

No. 22702

**NETHERLANDS
and
FEDERAL REPUBLIC OF GERMANY**

**Agreement to supplement the European Convention on
Extradition of 13 December 1957 and to facilitate its
application. Signed at Wittem on 30 August 1979**

Authentic texts: Dutch and German.

Registered by the Netherlands on 13 February 1984.

**PAYS-BAS
et
RÉPUBLIQUE FÉDÉRALE D'ALLEMAGNE**

**Accord destiné à compléter la Convention européenne
d'extradition du 13 décembre 1957 et à en faciliter l'ap-
plication. Signé à Wittem le 30 août 1979**

Textes authentiques : néerlandais et allemand.

Enregistré par les Pays-Bas le 13 février 1984.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE KINGDOM OF THE NETHERLANDS
AND THE FEDERAL REPUBLIC OF GERMANY TO SUPPLEMENT
THE EUROPEAN CONVENTION ON EXTRADITION OF
13 DECEMBER 1957² AND TO FACILITATE ITS APPLICATION

The Kingdom of the Netherlands and the Federal Republic of Germany,

Desiring to facilitate the application of the European Convention on Extradition of 13 December 1957 with respect to the relations between the two States² and to supplement the regulation of extradition provided for in that Convention,

Have agreed as follows:

Article I. In this Agreement the term “Convention” shall mean the European Convention on Extradition of 13 December 1957.

Article II (ad article 2 of the Convention). (1) Extradition shall also be granted where the combined term of several sentences and detention and correctional measures amounts to at least four months.

(2) Without prejudice to articles 3 to 5 inclusive and 7 to 10 inclusive of the Convention, extradition under article 2, paragraph 2, of the Convention shall be admissible for offences which are punishable only by a fine, or which are punishable in one of the two States and in the other State are dealt with by administrative authorities as infractions of regulations relating to public order, provided that their decisions can be appealed to a judge who is competent in criminal cases as well. Extradition under this paragraph shall be admissible only as a supplement to extradition under article 2, paragraph 1, of the Convention and may be granted concurrently with it or subsequently.

(3) A final decision of a judicial or administrative authority which is delivered without a trial and imposes detention or a fine on a person shall be assimilated to a sentence, provided that the person in question had the opportunity to conduct his defence.

Article III (ad article 5 of the Convention). Extradition for infractions of regulations concerning charges, taxes, customs duties and foreign exchange shall be admissible under the conditions laid down in the Convention and in this Agreement in particular instances and without setting a precedent.

Article IV (ad article 7, paragraph 1, and article 8 of the Convention). (1) Where the punishable offence giving rise to the request for extradition also falls within the jurisdiction of the requested State, the latter shall determine whether it is more expedient that the person claimed should be judged by a judicial authority of the requesting State.

¹ Came into force on 30 January 1983, i.e., one month after the exchange of the instruments of ratification, which took place at Bonn on 30 December 1982, in accordance with article XV (2).

² United Nations, *Treaty Series*, vol. 359, p. 273.

The same shall apply in the case of supplementary requests for consent to further prosecution for offences other than the offence for which he was extradited and in the case of requests for re-extradition to a further State.

(2) If one of the two Parties to this Convention has requested from a third State the extradition of one of its own nationals for an offence which is also within the jurisdiction of the other Party, the latter shall determine whether, instead of requesting extradition from the third State, it will request the State of nationality to undertake the prosecution.

Article V (ad article 10 of the Convention). (1) The prevention or suspension of any legal effects of lapse of time shall be governed solely by the law of the requesting State.

(2) The obligation to extradite shall not be affected by the absence of any application for sentence or authorization for prosecution which is required solely under the law of the requested State.

Article VI (ad article 12 of the Convention). Without prejudice to the diplomatic channel, correspondence shall be conducted:

- (a) In matters relating to extradition, between the Federal Minister of Justice or the Ministries of Justice of the *Länder* (the *Landesjustizverwaltungen*) of the Federal Republic of Germany on the one hand and the Netherlands Minister of Justice on the other;
- (b) In matters relating to transit, between the Federal Minister of Justice of the Federal Republic of Germany on the one hand and the Netherlands Minister of Justice on the other.

Article VII (ad article 14 of the Convention). (1) Conditional sentencing, or discharge without an order restricting the freedom of movement of the extradited person, shall be assimilated to final discharge.

(2) The requested State shall waive compliance with the restrictions laid down in article 14 of the Convention if the extradited person gives his consent to unrestricted criminal prosecution or execution of sentence by a statement made before a judge after being informed of its legal effects. The statement shall be taken down in writing.

(3) The statement may also be made after extradition has taken place. In such cases a certified transcript of the statement shall be transmitted to the requested State.

Article VIII (ad article 17 of the Convention). If one of the two Parties to this Agreement and a third State ask the other Party for extradition and preference is given to one of the requests, the requested Party shall, when notifying the requesting States of the decision concerning the request for extradition, indicate to what extent it consents to re-extradition of the extradited person to the other requesting State from the State to which he is extradited.

Article IX (ad article 19 of the Convention). (1) A request for temporary surrender of the person claimed, with a view to the performance of specific procedural acts, in particular the trial, shall be complied with, provided that the criminal procedure of the requested State is not thereby impeded. The person surrendered shall be returned by the requesting State immediately after the performance of the

said procedural acts or upon the application of the requested State, regardless of his nationality.

(2) The competent authorities of the requesting State shall hold the person surrendered in custody throughout his stay in its territory.

(3) The time spent in custody by the person surrendered between his departure from the territory of the requested State and his return to that territory shall be deducted from the sentence to be imposed or executed in the requested State. If any factual or legal impediment exists with regard to the foregoing, the time spent in custody shall be deducted from the sentence to be imposed or executed in the requesting State.

(4) Each State shall defray the expenses incurred in the application of this article in its territory.

Article X (ad article 20 of the Convention). (1) In the cases referred to in article 20, paragraphs 1 and 2, the requested State shall, when reporting the seizure of property, also indicate whether the person claimed agrees to the direct return of the property to the injured persons. The requesting State shall inform the requested State as soon as possible whether the handing over of the property is being waived on the express condition that it is delivered to the owner or otherwise entitled person or their authorized representative upon production of a certificate of release issued by a designated criminal-prosecution authority.

(2) When the requested State, upon instruction by a judicial authority, hands over property and waives the return thereof, it shall not assert any customs lien or other liability *in rem* under the provisions of customs law or taxation law, unless the property owner injured by the offence is himself liable for the duty or tax in question.

Article XI (ad article 23 of the Convention). Requests for extradition and other documents shall be drawn up in the language of the requesting State.

No translations shall be required.

Article XII (ad article 27 of the Convention). (1) This Agreement shall apply also to *Land Berlin*, provided that the Government of the Federal Republic of Germany does not make a contrary declaration to the Government of the Kingdom of the Netherlands within three months from the date of the entry into force of this Agreement.

(2) This Agreement shall be binding only for the European territory of the Kingdom of the Netherlands.

Should the applicability of the Convention be extended to include the Netherlands Antilles, the applicability of this Agreement may be extended to the Netherlands Antilles by an exchange of notes between the Parties.

Article XIII. (1) Provisions of multilateral conventions which are concluded with the aim of supplementing the Convention or facilitating its application shall, as from the date of their entry into force between the Kingdom of the Netherlands and the Federal Republic of Germany, supersede corresponding provisions of this Agreement.

(2) Before the multilateral conventions referred to in paragraph (1) enter into force between the Parties to this Agreement, the Parties shall determine by agreement which provisions of the said conventions shall supersede corresponding provisions of this Agreement.

Article XIV (ad article 31 of the Convention). Denunciation of the Convention by one of the Parties to this Agreement shall enter into force between them after the expiry of a period of two years from the date on which notice of denunciation is received by the Secretary-General of the Council of Europe.

Article XV. (1) This Agreement shall be ratified; the instruments of ratification shall be exchanged at Bonn as soon as possible.

(2) This Agreement shall enter into force one month after the exchange of the instruments of ratification.

(3) This Agreement may be denounced in writing at any time; it shall cease to have effect six months after the date of denunciation. Even if it is not denounced, it shall cease to have effect on the date when the Convention ceases to have effect between the Parties to this Agreement.

DONE at Wittern on 30 August 1979 in two copies, each in the Dutch and German languages, both texts being equally authentic.

For the Kingdom of the Netherlands:

J. DE RUITER

For the Federal Republic of Germany:

DREHER

H. J. VOGEL
