

Übersetzung durch Ute Reusch

Translation provided by Ute Reusch

Stand: Die Übersetzung berücksichtigt die Änderung(en) durch Artikel 29 des Gesetzes vom 5. Oktober 2021 (BGBl. I S. 4607)

Version information: The translation includes the amendment(s) to the Act by Article 29 of the Act of 5 October 2021 (Federal Law Gazette I, p. 4607)

Zur Nutzung dieser Übersetzung lesen Sie bitte den Hinweis auf www.gesetze-im-internet.de unter "[Translations](#)".

For conditions governing use of this translation, please see the information provided at www.gesetze-im-internet.de under "[Translations](#)".

Act on International Mutual Assistance in Criminal Matters (Gesetz über die internationale Rechtshilfe in Strafsachen – IRG)

International Mutual Assistance Act in the version published on 27 June 1994 (Federal Law Gazette I, p. 1537), as last amended by Article 29 of the Act of 5 October 2021 (Federal Law Gazette I, p. 4607)

Part 1

Scope of application

Section 1

Scope of application

(1) Mutual assistance in criminal matters between Germany and foreign states is governed by the provisions of this Act.

(2) For the purposes of this Act, 'criminal matters' includes proceedings for an offence which is punishable under German law as a regulatory offence by imposition of an administrative fine or which is punishable under the law of a foreign state by imposition of a comparable sanction, provided that a court which also has jurisdiction in criminal matters is able to determine the sanction.

(3) Insofar as they have become directly applicable domestic law, the provisions of agreements under international law take precedence over the provisions of this Act.

(4) Assistance rendered in the context of proceedings in a criminal matter relating to a Member State of the European Union is governed by the provisions of this Act.

(5) Assistance rendered in the context of proceedings in a criminal matter relating to extradition and transit matters involving the Republic of Iceland or the Kingdom of Norway is governed by the provisions of this Act.

Part 2

Extradition abroad

Section 2

Principle

(1) A foreign national who is being prosecuted in a foreign state for an offence or who has been convicted of an offence which is punishable there may be extradited to that foreign state upon the request of a competent agency for prosecution or for enforcement of a penalty or other sanction imposed for that offence.

(2) A foreign national who has been convicted in a foreign state of an offence which is punishable there may be extradited to another foreign state which has taken on the

enforcement upon the request of a competent agency in that foreign state for enforcement of a penalty or other sanction imposed for that offence.

(3) For the purposes of this Act, 'foreign nationals' means persons who are not Germans as defined in Article 116 (1) of the Basic Law (*Grundgesetz*).

Section 3

Extradition for prosecution or for enforcement

(1) Extradition is only permissible if the offence is also an unlawful act under German law which fulfils the elements of a criminal provision or if it would also constitute such an act under German law in the case of analogous conversion of the facts.

(2) Extradition for the purpose of prosecution is only permissible if the offence is punishable under German law with a maximum sentence of imprisonment of at least one year or if it would be punishable under German law by imposition of such a penalty in the case of analogous conversion of the facts.

(3) Extradition for the purpose of enforcement is only permissible if extradition for the purpose of prosecution would be permissible for the offence and if a sanction involving deprivation of liberty is to be enforced. It is, further, only permissible if it is to be expected that the remainder of the sanction involving deprivation of liberty still to be enforced or the sum of the sanctions involving deprivation of liberty still to be enforced amounts to no less than four months.

Section 4

Accessory extradition

If extradition is permissible, then it is also permissible for a further offence where

1. the conditions of section 3 (2) or (3) are not met for that offence or
2. the conditions of section 2 or of section 3 (1) are not met for that offence on account of the further offence only being punishable by a sanction under the terms of section 1 (2).

Section 5

Reciprocity

Extradition is only permissible where assurances given by the requesting state lead to the expectation that the request would correspond to a comparable German request.

Section 6

Political offences, political persecution

(1) Extradition is not permissible for a political offence or for an act committed in connection with such an offence. It is permissible if the person pursued is being prosecuted for or has been convicted of completed or attempted genocide, murder under specific aggravating circumstances (*Mord*) or murder (*Totschlag*) or participating in such an offence.

(2) Extradition is not permissible if there are substantial grounds for believing that, in the event of being extradited, the person pursued would be prosecuted or punished by reason of his or her race, religion, nationality, political views or belonging to a specific social group, or if that person's situation would be made more difficult for one of those reasons.

Section 7

Military offences

Extradition is not permissible for an offence which only constitutes a breach of military duties.

Section 8

Death penalty

If the offence is punishable under the law of the requesting state by the death penalty, then extradition is only permissible if the requesting state gives an assurance that the death penalty will not be imposed or will not be enforced.

Section 9

Concurrent jurisdiction

Where German jurisdiction is also established for an offence, extradition is not permissible if

1. a court or an authority within the area of application of this Act has delivered a judgment or given a decision with corresponding legal effect against the person pursued for the offence, has refused to open main proceedings (section 204 of the Code of Criminal Procedure (*Strafprozeßordnung*)), has not granted an application to prefer public charges (section 174 of the Code of Criminal Procedure), has terminated proceedings following the fulfilment of conditions and directions (section 153a of the Code of Criminal Procedure), or has dispensed with prosecution or terminated proceedings under juvenile criminal law (sections 45 and 47 of the Youth Courts Act (*Jugendgerichtsgesetz*)) or
2. prosecution or enforcement is statute-barred under German law or is ruled out under German immunity law.

Section 9a

Extradition and proceedings before international criminal courts

(1) Extradition is not permissible where an international criminal court established by an instrument which is legally binding on the Federal Republic of Germany has delivered a final criminal judgment against the person pursued for the offence or has given a decision with corresponding legal effect, or it has finally terminated criminal proceedings, and, under the instrument of constitution, prosecution by another body is prohibited in that case. If the court referred to in sentence 1 conducts criminal proceedings for the offence and it has not yet issued its decision at the time of receipt of the request for extradition, then the decision on whether extradition is permissible is deferred. Temporary extradition (section 37) is not possible.

(2) If both a foreign state and a court as referred to in subsection (1) sentence 1 request that the person pursued be surrendered for the purpose of criminal prosecution or enforcement of a penalty (concurrent requests) and the instrument of constitution of the court or the legislation enacted in its implementation make provision on the procedure to be followed in the case of several requests being made, then the requests are executed in accordance with those provisions. If neither the instrument of constitution nor the legislation enacted in its implementation make provision on the procedure to be followed in the case of concurrent requests but the instrument of constitution gives precedence to proceedings before the international criminal court over proceedings in the foreign state, then precedence is given to the request submitted by the international criminal court.

Section 10

Extradition documentation

(1) Extradition is only permissible if an arrest warrant, a document with corresponding legal effect or an enforceable judgment ordering deprivation of liberty issued by a competent agency in the requesting state and a description of the applicable statutory provisions have been submitted in respect of the offence. Where a request is made for extradition for the prosecution of several offences, it is sufficient, in respect of the further offences, to submit the document issued by the competent agency in the requesting state which clearly indicates the offence of which the person pursued is accused in lieu of an arrest warrant or a document with corresponding legal effect.

(2) Where the particular circumstances of a case give cause to examine whether there appears to be sufficient suspicion that the person pursued committed the offence of which he or she is accused, then extradition is, further, only permissible where a description of the facts setting out the sufficient grounds to suspect that said person committed the offence has been submitted.

(3) Extradition for enforcement of a penalty or other sanction which was imposed in a third state is only permissible where the following have been submitted:

1. the enforceable judgment ordering deprivation of liberty and a document issued by the third state indicating that it consents to enforcement by the state which has taken on enforcement,
2. a document issued by a competent agency in the state which has taken on enforcement indicating that the penalty or other sanction is enforceable there,
3. a description of the applicable statutory provisions and
4. a description, in the case under subsection (2), within the meaning of this provision.

Section 11 Speciality

(1) Extradition is only permissible where it is guaranteed that the person pursued

1. will not be punished in the requesting state without Germany's consent, nor subjected to a restriction of personal liberty nor prosecuted by measures which cannot also be taken in his or her absence on any grounds arising prior to the transfer, with the exception of the offence giving rise to the authorisation of extradition,
2. will not be re-extradited, transferred or deported to a third state without Germany's consent and
3. may leave the requesting state following final conclusion of the proceedings giving rise to the authorisation of that person's extradition.

(2) The requesting state may only be released from the obligation to abide by the principle of speciality if

1. Germany has consented to prosecution or to enforcement of a penalty or other sanction relating to a further offence (section 35), or to re-extradition, transfer or deportation to another foreign state (section 36),
2. the person pursued had the right and the opportunity to leave the requesting state but did not do so within one month after final conclusion of the proceedings giving rise to the authorisation of his or her extradition, or
3. the person pursued returned to the requesting state after leaving or was transferred back there by a third state. The right of the requesting state to hear the person pursued in the course of preparing a request under section 35 remains unaffected.

(3) Conditional release without an order restricting the person pursued's freedom of movement is equal to final conclusion of the proceedings pursuant to subsection (1) no. 3 or subsection (2) sentence 1 no. 2.

Section 12 Authorisation of extradition

Except in the case referred to in section 41, extradition may only be authorised if the court has declared it permissible.

Section 13 Subject-matter jurisdiction

- (1) It is for a higher regional court to give the relevant court decisions, subject to sections 21, 22 and 39 (2). There is no right of appeal against such decisions by a higher regional court.
- (2) The public prosecution office at the higher regional court prepares decisions on extradition and effects extradition once it has been authorised.

Section 14
Local jurisdiction

- (1) Local jurisdiction lies with the higher regional court and the public prosecution office at the higher regional court in whose district the person pursued is apprehended for the purpose of extradition or, if he or she is not apprehended, was first determined to be in.
- (2) If several persons pursued who are to be extradited for participating in the same offence or for aiding after the fact, obstruction of prosecution or of punishment, or for handling stolen goods in connection with it are apprehended for the purpose of extradition or are found to be in the districts of different higher regional courts, then jurisdiction lies with that higher regional court or, if no higher regional court is yet seised of the case, with that public prosecution office at the higher regional court which was first seised of the case.
- (3) If the person pursued's whereabouts are not known, the Federal Court of Justice determines which higher regional court has jurisdiction.

Section 15
Arrest pending extradition

- (1) After receipt of a request for extradition, arrest pending extradition may be ordered against the person pursued if
1. there is a danger that the person pursued will evade the extradition proceedings or extradition itself or
 2. there is strong reason to believe, based on certain facts, that the person pursued will render more difficult the establishment of the truth in proceedings in the foreign state or in the extradition procedure.
- (2) Subsection (1) does not apply if it appears, from the outset, that extradition is not permissible.

Section 16
Provisional arrest pending extradition

- (1) Arrest pending extradition may be ordered under the conditions of section 15 even before receipt of the request for extradition if
1. the competent agency in the requesting state makes a request to that effect or
 2. there is strong reason to believe, based on certain facts, that a foreign national has committed an offence which may provide grounds for extradition.
- (2) The warrant of arrest pending extradition is to be lifted if the person pursued has spent a total of two months under arrest pending extradition, calculated from the day of apprehension or provisional arrest, without the request for extradition and the extradition documentation having been received by the authority designated in section 74 or by another agency competent to take receipt of them. Where a non-European state has requested the making of an order for provisional arrest pending extradition, the time limit is three months.
- (3) Following receipt of the request for extradition and extradition documentation, the higher regional court gives a decision without delay as to whether detention is to continue.

Section 17
Warrant of arrest pending extradition

- (1) Provisional arrest pending extradition and arrest pending extradition are ordered by way of written arrest warrant (warrant of arrest pending extradition) issued by the higher regional court.
- (2) The warrant of arrest pending extradition must indicate the following:
1. the name of the person pursued,
 2. the state to which, in the light of the circumstances of the case, extradition is considered as a possibility,

3. the offence of which the person pursued is being accused,
4. the request or, in the case under section 16 (1) no. 2, the facts which indicate that there is strong reason to believe that the person pursued committed the offence giving cause for that person's extradition and
5. the reason for arrest and the facts on which it is based.

Section 18 **Investigative measures**

Where a request for extradition has been received and the person pursued's whereabouts are not known, the measures required to ascertain the person pursued's whereabouts and to arrest him or her may be taken. No separate request is required for the ordering of individual investigative measures. It is for the public prosecution office at the higher regional court to issue an alert for arrest. The provisions of Division 9a of the Code of Criminal Procedure apply accordingly.

Section 19 **Provisional arrest**

Where the conditions for the issuing of a warrant of arrest pending extradition are met, the public prosecution office and police officers are authorised to make a provisional arrest. Under the conditions of section 127 (1) sentence 1 of the Code of Criminal Procedure, any person is authorised to make a provisional arrest.

Section 20 **Disclosure**

- (1) Upon their arrest, persons pursued are to be informed of the reason for their arrest.
- (2) Where a warrant of arrest pending extradition has been issued, it must be disclosed to the person pursued without delay. The person pursued is given a copy.

Section 21

Procedure following apprehension based on warrant of arrest pending extradition

- (1) Upon their apprehension on the basis of a warrant of arrest pending extradition, persons pursued are to be brought before a judge at the nearest local court without delay, but no later than the day following their apprehension.
- (2) The judge at the local court hears persons pursued about their personal circumstances, in particular nationality, without delay after they are brought before the court, but no later than the following day. The judge draws their attention to the right to avail themselves of the services of legal counsel (section 40) at any stage of the proceedings and to the fact that they are free to either make a statement or not make a statement regarding the offence of which they are accused. The judge then asks whether and, if so, for what reasons they wish to object to extradition, to the warrant of arrest pending extradition or to its enforcement. In the case under section 16 (1) no. 2, the hearing also encompasses the subject matter of the accusation; in all other cases, any information which persons pursued volunteer is to be placed on record.
- (3) If it transpires in the course of the hearing that
 1. the person apprehended is not the person designated in the warrant of arrest pending extradition,
 2. the warrant of arrest pending extradition has been lifted or
 3. enforcement of the warrant of arrest pending extradition has been suspended,then the judge at the local court orders the apprehended person's release.
- (4) Where the warrant of arrest pending extradition has been lifted or its enforcement has been suspended, the judge at the local court orders that the person pursued be detained until the higher regional court gives its decision if

1. the conditions for the issuing of a new warrant of arrest pending extradition for the offence are met or
2. there are grounds for ordering enforcement of the warrant of arrest pending extradition.

The public prosecution office at the higher regional court is responsible for ensuring that the higher regional court gives such a decision without delay.

(5) If the person pursued raises other objections to the warrant of arrest pending extradition or to its enforcement which are not manifestly unfounded, or if the judge at the local court has doubts in respect of continuing detention, then the judge without delay and by expeditious means notifies the public prosecution office at the higher regional court of that fact. The public prosecution office at the higher regional court is responsible for ensuring that the higher regional court gives such a decision without delay.

(6) If the person pursued does not raise any objections to extradition, then the judge at the local court instructs said person about the possibility of a simplified extradition procedure and about its legal consequences (section 41) and then records their statement.

(7) There is no right of appeal against the decision given by the judge at the local court. The public prosecution office at the higher regional court may order the person pursued's release.

Section 22

Procedure following provisional arrest

(1) Upon their provisional arrest, persons pursued are to be brought before the judge at the nearest local court without delay, but no later than the day following their arrest.

(2) The judge at the local court hears persons pursued without delay after they are brought before the court, but no later than the following day, about their personal circumstances, in particular nationality. The judge draws their attention to the right to avail themselves of the services of legal counsel (section 40) at any stage of the proceedings and to the fact that they are free to either make a statement or not make a statement regarding the offence of which they are accused. The judge then asks whether and, if so, for what reasons they wish to object to extradition or to the provisional arrest. Section 21 (2) sentence 4 applies accordingly.

(3) If it transpires in the course of the hearing that the person apprehended is not the person to which the request or the facts referred to in section 17 (2) no. 4 pertain, then the judge at the local court orders that person's release. Otherwise, the judge at the local court orders that the person pursued be detained until the higher regional court gives its decision. Section 21 (4) sentence 2 and (6) and (7) applies accordingly.

Section 23

Decision on objections by persons pursued

It is for the higher regional court to give decisions on objections raised by persons pursued against a warrant of arrest pending extradition or against its enforcement.

Section 24

Lifting of warrant of arrest pending extradition

(1) A warrant of arrest pending extradition is to be lifted as soon as the conditions for provisional arrest pending extradition or arrest pending extradition are no longer met or extradition is declared not to be permissible.

(2) A warrant of arrest pending extradition is likewise to be lifted if the public prosecution office at the higher regional court makes an application to that effect. When making such an application it simultaneously orders the person pursued's release.

Section 25

Suspending enforcement of warrant of arrest pending extradition

(1) The higher regional court may suspend enforcement of a warrant of arrest pending extradition if less severe measures offer sufficient guarantee that the purpose of the

provisional arrest pending extradition or of the arrest pending extradition will likewise be achieved if those less severe measures are taken.

(2) Section 116 (1) sentence 2 and (4), sections 116a and 123, and section 124 (1) and (2) sentence 1 and (3) of the Code of Criminal Procedure and section 72 (1) and (4) sentence 1 of the Youth Courts Act apply accordingly.

Section 26

Review of detention

(1) Where the person pursued is under arrest pending extradition, it is for the higher regional court to decide whether detention is to continue once the person pursued has spent a total of two months in detention, calculated from the day of apprehension, provisional arrest or the day on which the last decision was taken concerning the continuation of detention. The review of detention is repeated every two months. The higher regional court may order that the review of detention is carried out within a shorter time frame.

(2) Where the person pursued is under provisional arrest pending extradition or under provisional placement in a youth welfare services home (section 71 (2) of the Youth Courts Act), subsection (1) applies accordingly.

Section 27

Enforcement of detention

(1) The provisions concerning the enforcement of remand detention and section 119 of the Code of Criminal Procedure apply accordingly to the enforcement of provisional arrest pending extradition, of arrest pending extradition and of an arrest based on an order made by the judge at the local court.

(2) The public prosecution office at the higher regional court determines in which facility the person pursued is to be detained.

(3) It is for the president of the competent division at the higher regional court to make such court orders.

Section 28

Hearing of person pursued

(1) Following receipt of a request for extradition, the public prosecution office at the higher regional court applies for the person pursued to be heard by that local court in whose district said person is located.

(2) The judge at the local court hears persons pursued about their personal circumstances, in particular nationality. The judge draws their attention to the right to avail themselves of the services of legal counsel (section 40) at any stage of the proceedings and to the fact that they are free to either make a statement or not make a statement regarding the offence of which they are accused. The judge then asks whether and, if so, for what reasons they wish to object to extradition. Persons pursued are only to be heard in respect of the substance of the accusation if the public prosecution office at the higher regional court makes an application to that effect; in all other cases, any information which persons pursued volunteer is to be placed on record.

(3) If they raise no objections to extradition, the judge at the local court instructs persons pursued about the possibility of a simplified extradition procedure and about its legal consequences (section 41) and then records their statement.

Section 29

Application for decision on permissibility of extradition

(1) Where a person pursued has not consented to the simplified extradition procedure (section 41), the public prosecution office at the higher regional court applies for the higher regional court to give a decision in respect of whether extradition is permissible.

(2) The public prosecution office at the higher regional court may apply for the higher regional court to give a decision even if the person pursued has in fact consented to the simplified extradition procedure.

Section 30 **Preparing decision**

(1) If the extradition documentation is not sufficient to be able to assess whether extradition is permissible, the higher regional court does not give a decision until the requesting state has been given the opportunity to submit additional documentation. A time limit may be set for its submission.

(2) The higher regional court may hear the person pursued. It may take additional evidence concerning the permissibility of extradition. In the case under section 10 (2), the taking of evidence concerning the permissibility of extradition also encompasses the matter of whether there appears to be sufficient suspicion that the person pursued committed the offence of which he or she is accused. It is for the higher regional court to determine the method and extent of the taking of evidence, without it being bound by applications, waivers or earlier decisions.

(3) The higher regional court may conduct a court hearing.

Section 31 **Court hearing**

(1) The public prosecution office at the higher regional court, the person pursued and his or her legal counsel (section 40) are to be notified of the date and place of the court hearing. A representative of the public prosecution office at the higher regional court must attend the court hearing.

(2) If the person pursued is under arrest, he or she is to be brought before the court, unless he or she has waived the right to be present at the hearing or long distance, illness or other insurmountable obstacles prevent him or her being brought before the court. If the person pursued is not brought before the court for the court hearing, then legal counsel (section 40) must exercise that person's rights at the hearing. In such cases, a lawyer (*Rechtsanwalt*) is to be appointed as legal counsel for the court hearing if the person pursued does not yet have legal counsel.

(3) If the person pursued is at large, the higher regional court may order that he or she appear in person. If a person pursued who has been properly summoned does not appear and no sufficient excuse is presented for such non-appearance, the higher regional court may order that the person pursued be brought before the court.

(4) The parties present are to be heard in the course of the court hearing. A record is to be kept of the hearing.

Section 32 **Decision on permissibility**

Reasons are to be given in the decision on the permissibility of extradition. The decision is to be notified to the public prosecution office at the higher regional court, to the person pursued and to his or her legal counsel (section 40). The person pursued is given a copy.

Section 33 **New decision on permissibility**

(1) If, after the higher regional court has given its decision on the permissibility of extradition, circumstances arise which suggest that there is reason to give a different decision on permissibility, then the higher regional court gives a new decision on the permissibility of extradition ex officio, upon application by the public prosecution office at the higher regional court or upon application by the person pursued.

(2) If, after the higher regional court has given its decision, circumstances become known which suggest that there is reason to give a different decision on permissibility, then the higher regional court may give a new decision on the permissibility of extradition.

(3) Section 30 (2) and (3) and sections 31 and 32 apply accordingly.

(4) The higher regional court may order that extradition be deferred.

Section 34
Arrest to effect extradition

(1) If, after extradition has been authorised, the person pursued is at large and it is not possible to guarantee that extradition can be effected in another manner, then the higher regional court makes an order, by way of written arrest warrant, that the person pursued be arrested for the purpose of effecting extradition, unless enforcement of an existing warrant of arrest pending extradition (section 17) can be ordered.

(2) The arrest warrant must indicate the following:

1. the name of the person pursued,
2. the decision on the basis of which extradition was authorised and
3. the reason for arrest and the facts on which it is based.

(3) Sections 18 to 20 and 23 to 27 apply accordingly.

Section 35
Extending authorisation of extradition

(1) Where extradition has already been effected and the state to which the person pursued has been extradited requests consent to prosecution or to enforcement of a penalty or another sanction for a further offence, such consent may be granted if

1. proof has been furnished that the person extradited had the opportunity to make a statement regarding the request and the higher regional court decided that extradition for the offence would be permissible or
2. proof has been furnished that the person extradited consented to prosecution or to enforcement of the penalty or other sanction, such consent being declared before and placed on record by a judge in the requesting state, and extradition for the offence would be permissible.

If a request is made for consent to prosecution, then, in lieu of an arrest warrant or document with corresponding legal effect (section 10 (1) sentence 1), the document issued by a competent agency in the requesting state indicating the offence of which the person pursued is accused suffices.

(2) Section 29 applies accordingly to the procedure, with the proviso that the person pursued's consent to the simplified extradition procedure is replaced by his or her consent as required by subsection (1) sentence 1 no. 2, and section 30 (1) and (2) sentences 2 to 4 and (3), section 31 (1) and (4), sections 32 and 33 (1) and (2) also apply to the procedure. It is for the higher regional court which was competent to give decisions on the permissibility of the extradition in the extradition proceedings to give the decisions referred to in subsection (1) sentence 1 no. 1.

Section 36
Re-extradition

(1) Where extradition has already been effected and a competent agency in a foreign state requests consent to re-extradition, to the extradited person's transfer for the purpose of enforcement of a penalty or other sanction, or to deportation for the offence on the basis of which extradition was authorised, section 35 (1) sentence 1 and (2) applies accordingly, with the proviso that extradition to the state to which the extradited person is to be re-extradited or transferred would have to be permissible for that offence.

(2) Where extradition has not yet been effected, consent may be given to a request of the type designated in subsection (1) if extradition to the state to which the extradited person is to be re-extradited or transferred would be permissible for that offence. Sections 28 to 33 apply accordingly to the procedure.

Section 37 **Temporary extradition**

(1) Where an authorised extradition is deferred because criminal proceedings are being conducted against the person pursued within the area of application of this Act or a sentence of imprisonment or measure of reform and prevention involving deprivation of liberty is to be enforced, the person pursued may be temporarily extradited if the competent agency in the requesting state makes a request to that effect and gives an assurance that the person pursued will be returned by a specific point in time or upon request.

(2) Returning the person pursued may be dispensed with.

(3) Where a determinate sentence of imprisonment or a fine is imposed in the proceedings on account of which the extradition was deferred, the time spent in detention in the requesting state up until return or up until return is dispensed with is credited against that time. Where the extradition was deferred because a determinate sentence of imprisonment is to be enforced against the person pursued, sentence 1 applies accordingly.

(4) It is for the agency competent for crediting the time spent in detention in accordance with subsection (3) to determine, at its discretion, the amount of time to be credited after hearing the public prosecution office at the higher regional court. It may order that no time or only part of the time be credited if

1. time spent in detention in the requesting state has been credited in full or in part against a penalty or other sanction imposed or to be enforced there or
2. the crediting of time is not justified in the light of the person pursued's conduct following surrender.

Section 38 **Surrender of property in extradition proceedings**

(1) The following may be surrendered, in the context of extradition, to the requesting state without the need for a special request:

1. property which may serve as evidence in the foreign proceedings or
2. property which the person pursued or a party to the offence obtained as a result of the offence on account of which the extradition was authorised or obtained for that offence or as consideration for such property.

(2) The surrender of property is only permissible if it is guaranteed that the rights of third parties remain unaffected and on condition that, upon request, property surrendered is returned without delay.

(3) Subject to the conditions of subsections (1) and (2), property may also be surrendered if an authorised extradition cannot be effected for factual reasons.

(4) It is for the higher regional court to give a decision on whether the surrender of property is permissible following an objection by the person pursued, upon application by the public prosecution office at the higher regional court or upon application by any person asserting that their rights would be infringed if the property were to be surrendered. If the higher regional court declares that the surrender of property is permissible, it may require that party which applied for the decision to pay any costs arising to the Public Treasury. Such surrender may not be authorised if the higher regional court has declared it not to be permissible.

Section 39 **Seizure and search**

(1) Property in regard to which surrender to a foreign state is being considered as a possibility may be seized or secured by other means even before receipt of a request for extradition. A search may likewise be carried out to that end.

(2) If no higher regional court is yet seised of the extradition proceedings, the seizure and the search are initially ordered by that local court in whose district the measures are to be taken.

(3) In exigent circumstances, the public prosecution office and its investigators (section 152 of the Courts Constitution Act (*Gerichtsverfassungsgesetz*)) are authorised to order the seizure and the search.

Section 40 **Legal counsel**

(1) Persons pursued may avail themselves of the services of legal counsel at any stage of the proceedings.

(2) Where persons pursued are arrested, they require the mandatory assistance of legal counsel in the extradition proceedings.

(3) Where persons pursued are not arrested, they require the mandatory assistance of legal counsel in the extradition proceedings if

1. the involvement of legal counsel appears necessary on account of the complexity of the factual or legal situation, in the case of proceedings pursuant to Part 8 Division 2 especially in the case of doubt as to whether the conditions of sections 80 and 81 no. 4 are met,

2. it is clear that they are not in a position to adequately exercise their rights themselves or

3. they are under the age of 18.

(4) If the mandatory assistance of legal counsel is required and the person pursued has not yet mandated legal counsel, then legal counsel is to be appointed for the person pursued upon application or ex officio. If the person pursued has no legal counsel, then, in the cases referred to in subsection (3) no. 1 and no. 2, upon disclosure of the request, the person pursued is to be instructed about the right to apply for legal counsel to be appointed.

(5) Legal counsel is appointed ex officio

1. in the case under subsection (2): without delay following arrest,

2. in the case under subsection (3) no. 3: without delay following disclosure of the request for extradition,

3. in the cases under subsection (3) no. 1 and no. 2: following disclosure of the request for extradition as soon as the conditions set out therein are met.

(6) It is for that court before which the person pursued is to be brought or would have to be brought to give a decision on the appointment. After an application is made pursuant to section 29 (1), it is for the competent higher regional court to give such a decision.

(7) The appointment ends once the person pursued is surrendered or once a final decision is given not to surrender the person pursued. The appointment encompasses procedures pursuant to section 33. If no decision declaring the extradition not to be permissible is given and the person in question is not surrendered, the appointment ends once the public prosecution office at the higher regional court gives a decision not to surrender the person pursued. In the cases under subsection (3) no. 1 and no. 2, the appointment may be revoked if there is no longer a requirement for the mandatory assistance of legal counsel.

(8) The provisions of Book 1 Division 11 of the Code of Criminal Procedure, with the exception of sections 139, 140, 141 and 141a, section 142 (2) and (3), section 143 (1) and (2) sentences 2 to 4 and section 143a (3) apply accordingly. Sections 142 (7), 143 (3) and 143a (4) of the Code of Criminal Procedure apply accordingly, with the proviso that the decision on an immediate complaint (*sofortige Beschwerde*) is given by that court which is competent to give a decision on whether extradition is permissible. There is no right to contest decisions given by the higher regional court as per subsection (6) sentence 2 and subsection (7) sentence 4.

Section 41

Simplified extradition procedure

(1) The extradition of a person pursued against whom a warrant of arrest pending extradition has been issued may be authorised upon request for extradition or provisional arrest for the purpose of extradition made by a competent agency in a foreign state without the need for a formal extradition process if, following instruction, the person pursued has consented to the simplified extradition procedure and that consent was declared before and placed on record by a judge.

(2) In the case under subsection (1), fulfilment of the conditions of section 11 may be dispensed with if, following instruction, the person pursued consented thereto and that consent was declared before and placed on record by a judge.

(3) Such consent may not be revoked.

(4) Upon application by the public prosecution office at the higher regional court, the judge at the local court instructs the person pursued about the possibility of a simplified extradition procedure and about its legal consequences (subsections (1) to (3)) and then records the person pursued's statement. The judge at that local court in whose district the person pursued is located is competent in this regard.

Section 42

Recourse to Federal Court of Justice

(1) If the higher regional court holds that the Federal Court of Justice is required to clarify a legal issue of fundamental importance, or if it wishes to deviate from a decision given by the Federal Court of Justice or from a decision given by another higher regional court after the entry into force of this Act on a legal issue relating to extradition matters, then it must give reasons for its opinion and obtain a decision from the Federal Court of Justice on that legal issue.

(2) The Federal Court of Justice is also asked to give a decision if the Public Prosecutor General or the public prosecution office at the higher regional court applies for a decision to clarify a legal issue.

(3) The Federal Court of Justice gives the person pursued the opportunity to make a statement. The decision is given without a court hearing.

Part 3

Transit

Section 43

Permissibility of transit

(1) The transit of a foreign national who is being prosecuted for or has been convicted of an offence in a foreign state which is punishable in that state may, upon request by a competent agency in that foreign state, be effected through the area of application of this Act for the prosecution or enforcement of the penalty or other sanction imposed for the offence.

(2) The transit of a foreign national who has been convicted of an offence in a foreign state which is punishable in that state may, upon request by a competent agency in another foreign state, be effected through the area of application of this Act for the enforcement of a penalty or other sanction imposed for the offence.

(3) Such transit is only permissible if

1. the offence giving rise to the request is punishable, under German law, by imprisonment or would be punishable by imprisonment in the case of analogous conversion of the facts and

2. the documentation relating to the offence giving rise to the request designated in

a) section 10 (1) sentence 1 in the case under subsection (1) or

b) section 10 (3) nos. 1 to 3 in the case under subsection (2)

has been submitted.

Where a request is made for transit for several offences, it is sufficient for the conditions of sentence 1 to be met for at least one of the offences giving rise to the request.

(4) Sections 6 to 8 apply accordingly to such transit.

Section 44 Jurisdiction

(1) It is for the higher regional court to give the relevant court decisions. Section 13 (1) sentence 2 and (2) applies accordingly.

(2) Local jurisdiction lies with

1. that higher regional court within the area of application of this Act to whose district the person pursued will likely be transferred in the case of transit by land or by sea,

2. that higher regional court in whose district the first stopover is to take place in the case of transit by air.

(3) Where no jurisdiction is established pursuant to subsection (2) no. 2, Frankfurt am Main Higher Regional Court has jurisdiction.

Section 45 Transit procedure

(1) If it appears that the transit is permissible, the person pursued is kept under arrest to secure the transit.

(2) Such arrest is ordered by way of written arrest warrant (warrant of arrest pending transit) issued by the higher regional court. Sections 17 (2) and 30 (1) apply accordingly.

(3) Such transit may only be authorised if a warrant of arrest pending transit has been issued.

(4) The warrant of arrest pending transit must be disclosed to the person pursued without delay after that person's arrival in the area of application of this Act. The person pursued is given a copy.

(5) If it is likely that the transit cannot be completed by the end of the day following the day of his or her transfer, the person pursued is to be brought before the judge at the nearest local court without delay, but no later than the day after he or she arrives in the area of application of this Act. The judge at the local court hears persons pursued about their personal circumstances, in particular nationality. The judge must draw their attention to the right to avail themselves of the services of legal counsel (section 40) at any stage of the proceedings and to the fact that they are free to either make a statement or not make a statement regarding the offence of which they are accused. The judge then asks whether and, if so, for what reasons they wish to object to the warrant of arrest pending transit or to the permissibility of the transit. If a person pursued raises objections which are not manifestly unfounded or if the judge at the local court has doubts about continuing that person's detention or about the permissibility of the transit, then the judge without delay and by expeditious means notifies the public prosecution office at the higher regional court thereof. The public prosecution office is then responsible for ensuring that the higher regional court gives a decision without delay.

(6) Sections 24 and 27, section 33 (1), (2) and (4), and section 42 apply accordingly, as does section 26 (1), with the proviso that instead of a time limit of two months a time limit of one month applies. Section 40 applies accordingly, with the proviso that mandatory assistance of legal counsel is only required if the conditions of section 40 (3) are met.

(7) Any property taken on during transit may be surrendered without a special request at the same time as the person pursued's transfer.

Section 46 Transit for temporary extradition

- (1) Once authorised, the person pursued's transit may, upon request by a competent agency in the requesting state, first be effected through the area of application of this Act for the purpose of enforcing temporary extradition and subsequent return.
- (2) In the case under subsection (1), the warrant of arrest pending transit may also extend to further transfers.

Section 47

Unscheduled stopover during transport by air

- (1) Where a competent agency in a foreign state has announced that it plans to have a foreign national transported by air through the area of application of this Act without a stopover for the purpose of extradition and that agency gives notification that the documentation as required under section 43 (3) sentence 1 no. 2 and sentence 2 has been received but an unscheduled stopover then becomes necessary, the announcement is treated as a request for transit.
- (2) If the conditions of subsection (1) are met, the public prosecution office and police officers are authorised to make a provisional arrest.
- (3) Persons pursued are to be brought before the judge at the nearest local court without delay, but no later than the day following their arrest. The judge at the local court hears persons pursued about their personal circumstances, in particular nationality. The judge must draw their attention to the right to avail themselves of the services of legal counsel (section 40) at any stage of the proceedings and to the fact that they are free to either make a statement or not make a statement regarding the offence of which they are accused. The judge then asks whether and, if so, for what reasons they wish to object to the transit or to their being detained.
- (4) If it transpires in the course of the hearing that the person brought before the court is not the person designated in the announcement, the judge at the local court orders that person's release. Otherwise, the judge at the local court orders that the person pursued is to be detained until the higher regional court gives its decision. Section 21 (4) sentence 2 and (7) applies accordingly.
- (5) The warrant of arrest pending transit may be issued even before receipt of the documentation designated in section 43 (3) sentence 1 no. 2. It is to be disclosed to the person pursued without delay. The person pursued is given a copy.
- (6) The warrant of arrest pending transit is to be lifted where the person pursued has spent a total of 45 days in detention pending transit, calculated from the day of provisional arrest, without the transit documentation having been received. Where a non-European state has announced the transport referred to in subsection (1), the time limit is two months.
- (7) Following receipt of the documentation, the public prosecution office at the higher regional court applies for the person pursued to be heard by the judge at that local court in whose district the person pursued is located. Section 45 (5) sentences 2 to 4 applies accordingly. The public prosecution office at the higher regional court then applies for the higher regional court to give a decision as to whether the warrant of arrest pending transit is to be upheld.
- (8) Transit may only be authorised if the higher regional court upholds the warrant of arrest pending transit.

Part 4

Mutual assistance through enforcement of foreign judgments

Section 48

Principle

Mutual assistance may be rendered in the context of proceedings in a criminal matter by way of the enforcement of a penalty or other sanction imposed by final decision in a foreign state. Part 4 also applies to the enforcement of an order for confiscation made by a court in a foreign state without jurisdiction in criminal matters, provided that the act giving rise to the order is a punishable one.

Section 49

Other conditions governing permissibility

(1) Enforcement is only permissible if

1. a full, final and enforceable judgment has been submitted,
2. the foreign judgment was delivered in proceedings which are in compliance with the European Convention of 4 November 1950 for the Protection of Human Rights and Fundamental Freedoms, including its Additional Protocols, provided they have entered into force in Germany,
3. notwithstanding any procedural obstacles and, where applicable, in the case of analogous conversion of the facts,
 - a) a penalty, measure of reform and prevention or an administrative fine could also have been imposed or
 - b) where an order for confiscation is to be enforced, such an order could also have been made

under German law for the offence giving rise to the foreign judgment,

4. no decision of the type referred to in section 9 no. 1 has been given, unless, in cases where an order for confiscation is to be enforced, such an order could be made separately in accordance with section 76a of the Criminal Code (*Strafgesetzbuch*) and
5. enforcement is not statute-barred under German law or would not be statute-barred in the case of analogous conversion of the facts; notwithstanding this, enforcement of an order for confiscation is permissible if
 - a) German criminal law does not apply to the offence giving rise to the order or
 - b) such an order could be made in accordance with section 76a (2) no. 1 of the Criminal Code, where applicable in the case of analogous conversion of the facts.

(2) Where a sanction involving deprivation of liberty has been imposed in a foreign state and the sentenced person is in that foreign state, enforcement is, further, only permissible if, following instruction, the sentenced person consents and that consent is declared before and placed on record by a judge in the foreign state or by a German consular official authorised to record declarations of intent. Such consent may not be revoked.

(3) Enforcement of a sanction involving deprivation of liberty which has been imposed on a German national in a foreign state may, in derogation from subsection (1) nos. 2 to 5, be declared permissible by way of exception, giving due consideration to the sentenced person's interests, if that person has made an application to that effect. The sentenced person's application as referred to in sentence 1 is to be declared before and placed on record by a judge or, if that person is being detained abroad, a German consular official authorised to record declarations of intent. Such an application may not be withdrawn. The sentenced person must first be instructed about the legal consequences of such an application and about the fact that it may not be withdrawn. If the conditions referred to in subsection (1) no. 3 are not met, the maximum period in respect of the conversion of the sanction pursuant to section 54 (1) is two years' imprisonment.

(4) If the law applicable within the area of application of this Act does not provide for sanctions which correspond, in respect of their nature, to the sanction imposed in the foreign state, then enforcement is not permissible.

(5) If the foreign order for confiscation includes a decision relating to the rights of third parties, then it is binding, unless

- a) the third party was not given sufficient opportunity to assert those rights or

b) the decision is not compatible with a civil-law decision given within the area of application of this Act in the same matter or

c) the decision refers to the rights of third parties in real property located in the Federal territory or a right in such real property; the rights of third parties include priority notices.

(6) The withdrawal or suspension of a right, a prohibition and the loss of a capacity extend to the area of application of this Act where provided for in an agreement under international law which has received approval, in the form of a law, as required by Article 59 (2) of the Basic Law.

Section 50 **Subject-matter jurisdiction**

It is for the regional court to give decisions on the enforceability of foreign judgments. The public prosecution office at the regional court prepares such decisions.

Section 51 **Local jurisdiction**

(1) Local jurisdiction for decisions on the enforceability of foreign judgments is established at the sentenced person's place of residence.

(2) If the sentenced person has no residence within the area of application of this Act, then jurisdiction is established at that person's place of habitual residence, or last residence if no such habitual residence is known, otherwise the place at which the sentenced person was apprehended or, if no such apprehension was made, is first determined to be. In the event of enforcement of only an order for confiscation or of a financial penalty (criminal or administrative fine), that court has jurisdiction in whose district the property to which the confiscation refers is located or, if the confiscation does not refer to a specific object and in the event of enforcement of a financial penalty, that court in whose district the sentenced person's assets are located. If the sentenced person's assets are located in the districts of several regional courts, jurisdiction lies with that regional court or, if no regional court is yet seised of the case, with that public prosecution office at the regional court which was first seised of the case.

(3) Until jurisdiction can be established, it is determined to be at the seat of the Federal Government.

Section 52 **Preparing decision**

(1) If the documentation submitted is not sufficient to be able to assess whether enforcement is permissible, then the court does not give a decision until the foreign state has been given the opportunity to submit additional documentation.

(2) Section 30 (1) sentence 2, (2) sentences 2 and 4 and (3) and section 31 (1) and (4) apply accordingly. If the sentenced person is within the area of application of this Act, section 30 (2) sentence 1 and section 31 (2) and (3) apply accordingly.

(3) The sentenced person and third parties who could, in the light of the circumstances of the case, assert rights in the property in the case of enforcement of foreign orders for confiscation must be given the opportunity to make a statement before the decision is given.

Section 53 **Legal counsel**

(1) Sentenced persons may at any stage of the proceedings avail themselves of the services of legal counsel. The same applies to third parties who could, in the light of the circumstances of the case, assert rights in the property in the case of enforcement of foreign orders for confiscation.

(2) The mandatory assistance of legal counsel is required if

1. the involvement of legal counsel appears necessary on account of the complexity of the factual or legal situation,
2. it is clear that the sentenced person is not in a position to adequately exercise their rights themselves or
3. the sentenced person is under arrest outside of the area of application of this Act and there are doubts as to whether they are in a position to adequately exercise their rights themselves.

(3) If the mandatory assistance of legal counsel is required and the sentenced person has not yet mandated legal counsel, then legal counsel is to be appointed for the sentenced person upon application or ex officio. Upon disclosure that proceedings to enforce a foreign judgment have been instituted, sentenced persons are to be instructed about their right to apply for legal counsel to be appointed.

(4) The decision on the appointment falls to that court which has jurisdiction to give the decision on the enforceability of a foreign judgment.

(5) The appointment may be revoked where the mandatory assistance of legal counsel is no longer required.

(6) The provisions of Book 1 Division 11 of the Code of Criminal Procedure, with the exception of sections 139, 140, 141, 141a, 142 (2) and (3), 143 (1) and (2) sentences 2 to 4, 143a (3) and 144 apply accordingly.

Section 54 **Converting foreign sanction**

(1) If enforcement of a foreign judgment is permissible, it is declared enforceable. At the same time, any sanction imposed is to be converted into that sanction under German law which most closely corresponds to. The foreign judgment is binding in respect of the measure of the sanction to be set; it may, however, not exceed the maximum possible sanction for the offence within the area of application of this Act. This maximum sanction is replaced by a maximum of two years' imprisonment if, within the area of application of this Act, the offence

1. is punishable by a maximum sentence of imprisonment of no more than two years or
2. is punishable as a regulatory offence by imposition of an administrative fine but the foreign sanction is to be converted pursuant to sentence 2 into a sanction involving deprivation of liberty.

(2) When converting a financial penalty, the amount calculated in the foreign currency is converted into euros at that market rate which was applicable on the day when the foreign judgment was delivered.

(2a) Where an order for confiscation concerning a specific object is to be converted, the declaration of enforceability refers to that object. In lieu of a specific object, the declaration of enforceability may also refer to an amount of money corresponding to the value of the object if

1. the foreign state has made a request to that effect and
2. the conditions of section 76 of the Criminal Code, with the necessary changes, are met.

If the order for confiscation determines the value, subsection (2) applies accordingly.

(3) When converting a sanction imposed on a juvenile or young adult, the provisions of the Youth Courts Act apply accordingly.

(4) That part of the sanction which has already been enforced in a foreign state against the sentenced person for the offence and any time spent in detention pursuant to section 58 are credited against the sanction to be set. If no such crediting was done when the decision on

enforceability was given or the conditions for such crediting arise thereafter, the decision is to be amended.

Section 54a

Enforcing long sanctions involving deprivation of liberty

(1) If the sentencing state has imposed the condition that, following the transfer of a German national, a sanction involving deprivation of liberty is to be enforced for a specific period in the Federal Republic of Germany, then the court may, by way of exception and giving consideration to the sentenced person's interests,

1. in derogation from section 54 (1) sentence 3, also set a sanction which exceeds the maximum sanction which can be imposed for the offence within the area of application of this Act and

2. suspend on probation the enforcement of the remainder of the sentence of imprisonment to be enforced in the Federal Republic of Germany pursuant to section 57 (2) only with the consent of the sentencing state.

(2) The court may only give the decision referred to in subsection (1) if the sentenced person makes an application to that effect. The sentenced person's application as referred to in sentence 1 is to be declared before and placed on record by a judge or, if the sentenced person is being detained abroad, a German consular official authorised to record declarations of intent. Such an application may not be withdrawn. The sentenced person must first be instructed about the legal consequences of such an application and about the fact that it cannot be withdrawn.

(3) If, after a court has given a decision pursuant to section 54 (1) or section 54a (1), the sentencing state imposes the condition that following transfer the sanction involving deprivation of liberty is to continue to be enforced for a specific period in the Federal Republic of Germany, then the court gives a new decision in accordance with subsection (1) ex officio, upon application by the public prosecution office or upon application by the sentenced person.

Section 55

Decision on enforceability

(1) It is for the regional court to give decisions on enforceability by way of court order. If the foreign judgment is declared enforceable, the judgment and the nature and extent of the sanction to be enforced must be stated in the operative part of the order.

(2) The public prosecution office at the regional court, the sentenced person and third parties who have, in the case of enforcement of foreign orders for confiscation, asserted rights in an object, are entitled to file an immediate complaint against the regional court's decision.

Section 42 applies accordingly to the further procedure.

(3) The court's final decisions are to be notified to the Federal Central Criminal Register by forwarding of a copy thereof. This does not apply if the sanction imposed in the foreign judgment has been converted into an administrative fine or if the final decision only contains an order for confiscation. If the foreign judgment needs to be entered in the Federal Central Criminal Register, a note is to be made of the decision on enforceability upon the making of the entry. Sections 12 to 16 of the Federal Central Criminal Register Act (*Bundeszentralregistergesetz*) apply accordingly.

Section 56

Authorisation of assistance

(1) Authorisation to render mutual assistance may only be given if the foreign judgment has been declared enforceable.

(2) The decision authorising mutual assistance must be notified to the Federal Central Criminal Register. Section 55 (3) sentences 2 to 4 applies accordingly.

(3) Where authorisation is given to enforce a financial penalty or a sentence of imprisonment, the offence may no longer be prosecuted under German law.

(4) Authorisation to enforce an order for confiscation is equal to a final order and decision within the meaning of sections 73 and 74 of the Criminal Code. Section 433 of the Code of Criminal Procedure applies accordingly.

Section 56a **Compensation of injured party**

(1) Where a foreign order for the confiscation of the proceeds of crime located in Germany has led to enforcement in the sentenced person's assets, the party injured by the offence giving rise to the foreign order is, upon application, compensated by the Public Treasury if

1. a German or foreign court has given a final decision against the sentenced person on the claim for compensation or that person has, on the basis of an enforcement order, undertaken to pay the injured party,
2. the order is enforceable in Germany,
3. the injured party substantiates that the enforcement order encompasses the compensation resulting from the offence giving rise to the order for the confiscation of the proceeds of crime and
4. the injured party substantiates that enforcement of the order would not provide full compensation.

Compensation is paid in the corresponding amount in exchange for assigning the claim for compensation.

(2) No compensation is granted if the sentenced person's rights as defined in section 75 (2) sentence 1 of the Criminal Code continue to exist.

(3) The amount of the compensation is limited to the proceeds remaining to the German Public Treasury after enforcement in the assets in Germany based on the order for the confiscation of the proceeds of crime. If several injured persons have filed an application pursuant to subsection (1), their compensation is determined in accordance with the order in which their applications were made. If several applications are received on the same day and the proceeds are not sufficient to compensate these persons, they are to be compensated pro rata in accordance with the amount of their claims to compensation.

(4) Applications are to be sent to the competent enforcing authority. They may be rejected after six months have elapsed since the end of enforcement in the assets from which compensation could be paid. The enforcing authority may set appropriate time limits for the injured party to submit the necessary documentation.

(5) Recourse to the civil courts is possible in respect of decisions given by the enforcing authority.

Section 56b **Agreement on realisation, surrender and distribution of recovered assets**

(1) The authorising authority may, in an individual case, reach agreement with the competent authority in the foreign state in respect of the realisation, surrender and distribution of the assets recovered in the course of enforcing an order for confiscation, provided that an assurance of reciprocity has been given.

(2) Agreements relating to national cultural property pursuant to section 6 (1) no. 1 of the Act on the Protection of Cultural Property (*Kulturgutschutzgesetz*) of 31 July 2016 (Federal Law Gazette I, p. 1914) require the approval of the highest federal authority responsible for culture and the media.

Section 57 **Enforcement**

(1) Once authorisation to render mutual assistance has been given, the public prosecution office with jurisdiction under section 50 sentence 2 is responsible, in the capacity as enforcing authority, for enforcement, provided that the foreign state consents to enforcement.

Competence for enforcing a sanction which has been converted into a sanction which is permissible under the Youth Courts Act is determined in accordance with the provisions of the Youth Courts Act.

(2) Enforcement of the remainder of a sanction involving deprivation of liberty may be suspended on probation. The provisions of the Criminal Code apply accordingly. If, in the case of a determinate sentence of imprisonment, the period after which two thirds of the penalty has been served amounts to more than 15 years, then section 57a of the Criminal Code, with the exception of subsection (1) sentence 1 no. 2, also applies accordingly.

(3) The decision referred to in subsection (2) and subsequent decisions relating to suspension of a sentence on probation fall to the court which has jurisdiction under section 462a (1) sentence 1 and 2 of the Code of Criminal Procedure or, if no jurisdiction is established under this provision, the court which has jurisdiction for the decision under section 50.

(4) Enforcement of a converted sanction is governed by those provisions which would be applicable to a corresponding sanction imposed in the Federal Republic of Germany.

(5) Enforcement of a sum of money is to be terminated or limited if the sentenced person submits a document indicating that the sum of money was enforced in another state or the enforcing authority learns of this in another manner.

(6) Enforcement is to be dispensed with if the competent agency in the foreign state gives notification that the conditions for enforcement no longer apply.

(7) Where a foreign order for the confiscation of the proceeds of crime has been enforced and there are indications that a named person may have a claim for compensation against the sentenced person resulting from the offence giving rise to the order, then that person must be instructed without delay about his or her rights under section 56a in the form of a simple letter which is to be forwarded to his or her last known address. This may be dispensed with if the time limit in section 56a (4) sentence 2 has already passed.

Section 57a **Costs of enforcement**

The sentenced person bears the costs of enforcement. The sentenced person also bears the necessary costs of his or her transfer where such transfer may only be effected with his or her consent. No costs are to be imposed where, given the sentenced person's personal financial circumstances and conditions of detention abroad, this would constitute intolerable hardship.

Section 58 **Securing enforcement**

(1) Where a full, final and enforceable judgment as required by section 49 (1) no. 1 has been submitted or a competent agency in the foreign state makes a request, before receipt of the judgment, indicating the infringement which led to conviction, the time and place of commission and as detailed a description as possible of the sentenced person, the sentenced person's arrest may be ordered to secure enforcement of a sanction involving deprivation of liberty if certain facts

1. give rise to the suspicion that the sentenced person will evade the enforceability proceedings or the enforcement itself or

2. give rise to the strong suspicion that the sentenced person will, by taking unfair advantage, render more difficult the establishment of the truth in the enforceability proceedings.

(2) It is for the court with jurisdiction to give the decision referred to in section 50 to make such orders for arrest. Sections 17, 18, 20 and 23 to 27 apply accordingly. The regional court takes the place of the higher regional court, the public prosecution office at the regional court the place of the public prosecution office at the higher regional court. There is a right of appeal against decisions given by the regional court.

(3) In the case of enforcement of a financial penalty or of an order for confiscation, or in the event that a competent agency in the foreign state, stating the name of the suspect, the infringement giving rise to the criminal proceedings and the time and place of commission of the infringement, requests a measure to secure enforcement pursuant to sections 111b to 111h of the Code of Criminal Procedure before receipt of a full, final and enforceable judgment, section 67 (1) applies accordingly. Under the conditions of section 66 (2) no. 1 and no. 2, measures to secure enforcement pursuant to sections 111b to 111h of the Code of Criminal Procedure may be taken to prepare a decision on confiscation in the foreign state, and such decision may also refer to an equivalent sum of money.

(4) Subsections (1) and (3) do not apply if enforcement does not, from the outset, appear to be permissible.

Part 5

Other types of mutual assistance

Section 59

Permissibility

(1) Other types of mutual assistance may be rendered in a criminal matter upon request by a competent agency in a foreign state.

(2) 'Assistance' within the meaning of subsection (1) means any help provided in foreign proceedings in a criminal matter, regardless of whether the foreign proceedings are conducted by a court or by an authority and whether the assistance is to be rendered by a court or by an authority.

(3) Assistance may only be rendered where the conditions are met under which German courts or authorities would be able to render mutual assistance in corresponding cases.

Section 60

Rendering assistance

If the authority responsible for authorising assistance holds that the conditions for rendering such assistance are met, then the authority responsible for rendering assistance is bound by that decision. Section 61 remains unaffected.

Section 61

Court decision

(1) If a court which is responsible for rendering assistance holds that the conditions for rendering such assistance are not met, it gives reasons for its opinion and applies to the higher regional court for a decision. The higher regional court likewise gives a decision in respect of whether the conditions for rendering assistance are met upon application by the public prosecution office at the higher regional court or, in the case under section 66, upon application by persons asserting that their rights would be infringed on account of the surrender. Sections 30 and 31 (1), (3) and (4), sections 32 and 33 (1), (2) and (4), section 38 (4) sentence 2, section 40 (1) and the provisions of Book 1 Division 11 of the Code of Criminal Procedure, with the exception of sections 140 to 143, apply accordingly to proceedings before the higher regional court. Section 42 applies accordingly to further proceedings.

(2) Local jurisdiction lies with the higher regional court and with the public prosecution office at the higher regional court in whose district the assistance is to be rendered or has been rendered. Where assistance is to be or has been rendered in the districts of various higher regional courts, jurisdiction lies with that higher regional court or, until a higher regional court is seised of the case, with that public prosecution office at the higher regional court which was first seised of the case.

(3) The higher regional court's decision is binding on the courts and on the authorities responsible for rendering assistance.

(4) Authorisation may not be given for assistance to be rendered if the higher regional court has given a decision stating that the conditions for rendering that assistance are not met.

Section 61a

Data transmission without request

(1) The courts and public prosecution offices may transmit personal data resulting from investigations in criminal proceedings to public agencies in other states and to intergovernmental and supranational agencies without a request if

1. transmission to a German court or German public prosecution office would be permissible without a request,
2. there are facts justifying the assumption that transmission is necessary
 - a) to prepare a request made by the receiving state for assistance in proceedings leading to criminal prosecution or to enforcement of a penalty on account of an offence which is punishable within the area of application of this Act by a maximum sentence of imprisonment of more than five years and the conditions for rendering assistance upon request would be met if such a request were made or
 - b) to avert a risk, in an individual case, to the existence or security of the state, or to the life, limb or liberty of a person or items of considerable value whose preservation is in the public interest, or to prevent an offence of the kind referred to in letter (a) and
3. the agency to which the data are being transmitted is responsible for the measure to be taken in accordance with no. 2.

Where an appropriate level of data protection is guaranteed in the receiving state, sentence 1 no. 2 (a) applies, with the proviso that an offence which is punishable within the area of application of this Act by a maximum sentence of imprisonment of more than five years is replaced by an especially serious criminal offence.

(2) The data transmission is to be linked to the condition that

- a) the time limits for deletion or for the review of deletion applicable under German law are to be complied with,
- b) the transmitted data may only be used for the purpose for which they were transmitted and
- c) the transmitted data are to be deleted without delay or to be rectified in the case of notification pursuant to subsection (4).

(3) No data are to be transmitted if it is clear to the court or to the public prosecution office that – even considering the special public interest in data transmission – the data subject's legitimate interests in the data not being transmitted prevail in an individual case; the data subject's legitimate interests include the existence of an appropriate level of data protection in the receiving state.

(4) If it transpires that personal data which ought not to have been transmitted or incorrect personal data were transmitted, the recipient is to be notified thereof without delay.

Section 61b

Joint investigation teams

(1) A joint investigation team may be established where provided for by an agreement under international law. A member of a joint investigation team seconded by another state may be entrusted with carrying out investigative measures under the direction of the competent German team member provided this has been authorised by the seconding state.

(2) Other persons may be permitted to participate in a joint investigation team pursuant to the legal provisions applicable in the participating states or an agreement reached by them.

(3) Officers working in a joint investigation team may directly transmit information, including personal data, obtained in the course of their official duties to members seconded by other

states or other team members insofar as this is necessary for the work of the joint investigation team.

(4) If transmission of information obtained under the condition of subsection (3) requires a special agreement on further processing for another purpose, then it is permissible if it would be possible to authorise a request for the use of the information.

Section 61c

Hearing by audio-visual means

No costs or administrative measures may be imposed on a witness or expert witness who does not obey a summons to a hearing by a foreign judicial authority by video conference.

Section 62

Temporary transfer abroad for foreign proceedings

(1) Whoever is in remand detention or in prison within the area of application of this Act or has been ordered to be placed under a measure of reform and prevention involving deprivation of liberty may be temporarily transferred, in the capacity as witness, to a foreign state upon request by a competent agency in that state for proceedings pending there for the purpose of a hearing, an identity parade or a visual inspection if

1. that person has consented thereto, following instruction, and that consent was declared before and placed on record by a judge,
2. it is not expected that the period in detention will be extended or that the purpose of the criminal proceedings will be impeded as a consequence of the transfer,
3. it is guaranteed that, throughout the period of transfer, the person concerned will not be punished, subjected to another sanction or will not be prosecuted by measures which cannot also be taken in his or her absence and that, in the event of being released, said person may leave the requesting state and
4. it is guaranteed that the person concerned will be transferred back without delay following the taking of evidence, unless the right to transfer back has been waived.

Such consent (sentence 1 no. 1) may not be revoked.

(2) The public prosecution office at the higher regional court prepares and effects the transfer. Local jurisdiction lies with that public prosecution office at the higher regional court in whose district the detention is being enforced.

(3) Any time spent in detention in the requesting state is credited against the detention to be enforced within the area of application of this Act. Section 37 (4) applies accordingly.

Section 63

Temporary transfer from abroad for foreign proceedings

(1) Whoever is in remand detention or in prison in a foreign state or has been ordered to be placed under a measure of reform and prevention involving deprivation of liberty may, upon request by a competent agency in that state, be temporarily transferred to the area of application of this Act for proceedings pending in that foreign state for the purpose of the taking of evidence and then transferred back following the taking of evidence. The person concerned is kept under arrest to secure the return.

(2) Such arrest is ordered by way of written arrest warrant. The arrest warrant must indicate the following:

1. the name of the person concerned,
2. the request for the taking of evidence in the person concerned's presence and
3. the reason for arrest.

(3) The decision to order arrest lies with the judge who is to render the assistance or with the judge at that local court in whose district the authority which is to render the assistance has its seat. There is no right of appeal against the decision.

(4) Sections 27, 45 (4) and 62 (1) sentence 1 no. 3 and (2) sentence 1 apply accordingly.

Section 64

Transport of witnesses

(1) Foreign nationals who are in remand detention or in prison or have been ordered to be placed under a measure of reform and prevention involving deprivation of liberty in a foreign state may be transported, in the capacity as witness, through the area of application of this Act to a third state upon request by a competent agency for the purpose of a hearing, an identity parade or a visual inspection and then transported back following the taking of evidence.

(2) The persons concerned are kept under arrest to secure the transport. Sections 27, 30 (1), 42, 44, 45 (3) and (4), 47 and 63 (2) apply accordingly.

Section 65

Transport for enforcement

Section 43 (2) to (4) and sections 44, 45 and 47 apply accordingly to the transport of foreign nationals for enforcement of a penalty or other sanction from a state in which they have been sentenced through the area of application of this Act to a foreign state which has taken on enforcement, with the proviso that the request may also be made by a competent agency in the sentencing state.

Section 66

Surrender of property

(1) Upon request by a competent agency in a foreign state, that property may be surrendered

1. which may serve as evidence in foreign proceedings,
2. which the person concerned or a party to the offence obtained for or as a result of the offence giving rise to the request,
3. which the person concerned or a party to the offence obtained by selling an object obtained or was given as compensation for its destruction, damage or confiscation or on account of an obtained right or for the use thereof or
4. which was created by the offence giving rise to the request or which was used or destined to be used to commit or prepare that offence.

(2) Such surrender is only permissible if

1. the offence giving rise to the request is also an unlawful act under German law which fulfils the elements of a criminal provision or of a provision which permits punishment by imposition of an administrative fine or if it would also constitute such an act under German law in the case of analogous conversion of the facts,
2. an order for seizure issued by a competent agency in the requesting state is submitted or a declaration made by such an agency indicates that the conditions for seizure would be met if the property were located in the requesting state and
3. it is guaranteed that the rights of third parties remain unaffected and property which is conditionally surrendered is returned without delay upon request.

(3) Surrender pursuant to subsection (1) nos. 2 to 4 is only permissible as long as no final and enforceable foreign judgment relating to that property has been submitted.

(4) The public prosecution office at the regional court prepares the decision concerning the surrender and effects the surrender once it has been authorised. Local jurisdiction lies with

the public prosecution office at the regional court in whose district the property is located.
Section 61 (2) sentence 2 applies accordingly.

Section 67 **Seizure and search**

- (1) Property in regard to which surrender to a foreign state is being considered as a possibility may be seized or secured by other means even before receipt of a request for such surrender. A search may likewise be carried out to that end.
- (2) Property may also be seized or secured by other means under the conditions of section 66 (1) no. 1 and (2) no. 1 if this is necessary to execute a request which does not relate to the surrender of the property. Subsection (1) sentence 2 applies accordingly.
- (3) The seizure and the search are ordered by that local court in whose district the seizure and search are to be carried out. Section 61 (2) sentence 2 applies accordingly.
- (4) In exigent circumstances, the public prosecution office and its investigators (section 152 of the Courts Constitution Act) are authorised to order the seizure and the search.

Section 67a **Assistance to international criminal courts, intergovernmental and supranational institutions**

The provisions of Part 5 apply accordingly to requests for other types of mutual assistance in criminal matters which are made by an international criminal court and by other intergovernmental and supranational institutions, unless special-law rules make exhaustive provision in that regard.

Part 6 **Outgoing requests**

Section 68 **Return**

- (1) Persons pursued who have been temporarily extradited, upon request and on condition of subsequent return, for the purpose of criminal proceedings conducted against them within the area of application of this Act are returned to the requested state on the agreed date, unless they waive the right to return. The public prosecution office which is involved in the criminal proceedings referred to in sentence 1 has jurisdiction in respect of the ordering and carrying out of the return.
- (2) A written arrest warrant may be issued to order the arrest of persons pursued if the return would otherwise not be guaranteed. The arrest warrant must indicate the following:
 1. the name of the person pursued,
 2. the state to which the person pursued is to be returned and
 3. the grounds to justify the order for arrest.
- (3) It is for the court with jurisdiction to order measures involving deprivation of liberty in the criminal proceedings referred to in subsection (1) sentence 1 to give the decision to order arrest. There is no right of appeal against the decision.
- (4) Sections 18, 19, 24, 25, 27 and 45 (4) apply accordingly.

Section 69 **Temporary transfer from abroad for German proceedings**

- (1) Whoever is in remand detention or in prison or who has been ordered to be placed under a measure of reform and prevention involving deprivation of liberty in a foreign state and who has been temporarily transferred upon request, in the capacity as witness, to a German court or German authority for the purpose of a hearing, an identity parade or a visual inspection is kept under arrest within the area of application of this Act to secure their return.
- (2) It is for the court which is seised of the case to give the decision on the arrest, in preparatory proceedings the judge at the local court in whose district the public prosecution

office conducting the proceedings has its seat. There is no right of appeal against the decision.

(3) Sections 27 and 45 (4), section 62 (1) sentence 1 no. 3 and (2) sentence 1, and section 63 (2) apply accordingly.

Section 70

Temporary transfer abroad for German proceedings

Whoever is in remand detention or in prison or who has been ordered to be placed under a measure of reform and prevention involving deprivation of liberty within the area of application of this Act may be transferred to a foreign state for the taking of evidence in criminal proceedings being conducted within the area of application of this Act if the conditions of section 62 (1) sentence 1 nos. 1, 3 and 4 are met. Section 62 (1) sentence 2 and (2) and (3) applies accordingly.

Section 71

Enforcement of German judgments abroad

(1) Enforcement of a penalty or other sanction which was imposed on a foreign national within the area of application of this Act may be transferred to a foreign state if

1. the sentenced person's residence or habitual residence is in the foreign state or said person is staying in that foreign state and is not being extradited because a request for extradition has not been made or has been refused, or extradition cannot be effected or
2. enforcement in the foreign state is in the sentenced person's or in the public interest.

The sentenced person may only be transferred for the purpose of enforcing a sanction involving deprivation of liberty; section 6 (2) and section 11 apply accordingly.

(2) Enforcement of a penalty or sanction not involving deprivation of liberty which was imposed on a German national within the area of application of this Act may be transferred to a foreign state if this is in the public interest. Further, the enforcement of a penalty or other sanction not involving deprivation of liberty which was imposed on a German national within the area of application of this Act may be transferred to a foreign state if

1. the sentenced person's residence or habitual residence is in the foreign state or said person is staying in that foreign state,
2. the sentenced person is not being extradited because a request for extradition has not been made or has been refused, or extradition cannot be effected and
3. the sentenced person will not suffer any significant disadvantages which go beyond the purpose of the punishment on account of the enforcement in the foreign state.

If the sentenced person is not in the foreign state, then enforcement of a sanction involving deprivation of liberty may, further, only be transferred if, following instruction, the sentenced person consents thereto and that consent is declared before and placed on record by a judge or a German consular official authorised to record declarations of intent. Such consent may not be revoked.

(3) Enforcement may only be transferred if it is guaranteed that the foreign state will comply with any withdrawal or limitation of the transfer.

(4) Enforcement of a sanction involving deprivation of liberty may only be transferred if the court has declared enforcement in the foreign state to be permissible. It is for the higher regional court to give a decision on permissibility by way of court order. Local jurisdiction lies with the court which imposed the penalty or other sanction to be enforced or, where a sentence of imprisonment is being enforced against the sentenced person within the area of application of this Act, in accordance with section 462a (1) sentences 1 and 2 of the Code of Criminal Procedure. Section 13 (1) sentence 2 and (2), section 30 (2) sentences 2 and 4 and

(3), section 31 (1) and (4), and sections 33, 52 (3) and 53 apply accordingly. If the sentenced person is within the area of application of this Act, section 30 (2) sentence 1 and section 31 (2) and (3) also apply accordingly.

(5) The German enforcing authority dispenses with enforcement if the foreign state has taken it on and carried it out. It may resume the enforcement if the foreign state did not complete it.

Section 71a

Agreement on realisation, surrender and distribution of recovered assets

Section 56b (1) applies accordingly to the enforcement of an order for confiscation in a foreign state.

Section 72

Conditions

Conditions which the foreign state attaches to mutual assistance must be complied with.

Part 7

Common provisions

Division 1

General provisions

Section 73

Limits to mutual assistance

The rendering of mutual assistance and the transmission of data without a request is not permissible if it would contradict core principles of the German legal system. In the case of requests pursuant to Part 8, 9, 10 and 13, the rendering of assistance is not permissible if executing the request would go against basic principles as set out in Article 6 of the Treaty on European Union.

Section 74

Federal jurisdiction

(1) It is for the Federal Ministry of Justice and Consumer Protection, in consultation with the Federal Foreign Office and other federal ministries whose remit is affected by the mutual assistance, to give a decision on foreign requests for mutual assistance and to send requests for mutual assistance to foreign states. Where an authority subordinate to another federal ministry is responsible for rendering the assistance, that federal ministry takes the place of the Federal Ministry of Justice and Consumer Protection. The federal ministries with jurisdiction under sentences 1 and 2 may delegate the exercise of their powers to subordinate federal authorities. It is for the Federal Office of Justice to give decisions on requests made in accordance with Part 9 Division 2 Subdivisions 2 and 3.

(2) The Federal Government may, by way of agreement, delegate to the *Land* governments the exercise of its power to give decisions on foreign requests for mutual assistance and to send requests for mutual assistance to foreign states. The *Land* governments are entitled to transfer that power to other bodies.

(3) The powers of the Federal Criminal Police Office in respect of the transmission of data, issuing of alerts and establishing of a person's identity on the basis of a foreign request are governed by section 27 (1) sentence 1 no. 2 and section 33 (1) to (4) of the Federal Criminal Police Office Act (*Bundeskriminalamtgesetz*).

(4) 'Requests' within the meaning of subsections (1) and (2) include those for data transmission in accordance with sections 61a und 92c. Data transmission in accordance with section 61a is ruled out from the possibility set out in subsection (2), unless provision is made therefor in agreements under international law as referred to in section 1 (3).

Section 74a

International criminal courts, intergovernmental and supranational institutions

Section 74 applies accordingly to decisions on requests by an international criminal court and by other intergovernmental and supranational institutions for other types of mutual assistance in criminal matters, unless special-law rules make exhaustive provision in that regard.

Section 75 Costs

Reimbursement, by the foreign state, of the costs of rendering assistance may be waived.

Section 76 Assurance of reciprocity

A foreign state may be given an assurance, in the context of a German request for mutual assistance, that outgoing requests made by that state will be executed, provided that it is not ruled out under this Act. Section 74 (1) applies accordingly.

Section 77 Application of other procedural rules

(1) In the absence of special procedural rules provided for under this Act, the provisions of the Courts Constitution Act and of the Introductory Act to the Courts Constitution Act (*Einführungsgesetz zum Gerichtsverfassungsgesetz*), of the Code of Criminal Procedure, of the Youth Courts Act, of the Fiscal Code (*Abgabenordnung*) and of the Act on Regulatory Offences (*Gesetz über Ordnungswidrigkeiten*) apply analogously.

(2) When rendering assistance in foreign proceedings, the same provisions on immunity, indemnity and reservations in respect of the authorisation of searches and seizures on parliamentary premises apply as are applicable to German criminal and regulatory fines proceedings.

Section 77a Electronic communications and file management

(1) Where this Act requires that it is necessary, in respect of the rendering of mutual assistance, to file the originals or certified copies of written documentation, these may also be submitted in electronic form, provided this is permitted by statutory instrument issued pursuant to section 77b. Electronic documents must bear a qualified electronic signature and must be suitable for processing by an authority or a court. The same applies to declarations, applications or statements of reasons which this Act expressly requires must be made in writing or must be signed.

(2) Qualified electronic signatures may be replaced by another secure procedure which guarantees the authenticity and integrity of the transmitted electronic document.

(3) An electronic document is deemed to have been received as soon as it has been recorded by the body in the authority or at the court responsible for taking receipt of documents. If a transmitted electronic document is not suitable for processing, the sender must be notified of that fact without delay, stating the applicable technical requirements. If electronic file management is not permitted in accordance with subsection (4), a copy of the electronic document is to be made without delay.

(4) The case files may be kept in electronic form if this is permitted by statutory instrument issued pursuant to section 77b. Papers and items inspected (originals) which are submitted for inclusion in the electronic files and are suitable for transmission are to be transferred into electronic form to replace the original, unless otherwise provided by statutory instrument issued pursuant to section 77b. The electronic document must bear a note stating when and by whom the original was transferred into electronic form. The originals are to be retained until proceedings are concluded so that they may be produced within one week if requested.

(5) An electronic document created in accordance with subsection (4) sentences 2 and 3 is to be used in proceedings unless there is reason to doubt that it corresponds to the original.

(6) If, in addition to a note made in accordance with subsection (4) sentence 3, an electronic document created in accordance with subsection (1) also bears a note to which a qualified electronic signature has been affixed concerning

1. the fact that the on-screen display corresponds to the original in terms of content and appearance and
2. whether the original or a copy of the original text was available at the time of the transmission,

then the original may be destroyed even before proceedings are concluded. Statements made by the person concerned and third parties in the course of proceedings and simple copies attached to them may be destroyed under the conditions of sentence 1.

(7) In all other cases, section 32 (1) sentence 3 half-sentence 2 and (2), section 32a (4) sentence 1 nos. 1 to 5, (5) sentence 2 and (6) sentence 2, section 32b (1) to (4), section 32c sentences 1 to 4, section 32d sentence 1, section 32e (2) to (4) and sections 32f and 497 of the Code of Criminal Procedure apply analogously to electronic communications and to electronic file management. In derogation from section 32b (1) sentence 2 of the Code of Criminal Procedure, when automatically creating an electronic signature which is to be signed, it is the accompanying order which is to be signed not the electronic document itself. Section 32c sentence 1 applies, with the proviso that the approval of the Bundesrat is not required.

Section 77b

Authorisation to issue statutory instrument

The Federal Ministry of Justice and Consumer Protection and the *Land* governments determine, by way of statutory instrument, for their own remits

1. the date from which electronic documents pursuant to section 77a (1) may be submitted,
2. the necessary requirements pertaining to the signature in respect of transmission of electronic documents pursuant to section 77a (2) and the form required for the purpose of processing,
3. the date from which files are to be or may be kept in electronic form pursuant to section 77a (4),
4. the organisational and technical requirements pertaining to the creation, management and filing of electronic files, including exceptions to the rule on replacing the original under section 77a (4),
5. the originals which are to be retained in derogation from section 77a (6).

The *Land* governments may transfer this authorisation by way of statutory instrument to the *Land* departments of justice. Permission for electronic transmission pursuant to section 77a (1) may be restricted to individual courts and authorities and to individual proceedings. Electronic file management pursuant to section 77a (4) may be limited to proceedings in individual authorities or to stages of those proceedings.

Division 2

Protection of personal data in mutual assistance matters

Section 77c

Scope of application

The provisions of this Division apply to personal data which are transmitted or received in the context of mutual assistance matters.

Section 77d

Transmission of personal data

(1) Where provided for by law and subject to the rules set out in sections 97a and 97b, personal data may be transmitted to public agencies in other states as well as to intergovernmental or supranational institutions

1. where it is necessary to prevent or prosecute criminal or regulatory offences, or to enforce or execute criminal-law sanctions or to avert threats,
2. where the receiving agency is responsible for one of the tasks referred to in no. 1,
3. where, in cases in which the personal data were transmitted from another Member State of the European Union or another Schengen Associated State, that state has previously consented to the transmission or has expressly waived the need for consent,
4. where the European Commission has adopted a decision on the adequacy of the level of protection (adequacy decision) in the receiving state or the receiving intergovernmental or supranational institution pursuant to Article 36 (3) of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89; L 127, 23.5.2018, p. 9), or where the conditions of section 77f are met and
5. where, in cases in which data were collected for a purpose other than that on which the transmission is based, it would also be permissible to collect the personal data for that transmission purpose by comparable means.

(2) Personal data are not transmitted, including where consideration is given to the special public interest in the data transmission, if there is insufficient guarantee, in the individual case, that the receiving state or the receiving intergovernmental or supranational institution will handle the personal data in an adequate manner and in line with basic human rights, or if the data subject's other legitimate interests pose an obstacle thereto.

(3) The transmission of personal data to agencies other than those competent agencies designated in subsection (1) no. 2 or to non-public agencies is permissible where the remaining conditions of subsection (1) are complied with if

1. transmission is vital in order for the transmitting agency to be able to carry out an assigned task,
2. transmission to the competent agency would be ineffective or unsuitable, in particular because the transmission could not be effected in due time, and
3. the receiving agency's attention is drawn to the purpose of the data transmission and to the fact that the personal data may only be used if it is necessary to fulfil the relevant purpose.

The competent agency is to be notified without delay of the transmission, unless such notification would be ineffective or unsuitable.

(4) If the prior consent of the Member State of the European Union concerned or of the Schengen Associated State concerned as required under subsection (1) no. 3 cannot be obtained in due time, the transmission of personal data is permissible without such consent if it is necessary to avert a present and substantial threat

1. to the public security of a state or

2. to the key interests of one of the Member States of the European Union or of a Schengen Associated State.

The agency in the Member State of the European Union concerned or in the Schengen Associated State which is responsible for giving consent is to be notified without delay.

(5) Responsibility for the permissibility of the transmission of personal data lies with the transmitting agency. The possibility of attaching conditions to the transmission of personal data remains unaffected.

(6) 'Member States of the European Union' within the meaning of this provision means those states to which Directive (EU) 2016/680 applies; 'Schengen Associated States' means those states as defined in section 91 (3).

Section 77e

Transmitting agency's verification, reporting and logging obligations

(1) The transmitting agency

1. is, as a general rule, to check the accuracy, completeness and currency of the personal data before transmission,
2. includes information, where possible, when transmitting personal data which permits the receiving agency to assess the accuracy, completeness, currency and reliability of the data,
3. expressly informs the receiving agency when transmitting the data about the fact that the transmitted personal data may only be used for the purpose for which they were transmitted,
4. expressly informs the receiving agency about the fact that forwarding the data to other states or intergovernmental or supranational institutions requires the transmitting agency's prior consent,
5. informs the receiving agency when transmitting the data of any conditions which apply under German law to the processing of the transmitted personal data and which must be complied with,
6. notifies the receiving state without delay if it transpires that data ought not to have been transmitted or that incorrect data were transmitted,
7. notifies the competent data protection supervisory authority about the transmission of data in accordance with section 77d (3) and
8. records each instance in which personal data are transmitted under the provisions of domestic law.

(2) Subsection (1) no. 5 applies accordingly where the transmitting agency has received data from another state or from an intergovernmental or supranational institution with conditions attached with which the receiving agency must also comply.

Section 77f

Procedure in case of lack of adequacy decision

(1) Personal data may be transmitted without an adequacy decision as referred to in section 77d (1) no. 4 if

1. an instrument which is legally binding on the receiving state or on the receiving intergovernmental or supranational body provides suitable guarantees concerning the protection of personal data or
2. the transmitting agency, after assessing all the relevant circumstances, has come to the conclusion that appropriate safeguards concerning the protection of personal data are in place.

(2) Where no adequacy decision has been given and no suitable guarantees are in place as required under subsection (1), personal data may only be transmitted in an individual case if this is necessary

1. to protect the data subject's or another person's vital interests,
2. to safeguard the data subject's legitimate interests,
3. to avert a present and substantial threat to a state's public security,
4. to prevent or prosecute criminal or regulatory offences or to enforce or execute criminal-law sanctions or
5. to assert, exercise or defend legal claims in connection with those purposes referred to in no. 4.

(3) The transmitting agency notifies the competent data protection supervisory authority about groups of cases of transmission as per subsection (1) no. 2.

Section 77g

Consent to forwarding of personal data

Where the transmitting agency is requested by the receiving agency to consent to the forwarding of transmitted personal data to other states or to other intergovernmental or supranational institutions, such consent may be given if the corresponding direct data transmission would be permissible pursuant to section 77d.

Section 77h

Use of transmitted personal data

(1) Personal data which have been transmitted by public agencies in other states or by intergovernmental or supranational institutions may, where provided for by law, only be used for purposes other than those for which they were transmitted if the transmitting agency has previously consented thereto. Section 77d (4) applies accordingly.

(2) Conditions attached to the use of the personal data to which the transmitting agency has drawn attention must be complied with.

(3) Where personal data are transmitted without a request, the receiving agency without delay examines whether the data are required for the purpose for which they were transmitted.

Part 8

Extradition and transit matters with Member States of European Union

Division 1

General provisions

Section 78

Precedence of Part 8

(1) In the absence of special provision made under this Part, the remaining provisions of this Act apply to extradition and transit matters with the Member States of the European Union.

(2) This Part takes precedence over agreements under international law as referred to in section 1 (3), provided that exhaustive provision is made on the relevant matter.

Section 79

Obligation to authorise extradition or transit; preliminary ruling

(1) Permissible requests for extradition or transit made by a Member State may only be refused where provided for under this Part. Reasons must be given for a decision not to authorise the extradition or transit.

(2) Before the higher regional court gives its decision on permissibility, the agency responsible for authorisation gives a decision as to whether it plans to assert any of the obstacles to authorisation set out in section 83b. Reasons must be given for the decision not

to assert any obstacles to authorisation. The decision is subject to review by the higher regional court as per the procedure under section 29; the parties are to be heard. When giving instruction as required by section 41 (4), the person pursued is also to be informed that in the event of a simplified extradition procedure being conducted, no court review as set out in sentence 3 is undertaken.

(3) Where circumstances suited to asserting obstacles to authorisation which arise or become known following the decision referred to in subsection (2) sentence 1 do not lead to authorisation being refused, the decision not to assert any obstacles to authorisation is subject to review as per the procedure under section 33.

Division 2 Extradition to Member State of European Union

Section 80 Extradition of German nationals

(1) Extradition of a German national for the purpose of criminal prosecution is only permissible where

1. it is guaranteed that the requesting Member State, after imposing a final sentence of imprisonment or other sanction, will offer to return the person pursued on that person's request for the purpose of enforcement within the area of application of this Act and
2. the offence has a substantial link to the requesting Member State.

An offence generally has a substantial link to the requesting Member State if the entire offence or essential parts of the offence were committed in that Member State's sovereign territory and at least essential parts of the result occurred there, or if the offence is a serious crime with a typical cross-border dimension which was committed at least in part in that Member State's sovereign territory.

(2) If the conditions of subsection (1) sentence 1 no. 2 are not met, extradition of a German national for the purpose of criminal prosecution is only permissible if

1. the conditions of subsection (1) sentence 1 no. 1 are met and
2. the offence has a substantial link to Germany and
3. the offence is also an unlawful act under German law which fulfils the elements of a criminal provision or would also be such an act under German law in the case of analogous conversion of the facts, and, after weighing up the various concrete, contradictory interests, the person pursued's legitimate expectation in not being extradited does not prevail.

An offence generally has a substantial link to Germany if the entire offence or essential parts of the offence were committed within the area of application of this Act and at least essential parts of the result occurred there. When considering the various interests, the criminal charge, the practical requirements and possibilities in respect of effective criminal prosecution, and the person pursued's constitutionally protected interests are specifically to be weighed up and set in proper relation to one another, giving due consideration to the goals associated with the creation of a European judicial area. Where a public prosecution office or a court has given a decision to terminate or not to institute criminal proceedings in Germany for the offence which is the subject matter of the request for extradition, this decision and its reasoning are to be included when considering the various interests; the same applies accordingly where a court has opened main proceedings or has issued a summary penalty order.

(3) Extradition of a German national for the purpose of enforcement of a penalty is only permissible if the person pursued consents, following instruction, and that consent is declared before and placed on record by a judge. Section 41 (3) and (4) applies accordingly.

(4) (repealed)

Section 81

Extradition for prosecution or for enforcement

Section 3 applies, with the provisos that

1. extradition for prosecution is only permissible if, under the law of the requesting Member State, the offence is punishable by a sentence of imprisonment or another sanction of a maximum of at least 12 months,
2. extradition for enforcement is only permissible if, under the law of the requesting Member State, a sanction involving deprivation of liberty of no less than four months is to be enforced,
3. extradition in tax, customs and currency exchange matters is also permissible even if German law does not impose the same kind of taxes or does not contain the same kind of provisions on taxes, customs duties and currency exchange activities as the law of the requesting Member State,
4. no double criminality check is carried out if, under the law of the requesting state, the offence giving rise to the request is punishable by a sanction involving deprivation of liberty of a maximum of at least three years and belongs to one of the categories of offences listed in Article 2 (2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190, 18.7.2002, p. 1), as amended by Framework Decision 2009/299/JHA (OJ L 81, 7.3.2009, p. 24) (European Arrest Warrant Framework Decision).

Section 82

Nonapplicability of specific provisions

Sections 5, 6 (1) and 7 and, where a European Arrest Warrant has been submitted, section 11, do not apply.

Section 83

Additional conditions governing permissibility

(1) Extradition is not permissible if

1. final judgment has already been passed upon the person pursued in another Member State for the same offence which gave rise to the request, provided that, in the event of conviction, the sanction has already been enforced, is currently being enforced or can no longer be enforced under the law of the sentencing state,
2. the person pursued lacked criminal responsibility under section 19 of the Criminal Code at the time of the offence or
3. in the case of a request for the purpose of enforcement the sentenced person did not appear in person at the hearing which led to the judgment or
4. the offence giving rise to the request is punishable, under the law of the requesting Member State, by imprisonment for life or another sanction involving deprivation of liberty for life, or the person pursued has had such a sentence imposed and a review of enforcement of the sentence or sanction imposed is conducted, upon application or ex officio, before no more than 20 years have elapsed.

(2) However, in derogation from subsection (1) no. 3, extradition is permissible if

1. the sentenced person
 - a) in due time

- aa) was summoned in person to the hearing which led to the judgment or
 - bb) actually received official information by other means of the scheduled date and place of the hearing which led to the judgment in such a manner that it was unequivocally established that the sentenced person was aware of the scheduled hearing and
- b) was informed that judgment may also be delivered in absentia,
- 2. the sentenced person, being aware of the proceedings against him or her in which defence counsel participated, prevented a personal summons by absconding or
 - 3. the sentenced person, being aware of the scheduled hearing, mandated legal counsel to defend him or her at the hearing and was indeed defended by legal counsel at the hearing.
- (3) In derogation from subsection (1) no. 3, extradition is also permissible if the sentenced person has, following service of the judgment,
- 1. expressly stated that he or she does not contest the judgment delivered or
 - 2. not requested a retrial or filed an appeal on points of fact and law (*Berufung*) within the applicable time limits.

Sentenced persons must first be expressly instructed about their right to a retrial or to an appeal on points of fact and law in which they have a right to participate and in which the merits of the case, including fresh evidence, may be re-examined and which may lead to the original judgment being quashed.

(4) In derogation from subsection (1) no. 3, extradition is, further, permissible if, following their surrender to the requesting Member State, the judgment will be served personally on the sentenced person without delay and that person will be instructed about the right, as set out in subsection (3) sentence 2, to request a retrial or to file an appeal on points of fact and law, as well as of the applicable time limits.

Section 83a **Extradition documentation**

- (1) Extradition is only permissible if the documentation referred to in section 10 or a European Arrest Warrant has been transmitted which contains the following information:
- 1. the identity of the person pursued as specified in the Annex to the European Arrest Warrant Framework Decision and that person's nationality,
 - 2. the name and address of the issuing judicial authority,
 - 3. whether an enforceable judgment, arrest warrant or another enforceable judicial decision with the same legal effect has been received,
 - 4. the nature and legal assessment of the criminal offence, including the statutory provisions,
 - 5. a description of the circumstances of the commission of the criminal offence, including the time and place of commission and the person sought's involvement in the offence and
 - 6. the maximum penalty provided for by law for the criminal offence concerned in the issuing Member State or, in the event of a final judgment having been given, the penalty imposed.
- (2) The issuing of an alert for arrest for the purpose of transfer or extradition under Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the

second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63) which contains the particulars designated in subsection (1) nos. 1 to 6 or to which these particulars were subsequently added is deemed to be a European Arrest Warrant.

Section 83b Obstacles to authorisation

(1) Authorisation of extradition may be refused if

1. criminal proceedings are being conducted within the area of application of this Act against the person pursued for the same offence which gave rise to the request for extradition,
2. the institution of criminal proceedings for the same offence which gave rise to the request for extradition was refused or previously instituted criminal proceedings were terminated,
3. precedence is to be given to a request for extradition made by a third state,
4. it is not to be expected, based on an obligation to extradite a person under the European Arrest Warrant Framework Decision, an assurance given by the requesting state or for other reasons, that it would correspond to a comparable request made by a German authority.

(2) Authorisation of the extradition of a foreign national who is habitually resident in Germany may, further, be refused if,

1. in the case of extradition for the purpose of prosecution, the extradition of a German national would not be permissible pursuant to section 80 (1) and (2),
2. in the case of extradition for the purpose of enforcement of a penalty, the foreign national, following instruction, does not consent to extradition, such non-consent being declared before and placed on record by a judge, and that person's legitimate interests in enforcement in Germany prevail; section 41 (3) and (4) applies accordingly.

Section 83c Procedure and time limits

(1) A decision on extradition is, as a general rule, to be given no later than 60 days following the person pursued's arrest.

(2) Persons pursued are to be informed without delay about their right to nominate legal counsel in the requesting Member State.

(3) Where a person pursued consents to the simplified extradition procedure, a decision on extradition is, as a general rule, to be given no later than 10 days after that consent is given.

(4) Once extradition has been authorised, a date on which the person pursued is to be surrendered is to be arranged with the requesting Member State. The date arranged for the surrender should be no later than 10 days after the decision to authorise extradition. If it is impossible to keep the date owing to circumstances which are beyond the control of the involved states, a new date is to be arranged so that the surrender can be made within the next 10 days. The arranging of a date for the surrender may be postponed on account of ongoing criminal proceedings or enforcement of a criminal sanction against the person pursued within the area of application of this Act or on compelling humanitarian grounds.

(5) Where extraordinary circumstances arise and mean that the time limits set out in this provision cannot be complied with, the Federal Government informs Eurojust of this fact and of the reasons for the delay; no personal data may be transmitted.

(6) A decision on a request to extend the authorisation of extradition is, as a general rule, to be given within 30 days following receipt of the request.

Section 83d Release of person pursued

If the person pursued has not been transferred within 10 days following expiry of the date arranged for the surrender in accordance with section 83c (4), then that person is to be released from arrest pending extradition if no new date for the surrender has been arranged.

Section 83e
Hearing of person pursued

- (1) As long as no decision has been given on extradition, a request by the requesting Member State for the person pursued to be heard as an accused is to be authorised.
- (2) Upon request, representatives of the requesting Member State are to be permitted to be present during such a hearing.

Division 3
Transit to Member State of European Union

Section 83f
Transit

- (1) Transit from one Member State through the area of application of this Act to another Member State is permissible if the transmitted documentation contains the following information:
1. the identity of the person pursued as specified in the Annex to the European Arrest Warrant Framework Decision and that person's nationality,
 2. the fact that a European Arrest Warrant or a document as designated in section 10 has been received,
 3. the nature and legal assessment of the criminal offence and
 4. the circumstances of the commission of the criminal offence, including the time and place of commission.
- (2) Subsection (1) applies to transit from a third state to a Member State, with the proviso that notification that a request for extradition has been received takes the place of the information referred to in subsection (1) no. 2.
- (3) The transit of German nationals for the purpose of prosecution is only permissible if the Member State to which they are to be extradited gives an assurance that they are to be returned at Germany's request, after imposition of a final sentence of imprisonment or other sanction, for enforcement within the area of application of this Act. The transit of German nationals for the purpose of prosecution is only permissible if the person concerned consents thereto.
- (4) A decision on transit is, as a general rule, to be given within 30 days following receipt of the request.

Section 83g
Transport by air

Section 83f also applies to transport by air in the course of which an unscheduled stopover is made within the area of application of this Act.

Division 4
Outgoing requests for extradition to Member State of European Union

Section 83h
Speciality

- (1) Persons surrendered by a Member State on the basis of a European Arrest Warrant
1. may neither be prosecuted nor convicted nor subjected to a measure involving deprivation of liberty for an offence committed prior to their surrender other than that for which they were surrendered and

2. may not be re-extradited, transferred or deported to a third state.

(2) Subsection (1) does not apply where

1. the person surrendered had the opportunity to leave the territorial scope of this Act but did not do so within 45 days after final discharge or returned there after leaving,

2. the criminal offence is not punishable by a sentence of imprisonment or measure of reform and prevention involving deprivation of liberty,

3. the criminal proceedings do not give rise to a measure restricting personal liberty,

4. the person surrendered has a penalty or measure of reform and prevention not involving deprivation of liberty enforced against him or her, even if that penalty or measure may give rise to a restriction of personal liberty or

5. the requested Member State or the person surrendered has waived such right.

(3) Where the person surrendered waives such right after being surrendered, the waiver is to be declared before and placed on record by a judge or public prosecutor. The declaration of waiver may not be revoked. The person surrendered must be instructed about that fact.

Section 83i Notification of delays

The Federal Government notifies the Council of the European Union of any repeated delays on the part of another Member State in the effecting of extradition. Where, in an individual case, it is necessary in order to be able to establish the reasons for the time limits being exceeded, the person pursued's pseudonymised data may be transmitted to the Council. The Federal Government may only re-personalise these data vis-à-vis the requested state and only where necessary for the purpose of an evaluation of implementation of the European Arrest Warrant Framework Decision.

Section 83j Legal counsel

(1) The mandatory assistance of legal counsel is required in proceedings to enforce a European Arrest Warrant for the purpose of prosecution if

1. the person pursued nominates legal counsel in the area of application of this Act to assist his or her legal counsel in the requested Member State and

2. the appointment of the additional legal counsel is necessary to guarantee the effective exercise of the person pursued's rights in the requested state.

(2) Where the mandatory assistance of legal counsel is required pursuant to subsection (1) and the person pursued does not yet have legal counsel in the area of application of this Act to assist his or her legal counsel in the requested Member State, legal counsel is to be appointed upon application or ex officio.

(3) It is for the court which issued the domestic arrest warrant giving rise to the European Arrest Warrant to make the appointment. After preferment of public charges, the decision lies with the president of the court before which the proceedings are pending.

(4) The appointment is, as a general rule, to be revoked if the conditions of subsection (1) are no longer met or the person pursued has been transferred.

(5) The provisions of Book 1 Division 11 of the Code of Criminal Procedure, with the exception of sections 139, 140, 141, 141a, 142 (2) and (3), 143 (1) and (2) sentences 2 to 4, 143a (3) and 144 apply accordingly.

Part 9 Mutual assistance in enforcement matters with Member States of European Union

Division 1
Sanctions involving deprivation of liberty

Subdivision 1
Enforcement of foreign judgments in Federal Republic of Germany

Section 84
Principle

(1) Assistance in matters relating to the enforcement of judgments which is rendered to another Member State of the European Union under the provisions of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5.12.2008, p. 27), as amended by Council Framework Decision 2009/299/JHA (OJ L 81, 27.3.2009, p. 24) (Framework Decision on Custodial Sentences), is governed by the provisions of this Subdivision.

(2) The provisions of Part 4 and the general provisions of Part 1 and Part 7 of this Act apply

1. in the absence of special provision made under this Subdivision or
2. if no request has been made under the provisions of the Framework Decision on Custodial Sentences.

(3) This Subdivision takes precedence over agreements under international law as referred to in section 1 (3), provided that exhaustive provision is made on the relevant matter.

Section 84a
Conditions governing permissibility

(1) In derogation from section 49, enforcement of a foreign judgment is only permissible under the provisions of the Framework Decision on Custodial Sentences if

1. a court in another Member State has by final decision imposed a sanction involving deprivation of liberty
 - a) which is enforceable and
 - b) which, in the cases referred to in section 84g (5), can be converted into that sanction provided for under German law which most closely corresponds to it,
2. a penalty, measure of reform and prevention or an administrative fine could also have been imposed under German law for the offence giving rise to the judgment, notwithstanding any procedural obstacles and, where applicable, in the case of analogous conversion of the facts and
3. the sentenced person
 - a) is a German national or has his or her lawful and permanent habitual residence in the Federal Republic of Germany and no proceedings to terminate that residence are pending,
 - b) is in the Federal Republic of Germany or in the Member State in which the judgment against him or her was delivered and
 - c) has, in the event that he or she is in the Member State in which the judgment was delivered, consented, under the provisions applicable in that Member State, to enforcement in the Federal Republic of Germany.

(2) In derogation from subsection (1) no. 2, enforcement is also permissible in tax, customs and currency exchange matters if German law does not contain any tax, customs and currency exchange provisions of the same kind as the law of the other Member State.

(3) Subsection (1) no. 2 does not apply if the sentenced person has not consented to extradition or to transfer for enforcement of a penalty in accordance with section 80 (3), section 83b (2) no. 2 or section 83f (3) sentence 2. If the conditions of section (1) no. 2 are not met, the upper limit when converting the sanction in accordance with section 84g (4) and (5) is two years' imprisonment.

(4) In derogation from subsection (1) no. 3 (c), the sentenced person's consent is not required if a competent authority in the other Member State makes a request for enforcement of a judgment under the provisions of the Framework Decision on Custodial Sentences together accompanied by the documentation referred to in section 84c and

1. the sentenced person is a German national and has his or her centre of vital interests in the Federal Republic of Germany or
2. a competent authority in the requesting Member State has issued a final decision to the effect that the sentenced person has no right of residence in its territorial jurisdiction and may therefore be expelled or deported to the Federal Republic of Germany after discharge from prison.

Section 84b

Additional conditions governing permissibility

(1) Enforcement is not permissible if

1. the sentenced person lacked criminal responsibility under section 19 of the Criminal Code or lacked criminal liability under section 3 of the Youth Courts Act at the time of the offence,
2. the sentenced person did not appear in person at the hearing which led to the judgment,
3. the sentenced person
 - a) has already had final judgment passed upon him or her in a Member State other than that in which judgment was delivered against him or her for the same offence which led to the judgment and
 - b) has been sentenced and the sanction imposed has already been enforced, is currently being enforced or can no longer be enforced under the law of the sentencing state or
4. enforcement is statute-barred under German law or would be statute-barred in the case of analogous conversion of the facts.

(2) In derogation from subsection (1) no. 4 and section 84a (1) no. 2, enforcement of a judgment delivered in another Member State may be declared permissible if the sentenced person has made an application to that effect. The application referred to in sentence 1 must be made in accordance with the provisions of the Member State in which the judgment to be enforced was delivered against him or her. The application referred to in sentence 1 is to be declared before and placed on record by a judge or, if the sentenced person is being detained in the other Member State, a German consular official authorised to record declarations of intent. The application may not be withdrawn. The sentenced person must first be instructed about the legal consequences of making the application and about the fact that it cannot be withdrawn. If the conditions of section 84a (1) no. 2 are not met, the upper limit when converting the sanction in accordance with section 84g (4) and (5) is two years' imprisonment.

(3) In derogation from subsection (1) no. 2, enforcement is also permissible if

1. the sentenced person, in due time,

- a) was summoned in person to appear at the hearing which led to the judgment or
 - b) actually received official information by other means of the scheduled date and place of the hearing which led to the judgment in such a manner that it was unequivocally established that the sentenced person was aware of the scheduled hearing and
 - c) was informed that judgment may also be delivered in absentia,
2. the sentenced person, being aware of the proceedings being conducted against him or her in which defence counsel participated, prevented a personal summons by absconding or
 3. the sentenced person, being aware of the scheduled hearing, mandated defence counsel to defend him or her at the hearing and was indeed defended by counsel at the hearing.
- (4) In derogation from subsection (1) no. 2, enforcement is, further, permissible if, following service of the judgment, the sentenced person
1. expressly stated that he or she does not contest the judgment delivered or
 2. did not request a retrial or file an appeal on points of fact and law within the applicable time limits.

Sentenced persons must first be expressly instructed about their right to a retrial or to an appeal on points of fact and law in which they have a right to participate and in which the merits of the case, including fresh evidence, may be re-examined and which may lead to the original judgment being quashed.

Section 84c Documentation

- (1) Enforcement of a foreign judgment under the provisions of the Framework Decision on Custodial Sentences is only permissible if the other Member State transmits the original or a certified copy of the judgment together with a fully completed certificate which corresponds to the form in Annex I of the Framework Decision on Custodial Sentences, as amended.
- (2) Where the certificate referred to in subsection (1) is submitted but is incomplete, the competent authority may waive submission of a completed certificate if the required particulars can be drawn from the judgment to be enforced or from other accompanying documentation.

Section 84d Obstacles to authorisation

Authorisation of the enforcement of a judgment which is permissible under the terms of sections 84a to 84c may only be refused if

1. the certificate (section 84c (1)) is incomplete or manifestly does not correspond to the judgment to be enforced and the other Member State has not completed or corrected these particulars,
2. the judgment is to be enforced against a German national and
 - a) that person neither has his or her centre of vital interests in the Federal Republic of Germany and
 - b) no competent authority in the other Member State has issued a final decision to the effect that the sentenced person does not have the right of residence in its territorial jurisdiction and is therefore required to leave for the Federal Republic of Germany after discharge from prison,

3. essential parts of the offence were committed in the Federal Republic of Germany or on one of the means of transport referred to in section 4 of the Criminal Code,
4. less than six months of the sanction remain to be enforced at the point in time when the judgment is received,
5. the public prosecution office or the court has established that the foreign judgment is enforceable only in part and it was not possible to reach agreement with the competent authority in the other Member State regarding the extent to which the judgment is to be enforced or
6. the other Member State has refused to consent to the sentenced person being prosecuted, convicted or subjected to a measure involving deprivation of liberty following transfer for another offence committed prior to transfer and which did not lead to the judgment.

Section 84e

Interim authorisation decision

- (1) The decision on whether to authorise enforcement is given by the public prosecution office with jurisdiction under section 50 sentence 2 and section 51. It gives the sentenced person the opportunity to make a statement. This may be dispensed with if the sentenced person was already heard in the other Member State.
- (2) If the public prosecution office decides not to assert any of the obstacles to authorisation referred to in section 84d nos. 1 to 6, it includes its reasons for this decision in its application for a court decision on enforceability.
- (3) If the public prosecution office does not authorise enforcement in the Federal Republic of Germany, it gives reasons for this decision. The public prosecution office serves the decision on the sentenced person, provided he or she has consented to enforcement in the Federal Republic of Germany. The sentenced person may apply, within two weeks following service, for a court decision. Sections 297 to 300 and section 302 (1) sentence 1 and (2) of the Code of Criminal Procedure on appellate remedies and sections 42 to 47 of the Code of Criminal Procedure on time limits and restoration of the status quo ante apply accordingly.

Section 84f

Court procedure

- (1) It is for the regional court with jurisdiction under section 50 sentence 1 and section 51 to decide upon application by the public prosecution office pursuant to section 84e (2) or upon application by the sentenced person pursuant to section 84e (3) sentence 3. The public prosecution office prepares the decision.
- (2) The court sends the sentenced person a copy of the documentation referred to in section 84c (1) insofar as this is necessary in order for the sentenced person to be able to exercise his or her rights.
- (3) If the public prosecution office files an application for a court decision on enforceability pursuant to section 84e (2), a copy of the decision referred to in section 84e (2) is to be served on the sentenced person together with the copy referred to in subsection (2). The sentenced person is requested to respond to the application filed by the public prosecution office within a period to be determined by the court.
- (4) Section 52 (1) applies accordingly to the court's preparation of the decision, with the proviso that the competent authority in the other Member State must also have been given the opportunity to submit additional documentation if the forwarded documentation is not sufficient to be able to assess whether the public prosecution office properly exercised its discretionary power. A time limit may be set for submission of the documentation.
- (5) Section 30 (2) sentence 2 applies accordingly, with the proviso that the court may also take evidence on whether the public prosecution office properly exercised its discretionary power. Section 30 (2) sentence 4 and (3) and section 31 (1) and (4) apply accordingly. If the

sentenced person is within the area of application of this Act, section 30 (2) sentence 1 and section 31 (2) and (3) also apply accordingly.

Section 84g Court decision

(1) It is for the regional court to decide, by way of court order, on applications for a court decision pursuant to section 84e (2) and (3).
(2) If the sentenced person has not complied with the provisions governing applications for a court decision under section 84e (3) sentences 3 and 4, the court dismisses the application as inadmissible. There is no right of appeal against the decision.
(3) In derogation from section 54 (1), the court declares the foreign judgment enforceable in accordance with section 50 sentence 1 and section 55 if enforcement is permissible and the public prosecution office

1. properly exercised its discretionary power not to assert any of the obstacles to authorisation as per section 84d nos. 1 to 6 or

2. improperly exercised its discretionary power to assert obstacles to authorisation as referred to in section 84d nos. 1 to 6 and no other discretionary decision is justified; if, however, another discretionary decision is considered as a possibility, the court reverses the decision given by the public prosecution office and returns the case files so that the public prosecution office may exercise its discretionary power once more, giving due consideration to the court's legal opinion.

Section 54 (4) applies accordingly, with the proviso that rather than the time spent under arrest in accordance with section 58, the time spent under arrest in accordance with section 84j is to be credited. Section 55 (2) and (3) applies accordingly.

(4) If the sanction imposed in the foreign judgment exceeds the upper limit set for the offence within the area of application of this Act, the court reduces the sanction to that upper limit. Section 54 (1) sentence 4 and section 54a (1) no. 1 and (2) and (3) apply accordingly.

(5) In its decision to be given in accordance with subsections (3) and (4), the court converts the sanction imposed into that sanction provided for under German law which most closely corresponds to it if

1. the sanction imposed corresponds in nature to no sentence provided for under the law applicable within the area of application of this Act or

2. the sentenced person was under the age of 21 at the time of the offence; the provisions of the Youth Courts Act thus apply accordingly.

The foreign judgment is binding in respect of the measure of the converted sanction; the nature or duration of the sanction imposed in the other Member State may not be aggravated when converting the sanction.

Section 84h Authorisation following court decision

(1) The public prosecution office may authorise the rendering of assistance in the enforcement of judgments only if the foreign judgment has been declared enforceable.
(2) The public prosecution office authorises the enforcement under the terms of the final decision given by the court.
(3) There is no right of appeal against the authorisation decision.
(4) The decision on whether to authorise enforcement is, as a general rule, to be given within 90 days after the public prosecution office receives the documentation referred to in section 84c (1). Reasons are to be given for any final decision not to authorise the rendering of assistance.

Section 84i Speciality

(1) Where a sentenced person was transferred from another Member State without his or her consent, that sentenced person may neither be prosecuted nor convicted nor subjected to a measure involving deprivation of liberty for an offence committed prior to his or her transfer other than that for which the transfer was effected.

(2) In derogation from subsection (1), a transferred person may be prosecuted, convicted or subjected to a measure involving deprivation of liberty for an offence committed prior to his or her transfer other than that for which the transfer was effected if

1. the transferred person had the opportunity to leave the territorial scope of this Act but did not do so within 45 days after final discharge or returned there after leaving,
2. the criminal proceedings did not give rise to a measure restricting personal liberty,
3. a penalty or a measure of reform and prevention not involving deprivation of liberty is being enforced against him or her for the other offence, even if that penalty or measure may restrict personal liberty or
4. the other Member State or the transferred person has waived the right to application of subsection (1).

Following his or her transfer, the transferred person's waiver of the entitlement under sentence 1 no. 4 is to be declared before and placed on record by a judge or public prosecutor. The declaration of waiver may not be revoked. The transferred person is to be instructed about the legal consequences of waiving this right and about its irrevocability.

Section 84j Securing enforcement

Section 58 (1), (2) and (4) applies, with the proviso that an order may be made to arrest the sentenced person if

1. that sentenced person is within the area of application of this Act,
2. a foreign judgment as defined in section 84a (1) no. 1 has been delivered,
3. the other Member State has made a request for the sentenced person to be arrested and
4. there is a danger that the sentenced person will evade the enforceability proceedings or the enforcement itself.

Section 84k Additional regulations on enforcement

(1) Enforcement of the remainder of a sanction involving deprivation of liberty may be suspended on probation. The provisions of the Criminal Code apply accordingly. The decision on suspension on probation is to be given at that point in time when the sentenced person, in the case of ongoing enforcement in the other Member State, would have a right to a review of suspension on probation under the law of that Member State.

(2) In derogation from section 57 (6), after enforcement in the Federal Republic of Germany has commenced, enforcement is only to be dispensed with if a competent agency in the other Member State gives notification that the conditions for enforcement are no longer met on account of a retrial or the granting of an amnesty or a pardon. Enforcement may, further, be dispensed with if the sentenced person has escaped from prison in the Federal Republic of Germany.

Section 84l Transport for enforcement

(1) Where a person is to be transported from one Member State through the area of application of this Act to another Member State in order that a sentence of imprisonment or

other sanction involving deprivation of liberty can be enforced in the latter Member State, the transport is only permissible if one of the two Member States has made a request to that effect.

(2) The request referred to in subsection (1) must include a copy of a certificate which corresponds to the form in Annex I of the Framework Decision on Custodial Sentences, as amended.

(3) If transport is requested for several offences, it is sufficient for the requirements of subsections (1) and (2) to be met in respect of at least one of the offences giving rise to the request.

(4) The transport of a German national is only permissible if that person has consented thereto under the provisions applicable in the Member State in which the judgment to be enforced was delivered. Such consent cannot be revoked.

Section 84m **Transport procedure**

(1) Sections 44 and 45 (1), (2) and (4) to (7) apply accordingly to the transport procedure. Transport is to be authorised where a warrant of arrest pending transport has been issued.

(2) A decision on a request for transport is, as a general rule, to be given within one week following receipt of the request.

Section 84n **Transport by air**

(1) Sections 84l and 84m also apply to transport by air in the course of which an unscheduled stopover is necessary within the area of application of this Act.

(2) In the event of an unscheduled stopover, the public prosecution office and police officers are authorised to make a provisional arrest to secure the transport.

(3) Section 47 (3), (4), (6) sentence 1 and (7) applies accordingly. Section 47 (5) applies accordingly to the warrant of arrest pending transport, with the proviso that it may already be issued before receipt of the documentation referred to in section 84l (2). Transport is to be authorised if the higher regional court has upheld the warrant of arrest pending transport.

Subdivision 2 **Enforcement of German judgments in another Member State of European Union**

Section 85 **Interim authorisation decision**

(1) In derogation from section 71, the enforcing authority may transfer enforcement of a sanction involving deprivation of liberty imposed within the area of application of this Act to another Member State under the provisions of the Framework Decision on Custodial Sentences. The enforcing authority gives the sentenced person the opportunity to make a statement. This may be dispensed with if the sentenced person has filed an application for enforcement to be transferred to that other Member State.

(2) If the sentenced person is in the Federal Republic of Germany, the enforcing authority may only authorise enforcement of a sanction involving deprivation of liberty in another Member State if

1. the sentenced person has consented to enforcement of the sanction involving deprivation of liberty in that other Member State or
2. the court has, upon application by the enforcing authority pursuant to section 85c, declared enforcement of the sanction involving deprivation of liberty in that other Member State to be permissible.

The sentenced person's consent as referred to in sentence 1 no. 1 is to be declared before and placed on record by a judge. Such consent may not be revoked. The sentenced person is to be instructed about the legal consequences of such consent and about its irrevocability.

(3) If the enforcing authority decides to send a request for enforcement to another Member State, it must notify the sentenced person thereof in writing. If the sentenced person is in the other Member State's territorial jurisdiction, the enforcing authority may request its competent authority to forward such notification to the sentenced person. The request for enforcement must include those statements, in written form, which were made by the sentenced person and his or her legal representative.

(4) The enforcing authority may withdraw a request for enforcement as long as enforcement in the other Member State has not commenced.

(5) If the enforcing authority does not authorise enforcement of the sanction involving deprivation of liberty in another Member State or it withdraws a request as provided for in subsection (4), then it gives reasons for this decision. The enforcing authority serves the decision on the sentenced person, provided he or she has applied for enforcement in the other Member State or has consented to such enforcement. The sentenced person may apply, within two weeks following service, for a court decision. Sections 297 to 300 and section 302 (1) sentence 1 and (2) of the Code of Criminal Procedure on appellate remedies and sections 42 to 47 of the Code of Criminal Procedure on time limits and restoration of the status quo ante apply accordingly.

Section 85a **Court procedure**

(1) It is for the higher regional court with jurisdiction under section 71 (4) sentences 2 and 3 to decide, by way of court order, upon application by the enforcing authority pursuant to section 85 (2) sentence 1 no. 2 or upon application by the sentenced person pursuant to section 85 (5) sentence 3. The enforcing authority prepares the decision.

(2) Section 13 (1) sentence 2, section 30 (2) sentences 2 and 4 and (3), section 31 (1) and (4), and sections 33, 42 and 53 apply accordingly. If the sentenced person is within the area of application of this Act, section 30 (2) sentence 1 and section 31 (2) and (3) also apply accordingly.

Section 85b **Court decision upon application by sentenced person**

(1) If the sentenced person does not comply with the provisions governing an application for a court decision under section 85 (5) sentences 3 and 4, the court dismisses the application as inadmissible.

(2) The sentenced person's application for a court decision is rejected as unfounded by court order if

1. it is not permissible, under the provisions of the Framework Decision on Custodial Sentences, to transfer enforcement of a sanction involving deprivation of liberty imposed within the area of application of this Act to another Member State or

2. the enforcing authority properly exercised its discretionary power under section 85 (1) and (4).

(3) If the sentenced person's application for a court decision is admissible and well-founded, the court declares enforcement of the sanction involving deprivation of liberty in the other Member State to be permissible if no other discretionary decision is justified. If, however, another discretionary decision is considered as a possibility, the court reverses the decision given by the enforcing authority and returns the case files so that the enforcing authority may exercise its discretionary power once more, giving due consideration to the court's legal opinion.

Section 85c **Court decision upon application by enforcing authority**

Upon application by the enforcing authority, the court declares it permissible in accordance with the provisions of the Framework Decision on Custodial Sentences to enforce, in another

Member State, a sanction involving deprivation of liberty imposed on a person who is not a German national or on a stateless person if the sentenced person

1. is a national of that other Member State and has his or her centre of vital interests in that Member State or
2. is obliged, based on the findings of the competent agency, to leave the Federal Republic of Germany as required under section 50 of the Residence Act (*Aufenthaltsgesetz*).

Section 85d

Authorisation following court decision

The enforcing authority may only authorise enforcement of a sanction involving deprivation of liberty if the court has declared enforcement in the other Member State to be permissible. The enforcing authority authorises enforcement under the terms of the final court decision. There is no right of appeal against the authorisation decision.

Section 85e

Domestic enforcement proceedings

- (1) The sentenced person is, as a general rule, to be transferred to the other Member State within 30 days following that Member State's decision to take on enforcement of the sanction involving deprivation of liberty.
- (2) The German enforcing authority dispenses with enforcement if the other Member State has taken on and carried out the enforcement. It may resume enforcement as soon as the other Member State has given notification that the sentenced person has escaped from prison.
- (3) If the other Member State requests consent to prosecute another offence or permission to enforce a penalty or other sanction for another offence, then that agency is competent to give the decision on consent which would be competent to authorise extradition. Consent is given if extradition in accordance with section 79 (1) would have to be authorised for the other offence. Section 78 (1) and sections 79 (2) to 83b apply accordingly. In lieu of the documentation referred to in section 83a (1), a certificate issued by the competent agency in the other Member State containing the particulars referred to in section 83a (1) suffices for consent to be given. A decision on consent is, as a general rule, to be given within 30 days after the enforcing authority receives the documentation containing the particulars referred to in section 83a (1).

Section 85f

Securing continued enforcement

- (1) If the sentenced person is found within the area of application of this Act before half of the sentence has been served which he or she has to serve for the sanction imposed or converted in the other Member State, then an order may be made to detain the sentenced person if
 1. he or she cannot produce a certificate of discharge or a document with the same content or
 2. the other Member State has not given notification that enforcement has been completed.
- (2) The court may issue an order to detain the sentenced person as well as an alert for arrest and may order the necessary investigative measures even before enforcement is transferred to the other Member State. If the sentenced person is within the area of application of this Act, he or she is to be instructed about the orders referred to in sentence 1, such instruction being declared before and placed on record by a judge. If the sentenced person is in the sovereign territory of the other Member State, the court forwards such instruction.

(3) Orders to detain sentenced persons, orders to issue an alert for arrest and orders to take the necessary investigative measures are made by the court of first instance. Where a sanction involving deprivation of liberty is being enforced against a sentenced person within the area of application of this Act, it is for the chamber responsible for enforcement of sentences to make the orders referred to in sentence 1. Section 462a (1) sentences 1 and 2, (3) sentences 2 and 3, and (6) of the Code of Criminal Procedure applies accordingly. Section 6 (2) sentences 1 and 2, sections 7 to 9 (1) to (4) sentences 1 and 2, and sections 10 to 14 (2) of the Act Implementing the Council of Europe Convention on the Transfer of Sentenced Persons of 21 March 1983, the Additional Protocol of 18 December 1997 and the Schengen Convention of 26 September 1991 (Federal Law Gazette I, p. 1954; 1992 I, p. 1232; 1994 I, p. 1425), as last amended by Article 5 of the Act of 29 July 2009 (Federal Law Gazette I, p. 2274), apply accordingly.

Division 2

Financial penalties

Subdivision 1

General provisions

Section 86

Precedence

- (1) In the absence of special provision made under this Division, the remaining provisions of this Act apply to requests for the enforcement of financial penalties in mutual assistance matters with the Member States of the European Union.
- (2) This Part takes precedence over agreements under international law as referred to in section 1 (3), provided that exhaustive provision is made on the relevant matter.

Subdivision 2

Incoming requests

Section 87

Principle

- (1) Assistance in matters relating to the enforcement of judgments which is rendered to another Member State in accordance with the provisions of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16), as amended by Framework Decision 2009/299/JHA (OJ L 81, 27.3.2009, p. 24) (Framework Decision on Financial Penalties), is governed by the provisions of this Subdivision. The provisions of Part 4 only apply where explicit reference is made to them in the following.
- (2) Assistance in matters relating to the enforcement of judgments may be rendered by way of enforcement of a financial penalty imposed on the person concerned by final decision if that financial penalty is based on a decision given by

1. a court in the requesting Member State for an offence which is punishable under its law,
2. a non-judicial agency in the requesting Member State for an offence which is punishable under its law, insofar as recourse was open to a court which also has jurisdiction in criminal matters in respect of that decision,
3. a non-judicial agency in the requesting Member State for an offence which can be prosecuted under its law as a regulatory offence, insofar as recourse was open to a court which also has jurisdiction in criminal matters in respect of that decision or
4. a court in the requesting Member State which also has jurisdiction in criminal matters in respect of a decision in accordance with no. 3.

- (3) 'Financial penalty' within the meaning of subsection (2) means the obligation to pay

1. a sum of money for a criminal or regulatory offence,
2. the costs of proceedings imposed in addition to a sanction as referred to in no. 1,
3. compensation imposed in addition to a sanction as referred to in no. 1 for the benefit of the victim if the victim was not permitted to assert any civil-law claims in the proceedings in the requesting Member State and a court was acting in the exercise of its jurisdiction in criminal matters or
4. a sum of money to a public fund or to a victim support organisation imposed in addition to a sanction as referred to in no. 1.

Orders for confiscation and orders of a civil-law nature arising out of claims for compensation and actions for restitution of the status quo ante and which are enforceable in accordance with Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1) are not financial penalties.

Section 87a **Enforcement documentation**

Enforcement of a financial penalty is only permissible if the following documentation has been submitted:

1. the original of the decision to be enforced or a certified copy thereof,
2. the original of the certificate corresponding to the form in the Annex to the Framework Decision on Financial Penalties which has been completed and signed by the competent authority in the requesting state.

Section 87b **Conditions governing permissibility**

(1) Enforcement of a financial penalty is only permissible if, notwithstanding any possible procedural obstacles and, where applicable, in the case of analogous conversion of the facts, a penalty or administrative fine could also have been imposed under German law for the offence giving rise to the decision. No double criminality check is carried out if, under the law of the requesting Member State, the offence giving rise to the decision constitutes one of the criminal offences or regulatory offences listed in Article 5 (1) of the Framework Decision on Financial Penalties.

(2) Enforcement of the financial penalty is not permissible if it has already been paid or recovered.

(3) Enforcement of the financial penalty is not permissible if

1. the certificate referred to in section 87a no. 2 is incomplete or manifestly does not correspond to the decision,
2. the financial penalty imposed amounts to less than 70 euros or its equivalent value in another currency based on the relevant market value in the case of conversion on the date on which the decision to be enforced was given,
3. the decision on which it is based was given in written proceedings and the person concerned or a representative authorised in accordance with the law of the requesting Member State was not instructed about the right of contestation and about the time limits under that law,
4. the person concerned did not appear in person at the hearing which led to the decision,

5. a decision within the meaning of section 9 no. 1 was given in Germany against the person concerned for the same offence which gave rise to the decision and Germany's jurisdiction is also established for that offence, or if a decision has been given and enforced in a state other than the requesting Member State against the person concerned for the same offence which gave rise to the decision,

6. Germany's jurisdiction is also established for the offence giving rise to the decision and enforcement under German law is statute-barred,

7. the person concerned lacked criminal responsibility under German law on account of his or her age at the time of the offence giving rise to the decision or he or she lacked criminal liability under section 3 sentence 1 of the Youth Courts Act,

8. the offence giving rise to the decision was committed in whole or in part in Germany or on a ship or aircraft which is authorised to fly the federal flag or the nationality mark of the Federal Republic of Germany and the offence is not punishable under German law as a criminal offence by imposition of a penalty or as a regulatory offence by imposition of an administrative fine or

9. the person concerned did not have the opportunity, in the foreign proceedings, to contest his or her responsibility for the act on which the decision was based and asserted that fact vis-à-vis the authorising authority.

(4) In derogation from subsection (3) no. 4, however, enforcement of a financial penalty is permissible if

1. the person concerned

a) in due time

aa) was summoned in person to the hearing which led to the judgment or

bb) actually received official information by other means of the scheduled date and place of the hearing which led to the judgment in such a manner that it was unequivocally established that the person concerned was aware of the scheduled hearing and

b) was informed that judgment may also be delivered in absentia,

2. the person concerned, being aware of the proceedings being conducted against him or her in which defence counsel participated, prevented a personal summons by absconding or

3. the person concerned, being aware of the scheduled hearing, mandated legal counsel to defend him or her at the hearing and was indeed defended by legal counsel at the hearing.

(5) In derogation from subsection (3) no. 4, enforcement of a financial penalty is also permissible if, following service of the decision, the person concerned

1. expressly stated that he or she does not contest the decision given or

2. did not request a retrial or file an appeal on points of fact and law within the applicable time limits.

Persons concerned must first be given explicit instruction about their right to a retrial or to an appeal on points of fact and law in which they have a right to participate and in which the merits of the case, including fresh evidence, may be re-examined and which may lead to the original judgment being quashed.

(6) In derogation from subsection (3) no. 4, enforcement of a financial penalty is, further, permissible if, following explicit instruction about the procedure and the possibility of appearing in person at the hearing, the person concerned

1. expressly waived the right to a court hearing and
2. stated that he or she does not contest the decision.

Section 87c

Preparing decision on authorisation

(1) The authorising authority is required to send the person concerned a letter regarding the hearing, enclosing copies of the documentation referred to in section 87a. The person concerned is given the opportunity to respond within two weeks following receipt and is to be instructed that after the expiry of that time limit the authorising authority will decide whether to authorise enforcement or, under the conditions of section 87i (1), whether to apply for a court decision.

(1a) The letter referred to in subsection (1) sentence 1 may be fully prepared by means of automated processes.

(2) The hearing pursuant to subsection (1) need not be held if the authorising authority

1. refuses to authorise enforcement for lack of permissibility,
2. asserts an obstacle to authorisation pursuant to section 87d or
3. applies, at the outset, for conversion of a decision given by the court pursuant to section 87i (1).

Section 87d

Obligation to authorise enforcement

Authorisation of a permissible request for the enforcement of a financial penalty may only be refused if the offence giving rise to the decision

1. was committed in whole or in part in Germany or on a ship or aircraft which is authorised to fly the federal flag or the nationality mark of the Federal Republic of Germany and the offence is punishable under German law as a criminal offence by imposition of a penalty or as a regulatory offence by imposition of an administrative fine or
2. was committed outside of the requesting Member State's sovereign territory and if such an offence committed abroad is not punishable under German law as a criminal offence by imposition of a penalty or as a regulatory offence by imposition of an administrative fine.

Section 87e

Legal counsel

Section 53 concerning legal counsel applies accordingly.

Section 87f

Authorisation of enforcement

(1) It is for the authorising authority to give the decision to authorise enforcement, unless it applies for a court decision in accordance with section 87i (1).

(2) Section 54 (2) and (4) applies accordingly. If the offence giving rise to the other Member State's request was not committed in that Member State's sovereign territory and Germany's jurisdiction is established for that offence, then the amount of the financial penalty is to be reduced to the maximum amount to be imposed under German law for a comparable offence if the sanction imposed in the other Member State exceeds this maximum amount.

(3) If the other Member State's decision is declared enforceable, the decision and the amount of the financial penalty to be enforced must be indicated. Reasons are to be given in

the authorisation notice, which is to be served on the person concerned. The authorisation notice

1. indicates that the authorisation will become final and that the financial penalty will become enforceable if no objection is raised pursuant to subsection (4),

2. requests the person concerned to pay the financial penalty to the Federal Treasury no later than two weeks after the notice becomes final.

(4) The person concerned may object to the authorisation notice in writing or for the record of the authorising authority within two weeks following its service. Sections 297 to 300 and section 302 of the Code of Criminal Procedure on appellate remedies and sections 42 bis 47 of the Code of Criminal Procedure on times limits and restoration of the status quo ante apply accordingly.

(5) If the objection against the authorisation of enforcement is not submitted in due time or in the prescribed form or is submitted in another manner as to render it ineffective, the authorising authority rejects it as inadmissible. Within two weeks following service, the person concerned may apply, in writing or for the record of the authorising authority, for a court decision against this decision in accordance with section 87g.

(6) If the objection is admissible, the authorising authority examines whether to uphold its authorisation of enforcement or whether to remedy the person concerned's objection.

Section 87g **Court procedure**

(1) Recourse to the ordinary courts is possible in respect of the authorisation of enforcement and against the decision referred to in section 87f (5) sentence 1. If the authorising authority does not remedy the person concerned's objection or the person concerned applies for a court decision in accordance with section 87f (5) sentence 2, then it is for the local court with jurisdiction under subsection (2) to give a decision. The competent local court, further, gives a decision pursuant to section 87i upon application by the authorising authority. Sections 34 (1) and 107 of the Youth Courts Act and section 68 (2) of the Act on Regulatory Offences apply accordingly. The authorising authority prepares the decision.

(2) Local jurisdiction is determined on the basis of the person concerned's residence if that person is a natural person. If the person concerned has no residence in Germany, jurisdiction is determined on the basis of his or her habitual residence or, if that is not known, last residence. If the person concerned is a legal entity, jurisdiction falls to the court in whose district the legal entity has its seat. In the case under section 87h, the date of receipt of the objection is relevant, in the event of section 87i the date on which the court receives the application. If these places cannot be identified, jurisdiction falls to that court in whose district the person concerned's assets are located. If the person concerned's assets are located in the districts of various local courts, then jurisdiction lies with that local court which was first seized of the case. Section 58 (1) of the Courts Constitution Act remains unaffected.

(3) The court sends the person concerned a copy of a German translation of the other Member State's decision if this is necessary for the exercise of that person's rights. Where an application as referred to in section 87i (1) is made, the person concerned is also to be served copies of the documentation referred to in section 87a and of the decision, pursuant to section 87i (2), not to assert any obstacles to authorisation. In the case under sentence 2, the person concerned is requested to respond within a period to be determined by the court.

(4) Section 52 (1) applies accordingly to preparing the decision, with the proviso that the competent authority in the requesting Member State must also have been given the opportunity to submit additional documentation if the documentation submitted is not sufficient to be able to assess whether the authorising authority correctly exercised its discretion not to assert any obstacles to authorisation. A time limit may be set for submission of the documentation. The authorising authority enforces the decisions given by the court in accordance with sentences 1 and 2. The court may take other evidence in respect of constituent elements of the offence over and above those referred to in section 87h (3)

sentence 1 nos. 1, 2 and 3. Section 30 (2) sentence 4 and (3) and section 31 (4) apply accordingly. If the person concerned is in Germany, section 30 (2) sentence 1 and section 31 (2) apply accordingly. Section 31 (1) sentence 1 applies accordingly, with the proviso that the authorising authority takes the place of the public prosecution office. The authorising authority is not obliged to participate in the court hearing; the court notifies the authorising authority if it holds such participation to be appropriate.

Section 87h

Court decision following objection or person concerned's application

(1) It is for the local court to give a decision, by way of court order, in respect of whether an objection is admissible and well-founded.

(2) Where the provisions on lodging an objection have not been complied with, the court dismisses the objection as inadmissible. There is no right of appeal against the decision.

(3) The person concerned's objection is rejected as unfounded by way of court order if

1. enforcement of the other Member State's decision is permissible,
2. the authorising authority has correctly exercised its discretion not to assert any obstacle to authorisation and
3. the financial penalty was correctly adjusted in accordance with section 87f (2).

If the objection is well-founded on account of enforcement not being permissible or on account of the incorrect exercise of discretionary powers, then the other Member State's decision is declared not to be enforceable. If the penalty was incorrectly adjusted pursuant to section 87f (2) or was not adjusted although this was necessary, the court adjusts the financial penalty and declares the decision enforceable. If the court deviates from the authorisation decision, the amount of the financial penalty to be enforced must be stated in the operative part of the decision.

(4) Section 77b of the Act on Regulatory Offences applies accordingly.

(5) It is for the local court to give a decision, by way of court order, on the admissibility and merits of the application as referred to in section 87f (5) sentence 2. Sections 297 to 300, 302 and 306 (2), sections 307, 308 and 309 (1) and section 311a of the Code of Criminal Procedure on appellate remedies and the provisions of the Code of Criminal Procedure on the imposition of the costs of an appeal procedure apply accordingly. There is no right of appeal against the court's decision.

Section 87i

Court decision upon application by authorising authority; authorisation

(1) If the other Member State's decision relates to a financial penalty pursuant to section 87 (2) no. 1 and no. 2 which was imposed on a juvenile or young adult under the Youth Courts Act, then, if enforcement is permissible, the authorising authority applies for the court to convert the decision.

(2) By applying for a court decision in accordance with subsection (1), the authorising authority declares that it asserts no obstacles to authorisation. Reasons are to be given for the decision not to assert any obstacles to authorisation.

(3) If enforcement of the other Member State's decision is permissible and the authorising authority has correctly exercised its discretion not to assert any obstacles to authorisation, then the decision is declared enforceable. A financial penalty pursuant to section 87 (2) no. 1 and no. 2 imposed on a juvenile is, in addition, to be converted into a sanction permissible under the Youth Courts Act. Sentence 2 applies accordingly to a young adult where juvenile criminal law is applicable under the terms of section 105 (1) of the Youth Courts Act. Section 87f (2) applies accordingly in respect of adjusting the amount of the financial penalty.

(4) It is for the local court to give a decision, by way of court order, on the enforceability of the decision. If the other Member State's decision alone is declared enforceable pursuant to subsection (3) sentence 1, the amount of the financial penalty to be enforced must also be stated in the operative part of the decision.

(5) The authorising authority authorises enforcement under the terms of the final court decision. There is no right of appeal against the authorisation decision. Section 87f (3) sentences 1 and 2 applies accordingly. The authorisation notice

1. indicates that the authorisation is final and that the financial penalty has become enforceable, and
2. requests the person concerned either to pay the financial penalty no later than two weeks following service to the relevant treasury as required under section 87n (5) sentence 3 or to comply with the sanction imposed under the Youth Courts Act into which the financial penalty referred to in subsection (3) sentence 2 was converted.

Section 87j **Appeal**

(1) An appeal on points of law (*Rechtsbeschwerde*) may be filed against the decision given by the local court pursuant to section 87h (3) and section 87i (4) if leave to appeal is granted. Both the person concerned and the authorising authority may file such an appeal. After the respondent has been given the opportunity to make a statement, the local court submits the files to the court hearing the appeal, via the public prosecution office, for a decision.

(2) Unless otherwise provided for under this Act, the provisions of the Code of Criminal Procedure and of the Courts Constitution Act on an appeal on points of law (*Revision*) apply accordingly to the appeal and further proceedings.

(3) The time limit for filing an appeal on points of law begins to run upon service of the decision.

(4) The court hearing the appeal decides by way of court order.

(5) If the court hearing the appeal quashes the contested decision, then in derogation from section 354 (1) and (2) of the Code of Criminal Procedure it may itself decide on the matter or refer it back to the local court whose decision was quashed or to another local court in the same *Land*.

(6) Section 42 applies accordingly to further proceedings.

Section 87k **Leave to appeal**

(1) The court hearing the appeal grants leave to appeal upon application by the person concerned or by the authorising authority if it is necessary

1. to enable the decision to be reviewed for the purpose of the further development of the law or to ensure uniform court decision-making or

2. to reverse the decision on account of the denial of the right to be heard.

(2) The provisions on filing an appeal on points of law apply accordingly to the application for leave to appeal. The application is regarded as an appeal filed as a precautionary measure. The provisions on the filing of applications for leave to appeal and on the grounds for appeal (sections 344 and 345 of the Code of Criminal Procedure) must be complied with. When stating the grounds for appeal, the applicant is, as a general rule, to simultaneously state the reasons why the conditions of subsection (1) are met. Section 35a of the Code of Criminal Procedure applies accordingly.

(3) The court hearing the appeal gives a decision by way of court order. The decision to reject the application requires no reasons. If the application is rejected, the appeal is deemed to have been withdrawn.

(4) If it transpires, before the decision on the application for leave to appeal is given, that there is a procedural obstacle, the court hearing the appeal only terminates the proceedings if the procedural obstacle arose after the order pursuant to section 87h (3) or section 87i (4) was made.

Section 87l

Composition of divisions at higher regional court

- (1) It is for the higher regional court to give the decision to grant an appeal and on the appeal.
- (2) The division is composed of one judge, unless otherwise provided for.
- (3) The division is composed of three judges, including the presiding judge, in proceedings on appeal in which
1. the matter concerns the enforcement of a financial penalty within the meaning of section 87 (2) no. 1 or no. 2,
 2. one of the reasons for granting leave to appeal set out in section 87k (1) no. 1 applies,
 3. this appears necessary on account of the particular complexities of the factual or legal situation, or
 4. a decision is to be given which deviates from that given by a higher regional court.

Section 87m

Prohibition of double jeopardy; notifying Federal Central Criminal Register

- (1) If enforcement is authorised, the same offence which gave rise to the other Member State's decision may no longer be prosecuted as a criminal or regulatory offence under German law.
- (2) The authorisation notice in which another Member State's decision was declared enforceable or was rejected pursuant to section 87 (2) no. 1 or no. 2 must be notified to the Federal Central Criminal Register. This does not apply if
1. the other Member State's decision cannot be entered in the Federal Central Criminal Register or
 2. the decision relates to a German national and notification is not necessary because the other Member State regularly notifies the Federal Central Criminal Register about criminal convictions relating to German nationals.

Section 87n

Enforcement

- (1) The authorising authority is responsible for enforcement in the capacity as enforcing authority. This does not apply if the court gives its decision following an objection pursuant to section 87h or upon application by the authorising authority pursuant to section 87i. In the cases under sentence 2, the public prosecution office at the regional court in whose district the competent local court has its seat is responsible for enforcement in the capacity as enforcing authority. Where, in the cases under sentence 2, a sanction under youth criminal law is to be enforced following conversion, section 82 of the Youth Courts Act applies to enforcement.
- (2) Section 34, sections 93 to 99 (1), sections 101, 102, 103 (1) no. 2 and (2), and section 104 (2) and (3) sentence 1 no. 1 and sentence 2 of the Act on Regulatory Offences apply analogously to enforcement. The court decisions required under sentence 1 in the course of enforcement are given by the local court at the seat of the enforcing authority. In proceedings against juveniles and young adults, sections 82 (1), 83 (2), 84 and 85 (5) of the Youth Courts Act also apply analogously. The provisions of the Act on the Recovery of Claims of the Judicial Authorities (*Justizbeitreibungsgesetz*) apply, unless otherwise provided for under this Act. Where a decision was given pursuant to section 87i (3) sentence 2 and 3, sentences 1 to 4 are not applicable.

(3) Measures involving deprivation of liberty may not be ordered when enforcing a decision pursuant to section 87i (3). The same applies to enforcement of a decision relating to juveniles and young adults in accordance with subsection (2).

(4) Section 57 (6) applies accordingly.

(5) Any proceeds resulting from enforcement accrue to the Federal Treasury. This does not apply if the court gives its decision following an objection pursuant to section 87h or upon application by the authorising authority pursuant to section 87i. In the cases under sentence 2, the proceeds resulting from enforcement accrue to the treasury of that *Land* in which the competent local court has its seat. In derogation from sentences 1 to 3, especially when enforcing a decision which was converted into a decision pursuant to section 87 (3) sentence 1 no. 3, agreement may be reached with the requesting Member State to the effect that the proceeds resulting from enforcement accrue to the victim.

(6) The costs of enforcement are borne by the person concerned.

Section 87o

Transitional provision relating to procedure under section 87f (5) and section 87i (3)

Section 87f (5) and section 87i do not apply to requests which the Federal Office of Justice received before 27 November 2020. Sections 86 to 87p, in the version in force before the expiry of 26 November 2020, apply to requests which the Federal Office of Justice received before that point in time.

Subdivision 3 Outgoing requests

Section 87p

Principle

(1) Requests made to another Member State in accordance with the provisions of the Framework Decision on Financial Penalties are governed by the provisions of this Subdivision. Section 71 does not apply. Section 87 (2) nos. 1, 3 and 4, (3) sentence 1 no. 1 and no. 2, and sentence 2 applies analogously.

(2) The competent authority in another Member State may be requested to enforce a financial penalty if the person concerned

1. is a natural person who is resident in the requested Member State or generally lives there,
2. is a legal person whose registered office is in the requested Member State,
3. has assets in the requested Member State or
4. earns income in the requested Member State.

Section 87q

Domestic enforcement proceedings; stay of limitation

(1) Where a request for enforcement has been made to another Member State, enforcement in Germany is not permissible until

1. the request has been withdrawn or
2. the requested Member State has refused enforcement.

Enforcement in Germany is not permissible if the requested Member State has based its decision to refuse enforcement on the fact that a decision has been issued against the person concerned in the requested Member State for the same offence or a decision has been issued and enforced in a third state.

(2) Section 79a no. 2 (c) of the Criminal Code and section 34 (4) no. 3 of the Act on Regulatory Offences apply, with the proviso that the limitation of enforcement is also stayed

where the relaxation of payment conditions was authorised in another Member State of the European Union.

Division 3 Confiscation

Section 88 Principle

Outside of the area of application of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ L 303, 28.11.2018, p. 1) (Freezing and Confiscation Regulation), assistance in matters relating to the enforcement of judgments which is rendered to another Member State of the European Union in accordance with the provisions of Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition of confiscation orders (OJ L 328, 24.11.2006, p. 59), as amended by Framework Decision 2009/299/JHA (OJ L 81, 27.3.2009, p. 24) and Regulation (EU) 2018/1805 (OJ L 303, 28.11.2018, p. 1) (Framework Decision on Confiscation), is governed by sections 88a to 88f. In the absence of special provision made under this Division or if the request is not made in accordance with the provisions set out in the Framework Decision on Confiscation, the provisions of Part 4 and the general provisions of Part 1 and Part 7 of this Act apply.

Section 88a Conditions governing permissibility

(1) In derogation from section 49 (1), enforcement of a court order for confiscation transmitted in accordance with the provisions of the Framework Decision on Confiscation relating to a specific sum of money or asset is only permissible if

1. a competent authority in another Member State of the European Union has made a request to that effect and submitted the documentation referred to in section 88b and
2. notwithstanding any procedural obstacles and, where applicable, in the case of analogous conversion of the facts, such an order could also have been made under German law in respect of the offence giving rise to the foreign order for confiscation, whereby
 - a) with the exception of requests for the enforcement of a measure which corresponds to section 73a or 74a of the Criminal Code, no double criminality check is carried out if the offence giving rise to the request is punishable by a sentence of imprisonment of a maximum of at least three years under the law of the requesting Member State and belongs to one of the categories of offences listed in Article 6 (1) of the Framework Decision on Confiscation and
 - b) enforcement in relation to taxes, duties, customs duties and currency exchange activities is also permissible even if German law does not impose the same kind of taxes or duties or does not contain the same kind of provisions on taxes, duties, customs duties or currency exchange activities as the law of the requesting Member State.

(2) Enforcement of an order for confiscation transmitted in accordance with subsection (1) is not permissible if

1. the offence was committed in Germany or on one of the means of transport referred to in section 4 of the Criminal Code and is not punishable under German law;
2. the person concerned did not appear in person at the hearing which led to the order for confiscation;

3. final sentence has already been passed upon the person concerned in a Member State other than the requesting Member State for the same offence which gave rise to the request, provided that this sanction has already been enforced, is currently being enforced or can no longer be enforced under the law of the sentencing state, unless confiscation could be ordered separately in accordance with section 76a of the Criminal Code;

4. enforcement, in the case of criminal offences to which German criminal law applies, is statute-barred under German law, unless an order for confiscation could be made in accordance with section 76a (2) of the Criminal Code.

(3) Enforcement of an order for confiscation transmitted in accordance with subsection (1) is, however, permissible in derogation from subsection (2) no. 2 if

1. the person concerned

a) in due time

aa) was summoned in person to the hearing which led to the judgment or

bb) actually received official information by other means of the scheduled date and place of the hearing which led to the judgment in such a manner that it was unequivocally established that the person concerned was aware of the scheduled hearing and

b) was informed that a decision may also be given in absentia,

2. the person concerned, being aware of the proceedings being conducted against him or her in which defence counsel participated, prevented a personal summons by absconding or

3. the person concerned, being aware of the scheduled hearing, mandated legal counsel to defend him or her at the hearing and was indeed defended by legal counsel at the hearing.

(4) Enforcement of an order for confiscation transmitted in accordance with subsection (1) is also permissible, in derogation from subsection (2) no. 2 if, following service of the decision, the person concerned

1. expressly stated that he or she does not contest the decision given or

2. did not request a retrial or file an appeal on points of fact and law within the applicable time limits.

Persons concerned must first expressly have been instructed about their right to a retrial or to an appeal on points of fact and law in which they have a right to participate and in which the merits of the case, including fresh evidence, may be re-examined and which may lead to the original decision being reversed.

Section 88b Documentation

(1) The requesting Member State must present the original or a certified copy of a final court decision together with a certificate in accordance with Article 4 of the Framework Decision on Confiscation which contains the following information:

1. the name and address of the court which made the order for confiscation;

2. the names and addresses of the judicial authorities competent in respect of the request;

3. as detailed a description as possible of the natural or legal person against whom the decision is to be enforced;
4. the amount of the sum of money or a description of another asset which is to be the subject of the enforcement;
5. a description of the grounds for the order;
6. a description of the circumstances of the commission of the criminal offence, including the time and place of commission;
7. the nature and legal assessment of the criminal offence, including the statutory provisions on the basis of which the decision was given and
8. whether the person concerned appeared in person at the hearing or the reasons why that was not necessary.

(2) If the certificate referred to in subsection (1) is not included in the request, or it is incomplete or manifestly does not correspond to the decision to be enforced, the competent authority may set a time limit for its submission, completion or correction. If the certificate referred to in subsection (1) is incomplete but the required particulars can be drawn from the decision to be enforced or from other accompanying documentation, then the competent authority may dispense with requiring that a completed certificate be submitted.

Section 88c **Grounds for refusal**

A request which is permissible under section 88a may only be refused if

1. the certificate referred to in Article 4 of the Framework Decision on Confiscation was not even submitted, completed or corrected by the requesting Member State in the course of the procedure set out in section 88b (2) sentence 1;
2. the offence was committed in Germany or on one of the means of transport referred to in section 4 of the Criminal Code;
3. the offence was committed neither in Germany nor in the territorial jurisdiction of the requesting Member State and German criminal law does not apply or the offence is not punishable under German law;
4. an order for confiscation referring to the same assets was made in Germany and precedence is to be given to enforcement of that order on account of a public interest or
5. a request for the enforcement of an order for confiscation has been received from another state, that request refers to the same assets and precedence is to be given to enforcement of that order on account of a public interest.

Section 88d **Procedure**

(1) If the public prosecution office with jurisdiction under sections 50 and 51 regards the request as permissible and it intends to assert no grounds for refusal pursuant to section 88c, then it institutes those measures which are suitable and necessary in order to provisionally secure the assets to be enforced in accordance with section 111b to 111h of the Code of Criminal Procedure and gives both the person concerned and third parties which, in the light of the circumstances of the case, could assert rights in the object to be enforced the opportunity to make a statement. If the public prosecution office decides not to assert grounds for refusal in accordance with section 88c nos. 1 to 3, then it gives reasons for this decision in its application for a court decision on enforceability.

(2) The competent authority may postpone proceedings

1. as long as it is to be assumed that the order will simultaneously be fully enforced in another Member State or

2. as long as proceedings to recognise and enforce the foreign order might interfere with ongoing criminal and enforcement proceedings.

(3) In derogation from section 54 (1), the foreign order is declared enforceable by the court pursuant to sections 50 and 55 if its enforcement is permissible and the public prosecution office has properly exercised its discretionary power not to assert any grounds for refusal in accordance with section 88c nos. 1 to 3. The amount of money or the asset to be enforced must also be stated in the operative part of the order. Section 54 (2a) and (4) applies accordingly. The sanction imposed is to be converted into that sanction provided for under German law which most closely corresponds to it if the operative part of the foreign order is not enforceable as per section 459g of the Code of Criminal Procedure.

Section 88e Enforcement

(1) Section 57 (1) applies, with the proviso that jurisdiction in respect of the enforcement of a foreign order is also established in accordance with the provisions of the Youth Courts Act if the sanction was not converted pursuant to section 88d (3) sentence 4 and the court applied the Youth Courts Act when giving its decision on enforceability.

(2) Section 57 (4) applies accordingly, with the proviso that the order for arrest for the purpose of making a declaration in lieu of an oath in respect of the assets or in respect of the whereabouts of property may only be made with the consent of the competent authority in the requesting Member State.

(3) Enforcement may be suspended temporarily under the conditions of section 88d (2).

Section 88f Distribution of assets

The proceeds of enforcement are to be divided up equally with the competent authority in the requesting Member State if they amount to more than 10,000 euros before deducting costs and compensation payments (section 56a) and no agreement has been reached in accordance with section 56b (1). This does not apply if the approval required in accordance with section 56b (2) was refused.

Section 89 Measures to secure confiscation

Sections 91 and 94 to 96 apply accordingly to requests made by a Member State of the European Union for a measure to secure confiscation pursuant to sections 111b to 111h of the Code of Criminal Procedure in preparation of a decision on confiscation to be given in the requesting Member State.

Section 90 Outgoing requests

(1) The competent authorities may make requests to another Member State of the European Union for the enforcement of an order for confiscation under the provisions of the Framework Decision on Confiscation. A request may only be made in parallel to another Member State if

1. there is justified reason to believe that a specific asset or various assets covered by the decision to be enforced could be located in various Member States or

2. enforcement against a specific asset or a certain sum of money requires that the request be made to several Member States.

(2) Requests which have not yet been executed are to be withdrawn as soon as the conditions of subsection (1) are no longer met.

(3) Where an order for confiscation refers to a specific object, the competent enforcing authority may consent to enforcement, by way of substitute, of a sum of money equivalent to

the value of the object if a decision has been given pursuant to section 76 of the Criminal Code.

(4) Section 71 (5) and sections 71a and 72 in Part 6 of this Act apply.

Division 4
Probation measures and alternative sanctions

Subdivision 1
Supervision of foreign probation measures and alternative sanctions in Federal Republic of Germany

Section 90a
Principle

(1) Assistance in matters relating to the enforcement of judgments which is rendered to another Member State of the European Union in accordance with the provisions of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (OJ L 337, 16.12.2008, p. 102), as amended by Framework Decision 2009/299/JHA (OJ L 81, 27.3.2009, p. 24) (Framework Decision on Supervision of Probation), is governed by the provisions of this Subdivision.

(2) The provisions of Part 4 and the general provisions of Part 1 and Part 7 of this Act apply

1. in the absence of special provision made under this Subdivision or
2. where a request does not comply with the provisions of the Framework Decision on Supervision of Probation.

(3) This Subdivision takes precedence over agreements under international law as referred to in section 1 (3), provided that exhaustive provision is made on the relevant matter.

Section 90b
Conditions governing permissibility

(1) In derogation from section 49, enforcement of a foreign judgment and supervision of probation measures or alternative sanctions imposed on the basis of that judgment are only permissible in accordance with the provisions of the Framework Decision on Supervision of Probation if

1. a court in another Member State has delivered a final and enforceable judgment,
2. the court
 - a) has suspended on probation the enforcement of a sanction involving deprivation of liberty imposed in the judgment,
 - b) has suspended the enforcement of the remainder of a sanction involving deprivation of liberty imposed in the judgment or
 - c) has imposed one of the alternative sanctions as designated in no. 6 on the sentenced person and has determined a sanction involving deprivation of liberty in the event of a breach of the sanction,
3. the sanction involving deprivation of liberty imposed by the court or determined in accordance with no. 2 (c) in the cases referred to in section 90h (5) can be converted into a sanction provided for under German law which most closely corresponds to it,
4. a penalty, measure of reform and prevention or an administrative fine could also have been imposed under German law for the offence giving rise to the judgment, notwithstanding any procedural obstacles and, where applicable, in the case of the analogous conversion of the facts,

5. the sentenced person
 - a) is a German national or has his or her lawful and habitual residence in the Federal Republic of Germany and no proceedings to terminate that residence are pending and
 - b) is in the Federal Republic of Germany and
6. one of the following probation measures or one of the following alternative sanctions was imposed on the sentenced person:
 - a) the obligation to inform a specific authority of any change of residence or workplace,
 - b) the obligation not to enter certain localities, places or defined areas in the other Member State or in the Federal Republic of Germany,
 - c) an obligation containing limitations on leaving the territory of the Federal Republic of Germany,
 - d) an obligation relating to behaviour, residence, education and training, or leisure activities, or containing limitations on or modalities of carrying out a professional activity,
 - e) the obligation to report at specified times to a specific authority,
 - f) the obligation to avoid contact with specific persons,
 - g) the obligation to avoid contact with specific objects used or likely to be used by the sentenced person with a view to committing a criminal offence,
 - h) the obligation to compensate financially for prejudice caused by the offence,
 - i) the obligation to provide proof of compliance with the obligation referred to in letter (h),
 - j) the obligation to provide proof of compliance with the obligation to compensate financially for any prejudice caused,
 - k) the obligation to carry out community service,
 - l) the obligation to cooperate with a probation officer,
 - m) the obligation to undergo therapeutic treatment involving a physical intervention or to undergo treatment for addiction, provided that the sentenced person and, where applicable, the person having parental custody of the sentenced person or the sentenced person's legal representative has consented thereto,
 - n) the obligation to undertake every effort to make restitution for the damage caused by the offence,
 - o) the obligation on the part of anyone who was under the age of 21 at the time of the offence to apologise in person to the injured party,
 - p) the obligation to pay a sum of money to a charitable organisation if this is appropriate given the nature of the offence and the offender's personality or
 - q) other obligations which are suited to helping the sentenced person not to commit any further offences or which relate to the conduct of a sentenced person

who was under the age of 21 at the time of the offence, and thus to promote and ensure the sentenced person's education.

The decision referred to in sentence 1 no. 2 (b) may be given by another competent authority in the other Member State in lieu of a court.

(2) In derogation from subsection (1) sentence 1 no. 4, enforcement of the judgment and supervision of probation measures or alternative sanctions imposed in that judgment are also permissible in relation to taxes, customs duties and currency exchange activities even if German law does not contain the same kind of provisions on taxes, customs duties and currency exchange activities as the law of the other Member State.

(3) Supervision of probation measures or alternative sanctions, but not the enforcement of the foreign judgment, is also permissible if,

1. instead of issuing one of the decisions referred to in subsection (1) sentence 1 no. 2, the court

a) has imposed one of the alternative sanctions designated in subsection (1) sentence 1 no. 6 on the sentenced person and has determined no sanction involving deprivation of liberty in the event of a breach of that sanction,

b) has conditionally deferred fixing the penalty by imposing one or more probation measures on the sentenced person or

c) has imposed one or more probation measures on the sentenced person instead of a sanction involving deprivation of liberty,

2. in derogation from subsection (1) sentence 1 no. 3, the sanction involving deprivation of liberty in the cases referred to in section 90h (5) cannot be converted into a sanction provided for under German law which most closely corresponds to it or

3. in derogation from subsection (1) sentence 1 no. 4, no penalty, measure of reform and prevention or administrative fine could be imposed under German law for the offence giving rise to the judgment.

Section 90c

Additional conditions governing permissibility

(1) Enforcement of the judgment and supervision of the probation measures or alternative sanctions imposed in that judgment are not permissible if

1. the sentenced person lacked criminal responsibility under section 19 of the Criminal Code or lacked criminal liability under section 3 of the Youth Courts Act at the time of the offence,

2. the sentenced person did not appear in person at the hearing which led to the judgment,

3. the sentenced person

a) has already had final judgment passed upon him or her in a Member State other than that in which the judgment was delivered for the same offence giving rise to the judgment and

b) has had a sanction imposed and this has already been enforced, is currently being enforced or can no longer be enforced under the law of the sentencing state,

4. Germany's jurisdiction has also been established for the offence giving rise to the judgment and enforcement is statute-barred under German law or would be statute-barred in the case of analogous conversion of the facts.

(2) In derogation from subsection (1) no. 4 and section 90b (1) sentence 1 no. 4, enforcement of a judgment delivered in another Member State and supervision of the probation measures or alternative sanctions imposed in that judgment may be declared permissible if the sentenced person has filed an application to that effect. The application referred to in sentence 1 is to be declared before and recorded by a judge. The application may not be withdrawn. The sentenced person must first to be instructed about the legal consequences of filing such an application and about the fact that it cannot be withdrawn. If the conditions of section 90b (1) sentence 1 no. 4 are not met, the upper limit in the event of conversion of the sanction in accordance with section 90h (4) and (5) is two years' imprisonment.

(3) In derogation from subsection (1) no. 2, enforcement of the judgment and supervision of the probation measures or alternative sanctions imposed in that judgment are also permissible if

1. the sentenced person
 - a) in due time
 - aa) was summoned in person to appear at the hearing which led to the judgment or
 - bb) actually received official information by other means of the scheduled date and place of the hearing which led to the judgment in such a manner that it was unequivocally established that the sentenced person was aware of the scheduled hearing and
 - b) was informed that judgment may also be delivered in absentia,
2. the sentenced person, being aware of the proceedings being conducted against him or her in which defence counsel participated, prevented a personal summons by absconding or
3. the sentenced person, being aware of the scheduled hearing, mandated defence counsel to defend him or her at the hearing and was indeed defended by counsel at the hearing.

(4) In derogation from subsection (1) no. 2, enforcement of the judgment and supervision of the probation measures or alternative sanctions imposed in that judgment are also permissible if, following service of the judgment, the sentenced person

1. expressly stated that he or she does not contest the judgment delivered or
2. did not request a retrial or file an appeal on points of fact and law within the applicable time limits.

Sentenced persons must first be expressly instructed about their right to a retrial or to an appeal on points of fact and law in which they have a right to participate and in which the merits of the case, including fresh evidence, may be re-examined and which may lead to the original decision being reversed.

Section 90d Documentation

(1) Enforcement of a foreign judgment and supervision of the probation measures or alternative sanctions imposed in that judgment under the provisions of the Framework Decision on Supervision of Probation are only permissible if the other Member State has transmitted the original or a certified copy of the judgment and, where applicable, of the probation decision together with a fully completed certificate which corresponds to the form in Annex I of the Framework Decision on Supervision of Probation, as amended.

(2) Where the certificate referred to in subsection (1) is submitted but is incomplete, the competent authority may dispense with requiring submission of a completed certificate if the required particulars can be drawn from the judgment to be enforced or from other accompanying documentation.

Section 90e Obstacles to authorisation

(1) Authorisation to enforce a foreign judgment and to supervise the probation measures or alternative sanctions imposed in that judgment, provided that the enforcement and the supervision are permissible under the terms of sections 90b to 90d, may only be refused if one or more of the following conditions are met:

1. the certificate (section 90d (1))
 - a) does not contain all the required particulars or manifestly does not correspond to the foreign judgment or to the probation decision and
 - b) the other Member State has not completed or corrected these particulars,
2. the judgment is to be enforced against a German national who is not habitually resident in the Federal Republic of Germany,
3. essential parts of the offence were committed in the Federal Republic of Germany or on one of the means of transport referred to in section 4 of the Criminal Code or
4. the probation measure or the alternative sanction is of less than six months' duration.

(2) Authorisation to enforce a foreign judgment which is permissible under the terms of sections 90b to 90d but not to supervise probation measures or alternative sanctions imposed in that judgment may, further, be refused if the public prosecution office or court finds that the foreign judgment is enforceable only in part and it was not possible to reach agreement with the competent authority in the other Member State regarding the extent to which the judgment is to be enforced.

Section 90f Interim authorisation decision

(1) It is for the public prosecution office with jurisdiction under section 50 sentence 2 and section 51 to give the decision on whether to authorise enforcement of the foreign judgment and to supervise the probation measures or alternative sanctions imposed in that judgment. It gives the sentenced person the opportunity to make a statement. This may be dispensed with if the sentenced person has already made a statement.

(2) If the public prosecution office decides not to assert any of the obstacles to authorisation referred to in section 90e, it gives reasons for this decision in its application for a court decision on enforceability of the foreign judgment and on permissibility of the supervision of probation measures or alternative sanctions.

(3) If the public prosecution office does not authorise enforcement of the foreign judgment and supervision of probation measures or alternative sanctions imposed in that judgment in the Federal Republic of Germany, it gives reasons for this decision. The public prosecution office serves the decision on the sentenced person, provided that he or she has consented to enforcement of the foreign judgment and to supervision of the probation measures or alternative sanctions imposed in that judgment in the Federal Republic of Germany. The sentenced person may apply, within two weeks following service, for a court decision. Sections 297 to 300 and section 302 (1) sentence 1 and (2) of the Code of Criminal Procedure on appellate remedies and sections 42 to 47 of the Code of Criminal Procedure on time limits and restoration of the status quo ante apply accordingly.

(4) In lieu of giving a decision not to authorise supervision of the probation measures or alternative sanctions together with enforcement of the foreign judgment in accordance with subsection (3), the public prosecution office may also decide only to authorise supervision of the probation measures or alternative sanctions. The public prosecution office gives reasons for this decision in its application for a court decision on the permissibility of the supervision of probation measures or alternative sanctions.

Section 90g **Court procedure**

(1) It is for the regional court with jurisdiction under section 50 sentence 1 and section 51 to decide upon application by the public prosecution office pursuant to section 90f (2) and (4) sentence 2 or upon application by the sentenced person pursuant to section 90f (3) sentence 3. The public prosecution office prepares the decision.

(2) The court forwards a copy of the documentation referred to in section 90d to the sentenced person insofar as this is necessary in order for the sentenced person to be able to exercise his or her rights.

(3) If the public prosecution office files an application for a court decision on the enforceability and permissibility of supervision under section 90f (2) or on the permissibility of the supervision under section 90f (4) sentence 2, then in addition to the copy referred to in subsection (2) the sentenced person is also to be sent a copy of the decision referred to in section 90f (2) and (4) sentence 1. The sentenced person is requested to respond to the application within a time limit to be determined by the court.

(4) Section 52 (1) applies accordingly to the court's preparation of the decision, with the proviso that the competent authority in the other Member State must also have been given the opportunity to submit additional documentation if the transmitted documentation is not sufficient to be able to assess whether the public prosecution office properly exercised its discretionary power. A time limit may be set for submission of the documentation.

(5) Section 30 (2) sentence 2 applies accordingly, with the proviso that the court may also take evidence on whether the public prosecution office properly exercised its discretionary power. Section 30 (2) sentence 4 and (3) and section 31 (1) and (4) apply accordingly. If the sentenced person is within the area of application of this Act, then section 30 (2) sentence 1 and section 31 (2) and (3) also apply accordingly.

Section 90h **Court decision**

(1) It is for the regional court to decide, by way of court order, upon applications for a court decision pursuant to section 90f (2), (3) and (4).

(2) If the sentenced person has not complied with the provisions governing applications for a court decision under section 90f (3) sentences 3 and 4, the court dismisses the application as inadmissible. There is no right of appeal against the decision.

(3) In derogation from section 54 (1), the court declares the foreign judgment enforceable under section 50 sentence 1 and section 55, subject to the proviso that suspension of the sentence is revoked or the previously determined sanction involving deprivation of liberty is imposed on the sentenced person, and declares the supervision of the probation measures or alternative sanctions permissible insofar as enforcement of the foreign judgment and supervision of the probation measures or alternative sanctions are permissible and the public prosecution office

1. properly exercised its discretionary power not to assert any of the obstacles to authorisation referred to in section 90e or

2. improperly exercised its discretionary power to assert obstacles to authorisation as referred to in section 90e and no other discretionary decision is justified; if, however, another discretionary decision is considered as a possibility, the court reverses the decision given by the public prosecution office and returns the case files so that the public

prosecution office may exercise its discretionary power once more, giving due consideration to the court's legal opinion.

(4) If the sanction involving deprivation of liberty imposed in the foreign judgment exceeds the upper limit imposed for the offence within the area of application of this Act, the court reduces the sentence to that upper limit. Section 54 (1) sentence 4 and section 54a apply accordingly.

(5) In decisions given in accordance with subsections (3) and (4) the court converts the sanction involving deprivation of liberty which has been imposed or previously determined into that sanction involving deprivation of liberty provided for under German law which most closely corresponds to it if

1. the sanction involving deprivation of liberty imposed or previously determined corresponds in terms of its nature to no sanction provided for under the law applicable within the area of application of this Act or

2. at the time of the offence the sentenced person was under the age of 21; section 54 (3) applies accordingly.

The foreign judgment is binding in respect of the measure of the converted sanction; the nature or duration of the sanction imposed in the other Member State may not be aggravated when converting the sanction.

(6) In derogation from subsection (3), only the supervision of probation measures or alternative sanctions is declared permissible if

1. only the supervision of probation measures or alternative sanctions is permissible in accordance with section 90b (3) and the public prosecution office

a) properly exercised its discretionary power not to assert any of the obstacles to authorisation referred to in section 90e (1) or

b) improperly exercised its discretionary power to assert obstacles to authorisation referred to in section 90e (1) and no other discretionary decision is justified; if, however, another discretionary decision is considered as a possibility, the court reverses the decision given by the public prosecution office and returns the case files so that the public prosecution office may exercise its discretionary power once more, giving due consideration to the court's legal opinion or

2. the public prosecution office properly exercised its discretionary power to assert the obstacle to authorisation referred to in section 90e (2).

(7) In the decision referred to in subsections (3) and (6) the court converts the probation measures or alternative sanctions imposed on the sentenced person into those obligations and instructions provided for under German law which most closely correspond to them if

1. the imposed probation measures or alternative sanctions do not correspond in terms of their nature to the obligations and instructions provided for under the law applicable within the area of application of this Act,

2. the conditions for the issuing of obligations and instructions under the law applicable within the area of application of this Act are not met,

3. the imposed probation measures or alternative sanctions make unreasonable demands of the sentenced person's conduct or

4. the imposed probation measures or alternative sanctions were not defined sufficiently precisely.

If the foreign judgment or probation decision provides for probation or supervision of conduct for more than five years, then, except in the cases referred to in section 68c (2) and (3) of the Criminal Code, the court reduces the probation or supervision of conduct to the

maximum duration of five years. If, under German law, juvenile criminal law would be applicable, sentence 2 applies, with the proviso that in the case of probation or supervision of conduct for more than three years the maximum duration is three years. Section 55 (1) sentence 2 applies, with the proviso that the probation measures or alternative sanctions to be supervised and, where applicable, the duration of the probation period must also be stated in the operative part of the judgment.

Section 90i

Authorisation following court decision

(1) The public prosecution office may only authorise enforcement of a foreign judgment and supervision of probation measures or alternative sanctions if the court has declared the foreign judgment enforceable and supervision of probation measures or alternative sanctions permissible. If the court has only declared the supervision to be permissible, the public prosecution office may only authorise the supervision.

(2) The public prosecution office authorises enforcement and supervision under the terms of the final court decision. A decision on authorisation is, as a general rule, to be given within 60 days after the public prosecution office receives the documentation referred to in section 90d. Reasons are to be given for a final decision not to authorise enforcement and supervision.

(3) There is no right of appeal against the authorisation decision.

Section 90j

Additional regulations on enforcement

(1) After authorising the enforcement of a foreign judgment and the supervision of probation measures imposed in that judgment, the court competent for giving the decision provided for in section 90h supervises the sentenced person's conduct throughout the probation period, in particular his or her fulfilment of obligations and instructions as well as of offers and assurances. The court is responsible for giving all subsequent decisions relating to the suspension of enforcement on probation in the event that the other Member State suspends supervision. If the sanction involving deprivation of liberty which was imposed or previously determined was converted, under section 90h (5) sentence 1 no. 2, into a sanction which is permissible under the Youth Courts Act, then competence for supervising the sentenced person's conduct and for all subsequent decisions relating to the suspension of enforcement on probation is governed by the provisions of the Youth Courts Act.

(2) If a court in the other Member State has imposed one or more of the alternative sanctions provided for in section 90b (1) sentence 1 no. 6 on the sentenced person and has determined a sanction involving deprivation of liberty in the event of a breach of the alternative sanctions (section 90b (1) sentence 1 no. 2 (c)), then subsection (1) applies, with the proviso that the court supervises compliance with the alternative sanctions and, where applicable, imposes the sanction involving deprivation of liberty previously determined on the sentenced person if it would revoke suspension of enforcement of a sanction involving deprivation of liberty in accordance with sections 56f and 67g of the Criminal Code or in accordance with section 26 of the Youth Courts Act.

(3) The court instructs the sentenced person about

1. the significance of the suspension of a sentence or measure of reform and prevention on probation, the significance of alternative sanctions or of the supervision of conduct,
2. the duration of the probation or supervision of conduct,
3. the probation measures and
4. the possibility of the suspension being revoked or of the previously determined sanction involving deprivation of liberty being imposed.

If the court has converted obligations and instructions under section 90h (7) into instructions under section 68b (1) of the Criminal Code, then the court also instructs the sentenced person about the possibility of punishment in accordance with section 145a of the Criminal Code. The presiding judge may entrust such instruction to a commissioned or requested judge.

(4) In derogation from section 57 (6), after supervision of probation measures or alternative sanctions has commenced in the Federal Republic of Germany enforcement and supervision may only be dispensed with if

1. a competent agency in the other Member State gives notification that the conditions for enforcement and supervision are no longer met on account of a retrial or the granting of an amnesty or a pardon or
2. the sentenced person has fled the Federal Republic of Germany.

Enforcement and supervision may, further, be dispensed with if the sentenced person no longer has his or her lawful and habitual residence in the Federal Republic of Germany or the other Member State is conducting criminal proceedings against the sentenced person in another matter and has requested that enforcement and supervision be dispensed with.

Section 90k Supervision of sentenced person

(1) If the public prosecution office has only authorised the supervision of probation measures or alternative sanctions, then the court only supervises the sentenced person's conduct during the probation period as well as compliance with the probation measures or alternative sanctions imposed on him or her insofar as the other Member State has suspended supervision. Section 90j (1) sentence 3 applies accordingly.

(2) If the public prosecution office has not authorised enforcement of the foreign judgment but supervision of probation measures or alternative sanctions is permissible because section 90b (3) no. 1 or no. 2 applies or because the obstacle to authorisation referred to in section 90e (2) was properly asserted, then in addition to supervision in accordance with subsection (1) the court also gives the following subsequent decisions:

1. regarding a reduction of the duration of the probation or supervision of conduct to the lower limit,
2. regarding an increase in the duration of the probation or supervision of conduct to the upper limit and
3. regarding the issuing, amendment and revocation of obligations and instructions, including the instruction to subject the sentenced person to the supervision and direction of a probation officer for the full duration or part of the probation period.

Section 90j (1) sentence 3 applies accordingly.

(3) Once supervision of the probation measures or alternative sanctions has commenced, that supervision is dispensed with if

1. a competent agency in the other Member State gives notification that the conditions for the supervision are no longer met,
2. the sentenced person has fled the Federal Republic of Germany or
3. the court would revoke suspension on probation or would impose a sanction involving deprivation of liberty on the sentenced person.

Section 90j (4) sentence 2 applies accordingly.

(4) The court notifies the competent authority in the other Member State without delay about

1. any breach whatsoever of a probation measure or alternative sanction, in the event of its only supervising the sentenced person's conduct, as well as compliance with probation measures and alternative sanctions pursuant to subsection (1),
2. subsequent decisions given pursuant to subsection (2) and
3. supervision being dispensed with pursuant to subsection (3).

The form in Annex II of the Framework Decision on Supervision of Probation is to be used for the notification required under sentence 1 no. 1 and no. 2 and for the notification about supervision being dispensed with required under sentence 1 no. 3 in conjunction with subsection (3) sentence 1 no. 3.

(5) Section 90j (3) applies accordingly, with the proviso that instead of instructing the sentenced person about the possibility of suspension being revoked or the previously determined sanction involving deprivation of liberty being imposed in accordance with section 90j (3) sentence 1 no. 4 the court instructs the sentenced person about the possibility of supervision being dispensed with in accordance with subsection (3) sentence 1 no. 3.

Subdivision 2

Supervision of German probation measures in another Member State of European Union

Section 90I

Authorisation of enforcement and supervision

(1) In derogation from section 71, the enforcing authority may transfer the following to another Member State under the provisions of the Framework Decision on Supervision of Probation:

1. the enforcement of a sanction involving deprivation of liberty imposed within the area of application of this Act whose enforcement or further enforcement was suspended on probation and
2. the supervision of obligations and instructions imposed on the sentenced person for the full duration or a part of the probation period.

Enforcement in accordance with sentence 1 no. 1 may only be transferred in conjunction with supervision in accordance with sentence 1 no. 2. The enforcing authority gives the sentenced person the opportunity to make a statement. This may be dispensed with if the sentenced person has applied for enforcement and supervision to be transferred to the other Member State.

(2) If the sentenced person is in the Federal Republic of Germany, the enforcing authority may only authorise the transfer of enforcement and supervision if the sentenced person has consented thereto. The sentenced person's consent is to be declared before and placed on record by a judge. It may not be revoked. The sentenced person is to be instructed about the legal consequences of giving consent and about its irrevocability.

(3) The enforcing authority is to inform the sentenced person, in writing, about the decision to make a request for enforcement and supervision to another Member State. If the sentenced person is in the other Member State's territorial jurisdiction, the enforcing authority may request that the competent authority in that Member State forward the notification to the sentenced person. All statements made by the sentenced person and by his or her legal representative must be included, in written form, with the request for enforcement.

(4) The enforcing authority may withdraw a request for enforcement and supervision as long as supervision by the other Member State has not yet commenced.

(5) If the enforcing authority does not authorise the transfer of enforcement of a sanction involving deprivation of liberty in accordance with subsection (1) sentence 1 no. 1 and supervision of obligations and instructions in accordance with subsection (1) sentence 1 no. 2 to another Member State or if it withdraws a request pursuant to subsection (4), then it gives reasons for this decision. The enforcing authority serves the decision on the sentenced

person, provided he or she has consented to enforcement and supervision in that other Member State. The sentenced person may apply, within two weeks following service, for a court decision. Sections 297 to 300 and section 302 (1) sentence 1 and (2) of the Code of Criminal Procedure on appellate remedies and sections 42 to 47 of the Code of Criminal Procedure on time limits and restoration of the status quo ante apply accordingly.

Section 90m

Court proceedings upon application by sentenced person

(1) It is for the higher regional court with jurisdiction under section 71 (4) sentences 2 and 3 to decide, by way of court order, upon application by the sentenced person made in accordance with section 90l (5) sentence 3. The enforcing authority prepares the decision. Section 13 (1) sentence 2, section 30 (2) sentences 2 and 4 and (3), section 31 (1) and (4) and sections 33, 42 and 53 apply accordingly. If the sentenced person is within the area of application of this Act, then section 30 (2) sentence 1 and section 31 (2) and (3) also apply accordingly.

(2) If the sentenced person does not comply with the provisions governing an application for a court decision under section 90l (5) sentences 3 and 4, the court dismisses the application as inadmissible.

(3) The sentenced person's application for a court decision is rejected as unfounded by way of court order if

1. it is not permissible, under the provisions of the Framework Decision on Supervision of Probation and pursuant to section 90l (1), to transfer enforcement of a judgment delivered within the area of application of this Act and supervision of obligations and instructions imposed in that judgment to another Member State or

2. the enforcing authority properly exercised its discretionary power under section 90l (1) sentence 1 and (4).

(4) If the sentenced person's application for a court decision is admissible and well-founded and no discretionary decision other than that given by the enforcing authority is justified, the court declares enforcement of the sanction involving deprivation of liberty in accordance with section 90l (1) sentence 1 no. 1 and supervision of the obligations and instructions designated in section 90l (1) sentence 1 no. 2 in the other Member State to be permissible. If, however, another discretionary decision is considered as a possibility, the court reverses the decision given by the enforcing authority and returns the case files so that the enforcing authority may exercise its discretionary power once more, giving due consideration to the court's legal opinion.

(5) The enforcing authority authorises the enforcement and the supervision in the other Member State under the terms of the final court decision. There is no right of appeal against the authorisation decision.

Section 90n

Domestic enforcement proceedings

(1) The German enforcing authority dispenses with enforcement and supervision if the other Member State has taken them on and carried them out. It may resume enforcement and supervision as soon as that other Member State has given notification that it dispenses with further enforcement and supervision.

(2) If the other Member State has converted or subsequently amended the obligations and instructions imposed on the sentenced person for the full duration or a part of the probation period, then the competent court converts the obligations and instructions in accordance with section 90h (7) sentence 1. That court which has jurisdiction to give decisions pursuant to section 453 of the Code of Criminal Procedure or section 58 of the Youth Courts Act has jurisdiction in this regard.

(3) If the other Member State increases the probation period by more than half of the initially determined period, the court reduces the duration of the probation period to that upper limit if

the increased probation period is more than five years. If juvenile criminal law was applicable under German law, then sentence 2 applies, with the proviso that the maximum duration is four years. Any efforts which the sentenced person has made to fulfil obligations, offers, instructions or assurances in the other Member State are credited to him or her.

Division 5
Monitoring of supervision measures to avoid remand detention

Section 90o
Principle

(1) Assistance in matters relating to the enforcement of judgments which is rendered and the transfer of such enforcement to another Member State of the European Union under the provisions of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition of decisions on supervision measures as an alternative to provisional detention (OJ L 294, 11.11.2009, p. 20) (Framework Decision on Supervision Measures) are governed by the provisions of this Division.

(2) In the absence of special provision made under this Division, the general provisions of Part 1 and Part 7 apply. Section 53 applies accordingly.

(3) This Division takes precedence over agreements under international law as referred to in section 1 (3), provided that exhaustive provision is made on the relevant matter.

Section 90p
Conditions governing permissibility

(1) Obligations and instructions which another Member State of the European Union has imposed under the provisions of its national law and proceedings against a natural person to avoid remand detention (supervision measures) may be monitored in the Federal Republic of Germany. The monitoring of supervision measures is only permissible if

1. a penalty or measure of reform and prevention could, notwithstanding any procedural obstacles and, where applicable, in the case of analogous conversion of the facts, also be imposed under German law for the offence giving rise to the judgment,
2. following instruction about the supervision measures, the person to be monitored consents to return to or remain in the Federal Republic of Germany,
3. the person to be monitored
 - a) is a German national or has his or her lawful and habitual residence in the Federal Republic of Germany or
 - b) intends to establish his or her habitual residence in the Federal Republic of Germany forthwith and meets the requirements for entry into and residence in the territory of the Federal Republic of Germany and
4. one or more of the following supervision measures is or are to be monitored:
 - a) the obligation to inform a specific authority of any change of residence,
 - b) the obligation not to enter certain localities, places or defined areas in the Federal Republic of Germany or in the other Member State,
 - c) the obligation to remain at a specified place, where applicable during specified times,
 - d) an obligation containing limitations on leaving the territory of the Federal Republic of Germany,
 - e) the obligation to report at specified times to a specific authority,

- f) the obligation to avoid contact with specific persons,
- g) the obligation not to engage in specified activities in relation with the offence allegedly committed,
- h) the obligation to deposit a certain sum of money or to give another kind of guarantee, which may either be provided in a specified number of instalments or entirely at once,
- i) the obligation to avoid contact with specific objects in relation with the offence allegedly committed,

(2) In derogation from subsection (1) sentence 2 no. 1, the monitoring of supervision measures in tax, customs and currency exchange matters is also permissible even if German law does not contain the same kind of provisions on taxes, customs and currency exchange activities as the law of the other Member State.

(3) The monitoring of a supervision measure is not permissible if

1. the person to be monitored lacked criminal responsibility under section 19 of the Criminal Code or lacked criminal liability under section 3 of the Youth Courts Act at the time of the offence,
2. the person to be monitored
 - a) has already had final judgment passed upon him or her by a Member State other than that in which the judgment was delivered for the same offence which gave rise to the judgment and
 - b) has, in the event of conviction, had a sanction imposed and this has already been enforced, is currently being enforced or can no longer be enforced under the law of the sentencing state or
3. prosecution would be statute-barred under German law in the case of offences for which Germany's jurisdiction has also been established.

Section 90q Documentation

(1) The monitoring of a supervision measure in accordance with the provisions of the Framework Decision on Supervision Measures is only permissible if the other Member State has transmitted the original or a certified copy of the enforceable decision on supervision measures together with a fully completed certificate, for which the form in Annex I of the Framework Decision on Supervision Measures, as amended, is to be used.

(2) If the certificate referred to in subsection (1) is incomplete but the required particulars can be drawn from the decision or from other accompanying documentation, then the competent authority may dispense with requiring the submission of a completed certificate.

Section 90r Obstacles to authorisation

Authorisation of the monitoring of supervision measures which is permissible under the terms of sections 90p and 90q may only be refused if

1. the certificate (section 90q (1)) is incomplete or manifestly does not correspond to the decision and the other Member State has not completed or corrected these particulars,
2. extradition of the person to be monitored would have to be refused in the event of a breach of a supervision measure,
3. proceedings are pending to terminate the residence of a person who has his or her lawful and habitual residence in the Federal Republic of Germany or

4. supervision of the person to be monitored can, in the individual case, be better guaranteed in another Member State in the case under section 90p (1) sentence 2 no. 3 (b).

Section 90s

Interim authorisation decision

- (1) It is for the public prosecution office with jurisdiction under section 51 to give the decision on whether to take on the monitoring of supervision measures.
- (2) The public prosecution office gives the person to be monitored the opportunity to make a statement, unless he or she has already done so.
- (3) If the public prosecution office decides not to assert any of the obstacles to authorisation referred to in section 90r, it gives reasons for this decision in its application for a court decision on the permissibility of the supervision measure. The competent authority in the other Member State is to be notified by the public prosecution office before it applies for a court decision about
 1. the reasons why it would have to refuse to extradite the person to be monitored in the event of a breach of a supervision measure and
 2. it not asserting any obstacles to authorisation.
- (4) If the public prosecution office does not authorise the monitoring of supervision measures, it gives reasons for this decision. The public prosecution office serves the decision on the person to be monitored. The person to be monitored may apply, within two weeks following service of the decision not to authorise the monitoring of supervision measures, for a court decision. Sections 297 to 300 and section 302 (1) sentence 1 and (2) of the Code of Criminal Procedure on appellate remedies and sections 42 to 47 of the Code of Criminal Procedure on time limits and restitution of the status quo ante apply accordingly.

Section 90t

Court procedure

- (1) It is for the local court to decide upon application by the public prosecution office pursuant to section 90s (3) sentence 1 or upon application by the person to be monitored pursuant to section 90s (4) sentence 3. Section 51 applies accordingly. The public prosecution office prepares the decision.
- (2) Section 52 (1) applies accordingly to the court's preparation of the decision, with the proviso that the competent authority in the other Member State must also have been given the opportunity to submit additional documentation if the documentation submitted is not sufficient to be able to assess whether the public prosecution office properly exercised its discretionary power. The court may set a time limit for submission of the documentation.
- (3) Section 30 (2) sentence 2 applies accordingly, with the proviso that the court may also take evidence as to whether the public prosecution office properly exercised its discretionary power. Section 30 (2) sentence 4 and (3) and section 31 (1) and (4) apply accordingly. If the sentenced person is within the area of application of this Act, then section 30 (2) sentence 1 and section 31 (2) and (3) apply accordingly.

Section 90u

Court decision on permissibility

- (1) It is for the local court to decide, by way of court order, upon applications for a court decision as provided for in section 90s (3) sentence 1 and (4) sentence 3. The supervision measures to be monitored must be precisely defined in the operative part of the decision granting the application.
- (2) If the person to be monitored has not complied with the provisions governing an application for a court decision as provided for in section 90s (4) sentence 3, then the court dismisses the application as inadmissible. There is no right of appeal against the decision.
- (3) The court orders the monitoring of supervision measures if it is permissible and

1. the public prosecution office properly exercised its discretionary power not to assert any of the obstacles to authorisation referred to in section 90r or
 2. the public prosecution office improperly exercised its discretionary power to assert obstacles to authorisation as referred to in section 90r and no other discretionary decision is justified; if, however, another discretionary decision is considered as a possibility, the court reverses the decision given by the public prosecution office and returns the case files so that the public prosecution office may exercise its discretionary power once more, giving due consideration to the court's legal opinion.
- (4) The court converts the supervision measures imposed on the person to be monitored if
1. the conditions for the imposition of supervision measures under the law applicable within the area of application of this Act are not met or
 2. the supervision measures imposed were not defined sufficiently precisely.
- The converted supervision measures must correspond as closely as possible to the supervision measures imposed by the issuing state. They may not be more severe than the supervision measures imposed by the issuing state. The competent authority in the other Member State is to be notified without delay about any conversion as per this subsection.
- (5) The public prosecution office and the person to be monitored may file an immediate complaint against the decision given by the local court. Subsection (2) sentence 2 remains unaffected. Section 42 applies accordingly.

Section 90v

Authorisation following court decision

- (1) The public prosecution office may only authorise the taking on of the monitoring of supervision measures if it has been declared permissible by court decision. The public prosecution office authorises the monitoring under the terms of the enforceable court decision. There is no right of appeal against the authorisation decision.
- (2) A decision on authorisation is, as a general rule, to be given within 20 working days after the public prosecution office receives the documentation referred to in section 90q. Where an immediate complaint was filed against the court's decision under section 90u (5), the time limit for authorisation is extended by a further 20 working days.
- (3) If the public prosecution office is prevented, owing to extraordinary circumstances, from complying with the time limits set out in subsection (2), it notifies the competent authority in the issuing state without delay, giving the reasons for the delay and indicating how long it expects to take to give the final decision.

Section 90w

Conduct of monitoring

- (1) The court with jurisdiction to give the decision under section 90u assumes responsibility for monitoring the supervision measures immediately after authorisation to take on the monitoring of supervision measures is given and for the duration of the period indicated by the competent authority in the other Member State. The court may transfer monitoring in full or in part to the court in whose district the person to be monitored has his or her place of residence or, in the absence of such residence, his or her habitual residence. Such transfer is binding.
- (2) If provision is made by law for the hearing or involvement of the public prosecution office, then that public prosecution office is competent which prepared the court decision on permissibility. Its competence remains unaffected by any transfer in accordance with subsection (1) sentence 2.
- (3) The court notifies the competent authority in the other Member State without delay about
 1. any change in the person to be monitored's place of residence,

2. the fact that the person to be monitored's whereabouts in the territory of the Federal Republic of Germany can no longer be established and

3. any breach of a supervision measure and any judgments which could entail a further decision in relation to a decision on supervision measures; the form in Annex II of the Framework Decision on Supervision Measures, as amended, is to be used for this purpose.

(4) The court dispenses with monitoring supervision measures if

1. the competent authority in the other Member State withdraws the certificate or gives notification in another suitable manner that monitoring of the supervision measures is to be discontinued,

2. the person to be monitored's whereabouts in the territory of the Federal Republic of Germany can no longer be established,

3. the person to be monitored no longer has a lawful and habitual residence in Germany or

4. the competent authority in the other Member State has amended the supervision measure so that no supervision measure within the meaning of section 90p (1) sentence 2 no. 4 now exists.

The decision referred to in sentence 1 is given by way of court order.

(5) The court may dispense with monitoring the supervision measure if the competent authority in the other Member State has given no further decision in relation to a decision on supervision measures although the court

1. repeatedly notified the competent authority in the other Member State about the same person, as required under subsection (3) no. 3, and

2. set a suitable time limit for the issuing of a further decision in relation to a decision on supervision measures.

The decision referred to in sentence 1 is given by way of court order.

(6) If the court has decided to discontinue monitoring of the supervision measures under the terms of subsection (5), it notifies the competent authority in the other Member State thereof in writing, giving reasons.

Section 90x

New and amended supervision measures

The provisions of sections 90o to 90w also apply to the taking on and monitoring of new or amended supervision measures, with the proviso that no re-examination as set forth in section 90p (1) sentence 2 no. 2 and no. 3 and (3), section 90r and section 77 (2) is then carried out. In the case of decisions on new supervision measures, no re-examination as set forth in section 90p (1) sentence 2 no. 4 is carried out either.

Section 90y

Transfer of monitoring

(1) The court with jurisdiction under section 126 of the Code of Criminal Procedure may transfer the monitoring of supervision measures to avoid remand detention imposed by a German court to another Member State of the European Union for monitoring under the provisions of the Framework Decision on Supervision Measures. Such transfer is only permissible if the person to be monitored

1. has his or her lawful and habitual residence in that Member State and

2. has consented to return to that Member State following instruction about the supervision measures in question or

3. is already in that Member State.

The court gives the public prosecution office the opportunity to make a statement.

(2) In derogation from subsection (1) sentence 2 no. 1 and no. 2, the court may transfer the monitoring of supervision measures to a Member State of the European Union other than that in which the person to be monitored has his or her lawful and habitual residence, provided the person to be monitored has filed an application to that effect.

(3) The court notifies the competent authority in the other Member State without delay about

1. any further decision given in relation to a decision on supervision measures and
2. any legal remedy filed against a decision on supervision measures.

(4) The court may request the competent authority in the other Member State to extend the monitoring of supervision measures if

1. the competent authority in the other Member State has stated a specific period during which the monitoring of supervision measures is permissible,
2. the period referred to in no. 1 has elapsed and
3. it deems monitoring of the supervision measures still to be necessary.

(5) A request as referred to in subsection (4) must include the following information:

1. the reasons for the extension,
2. the likely consequences for the person to be monitored if the supervision measures were not to be extended and
3. the likely length of the extension.

Section 90z

Withdrawal of transfer of monitoring

(1) The court must withdraw the certificate relating to the transfer of monitoring if the conditions for the issuing of an arrest warrant are no longer met. It may withdraw the certificate if

1. the competent authority in the other Member State has given notification that it has amended the supervision measures in line with the law applicable in that Member State,
2. the competent authority in the other Member State has given notification that it can only monitor the supervision measures for a limited period of time or
3. the competent authority in the other Member State has given notification that, in the event of a breach of the supervision measures, it would have to refuse to extradite the person to be monitored.

In the cases under sentence 2, the certificate must be withdrawn before monitoring has commenced in the other Member State and no later than 10 days after the competent court receives the notification.

(2) The court resumes responsibility for monitoring the supervision measures if

1. the competent court in the other Member State gives notification that the person to be monitored has moved his or her lawful and habitual residence to a state other than the notified executing state,
2. the court has amended the supervision measures and the competent authority in the other Member State has refused to monitor the amended supervision measures,
3. the maximum period during which the measures may be monitored in the other Member State has elapsed,

4. the competent authority in the other Member State has decided to discontinue monitoring of the supervision measures under the provisions of Article 23 of the Framework Decision on Supervision Measures and has notified the court thereof.

Part 10
Other mutual assistance matters with Member States of European Union

Division 1
General provisions

Section 91
Precedence of Part 10

- (1) In the absence of special provision made under this Part, the remaining provisions of this Act apply to other mutual assistance matters with the Member States of the European Union.
- (2) This Part takes precedence over agreements under international law as referred to in section 1 (3), provided that exhaustive provision is made on the relevant matter.
- (3) Sections 92 to 92b also apply, within the context of mutual assistance matters, to states which apply the provisions of the Schengen *acquis* on the basis of an association agreement with the European Union on the implementation, application and development of the Schengen *acquis* (Schengen Associated States).

Division 2
European Investigation Order

Section 91a
Principle

- (1) Other types of mutual assistance rendered to another Member State of the European Union under Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1; OJ L 143, 9.6.2015, p. 16) (European Investigation Order Directive) are governed by the provisions of this Division.
- (2) This Division does not apply to
1. the establishment of joint investigation teams and the gathering of evidence by such teams,
 2. cross-border surveillance and
 3. the hearing of an accused by telephone conference.
- (3) The securing of evidence for or by another Member State of the European Union is governed by subsection (1). Sections 94 to 96 apply to the securing of property for the purpose of confiscation, unless the Freezing and Confiscation Regulation applies.
- (4) The provisions of Part 1 and Parts 5 to 7, as well as the general and special provisions of this Part apply
1. in the absence of special provision made under this Part or
 2. if a request was not made in accordance with the provisions of the European Investigation Order Directive.

Section 91b
Conditions governing permissibility

- (1) The rendering of mutual assistance is not permissible,
1. if it, by law, requires specially designated criminal offences or offences of a certain degree of severity, and the offence giving rise to the request does not meet the requirements even, where applicable, in the case of analogous conversion of the facts or
 2. insofar as

- a) rights to refuse to give evidence or information, in particular those set out in section 52, 53 or 55 of the Code of Criminal Procedure or provisions which make reference to them, pose an obstacle thereto or
- b) one of the provisions referred to in section 77 (2) of this Act or in sections 18 to 20 of the Courts Constitution Act take effect.

(2) A request in connection with taxes, duties, customs duties or currency exchange activities is also permissible even if German law does not contain the same kind of provisions on taxes, duties, customs duties and currency exchange activities as the law of the requesting Member State.

(3) Section 73 sentence 2 applies, with the proviso that the rendering of mutual assistance is not permissible if there is justified reason to believe that executing the request would not be compatible with the obligations which the Federal Republic of Germany is under pursuant to Article 6 of the Treaty on European Union and the Charter of Fundamental Rights of the European Union.

(4) Section 66 (2) no. 1 and section 67 (1) and (2) apply, with the proviso that no double criminality check is carried out if, under the law of the requesting Member State, the offence giving rise to the request belongs to one of the categories of offences listed in Annex D to the European Investigation Order Directive and is punishable by a sentence of imprisonment or a measure of reform and prevention involving deprivation of liberty of a maximum of at least three years.

(5) If the rendering of mutual assistance is not permissible, the competent agency in the requesting Member State must be notified thereof without delay. Notification is to be made in a form which permits the production of a written record.

Section 91c

Additional conditions governing permissibility for special types of mutual assistance

(1) Hearings by audio-visual means pursuant to section 61c are not permissible unless the person to be heard consents thereto.

(2) Mutual assistance may only be rendered where, in addition to the conditions referred to in section 91b (1), (3) or (4), the conditions under which German courts or German authorities are permitted to render mutual assistance in accordance with section 59 (3) are met in the case of

- 1. requests made in the context of proceedings under section 1 (2) or
- 2. requests for
 - a) information in respect of accounts held at a financial institution within the meaning of Article 3 no. 2 of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73) whose head office is in Germany,
 - b) information about individual account activities or other business conducted in connection with an account as referred to in letter (a) or
 - c) investigative measures of a specific duration, in particular requests for
 - aa) the monitoring of individual account activities or other business conducted via an account held at a bank within the meaning of section 1 (1) of the Banking Act (*Kreditwesengesetz*) or at a financial institution within the meaning of letter (a),

- bb) the making of controlled deliveries,
- cc) the use of covert investigators or
- dd) the interception of telecommunications.

(3) Section 62 (1) applies, with the proviso that a person may also be transferred temporarily for the purpose of investigative measures other than those referred to therein. Section 62 (1) sentence 1 no. 3, also in conjunction with section 63 (4), does not apply if the person concerned was transferred to the territorial scope of the requesting Member State or to the area of application of this Act and, having had the opportunity to leave that territorial scope for a period of 15 consecutive days from the date when his or her presence was no longer required by the competent agencies, did not do so or returned there after leaving.

(4) Section 91b (5) applies accordingly.

Section 91d Documentation

(1) The rendering of mutual assistance is only permissible if the requesting Member State uses the form in Annex A or Annex C of the European Investigation Order Directive, as amended, to make its request and the request

1. has been issued by a judicial authority within the meaning of Article 2 (c) (i) of the European Investigation Order Directive or

2. has been issued by an authority other than that referred to in no. 1 which the requesting Member State has designated as competent therefor and it has been confirmed by an authority pursuant to Section L no. 1 of the form in Annex A of the European Investigation Order Directive.

(2) Receipt of a request made in accordance with subsection (1) is to be confirmed without delay, but no later than one week following its receipt by the competent agency, by means of confirmation of receipt which corresponds to the form in Annex B of the European Investigation Order Directive, as amended. Where a request has been received by an agency which is not competent in the matter, it is to be forwarded to the competent agency; the requesting agency is to be notified of such forwarding as per sentence 1.

(3) If the form referred to in subsection (1) is incomplete or manifestly incorrect and mutual assistance cannot therefore be rendered, the competent agency in the requesting Member State must be notified thereof without delay. Notification is, as a general rule, to be made in a form which permits the production of a written record.

Section 91e Authorisation; obstacles to authorisation; deferring authorisation

(1) Authorisation of the rendering of mutual assistance may only be refused if at least one of the following grounds exists:

1. authorisation would prejudice essential security interests of the Federation or of the *Länder*, would jeopardise the sources of information or necessitate the use of classified information relating to specific intelligence activities,

2. final judgment has already been passed upon the person pursued in a Member State other than the requesting Member State for the same offence which gave rise to the request and, in the event of conviction, the sanction has already been enforced, is currently being enforced or can no longer be enforced under the law of the sentencing state,

3. the offence giving rise to the request

- a) was committed outside of the requesting Member State's sovereign territory and in full or in part in Germany or on one of the means of transport referred to in section 4 of the Criminal Code and
 - b) is punishable under German law neither as a criminal offence by imposition of a penalty nor as a regulatory offence by imposition of an administrative fine,
4. where, in the case of requests for the temporary transfer of persons from the requesting Member State for proceedings which are pending there pursuant to section 63, the detained person does not consent to the temporary transfer,
5. if, in the case of a request for the use of covert investigators, no agreement can be reached with the requesting Member State in respect of the length of the operation, its precise conditions or the investigators' legal status.
- (2) Authorisation of the rendering of mutual assistance may be deferred if
1. it might interfere with ongoing criminal investigations or
 2. the evidence being requested is already being used in other proceedings.
- (3) Reasons are to be given for decisions relating to authorisation or to the deferment of authorisation.
- (4) The competent agency in the requesting Member State is to be notified without delay of any decisions taken pursuant to subsection (1) or (2). In the case of decisions pursuant to subsection (2), the reasons for the delay are to be stated; the expected length of the delay is, as a general rule, to be stated. Section 91b (5) sentence 2 applies accordingly.

Section 91f **Recourse to other investigative measures**

- (1) Where a less intrusive investigative measure than that indicated in the request referred to in section 91d (1) is available, then that less intrusive measure is to be taken if the same outcome can be achieved as with the investigative measure indicated in the request.
- (2) Recourse is to be taken to an investigative measure other than that indicated in a request referred to in section 91d (1) if the investigative measure indicated
1. is not provided for under German law or
 2. would not be available in a comparable domestic case.
- (3) Reasons are to be given for decisions given pursuant to subsections (1) and (2).
- (4) Before taking recourse to another investigative measure under the terms of subsection (1) or (2), the competent agency in the requesting Member State is to be notified without delay. Section 91b (5) sentence 2 applies accordingly.
- (5) If, in the case under subsection (2), no other investigative measure is available which can achieve the same outcome as that stated in the request in accordance with section 91d (1), the competent agency in the requesting Member State is to be notified, without delay, of the fact that it was not possible to render the requested assistance. Section 91b (5) sentence 2 applies accordingly.

Section 91g **Time limits**

- (1) A decision on the authorising of mutual assistance is, as a general rule, to be taken without delay, but no later than 30 days after the competent agency receives the request. A decision on authorising requests for the securing of evidence is, as a general rule, to be taken without delay and, where possible, within 24 hours after receipt of the request.
- (2) Where there are no grounds for delay pursuant to section 91e (2) or the authority is not already in possession of the evidence requested, the investigative measure is, as a general rule, to be executed without delay, but no later than 90 days after authorisation is given.

(3) Particular requests on the part of the competent agency in the requesting Member State requiring that shorter time limits than those specified in subsection (1) or (2) be complied with or that the investigative measure be carried out at a specific point in time are to be complied with as far as possible.

(4) If the time limit specified in subsection (1) sentence 1 or the particular requests referred to in subsection (3) cannot be complied with for practical reasons, the competent agency in the requesting Member State is to be notified thereof without delay. The reasons and the likely length of the delay are to be stated. Section 91d (3) sentence 2 applies accordingly. The time limit specified in subsection (1) sentence 1 may be extended by a maximum of 30 days.

(5) If the time limit specified in subsection (2) cannot be complied with for practical reasons, the competent agency in the requesting Member State is to be notified thereof without delay. The reasons for the delay are to be stated. Section 91d (3) sentence 2 applies accordingly. A suitable time for the carrying out of the investigative measure is to be agreed with the competent agency in the requesting Member State.

(6) Where requests relate to the cross-border interception of telecommunications which do not require technical assistance from the Federal Republic of Germany to carry out that interception, and the investigative measure would not be authorised in a comparable domestic case, the competent agency in the requesting Member State is to be notified thereof without delay, but no later than 96 hours following receipt of the request, that

1. the interception cannot be carried out or is to be terminated and
2. intelligence which has already been gathered while the surveilled person was in the territorial jurisdiction of the Federal Republic of Germany may not be used or only subject to conditions; the conditions and reasons therefor must be notified.

Section 91d (3) sentence 2 applies accordingly.

Section 91h Executing requests

(1) If the conditions for rendering mutual assistance are met, a request as set out in section 91d (1) is to be executed under the same terms as would apply if the request had been made by a German agency; this also applies to measures of compulsion which become necessary in the course of executing the request.

(2) Unless otherwise provided under the European Investigation Order Directive and no core principles of the German legal system pose an obstacle thereto,

1. special formal or procedural requirements indicated in the request as set out in section 91d (1) must be complied with and
2. requests made by authorities in the requesting Member State to participate in an official act are to be complied with.

If special formal or procedural requirements as referred to in sentence 1 no. 1 or requests as referred to in sentence 1 no. 2 cannot be complied with, the competent agency in the requesting Member State is to be notified thereof without delay; section 91d (3) sentence 2 applies accordingly.

(3) Hearings by audio-visual means pursuant to section 61c are conducted under the direction of the competent agency and on the basis of the law applicable in the requesting Member State. The competent German agency participates in the hearing, establishes the identity of the person to be heard and ensures that the core principles of the German legal system are abided by. Accused persons are to be instructed at the start of the hearing about their rights under the law of the requesting Member State and under German procedural law. Witnesses and expert witnesses are to be instructed about those rights to refuse to give evidence or information which they have under the law of the requesting Member State and under German procedural law.

(4) Subsection (3) sentences 1, 2 and 4 applies accordingly to the hearing of witnesses or expert witnesses by telephone.

Section 91i

Appeals; suspending transmission of evidence

(1) Where a submission is made as specified in section 61 (1) sentence 1 or an application is made as specified in section 61 (1) sentence 2, the higher regional court also reviews, upon application, the decisions referred to in section 91e (3) and in section 91f (1) and (2). Where the decisions referred to in section 91e (3) were based on an abuse of discretionary powers, the court makes such a determination, reverses the decisions to that extent and returns the files for a new decision, in which due consideration must be given to the court's legal opinion; otherwise, the court finds that discretionary powers were properly exercised.

(2) The transmission of evidence to the requesting Member State may be suspended until a decision is given on an appeal which was filed

1. in the requesting Member State against the issuing of a European Investigation Order or

2. within the area of application of this Act.

(3) It is for the competent agency in the requesting Member State to give notification about any appeals filed pursuant to subsection (2) no. 2; section 91d (3) sentence 2 applies accordingly.

Section 91j

Outgoing requests

(1) Outgoing requests are to be made using the form in Annex A or Annex C of the European Investigation Order Directive, as amended.

(2) If a request is made by an administrative authority in proceedings in accordance with section 1 (2), then before that request is transmitted to the requested Member State it is to be submitted to the public prosecution office for confirmation in accordance with Section L in the form in Annex A of the European Investigation Order Directive. Local jurisdiction lies with the public prosecution office at that regional court in whose district the administrative authority has its seat. The *Länder* may delegate their jurisdiction under sentence 1 to a court or may issue rules concerning local jurisdiction under sentence 2 in another manner.

(3) Confirmation as referred to in subsection (2) is given once the public prosecution office or the court determined in accordance with subsection (2) sentence 3 finds that the conditions for issuing the request are met, in particular that

1. the request satisfies the principle of proportionality and

2. it would be possible to order the investigative measure indicated in the request under the same conditions in a comparable domestic case.

(4) Where, in proceedings under section 1 (2), the right to order the measure is reserved to the judge, the confirmation in accordance with subsections (2) and (3) may also be signed by the court seised of the matter, if so provided by the *Länder*.

(5) Section 69 applies, with the proviso that a person may also be temporarily transferred for the purpose of investigative measures other than those indicated therein. Section 62 (1) sentence 1 no. 3, in conjunction with section 69 (3) or section 70 sentence 1, does not apply if the person concerned was transferred to the area of application of this Act or to the territorial scope of the requested Member State and had the opportunity to leave that territorial scope but did not do so within 15 consecutive days after the competent agencies no longer required his or her presence, or returned there after leaving.

Division 3

Special types of mutual assistance

Section 92

Transmission of information, including personal data, to Member States of European Union

(1) The competent federal and *Land* police authorities may transmit information, including personal data, for the purpose of prosecuting criminal offences upon a request made by a law enforcement authority in a Member State of the European Union in accordance with the provisions of Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (OJ L 386, 29.12.2006, p. 89; OJ L 75, 15.3.2007, p. 26). Such transmission is effected under the same statutory conditions as apply to a German police authority. The provisions of section 3 of the Federal Criminal Police Office Act on international cooperation between the federal and *Land* police authorities remain unaffected.

(2) When transmitting information in accordance with subsection (1), notification is to be included that it is not permissible to use the information as evidence in court proceedings, unless the authorising authority which is competent to give decisions on requests under Part 5 has consented to such use as evidence. The authority competent to give decisions on requests under Part 5 also decides accordingly on requests for the subsequent authorisation of the use of such information as evidence.

(3) The transmission of information, including personal data, in accordance with subsection (1) is not permissible if

1. this would prejudice essential security interests of the Federation or of the *Länder*,
2. the data to be transmitted are not held by the requested authority and can only be obtained by taking measures of compulsion or
3. transmission of the data would be disproportionate or the data are not required for the purpose for which they are to be transmitted.

(4) Authorisation of a request as referred to in subsection (1) may be refused if

1. the data to be transmitted are not held by the requested authority but can be obtained without taking measures of compulsion or
2. the success of ongoing investigations or a person's life, limb or liberty would be endangered thereby or
3. the offence for the prosecution of which the data are to be transmitted is punishable, under German law, by a sentence of imprisonment of a maximum of one year or less.

(5) A 'law enforcement authority in a Member State of the European Union' within the meaning of subsection (1) is any agency designated by that state in accordance with Article 2 (a) of Council Framework Decision 2006/960/JHA.

Section 92a Content of request

A request within the meaning of section 92 (1) sentence 1 may only be authorised if the request indicates the following particulars:

1. the name and address of the requesting law enforcement authority,
2. a designation of the criminal offence for the prosecution of which the data are required,
3. a description of the facts of the criminal offence giving rise to the request,
4. the purpose for which the data are being requested,

5. the link between the purpose for which the information or intelligence is being requested and the person to whom that information relates,
6. details on the identity of the accused insofar as the investigations are being conducted against a known person and
7. reasons to believe that useful information and intelligence are available in Germany.

Section 92b

Use of information, including personal data, transmitted under Council Framework Decision 2006/960/JHA

Information, including personal data, transmitted under Council Framework Decision 2006/960/JHA to a German police authority may only be used for those purposes for which the transmission was effected or to avert a current and substantial threat to public security. It may only be used for another purpose or as evidence in court proceedings if the transmitting state has consented thereto. Conditions imposed by the transmitting state in respect of the use of such data are to be complied with.

Section 92c

Data transmission without request

(1) Insofar as provided for by an agreement under international law or in accordance with the provisions of Council Framework Decision 2006/960/JHA, public agencies may, without a request, transmit to public agencies in another Member State of the European Union or of a Schengen Associated State, as well as to the organs and institutions of the European Union personal data giving rise to the suspicion that a criminal offence has been committed if

1. transmission to a German court or a German public prosecution office would also be permissible without a request and
2. the transmission is suited to
 - a) instituting criminal proceedings in the other Member State or
 - b) moving forward criminal proceedings which have been instituted there and
3. the agency to which the data are transmitted is responsible for the measures to be taken in accordance with no. 2.

(2) Section 61a (2) to (4) applies accordingly.

Section 92d

Local jurisdiction for requests for interception of telecommunications without technical assistance; authorisation to issue statutory instrument

(1) Local jurisdiction for requests made by Member States of the European Union concerning the cross-border interception of telecommunications without there being any need for technical assistance from the Federal Republic of Germany to carry out the interception lies with

1. the competent court at the seat of the *Land* government of Baden-Württemberg in the case of requests received from the Republic of France, the Republic of Spain and the Republic of Portugal;
2. the competent court at the seat of the *Land* government of the Free State of Bavaria in the case of requests received from the Republic of Italy, the Republic of Croatia, the Republic of Malta, the Republic of Austria and the Republic of Slovenia;
3. the competent court at the seat of the Berlin Senate in the case of requests received from the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania;

4. the competent court at the seat of the *Land* government of Brandenburg in the case of requests received from the Republic of Poland;
 5. the competent court at the seat of the Senate of the Free Hanseatic City of Bremen in the case of requests received from the Republic of Ireland;
 6. the competent court at the seat of the Senate of the Free and Hanseatic City of Hamburg in the case of requests received from the Kingdom of Sweden;
 7. the competent court at the seat of the *Land* government of Hesse in the case of requests received from the Republic of Bulgaria and from Romania;
 8. the competent court at the seat of the *Land* government of Mecklenburg-Western Pomerania in the case of requests received from the Republic of Finland;
 9. the competent court at the seat of the *Land* government of Lower Saxony in the case of requests received from the United Kingdom of Great Britain and Northern Ireland;
 10. the competent court at the seat of the *Land* government of North Rhine-Westphalia in the case of requests received from the Kingdom of the Netherlands;
 11. the competent court at the seat of the *Land* government of Rhineland-Palatinate in the case of requests received from the Kingdom of Belgium;
 12. the competent court at the seat of the *Land* government of Saarland in the case of requests received from the Grand Duchy of Luxembourg;
 13. the competent court at the seat of the *Land* government of the Free State of Saxony in the case of requests received from the Republic of Slovakia and from the Czech Republic;
 14. the competent court at the seat of the *Land* government of Saxony-Anhalt in the case of requests received from Hungary;
 15. the competent court at the seat of the *Land* government of Schleswig-Holstein in the case of requests received from the Kingdom of Denmark;
 16. the competent court at the seat of the *Land* government of the Free State of Thuringia in the case of requests received from the Hellenic Republic and the Republic of Cyprus.
- (2) The *Land* governments may, by way of statutory instrument, set deviating regulations in respect of local jurisdiction. The *Land* governments may, by way of statutory instrument, delegate this authorisation to the *Land* departments of justice.

Section 93 **Joint investigation teams**

- (1) A team member seconded by a Member State of the European Union to a joint investigation team may be entrusted with carrying out investigative measures under the direction of the competent German team member provided this has been authorised by the seconding Member State.
- (2) Other persons may be permitted to participate in a joint investigation team pursuant to the legal provisions applicable in the participating Member States or an agreement reached by them.
- (3) Officers working in a joint investigation team may directly transmit information, including personal data, obtained in the course of carrying out their official duties to the team members seconded by the other Member States or to other team members insofar as this is necessary for the work of the joint investigation team.

(4) If transmission of information obtained under the condition of subsection (3) requires a special agreement on further processing for another purpose, then it is permissible if it would be possible to authorise a request for the use of the information.

Section 94

Request for freezing, seizure and search

(1) Outside of the area of application of the Freezing and Confiscation Regulation, section 58 (3) and section 67 apply to requests made in accordance with the provisions of Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196, 2.8.2003, p. 45), as amended by Regulation (EU) 2018/1805 (OJ L 303, 28.11.2018, p. 1) (Framework Decision on Freezing of Property or Evidence), whereby

1. no double criminality check is carried out if the offence giving rise to the request is punishable, under the law of the requesting state, by a sentence of imprisonment of a maximum of at least three years and belongs to one of the categories of offences listed in Article 3 (2) the Framework Decision on Freezing of Property or Evidence,

2. a request in relation to taxes, duties, customs duties and currency exchange activities is also permissible even if German law does not impose the same kind of taxes or does not contain the same kind of provisions on taxes, duties, customs duties and currency exchange activities as the law of the requesting Member State.

(2) Authorisation of requests referred to in subsection (1) is not permissible if

1. a ban on confiscation pursuant to section 77 (1) in conjunction with section 97 of the Code of Criminal Procedure has been imposed or

2. final judgment has already been passed upon the person pursued in a Member State other than the requesting Member State for the same offence which gave rise to the request, provided that, in the case of conviction, the sanction has already been enforced, is currently being enforced or can no longer be enforced under the law of the sentencing state.

This does not apply if the request serves the purpose of preparing an order for confiscation and such a measure could be independently ordered under section 76a of the Criminal Code.

(3) Authorisation of requests for measures as set out in section 58 (3) and section 67 may be deferred as long as

1. they might compromise ongoing criminal investigations and

2. the property to which the request refers has been confiscated or frozen for other criminal proceedings.

Section 95

Documentation relating to freezing

(1) Authorisation of requests in accordance with the provisions of the Framework Decision on Freezing of Property or Evidence is only permissible upon submission of a freezing order together with a certificate which indicates the following particulars:

1. the name and address of the issuing judicial authority,

2. a description of the property or evidence to which the request for freezing relates,

3. as precise a description as possible of the natural or legal person suspected of having committed the criminal offence under the provisions of the law of the requesting state,

4. a description of the grounds for the freezing order,
 5. a description of the circumstances of the commission of the criminal offence, including the time and place of commission, and
 6. the nature and legal assessment of the criminal offence, including the statutory provisions on the basis of which the freezing order was made.
- (2) If the certificate referred to in subsection (1) was not submitted upon the making of the request or it is incomplete or manifestly does not correspond to the freezing order, the competent authority may set a time limit for its submission, completion or correction. If the certificate referred to in subsection (1) is incomplete but the required particulars can be drawn from the freezing order, the competent authority may waive the need to submit a completed certificate.

Section 96 **Obligation to authorise freezing measures**

Requests made by a Member State which are permissible under sections 94 and 95 are to be authorised. If a request is refused for lack of permissibility, reasons must be given for that decision.

Part 11 **Provisions implementing Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders**

Section 96a **Principle**

Unless specific provision is made in this Part, section 77 applies.

Section 96b **Jurisdiction and procedure regarding incoming requests**

- (1) It is for the local court with jurisdiction under section 67 (3) to give a decision on the recognition and enforcement of incoming freezing orders; section 51 (2) sentence 3 applies accordingly. Where a freezing order is transmitted simultaneously with a confiscation order, it is for the regional court with jurisdiction under section 50 sentence 1 and section 51 to give the decision.
- (2) It is for the regional court with jurisdiction under section 50 (1) and section 51 to give a decision on the recognition and enforcement of incoming confiscation orders.
- (3) The public prosecution office with jurisdiction under section 50 sentence 2 and section 51 takes receipt of freezing orders and confiscation orders and prepares the court's decision.
- (4) Insofar as the public prosecution office has instituted those measures which are suitable and necessary under the conditions of Article 18 (5) of the Freezing and Confiscation Regulation in order to provisionally secure the assets to be enforced, it gives both the person concerned and third parties which, in the light of the circumstances of the case, could assert rights in the object to be enforced the opportunity to make a statement.
- (5) Persons concerned may avail themselves of the assistance of legal counsel at any stage of the proceedings.

Section 96c **Enforcement**

- (1) After the court has given a decision on the recognition and enforcement of a freezing order or confiscation order, the public prosecution office effects enforcement.
- (2) It is for the public prosecution office to give a decision on the postponement of enforcement of a freezing order and a confiscation order in accordance with Articles 10 and 21 of the Freezing and Confiscation Regulation as well as on the impossibility of enforcing a

freezing order or confiscation order in accordance with Articles 13 and 22 of the Freezing and Confiscation Regulation.

(3) Jurisdiction for the enforcement of a freezing order or confiscation order which relates to a juvenile or young adult is governed by the provisions of the Youth Courts Act.

Section 96d

Appeal

(1) Persons concerned may file an immediate complaint in accordance with the provisions of Article 33 of the Freezing and Confiscation Regulation against the decision on the recognition and enforcement of the freezing order or confiscation order.

(2) Where the immediate complaint refers to a decision given by a regional court, section 42 applies accordingly to further procedure.

Section 96e

Outgoing requests

(1) It is for the public prosecution office to issue and transmit requests for recognition and enforcement of freezing orders or confiscation orders to another Member State. This applies subject to Article 2 (8) (a) (ii) sentence 3 of the Freezing and Confiscation Regulation.

(2) Where an administrative authority competent as regards the prosecution of regulatory offences within the meaning of Article 2 (8) (a) (ii) of the Freezing and Confiscation Regulation has submitted a request for recognition and enforcement of a freezing order in the context of proceedings on a regulatory offence, then, before being transmitted to the requested Member State, the request is to be submitted to the competent public prosecution office for validation. This is to be done using the certificate in Section N of the Freezing Certification in Annex I of the Freezing and Confiscation Regulation. Local jurisdiction lies with the public prosecution office at the higher regional court in whose district the administrative authority has its seat. The *Länder* may delegate the jurisdiction of the public prosecution office under sentence 1 to a court or may issue rules concerning the local jurisdiction of the public prosecution office under sentence 3 in another manner.

(3) Validation as referred to in subsection (2) sentence 1 is given after the public prosecution office or the court determined in accordance with subsection (2) sentence 4 has established that the conditions for the issue of the request are met, in particular that

1. the request satisfies the principle of proportionality and
2. it would be possible to order the investigative measure indicated in the request under the same conditions in a comparable domestic case.

(4) Where the right to order a measure is reserved to the judge, the validation referred to in subsections (2) and (3) may also be effected by the court seised of the matter, if so provided by the *Länder*.

(5) Section 96b (5) applies accordingly.

Section 97

(repealed)

Part 12

Protection of personal data in mutual assistance matters within European Union and with Schengen Associated States

Section 97a

Scope of application

(1) The provisions of this Part apply to personal data which are transmitted to or received by Member States of the European Union to which Directive (EU) 2016/680 applies or organs, institutions, offices and agencies of the European Union.

(2) Schengen Associated States are equal to the Member States of the European Union as referred to in subsection (1) in respect of the application of this Part.

(3) In the absence of special provision made under this Part, the provisions of Part 7 Division 2 apply.

Section 97b
Transmission of personal data

Section 77d applies to the transmission of personal data, with the proviso that its

1. subsection (1) no. 2, also in conjunction with subsection (3) and section 77e (1) no. 7,
 2. subsection (1) no. 3, also in conjunction with subsection (4) and section 77e (1) no. 4, and
 3. subsection (1) no. 4, in conjunction with section 77f,
- does not apply.

Section 97c

Transmitting agency's verification, reporting and logging obligations

In addition to the obligations set out in section 77e, in the event of any breach of the protection of personal data, the agency in another Member State of the European Union from which or to which personal data have been transmitted must be notified without delay of the information referred to in section 65 (3) of the Federal Data Protection Act (*Bundesdatenschutzgesetz*).

Part 13

Mutual assistance in extradition and transit matters with Republic of Iceland and Kingdom of Norway

Section 98
Precedence of Part 13

(1) This Part applies to mutual assistance rendered in extradition and transit matters with the Republic of Iceland and the Kingdom of Norway under the Agreement of 28 June 2006 between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway (OJ L 292, 21.10.2006, p. 2).

(2) In the absence of special provision made under this Part, the provisions of Part 8, with the exception of section 79 (1) sentence 1, section 80, section 81 no. 4, section 83c (5), section 83f (3) and section 83i, apply accordingly and, in accordance with section 78, the other provisions of this Act apply.

(3) Sections 35 and 36 apply, with the proviso that if authorisation of extradition is extended or in the case of the person pursued being re-extradited to Member States of the European Union, to the Republic of Iceland or to the Kingdom of Norway, then in derogation from section 35 (1) sentence 1, approval is to be given. Section 83a (1) and section 83c (6) apply accordingly in that respect. Sections 38 and 39 apply, with the proviso that, if the relevant conditions are met, the obligation arises to take the measures.

(4) In the applicable provisions of Part 8, the Member State is replaced by the Member States of the European Union as well as the Republic of Iceland and the Kingdom of Norway; the European Arrest Warrant is replaced by a request for extradition based on an arrest warrant within the meaning of Article 2 (5) of the Agreement of 28 June 2006 between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway. Further, that Agreement takes the place of the European Arrest Warrant Framework Decision in the applicable provisions of Part 8.

Section 99
Obligation to authorise request

Permissible requests made by the Republic of Iceland and the Kingdom of Norway for the extradition or transit of a foreign national may only be refused insofar as provided for in this Part or under the other applicable provisions of this Act.

Part 14 Final provisions

Section 100 Reservation of application; time limit

The provisions of Part 9 Division 2 on the enforcement of financial penalties under the Framework Decision on Financial Penalties are only applicable to financial penalties pursuant to section 87 (2) no. 1 and no. 4 if they became final after 27 October 2010. In the case of financial penalties under section 87 (2) no. 2 and no. 3, the provisions referred to in sentence 1 only apply if the non-judicial decision imposing the financial penalty was given after 27 October 2010.

Section 101

Transitional provision regarding requests based on decision in absentia

In derogation from section 83a (1), section 83f (1), section 87a no. 2, section 88b (1) and section 88c no. 1, submission of the European Arrest Warrant or of the certificate referred to in those provisions is also permissible in the version available prior to 28 March 2011, provided that the requesting Member State of the European Union transmits, in another manner, the additional particulars which are required in accordance with Articles 2 to 4 of Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ L 81, 27.3.2009, p. 24). This rule will no longer be applicable once the last Member State of the European Union has transposed Framework Decision 2009/299/JHA into its national law. The Federal Ministry of Justice and Consumer Protection is to announce, in the Federal Gazette, the date from which sentence 1 is no longer applicable pursuant to sentence 2.

Section 102

Transitional provision regarding enforcement of sanctions involving deprivation of liberty

Sections 84 to 85f do not apply in relations with the Kingdom of the Netherlands, the Republic of Latvia, the Republic of Lithuania, the Republic of Poland, with the Republic of Ireland and the Republic of Malta if the judgment on which enforcement of the sanction involving deprivation of liberty is based was issued before 5 December 2011.

Section 103

Transitional provision regarding requests for other types of mutual assistance

Part 10 Division 2 does not apply to requests received by the agency responsible for authorisation before 22 May 2017.

Section 104

Equal status of foreign and domestic public officials in respect of official acts in Federal Republic of Germany

Judges and other public officials of another Member State of the European Union who are present in the sovereign territory of the Federal Republic of Germany when carrying out official acts under Part 10 Division 2 are equal, for the duration of their stay, to German judges and other German public officials in respect of criminal offences which they themselves commit or which are committed to their detriment or against them.

Section 105 Compensation for damage

(1) Where another Member State of the European Union compensates the injured party, or a party who succeeds the injured party, for damage caused by German judges or other German public officials in the course of carrying out official acts under Part 10 Division 2 in the sovereign territory of the other Member State, it may demand compensation therefor from the Federal Republic of Germany.

(2) Damage caused by judges or other public officials of another Member State of the European Union in the course of carrying out official acts under Part 10 Division 2 in the sovereign territory of the Federal Republic of Germany is compensated by the competent holder of public authority in Germany to the extent that it would have to be compensated under German law if German judges or other German public officials had caused the damage.

Section 106

Restriction of fundamental rights

The fundamental rights to physical integrity (Article 2 (2) sentence 1 of the Basic Law), freedom of the person (Article 2 (2) sentence 2 of the Basic Law), privacy of correspondence, post and telecommunications (Article 10 (1) of the Basic Law), inviolability of the home (Article 13 of the Basic Law) and protection against extradition to a foreign country (Article 16 (2) sentence 1 of the Basic Law) are restricted in accordance with the provisions of this Act.