

Übersetzung durch Ute Reusch

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Act on International Cooperation with the International Criminal Court

(Gesetz über die Zusammenarbeit mit dem Internationalen Strafgerichtshof – IStGHG)

International Criminal Court Act of 21 June 2002 (Federal Law Gazette I, p. 2144), as last amended by Article 6 of the Act of 10 December 2019 (Federal Law Gazette I, p. 2128)

Part 1

Scope of application

Section 1

Scope of application

(Re Article 1, Article 17, Article 86 and Article 34 of the Rome Statute)

(1) The International Criminal Court is complementary to the German criminal jurisdiction. The Federal Republic of Germany cooperates with the International Criminal Court under this Act and under the Rome Statute of the International Criminal Court ('the Rome Statute') of 17 July 1998 (Federal Law Gazette 2000 II, p. 1393).

(2) For the purposes of this Act, 'the Court' means the International Criminal Court established under the Rome Statute, including the Presidency, the Chambers, the Office of the Prosecutor, the Registry and the members of these organs.

Part 2

Surrender

Section 2

Principle

(Re Article 89 (1), Article 91 (2) and (3) of the Rome Statute)

(1) Persons in respect of whom the Court has requested surrender under the Rome Statute and who are present in Germany are surrendered under the provisions of the Rome Statute and of this Act for the purpose of criminal prosecution and of enforcement of a penalty.

(2) Surrender for the purpose of enforcement of a penalty may, in consultation with the Court, also be effected by directly transferring the person pursued to the competent agencies in the state in which the term of imprisonment imposed by the Court is to be enforced ('the enforcing state').

Section 3

Request for surrender and prior criminal proceedings before Court or in foreign state (Re Article 89 (2) sentence 1 of the Rome Statute)

Where persons pursued assert, in the surrender procedure, that they have already been convicted or acquitted by the Court or by a court in another state of the offence regarding which the Court is requesting their surrender, then, notwithstanding section 68 (3) sentences 3 and 4, the agency to which they have made such submission without delay notifies the public prosecution office at the higher regional court. The higher regional court postpones execution of the surrender procedure in accordance with Article 89 (2) sentence 3 of the Rome Statute until the Court makes a determination on admissibility. Surrender of persons pursued is not effected if the Court makes a determination that the conduct of criminal proceedings is not permissible.

Section 4
Request for surrender and request for extradition
(Re Article 90 of the Rome Statute)

(1) Where a foreign state transmits a request for the extradition of a person on account of an offence falling within the Court's jurisdiction, the Court may be notified that the request has been made. Upon request, copies of the request for extradition and of the supporting documentation are transmitted to the Court if the foreign state does not object to such transmission and the transmission does not go against other agreements under international law.

(2) Where both the Court transmits a request for surrender and a foreign state transmits a request for the extradition of one and the same person, the Court and the foreign state are notified of the other's request. Where a request for surrender and a request for extradition are made for the same offence, this is to be stated in the notification made in accordance with sentence 1.

(3) Where the extradition has not yet been authorised upon receipt of the Court's request for surrender, then, subject to subsection (5), the decision on extradition is deferred until a decision is given on authorisation of the surrender. The decision on which request is to be given precedence is governed by Article 90 (2), (4) and (7) (a) of the Rome Statute.

(4) In the cases under Articles 90 (2) to (6) of the Rome Statute, following authorisation of the request for surrender the decision on authorisation of the extradition is deferred until a final decision is given in the proceedings before the Court on the offences on which the request for surrender is based.

(5) Where, in the case under Article 90 (5) of the Rome Statute, the Court has not made a determination on admissibility within two months following receipt of the notification referred to in Article 90 (1) of the Rome Statute, then, if the other conditions are met, a decision may be given on authorisation of the extradition.

(6) In the cases under Article 90 (6) and (7) (b) of the Rome Statute, precedence is given to the Court's request, unless, taking account of the features to which reference is made in these provisions, the grounds which speak in favour of authorising the request for extradition clearly prevail.

(7) In all cases, the Court is notified about the decision on the request for extradition.

Section 5
Surrender documentation
(Re Article 91 (2) and (3), Article 111 of the Rome Statute)

(1) The surrender of a person to the Court is permissible only if the documentation referred to in Article 91 (2) of the Rome Statute ('surrender for the purpose of criminal prosecution') or in Article 91 (3) of the Rome Statute ('surrender for the purpose of enforcement of a penalty') has been submitted. Where a request is transmitted for surrender for the prosecution of several offences, it is sufficient, in respect of the further offences, to submit the document issued by the Court indicating the offence of which the person pursued is accused in lieu of a warrant of arrest. The documents referred to in Article 91 (2) (c) of the Rome Statute must indicate the applicable provisions. Where these are provisions of the Rome Statute, it is sufficient to indicate the designation of those provisions.

(2) Enforcement of an authorised surrender for the purpose of enforcement of a penalty to the enforcing state (section 2 (2)) is permissible only if, in addition to the documents referred to in Article 91 (3) of the Rome Statute,

1. a document issued by the enforcing state indicating that its consent to enforcement or a declaration by the Court indicating that the enforcing state consents to enforcement has been submitted and
2. the Court has, in its request or in the supporting documentation, declared its consent to the German authorities surrendering the person pursued to the enforcing state.

Section 6 Authorisation of surrender

Except in the case under section 32, surrender may be authorised only if the Court has declared it permissible.

Section 7 Subject-matter jurisdiction

- (1) It is for the higher regional court to give the relevant court decisions, unless otherwise provided. There is no right of appeal against such decisions by the higher regional court.
- (2) The public prosecution office at the higher regional court prepares decisions on surrender and effects surrender once it has been authorised.

Section 8 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 surrender or, if the person pursued is not apprehended, was first determined to be in.
- (2) Where several persons pursued who are to be surrendered for participating in the same offence or in connection with the same offence are, for the purpose of surrender, apprehended or are found to be in the districts of different higher regional courts, 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) Until the person pursued's whereabouts are known, jurisdiction is determined to be at the seat of the Federal Government.

Section 9 Investigative measures (Re Article 59 (1) of the Rome Statute)

- (1) Following receipt of a request for arrest and surrender from the Court in accordance with Article 89 (1) of the Rome Statute or for provisional arrest in accordance with Article 92 (1) of the Rome Statute, the measures necessary to establish the person pursued's whereabouts and to arrest the person pursued are taken. The provisions of Book 1 Division 9a of the Code of Criminal Procedure (*Strafprozeßordnung*) apply accordingly.
- (2) No separate request from the Court is needed in respect of an order for individual search measures. It is for the public prosecution office at the higher regional court to issue an alert for arrest.

Section 10 Arrest pending surrender (Re Article 59 (1) of the Rome Statute)

Following receipt of a request for arrest and surrender supported by the documents referred to in Article 91 (2) of the Rome Statute in the case of surrender for the purpose of prosecution and by the documents referred to in Article 91 (3) of the Rome Statute in the

case of surrender for the purpose of enforcement of a penalty, an order is made for the arrest pending surrender of the person pursued.

Section 11
Provisional arrest pending surrender
(Re Article 59 (1), Article 92 of the Rome Statute)

(1) Upon receipt of a request from the Court for provisional arrest and of the documents referred to in Article 92 (2) of the Rome Statute, an order is made for provisional arrest pending surrender. The warrant of arrest pending surrender is to be lifted where the person pursued has spent a total of 60 days under arrest pending surrender, calculated from the day of apprehension or provisional arrest, without the agency competent under section 68 (1) having received a request for arrest and surrender from the Court and the documentation relating to surrender to be submitted as required by the Rome Statute or without the person pursued having declared his or her consent to the simplified surrender procedure (section 33) within that time limit.

(2) Prior to receipt of a request for arrest and surrender or of a request for provisional arrest, an order may be made for provisional arrest pending surrender if there is strong reason to believe, based on certain facts, that the person committed an offence which may give cause for their surrender to the Court and

1. there is a danger that the person pursued will evade the surrender procedure or the surrender itself or
2. there is strong reason to believe, based on certain facts, that the person pursued will render more difficult either the establishment of the truth in proceedings before the Court or the surrender procedure.

An order may also be made for the provisional arrest pending surrender of a person pursued if there is strong reason to believe, based on certain facts, that said person has committed genocide (Article 6 of the Rome Statute) or a crime against humanity (Article 7 of the Rome Statute) and certain facts give reason to believe that there is a danger that if the person pursued is not arrested the Court's clarification of the facts in relation to the offence of which that person is accused could be jeopardised. Suitable measures are to be taken to ensure that the agency competent under section 68 (1) can inform the Court that the order of arrest has been made in accordance with sentence 1 or sentence 2.

(3) A provisional warrant of arrest pending surrender as referred to in subsection (2) is lifted if the Court declares that it does not intend to submit the relevant request or the person pursued has spent a total of one month under arrest pending surrender since apprehension or provisional arrest without the agency competent under section 68 (1) having received a request for arrest and surrender or for provisional arrest from the Court. Upon receipt of a request for arrest and surrender or for provisional arrest from the Court, the time limit referred to in subsection (1) sentence 2 applies.

Section 12
Warrant of arrest pending surrender

(1) An order for provisional arrest pending surrender and for arrest pending surrender is made by written warrant of arrest ('warrant of arrest pending surrender') made by the higher regional court.

(2) The warrant of arrest pending surrender must indicate

1. the name of the person pursued,
2. the offence of which the person pursued is being accused,
3. the request and the transmitted documentation in support of the surrender or, in the case under section 11 (2) sentence 1 or sentence 2, the reason for arrest and the facts on which it is based as well as the facts which indicate that there is strong

reason to believe that the person pursued committed the offence giving cause for their surrender.

(3) A warrant of arrest pending surrender is lifted if the request is withdrawn, the Court declares that the proceedings before it on which the request for surrender is based are not permissible or the surrender is determined not to be permissible.

Section 13 Provisional arrest

(1) Where the conditions for the issuing of a warrant of arrest pending surrender 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.

(2) Upon their arrest, persons pursued are to be informed of the reason for their arrest.

(3) Where a warrant of arrest pending surrender has been issued, it must be disclosed to the person pursued without delay. The person pursued is given a copy.

Section 14

Procedure following apprehension based on warrant of arrest pending surrender (Re Article 59 (2) of the Rome Statute)

(1) Upon their apprehension based on a warrant of arrest pending surrender, persons pursued are to be brought before the 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 persons pursued's attention to their right to avail themselves of the services of legal counsel (section 31) 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 instructs persons pursued that they may apply for enforcement of the warrant of arrest pending surrender to be suspended and may apply to the Court at any time in connection with the warrant of arrest, and the judge then asks whether and, possibly, for what reasons they wish to raise objections to the surrender; section 41 (5) sentence 1 applies accordingly. In the case under section 11 (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. A copy of the record is to be transmitted to the Court if it so requests.

(3) If it transpires in the course of the hearing that

1. the person apprehended is not the person referred to in the warrant of arrest pending surrender,
2. the warrant of arrest pending surrender has been lifted or
3. enforcement of the warrant of arrest pending surrender has been suspended,

then the judge at the local court orders the apprehended person's release. The decision is given after hearing the views of the public prosecution office at the higher regional court which has jurisdiction in respect of permissibility of the surrender.

(4) Where the warrant of arrest pending surrender 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 where

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

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 makes an application for the warrant of arrest pending surrender to be suspended or raises other objections to the warrant of arrest pending surrender or to its enforcement which are not manifestly unfounded, or if the judge at the local court has doubts about continuing the person pursued's detention, then, notwithstanding section 68 (3) sentences 3 and 4, the judge without delay notifies the public prosecution office at the higher regional court thereof. The public prosecution office at the higher regional court is responsible for ensuring that the higher regional court gives such a decision without delay; section 16 (2) to (4) applies accordingly.

(6) If the person pursued raises no objections, the judge at the local court instructs said person about the possibility of a simplified surrender procedure and about its legal consequences (section 33) and then records their statement. Subsection (2) sentence 5 applies accordingly.

(7) There is no right of appeal against the decision given by the judge at the local court.

Section 15

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) Section 14 (2) applies accordingly to the hearing of persons pursued.

(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 11 (2) pertain, 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. The public prosecution office at the higher regional court is responsible for ensuring that the higher regional court gives such a decision without delay; the Court's involvement is governed by Article 59 (4) to (6) of the Rome Statute. Section 14 (5) to (7) applies accordingly.

Section 16

Decisions on arrest, suspending enforcement of warrant of arrest pending surrender (Re Article 59 (4) to (6) of the Rome Statute)

(1) It is for the higher regional court to give decisions on objections raised by persons pursued against warrants of arrest pending surrender or against their enforcement.

(2) The higher regional court may suspend enforcement of a warrant of arrest pending surrender made on the basis of a request from the Court only under the conditions of Article 59 (4) of the Rome Statute. Enforcement of a warrant of arrest pending surrender issued in accordance with section 11 (2) sentence 1 or sentence 2 may be suspended if less severe measures offer sufficient guarantee that the purpose of the arrest pending surrender will likewise be achieved if those less severe measures are taken.

(3) Before the decisions referred to in subsection (1) or subsection (2) sentence 1 are given, the Court is to be afforded the opportunity to make a statement. Consideration is to be given to any recommendations made in accordance with Article 59 (5) sentence 2 of the Rome Statute. Where a recommendation made by the Court is not to be followed, the Court is, as a rule, to be afforded a new opportunity to make a statement and to present its reasons.

Where enforcement of the warrant of arrest pending surrender is suspended, the Court is informed about the stage reached in proceedings if it so requests.

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

Section 17

Review of detention

Where a person pursued is under arrest pending surrender or under provisional arrest pending surrender, it is for the higher regional court to give a decision on whether to suspend enforcement of the warrant of arrest pending surrender where the person pursued has spent

a total of two months in detention for the purpose of surrender, calculated from the day of apprehension, provisional arrest or on which the last decision was taken concerning enforcement of the warrant of arrest pending surrender. The review of detention is repeated every two months. The higher regional court may order that the review of detention is to be carried out within a shorter time frame. Section 16 (2) and (3) applies accordingly.

Section 18 **Enforcement of detention**

- (1) The provisions of the Code of Criminal Procedure, of the Prison Act (*Strafvollzugsgesetz*) and, if the person pursued is a young adult, of the Youth Courts Act (*Jugendgerichtsgesetz*) on enforcement of remand detention apply accordingly to provisional arrest pending surrender, arrest pending surrender and detention on the order of the judge at the local court.
- (2) The public prosecution office at the higher regional court determines the facility in which the person pursued is to be detained.
- (3) It is for the presiding judge of the competent division at the higher regional court to make the court orders.

Section 19 **Hearing of person pursued**

- (1) Following receipt of a request for arrest and surrender, the higher regional court hears the person pursued, unless said person has declared consent to a simplified surrender procedure (section 32).
- (2) The higher regional court hears persons pursued about their personal circumstances, in particular nationality. Section 14 (2) sentence 2 and sentence 3 applies accordingly. 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 therefor; in all other cases, any information which persons pursued volunteer is to be placed on record. Section 14 (2) sentence 5 and (6) applies accordingly.

Section 20 **Permissibility procedure**

- (1) Where a person pursued has not consented to the simplified surrender procedure (section 32), the public prosecution office at the higher regional court applies for the higher regional court to give a decision in respect of whether the surrender is permissible.
- (2) If the surrender documentation is not sufficient to be able to assess whether surrender is permissible, the higher regional court does not give a decision until the Court has been afforded the opportunity to submit additional documentation.
- (3) The higher regional court may hear the person pursued. It may take additional evidence concerning the permissibility of the person pursued's surrender and conduct an oral hearing. It is for the higher regional court to determine the manner and extent of the evidence-taking, without it being bound by applications, waivers or earlier decisions.

Section 21 **Conduct of oral hearing**

- (1) The public prosecution office at the higher regional court, the person pursued and his or her legal counsel (section 31) are to be notified of the date and place of an oral hearing. A representative of the public prosecution office at the higher regional court and the person pursued's appointed legal counsel must attend the oral hearing. Members of the Court and the person pursued's defence counsel in the proceedings before the Court may be permitted to be present and to propose questions.
- (2) Persons pursued who are under arrest are to be brought before the court, unless they have waived the right to be present at the hearing or this is prevented owing to illness, deliberately brought about unfitness to stand trial with intent, absence owing to disorderly conduct or another insurmountable obstacle for which the person pursued is at fault.

(3) In the case of persons pursued who are at large, the higher regional court regularly orders that they appear in person, unless there are important grounds for not making such an order. In the case of persons pursued who have been properly summoned who do not appear without sufficient excuse being presented for their non-appearance, the higher regional court orders that they be brought before the court and takes the measures necessary to secure their surrender at a later date.

(4) The parties present are to be heard in the course of the oral hearing. A record is to be kept of the hearing. Section 14 (2) sentence 5 applies accordingly.

Section 22 **Decision on permissibility**

Decisions on the permissibility of surrender are to be reasoned. They are 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 31). The person pursued is given a copy.

Section 23 **New decision on permissibility**

(1) If, following the higher regional court's decision on the permissibility of surrender, circumstances arise which suggest that there is reason to give a different decision on permissibility, the higher regional court gives a new decision on the permissibility of surrender 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 give cause for a different decision on permissibility, the higher regional court may give a new decision on the permissibility of surrender. Subsection (1) applies accordingly.

(3) If the person pursued consents to the simplified surrender procedure, subsections (1) and (2) apply accordingly, with the proviso that the declaration of the person pursued's consent to the simplified surrender procedure takes the place of the higher regional court's decision.

(4) Section 20 (3) and sections 21 and 22 apply accordingly.

(5) The higher regional court may order that surrender be deferred.

Section 24 **Arrest to effect surrender**

Where enforcement of a warrant of arrest pending surrender has been suspended, the higher regional court, after authorisation for the surrender has been given, orders its enforcement, unless important reasons speak against the arrest being made and it is possible to guarantee that the surrender can be effected in another manner.

Section 25 **Speciality** **(Re Article 101 of the Rome Statute)**

(1) Subject to Article 101 (2) of the Rome Statute, a person who has been surrendered to the Court may also be prosecuted, punished and subjected to conditions restricting their personal liberty for offences other than those regarding which the surrender was authorised insofar as the offences are subject to the Court's jurisdiction.

(2) Where a foreign state successfully challenges the admissibility of the criminal proceedings before the Court pursuant to Article 19 in conjunction with Article 17 (1) (a) of the Rome Statute and the Court thereupon intends to surrender the person pursued to the authorities of that state, subsection (1) does not apply. In such cases the Court is without delay requested to return the person pursued. The provisions of the law on extradition apply to further procedure.

(3) Subsection (1) likewise does not apply where a foreign state requests that the Court, the state within whose sovereign territory the Court has its seat ('the host state', Article 3 of the Rome Statute) or the enforcing state transmits a request for extradition, for temporary extradition, for deportation or other transfer into its sovereign territory for the purpose of

prosecution or enforcement of a penalty or other sanction. The Court is requested to return the person pursued if it is not possible to guarantee that the provisions of the law of extradition applicable in relations with the requesting state will be complied with in another manner.

Section 26

Request for surrender following extradition

(1) Where a person pursued has been extradited to a foreign state and the Court requests consent to prosecution or to enforcement of a penalty, such consent is given if

1. proof has been furnished that the person pursued was afforded the opportunity to make a statement regarding the request and the higher regional court gave a decision that surrender for the offence would be permissible or
2. proof has been furnished that the person pursued consented to prosecution or to enforcement of a penalty, such consent being declared before and placed on record by a judge of the Court or of the state to which the person pursued has been extradited and surrender for the offence would be permissible.

If the requests are based on the same offence, this is indicated to the Court.

(2) Section 20 (1) applies accordingly to the procedure, with the proviso that the person pursued's consent to the simplified surrender procedure is replaced by his or her consent as required by subsection (1) sentence 1 no. 2, as do section 20 (2) and (3) sentences 2 and 3, section 21 (1), (2) sentence 2 and (4), section 22 and section 23 (1) and (2). It is for the higher regional court which is competent to give the decision on the permissibility of the extradition to give the decision referred to in subsection (1) sentence 1 no. 1.

(3) Where extradition has not yet been effected, consent is given to a request of the type referred to in subsection (1) if surrender to the Court would be permissible for that offence. Subsection (1) sentence 2 applies accordingly. Sections 19 to 23 apply accordingly to the procedure.

Section 27

Temporary surrender

(Re Article 89 (4) of the Rome Statute)

(1) Where an authorised surrender is deferred because criminal proceedings are being conducted against the person pursued or a sentence of imprisonment or a measure of reform and prevention involving deprivation of liberty is to be enforced in Germany, the person pursued may be temporarily surrendered if the Court gives an assurance that the person pursued will be returned by a specific point in time.

(2) Return of the person pursued may be waived.

(3) Where a determinate sentence of imprisonment or a fine is imposed in the proceedings on account of which the surrender was deferred, the time spent in detention during the proceedings before the Court upon until the return is effected or waived is credited against that time. Sentence 1 applies accordingly where the surrender was deferred because a determinate sentence of imprisonment is to be enforced against the person pursued.

(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 which is to be credited after hearing the views of the public prosecution office at the higher regional court. It may order that no time or only part of the time is to be credited where

1. time spent in detention under an order made by the Court has been credited in full or in part against a penalty imposed by or to be enforced by the Court, or
2. the crediting of time is not justified in the light of the person pursued's conduct following surrender.

Section 28

German criminal proceedings and request for surrender

- (1) Where criminal proceedings are being conducted against a person pursued in Germany in respect of one of the offences referred to in Article 5 of the Rome Statute and the Court has submitted a declaration to the Federal Ministry of Justice and Consumer Protection or to the agency competent under section 68 (1) that, in the event of the German criminal proceedings being terminated, it will request surrender of the person pursued, the public prosecution office may decide not to prosecute the offence if this appears necessary on account of specific reasons in the public interest which speak against such prosecution in Germany. Where public charges have already been preferred, the Court, upon the relevant request being made by the public prosecution office, provisionally terminates the criminal proceedings at whatever stage they are at. It is for the agency competent under section 68 (1) to give the decision to ask the Court for a declaration within the meaning of sentence 1.
- (2) Where an order has been made for a person pursued's provisional arrest pending surrender in accordance with section 11 (2) and the Court has not transmitted a request for provisional arrest within the time limit provided for in section 11 (3), the proceedings are resumed. Proceedings are also resumed where an order has been made for the person pursued's provisional arrest pending surrender based on a request for provisional arrest in accordance with section 11 (1) sentence 1 and the Court has not transmitted a request for arrest and surrender within the time limit referred to in section 11 (1) sentence 2. Where the Court has provisionally terminated the proceedings, a court order is required for their resumption. Previous resumption of the proceedings does not preclude them being terminated anew pursuant to subsection (1).
- (3) There is no right of appeal against the decision to terminate proceedings and the decision to resume proceedings.
- (4) A decision on costs and necessary expenses is given after the proceedings before the Court have been concluded by final decision. Sections 464 to 473 of the Code of Criminal Proceedings apply accordingly.

Section 29

Surrender of property in surrender procedure

- (1) The following property may be surrendered to the Court, in the context of the surrender of persons, without the need for a particular request in accordance with section 51:
1. property which may serve as evidence in the proceedings before the Court 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 surrender 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 that, upon request, property which has been conditionally surrendered will be returned without delay.
- (3) Subject to the conditions of subsections (1) and (2), property may also be surrendered if the authorised surrender of a person 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 after the person pursued raises objections thereto, 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 makes a determination that the surrender of property is permissible, it may require the party which applied for the decision to pay any costs arising to the Public Treasury. Such surrender of property may not be authorised if the higher regional court has declared it not to be permissible.
- (5) If the property to be surrendered contains any of the person pursued's personal data, reference is to be made upon surrender to the fact that said data may only be used in the performance of the tasks assigned to the Court under the Rome Statute. Where the person

pursued's personal data are linked to other personal data of a third party in such a manner that it is not possible to separate them or doing so what involved disproportionate effort, the transmission of these data is also permissible, unless the legitimate interests of the person pursued or of a third party in their being kept secret manifestly prevail.

Section 30 **Seizure and search**

- (1) Property in respect of which surrender to the Court is being considered as a possibility may be seized or secured by other means even prior to receipt of a request for surrender. A search may likewise be carried out to that end.
- (2) The higher regional court which has jurisdiction in respect of the surrender procedure is responsible for ordering the measures referred to in subsection (1). It is also responsible for ordering measures in relation to that property which is located outside of its district. Section 7 (1) sentence 2 and (2) applies accordingly.
- (3) In exigent circumstances, the public prosecution office and its investigators (section 152 of the Courts Constitution Act (*Gerichtsverfassungsgesetz*)) are authorised to order seizure and search under the provisions of the Code of Criminal Procedure.

Section 31 **Legal counsel**

- (1) Persons pursued may avail themselves of the services of legal counsel at any stage of the proceedings.
- (2) The mandatory assistance of legal counsel is required in the surrender procedure.
- (3) Where persons pursued have not yet mandated legal counsel, then legal counsel is to be appointed for them upon application or ex officio.
- (4) Legal counsel is appointed ex officio without delay following a person pursued's arrest. If no arrest is made, legal counsel is to be appointed at the latest before the person pursued's first hearing in accordance with section 14 (2), also in conjunction with section 15 (2). If the person pursued has no legal counsel, then upon disclosure of the request, the person pursued is to be instructed about the right to apply for legal counsel to be appointed.
- (5) It is for the 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 20 (1), it is for the competent higher regional court to give such a decision.
- (6) The appointment ends upon the person pursued being surrendered or upon a final decision being given that the person pursued is not to be surrendered. The appointment encompasses procedures pursuant to section 23. If no court decision declaring the surrender not to be permissible is given and the person in question is not surrendered, the appointment ends upon the public prosecution office at the higher regional court giving a decision that the person pursued is not to be surrendered.
- (7) 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 surrender is permissible. There is no right of appeal against decisions given by the higher regional court as per subsection (5) sentence 2 and subsection (7) sentence 4.

Section 32 **Simplified surrender procedure** **(Re Article 92 (3) sentence 2 of the Rome Statute)**

- (1) Authorisation may be given for the surrender of a person against whom an order for arrest pending surrender has been made or in respect of whom the Court has transmitted a request for arrest and surrender or for provisional arrest without conducting the formal

surrender procedure if, following instruction, the person pursued consented to the simplified surrender procedure and that consent was declared before and placed on record by a judge.

(2) Such consent cannot be revoked.

(3) Upon application by the public prosecution office at the higher regional court, in the cases under sections 14 and 15 the judge at the local court, in all other cases the higher regional court, instructs the person pursued about the possibility of a simplified surrender procedure and about its legal consequences (subsections (1) and (2)) and then records the person pursued's declaration. The judge at that local court in whose district the person pursued is located is competent in this regard.

Section 33

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 on a legal issue relating to surrender matters involving the Court, then it gives reasons for its opinion and obtains 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 affords the person pursued the opportunity to make a statement. The decision is given without an oral hearing.

Part 3

Transit

Section 34

Principle

(Re Article 89 (3) of the Rome Statute)

Persons in respect of whom a request for transport has been transmitted by the Court or, with its consent, by the state from which the person pursued is to be surrendered to the Court ('the surrendering state') or by the enforcing state are transported through the territory of the Federal Republic of Germany for the purpose of prosecution or enforcement of a penalty in accordance with the provisions of the Rome Statute and of this Act.

Section 35

Transit documentation

(Re Article 89 (3) of the Rome Statute)

(1) The transport of a person pursued to the Court pursuant to Article 89 (3) of the Rome Statute for the purpose of prosecution or enforcement of a penalty upon the Court's request is permissible only upon submission of the documentation referred to in Article 89 (3) (b) (i) to (iii) of the Rome Statute.

(2) In addition to the documentation referred to in Article 89 (3) of the Rome Statute, a document issued by the enforcing state indicating its consent to enforcement of a penalty imposed by the Court or a declaration by the Court indicating that the enforcing state consents to the enforcement must also be submitted in respect of the transport of a person pursued to the enforcing state.

(3) If the surrendering state transmits a request for transport to the Court or the enforcing state transmits a request for transport for the purpose of enforcement of a penalty imposed by the Court, then in addition to the documentation referred to in subsection (1) and, in the case of transport to the enforcing state, in addition to the documentation referred to in subsection (2), a declaration made by the Court indicating that it consents to the request must also be included.

Section 36

Jurisdiction

(1) It is for a higher regional court to give the relevant court decisions. Section 7 (1) sentence 2 and (2) applies accordingly.

(2) Local jurisdiction lies with

1. the higher regional court into whose district within the area of application of this Act the person pursued will likely be surrendered in the case of transit by land or sea,
2. the higher regional court in whose district the first landing 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 37
Transit procedure
(Re Article 89 (3) (c) of the Rome Statute)

(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 warrant of arrest ('warrant of arrest pending transit') issued by the higher regional court. Sections 12 (2) and 20 (2) apply accordingly.

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

(4) Warrants of arrest pending transit must be disclosed to persons pursued without delay after their arrival in Germany. They are given a copy.

(5) If it is likely that the transit cannot be completed by the end of the day following the day of their surrender, persons pursued are to be brought before the judge at the nearest local court without delay, but no later than the day after they arrive in Germany. 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 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. Sections 14 (5) and 16 apply accordingly.

(6) Sections 12 (3), 18, 23 (1), (2) and (5), and 33 apply accordingly. Section 17 applies accordingly, with the proviso that the time limit of two months is replaced by a time limit of one month. Section 31 applies accordingly, with the proviso that the mandatory assistance of legal counsel is required where

1. it appears necessary on account of the complexity of the factual or legal situation, or
2. it is clear that the person pursued is not in a position to adequately exercise their rights themselves.

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

Section 38
Multiple transit

(1) Where transit for the purpose of the surrender of a person pursued to the Court has been authorised for the first time, the person pursued may also, upon transmission of a request making reference to documentation transmitted on the occasion of that first transit, be transported once more without a new decision on authorisation for the purpose of enforcement of a penalty imposed by the Court for surrender to the enforcing state upon presentation of a document issued by the enforcing state indicating its consent to enforcement of the penalty imposed by the Court or a declaration by the Court indicating that the enforcing state consents to the enforcement. Sentences 1 and 2 also apply to the additional transit.

(2) In the case under subsection (1), the warrant of arrest pending transit may also extend to further transfers.

(3) Subsections (1) and (2) also apply accordingly where, following provisional surrender, a person is returned to the surrendering state insofar as the fact of their subsequent return was recognisable upon the first transit.

Section 39

Unscheduled landing

(Re Article 89 (3) (e) of the Rome Statute)

(1) In the event of an unscheduled landing in Germany, the agency which first becomes aware of the landing and which takes action on the basis of this Act without delay notifies the Court and the agency competent under section 68 (1) about the landing. The agency competent under section 68 (1) asks the Court to transmit a request for transit as required by Article 89 (3) (b) of the Rome Statute. The public prosecution office and police officers are authorised to make a provisional arrest.

(2) 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. They are to be released from detention by that judge where 96 hours have elapsed since the unscheduled landing without the agency competent under section 68 (1) having received the request for transit and the transit documentation.

(3) In all other cases, sections 35 to 37 apply accordingly.

Part 4

Mutual assistance by way of enforcement of Court decisions and orders

Section 40

Principle

Mutual assistance is rendered by way of the enforcement of penalties imposed by the Court by final decision in accordance with the provisions of the Rome Statute and of this Act. Orders for the confiscation of the proceeds of crime pursuant to Article 77 (2) (b) of the Rome Statute and decisions pursuant to Article 75 of the Rome Statute are also enforced.

Section 41

Enforcement of terms of imprisonment

(Re Article 77 (1), Article 103 (1) and (2), Article 105, Article 106, Article 110 of the Rome Statute)

(1) Terms of imprisonment are enforced where

1. the Court has transmitted a request therefor and has submitted the full, final and enforceable judgments on the guilty verdict and the sentence, and
2. the Court and the agency competent under section 68 (1) have reached agreement in respect of who is to enforce the penalty.

Upon taking charge of the person pursued, a declaration made by the Court in respect of how much of the penalty imposed is still to be enforced must have been presented.

(2) The amount of the term of imprisonment as notified by the Court is enforced. The provisions of the Criminal Code (*Strafgesetzbuch*) on the suspension of enforcement of the remainder of a determinate sentence of imprisonment or of imprisonment for life (sections 57 to 57b of the Criminal Code) and of the Code of Criminal Procedure on enforcement of a sentence of imprisonment do not apply. Enforcement is to end upon notification by the Court.

(3) Upon transmission of a request by the Court, the sentenced person is to be surrendered back to the Court or to a state designated by it. If the Court does not give explicit notification that the sentenced person is to be released, said person is to be kept in detention until their surrender to the Court or to the authorities of the state designated by the Court. If, at a later date, the Court transmits a request for the continuation of enforcement of a penalty which has been partially enforced in Germany, the documents referred to in subsection (1) no. 1

need not be transmitted a second time. Subsection (1) sentence 1 no. 2 and sentence 2 applies accordingly.

(4) The Court is responsible for giving those decisions relating to enforcement of a penalty, including in respect of a pardon, resumption of proceedings and reduction of the sentence imposed by the Court, and other decisions which may involve the sentenced person staying outside of the facility in which they are being detained without being under guard. If circumstances arise which, under German law, would enable postponement, temporary postponement, interruption of enforcement, dispensing with enforcement, crediting against the term of imprisonment or prison orders outside a detention facility without being under guard, then the Court is to be requested to give a decision. In all other cases, enforcement of a penalty is governed by the provisions of German law and corresponds to the enforcement of penalties imposed by German courts for comparable offences. The provisions of the Prison Act on complaint proceedings and court proceedings do not apply if the Court is responsible for giving a decision on enforcement measures.

(5) Communication between the sentenced person and the Court is free and confidential. Upon the request of the Court, members of the Court are granted access to the detention facility. If the sentenced person raises objections to enforcement of a penalty or files applications on which the Court is called to give a decision, the Court is asked to give a decision.

(6) Costs incurred in relation to enforcement are borne by the Federation in accordance with an agreement to be concluded with the *Länder*. This does not apply if the costs are borne by the Court in accordance with the provisions of the Rome Statute or other provisions.

Section 42

Escape and speciality

(Re Article 108, Article 111 of the Rome Statute)

(1) Where a sentenced person escapes or evades enforcement in another manner, the agency competent under section 46 (1) issues a warrant of arrest and takes those other measures which are necessary to determine said person's whereabouts and to arrest them. No further request from the Court is needed for individual search measures to be taken.

Section 31 (2) sentence 1 of the Act on Senior Judicial Officials (*Rechtspflegergesetz*) applies accordingly. The Court is notified without delay that the person pursued has escaped; in all other cases, the procedure is governed by Article 111 of the Rome Statute.

(2) The prosecution of offences which sentenced persons committed prior to their surrender to the German authorities or the enforcement of a term of imprisonment or a measure of reform and prevention imposed prior to their surrender is permissible, subject to the provisions of Article 108 (3) of the Rome Statute, only with the consent of the Court.

(3) Where a foreign state transmits a request for extradition, temporary extradition, deportation, other transfer into its sovereign territory for the purpose of prosecution or of enforcement of a penalty or other sanction, consent may be given if, subject to Article 108 (3) of the Rome Statute, the Court has given its prior consent and the extradition is permissible under the provisions on extradition applicable in the relationship with the requesting state.

Section 43

Enforcement of fines

(Re Article 77 (2) (a), Article 109 (1) of the Rome Statute)

(1) Fines are enforced where

1. the Court has transmitted a request therefor and has submitted the full, final and enforceable judgments on the guilty verdict and the sentence, and
2. the request indicates how much of the fine is to be enforced in Germany, insofar as the Court is requesting enforcement of the fine in several states.

If the amount of the enforceable fine is indicated in a currency other than euros, the officially determined exchange rate on the date on which the request was received is used as the basis for converting the relevant amount.

(2) The provisions of the Act on the Recovery of Claims of the Judicial Authorities (*Justizbeitreibungsgesetz*) apply to enforcement of a fine, unless otherwise provided under this Act.

(3) The fine is due upon receipt of the request. A decision is sought from the Court in respect of interpreting the verdict of guilty or the sentence, calculating the penalty imposed, objections to the permissibility of enforcement of a penalty or if, under German law, the conditions of section 459a of the Code of Criminal Procedure would be met. Enforcement is not stayed as a result; the agency competent under section 46 (2) may, however, postpone or suspend enforcement. Suitable measures are to be taken to ensure that enforcement continues at a later point in time; a search of the sentenced person, that person's domicile and property, as well as the confiscation of property are permissible to that end.

(4) Sections 459b and 459c (2) and (3) of the Code of Criminal Procedure apply accordingly. The Court is notified of the result of enforcement and the fine recovered is transferred to the Court.

(5) To the extent that the Court extends the term of imprisonment imposed against the sentenced person for one of the offences referred to in Article 5 of the Rome Statute owing to the unrecoverability of the fine or imposes a term of imprisonment for one of the offences referred to in Article 70 (1) of the Rome Statute owing to unrecoverability, sections 41 and 42 apply to enforcement of the term of imprisonment.

Section 44

Enforcement of orders for confiscation of proceeds of crime (Re Article 77 (2), Article 109 (2) of the Rome Statute)

(1) Orders made pursuant to Article 77 (2) (b) of the Rome Statute ('forfeiture orders') are enforced where

1. the Court has transmitted a request therefor and has submitted the full, final and enforceable judgments on the guilty verdict and the sentence, and
2. the property in question is located in Germany.

(2) To effect enforcement, the Court orders confiscation of the proceeds of crime. Section 73 (2) and (3), sections 73b, 73c and 73d of the Criminal Code apply accordingly.

(3) Where an order is made for the confiscation of the proceeds of crime, ownership of the item or of the right confiscated transfers to the Court upon authorisation of legal assistance by the agency competent under section 68 (1) if the person mentioned in the order is entitled to it at that point in time. Before authorisation is given, the order has the effect of a prohibition of disposal within the meaning of section 136 of the Civil Code (*Bürgerliches Gesetzbuch*); the prohibition also covers disposals other than sale. Property in respect of which an order for confiscation of the proceeds of crime has been made is surrendered to the Court upon mutual assistance being authorised.

(4) If the Court's order for confiscation of the proceeds of crime includes a decision in respect of the rights of third parties, that decision is binding, unless

1. the third party manifestly was not afforded sufficient opportunity to assert their rights,
2. the decision is incompatible with a decision under civil law given in Germany in the same matter or
3. the decision refers to the rights of third parties in a plot of real land or a right in a plot of real land situated in Germany; the rights of third parties include priority notices.

In the cases under sentence 1, the Court is to be afforded the opportunity to make a statement in proceedings under section 68 (1). The rights of third parties in the property remain to the extent provided for under the Rome Statute. Third parties who, given the

circumstances of the individual case, could assert rights in the property are afforded the opportunity to make a statement before the decision is given, unless they have already been afforded the opportunity to make a statement before the Court. They may avail themselves of the services of legal counsel at any stage in the proceedings.

(5) Property which is being considered for inclusion in an order for confiscation of the proceeds of crime based on a request transmitted by the Court may be seized for the purpose of securing the confiscation procedure. A search may also be conducted to that end. Jurisdiction is governed by section 46 (3). In all other cases, sections 111b to 111m and 111p of the Code of Criminal Procedure apply accordingly. Section 111n applies accordingly, with the proviso that before surrendering property to the aggrieved party the Court is asked to make a statement; the property is not surrendered if the Court's statement indicates its opposition thereto.

Section 45
Enforcement of restitution orders
(Re Article 75 (2), Article 109 of the Rome Statute)

Orders for restitution relating to payment of a sum of cash are enforced where

1. the Court has transmitted a request therefor and has submitted the full, final and enforceable judgments on the guilty verdict and the sentence, as well as the order referred to in Article 75 of the Rome Statute and
2. the request indicates up to what amount the restitution order is to be enforced in Germany, insofar as the Court transmits a request for enforcement in several states.

In all other cases, enforcement is governed by section 43.

Section 46
Jurisdiction, recourse to Federal Court of Justice, legal counsel

(1) The German agency responsible for enforcing terms of imprisonment imposed by the Court (sections 41 and 42) is the public prosecution office at the higher regional court in whose district the facility is located in which the sentenced person is being detained.

(2) The agency competent in respect of the enforcement of fines under section 43 and of restitution orders under section 45 is the public prosecution office at the higher regional court in whose district the sentenced person has his or her place of residence, in the absence of such residence, his or her habitual residence. Where no place of residence or habitual residence can be determined, jurisdiction lies with the public prosecution office at the higher regional court in whose district the sentenced person's property is located. If property is located in the districts of various higher regional courts, jurisdiction lies with that higher regional court which was first seised of the case. Until jurisdiction can be established in accordance with sentences 1 to 3, it is determined to be at the seat of the Federal Government. Any necessary court orders are made by the higher regional court. There is no right of appeal against the decisions given by the higher regional court.

(3) It is for the higher regional court to make the court orders required in respect of enforcement of an order for confiscation made by the Court (section 44). Subsection (2) sentence 6 applies accordingly. The public prosecution office at the higher regional court prepares the decision. Local jurisdiction lies with the higher regional court and the public prosecution office at the higher regional court in whose district the property is located. Where property is located in the districts of various higher regional courts, jurisdiction lies with that higher regional court or, if no higher regional court is yet seised of the case, with that public prosecution office which was first seised of the case. Until jurisdiction can be established in accordance with sentence 2 or sentence 3, it is determined to be at the seat of the Federal Government.

(4) Sections 20 (2) and (3), 21 (1) and (4), 22, 23, 29 (4) and 33 apply accordingly to proceedings before the higher regional court. Section 31 applies accordingly, with the proviso that mandatory assistance of legal counsel is required where

1. the involvement of legal counsel appears necessary on account of the complexity of the factual or legal situation, or
2. it is clear that the person pursued is not in a position to adequately exercise their rights themselves.

Part 5

Other types of mutual assistance

Section 47

Principle

(Re Article 93 (1), Article 96 (1) and (2) of the Rome Statute)

- (1) Subject to section 58 (2), other types of mutual assistance are rendered to the Court, upon request, in accordance with the provisions of the Rome Statute and of this Act.
- (2) 'Mutual assistance' within the meaning of subsection (1) means any type of support afforded to the Court in the performance of the tasks assigned to it under the Rome Statute, regardless of whether the assistance is to be rendered by a court or an authority.
- (3) If the authority responsible for authorising the mutual assistance considers the conditions for rendering that assistance to be met, the authority responsible for rendering the mutual assistance is bound by that decision. Section 50 remains unaffected.
- (4) The procedure to be followed in the case of competing requests for other types of mutual assistance is governed by Article 93 (9) (a) of the Rome Statute. Insofar as Article 90 of the Rome Statute applies, section 4 applies accordingly.

Section 48

Deferral of execution

In the cases under Article 93 (3) to (5), (9) (b), Article 94 (1) and Article 95 of the Rome Statute, execution may be deferred until further procedure in relation to the request which corresponds to the Rome State has been clarified.

Section 49

Jurisdiction

- (1) Where mutual assistance is rendered by a public prosecution office, local jurisdiction lies with that public prosecution office in whose district the assistance is rendered. Where assistance is to be rendered in the districts of various public prosecution offices, jurisdiction lies with that public prosecution office which was first seized of the case. Until jurisdiction can be established in accordance with sentence 1 or sentence 2, it is determined to be at the seat of the Federal Government.
- (2) Subsection (1) applies accordingly to court jurisdiction where judicial action is required in the rendering of mutual assistance or other court decisions are to be given.
- (3) Jurisdiction in respect of the decisions to be given by a court concerning the surrender of property under section 50 (1) sentence 2, in respect of the order for the seizure and search of property (section 52 (1) and (2)) and asset seizure (section 52 (4)), in respect of decisions on arrest in the case of temporary surrender (section 55 (1)) and transfer (section 55 (6)) and in respect of court orders in the case of telecommunications surveillance (section 59 (1)) and a measure taken without the knowledge of the person concerned (section 59 (2)) lies with the higher regional court. In the case of temporary surrender, local jurisdiction lies with that higher regional court in whose district the agency which is to render the assistance has its seat. In the case of transfer, section 36 (2) and (3) applies accordingly.
- (4) Where the jurisdiction of the higher regional court has been established, the public prosecution office at the higher regional court prepares the decision and takes the measures necessary to effect it. It also has jurisdiction as regards the ordering and effecting of temporary surrender (section 54), preparing a decision to authorise the surrender of property and effecting any authorised surrender of property. In the case of the temporary surrender of a person, local jurisdiction lies with that public prosecution office at the higher regional court in whose district the deprivation of liberty is being enforced.

Section 50

Court decision

(1) In the cases under section 52 (1), (2) and (4), section 55 (1) and (6) and section 59 (1) and (2), mutual assistance may be authorised only if the higher regional court has taken the measures necessary to render the assistance. Further, the higher regional court gives decisions on the permissibility of the surrender of objects upon the application of the public prosecution office at the higher regional court or upon the application of any person who asserts that their rights would be infringed if the property were to be surrendered. There is no right of appeal against the decisions of the higher regional court.

(2) Section 20 (2) and (3), section 21 (1) and (4), section 22, section 29 (4) sentence 2, section 31 (1), section 33 and the provisions of Book 1 Division 11 of the Code of Criminal Procedure, with the exception of sections 140 to 144, apply accordingly to proceedings before the higher regional court. Section 23 (1), (2) and (4) applies accordingly to further procedure, with the proviso that the person pursued's application as referred to in section 23 (1) is replaced by an application by the person affected by a measure under section 52 (1), (2) or (4) and that, irrespective of whether the conditions of section 23 (1) and (2) are met, a new decision on rendering mutual assistance is also given upon the application of the person concerned if the person concerned was not heard before the measure was first ordered.

(3) Where a court other than the higher regional court is responsible for rendering mutual assistance and it 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. Further, upon the application of the public prosecution office at the higher regional court, the higher regional court gives a decision on whether the conditions for the rendering of mutual assistance are met. Authorisation may not be given for assistance to be rendered if the higher regional court has given a decision determining that the conditions for rendering that assistance are not met. The higher regional court's decision is binding on the courts and authorities responsible for rendering assistance.

(4) Section 20 (2) and (3), section 21 (1) and (4), section 22, section 23 (1), (2) and (4), section 29 (4) sentence 2, section 31 (1), section 33 and the provisions of Book 1 Division 11 of the Code of Criminal Procedure, with the exception of sections 140 to 144, apply accordingly to proceedings before the higher regional court.

Section 51

Surrender of property

(1) Notwithstanding section 58 (3) and upon a request being transmitted by the competent organ of the Court, such property is surrendered

1. which may serve as evidence in proceedings before the Court,
2. which the person pursued or a party to the offence obtained as a result of the offence subject to the Court's jurisdiction, or obtained for that offence or as consideration for such property.

(2) Such surrender is permissible only upon

1. submission of a decision given by a relevant organ of the Court ordering seizure of the property or freezing within the meaning of Article 93 (1) (k) of the Rome Statute and
2. it being guaranteed that the rights of third parties remain unaffected and that, upon request, property which has been conditionally surrendered will be returned without delay.

(3) If the property to be surrendered contains the person pursued's personal data, reference is to be made upon their surrender to the fact that said data may only be used in the performance of the tasks assigned to the Court under the Rome Statute. Where the person pursued's personal data are linked to further personal data of a third party in such a manner

that it is not possible to separate them or doing so would involve disproportionate effort, the transmission of these data is also permissible, unless the legitimate interests of the person pursued or of a third party in their being kept secret manifestly prevail.

Section 52

Seizure and search, asset seizure

(1) Property whose surrender to the Court is considered as a possibility may be seized or secured in another manner even before a request for seizure is received. A search may also be conducted to that end.

(2) Property may also be seized or secured by other means under the conditions of section 51 (1) no. 1 if this is necessary to execute a request which does not relate to the surrender of property. Subsection (1) sentence 2 applies accordingly.

(3) Notwithstanding section 49 (3) and (4), the public prosecution office and its investigators (section 152 of the Courts Constitution Act) are authorised, in exigent circumstances, to order seizure and search in accordance with the provisions of the Code of Criminal Procedure.

(4) Regardless of whether the conditions of section 51 (1) no. 1 or no. 2 are met, upon a request being transmitted by the Court, seizure is effected in respect of property or individual items of property located in Germany and belonging to a person against whom charges have been confirmed for one of the offences referred to in Article 5 of the Rome Statute (Article 61 of the Rome Statute) or against whom a warrant of arrest has been issued (Article 58 of the Rome Statute). Section 51 (2) no. 1 applies accordingly. Seizure also encompasses that property which subsequently falls to the accused. Subsection (1) sentence 2 applies accordingly.

(5) Notwithstanding section 49 (3) and (4), the public prosecution office may, in exigent circumstances, order provisional seizure in accordance with subsection (4). An interim order made in accordance with sentence 1 ceases to be effective if it is not confirmed by a court within three days.

(6) Seizure in accordance with subsection (4) is revoked upon transmission of a request by the Court, at the latest, though, after the court making the seizure order learns that the warrant of arrest has been lifted or the proceedings before the court of first instance have been concluded. Sections 291, 292 and 293 (2) of the Code of Criminal Procedure apply accordingly to seizure in accordance with subsection (4) or (5).

Section 53

Appearance in court by witnesses

(1) Where the Court transmits a request for a person who is at large in Germany to appear as a witness for the purpose of an examination, a confrontation or judicial inspection, those administrative measures may be ordered which could be imposed if a summons were made by a German court or public prosecution office.

(2) Where the Court gives an assurance that a person's testimony will not be used, the details provided by that person may not be used, in the extent of the assurance given by the Court, in German criminal proceedings without that person's consent. Testimony given to the Court may also not be used in German criminal proceedings without the person's consent if said person was obliged to provide details to the Court but would have been able to refuse to provide such details under German law.

Section 54

Temporary surrender

(Re Article 93 (1) and (7) of the Rome Statute)

Any person who is in remand detention, is serving a prison sentence or has, by order, been placed under a measure of reform and prevention involving deprivation of liberty in Germany is, upon a request being transmitted by the Court, temporarily surrendered to the Court or to the authorities of a state designated by the Court for investigations which are being conducted against another person there or for court proceedings pending there which are

being conducted against another person for the purpose of evidence-taking or another purpose provided for under Article 93 (7) (a) sentence 1 of the Rome Statute if

1. that person has consented thereto, following instruction, and that consent was declared before and placed on record by the judge at the local court in whose district the facility is located in which that person is being detained,
2. it is not expected that the purpose of the criminal proceedings or the enforcement of a penalty will be impeded as a consequence of the surrender,
3. it is guaranteed that, during the period of their surrender, the person concerned, with the exception of measures in relation to offences under Articles 70 and 71 of the Rome Statute, will not be punished, subjected to another sanction or pursued by means of measures which cannot also be taken in their absence and that, in the event of being released, they will be able to leave the host state or the state designated by the Court and
4. it is guaranteed that the person concerned will be returned without delay following the evidence-taking, unless this is waived.

Consent (sentence 1 no. 1) cannot be revoked. Any deprivation of liberty occasioned by the surrender is credited against the deprivation of liberty to be enforced in Germany. Section 27 (4) applies accordingly. This does not apply to terms of imprisonment imposed and enforced by the Court pursuant to Article 70 (3) of the Rome Statute.

Section 55 **Temporary acceptance and transfer**

(1) Any person who is in remand detention, is serving a prison sentence or has, by order, been placed under a measure depriving them of their liberty outside of the area of application of this Act, is, upon a request being transmitted by the Court, temporarily accepted in the area of application of this Act for investigations being conducted there or for proceedings pending there for the purpose of evidence-taking and is returned, upon a request being transmitted by the Court, except in cases where the Court waives this if it is guaranteed that, in the event of the Court waiving the return of the person accepted, that person is then accepted by a foreign state. Before effecting the temporary acceptance, the person concerned is, upon the making of a written warrant of arrest, ordered to be detained if the Court requests this or their return would not be guaranteed in another manner.

(2) The warrant of arrest must indicate

1. the name of the person concerned,
2. the request for the taking of evidence in the person concerned's presence,
3. details provided by the Court regarding to which agency the person concerned is to be returned and
4. the reason for arrest.

Section 13 (3), section 14 (1), (2) sentence 1 and sentence 3 and (5), and section 18 apply accordingly.

(3) The warrant of arrest is lifted if

1. the Court gives notification that detention is no longer necessary,
2. the Court gives its consent in accordance with subsection (4) sentence 2,
3. the person concerned is returned to the Court or to a state designated by the Court or
4. the Court waives the person concerned's return.

(4) It is for the higher regional court to give decisions on objections raised by the person concerned against the warrant of arrest pending acceptance or against its enforcement. With the Court's consent, the higher regional court may lift the warrant of arrest pending acceptance or suspend its enforcement. Sections 116 (1) sentence 2 and (4), 116a, 123 and 124 (1), (2) sentence 1 and (3) of the Code of Criminal Procedure apply accordingly. If the Court does not consent to the lifting or suspension of the warrant of arrest pending transfer, the person concerned is without delay transferred back to the Court or to the authorities of a state designated by it. The person concerned is kept in detention until the transfer back is effected.

(5) It is for the higher regional court to give a decision on whether the arrest pending acceptance is to continue where the person pursued is in detention for a total of two months on the basis of the warrant of arrest pending acceptance. The review of detention is repeated every two months. The higher regional court may order that the review of detention is to be carried out within a shorter time frame. Subsection (4) sentences 2 to 5 applies accordingly.

(6) Any person who is in remand detention, is serving a prison sentence or has, by order, been placed under a measure depriving them of their liberty outside of the area of application of this Act is, upon a request being transmitted by the Court, transported through the area of application of this Act for investigations being conducted there against another person or for court proceedings pending there against another person for the purpose of evidence-taking and is transferred back following the evidence-taking. Subsection (1) sentence 2 and (2) to (5) applies, with the proviso that the time limit referred to in subsection (5) of two months is replaced by a time limit of one month. Moreover, section 14 (5), section 18, section 20 (2) and section 37 (4) and (5) sentences 1, 2 and 4 apply accordingly.

Section 56

Protection of persons

(Re Article 93 (1) (j) of the Rome Statute)

The provisions on the protection of victims of criminal offences and on the protection of persons participating in German criminal proceedings apply accordingly to the alleged injured parties of a criminal offence subject to the jurisdiction of the Court or to witnesses in proceedings before the Court.

Section 57

Service

(Re Article 58 (7) sentence 4, Article 93 (1) (d) of the Rome Statute)

(1) The provisions of the Code of Civil Procedure (*Zivilprozessordnung*) apply accordingly to the procedure relating to service.

(2) Service to an accused of summons issued by the Court by way of substitute service is ruled out.

Section 58

Passing on of officially obtained information

(1) Upon the request of the relevant organ of the Court and subject to subsection (3), information officially obtained from German courts and authorities in the discharge of the Court's responsibilities are passed on, to the extent that this would be permissible vis-à-vis a German court or public prosecution office, for the purpose of conducting criminal proceedings if it is guaranteed that

1. information drawn from the Federal Central Criminal Register and information obtained through telecommunications surveillance (section 59 (1)) or through another measure without the knowledge of the person concerned (section 59 (2)) is not transmitted to agencies external to the Court and
2. other information is transmitted to agencies external to the Court only with the prior consent of the agency competent under section 68 (1).

When transmitting such information, reference is to be made in a suitable manner to the maximum periods applicable under German law in respect of retention of the information transmitted as well as to the fact that the information transmitted may be used only in the performance of the tasks assigned to the Court under the Rome Statute. Where it transpires that incorrect information or information which should not have been transmitted has been transmitted, the Court is to be notified thereof without delay and asked to correct or delete the information.

(2) Subject to subsection (3), information within the meaning of subsection (1), with the exception of information drawn from the Federal Central Criminal Register, may be transmitted to the Court without a request therefor if the conditions under subsection (1) sentence 1 are otherwise met and transmission is suited to

1. instituting proceedings before the Court,
2. promoting proceedings which have already been instituted before the Court or
3. preparing a request for mutual assistance to be transmitted by the Court.

Subsection (1) sentence 2 and sentence 3 applies accordingly.

(3) If the Court transmits a request for the transmission of information which was sent to a German court or authority by a foreign state or by an international or supranational facility together with a request that it be treated as confidential, the information may not be transmitted to the Court until the originator has provided consent thereto as required by Article 73 sentence 1 of the Rome Statute. The Court is to be notified thereof.

Section 59

Telecommunications surveillance and other measures without knowledge of person concerned

(Re Article 93 (1) (I) of the Rome Statute)

(1) An order for telecommunications surveillance (section 100a of the Code of Criminal Procedure) and the transmission of information obtained on the basis of such surveillance are permissible only upon

1. presentation of the decision to order the telecommunications surveillance given by a judge at the Court,
2. the other conditions set out in the Code of Criminal Procedure regarding the ordering of the measure being met, with the proviso that the criminal offences referred to in Article 5 of the Rome Statute take the place of the criminal offences referred to in section 100a (2) of the Code of Criminal Procedure and
3. it being guaranteed that the provisions of the Code of Criminal Procedure on notification of the person to whom the measure relates (section 101 (4) to (6) of the Code of Criminal Procedure), on transmission of personal data obtained for evidentiary purposes in other criminal proceedings before the Court (section 479 (2) sentence 1 of the Code of Criminal Procedure) and on deletion (section 101 (8) of the Code of Criminal Procedure) will be complied with.

(2) Upon the request of the Court, the measures referred to in sections 100b, 100c and 100f of the Code of Criminal Procedure are ordered without the knowledge of the person concerned. Subsection (1) applies accordingly.

Section 60

Presence during rendering of mutual assistance

(Re Article 99 (1) of the Rome Statute)

The members and authorised representatives of the Court and other persons referred to in the Court's request are, upon request, permitted to be present during the rendering of mutual assistance in Germany; they may propose questions or measures. The members of the

Court may make records as well as audio, image or video recordings of the assistance being rendered. If the persons concerned consent thereto, audio, image and video recordings are also permitted without the conditions referred to in the Code of Criminal Procedure being met. Recordings which have been made in accordance with sentence 3 may not be used in German criminal proceedings.

Section 61
Court hearings
(Re Article 3 (2) of the Rome Statute)

- (1) Upon the Court's request, it is permitted to conduct court hearings in Germany.
- (2) Section 43 applies accordingly to enforcement of a fine pursuant to Article 71 (1) of the Rome Statute.

Section 62
Direct execution by Court
(Re Article 99 (4) (b) of the Rome Statute)

Upon particular request, the members and authorised representatives of the Court are permitted, in consultation with the competent German authorities, independently to conduct examinations, visual inspections and similar evidence-taking in Germany. Such mutual assistance may be authorised under the conditions of Article 99 (4) (b) of the Rome Statute. The order for and execution of measures of compulsion are reserved to the competent German authorities in all cases and are governed by German law.

Section 63
Institution of German criminal proceedings
(Re Article 70 (4) of the Rome Statute)

Where the Court transmits a request in accordance with Article 70 (4) (b) of the Rome Statute for the institution of criminal proceedings against a person who is suspected of having committed one of the offences referred to in Article 70 (1) of the Rome Statute, the Court is notified as soon as possible of that which was occasioned on the basis of the request. Following conclusion of the proceedings, it is sent an executed copy or a certified copy of the final decision. Surrendered property and files are to be returned if the Court so requests.

Part 6
Outgoing requests

Section 64
Form and content of requests
(Re Article 93 (10), Article 96 (4) of the Rome Statute)

Requests for mutual assistance or for the surrender of persons transmitted to the Court in accordance with Article 93 (10) (a) of the Rome Statute and the supporting documentation must be in the form prescribed in Article 96 (1) in conjunction with (4) of the Rome Statute and must include the content prescribed in Article 96 (2) in conjunction with (4) of the Rome Statute.

Section 65
Return

- (1) Any person who has, upon request, been temporarily surrendered by the Court for criminal proceedings being conducted against them in Germany on condition of subsequent return is returned, at the agreed point in time, to the Court or to the authorities of a state designated by the Court, unless the Court has waived such return. Before temporary surrender is effected, a written warrant of arrest is made ordering the person pursued's arrest if the Court makes the surrender dependent on the person being kept in detention or if the return would otherwise not be guaranteed. Any period of detention based on an order

made in accordance with sentence 2 is credited against a penalty imposed in German criminal proceedings in accordance with section 51 of the Criminal Code.

(2) Section 55 (2) applies accordingly to the warrant of arrest. In all other cases, section 13 (3), section 14 (1), (2) sentence 1 and sentence 3 and (5), section 18 and section 55 (3) to (5) apply accordingly. It is for the higher regional court to give a decision on objections to a warrant of arrest pending return or an application for its suspension if the detention is being enforced based on a warrant of arrest pending return.

(3) The decision on arrest is given by that higher regional court in whose district the court seized of the domestic criminal proceedings has its seat, before the preferment of public charges by that higher regional court in whose district the public prosecution office conducting the proceedings has its seat. There is no right of appeal against the decision. The public prosecution office at the higher regional court with jurisdiction in accordance with sentence 1 is responsible for ordering and effecting the return.

Section 66

Temporary transfer for German proceedings

(1) Any person who is in remand detention or serving a prison sentence on the basis of an order made by the Court and who has, for the purpose of evidence-taking for domestic criminal proceedings being conducted against another person, been temporarily transferred to a German court or authority upon request therefor on condition that they are to be subsequently returned, is returned, at the agreed point in time, to the Court or the authorities of a state designated by the Court, unless the Court waives such return. Before effecting the temporary transfer, an order is made against the person pursued, by written warrant of arrest, if the Court makes the transfer dependent on that person being kept in detention or if the transfer back could otherwise not be guaranteed. Section 55 (2) applies accordingly. In all other cases, section 13 (3), section 14 (1), (2) sentence 1 and sentence 3 and (5), section 18, section 55 (3) to (5) and section 65 (3) apply accordingly.

(2) Any person who is in remand detention, is serving a prison sentence or who has, by order, been placed under a measure of reform and prevention depriving them of their liberty in Germany may be temporarily transferred to the Court for the purpose of evidence-taking for criminal proceedings being conducted in Germany if the conditions of section 54 sentence 1 nos. 1, 3 and 4 are met. Section 49 (4) sentences 2 and 3 and section 54 sentences 2 to 5 apply accordingly.

Section 67

Conditions

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

Part 7

Common provisions

Section 68

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 requests for mutual assistance transmitted by the Court and on the transmission of requests for mutual assistance to the Court. Where an authority subordinate to another federal ministry is responsible for rendering assistance, that federal ministry takes the place of the Federal Ministry of Justice and Consumer Protection; the decision is given in consultation with the Federal Ministry of Justice and Consumer Protection and the Federal Foreign Office. The federal ministries with jurisdiction in accordance with sentences 1 and 2 may delegate the exercise of their powers, in the individual case, to subordinate federal authorities. The Federal Government may, in the individual case, delegate to a *Land* government the exercise of its powers to give a decision on a request transmitted by the Court under Part 5 of this Act and to transmit a request for

mutual assistance to the Court. The *Land* governments may delegate the powers delegated to them in accordance with sentence 4 to another authority competent under *Land* legislation.

(2) The Federal Ministry of Justice and Consumer Protection, in consultation with the Federal Foreign Office and other supreme federal authorities whose remit is affected, in particular gives decisions on

1. the referral of a situation under Article 14 (1) of the Rome Statute,
2. the notification under Article 18 (2) of the Rome Statute and the filing of an appeal under Article 18 (4) of the Rome Statute,
3. the making of a challenge under Article 19 (2) of the Rome Statute,
4. the filing of an appeal under Article 19 (6) of the Rome Statute,
5. an intervention under Article 72 (4) of the Rome Statute,
6. the filing of an appeal under Article 82 (2) of the Rome Statute or
7. the transmission of a request for a waiver under Article 101 (2) of the Rome Statute.

(3) Where provision is made under the Rome Statute or under this Act in respect of consultations with the Court or notifications to the Court, subsection (1) sentence 1 applies accordingly. Where facts which necessitate consultations with the Court under the Rome Statute or under this Act become known to an agency other than the agency competent under sentence 1, that agency without delay notifies the agency competent to conduct the consultations in accordance with sentence 1. Where certain facts are to be notified to the Court or its decision or consent is to be obtained, the agency competent under sentence 1 takes the measures necessary therefor. In urgent cases, the agency which first became aware of the circumstances necessitating notification or of the facts necessitating a decision from the Court or the Court's consent may notify the Court in advance of the circumstances or the facts.

(4) 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 based on a request transmitted by the Court are governed by section 27 (1) sentence 1 no. 2 and section 33 (1) to (4) of the Federal Criminal Police Office Act (*Bundeskriminalamtgesetz*).

Section 69

German criminal proceedings and prior criminal proceedings before Court (Re Article 20 (2), Article 70 (2) of the Rome Statute)

(1) No one may be brought before another court in connection with one of the serious criminal offences (*Verbrechen*) referred to in Article 5 of the Rome Statute or one of the criminal offences referred to in Article 70 (1) of the Rome Statute for which they have already been convicted or acquitted by the Court.

(2) If it becomes known in criminal proceedings being conducted in Germany against a person that said person has already been convicted or acquitted by final decision by the Court for all or a part of the offences on which the German proceedings are based, the proceedings in respect of the offences on which the Court has already given its decision are terminated at the Public Treasury's expense. Where the proceedings are pending before a court, a court order is needed for such termination.

(3) A decision which must be given in relation to compensation for prosecutory measures is based on the Court's decision regarding the question of guilt and punishment.

Section 70

Notification

(Re Article 27 of the Rome Statute)

Where a request for the surrender of a person or for other types of mutual assistance transmitted by the Court relates to a Member of the Bundestag or to a legislative body of one of the *Länder*, or to investigative acts on their premises, the Federal Ministry of Justice and Consumer Protection or the agency competent under section 68 (1) notifies the president of the body of which the person concerned is a member or which is affected by the requested investigative act that such a request has been received. Suitable measures are to be taken to ensure that conduct of the proceedings before the Court or the surrender procedure is not jeopardised as a consequence of the notification being made.

Section 71

Costs

(Re Article 100, Article 107 (2) of the Rome Statute)

Reimbursement of the costs of mutual assistance to be borne by the Court may be waived.

Section 72

Application of other procedural provisions

Unless this Act contains particular procedural provisions, 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 and of the Introductory Act to the Code of Criminal Procedure (*Einführungsgesetz zur Strafprozeßordnung*), of the Criminal Code, of the Youth Courts Act and of the Fiscal Code (*Abgabenordnung*) apply analogously.

Section 73

Restriction of basic rights

The basic rights to physical integrity (Article 2 (2) sentence 1 of the Basic Law (*Grundgesetz*)), to personal freedoms (Article 2 (2) sentence 2 of the Basic Law), to privacy of correspondence, posts and telecommunications (Article 10 (1) of the Basic Law), to inviolability of the home (Article 13 of the Basic Law) and to the prohibition of extradition (Article 16 (2) sentence 1 of the Basic Law) are restricted in accordance with the provisions of this Act.