreign Affairs. The CT Co-ordination is responsible for developing and co-ordinating Switzerland's foreign CT policy and implements the Swiss government's initiatives to strengthen co-operation with states and international organisations. It is worth noting that this co-ordination function does not encroach on the substantive jurisdiction of the other federal agencies, which remain responsible for the matters within their respective operational areas.

### **Council of Europe**

Switzerland is an active member of the Council of Europe Committee on Counter-Terrorism (CDCT). On 25 March 2021, Switzerland ratified the Council of Europe Convention on the Prevention of Terrorism of 16 May 2005 and its additional protocol of 22 October 2015. Both treaties entered into force in respect of Switzerland on 1 July 2021. On the same date, targeted adjustments to Swiss criminal law for the

<sup>62</sup> RS 173.110; <https://www.fedlex.admin.ch/eli/cc/2006/218/fr>

<sup>63</sup> Art. 80<sup>bis</sup> ss EIMP, entered into force on 1 July 2021.

purpose of implementing the treaties came into force.<sup>64</sup>

## **UN conventions and Global Strategy**

Switzerland has signed, ratified and implemented the United Nations conventions on terrorism. It is also a strong supporter of the UN's Global Counter-Terrorism Strategy (adopted by the UN General Assembly in 2006). Switzerland plays an active part in each biennial review process and, in that context, has lobbied for a holistic, balanced approach to the implementation of the four pillars. It has launched many initiatives to promote and strengthen the Strategy's four pillars and to encourage its implementation at regional and national level.<sup>65</sup>

### *Ensuring respect for human rights (Pillar IV of the UN Global Strategy)*

It is essential for Switzerland that counter-terrorism efforts and policies are carried out within the framework of international law and in particular human rights law, striking the right balance between prevention and punishment. In the context of armed conflict, moreover, all parties and individuals must apply international humanitarian law, without any exceptions.

Switzerland systematically implements the decisions of the Sanctions Committee of the United Nations Security Council and supplies financial intermediaries with the lists of names of individuals or organisations provided by other countries. Switzerland is convinced that targeted sanctions are an important tool for maintaining peace and security. Targeted sanctions must be consistent with fundamental due process rights if there is to be any guarantee that they will be fully implemented by the member states of the United Nations.

Switzerland, together with the Group of Like-Minded States on Targeted Sanctions, plays a crucial role in the improvement of procedural safeguards relating to the sanctions regime of the UN Security Council, leading to the creation of an office of the Ombudsperson in 2009. Switzerland and the Group of Like-Minded States continue to call for further improvements to all sanction regimes and regularly make concrete proposals to the UN Security Council.

### *Conditions conducive to the spread of terrorism (Pillar I of the UN Global Strategy)*

Switzerland considers that international security cannot be ensured on a lasting basis unless states strengthen their co-operation with a view to eradicating poverty, preventing and resolving conflicts and effectively promoting human rights and the rule of law. Without improvements to peoples' living conditions and without universal respect for fundamental freedoms, the long-term effectiveness of measures adopted against terrorism cannot be guaranteed. Dialogue and mutual understanding between cultures and religions will inevitably help to prevent conflicts and terrorist acts.

Violent extremism needs to be countered at the grassroots level, together with local actors and communities, where radicalisation and recruitment are occurring. To this end, Switzerland has actively participated in the creation of the Global Community Engagement and Resilience Fund (GCERF)<sup>66</sup> in Geneva, and supports its work.

In 2016, Switzerland developed a foreign policy action plan for the prevention of violent extremism<sup>67</sup> which aims to tackle the direct, structural causes of violent extremism and involves ongoing engagement in contexts of armed conflict, transition and fragility.

## **Financial Action Task Force (FATF)**

Switzerland is a member of the Financial Action Task Force (FATF) and supports the work of that organisation in the areas of money laundering and terrorist financing.

## **Egmont Group**

The MROS<sup>68</sup> is a member of the Egmont Group. Within this framework, it exchanges information with its foreign counterparts who are members of the Group. Under Swiss law, the MROS can exchange financial, police and judicial information with these counterparts. In addition, since 1 July 2021, the MROS has been able to request information from Swiss financial intermediaries in order to respond to requests for international mutual assistance from its foreign counterparts, regardless of whether an SAR has been submitted.

## **Global Counterterrorism Forum (GCTF)**

Switzerland is a founding member of the Global Counterterrorism Forum (GCTF),<sup>69</sup> created in 2011.

<sup>64</sup> See above, "Criminal law".

<sup>65</sup> See above "Switzerland and Counter-Terrorism".

<sup>66</sup> <https://www.qcerf.org/>

<sup>67</sup> [https://www.eda.admin.ch/dam/eda/fr/documents/publications/SchweizerischeAussenpolitik/Aussenpolitischer-Aktionsplan-PVE160404\\_FR.pdf](https://www.eda.admin.ch/dam/eda/fr/documents/publications/SchweizerischeAussenpolitik/Aussenpolitischer-Aktionsplan-PVE160404_FR.pdf)

<sup>68</sup> See above "Prevention of terrorist financing".

<sup>69</sup> <https://www.thegctf.org/>



Since then, the Forum has demonstrated some very valuable action-oriented capabilities and has become a global player in this area. Many policy instruments have been adopted within the framework of the GCTF. Since 2017, Switzerland has co-chaired the GCTF Criminal Justice and Rule of Law Working Group, a role that it will continue to perform until 2022. Some major initiatives have been undertaken by this working group in partnership with the UN, academic

institutions and NGOs. In this context, Switzerland has initiated the drafting of good practice documents and recommendations on juvenile justice, evidence gathering, administrative measures and criminal prosecution of organised crimes and international crimes in the fight against terrorism.<sup>70</sup>

<b>Relevant Conventions of the Council of Europe - Switzerland</b>	<b>Signed</b>	<b>Ratified</b>
European Convention on the Suppression of Terrorism (ETS 90)	27/01/1977	19/05/1983
Amending Protocol (ETS 190)	15/05/2003	07/09/2006
European Convention on Extradition (ETS 24)	29/11/1965	20/12/1966
First Additional Protocol (ETS 86)	17/11/1981	11/03/1985
Second Additional Protocol (ETS 98)	17/11/1981	11/03/1985
European Convention on Mutual Assistance in Criminal Matters (ETS 30)	29/11/1965	20/12/1966
First Additional Protocol (ETS 99)	17/11/1981	-
Second Additional Protocol (ETS 182)	15/02/2002	04/10/2004
European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)	-	-
European Convention on the Compensation of Victims of Violent Crimes (ETS 116)	15/05/1990	07/09/1992
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141)	23/08/1991	11/05/1993
Convention on Cybercrime (ETS 185)	23/11/2001	21/09/2011
Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189)	15/05/2003	-
Council of Europe Convention on the Prevention of Terrorism (ETS 196)	11/09/2012	25/03/2021
Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (ETS 217)	22/10/2015	25/03/2021
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS 198)	-	-

<b>Relevant United Nations conventions – Switzerland</b>	<b>Signed</b>	<b>Ratified</b>
Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963)	31/10/1969	21/12/1970
Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague, 1970)	16/12/1970	14/09/1971
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971)	23/09/1971	17/01/1978
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1988)	24/02/1988	09/10/1990
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 1973)		05/03/1985
International Convention against the Taking of Hostages (New York, 1979)	18/07/1980	05/03/1985
Convention on the Physical Protection of Nuclear Material (Vienna, 1979)	09/01/1987	09/01/1987
Amendment to the Convention on the Physical Protection of Nuclear Material (Vienna, 2005)		05/10/2008
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 1988)		12/03/1993
2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (London, 2005)		15/10/2008
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 1988)		12/03/1993
2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (London, 2005)		15/10/2008

<sup>70</sup> <https://www.thegctf.org/About-us/GCTF-framework-documents>

Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1991)	01/03/91	03/04/1995
International Convention for the Suppression of Terrorist Bombings (New York, 1997)		23/09/2003
International Convention for the Suppression of the Financing of Terrorism (New York, 1999)	13/06/2001	23/09/2003
International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 2005)	14/09/2005	15/10/2008