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ACT ON INTERNATIONAL COOPERATION IN CRIMINAL MATTERS
(AICC M)


Footnote 1)
Translator’s note: Translation of the names of courts, public authorities as well as those of acts of legislation etc. often leads to distortions and misleading simplifications. We have therefore chosen to retain the German expressions in some of the more important cases and to indicate them by the use of italics. The legislation – and for some also translations – can be found at www.gesetze-im-internet.de. The expressions so used are explained in the glossary below, although in some isolated instances explanations were given in situ.

Part I.
Scope of Application

Section 1
Scope of Application

(1) This Act shall govern the relations with foreign States regarding legal assistance in criminal matters.

(2) Criminal matters under this Act shall include proceedings resulting from an offence which under German law would constitute a regulatory offence sanctionable by a fine or which pursuant to foreign law is subject to a similar penalty, provided that a court of criminal jurisdiction determines the sentence.

(3) Provisions of international treaties shall take precedence before the provisions of this law to the extent that they have become directly applicable national law.

(4) This Act shall govern the support in criminal proceedings involving a Member State of the European Union.

Part II.
Extradition to a Foreign State

Section 2
Principle

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

(2) A foreigner who has been convicted in a foreign State because of an offence punishable in that State may be extradited to another foreign State which has taken over the enforcement, at the request of the competent authority of the enforcing State, for the purpose of enforcing the penalty or other sanction imposed for the offence.
Section 3
Extradition for the Purpose of Prosecution or Enforcement

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

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

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

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

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

Section 4
Extradition for Additional Offences

If an extradition request may be granted, it may additionally be granted for another offence even if with respect to the latter
(1) the conditions under s. 3(2) or (3) do not apply, or
(2) the conditions pursuant to ss. 2 or 3(1) do not apply because the offence is punishable only by a penalty according to s. 1(2).

Section 5
Reciprocity

Extradition shall not be granted unless on the basis of assurances given by the requesting State it can be expected that the State would enforce a similar German request.

Section 6
Political Offences, Political Prosecution

(1) Extradition for a political offence or for an offence connected with such an offence shall not be admissible. It may be admissible if the person sought is being prosecuted for or has been convicted of attempted genocide, genocide, aggravated murder or murder or because of his participation in such an offence.

(2) Extradition shall not be admissible if there is serious cause to believe that the person sought if extradited would be persecuted or punished because of his race, religion, citizenship, association with a certain social group or his political beliefs, or that his situation would be made more difficult for one of these reasons.

Section 7
Military Offences

Extradition because of an offence which consists merely of a breach of military duties shall not be granted.
Section 8
Death Penalty
If the offence is punishable by death under the law of the requesting State, extradition shall not be granted unless the requesting State gives assurances that the death penalty will neither be imposed nor enforced.

Section 9
Concurrent Jurisdiction
If the offence is also subject to German jurisdiction extradition shall not be granted if
(1) a court or other authority in Germany has because of the offence and with respect to the prosecuted person issued a judgment or a decision with corresponding legal effect or has declined to admit the case for trial (s. 204 of the Strafprozessordnung) or has denied a motion to admit a case for trial (s. 174 of the Strafprozessordnung) or has suspended the proceedings after the satisfaction of conditions or directions (s. 153 a of the Strafprozessordnung) or has under juvenile criminal law declined prosecution or has closed the proceedings (ss. 45, 47 of the Jugendgerichtsgesetz), or
(2) the statute of limitations for prosecution or enforcement has lapsed under German law or if prosecution or enforcement are barred by a German amnesty law.

Section 9 a
Extradition and Proceedings before International Criminal Courts
(1) Extradition for an offence shall not be granted if an international criminal court, established according to a legal instrument binding on the Federal Republic of Germany, has pronounced a final judgment or an unappealable decision with corresponding legal effect or has discontinued the criminal proceedings without further possibility of appeal, and if the prosecution by other authorities is prohibited in that case under the establishing instrument. If the court indicated in the 1st sentence above is conducting criminal proceedings for the offence and a decision within the meaning of the 1st sentence above has not yet been rendered upon receipt of an extradition request, the decision on the admissibility of the extradition shall be stayed. Temporary extradition (s. 37) is excluded.
(2) If a foreign State and a court within the meaning of subsection (1) 1st sentence above request the surrender of a person sought for the purpose of prosecution or the enforcement of a sentence (concurrent requests) and if the instrument establishing the court or the implementing provisions contain regulations governing multiple requests, the requests shall be dealt with in accordance with these provisions. If neither the establishing instrument nor the implementing provisions contain regulations on concurrent requests but the establishing instrument grants primacy to the jurisdiction of the court over that of a foreign State, precedence shall be given to the request of the court.

Section 10
Extradition Documents
(1) Extradition shall not be granted unless an arrest warrant or a document with corresponding legal force or an enforceable decision ordering detention from a competent authority of the requesting State as well as a description of the applicable laws have been submitted in relation to the offence. If extradition is requested for the purpose of prosecution of multiple offences, a document from the competent authorities of the requesting State describing the charges made against the person sought shall suffice with regard to additional offences and replace an arrest warrant or a document with corresponding legal force.
(2) If special circumstances justify a review as to whether there are reasonable grounds to believe that the person sought has committed the offence with which he is charged, extradition shall be not granted unless a description of the facts showing probable cause for the commission of the offence has been submitted.
(3) Extradition for the purpose of enforcing a sentence or another penalty imposed in a third State shall not be granted unless the following documents have been submitted:
1. The enforceable decision ordering detention and a document from the third State showing its consent to its enforcement by the State assuming enforcement.
2. A document from a competent authority of the State assuming enforcement certifying that the sentence or other penalty is enforceable there.
3. A description of the applicable laws.
4. In the case of subsection (2) above, a description within the meaning of this provision.

Section 11
Rule of Speciality
(1) Extradition shall not be granted unless the following conditions are met:
   1. that the person sought will neither be punished in the requesting State without Germany’s consent for any reason which arose prior to his transfer with the exception of that offence for which extradition had been granted, nor be restricted in his personal freedom or be prosecuted through measures which could not also be taken in his absence;
   2. that the person sought will not be delivered, transferred or deported to a third State without Germany’s consent; and
   3. that the person sought may leave the requesting State after the final conclusion of the proceedings for which extradition had been granted.
(2) The requirement that the requesting State adhere to the rule of speciality must not be waived unless
   1. Germany’s consent to prosecute or enforce a sentence or another sanction regarding an additional offence (s. 35) or to deliver, transfer or deport to another foreign State (s. 36) has been given;
   2. the person sought has not left the requesting State within one month after the final conclusion of the proceedings for which his extradition had been granted although he had the possibility and the right to do so;
   3. the person sought, after having left the requesting State, returned there or was sent back there by a third State.
The right of the requesting State to interrogate the person sought for the purpose of preparing a request pursuant to s. 35 shall not be prejudiced.
(3) Early release without an order limiting the freedom of movement of the person sought shall have the same effect as the final conclusion of the proceedings pursuant to subsection (1) no. 3, (2) 1st sentence no. 2 above.

Section 12
Granting Extradition
Except in a case covered by s. 41 extradition must not be granted unless a court has ruled it admissible.

Section 13
Jurisdiction Ratione Materiae
(1) Except as provided in ss. 21, 22 and 39 (2) the Oberlandesgericht shall have jurisdiction. The decision of the Oberlandesgericht shall not be subject to appeal.
(2) The public prosecution service at the Oberlandesgericht shall prepare the decision regarding extradition and shall execute the extradition order if granted.
Section 14
Jurisdiction Ratione Loci
(1) The Oberlandesgericht and the public prosecution service at the Oberlandesgericht in the district where the person sought was arrested for the purpose of extradition or, if the person sought was not apprehended, where he was first located, shall have jurisdiction.
(2) If several person accused of participation in the same offence, or in connection with it of assistance after the fact, assistance in avoiding prosecution or punishment, or handling stolen goods are to be extradited and are arrested or located for the purposes of extradition in the districts of different Oberlandesgerichte, the Oberlandesgericht or if no Oberlandesgericht has been seized of the matter yet, the public prosecution service at the Oberlandesgericht who has first dealt with the case, shall have jurisdiction.
(3) If the whereabouts of a person are unknown, the Bundesgerichtshof shall decide which Oberlandesgericht has jurisdiction.

Section 15
Extradition Detention
(1) Upon receipt of an extradition request extradition detention of a person may be ordered
1. if there is a danger that he may avoid the extradition proceedings or the execution of the extradition; or
2. if based on ascertainable facts there is strong reason to believe that the person would obstruct the investigation of the truth in the foreign proceedings or in the extradition proceedings.
(2) Subsection (1) above shall not apply if it appears ab initio that extradition will not be granted.

Section 16
Provisional Extradition Detention
(1) Under the conditions of s. 15 extradition detention may be ordered prior to receipt of the extradition request, if
1. a competent authority of the requesting State so requests; or
2. if there is a strong reason to believe that a foreigner, based on ascertainable facts, may have committed an offence which could lead to his extradition.
(2) The extradition arrest warrant shall be lifted if the person sought has been in detention from the day of his apprehension or arrest for a period of two months for the purpose of extradition and an extradition request accompanied by the extradition documents has neither been received by the authorities mentioned in s. 74 nor by any other authorities competent to receive the request and documents. If a non-European State has requested the order for provisional extradition detention, the period shall be three months.
(3) After receipt of the extradition request and extradition documents, the Oberlandesgericht shall decide without undue delay whether the detention is to be upheld.

Section 17
Extradition Arrest Warrant
(1) The provisional extradition detention and the extradition detention shall be ordered by the Oberlandesgericht in a written arrest warrant (extradition arrest warrant).
(2) The extradition arrest warrant must mention the following:
1. The person sought;
2. the State to which, depending on the circumstances of the case, he is to be extradited;
3. the offence with which the person sought is charged;
4. the request or in the case of s. 16(1) no. 2 the facts which show that there is strong reason to believe that the person sought has committed an offence which may lead to his extradition and

5. the reason for the arrest and the facts supporting it.

**Section 18**

**Measures to Determine the Whereabouts of the Person Sought**

If an extradition request has been submitted and the location of the person sought is unknown, measures necessary for determining the whereabouts and apprehension of the person sought may be taken. No special request is required for specific measures to be ordered. The public prosecution service at the Oberlandesgericht shall have jurisdiction to issue and advertise an order for his apprehension. The provisions of s. 9(a) of the Strafprozessordnung shall apply mutatis mutandis.

**Section 19**

**Provisional Arrest**

If the conditions for an extradition arrest warrant are fulfilled the public prosecution service and the police may provisionally arrest the person sought. Under the requirements of s. 127(1) no. 1 of the Strafprozessordnung everyone shall have the right to make a citizen’s arrest.

**Section 20**

**Notification**

(1) Once the person sought is provisionally arrested he must be informed of the reason for his arrest.

(2) If an extradition arrest warrant has been issued the person sought must immediately be informed about it. The person sought shall receive a copy.

**Section 21**

**Procedure after Arrest Pursuant to an Extradition Arrest Warrant**

(1) A person sought who is apprehended on the basis of an extradition arrest warrant shall be brought without delay, but no later than on the day following his apprehension, before a judge of the nearest Amtsgericht.

(2) The judge shall examine the person sought immediately after he is brought before him but no later than on the following day, about his personal circumstances and especially his citizenship. He shall advise him that he may at any time during the proceedings have the assistance of counsel (s. 40) and that he is free to make or not to make any statements regarding the charges made against him or to remain silent. He shall ask him whether and if so on what grounds he wishes to object to the extradition, to the extradition arrest warrant or to its execution. In the case of s. 16(1) no. 2 this examination shall also include the object of the charges. In all other cases, those statements which the person sought makes voluntarily in that context are to be entered into the court record.

(3) If the examination shows that

1. the detainee is not the person identified in the extradition arrest warrant;

2. the extradition arrest warrant has been rescinded; or

3. the execution of the extradition arrest warrant has been stayed,

the judge shall order his release.

(4) If the extradition arrest warrant has been rescinded or its execution stayed, the judge shall order the person sought to be detained pending the decision by the Oberlandesgericht, if

1. the requirements for a new extradition arrest warrant on the same charges exist or
2. reasons for ordering the execution of the extradition arrest warrant exist. The public prosecution service at the Oberlandesgericht shall without undue delay request a decision by the Oberlandesgericht.

(5) If the person sought raises other objections to the extradition arrest warrant or to its execution which are not manifestly unfounded, or if the judge has reservations against the continuation of the detention, he shall immediately inform the public prosecution service at the Oberlandesgericht in the most expeditious manner. The public prosecution service at the Oberlandesgericht shall without undue delay request a decision by the Oberlandesgericht.

(6) If the person sought does not raise any objections to the extradition, the judge shall advise him about the possibility of a simplified extradition and its legal consequences (s. 41). He shall then record his statements.

(7) The decision of the judge shall not be subject to appeal. The public prosecution service at the Oberlandesgericht may order the release of the person sought.

Section 22
Procedure after Arrest

(1) A person sought who is arrested shall be brought without delay, but no later than the day following his arrest, before the judge of the closest Amtsgericht.

(2) The judge shall examine the person sought immediately after he is brought before him, but no later than on the following day, about his personal circumstances and especially his citizenship. The judge shall advise him that he may at any time during the proceedings have the assistance of counsel (s. 40) and that he is free to make any statements regarding the charges made against him, or to remain silent. He shall ask him whether and if so on what grounds he wishes to object to the extradition or to his arrest. S. 21(2) 4th sentence shall apply mutatis mutandis.

(3) If the examination shows that the detainee is not the person to whom the request or the facts within the meaning of s. 17(2) no. 4 refer, the judge shall order his release. Otherwise, the judge shall order that the person sought be detained pending the decision by the Oberlandesgericht. S. 21(4) 2nd sentence, (6) and (7) shall apply mutatis mutandis.

Section 23
Decision on Objections Raised by the Person Sought

The Oberlandesgericht shall rule on any objections raised by the person sought against the extradition arrest warrant or against its execution.

Section 24
Repeal of Extradition Arrest Warrant

(1) The extradition arrest warrant shall be repealed as soon as the requirements for the provisional extradition detention or for the extradition detention no longer exist or a decision denying extradition has been issued.

(2) The extradition arrest warrant shall also be repealed if the public prosecution service at the Oberlandesgericht applies for its repeal. Simultaneously with the application, the public prosecution service shall order the release of the person sought.

Section 25
Stay of Execution of Extradition Arrest Warrant

(1) The Oberlandesgericht may stay the execution of the extradition arrest warrant if less intrusive measures will ensure that the purpose of the provisional extradition detention or of the extradition detention is served.

(2) S. 116(1) 2nd sentence, (4), ss. 116 a, 123 and 124(1), (2) 1st sentence, (3) of the Strafprozess-ordnung as well as s. 72(1), (4) 1st sentence of the Jugendgerichtsgesetz shall apply mutatis mutandis.

Section 26
Review of Detention
(1) If the person sought is held in extradition detention, the Oberlandesgericht shall decide on its continuation provided the person sought has been detained for a total of two months from the day of his capture or his arrest or the day of the last decision concerning the continuation of the detention for the purpose of extradition. The review shall be repeated every two months. The Oberlandesgericht may order that the review take place within shorter periods of time.

(2) If the person sought is provisionally detained in temporary placement in an approved school (s. 71(2) of the Jugendgerichtsgesetz), subsection (1) above shall apply mutatis mutandis.

Section 27
Execution of Detention

(1) The provisions on the execution of custody pending trial and s. 119 of the Strafprozessordnung shall apply mutatis mutandis to provisional extradition detention, to extradition detention and to detention pursuant to an order issued by a judge with regard to the execution of detention pending further investigation.

(2) The public prosecution service at the Oberlandesgericht shall designate the facility in which the person sought is to be kept.

(3) The presiding judge of the appropriate senate of the Oberlandesgericht shall issue the necessary judicial orders.

Section 28
Examination of the Person Sought

(1) Upon receipt of the extradition request, the public prosecution service at the Oberlandesgericht shall apply to the Amtsgericht in whose district the person sought is located for his examination.

(2) The judge at the Amtsgericht shall examine the person sought about his personal circumstances and especially his citizenship. He shall advise him that he may at any time during the proceedings have assistance of counsel (s. 40) and that he is free to make any statements regarding the charges made against him or to remain silent. He shall ask him whether and if so on what grounds he wishes to object to the extradition. The person sought shall be interrogated with regard to the object of the charges only if the public prosecution service at the Oberlandesgericht has applied for it. Other than that, the statements concerning the subject matter of the charges volunteered by the person sought shall be entered into the court record.

(3) If the person sought does not raise any objections to the extradition, the judge shall advise him about the possibility of a simplified extradition and its legal consequences (s. 41) and record any declarations of the person sought.

Section 29
Request for a Decision Concerning the Admissibility of Extradition

(1) If the person sought does not consent to the simplified extradition (s. 41) the public prosecution service at the Oberlandesgericht shall apply to the Oberlandesgericht for a decision on whether extradition is admissible.

(2) The public prosecution service at the Oberlandesgericht may also apply to the Oberlandesgericht for such a decision if the person sought has consented to a simplified extradition.

Section 30
Preparation of Decision

(1) If the extradition documents do not suffice for making a decision about the admissibility of the extradition the Oberlandesgericht shall render a decision only after the requesting State has been given an opportunity to submit additional documents. A deadline for the submission of these documents may be set.
(2) The Oberlandesgericht may examine the person sought. It may hear other evidence regarding the admissibility of the extradition. In the case of s. 10(2) the evidence regarding the admissibility of the extradition shall also extend to whether there is sufficient cause to believe that the person sought is guilty of the offence with which he is charged. The Oberlandesgericht shall determine the manner in which the evidence is presented as well as its extent, without being bound by applications, waivers or prior decisions.

(3) The Oberlandesgericht may hold an oral hearing.

Section 31
Oral Hearing

(1) The public prosecution service at the Oberlandesgericht, the person sought and his counsel (s. 40) shall be advised of the time and place of the oral hearing. A representative of the public prosecution service at the Oberlandesgericht must be present at the oral hearing.

(2) If the person sought is in custody he is to be brought before the court unless he has waived his right to be present during the hearing or unless reasons of long distance, illness or other insurmountable obstacles prevent his attendance. If the person sought is not brought before the judge the oral hearing counsel (s. 40) must represent him during the oral hearing. In this case counsel shall be appointed for his defence unless he is represented by counsel of his choice.

(3) If the person sought is not in custody the Oberlandesgericht may order his personal attendance. If the person sought has been properly summoned and does not attend and if his absence has not been sufficiently excused the Oberlandesgericht may order him to be brought before the court.

(4) The parties present at the hearing shall be heard. A record of the oral hearing shall be made.

Section 32
Decision on Admissibility of Extradition

The decision regarding the admissibility of the extradition must contain the court’s reasons. The public prosecution service at the Oberlandesgericht, the person sought and his counsel (s. 40) shall be notified of the decision. The person sought shall receive a copy.

Section 33
Reconsideration of Decision on Admissibility of Extradition

(1) If after the decision by the Oberlandesgericht regarding the admissibility of the extradition, circumstances arise which may justify a different decision, the Oberlandesgericht shall proprio motu, on the application of the public prosecution service at the Oberlandesgericht or of the person sought, review its decision.

(2) If after the decision by the Oberlandesgericht circumstances become known which may justify a different decision on the admissibility, the Oberlandesgericht may render a new decision.

(3) S. 30(2) and (3), and ss. 31 and 32 shall apply mutatis mutandis.

(4) The Oberlandesgericht may order a stay of the extradition.

Section 34
Detention for the Purpose of Safeguarding Extradition

(1) If, after the granting of extradition the person sought is not in custody and if the extradition cannot be ensured in another manner the Oberlandesgericht shall order the arrest for the purpose of executing extradition by means of a written arrest warrant, unless the execution of an existing extradition arrest warrant (s. 17) can be ordered.

(2) The arrest order shall contain information concerning the following:

1. The person sought,

2. the decision granting extradition and

3. the reason for the detention and the facts on which it is based.
(3) Ss. 18 to 20 and 23 to 27 shall apply mutatis mutandis.

Section 35
Extension of Scope of Granted Extradition

(1) If the extradition has been carried out and the requesting State to which the person sought has been extradited requests, because of an additional offence, the consent for the prosecution or for the enforcement of a sentence or of any other sanction, consent may be given, provided it has been demonstrated that

1. the person sought had the opportunity to state his views regarding the request and the Oberlandesgericht had decided that extradition for the offence would have been admissible or

2. the person sought has given his consent on the record of a court of the requesting State to the prosecution or to the enforcement of the sentence or of any other sanction and if extradition for the offence would be admissible.

If the consent to prosecute is requested, then instead of an arrest warrant or of a document with corresponding legal force (s. 10(1) 1st sentence) the document of a competent authority of the requesting State, denoting the offence with which the person sought has been charged, shall suffice.

(2) With regard to the procedure s. 29, with the proviso that the consent of the person sought to the simplified extradition is substituted by his consent in the sense of subsection (1) 1st sentence no. 2 above, as well as ss. 30(1) and (2) 2nd to 4th sentences (3), s. 31(1) and (4), and ss. 32, 33(1) and (2) shall apply mutatis mutandis. Pursuant to subsection (1) 1st sentence no. 1 above the Oberlandesgericht which had jurisdiction in the extradition proceedings for the decision regarding the admissibility of the extradition shall also have jurisdiction for this decision.

Section 36
Transfer to a Third State

(1) If the extradition has been carried out and if a competent authority of a foreign State requests, on the basis of the offence for which the extradition had been granted or for an additional offence, consent to the transfer to a third State, to the surrender of the person sought for the purpose of enforcing a sentence or any other sanction or his deportation, s. 35(1) 1st sentence, (2) shall apply mutatis mutandis if extradition for the offence to that State to which the person sought is to be delivered or surrendered would be admissible.

(2) If the extradition has not yet been carried out, consent may be given upon a request as described in subsection (1) above, provided that because of the nature of the offence extradited to the State to which the person extradited is to be delivered or surrendered would be admissible. With regard to the proceedings, ss. 28 to 33 shall apply mutatis mutandis.

Section 37
Temporary Extradition

(1) If the extradition is stayed because criminal proceedings against the person sought are pending on German territory, or because a prison sentence or a custodial measure of rehabilitation and incapacitation is to be enforced, the person sought may temporarily be extradited, provided that a competent authority of the requesting State makes such a request and gives an assurance that he will be returned if requested or by a certain date.

(2) The return of the person sought may be waived.

(3) If in the proceedings which caused the stay of the extradition a prison sentence or a fine is imposed, the time already served by the person sought in the requesting State until his return or until the waiver of his return shall be credited against such penalty. If the extradition was stayed because a prison sentence was being enforced against the person sought, the 1st sentence above shall apply mutatis mutandis.
(4) The authority responsible under subsection (3) above for deciding on the credit shall determine its measure in its discretion and after hearing the public prosecution service at the Oberlandesgericht. It may order that no credit or only partial credit be given,

1. if the time served in the requesting State was credited completely or partly against a sentence issued or to be enforced there or against any other sanction; or
2. if in view of the conduct of the person sought after his transfer such credit is not justified.

Section 38
Handing Over of Objects in Extradition Proceedings

(1) In connection with an extradition the following objects may be handed over to the requesting State without a separate request:

1. Objects which may serve as evidence in the foreign proceedings or
2. objects which the person sought or a participant to the offence have obtained through the offence for which extradition has been granted or as compensation for such objects.

(2) The handing over shall not be admitted unless rights of third parties are not infringed, and be admitted under the condition that objects handed over will be returned immediately upon request.

(3) Under the conditions specified in subsections (1) and (2) above property may be handed over even if the extradition itself cannot be carried out for factual reasons.

(4) The Oberlandesgericht shall rule on the admissibility of the handing over upon objection by the person sought, upon application by the public prosecution service at the Oberlandesgericht or upon application by any person who claims that his rights would be infringed by the handing over. If the Oberlandesgericht allows the handing over it may make a costs order for the costs arising to the State against the person who applied for the Oberlandesgericht decision. The handing over may not be granted if the Oberlandesgericht has declared it inadmissible.

Section 39
Search and Seizure

(1) Objects which may be subject to being handed over to a foreign State may be seized or otherwise secured even prior to the receipt of the extradition request. A search may be conducted for this purpose.

(2) If no Oberlandesgericht has been seized of the extradition proceedings the Amtsgericht in whose district these actions are to be performed shall have jurisdiction to order the search and seizure.

(3) In cases of emergency, the public prosecution service or its agents (s. 152 Gerichtsverfassungsgesetz ) may order the search and seizure.

Section 40
Assistance of Counsel

(1) The person sought may at any time during the proceedings have the assistance of counsel.

(2) If the person sought does not already have privately appointed counsel, counsel shall be assigned to him

1. if due to the factual or legal complexity of the case assistance appears appropriate, in proceedings according to paragraph 2. of Part VIII, especially in cases of doubt whether the conditions of ss. 80 and 81 no. 4 have been fulfilled,
2. if it is apparent that the person sought cannot himself adequately protect his rights or
3. if the person sought is under 18 years of age.

(3) The provisions of Chapter 11 of Book 1 of the Strafprozessordnung with the exception of ss. 140, 141(1) to (3) and s. 142(2) shall apply mutatis mutandis.

Section 41
Simplified Extradition

(1) Upon the request of a competent authority of a foreign State for extradition or arrest for the purpose of extradition, the extradition of a person sought against whom an extradition arrest warrant has been issued may be granted without formal extradition proceedings provided the person sought, after being advised of his rights, consents to the simplified extradition and his consent has been entered into the court record.

(2) In the case of subsection (1) above the requirements of s. 11 need not be complied with if the person sought after being advised of his rights consents and his consent has been entered into the court record.

(3) The consent cannot be revoked.

(4) On the application by the public prosecution service at the Oberlandesgericht the judge of the Amtsgericht shall advise the person sought of the possibility of simplified extradition and its legal consequences (subsections (1) to (3) above) and record his declaration. The judge of the Amtsgericht in whose district the person sought is located shall have jurisdiction.

Section 42
Preliminary Rulings on Legal Issues by the Bundesgerichtshof

(1) If the Oberlandesgericht deems a ruling by the Bundesgerichtshof necessary for the clarification of a legal issue of fundamental significance or if it wishes to deviate from a decision of the Bundesgerichtshof or from a decision taken after the coming into force of this Act by another Oberlandesgericht concerning a legal issue in the context of extradition, it shall request the decision of the Bundesgerichtshof concerning that legal issue by means of a reasoned decision.

(2) The decision of the Bundesgerichtshof shall also be requested if the Generalbundesanwalt or the public prosecution service at the Oberlandesgericht make such a request for the clarification of a legal issue.

(3) The Bundesgerichtshof shall give the person sought an opportunity to be heard. The decision shall be made without an oral hearing.

Part III.
Transit

Section 43
Admissibility of Transit

(1) A foreigner who is being prosecuted in a foreign State because of an offence punishable there or who has been convicted there may, for the purpose of prosecution or enforcement of a penalty imposed on him for that offence or of any other sanction, at the request of a competent authority of that State, transit through German territory.

(2) A foreigner who has been convicted in a foreign State because of an offence punishable there, may, at the request of a competent authority of another foreign State which has taken over the enforcement, transit through German territory for the purpose of enforcement of a penalty imposed on him for that offence or of any other sanction.

(3) Transit shall not be granted unless

1. the offence on which the request is based is punishable under German law by imprisonment or mutatis mutandis would be punishable by imprisonment, and unless

2. for the offence on which the request is based,

   a) in the case of subsection (1) above, the documents described in s. 10(1) 1st sentence, or
b) in the case of subsection (2) above, the documents described in s. 10(3) nos. 1 to 3 have been submitted.

If transit is requested for several offences the requirements of the 1st sentence above need only be complied with for one of the offences on which the request is based.

(4) For the transit ss. 6 to 8 shall apply mutatis mutandis.

Section 44
Jurisdiction

(1) The judicial decisions shall be issued by the Oberlandesgericht. S. 13(1) 2nd sentence and (2) shall apply mutatis mutandis.

(2) Jurisdiction ratione loci shall lie

1. in the case of transit by land or by sea, with the Oberlandesgericht in the district where the person is scheduled to enter German territory;

2. in the case of transit by air, with the Oberlandesgericht in the district where the aircraft will make its first stop.

(3) If jurisdiction pursuant to subsection (2) no. 2 above cannot be established, the Oberlandesgericht in Frankfurt am Main shall have jurisdiction.

Section 45
Transit Proceedings

(1) If transit appears admissible the person sought shall be held in detention to ensure transit.

(2) Detention shall be ordered by means of a written arrest warrant (transit arrest warrant) by the Oberlandesgericht. S. 17(2) and s. 30(1) shall apply mutatis mutandis.

(3) Transit may not be granted unless a transit arrest warrant has been issued.

(4) Immediately upon his arrival on German territory the person sought shall be notified of the transit arrest warrant. He shall receive a copy.

(5) If it is unlikely that transit can be completed before the end of the day following entry on German territory the person sought shall be brought immediately, but no later than on the day after his arrival on German territory, before the judge of the nearest Amtsgericht. The judge shall examine the person sought about his personal circumstances and especially his citizenship. He shall advise him that he may at any time during the proceedings have the assistance of counsel (s. 40) and that he is free to make statements regarding the charges made against him or to remain silent. The judge shall ask him whether and if so on what grounds he wishes to object to the transit arrest warrant or to the admittance of transit. If the person sought raises objections which are not manifestly unfounded or if the judge has reservations against the continuation of the detention or against the admissibility of the passage in transit, he shall advise the public prosecution service at the Oberlandesgericht immediately and in the most expeditious manner. The public prosecution service shall without undue delay request a decision from the Oberlandesgericht.

(6) Ss. 24, 27, 33(1), (2) and (4) and ss. 40 and 42 shall apply mutatis mutandis, as well as s. 26(1) with the proviso that for the period of two months shall be substituted a period of one month.

(7) Objects received in the course of transit may without separate request be handed over at the same time as the person sought.

Section 46
Transit in Case of Temporary Extradition

(1) If transit has been granted the person sought may at the request of a competent authority of the requesting State be transported in transit through German territory for the purpose of executing a temporary extradition and a subsequent return.

(2) In the case of subsection (1) above the transit arrest warrant shall be extended to the additional instances of transit.
Section 47

Unscheduled Landing in Case of Transport by Air

(1) If a competent authority of a foreign State presents a notification that it will, for the purpose of extradition by air, have a foreigner transported by air through German airspace without landing, and if the necessary documents pursuant to s. 43(3) 1st sentence no. 2 and 2nd sentence have been submitted, such notification shall in the case of an unscheduled landing be treated like a request for transit.

(2) If the requirements of subsection (1) above are fulfilled the public prosecution service and the police shall be authorised to arrest the transported person.

(3) The person sought shall be brought without delay, but no later than on the following day before the judge of the closest Amtsgericht. The judge shall examine him about his personal circumstances and especially his citizenship. He shall advise him that at any time during the proceedings he may have the assistance of counsel (s. 40) and that he is free to make any statements regarding the charges made against him or to remain silent. He shall ask whether and if so on what grounds he wishes to object to the transit or his detention.

(4) If the examination shows that the person presented is not the person described in the notification, the judge shall order his release. Otherwise, the judge shall order that the person sought be detained pending the decision of the Oberlandesgericht. S. 21(4) 2nd sentence and (7) shall apply mutatis mutandis.

(5) The transit arrest warrant may be issued prior to receipt of the documents described in s. 43 (3) 1st sentence no. 2. The person sought shall be notified immediately. He shall receive a copy.

(6) The transit arrest warrant shall be repealed if the person sought has for the purpose of transit been held in detention from the day of his arrest for a total of 45 days, and the transit documents have not been received. If a non-European State has presented notification of the passage in transit pursuant to subsection (1) above the period shall be two months.

(7) Upon receipt of the documents, the public prosecution service at the Oberlandesgericht shall apply for the examination of the person sought by the judge of the Amtsgericht in whose district the person sought is located. S. 45(5) 2nd to 4th sentences shall apply mutatis mutandis. The public prosecution service at the Oberlandesgericht shall request the decision of the Oberlandesgericht as to whether the transit arrest warrant is to be upheld.

(8) Transit may be granted only if the Oberlandesgericht has upheld the transit arrest warrant.

Part IV.

Assistance in the Enforcement of Foreign Judgments

Section 48

Principle

For criminal proceedings assistance may be provided through enforcement of a penalty or any other sanction imposed with final and binding force in a foreign country. Part IV of this Law shall also apply to requests for the enforcement of an order for confiscation or deprivation, made by a court exercising other than criminal jurisdiction in the requesting State if the order is based on a punishable offence.

Section 49

Additional Prerequisites for Admissibility of Assistance

(1) The enforcement shall not be admissible unless

1. a competent authority of the foreign State submitting the complete, legally binding and enforceable decision has requested it;

2. in the proceedings on which the foreign decision is based the convicted person had an opportunity to be heard and to present an adequate defence, and the sanction has been imposed by an independent court or, in the case of a fine, was imposed by an authority whose decision may be appealed to an independent court;
3. under German law notwithstanding possible procedural obstacles and, if necessary mutatis mutandis, a criminal penalty, measure of rehabilitation and incapacitation or a regulatory fine could have been imposed in respect of the offence on which the foreign judgment is based or, where enforcement of an order for confiscation or deprivation is requested, such an order could have been made, notwithstanding section 73(1) 2nd sentence of the Strafgesetzbuch;

4. a decision of the kind mentioned in s. 9 no. 1 has been made, unless the enforcement of an order for confiscation or deprivation is requested and such an order could be made independently under s. 76 a of the Strafgesetzbuch;

5. the statute of limitations for the enforcement under German law has not lapsed or would not have lapsed mutatis mutandis; the above notwithstanding the enforcement of an order for confiscation or deprivation shall be admissible if
   a) German criminal law does not apply to the offence on which the order is based or
   b) such an order could be made mutatis mutandis by analogous application of s. 76 a(2) no. 1 of the Strafgesetzbuch.

(2) If a custodial sanction has been imposed in a foreign State and the convicted person is located there, enforcement shall not be admitted unless the convicted person, after having been advised, consented and his consent was entered into the record of a court in the requesting State or the consent was declared before a German consular career official empowered to certify legally relevant declarations. The consent cannot be revoked.

(3) If German law does not recognise any type of sanction corresponding to the sanction imposed in the foreign State, enforcement shall not be admissible.

(4) If in the foreign order for confiscation or deprivation a decision has been made concerning the rights of third parties, it shall be binding unless
   a) the third party had not been given sufficient opportunity to defend their rights, or
   b) the decision is incompatible with a German civil court decision issued in the same matter or
   c) the decision relates to third party rights to real estate located on German territory or to a real estate rights; third party rights shall also include priority notices.\footnote{4)

(5) Orders depriving of or suspending a right, or ordering prohibitions or the loss of a capacity, shall extend to German territory if so provided for in an international agreement approved by law in accordance with Article 59(2) of the Grundgesetz.

\footnote{4)
Under s. 883 of the German Civil Code.}

Section 50
Jurisdiction Ratione Materiae
Jurisdiction regarding the enforceability of a foreign decision shall lie with the Landgericht. The public prosecution service at the Landgericht shall prepare the decision.

Section 51
Jurisdiction ratione loci
(1) Jurisdiction for the decision regarding the enforceability of a foreign decision shall be determined by the place of residence of the convicted person.

(2) If the convicted person does not have a permanent place of residence on German territory, jurisdiction shall be determined by the place where he normally lives or, if such a place is not known, by his last place of residence, otherwise by the place where he was apprehended, or, if he has not been not apprehended, where he was first located. If the request relates solely to enforcement of an order for confiscation or deprivation or a fine or a
regulatory fine, jurisdiction shall lie with the court in whose district the object described in the order for confiscation or deprivation, is located, or, if no particular object is specified in the order for confiscation or deprivation or if a fine or regulatory fine is to be enforced, jurisdiction shall lie with the court in whose district the convicted person’s assets are located. If the convicted person has assets in the districts of several Landgerichte jurisdiction shall be determined by which Landgericht was first seized of the matter or, if no Landgericht has been seized of the matter yet, which public prosecution service at a Landgericht was first seized of it.

(3) If jurisdiction cannot be otherwise established, it shall be determined by the seat of the Bundesregierung.

Section 52
Preparation of Decision

(1) If the documents submitted are insufficient to permit a determination as to enforcement, the court shall issue its decision only after the requesting State has been given an opportunity to submit additional documents.
(2) S. 30(1) 2nd sentence, (2) 2nd and 4th sentences, (3) and s. 31(1) and (4) shall apply mutatis mutandis. If the convicted person is on German territory, s. 30(2) 1st sentence and s. 31(2) and (3) shall also apply mutatis mutandis.

(3) In respect of requests for enforcement of foreign orders for confiscation or deprivation, the convicted person as well as third parties who could, depending on the circumstances of the case, claim rights to the object, must be given an opportunity to be heard prior to the decision.

Section 53
Assistance of Counsel

(1) In respect of requests for enforcement of foreign orders for confiscation or deprivation, the convicted person as well as third parties who could, depending on the circumstances of the case, claim rights to the object, may avail themselves of the assistance of counsel at any stage of the proceedings.
(2) If the convicted person did not privately appoint counsel, he shall be assigned counsel if

1. because of the complexity of the factual and legal situation, the assistance of counsel appears necessary,
2. it is apparent that the convicted person cannot himself adequately protect his rights or
3. the convicted person is in detention outside German territory and there are doubts whether he himself can adequately protect his rights.

(3) The provisions of Chapter 11 of Book 1 of the Strafprozessordnung with the exception of ss. 140, 141(1) to (3) and s. 142(2) shall apply mutatis mutandis.

Section 54
Conversion of Foreign Sentence

(1) To the extent that enforcement of the foreign judgment is admissible, it shall be declared enforceable. The penalty imposed shall at the same time be converted into a penalty which under German law corresponds most closely to it. The extent of the penalty to be imposed shall be determined by the foreign decision; it must, however, not exceed the maximum of the penalty which could be imposed for the offence under German law. This maximum shall be substituted with a maximum term of two years’ imprisonment if under German law the offence is punishable

1. by a term of imprisonment not exceeding two years or
2. sanctionable as a regulatory offence by a regulatory fine yet the foreign penalty must be converted into a term of imprisonment pursuant to the 2nd sentence above.
(2) In the case of a fine the foreign currency amount shall be converted into Euros at the exchange rate applicable on the day of the foreign decision.

(2 a) Where an order for confiscation or deprivation concerns a specific object the declaration of enforceability shall refer to that object. Instead of a specific object the declaration can also refer to the monetary amount equal to the value of the object if

1. the foreign State has made a request to that effect and
2. the conditions of s. 76 of the Strafgesetzbuch are fulfilled mutatis mutandis.

If the order is defined in terms of monetary value, subsection (2) above shall apply mutatis mutandis.

(3) When converting a sentence imposed against a juvenile or a young adult the provisions of the Jugendgerichtsgesetz shall apply mutatis mutandis.

(4) Any part of the sentence previously served in the requesting State or a third State, and any detention served pursuant to s. 58, shall be credited towards the sentence to be determined. If this credit was not taken into account at the time of the decision about enforcement of the judgment or if the conditions for a credit arise at a later date, the decision shall be amended.

Section 55
Decision Concerning Enforceability

(1) The Landgericht shall decide on the enforceability by order. To the extent that the foreign decision is declared enforceable, that finding and the type and extent of the penalty to be enforced shall be stated in the order.

(2) The public prosecution service at the Landgericht, the convicted person and third parties who when a request for enforcement of an order for confiscation or deprivation was made have claimed rights to the object, may appeal the order within one week. For the subsequent procedure, s. 42 shall apply mutatis mutandis.

(3) Copies of the final orders entered by the court shall be passed on to the Bundeszentralregister. This shall not apply if the penalty imposed in the foreign judgment has been converted into a fine or if the final order related solely to an order for confiscation or deprivation. If the foreign decision is to be entered in the Bundeszentralregister the decision regarding the enforceability is to be noted in the entry. Ss. 12 to 16 of the Bundeszentralregistergesetz shall apply mutatis mutandis.

Footnote 5)
The German term here is „sofortige Beschwerde“ which means that the appeal must be filed within one week of the decision; see s. 311(2) of the Strafprozessordnung.

Section 56
Granting Assistance

(1) Legal assistance shall not be granted unless the foreign decision has been declared enforceable.

(2) The decision regarding legal assistance shall be notified to the Bundeszentralregister. S. 55(3) 2nd–4th sentences shall apply mutatis mutandis.

(3) If upon request the enforcement of a fine or a sentence of imprisonment is granted, the offence may no longer be prosecuted under German law.

(4) The granting of a request for legal assistance seeking the enforcement of an order for confiscation or deprivation shall be equivalent to a final order and decision within the meaning of ss. 73, 74 of the Strafgesetzbuch. S. 493 of the Strafprozessordnung shall apply mutatis mutandis.

Section 56 a
Compensation of the Injured Party

(1) If upon the request of another State a foreign decision ordering confiscation was executed into the assets of the convicted person within German territory, the party injured by
the offence on which the foreign decision is based shall receive compensation from public funds if

1. a German or foreign court has issued an enforceable decision awarding damages against the convicted person or if the latter has declared his obligation to pay to the injured person in an enforceable document (title),

2. the title is enforceable within German territory,

3. the injured person shows that the title covers the damages arising from the offence on which the decision for confiscation is based and

4. the injured person shows that he could not obtain full satisfaction of his claim from the enforcement of the title.

Compensation shall be awarded in exchange for cession of the claim for damages to an equal amount.

(2) Compensation shall not be granted if the rights of the injured person under s. 73 e(1) 2nd sentence continue to exist.

(3) The amount of compensation shall be limited by the remaining revenue accruing to German public funds from the enforcement of the confiscation order into the domestic assets.

If several injured parties have filed an application under subsection (1) above, their compensation shall be determined by the sequence of their applications. If several applications are filed on the same day and the revenue is insufficient to satisfy these persons they shall receive compensation pro rata according to the amount of the claims for damages.

(4) The application shall be filed with the competent enforcement authority. It may be denied if six months have passed since the end of the enforcement proceedings related to the asset from which compensation could be paid. The enforcement authority may set appropriate time limits in which the injured person must adduce the necessary documentation.

(5) The decision of the enforcement authority may be reviewed in the civil courts.

Section 56 b
Agreement on Disposal, Return and Distribution of Seized Assets

(1) The authority in charge of granting assistance may enter into an ad hoc agreement with the competent authority of the requesting State about the disposal, return or distribution of the assets resulting from the enforcement of an order for confiscation or deprivation if reciprocity is assured.

(2) Agreements relating to objects within the meaning of ss. 1 and 10 of the Gesetz zum Schutz deutschen Kulturgutes gegen Abwanderung require the consent of the Representative of the Bundesregierung for Cultural and Media Affairs. If the consent is refused, s. 16(3) 2nd sentence of the Gesetz zum Schutz deutschen Kulturgutes gegen Abwanderung shall apply mutatis mutandis.

Section 57
Enforcement

(1) Upon legal assistance having been granted, the prosecution service having jurisdiction under s. 50(2) shall execute the enforcement as enforcement authority. The jurisdiction for the enforcement of a sanction which was converted into a sanction admissible under the Jugendgerichtsgesetz shall be determined by the provisions of the Jugendgerichtsgesetz.

(2) The enforcement of the remainder of a custodial sanction may be suspended. The provisions of the Strafgesetzbuch shall apply mutatis mutandis.

(3) The decision under subsection (2) above and any subsequent decision relating to suspension shall lie with the court having jurisdiction under s. 462 a(1) 1st and 2nd sentences of the Strafprozessordnung, or, if its jurisdiction is not established under this provision, with the court having jurisdiction under s. 50.

(4) The enforcement of a converted sanction shall follow, mutatis mutandis, the provisions applicable to a similar sanction if issued in the Federal Republic of Germany.
(5) The enforcement related to a monetary value shall cease or be restricted if the convicted person adduces a document which shows that the amount was enforced in another State or if the enforcing authority obtains knowledge thereof in another manner.

(6) Enforcement shall not be executed if a competent authority of the requesting State provides notice that the conditions for enforcement no longer exist.

(7) If a foreign order for confiscation was enforced and there is reason to believe from that order that a person identifiable by name might have a claim for damages against the convicted person arising from the offence on which the order was based, that person must without undue delay be informed by the enforcing authority by simple letter to the last known address, about his rights under s. 56 a. The authority may decide not to send such information if the period under s. 56 a(4) 2nd sentence has lapsed.

Section 57 a
Costs of enforcement
The convicted person shall bear the costs of the enforcement.

Section 58
Measures Safeguarding Enforcement
(1) If a request for enforcement in the meaning of s. 49(1) no. 1 has been received, or if prior to its receipt it has been so requested by a competent authority of the requesting State with details of the offence on which the sentence is based, the time and place when it was committed and as exact a description of the convicted person as possible, the detention of the convicted person for the purpose of ensuring enforcement of a sentence of imprisonment may be ordered provided that on the basis of ascertainable facts

1. there is reason to believe that he would abscond from the enforcement proceedings or from enforcement, or

2. if there is a strong reason to believe that in the enforcement proceedings he would dishonestly obstruct the ascertainment of the truth.

(2) The court having jurisdiction pursuant to s. 50 shall issue the decision regarding detention. Ss. 17, 18, 20, 23 to 27 shall apply mutatis mutandis. The Oberlandesgericht shall be substituted by the Landgericht, the public prosecution service at the Oberlandesgericht shall be substituted by the public prosecution service at the Landgericht. Decisions of the Landgericht shall be subject to appeal.

(3) If the request for enforcement relates to a fine, a regulatory fine or an order for confiscation or deprivation, or if a competent authority of the requesting State has, with identification of the person sought, the offence on which the criminal proceedings are based and the time and place of its commission prior to receipt of such request, requested preliminary measures for the purpose of ensuring enforcement under ss. 111 b to 111 d of the Strafprozessordnung, s. 67(1) shall apply mutatis mutandis. For the purpose of the preparation of an order for confiscation or deprivation in the requesting State, which may also relate to the monetary value, decisions under ss. 111 b to 111 d of the Strafprozessordnung may be issued if the conditions of s. 66(2) nos. 1 and 2 are fulfilled.

(4) Subsections (1) and (3) above shall not apply if it appears ab initio that enforcement will not be admissible.

Part V.
Other Assistance (Mutual Legal Assistance)

Section 59
Admissibility of Assistance
(1) At the request of a competent authority of a foreign State, other legal assistance in a criminal matter may be provided.

(2) Legal assistance within the meaning of subsection (1) above shall be any kind of support given for foreign criminal proceedings regardless of whether the foreign proceedings are
conducted by a court or by an executive authority and whether the legal assistance is to be provided by a court or by an executive authority.

(3) Legal assistance may be provided only in those cases in which German courts and executive authorities could render mutual legal assistance to each other.

Section 60
Rendering Assistance
If the executive authority responsible for granting legal assistance determines that the requirements for rendering legal assistance have been fulfilled, the executive authority responsible for rendering the legal assistance shall be bound by such determination, without prejudice to s. 61.

Section 61
Decision of the Court
(1) If a court responsible for rendering legal assistance is of the view that the requirements for rendering legal assistance have not been fulfilled, it shall note the reasons for its view and request a decision from the Oberlandesgericht. The Oberlandesgericht shall also rule upon an application by the public prosecution service at the Oberlandesgericht, or in the case of s. 66, upon an application by a person claiming that his rights would be infringed if the return of an asset was ordered, whether the requirements for rendering legal assistance have been fulfilled. For these proceedings before the Oberlandesgericht, ss. 30, 31(1), (3) and (4), 32, 33(1), (2) and (4), 38(4) 2nd sentence, 40 (1) as well as the provisions of Chapter 11 of Book 1 of the Strafprozessordnung, with the exception of ss. 140 to 143, shall apply mutatis mutandis. For any subsequent proceedings s. 42 shall apply mutatis mutandis.

(2) Jurisdiction ratione loci shall lie with the Oberlandesgericht and with the public prosecution service at the Oberlandesgericht in whose district the legal assistance is to be or has been rendered. If acts of legal assistance are to be or have been carried out in the districts of different Oberlandesgerichte, jurisdiction shall lie in the district of the Oberlandesgericht which first became seized of the matter, and if no court has yet been seized of the matter, in the district in which the public prosecution service at the Oberlandesgericht first became seized of the matter.

(3) The decision of the Oberlandesgericht shall be binding on those courts and authorities responsible for rendering the legal assistance.

(4) Legal assistance may not be granted if the Oberlandesgericht rules that the requirements for the rendering of legal assistance have not been complied with.

Section 61a
Transmission of Personal Data Without Request
(1) Courts and the public prosecution service may transmit personal data from criminal proceedings to the public authorities of another State as well as to Inter-State and supranational authorities without request by the latter if

1. transmission without request to a German court or to a German public prosecution service were admissible,

2. facts exist which warrant the expectation that the transmission is necessary

   a) in order to prepare a request by the receiving State for assistance for the purpose of prosecution or enforcement of a sentence for an offence which would be punishable by a maximum term of more than five years’ imprisonment under German law, and the conditions for granting assistance on request would be fulfilled if such a request was made or

   b) in the individual case to avert a danger to the existence or security of the State, or to the life, limb or freedom of a person, or to property of significant value, protection of which is in the public interest, or to prevent a crime as described under a) above, and
3. the public authority to which the data are transmitted is competent to implement the appropriate measures under no. 2 above. If an adequate level of data protection is ensured in the receiving State, the 1st sentence no. 2 a) above shall apply with the proviso that an offence punishable under German law by a maximum term of more than five years' imprisonment shall be substituted by an offence of significant gravity.

(2) The transmission shall occur under the condition that

1. time limits pursuant to German law for data deletion and for review of data deletion will be observed,
2. transmitted data will only be used for the purposes for which they were transmitted and
3. transmitted data will be deleted or corrected immediately upon information in accordance with subsection (4) below.

(3) Transmission shall be precluded if it is evident to the court or the public prosecution service that – taking into consideration the special public interest in the transmission – the protected interests of the person demand the preclusion of the transmission in the individual case; the protected interests of the person concerned include the existence of an adequate level of data protection in the receiving State.

(4) The receiving authority shall be notified without undue delay upon discovery that the transmission of data was inadmissible or that the transmitted data were incorrect.

Section 61 b
Joint Investigation Teams
(1) If an international treaty so provides joint investigation teams may be established. A member of the joint investigation team seconded by a foreign State may be allowed to conduct investigations under the supervision of the relevant German team member if this has been previously approved by the sending State.
(2) Other persons may participate in the joint investigation team based on the law of the participating States or any agreement between them.
(3) The German officers participating in the joint investigation team may directly transmit information obtained in the execution of their office, including personal data, to the members sent by other States, insofar as this is necessary for the work of the joint investigation team.
(4) Insofar as the transmission of the information obtained under subsection (3) above requires a specific agreement amending the purpose of its use such an agreement is admissible if a request for the use of the information was admissible.

Section 61 c
Audiovisual Examination
A witness or an expert who fails to appear for examination by a foreign legal authority by use of a video conference although properly summoned shall neither be charged with the costs arising from his failure to appear nor have any penalty for contempt imposed upon him.

Section 62
Temporary Transfer to a Foreign Country for Foreign Proceedings
(1) A person detained in pretrial detention or serving a prison sentence or detained under a custodial measure of rehabilitation and incapacitation on German territory may, at the request of a competent authority of a foreign State, be temporarily transferred to that State in order to testify as a witness or for the purpose of identification or inspection by the court in proceedings pending there if

1. after being advised of his rights by a judge he consents to such transfer and his consent is entered into the court record,
2. it is not to be expected that as a result of the transfer the person’s detention would be prolonged or that the purpose of the criminal proceedings would be jeopardised,
3. measures are in place to ensure that the person will not, during the period of his transfer, be punished or be subjected to any other sanction that cannot be issued in absentia, and that in the case of his release he may leave the requesting State, and
4. if measures are in place to ensure that the person will be returned immediately after the evidence has been taken unless this requirement has been waived.

The consent (1st sentence no. 1 above) cannot be revoked.

(2) The public prosecution service at the Oberlandesgericht shall prepare the transfer and shall execute it. The public prosecution service at the Oberlandesgericht in whose district the person is detained shall have jurisdiction.

(3) The detention served in the requesting State shall be credited towards the detention being enforced in Germany. S. 37(4) shall apply mutatis mutandis.

Section 63
Temporary Transfer from a Foreign Country for Foreign Proceedings

(1) A person detained in pretrial detention or serving a prison sentence or detained under a custodial measure in a foreign State may, at the request of a competent authority of that State, be temporarily transferred to German territory to give evidence in proceedings pending in that State and after the evidence has been taken, be returned. In order to ensure his return the person shall be held in detention.

(2) Detention shall be ordered by means of a written arrest warrant. The written arrest warrant shall contain information concerning the following:

1. The person,
2. the request for taking evidence in the presence of the person and
3. the reason for the detention.

(3) The judge who is to provide the legal assistance or the judge of the Amtsgericht in whose district the executive authority that is to provide the legal assistance is located, shall have jurisdiction over the decision regarding the detention. The decision shall not be subject to appeal.

(4) Ss. 27, 45(4) and 62(2) 1st sentence shall apply mutatis mutandis.

Section 64
Transporting Witnesses in Transit

(1) A foreigner detained in a foreign State in pretrial detention or serving a prison sentence or otherwise detained under a custodial measure may, at the request of a competent authority, be transported through German territory to a third State in order to give evidence as a witness, for identification or inspection and may after the evidence has been taken be returned.

(2) To ensure the transport in transit, the person shall be held in detention. Ss. 27, 30(1), 42, 44, 45(3) and (4), 47 and 63(2) shall apply mutatis mutandis.

Section 65
Transport in Transit to Enforce Sentence

The transport in transit through German territory of a foreign citizen for the purpose of enforcing a sentence or any other sanction, from the State where he was convicted to a foreign State that has taken over the enforcement, shall be governed by ss. 43(2) to (4), 44, 45 and 47 mutatis mutandis with the proviso that the request may also be submitted by a competent authority of the State of conviction.

Section 66
Handing Over of Objects
(1) At the request of a competent authority of a foreign State objects may be handed over

1. which may serve as evidence in foreign proceedings or

2. which the person concerned or an accomplice have obtained for or through the

offence on which the request is based,

3. which the person concerned or an accomplice have obtained through the sale

of such object or as a replacement for its being destroyed, damaged or taken away or on

the basis of a right accrued to them or as usufruct or

4. which were created by or used or meant to be used in the commission or

preparation of the offence on which the request is based.

(2) Surrender shall not be admissible unless

1. the offence on which the request is based contains elements of the actus reus

and mens rea of a criminal offence or of an offence permitting the imposition of a fine

under German law or unless mutatis mutandis it would be such an offence under German

law,

2. an order for seizure by a competent authority of the requesting State is

submitted or a declaration of such an authority shows that the requirements for seizure

would exist if the objects were located in the requesting State and

3. measures are in place to ensure that the rights of third parties will not be

infringed and that objects handed over under a condition will be returned upon request

without undue delay.

(3) The handing over under subsection (1) nos. 2 to 4 above shall be admissible only as long

as no pertinent final and enforceable foreign decision exists with regard to the

abovementioned objects.

(4) The public prosecution service at the Landgericht shall prepare the decision about the

handing over and shall execute it if granted. The public prosecution service at the

Landgericht in whose district the object is located shall have jurisdiction. S. 61(2) 2nd

sentence shall apply mutatis mutandis.

Section 67
Search and Seizure

(1) Objects that may be considered for handing over to a foreign State may be seized or

otherwise secured even prior to the receipt of the request for surrender. To this end, a

search may be conducted.

(2) If the conditions specified in s. 66(1) no. 1 and (2) no. 1 apply, objects may also be

seized or otherwise secured if necessary for the enforcement of a request which is not

directed at the handing over of the objects. Subsection (1) 2nd sentence above shall apply

mutatis mutandis.

(3) The Amtsgericht in whose district they are to be performed shall have jurisdiction to order

the search and seizure. S. 61(2) 2nd sentence shall apply mutatis mutandis.

(4) If cases of emergency the public prosecution service or its agents (s. 152 of the

Gerichtsverfassungsgesetz) may order the search and seizure.

Section 67 a
Legal Assistance to International Criminal Courts, InterState and Supranational
Institutions

The provisions of Part V shall apply mutatis mutandis to requests by an international criminal

court and other InterState and supranational institutions for other forms of assistance in

criminal matters, unless special legislation provides an exhaustive regulation of the relevant

matters.
Part VI.  
Requests Addressed to Foreign Countries

Section 68  
Return to a Foreign Country

(1) A person sought who has been provisionally transferred upon request and on the condition that he would be returned later for proceedings pending against him on German territory shall be returned to the requested State at the time agreed upon unless return has been waived. The public prosecution service in charge of the proceedings referred to in the 1st sentence above shall order the return and execute it.

(2) Detention by means of a written arrest warrant may be ordered against the person sought should his return not be guaranteed otherwise. The arrest warrant must contain information concerning the following:

1. The person sought,
2. the State to which the person sought is to be returned and
3. the reasons underlying the arrest warrant.

(3) The decision about the arrest warrant shall be made by the court which has jurisdiction for custodial measures in the proceedings referred to in subsection (1) 1st sentence above. The decision shall not be subject to appeal.

(4) Ss. 18, 19, 24, 25, 27 and 45(4) shall apply mutatis mutandis.

Section 69  
Temporary Transfer from a Foreign Country for German Proceedings

(1) A person in a foreign State who is held in pretrial detention or serving a prison sentence or against whom a custodial measure has been ordered and who has upon request been temporarily transferred to a German court or a German authority in order to give evidence as a witness, for the purpose of identification or inspection shall during his presence on German territory and in order to ensure his return be held in detention.

(2) The decision regarding the detention shall be made by the court in charge of the proceedings, in preliminary proceedings by the judge of the Amtsgericht in whose district the public prosecution service conducting the case has its seat. The decision shall not be subject to appeal.

(3) Ss. 27, 45 (4), 62(2) 1st sentence and 63(2) shall apply mutatis mutandis.

Section 70  
Temporary Transfer to a Foreign Country for German Proceedings

A person in pretrial detention or serving a prison sentence or against whom a custodial measure of rehabilitation and incapacitation has been ordered in Germany may be transferred to a foreign State for the taking of evidence in German criminal proceedings if the conditions of s. 62(1) 1st sentence nos. 1, 3 and 4 are fulfilled. S. 62(1) 1st sentence and (2) to (3) shall apply mutatis mutandis.

Section 71  
Request for Enforcement

(1) A foreign State may be requested to enforce a penalty or any other sanction imposed on a foreign citizen in Germany if

1. the convicted person is resident in the foreign State or normally lives there or is present there but is not extradited because an extradition request has not been submitted or has been refused or because extradition is not practicable or
2. if enforcement in the requested State is in the interest of the convicted person or in the public interest.
Transfer of the convicted person may only be effected for the purpose of enforcing a custodial sanction. Ss. 6(2) and 11 shall apply mutatis mutandis.

(2) A foreign State may be requested to enforce a noncustodial penalty or sanction imposed on a German citizen in Germany if this is in the public interest. Furthermore, the foreign State may be requested to enforce a custodial sanction imposed on a German citizen in Germany if

1. the convicted person is resident in the foreign State or normally lives there or is present there,

2. the convicted person is not extradited because an extradition request has not been submitted or has been refused or because extradition is not practicable and

3. enforcement in the foreign State will not result in any significant disadvantage, beyond the purpose of the sentence, to the convicted person.

If the convicted person is not present in the foreign State the enforcement of a custodial sanction may not be requested unless the convicted person, after being cautioned, consents and his consent has been noted in the court record or if he consents before a consular career official empowered to certify legally relevant declarations. The consent cannot be revoked.

(3) Enforcement may not be requested unless measures are in place to ensure that the requested State will comply with a withdrawal or a limitation of the request.

(4) Enforcement of a custodial sanction may not be requested unless the court has declared enforcement in the requested State to be admissible. The Oberlandesgericht shall decide on admissibility without an oral hearing. Jurisdiction shall be determined by the location of the court which issued the sentence or other sanction to be enforced or if a prison sentence is being enforced in Germany by s. 462(1) 1st and 2nd sentences of the Strafprozessordnung. Ss 13(1) 2nd sentence, (2), 30(2) 2nd and 4th sentences, (3), 31(1) and (4), 33, 50 2nd sentence, 52(3) and 53 shall apply mutatis mutandis. If the convicted person is present on German territory, ss. 30(2) 1st sentence and 31(2) and (3) shall also apply mutatis mutandis.

(5) The German enforcement authority shall cease the enforcement to the extent that the requested State has taken over and executed enforcement. It may continue the enforcement to the extent that the requested State has not done so to completion.

Section 71a
Agreements as to Disposal, Return and Distribution of Seized Assets
If a foreign State is requested to enforce an order for confiscation or deprivation s. 56 b(1) shall apply mutatis mutandis.

Section 72
Conditions
Conditions which the requested State has attached to the legal assistance shall be honoured.

Part VII.
Applicable General Regulations

Section 73
Limitations on Assistance (Ordre Public)
Legal assistance and transmission of data without request shall not be granted if this would conflict with basic principles of the German legal system. Requests under Parts VIII, IX and X shall not be granted if compliance would violate the principles in Article 6 of the Treaty on the European Union.

Section 74
Federal Jurisdiction
(1) The Bundesministerium der Justiz with the consent of the Auswärtiges Amt and other federal ministries whose portfolio would be affected by the legal assistance shall decide on foreign requests for legal assistance and on requests to foreign States for legal assistance. If an authority responsible for rendering legal assistance falls within the portfolio of another federal ministry, that ministry shall take the place of the Bundesministerium der Justiz. The federal ministries responsible pursuant to the 1st and 2nd sentences above may delegate the exercise of their powers to federal authorities subordinate to them. The Bundesamt für Justiz shall decide on requests under subparagraphs 2 and 3 of Paragraph 2 of Part IX of this Act.

(2) The Bundesregierung may delegate the exercise of the power to decide on foreign requests for legal assistance and to request foreign States for legal assistance by way of an agreement to the Landesregierungen. The Landesregierungen shall have the right to delegate their powers further.

(3) The powers of the Bundeskriminalamt to transmit data, to place a person or an object on a „wanted“-list and to establish a person’s identity at the request of a foreign State shall be governed by s. 14(1) 1st sentence no. 2 and 15(1) to (3) of the Bundeskriminalamtgesetz.

Section 74 a
International Criminal Courts, InterState and Supranational Institutions
S. 74 shall apply mutatis mutandis to requests by an international criminal court and other InterState and supranational institutions for other forms of assistance in criminal matters unless special legislation provides an exhaustive regulation of the relevant matters.

Section 75
Costs
The reimbursement of costs incurred in the provision of legal assistance from the requesting State may be waived.

Section 76
Assurances of Reciprocity
In connection with German requests for legal assistance a foreign State may be given assurances that requests submitted by it will be honoured to the extent that they are not in conflict with this Act. S. 74(1) shall apply mutatis mutandis.

Section 77
Application of Procedural Rules
(1) To the extent that this Act does not contain any special procedural rules, the provisions of the Gerichtsverfassungsgesetz and the Einführungsgesetz zum Gerichtsverfassungsgesetz, the Strafprozessordnung, the Jugendgerichtsgesetz, the Abgabenordnung, and of the Ordnungswidrigkeitengesetz shall apply mutatis mutandis.

(2) In the case of incoming requests, the provisions applicable in German criminal and regulatory fine proceedings relating to immunity, indemnity and the conditions for search and seizure on the premises of a parliament shall apply.

Section 77 a
Electronic Communication and Dossier
(1) If under this Act the provision of legal assistance requires the submission of written documentation including originals or certified copies, the submission of electronic documents shall suffice if so provided for by secondary legislation under s. 77 b. The electronic documents shall contain a qualified electronic signature under the Signaturgesetz and must be fit for use by an authority or court. The same shall apply to declarations, applications or justifications which under this Act are explicitly required to be in writing or signed.

(2) The qualified electronic signature may be substituted by another secure procedure which ensures the authenticity and integrity of the transmitted electronic documents.

(3) An electronic document shall be deemed to have been received as soon as the receiving facility of the authority or court has recorded it. If a transmitted document is not fit for use the
sender shall be informed of this without undue delay together with instructions about the valid technical parameters. Unless the use of an electronic dossier has been approved under subsection (4) below, a hard copy of the electronic document shall be made without undue delay.

(4) An electronic dossier may be kept if this has been approved by secondary legislation under s. 77 b. Documents and objects for inspection (originals) handed in to the electronic dossier and fit for transposing shall be transposed into an electronic document in order to replace the original unless the secondary legislation under s. 77 b provides otherwise. The electronic document must contain a notice about when and by whom the original was transposed. The originals shall be stored until the end of the proceedings so that they may be produced upon request within a week.

(5) An electronic document created under subsection (4) 2nd and 3rd sentences above shall be used for the purpose of the proceedings unless there is cause to doubt that it is identical to the original.

(6) If the electronic document created under subsection (1) above in addition to the notice under subsection (4) 3rd sentence above contains a notice bearing a qualified electronic signature

1. to the effect that the onscreen display is in content and appearance identical to the original and
2. as to whether the original or a certified copy of it had been present for the transposal, the original may be destroyed before the end of the proceedings. Under the conditions of the 1st sentence above declarations of the person concerned and of third parties internal to the proceedings and any attached simple copies may be destroyed.

(7) Ss. 110 c to 110 e of the Ordnungswidrigkeitengesetz shall apply mutatis mutandis.

Section 77 b
Authorisation to Pass Secondary Legislation
The Bundesministerium der Justiz and the Landesregierungen shall determine within their remit of competence through secondary legislation

1. the date and time after which electronic documents may be submitted under s. 77 a(1),
2. the signature requirements for the transmission of the electronic documents under s. 77 a(2) and the required form,
3. the date and time after which dossiers are to be or may be kept electronically under s. 77 a(4),
4. the organisational-technical parameters for the creation, maintenance and storage of the electronic dossiers including the exceptions from the replacement of the original under s. 77 a(4),
5. the originals which in variance from s. 77 a(6) shall continue to be stored.

The Landesregierungen may delegate the authorisation by secondary legislation to the authorities in charge of the State administration of justice. Electronic transmission under s. 77 a(1) may be restricted to individual courts and authorities as well as proceedings. The use of an electronic dossier under s. 77 a(4) may be restricted to proceedings before individual authorities or to different stages of proceedings.

Part VIII.
Extradition and Transit to Member States of the European Union
Paragraph 1.
General Provisions
Section 78
Precedence of Part VIII

(1) Unless this Part contains specific regulations, the other provisions of this Act shall apply to the extradition and transit to Member States of the European Union.
(2) This Part shall take precedence before the international agreements mentioned in s. 1(3) insofar as it contains exhaustive regulations.

Section 79
Duty to Grant Assistance; Preliminary Decision

(1) Admissible requests for extradition or transit by a Member State may only be denied as far as provided in this Part. The decision refusing assistance must contain reasons.
(2) Prior to the decision of the Oberlandesgericht on admissibility the authority in charge of granting assistance shall decide whether it intends to raise objections under s. 83 b. The decision not to raise objections must contain reasons. It is subject to review by the Oberlandesgericht in the procedure under s. 29; the parties shall be heard. When being notified under s. 41(4) the person sought shall be warned that in the case of simplified extradition a judicial review under the 3rd sentence above is not available.
(3) If facts arising after a decision under subsection (2) 1st sentence above which are capable of giving rise to obstacles to admissibility do not lead to a refusal, the decision not to raise objections shall be subject to review in the procedure under s. 33.

Paragraph 2.
Extradition to a Member State of the European Union

Section 80
Extradition of German Citizens

(1) The extradition of a German citizen for the purpose of prosecution shall not be admissible unless

1. measures are in place to ensure that the requesting Member State after a final conviction to a sentence of imprisonment or other sanction will offer to return the person sought, if he so wishes, to Germany for the purpose of enforcement and
2. the offence has a substantial link to the requesting Member State.

A substantial link to the requesting Member State typically exists if the conduct underlying the offence occurred wholly or in its essential parts on its territory and the result occurred there at least to an essential degree, or if it relates to a serious offence with a typically transborder quality which was committed at least in part on its territory.

(2) If the conditions of subsection (1) 1st sentence no. 2 above are not fulfilled, the extradition of a German citizen for the purpose of prosecution shall be inadmissible unless

1. the conditions of subsection (1) 1st sentence no. 1 above are fulfilled and the offence
2. has no substantial link to German territory and
3. would under German law also be an unlawful act fulfilling the actus reus and mens rea elements of an offence under German law or would mutatis mutandis be such an offence under German law, and if upon an individual balancing of the competing interests the interest of the person sought in his non-extradition does not outweigh the other interests.

A substantial link to the domestic territory typically exists if the conduct underlying the offence occurred wholly or in its essential parts on German territory and the result occurred there at least to an essential degree. When balancing the interests, special regard shall be had to the nature of the offence, the practical requirements and possibilities of an effective prosecution, the interests of the person sought as protected under civil liberties, taking into
account the goals related to the creation of a European Judicial Space and weighing them against each other. If because of the offence on which the extradition request is based a decision by the prosecution service or by a court exists ordering the discontinuance or nonlieu of a criminal investigation, this decision and the reasons for it must be taken into account. This shall also apply if a court has listed a case for trial or has issued a summary judgment in written proceedings.

(3) The extradition of a German citizen for the purpose of enforcement shall be inadmissible unless the person sought after being notified of his rights gives his consent and this is noted in a judicial record. S. 41(3) and (4) shall apply mutatis mutandis.

(4) If the request for enforcement of a final sentence of imprisonment or other custodial sanction was preceded by an extradition because of the offence on which the sentence is based under subsections (1) or (2) above or if the request is based on the non-consent of the person sought under subsection (3) above, s. 49(1) no. 3 shall not apply. If in the case of such a request and for the purposes of conversion under s. 54 there is no maximum penalty for the offence under German law because s. 49(1) no. 3 does not apply, the maximum penalty shall be two years’ imprisonment.

Section 81
Extradition for the Purpose of Prosecution and Enforcement
S. 3 shall apply under the proviso that

1. extradition for the purpose of prosecution shall not be admissible unless under the law of the requesting Member State the offence is punishable by imprisonment or another sanction with a maximum term of no less than twelve months,

2. extradition for the purpose of enforcement shall not be admissible unless under the law of the requesting Member State a custodial sanction of no less than four months is to be enforced,

3. extradition in tax, customs and currency matters shall also be admissible if the German law does not recognise similar taxes or does not contain similar tax, customs or currency laws as the law of the requesting Member State,

4. double criminality shall not need to be established if the offence on which the request is based is under the law of the requesting State punishable by a custodial sanction with a maximum term of no less than three years and is listed in one of the categories of offences listed in article 2 (2) of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190/1 of 18 July 2002).

Section 82
Non-Applicability of Provisions
Ss. 5, 6 (1), 7 and, insofar as a European arrest warrant is concerned, s. 11 shall not apply.

Section 83
Additional Conditions of Admissibility
Extradition shall not be admissible

1. if the person sought has already been finally tried in another Member State for the offence on which the request is based and that in the case of a conviction the sentence has been enforced, is currently being enforced or can no longer be enforced under the law of the convicting State,

2. if the person sought was at the time of the offence not criminally liable under s. 19 of the Strafgesetzbuch or

3. if in the case of a request for the purpose of enforcement the sentence on which the request is based was issued in absentia and the person sought had not been
personally summoned to or otherwise been informed about the date of the hearing which led to the judgment in absentia unless the person sought, in a case where defence counsel had been appointed, frustrated the service of a summons through flight in the knowledge of the proceedings against him, or if after his transfer he is granted a trial de novo in which the charges against him will be reviewed in their entirety and where he will be given the right to be present at the trial, or

4. if the offence upon which the request is based is under the law of the requesting Member State punishable by life imprisonment or another custodial sanction for life or if the person sought was sentenced to such a penalty and there is no review of the penalty or sanction either upon request or proprio motu after a period of no longer than 20 years.

Section 83 a
Extradition Documents
(1) Extradition shall not be admissible unless the documentation mentioned in s. 10 or a European arrest warrant containing the following information have been transmitted:

1. the identity of the person sought as defined in the Annex to the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, and his citizenship,

2. name and address of the requesting justice authority,

3. the declaration of whether an enforceable judgment, an arrest warrant or another enforceable judicial decision with equal legal effect exists,

4. the nature and legal characterisation of the offence, including the provisions applied,

5. a description of the circumstances in which the offence was committed, including the time and place of its commission and the mode of participation by the person sought and

6. the maximum term provided for under the law of the requesting Member State for the pertinent offence or in the case of a final judgment the actual sentence imposed.

(2) Listings for arrest for the purposes of extradition under the Schengen Agreement containing the information under subsection (1) nos. 1 to 6 above or to which this information has subsequently been attached shall be treated as an European arrest warrant.

Section 83 b
Obstacles to Granting an Application
(1) Extradition may be refused

a) if criminal proceedings are pending against the person sought in Germany for the same offence as the one on which the request is based,

b) if criminal proceedings against the person sought for the same offence as the one on which the request is based, have either not been instituted or if initiated have been closed,

c) if a request for extradition by a third State shall be given precedence,

d) unless on the basis of the duty to surrender under the Council Framework Decision of 13 June 2002 (OJ L 190/1) on the European Arrest Warrant and the surrender procedures between the Member States, on the basis of an assurance by the requesting State or based on other reasons it can be expected that the requesting State would honour a similar German request.

(2) Extradition of a foreign citizen normally living on German territory may further be refused
a) if in the case of an extradition for the purpose of prosecution the extradition of a German citizen would be inadmissible under s. 80(1) and (2),

b) if in the case of an extradition for the purpose of enforcement, after being judicially warned, the person sought does not consent on the record of the court and his interest in an enforcement in Germany prevails; s. 41(3) and (4) shall apply mutatis mutandis.

S. 80(4) shall apply mutatis mutandis.

Section 83 c
Time Limits
(1) The decision on extradition shall be made no later than within 60 days of the arrest of the person sought.

(2) If the person sought consents to simplified extradition the decision on extradition shall be made no later than within ten days of the declaration of consent.

(3) Upon granting extradition a date for the transfer of the person sought shall be arranged with the requesting Member State. The date shall be no later than within ten days of the decision granting the extradition. If the date cannot be kept due to circumstances beyond the control of the requesting Member State a new date for transfer within ten days shall be arranged. The arrangement of a date for transfer may be delayed on account of a prosecution or enforcement proceedings pending against the person sought in Germany or for serious humanitarian reasons.

(4) If the time limits mentioned in this provision cannot be adhered to based on extraordinary circumstances the Bundesregierung shall inform Eurojust of this fact and of the reasons for the delay; personal data shall not be transmitted.

(5) The decision about a request for extension of a granted extradition shall be made no later than within 30 days of the receipt of that request.

Section 83 d
Release of the Person Sought
The person sought shall be released from extradition detention unless he was transferred within ten days of the date arranged under s. 83 c(3) and no new transfer date has been arranged.

Section 83 e
Interrogation of the Person Sought
(1) As long as a decision on extradition is pending a request by the requesting Member State for interrogation of the person sought as a suspect shall be granted.

(2) Upon request representatives of the requesting Member State may be present at the interrogation.

Paragraph 3.
Transit to a Member State of the European Union
Section 83 f
Transit
(1) Transit through Germany from one Member State to another Member State shall be admissible if the submitted documentation shows

1. the identity of the person sought as defined in the Annex to the Council Framework Decision of 13 June 2002 (OJ L 190M) on the European arrest warrant and the surrender procedures between Member States, and his citizenship,

2. the existence of an European arrest warrant or of a document mentioned in s. 10,

3. the nature and legal characterisation of the offence and
4. a description of the circumstances in which the offence was committed, including the time and place of its commission.

(2) Subsection (1) above shall apply to the transit from a third State to a Member State with the proviso that the information listed in subsection (1) no. 2 above shall be substituted by the information that a request for extradition exists.

(3) Transit of a German citizen for the purpose of prosecution shall be inadmissible unless the destinatory Member State gives an assurance to return the person sought to Germany upon request by Germany after the imposition of a final sentence of imprisonment or another sanction for the purpose of enforcement. Transit of German citizens for the purpose of enforcement shall be inadmissible unless the person sought consents. S. 80(4) shall apply mutatis mutandis.

(4) A decision on a request for transit shall be made no later than within 30 days of the receipt of the request.

Section 83 g
Transport by Air
S. 83 f shall also apply to transport by air in the case of an unexpected landing on German territory.

Paragraph 4.
Requests for Extradition to a Member State of the European Union

Section 83 h
Rule of Speciality

(1) Persons transferred by a Member State must

1. neither be prosecuted nor convicted or be subjected to a custodial measure for another offence than the one on which the transfer was based and

2. not be transferred, surrendered or deported to a third State.

(2) Subsection (1) above shall not apply if

1. the transferred person has not left German territory within 45 days of his final release despite having had the opportunity to do so, or after having left has returned to it,

2. the offence is not punishable by imprisonment or a custodial measure of rehabilitation and incapacitation,

3. the prosecution does not entail the use of measures restricting personal freedom,

4. the transferred person is subjected to the enforcement of a non-custodial penalty or measure of rehabilitation and incapacitation, even if this penalty or measure may have a restricting effect on personal freedom or

5. the requested member State or the person sought have declared a pertinent waiver.

(3) The waiver declared by the transferred person after transfer shall be recorded by a judge or the public prosecution service. The waiver cannot be revoked. The transferred person shall be warned of this consequence.

Section 83 i
Notification about Delays
The Bundesregierung shall notify the Council of the European Union if there have been repeated delays in the context of extraditions by another Member State. As far as necessary for the purpose of establishing the reasons for the delay in the individual case pseudonymised data of the person sought may be transmitted. The Bundesregierung may
reveal the personality link only towards the State from whom extradition had been requested and only insofar as it is necessary for the evaluation of the implementation of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190/1).

Part IX.
Assistance by Enforcement to Member States of the European Union

Paragraph 1.
Custodial Sanctions

Section 84
Incoming Requests
The provisions of Parts IV and the general provisions of Parts I and VII of this Act shall apply to requests by a Member State of the European Union for legal assistance by enforcement of a final custodial sentence issued abroad.

Section 85
Outgoing Requests
Ss. 71 and 72 as well as the general provisions of Parts I and VII of this Act shall apply to outgoing requests to a Member State of the European Union for legal assistance by enforcement of a final custodial sentence issued in Germany.

Paragraph 2.
Financial Penalties

Subparagraph 1.
General Provisions
Section 86
Precedence
(1) To the extent that this section does not contain any special rules, the remaining provisions of this Act shall be applicable to requests for enforcement of financial penalties in mutual legal assistance transactions with the Member States of the European Union.
(2) This section shall have precedence over the international law agreements listed in section 1(3) to the extent that it contains exhaustive regulations.

Subparagraph 2. Incoming Requests
Section 87
Principle
(1) Assistance for the purpose of enforcement to another Member State according to the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76/16 of 22 March 2005) is regulated by this Subparagraph. The provisions of Part IV of this Act shall apply only insofar as the following provisions expressly refer to them.
(2) Enforcement assistance may be given by enforcement of a final decision against the person concerned requiring a financial penalty to be paid where the decision was made by

1. a court of the requesting State in respect of a criminal offence under the law of the requesting State,
2. an authority of the requesting Member State other than a court in respect of a criminal offence under the law of the requesting State, provided that the person concerned has had an opportunity to have the case heard by a court having jurisdiction in particular in criminal matters,
3. an authority of the requesting State other than a court in respect of acts which are punishable under the national law of the requesting State by virtue of being
infringements of the rules of law, provided that the person concerned has had an opportunity to have the case heard by a court having jurisdiction in particular in criminal matters, or

4. a court having jurisdiction in particular in criminal matters, where the decision was made regarding a decision as referred to under no. 3 above.

(3) A financial penalty in the meaning of subsection (2) above is an obligation to pay

1. a sum of money on conviction of an offence imposed in a decision,
2. a sum of money in respect of the costs of court or administrative proceedings leading to the decision apart from the sanction under no. 1 above,
3. compensation imposed in the same decision for the benefit of victims, where the victim may not be a civil party to the proceedings and the court is acting in the exercise of its criminal jurisdiction, or
4. a sum of money to a public fund or a victim support organisation, imposed in the same decision apart from a sanction under no. 1 above.

A financial penalty shall not include orders for the confiscation of instrumentalities or proceeds of crime, orders that have a civil nature and arise out of a claim for damages and restitution and which are enforceable in accordance with Council Regulation (EC) No 44/2001 of 22 December 2000 (OJ L012/1) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Section 87 a
Documentation

The enforcement of a financial penalty shall be inadmissible unless the following documents have been submitted:

1. the original of the decision to be enforced or a certified copy of it,
2. the original certificate, filled in and signed by the competent authority of the requesting State, according to the standard form printed in the Annex to the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76/16 of 22 March 2005).

Section 87 b
Prerequisites of Admissibility

(1) The enforcement of the financial penalty shall be inadmissible unless a fine or a regulatory fine could have been imposed under German law for the offence on which the decision is based, notwithstanding procedural obstacles and, if necessary, according to a reorganisation of facts mutatis mutandis. Double criminality shall not be examined if the offence on which the decision is based fulfills, under the law of the requesting Member State, the criteria of one of the criminal or regulatory offences listed in article 5(1) of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

(2) The enforcement of the financial penalty shall be inadmissible to the extent that it has been paid or collected.

(3) The enforcement of the financial penalty shall be inadmissible if

1. the certificate mentioned in s. 87 a no. 2 is incomplete or manifestly does not correspond to the decision,
2. the financial penalty is less than the amount of EUR 70 or the corresponding value calculated on the basis of the exchange rate valid on the date of the decision to be enforced,
3. the decision was imposed in a written procedure and the person concerned was not, in accordance with the law of the issuing State, informed personally or via a representative, competent according to national law, of his right to contest the case and of the time limits of such a legal remedy,

4. the decision was issued in the absence of the person concerned, unless the person concerned was informed personally, or via a representative, competent according to national law, of the proceedings in accordance with the law of the issuing State, or that the person concerned had indicated that he does not wish to contest the case;

5. a decision within the meaning of s. 9 no. 1 was imposed on the person concerned in Germany for the same offence as the one on which the decision is based and if for that offence German courts had jurisdiction, or if for the same offence as the one on which the decision is based a decision was imposed on the person concerned and enforced in a State other than the requesting State or Germany,

6. German courts had jurisdiction over the offence on which the decision is based and the enforcement under German law is statute-barred,

7. the person concerned on account of his age at the time of the offence on which the decision is based was either acting without guilt under German law or not criminally liable within the meaning of s. 3 1st sentence of the Jugendgerichtsgesetz,

8. the offence on which the decision is based was wholly or partially committed on German territory or on a ship or aircraft entitled to fly the federal flag or the national insignia of the Federal Republic of Germany and the offence was neither punishable as a criminal offence nor sanctionable by a regulatory fine as a regulatory offence under German law, or

9. the person concerned did not have the opportunity in the foreign proceedings to state that he was not responsible for the actions on which the decision is based and he does so before the authority competent for granting enforcement.

Section 87 c
Preparation of the Decision Granting Assistance

(1) The granting authority shall provide the person concerned with copies of the documents mentioned in s. 87 a. He shall have the opportunity to make representations within two weeks of receipt and shall be warned that after lapse of that period the above authority will decide whether enforcement is granted or file an application for a judicial ruling under s. 87 i(1).

(2) The person concerned need not be heard in accordance with subsection (1) above if the granting authority

1. refuses enforcement because of lack of admissibility,

2. raises an objection to granting assistance under s. 87 d or

3. immediately requests the judicial conversion of a decision under s. 87 i(1).

Section 87 d
Duty to Grant Assistance

An admissible request for enforcement of a financial penalty may only be refused if the offence on which the request is based

1. was wholly or partially committed on German territory or on a ship or aircraft entitled to fly the federal flag or the national insignia of the Federal Republic of Germany and the offence was punishable as a criminal offence or sanctionable by a regulatory fine as a regulatory offence under German law or
2. was committed outside the territory of the requesting State and the offence is not punishable as a criminal offence or sanctionable by a regulatory fine as a regulatory offence under German law.

Section 87 e
Assistance of Counsel

S. 53 on assistance of counsel shall apply mutatis mutandis.

Section 87 f
Granting Enforcement

(1) The authority competent for granting assistance shall decide on the enforcement unless it requests a judicial ruling under s. 87 i(1).

(2) S. 54(2) and (4) shall apply mutatis mutandis. If the offence on which the request of the other Member State is based was not committed on its territory and if German courts have jurisdiction, the amount of the fine or regulatory fine shall be reduced to the maximum for a similar offence under German law if the sanction imposed in the other Member State exceeds that maximum.

(3) To the extent that the decision of the other Member State is declared enforceable the decision and the amount of the financial penalty to be enforced shall be stated. The decision granting enforcement must contain reasons and shall be formally served on the person concerned. The decision granting enforcement shall contain

1. the caution that the granting of enforcement shall become final and the financial penalty enforceable unless an objection is filed in accordance with subsection (4) below,

2. the request to the person concerned to pay the financial penalty to the Bundeskasse no later than within two weeks of the decision becoming final.

(4) The person concerned may within two weeks of service file an objection against the decision granting enforcement, either in writing or in person with the authority granting enforcement. Ss. 297 to 300 and s. 302 of the Strafprozessordnung on appeals and ss. 42 to 47 of the Strafprozessordnung on time limits and reinstatement shall apply mutatis mutandis.

Section 87 g
Judicial Procedure

(1) The courts of ordinary jurisdiction shall be seized of remedies against the decision granting enforcement. Unless the authority granting enforcement upholds the objection by the person concerned the Amtsgericht with jurisdiction under subsection (2) below shall decide. The competent Amtsgericht shall also decide upon a motion by the authority granting enforcement pursuant to s. 87 i. S. 34(1), s. 107 of the Jugendgerichtsgesetz and s. 68(2) of the Ordnungswidrigkeitengesetz shall apply mutatis mutandis. The authority granting enforcement shall prepare the decision.

(2) Jurisdiction ratione loci shall be determined by the place of residence of the person concerned if he is a natural person. If the person concerned has no residence within Germany jurisdiction shall be determined by the place where he normally lives, or if such a place is not known, his last place of residence. If the person concerned is a legal person the court where it has its seat shall have jurisdiction. In the case of s. 87 h the time of receipt of the objection, in the case of s. 87 i the time of receipt of the request by the court, shall be determinative. If none of these localities can be established the court in whose jurisdiction assets of the person concerned exist shall have jurisdiction. If assets of the person concerned exist in the jurisdictions of different Amtsgerichte the jurisdiction shall be determined according to which Amtsgericht was first seized of the matter, without prejudice to s. 58(1) of the Gerichtsverfassungsgesetz.

(3) The court shall serve the person concerned with a copy of the translation into German of the decision of the other Member State insofar as necessary for the exercise of his rights. If a request under s. 87 i(1) is filed the person concerned shall also be served with copies of the documentation listed in s. 87 a and of the decision under s. 87 i(2) not to raise objections.
against the granting of enforcement. In the case of the 2nd sentence above the person concerned shall be asked to make representations within a period to be determined by the court.

(4) For the preparation of the decision s. 52(1) shall apply mutatis mutandis with the proviso that the competent authority in the requesting Member State must have been given the opportunity to submit additional documents if those submitted previously are insufficient to make an evaluation about whether the authority granting enforcement has exercised its discretion not to raise objections correctly. Time limits may be set for the submission of additional documents. The authority granting enforcement shall execute the judicial decisions made under the 1st and 2nd sentences above. The court may hear additional evidence related to the criteria listed in s. 87 h(3) 1st sentence nos. 1, 2 and 3. Ss. 30(2) 2nd to 4th sentences and (3), 31(4) shall apply mutatis mutandis. If the person concerned is located on German territory ss. 30(2) 1st sentence and 31(2) shall apply mutatis mutandis. S. 31(1) 1st sentence shall apply mutatis mutandis with the proviso that the authority granting enforcement shall be substituted by the public prosecution service. The authority granting enforcement shall not be obliged to attend the hearing; the court shall inform the authority if it deems its attendance appropriate.

Section 87 h
Decision of the Court after Objection

(1) The Amtsgericht shall decide on the admissibility and merits of the objection by order.6)

(2) If the provisions on the filing of the objection have not been complied with the court shall dismiss it as inadmissible. The order shall not be subject to appeal.

(3) The objection by the person concerned shall be dismissed by order on the merits to the extent that

1. the enforcement of the decision of the other Member State is admissible,
2. the authority granting enforcement has exercised its discretion not to raise objections against enforcement correctly and
3. the financial penalty was correctly adapted pursuant to s. 87 f(2).

To the extent that the objection succeeds because of inadmissibility of enforcement or because of incorrect exercise of discretion the decision of the other Member State shall be declared unenforceable. If an adaptation under s. 87 f(2) is incorrect or has been omitted despite being required the court shall itself adapt the financial penalty and declare the decision enforceable. To the extent that this entails an amendment of the authority’s decision granting enforcement the amount of the financial penalty to be enforced shall be listed in the tenor7) of the order.

(4) S. 77 b of the Ordnungswidrigkeitengesetz shall apply mutatis mutandis.

Footnotes

6) The German original uses the word „Beschluss“, which has been translated by „order“. A Beschluss is a judicial decision that does not require an oral hearing, as opposed to, e. g., an „Urteil“ (judgment). This distinction is difficult to transpose terminologically to the English legal context.

7) The German word used here is „Beschlussformel“, i. e. the operative part of the order that contains the actual directions of the court as opposed to the reasons for it. „Tenor“ is the equivalent for an „Urteil“ (judgment) and has comparable connotations in English with the tenor representing the gist or main contents of a statement, view, opinion etc. The word is used for want of a better crisp expression.

Section 87 i
Judicial Decision upon Request by Authority; Granting Enforcement

(1) If the decision of another Member State
1. is a financial penalty under s. 87(2) nos. 1 and 2 imposed on a juvenile or young adult in the meaning of the Jugendgerichtsgesetz,

2. was imposed on a legal person incorporated under the law of a Member State of the European Union and which has its statutory seat, head office or main branch within the European Union or

3. was transmitted for the purpose of enforcement of a financial penalty under s. 87(3) 1st sentence nos. 3 or 4,

the authority granting enforcement shall, insofar as enforcement is admissible, request conversion of the decision by the court.

(2) When requesting a judicial decision under subsection (1) above the authority shall declare that it does not intend to raise objections against granting enforcement. The decision not to raise objections shall contain reasons.

(3) To the extent that the enforcement of the decision of another Member State is admissible and the authority has exercised its discretion not to raise objections correctly the decision shall be declared enforceable. The financial penalty shall be converted into the sanction under German law most closely resembling it. Regarding the adaptation of the amount of the financial penalty s. 87 f(2) shall apply mutatis mutandis.

(4) A financial penalty imposed on a juvenile pursuant to s. 87(2) nos. 1 and 2 shall be converted into a sanction admissible under the Jugendgerichtsgesetz. The 1st sentence above shall apply mutatis mutandis to a young adult if juvenile criminal law is applied under s. 105(1) of the Jugendgerichtsgesetz. In all other cases the decision shall be declared enforceable.

(5) The Amtsgericht shall decide on the enforceability of the decision by order. To the extent that the decision is declared enforceable the decision and the nature and amount of the financial penalty to be enforced shall be listed in the tenor of the order.

(6) The authority shall grant enforcement in accordance with the final judicial decision. The granting decision shall not be subject to appeal. S. 87 f(3) 1st and 2nd sentences shall apply mutatis mutandis. The granting decision shall contain

1. the notice that the decision granting enforcement is final and the financial penalty has become enforceable, and

2. the request to the person concerned to pay the financial penalty no later than within two weeks of service to the appropriate public fund pursuant to s. 87 n(5) 3rd sentence.

Section 87 j

Appeal

(1) The decisions of the Amtsgericht under s. 87 h(3) and s. 87 i(5) are subject to appeal on points of law (Rechtsbeschwerde) by leave of the court. The appeal may be filed by the person concerned and the authority granting enforcement. After the respondent has had an opportunity to be heard the Amtsgericht shall submit the dossier via the prosecution service to the appellate court.

(2) For the appeal and the ensuing procedure the provisions of the Strafprozessordnung and of the Gerichtsverfassungsgesetz on the Revision shall apply mutatis mutandis unless this Act provides otherwise.

(3) The time limit for filing the appeal shall begin once service of the decision has been effected.

(4) The appellate court shall decide by order without an oral hearing.

(5) If the appellate court quashes the appealed decision, it may in contrast to s 354(1) and (2) of the Strafprozessordnung revise the decision itself or remand it to the Amtsgericht whose decision was quashed or to another Amtsgericht of the same Land.

(6) For the further procedure s. 42 shall apply mutatis mutandis.

Footnotes
8) See next footnote.
9) See also text at preceding footnote. – Both „Rechtsbeschwerde“ and „Revision“ deal with appeals on points of law only; the difference (insofar as it matters here) is roughly that the former is available against decisions by „Beschluss“ i. e. without an oral hearing, the latter against decisions by „Urteil“ i. e. after an oral trial hearing.

Section 87 k
Leave to Appeal
(1) The appellate court shall grant leave to appeal upon request by the person concerned or the authority if it deems it necessary
1. to review the decision for the purpose of the development of the law or in order to ensure a uniform jurisprudence or
2. to quash the decision because the right to be heard was violated.
(2) For the leave request the provisions on the filing of a Rechtsbeschwerde shall apply mutatis mutandis. The request shall be deemed to be an appeal filed prophylactically. The provisions on the filing of the appeal pleadings and their justification (ss. 344, 345 of the Strafprozessordnung) shall be complied with. In his justification of the appeal the appellant shall state at the same time why the conditions mentioned in subsection (1) above have been fulfilled. S. 35 a of the Strafprozessordnung shall apply mutatis mutandis.
(3) The appellate court shall decide by order without an oral hearing. The decision rejecting the request shall not require any reasons. If the request is rejected the appeal shall be deemed to have been withdrawn.
(4) If before the decision upon the request is taken a procedural obstacle arises the appellate court shall discontinue the proceedings only if the obstacle arose after the decision pursuant to s. 87 h(3) or s. 87 i(5).

Section 87 l
Composition of the Senates of the Oberlandesgericht
(1) The Oberlandesgericht shall decide on the leave to appeal and on the appeal.
(2) The Senate shall sit with one judge unless provided otherwise.
(3) The Senate shall be composed of three judges including the presiding judge in proceedings
1. concerning the enforcement of a financial penalty within the meaning of s. 87(2) no. 1 or 2,
2. in which a reason for leave to appeal within the meaning of s. 87 k(1) no. 1 exists,
3. in which the factual or legal complexity of the case requires it or
4. in which the court intends to deviate from the decision of an Oberlandesgericht.

Section 87 m
Ne bis in idem; Notice to the Bundeszentralregister
(1) If enforcement is granted the offence on which the decision of the other Member State is based may no longer under German law be prosecuted either as a criminal offence or a regulatory offence.
(2) The granting or refusal of enforcement of the decision of another Member State under s. 87(2) no. 1 or 2 shall be notified to the Bundeszentralregister unless
1. the decision of the other Member State cannot be entered in the Bundeszentralregister or
2. the decision was imposed on a German citizen and the notice is unnecessary because the other Member State regularly informs the Bundeszentralregister of criminal convictions of German citizens.

Section 87 n
Enforcement

(1) The authority granting enforcement shall be in charge of the enforcement as enforcement authority. This shall apply unless the court decides on an objection under s. 87 h or upon a request of the authority pursuant to s. 87 i. In the cases under the 2nd sentence above the prosecution service with the Landgericht in whose jurisdiction the competent Amtsgericht has its seat shall be the enforcement authority. To the extent that in the cases under the 2nd sentence above a converted sanction under juvenile law is to be enforced enforcement shall follow the rules set out in s. 82 of the Jugendgerichtsgesetz.

(2) For the purposes of enforcement ss. 34, 93 to 99(1), 101, 102, 103(1) no. 2, (2) and 104(2) and (3) 1st sentence no. 1 and 2nd sentence of the Ordnungswidrigkeitengesetz shall apply mutatis mutandis. The judicial decisions necessary for the enforcement under the 1st sentence above shall lie with the Amtsgericht at the seat of the enforcement authority. In proceedings against juveniles and young adults s. 82(1), s. 83(2) and ss. 84 and 85(5) of the Jugendgerichtsgesetz shall apply mutatis mutandis. The provisions of the Justizbeitreibungsordnung shall apply unless otherwise provided in this Act. The 1st to 4th sentences above shall not apply if a decision pursuant to s. 87 i(4) 1st and 2nd sentences has been issued.

(3) Custodial measures must not be ordered when enforcing a decision under s. 87 i(4). This also applies to the enforcement of a decision against juveniles or young adults under subsection (2) above.

(4) S. 57(6) shall apply mutatis mutandis.

(5) The revenue from the enforcement shall be transferred to the Bundeskasse. This shall not apply if the court decides on an objection under s. 87 h or upon a request by the authority granting enforcement pursuant to s. 87 i. In the cases of the 2nd sentence above the revenue shall be transferred to the funds of the Land in which the competent Amtsgericht has its seat. In deviation from the 1st to 3rd sentences above an agreement may be made with the requesting Member State to the effect that in the case of enforcement of a decision converted under s. 87(3) 1st sentence no. 3 the revenue shall be transferred to the victim.

(6) The person concerned shall bear the costs of the enforcement.

Subparagraph 3.
Outgoing Requests

Section 87 o
Principle

(1) Requests to another Member State under the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties shall be regulated by this subparagraph. S. 71 shall not apply. S. 87(2) nos. 1, 3 and 4, (3) 1st sentence nos. 1 and 2 shall apply mutatis mutandis.

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

1. is a natural person with his residence in the requested Member State or who normally lives there,
2. is a legal person with its seat in the requested Member State,
3. holds assets in the requested Member State or
4. has income in the requested Member State.
Section 87 p
Domestic Enforcement Procedure
If the other Member State was requested to effect enforcement, such enforcement within Germany shall not be admissible before

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

Enforcement within Germany shall be inadmissible if the requested Member State justified its refusal by the fact that for the same offence a decision was issued against the person concerned in the requested Member State or that a decision was issued and enforced in a third State.

Paragraph 3.
Confiscation and Deprivation

Footnote 10)
Note: The underlying EU legislation uses only the term „confiscation“, however, German law attaches slightly different meanings to the terms „Verfall“ (confiscation) and „Einziehung“ (deprivation), see for an explanation ss. 73 ff Strafgesetzbuch in the English translation at www.gesetze-im-internet.de. The distinction may not necessarily be of exactly the same substance as in English law, from which the corresponding terms are drawn, so again this is more an issue of approximation rather than of exact translation.

Section 88
Principle
Assistance in enforcement for another Member State of the European Union pursuant to Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328/59 of 24 November 2006) shall be regulated by ss. 88 a to 88 f. To the extent that this paragraph does not contain specific regulations or if the request was not submitted pursuant to the Framework Decision 2006/783/JHA the provisions of Part IV and the general provisions of Parts I and VII of this Act shall apply.

Section 88 a
Prerequisites of Admissibility
(1) In deviation from s. 49(1) the enforcement of a judicial order for deprivation or confiscation of a specific monetary value or asset submitted in accordance with Framework Decision 2006/783/JHA shall not be admissible unless

1. a competent authority of another Member State of the European Union has so requested and submitted the documentation listed in s. 88 b and
2. under German law for the offence on which the foreign order for confiscation or deprivation is based and notwithstanding procedural obstacles and if necessary mutatis mutandis, such an order could have been made notwithstanding s. 73(1) 2nd sentence of the Strafgesetzbuch with the following proviso:
   a) Except in cases of requests for enforcement of an order similar to s. 73 d or s. 74 a of the Strafgesetzbuch double criminality shall not need to be examined if the offence on which the request is based is punishable under the law of the requesting Member State by a sentence of imprisonment with a maximum of no less than three years and belongs to one of the offence categories listed in Article 6(1) of Framework Decision 2006/783/JHA and
   b) that the enforcement in tax, duties, customs and currency matters shall also be admissible if the German law does not provide for equivalent taxes or duties
or does not contain similar tax, duties, customs or currency provisions as the law of the requesting Member State.

(2) The enforcement of an order for deprivation or confiscation submitted according to subsection (1) above shall be inadmissible if

1. the offence was committed on German territory or in one of the means of transportation listed in s. 4 of the Strafgesetzbuch and is not punishable under German law;

2. the convicted person did neither attend in person the hearing leading to the order for deprivation or confiscation nor have representation by counsel unless
   a) the convicted person or his defence counsel were notified of the proceedings under the law of the requesting Member State or
   b) the convicted person had declared that he does not wish to contest the order;

3. the convicted person has already been finally tried for the same offence on which the request is based by another State than the requesting Member State provided that the sanction has already been enforced, is currently being enforced or can no longer be enforced under the law of the convicting State, unless deprivation or confiscation could have been ordered separately under s. 76 a of the Strafgesetzbuch;

4. for offences for which German law is applicable enforcement is statute-barred under German law, unless deprivation or confiscation could have been ordered separately under s. 76 a(2) no. 1 of the Strafgesetzbuch.

Section 88 b

Documentation

(1) The requesting Member State shall submit the original or a certified copy of a final judicial order together with a certificate under Article 4 of the Framework Decision 2006/783/JHA containing the following data:

1. name and address of the court ordering the deprivation or confiscation;

2. names and addresses of the justice authorities with competence for the request;

3. the description, as precisely as possible, of the natural or legal person against whom the decision is to be enforced;

4. the monetary amount or the description of another asset which is to be the object of the enforcement;

5. the reasons for the order;

6. a description of the circumstances of the offence, including the time and place of the offence;

7. the nature and legal characterisation of the offence, including the provisions underlying the order and

8. information about the personal attendance of the convicted person at the hearing or why the attendance was not required.

(2) If a certificate pursuant to subsection (1) above has not been submitted or is at the time of submission of the request incomplete or does clearly not correspond to the order to be enforced the competent authority may set a deadline for submission, completion or correction. If the certificate pursuant to subsection (1) above is incomplete the competent
authority may waive the submission of a complete certificate if the required data can be gathered from the order to be enforced or other submitted documents.

Section 88 c
Reasons for Refusal
A request which is admissible under s. 88 a may not be refused unless

1. the certificate pursuant to Article 4 of Framework Decision 2006/783/JHA has not been submitted, completed or corrected in the procedure pursuant to s. 88b(2) 1st sentence;

2. the offence was committed on German territory or in one of the means of transportation listed in s. 4 of the Strafgesetzbuch;

3. the offence was neither committed on German territory nor the territory of the requesting Member State and German criminal law does not apply or the act is not an offence under German law;

4. a German order for deprivation or confiscation exists that attaches to the same assets and for reasons of public interest enforcement of the German order is to be given precedence or

5. a request for enforcement of an order for deprivation or confiscation from a third State has been received that attaches to the same assets and for reasons of public interest enforcement of this order is to be given precedence.

Section 88 d
Procedure
(1) If the prosecution service with jurisdiction under ss. 50 and 51 considers the request admissible and intends not to raise any objections under s. 88 c it shall initiate appropriate and necessary measures for the provisional freezing of the assets that are to be the object of the enforcement according to ss. 111 b to 111 d of the Strafprozessordnung and shall give the convicted person and third parties which may under the circumstances of the case claim a right to the assets an opportunity to make representations. If the prosecution decides not to raise objections under s. 88 c nos. 1 to 3 it shall give reasons for this decision in the request for a judicial decision about enforceability.

(2) The competent authority may stay the proceedings,

1. as long as there is reason to believe that the order is being simultaneously and comprehensively enforced in another Member State or

2. as long as the procedure for recognition and enforcement of the foreign order could jeopardise ongoing criminal or enforcement proceedings.

(3) In deviation from s. 54(1) the foreign order shall be declared enforceable by the court under ss. 50 and 55 to the extent that its enforcement is admissible and the prosecution has exercised its discretion not to raise objections under s. 88 c nos. 1 to 3 correctly. The tenor of the declaration shall also contain the monetary amount or asset subject to enforcement. S. 54(2 a) and (4) shall apply mutatis mutandis. The imposed sanction shall be converted into the sanction under German law that most closely resembles it unless the tenor of the foreign decision is enforceable under s. 459 g of the Strafprozessordnung.

Section 88 e
Enforcement
(1) S. 57(1) shall apply with the proviso that the jurisdiction for the enforcement of a foreign order shall also be determined by the provisions of the Jugendgerichtsgesetz if the sanction is not converted pursuant to s. 88 d(3) 4th sentence and the court has applied the Jugendgerichtsgesetz when deciding about enforceability.
(2) S. 57(4) shall apply mutatis mutandis with the proviso that remand in custody in order to force a sworn affidavit about the assets or the whereabouts of certain objects may only be ordered with the consent of the competent authority of the requesting Member State.
(3) The enforcement may be provisionally abandoned only under the conditions of s. 88 d(2).

Section 88 f
Distribution of Revenue
Half the revenue from the enforcement shall be assigned to the competent authority of the requesting Member State if without deduction of costs and compensation (s. 56 a) its value exceeds EUR 10,000 and no agreement under s. 56 b(1) has been reached. This shall not apply if the consent necessary under s. 56 b(2) was refused.

Section 89
Provisional Asset Freezing Measures
Ss. 91 and 94 to 96 shall apply mutatis mutandis to requests of a Member State of the European Union for provisional freezing measures under ss. 111 b to 111 d of the Strafprozessordnung for the purpose of the preparation in the requesting Member State of an order for confiscation or deprivation.

Section 90
Outgoing Requests
(1) The competent authorities may submit requests for enforcement of an order for confiscation or deprivation pursuant to Framework Decision 2006/783/JHA to another Member State of the European Union. An identical simultaneous request to a further Member State may not be submitted unless

1. there is good reason to believe that a specific asset or several assets covered by the order to be enforced may be located in different Member States or
2. the enforcement into a specific asset or because of a monetary amount requires a request to multiple Member States.
(2) Requests that have not been completed shall be withdrawn as soon as the conditions under subsection (1) above cease to exist.
(3) If the order for confiscation or deprivation attaches to a specific object the competent enforcement authority may consent to substituting enforcement into a monetary amount equal to its value if a decision under s. 76 of the Strafgesetzbuch has been issued.
(4) Of Part VI of this Act s. 71(5) as well as ss. 71 a and 72 shall apply.

Part X.
Other Legal Assistance with the Member States of the European Union

Paragraph 1.
General Provisions

Section 91
Precedence of Part X
(1) Unless this Part contains specific regulations the remaining provisions of the Act shall apply to other areas of legal assistance with the Member States of the European Union.
(2) This Part shall take precedence before the international agreements mentioned in s. 1(3) insofar as it contains exhaustive regulations.

Paragraph 2.
Specific Forms of Legal Assistance

Section 92
Data Transmission Without Request
(1) To the extent that an international agreement so provides public authorities may transmit without request personal data that give rise to the suspicion that an offence has been committed, to public authorities of another Member State of the European Union as well as organs and institutions of the European Communities, if

1. a transmission without request to a German court or prosecution service were permissible and
2. the transmission is useful in
   a) initiating criminal proceedings in another Member State or
   b) assisting criminal proceedings already pending there and
3. the authority to whom the data are transmitted has jurisdiction for the measures under no.2 above.

(2) S. 61 a(2) to (4) shall apply mutatis mutandis.

Section 93
Joint Investigation Teams

(1) A member of the joint investigation team seconded by a Member State of the European Union may be allowed to conduct investigations under the supervision of the relevant German team member if this has been previously approved by the sending Member State.
(2) Other persons may participate in the joint investigation team based on the law of the participating Member States or any agreement between them.
(3) The German officers participating in the joint investigation team may directly transmit information obtained in the execution of their office, including personal data, to the members sent by other Member States, insofar as this is necessary for the work of the joint investigation team.
(4) Insofar as the transmission of the information obtained under subsection (3) above requires a specific agreement amending the purpose of its use such an agreement is admissible if a request for the use of the information was admissible.

Section 94
Requests for Freezing, Seizure and Search

(1) Ss. 58(3) and 67 shall apply to requests pursuant to Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196/45) with the proviso

1. that double criminality shall not need to be established if the offence on which the request is based is under the law of the requesting State punishable by a custodial sanction with a maximum term of no less than three years and is listed in one of the categories of offences listed in article 3(2) of the Council Framework Decision 2003/577/JHA,
2. that a request in tax, duties, customs and currency matters shall also be admissible if the German law does not provide for equivalent taxes or duties or does not contain similar tax, duties, customs or currency provisions as the law of the requesting Member State.

(2) The granting of requests under subsection (1) above shall be inadmissible if

1. a ban on seizure exists pursuant to s. 77(1) in conjunction with s. 97 of the Strafprozessordnung or
2. the convicted person has already been finally tried for the same offence on which the request is based by another State than the requesting Member State provided that the sanction has already been enforced, is currently being enforced or can no longer be enforced under the law of the convicting State.
This shall not apply if the request serves the preparation of an order for confiscation or deprivation and if deprivation or confiscation could have been ordered separately under s. 76a of the Strafgesetzbuch.

(3) The granting of requests for measures under s. 58(3) and s. 67 may be stayed as long as

1. it could jeopardise ongoing criminal investigations and
2. the objects to which the request attaches have been seized or otherwise secured for other criminal proceedings.

Section 95

Documentation for Freezing Requests

(1) Requests pursuant to Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence shall not be granted unless the request is accompanied by a certificate containing the following data:

1. Name and address of the issuing justice authority;
2. the description of the asset or piece of evidence the freezing of which is requested;
3. the description, as precisely as possible, of the natural or legal person who is suspected of the offence under the law of the requesting State;
4. the reasons for the freezing order;
5. a description of the circumstances of the offence, including the time and place of the offence and the nature and legal characterisation of the offence, including the provisions underlying the freezing order.

(2) If a certificate pursuant to subsection (1) above has not been submitted or is at the time of submission of the request incomplete or does clearly not correspond to the freezing order the competent authority may set a deadline for submission, completion or correction. If the certificate pursuant to subsection (1) above is incomplete the competent authority may waive the submission of a complete certificate if the required data can be gathered from the freezing order.

Section 96

Duty to Grant Freezing Measures

Requests by a Member State which are admissible under ss. 94 and 95 shall be granted. If a request is refused for lack of admissibility, the refusing decision shall contain the reasons therefore.

Section 97

Requests for Pieces of Evidence

S. 94(1) shall apply mutatis mutandis to requests by Member States for the handing over of objects which may serve as evidence in proceedings in the requesting Member State and which may be seized or otherwise secured pursuant to Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

Part XI.

Final Provisions

Section 98

Reservation as to Application; Operational Date

The provisions of Paragraph Two of Part IX on the enforcement of financial penalties pursuant to Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76/16 of 22
March 2005) shall in the case of financial penalties under s. 87(2) no. 1 apply only if they became final after 27 October 2010. In the case of financial penalties under s. 87(2) nos. 2 and 3 the provisions mentioned in the 1st sentence above shall apply only if the non-judicial decision imposing the financial penalty was issued after 30 September 2010.

Section 99
Restriction of Civil Liberties
The civil liberties relating to the protection of bodily integrity (Article 2(1) 1st sentence of the Grundgesetz), personal privacy and freedom (Article 2(2) 2nd sentence of the Grundgesetz), the secret of letters, postal and telecommunications (Article 10(1) of the Grundgesetz), inviolability of the home (Article 13 of the Grundgesetz) and from extradition (Article 16(2) 1st sentence of the Grundgesetz) shall be restricted in accordance with this Act.

Glossary
- Abgabenordnung: (abbrev. AO) Tax Code.
- Amtsgericht: (abbrev. AG) Local Court i.e. Lowest trial court for criminal and civil matters.
- Auswärtiges Amt: (abbrev. AA) Foreign Office; part of the Federal Government.
- Bundesamt für Justiz: (abbrev BAJustiz) Federal Office of Justice; central service authority of the federal German judiciary and port of call for international legal affairs.
- Bundesgerichtshof: (abbrev. BGH) Federal High Court, i.e. Court of Final Appellate Jurisdiction in Civil and Criminal Matters; sits in senates (Senate).
- Bundesgesetzblatt: (abbrev. BGBl.) Federal Official Gazette (sometimes referred to as “Federal Law Gazette”): contains federal legislation, international treaties and decisions by the Federal Constitutional Court that have the force of an Act of Parliament.
- Bundeskasse: Federal Public Funds Office.
- Bundeskriminalamt: (abbrev. BKA) Federal Criminal Police.
- Bundesregierung: (abbrev. BReg.) Federal Government.
- Bundesverfassungsgericht: (abbrev. BVerfG) Federal Constitutional Court.
- Bundeszentralregister: (abbrev. BZR) Federal Central Criminal Register.
- Bundeszentralregistergesetz: (abbrev. BZRG) Federal Central Criminal Register Act.
- Generalbundesanwalt: (abbrev. GBA) Federal Prosecutor General; represents the prosecution before the Bundesgerichtshof, in some cases before the Oberlandesgericht.
- Gerichtsverfassungsgesetz: (abbrev. GVG) Court Organisation Act; deals with the structure and jurisdiction of courts.

- Grundgesetz: (abbrev. GG) The German Federal Constitution, often translated by “Basic Law”.

- Jugendgerichtsgesetz: (abbrev. JGG) Juvenile Courts Act; deals with specific regulations in proceedings against juveniles (14–18 years) and young adults (18–21 years).

- Justizbeitreibungsordnung: Judicial Proceedings (Costs Recovery) Ordinance; regulates recovery and enforcement of costs accrued in judicial proceedings.

- Land: One of the 16 member States of the German Federation.


- Landgericht: (abbrev. LG) Regional Court i.e. Trial court for serious criminal and civil proceedings, appellate court for appeals against decisions of the Amtsgericht. Sits in chambers (Kammern).

- Oberlandesgericht: (abbrev. OLG) Higher Regional Court i.e. highest court of appellate and trial jurisdiction of a Land. Sits in senates (Senate).

- Ordnungswidrigkeitengesetz: (abbrev. OWiG) Regulatory Offences Act; deals with offences that are classified as infringements of police and administrative regulations, thus not considered as criminal offences strictu sensu. Fines under this Act and related legislation are translated by “regulatory” fines.

