

## **Translation**

### **Part VIII**

#### **Assistance to Member States of the European Union**

#### **Chapter 1**

#### **General provisions**

#### **Section 78**

#### **Precedence of Part VIII**

Unless this Part contains any special provisions, the other provisions of this Act shall apply to the requests by a Member State dealt with in Parts II, III and V.

#### **Section 79**

#### **General obligation to grant extradition; preliminary decision**

- 1) Permissible requests by a Member State for extradition or transit may be rejected only to the extent provided for in this Part. Reasons must be given for the decision not to grant extradition.
- 2) Prior to the decision of the Higher Regional Court on the permissibility of the request, the authority competent for granting extradition shall decide whether it intends to invoke any obstacles to granting extradition by virtue of section 83b. Reasons must be given for the decision not to invoke any obstacles to granting extradition. The decision shall be subject to review by the Higher Regional Court in the proceedings provided for under section 29; the parties concerned are to be heard. When being instructed in accordance with section 41 subsection 4, the requested person must also be informed that in the case of simplified extradition there will be no judicial review such as provided for in the third sentence.
- 3) Where circumstances which have arisen or become known after the decision pursuant to subsection 2, 1<sup>st</sup> sentence, was made and which are appropriate for invoking obstacles to granting extradition do not lead to a decision not to grant extradition, the decision not to invoke any obstacles to granting extradition shall be subject to review in the proceedings

provided for under section 33.

## **Chapter 2**

### **Extradition to a Member State of the European Union**

#### **Section 80**

##### **Extradition of German nationals**

1) The extradition of a German national for the purpose of conducting a criminal prosecution shall be permissible only if

1. it is guaranteed that, following the imposition of a final custodial sentence or other sanction, the requesting Member State will offer to return the requested person, if he so wishes, to serve his sentence in the territory to which this Act is applicable, and
2. the offence has a relevant connection with the requesting Member State.

As a general rule, the offence shall have a relevant connection with the requesting Member State if the act constituting the offence was committed as a whole or to a substantial extent in its territory and its result occurred there at least to a substantial extent, or if the act constituting the offence is a serious crime which is typically transnational in nature and which was at least in part also committed in its territory.

2) If the conditions set forth in subsection 1, 1<sup>st</sup> sentence, no. 2 have not been met, the extradition of a German national for the purpose of conducting a criminal prosecution shall be permissible only where

1. the conditions set forth in subsection 1, 1<sup>st</sup> sentence, no. 1 have been met and the offence
2. has no relevant connection with Germany and
3. is an unlawful act constituting a criminal offence also under German law or would be such an act also under German law if the facts were converted accordingly, and where, the conflicting interests having been weighed up in the concrete case, the legitimate expectation of the requested person that he would not be extradited does not prevail.

As a general rule, the offence has a relevant connection with Germany if the act constituting the offence was committed as a whole or to a substantial extent in the territory to which the Act is applicable and if its result occurred there at least to a substantial extent. In the

weighing up, circumstances to be weighed and compared to each other shall include, in particular, the alleged offence, the practical requirements and opportunities of effective criminal prosecution and those interests of the requested person which are safeguarded as fundamental rights, taking into account the objectives connected with the establishment of a European Judicial Area. Where in respect of the offence which is the subject matter of the request for extradition, a decision has been made by a public prosecution office or by a court terminating, or determining not to initiate, a German criminal proceeding, that decision and the reasons given for it must be taken into consideration in the weighing up; the same applies where a court has opened the main proceedings or issued a penal order.

3) The extradition of a German national for the purpose of executing a sentence shall be permissible only if the requested person, after being instructed, gives his consent before a judge to be recorded in writing. Section 41 subsections 3 and 4 shall apply *mutatis mutandis*.

4) Where a request for execution of a final custodial sentence or other sanction involving deprivation of liberty imposed abroad was preceded by extradition pursuant to subsection 1 or 2 for the act forming the basis of the judgment or where such a request is submitted because the requested person does not consent as required under subsection 3, section 49 subsection 1 no. 3 shall not apply. Where, in the case of such a request, the sentence has to be converted pursuant to section 54 and there is no maximum sanction imposable for the offence in the territory to which this Act is applicable because the requirements of section 49 subsection 1 no. 3 are not fulfilled, a maximum of two years' deprivation of liberty shall be substituted for the maximum sanction.

## **Section 81**

### **Extradition for prosecution or for execution of sentence**

Section 3 shall be applicable subject to the following conditions:

1. Extradition for prosecution shall be permissible only if, pursuant to the law of the requesting Member State, the act is punishable by a custodial sentence or other sanction for a maximum period of at least twelve months;
2. extradition for execution of sentence shall be permissible only if, pursuant to the law of the requesting Member State, the custodial sentence to be executed amounts to at least four months;
3. extradition in relation to taxes or duties, customs and exchange shall also be permissible where German law does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as

the law of the requesting Member State;

4. double criminality shall not be verified if, under the law of the requesting State, the act forming the basis of the request violates a penal provision relating to the categories of offences listed in Article 2 para. 2 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ EC no. L 190 p. 1).

## **Section 82**

### **Non-applicability of provisions**

Section 5, section 6 subsection 1, section 7 and, where a European arrest warrant has been issued, section 11 shall not be applicable.

## **Section 83**

### **Additional criteria for permissibility**

Extradition shall not be permissible

1. if the requested person has already been finally judged by another Member State in respect of the same act forming the basis of the request, provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing State,
2. if, pursuant to section 19 of the Criminal Code, the requested person lacked criminal responsibility at the time the act was committed or
3. if, in the case of a request for execution of sentence, the decision on which the request is based was rendered in the absence of the requested person and the requested person was not summoned in person or otherwise informed of the hearing which led to the decision rendered in absentia, unless, having been aware of the proceedings against him in which defence counsel took part, the requested person prevented his being summoned in person by fleeing or, after his surrender, he will be granted the right to a retrial in which the charges against him will be examined thoroughly, and the right to be present at that trial, or
4. if, pursuant to the law of the requesting Member State, the act forming the basis of the request is punishable by custodial life sentence or another life-time sanction involving deprivation of liberty or the requested person had received such a sentence and execution of the sentence or sanction imposed is not subject to review on request or ex officio at the latest after 20 years.

## **Section 83a**

### **Extradition documents**

- 1) Extradition shall be permissible only if the documents specified in section 10 or a European arrest warrant containing the following information have been submitted:
1. the identity as specified in the annex to the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States and the nationality of the requested person,
  2. the name and address of the issuing judicial authority,
  3. evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect,
  4. the nature and legal classification of the offence including the legal provisions,
  5. a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person, and
  6. the maximum penalty prescribed for the offence under the law of the issuing Member State or the penalty imposed, if there is a final judgment.
- 2) An alert for arrest for the purpose of extradition pursuant to the Convention Implementing the Schengen Agreement which contains the information referred to in subsection 1 nos. 1 to 6 or in respect of which such information was subsequently submitted shall be deemed to be a European arrest warrant.

## **Section 83b**

### **Obstacles to granting extradition**

- 1) The granting of extradition may be refused where
- a) criminal proceedings are being conducted against the requested person in the territory to which this Act is applicable for the same act as that on which the request for extradition is based;
  - b) it has been decided not to initiate criminal proceedings for the same act as that on which the request for extradition is based or to terminate proceedings already initiated;
  - c) the request for extradition made by a third State is to be given priority;
  - d) it is neither on account of a duty to extradite under Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ EC no. L 190 p. 1) nor on account of an assurance provided by the

requesting State or for other reasons that it can be expected that the requesting State would grant a similar German request.

- 2) The granting of extradition of a foreigner who has his habitual residence on domestic territory may also be refused where
- a) in the case of extradition for the purpose of conducting a criminal prosecution, pursuant to section 80 subsections 1 and 2, the extradition of a German national would not be permissible;
  - b) in the case of extradition for the purpose of executing a sentence, after being instructed, he declares before a judge to be recorded in writing that he does not consent to it and his legitimate interest in the domestic execution of the sentence prevails; section 41 subsections 3 and 4 shall apply *mutatis mutandis*.

Section 80 subsection 4 shall apply *mutatis mutandis*.

### **Section 83c**

#### **Time limits**

- 1) The decision on extradition should be taken at the latest within a period of 60 days after the arrest of the requested person.
- 2) Where the requested person consents to his simplified extradition, the decision on extradition should be taken at the latest within a period of ten days after consent has been given.
- 3) After extradition has been granted, a date for the surrender of the requested person shall be agreed with the requesting Member State. The surrender date should be no later than ten days after the decision on granting extradition has been taken. If observance of this date is prevented by circumstances beyond the control of the requesting Member State, a new surrender date shall be agreed within a period of ten days. The agreement on a surrender date may be postponed in view of criminal proceedings or execution of sentence pending in respect of the requested person in the territory to which this Act is applicable or for other serious humanitarian reasons.
- 4) Where in exceptional circumstances the time limits provided for in this section cannot be observed, the Federal Government shall inform Eurojust, giving reasons for the delay; personal data shall not be transmitted.
- 5) The decision on a request for an extension of the decision granting extradition shall be taken within a period of 30 days after the request has been received.

### **Section 83d**

### **Release of the requested person**

If custody of the requested person has not been assumed within a period of ten days following expiry of the surrender date agreed upon in accordance with section 83c subsection 3, the requested person shall be released from detention pending extradition unless a new surrender date has been agreed upon.

### **Section 83e**

#### **Hearing of the requested person**

- 1) As long as a decision on extradition has not yet been taken, a request by the requesting Member State for the requested person to be heard as an accused shall be granted.
- 2) At their request, representatives of the requesting Member State shall be granted permission to be present during the hearing.

### **Chapter 3**

#### **Transit to a Member State of the European Union**

### **Section 83f**

#### **Transit**

- 1) The transit from one Member State through the territory to which this Act is applicable to another Member State shall be permissible if the documents transmitted provide information on
  1. the identity as specified in the annex to the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ EC no. L 190 p. 1) and the nationality of the requested person,
  2. the existence of a European arrest warrant or a document as specified in section 10,
  3. the nature and legal classification of the offence and
  4. the circumstances of the offence, including the date and place.
- 2) Subsection 1 shall apply to transit from a third State to a Member State with the proviso that the information referred to in subsection 1 no. 2 is replaced by information on the existence of a request for extradition.
- 3) The transit of German nationals for the purpose of conducting a criminal prosecution shall be permissible only if the Member State to which the requested person is to be extradited guarantees that, following the imposition of a final custodial sentence or other sanction, the

requested person will be returned, at Germany's request, to serve sentence in the territory to which this Act is applicable. The transit of German nationals for the purpose of executing a sentence shall be permissible only with the consent of the person concerned. Section 80 subsection 4 shall apply *mutatis mutandis*.

4) The decision on a transit request shall be taken within a period of 30 days after the request has been received.

### **Section 83g**

#### **Transport by air**

Section 83f shall also apply to the transport by air where an unscheduled landing occurs on the territory to which this Act is applicable.

### **Chapter 4**

#### **Outgoing extradition requests to a Member State of the European Union**

### **Section 83h**

#### **Speciality**

1) Persons surrendered by a Member State on the basis of a European arrest warrant may

1. not be prosecuted, sentenced or otherwise deprived of their liberty for an offence committed prior to their surrender other than that for which they were surrendered and
2. not be re-extradited, transferred or deported to a third State.

2) Subsection 1 shall not apply where

1. the person surrendered, having had the opportunity to leave the territory to which this Act is applicable, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it,
2. the offence is not punishable by a custodial sentence or detention order;
3. the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
4. the person surrendered could be liable to a penalty or measure not involving deprivation of liberty even if the penalty or measure may give rise to a restriction of his personal liberty, or
5. the requested Member State or the person surrendered has renounced its application.

3) Renunciation expressed by the surrendered person after his surrender shall be given

before a judge or public prosecutor to be recorded in writing. The renunciation shall be irrevocable. The person surrendered shall be informed accordingly.

### **Section 83i**

#### **Information on delays**

The Federal Government shall inform the Council of the European Union about any repeated delays in extradition on the part of another Member State. Together with such information, pseudonymised data of the requested person may be transmitted to the Council if, in a particular case, this is necessary for establishing the reasons for the delays. The Federal Government may reconstitute the identity of the person concerned only for the information of the State to which the request for extradition has been addressed, and only if necessary for evaluating the implementation of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ EC no. L 190 p. 1).