

# Federal Act on International Mutual Assistance in Criminal Matters

(Act on International Criminal Assistance, IMAC)

of 20 March 1981 (status as of 1 January 2010)<sup>1</sup>

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*The Federal Assembly of the Swiss Confederation,*

based on articles 103 and 114<sup>bis</sup> of the Federal Constitution<sup>2,3</sup> after examining ...  
[the] message by the Federal Council of 8 March 1976<sup>4</sup>,

*resolves [as follows]:*

## First Part: General Provisions

### Chapter 1: Scope of Application

#### Section 1: Subject and Limits of Cooperation

##### Art. 1 Subject

<sup>1</sup> Provided that international agreements do not provide otherwise, this act shall govern all procedures of international cooperation in criminal matters, especially<sup>5</sup>

- a. the extradition of persons who are the subjects of criminal prosecution or convicted (second part);
- b. assistance aimed at supporting criminal proceedings abroad (third part);
- c. the transfer of proceedings and punishment of offences (fourth part);
- d. the execution of foreign criminal judgments (fifth part).

<sup>2</sup> ...<sup>6</sup>

<sup>3</sup> This act shall apply only to criminal matters in which an appeal to a judge can be made according to the law of the requesting State.

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AS 1982 846

<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> [BS 1 3]. Arts. 54 para. 1, 164 para. 1(g) and 190 of the Federal Constitution of 18 April 1999 (SR 101) correspond to the said provisions.

<sup>3</sup> Version according to subpara. 4 of the Annex to the Federal Act of 6 October 2000 on the surveillance of mail and telecommunication service, in force since 1 January 2002 (SR 780.1).

<sup>4</sup> BBl [Official Federal Gazette] 1976 II 444

<sup>5</sup> Version according to art. 59 subpara. 1 of the Federal Act of 22 June 2001 on the cooperation with the International Criminal Court, in force since 1 July 2002 (SR 351.6).

<sup>6</sup> Repealed by section I of the Federal Act of 4 October 1996 (AS [Official Compilation of Federal Laws and Decrees] 1997 114; BBl 1995 III 1).

<sup>4</sup> This act shall confer no right to demand international cooperation in criminal matters.

**Art. 1a<sup>7</sup>**      Limitation of Cooperation

In the application of this act, the sovereignty, security, public order or similar essential interests of Switzerland shall be taken into account.

## Section 2: Exclusion of Requests

**Art. 2**      Foreign Proceeding<sup>8</sup>

A request for cooperation in criminal matters shall not be granted if there are reasons to believe that the foreign proceeding

- a.<sup>9</sup> does not meet the procedural requirements of the European Convention of Human Rights and Fundamental Freedoms of 4 November 1950<sup>10</sup>, or the International Covenant on Civil and Political Rights of 16 December 1966<sup>11</sup>;
- b.<sup>12</sup> is carried out so as to prosecute or punish a person on account of his political opinions, his belonging to a certain social group, his race, religion, or nationality;
- c. could result in aggravating the situation of the person pursued for any of the reasons mentioned under letter b; or
- d. is tainted with other grave defects.

**Art. 3**      Nature of the Offence

<sup>1</sup> A request shall not be granted if the subject of the proceeding is an act which, according to the Swiss concept, has a predominantly political character, constitutes a violation of the obligation to perform military or similar service or appears to be directed against the national defence or military strength of the requesting State.

<sup>2</sup> The plea [that an act is] of [a] political character shall not be taken into account at all if the act

- a. was aimed at the extermination or suppression of a population group on account of nationality, race, religion or ethnical, social or political relationship;

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<sup>7</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>8</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>9</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>10</sup> SR **0.101**

<sup>11</sup> SR **0.103.2**

<sup>12</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

- b. appears particularly reprehensible because the offender, for the purpose of extortion or duress, jeopardized or threatened to jeopardize freedom, life or limb of men, especially by hijacking planes, taking hostages or using means of mass extermination; or
- c. constitutes a serious violation of the humanitarian law of the states within the meaning of the Geneva conventions of 12 August 1949<sup>13</sup> and the additional protocols<sup>14, 15</sup>

<sup>3</sup> A request shall not be granted if the subject of the proceeding is an offence which appears to be aimed at reducing fiscal duties or taxes or which violates regulations concerning currency, trade or economic policy. However, the following requests may be granted:

- a. a request for judicial assistance under the third part of this Act, if the subject of the proceeding is a duty or tax fraud;
- b. a request under all parts of this Act, if the subject of the proceeding is an aggravated duty or tax fraud in the sense of article 14, paragraph 4 of the Federal Act of 22 March 1974<sup>16</sup> on Administrative Criminal Law.<sup>17</sup>

#### **Art. 4** Minor Cases<sup>18</sup>

A request shall be rejected if the importance of the offence does not justify the carrying out of the proceedings.

#### **Art. 5** Extinction of the Penal Claim

<sup>1</sup> A request shall not be granted if<sup>19</sup>

- a.<sup>20</sup> in Switzerland or in the State where the offence was committed, the judge
  - 1. acquitted the defendant or discontinued the proceedings for material reasons; or
  - 2. renounced or provisionally abstained from imposing a sanction;
- b.<sup>21</sup> the sanction was executed or cannot be executed according to the laws of the State where the sentence was passed;

<sup>13</sup> SR **0.518.12/.23/42/.51**

<sup>14</sup> SR **0.518.521/.522**

<sup>15</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>16</sup> SR **313.0**

<sup>17</sup> Version of the second sentence according to section I 3 of the Federal Act of 3 October 2008 transposing the revised recommendations of the Financial Action Task Force, in force since 1 February 2009 (AS **2009** 361 367; BBl **2007** 6269).

<sup>18</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>19</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>20</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>21</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

- c.<sup>22</sup> its execution requires compulsory measures and the prosecution or execution of the sentence were absolutely barred under Swiss law by the statute of limitations.

<sup>2</sup> Paragraph 1 letters a and b do not apply if the requesting State asserts that there are reasons for a revision of the final sentence in the sense of article 229 of the Federal Act of 15 June 1934 on Federal Criminal Procedure<sup>23, 24</sup>

#### **Art. 6** Concurrency of Exclusion and Admissibility of Cooperation

<sup>1</sup> If the act imputed to the person pursued falls under several articles of the Swiss penal law, the request may be granted only with regard to those offences for which there are no reasons for exclusion and if there is a guarantee that the requesting State will respect the conditions imposed.

<sup>2</sup> Cooperation shall not be permitted if the proceedings concern an act which falls under several articles of the Swiss or foreign penal law and if, with regard to one of these offences, which covers the act in all its elements, a request may not be granted.

### **Section 3: Special Rules**

#### **Art. 7** Swiss Nationals

<sup>1</sup> No Swiss national may, without his written consent, be extradited or surrendered to a foreign State for prosecution or execution of a sentence. The consent may be withdrawn up to the time when the surrender is ordered.

<sup>2</sup> Paragraph 1 shall not apply to transit or return of a Swiss national who is temporarily surrendered by a third State to the Swiss authorities.

#### **Art. 8** Reciprocity

<sup>1</sup> As a rule, a request shall be granted only if the requesting State guarantees reciprocity. The Federal Office of Justice<sup>25</sup> of the Federal Department of Justice and Police (Federal Office) may require a guarantee of reciprocity if this is deemed necessary.

<sup>2</sup> Reciprocity is in particular not necessary in cases of service of documents or if the execution of a request

- a. seems advisable by reason of the type of offence or of the necessity of combating certain offences;

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<sup>22</sup> The version according to art. 97 et seqq. of the Swiss Penal Code (SR **311.0**) contains a new system of statute of limitations (AS **2006** 3459; BBl **1999** 1979).

<sup>23</sup> SR **312.0**

<sup>24</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>25</sup> The designation of the administrative unit has been adapted according to art. 16 para. 3 of the Ordinance of 17 November 2004 on official publications (SR **170.512.1**).

b.<sup>26</sup> is likely to improve the situation of the person pursued or the prospects of his social rehabilitation; or

c. serves to clarify an offence against a Swiss national.

<sup>3</sup> The Federal Council may, within the scope of this act, give other States a guarantee of reciprocity.

#### **Art. 8a<sup>27</sup>**      Bilateral Treaties

The Federal Council may conclude bilateral agreements with foreign States regarding the transfer of convicted persons as far as those agreements respect the principles of the European Convention of 21 March 1983 on the Transfer of Sentenced Persons<sup>28</sup>.

#### **Art. 9**            Protection of Privacy

In the execution of requests, the protection of privacy shall be determined according to the provisions on the right of witnesses to refuse testimony. The principles of article 69 of the Act on Federal Criminal Procedure<sup>29</sup> shall apply to the search and to the placing under seal of documents.

#### **Art. 10<sup>30</sup>**

#### **Art. 11**            Legal Definitions

<sup>1</sup> A person pursued within the meaning of this act is any person suspected, under investigation or affected by a sanction.<sup>31</sup>

<sup>2</sup> A sanction is any punishment or [other penal] sanction.

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<sup>26</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>27</sup> Inserted through section I of the Federal Act of 21 June 2002, in force since 1 November 2002 (AS **2002** 3333 3334; BBl **2001** 4687).

<sup>28</sup> SR **0.343**

<sup>29</sup> SR **312.0**

<sup>30</sup> Repealed by section I of the Federal Act of 4 October 1996 (AS **1997** 114; BBl **1995** III 1).

<sup>31</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

## Chapter *Ia*:<sup>32</sup> Management System for Persons, Dossiers and Cases

### Art. 11a

<sup>1</sup> The Federal Office of Justice operates a management system for persons, dossiers and cases which can contain data particularly worthy of protection processed in the context of the forms of cooperation governed by this Act. These data may be processed in order to:

- a. establish whether data relating to a particular person are being processed;
- b. process data relating to cases or dossiers;
- c. make sequences of operations rational and efficient;
- d. perform business control tasks;
- e. compile statistics.

<sup>2</sup> In order to be able to serve the purposes mentioned in paragraph 1, the system contains:

- a. the particulars of the persons whose data are being processed;
- b. data necessary for the localisation and the proper administration of the dossiers;
- c. documents pertaining to electronically stored dossiers and entries.

<sup>3</sup> The Federal Office of Police, the Federal Office for Migration and the units of the Federal Intelligence Service which are responsible for the enforcement of the Federal Act of 21 March 1997<sup>33</sup> on Measures to Safeguard Internal Security can access data according to paragraph 2, letter a online.<sup>34</sup> As far as the Federal Office of Police performs tasks of the Federal Office of Justice according to this Act, it can also access data according to paragraph 2, letter b online.

<sup>4</sup> The Federal Council specifies the details, in particular:

- a. regarding the recording of data according to paragraph 2, letters a and b, data of the judicial authorities participating in the mutual assistance proceeding as well as of the offence giving rise to the request for assistance;
- b. the duration of storage and archiving of the data;
- c. the entities of the Office authorized to process data directly in the system, as well as the data which can be communicated to other authorities in particular cases.

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<sup>32</sup> Inserted through Annex 1 section 7 of the Federal Act of 13 June 2008 on the Police Information Systems of the Confederation, in force since 5 December 2008 (SR 361).

<sup>33</sup> SR 120

<sup>34</sup> Version according to section I 4 of the Ordinance of 4 December 2009 on the adaptation of legal provisions as a result of the creation of the Federal Intelligence Service, in force since 1 January 2010 (AS 2009 6921).

## Chapter 2: Applicable Law

### Art. 12 In General

<sup>1</sup> If this Act does not specify otherwise, the federal administrative authorities shall apply, by analogy, the Federal Act on Administrative Procedure<sup>35</sup>, and the cantonal authorities their own procedural rules. The procedural rules observed in criminal matters shall apply to acts of procedure.

<sup>2</sup> The cantonal and federal provisions on the suspension of time limits do not apply.<sup>36</sup>

### Art. 13 Interruption of the Statute of Limitations<sup>37</sup>. Petition for Punishment<sup>38</sup>

<sup>1</sup> In proceedings according to this act, the following shall be considered to produce effect in Switzerland:

- a. the interruption of the statute of limitations according to the law of the requesting State;
- b. the petition for punishment filed with a foreign authority within the time limit provided for if the petition is required also according to Swiss law.

<sup>2</sup> If a petition for punishment is required only according to Swiss law, no sanction may be pronounced or executed in Switzerland if the victim make objections.

### Art. 14 Credit for Detention

Article 69 of the Swiss Penal Code<sup>39</sup> shall be applicable for determining the credit for the period of detention suffered abroad pending trial or caused abroad by a proceeding according to this act.

### Art. 15 Compensation

<sup>1</sup> The federal and cantonal provisions governing compensation for unjustified detention and other disadvantages shall apply, by analogy, to a proceeding which was carried out against a person pursued in Switzerland according to this act or abroad at the request of a Swiss authority.

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<sup>35</sup> SR 172.021

<sup>36</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>37</sup> The interruption of the statute of limitations has been abolished by virtue of art. 97 et seqq. of the Swiss Penal Code (SR 311.0) and is being substituted, in the case of the statute-barring of execution, by an extension of the regular time limit (AS 2006 3459; BBl 1999 1979).

<sup>38</sup> Translators' note: In this context, 'petition' means an explicit declaration by the injured person that he wants the offender to be prosecuted and/or punished. Such a declaration is necessary for the prosecution of certain minor offences or of offences where the offender is a relative to the injured person.

<sup>39</sup> SR 311.0

<sup>2</sup> The Confederation shall pay the compensation if a federal authority makes or executes a request. It may require reimbursement from the canton which caused the request to be made.

<sup>3</sup> The compensation may be reduced or refused if the person pursued has provoked the investigation or the detention through his fault, or has, without reason, obstructed or delayed the proceeding.<sup>40</sup>

<sup>4</sup> The compensation for the detention with a view to extradition suffered in Switzerland may also be reduced or refused if the requesting State

- a. withdraws the request for search and arrest with a view to extradition; or
- b. does not present the request for extradition with the necessary enclosures within the deadline set.<sup>41</sup>

<sup>5</sup> The possibilities of the injured party to obtain damages in the foreign State shall be taken into account when the decision is made as to reduce or refuse the compensation.<sup>42</sup>

## Chapter 3: Intrastate Procedure

### Section 1: Authorities and Powers

#### Art. 16 Cantonal Authorities

<sup>1</sup> The cantons shall participate in the carrying out of extradition proceedings. If the federal law does not require otherwise, it is incumbent upon them to execute the requests for other assistance, transfer of proceedings and execution of criminal judgments. The cantons shall be under the supervision of the Confederation as far as this act is applicable.

<sup>2</sup> The cantons shall determine competency, organisation and administration of the executing authorities.

#### Art. 17 Federal Authorities

<sup>1</sup> The Federal Department of Justice and Police (Department) shall decide cases under article 1, letter *a*. The decision of the Department can be requested within 30 days after the written notification of the conclusive decree.<sup>43 44</sup>

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<sup>40</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>41</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>42</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>43</sup> Sentence inserted through subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (SR 173.32).

<sup>44</sup> Version according to section of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>2</sup> The Federal Office shall receive the requests from abroad and present Swiss requests. It shall handle extradition requests and cause requests for other assistance, transfer of proceedings and execution of criminal judgments to be examined by the appropriate cantonal or federal authorities, if their execution is not obviously inadmissible.

<sup>3</sup> It shall decide

- a. whether to require a guarantee of reciprocity (art. 8, para. 1);
- b. on the choice of the appropriate procedure (art. 19);
- c. on the admissibility of Swiss requests (art. 30, para. 1).

<sup>4</sup> It may transfer the carrying out of a proceeding partly or completely to the federal authority which would be competent for punishing the offence if it had been committed in Switzerland.

<sup>5</sup> It may also decide that assistance is admitted and allow its execution according to article 79, letter *a*.<sup>45</sup>

#### **Art. 17<sup>a46</sup>**      Obligation to Promptness

<sup>1</sup> The competent authority shall execute the requests promptly. It shall rule without delay.

<sup>2</sup> Upon request of the Federal Office, it shall inform on the status of the proceeding, the reasons for a possible delay and the measures considered. If the delay is not justified, the Federal Office may intervene with the appropriate authority of supervision.

<sup>3</sup> When the competent authority, without reason, refuses to rule or delays issuing a decree, its silence shall be taken to mean a negative decision subject to appeal.

#### **Art. 18<sup>a47</sup>**      Provisional Measures

<sup>1</sup> Upon explicit request by another State, provisional measures may be taken by the competent authority to preserve the existing situation, to safeguard threatened legal interests or to protect jeopardized evidence if the proceeding according to this act does not appear obviously inadmissible or inappropriate.

<sup>2</sup> If any delay were to jeopardize the proceedings and if there is sufficient information so as to determine whether all the conditions are met, the Federal Office may likewise order these measures as soon as a request is announced. These measures shall be lifted if the foreign State does not make the request within the deadline set.

<sup>3</sup> Objections and appeals filed against decrees based on this article do not have suspensive effect.

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<sup>45</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>46</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>47</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

**Art. 18a**<sup>48</sup> Surveillance of mail and telecommunication service

<sup>1</sup> The Federal Office may, at the explicit request of another State to establish the whereabouts of a person pursued, order a surveillance of mail and telecommunication service.

<sup>2</sup> If other acts of assistance are granted, the cantonal or federal authority dealing with the request may order the surveillance of mail and telecommunication service.

<sup>3</sup> The conditions for the surveillance and the procedure shall be ruled by the Federal Act of 6 October 2000 on the surveillance of mail and telecommunication service<sup>49</sup>.

**Art. 19** Choice of Procedure

If the person pursued is abroad and if, according to the laws of the State to which the request is to be made, there is a choice between different procedures, preference shall be given to that which appears to assure the better social rehabilitation.

**Art. 20** Suspension of the Criminal Proceeding or of the Execution of a Sanction

<sup>1</sup> Upon application made by the Federal Office, the competent authority may temporarily suspend the criminal proceedings or the execution of a sanction against a person prosecuted abroad for another offence if

- a. the sanction incurred in Switzerland is not of great importance in comparison to the one likely to be imposed abroad or
- b. the execution in Switzerland does not seem appropriate.

<sup>2</sup> Upon conclusion of the criminal proceedings abroad, the Swiss authority shall decide whether to resume the suspended proceedings or execution of the sanction.

**Art. 20a**<sup>50</sup> Transit

<sup>1</sup> In the interest of a proceeding carried out in another State and permitted under this act, the Federal Office may grant transit [through Swiss territory] and issue the orders necessary to this effect on submission of a request by that or a third State without hearing the affected person. The decision and ancillary measures cannot be appealed. They shall be notified only to the requesting State.

<sup>2</sup> No authority shall be required if the detained person is to be transported by aircraft over Swiss territory without intermediate landing. In case of an unscheduled intermediate landing, the detained person may be kept in custody only if

- a. the conditions exist for his arrest according to article 44; or

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<sup>48</sup> Inserted through subpara. 4 of the Annex to the Federal Act of 6 October 2000 on the surveillance of mail and telecommunication service, in force since 1 January 2002 (SR 780.1).

<sup>49</sup> SR 780.1

<sup>50</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

- b. the State causing the transport to be made has previously informed the Federal Office by indicating the reason for surrender and the offence which is the basis for it.

<sup>3</sup> Solely the Federal Office may interrupt the transit so as to prosecute an offence or to execute a criminal judgment in Switzerland.

## Section 2: Protection of Rights

### Art. 21 Common Provisions

<sup>1</sup> The person pursued may retain counsel. If he waives doing so or is not in a position to do so, counsel shall be officially appointed if the safeguard of his interests so requires.

<sup>2</sup> Other persons who are affected by the measures of judicial assistance or who, as injured parties, are present at inquiries, may, if the safeguarding of their interests so requires, be assisted by counsel at the carrying out of the act of judicial assistance and, as far as the purpose of the investigation is not prejudiced, be represented by him.

<sup>3</sup> Persons who are targets of foreign criminal proceedings may challenge decrees only if they are personally and directly affected by a mutual assistance measure and if they have an interest worthy of legal protection that the measure is lifted or changed.<sup>51</sup>

<sup>4</sup> Appeals filed against a decree rendered in the application of this act shall not have a suspensive effect. This rule shall not apply to appeals directed against a decree:

- a. granting extradition; or
- b. authorizing the transmission abroad of information within the scope of secrecy or the handing over of objects or assets.<sup>52</sup>

### Art. 22<sup>53</sup> Notice Regarding Legal Remedies

Decrees and decisions of federal and cantonal authorities shall indicate the possible legal remedies, the authority for appeal and the deadline given to appeal.

### Art. 23<sup>54</sup>

### Art. 24<sup>55</sup>

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<sup>51</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>52</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>53</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>54</sup> Repealed by subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, with effect from 1 January 2007 (SR 173.32).

**Art. 25** Appeal<sup>56</sup>

<sup>1</sup> First instance decrees of cantonal and federal authorities shall be subject to appeal directly to the Appeals Chamber of the Federal Criminal Court in so far as this act does not stipulate otherwise.<sup>57</sup>

<sup>2</sup> An appeal of a Swiss request to an other State shall lie only if this State is requested to assume the criminal proceedings or the execution of a criminal judgment. In this case, only the person pursued who has his habitual residence in Switzerland shall be entitled to appeal.<sup>58</sup>

<sup>2bis</sup> The appeal against a Swiss request for assumption of the execution of a criminal judgment in connection with a transfer according to article 101, paragraph 2 is admissible.<sup>59</sup>

<sup>3</sup> The Federal Office may appeal against decrees of cantonal authorities as well as against decisions of the Federal Criminal Court. The cantonal authority is entitled to appeal against the decision of the Federal Office not to make a request.<sup>60</sup>

<sup>4</sup> An appeal may also be filed against inadmissible or obviously improper application of foreign law.

<sup>5</sup> ...<sup>61</sup>

<sup>6</sup> The Appeals Chamber of the Federal Criminal Court shall not be bound by the applications made by the parties.<sup>62</sup>

**Art. 26**<sup>63</sup> Administrative Appeal

Decrees of the Department according to article 17, paragraph 1, shall be subject to appeal to the Federal Council. ...<sup>64</sup>

<sup>55</sup> Repealed by section I of the Federal Act of 4 October 1996 (AS **1997** 114; BBl **1995** III 1).

<sup>56</sup> Version according to subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (SR **173.32**).

<sup>57</sup> Version according to subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (SR **173.32**).

<sup>58</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>59</sup> Inserted through article 2 of the Federal Assembly Resolution of 19 December 2003, in force since 1 October 2004 (AS **2004** 4161 4162; BBl **2002** 4340).

<sup>60</sup> Version according to subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (SR **173.32**).

<sup>61</sup> Repealed by section I of the Federal Act of 4 October 1996 (AS **1997** 114; BBl **1995** III 1).

<sup>62</sup> Version according to subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (SR **173.32**).

<sup>63</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>64</sup> Sentence repealed by subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, with effect from 1 January 2007 (SR **173.32**).

## Chapter 4: Interstate Procedure

### Art. 27 General Rules for Requests

<sup>1</sup> Articles 27 to 31 shall apply to all procedures under this act. The special rules of procedure provided in the other parts of this act are reserved.<sup>65</sup>

<sup>2</sup> Foreign requests shall be addressed directly to the Federal Office.

<sup>3</sup> Requests which are addressed to an inappropriate authority shall be forwarded ex officio. The requesting authority shall be informed.

<sup>4</sup> Requests in connection with a case of detention shall be dealt with without delay.

<sup>5</sup> Non-acceptance or refusal of a request shall be substantiated.

### Art. 28 Form and Contents of Requests

<sup>1</sup> Requests shall be reduced to writing.

<sup>2</sup> To be stated in a request are:

- a. the office from which it emanates and if necessary, the authority having criminal jurisdiction;
- b. the subject matter of and the reason for the request;
- c. the legal qualification of the offence;
- d. indications as exact and comprehensible as possible on the person being the target of the criminal proceedings.

<sup>3</sup> To determine the legal qualification of the offence, it shall be added:

- a. a summary of the relevant facts, except in cases of requests for service of process;
- b.<sup>66</sup> the text of the regulations applicable at the place where the offence was committed, except in cases of requests for assistance according to the third part of this act.

<sup>4</sup> Foreign official records need not be legalized.

<sup>5</sup> Foreign requests and their enclosures shall be submitted in German, French or Italian or be accompanied by a translation into one of these languages. Translations shall be officially certified.

<sup>6</sup> If a request does not meet the formal requirements, its correction or completion may be demanded; the ordering of precautionary measures will not be affected thereby.

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<sup>65</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BB1 1995 III 1).

<sup>66</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BB1 1995 III 1).

**Art. 29** Transmission

<sup>1</sup> The Federal Office may receive requests directly from the ministry of justice of the requesting State.

<sup>2</sup> When provisional measures are to be taken or in urgent cases, the intervention of the International Criminal Police Organisation (ICPO-Interpol) may be enlisted or a copy of the written request sent directly to the authority competent for its execution.

**Art. 30** Swiss Requests

<sup>1</sup> Swiss authorities may not address to an other State requests which they themselves could not grant according to this act.

<sup>2</sup> The Federal Office shall be competent in cases of requests for extradition, transfer of proceedings or execution of criminal judgments; it shall take action at the request of the cantonal authority.

<sup>3</sup> Conditions which the requested State attaches to the execution of the request shall be observed by the Swiss authorities.

<sup>4</sup> The Federal Office may decline to make a request if the importance of the offence does not justify the proceedings.

**Art. 31** Costs

<sup>1</sup> As a rule, foreign requests shall be executed free of charge.

<sup>2</sup> The Federal Council shall fix the conditions under which the requesting State may be charged the costs completely or partially.

<sup>3</sup> The expenses for a Swiss request for which an other State is reimbursed shall be charged to the proceedings that caused the request to be made.

<sup>4</sup> The Federal Council shall fix the sharing of costs between the Confederation and the cantons.

**Second Part: Extradition****Chapter 1: Conditions****Art. 32** Foreign Nationals

Foreign nationals may be surrendered to another State for prosecution or execution of a sanction with deprivation of liberty regarding acts which come under its jurisdiction if this State requests extradition or if it accepts the Swiss request to prosecute the offence or execute the sanction.

**Art. 33** Persons Under 20 Years

<sup>1</sup> Children and juveniles as defined in the Swiss Penal Code<sup>67</sup> whose extradition is requested shall, if possible, be repatriated by the juvenile authorities. The same applies for persons between the age of 18 and 20 if extradition could endanger their mental development or social rehabilitation.

<sup>2</sup> Repatriation shall have the effects of an extradition.

**Art. 34**<sup>68</sup>**Art. 35** Extraditable Offences

<sup>1</sup> Extradition shall be permitted if, according to the documents supporting the request, the offence

- a. is punishable not only under the law of Switzerland but also under the law of the requesting State by a sanction with deprivation of liberty for a maximum period of at least one year or with a more severe sanction and
- b. is not subject to Swiss jurisdiction.

<sup>2</sup> In determining if an act is punishable under Swiss law, special degrees of guilt and conditions of punishability shall not be taken into account, not even with respect to the personal and temporal scope of application of the provisions of the Swiss Military Penal Law<sup>69 70</sup> concerning violation of public international law in case of armed conflicts and wartime looting as well as pillaging.<sup>71</sup>

**Art. 36** Special Cases

<sup>1</sup> As an exception the person pursued may be extradited for an offence which comes under Swiss jurisdiction if special circumstances, especially the possibility of better social rehabilitation, justify it.

<sup>2</sup> If one of several offences is an extraditable one (art. 35, para. 1) extradition may be granted for all offences.

**Art. 37** Denial

<sup>1</sup> Extradition may be denied if Switzerland can assume the prosecution of the offence or the execution of the foreign criminal judgment and if this appears to be indicated with regard to the social rehabilitation of the person pursued.

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<sup>67</sup> SR 311.0

<sup>68</sup> Repealed by section I of the Federal Act of 4 October 1996 (AS 1997 114; BBl 1995 III 1).

<sup>69</sup> Term according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>70</sup> SR 321.0

<sup>71</sup> Rectified by the Drafting Committee of the Federal Assembly [art. 33 GVG – AS 1974 1051].

<sup>2</sup> Extradition shall be denied if the request is based on a verdict rendered in the absence of the defendant and if the minimum rights of the defence which a defendant acknowledgedly is entitled to were not respected in the proceedings preceding the verdict; this rule shall not apply if the requesting State gives sufficient assurances to guarantee the person pursued the right to a new court proceeding where the rights of the defence are respected.<sup>72</sup>

<sup>3</sup> Extradition shall also be denied if the requesting State does not give the guarantee that the person pursued will not be condemned to death, that an already pronounced death penalty will not be carried out, or that he will not be subjected to treatment that will impair his physical integrity.<sup>73</sup>

### **Art. 38**            Conditions

<sup>1</sup> The person pursued may be extradited only on condition that the requesting State:

- a. shall neither prosecute nor sentence nor re-extradite him to a third State for any offence committed prior to his extradition and for which extradition was not granted;
- b.<sup>74</sup> shall not deprive him of his liberty on any other ground that existed before his extradition;
- c.<sup>75</sup> shall not bring him before an extraordinary court; and moreover
- d. shall send the Swiss authorities, upon their request, an officially certified copy of the decision which concludes the penal proceedings.

<sup>2</sup> The conditions of paragraph 1, letters a and b, shall no longer be applicable if:

- a. the person pursued or extradited explicitly renounces; or
- b. the person extradited:
  1. in spite of being advised of the consequences, did not leave the territory of the requesting State within forty-five days after his conditional or final release although he had the opportunity to do so, or if, after leaving that territory, he has returned; or
  2. has been returned by a third State.<sup>76</sup>

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<sup>72</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>73</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>74</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>75</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>76</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

**Art. 39** Extension

If the extradited person is charged with other offences, the State to which he was extradited may be permitted, upon a new request, to prosecute these offences as well.

**Art. 40** Requests by Several States

<sup>1</sup> If several States request extradition for the same offence, extradition shall be granted as a rule to the State where the offence was committed or principally perpetrated.

<sup>2</sup> If extradition is requested by more than one State for different offences, the decision shall be made having due regard to all circumstances, especially the seriousness of the offences, the place of commission, the chronological order in which the requests were received, the nationality of the person pursued, the better prospect of social rehabilitation and the possibility of extradition to another State.

**Chapter 2: Procedure****Section 1: Requests****Art. 41** Documents Supporting the Request

In addition to the documents specified in article 28, paragraph 3, the following shall be enclosed with the request: the original or an officially authenticated copy of an enforceable judgment, of the warrant of arrest or of any other document issued in accordance with the regulations of the requesting State and having the same effect.

**Art. 42** Request for Search and Arrest

Requests for search and arrest with a view to extradition shall contain, in addition to the items of information specified in article 28, paragraphs 2 and 3, letter a, references to the following:

- a. the existence of a valid warrant of arrest, the date of its issuance and the name of the issuing authority;
- b. the intention of the competent authority to make a request for extradition.

**Art. 43** Acceptance of the Request for Consideration

The Federal Office shall decide whether and under what conditions it will agree to consider the request.

## Section 2: Provisional Measures

### Art. 44 Arrest

Foreign nationals may be arrested with a view to extradition on the basis of a request by an Interpol National Central Bureau or the Ministry of Justice of another State or on the basis of an international look-out notice in a police search system.<sup>77</sup> Article 52, paragraphs 1 and 2, shall apply by analogy.

### Art. 45 Seizure of Objects

<sup>1</sup> At the time of arrest, objects and assets which can serve as evidence in foreign criminal proceedings or which originate from an offence shall be seized.

<sup>2</sup> The cantonal authorities may, if necessary, order that the arrested person or the rooms be searched.

### Art. 46 Notice of Execution. Duration of the Measures

<sup>1</sup> Arrest and seizure shall be reported to the Federal Office.

<sup>2</sup> They shall continue until a decision concerning the detention awaiting extradition is rendered but at the most until the third workday after the arrest.

## Section 3: Detention Awaiting Extradition and Seizure

### Art. 47 Warrant of Arrest and Other Decrees

<sup>1</sup> The Federal Office shall issue a warrant of arrest with a view to extradition. It may decline to do so, especially if the person pursued:

- a. probably will not elude extradition and will not endanger the criminal investigation or
- b. can prove without delay that he was not at the place of the offence when it was committed.

<sup>2</sup> If the person pursued is unfit to remain in detention or if there are other valid reasons, the Federal Office may order measures other than detention to ensure his presence.

<sup>3</sup> At the same time it shall order which objects and valuables will remain seized or are to be seized.

### Art. 48 Contents

<sup>1</sup> Decrees under article 47 shall contain:

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<sup>77</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

- a. information, provided by the foreign authority, concerning the identity of the person pursued and the offence alleged against this person;
- b. the name of the office which made the request;
- c. the confirmation that extradition will be requested;
- d. the notice regarding the right of appeal according to paragraph 2 and the right to retain counsel.

<sup>2</sup> An appeal against these decrees may be lodged with the Appeals Chamber of the Federal Criminal Court within ten days after service of the written warrant of arrest with a view to extradition. The appeal shall not have suspensive effect unless the Appeals Chamber or its president rule otherwise.<sup>78 79</sup>

#### **Art. 49** Execution

<sup>1</sup> The execution of decrees under article 47 shall be a matter for the cantonal authorities.

<sup>2</sup> The warrant of arrest with a view to extradition cannot be executed as long as the person pursued is held in custody awaiting trial or serving a sentence.<sup>80</sup>

<sup>3</sup> The person pursued may neither be released nor be deported from Switzerland without the consent of the Federal Office.

#### **Art. 50** Lifting of the Detention

<sup>1</sup> The Federal Office shall lift the detention 18 days after the apprehension if the request for extradition and the documents supporting it have not been received.<sup>81</sup> This period may be extended for special reasons up to 40 days.

<sup>2</sup> If the person pursued is already detained, the period shall start when he is detained with a view to extradition.

<sup>3</sup> Detention with a view to extradition may be exceptionally lifted at any stage of the proceedings. The person pursued may lodge a petition for release at any time.

<sup>4</sup> In addition, articles 53 to 60 of the Act on Federal Criminal Procedure<sup>82</sup> shall apply by analogy to the lifting of detention.

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<sup>78</sup> Version of the sentence according to subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (SR **173.32**).

<sup>79</sup> Version according to subpara. 13 of the Annex to the Federal Act of 4 October 2002 on the Federal Criminal Court, in force since 1 April 2004 (SR **173.71**).

<sup>80</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>81</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>82</sup> SR **312.0**

**Art. 51** Continuation and Renewal of Detention

<sup>1</sup> If the request and its enclosures are received in time and if extradition is not obviously inadmissible, detention shall continue throughout the whole proceedings without special order.

<sup>2</sup> If the person pursued was released, the detention with a view to extradition may be re-ordered.

**Section 4: Preparation of the Extradition Decision****Art. 52** Right to Be Heard

<sup>1</sup> The request and the documents supporting it shall be submitted to the person pursued and to his counsel. When formally presenting the person pursued with the warrant of arrest with a view to extradition, the cantonal authority shall ascertain if the person pursued is identical with the person mentioned in the request. It shall explain to him the conditions of extradition and of simplified extradition and make reference to his right to appeal, to retain counsel or to have counsel officially appointed.<sup>83</sup>

<sup>2</sup> The person pursued shall be questioned briefly about his personal situation, especially his nationality and his relationship with the requesting State and asked if and for what reasons he raises objections to the warrant of arrest or his extradition. His counsel may assist in this hearing.

<sup>3</sup> Should the extradited person be prosecuted for other offences or re-extradited to a third State, the Federal Office shall cause him to be questioned on the record according to paragraph 2 by a judicial authority of the requesting State.

**Art. 53** Proof by Alibi

<sup>1</sup> If the person pursued claims that he is able to prove that he was not at the scene of the offence when it was committed, the Federal Office shall make the necessary investigations.

<sup>2</sup> Extradition shall be denied in clear cases. In other cases, the exculpatory evidence shall be submitted to the requesting State which shall be asked to declare within short time whether it will maintain that request.

**Art. 54<sup>84</sup>** Simplified Extradition

<sup>1</sup> If the person pursued places on the record before a judicial authority that he waives extradition proceedings, the Federal Office shall order the surrender unless there are special considerations prohibiting it.

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<sup>83</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>84</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>2</sup> This waiver may be revoked as long as the Federal Office has not ordered the surrender.

<sup>3</sup> The simplified extradition shall have the effects of an extradition and is subject to the same conditions. The requesting State shall be given notice thereof.

## Section 5: Decision on Extradition

### Art. 55 Competence

<sup>1</sup> After setting the person pursued and the third party objecting to the handing over of property an appropriate deadline for taking position, the Federal Office shall rule on the extradition of the person pursued and the handing over of objects and assets seized.<sup>85</sup>

<sup>2</sup> If the person pursued claims to be charged with a political offence or if the investigation reveals serious reasons to believe that the offence is of a political nature, the Appeals Chamber of the Federal Criminal Court shall decide the case.<sup>86</sup> The Federal Office shall send the file to this Court, together with its proposal. The person pursued shall be given the opportunity to take position.

<sup>3</sup> The procedure of the appeal according to article 25 shall apply by analogy.<sup>87</sup>

## Section 6: Execution

### Art. 56 Executability

<sup>1</sup> Extradition may be executed if the person pursued:

- a. explicitly requests immediate execution or
- b. does not announce within five days after notice of the decision that he will lodge an appeal.

<sup>2</sup> If extradition is refused, the Federal Office shall lift the detention with a view to extradition.

### Art. 57 Extradition

<sup>1</sup> The Federal Office shall give the necessary orders in agreement with the cantonal authorities.

<sup>2</sup> It shall notify the requesting State of the decision as well as of the date and place of surrender.

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<sup>85</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>86</sup> Version according to subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (SR **173.32**).

<sup>87</sup> Version according to subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (SR **173.32**).

**Art. 58** Postponement. Provisional Surrender

<sup>1</sup> The surrender may be postponed as long as the person to be extradited is being prosecuted in Switzerland for other offences or if he has to serve a sanction with deprivation of liberty.

<sup>2</sup> However, provisional surrender of the person pursued may be granted if:

- a. Swiss criminal proceedings are not prejudiced by it and
- b. the requesting State has guaranteed to keep the person pursued in custody during his stay in that State and will return him regardless of his nationality.

**Art. 59<sup>88</sup>** Handing Over of Objects and Assets

<sup>1</sup> If the conditions set for the extradition are met, shall also be handed over objects and assets which:

- a. can serve as evidence; or
- b. derive from the offence.

<sup>2</sup> If an authority, or a third party with rights acquired in good faith, or the victim who lives in Switzerland asserts rights over the objects or assets which can serve as evidence, their handing over shall be subject to the condition that the requesting State gives the guarantee to return them without costs after the conclusion of its proceedings.

<sup>3</sup> The objects or assets which derive from the offence include:

- a. instruments which served to commit the offence;
- b. products or profits of the offence, their replacement value and an illicit advantage;
- c. gifts and other contributions which served to instigate the offence or recompense the author the offence, as well as their replacement value.

<sup>4</sup> The objects or assets which derive from the offence may be retained in Switzerland if:

- a. the victim has his habitual residence in Switzerland and they have to be returned to him;
- b. an authority asserts rights over them; or
- c. a person not involved in the offence and whose claims are not guaranteed by the requesting State shows probable cause that he has acquired rights over these objects and assets in good faith in Switzerland, or if he has his habitual residence in Switzerland, in a foreign country.

<sup>5</sup> May also be retained in Switzerland objects or assets mentioned in the first paragraph and which are necessary to a pending criminal proceeding in Switzerland.

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<sup>88</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>6</sup> The claims raised by a person entitled to the objects or assets according to paragraph 4 shall entail the suspension of their handing over until the justification of the claim has been established. Objects or assets which derive from the offence and are under litigation shall be returned to the person entitled only if:

- a. the requesting State gives its consent;
- b. in case of paragraph 4, letter b, the authority gives its consent; or
- c. the justification of the claim is recognized by a Swiss judicial authority.

<sup>7</sup> The handing over of objects and assets shall be independent of the execution of the extradition of the person pursued.

<sup>8</sup> Not handed over pursuant to paragraph 1, letter b, are objects and assets to which Switzerland is entitled according to an asset sharing agreement based on the Federal Act of 19 March 2004 on the sharing of confiscated assets<sup>89, 90</sup>

#### **Art. 60** Fiscal Lien

<sup>1</sup> If objects or assets are handed over and their return is waived, the customs lien or any other real liability according to Swiss customs or tax law shall not be claimed if the owner who suffered damage by the offence does not owe the duty or tax himself.

<sup>2</sup> The waiver of such a fiscal lien may be made dependent on reciprocity.

#### **Art. 61** Time Limit for Taking Over

If the requesting State does not take the necessary steps to take over the person to be extradited within ten days after notification of the execution order, he will be released. This time limit may be extended up to 30 days upon a request substantiated by the requesting State.

#### **Art. 62** Costs

<sup>1</sup> In case of extradition to a foreign country the [Swiss] Confederation will pay the costs for detention and transportation as far as they are usually defrayed by the requesting State in international cooperation.

<sup>2</sup> The personal property of the person pursued may be used to cover the costs to the extent that is not required to be handed over [to the requesting State].

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<sup>89</sup> SR 312.4

<sup>90</sup> Inserted through subpara. 2 of the Annex to the Federal Act of 19 March 2004 on the sharing of confiscated assets, in force since 1 August 2004 (SR 312.4).

## Third Part: Other Acts of Assistance

### Chapter 1: Conditions

#### Section 1: In General

##### Art. 63 Principle

<sup>1</sup> Assistance within the meaning of the third part of this act shall comprise the transmission of information, as well as procedural acts and other official acts permitted under Swiss law, as far as these acts appear to be necessary for proceedings carried out abroad in criminal matters or serve to retrieve the proceeds of the offence.<sup>91</sup>

<sup>2</sup> Acts of assistance shall include in particular:

- a. service of documents;
- b. obtaining of evidence, in particular search of persons and rooms, seizure, order to produce, expert opinion, hearing and confrontation of persons;
- c. production of documents and papers;
- d. handing over of objects or assets with a view to forfeiture or restitution to the entitled person.<sup>92</sup>

<sup>3</sup> The following shall, in particular, be considered as proceedings carried out in criminal matters:

- a. the prosecution of criminal offences as provided for in article 1, paragraph 3;
- b. administrative measures against an offender;
- c. execution of criminal judgments and pardon;
- d. compensation for unjustified detention.<sup>93</sup>

<sup>4</sup> Assistance may also be granted to the European Court of Human Rights and to the European Commission on Human Rights in proceedings regarding the safeguarding of Human Rights and Fundamental Freedoms.

<sup>5</sup> Assistance which will exonerate a person pursued shall be permitted even if the reasons for exclusion according to articles 3-5 are given.

##### Art. 64 Compulsory Measures

<sup>1</sup> Measures according to article 63 which require the use of compulsion provided for in the procedural law may be ordered only if the description of the relevant facts of the case shows that the offence prosecuted abroad contains the elements, other than intent or negligence, of an offence punishable according to Swiss law. They have to be carried out in accordance with Swiss law.

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<sup>91</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>92</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>93</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>2</sup> If the offence prosecuted abroad is not punishable in Switzerland, measures according to article 63 which require the use of compulsion provided for in the procedural law shall be allowed:

- a. for the exoneration of a person pursued;
- b. for the prosecution of offences constituting sexual acts with minors.<sup>94</sup>

**Art. 65<sup>95</sup>** Application of Foreign Law

<sup>1</sup> Upon explicit request of the foreign State:

- a. the statements of witnesses or experts shall be affirmed in the form prescribed by the laws of the requesting State, even if the applicable Swiss law does not provide such a form;
- b. forms necessary to obtain other evidence that is admissible in court may be taken into consideration.

<sup>2</sup> Forms for obtaining and affirming evidence according to paragraph 1 shall be compatible with Swiss law, and no essential prejudice may result therefrom to the persons involved.

<sup>3</sup> Testimony may also be refused as far as the law of the requesting State so provides or if the fact of testifying may cause penal or disciplinary sanctions to be taken according to the laws of that State or of the State where the examined person lives.

**Art. 65a<sup>96</sup>** Presence of Persons Who Are Participating in a Proceeding Abroad

<sup>1</sup> When the requesting State, based on its law, so requests, persons who are participating in a proceeding abroad may be authorized to assist in mutual assistance proceedings and to have access to the files.

<sup>2</sup> Their presence may also be admitted if it allows to considerably facilitate the execution of the request or the foreign criminal proceedings.

<sup>3</sup> Their presence may not have the consequence that they obtain access to information within the scope of secrecy before the appropriate authority has decided whether, and to what extent, assistance may be granted.

**Art. 66** Principle of «Ne bis in idem»<sup>97</sup>

<sup>1</sup> Assistance may be denied if the person pursued resides in Switzerland and proceedings are already pending here regarding the offence to which the request refers.

<sup>94</sup> Version according to subpara. 4 of the Federal Act of 13 December 2002, in force since 1 January 2007 (AS 2006 3459 3535; BBl 1999 1979).

<sup>95</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>96</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>97</sup> Translators' note: Latin expression, a concept similar to double jeopardy. Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>2</sup> However, assistance may be granted, if the proceedings carried out abroad are not solely directed against the person pursued residing in Switzerland, or if the execution of the request serves to exonerate him.<sup>98</sup>

**Art. 67<sup>99</sup>** Principle of Speciality

<sup>1</sup> Information and documents obtained through the means of mutual assistance shall not be used for investigative purposes nor be introduced into evidence in the requesting State in any proceeding relating to an offence for which assistance is not admissible.

<sup>2</sup> Any further use shall be subject to approval by the Federal Office. This approval is not necessary:

- a. if the facts which are the basis of the request constitute another offence for which mutual assistance would be granted; or
- b. if the foreign criminal proceeding is directed against other persons having participated in committing the offence.

<sup>3</sup> Presence in the acts of mutual assistance and access to the files shall be admitted under the same conditions (art. 65a, para.1).

**Art. 67a<sup>100</sup>** Spontaneous Transmittal of Information and Evidence

<sup>1</sup> An authority prosecuting offences may spontaneously transmit to a foreign authority prosecuting offences information or evidence that it has gathered in the course of its own investigation, when it determines that this transmittal is of a nature:

- a. to permit the opening of a criminal proceeding; or
- b. to facilitate a pending criminal investigation.

<sup>2</sup> The transmittal according to paragraph 1 does not have any effect on the criminal proceeding pending in Switzerland.

<sup>3</sup> The transmittal of evidence to a State with which Switzerland does not have an international agreement shall be subject to authorization by the Federal Office.

<sup>4</sup> Paragraphs 1 and 2 do not apply to evidence that is within the scope of secrecy.

<sup>5</sup> Information that is within the scope of secrecy may be transmitted if it is of a nature to enable the foreign State to present a request for mutual assistance.

<sup>6</sup> A record shall be made of any spontaneous transmittal.

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<sup>98</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>99</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>100</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

## Section 2: Specific Acts of Assistance

### Art. 68 Service of Documents. General Provisions

<sup>1</sup> Service of documents which is requested from a Swiss authority may be effected by personal delivery to the recipient or by mail.

<sup>2</sup> The Federal Council may permit the direct service of documents from abroad upon the recipient in Switzerland. It shall determine the conditions [for such service].

<sup>3</sup> Service is presumed to be effected if acceptance or refusal to accept has been confirmed in writing.

### Art. 69 Service of Summons. Safe Conduct

<sup>1</sup> Whoever accepts a summons to appear before a foreign authority shall be under no obligation to comply.

<sup>2</sup> Summons containing threats of compulsion shall not be served.

<sup>3</sup> Service of a summons may be subjected to the condition that the recipient shall be guaranteed safe conduct for an appropriate period of time and that he will not be prevented from freely leaving the territory of the requesting State. If the recipient so requires, the authority effecting service shall ask the requesting State to give a written assurance thereof before proof of service is furnished.

### Art. 70 Transfer of Arrested Persons

<sup>1</sup> Persons held in custody in Switzerland may be transferred to a foreign authority for the purpose of investigation if they are guaranteed safe conduct and if it is assured that they will be kept in custody and returned to Switzerland upon request.

<sup>2</sup> Persons who are not indicted abroad and Swiss citizens may be transferred only with their written consent. This shall not be necessary if the transfer is required for the execution of a Swiss request or for confrontation with other persons abroad.

### Art. 71<sup>101</sup>

### Art. 72 Maintaining of Custody

<sup>1</sup> If a detained person is surrendered to the Swiss authorities in the course of an act of assistance, the warrant for his arrest issued abroad shall also be valid in Switzerland for the period of his stay in Switzerland.

<sup>2</sup> During transit the person pursued shall be kept in custody by virtue of the order for transit given by the Federal Office.

<sup>3</sup> In those cases the detained person may be released only with the agreement of the competent foreign authority.

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<sup>101</sup> Repealed by section I of the Federal Act of 4 October 1996 (AS **1997** 114; BB1 **1995** III 1).

**Art. 73** Safe Conduct in Switzerland

<sup>1</sup> A person with habitual residence abroad and who appears in Switzerland in a criminal case pursuant to a summons may neither be prosecuted nor restricted in his personal freedom for reasons that occurred prior to his entry into Switzerland.

<sup>2</sup> The person pursued shall enjoy no safe conduct regarding the offences specified in the summons.

<sup>3</sup> The safe conduct provided in paragraph 1 shall cease when this person leaves Switzerland but at the latest three days after he is dismissed by the summoning authorities.

**Art. 74**<sup>102</sup> Handing Over of Evidence

<sup>1</sup> Upon request, objects, documents or assets seized as evidence, as well as records and decisions, shall be put at the disposal of the competent foreign authority after conclusion of the mutual assistance procedure (art. 80*d*).

<sup>2</sup> If a third party with rights acquired in good faith, an authority, or the victim who has his habitual residence in Switzerland claim that they have rights over these objects, documents or assets according to paragraph 1, their handing over shall be subject to the condition that the requesting State gives the guarantee to return them without costs after the conclusion of the proceeding.

<sup>3</sup> The return may be delayed if the objects, documents or assets are necessary for a pending criminal proceeding in Switzerland.

<sup>4</sup> Article 60 shall apply to fiscal liens.

**Art. 74a**<sup>103</sup> Handing Over [of Property] for the Purpose of Forfeiture or Return

<sup>1</sup> Upon request, the objects or assets subject to a precautionary seizure may be handed over to the competent foreign authority after conclusion of the mutual assistance proceeding (art. 80*d*) for the purpose of forfeiture or return to the person entitled.

<sup>2</sup> The objects or assets referred to in paragraph 1 include:

- a. instruments which served to commit the offence;
- b. products or profits of the offence, their replacement value and an illicit advantage;
- c. gifts and other contributions which served to instigate the offence or recompense the offender, as well as their replacement value.

<sup>3</sup> The handing over may intervene at any stage of the foreign proceeding, as a rule based on a final and executable order of the requesting State.

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<sup>102</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>103</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>4</sup> However, the objects or assets may be retained in Switzerland if:

- a. the victim has his habitual residence in Switzerland and they have to be returned to him;
- b. an authority asserts rights over them;
- c. a person not involved in the offence and whose claims are not guaranteed by the requesting State shows probable cause that he has acquired rights over these objects and assets in good faith in Switzerland, or if he has his habitual residence in Switzerland, in a foreign country; or
- d. the objects or assets are necessary for a pending criminal proceeding in Switzerland or appear, because of their nature, to be subject to forfeiture in Switzerland.

<sup>5</sup> Whenever somebody claims to have rights over the objects or assets under paragraph 4, its handing over to the requesting State shall be suspended until the legal situation is clear. The objects or assets claimed may be handed over to the person entitled if:

- a. the requesting State agrees;
- b. in case of paragraph 4, letter b, the authority gives its consent; or
- c. the claim has been recognized by a Swiss court.

<sup>6</sup> Article 60 shall apply to fiscal liens.

<sup>7</sup> Not handed over pursuant to paragraph 1 are objects and assets to which Switzerland is entitled according to an asset sharing agreement based on the Federal Act of 19 March 2004 on the sharing of confiscated assets<sup>104, 105</sup>

## Chapter 2: Procedure

### Section 1: Request for Mutual Assistance

#### Art. 75 Competence for Requesting Mutual Assistance

<sup>1</sup> Requests for assistance may be submitted by authorities which are competent to investigate offences or render decisions in other proceedings to which this act is applicable.

<sup>2</sup> Swiss authorities may also accept requests for the execution of procedural acts from the parties authorized to make them if those acts are incumbent upon the parties according to the laws of the requesting State.

<sup>3</sup> The Federal Office shall make requests for mutual assistance that is needed outside of a criminal proceeding.<sup>106</sup>

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<sup>104</sup> SR 312.4

<sup>105</sup> Inserted through subpara. 2 of the Annex to the Federal Act of 19 March 2004 on the sharing of confiscated assets, in force since 1 August 2004 (SR 312.4).

<sup>106</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

**Art. 75a**<sup>107</sup> Police Requests

<sup>1</sup> The commissioners of police of the [Swiss] Confederation and of the cantons may make request according to article 63 on their own behalf and may grant such requests emanating from foreign authorities.

<sup>2</sup> Are excluded requests:

- a. which make necessary the use of compulsory process;
- b. for information or measures in proceedings regarding extradition, transfer of proceedings and execution of criminal judgments;
- c. for the handing over of criminal decisions or criminal records.

**Art. 76** Contents and Documents

In addition to the information and documents required by article 28, the following shall be specified in or enclosed with a request:

- a. in requests for service: name and address of the recipient and his position in the proceedings as well as the kind of document to be served;
- b. with requests for transit: one of the documents listed in article 41;
- c. with requests for search of persons or rooms, for seizure or handing over of objects: a confirmation that these measures are permitted in the requesting State.

**Art. 77** Way of Transmission<sup>108</sup>

<sup>1</sup> Foreign requests shall be addressed to the appropriate cantonal authority through the intermediary of the Federal Office.

<sup>2</sup> Requests for extracts from the Register of Convictions or for determining the identity of a person shall be addressed to the Federal Office<sup>109</sup>.

**Section 2:**<sup>110</sup> **Treatment of the Request****Art. 78** Receipt and Transmittal

<sup>1</sup> The Federal Office shall receive the foreign requests unless direct transmittal to the competent cantonal or federal executing authority is provided for.

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<sup>107</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>108</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>109</sup> The designation of the administrative unit has been adapted according to art. 16 para. 3 of the Ordinance of 17 November 2004 on official publications (SR 170.512.1).

<sup>110</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>2</sup> The Federal Office shall examine summarily whether the request meets the formal requirements [of this act] and forward it to the appropriate executing authority unless the request appears to be obviously inadmissible.

<sup>3</sup> If necessary, it shall return the request to the requesting State for improvement or completion.

<sup>4</sup> Receipt and transmittal of the request to the competent authority are not subject to appeal.

<sup>5</sup> The provisions on procedure of article 18 shall remain reserved.

#### **Art. 79** Delegation of the Execution

<sup>1</sup> If the execution of the request necessitates investigations in several cantons or if it also concerns a federal authority, the Federal Office may charge one single authority with its execution. Articles 352-355 of the Swiss Penal Code<sup>111</sup> apply by analogy.

<sup>2</sup> The Federal Office may, in part or completely, delegate the execution of a request to the federal authority which would be competent if the offence had been committed in Switzerland.

<sup>3</sup> The Federal Office may also entrust the execution of complementary requests to the authority to whom the execution was delegated.

<sup>4</sup> The designation of the cantonal or federal authority charged to direct the proceeding shall not be subject to appeal.

#### **Art. 79a** Decision of the Federal Office

The Federal Office may decide whether mutual assistance is permitted and delegate the execution to a cantonal authority or itself decide on the execution if:

- a. the execution of the request necessitates investigations in several cantons;
- b. the competent cantonal authority is unable to render a decision within appropriate time; or
- c. the cases are complex or particularly important.

#### **Art. 80** Preliminary Examination

<sup>1</sup> The request shall be subject to preliminary examination by the cantonal or federal authority charged with the execution.

<sup>2</sup> If the request may not be granted, the executing authority shall return it to the requesting authority on the same way it was received.

#### **Art. 80a** Entering into the Case and Execution

<sup>1</sup> The executing authority shall issue a summary decree on whether to enter into the case and shall order the mutual assistance measure that are admissible.

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<sup>111</sup> SR 311.0

<sup>2</sup> It shall execute the mutual assistance acts according to its own law of procedure.

**Art. 80b** Assistance in the Proceeding and Access to the Files

<sup>1</sup> The persons entitled may assist in the proceeding and have access to the files to the extent the safeguard of their interest requires it.

<sup>2</sup> The rights provided in paragraph 1 may be limited only:

- a. in the interest of a foreign proceeding;
- b. for the protection of an important legal interest, if the requesting State so requests;
- c. because of the nature or the urgency of the measures to be taken;
- d. for the protection of important private interests;
- e. in the interest of a Swiss proceeding.

<sup>3</sup> Access to the files or assistance in the proceeding may only be denied for files or procedural measures for which there is a restriction of secrecy.

**Art. 80c** Simplified Execution

<sup>1</sup> The persons entitled, in particular the holders of documents, information or assets may accept their handing over without formality until the proceeding is concluded. The[ir] consent is irrevocable.

<sup>2</sup> If all the persons entitled give their consent, the competent authority shall make a written record thereof and conclude the proceeding.

<sup>3</sup> If the handing over concerns only a part of the documents, information or assets required, the ordinary proceeding shall be followed for the remaining part.

**Art. 80d** Conclusion of the Mutual Assistance Proceeding

When the executing authority determines that the request is completely or partially executed, it shall issue a decree with reasons on whether mutual assistance is granted and to what extent.

**Section 3:**<sup>112</sup> **Appeal**

**Art. 80e**<sup>113</sup> Appeal against the decree of the executing authority

<sup>1</sup> The decree of the executing cantonal or federal authority on the conclusion of the mutual assistance proceedings shall be subject to appeal to the Appeals Chamber of the Federal Criminal Court together with the prior incidental decrees.

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<sup>112</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BB1 1995 III 1).

<sup>113</sup> Version according to subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (SR 173.32).

<sup>2</sup> Incidental decrees preceding the conclusive decree can be appealed against separately provided that they cause immediate and irreparable prejudice:

- a. through the seizure of assets or valuables; or
- b. through the presence of persons involved in the foreign proceeding.

<sup>3</sup> Article 80l, paragraphs 2 and 3 shall apply by analogy.

#### **Art. 80f** und **80g**<sup>114</sup>

##### **Art. 80h** Right to Appeal

Shall be entitled to appeal:

- a. the Federal Office;
- b. whoever is personally and directly affected by a mutual assistance measure and has an interest worthy of protection that it be annulled or modified.

##### **Art. 80i** Reasons for Appeal

<sup>1</sup> The appeal may be lodged to challenge:

- a. a violation of federal law, including excess or abuse of discretion;
- b. the inadmissible or manifestly inexact application of foreign law in the cases under article 65.

<sup>2</sup> ...<sup>115</sup>

##### **Art. 80k** Deadline for Appeal

The deadline for appeal against the conclusive decree shall be 30 days, for an incidental decree ten days, from the written communication of the decree.

##### **Art. 80l** Suspensive Effect

<sup>1</sup> Only appeals against the conclusive decree or any other decree authorizing the transmittal of information within the scope of secrecy or the handing over of objects or assets to a foreign State shall have suspensive effect.<sup>116</sup>

<sup>2</sup> Every incidental decree preceding the conclusive decree may be executed immediately.

<sup>3</sup> The Appeals Chamber of the Federal Criminal Court can grant suspensive effect to an incidental decree according to paragraph 2 if the person entitled shows probable

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<sup>114</sup> Repealed by subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, with effect from 1 January 2007 (SR 173.32).

<sup>115</sup> Repealed by subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, with effect from 1 January 2007 (SR 173.32).

<sup>116</sup> Version according to subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (SR 173.32).

cause that immediate and irreparable prejudice according to article 80e, paragraph 2 may result.<sup>117</sup>

#### **Section 4:**<sup>118</sup> **Special Provisions**

##### **Art. 80m** Notification of Decrees

<sup>1</sup> The executing authority and the appellate authority shall notify their decrees to:

- a. the entitled person living in Switzerland;
- b. the entitled person living abroad and having an address for service in Switzerland.

<sup>2</sup> The right to notification shall end when the decree concluding the mutual assistance proceeding becomes executory.

##### **Art. 80n** Right to Inform

<sup>1</sup> The holder of documents has the right to inform those who mandated him of the existence of the request and of all the facts related to it, unless the competent authority has, as an exception, prohibited this under menace of sanctions provided by article 292 of the Swiss Penal Code<sup>119</sup>.

<sup>2</sup> The person entitled who intervenes in a pending proceeding may no longer challenge decrees that have become executory.

##### **Art. 80o** Inquiry Addressed to the Requesting State

<sup>1</sup> If additional information is necessary, the executing or the appellate authority shall invite the Federal Office to obtain it from the requesting State.

<sup>2</sup> If necessary, the competent authority shall totally or partially suspend dealing with the request and rule on the points that may be treated based on the file.

<sup>3</sup> The Federal Office shall give the requesting State an appropriate deadline to respond. If the deadline given is not respected, the request for mutual assistance shall be examined based on the file.

##### **Art. 80p** Conditions Subject to Acceptance

<sup>1</sup> The executing and the appellate authority as well as the Federal Office may totally or partially subordinate the granting of mutual assistance to certain conditions.

<sup>2</sup> The Federal Office shall communicate the conditions to the requesting State when the decree on the granting and the extent of the mutual assistance is final and shall

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<sup>117</sup> Version according to subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (SR 173.32).

<sup>118</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>119</sup> SR 311.0

give him an appropriate deadline to accept or refuse. If the deadline given is not respected, the mutual assistance may be granted on the points that are not subject to conditions.

<sup>3</sup> The Federal Office shall examine if the response of the requesting State constitutes a sufficient commitment to the conditions set.

<sup>4</sup> The decision of the Federal Office can be appealed against in the Appeals Chamber of the Federal Criminal Court within ten days of its notice in writing. The decision of the Appeals Chamber is final.<sup>120</sup>

#### **Art. 80q** Costs

The requesting State shall be charged with the costs for:

- a. the remuneration of experts
- b. the return of objects or assets for the purpose of restitution to the person entitled.

#### **Art. 81 - 84**<sup>121</sup>

### **Fourth Part: Transfer of Proceedings**

#### **Chapter 1: Conditions**

##### **Section 1: Assumption by Switzerland**

#### **Art. 85** Principle

<sup>1</sup> Switzerland may exercise its jurisdiction instead of the State of perpetration with respect to an offence committed abroad if:

- a. extradition is not permitted;
- b. the person pursued has to answer in Switzerland for other more serious offences and
- c. it is guaranteed that the requesting State will not prosecute him for the same offence after acquittal or execution of the sentence in Switzerland.

<sup>2</sup> The prosecution of an alien who has his habitual residence in Switzerland may also be assumed if his extradition cannot be justified and the assumption of the prosecution seems appropriate with regard to his personal situation and social rehabilitation.

<sup>3</sup> These rules shall not apply if the offence is subject to Swiss jurisdiction on the basis of an other provision.<sup>122</sup>

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<sup>120</sup> Version according to subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (SR 173.32).

<sup>121</sup> Repealed by section I of the Federal Act of 4 October 1996 (AS 1997 114; BBl 1995 III 1).

<sup>122</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

**Art. 86** Applicable Law

<sup>1</sup> The offence shall be judged according to Swiss law as if it were committed in Switzerland.

<sup>2</sup> The foreign law shall apply if it is more lenient. The judge may impose only sanctions provided by Swiss law.

<sup>3</sup> Proceedings in the absence of the defendant shall not be permitted.

**Art. 87** Jurisdiction

If there is no Swiss jurisdiction yet, it shall be determined according to article 348 of the Swiss Penal Code<sup>123</sup>.

**Section 2: Transfer to Foreign States****Art. 88**<sup>124</sup> Conditions

An other State may be requested to assume the prosecution of an offence subject to Swiss jurisdiction if its laws allow prosecution and judicial punishment of the offence and if:

- a. the person pursued stays there and his extradition to Switzerland is inappropriate or not permitted; or
- b. he is extradited to this State and the transfer of the prosecution may lead to the expectation of a better social rehabilitation.

**Art. 89** Effects

<sup>1</sup> If another State assumes prosecution, Swiss authorities may not take further measures against the person pursued because of the same offence

- a. as long as the requested State has not given notice that it is not in a position to conclude the prosecution, or
- b. if according to the decision rendered in this State the conditions of article 5, letter a or b, are met.

<sup>2</sup> The effects of the statute of limitations according to Swiss law shall be suspended as long as the procedure including execution of the sentence is pending in the requested State.<sup>125</sup>

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<sup>123</sup> SR 311.0

<sup>124</sup> Version according to section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>125</sup> The suspension of the effects of the statute of limitations has been abolished by virtue of art. 97 et seqq. of the Swiss Penal Code (SR 311.0) and is being substituted, in the case of statute-barring of execution, by an extension of the regular time limit (AS 2006 3459; BBl 1999 1979).

<sup>3</sup> If the person pursued was extradited to the requested State for other offences, this State need not observe the conditions of extradition according to article 38 insofar as it grants the request for prosecution.

## Chapter 2: Procedure

### Art. 90 Documents

In addition to the documents specified in article 28, paragraph 3, the record of criminal proceedings as well as possible exhibits shall be enclosed with the request.

### Art. 91 Decision on the Request

<sup>1</sup> The Federal Office shall decide after discussion of the case with the prosecuting authorities whether the foreign request will be accepted.

<sup>2</sup> If it accepts the request, it shall transmit the file to the prosecuting authority and notify the requesting State and the concerned person.

<sup>3</sup> This decision shall not create an obligation to institute criminal proceedings.

<sup>4</sup> The Federal Office may deny assumption of the prosecution if there are pertinent reasons against it or if the significance of the offence does not justify it.

### Art. 92 Foreign Acts of Investigation

Any act of investigation carried out by the authorities of the requesting State according to its law shall be considered equal to a corresponding Swiss act of investigation.

### Art. 93 Costs

<sup>1</sup> The costs of the proceedings fixed by the requesting State shall be added to the costs of the proceedings in Switzerland and collected. They will not be refunded to the requesting State.

<sup>2</sup> The cantons shall dispose of paid fines and, subject to the provisions of the Federal Act of 19 March 2004 on the sharing of confiscated assets<sup>126</sup>, of confiscated objects.<sup>127</sup>

<sup>3</sup> The requested State shall be notified of the costs of the proceedings incurred in Switzerland if the requested State assumes prosecution. Their reimbursement shall not be required.

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<sup>126</sup> SR 312.4

<sup>127</sup> Version according to subpara. 2 of the Annex to the Federal Act of 19 March 2004 on the sharing of confiscated assets, in force since 1 August 2004 (SR 312.4).

## **Fifth Part: Execution of Criminal Judgments**

### **Chapter 1: Conditions**

#### **Section 1: Assumption by Switzerland**

##### **Art. 94** Principle

<sup>1</sup> Final and enforceable criminal judgments of an other State may be executed upon its request if:

- a. the convicted person has his habitual residence in Switzerland or has to answer here for a serious offence;
- b. the subject of the conviction is an offence committed abroad which, if similarly committed in Switzerland, would be punishable here, and
- c. execution in Switzerland seems to be appropriate for one of the reasons specified in article 85, paragraphs 1 and 2, or likely to be barred in the requesting State.

<sup>2</sup> [Penal] sanctions imposed abroad shall be executed insofar as they do not exceed the maximum penalty provided by Swiss law for a corresponding offence. [Penal] sanctions that remain below the minimum penalty according to Swiss law may be executed.

<sup>3</sup> ...<sup>128</sup>

<sup>4</sup> Fines as well as costs arising from procedures according to article 63 may also be levied if the convicted person has his habitual residence abroad but has assets at his disposal in Switzerland and if the requesting State grants reciprocity.

##### **Art. 95** Inadmissibility of the Declaration of Execution

<sup>1</sup> The declaration of execution (exequatur) shall not be permitted if

- a.<sup>129</sup> the conviction took place at a time when, under Swiss law, the prosecution would have finally come within the statute of limitations;
- b. the [penal] sanction would have come within the statute of limitations according to Swiss law if a Swiss authority had imposed it at the same time, or
- c. the offence is also subject to Swiss jurisdiction and if according to Swiss law no sanction can be imposed for other reasons.

<sup>2</sup> Decisions on costs shall be declared executable only if the costs are to be paid to the State.

##### **Art. 96** Denial of Execution

The judge shall partly or completely deny execution if

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<sup>128</sup> Repealed by section I of the Federal Act of 4 October 1996 (AS **1997** 114; BB1 **1995** III 1).

<sup>129</sup> The version according to art. 97 et seqq. of the Swiss Penal Code (SR **311.0**) contains a new system of statute of limitations (AS **2006** 3459; BB1 **1999** 1979).

- a. the convicted person has incurred a sanction with deprivation of liberty in Switzerland because of other offences and if the requested execution resulted in an obviously more severe punishment than if the offences taken as a whole were to be judged in Switzerland, or
- b. the execution of one of the accessory penal measures in Switzerland is not permitted, or
- c. he estimates that the convicted person for good cause opposes the execution of a judgment or penal decree that was rendered in his absence and is no longer subject to an objection or appeal according to the law of the requesting State.

**Art. 97** Binding Force of the Finding of the Facts

When judging the punishability and the possibility of prosecution under Swiss law, the judge shall be bound to the finding of the facts on which the [foreign] decision relies. As far as they do not suffice, the gathering of [additional] evidence may be ordered.

**Art. 98** Effects of Assumption

If Switzerland assumes the execution, criminal proceedings against the convicted person for the same offence shall not be instituted or continued here.

**Art. 99** Utilization of Swiss Institutions by Foreign States

<sup>1</sup> If the conditions of article 94, paragraph 1, are not met, sanctions restraining personal liberty which have been imposed upon a non-Swiss national in an other State may be executed in Switzerland under Swiss law if the other State cannot execute them itself.

<sup>2</sup> In this case, the final and enforceable foreign decision shall constitute the legal base for the restriction of the convicted person's personal liberty.

<sup>3</sup> If persons are surrendered to Switzerland according to paragraph 1, they may be neither prosecuted nor punished nor extradited to a third State by the Swiss authorities for offences that they committed before their surrender and that were not the subject of their conviction unless there are arrangements to the contrary made with the competent authorities of the surrendering State. These effects shall expire ten days after conditional or final release from the institution.

<sup>4</sup> The Federal Council shall issue rules on the details.

## **Section 2: Transfer to a Foreign State**

**Art. 100** Principle

An other State may be requested to assume the execution of a Swiss criminal judgment if

- a. the observation of the binding force of the judgment according to article 97 is guaranteed and
- b. the transfer of the execution leads to a reasonable expectation of better social rehabilitation of the convicted person or if Switzerland cannot obtain his extradition.

**Art. 101**      Conditions of Transfer

<sup>1</sup> The convicted person who is detained in Switzerland may only be transferred with a view to execution [of the judgment] under article 100 if he agrees and if the requested State can be expected to accept the conditions set by the Federal Office.

<sup>2</sup> The convicted person may be transferred without his consent if an international agreement ratified by Switzerland so provides. In this case the conditions and effects of the transfer are regulated exclusively by the dispositions of the said international agreement.<sup>130</sup>

**Art. 102**      Effects of Transfer

<sup>1</sup> If another State assumes the execution of the criminal judgment, the Swiss authority shall renounce execution as long as the requested State has not communicated that it will not conclude it.

<sup>2</sup> The convicted person may be taken into custody so as to ensure his transfer.

<sup>3</sup> Article 89, paragraphs 2 and 3, apply by analogy.

## **Chapter 2: Procedure**

### **Section 1: Request**

**Art. 103**      Documents

In addition to the documents specified in article 28, paragraph 3, the following shall be enclosed with a request:

- a. the original or an officially authenticated copy of the sentence with a certificate attesting that it is legally enforceable;
- b. a certificate attesting the [period of] detention suffered in the requesting State;
- c. if the requested State so requests, the original or officially authenticated copy of the penal file.

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<sup>130</sup> Inserted through article 2 of the Federal Assembly Resolution of 19 December 2003, in force since 1 October 2004 (AS **2004** 4161 4162; BBl **2002** 4340).

**Art. 104** Decision on the Request

<sup>1</sup> The Federal Office, after conferring with the authority which will execute the request, shall decide whether to accept the foreign request. If it accepts, it shall convey the file and its opinion to the executing authority and inform the requesting State. Article 91, paragraph 4, applies by analogy.

<sup>2</sup> If there is Swiss jurisdiction and if a sanction which is more severe than the one provided by Swiss law was imposed abroad, the prosecution may be assumed instead of the execution of the judgment if the requesting State so requests.

**Section 2: Procedure of Exequatur****Art. 105** Competent Judge

The judge who is competent under article 348 of the Swiss Penal Code<sup>131</sup> shall inform the convicted person of the applicable procedure, hear him on the matter, as well as his counsel, and decide on execution.

**Art. 106** Declaration of Exequatur

<sup>1</sup> The judge ex officio shall examine whether the conditions for execution are met and gather the necessary evidence.

<sup>2</sup> If the conditions are met, the judge shall declare that the sentence can be executed and take the measure necessary for execution.

<sup>3</sup> The decision shall be rendered in the form of a judgment containing a statement of the rationale therefore. The canton law shall provide on appeal.

**Section 3: Execution****Art. 107** Execution of the Sanction

<sup>1</sup> The sanction determined by the judge shall be executed according to Swiss law.

<sup>2</sup> Execution shall be terminated if the sentence is no longer executable in the requesting State.

<sup>3</sup> If a decision solely on costs was executed, the amounts collected after deduction of the costs resulting from the execution will be transferred to the requesting State if it guarantees reciprocity.

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<sup>131</sup> SR 311.0

**Art. 108** Costs

In addition to the costs for the execution of the sanction, those for the procedure of exequatur and other measures of execution shall also be considered costs according to article 31.

**Sixth Part: Final Provisions****Art. 109** Repeals and Modifications of Current Law

<sup>1</sup> The Federal Act of 22 January 1892 on Extradition to Foreign States<sup>132</sup> is hereby repealed.

<sup>2</sup> a. The Swiss Penal Code<sup>133</sup> is modified as follows:

*Art. 75bis*

...

*Transitory Provision*

...

- b. The corresponding texts shall be inserted as article 56<sup>bis</sup> and transitional provision into the Military Penal Law<sup>134</sup>.

<sup>3</sup> The Federal Act of 16 December 1943 on the Organisation of the Administration of Federal Justice<sup>135</sup> shall be modified as follows:

*Art. 100 ltr. f*

...<sup>136</sup>

**Art. 110** Transitory Provisions

<sup>1</sup> Extradition proceedings which are pending at the entry into force of this act shall be completed in accordance with the procedural provisions of the Federal Act of 22 January 1892 on Extradition to Foreign States<sup>137</sup>.

<sup>2</sup> The prosecution and the execution of sentences according to the fourth and fifth parts of this act may be assumed only if the offence to which the request refers was committed after the entry into force of this act.

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<sup>132</sup> [BS 3 509]

<sup>133</sup> SR 311.0. The modifications listed hereafter are inserted in the said Federal Act.

<sup>134</sup> SR 321.0

<sup>135</sup> SR 173.110

<sup>136</sup> Today, this letter has a new wording.

<sup>137</sup> [BS 3 509]

<sup>3</sup> Requests for extradition or other assistance because of offences which, according to article 75<sup>bis</sup> of the Swiss Penal Code<sup>138</sup> or article 56<sup>bis</sup> of the Military Penal Code<sup>139</sup> are not subject to the statute of limitations may be granted by the Federal Council even if, at the moment of the entry into force of these provisions, the prosecution or the sentence has come within the statute of limitations.

**Art. 110a**<sup>140</sup> Transitory Provision for the Amendment of 4 October 1996

The provisions of the amendment of 4 October 1996 of this Act shall apply to all proceedings pending at their entry into force.

**Art. 110b**<sup>141</sup> Transitory Provision for the Amendment of 17 June 2005

The legal dispositions in force up to now shall apply to appeal proceedings against decrees enacted in the first instance before the entry into force of this amendment.

**Art. 111** Execution

<sup>1</sup> The Federal Council shall promulgate implementing regulations.

<sup>2</sup> It may institute a permanent commission to examine the question whether the importance of the offence justifies the giving of information within the scope of secrecy. The members of the commission are bound to secrecy like officials of the [Swiss] Confederation.

**Art. 112** Entry into Force and Referendum

<sup>1</sup> This act shall be subject to the optional referendum.

<sup>2</sup> The Federal Council shall fix the entry into force.

Date of entry into force: 1 January 1983<sup>142</sup>

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<sup>138</sup> SR 311.0

<sup>139</sup> SR 321.0

<sup>140</sup> Inserted through section I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>141</sup> Inserted through subpara. 30 of the Annex to the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (SR 173.32).

<sup>142</sup> Federal Council Decision of 24 February 1982 (AS 1982 877)