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## **Section 2 Principle**

(1) A foreigner who is being prosecuted or who has been convicted in a foreign State because of an offence punishable in that State may be extradited to that foreign State at the request of a competent authority of that State for the purpose of prosecution, or for the enforcement of a penalty or other sanction imposed for that offence.

(2) A foreigner who has been convicted in a foreign State because of an offence punishable in that State may be extradited to another foreign State which has taken over the enforcement, at the request of the competent authority of the enforcing State, for the purpose of enforcing the penalty or other sanction imposed for the offence.

(3) Foreigners within the meaning of this Act are persons who are not German citizens pursuant to Article 116 (1) of the Grundgesetz.

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## **Section 3 Extradition for the Purpose of Prosecution or Enforcement**

(1) Extradition shall not be granted unless the offence is an unlawful act<sup>2)</sup> under German law or unless mutatis mutandis<sup>3)</sup> the offence would also constitute an offence under German law.

(2) Extradition for the purpose of prosecution shall not be granted unless the offence is punishable under German law by a maximum penalty of imprisonment of no less than one year, or unless mutatis mutandis the offence would be punishable by such a penalty under German law.

(3) Extradition for the purpose of the enforcement of a sentence shall not be granted unless an extradition for the purpose of prosecution for the offence would be admissible and a custodial penalty is to be enforced. It shall not be granted unless it is to be expected that the period of the custodial penalty still to be served or the sum of the periods of custodial penalties still to be served is not less than four months.

### Footnotes

2) The German original speaks of a „rechtswidrige Tat“, which refers to the tri-partite structure of criminal offences in German law, and means that the act must fulfil the elements of the actus reus and mens rea of the first-tier offence description (Tatbestand) as well as the second-tier element of general unlawfulness (Rechtswidrigkeit). The third-tier element of guilt (Schuld) need not be fulfilled.

3) The law uses the term „sinngemäße Umstellung des Sachverhalts“ which means that at least a recharacterisation or reorganisation of the facts must, „mutatis mutandis“, match the provisions of the German criminal law.

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## **Section 4 Extradition for Additional Offences**

If an extradition request may be granted, it may additionally be granted for another offence even if with respect to the latter

(1) the conditions under s. 3(2) or (3) do not apply, or

(2) the conditions pursuant to ss. 2 or 3(1) do not apply because the offence is punishable only by a penalty according to s. 1(2).

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## **Section 5 Reciprocity**