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## **Federal Act on International Mutual Assistance in Criminal Matters (Mutual Assistance Act, IMAC)**

of 20 March 1981 (Status as of 1 January 2013)

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*The Federal Assembly of the Swiss Confederation,*

based on Articles 54 para. 1 and 173 para. 2 of the Federal Constitution<sup>1, 2</sup>  
and having considered the Dispatch of the Federal Council of 8 March 1976<sup>3</sup>,  
*decrees:*

### **Part One: General Provisions**

#### **Chapter 1: Scope of Application**

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

**Art. 1** Subject matter

<sup>1</sup> Unless other federal acts or international agreements provide otherwise, this Act shall govern all procedures of international cooperation in criminal matters, and in particular:<sup>4</sup>

- a. the extradition of persons who are the subject of criminal prosecution or have been convicted (Part Two);
- b. assistance aimed at supporting criminal proceedings abroad (Part Three);
- c. the transfer of proceedings and punishment of offences (Part Four);
- d. the execution of foreign criminal judgments (Part Five).

<sup>2</sup> ...<sup>5</sup>

<sup>3</sup> This Act applies only to criminal matters in which recourse to the courts is permitted under the law of the requesting State.

<sup>4</sup> This Act confers no right to international cooperation in criminal matters.

AS 1982 846

<sup>1</sup> SR 101

<sup>2</sup> Amended by No 3 of the Federal Act of 6 October 2000 on the Coordination of Asylum and Extradition Procedures, in force since 1 April 2011 (AS 2011 925; BBl 2010 1467).

<sup>3</sup> BBl 1976 II 444

<sup>4</sup> Amended by Art. 59 No 1 of the Federal Act of 22 June 2001 on Cooperation with the International Criminal Court, in force since 1 July 2002 (AS 2002 1493; BBl 2001 391).

<sup>5</sup> Repealed by No 1 of the Federal Act of 4 October 1996, with effect from 1 February 1997 (AS 1997 114; BBl 1995 III 1).

**Art. 1a<sup>6</sup>**      Limitation of cooperation

In the application of this Act, Swiss sovereignty, security, public order or similar essential interests must be taken into account.

**Section 2:    Inadmissibility of Requests****Art. 2**            Foreign proceedings<sup>7</sup>

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

- a.<sup>8</sup> do not meet the procedural requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950<sup>9</sup>, or the International Covenant on Civil and Political Rights of 16 December 1966<sup>10</sup>;
- b.<sup>11</sup> are being conducted 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 defendant for any of the reasons mentioned under letter b; or
- d. have other serious defects.

**Art. 3**            Nature of the offence

<sup>1</sup> A request shall not be granted if the subject of the proceedings is an act which, in the Swiss view, is of a predominantly political nature, constitutes a violation of the obligation to perform military or similar service, or appears to be directed against the national security or military defence of the requesting State.

<sup>2</sup> The plea that an act is of a political nature shall not be taken into account under any circumstances:

- a. in cases of genocide;
- b. in cases of crimes against humanity;
- c. in cases of war crimes; or
- d. if the act appears particularly reprehensible because the offender, for the purpose of extortion or duress, has endangered or threatened to endanger the life or limb of persons, especially by hijacking aircraft, using means of mass extermination, causing a catastrophe or taking hostages.<sup>12</sup>

<sup>6</sup> Inserted by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>7</sup> Amended by No 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> Amended by No 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> SR 0.101

<sup>10</sup> SR 0.103.2

<sup>11</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>12</sup> Amended by No I 4 of the Federal Act of 18 June 2010 on the Amendment of the Federal Legislation in Implementation of the Rome Statute of the International Criminal Court, in force since 1 Jan. 2011 (AS 2010 4963; BBl 2008 3863).

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

- a. for mutual assistance under Part Three of this Act if duty or tax fraud is the subject of the proceedings;
- b. under any part of this Act if aggravated duty or tax fraud as defined in Article 14 paragraph 4 of the Federal Act of 22 March 1974<sup>13</sup> on Administrative Criminal Law is the subject of the proceedings.<sup>14</sup>

**Art. 4** Minor cases<sup>15</sup>

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

**Art. 5** Extinction of the right to prosecute

<sup>1</sup> A request shall not be granted if:<sup>16</sup>

- a.<sup>17</sup> in Switzerland or in the State where the offence was committed, the court
  1. has acquitted the defendant or abandoned the proceedings for material reasons; or
  2. has permanently or provisionally dispensed with imposing a sentence;
- b.<sup>18</sup> the sentence was executed or cannot be executed under the laws of the State where sentence was passed;
- c.<sup>19</sup> its execution requires compulsory measures and the prosecution or execution of the sentence was absolutely time barred under Swiss law.

<sup>2</sup> Paragraph 1 letters a and b do not apply if the requesting State claims that there are grounds for a review of the final sentence within the meaning of Article 410 of the Criminal Procedure Code of 5 October 2007<sup>20</sup> (CrimPC).<sup>21</sup>

**Art. 6** Concurrence of inadmissibility and admissibility of cooperation

<sup>1</sup> If the act of which the defendant is accused constitutes an offence under two or more provisions of Swiss criminal law, the request may be granted only in respect of those offences for which there are no reasons for inadmissibility and if there is a guarantee that the requesting State will respect the conditions imposed.

<sup>13</sup> SR 313.0

<sup>14</sup> Second paragraph Amended by No I 3 of the Federal Act of 3 October 2008 on the Implementation of the Revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361 367; BBl 2007 6269)

<sup>15</sup> Amended by No 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> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>17</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>18</sup> Amended by No 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> The amendment in accordance with Art. 97 ff. of the Swiss Criminal Code (SR 311.0) contains a new system of time limits (AS 2006 3459; BBl 1999 1979).

<sup>20</sup> SR 312.0

<sup>21</sup> Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

<sup>2</sup> Cooperation shall not be permitted if the proceedings concern an act that constitutes an offence under two or more provisions of Swiss or foreign criminal law and if, with regard to one of these offences, which covers the act in all its aspects, a request may not be granted.

### Section 3: Special Provisions

#### 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 for the execution of a sentence. Consent may be withdrawn up to the time when the surrender is ordered.

<sup>2</sup> Paragraph 1 does 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>22</sup> of the Federal Department of Justice and Police (Federal Office) shall obtain a guarantee of reciprocity if this is considered necessary.

<sup>2</sup> Reciprocity is in particular not required for the service of documents or if the execution of a request:

- a. seems advisable due to the type of offence or to the necessity of combating certain offences;
- b.<sup>23</sup> is likely to improve the situation of the defendant 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, provide other States with a guarantee of reciprocity.

#### Art. 8a<sup>24</sup> Bilateral treaties

The Federal Council may conclude bilateral agreements with foreign States regarding the transfer of sentenced persons provided those agreements respect the principles of the European Convention of 21 March 1983 on the Transfer of Sentenced Persons<sup>25</sup>.

#### Art. 9 Protection of privacy

In the execution of requests, protection of privacy shall be governed by the provisions on the right of witnesses to refuse to testify. Articles 246–248 CrimPC<sup>26</sup> apply by analogy to the search and to the placing under seal of documents.<sup>27</sup>

<sup>22</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>23</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1)

<sup>24</sup> Inserted by No I of the Federal Act of 21 June 2002, in force since 1 November 2002 (AS **2002** 3333 3334; BBl **2001** 4687)

<sup>25</sup> SR **0.343**

<sup>26</sup> SR **312.0**

<sup>27</sup> Second sentence Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

**Art. 10<sup>28</sup>****Art. 11** Legal definitions

<sup>1</sup> A defendant under this Act is any person under suspicion, subject to criminal proceedings or on whom a sentence has been imposed.<sup>29</sup>

<sup>2</sup> A sentence is any penalty or other measure.

**Chapter 1a:<sup>30</sup> Personal Data, File and Process Management System****Art. 11a**

<sup>1</sup> The Federal Office of Justice shall run a personal data, file and process management system that may contain sensitive personal data obtained through forms of cooperation governed by this Act. This data may be processed in order to:

- a. identify whether data on a particular person is being processed;
- b. process data on processes;
- c. organise work procedures rationally and efficiently;
- d. conduct a process check;
- e. compile statistics.

<sup>2</sup> In order to comply with the processing purposes mentioned in paragraph 1, the system shall contain:

- a. personal details of persons on whom data is being processed;
- b. data necessary for the localisation and proper administration of the dossier;
- c. documents on electronically stored processes and entries.

<sup>3</sup> The Federal Office of Police and the State Secretariat for Migration<sup>31</sup> and the units of the Federal Intelligence Service responsible for the implementation of the Federal Act of 21 March 1997<sup>32</sup> on Measures to Safeguard Internal Security shall have online access to the data defined in paragraph 2 letter a.<sup>33</sup> If the Federal Office of Police carries out the tasks of the Federal Office of Justice under this Act, it shall also have online access to the data defined in paragraph 2 letter b.

<sup>4</sup> The Federal Council shall specify the details, and in particular:

- a. in the case of the recording of data in accordance with paragraph 2 letters a and b, data on the judicial authorities involved in the mutual assistance proceedings and data on the offences giving rise to the request for mutual assistance;
- b. the period of time that the data is kept and the archiving of the data;

<sup>28</sup> Repealed by No I of the Federal Act of 4 October 1996, with effect from 1 February 1997 (AS **1997** 114; BBl **1995** III 1).

<sup>29</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1)

<sup>30</sup> Inserted by Annex 1 No 7 of the Federal Act of 13 June 2008 on the Federal Police Information Systems, in force since 5 Dec. 2008 (AS **2008** 4989; BBl **2006** 5061).

<sup>31</sup> The name of this administrative unit was amended by Art. 16 para. 3 of the Publications Ordinance of 17 Nov. 2004 (SR **170.512.1**), in force since 1 Jan. 2015.

<sup>32</sup> SR **120**

<sup>33</sup> Amended by No I 4 of the Ordinance of 4 Dec. 2009 on the Amendment of Legislation due to the Establishment of the Federal Intelligence Service, in force since 1 Jan. 2010 (AS **2009** 6921).

- c. the agencies of the Federal Office that are authorised to process the data directly in the system and the data that in individual cases may be disclosed to other authorities.

## Chapter 2: Applicable Law

### Art. 12 General

<sup>1</sup> Unless this Act specifies otherwise, the federal administrative authorities shall apply, by analogy, the Federal Act of 20 December 1968<sup>34</sup> on Administrative Procedure, and the cantonal authorities their own procedural rules. Procedural acts are governed by the procedural law in criminal matters.

<sup>2</sup> The cantonal and federal provisions on the suspension of time limits do not apply.<sup>35</sup>

### Art. 13 Suspension of limitation periods<sup>36</sup>. Filing a criminal complaint

<sup>1</sup> In proceedings under this Act, the following shall be considered to have effect in Switzerland:

- a. the suspension of a limitation period under the law of the requesting State;
- b. the filing of a criminal complaint with a foreign authority within the time limit provided for if this is so required under Swiss law.

<sup>2</sup> If a criminal complaint is required only under Swiss law, no sentence may be imposed or executed in Switzerland if the victim makes objections.

### Art. 14 Taking account of the period in detention

Article 69 of the Swiss Criminal Code<sup>37</sup> applies when taking account of the period spent on remand or in detention abroad due to proceedings under this Act.

### Art. 15 Compensation

<sup>1</sup> Articles 429 und 431 CrimPC<sup>38</sup> apply by analogy in proceedings that have been conducted against the defendant under this Act in Switzerland or at the instigation of a Swiss authority abroad.<sup>39</sup>

<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 that caused the request to be made.

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

<sup>4</sup> Compensation for detention pending extradition served in Switzerland may also be reduced or refused if the requesting State:

<sup>34</sup> SR 172.021

<sup>35</sup> Inserted by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>36</sup> The suspension of the effects of the time limitation provisions has been abolished by Art. 97 ff. of the Swiss Criminal Code (SR 311.0) and time limits for execution have been replaced by an extension of the regular time limit (AS 2006 3459; BBl 1999 1979).

<sup>37</sup> SR 311.0

<sup>38</sup> SR 312.0

<sup>39</sup> Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

<sup>40</sup> Inserted by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

- 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 likelihood of the injured party being able to obtain damages in the foreign State must be taken into account when the decision is made to reduce or refuse the compensation.<sup>42</sup>

## Chapter 3: Domestic Procedure

### Section 1: Authorities and Powers

#### Art. 16 Cantonal authorities

<sup>1</sup> The cantons shall participate in the conduct of extradition proceedings. Unless federal law provides otherwise, they are required to execute the requests for other forms of mutual assistance and the transfer of proceedings and to execute criminal judgments. The cantons shall be subject to the supervision of the Confederation provided this Act applies.

<sup>2</sup> ...<sup>43</sup>

#### Art. 17 Federal authorities

<sup>1</sup> The Federal Department of Justice and Police (the Department) shall decide on cases under Article 1 letter *a*.<sup>44</sup> The decision of the Department may be requested within 30 days of receiving written notification of the final ruling.<sup>45</sup>

<sup>2</sup> The Federal Office shall receive the requests from abroad and file Swiss requests. It shall handle extradition requests and arrange for 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 appropriate procedure (Art. 19);
- c. on the admissibility of Swiss requests (Art. 30, para. 1).

<sup>4</sup> It may transfer the conduct of proceedings wholly or partly to the federal authority which would be competent to prosecute the offence if it had been committed in Switzerland.

<sup>5</sup> It may also decide on the admissibility of assistance and allow its execution in accordance with Article 79 letter *a*.<sup>46</sup>

<sup>41</sup> Inserted by No 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 by No 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> Repealed by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, with effect from 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

<sup>44</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1)

<sup>45</sup> Sentence inserted by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (AS **2006** 2197; BBl **2001** 4202).

<sup>46</sup> Inserted by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1)

**Art. 17a<sup>47</sup>** Obligation of promptness

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

<sup>2</sup> It shall on request provide the Federal Office with information on the status of the proceedings, the reasons for any delay and the measures being considered. If the delay is not justified, the Federal Office may take the matter up with the appropriate supervisory authority.

<sup>3</sup> When the competent authority, without reason, refuses to or delays in issuing a ruling, its conduct shall be regarded as equivalent to a negative decision subject to appeal.

**Art. 18<sup>48</sup>** Provisional measures

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

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

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

**Art. 18a<sup>49</sup>** Surveillance of postal and telecommunications traffic

<sup>1</sup> In extradition cases, the Federal Office may, at the express request of another State order the surveillance of postal and telecommunications traffic in order to establish the whereabouts of the defendant.

<sup>2</sup> In other mutual assistance cases, the following authorities may order the surveillance of postal and telecommunications traffic:

- a. the Office of the Attorney General of Switzerland or of the Cantonal Public Prosecutor;
- b. the Federal Office, if it is executing the request for mutual assistance itself.

<sup>3</sup> The surveillance order must be submitted to the following authorities for approval:

- a. by the federal authorities: the federal compulsory measures court;
- b. by the cantonal authorities: the cantonal compulsory measures court.

<sup>4</sup> The requirements for surveillance and the procedure shall otherwise be governed by Articles 269–279 CrimPC<sup>50</sup> and the Federal Act of 6 October 2000<sup>51</sup> on the Surveillance of Postal and Telecommunications Traffic.

<sup>47</sup> Inserted by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1)

<sup>48</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1)

<sup>49</sup> Inserted by Annex No 4 of the Federal Act of 6 October 2000 on the Surveillance of Mail and Telecommunication Services (AS **2001** 3096; BBl **1998** 4241). Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

<sup>50</sup> SR **312.0**

<sup>51</sup> SR **780.1**



**Art. 18<sup>b52</sup>** Electronic communications traffic data

<sup>1</sup> The federal or cantonal authority dealing with a request for mutual assistance may order the transmission of electronic communications traffic data to another State before conclusion of the mutual assistance proceedings if:

- a. provisional measures indicate that the communication that is the subject of the request originated abroad; or
- b. the data was acquired by the executing authority based on an order for authorised real-time surveillance (Art. 269–281 of the CrimPC<sup>53</sup>).

<sup>2</sup> The data may not be used in evidence before the ruling on granting and the extent of mutual assistance is legally binding.

<sup>3</sup> Notice of the ruling under paragraph 1 and any order or authorisation for surveillance must be given to the Federal Office immediately.

**Art. 19** Choice of procedure

If the defendant 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 the procedure which appears to ensure the better social rehabilitation.

**Art. 20** Suspension of criminal proceedings or of the execution of a penalty

<sup>1</sup> At the request of the Federal Office, the competent authority may temporarily suspend criminal proceedings or the execution of a sentence against a defendant abroad for another offence if:

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

<sup>2</sup> On conclusion of the criminal proceedings abroad, the Swiss authority shall decide whether or not to resume the suspended proceedings or the execution of the penalty.

**Art. 20<sup>a54</sup>** Transit

<sup>1</sup> In the interest of proceedings carried out in another State and permitted under this Act, the Federal Office may permit transit through Swiss territory and approve the measures required therefor on submission of a request by the State concerned or a third State without hearing the person concerned. There is no right of appeal against the decision and ancillary measures. They shall be notified only to the requesting State.

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

- a. the requirements for his arrest under Article 44 are met; or
- b. the State arranging for 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>52</sup> Inserted by Art. 2 No 2 of the Federal Decree of 18 March 2011 (Council of Europe Convention on Cybercrime), in force since 1 Jan. 2012 (AS **2011** 6293; BBl **2010** 4697).

<sup>53</sup> SR **312.0**

<sup>54</sup> Inserted by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1)

<sup>3</sup> Only the Federal Office may interrupt the transit 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 defendant may appoint a legal adviser. If he chooses not to do so or is not in a position to do so, a legal adviser shall be officially appointed if required to safeguard the interests of the defendant.

<sup>2</sup> Other persons who are affected by the mutual assistance measures or who, as injured parties, are present at enquiries, may, if the safeguarding of their interests so requires, be assisted by a legal adviser while mutual assistance measures are being carried out and, provided the object of the investigation is not prejudiced, be represented by him.

<sup>3</sup> Persons who are the subject of foreign criminal proceedings may challenge rulings only if they are personally and directly affected by a mutual assistance measure and if they have an interest worthy of legal protection in the measure being revoked or changed.<sup>55</sup>

<sup>4</sup> Appeals filed against a decision made in application of this Act shall not have a suspensive effect. This rule does not apply to appeals directed against a decision:

- a. granting extradition; or
- b. authorising the transmission abroad of classified information or the handing over of objects or assets.<sup>56</sup>

### Art. 22<sup>57</sup> Notice regarding appellate remedies

Rulings and decisions issued by federal and cantonal authorities must give notice of the possible appellate remedies, the appellate authority and the deadline for filing an appeal.

<sup>55</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>56</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>57</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

**Art. 23**<sup>58</sup>**Art. 24**<sup>59</sup>**Art. 25** Appeal<sup>60</sup>

<sup>1</sup> First instance rulings by cantonal and federal authorities are subject to an appeal directly to the Appeals Chamber of the Federal Criminal Court unless this Act stipulates otherwise.<sup>61</sup>

<sup>2</sup> An appeal against a Swiss request to another State is only admissible if that State is requested to assume responsibility for the criminal proceedings or the execution of a criminal judgment. In this case, only defendants who are habitually resident in Switzerland are entitled to appeal.<sup>62</sup>

<sup>2bis</sup> An appeal against a Swiss request for transferring responsibility for the execution of a criminal judgment in connection with a transfer under Article 101 paragraph 2 is admissible.<sup>63</sup>

<sup>3</sup> The Federal Office may appeal against rulings by cantonal authorities as well as against decisions by the Federal Criminal Court. The cantonal authority is entitled to appeal against the decision of the Federal Office not to make a request.<sup>64</sup>

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

<sup>5</sup> ...<sup>65</sup>

<sup>6</sup> The Appeals Chamber of the Federal Criminal Court is not bound by the applications made by the parties.<sup>66</sup>

**Art. 26**<sup>67</sup> Administrative appeal

Rulings made by the Department under Article 17 paragraph 1 shall be subject to appeal to the Federal Council. ...<sup>68</sup>

<sup>58</sup> Repealed by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, with effect from 1 January 2007 (AS **2006** 2197; BBl **2001** 4202).

<sup>59</sup> Repealed by No I of the Federal Act of 4 October 1996, with effect from 1 February 1997 (AS **1997** 114; BBl **1995** III 1).

<sup>60</sup> Amended by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (AS **2006** 2197; BBl **2001** 4202).

<sup>61</sup> Amended by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (AS **2006** 2197; BBl **2001** 4202).

<sup>62</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>63</sup> Inserted by Article 2 of the Federal Decree of 19 December 2003, in force since 1 October 2004 (AS **2004** 4161 4162; BBl **2002** 4340).

<sup>64</sup> Amended by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (AS **2006** 2197; BBl **2001** 4202).

<sup>65</sup> Repealed by No I of the Federal Act of 4 October 1996, with effect from 1 February 1997 (AS **1997** 114; BBl **1995** III 1).

<sup>66</sup> Amended by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (AS **2006** 2197; BBl **2001** 4202).

<sup>67</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>68</sup> Sentence repealed by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, with effect from 1 January 2007 (AS **2006** 2197; BBl **2001** 4202).

## Chapter 4: International Procedure

### Art. 27 General rules for requests

<sup>1</sup> Articles 27 to 31 apply to all procedures under this Act subject to the special rules of procedure provided for in the other parts of this Act.<sup>69</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 duly notified.

<sup>4</sup> Requests in connection with an arrest shall be dealt with without delay.

<sup>5</sup> The non-acceptance or refusal of a request must be substantiated.

### Art. 28 Form and content of requests

<sup>1</sup> Requests shall be made in writing.

<sup>2</sup> The following information must be provided in a request:

- a. the office issuing the request and, if applicable, the authority having criminal jurisdiction;
- b. the subject matter of and the reason for the request;
- c. the legal term for the offence;
- d. details that are as exact and complete as possible on the person who is the subject of the criminal proceedings.

<sup>3</sup> To permit the legal assessment of the offence, the following shall be added:

- a. a summary of the relevant allegations, except in the case of requests for service;
- b.<sup>70</sup> the wording of the regulations applicable at the place where the offence was committed, except for requests for assistance in accordance with Part Three of this Act.

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

<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 must 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 provisional measures is not affected thereby.

### 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 must 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 may be sent directly to the authority competent for its execution.

<sup>69</sup> Amended by No 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> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

**Art. 30** Swiss requests

<sup>1</sup> Swiss authorities may not address to another State requests which they themselves could not grant under this Act.

<sup>2</sup> The Federal Office is competent for 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 must 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 determine the conditions under which the requesting State may be charged full or partial costs.

<sup>3</sup> The costs of a Swiss request that are reimbursed to another State shall be charged to the proceedings that caused the request to be made.

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

**Part Two: Extradition****Chapter 1: Conditions****Art. 32** Foreign nationals

Foreign nationals may be surrendered to another State for prosecution or enforcement of a sentence involving deprivation of liberty for acts which come under its criminal jurisdiction if that State requests extradition or if it accepts the Swiss request to prosecute the offence or enforce the judgment.

**Art. 33** Persons under 20 years of age

<sup>1</sup> Children and juveniles as defined in the Swiss Criminal Code<sup>71</sup> whose extradition is requested shall, if possible, be repatriated by the juvenile authorities. The same applies to persons between the ages 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>72</sup>**Art. 35** Extraditable offences

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

<sup>71</sup> SR 311.0

<sup>72</sup> Repealed by No I of the Federal Act of 4 October 1996, with effect from 1 February 1997 (AS 1997 114; BBl 1995 III 1).

- a. is punishable by deprivation of liberty for a maximum period of at least one year or a more severe sentence both under the law of Switzerland and under the law of the requesting State and
  - b. is not subject to Swiss jurisdiction.
- <sup>2</sup> In determining whether an act is an offence under Swiss law, the following are not considered:
- a. its specific degrees of guilt and conditions for criminal liability;
  - b. the conditions relating to the personal and time-related application of the Swiss Criminal Code<sup>73</sup> and the Swiss Military Criminal Code of 13 June 1927<sup>74</sup> with regard to the criminal provisions on genocide, crimes against humanity and war crimes.<sup>75</sup>

#### **Art. 36** Special cases

<sup>1</sup> As an exception, the defendant 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 two or more offences is extraditable (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 responsibility for the prosecution of the offence or the execution of the foreign criminal judgment and if this appears to be appropriate with regard to the social rehabilitation of the defendant.

<sup>2</sup> Extradition shall be denied if the request is based on a verdict issued in the absence of the defendant and if the minimum rights of the defence to which a defendant is recognised to be entitled were not respected in the proceedings preceding the verdict; this rule does not apply if the requesting State gives sufficient assurances to guarantee the defendant the right to new court proceedings where the rights of the defence are respected.<sup>76</sup>

<sup>3</sup> Extradition shall also be denied if the requesting State fails to guarantee that the defendant will not be sentenced 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>77</sup>

#### **Art. 38** Conditions

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

- a. neither prosecutes nor sentences nor re-extradites him to a third State for any offence committed prior to his extradition and for which extradition was not granted;
- b.<sup>78</sup> does not deprive him of his liberty on any other ground that existed before his extradition;

<sup>73</sup> SR 311.0

<sup>74</sup> SR 321.0

<sup>75</sup> Amended by No I 4 of the Federal Act of 18 June 2010 on the Amendment of the Federal Act in Implementation of the Rome Statute of the International Criminal Court, in force since 1 Jan. 2011 (AS 2010 4963; BBl 2008 3863).

<sup>76</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>77</sup> Inserted by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>78</sup> Amended by No 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>79</sup> does not bring him before an extraordinary court; and moreover
  - d. sends the Swiss authorities, at their request, an officially certified copy of the decision which concludes the criminal proceedings.
- <sup>2</sup> The conditions of paragraph 1 letters a and b no longer apply if:
- a. the defendant or extradited expressly waives them; or
  - b. the person extradited:
    - 1. in spite of being advised of the consequences has not left the territory of the requesting State within forty-five days of his conditional or final release despite having the opportunity to do so, or if, after leaving that territory, he has returned; or
    - 2. has been returned by a third State.<sup>80</sup>

**Art. 39** Extension

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

**Art. 40** Requests by more than one State

<sup>1</sup> If two or more 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 defendant, 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 an arrest warrant or of any other document issued in accordance with the regulations of the requesting State and having the same effect.

**Art. 42** Request for tracing and arrest

Requests for tracing 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 arrest warrant, its date of issue and the name of the issuing authority;
- b. the intention of the competent authority to make a request for extradition.

<sup>79</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>80</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

**Art. 43** Consideration of the request

The Federal Office shall decide whether and under what conditions it will 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 alert in a police search system.<sup>81</sup> Article 52 paragraphs 1 and 2 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 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 issued but at the latest until the third workday after the arrest.

**Section 3: Detention awaiting Extradition and Seizure****Art. 47** Arrest warrant and other rulings

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

- a. will probably 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 defendant 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 the Federal Office shall rule on which objects and assets will remain seized or must be seized.

**Art. 48** Content

<sup>1</sup> Rulings under Article 47 shall contain:

- a. information, provided by the foreign authority, concerning the identity of the defendant and the offence alleged against this person;
- b. the name of the office which made the request;

<sup>81</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)



- c. the confirmation that extradition will be requested;
- d. the notice regarding the right of appeal under paragraph 2 and the right to appoint a legal adviser.

<sup>2</sup> An appeal against these rulings may be filed with the Appeals Chamber of the Federal Criminal Court within ten days of the serving of the written arrest warrant with a view to extradition. Articles 379–397 CrimPC<sup>82</sup> apply by analogy to the appeal procedure.<sup>83</sup>

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

<sup>1</sup> The execution of rulings under Article 47 is a matter for the cantonal authorities.

<sup>2</sup> The arrest warrant with a view to extradition may not be executed while the defendant is held in detention awaiting trial or is serving a sentence.<sup>84</sup>

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

#### **Art. 50** Release from detention

<sup>1</sup> The Federal Office shall order the release of the person concerned from detention 18 days after arrest if the request for extradition and the documents supporting it have not been received.<sup>85</sup> This period may be extended for special cause by up to 40 days.

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

<sup>3</sup> By way of exception, the person concerned may be released from detention with a view to extradition at any stage of the proceedings if this is appropriate in the circumstances. The defendant may lodge a petition for release at any time.

<sup>4</sup> In addition, Articles 238–240 CrimPC<sup>86</sup> apply by analogy to release from detention.<sup>87</sup>

#### **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 proceedings without special ruling.

<sup>2</sup> If the defendant has been released, detention with a view to extradition may be ordered again.

### **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 defendant and to his legal adviser. When formally presenting the defendant with the arrest warrant with a view to extradition, the cantonal authority shall ascertain if the defendant is identical with the person

<sup>82</sup> SR 312.0

<sup>83</sup> Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

<sup>84</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>85</sup> Amended by No 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> SR 312.0

<sup>87</sup> Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

mentioned in the request. It shall explain to him the conditions of extradition and of simplified extradition and advise him of the right to appeal, to appoint a legal adviser or to have a legal adviser officially appointed.<sup>88</sup>

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

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

#### **Art. 53** Alibi evidence

<sup>1</sup> If the defendant claims to be 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 a short time whether it wishes to continue with its request.

#### **Art. 54<sup>89</sup>** Simplified extradition

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

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

<sup>3</sup> Simplified extradition shall have the effect of 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 defendant and the third party objecting to the handing over of objects an appropriate deadline for stating their position, the Federal Office shall rule on the extradition of the defendant and the handing over of objects and assets seized.<sup>90</sup>

<sup>2</sup> If the defendant claims that he is being charged with a political offence or if the investigation reveals serious grounds to believe that the offence is of a political nature, the Appeals Chamber of the Federal Criminal Court shall decide the case.<sup>91</sup> The Federal Office shall send the file to this Court, together with its proposal. The defendant shall be given the opportunity to state his position.

<sup>88</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1)

<sup>89</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1)

<sup>90</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1)

<sup>91</sup> Amended by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (AS **2006** 2197; BBl **2001** 4202).

<sup>3</sup> The procedure for an appeal under Article 25 applies by analogy.<sup>92</sup>

**Art. 55a**<sup>93</sup> Coordination with asylum proceedings

If the defendant has applied for asylum under the Asylum Act of 26 June 1998<sup>94</sup>, the Federal Office and the appellate authority shall consult the files from the asylum proceedings when deciding on extradition.

**Section 6: Execution**

**Art. 56** Executability

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

- a. expressly requests his own immediate extradition or
- b. does not give notice within five days of the issue of the ruling that he will file an appeal.

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

**Art. 57** Extradition

<sup>1</sup> The Federal Office shall issue the necessary rulings 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 extradition.

**Art. 58** Postponement. Provisional surrender

<sup>1</sup> Extradition may be postponed provided the person to be extradited is being prosecuted in Switzerland for other offences or if he has to serve a sentence involving deprivation of liberty.

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

- a. this will not be prejudicial to the Swiss criminal proceedings and
- b. the requesting State has guaranteed to keep the defendant in custody during his stay in that State and will return him regardless of his nationality.

**Art. 59**<sup>95</sup> Handing over of objects and assets

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

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

<sup>92</sup> Amended by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (AS **2006** 2197; BBl **2001** 4202).

<sup>93</sup> Inserted by No 3 of the Federal Act of 1 Oct 2010 on the Coordination of Asylum and Extradition Procedures, in force since 1 April 2011 (AS **2011** 925; BBl **2010** 1467).

<sup>94</sup> SR **142.31**

<sup>95</sup> Amended by No 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 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 guarantees their return 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 any unlawful advantage;
- c. gifts and other benefits which served to instigate the offence or recompense the perpetrator for 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 is habitually resident 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 the objects and assets in good faith in Switzerland, or, if he is habitually resident in Switzerland, in a foreign country.

<sup>5</sup> Objects or assets mentioned in the first paragraph and which are required for pending criminal proceedings in Switzerland may also be retained in Switzerland.

<sup>6</sup> If a person entitled to the objects or assets makes a claim under paragraph 4, the objects or assets shall not be handed over until the legal position has been clarified. Objects or assets in dispute shall be returned to the person entitled only if:

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

<sup>7</sup> The handing over of objects and assets is not dependent on the execution of the extradition of the defendant.

<sup>8</sup> Objects and assets in accordance with paragraph 1 letter b to which Switzerland is entitled according to an asset-sharing agreement based on the Federal Act of 19 March 2004 on the Division of Forfeited Assets<sup>96</sup> are not handed over.<sup>97</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 under Swiss customs or tax law shall not be claimed if the owner who suffered loss as a result of the offence does not personally owe the duty or tax.

<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 of notification of the execution order, he shall be released. This time limit may be extended up to 30 days in response to a justified request from the requesting State.

<sup>96</sup> SR 312.4

<sup>97</sup> Inserted by Annex No 2 of the Federal Act of 19 March 2004 on the Division of Forfeited Assets, in force since 1 August 2004 (AS 2004 3503; BBl 2002 441).

**Art. 62** Costs

<sup>1</sup> In the event of extradition to a foreign country, the Swiss Confederation shall pay the costs of detention and transportation provided that it is customary in international relations for the requested State to pay such costs.

<sup>2</sup> The personal property of the defendant may be used to cover the costs provided it does not have to be handed over to the requesting State.

**Part Three: Other Mutual Assistance****Chapter 1: Requirements****Section 1: General****Art. 63** Principle

<sup>1</sup> Mutual assistance within the meaning of Part Three of this Act shall comprise the transmission of information, as well as procedural acts and other official acts permitted under Swiss law provided these acts appear to be necessary for proceedings carried out abroad in criminal matters or serve to retrieve the proceeds of the offence.<sup>98</sup>

<sup>2</sup> Mutual assistance measures shall include in particular:

- a. the service of documents;
- b. obtaining evidence, and in particular searching persons and rooms, seizure, orders to produce, expert opinions, conducting hearings and confrontations of persons;
- c. production of documents and papers;
- d. handing over of objects or assets with a view to forfeiture or for restitution to the entitled person.<sup>99</sup>

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

- a. prosecution of criminal offences as provided for in Article 1 paragraph 3;
- b. administrative measures against an offender;
- c. execution of criminal judgments and pardons;
- d. compensation for unjustified detention.<sup>100</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 defendant is permitted even if the request is inadmissible under Articles 3-5.

**Art. 64** Compulsory measures

<sup>1</sup> Measures under Article 63 which require the use of procedural compulsion may be ordered only if the description of the circumstances of the case indicates that the offence being prose-

<sup>98</sup> Amended by No 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> Amended by No 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> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

cutted abroad contains the objective elements of an offence under Swiss law. The measures must be carried out in accordance with Swiss law.

<sup>2</sup> If the offence prosecuted abroad is not an offence in Switzerland, measures under Article 63 which require the use of procedural compulsion shall be allowed for:

- a. the exoneration of a defendant;
- b.<sup>101</sup> the prosecution of offences involving sexual acts with minors;<sup>102</sup>

#### **Art. 65**<sup>103</sup> Application of foreign law

<sup>1</sup> At the express 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 must be compatible with Swiss law, and no essential prejudice may result therefrom to the persons involved.

<sup>3</sup> A person may also refuse to testify provided the law of the requesting State so provides or if the fact of testifying may cause criminal or disciplinary sanctions to be imposed under the laws of that State or of the State where the examined person lives.

#### **Art. 65a**<sup>104</sup> Presence of persons participating in proceedings abroad

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

<sup>2</sup> Their presence may also be permitted if it substantially helps to facilitate the execution of the request or the foreign criminal proceedings.

<sup>3</sup> Their presence may not lead to their obtaining 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>105</sup>

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

<sup>2</sup> However, assistance may be granted if the proceedings carried out abroad are not directed solely against the defendant who is residing in Switzerland, or if the execution of the request serves to exonerate him.<sup>106</sup>

<sup>101</sup> Amended by Annex No 16 of the Federal Act of 19 Dec. 2008 (Adult Protection, Law of Persons and Law of Children), in force since 1 Jan. 2013 (AS 2011 725; BBl 2006 7001).

<sup>102</sup> Amended by Annex No 4 of the Federal Act of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459; BBl 1999 1979).

<sup>103</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>104</sup> Inserted by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>105</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

**Art. 67<sup>107</sup>** Principle of speciality

<sup>1</sup> Information and documents obtained through mutual assistance may not be used for investigative purposes or as evidence in the requesting State in any proceedings 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 if:

- a. the act to which the request relates constitutes another offence for which mutual assistance would be granted; or
- b. the foreign criminal proceedings are directed against other persons who have participated in committing the offence.

<sup>3</sup> Presence at the mutual assistance proceedings and access to the files shall be permitted under the same conditions (Art. 65a para.1).

**Art. 67a<sup>108</sup>** Spontaneous transmission of information and evidence

<sup>1</sup> An authority prosecuting offences may, without being requested to do so, 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 transmission may:

- a. permit the opening of criminal proceedings; or
- b. facilitate an ongoing criminal investigation.

<sup>2</sup> The transmission as defined in paragraph 1 does not have any effect on the criminal proceedings pending in Switzerland.

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

<sup>4</sup> Paragraphs 1 and 2 do not apply to evidence that is subject to the rules on secrecy.

<sup>5</sup> Information that is subject to the rules on secrecy may be transmitted if it may enable the foreign State to present a request for mutual assistance.

<sup>6</sup> A record shall be made of each spontaneous transmission.

**Section 2: Specific Mutual Assistance Measures****Art. 68** Service of documents. General provisions

<sup>1</sup> Where a Swiss authority is requested to serve documents, service may be effected by personal or postal delivery to the recipient.

<sup>2</sup> The Federal Council may permit the direct service of documents from abroad to 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.

<sup>106</sup> Inserted by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>107</sup> Amended by No 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> Inserted by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

**Art. 69** Service of summonses. Safe conduct

<sup>1</sup> There is no obligation to comply for any person who accepts a summons to appear before a foreign authority.

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

<sup>3</sup> Service of a summons may be made subject to the condition that the recipient is guaranteed safe conduct for an appropriate period of time and 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 investigations if they are guaranteed safe conduct and if it is guaranteed that they will be kept in custody and returned to Switzerland on request.

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

**Art. 71**<sup>109</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 defendant 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.

**Art. 73** Safe conduct in Switzerland

<sup>1</sup> A person habitually resident 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 defendant shall enjoy no safe conduct regarding the offences specified in the summons.

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

**Art. 74**<sup>110</sup> Handing over of evidence

<sup>1</sup> On request, objects, documents or assets seized as evidence as well as records and decisions shall be made available to the competent foreign authority after conclusion of the mutual assistance proceedings (Art. 80*d*).

<sup>109</sup> Repealed by No I of the Federal Act of 4 October 1996, with effect from 1 February 1997 (AS 1997 114; BBl 1995 III 1).

<sup>110</sup> Amended by No 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 a third party with rights acquired in good faith, an authority, or the victim who is habitually resident in Switzerland claim that they have rights over the objects, documents or assets under paragraph 1, their handing over shall be subject to the condition that the requesting State gives the guarantee to return them free of charge after the conclusion of the proceedings.

<sup>3</sup> Return may be delayed if the objects, documents or assets are necessary for criminal proceedings pending in Switzerland.

<sup>4</sup> Article 60 applies to fiscal liens.

**Art. 74a<sup>111</sup>** Handing over of objects or assets for the purpose of forfeiture or return

<sup>1</sup> On request, objects or assets subject to a precautionary seizure may be handed over to the competent foreign authority after conclusion of the mutual assistance proceedings (Art. 80d) 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 were used to commit the offence;
- b. products of or profits from the offence, their replacement value and any unlawful 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 take place at any stage of the foreign proceedings, normally based on a final and executable decision from the requesting State.

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

- a. the victim is habitually resident 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 is habitually resident in Switzerland, in a foreign country; or
- d. the objects or assets are necessary for pending criminal proceedings in Switzerland or appear, because of their nature, to be subject to forfeiture in Switzerland.

<sup>5</sup> Whenever a person claims to have rights over the objects or assets under paragraph 4, its handing over to the requesting State shall be postponed 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 the case of paragraph 4 letter b, the authority gives its consent; or
- c. the claim has been recognised by a Swiss court.

<sup>6</sup> Article 60 applies to fiscal liens.

<sup>7</sup> 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 Division of Forfeited Assets<sup>112</sup> shall not be handed over in accordance with paragraph 1.<sup>113</sup>

<sup>111</sup> Inserted by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1).

<sup>112</sup> SR **312.4**

<sup>113</sup> Inserted by Annex No 2 of the Federal Act of 19 March 2004 on the Division of Forfeited Assets, in force since 1 August 2004 (AS **2004** 3503; BBl **2002** 441).

## Chapter 2: Procedure

### Section 1: Requests for Mutual Assistance

#### Art. 75 Authorisation for requesting mutual assistance

<sup>1</sup> Requests for assistance may be submitted by authorities that are competent to investigate offences or make 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 authorised to make them if those acts are incumbent upon the parties under the laws of the requesting State.

<sup>3</sup> The Federal Office shall make requests for mutual assistance that is needed outside criminal proceedings.<sup>114</sup>

#### Art. 75a<sup>115</sup> Police requests

<sup>1</sup> The commissioners of police of the Confederation and of the cantons may make a request under Article 63 on their own behalf and may grant such requests emanating from foreign authorities.

<sup>2</sup> The following requests are excluded:

- a. requests which necessitate the use of procedural compulsion;
- b. requests for information or measures in proceedings regarding extradition, transfer of proceedings and execution of criminal judgments;
- c. requests for the handing over of criminal decisions or criminal files.

#### Art. 76 Content 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: the name and address of the recipient and his position in the proceedings as well as the type 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: confirmation that these measures are permitted in the requesting State.

#### Art. 77 Way of transmission<sup>116</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>117</sup>.

<sup>114</sup> Inserted by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>115</sup> Inserted by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>116</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1).

<sup>117</sup> The designation of the administrative unit has been adapted according to Art. 16 para. 3 of the Publications Ordinance of 17 November 2004 (SR 170.512.1).

**Section 2:**<sup>118</sup> **Treatment of the Request****Art. 78** Receipt and transmission

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

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

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

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

<sup>5</sup> The procedural provisions of Article 18 are reserved.

**Art. 79** Delegation of execution

<sup>1</sup> If the execution of the request necessitates investigations in more than one canton or if it also concerns a federal authority, the Federal Office may entrust a single authority with its execution. Articles 44–47, 52 and 53 CrimPC<sup>119</sup> apply by analogy.<sup>120</sup>

<sup>2</sup> The Federal Office may delegate all or part of 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 supplementary requests to the authority to which execution was delegated.

<sup>4</sup> The designation of the cantonal or federal authority responsible 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 its execution to a cantonal authority or itself decide on the execution if:

- a. the execution of the request necessitates investigations in more than one canton;
- b. the competent cantonal authority is unable to make a decision within the 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 responsible for its execution.

<sup>2</sup> If the request cannot be granted, the executing authority shall return it to the requesting authority by the same channel through which it was received.

<sup>118</sup> Amended by No 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 **312.0**

<sup>120</sup> Second sentence Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

**Art. 80a** Consideration and execution

<sup>1</sup> The executing authority shall issue a summary ruling on whether to consider the case and shall order the mutual assistance measures permitted.

<sup>2</sup> It shall execute the mutual assistance measures in accordance with its own procedural law.

**Art. 80b** Participation in the proceedings and access to the files

<sup>1</sup> The persons entitled may participate in the proceedings and have access to the files provided this is necessary to safeguard their interests.

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

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

<sup>3</sup> Access to the files or participation in the proceedings may only be denied in the case of files or procedural measures for reasons of confidentiality.

**Art. 80c** Simplified execution

<sup>1</sup> The persons entitled, and in particular the holders of documents, information or assets may consent to handing them over without formality at any time prior to the conclusion of the proceedings. 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 proceedings.

<sup>3</sup> If only some of the documents, information or assets required are handed over, the ordinary proceedings shall be followed for the remaining part.

**Art. 80d** Conclusion of the mutual assistance proceedings

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

**Section 3:<sup>121</sup> Appeal****Art. 80e<sup>122</sup>** Appeal against the ruling of the executing authority

<sup>1</sup> The ruling of the executing cantonal or federal authority on the conclusion of the mutual assistance proceedings together with the preceding interim rulings shall be subject to appeal to the Appeals Chamber of the Federal Criminal Court.

<sup>2</sup> Interim rulings preceding the final ruling may be appealed against separately provided that they cause immediate and irreparable prejudice through:

- a. the seizure of assets or valuables; or

<sup>121</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>122</sup> Amended by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (AS 2006 2197; BBl 2001 4202).

b. the presence of persons involved in the foreign proceedings.

<sup>3</sup> Article 80/ paragraphs 2 and 3 applies by analogy.

**Art. 80f** and **80g**<sup>123</sup>

**Art. 80h** Right of appeal

The following shall be entitled to appeal:

- a. the Federal Office;
- b. any person who is personally and directly affected by a mutual assistance measure and has a legitimate interest in that measure being annulled or modified.

**Art. 80i** Reasons for appeal

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

- a. a violation of federal law, including excessive use or abuse of discretion;
- b. the inadmissible or manifestly incorrect application of foreign law in the cases under Article 65.

<sup>2</sup> ...<sup>124</sup>

**Art. 80k** Deadline for appeal

The deadline for appeal against the final ruling shall be 30 days, or ten days in the case of an interim ruling, from the written communication of the ruling.

**Art. 80l** Suspensive effect

<sup>1</sup> Only appeals against the final ruling or any other ruling authorising the transmission of classified information or the handing over of objects or assets to a foreign State shall have suspensive effect.<sup>125</sup>

<sup>2</sup> An interim ruling preceding the final ruling may be executed immediately.

<sup>3</sup> The Appeals Chamber of the Federal Criminal Court may grant suspensive effect to an interim ruling in accordance with paragraph 2 if the person entitled shows probable cause that immediate and irreparable prejudice as defined in Article 80e, paragraph 2 may result.<sup>126</sup>

## Section 4:<sup>127</sup> Special Provisions

**Art. 80m** Notification of rulings

<sup>1</sup> The executing authority and the appellate authority shall give notice of their rulings to:

<sup>123</sup> Repealed by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, with effect from 1 January 2007 (AS **2006** 2197; BBl **2001** 4202).

<sup>124</sup> Repealed by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, with effect from 1 January 2007 (AS **2006** 2197; BBl **2001** 4202).

<sup>125</sup> Amended by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (AS **2006** 2197; BBl **2001** 4202).

<sup>126</sup> Amended by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (AS **2006** 2197; BBl **2001** 4202).

<sup>127</sup> Inserted by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1)

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

<sup>2</sup> The right to notification shall end when the ruling concluding the mutual assistance proceedings becomes legally enforceable.

**Art. 80n** Right to inform

<sup>1</sup> Holders of documents have the right to inform their clients of the existence of the request and of all the facts relating thereto unless the competent authority has, as an exception, expressly prohibited this and made reference to Article 292 of the Swiss Criminal Code<sup>128</sup> and the penalties that it carries.

<sup>2</sup> The person entitled who intervenes in pending proceedings may no longer challenge rulings that have become legally enforceable.

**Art. 80o** Inquiry addressed to the requesting State

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

<sup>2</sup> If necessary, the competent authority shall suspend dealing with all or part of the request and rule on the points that may be dealt with based on the documents available.

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

**Art. 80p** Conditions subject to acceptance

<sup>1</sup> The executing and the appellate authority as well as the Federal Office may make the granting of mutual assistance wholly or partly subject to certain conditions.

<sup>2</sup> The Federal Office shall communicate the conditions to the requesting State when the ruling on the granting and the extent of the mutual assistance is final and shall give it an appropriate deadline by which to accept or refuse. If the deadline given is not respected, 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 satisfies the conditions set.

<sup>4</sup> The ruling of the Federal Office is subject to an appeal to the Appeals Chamber of the Federal Criminal Court within ten days of its notice being given in writing. The decision of the Appeals Chamber is final.<sup>129</sup>

**Art. 80q** Costs

The requesting State shall be charged for:

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

<sup>128</sup> SR 311.0

<sup>129</sup> Amended by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (AS 2006 2197; BBl 2001 4202).

**Art. 81 - 84**<sup>130</sup>**Part Four: Transfer of Proceedings****Chapter 1: Conditions****Section 1: Prosecution in Switzerland on behalf of another State****Art. 85** Principle

<sup>1</sup> At the request of the State in which the offence was committed, Switzerland may prosecute on its behalf an offence committed abroad if:

- a. extradition is not permitted;
- b. the defendant has to face charges 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 completing a sentence in Switzerland.

<sup>2</sup> A foreign national who is habitually resident in Switzerland may also be prosecuted in Switzerland if his extradition cannot be justified and prosecution in Switzerland seems appropriate with regard to his personal situation and social rehabilitation.

<sup>3</sup> These provisions do not apply if the offence is subject to Swiss jurisdiction on the basis of another provision.<sup>131</sup>

**Art. 86** Applicable law

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

<sup>2</sup> The foreign law applies if it is more lenient. The court may impose only the sentences provided for by Swiss law.

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

**Art. 87**<sup>132</sup> Jurisdiction

If Swiss jurisdiction is not yet established, it shall be determined in accordance with Article 32 CrimPC<sup>133</sup>.

**Section 2: Transfer to Foreign States****Art. 88**<sup>134</sup> Conditions

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

<sup>130</sup> Repealed by No I of the Federal Act of 4 October 1996, with effect from 1 February 1997 (AS **1997** 114; BBl **1995** III 1).

<sup>131</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1)

<sup>132</sup> Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS **2010** 1881; BBl **2006** 1085).

<sup>133</sup> SR **312.0**

<sup>134</sup> Amended by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS **1997** 114 130; BBl **1995** III 1)

- a. the defendant is present 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 offers the prospect of better social rehabilitation.

**Art. 89**            Effects

<sup>1</sup> If another State prosecutes the offence, the Swiss authorities may not take further measures against the defendant for the same offence:

- a. unless the requested State has given notice that it is not in a position to conclude the prosecution, or
- b. if according to the decision made in the requested State, the conditions of Article 5 letter a or b are met.

<sup>2</sup> The effect of the time limitation provisions under Swiss law is suspended provided the proceedings including enforcement of the sentence are ongoing in the requested State.<sup>135</sup>

<sup>3</sup> If the defendant was extradited to the requested State for other offences, this State need not observe the conditions of extradition in accordance with Article 38 provided 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 any evidentiary productions must be enclosed with the request.

**Art. 91**            Decision on the request

<sup>1</sup> The Federal Office shall decide on whether to accept the foreign request after consulting the prosecuting authorities.

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

<sup>3</sup> The decision does not create an obligation to institute criminal proceedings.

<sup>4</sup> The Federal Office may refuse to assume responsibility for the prosecution if there is good cause not to do so or if the seriousness of the offence does not justify it.

**Art. 92**            Foreign investigative measures

Any investigative measure carried out by the authorities of the requesting State under its law shall be considered equivalent to a corresponding Swiss investigative measure.

**Art. 93**            Costs

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

<sup>135</sup> The suspension of the effects of the time limitation provisions has been abolished by Art. 97 ff. of the Swiss Criminal Code (SR 311.0) and time limits for execution have been replaced by an extension of the regular time limit (AS 2006 3459; BBl 1999 1979).



<sup>2</sup> The cantons shall have a right of disposal over any fines paid and, subject to the provisions of the Federal Act of 19 March 2004<sup>136</sup> on the Division of Forfeited Assets, over forfeited objects.<sup>137</sup>

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

## **Part Five: Enforcement of Criminal Judgments**

### **Chapter 1: Conditions**

#### **Section 1: Enforcement by Switzerland**

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

<sup>1</sup> Final and enforceable criminal judgments from another State may be enforced at that State's request if:

- a. the convicted person is habitually resident in Switzerland or has to face charges here for a serious offence;
- b. the subject of the conviction is an offence committed abroad which, if committed in Switzerland, would be punishable here, and
- c. enforcement 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> Sentences imposed abroad shall be executed provided they do not exceed the maximum penalty provided by Swiss law for a corresponding offence. Sentences that remain below the minimum penalty according to Swiss law may be executed.

<sup>3</sup> ...<sup>138</sup>

<sup>4</sup> Fines as well as costs arising from proceedings under Article 63 may also be enforced if the convicted person is habitually resident abroad but has assets at his disposal in Switzerland and if the requesting State grants reciprocity.

##### **Art. 95** Inadmissibility of the enforcement order

<sup>1</sup> The order permitting enforcement (exequatur) may not be issued if:

- a.<sup>139</sup> the conviction took place at a time when, under Swiss law, the prosecution would have been time barred;
- b. the sentence would have been time barred under Swiss law if a Swiss authority had imposed it at the same time, or
- c. the offence is also subject to Swiss jurisdiction and no sentence could be imposed under Swiss law for other reasons.

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

<sup>136</sup> SR 312.4

<sup>137</sup> Amended by Annex No 2 of the Federal Act of 19 March 2004 on the Division of Forfeited Assets, in force since 1 August 2004 (AS 2004 3503; BBl 2002 441).

<sup>138</sup> Repealed by No I of the Federal Act of 4 October 1996, with effect from 1 February 1997 (AS 1997 114; BBl 1995 III 1).

<sup>139</sup> The amendment in accordance with Art. 97 ff. of the Swiss Criminal Code (SR 311.0) contains a limitation system (AS 2006 3459; BBl 1999 1979).

**Art. 96** Refusal to enforce

The court shall refuse to enforce in whole or in part if:

- a. the convicted person has incurred a sentence involving deprivation of liberty in Switzerland for other offences and enforcement as requested would result in an obviously more severe punishment than if the offences taken as a whole were judged in Switzerland, or
- b. the execution of any of the accessory criminal measures in Switzerland is not permitted, or
- c. it is of the opinion that the convicted person has good reason to oppose the enforcement of a judgment or penalty order that was issued in his absence and which is no longer subject to a right of objection or appeal under the law of the requesting State.

**Art. 97** Binding force of the findings in fact

In assessing criminal liability and the possibility of prosecution under Swiss law, the court shall be bound to the findings in fact on which the decision relies. If they do not suffice, the gathering of evidence may be ordered.

**Art. 98** Effects of enforcement

If Switzerland assumes responsibility for enforcement, no criminal proceedings against the convicted person for the same offence may be instituted or continued here.

**Art. 99** Use of Swiss institutions by foreign States

<sup>1</sup> If the conditions of Article 94 paragraph 1 are not met, sentences involving restriction of liberty that have been imposed on a non-Swiss national in another State may be enforced 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 basis for the restriction of the convicted person's liberty.

<sup>3</sup> If persons are surrendered to Switzerland in accordance with paragraph 1, then unless arrangements to the contrary have been made with the competent authorities of the surrendering State, they may neither be 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. These effects shall expire ten days after release on parole or final release from the institution.

<sup>4</sup> The Federal Council shall regulate the details.

**Section 2: Transfer to a Foreign State****Art. 100** Principle

Another State may be requested to enforce a Swiss criminal judgment if:

- a. it is certain to accept the binding force of the judgment in accordance with Article 97, and
- b. the transfer of enforcement is likely to improve the prospects of the social rehabilitation of the convicted person or if Switzerland cannot obtain his extradition.

**Art. 101** Conditions for transfer

<sup>1</sup> The convicted person who is detained in Switzerland may only be transferred with a view to enforcement of the judgment under Article 100 if he agrees and if the requested State is 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 said international agreement.<sup>140</sup>

**Art. 102** Effects of transfer

<sup>1</sup> If another State enforces the criminal judgment, the Swiss authority shall abandon enforcement provided the requested State has not given notice 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 judgment with a certificate attesting that it is legally enforceable;
- b. a certificate attesting the period of detention undergone in the requesting State;
- c. if the requested State so requests, the original or officially authenticated copy of the criminal file.

**Art. 104** Decision on the request

<sup>1</sup> After consulting with the authority which will execute the request, the Federal Office 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 sentence which is more severe than the one provided by Swiss law was imposed abroad, the prosecution may be taken over instead of the enforcement of the judgment if the requesting State so requests.

<sup>140</sup> Inserted by article 2 of the Federal Decree of 19 December 2003, in force since 1 October 2004 (AS 2004 4161 4162; BBl 2002 4340).

## Section 2: Procedure of Exequatur

### Art. 105<sup>141</sup> Competent judge

The competent court under Article 32 CrimPC<sup>142</sup> shall inform the convicted person of the applicable procedure, hear him on the matter, as well as his counsel, and decide on enforcement.

### Art. 106 Declaration of exequatur

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

<sup>2</sup> If the conditions are met, the court shall declare that the decision may be enforced and take the measures necessary for enforcement.

<sup>3</sup> The decision shall be made in the form of a judgment containing a statement of the rationale therefor. Cantonal law shall provide for an appeal.

## Section 3: Enforcement

### Art. 107 Execution of the sentence

<sup>1</sup> The sentence determined by the court shall be executed in accordance with Swiss law.

<sup>2</sup> Execution shall be discontinued if the decision is no longer enforceable in the requesting State.

<sup>3</sup> If enforcement relates solely to a decision on costs, the amounts collected after deduction of the costs incurred shall be transferred to the requesting State if it guarantees reciprocity.

### Art. 108 Costs

In addition to the costs for the execution of the sentence, the costs of exequatur proceedings and other enforcement measures shall also be regarded as costs in accordance with Article 31.

## Part Six: Final Provisions

### Art. 109 Repeal and amendment of current law

<sup>1</sup> The Federal Act of 22 January 1892 on Extradition to Foreign States<sup>143</sup> is hereby repealed.

2–3 ...<sup>144</sup>

### Art. 110 Transitional provisions

<sup>1</sup> Extradition proceedings which are pending on the commencement of this Act shall be completed in accordance with the procedural provisions of the Federal Act of 22 January 1892<sup>145</sup> on Extradition to Foreign States.

<sup>141</sup> Amended by Annex 1 No II 13 of the Criminal Procedure Code of 5 Oct. 2007, in force since 1 Jan. 2011 (AS 2010 1881; BBl 2006 1085).

<sup>142</sup> SR 312.0

<sup>143</sup> [BS 3 509]

<sup>144</sup> The amendments may be consulted under AS 1982 846.

<sup>2</sup> The prosecution and the enforcement of decisions in accordance with Parts Four and Five of this Act may be taken over only if the offence to which the request refers was committed after the commencement of this Act.

<sup>3</sup> Requests for extradition or other assistance in relation to offences which under Article 75<sup>bis</sup> of the Swiss Criminal Code<sup>146</sup> or Article 56<sup>bis</sup> of the Military Criminal Code<sup>147</sup> are not subject to a time limit may be granted by the Federal Council even if, on the date that these provisions come into force, the prosecution or the penalty is time barred.

**Art. 110a**<sup>148</sup> Transitional provision for the amendment of 4 October 1996

The provisions of the amendment of 4 October 1996 to this Act apply to all proceedings pending when such provisions come into force.

**Art. 110b**<sup>149</sup> Transitional provision for the amendment of 17 June 2005

The previous law applies to appeal proceedings against rulings issued by the court of first instance before this amendment comes into force.

**Art. 111** Implementation

<sup>1</sup> The Federal Council shall issue the implementing provisions.

<sup>2</sup> It may establish a standing committee to examine the question of whether the seriousness of the offence justifies the disclosure of classified information. The members of the committee are bound to secrecy like officials of the Confederation.

**Art. 112** Commencement and referendum

<sup>1</sup> This Act is subject to the optional referendum.

<sup>2</sup> The Federal Council shall determine the commencement date.

Commencement date: 1 January 1983<sup>150</sup>

<sup>145</sup> [BS 3 509]

<sup>146</sup> SR 311.0

<sup>147</sup> SR 321.0

<sup>148</sup> Inserted by No I of the Federal Act of 4 October 1996, in force since 1 February 1997 (AS 1997 114 130; BBl 1995 III 1)

<sup>149</sup> Inserted by Annex No 30 of the Federal Act of 17 June 2005 on the Federal Administrative Court, in force since 1 January 2007 (AS 2006 2197; BBl 2001 4202).

<sup>150</sup> Federal Council Decree of 24 February 1982 (AS 1982 877)

