

Übersetzung durch Neil Mussett

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Act on Regulatory Offences

(Gesetz über Ordnungswidrigkeiten – OWiG)

Act on Regulatory Offences in the version published on 19 February 1987 (Federal Law Gazette [Bundesgesetzblatt] I p. 602), most recently amended by Article 5 of the Act of 14 March 2023 (Federal Law Gazette I 2023 No. 73)

PART I

GENERAL PROVISIONS

CHAPTER ONE

SCOPE OF APPLICATION

Section 1

Definition

(1) A regulatory offence shall be an unlawful and reprehensible act, constituting the factual elements set forth in a statute that enables the act to be sanctioned by imposition of a regulatory fine.

(2) An act that is subject to a regulatory fine shall be deemed to be an unlawful act, which constitutes the factual elements set forth in a statute within the meaning of subsection 1 even if it is not committed in a reprehensible manner.

Section 2

Substantive Application

This Act shall apply to regulatory offences in accordance with Federal law and to *Land* law.

Section 3

No Sanctioning Without a Law

An act may only be sanctioned as a regulatory offence if the possibility to impose a sanction was determined by statute before the act was committed.

Section 4

Temporal Application

(1) The regulatory fine shall be governed by the statute that is applicable at the time of the act.

(2) If the regulatory fine imposable is modified during commission of the act, that statute in force at the time of completion of the act shall apply.

(3) If the statute in force at the time of completion of the act is amended prior to the decision, the most lenient statute shall apply.

(4) A statute which is to apply for a certain period of time only shall apply to acts committed while it is in force even if it is no longer in force. This shall not apply if there is other statutory provision to the contrary.

(5) Subsections 1 to 4 shall apply mutatis mutandis to incidental consequences of a regulatory offence.

Section 5

Territorial Application

Unless otherwise provided by statute, only those regulatory offences may be sanctioned that are committed within the territorial scope of this Act or outside thereof on board a vessel or aircraft authorised to fly the Federal flag or to bear the nationality sign of the Federal Republic of Germany.

Section 6

Time of the Act

An act shall be deemed to have been committed at the time at which the perpetrator acted or, in the event of an omission, ought to have acted. The time when the result occurs shall not be decisive.

Section 7

Place of the Act

(1) An act shall be deemed to have been committed at any place where the perpetrator acted or, in the event of an omission, ought to have acted, or where the success as part of the factual elements of the offence has occurred or should have occurred as foreseen by the perpetrator.

(2) The act of a participant shall also be deemed to have been committed at the place where the factual elements have been fulfilled, being the elements set forth in the statute that enables the act to be sanctioned by imposition of a regulatory fine, or ought to have been fulfilled as foreseen by that participant.

CHAPTER TWO

BASIS FOR SANCTIONING

Section 8

Commission of an Act by Omission

Whoever omits to avert a result, being part of the factual elements of a regulatory fining provision, shall be deemed to have committed a regulatory offence in accordance with this provision only if he is legally responsible for averting the result and if the omission is tantamount to fulfilment of the factual elements by an act.

Section 9

Acting for Another

(1) If someone acts

1. as an entity authorised to represent a legal person or as a member of such an entity,
2. as a partner authorised to represent a commercial partnership, or
3. as a statutory representative of another,

then a statute, in accordance with which special personal attributes, relationships or circumstances (special personal characteristics) form the basis of sanctioning, shall also be applicable to the representative if these characteristics do not indeed pertain to him, but to the person represented.

(2) If the owner of a business or someone otherwise so authorised

1. commissions a person to manage a business, in whole or in part, or
2. expressly commissions a person to perform on his own responsibility duties which are incumbent on the owner of the business,

and if this person acts on the basis of this commission, then a statute in accordance with which special personal characteristics are the basis of sanctioning shall also be applicable to the person commissioned if these characteristics do not indeed pertain to him, but to the owner of the business. Within the meaning of the first sentence, an enterprise shall be the equivalent of a business. If someone acts on the basis of a corresponding commission for an agency which performs duties of public administration, then the first sentence shall apply *mutatis mutandis*.

(3) Subsections 1 and 2 shall also apply if the legal act which was intended to form the basis of the power of representation or the agency is void

Section 10 **Intent and Negligence**

If the law does not expressly impose a regulatory fine on negligent acts, then only intentional acts may be sanctioned as regulatory offences.

Section 11 **Error**

(1) Whoever, at the time the act is committed, is ignorant of a circumstance that is a factual element of the act, shall not be deemed to have acted with intent. The possibility of sanctioning for negligent acts shall remain unaffected.

(2) If the perpetrator, at the time the act is committed, is incapable of understanding its wrongfulness because he is ignorant of the existence or applicability of a legal provision, he shall not be deemed to have acted reprehensibly if he could not avoid this error.

Section 12 **Responsibility**

(1) Whoever upon commission of the act is under fourteen years of age shall not be deemed to have acted reprehensibly. A juvenile shall be deemed to have acted reprehensibly only under the prerequisites of section 3 first sentence of the Youth Court Act.

(2) Whoever upon commission of the act is incapable of appreciating the fact that the act was unauthorised or of acting in accordance with such appreciation due to a pathological emotional disorder, profound consciousness disorder, an impairment of intelligence, or any other serious emotional disturbance, shall not be considered to have acted reprehensibly.

Section 13 **Attempt**

(1) Whoever, in accordance with his understanding of the act, takes a direct step towards the realisation of the factual elements of the offence, shall be deemed to have attempted a regulatory offence.

(2) The attempt may be sanctioned only if expressly provided by law.

(3) If the perpetrator voluntarily renounces further execution of the act or prevents its completion, he shall not be sanctioned for attempt. If the act will not be completed without the contribution of the abandoning party, his voluntary and earnest efforts to prevent its completion shall be sufficient.

(4) If more than one person participates in the act, the one who voluntarily prevents its completion shall not be sanctioned for an attempt. However, his voluntary and earnest efforts to prevent the completion of the act shall suffice if the act is not completed without his contribution or is committed independently of his earlier participation

Section 14 **Participation**

(1) If several persons participate in a regulatory offence, each of them shall be deemed to have committed a regulatory offence. This shall also apply if special personal characteristics (section 9 subsection 1) giving rise to the possibility to impose a sanction pertain only to one participant.

(2) Participation may be sanctioned only if the factual elements of an act set forth in a statute enabling imposition of a regulatory fine are unlawfully fulfilled, or if in cases where an attempt may also be sanctioned, the attempt has at least been made.

(3) If one of the participants does not act reprehensibly, this shall not mean that sanctioning of the others is precluded. If the statute provides that special personal characteristics preclude sanctioning, this shall apply only to a participant who displays such characteristics.

(4) If the statute provides that an act which would otherwise be a regulatory offence is a criminal offence in view of special personal characteristics of the perpetrator, this shall apply only to a participant who displays such characteristics.

Section 15 **Necessary Defence**

(1) Whoever commits an act, required as necessary defence, shall not be deemed to have acted unlawfully.

(2) Necessary defence shall be the defence which is required to avert an imminent unlawful assault from oneself or another.

(3) If the perpetrator exceeds the limits of necessary defence due to confusion, fear or fright, then the act shall not be sanctioned.

Section 16 **Necessity as Justification**

Whoever, faced with an imminent danger to life, limb, freedom, honour, property or another legal interest which cannot otherwise be averted, commits an act to avert the danger from himself or another, shall not be deemed to have acted unlawfully if, upon weighing the conflicting interests, in particular the affected legal interests and the degree of danger threatening them, the protected interest substantially outweighs the one that has been placed at a disadvantage. This shall apply, however, only to the extent that the act is an appropriate means to avert the danger.

CHAPTER THREE **REGULATORY FINE**

Section 17 **Amount of Regulatory Fine**

(1) The amount of the regulatory fine shall not be less than five Euros and unless otherwise provided by statute shall not exceed one thousand Euros.

(2) If the law threatens to impose a regulatory fine for intentional and negligent action without distinction as to the maximum regulatory fine, the maximum sanction for a negligent action shall not exceed half of the maximum regulatory fine imposable.

(3) The significance of the regulatory offence and the charge faced by the perpetrator shall form the basis for the assessment of the regulatory fine. The perpetrator's financial circumstances shall also be taken into account; however, they shall, as a rule, be disregarded in cases involving negligible regulatory offences.

(4) The regulatory fine shall exceed the financial benefit that the perpetrator has obtained from commission of the regulatory offence. If the statutory maximum does not suffice for that purpose, it may be exceeded.

Section 18 **Easier Means of Payment**

If the person concerned, due to financial circumstances, cannot be expected to pay the regulatory fine immediately, he shall be granted a payment deadline or be allowed to pay in specified instalments. It may also be ordered in doing so that the privilege of paying the fine in fixed instalments be withdrawn if the person concerned fails to pay an instalment in time.

CHAPTER FOUR **CONCURRENCE OF STATUTORY VIOLATIONS**

Section 19

Act Constituting More than One Violation

- (1) If the same act violates more than one statute according to which it may be sanctioned as a regulatory offence, or such a legal provision repeatedly, then only one regulatory fine shall be assessed.
- (2) If more than one statute has been violated, then the regulatory fine shall be assessed according to the statute that provides for the highest regulatory fine. Incidental consequences provided for in the other statute may be imposed.

Section 20

Commission of More than One Violation

If more than one regulatory fine has been imposed, each one shall be assessed separately.

Section 21

Concurrence of Criminal Offence and Regulatory Offence

- (1) If an act is at the same time a criminal offence and a regulatory offence, only the criminal law shall be applied. The incidental consequences provided for in the other statute may be imposed.
- (2) In cases arising under subsection 1 however, the act may be sanctioned as a regulatory offence if no criminal penalty is imposed.

CHAPTER FIVE CONFISCATION OF OBJECTS

Section 22

Confiscation of Objects

- (1) As an incidental consequence of a regulatory offence, objects may be confiscated only if expressly permitted by statute.
- (2) Confiscation shall be permissible only if
1. at the time of the decision the objects belong to the perpetrator or he is entitled to them, or
 2. the objects, due to their nature and the circumstances, constitute a danger to the public, or if there is a risk that they will serve the commission of acts subject to a criminal penalty or a regulatory fine.
- (3) Under the prerequisites of subsection 2 number 2 the confiscation of the objects shall also be permitted if the perpetrator has not acted reprehensibly.

Section 23

Extended Prerequisites for Confiscation

If the law refers to this provision, then the objects may also be confiscated, in derogation from section 22 subsection 2 number 1 if at the time of the decision the person owning or entitled to them

1. has at least recklessly contributed to the fact that the object or the right thereto has been the object or instrumentality of the act or its preparation, or
2. has acquired the objects in a reprehensible manner with knowledge of the circumstances which would have permitted their confiscation.

Section 24

Principle of Proportionality

- (1) Confiscation may not be ordered in cases falling under sections 22 subsection 2 numbers 1 and 23 if it is disproportionate to the significance of the act committed or the reproach attaching to the perpetrator or the third party in cases falling under section 23 affected by the confiscation.

(2) In cases under sections 22 and 23, it shall be ordered that the confiscation be reserved and a less incisive measure shall be imposed if the objective of the confiscation can also be thereby attained. Particular consideration shall be given to instructions

1. to render the objects unusable,
2. to remove particular fittings or distinguishing marks or otherwise modify the objects, or
3. to deal with the objects in a specified manner.

If the instructions are followed, the reservation on confiscation shall be lifted; otherwise the court shall subsequently order the confiscation.

(3) Confiscation may be limited to a part of the objects.

Section 25

Confiscation of Replacement Value

(1) If prior to the ordering of confiscation the perpetrator has used, particularly through alienation or consumption, the object which he owned or to which he was entitled at the time of the act and in respect of which confiscation could have been ordered, or if he has otherwise obstructed the confiscation of the object, then the confiscation from the perpetrator of a sum of money may be ordered no greater than an amount equivalent to the value of the object.

(2) Collateral to the confiscation of an object or in place thereof, such an order may also be issued if the perpetrator has, prior to the ordering of confiscation, encumbered it with the right of a third party, the extinguishment of which cannot be ordered without compensation or could not be ordered in the case of confiscation (sections 26 subsection 2 and 28); if the order is issued collateral to the confiscation, then the amount of the replacement value shall be measured according to the value of the encumbrance on the object.

(3) The value of the object and the encumbrance may be estimated.

(4) If the order to confiscate an object cannot be executed or is insufficient because subsequent to issuance of the order one of the prerequisites designated in subsection 1 or 2 has occurred or become known, confiscation of the substitute value may be subsequently ordered.

(5) Section 18 shall apply to approval of facilitation of payment.

Section 26

Effect of Confiscation

(1) If an object is confiscated, then ownership of the property or the right confiscated shall pass to the state when the decision becomes final or as far as provided by law it is conferred to the corporation or institution under public law whose agency or office has ordered the confiscation.

(2) Rights of third persons in the object shall remain unaffected. However, the forfeiture of these rights shall be ordered if the confiscation is based on the fact that the prerequisites of section 22 subsection 2 number 2 are met. The forfeiture of the right of a third person may also be ordered if this person cannot be granted compensation in accordance with section 28 subsection 2 number 1 or 2.

(3) Prior to its validity, the order of confiscation shall have the effect of a prohibition to alienate within the meaning of section 136 of the Civil Code; the prohibition shall also comprise orders other than alienation. The order reserving confiscation shall have the same effect even if it has no current legal force.

Section 27

Order in its own Right

(1) If no particular person can be prosecuted for the regulatory offence on factual grounds, nor a regulatory fine be imposed on a particular person, the confiscation of the object or of its

substitute value may be ordered in its own right if the prerequisites permitting such measure are fulfilled in other respects.

(2) Subsection 1 shall also be applicable subject to section 22 subsection 2 number 2, or subsection 3 if

1. prosecution of the regulatory offence is barred by the period of limitation, or
2. otherwise for legal reasons no particular person can be prosecuted

and no statute provides otherwise.

However, confiscation may not be ordered in the absence of a request or authorisation.

(3) Subsection 1 shall also be applicable if in accordance with section 47, the prosecuting authority refrains from prosecuting the regulatory offence, or if the court stays the proceedings.

Section 28 Compensation

(1) If a third party had a claim of ownership in the property or the confiscated right at the time the decision on confiscation became final or if the object was encumbered by a right of a third party which was extinguished or placed at a detriment by the decision, then the third party shall be appropriately compensated in money, taking into consideration the fair market value. The State or corporation, or institution under public law to which ownership of the object or the forfeited right has been transferred, shall be obligated to pay such compensation.

(2) Compensation shall not be granted if

1. the third party has at least recklessly contributed to the fact that the property or the right thereto has been the object or instrumentality of the act or of its preparation,
2. the third party has acquired the object or the right in the object in a reprehensible manner with knowledge of the circumstances which permit its confiscation, or
3. it would be permissible, under the circumstances which justified the confiscation, to confiscate the object from the third party permanently and without compensation on the basis of legal provisions outside of the law concerning regulatory offences.

(3) In cases under subsection 2 compensation may be granted to the extent that it would constitute an undue hardship to refuse it.

Section 29 Special Provision for Entities and Representatives

(1) If someone has committed an act:

1. as an entity authorised to represent a legal person or as a member of such an entity,
2. as chairman of the executive committee of an association without legal capacity or as a member of such committee,
3. as a partner authorised to represent a commercial partnership, or
4. as authorised representative with full power of attorney or in a managerial position as procura-holder or authorised representative with a commercial power of attorney of a legal person or an association of persons named in numbers 2 or 3, or
5. as another person acting with responsibility for managing the operation or enterprise of a legal person or of an association of persons named in numbers 2 or 3,

also including the monitoring of the management or the other exercise of monitoring activities in a managerial position

which in relation to him and under the other prerequisites of sections 22 to 25 and 28 would permit the confiscation of an object or of its replacement value or justify the exclusion of compensation, then his act shall be attributed by application of these provisions to the person represented.

(2) Section 9 subsection 3 shall apply mutatis mutandis.

CHAPTER SIX CONFISCATION OF THE VALUE OF THE PROCEEDS OF AN OFFENCE; REGULATORY FINE IMPOSED ON LEGAL PERSONS AND ASSOCIATIONS OF PERSONS

Section 29a

Confiscation of the Value of the Proceeds of an Offence

(1) If the perpetrator has gained something by means of or for an act which may be sanctioned by a regulatory fine, and if a regulatory fine has not been assessed against him for the act, the confiscation of a sum up to the amount of the pecuniary advantage gained may be ordered.

(2) The ordering of the confiscation of a sum up to the amount stated in subsection 1 may be directed against another party who is not the offender if

1. he has obtained something by means of an act which may be sanctioned by a regulatory fine and the offender acted for him,
2. what has been acquired
 - a) was transferred to him free of charge or without lawful reason, or
 - b) was transferred, and he recognised or should have recognised that what has been acquired originates from an act which may be sanctioned by a regulatory fine, or
3. what has been acquired
 - a) has passed to him as an inheritance, or
 - b) was transferred to him as a person entitled to a compulsory portion or a legatee.

The first sentence numbers 2 and 3 shall not apply if what has been acquired was previously transferred to a third party who did not recognise or could not be expected to recognise that what has been acquired originates from an act which may be sanctioned by a regulatory fine, for a fee and with a lawful reason.

(3) The expenditure of the offender or of the third party shall be deducted when determining the value of what has been acquired. What was expended or used for the commission of the offence or its preparation shall however not be allowed.

(4) The extent and value of what has been acquired, including the deductible expenditure, may be estimated. Section 18 shall apply mutatis mutandis.

(5) If no regulatory fining proceedings are initiated against the perpetrator, or if they are discontinued, confiscation may be ordered in its own right.

Section 30

Regulatory Fine Imposed on Legal Persons and on Associations of Persons

(1) Where someone acting

1. as an entity authorised to represent a legal person or as a member of such an entity,

2. as chairman of the executive committee of an association without legal capacity or as a member of such committee,
3. as a partner authorised to represent a partnership with legal capacity, or
4. as the authorised representative with full power of attorney or in a managerial position as procura-holder or the authorised representative with a commercial power of attorney of a legal person or of an association of persons referred to in numbers 2 or 3,
5. as another person responsible on behalf of the management of the operation or enterprise forming part of a legal person, or of an association of persons referred to in numbers 2 or 3, also covering supervision of the conduct of business or other exercise of controlling powers in a managerial position,

has committed a criminal offence or a regulatory offence as a result of which duties incumbent on the legal person or on the association of persons have been violated, or where the legal person or the association of persons has been enriched or was intended to be enriched, a regulatory fine may be imposed on such person or association.

(2) The regulatory fine shall amount

1. in the case of a criminal offence committed with intent, to not more than ten million Euros,
2. in the case of a criminal offence committed negligently, to not more than five million Euros.

Where there has been commission of a regulatory offence, the maximum regulatory fine that can be imposed shall be determined by the maximum regulatory fine imposable for the regulatory offence concerned. If the Act refers to this provision, the maximum amount of the regulatory fine in accordance with the second sentence shall be multiplied by ten for the offences referred to in the Act. The second sentence shall also apply where there has been commission of an act simultaneously constituting a criminal offence and a regulatory offence, provided that the maximum regulatory fine imposable for the regulatory offence exceeds the maximum in accordance with the first sentence.

(2a) In the event of a universal succession or of a partial universal succession by means of splitting (section 123 subsection 1 of the Reorganisation Act [*Umwandlungsgesetz*]), the regulatory fine in accordance with subsections 1 and 2 may be imposed on the legal successor(s). In such cases, the regulatory fine may not exceed the value of the assets which have been assumed, as well as the amount of the regulatory fine which is suitable against the legal predecessor. The legal successor(s) shall take up the procedural position in the regulatory fine proceedings in which the legal predecessor was at the time when the legal succession became effective.

(3) Section 17 subsection 4 and section 18 shall apply *mutatis mutandis*.

(4) If criminal proceedings or regulatory fining proceedings are not commenced on account of the criminal offence or of the regulatory offence, or if such proceedings are discontinued, or if imposition of a criminal penalty is dispensed with, the regulatory fine may be assessed independently. Statutory provision may be made to the effect that a regulatory fine may be imposed in its own right in further cases as well. Independent assessment of a regulatory fine against the legal person or association of persons shall however be precluded where the criminal offence or the regulatory offence cannot be prosecuted for legal reasons; section 33 subsection 1 second sentence shall remain unaffected.

(5) Assessment of a regulatory fine incurred by the legal person or association of persons shall, in respect of one and the same offence, preclude a confiscation order, in accordance with sections 73 or 73c of the Penal Code or in accordance with section 29a, against such person or association of persons.

(6) On issuance of a regulatory fining notice, in order to secure the regulatory fine, section 111e subsection 2 of the Code of Criminal Procedure shall be applied on proviso that the judgment is substituted by the regulatory fining notice.

CHAPTER SEVEN STATUTE OF LIMITATION

Section 31

Prosecution Barred by the Statute of Limitation

(1) Prosecution of regulatory offences and the ordering of incidental consequences shall be barred after the period of limitation has expired. Section 27 subsection 2 first sentence number 1 shall remain unaffected.

(2) If not otherwise provided by statute, the period of limitation for the prosecution of regulatory offences shall expire:

1. after three years in the case of regulatory offences for which a maximum regulatory fine of more than fifteen thousand Euros may be imposed,
2. after two years in the case of regulatory offences for which a maximum regulatory fine is imposable ranging from more than two thousand five hundred to fifteen thousand Euros,
3. after one year in the case of regulatory offences for which a maximum regulatory fine is imposable ranging from more than one thousand Euros to two thousand five hundred Euros,
4. after six months in all other cases involving regulatory offences.

(3) The statute of limitation shall begin to run as soon as the act is completed. If a result constituting a factual element of the offence occurs only later, the period of limitation shall begin to run at that time.

Section 32

Period of Limitation Tolloed by Statute

(1) The period of limitation shall be tolled for as long as prosecution cannot be commenced or continued by operation of the statute. This shall not apply if the act cannot be prosecuted due to the absence of a request or authorisation.

(2) If prior to the expiry of the period of limitation a judgment of the court of first instance or a decision in accordance with section 72 has been rendered, the period of limitation shall not expire prior to the date on which the proceedings were concluded with final and binding effect.

Section 33

Period of Limitation Interrupted

(1) The period of limitation shall be interrupted by

1. the initial examination of the person concerned, the notification that investigation proceedings have been initiated against him, or by the order requiring such examination or notification,
2. any judicial examination of the person concerned or of a witness, or by the order requiring such examination,
3. any appointment of an expert by the prosecuting authority or the judge, if the person concerned has previously been examined or was informed of the initiation of the investigation proceedings,
4. any order by the prosecuting authority or by the judge for seizure or search, and by judicial decisions by which such order is upheld,

5. the temporary discontinuation of the proceedings by the prosecuting authority or the judge because of absence of the person concerned, as well as by any order of the prosecuting authority or the judge issued after such discontinuation of the proceedings to establish the whereabouts of the person concerned or to secure evidence,
6. any request by the prosecuting authority or the judge to undertake an investigatory act in a foreign country,
7. the statutory hearing of another authority by the prosecuting authority prior to conclusion of the investigations,
8. the transfer of the case to the administrative authority by the public prosecution office in accordance with section 43,
9. issuance of a regulatory fining notice, so far as such notice is served within two weeks, otherwise by service thereof,
10. receipt of the files at the Local Court in accordance with section 69 subsection 3 first sentence and subsection 5 second sentence and referral of the case to the administrative authority in accordance with section 69 subsection 5 first sentence,
11. any fixing of a date for a main hearing,
12. reference to the possibility of giving a decision without a main hearing (section 72 subsection 1 second sentence),
13. preferring public charges,
14. the opening of main proceedings,
15. a penal order or any other decision equivalent to a judgment.

In independent proceedings involving an order imposing an incidental consequence or a regulatory fine against a legal person or an association of persons, the period of limitation shall be interrupted by the acts referred to in the first sentence for the purpose of carrying out independent proceedings.

(2) The running of the statute of limitations shall be interrupted by a written order or decision at the time at which the order or decision is drawn up. If the document has not immediately commenced processing after being drawn up, then the time it is actually submitted for processing shall be decisive.

(3) After each interruption, the statute of limitations shall commence to run anew. However, prosecution shall be barred by the statute of limitations at the latest either when, since the time indicated in section 31 subsection 3 twice the statutory period of limitations has elapsed, or when at least two years have elapsed. If a person is charged with an act in proceedings pending at a court, which at the same time constitutes a criminal offence and a regulatory offence, then the period ensuing from the criminal penalty imposable shall be deemed to be the statutory period of limitations within the meaning of the second sentence. Section 32 shall remain unaffected.

(4) The interruption shall be effective only in respect of the person to whom the act relates. In cases falling under subsection 1 first sentence numbers 1 to 7, 11, and 13 to 15, the interruption shall also occur if the act is aimed at prosecution of the offence as a criminal offence.

Section 34

Execution Subject to the Statute of Limitations

- (1) A regulatory fine imposed with final and binding effect may no longer be executed after expiry of the period of limitation.
- (2) The period of limitation shall amount to

1. five years in the case of a regulatory fine exceeding one thousand Euros;
 2. three years in the case of a regulatory fine not exceeding one thousand Euros.
- (3) The period of limitation shall begin on the day on which the decision enters into final and binding effect.
- (4) The statute of limitation shall be tolled for as long as
1. execution may not be commenced or continued by operation of statute,
 2. execution is suspended, or
 3. easier means of payment have been granted.
- (5) Subsections 1 to 4 shall apply mutatis mutandis to incidental consequences resulting in an obligation to pay. If such incidental consequences have been ordered in addition to a regulatory fine, execution of one legal consequence shall not fall under the statute of limitation earlier than that of the others.

PART II REGULATORY FINING PROCEEDINGS

CHAPTER ONE JURISDICTION CONCERNING PROSECUTION AND SANCTIONING OF REGULATORY OFFENCES

Section 35

Prosecution and Sanctioning by the Administrative Authority

- (1) The administrative authority shall have jurisdiction over the prosecution of regulatory offences unless, in accordance with this Act, the public prosecution office has such jurisdiction or, in its place, the judge in respect of specific acts of prosecution.
- (2) The administrative authority shall also have jurisdiction to sanction regulatory offences unless, in accordance with this Act, the court has such jurisdiction.

Section 36

Substantive Jurisdiction of the Administrative Authority

- (1) Substantive jurisdiction shall lie with
1. the administrative authority designated by statute,
 2. in the absence of such designation
 - a) the highest substantively competent *Land* authority, or
 - b) the substantively competent Federal Ministry as far as the law is implemented by Federal authorities.
- (2) The *Land* government may, by means of a statutory instrument, delegate jurisdiction in accordance with subsection 1 number 2a, to another authority or agency. The *Land* government may delegate the authorisation to the highest *Land* authority.
- (3) The Federal Ministry competent in accordance with subsection 1 number 2b may, by means of a statutory instrument that shall not require the approval of the Bundesrat, delegate its jurisdiction to another authority or agency.

Section 37

Local Jurisdiction of the Administrative Authority

- (1) Local jurisdiction shall lie with the administrative authority in whose district
1. the regulatory offence was committed or discovered, or
 2. the person concerned has his domicile at the time the regulatory fining proceedings are initiated.

(2) If the domicile of the person concerned changes after the regulatory fining proceedings have been initiated, the administrative authority in whose district the new domicile is located shall also have local jurisdiction.

(3) If the person concerned has no domicile within the territorial scope of this Act, jurisdiction shall also be determined by the habitual place of residence.

(4) If the regulatory offence was committed outside the territorial scope of this Act, on board a vessel authorised to fly the Federal flag, the administrative authority shall also have local jurisdiction in whose district the home port is located, or the port within the territorial scope of this Act first reached by the vessel after commission of the offence. The first sentence shall apply mutatis mutandis to aircraft authorised to bear the nationality sign of the Federal Republic of Germany.

Section 38 **Connected Regulatory Offences**

Connected regulatory offences which, in accordance with section 37, individually would be under the jurisdiction of different administrative authorities, shall fall under the jurisdiction of each of these administrative authorities. A connection between several regulatory offences shall be deemed to exist if a person is charged with more than one regulatory offence or if, with regard to the same offence, more than one person is accused of a regulatory offence.

Section 39 **Jurisdiction of More than One Authority**

(1) If in accordance with sections 36 to 38 more than one administrative authority has jurisdiction, preference shall be given to the administrative authority which first examined the person concerned on account of the offence or which first caused the police to examine him, or which first received the files from the police after examination of the person concerned. This administrative authority may, in the cases under section 38, sever the proceedings again in respect of the connected offence.

(2) In the cases under subsection 1 first sentence, however, prosecution and sanctioning may be transferred to one of the other competent administrative authorities by virtue of an agreement between these administrative authorities, if this appears to be expedient in order to accelerate or simplify the proceedings or for other reasons. If more than one administrative authority has substantive jurisdiction, the administrative authority which is to be given preference in accordance with subsection 1 first sentence shall hear the other administrative authorities that have substantive jurisdiction, at the latest prior to conclusion of the investigations.

(3) In the absence of agreement in accordance with subsection 2 first sentence a decision shall, at the request of one of the administrative authorities involved, be given by

1. the common directly superior administrative authority,
2. the common court having jurisdiction in accordance with section 68 in the absence of a common superior administrative authority, and
3. the common superior court for the different courts that would be competent in accordance with section 68.

(4) In cases falling under subsections 2 and 3 the transfer may be revoked in the same way.

Section 40 **Prosecution by the Public Prosecution Office**

In criminal proceedings the public prosecution office shall be competent to prosecute the offence also within the legal dimension of a regulatory offence, unless otherwise provided by statute.

Section 41 **Transfer of the Case to the Public Prosecution Office**

- (1) The administrative authority shall transfer the case to the public prosecution office if there are indications to the effect that the offence constitutes a criminal offence.
- (2) If the public prosecution dispenses with initiating criminal proceedings they shall send the case back to the administrative authority.

Section 42

The Public Prosecution Office Taking Over the Case

- (1) If the public prosecution office prosecutes a criminal offence connected with the regulatory offence, it may take over prosecution of the regulatory offence until the regulatory fining notice is issued. There shall be a connection between a criminal offence and a regulatory offence if a person is accused of a criminal offence as well as of a regulatory offence, or if with regard to the same offence one person is accused of a criminal offence and another person of a regulatory offence.
- (2) The public prosecution office shall take over prosecution only for the purpose of accelerating the proceedings or on account of the factual connection or if for other reasons it is deemed appropriate for the investigations or for the decision.

Section 43

Transfer of the Case to the Administrative Authority

- (1) In cases under section 40, if the public prosecution office discontinues the proceedings only in respect of the criminal offence, or in the cases under section 42, if prosecution is not taken over but there are indications to the effect that the offence may be prosecuted as a regulatory offence, it shall transfer the case to the administrative authority.
- (2) If the public prosecution office has taken over prosecution, it may transfer the case to the administrative authority as long as the proceedings are not yet pending before the court; it must transfer the case if the proceedings are terminated only in respect of the criminal offence.

Section 44

Binding Effect for the Administrative Authority

The administrative authority shall be bound by the decision of the public prosecution office as to whether or not an offence is to be prosecuted as a criminal offence.

Section 45

Jurisdiction of the Court

If the public prosecution office prosecutes the regulatory offence together with a connected criminal offence, the court which has jurisdiction over the criminal case shall be competent for sanctioning the regulatory offence.

CHAPTER TWO

GENERAL PROCEDURAL PROVISIONS

Section 46

Application of the Provisions Regarding Criminal Proceedings

- (1) Unless otherwise provided by this Act, the provisions of general statutes concerning criminal proceedings, particularly those of the Code of Criminal Procedure, of the Courts Constitution Act and of the Youth Court Act, shall apply mutatis mutandis to the regulatory fining proceedings.
- (2) Unless otherwise provided by this Act, the prosecuting authority shall have the same rights and obligations in the regulatory fining proceedings as the public prosecution office when prosecuting criminal offences.
- (3) Committal to an institution, apprehension, and provisional detention, confiscation of postal items and telegrams, as well as requests for information regarding matters that are subject to post and telecommunications secrecy shall be inadmissible. Section 160 subsection 3 second sentence of the Code of Criminal Procedure concerning the court assistance agency shall not be applicable. Proceedings to compel public charges shall not

take place. The provisions concerning participation of the aggrieved person in the proceedings and on the national register of proceedings conducted by the public prosecution offices shall not be applicable; this shall not apply to section 406e of the Code of Criminal Procedure.

(4) Section 81a subsection 1 second sentence of the Code of Criminal Procedure shall be applied with the restriction that only the taking of blood samples and other minor interventions are permissible. In derogation from section 81a subsection 2 first sentence of the Code of Criminal Procedure, the taking of a blood sample shall not require a court order if specific facts justify the suspicion that a regulatory offence has been committed

1. in accordance with sections 24a and 24c of the Road Traffic Act (*Straßenverkehrsgesetz*), or

2. in accordance with section 7 subsection 1 of the Act on Tasks in Inland Waterways (*Binnenschifffahrtsgesetz*), in conjunction with a provision contained in a statutory instrument issued on the basis of section 3 subsection 1 first sentence number 1 of the Act on Tasks in Inland Waterways, insofar as such provision regulates behaviour in traffic within the meaning of section 3 subsection 1 first sentence number 1 (a) (aa) of the Act on Tasks in Inland Waterways.

Blood samples and other body cells taken in criminal proceedings, the taking of which would have been admissible in regulatory fining proceedings in accordance with the first sentence, may be used. Use of blood samples and other body cells for the purpose of conducting an examination within the meaning of section 81e of the Code of Criminal Procedure shall be inadmissible.

(4a) Section 100j subsection 1 first sentence number 2 of the Code of Criminal Procedure, also in conjunction with section 100j subsection 2 of the Code of Criminal Procedure, shall be applied with the restriction that the collection of subscriber information is only permissible in order to prosecute regulatory offences on which regulatory fines of a maximum of more than fifteen thousand Euro are imposable on natural persons.

(5) The order to bring the person concerned and any witness who fails to comply with a summons before the prosecuting authority shall only be made by the judge. Detention ordered to force the witness to testify (section 70 subsection 2 of the Code of Criminal Procedure) may not exceed six weeks.

(6) In proceedings against juveniles and adolescents, recourse to the services of the youth court assistance agency (section 38 of the Youth Court Act) may be dispensed with if their participation is not necessary for the proper conduct of the proceedings.

(7) In court proceedings, the decision shall be given by divisions for regulatory fining matters at the Local Court, by chambers for regulatory fining matters at the Regional Court, and by panels for regulatory fining matters at the Higher Regional Court, as well as at the Federal Court of Justice.

(8) The provisions relating to the implementation of section 191a subsection 1 first to fourth sentences of the Courts Constitution Act in the regulatory fining proceedings shall be determined in the statutory instrument in accordance with section 191a subsection 2 of the Courts Constitution Act.

Section 47

Prosecution of Regulatory Offences

(1) The prosecution of regulatory offences shall be within the duty-bound discretion of the prosecuting authority. As long as the proceedings are pending before the prosecuting authority, they may be terminated by such authority.

(2) If proceedings are pending before the court, and if sanctioning is not deemed appropriate by the court, it may, with the consent of the public prosecution office, discontinue the proceedings at any stage. Such consent shall not be required where a regulatory fine of up to one hundred Euros has been imposed in a regulatory fining notice and the public

prosecution office has declared that it will not attend the main hearing. The decision shall be incontestable.

(3) Discontinuation of the proceedings shall not be made to depend on, or relate to, payment of a sum of money to a non-profit-making institution or other agency.

Section 48 **Deleted**

Section 49

Inspection of the Files by the Person Concerned and by the Administrative Authority

(1) The administrative authority shall grant the person concerned on request inspection of the files insofar as the purpose of the investigation, including in a different set of criminal or regulatory fining proceedings, cannot be endangered and no third persons have opposing and overriding interests that are worthy of protection. In the event that the files are not kept in electronic form, copies from the files may be provided in place of the inspection of the files.

(2) Where the public prosecution office is the prosecuting authority, the administrative authority that would otherwise have jurisdiction shall be entitled to inspect the files which have been submitted to the court or which would have to be submitted in court proceedings, as well as to inspect secured and seized items. Upon application, files which are kept in paper form shall be sent to the administrative authority for inspection.

Section 49a

Ex officio Transmission Encompassing Several Sets of Proceedings

(1) Courts, public prosecution offices and administrative authorities may transmit personal data from regulatory fining matters ex officio to the competent authorities and courts if in the view of the transmitting agency this is required for

1. the prosecution of criminal offences or of other regulatory offences,
2. decisions in other regulatory fining matters, including decisions relating to the execution of regulatory fining decisions or in pardoning matters, or
3. other decisions or measures in accordance with section 477 subsection 2 of the Code of Criminal Procedure;

the same shall apply to the authorities of the police service where this is permitted by application mutatis mutandis of section 480 subsection 1 of the Code of Criminal Procedure. Sections 478, 479 subsections 1, 2, 5 first sentence, and subsection 6, as well as section 480 subsections 1 and 2, of the Code of Criminal Procedure shall apply mutatis mutandis.

(2) Transmission shall also be admissible if there are special circumstances in an individual case requiring transmission for the purposes referred to in section 14 subsection 1 numbers 4 to 9 of the Introductory Act to the Courts Constitution Act in conjunction with mutatis mutandis application of subsection 2 second and fourth sentences of that provision.

(3) There shall be no transmission in accordance with subsections 1 and 2 so far as it is apparent to the transmitting agency that the person concerned has overriding interests, worthy of protection, in excluding transmission.

(4) The following additional provisions shall apply mutatis mutandis to transmission by administrative authorities:

1. sections 12, 13, 16, 17 numbers 2 to 5 and 18 to 21 of the Introductory Act to the Courts Constitution Act, and
2. section 22 of the Introductory Act to the Courts Constitution Act, provided that the procedure in accordance with section 62 subsection 1 first sentence and subsection 2 shall take the place of the procedure in accordance with sections 23 to 30 of that Act, and that the court referred to in section 68 shall take the place of the court referred to in section 25 of the Introductory Act to the Courts Constitution Act.

In addition, the authority with jurisdiction over the regulatory fining proceedings may transmit the decision concluding such proceedings to the administrative authority that initiated the regulatory fining proceedings or otherwise participated in such proceedings, if in the view of the transmitting agency such transmission is necessary for the purpose of exercising a function within the responsibility of the recipient and relating to the subject-matter of the proceedings; where the decision has dismissed an appellate remedy, the contested decision may also be transmitted. The Federal Ministry responsible for regulatory fining provisions under Federal law may in this respect and with the consent of the Federal Council issue general administrative regulations within the meaning of section 12 subsection 5 of the Introductory Act to the Courts Constitution Act.

(5) Furthermore, section 481 of the Code of Criminal Procedure shall apply mutatis mutandis. Transmission in accordance with sections 481 subsection 1 second sentence of the Code of Criminal Procedure shall be dispensed with subject to subsection 3. Of section 482 of the Code of Criminal Procedure, only subsection 1 shall apply mutatis mutandis, whereby the transmission of the file reference also to another administrative authority which has given rise to the regulatory fining proceedings or otherwise participated in the proceedings shall be effected.

Section 49b

Transmission Encompassing Several Sets of Proceedings in Response to Requests; Other Use of Data for Purposes Encompassing Several Sets of Proceedings

Sections 474 to 476, 478 to 481, and 498 subsection 2, of the Code of Criminal Procedure shall apply mutatis mutandis to the issuance of information and granting of inspection of files in response to requests, as well as to other use of data from regulatory fining proceedings for purposes encompassing several sets of proceedings, where

1. in section 474 subsection 2 first sentence number 1 of the Code of Criminal Procedure the criminal offence is replaced by the regulatory offence,
2. in section 474 subsection 2 first sentence numbers 2 and 3 and section 481 of the Code of Criminal Procedure, special provisions relating to the transmission or use of personal information from criminal proceedings are replaced by those on the transmission or use of personal data from regulatory fining proceedings,
3. in section 479 subsection 1 first sentence of the Code of Criminal Procedure, the purposes of the criminal proceedings are replaced by the purposes of the regulatory fining proceedings,
4. in section 479 subsection 4 number 2 of the Code of Criminal Procedure the period of two years is replaced by a period of one year, and
5. section 480 subsection 3 sentence 1 of the Code of Criminal Procedure is to be applied on proviso that, for the transmission by administrative authorities, the court designated in section 68 rules on the application for a court ruling in proceedings in accordance with section 62 subsection 1 sentence 1 and subsection 2.

Section 49c

Arrangements Relating to Files

(1) For the processing and use of personal data in files, subject to section 496 subsection 3 of the Code of Criminal Procedure and to special provisions in other statutes, the provisions of the Second Chapter of the Eighth Book of the Code of Criminal Procedure shall apply mutatis mutandis subject to the following provisions.

(2) Subject to subsection 3 storage, alteration and use may only be effected by courts, public prosecution offices and administrative authorities, including execution authorities, as well as the authorities of the police service, where this is admissible in accordance with sections 483, 484 subsection 1 and section 485 of the Code of Criminal Procedure; here, the purposes of the criminal proceedings shall be replaced by the purposes of the regulatory

fining proceedings. Personal data from regulatory fining proceedings may also be used where they are required for purposes of criminal proceedings, pardoning proceedings or international mutual legal and administrative assistance in criminal and regulatory fining matters. The storage of personal data of persons who were not of criminally responsible age at the time of the offence shall be inadmissible for purposes of future regulatory fining proceedings.

(3) The creation of a joint automated file in accordance with section 486 of the Code of Criminal Procedure for the agencies named in subsection 2 belonging to the subordinate authorities of various Federal or *Land* Ministries shall only be admissible if it is required for properly carrying out tasks and taking account of the interests of the persons concerned that are worthy of protection.

(4) Section 487 subsection 1 first sentence of the Code of Criminal Procedure shall apply subject to the proviso that the data stored in accordance with subsections 1 to 3 may be transmitted to the competent agencies only for the purposes named in subsection 2; section 49a subsection 3 shall apply mutatis mutandis to ex officio transmission. Section 487 subsection 2 of the Code of Criminal Procedure shall apply subject to the proviso that transmission may take place where it could be effected from the files in accordance with this Act.

(5) Where personal data are stored for purposes of the future prosecution of regulatory offences, the period within the meaning of section 489 subsection 4 second sentence number 1 of the Code of Criminal Procedure may not exceed five years for a regulatory fine of more than Euro 250, two years in all other cases falling under section 489 subsection 4 second sentence numbers 1 to 3 of the Code of Criminal Procedure.

Section 49d

Protection of Personal Data in an Electronic File

Section 496 subsections 1 and 2, as well as sections 497 and 498 subsection 1, of the Code of Criminal Procedure shall apply mutatis mutandis, whereby the respective regulatory fining proceedings shall replace the respective criminal proceedings in section 496 subsection 1 and section 498 subsection 1 of the Code of Criminal Procedure.

Section 50

Information as to Measures Taken by the Administrative Authority

(1) Orders, directives and other measures of the administrative authority shall be brought to the attention of the person to whom the measure refers without formal service thereof. If a legal remedy subject to a time limit is admissible in respect of the measure, it shall be brought to such person's attention in a notice to be served.

(2) On issuance of such notice by the administrative authority as may be contested by legal remedy subject to a time limit, the person to whom the measure refers shall be informed of the possibility of contesting the notice, as well as of the time-limit and the form stipulated therefor.

Section 51

Procedure for Service Effected by the Administrative Authority

(1) The provisions of the Act on Service Effected by Administrative Authorities shall apply to the procedure for the service of documents by the administrative authority if an administrative authority of the Federation conducts the proceedings, in other cases the corresponding provisions of *Land* law shall apply, unless otherwise provided by subsections 2 to 5. If a document is prepared by means of automatic devices, the document so prepared shall be served.

(2) A notice (section 50 subsection 1 second sentence) shall be served upon the person concerned and, where he has a statutory representative, shall be communicated to the latter.

(3) The defence counsel chosen whose power of attorney is proven, as well as the appointed defence counsel, shall be deemed entitled to receive service and other communications on behalf of the person concerned; this shall only apply to the service of a summons issued to

the person concerned where defence counsel has been expressly authorised in the power of attorney to receive summonses. Transmission of a copy of the power of attorney by defence counsel shall suffice as proof of the power of attorney. Submission of the original of the power of attorney may be required; it shall be possible to set a deadline therefor. Where a notice is served on defence counsel in accordance with the first half of the first sentence, the person concerned shall be informed thereof at the same time; he shall be furnished with a copy of the notice without formal service thereof. Where a notice is served on the person concerned, defence counsel shall be informed thereof at the same time, even if there is no power of attorney in the files; he shall be furnished with a copy of the notice without formal service thereof.

(4) Where service meant for the participant is effected on more than one person entitled to receive service, the time limit shall be determined by the service last effected.

(5) Section 6 subsection 1 of the Act on Service Effected by Administrative Authorities and the corresponding provisions of *Land* law shall not be applicable. Where the person concerned has defence counsel, section 8 subsection 1 first and second sentences, and subsection 2 of the Act on Service Effected by Administrative Authorities and the corresponding provisions of *Land* law shall also not be applicable.

Section 52

Restoration of the Status Quo Ante

(1) Sections 44, 45, 46 subsections 2 and 3 and section 47 of the Code of Criminal Procedure concerning restoration of the status quo ante shall apply to the legal remedy, subject to a time limit, in respect of the notice issued by the administrative authority, unless otherwise provided for in subsection 2.

(2) The administrative authority shall decide in respect of restoration of the status quo ante and of postponement of execution. If the court that would have had jurisdiction to give a decision on the merits in the case of a legal remedy sought in time deals with the legal remedy, it shall also give a decision on restoration of the status quo ante and on postponement of execution. If the administrative authority rejects the application for restoration of the status quo ante, the application for a court decision in accordance with section 62 shall be admissible in respect of the notice within two weeks of service.

CHAPTER THREE

PRELIMINARY PROCEEDINGS

I. GENERAL PROVISIONS

Section 53

Responsibilities of the Police

(1) The police force authorities and officials shall, according to their duty-bound discretion, investigate regulatory offences, and shall make all such orders as should not be postponed for the prevention of concealment of facts. When investigating a regulatory offence, they shall have the same rights and duties as apply to the prosecution of criminal offences unless otherwise provided by this Act. They shall forward their files to the administrative authority without delay, in cases of connected offences (section 42) to the public prosecution office.

(2) Officials of the police force appointed as investigative personnel of the public prosecution office (section 152 of the Courts Constitution Act) may order seizures, searches, investigations and other measures in accordance with the provisions of the Code of Criminal Procedure applying to them.

Section 54

Deleted

Section 55

Hearing of the Person Concerned

(1) Section 163a subsection 1 of the Code of Criminal Procedure shall apply subject to the restriction that it shall be sufficient for the person concerned to be given an opportunity to make a statement in response to the accusation.

(2) The person concerned need not be informed that he may consult defence counsel of his own choice even prior to his examination. Section 136 subsection 1 third to fifth sentences of the Code of Criminal Procedure, shall not apply.

II. CAUTIONING PROCEDURE

Section 56

Cautioning by the Administrative Authority

(1) In cases of negligible regulatory offences the administrative authority may caution the person concerned and impose a cautionary fine from five to fifty-five Euros. It may administer a caution without imposing a cautionary fine.

(2) The caution in accordance with subsection 1 first sentence shall only be effective if the person concerned, having been informed of his right of refusal, agrees to being cautioned and pays the cautionary fine as required by the administrative authority either immediately or within a period which should be set at one week, at the agency indicated therefor or at the post office by remittance to such agency. The above time limit should be set if the person concerned is unable to pay the cautionary fine immediately or if it amounts to more than ten Euros.

(3) A certificate shall be issued in respect of the caution in accordance with subsection 1 first sentence of the amount of the cautionary fine, of payment or, where applicable, of the time limit set for payment. Costs (fees and expenses) shall not be charged.

(4) If the caution in accordance with subsection 1 first sentence has become effective, the offence may no longer be prosecuted in respect of the factual and legal aspects giving rise to the caution.

Section 57

Cautioning by Officials on External Duty and by Police Force Officers

(1) Persons authorised to exercise, on external duty, the power in accordance with section 56 on behalf of the administrative authority shall furnish proof of such authorisation.

(2) The power in accordance with section 56 shall also be exercised by duly authorised police force officers who discover or prosecute in flagrante delicto a regulatory offence and prove their authorisation by virtue of their uniform or in some other way.

Section 58

Authorisation of Cautioning

(1) The authorisation in accordance with section 57 subsection 2 shall be issued by the official's highest superior authority or the office designated by such authority. The highest superior authority shall contact the competent authority in respect of the question as to the regulatory offences where authorisations are to be issued. The relevant competent Federal Ministry shall have jurisdiction over regulatory offences the prosecution and sanctioning of which falls within the jurisdiction of an administrative authority of the Federation, in other cases jurisdiction shall lie with the relevant competent highest *Land* authority.

(2) In so far as uniform treatment is appropriate in relation to certain regulatory offences having regard to their frequency and similarity, general authorisations issued to administrative staff and police force officials for the purpose of cautioning shall contain detailed provisions regarding the cases and the conditions under which cautioning is to take place, and regarding the amount of the cautionary fine to be imposed.

III. PROCEEDINGS OF THE ADMINISTRATIVE AUTHORITY

Section 59

Remuneration of Experts, Interpreters and Translators, Compensation of Witnesses and Third Parties

The Justice Remuneration and Compensation Act shall apply mutatis mutandis to the remuneration of experts, interpreters and translators, as well as to the compensation of witnesses and third parties (section 23 of the Justice Remuneration and Compensation Act).

Section 60 **Defence**

If participation of defence counsel is imperative in the proceedings of the administrative authority (section 140 subsection 2 of the Code of Criminal Procedure) the administrative authority shall be competent to appoint such counsel. The administrative authority shall also give a decision on admission of other persons as defence counsel and on rejection of defence counsel (section 138 subsection 2 section 146a subsection 1 first and second sentences of the Code of Criminal Procedure).

Section 61 **Conclusion of Investigations**

As soon as the administrative authority has concluded its investigations, it shall make a note of this in the files if it is considering further prosecution of the regulatory offence concerned.

Section 62 **Legal Remedy Against Measures of the Administrative Authority**

- (1) The person concerned and other persons against whom the measure is directed may file a request for a court decision in respect of orders, directives and other measures taken by the administrative authority in the regulatory fining proceedings. This shall not apply to measures which are taken only for the preparation of the decision as to whether a regulatory fining notice will be issued or whether the proceedings will be terminated and where such measures themselves lack relevance in their own right.
- (2) The court competent in accordance with section 68 shall decide on the request. Sections 297 to 300, 302, 306 to 309 and 311a of the Code of Criminal Procedure, as well as the provisions of the Code of Criminal Procedure regarding imposition of the costs of proceedings upon a complaint shall apply mutatis mutandis. The court's decision shall not be contestable unless otherwise provided by statute.

IV. PROCEEDINGS OF THE PUBLIC PROSECUTION OFFICE

Section 63 **Participation of the Administrative Authority**

- (1) If the public prosecution office has taken over prosecution of the regulatory offence (section 42), the staff of such administrative authority as would otherwise be competent, being entrusted with the investigation of regulatory offences, shall have the same rights and duties as police force officials in regulatory fining proceedings. Such administrative authority may order confiscations, emergency sales, searches and investigations in accordance with the provisions of the Code of Criminal Procedure applicable to investigative personnel of the public prosecution office.
- (2) Such administrative authority shall be informed of the indictment and of the request for issuance of a penal order to the extent that they relate to a regulatory offence.
- (3) If the public prosecution office considers discontinuing the proceedings in respect of a regulatory offence in cases falling under section 40 or 42, it shall hear the administrative authority that would otherwise have jurisdiction. The public prosecution office may dispense with this if the administrative authority's particular expertise may be dispensed with for the decision.

Section 64 **Public Charges Extended to the Regulatory offence**

If in cases falling under section 42 the public prosecution office prefers charges on account of a criminal offence, those charges shall extend to the regulatory offence where a sufficient reason exists according to the investigations.

CHAPTER FOUR REGULATORY FINING NOTICE

Section 65 General

Unless otherwise determined by this Act, regulatory offences shall be sanctioned by a regulatory fining notice.

Section 66 Contents of the Regulatory Fining Notice

(1) The regulatory fining notice shall contain:

1. information concerning the identity of the person concerned and of any other persons involved;
2. defence counsel's name and address;
3. the designation of the offence the person concerned is charged with, time and place of commission and the statutory elements of the regulatory offence and the regulatory fining provisions applied;
4. the evidence;
5. the regulatory fine and the incidental consequences.

(2) The regulatory fining notice shall further contain

1. an indication to the effect that
 - a) the regulatory fining notice shall become final and binding and enforceable if no objection is filed in accordance with section 67,
 - b) in the event of objection a decision may be given that is more disadvantageous to the person concerned,
2. a request addressed to the person concerned that
 - a) the regulatory fine or specified instalments be paid to the relevant public treasury, or
 - b) in the event of inability to pay a declaration be made, in writing or for the record, to the enforcement authority (section 92) stating why he cannot reasonably be expected, in the light of his financial circumstances, to pay on time,

no later than two weeks after entry into force or at any later date specified (section 18)
and

3. the information that coercive detention (section 96) may be imposed if the person concerned does not comply with his obligation under number 2.

(3) The regulatory fining notice need not be substantiated by any information beyond that contained in subsection 1 numbers 3 and 4.

CHAPTER FIVE OBJECTION AND COURT PROCEEDINGS

I. OBJECTION

Section 67 Form and Time Limit

- (1) The person concerned may file an objection to the regulatory fining notice within two weeks after service either in writing or for the record with the administrative authority that issued such notice. Sections 297 to 300 and section 302 of the Code of Criminal Procedure regarding appellate remedies shall apply *mutatis mutandis*.
- (2) The objection may be confined to specific points of complaint.

Section 68 **Court with Jurisdiction**

- (1) The Local Court in whose district the administrative authority has its seat shall give a decision on an objection to the regulatory fining notice. The Local Court judge shall give a decision sitting alone.
- (2) The Youth Court judge shall have jurisdiction in proceedings in respect of juveniles and adolescents.
- (3) If there is more than one Local Court district or more than one part of such district within the district of the administrative authority of a *Land*, the *Land* government may, by ordinance and in derogation from subsection 1 determine the jurisdiction of the Local Court according to where

1. the regulatory offence or one of the regulatory offences was committed (place of commission), or
2. the person concerned has his domicile (place of residence)

if, given the large number of cases or the long distance between the place of commission or the place of residence and the seat of the Local Court having jurisdiction in accordance with subsection 1 it appears appropriate to assign the sets of proceedings to more than one Local Court; section 37 subsection 3 shall apply *mutatis mutandis*. The district determining the jurisdiction of the Local Court in accordance with the first sentence may comprise the districts of more than one Local Court. The *Land* government may transfer the authorisation to the *Land* department of justice.

Section 69 **Intermediate Proceedings**

- (1) If the objection has not been filed in due time, not in the prescribed form, or otherwise not validly filed, the administrative authority shall reject it as being inadmissible. Within two weeks of service, an application can be made, in accordance with section 62, for a court decision in respect of the notice.
- (2) If the objection is admissible, the administrative authority shall examine whether to uphold or withdraw the regulatory fining notice. For this purpose it may

1. order or itself undertake further investigations;
2. request statements concerning official observations, examinations and knowledge (section 77a subsection 2) from authorities and other agencies.

The administrative authority may also give the person concerned the opportunity to make statements, within a time limit to be determined, on whether he wants to adduce facts and evidence in his defence in the further proceedings, and if so, what facts and evidence; in this connection he shall be informed that, by statute, he is free to respond to the accusation or not to make a statement on the matter.

(3) The administrative authority shall forward the files via the public prosecution office to the Local Court if it does not withdraw the regulatory fining notice and does not proceed in accordance with subsection 1 first sentence; it shall state the reasons therefor in the files as far as the factual situation so requires. The decision on an application for inspection of the files and on granting of same shall be taken prior to transmission of the files (section 49 subsection 1 of this Act, section 147 subsection 1 of the Code of Criminal Procedure).

(4) On receipt of the files by the public prosecution office, the functions of the prosecuting authority shall be assumed by the public prosecution office. The public prosecution office

shall submit the files to the Local Court judge if it neither discontinues the proceedings nor conducts further investigations.

(5) If the facts of the case have evidently not been sufficiently clarified, the Local Court judge may refer the matter back to the administrative authority, indicating the reasons and with the consent of the public prosecution office; upon receipt of the files, the administrative authority shall again have jurisdiction over prosecution and sanctioning. If the Local Court judge does not, on renewed transmission, see a sufficient suspicion of commission of a regulatory offence he may, in a final order, refer the case back to the administrative authority. Such ruling shall be incontestable.

Section 70 **Court Decision on the Admissibility of an Objection**

(1) If the provisions concerning the filing of an objection have been disregarded, the court shall reject the objection as being inadmissible.

(2) An immediate complaint shall be admissible in respect of the ruling.

II. MAIN PROCEEDINGS

Section 71 **Main Hearing**

(1) The procedure following an admissible objection shall be governed, unless otherwise provided by this Act, by the provisions of the Code of Criminal Procedure applicable following an admissible objection to a penal order.

(2) For enhanced clarification of the matter, the court may

1. order specific evidence to be taken,
2. request submission of statements about official observations, examinations and knowledge (section 77a subsection 2) from authorities and other agencies.

In preparation for the main hearing, the court may also give the person concerned the opportunity to state within a time limit to be determined whether he wants to adduce facts and evidence in his defence, and if so, what facts and evidence; section 69 subsection 2 second half of the third sentence shall apply.

Section 72 **Decision in a Ruling**

(1) If the court determines that a main hearing is not required, it may give its decision in a ruling if the person concerned and the public prosecution office do not object to such procedure. Prior to that, the court shall notify them of the provision made for such a procedure and such objection and shall give them the opportunity to make a statement within two weeks upon service of such notification; section 145a subsections 1 and 3 of the Code of Criminal Procedure shall apply mutatis mutandis. The court may dispense with notification to the person concerned and may, even against his objection, give its decision in a ruling if it acquits the person concerned.

(2) An objection received only after expiry of the time limit shall be disregarded. In this case, however, restoration of the status quo ante may be requested against the decision within one week of service under the same conditions as against failure to observe a time limit; on service of the ruling the person concerned shall be informed accordingly.

(3) The court shall determine whether the person concerned is to be acquitted, whether a regulatory fine is to be imposed on him, whether any incidental consequence is to be ordered or whether the proceedings are to be discontinued. The court may not deviate from the decision in the regulatory fining notice to the detriment of the person concerned.

(4) Where a regulatory fine is imposed, the regulatory offence shall be indicated in the ruling; if the factual elements of the offence for which a regulatory fine is imposed have a statutory title, such title should be used to designate the regulatory offence. Section 260 subsection 5 first sentence of the Code of Criminal Procedure shall apply mutatis mutandis. The reasons

given for the ruling shall contain the facts deemed to have been proven and which, in the court's opinion, constitute the factual elements of the regulatory offence. As far as evidence can be inferred from other facts, reference should also be made to those facts. The circumstances governing the assessment of the regulatory fine and the order imposing an incidental consequence shall also be indicated.

(5) If the person concerned is acquitted, the reasoning shall disclose whether the person concerned has been deemed not guilty or whether and for which reasons the offence assumed to be proven has not been deemed to be a regulatory offence. If the ruling cannot be contested by a complaint on a point of law, it need only be stated whether it was for factual or for legal reasons that the regulatory offence with which the person concerned was charged has not been determined.

(6) Provision of reasoning may be dispensed with if the participants in the proceedings so agree. In such case, reference to the content of the regulatory fining notice shall suffice; at its discretion the court may, having regard to the circumstances of the individual case, make additional statements. The full reasons shall be placed on file within five weeks if a complaint on a point of law is filed in respect of the ruling.

Section 73

Presence of the Person Concerned at the Main Hearing

(1) The person concerned shall be bound to appear at the main hearing.

(2) Upon his application, the court may relieve him of this obligation if he has made a statement on the matter, or if he has declared that he will not make a statement on the matter in the main hearing and if his presence is not required for clarifying important aspects of the facts.

(3) If the court has relieved the person concerned of the obligation of personal appearance, he may be represented by defence counsel with documented power of attorney.

Section 74

Proceedings in Absentia

(1) The main hearing shall be conducted in the absence of the person concerned if he has not appeared and was relieved of the obligation of personal appearance. Previous examinations of the person concerned and his statements put on record and other statements shall be introduced at the main hearing by communication of their essential content or by reading them out. It shall suffice to give defence counsel the indications required in accordance with section 265 subsections 1 and 2 of the Code of Criminal Procedure.

(2) If the person concerned fails to appear without sufficient excuse although he was not relieved of the obligation to appear, the court shall reject the objection in a judgment without a hearing on the merits.

(3) In the summons the person concerned shall be informed of subsections 1 and 2 and section 73 and section 77b subsection 1 first and third sentences.

(4) If the main hearing has been held without the person concerned in accordance with subsection 1 or 2 he may, in respect of the judgment, request within one week of service restoration of the status quo ante on the same conditions as apply in respect of failure to observe a time limit. He shall be informed thereof upon service of the judgment.

Section 75

Attendance of the Public Prosecution Office at the Main Hearing

(1) The public prosecution office shall not be obliged to attend the main hearing. The court shall inform the public prosecution office if it deems its attendance to be appropriate.

(2) If the public prosecution office does not attend the main hearing, its approval shall not be required to discontinue the proceedings (section 47 subsection 2) or to withdraw the objection at the main hearing.

Section 76

Participation of the Administrative Authority

- (1) The court shall give the administrative authority an opportunity to state those aspects which, in its opinion, are important for the decision. This shall also apply when the court is considering discontinuation of the proceedings in accordance with section 47 subsection 2. The date set down for the main hearing shall be communicated to the administrative authority. Its representative shall be heard upon request.
- (2) The court may dispense with involving the administrative authority in accordance with subsection 1 if its particular expertise is not needed for the decision.
- (3) If the public prosecution office considers withdrawing the case, section 63 subsection 3 shall apply *mutatis mutandis*.
- (4) The administrative authority shall be informed of the judgment and other decisions concluding the proceedings.

Section 77

Scope of the Taking of Evidence

- (1) The court shall determine the scope of the evidence to be taken, notwithstanding the duty to establish the truth *ex officio*. Here the court shall also refer to the importance of the matter.
- (2) If the court considers that the facts of the case have been cleared up in the light of the evidence taken so far, it may also reject an application for the taking of evidence, apart from the cases falling under section 244 subsection 3 of the Code of Criminal Procedure, where
 1. upon exercise of its duty-bound discretion the taking of evidence is not required to establish the truth, or
 2. upon its unfettered assessment the evidence or the fact to be proved is adduced without reasonable cause at such a late stage that the taking of evidence would lead to suspension of the main hearing.
- (3) The reasons given for the rejection of an application to take evidence in accordance with subsection 2 number 1 may, in the court decision (section 244 subsection 6 of the Code of Criminal Procedure) usually be confined to a statement to the effect that taking evidence is not needed for establishing the truth.

Section 77a

Simplified Procedure for Taking Evidence

- (1) Examination of a witness, of an expert or of another person concerned may be replaced by a reading aloud of the records regarding a previous examination or of documents containing a statement made by them.
- (2) Statements by authorities and other agencies regarding their official observations, investigations and knowledge, as well as regarding those of their staff, may be read out even if the preconditions contained in section 256 of the Code of Criminal Procedure do not apply.
- (3) The court may also obtain a statement from an authority (subsection 2) by telephone and state its substantial content at the main hearing. The content of such statement shall, upon application, be included in the record.
- (4) The procedure in accordance with subsections 1 to 3 shall require the approval of the person concerned, of defence counsel and of the public prosecution office so far as they are present at the main hearing. Section 251 subsection 1 numbers 3 and 4, subsection 2 numbers 1 and 2, subsections 3 and 4 as well as sections 252 and 253 of the Code of Criminal Procedure shall remain unaffected.

Section 77b

Dispensing with Stating Reasoning for the Judgment

- (1) Written reasoning for the judgment may be dispensed with where all those entitled to contest it refrain from lodging a complaint on a point of law, or where no such complaint is lodged within the time-limit. If the public prosecution office has not attended the main hearing, it shall not be necessary for it to declare its waiver; however, written reasons for the

judgment shall be necessary if so requested by the public prosecution office prior to the main hearing. A declaration of waiver by the person concerned shall be dispensable if he has been released from the obligation to appear at the main hearing, if he was represented by defence counsel at the main hearing, and if the regulatory fine assessed in the judgment was not more than two hundred and fifty Euros.

(2) The reasoning for the judgment shall be placed on file within the time-limit provided for in section 275 subsection 1 second sentence of the Code of Criminal Procedure if restoration of the status quo ante is granted in respect of failure to observe the time-limit set for the complaint on a point of law, or if a complaint on a point of law has been lodged by the public prosecution office in cases under subsection 1 first half of the second sentence, or by the person concerned in cases under subsection 1 third sentence.

Section 78 **Other Measures Simplifying the Proceedings**

(1) In lieu of reading out a document, the court may state its substantial content; however, this shall not apply where the actual wording of the document is decisive. If the person concerned, defence counsel and the representative of the public prosecution office being present at the main hearing have taken cognisance of the wording of the document or had an opportunity to do so, it shall be sufficient to include a statement to that effect in the record. Where reading out documents is dependent on the consent of the persons participating in the proceedings, this shall also apply to the procedure in accordance with the first and second sentences.

(2) Section 273 subsection 2 of the Code of Criminal Procedure shall not be applied.

(3) Section 78 subsection 3 of the Youth Court Act shall apply mutatis mutandis to proceedings in respect of juveniles.

(4) Where a regulatory fine is assessed in respect of a juvenile or an adolescent, the Youth Court judge may at the same time issue an enforcement order in accordance with section 98 subsection 1.

III. APPELLATE REMEDIES

Section 79 **Complaint on a Point of Law**

(1) A complaint on a point of law shall be admissible in respect of a judgment and a ruling in accordance with section 72 if

1. a regulatory fine of more than two hundred and fifty Euros has been assessed in respect of the person concerned,
2. an incidental consequence has been ordered unless such incidental consequence involves property the value of which has been assessed, in the judgment or in the ruling in accordance with section 72, as not exceeding two hundred and fifty Euros,
3. the person concerned has been acquitted of a regulatory offence or the proceedings have been discontinued, or imposition of deprivation of the right to drive has been dispensed with and, in respect of the offence, the regulatory fine assessed in the regulatory fining notice or in the penal order amounted to more than six hundred Euros, deprivation of the right to drive was imposed or the public prosecution office applied for imposition of such regulatory fine or deprivation of the right to drive,
4. the objection has been rejected by judgment as being inadmissible, or
5. a decision has been given in a ruling in accordance with section 72 although the complainant had objected to this procedure in good time or a hearing in accordance with the law has been otherwise denied to him/her.

A complaint on a point of law shall also be admissible where it is admitted (section 80).

(2) If the judgment or the ruling in accordance with section 72 concerns more than one offence, and if the preconditions of the first sentence of subsection 1 numbers 1 to 3, or of the second sentence, apply only with regard to individual offences, a complaint on a point of law shall be admissible to that extent only.

(3) In respect of a complaint on a point of law and the further proceedings, the provisions of the Code of Criminal Procedure and of the Courts Constitution Act concerning an appeal on a point of law only shall apply mutatis mutandis, unless otherwise provided by this Act.

Section 342 of the Code of Criminal Procedure shall also apply mutatis mutandis to an application for restoration of the status quo ante in accordance with section 72 subsection 2 first half of the second sentence.

(4) The time-limit allowed for lodging a complaint on a point of law shall commence upon service of the ruling in accordance with section 72 or of the judgment where it has been pronounced in the complainant's absence and the latter has also not been represented by defence counsel with documented power of attorney in accordance with section 73 subsection 3.

(5) The court hearing the complaint shall give its decision in a ruling. Where the complaint on a point of law is directed against a judgment, the court hearing the complaint may give its decision in a judgment following a main hearing.

(6) Where the court hearing the complaint quashes the contested decision, it may itself, in derogation from section 354 of the Code of Criminal Procedure, give a decision on the merits, or may refer it to the Local Court whose decision is quashed or to another Local Court of the same *Land*.

Section 80

Leave to Lodge a Complaint on a Point of Law

(1) The court hearing the complaint shall, upon application, grant leave to lodge a complaint on a point of law in accordance with section 79 subsection 1 second sentence where this is necessary

1. to enable the judgment to be reviewed for the purpose of developing the law or of ensuring uniformity of court decisions, unless otherwise provided in subsection 2, or

2. to quash the judgment for want of a hearing in accordance with the law.

(2) Leave to lodge a complaint on a point of law shall not be granted in respect of the application of legal rules concerning procedure, and shall be granted in respect of the application of other legal rules only for the purpose of developing the law where

1. a regulatory fine not exceeding one hundred Euros has been assessed in respect of the person concerned, or an incidental consequence involving property has been imposed the value of which has been assessed in the judgment at a sum not exceeding one hundred Euros, or

2. the person concerned has been acquitted of a regulatory offence, or the proceedings have been discontinued and, in respect of the offence, the regulatory fine assessed in the regulatory fining notice or in the penal order did not amount to more than one hundred and fifty Euros, or the public prosecution office applied for imposition of such regulatory fine.

(3) The provisions on the lodging of a complaint on a point of law shall apply mutatis mutandis to the application for leave to lodge a complaint on a point of law. The application shall be deemed to be a complaint on a point of law lodged by way of precaution. The provisions concerning submission of the notices of complaint on a point of law and the reasoning therefor (sections 344 and 345 of the Code of Criminal Procedure) shall be complied with. The reasoning stated in the notices of complaint shall also include the reasons why the preconditions referred to in subsection 1 apply. Section 35a of the Code of Criminal Procedure shall apply mutatis mutandis.

- (4) The court hearing the complaint shall give a decision on the application in a ruling. Sections 346 to 348 of the Code of Criminal Procedure shall apply mutatis mutandis. Reasoning need not be given for the ruling rejecting the application. If the application is rejected, the complaint on a point of law shall be deemed to have been withdrawn.
- (5) If it emerges prior to the decision on the application for leave to lodge a complaint on a point of law that an impediment to the proceedings exists, the court hearing the complaint shall discontinue the proceedings only if the impediment to the proceedings occurred after delivery of the judgment.

Section 80a

Composition of the Regulatory Fining Divisions of the Higher Regional Courts

- (1) The regulatory fining divisions of the Higher Regional Courts shall be composed of one judge, unless other provision has been made.
- (2) The regulatory fining divisions of the Higher Regional Courts shall be composed of three judges, including the presiding judge in proceedings on complaints on a point of law in the cases referred to under section 79 subsection 1 sentence 1 where a regulatory fine exceeding five thousand Euros, or an incidental consequence the value of which exceeds five thousand Euros involving property has been assessed or applied for. The value of a regulatory fine and the value of an incidental consequence involving property shall be calculated together where appropriate.
- (3) In cases referred to under subsection 1, the judge shall transfer the case to the regulatory fining division composed of three judges, if it is necessary to review the judgment or ruling in accordance with section 72 for the purpose of developing the law or for the purpose of ensuring consistency of decisions. This shall also apply in proceedings on an complaint on a point of law which has been admitted, but not in proceedings on its admission.

CHAPTER SIX

REGULATORY FINING PROCEEDINGS AND CRIMINAL PROCEEDINGS

Section 81

Transition from Regulatory Fining Proceedings to Criminal Proceedings

- (1) In regulatory fining proceedings, the court shall not be bound by the evaluation of the offence as a regulatory offence. It may, however, give a decision based on a penal provision only if the person concerned has previously been informed of the change in the legal assessment of the case and has been given the opportunity to defend himself.
- (2) The person concerned shall be informed of the change in the legal assessment at the request of the public prosecution office or ex officio. Upon this information, he shall have the legal status of a defendant. The hearing shall be interrupted if the court considers this to be necessary or if the defendant so applies. The defendant shall be informed of his right to apply for such interruption.
- (3) The special provisions of this Act shall no longer apply in the further proceedings. However, the evidence taken up to that point in the presence of the person concerned may also be used if it has been taken in accordance with these provisions; however, this shall not apply to the taking of evidence in accordance with section 77a and section 78 subsection 1.

Section 82

Imposition of a Regulatory Fine in Criminal Proceedings

- (1) In criminal proceedings, the court shall evaluate the offence referred to in the indictment also from the legal point of view of a regulatory offence.
- (2) Where the court admits the indictment for a main hearing only from the legal point of view of a regulatory offence, the special provisions of this Act shall apply in the further proceedings.

Section 83

Proceedings Relating to Regulatory Offences and Criminal Offences

(1) Where regulatory offences and criminal offences are the subject of the proceedings, and where specific offences are prosecuted only as regulatory offences, section 46 subsections 3, 4, 5 sentence 2 and subsection 7, sections 47, 49, 55, 76 to 78, 79 subsections 1 to 3 as well as section 80 shall also apply to the proceedings relating to such offences.

(2) Where in the cases under subsection 1 a complaint on a point of law is lodged against the judgment where the latter relates only to regulatory offences, and an appeal on points of fact and law in respect of all other cases, a complaint, if lodged in time and in the prescribed form, shall be treated as an appeal on points of fact and law as long as the appeal on points of fact and law is not withdrawn or dismissed as inadmissible. Notices of complaint including the reasoning therefor shall nevertheless be submitted in the prescribed form and be served on the opponent (sections 344 to 347 of the Code of Criminal Procedure); there shall, however, be no need to grant leave in accordance with section 79 subsection 1 second sentence. A complaint on a point of law, in accordance with section 79 subsections 1 and 2 as well as section 80, shall be admissible against a judgment given in an appeal on points of fact and law.

(3) If the court hearing the complaint quashes a judgment where the latter relates to regulatory offences only, it may give its own decision on the merits.

CHAPTER SEVEN

LEGAL FORCE AND RE-OPENING OF THE PROCEEDINGS

Section 84

Effect of the Legal Force

(1) If the regulatory fining notice has become legally effective, or if the court has rendered a final decision on the offence as a regulatory offence or as a criminal offence, the same offence can no longer be prosecuted as a regulatory offence.

(2) The final judgment on the offence as a regulatory offence shall also preclude its prosecution as a criminal offence. The ruling in accordance with section 72 and the ruling of the court hearing the complaint on the offence as a regulatory offence shall be deemed equivalent to the final judgment.

Section 85

Re-opening of the Proceedings

(1) Sections 359 to 373a of the Code of Criminal Procedure shall apply mutatis mutandis to the re-opening of proceedings that have been concluded by a final regulatory fining decision, unless otherwise determined by the provisions below.

(2) The re-opening of the proceedings in favour of the person concerned supported by new facts or evidence (section 359, number 5 of the Code of Criminal Procedure) shall not be permissible if

1. only a regulatory fine of up to two hundred and fifty Euros has been assessed against the person concerned, or
2. three years have passed since the regulatory fining decision has become legally effective.

The first sentence number 1 shall apply mutatis mutandis if an incidental consequence involving property has been ordered the value of which does not exceed two hundred and fifty Euros.

(3) The re-opening of the proceedings to the disadvantage of the person concerned shall be permissible under the prerequisites of section 362 of the Code of Criminal Procedure only for the purpose of creating a conviction in accordance with criminal law. For this purpose, it shall also be permissible if new facts or items of evidence have been submitted which separately or in conjunction with former evidence taken are apt to substantiate the person concerned's conviction for a major crime.

(4) In the re-opened proceedings against the regulatory fining notice, the court competent in accordance with section 68 shall render a decision. If such a re-opening of the proceedings

is requested by the person concerned, or if circumstances become known to the administrative authority which permit a re-opening of the proceedings, it shall send the records to the public prosecution office. Section 69 subsection 4 first sentence shall apply mutatis mutandis.

Section 86

Rescission of the Regulatory Fining Notice in Criminal Proceedings

(1) If a regulatory fine has been issued against the person concerned, and if he is subsequently sentenced in criminal proceedings for the same act, the regulatory fining notice shall be rescinded to this extent. The same shall apply if a sentence is not imposed in the criminal proceedings, but the findings of the court as delivered in the final decision oppose the regulatory fining notice.

(2) Amounts of money which have been paid or collected on the basis of the rescinded regulatory fining notice shall be first deducted from an assessed criminal fine, then from the incidental consequences ordered which obligate the offender to effect payment, and lastly from the costs of the criminal proceedings.

(3) The decisions in accordance with subsections 1 and 2 shall be rendered in the judgment or in another final decision.

CHAPTER EIGHT

PROCEDURE IF INCIDENTAL CONSEQUENCES OR A REGULATORY FINE ARE ORDERED AGAINST A LEGAL PERSON OR ASSOCIATION OF PERSONS

Section 87

Order for Confiscation

(1) If the administrative authority in the regulatory fining proceedings must decide on the confiscation of an object, it shall also be responsible for ordering participation in the proceedings, the appointment of an attorney or another person who may be appointed as defence counsel, as well as for decision on compensation (sections 424, 425, 428 subsection 2, section 430 subsection 3 and section 438 subsections 1 and 2 of the Code of Criminal Procedure); section 60 second sentence shall apply mutatis mutandis.

(2) Upon issuance of the regulatory fining decision, the person involved in the confiscation procedure, unless otherwise provided by law, shall have the powers to which a person concerned is entitled. The regulatory fining notice by which confiscation is ordered shall be served on him. At the same time, he shall be advised that a decision concerning him in respect of the confiscation has also been delivered.

(3) Confiscation shall be ordered in separate proceedings by means of a separate confiscation notice; section 66 subsection 1 subsection 2 number 1a and subsection 3 shall apply mutatis mutandis. The confiscation notice shall be deemed equivalent to a regulatory fining notice. The administrative authority which would be competent in case of prosecution of a particular person shall be responsible; local competence shall also be had by the administrative authority in the district of which the object has been secured.

(4) A request for subsequent proceedings (section 433 of the Code of Criminal Procedure) against a regulatory fining notice shall be submitted to the administrative authority which has ordered confiscation. The court with jurisdiction in accordance with section 68 shall render the decision. The administrative authority shall send the records to the public prosecution office, which shall submit them to the court; section 69 subsection 4 first sentence shall apply mutatis mutandis.

(5) The decision of the court on the confiscation of an object the value of which does not exceed two hundred and fifty Euros shall be incontestable.

(6) Subsection 2 third sentence, subsection 3 second half of the third sentence and subsection 5 shall not apply in proceedings involving the confiscation order in accordance with section 29a.

Section 88

Assessment of the Regulatory Fine Against Legal Persons and Associations of Persons

- (1) If in the regulatory fining proceedings the administrative authority must decide on the assessment of a regulatory fine against a legal person or an association of persons (section 30), that authority shall also be competent to order participation in the proceedings and the appointment of an attorney, or of any other person who may be appointed as defence counsel (section 444 subsection 1 and section 428 subsection 2 of the Code of Criminal Procedure); section 60 second sentence shall apply *mutatis mutandis*.
- (2) In separate proceedings, the administrative authority shall assess the regulatory fine in a separate regulatory fining decision. The administrative authority which would be competent in case of prosecution of a specific person shall be competent; local competence shall also lie with the administrative authority in the district of which the legal person or association of persons has its seat or branch.
- (3) Section 87 subsection 2 first and second sentences and subsection 5 shall apply *mutatis mutandis*.

CHAPTER NINE

ENFORCEMENT OF DECISIONS CONCERNING REGULATORY FINES

Section 89

Enforceability of Decisions Concerning Regulatory Fines

Decisions concerning regulatory fines shall be enforceable if they have become legally valid.

Section 90

Enforcement of Regulatory Fining Notices

- (1) Unless otherwise provided by law, the regulatory fining notice shall be enforced according to the provisions of the Administrative Enforcement Act dated 27 April 1953 (Federal Law Gazette I, page 157) in their current version, if an administrative authority of the Federation has issued the regulatory fining notice, in other cases in accordance with the pertinent *Land* provisions.
- (2) Unless otherwise provided for by law, regulatory fines shall benefit the Federal Treasury if an administrative authority of the Federation has issued the regulatory fining notice, in other cases the *Land* Treasury. The first sentence shall apply to incidental consequences constituting an obligation to effect payment.
- (3) If the confiscation or rendering unusable of an object has been ordered, the order shall be enforced by the object being taken away from the person concerned or from the party involved in the confiscation. If the object is not found in the possession of these persons they must, upon the request of the administrative authority, swear an affirmation in lieu of oath before the Local Court concerning the whereabouts of the object. Section 883 subsections 2 and 3 of the Code of Civil Procedure shall apply *mutatis mutandis*.
- (4) Subsection 1 shall apply *mutatis mutandis* to the enforcement of a disciplinary regulatory fine assessed by the administrative authority.

Section 91

Enforcement of the Decision Concerning Regulatory fines Issued by the Court

Sections 451 subsections 1, 2, sections 459 and 459g subsection 1 as well as subsection 2 in conjunction with section 459 of the Code of Criminal Procedure shall apply to the enforcement of the court's decision concerning regulatory fines, in proceedings against juveniles and adolescents, section 82 subsection 1, section 83 subsection 2, sections 84 and 85 subsection (5) of the Youth Court Act shall apply *mutatis mutandis*.

Section 92

Enforcement Authority

In cases falling under section 90, within the meaning of the provisions of this Chapter below, the term "enforcement authority" shall mean the administrative authority which has issued

the regulatory fining notice, and in other cases, the office which is responsible for enforcement in accordance with section 91.

Section 93 **Easier Means of Payment**

- (1) After the decision concerning a regulatory fine has become effective, the enforcement authority shall decide on easier means of payment (section 18).
- (2) The enforcement authority may subsequently amend or rescind a decision on easier means of payment in accordance with subsection 1 or section 18. In doing so, it may derogate from a prior decision to the disadvantage of the person concerned only on the basis of new facts or evidence.
- (3) Section 66 subsection 2 numbers 2 and 3 shall apply mutatis mutandis to decisions on easier means of payment. The decision shall also extend to the costs of the proceedings; it may also be separately rendered with regard to the costs.
- (4) If the concession granted in accordance with section 18 second sentence is cancelled, this shall be noted in the files. The execution authority may again grant the person concerned easier means of payment.

Section 94 **Offsetting of Instalments**

If the person concerned does not make an arrangement when paying, instalments shall be set off firstly against the regulatory fine, then against any incidental consequences that have been ordered constituting an obligation to effect payment, and lastly against the costs of the proceedings.

Section 95 **Collection of the Regulatory Fine**

- (1) The regulatory fine or instalments towards a regulatory fine shall be collected prior to the expiration of two weeks from the date the amount has become due only if specific facts reveal that the person concerned wishes to evade payment.
- (2) Should it emerge in accordance with his economic circumstances that the person concerned is unable to effect payment in the foreseeable future, the enforcement authority may order enforcement not to be carried out.

Section 96 **Ordering of Coercive Detention**

- (1) After expiration of the period set in accordance with section 95 subsection 1, the court may, upon request of the execution authority, or if it is responsible for enforcement itself, order coercive detention ex officio if
 1. the regulatory fine or the assessed instalment thereof has not been paid,
 2. the person concerned has not made known his insolvency (section 66 subsection 2 number 2b),
 3. he has been instructed in accordance with section 66 subsection 2 number 3, and
 4. no circumstances are known on which his/her insolvency can be based.
- (2) If it is revealed in accordance with his economic circumstances that the person concerned cannot be expected to pay the amount of the regulatory fine immediately, the court shall grant an easier means of payment or shall leave the decision on this to the enforcement authority. An order already given for coercive detention shall be rescinded.
- (3) The period of coercive detention involving a regulatory fine may not exceed six weeks, for several regulatory fines assessed in one regulatory fining decision it may not exceed three months. The period shall be fixed by days in consideration of the amount of the regulatory

fine to be paid, and may not be extended subsequently, but may be reduced. Coercive detention may not be repeated on account of the same amount.

Section 97

Enforcement of Coercive Detention

(1) Section 451 subsections 1 and 2 of the Code of Criminal Procedure shall apply to the enforcement of coercive detention, in proceedings against juveniles and adolescents section 82 subsection 1, section 83 subsection 2, as well as sections 84 and 85 subsection 5 of the Youth Court Act shall also apply mutatis mutandis.

(2) The person concerned may avert enforcement of coercive detention at any time by paying the due amount of the regulatory fine.

(3) If the person concerned, after coercive detention has been ordered, asserts that he cannot be expected to pay the amount of the regulatory fine immediately in view of his economic circumstances, enforcement of the order shall not be delayed thereby. However, the court may suspend enforcement.

Section 98

Enforcement Against Juveniles and Adolescents

(1) If the regulatory fine assessed against a juvenile is not paid after the expiration of the period fixed in accordance with section 95 subsection 1, the Youth Court judge may, upon request of the execution authority, or if he himself is responsible for enforcement, adjudge ex officio that in lieu of a regulatory fine the juvenile

1. complies with an order to work,
2. makes restitution to the best of his ability for damage caused by the act,
3. attends traffic classes if a violation of traffic regulations is involved,
4. performs other specified services,

if granting easier means of payment, collection of the regulatory fine or the ordering of coercive detention is not deemed possible or appropriate. The Youth Court judge may give the orders in accordance with the first sentence in combination with each other and subsequently change them.

(2) If the juvenile fails to comply with an order in accordance with subsection 1 through his own fault, and also fails to pay the regulatory fine, youth detention (section 16 of the Youth Court Act) may be imposed on him if he has been instructed accordingly. Youth detention imposed in accordance with this may not exceed one week if a regulatory fining decision has been delivered. Prior to the imposition of youth detention, the juvenile shall be afforded the opportunity to make an oral statement before the judge.

(3) Youth detention may not be repeatedly imposed in respect of the same amount. The judge shall refrain from enforcing youth detention if the juvenile on imposition complies with the instruction or pays the regulatory fine. If youth detention has been enforced, the Youth Court judge may declare entire or partial dismissal of the regulatory fine.

(4) Subsections 1 and 3 shall also apply to the enforcement of the regulatory fine assessed against an adolescent.

Section 99

Enforcement of Incidental Consequences Constituting an Obligation to Effect Payment

(1) Sections 93 and 95 shall apply mutatis mutandis to the enforcement of obligations to make payment directed as incidental consequences, sections 94, 96 and 97 shall also apply to the enforcement of the regulatory fine against a legal person or association of persons.

(2) If confiscation of a sum of money (section 29a) has been ordered with legal effect, and if the person concerned or the party involved in confiscation submits a final decision by which a claim of the injured person has been established against him for the act which may be

sanctioned by a regulatory fine, the enforcement authority shall order that the order for confiscation be no longer enforced to this extent. If the sum of money declared to be confiscated has already been paid or collected and proof of payment to the injured person is furnished on the basis of the final decision, the execution authority shall order reimbursement in this respect to the person concerned or to the party involved in confiscation.

Section 100 **Subsequent Decisions on Confiscation**

(1) A decision on the cancellation of the reservation concerning confiscation and the subsequent order to confiscate an object or a substitute value (section 24 subsection 2 third sentence, section 25 subsection 4 shall be rendered by

1. the administrative authority which has issued the regulatory fining notice,
2. the court if the regulatory fining decision has been issued by the court.

(2) Within two weeks after service of the notification, the request for a decision by the court in accordance with section 62 shall be admissible against the subsequent order for confiscation, in cases falling under subsection 1 number 1. An immediate complaint against the decision of the court shall be admissible if the value of the object in controversy exceeds two hundred and fifty Euros.

Section 101 **Enforcement Against the Estate**

A regulatory fine must not be enforced against the estate of the person concerned.

Section 102 **Subsequent Criminal Proceedings**

(1) If charges are preferred for the same act after the regulatory fining notice has become legally valid, the enforcement authority shall suspend enforcement of the regulatory fining notice in this respect.

(2) If no decisions in accordance with section 86 subsection 1 and 2 have been made in the criminal proceedings, they must be rendered subsequently by the court.

Section 103 **Decision of the Court**

(1) The court shall decide on objections against

1. the admissibility of enforcement,
2. orders given by the enforcement authority in accordance with sections 93, 99 subsection 2 and section 102 subsection 1,
3. other measures taken for enforcement based on a regulatory fining notice.

(2) Execution shall not be delayed by objections filed in accordance with subsection 1. However, the court may suspend enforcement.

Section 104 **Procedure in Case of Court Decisions**

(1) The decisions of the court which become necessary in connection with enforcement shall be issued

1. by the court which has jurisdiction in accordance with section 68 if a regulatory fining notice has to be enforced,
2. by the court of first instance if a regulatory fining decision rendered by the court is to be enforced,

3. by the Youth Court judge responsible for the execution of a regulatory fining decision rendered by a court, unless a decision in accordance with section 100 subsection 1 number 2 is to be made,

4. by the court of first instance in criminal proceedings if a decision in accordance with section 102 subsection 2 is to be rendered.

(2) The decision shall be rendered without an oral hearing. Prior to the decision, the persons concerned shall be given the opportunity to submit requests and to substantiate them.

(3) Immediate appeal shall be admissible against

1. the ordering of coercive detention and the imposition of youth detention;
2. the subsequent decision on confiscation (section 100 subsection 1 number 2);
3. the court decision in cases falling under section 103 subsection 1 number 2 in conjunction with section 99 subsection 2;

this shall apply in cases falling under numbers 2 and 3, however, only if the value of the object in controversy exceeds two hundred and fifty Euros. In other cases the decision shall be incontestable.

CHAPTER TEN COSTS

I. PROCEEDINGS OF THE ADMINISTRATIVE AUTHORITY

Section 105 Decision on Costs

(1) In the proceedings of the administrative authority, section 464 subsections 1 and 2, sections 464a and 464c as far as the costs of sign language interpreters are concerned, sections 464d, 465, 466, 467a subsections 1 and 2, section 469 subsections 1 and 2, sections 470, 472b and 473 subsection 7 of the Code of Criminal Procedure shall apply mutatis mutandis, in the proceedings against juveniles and adolescents also section 74 of the Youth Court Act shall apply.

(2) The necessary expenses which the Treasury shall bear in accordance with subsection 1 in connection with section 465 subsection 2, section 467a subsections 1 and 2 as well as sections 470 and 472b of the Code of Criminal Procedure shall be imposed on the Federal Treasury if an administrative authority of the Federation conducts the proceedings, otherwise the Treasury of the *Land* shall bear the costs, unless otherwise provided by the law.

Section 106 Assessment of Costs

(1) The amount of the costs and expenses which a person involved must reimburse to another person shall be assessed by the administrative authority upon request. Upon request it shall be stated that from the date the request for assessment is submitted, interest shall be payable in accordance with section 104 subsection 1 second sentence of the Code of Civil Procedure on the assessed costs and expenses. Added to the request for assessment shall be a calculation of costs which were incurred by the applicant, one information duplicate to the other person concerned and the receipts to verify the individually assessed amounts. For taking into consideration an assessed amount it shall be sufficient that it has been made credible. With regard to the expenses incurred by an attorney, such as postal and telecommunications services, the statement of the attorney that the expenses have been incurred shall be sufficient.

(2) The provisions of the Code of Civil Procedure concerning the coercive enforcement of costs decisions shall apply mutatis mutandis to the enforcement of an administrative costs decision. Coercive enforcement shall be permitted only if the administrative costs decision

has become incontestable. The executable copy shall be issued by the record officer of the office of the court competent in accordance with section 68.

Section 107 **Fees and Expenses**

(1) In the proceedings of the administrative authority, the fee shall be set according to the regulatory fine which has been assessed against the person concerned in the regulatory fining notice. If a regulatory fine is assessed against a legal person or an association of persons in accordance with section 30, a fee shall be levied on the legal person or the association of persons which is measured in line with the regulatory fine imposed on them. In assessing a regulatory fine, 5 % of the amount of the assessed regulatory fine shall be levied as a fee, however, at least Euro 25 and no more than Euro 7,500.

(2) If the administrative authority has rendered a final decision in the case of section 25a of the Road Traffic Act, the fee shall be Euro 20.

(3) The following fees shall be levied as expenses:

1. fees for telegrams;
2. for each service with notice of delivery, registered item with advice of delivery or by personnel of the administrative authority a flat amount of Euro 3.50;
3. Deleted
4. Expenditures for publication; expenditures shall not be collected for the announcement in an electronic information and communication system if the fee is not calculated for the individual case, or not for an individual set of proceedings;
5. the amounts to be paid in accordance with the Justice Remuneration and Compensation Act, even if for reasons of reciprocity, to simplify administrative matters, or for comparable reasons, no payments are to be made; if no fee is to be levied because of section 1 subsection 2 sentence 2 of the Justice Remuneration and Compensation Act, the amount shall be levied which would have been payable without this provision; if the expenditures are caused by various legal matters, they shall be adequately apportioned to the individual legal matters; expenses for translators, consulted to implement the rights of blind persons or those with impaired vision (section 191a subsection 1 of the Court Constitution Act), as well as expenses for experts arising as a result of the investigation of an accused person in accordance with section 43 subsection 2 of the Youth Courts Act (*Jugendgerichtsgesetz*), shall not be levied, expenses for sign language interpreters shall only be levied in accordance with sections 464c, 467a subsection 1 second sentence in conjunction with section 467 subsection 2 first sentence of the Code of Criminal Procedure;
6. with regard to out-of-office business transactions
 - a) the compensation (travel costs, reimbursement of expenses) granted to personnel of the administrative authority on the basis of legal provisions,
 - b) and the expenditures for making premises available,
 - c) for the use of official vehicles for each kilometre driven Euro 0.30;

expenditures caused by various legal matters shall be adequately apportioned to the individual legal matters;

7. amounts to be paid to attorneys;
8. the expenditures for the transportation of persons;

9. amounts granted to destitute persons for travelling to the place of a hearing, an examination or investigation and back, up to the amounts to be paid in accordance with the Justice Remuneration and Compensation Act;
 10. amounts payable to third parties for
 - a) the transportation of animals and items with the exception of postal fees accruing therefrom, the safekeeping of animals and items, as well as the feeding of animals;
 - b) the search or examination of premises and items, including measures in preparation of the search or examination;
 - c) surveillance of ships and aircraft;
 11. the costs for coercive detention;
 12. amounts payable in accordance with section 12 of the Federal Fees Act (*Bundesgebührengesetz*), with Part 5 of the Act on Consular Services (*Konsulargesetz*), and with the Special Fees Ordinance of the Federal Foreign Office (*Besondere Gebührenverordnung des Auswärtigen Amtes*) in accordance with section 22 subsection 4 of the Federal Fees Act in the context of administrative assistance;
 13. fees payable to German authorities for the performance of their own tasks, and the amounts due to these authorities, public facilities or their personnel replacing expenditures of the nature designated in numbers 1 to 11, even if for reasons of reciprocity, to simplify administrative matters, or for comparable reasons, no payments are to be made; the amount of these expenditures shall be limited by the minimum amounts for the designated expenditures;
 14. the amounts due to foreign agencies, institutions or persons abroad, as well as costs of international mutual legal and administrative assistance, even if no payments are to be made for reasons of reciprocity, to simplify administrative matters, or for comparable reasons.
- (4) If an administrative authority of the Federation has issued the regulatory fining notice, section 14 subsection 2 as well as sections 19 to 21 of the Administrative Costs Act dated 23 June 1970 (Federal Law Gazette I, page 821) in the version applicable until 14 August 2013 shall apply to the cancellation of costs in case of improper treatment of subject matter, as well as to the cancellation, remission, lapse and reimbursement of costs, or costs falling under the statute of limitation, otherwise the pertinent legal provisions of the *Land* shall apply.
- (5) Persons requesting transmittal of files shall be charged a flat-rate of 12 Euros as expenses per item transmitted, including return by the authorities. If the file is kept in electronic form, and if it is transmitted by electronic means, no flat rate shall be charged.

Section 108

Legal Remedy and Enforcement

(1) In the proceedings of the administrative authority, the request for a court decision in accordance with section 62 against

1. the separate administrative cost notice,
2. the notice assessing administrative costs (section 106), and
3. the assessed amount of fees and expenses

shall be admissible. In cases falling under numbers 1 and 2, the request must be submitted within two weeks after service of the notice; immediate recourse against the decision of the

court in cases falling under number 2 shall be admissible if the value of the matter in controversy exceeds two hundred Euros.

(2) Sections 89 and 90 subsection 1 shall apply mutatis mutandis to the enforcement of the costs of the regulatory fining proceedings.

II. PROCEEDINGS OF THE PUBLIC PROSECUTION OFFICE

Section 108a

(1) If, upon the objection against the regulatory fining notice, the public prosecution office discontinues the proceedings before submitting the files to the court, it shall render the decision in accordance with section 467a subsections 1 and 2 of the Code of Criminal Procedure.

(2) Within two weeks after service, a decision by the court may be requested against the decision of the public prosecution office; section 50 subsection 2, sections 52 and 62 subsection 2 first and second sentences and section 108 subsection 1 second half of the second sentence shall apply mutatis mutandis.

(3) The decision on the request for assessment (section 464b first sentence of the Code of Criminal Procedure) shall be rendered by the record officer of the public prosecution office. The court competent in accordance with section 68 shall decide on the reminder against the assessment order of the record officer of the office.

III. PROCEEDINGS CONCERNING ADMISSIBILITY OF THE OBJECTION

Section 109

Costs in Case of Withdrawal and Rejection of Objection

(1) If the notice of the administrative authority concerning the dismissal of

1. the objection (section 69 subsection 1), or
2. the request for restitution of the status quo ante because of failure to observe the period for filing an objection

is rescinded in the proceedings in accordance with section 62, the final decision in accordance with section 464 subsections 1 and 2 of the Code of Criminal Procedure shall also apply to the costs and expenses of these proceedings.

(2) If the objection of the person concerned to the regulatory fining notice is dismissed (sections 70 and 74 subsection 2 first sentence), he shall also bear the costs of the court proceedings.

IV. EXPENSES OF THE PERSON CONCERNED

Section 109a

(1) If in a regulatory fining notice because of the offence only a regulatory fine of up to ten Euros has been assessed against the person concerned, attorney's fees and expenses shall only be considered as necessary expenses (section 464a subsection 2 number 2 of the Code of Criminal Procedure) if due to the difficult factual and legal situation, or the importance of the matter, it was necessary to appoint an attorney.

(2) As far as the person concerned has incurred expenses which could have been avoided if he had submitted mitigating circumstances in time, it shall be possible to dispense with charging the Treasury with such costs.

CHAPTER ELEVEN COMPENSATION FOR PROSECUTION MEASURES

Section 110

(1) The decision on the obligation to pay compensation for a loss of property which has been caused by a prosecution measure in regulatory fining proceedings (section 8 of the Act on

Compensation for Criminal Prosecution Measures) shall be rendered by the administrative authority by a separate notice once it has concluded such proceedings.

(2) A request for a court decision on notice in accordance with section 62 shall be admissible within two weeks of service. Immediate appeal shall be admissible against the court decision.

(3) In cases falling under subsection 1, the administrative authority shall decide on the claim for compensation (section 10 of the Act on Compensation for Criminal Prosecution Measures).

(4) The Federation shall be liable to pay compensation (section 15 of the Act on Compensation for Criminal Prosecution Measures) in cases falling under subsection 1, unless otherwise provided by the law, if an administrative authority of the Federation conducts the proceedings, otherwise the *Land* shall be liable.

CHAPTER TWELVE

FILING AND COMMUNICATION DURING THE PROCEEDINGS

Section 110a

Electronic Filing; Power to Issue Statutory instruments

(1) The files may be kept in electronic form. The Federal Government and the *Land* Governments shall determine for their fields by statutory instrument the point in time from which the files are to be kept in electronic form. In doing so, they may restrict the introduction of electronic files to individual courts or authorities or to generally determined proceedings, and may provide that files which were established in paper form may be continued in paper form, even after the introduction of electronic files; if the possibility to restrict is taken up, the statutory instrument may provide that an administrative provision, which shall be published, shall regulate the proceedings in which the files are to be kept in electronic form. The empowerment may be transferred to the competent Federal or *Land* Ministries by statutory instrument.

(2) The Federal Government and the *Land* Governments shall determine for their fields by statutory instrument the organisational and technical framework corresponding to the state-of-the-art which is to be adhered to for electronic filing, including the requirements of data protection and accessibility. They may transfer the power to the competent Federal or *Land* Ministries by means of a statutory instrument.

(3) The Federal Government shall determine by statutory instrument with the consent of the Bundesrat the standards applicable to the transmission of electronic files between authorities and courts, as well as those applicable to the inspection of electronic files. It may transfer the empowerment to the competent Federal Ministries by statutory instrument without the consent of the Bundesrat.

(4) Authorities within the meaning of this chapter shall be deemed to be the public prosecution offices and administrative authorities, including the enforcement authorities, as well as the authorities of the police service insofar as the latter perform tasks in regulatory fine proceedings.

Section 110b

Electronic Forms; Empowerment to Issue Statutory instruments

The Federal Government may introduce electronic forms by statutory instrument with the consent of the Bundesrat. The statutory instrument may provide that the information contained in the forms is to be transmitted, completely or partly, in a structured machine-readable form. The forms shall be made available on the Internet for use on a communication platform to be determined in the statutory instrument. The statutory instrument may provide that the form user may be identified by using the electronic proof of identity in accordance with section 18 of the Act on Identity Cards (*Personalausweisgesetz*), with section 12 of the Act on the Electronic Identity Card (*eID-Karte-Gesetz*), or with section 78 subsection 5 of the Residence Act (*Aufenthaltsgesetz*), in derogation from section 32a

subsection 3 of the Code of Criminal Procedure. The Federal Government may transfer the power to the competent Federal or *Land* Ministries by means of a statutory instrument.

Section 110c

Corresponding application of the Code of Criminal Procedure to filing and communication in proceedings

Sections 32a, 32b and 32d to 32f of the Code of Criminal Procedure, as well as the statutory instruments issued on the basis of section 32a subsection 2 second sentence and subsection 4 first sentence number 6, of section 32b subsection 5, and of section 32f subsection 6, of the Code of Criminal Procedure, shall apply *mutatis mutandis* in other respects. In derogation from section 32b subsection 1 second sentence of the Code of Criminal Procedure, in case of an electronic document that requires to be signed being prepared in an automated process, the accompanying order shall be signed in its place. In derogation from section 32e subsection 4 first sentence of the Code of Criminal Procedure, source documents need not be stored or kept if the transmitted documents additionally contain a note affixed with a qualified electronic signature to the end that the content and image of the document to be placed on file corresponds to the source document.

PART III

SPECIFIC REGULATORY OFFENCES

CHAPTER ONE

VIOLATION OF GOVERNMENTAL ORDERS

Section 111

Stating False Names

(1) Whoever makes a false statement to a competent authority, to a competent office-holder or to a competent soldier of the Federal Armed Forces or refuses to make a statement concerning his first name, family name or name at birth, place or date of birth, marital status, profession, place of residence, address or nationality, shall be deemed to have committed a regulatory offence.

(2) A perpetrator who through negligence fails to recognise the competence of the authority, of the office-holder or of the soldier, shall also be deemed to have committed a regulatory offence.

(3) The regulatory offence in cases falling under subsection 1 may be sanctioned by a regulatory fine not exceeding one thousand Euros, in cases falling under subsection 2 by a regulatory fine of up to five hundred Euros unless the act may be sanctioned according to other provisions.

Section 112

Violation of the House Rules of a Legislative Organ

(1) Whoever acts contrary to orders issued by a legislative organ of the Federation or of a *Land* or by its President concerning entry to the building of the legislative organ or the land belonging to it, or concerning length of stay, or security and order in the building or on the land in general, or in a specific case, shall be deemed to have committed a regulatory offence.

(2) The regulatory offence may be sanctioned by a regulatory fine of up to five thousand Euros.

(3) In case of orders issued by a legislative organ of the Federation or by its President subsections 1 and 2 shall apply neither to members of the Bundestag nor to members of the Bundesrat and the Federal Government and their representatives, in case of orders by a legislative organ of a *Land* or by its President, neither to members of the legislative organs of this *Land*, nor to members of the *Land* Government and its commissioners.

Section 113

Unauthorised Gatherings

- (1) Whoever joins a public gathering or fails to leave it in cases where a holder of sovereign power has lawfully requested the crowd to disperse three times shall be deemed to have committed a regulatory offence.
- (2) The perpetrator who negligently fails to recognise that the request is lawful shall also be deemed to have committed a regulatory offence.
- (3) In cases falling under subsection 1, a regulatory fine not exceeding one thousand Euros, and in cases under subsection 2, a regulatory fine of up to five hundred Euros may be imposed in respect of the regulatory offence.

Section 114

Entering Military Installations

- (1) Whoever intentionally or negligently, contrary to a prohibition of the competent unit, enters a military facility or installation or a locality which, in compliance with the fulfilment of official tasks of the Federal Armed Forces, is off limits for security reasons shall be deemed to have committed a regulatory offence.
- (2) The regulatory offence may be sanctioned by a regulatory fine.

Section 115

Contact with Prisoners

- (1) Whoever, without authorisation
1. transmits objects or messages to a prisoner or receives objects or messages from him, or
 2. establishes contact with a prisoner who is inside a penal institution, by words or signs from outside
- shall be deemed to have committed a regulatory offence.
- (2) Whoever on the basis of a decision rendered by the criminal court, or as a temporarily arrested person, is in the custody of an authority shall be deemed to be a prisoner.
- (3) The regulatory offence and the attempt to commit a regulatory offence may be sanctioned by a regulatory fine.

CHAPTER TWO

VIOLATION OF PUBLIC ORDER

Section 116

Public Instigation to Regulatory Offences

- (1) Whoever in public, at a meeting or by dissemination of content (section 11 subsection 3 of the Criminal Code) instigates an act which may be sanctioned by a regulatory fine, shall be deemed to have committed a regulatory offence.
- (2) The regulatory offence may be sanctioned by a regulatory fine. The maximum amount of the regulatory fine shall be assessed according to the maximum amount of the regulatory fine provided for the act to which the perpetrator has instigated.

Section 117

Inadmissible Noise

- (1) Whoever, without a justified reason, or to an inadmissible extent, or to an extent avoidable under the circumstances, causes noise which is suitable to create considerable disturbance to the general public or to the neighbourhood, or to inflict harm upon the health of another, shall be deemed to have committed a regulatory offence.
- (2) The regulatory offence may be sanctioned with a regulatory fine of up to five thousand Euros unless the act may be sanctioned according to other provisions.

Section 118

Public Nuisance

- (1) Whoever commits a grossly offensive act which is apt to disturb or endanger the public and to prejudice public order shall be deemed to have committed a regulatory offence.

(2) The regulatory offence may be sanctioned by a regulatory fine unless the act may be sanctioned in accordance with other provisions.

Section 119 **Grossly Offensive and Disturbing Acts**

(1) Whoever

1. in public, in a manner which is apt to disturb others, or
2. in a grossly offensive manner by disseminating content (section 11 subsection 3 of the Criminal Code) or making it publicly accessible

offers, announces or recommends a possibility for the performance of sexual acts or publishes statements of such contents, shall be deemed to have committed a regulatory offence.

(2) Whoever offers, announces, recommends or publishes in the manner designated in subsection 1, means or objects serving the sexual use or publishes statements of such contents shall also be deemed to have committed a regulatory offence.

(3) Whoever makes sexual content (section 11 subsection 3 of the Criminal Code) accessible in public places where this is grossly offensive shall furthermore be deemed to have committed a regulatory offence.

(4) The regulatory offence may, in cases falling under subsection 1 number 1 be sanctioned by a regulatory fine of no more than one thousand Euros, in other cases by a regulatory fine not exceeding ten thousand Euros.

Section 120 **Prohibition to Engage in Prostitution**

(1) Whoever acts contrary to a prohibition issued by statutory instrument to engage in prostitution at certain places or at certain times during the day.

(2) The regulatory offence may be sanctioned by a regulatory fine.

Section 121 **Keeping Dangerous Animals**

(1) Whoever intentionally or negligently

1. allows free movement to a dangerous animal of a species living in the wild or to a vicious animal, or
2. has responsibility for the supervision of such animal and fails to take the necessary precautionary measures to avoid damage which may be caused by the animal

shall be deemed to have committed a regulatory offence.

(2) The regulatory offence may be sanctioned by a regulatory fine.

Section 122 **Total Intoxication**

(1) Whoever intentionally or negligently, due to the consumption of alcoholic beverages or other intoxicants, places himself in a state of intoxication, shall be deemed to have committed a regulatory offence if he commits in such a state an act which may be sanctioned by a regulatory fine, and a regulatory fine cannot be assessed against him for such an act because, due to intoxication, he has not acted reprehensibly or because it cannot be precluded that he has not acted reprehensibly.

(2) The regulatory offence may be sanctioned by a regulatory fine. The regulatory fine may not exceed the amount of the regulatory fine which is provided for the act committed while being in a state of intoxication.

Section 123 **Confiscation, Rendering Unusable**

(1) Objects used in connection with a regulatory offence in accordance with section 119 may be confiscated.

(2) When confiscating incorporations of content (section 11 subsection 3 of the Criminal Code), it may be ordered in the cases of section 119 subsections 1 and 2 that

1. confiscation be extended to all incorporations, and
2. devices used or designed for production be made unusable

where the incorporations and devices are in the possession of the perpetrator or of another person for whom the perpetrator has acted, or are designed for dissemination by these persons. Such order, however, shall be given only as required to prevent acts which may be sanctioned by a regulatory fine in accordance with section 119 subsection 1 or 2. Section 27 subsection 2 shall apply to the confiscation, section 27 and 28 shall apply mutatis mutandis to rendering objects unusable.

(3) Subsections 1 and 2 shall apply in cases falling under section 119 subsection 2 only to advertising material and to the devices used or designed for its production.

CHAPTER THREE **ABUSE OF STATE INSIGNIA OR INSIGNIA PROTECTED BY THE STATE**

Section 124

Use of Coats of Arms or Official Flags

(1) Whoever, without authorisation, uses

1. the coat of arms of the Federation or of a Land or the Federal Eagle or the pertinent part of a coat of arms of a Land, or
2. an official flag of the Federation or of a Land shall be deemed to have committed a regulatory offence.

(2) Coats of arms, parts of coats of arms and flags which so closely resemble those designated in subsection 1 that they may be mistaken for them, shall be deemed equal to those.

(3) The regulatory offence may be sanctioned by a regulatory fine.

Section 125

Use of the Red Cross or the Swiss Coat of Arms

(1) Whoever, without authorisation, uses the insignia of the Red Cross against a white background or the designation "Red Cross" or "Geneva Cross", shall be deemed to have committed a regulatory offence.

(2) Whoever, without authorisation, uses the coat of arms of the Swiss Confederation shall also be deemed to have committed a regulatory offence.

(3) Insignia, designations and coats of arms which so closely resemble those designated in subsections 1 and 2 that they may be mistaken for them, shall be deemed equal to those.

(4) Subsections 1 and 3 shall apply mutatis mutandis to such insignia or designations which according to international law are equivalent to the insignia of the red cross against a white background or to the designation "Red Cross".

(5) The regulatory offence may be sanctioned by a regulatory fine.

Section 126

Abuse of Vocational Clothing or Badges

(1) Whoever, without authorisation, wears

1. vocational clothing or a badge which are state-recognised or approved in the Federal Republic being designed for persons engaged in nursing or welfare work, or
2. vocational clothing or a badge of a religious association

recognised by a church or another religious association under public law shall be deemed to have committed a regulatory offence.

- (2) Working clothes and badges which so closely resemble those designated in subsection (1) that they may be mistaken for them, shall be deemed equal to those.
- (3) The regulatory offence may be sanctioned by a regulatory fine.

Section 127

Production or Utilisation of Items Which May be Used to Falsify Money or Documents

(1) Whoever, without the written permission of the competent office or of the persons authorised to give such permission, produces or procures for himself or for another person, offers, keeps, assigns to another or imports or exports

- 1. plates, moulds, printing devices, printing blocks, negatives, stencils, computer programs or similar devices which according to their type are suited for the production of
 - a) money, securities equivalent to money (section 151 of the Criminal Code), official stamps, payment cards within the meaning of section 152a subsection 4, of the Criminal Code, cheques, promissory notes or guaranteed payment cards within the meaning of section 152b subsection 4 of the Criminal Code; or
 - b) public documents or stamps for certification;
- 2. blank forms for official documents or stamps for certification,
- 3. paper which is similar to such type of paper, or which so closely resembles it as to be mistaken for it, being designed for the production of paper designated in numbers 1 or 2 especially prepared against counterfeiting,
- 4. holograms or other elements serving to ensure the items designated in number 1 (a) against counterfeiting

shall be deemed to have committed a regulatory offence.

(2) The perpetrator who negligently fails to recognise that there is no written permission of the competent office or of the person authorised to give such permission shall also be deemed to have committed a regulatory offence.

(3) Subsection 1 shall also apply to money, securities, stamps, documents, stamps for certification, payment cards within the meaning of section 152a subsection 4, of the Criminal Code, cheques, promissory notes and guaranteed payment cards within the meaning of section 152b subsection 4 of the Criminal Code of a foreign currency area.

(4) The regulatory offence may, in cases falling under subsection 1, be sanctioned by a regulatory fine of up to ten thousand Euros, in cases falling under subsection 2 by a regulatory fine of up to five thousand Euros.

Section 128

Production or Dissemination of Prints Similar to Paper Money or Illustrations

(1) Whoever produces or disseminates

- 1. printed papers or illustrations which according to their type are suited
 - a) to be confused with paper money or securities equivalent to paper money (section 151 of the Criminal Code) being in circulation, or
 - b) to be used to produce such papers, or which may be confused with others
- 2. produces, procures for himself or for another, offers, keeps, assigns to another, or imports or exports, plates, moulds, printing devices, printing blocks, negatives, stencils, computer programs or similar devices which according to their type are suited for the production of printed papers or illustrations designated in number 1,

shall be deemed to have committed a regulatory offence.

- (2) The perpetrator who negligently fails to recognise the aptitude for confusion or production within the meaning of subsection 1 number 1 shall also be deemed to have committed a regulatory offence.
- (3) Subsection 1 shall also apply to paper money and securities of a foreign currency area.
- (4) The regulatory offence may, in cases falling under subsection 1 be sanctioned by a regulatory fine of up to ten thousand Euros, in the case of subsection 2 by a regulatory fine of up to five thousand Euros.

Section 129 Confiscation

Objects used in connection with a regulatory offence in accordance with sections 124, 126 to 128 may be confiscated.

CHAPTER FOUR VIOLATION OF OBLIGATORY SUPERVISION IN OPERATIONS AND ENTERPRISES

Section 130

- (1) Whoever, as the owner of an operation or undertaking, intentionally or negligently omits to take the supervisory measures required to prevent contraventions, within the operation or undertaking, of duties incumbent on the owner and the violation of which carries a criminal penalty or a regulatory fine, shall be deemed to have committed a regulatory offence in a case where such contravention has been committed as would have been prevented, or made much more difficult, if there had been proper supervision. The required supervisory measures shall also comprise appointment, careful selection and surveillance of supervisory personnel.
- (2) An operation or undertaking within the meaning of subsection 1 shall include a public enterprise.
- (3) Where the breach of duty carries a criminal penalty, the regulatory offence may carry a regulatory fine not exceeding one million Euros. Section 30 subsection 2 third sentence shall be applicable. Where the breach of duty carries a regulatory fine, the maximum regulatory fine for breach of the duty of supervision shall be determined by the maximum regulatory fine imposable for the breach of duty. The third sentence shall also apply in the case of a breach of duty carrying simultaneously a criminal penalty and a regulatory fine, provided that the maximum regulatory fine imposable for the breach of duty exceeds the maximum in accordance with the first sentence.

CHAPTER FIVE JOINT PROVISIONS

Section 131

- (1) Administrative authority within the meaning of section 36 subsection 1 number 1
1. in case of regulatory offences in accordance with section 112 involving contraventions of orders
 - a) issued by the Bundestag or its President, shall be the director at the German Bundestag;
 - b) issued by the Bundesrat or its President, shall be the director of the Bundesrat;
 2. concerning regulatory offences in accordance with section 114, shall be the Federal Office of Infrastructure, Environmental Protection and Services of the Bundeswehr;
 3. in case of regulatory offences in accordance with section 124, concerning a coat of arms or an official flag of the Federation, shall be the Federal Ministry of the Interior, Building and Community;

4. in case of regulatory offences in accordance with sections 127 and 128, concerning

- a) securities of the Federation or its special funds, the Federal Financial Supervisory Authority;
- b) money or paper for the production of money, shall be the Deutsche Bundesbank (German Federal Bank);
- c) official stamps, shall be the Federal Ministry responsible for the area in which the stamps have been produced or issued.

The first sentence number 4a and c shall also apply to regulatory offences involving corresponding securities or stamps of a foreign currency area. Section 36 subsection 3 shall apply mutatis mutandis in cases falling under numbers 3 and 4c of the first sentence.

(2) In cases falling under sections 122 and 130, the regulatory offence shall be prosecuted only upon request or authorisation if the act committed in a state of intoxication or the violation of duty could be prosecuted only upon request or by authorisation.

(3) The procedural provisions shall also apply mutatis mutandis to prosecutions for regulatory offences in accordance with sections 116, 122 and 130, applicable to prosecution of acts committed upon instigation, acts committed in a state of intoxication or violations of duty which would be applicable in cases falling under sections 130 if the violation of duty subject to sanctioning would be subject to a regulatory fine only.

PART IV FINAL PROVISIONS

Section 132 Restriction of Basic Rights

The basic rights of inviolability of the person (Article 2, para. 2, first sentence of the Basic Law), the freedom of the individual (Article 2, para. 2, second sentence of the Basic Law) and the inviolability of the home (Article 13 of the Basic Law) shall be restricted under the provisions of this Law.

Section 133 Transitional Provisions

(1) Attendance by the person concerned at the main hearing and the proceedings in absentia shall be in accordance with the law applicable at the time when the first summons to the main hearing is sent to the person concerned.

(2) The admissibility and the admission of legal remedies shall be in accordance with the law applicable at the time when a judgment is delivered or a ruling is received by the registry.

(3) Resumption of the proceedings shall be in accordance with the law applicable at the time when an application is received by the court.

(4) In the proceedings of the administrative authority, fees and expenses shall be levied in accordance with the law applicable at the time when the regulatory fining notice was issued.

(5) For files existing on 1 October 2002, section 49c shall not apply until 1 October 2003.

(6) If the order of confiscation of the value of the proceeds of the offence relating to an act that is subject to a regulatory fine committed prior to 1 July 2017 is ruled on after this date, section 29a shall be applied in the version of the Act Reforming the Siphoning off of Assets under Criminal law (*Gesetz zur Reform der strafrechtlichen Vermögensabschöpfung*) of 13 April 2017 (Federal Law Gazette I p. 872). Section 29a shall be applied in the version applicable until 1 July 2017 in proceedings in which a ruling has already been handed down regarding the forfeiture of the replacement value prior to 1 July 2017.

Section 134 Transitional arrangement regarding the Act on the Introduction of Electronic Files in Criminal Matters and the Further Promotion of Electronic Legal Transactions (*Gesetz*

zur Einführung der elektronischen Akte in Strafsachen und zur weiteren Förderung des elektronischen Rechtsverkehrs); Powers to Issue Statutory instruments

The Federal Government and the *Land* Governments may determine by statutory instrument in their respective areas that the submission of electronic documents, in derogation from section 32a of the Code of Criminal Procedure, is not possible until as per 1 January 2019 or 2020, and that section 110a in the version applicable on 31 December 2017 shall continue to apply until 31 December 2018 or 2019, respectively. They may transfer the power in accordance with sentence 1 to the competent Federal or *Land* Ministries by means of a statutory instrument.