

Federal Office of Justice

No early handover of assets frozen in the frigate affair

Court recovery order required

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Berne. Switzerland will not return the assets frozen in the frigate affair to Taiwan without a court confiscation order. The Federal Examining Magistrate responsible has rejected an application for an early handover.

In their application for legal assistance dated 30 August 2006, the Taiwanese authorities requested the handover of the assets frozen in Switzerland as part of criminal and international legal assistance proceedings. They put the loss incurred by Taiwan from the payment of bribes in the frigate affair at USD 520 million (plus interest). The application was not based on a court recovery order. The Taiwanese authorities merely asserted, based on the bank records supplied by Switzerland under the legal assistance procedure, that the assets can be proven to originate from the frigate sale.

In exceptional cases – where the frozen assets are clearly of criminal origin – the Federal International Mutual Legal Assistance Act permits assets to be returned without a confiscation order issued by the requesting state. The Federal Examining Magistrate states in his decision of 7 April 2008 that there are significant indications that the assets whose return Taiwan is requesting are the proceeds of a crime. However, it is not possible to make a final judgment on the case, as this would prejudice the decision of the Taiwanese authorities in the pending criminal proceedings against the defendants in the bribery affair. Definitively establishing the facts is not the responsibility of the authority charged with executing the application for legal assistance, but rather that of the Taiwanese authorities. A further argument against an early handover is that it has so far proved impossible to clearly establish what portion of the total assets frozen in Switzerland is connected to the frigate affair and what portion comes from another source.

Ready to cooperate further

Despite this interim rejection, Switzerland remains prepared to cooperate with Taiwan. Criminal proceedings are currently pending in Taipei against the individuals accused of corruption, money laundering and other offences in connection with the bribes. If they are found guilty, the court will order the confiscation of all assets that are of criminal origin. The Federal Examining Magistrate therefore calls on the Taiwanese authorities to submit a new application for legal assistance requesting the handover of the assets, based on a legally valid and enforceable confiscation order. The assets remain frozen.

For more information

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