

LAWS USED AT UNCAC

1) Banking Act

Article 38

(1) Credit institutions, their members, members of their governing bodies, their employees as well as any other persons acting on behalf of credit institutions must not divulge or exploit secrets which are revealed or made accessible to them exclusively on the basis of business relations with customers, or on the basis of Article 75 para. 3 (banking secrecy). If the functionaries of authorities as well as the Oesterreichische Nationalbank acquire knowledge subject to banking secrecy requirements in the course of performing their duties, then they must maintain banking secrecy as official secrecy; these functionaries may only be relieved of this obligation in the cases indicated under para. 2. The obligation to maintain secrecy applies for an indefinite period of time.

(2) The obligation to maintain banking secrecy does not apply

1. vis-à-vis public prosecutors and criminal courts in connection with criminal court proceedings on the basis of a court approval (Article 116 Criminal Procedure Code; Strafprozeßordnung –stop), and vis-à-vis the fiscal authorities in connection with initiated criminal proceedings due to wilful fiscal offences, except in the case of financial misdemeanours;
2. in the case of obligations to provide information pursuant to Article 41 paras. 1 and 2, Article 61 para. 1, Article 93 and Article 93a;
3. vis-à-vis the probate court and the court commissioner in the event of the death of a customer;
4. vis-à-vis the competent court for guardianship or tutelage matters if the customer is a minor or otherwise under tutelage;
5. if the customer grants his/her express written consent to the disclosure of secrets;
6. for general information commonly provided in the banking business on the economic situation of an undertaking, unless the undertaking expressly objects to the provision of such information;
7. where disclosure is necessary in order to resolve legal matters arising from the relationship between the credit institution and customer;
8. with regard to the reporting requirements pursuant to Article 25 para. 1 of the Inheritance and Gift Tax Act (Erbschafts- und Schenkungssteuergesetz);
9. in the case of obligations to provide information to the FMA pursuant to the Securities Supervision Act and the Stock Exchange Act.

(3) A credit institution may not invoke its banking secrecy obligations in cases where the disclosure of secrets is necessary in order to determine the credit institution's own tax liabilities.

(4) The provisions of paras. 1 to 3 also apply to financial institutions and contract insurance undertakings with regard to Article 75 para. 3 and to protection schemes, with the exception of cooperation with other protection schemes, deposit guarantee schemes and investor compensation schemes as required by Articles 93 to 93b.

(5) (constitutional law provision) Paras. 1 to 4 may only be amended by the National Council with at least one-half of the representatives present and with a two-thirds majority of the votes cast.

2) Civil Servants' Employment Act (Beamten-Dienstrechtsgesetz – BDG)

Protection from discrimination

Section 53a

A civil servant who, in accordance with § 53, paragraph 1, in good faith reports well-founded suspicions of a criminal offence laid down in § 4, paragraph 1, of the Federal Law on the Establishment and Organization of the Federal Bureau of Anti-Corruption (Federal Law Gazette [BGBl.] I No. 72/2009) must not be discriminated against by the representative of the employer as a response to such report. The same applies if a civil servant exercises the right to report in accordance with § 5 of the Federal Law on the Establishment and Organization of the Federal Bureau of Anti-Corruption.”

Section 109

(1) In case of reasonable suspicion of a breach of official duty, the superior, directly or indirectly responsible for supervision, has to undertake all investigations required for the preliminary clarification of the facts of the case and thereafter, without delay and going through the official channels, file a disciplinary complaint to the authority. If the suspicion of a breach of official duty also raises the suspicion of a punishable act to be prosecuted ex officio, the superior, in this capacity, has to abstain from any investigation and immediately report to the authority, which has to proceed in accordance with § 78 StPO.

3) Code of Criminal Procedure (CCP – Strafprozessordnung – StPO):

Ex-officio prosecution

Section 2

(1) Criminal police and the public prosecutor are obliged in the framework of their tasks, to explore every suspicion of a criminal act that comes to their knowledge in an investigative proceeding except those criminal acts which are only prosecuted on the initiative of an entitled person.

(2)

As of 1 September 2012

Office for Prosecuting Economic Crimes and Corruption (WKStA),

Section 20a

(1) The WKStA is responsible in the complete territory of the Federation for conducting investigative proceedings and concluding them according to Chapters 10 and 11 and for filing charges, and to present them in the main trial and in trials before a Higher Regional Court for the following offences:

1. embezzlement, serious fraud or serious professional fraud, fraudulent misuse of data processing, breach of trust, misappropriation of subsidies and fraudulent bankruptcy, if it can be assumed on the basis of specific facts that the damage done by the offence exceeds

5,000,000 euros (Sections 133 (2) 2nd case, 147 (3), 148 2nd case, 148a (2) 2nd case, Sections 153 (2) second case, 153b (4) und 156 (2) Penal Code);

2. Fraudulent withholding of social security contributions and surcharges pursuant to the Construction Worker Leave Entitlement and Severance Act, inasmuch as it can be assumed on the basis of specific facts that the amount of contributions or surcharges withheld exceeds 5,000,000 euros (Section 153d (2) and (3) Penal Code), and organised illegal employment (Section 153e Penal Code);

3. Grossly negligent impairment of creditors' interests pursuant to Section 159 (4) clause 1 and 2 Penal Code, only inasmuch as it can be assumed on the basis of specific facts that the failure to satisfy such interests exceeds 5,000,000 euros;

4. Chain and pyramid schemes pursuant to Section 168 a (2) Penal Code;

5. Accepting gifts by stakeholders (Section 153a Penal Code), agreements restricting competition during procurement procedures (Section 168b Penal Code), accepting gifts by employees or agents (Section 168c (2) Penal Code), if it can be assumed on the basis of specific facts that the offence was committed for a benefit value exceeding 3,000 euros, taking bribes (Section 304 Penal Code), taking benefits (Section 305 Penal Code), preparing acceptance of bribes or benefits (Section 306 Penal Code), giving bribes (Section 307 Penal Code), giving benefits (Section 307a Penal Code), preparing bribes (Section 307b Penal Code) and forbidden intervention (Section 308 Penal Code);

6. Violations pursuant to Section 255 Securities Act, Section 122 Limited Liability Act, Section 89 Cooperatives Act, Section 37 Real Estate Investment Fund Act, Section 44 Investment Fund Act, Section 15 Capital Market Act, Section 43 ORF [Austrian Broadcasting Corporation] Act, Section 41 Private Foundation Act, Section 64 SE Act, Section 18 Demerger Act, and Section 114 Insurance Supervision Act, inasmuch as the company involved has a nominal capital of at least 5,000,000 euros or employs more than 2000. [Note: these consistently are offences which could be summed up under the heading "balance sheet crimes"], as well as proceedings pursuant to Section 48b Stock Exchange Act [Note: insider trading] (Section 20a (1) clause 6 CCP),

7. Financial offences under the jurisdiction of courts inasmuch as it can be assumed on the basis of certain facts that the punishable value exceeds 5,000,000 euros.

8. Money laundering (Section 165 Penal Code), inasmuch as the assets originate from a criminal act mentioned in the paragraphs above;

9. Criminal association and criminal organisation (Sections 278 and 278a Penal Code), inasmuch as the association or organisation is aimed at committing a criminal act as mentioned in the paragraphs above.

(2) Investigations for offences referred to in paragraph 1 subparagraph 5 and in Section 20b paragraph 3 and for offences according to paragraph 1 subparagraphs 8 and 9 insofar as they are connected to them are conducted by the WKStA according to the provisions of this Federal Law in cooperation with the Federal Bureau of Anti-Corruption unless their representatives can not act in time or the Federal Bureau of Anti-Corruption has transferred the investigations to a different office of the criminal police or a different important reason exists to give orders to other offices of the criminal police.

(3) WKStA is also responsible with respect to the offences referred to in paragraph 1 for procedures of mutual legal assistance and for criminal co-operation with the relevant bodies of the European Union, and with the justice authorities of the Member States of the European Union. It is the central national contact point for OLAF and Eurojust, inasmuch as proceedings for such offences are involved.

(4) In the case that other criminal acts are connected to offences referred to under paragraph 1 the WKStA has to proceed according to Sections 26 and 27. In respect to other offences the

WKStA has to separate the investigations and afterwards transfer them to the competent public prosecution unless the competence of the WKStA according to Section 20b exists; furthermore the WKStA can proceed in that manner if the investigation for the offence that establishes its competence is finalized. In any case the public prosecutor who first gains knowledge of offences according to paragraph 1 has to order whatever can not be delayed and transfer the investigation to the WKStA.

Section 20b

- (1) Insofar as it is necessary to have available special business know-how or experience in such proceedings to effectively and expeditiously deal with economic crimes, WKStA may take away any economic crime from the competent public prosecutor and take it over .
- (2) Economic crimes in this sense are proceedings for criminal acts against third party assets in connection with entrepreneurial activities, which are characterised by extent and complexity or the multitude of participants in the proceedings, by the business circles involved or by the special public interest in solving the facts investigated.
- (3) WKStA may also take over proceedings for offences pursuant to Sections 302 and 304 to 308 Penal Code, if the offence was committed by receiving a benefit not exceeding 3,000 euros, and there is special public interest to solve such an offence due to its significance or the person of the suspect involved.
- (4) Public prosecutors have to report to the WKStA without delay any cases according to preceding paragraphs that can be dealt with more efficiently and faster by the WKStA. Until the WKStA has decided they have to take the necessary steps nonetheless

Section 76

- (1) In accordance with this law, the criminal police, the public prosecutor's offices and the courts, in order to fulfil their tasks, have the right to receive immediate support from all public authorities and departments at federal, regional and municipal level as well as from other public corporations and institutions established by law. Such requests have to be complied with as soon as possible; potential obstacles have to be announced instantly. If necessary, files have to be made available for inspection.
- (3): The relations and communication with foreign authorities are governed by international treaties, the Federal Act on Extradition and Mutual Assistance in Criminal Matters, the Federal Act on Judicial Cooperation in Criminal Matters with the Member States of the EU, as well as the Police Cooperation Act.
- (4): For reasons relating to security management, criminal justice and review of the legality of acts of the bodies mentioned above, the criminal police, the public prosecutor's offices and the courts have the right to provide information about person-related data investigated in accordance with this law. In any case, the transmission of data to public bodies other than financial crime authorities for performing services related to criminal justice or on behalf of law enforcement authorities, public prosecutor's offices and courts is only permitted if there is an explicit legal authorization to do so.
- (5): The corresponding administrative authority has to be informed of the beginning and end of criminal proceedings against civil servants.

Section 78

Reporting obligation

- (1) If a public authority or public agency learns about a suspicion of a punishable act which concerns its statutory area of activities, it is obliged to make a report to the criminal police or to a public prosecutor service.
- (2) No duty to make a report as defined in paragraph 1 exists
 1. if the report would impair an official activity the effectiveness of which requires a confidential personal relationship, or
 2. if and as long as there are sufficient reasons to assume that the act will shortly not be punishable anymore because of measures to make good the damage caused.
- (3) In any case the public authority or public agency shall do anything necessary to protect the victim or any other person from danger; if necessary, a report has to be made also in the cases of paragraph 2.”

Section 99

- (1) The criminal investigation department shall conduct investigation ex officio or on the basis of a complaint and shall follow orders from the public prosecutor’s office and the court (section 105 paragraph 2).
- (2) If an order from the public prosecutor’s office is required for an investigative action, the criminal investigation department may exercise this power without having obtained such an order in case of imminent danger. In this case, the criminal investigation department shall immediately obtain permission (section 100 paragraph 2 sub-paragraph 2). If permission is not granted, the criminal investigation department shall terminate any investigative action immediately and restore the original state as far as possible.
- (3) If such an order requires authorisation by the court, it is not permissible to take such an investigative action without this authorisation in case of imminent danger unless it is expressly provided for by law.
- (4) A delay of criminal investigations is permissible, if this
 1. contributes to solving a more serious offence or to identifying a leading accessory to the crime subject to the proviso that it does not involve serious risk to the life, health, physical integrity or freedom of third parties, or
 2. is the only means of averting a serious threat to the life, health, physical integrity or freedom of third parties.
- (5) The criminal investigation department is required to immediately notify the public prosecutor’s office of a delay under paragraph 4. In case of a controlled delivery, i.e. the transport of banned or restricted goods in the national territory, and the absence of requirement for action under section 2 paragraph 1, the provisions of sections 71 and 72 of the Federal Act on Judicial Cooperation in Criminal Matters with the Member States of the EU (EU- JZG) shall apply mutatis mutandis.

Investigations

Section 103 (1) Except to the extent that the present Act provides otherwise, it is incumbent on the criminal investigation department to carry out the orders received from the public prosecutor’s office. The public prosecutor’s office may participate in all investigations conducted by the criminal investigation department and may give the head of the CID operation single assignments, if this is expedient for legal or factual reasons, in particular if the investigation is of importance for deciding on whether the proceedings are to be continued.

(2) The public prosecutor's office may conduct investigations (section 91 paragraph 2) of its own accord or commission an expert to do so.

Section 109-166 (only headlines)

The measures available to the law enforcement agencies are laid down in Chapter 8 (§§ 109 up to and including 166) of the Austrian Code of Criminal Procedure (StPO), and include: seizure (§§ 110-114); attachment (§ 115); alienation of seized or attached assets (§§ 115a); information on bank accounts and bank operations (§116); identification, search of areas and objects, search of persons, body inspection and molecular genetic analysis (§§ 117-124); experts and interpreters, external examination of a corpse and autopsy (§§ 125-128); surveillance, undercover investigation and sham transactions (§§ 129-133); seizure of letters, information on telecommunication data, information on retained data as well as on the surveillance of telecommunication and persons (§§ 134-140); linkage of databases (§§ 141-143); protection of clerical secrecy and professional secrecy (§ 144); special rules for application, legal protection and compensation for damages (§ 145, 147, 148); inspection and reconstruction of the offence (§§ 149, 150); enquiries and hearings (§§ 151-153); witness and obligation to tell the truth (§ 154); prohibition to interview as a witness (§ 155); exemption from giving evidence (§ 156); refusal to give evidence (§ 157, 158); information and invalidity (§ 159); carrying out the hearing (§ 160); anonymous evidence (§ 162); identity parade (§ 163); hearing of the defendant (§ 164); indirect interrogation during the investigation stage with participation of the parties (§ 165); prohibited evidence (§ 166).

Section 109

For the purpose of this law

1. "Seizure" shall mean

the temporary establishment of a power of disposal over items and the temporary prohibition to surrender items or other assets to third persons (third party prohibition) and the temporary prohibition to alienate or pledge such objects and assets,

2. "sequestration" shall mean

a court decision on performing or maintaining a seizure pursuant to sub-paragraph 1 and a court decision prohibiting the alienation, encumbrance or pledging of real property or rights recorded in a public register,

3. "Information on bank accounts and bank operations" shall mean

the disclosure of the name and other identity details of a client having a business relation with a bank as well as his/her address or information whether an accused person has a business relation with this institution, is the beneficial owner of such a relation or the agent for it, and delivery of all documentary evidence of the identity details of the holder of the business relation and his/her authorisation to dispose of an account, inspection of documents and other written evidence held by a credit or financial institution of the nature and extent of a business relation and related transactions and events during for a given past or future period of time.

Section 110 – Seizure

(1) A seizure is permissible if it is considered necessary

1. for evidential purposes,

2. for securing private-law claims (section 367), or

3. for securing a confiscation (section 19a PC), a forfeiture (section 20 PC), an extended forfeiture (section 20b PC), a confiscation (section 26 PC) or another order affecting property as provided for by law.

(2) A seizure is subject to an order from the public prosecutor's office and shall be effected by the criminal investigation department.

(3) The criminal investigation department shall be authorized to seize items (section 109 paragraph 1a) of its own accord,

1. if

a. they are not under the control of any person

b. a victim has been deprived of them as a result of the offence,

c. they have been found on the scene of crime and are likely to have been intended or used for committing the offence, or

d. they are of low value or can easily be replaced on a temporary basis,

2. if their possession is generally prohibited (section 445a, paragraph 1),

3. if they were found in possession of a suspect who was arrested in the circumstances described in section 170, paragraph 1, sub-paragraph 1, immediately or during a body search pursuant to section 120, paragraph 1, or

4. if there is reason to suspect that they involve an infringement of particular intellectual property rights pursuant to Article 4 of the European Council Regulation no. 1383/2003 of 22 July 2003 concerning customs measures to be taken against goods found to have infringed such rights (Official Journal no. L 196 of 2/8/2003, p. 7 – 14).

(4) The seizure of items for evidence purposes (paragraph 1, sub-paragraph 1) is not permissible and must be rescinded at the request of the person affected as soon as and to the extent that the evidential purpose can be served by making video, audio or other recordings, or copies of written records or electronically processed data, and the seized items or the originals of seized documents are not liable to be inspected during the trial.

Section 114

(1) The custody of seized items is incumbent on the criminal investigation department until the seizure is reported to the judiciary (section 115 paragraph 2), thereafter it is the responsibility of the public prosecutor's office.

(2) If the reason for maintaining custody of seized objects no longer applies, the items shall immediately be handed over to the person who had control of them at the time of seizure unless it is apparent that this person is not entitled to dispose of them. In such a case the items shall be handed over to the entitled person or, if such a person has not been identified or cannot be identified with reasonable effort, lodged pursuant to section 1425 of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch – ABGB). The persons affected shall be notified accordingly.

Section 115 – sequestration

sequestration is permissible if it the seized items are liable to be

1. required as evidence for the proceedings,

2. subject to civil law claims (section 367) or

3. required for ensuring that the execution of a court order for confiscation (section 19a PC), forfeiture (section 20 PC), confiscation (section 26 PC) or another order affecting property, which would otherwise be jeopardized or considerably complicated.

(2) When an sequestration is requested by the public prosecutor's office, the court is required to immediately take a decision.

(3) Section 110 paragraph 4 shall apply mutatis mutandis. Where appropriate, the sequestration is to be restricted to the recordings and copies mentioned there.

(4) If items subject to prohibition of surrender to third parties, of alienation and of encumbrance are attached (section 109 sub-paragraph 2b) the provisions of the Austrian

Enforcement Act (Exekutionsordnung – EO) on preliminary injunctions shall apply mutatis mutandis unless this law provides otherwise.

(5) The decision authorizing a sequestration with a view to secure the execution of a court decision on recovery of criminal proceeds (section 20 PC) or forfeiture (section 20b PC) shall contain an amount of money covering the recovery or the forfeiture.

(6) If and as soon as the conditions leading to the sequestration do not or no longer exist or an amount of money as determined in paragraph 5 is deposited, the public prosecutor's office or the court, once the criminal proceedings have been instituted, has to lift the sequestration.

Section 115a

(1) The confiscation or alienation of funds, money claims and securities, which have been seized according to section 110 paragraph 1 sub-paragraph 3 or can be attached according to section 115 paragraph 1 sub-paragraph 3 is required, if it is impossible for the court to decide on their forfeiture or extended forfeiture as part of a sentence (sections 443 to 444a) or in separate proceedings (sections 445 to 446), because the accused person or a liable stakeholder cannot be located or tried and the proceedings have to be discontinued on this ground pursuant to section 197, if at least two years have passed since the seizure or sequestration and the edict on the imminent alienation (section 115b) has been made public at least for one year (section 115b paragraph 2).

(2) An alienation is not permissible, as far and as long as

1. a person who is not suspected of being involved in the punishable act has established the probable validity of his/her claim on the asset (paragraph 1) or
2. the asset (paragraph 1) has been attached by court.

(3) The decision on the alienation of an asset shall be made by court on the request of the public prosecutor's office, where appropriate simultaneously with the sequestration.

Section 115e

(1) If items or assets that have been seized (section 110 paragraph 1 sub-paragraph 3) or attached (section 115 paragraph 1 sub-paragraph 3) are subject to fast spoilage or major decrease in value, or involve disproportionately high costs when being stored, they may be alienated by the court under section 377 upon request of the public prosecutor's office. However, they shall not be alienated as long as they are required for evidential purposes (section 110 paragraph 4). Their alienation shall however be omitted as long as the objects are required for evidential purposes (section 110 paragraph 4).

(2) Persons affected by the alienation shall be notified beforehand, where appropriate in application mutatis mutandis of section 83 paragraph 5. The proceeds will replace the alienated items. The alienation on the ground of disproportionate storage costs shall not be effected, if a sufficient amount for covering these costs is paid in time.

(3) The decision on the alienation of assets shall be made by the court on the request of the public prosecutor's office, where appropriate simultaneously with the sequestration. (section 115e, in force since 01/09/2012)

Section 116

(1) Information on bank accounts and bank operations is permissible if it seems to be required for solving a deliberately committed indictable or non-indictable offence falling under the jurisdiction of the regional courts (section 31 paragraph 2 to 4), or for clarifying whether the conditions for issuing an order for disclosing information under paragraph 2 sub-paragraph 2 in proceedings dealing with a deliberately committed punishable offence where the regional court would be competent to conduct the trial are met.

(2) In addition, information on bank accounts and bank operations according to section 109 sub-paragraph 3b is permissible only if specific facts suggest that

1. items, documents or other records of a business relationship and related transactions may be seized on the basis of such information, as far as this is necessary for solving the offence;
2. items or other assets may be seized according to section 109 sub-paragraph 1b for securing a confiscation (section 19a PC), a forfeiture (section 20 PC), an extended forfeiture (section 20b PC), a confiscation (section 26 PC) or another order affecting property as provided for by law.

3. a transaction related to a criminal act is carried out using this business relationship.

(3) Authorization by a court must be obtained the public prosecutor's office for an order to disclose information on bank accounts and bank operations.

(4) The order and its authorization regarding the disclosure of information must contain:

1. the case reference of the proceedings and the criminal charge it is based on as well as the pertinent section of the Penal Code,
2. the credit or financial institution involved,
3. the description of the items, documents (records) or assets to be seized,
4. the facts substantiating the necessity and proportionality (section 5) of the orders,
5. the period of time covered by an order according to paragraph 2 sub-paragraph 3.

(5) The order and its authorization have to be served on the credit or financial institution, the accused and the persons entitled to dispose of the bank account, as soon as they are known to the public prosecutor's office. Service on the accused and the persons entitled to dispose of the bank account can be postponed as long as the investigation would be jeopardized. The credit or financial institution has to be notified thereof and the same is required to observe secrecy towards clients and third parties in respect of the order and all facts and transactions.

(6) Credit and financial institutions and their staff are obliged to disclose the information and to allow the documents and written evidence to be inspected and surrendered. For this purpose an electronic data carrier in a common file format has to be used, if electronic data processing is used for the operation of the business relation. If the credit or financial institution lodges a complaint against the judicial authorization and refuses to disclose information or surrender documents, the procedure as defined in sections 93 paragraph 2 and 112 must be adopted with instruction to present the documents to the S with the difference that the documents have to be presented to the higher regional court (Oberlandesgericht). A search of credit or financial institutions always requires an order of the public prosecutor's office on the basis of a judicial authorization. Sections 110 paragraph 4 and 111 paragraph 3 apply.

Section 156

(2) According to para. 1, sub-para. 1, an adult who participates at the proceeding as a private person is not exempted from giving testimony.

Pre-trial detention Admissibility

Section 173

(1) ... Pre-trial detention may not be imposed or continued if it is disproportionate to the importance of the case or to the expected sentence or if its purpose can be achieved by alternative means (paragraph 5).

....

(5) Applicable alternative means are in particular:

1. the formal pledge not to flee or to hide until the final sentence nor to change the place of domicile without consent of the public prosecutor;
2. the formal pledge not to attempt to hinder the investigation;
3. in case of domestic violence (Section 38a Security Police Act) the formal pledge to refrain from any contact with the victim and the order not to approach a certain domicile and its immediate surroundings or to violate an already imposed protection order according to Section 38a paragraph 2 Security Police Act or an injunction according to Section 382b Act on the Enforcement of Judgments, including the removal of all keys to that domicile;
4. the order to take domicile in a specific location or with a specific family, to avoid a specific domicile, a specific location or a specific company, to refrain from alcohol or other intoxicating substances or to pursue a regular occupation;
5. the order to notify every change of domicile or to report regularly to the police or another institution;
6. the preliminary confiscation of identity documents, driving documents or other documents;
7. preliminary probation according to Section 179;
8. the deposition of bail according to Sections 180 and 181;
9. with the consent of the defendant the order to undergo a withdrawal treatment, any other medical treatment or psychotherapy (Section 51 paragraph 3 CC) or any other health related measure (Section 11 paragraph 2 Narcotic Substances Act).

House arrest

Section 173a

(1) Subject to an application of the public prosecutor or the defendant pre-trial detention can be continued as house arrest which is executed in the domicile where the defendant has his domestic residence. House arrest may be ordered, if the pre-trial detention can not be substituted by alternative measures (Section 173 paragraph 5) while the purpose of the pre-trial detention (Section 182 paragraph 1) can be achieved also by this form of execution of the pre-trial detention, because the defendant lives in orderly living conditions and consents to being monitored by appropriate instruments of electronic surveillance (Section 156b paragraph 1 and 2 Federal Law on the Execution of Prison Sentences and Preventive Detention). Otherwise the provisions on the continuation, repeal and maximum time span of the pre-trial detention are applicable *mutatis mutandis* subject to the modifications that after house arrest has been ordered no more hearings on the detention are taking place *ex officio* and that the order to continue or to repeal the pre-trial detention can be issued in writing without prior hearing.

(2) The decision on an application according to paragraph 1 has to be pronounced in a hearing (Section 176 paragraph 1). If applicable the court has to order preliminary probation according to Section 179 immediately after the application and to order the probation service to report at the latest in the hearing on the living conditions of the defendant and his social relations, including the possibility to pursue a profession or an education without endangering the purposes of the pre-trial detention as well as the terms for the execution of the house arrest agreed upon with the defendant, which the defendant has to pledge formally to respect at the hearing. Leaving the domicile is not permissible except for travelling on the shortest way possible to the place of work or education, for purchasing necessities for living and for resorting to necessary medical aid.

(3) If the application is granted the public prosecutor has to inform the criminal police and the security authority of the location where the house arrest will be executed and to order the prison administration to transfer the defendant into house arrest after installation of the technical means necessary for the electronic surveillance.

(4) The court has to repeal the house arrest and order the continuation of the execution of the pre-trial detention if the defendant declares to withdraw his consent. The same rules apply subject to application by the public prosecutor if the defendant violates the terms to which he gave his formal pledge or if it is established by other means that the purposes of the pre-trial detention can not be achieved through house arrest. The criminal police is to be tasked with the execution of the transfer.

(5) In case of a final sentence Section 3 paragraph 2 Federal Law on the Execution of Prison Sentences and Preventive Detention is applicable mutatis mutandis if the house arrest is not repealed according to paragraph 4.

Bail

Section 180

(1) The defendant can be released against bail and the formal pledges according to Section 173 paragraph 5 subparagraphs 1 and 2 if the danger of escape is the only reason for pre-trial detention; this has to take place if the criminal act is not punishable with a more severe sentence than five years imprisonment.

(2) The amount of bail has to be set by the court upon application by the public prosecutor under consideration of the importance of the criminal acts the defendant is charged with, his personal and financial conditions and of the resources of the person providing bail.

(3) Bail has to be deposited at the court in cash or in securities safe for investing money of wards, calculated according to the stock market rates of the day of the deposition, or by a collateral on real estate or on rights which are inscribed in the land registry or by a surety bond by a reliable person who pledges to pay the bail. The court has to investigate the legality of the origins of the bail if specific circumstances give rise to the suspicion that the bail offered originates from a criminal act.

(4) The bail is declared forfeited by the court on application of the public prosecutor if the defendant evades the proceedings or in the case of an unsuspended prison sentence the execution of the sentence, in particular by moving without permission from his domicile or by not complying with a citation. This citation and the forfeiture order have to be served upon the defendant according to Section 8 paragraph 2 Federal Law on the Service of Public Documents.

(5) The forfeited bail is confiscated for the Federal State with the entry into force of the court order according to paragraph 4; however the victim is entitled to demand, that his claims for damages are satisfied with priority from the bail or the proceeds from its realization

Section 181

(1) If the defendant prepares to flee after his release or new circumstances are uncovered which necessitate his arrest he has to be taken into custody notwithstanding the bail, however in these cases the bail becomes free.

(2) The same rule applies as soon as the proceedings are finalised, in case of an unsuspended prison sentence however only when the sentenced person has begun to serve his sentence.

(3) The release of the bail is subject to a decision by the court.

Rescinding Investigative Proceedings

Section 190

The public prosecutor shall refrain from prosecuting a punishable act and rescind the investigative proceedings whenever

1. the offence underlying the investigative proceedings does not carry a court punishment, or if any further prosecution of the accused would be inadmissible for legal reasons, or
2. there is no factual reason to further prosecute the accused.

Rescinding Petty Cases

Section 191

(1) The public prosecutor shall refrain from prosecuting a punishable act that only carries a fine, a maximum prison term of three years, or such a prison term and a fine, as well as discontinue the investigative proceedings if

1. when weighing the guilt, the consequences of the offence and the conduct of the accused after the offence, especially with a view to a possible reparation of the damage, as well as additional circumstances which would have an impact on assessing the punishment, the annoyance of the offence would have to be regarded as small, and
2. a punishment or an approach pursuant to Part 11 does not appear to be appropriate in order to prevent the accused from committing punishable acts, or to counteract that others commit punishable acts.

(2) Once an indictment has been issued, or once the written accusation has become final in proceedings at a regional court before a jury or a panel of lay judges in connection with a punishable act that must be prosecuted ex officio, the court shall discontinue the proceedings by court decision under the same requirements (paragraph (1)), before the end of the trial. § 209 (2) first sentence shall be applied in analogy.

Rescinding Proceedings in Case of Several Punishable Acts

Section 192

(1) The public prosecutor may refrain from prosecuting individual punishable acts, either with final effect or with the proviso of prosecuting them at a later stage, as well as discontinue the investigative proceedings to such an extent, whenever the accused has been charged with several punishable acts and

1. this will most likely not have any major impact, neither on the punishments or preventive measures, nor on the legal consequences connected to the conviction or the diversionary measures, or
2. the accused was already punished abroad for the punishable act with which he/she has been charged, or the punishable act was withdrawn from prosecution following diversionary measures, and it is not to be expected that the domestic court will impose a more severe punishment, or that he/she will be extradited to another State for having committed other offences, and the punishments to be expected in Austria, or the preventive measures, will not matter in comparison to those that will most likely be imposed abroad. (2) When prosecution is subject to the provisos pursuant to paragraph (1), it may be resumed within three months after the domestic criminal proceedings have been completed with final effect, or within one year in the case of criminal proceedings abroad. Any further reservations on account of individual punishable acts shall then be inadmissible.

Discontinuing Investigative Proceedings against Absent Persons and against Unknown Offenders

Section 197

(1) Whenever the accused is at large or of unknown domicile, the investigative proceedings shall be continued to the extent necessary in order to secure traces and evidence. In this case, investigative acts and evidence-taking, in which the accused has the right to participate (§ 150, § 165), may also be conducted in his/her absence. A search warrant may be issued

concerning the accused in order to establish his/her whereabouts and obtain his/her arrest. The public prosecutor shall discontinue the proceedings and continue the matter once the accused has been found.

(2) Paragraph (1) shall apply in analogy to proceedings against unknown offenders.

(3) The criminal police and the victim shall be informed that the proceedings against a known offender have been discontinued, as well as that proceedings are being continued or commenced, once an accused has been found.

(4) An accused who is absent or at large, who states voluntarily that he/she wishes to give himself/herself up to the proceedings, may be granted safe conduct by the Federal Ministry of Justice, after an opinion has been expressed by the senior public prosecutor of the district in which the competent public prosecutor is located, possibly against providing security, as well as making a promise, as mentioned in § 173 (5) items 1 and 2, with the effect that the accused may be exempt from custody for the punishable act for which he/she is granted safe conduct, until the first-instance court decision has been taken. § 180 shall apply in analogy to the provision of security, its forfeiture and the loss of the effect of safe conduct.

Withdrawal from Prosecution (Diversion) General Provisions

Section 198

(1) The public prosecutor shall proceed pursuant to the present chapter of the law and withdraw from prosecuting a punishable act, if it has been established, on the basis of sufficiently clear facts, that there is no question of rescinding the proceedings pursuant to § 190 to § 192, but that a punishment shall not be required, with a view to

1. the payment of an amount of money (§ 200), or
2. the provision of community services (§ 201), or
3. the setting of a probation period, in connection with probation services and the compliance with obligations (§ 203), or
4. diversion (§ 204) in order to keep the accused from committing punishable acts or to counteract that others will commit punishable acts.

(2) However, an approach pursuant to the present chapter of the law shall only be admissible if

1. the punishable act does not fall under the competences of a regional court sitting as a jury or a panel of lay judges,
2. the guilt of the accused were not to be regarded as grave (§ 32 of the Criminal Law Code), and
3. the offence did not result in the death of a person.

Section 199

Once an indictment has been issued in connection with the perpetration of a punishable act that must be prosecuted ex officio, the court shall apply, in analogy, the provisions of Sections 198, 200 to 209 that pertain to public prosecutors and rescind the proceedings by way of decision until the end of the trial under the requirements applicable to the public prosecutor.

Paying a Fine

Section 200

(1) Under the requirements of § 198, the public prosecutor may withdraw from prosecuting a punishable act if the accused pays an amount of money for the benefit of the Federal State.

(2) The amount of money must not exceed the sum that corresponds to a fine of 180 daily rates, plus the costs of the criminal proceedings that he/she must reimburse in the event of his/her conviction (§ 389 (2) and (3), § 391 (1)). The amount shall be paid within 14 days as of the service of the notice pursuant to paragraph (4). If this were to unreasonably affect the accused, he/she may be granted a maximum respite of six months, or the payment of sub-amounts during that period.

(3) Unless a withdrawal from prosecution can be waived for special reasons, the withdrawal from prosecution after payment of an amount of money shall also be made dependant upon the accused repairing the damage caused by the offence within a period to be determined with a maximum duration of six months and giving proof of it immediately.

(4) The public prosecutor shall inform the accused that it is planned to indict him/her for a specific punishable act, but that this will be waived if he/she pays a fixed sum of money and, if applicable, pays damages in a certain amount. Moreover, the public prosecutor shall inform the accused in accordance with § 207, as well as of the possibility of deferred payments (paragraph (2)), unless the public prosecutor offers him/her such a respite on ex officio basis.

(5) Upon payment of the amount of money and, if applicable, repairing the damage, the public prosecutor shall withdraw from any prosecution, unless the proceedings need to be continued at a later stage, pursuant to § 205.

Community Services

Section 201

(1) The public prosecutor may preliminarily withdraw from prosecuting a punishable act if the requirements of § 198 are fulfilled, if the accused expressly states that he/she is willing to provide community services on a gratuitous basis within a period to be determined (maximum: six months).

(2) Community services are to express the readiness of the accused to answer for his/her offence. They shall be provided during leisure-time with an appropriate facility, the consent of which shall be obtained.

(3) Unless it can be waived for specific reasons, withdrawal from prosecution after the provision of community services shall also be made dependant upon the fact that the accused also repairs the damage that has occurred on account of the offence within a period to be determined (maximum: six months) and also contributes otherwise to remedy the consequences of the offence, and gives proof thereof immediately.

(4) The public prosecutor shall inform the accused that it is intended to indict him/her for a specific punishable act, but that he/she will preliminarily refrain from so doing, if the accused is prepared to provide community services of a specified type and scope within a specified period of time, as well as to settle the consequences of the offence, if necessary. In this context, the public prosecutor shall inform the accused in accordance with § 207; he/she may also request a person with experience in social work to provide the information, as well as to help find community services (§ 29b of the Probation Services Act). The facility (paragraph (2)) shall issue a confirmation to the accused concerning the services provided, which shall be submitted immediately.

(5) After providing the community services and, if applicable, settling the consequences of the offence, the public prosecutor shall finally withdraw from prosecution, unless the proceedings shall be continued subsequently pursuant to § 205.

Probationary Period

Section 203

(1) The public prosecutor shall preliminarily withdraw from prosecuting a punishable act under the requirements of § 198, setting a probationary period between one and two years. The probationary period commences with the service of the communication concerning the preliminary withdrawal from prosecution.

(2) Unless specific reasons prevent it, the preliminary withdrawal from prosecution may also be made dependant upon the fact that the accused expressly stated that he/she is ready to comply with certain obligations during the probationary period which might be issued as instructions (§ 51 of the Criminal Law Code), as well as to be supported by a probation officer (§ 52 of the Criminal Law Code). This may involve, in particular, the obligation to use his/her best effort to remedy the damage caused or to contribute otherwise to a compensation of the consequences of the offence.

(3) The public prosecutor shall inform the accused that the indictment against him/her for a specific punishable act will preliminarily not be issued during a specified probationary period, as well as inform him/her along the lines of § 207. If applicable, the public prosecutor shall inform the accused that this preliminary withdrawal from prosecution requires that he/she expressly states his/her readiness to assume certain obligations and to be supported by a probation officer (paragraph (2)). In this case, the public prosecutor may also request a person with experience in social work to provide the information, as well as to request that the accused is supported in fulfilling such obligations (§ 29a of the Probation Services Act).

(4) After expiry of the probationary period and complying with possible obligations, the public prosecutor shall finally withdraw from prosecution, unless the proceedings must subsequently be continued pursuant to § 205.

Settlement of Punishable Acts

Section 204

(1) Under the requirements of § 198 the public prosecutor may withdraw from prosecuting a punishable act if the legally protected rights of a person might be directly affected by the offence and the accused is prepared to answer for his/her offence and to deal with its causes, if he/she settles possible consequences of an offence in a manner commensurate with the circumstances, especially by remedying the damage caused by the offence, or by contributing otherwise to settle the consequences of the offence, and if he/she assumes obligations, if so required, that document his/her readiness to refrain, in the future, from the kind of conduct that led to the offence.

(2) The victim shall be involved in the efforts to settle the punishable act, to the extent that he/she is prepared to do so. It depends on his/her agreement whether a settlement of the punishable act is achieved, unless he/she does not accept it for reasons that do not deserve consideration in the criminal proceedings. However, his/her legitimate interests shall certainly be taken into account (§ 206).

(3) The public prosecutor may also ask an expert in conflict resolving to inform the victim and the accused about the possibility of settling the punishable act, as well as in accordance with § 206 and § 207, and to guide them in their efforts to initiate and to support such a settlement (§ 29a of the Probation Service Act).

(4) The expert in conflict resolving shall report to the public prosecutor about the settlement negotiations and review their fulfilment. The expert in conflict resolving shall make a final report, once the accused has complied with his/her obligations, at least to the extent that it can be assumed, when taking account of his/her conduct otherwise, that he/she will continue to comply with the agreements, or if it is no longer to be expected that a settlement will be reached.

Subsequent Continuation of Criminal Proceedings

Section 205

(1) After a not merely preliminary withdrawal from prosecuting an accused pursuant to the present chapter of the law (§ 200 (5), § 201 (5), § 203 (4) and § 204 (1)), a continuation of the criminal proceedings shall only be admissible under the conditions for a regular reopening of the case. The criminal proceedings shall certainly be continued after such a withdrawal, if the accused so demands.

(2) If the public prosecutor proposed to the accused that he/she pay an amount of money (§ 200 (4)), provides community services (§ 201 (4)), or accepts a probationary period and, if applicable, obligations (§ 203 (3)), or if the public prosecutor withdrew preliminarily from prosecuting a punishable act (§ 201 (1), § 203 (1)), he/she shall continue the criminal proceedings if

1. in full or in time, the accused does not pay the amount of money and does not remedy the damage, if applicable, or if the accused does not provide the community services and does not settle the consequences of the offence, if applicable,
2. the accused does not sufficiently comply with the accepted obligations or consistently evades the influence of the probation officer, or
3. criminal proceedings are lodged against the accused for another punishable act prior to the expiry of the probationary period. In this case, the subsequent continuation of the proceedings is admissible, as soon as an indictment is issued against the accused, in connection with the new or newly emerged punishable act, which shall also be possible during three months after issuing the indictment, also if the probationary period has expired in the meantime. However, the subsequently continued criminal proceedings shall be ended, subject to the other requirements, if the new criminal proceedings are ended by another outcome than a conviction.

(3) However, continuation of the proceedings may be waived, if this appears to be justifiable for specific reasons in the cases of paragraph (2) item 1, if this is not required under the circumstances in the cases of paragraph (2) items 2 and 3 in order keep the accused from committing punishable acts. Moreover, a continuation of the proceedings in the cases listed in paragraph (2) shall only be admissible, except for the requirements listed in items 1 to 3, if the accused does not accept the proposal of the public prosecutor that is mentioned there.

(4) If the accused cannot pay the amount of money in full or in time, or cannot comply with his/her accepted obligations in full or in time, as this would unduly affect him/her on account of a considerable change in the circumstances determining the sum of the amount of money, or the type or scope of the obligations, the public prosecutor may reasonably adjust the sum of the amount of money or the obligation.

(5) Obligations which the accused has accepted, and payments which he/she is prepared to pay, become irrelevant when the proceedings are subsequently continued. The probation service shall end; § 179 shall, however, remain unaffected. Amounts of money which the accused has paid (§ 200) shall be credited to a fine which is not imposed on condition, applying § 38 (1) item 1 of the Criminal Law Code in analogy. All other amounts shall be paid back. Other performances shall not be compensated; in the event of a conviction, they shall, however, also be taken into due account when fixing the punishment. In this connection, the type and duration of the performance shall be taken into account.

Withdrawing from Prosecution because of Cooperation with the Public Prosecutor Section 209a

(1) The public prosecutor can proceed according to Sections 200 to 203 and 205 to 209 if the defendant voluntarily reveals his knowledge of facts which are not yet subject of the investigations against him and which make a significant contribution

1. to the investigation of a crime subject to the jurisdiction of a regional court of lay judges or assizes or the Central Office for the Prosecution of Economic Crimes and Corruption (Sections 20a and 20b),

2. or to getting hold of a person who is or was a leading member of a criminal association or a criminal or terrorist organisation.

(2) The application of paragraph 1 requires as a precondition that in consideration of the agreed services, in particular in view of the promised contributions (Section 198 paragraph 1 subparagraphs 1 to 3), conduct during giving evidence, in particular complete description of his own deeds, and the evidence value of the information, a punishment is not deemed necessary to prevent the defendant from committing further criminal acts; it is not permissible in the case of Section 198 paragraph 2 subparagraph 3 or of criminal acts of the defendant which might have infringed upon the right to sexual integrity and self-determination. In deviation of Section 200 paragraph 2 the fine imposed may be equivalent to up to 240 daily fines.

(3) After the services have been performed the public prosecutor has to withdraw from the prosecution with the reservation of later prosecution.

(4) The prosecution reserved according to paragraph 3 may be resumed if

1. the agreed participation in solving the crime was violated or

2. the documents and information provided were false or could not contribute to convicting the offender, or were only provided to conceal the principal witnesses leading function in an association or organisation referred to in paragraph 1 subparagraph 2

unless the public prosecutor does not issue the orders necessary for a resumption within a deadline of fourteen days beginning with the service of the final decision of the proceedings in which the circumstances described in subparagraph 1 or 2 have been established.

(5) The public prosecutor shall submit his orders according to paragraphs 3 and 4 to the officer for legal protection including a motivation for the decision. The officer for legal protection is entitled to apply in case of paragraph 3 for a resumption of the proceedings and in case of paragraph 4 for a withdrawing from the prosecution.

(6) In proceedings against Entities according to the Federal Statute on Responsibility of Entities for Criminal Offences [...] the same rules apply mutatis mutandis with the modification that Section 19 paragraph 1 subparagraph 1 to 3 Federal Statute on Responsibility of Entities for Criminal Offences are applicable. In deviation of Section 19 paragraph 1 subparagraph 1 Federal Statute on Responsibility of Entities for Criminal Offences the fine imposed may be equivalent to an entity fine of up to 75 daily rates.

Section 375

(1) If an accused person is found in possession of assets that are apparently owned by another person he/she is not able or willing to name, such assets shall be attached (section 115 paragraph 1, subparagraph 2) and described in an edict (section 376) in such a way that the owner is able to recognize them as his property while omitting essential characteristics which are required to be indicated as proof of ownership.

4) Code of Police Practice (Sicherheitspolizeigesetz – SPG)

Section 22, para.1, sub-para.5

The law enforcement authorities are to provide particular protection...
... of individuals who are able to supply information on a dangerous assault or organized crime and who are therefore especially endangered as well as relatives of this individuals.

Section 48, para. 1

Public security service officers shall be authorised to guard persons if, based on certain facts, it is to be assumed that a dangerous attack against their life, health or freedom is imminent.

5) Contract Staff Act (Vertragsbedienstetengesetz - VBG)

General duties and swearing-in

Section 5, paragraph 1

§ 43, § 43a, § 45a, § 45b, § 46, paragraphs 1 to 4, § 47, § 53, § 53a, § 54, paragraph 1 and 2, as well as §§ 55 to 59 of the BDG 1979 (Federal Law Gazette [BGBl.] No. 333/1979) apply. In applying § 56, paragraph 4 (3), of the BDG 1979, a parental leave in accordance with § 75c of the BDG 1979 is replaced by a parental leave in accordance with § 29e.

6) Convention, established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union

Article 7

“Spontaneous exchange of information”: “1. Within the limits of their national law, the competent authorities of the Member States may exchange information, without a request to that effect, relating to criminal offences and the infringements of rules of law referred to in Article 3 (1), the punishment or handling of which falls within the competence of the receiving authority at the time the information is provided. 2. The providing authority may, pursuant to its national law, impose conditions on the use of such information by the receiving authority. 3. The receiving authority shall be bound by those conditions.”

Article 13

(9) – “Joint investigation teams”: “A member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Member State which has seconded him or her for the purpose of the criminal investigations conducted by the team.”

7) Convention implementing the Schengen Agreement

Section 47

(1) The Contracting Parties may conclude bilateral agreements providing for the secondment, for a specified or unspecified period, of liaison officers from one Contracting Party to the police authorities of another Contracting Party.

8) Council Decision of 6 April 2009 establishing the European Police Office (Europol) – 2009/371/JHA

Article 9

(1) - (3) a-d: Liaison officers:

“(1) Each national unit shall second at least one liaison officer to Europol. Except as otherwise stipulated in specific provisions of this Decision, liaison officers shall be subject to the national law of the seconding Member State. (2) Liaison officers shall constitute the national liaison bureaux at Europol and shall be instructed by their national units to represent the interests of the latter within Europol in accordance with the national law of the seconding Member State and the provisions applicable to the administration of Europol. (3) Without prejudice to Article 8 (4) and (5), liaison officers shall: a) provide Europol with information from the seconding national unit; b) forward information from Europol to the seconding national unit; c) cooperate with Europol staff by providing information and giving advice; and d) assist in the exchange of information from their national units with the liaison officers of other Member States under their responsibility in accordance with national law. Such bilateral exchanges may also cover crimes out with the competence of Europol, as far as allowed by national law.”

9) Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European communities or officials of Member States of the European Union (Übereinkommen über die Bekämpfung der Bestechung in der EU)

Article 9

“1. If any procedure in connection with an offence established in accordance with the obligations arising out of Articles 2, 3 and 4 concerns at least two Member States, those States shall cooperate effectively in the investigation, the prosecution and in carrying out the punishment imposed by means, for example, of mutual legal assistance, extradition, transfer of proceedings or enforcement of sentences passed in another Member State.

2. Where more than one Member State has jurisdiction and has the possibility of viable prosecution of an offence based on the same facts, the Member States involved shall cooperate in deciding which shall prosecute the offender or offenders with a view to centralizing the prosecution in a single Member States where possible.”

10) EU Framework Decision on the European Arrest Warrant and the Surrender Procedures between Member States 2002/584/JI

Article 1-35

Council Framework Decision

of 13 June 2002

on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(a) and (b) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the European Parliament(2),

Whereas:

(1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.

(2) The programme of measures to implement the principle of mutual recognition of criminal decisions envisaged in point 37 of the Tampere European Council Conclusions and adopted by the Council on 30 November 2000(3), addresses the matter of mutual enforcement of arrest warrants.

(3) All or some Member States are parties to a number of conventions in the field of extradition, including the European Convention on extradition of 13 December 1957 and the European Convention on the suppression of terrorism of 27 January 1977. The Nordic States have extradition laws with identical wording.

(4) In addition, the following three Conventions dealing in whole or in part with extradition have been agreed upon among Member States and form part of the Union acquis: the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders(4) (regarding relations between the Member States which are parties to that Convention), the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union(5) and the Convention of 27 September 1996 relating to extradition between the Member States of the European Union(6).

(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by

a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

(8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.

(9) The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.

(10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.

(11) In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union(7), in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent a Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.

(13) No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

(14) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, the personal data processed in the context of the implementation of this

Framework Decision should be protected in accordance with the principles of the said Convention,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER 1

GENERAL PRINCIPLES

Article 1

Definition of the European arrest warrant and obligation to execute it

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.
3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 2

Scope of the European arrest warrant

1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.
2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:
 - participation in a criminal organisation,
 - terrorism,
 - trafficking in human beings,
 - sexual exploitation of children and child pornography,
 - illicit trafficking in narcotic drugs and psychotropic substances,
 - illicit trafficking in weapons, munitions and explosives,
 - corruption,
 - fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
 - laundering of the proceeds of crime,
 - counterfeiting currency, including of the euro,
 - computer-related crime,

- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

3. The Council may decide at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union (TEU), to add other categories of offence to the list contained in paragraph 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 34(3), whether the list should be extended or amended.

4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

Article 3

Grounds for mandatory non-execution of the European arrest warrant

The judicial authority of the Member State of execution (hereinafter "executing judicial authority") shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;
2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

Article 4

Grounds for optional non-execution of the European arrest warrant

The executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;
2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;
3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;
4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;
5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;
6. if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;
7. where the European arrest warrant relates to offences which:
 - (a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or
 - (b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

Article 5

Guarantees to be given by the issuing Member State in particular cases

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

1. where the European arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered in absentia and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment;
2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;
3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

Article 6

Determination of the competent judicial authorities

1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.
2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.
3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.

Article 7

Recourse to the central authority

1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.
2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto.

Member State wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

Article 8

Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

- (a) the identity and nationality of the requested person;
- (b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
- (c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;
- (d) the nature and legal classification of the offence, particularly in respect of Article 2;
- (e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
- (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;
- (g) if possible, other consequences of the offence.

2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

CHAPTER 2

SURRENDER PROCEDURE

Article 9

Transmission of a European arrest warrant

1. When the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority.
2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).
3. Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the Schengen Information System shall be equivalent to a European arrest warrant accompanied by the information set out in Article 8(1).

For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

Article 10

Detailed procedures for transmitting a European arrest warrant

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network(8), in order to obtain that information from the executing Member State.

2. If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.
3. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a European arrest warrant.
4. The issuing judicial authority may forward the European arrest warrant by any secure means capable of producing written records under conditions allowing the executing Member State to establish its authenticity.
5. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States.
6. If the authority which receives a European arrest warrant is not competent to act upon it, it shall automatically forward the European arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly.

Article 11

Rights of a requested person

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.
2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.

Article 12

Keeping the person in detention

When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.

Article 13

Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express renunciation of entitlement to the "speciality rule", referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.
2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State.

4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.

Article 14

Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.

Article 15

Surrender decision

1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.
2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.
3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

Article 16

Decision in the event of multiple requests

1. If two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.
2. The executing judicial authority may seek the advice of Eurojust(9) when making the choice referred to in paragraph 1.
3. In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

4. This Article shall be without prejudice to Member States' obligations under the Statute of the International Criminal Court.

Article 17

Time limits and procedures for the decision to execute the European arrest warrant

1. A European arrest warrant shall be dealt with and executed as a matter of urgency.
2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.
3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.
4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.
5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.
6. Reasons must be given for any refusal to execute a European arrest warrant.
7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

Article 18

Situation pending the decision

1. Where the European arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:
 - (a) either agree that the requested person should be heard according to Article 19;
 - (b) or agree to the temporary transfer of the requested person.
2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.
3. In the case of temporary transfer, the person must be able to return to the executing Member State to attend hearings concerning him or her as part of the surrender procedure.

Article 19

Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.

2. The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.
3. The competent executing judicial authority may assign another judicial authority of its Member State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

Article 20

Privileges and immunities

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State, the time limits referred to in Article 17 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.

The executing Member State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.

2. Where power to waive the privilege or immunity lies with an authority of the executing Member State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

Article 21

Competing international obligations

This Framework Decision shall not prejudice the obligations of the executing Member State where the requested person has been extradited to that Member State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. The executing Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the Member State which issued the European arrest warrant. The time limits referred to in Article 17 shall not start running until the day on which these speciality rules cease to apply. Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled.

Article 22

Notification of the decision

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the European arrest warrant.

Article 23

Time limits for surrender of the person

1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.
3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.
4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.
5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

Article 24

Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.
2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested person to the issuing Member State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing Member State.

Article 25

Transit

1. Each Member State shall, except when it avails itself of the possibility of refusal when the transit of a national or a resident is requested for the purpose of the execution of a custodial sentence or detention order, permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:

- (a) the identity and nationality of the person subject to the European arrest warrant;
- (b) the existence of a European arrest warrant;
- (c) the nature and legal classification of the offence;
- (d) the description of the circumstances of the offence, including the date and place.

Where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the Member State of transit, transit may be subject to the condition that the person, after being heard, is returned to the transit Member State to serve the custodial sentence or detention order passed against him in the issuing Member State.

2. Each Member State shall designate an authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests. Member States shall communicate this designation to the General Secretariat of the Council.
3. The transit request and the information set out in paragraph 1 may be addressed to the authority designated pursuant to paragraph 2 by any means capable of producing a written record. The Member State of transit shall notify its decision by the same procedure.
4. This Framework Decision does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing Member State shall provide the authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.
5. Where a transit concerns a person who is to be extradited from a third State to a Member State this Article will apply mutatis mutandis. In particular the expression "European arrest warrant" shall be deemed to be replaced by "extradition request".

CHAPTER 3

EFFECTS OF THE SURRENDER

Article 26

Deduction of the period of detention served in the executing Member State

1. The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.
2. To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.

Article 27

Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.
2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.
3. Paragraph 2 does not apply in the following cases:

- (a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
- (b) the offence is not punishable by a custodial sentence or detention order;
- (c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
- (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;
- (e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;
- (f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
- (g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein.

Article 28

Surrender or subsequent extradition

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:

- (a) where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;

(b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;

(c) where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).

3. The executing judicial authority consents to the surrender to another Member State according to the following rules:

(a) the request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8(1) and a translation as stated in Article 8(2);

(b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;

(c) the decision shall be taken no later than 30 days after receipt of the request;

(d) consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

For the situations referred to in Article 5, the issuing Member State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.

Article 29

Handing over of property

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its national law, seize and hand over property which:

(a) may be required as evidence, or

(b) has been acquired by the requested person as a result of the offence.

2. The property referred to in paragraph 1 shall be handed over even if the European arrest warrant cannot be carried out owing to the death or escape of the requested person.

3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing Member State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing Member State, on condition that it is returned.

4. Any rights which the executing Member State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the issuing Member State shall return the property without charge to the executing Member State as soon as the criminal proceedings have been terminated.

Article 30

Expenses

1. Expenses incurred in the territory of the executing Member State for the execution of a European arrest warrant shall be borne by that Member State.
2. All other expenses shall be borne by the issuing Member State.

CHAPTER 4

GENERAL AND FINAL PROVISIONS

Article 31

Relation to other legal instruments

1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:

(a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;

(b) the Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;

(c) the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union;

(d) the Convention of 27 September 1996 relating to extradition between the Member States of the European Union;

(e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants, in particular by fixing time limits shorter than those fixed in Article 17, by extending the list of offences laid down in Article 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold provided for in Article 2(1) or (2).

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them.

Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying.

Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

3. Where the conventions or agreements referred to in paragraph 1 apply to the territories of Member States or to territories for whose external relations a Member State is responsible to which this Framework Decision does not apply, these instruments shall continue to govern the relations existing between those territories and the other Members States.

Article 32

Transitional provision

1. Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 7 August 2002. The said statement will be published in the Official Journal of the European Communities. It may be withdrawn at any time.

Article 33

Provisions concerning Austria and Gibraltar

1. As long as Austria has not modified Article 12(1) of the "Auslieferungs- und Rechtshilfegesetz" and, at the latest, until 31 December 2008, it may allow its executing judicial authorities to refuse the enforcement of a European arrest warrant if the requested person is an Austrian citizen and if the act for which the European arrest warrant has been issued is not punishable under Austrian law.

2. This Framework Decision shall apply to Gibraltar.

Article 34

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 31 December 2003.

2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. When doing so, each Member State may indicate that it will apply immediately this Framework Decision in its relations with those Member States which have given the same notification.

The General Secretariat of the Council shall communicate to the Member States and to the Commission the information received pursuant to Article 7(2), Article 8(2), Article 13(4) and Article 25(2). It shall also have the information published in the Official Journal of the European Communities.

3. On the basis of the information communicated by the General Secretariat of the Council, the Commission shall, by 31 December 2004 at the latest, submit a report to the

European Parliament and to the Council on the operation of this Framework Decision, accompanied, where necessary, by legislative proposals.

4. The Council shall in the second half of 2003 conduct a review, in particular of the practical application, of the provisions of this Framework Decision by the Member States as well as the functioning of the Schengen Information System.

Article 35

Entry into force

This Framework Decision shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Done at Luxembourg, 13 June 2002.

**11) Federal Law on Extradition and Mutual Assistance in Criminal Matters
(Extradition and Mutual Assistance Act – Auslieferungs- und Rechtshilfegesetz -
(ARHG))**

TITLE I General Provisions

Primacy of Intergovernmental Agreements

§ 1. The provisions of this federal law shall be applicable only insofar as intergovernmental agreements do not stipulate otherwise.

General Reservation

§ 2. A foreign request may only be complied if this does not violate public order or other essential interests of the Republic of Austria.

Reciprocity

§ 3. (1) A foreign request may only be complied if it is ensured that the requesting State would also comply with a similar request by Austria.

(2) A request under this federal law may not be filed by an Austrian authority if it were not possible to comply with a similar request by another State, unless a request appears to be needed urgently for specific reasons. In this case, the requested State shall be notified of the absence of reciprocity.

(3) In the event of doubts concerning compliance with reciprocity, the opinion of the Federal Minister of Justice shall be obtained.

(4) Another State may be assured of reciprocity in connection with a request made under this federal law, provided that there are no intergovernmental agreement and that it would be admissible under this federal law to comply with a similar request of this State.

Conditions

§ 4. There shall be compliance with the conditions that another State imposes on the occasion of granting an extradition, transit or surrender, when providing judicial assistance, or in connection with taking over a case for criminal prosecution, surveillance, or execution, and which were not rejected.

Expenses

§ 5. Expenses arising from granting an extradition or surrender, from providing judicial assistance or in connection with taking over a case for criminal prosecution, surveillance or execution in Austria, shall be borne by the Republic of Austria, provided that reciprocity is also ensured in this respect. Compensation for experts' fees arising from providing mutual assistance, as well as for the costs of transits shall always be sought from the requesting State.

Provisions regarding Import, Export, and Transit

§ 6. The restrictions contained in regulations relating to customs duties, foreign exchange or monopoly laws, or those contained in the regulations on trade in goods, or prohibitions for the import, export, or transit of goods, including goods and property items, shall not oppose the surrender, transit transport, or sending of objects admissible pursuant to the provisions of this federal law.

Travel Documents

§ 7. Persons who are handed over to another State, or who are taken over from another State in accordance with the provisions of this federal law shall neither require any travel document (passport or document in lieu of passport), nor any visa to cross the border.

Preventive Measures

§ 8. For the purposes of this federal law a preventive measure shall be defined as a measure involving deprivation of liberty, imposed by a court decision, as provided by criminal law, in addition to or instead of a punishment. In the event that the duration of a measure yet to be enforced has not been determined, the maximum admissible duration shall be assumed.

Application of the Code of Criminal Procedure

§ 9. (1) Unless the provisions of this federal law stipulate otherwise, the 1975 Code of Criminal Procedure, Federal Law Gazette No. 631/1975, shall be applied in analogy.

(2) § 64, § 71 to § 73 and § 381 to § 392 of the Code of Criminal Procedure shall not be applied to proceedings for the extradition of persons; § 51 to § 53 and § 59 (2) of the Code of Criminal Procedure, however, shall only apply with the proviso that the date of the examination of the person concerned on the application for extradition (§ 31 (1)) shall replace the filing of the bill of indictment.

(3) The public prosecutor may refrain from prosecuting a punishable act and discontinue the investigating procedure accordingly, provided that the Austrian criminal jurisdiction is only based on § 65 (1) item 2 of the Criminal Law Code and that public

interests do not oppose such refraining from prosecution, in particular, if punishment is not required in order to deter others from committing punishable acts.

(4) If surveillance of a person convicted by a foreign court is to be taken over, or if the decision of a foreign court is to be enforced, the public prosecutor may refrain from prosecuting the criminal act underlying the foreign conviction and discontinue the investigative proceedings accordingly, if it can be assumed that the Austrian court would not impose a considerably more severe punishment or preventive measure than the one imposed by the foreign court.

TITLE II

Extradition from Austria

CHAPTER ONE

Admissibility of Extradition

General Principle

§ 10. The extradition of persons to another State for the purpose of prosecution for acts subject to punishment by court or for the execution of a custodial sentence or a preventive measure imposed for such an act shall be admissible at the request of another State according to the provisions of this federal law.

Punishable Acts Qualifying for Extradition

§ 11. (1) Extradition shall be admissible for the prosecution of intentionally committed acts that are punishable under the law of the requesting State by a custodial sentence of more than one year or by a preventive measure of the same duration and that are subject to a custodial sentence of more than one year under Austrian law. The penal sanctions, as amended by § 5 item 4 of the 1988 Juvenile Court Act shall not be used as a basis for deciding whether a punishable act shall give rise to an extradition. It is irrelevant whether an application, as required for prosecution under Austrian law, has been made or such an authorization has been given.

(2) An extradition for execution shall be admissible in cases where the custodial sentence or the preventive measure has been imposed for one or several of the punishable acts listed in paragraph (1) and when a remaining period of at least four months still needs to be executed. Several custodial sentences or the remaining parts thereof shall be aggregated.

(3) If an extradition is admissible under paragraphs (1) or (2), a person may also be extradited for the prosecution of other punishable acts or for the execution of other custodial sentences or preventive measures, in cases where extradition would otherwise not be admissible on account of the term of the stipulated sanction (paragraph (1)) or of the duration of the punishment or measure (paragraph (2)).

Prohibition to Extradite Austrian Citizens

§ 12. (Constitutional provision) (1) The extradition of Austrian citizens shall not be admissible.

(2) Paragraph (1) shall not prevent the return of an Austrian citizen who a foreign authority has surrendered to the Austrian authorities only temporarily for the purpose of performing specific procedural steps or in connection with providing of judicial assistance.

Primacy of Extradition

§ 13. If extradition proceedings are pending against a foreign citizen, or if there are sufficient grounds to institute such proceedings, it shall not be admissible to remove him/ her from Austria on the basis of other legal provisions.

Punishable Acts of a Political Nature

§ 14. Extradition shall not be admissible:

1. for political offences,
2. for other punishable acts that are based on political motives or aims, unless the criminal nature of the act outweighs its political nature, when taking into consideration all the circumstances of a specific case, especially the way in which the offence has been committed, the means applied or threatened, or the severity of the actual or intended consequences.

Military and Fiscal Punishable Acts

§ 15. Extradition shall not be admissible for punishable acts which, according to Austrian law, are exclusively

1. of a military nature, or
2. constitute a violation of stipulations relating to taxes, monopolies or customs duties, or of foreign exchange regulations, or of stipulations relating to the control of or foreign trade in goods.

Austrian Jurisdiction

§ 16. (1) An extradition for punishable acts that are subject to Austrian jurisdiction shall be prohibited.

(2) However, paragraph (1) does not oppose extradition if

1. jurisdiction is only exercised on behalf of another country, or
2. precedence shall be given to conducting the criminal proceedings in the requesting State, taking special circumstances into account, particularly reasons of ascertaining the truth, of determining or executing a punishment.

(3) In the cases defined in paragraph (2), extradition shall also not be admissible if the person to be extradited has already been convicted or acquitted with final and enforceable effect in Austria, or has been exempted from prosecution for reasons other than those specified in § 9 (3). In cases pursuant to paragraph (2) item 2 extradition shall also be inadmissible if there is reason for concern that, on account of the conviction in the other State, the person to be extradited would be in a significantly worse position overall than would be the case under Austrian law.

Jurisdiction of a Third Country

§ 17. An extradition shall be inadmissible if the person to be extradited for a punishable act

1. has been acquitted with final and enforceable effect by a court of the State in which the offence was committed, or has otherwise been exempted from prosecution, or
2. has been convicted with final and enforceable effect by a court in a third country, and the punishment has been fully served or waived in whole or in part for the portion of the sentence remaining to be enforced, or if the enforceability of the punishment comes under the statute of limitation pursuant to the law of this third country.

Limitation

§ 18. An extradition shall be inadmissible if prosecution or execution comes under the statute of limitations in accordance with the laws of the requesting State or under Austrian law.

Compliance with the Principles of the Rule of Law; Asylum

§ 19. An extradition shall be inadmissible if there is reason to suspect that

1. the criminal proceedings in the requesting State will not comply or did not comply with the principles of Articles 3 and 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Law Gazette No. 210/1958,
2. the punishment or preventive measure imposed by or to be expected in the requesting State would be enforced in a manner that is not consistent with the requirements of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Law Gazette No. 210/1958, or
3. the person to be extradited would be subject to persecution in the requesting State because of his/her origin, race, religion, affiliation to a specific ethnic or social group, nationality, or political opinions, or would have to expect other serious prejudices for any of these reasons (extradition asylum).

Inadmissible Punishments or Preventive Measures

§ 20. (1) Extradition for prosecution of a punishable act subject to capital punishment under the laws of the requesting State shall only be admissible if it is ensured that the death penalty will not be imposed.

(2) Extradition for execution of the death penalty shall be inadmissible.

(3) The provisions of paragraphs (1) and (2) shall also apply in analogy to punishments or preventive measures that do not comply with the requirements of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Law Gazette No. 210/1958.

Prosecution of Persons without Criminal Responsibility

§ 21. It shall be inadmissible to extradite persons who were without criminal responsibility under Austrian law or the law of the requesting State at the time of the punishable act.

Hardship Cases

§ 22. It shall be inadmissible to extradite persons who would be exposed to obviously disproportionately severe conditions when considering the severity of the punishable act with which they are charged, their young age (§1 item 2 of the 1988 Juvenile Court Act), the long period of their residence in Austria, or other serious reasons based on their personal circumstances.

Specialty of Extradition

§ 23. (1) Extradition shall only be admissible if it is ensured that

1. in the requesting State the extradited person will not be prosecuted, punished, restricted in his/her personal liberty, or further extradited to a third country either for an act committed prior to the surrender which is not covered by the granting of extradition, or exclusively for one or several acts which, as such, do not constitute a basis for extradition (§ 11, paragraph (3)),
2. in case of a change of the legal classification of the act underlying the extradition, or when applying other criminal-law provisions than the originally assumed ones, the extradited person shall be prosecuted and punished only insofar as extradition would still be admissible under the new approach.

(2) After performing an extradition, consent to prosecution or the execution of a custodial sentence or preventive measure may be granted upon request, if the extradition were admissible in the relationship with the requesting State for the act underlying the application, albeit only in connection with a prior authorization. Similarly, further extradition to a third country may be granted if the extradition were admissible in the relationship with that third country.

(3) The consent to an extradition pursuant to paragraph (2) shall not be required if

1. after his/her release, the extradited person remains within the territory of the requesting State for more than 45 days, although he/she was in a position and allowed to leave it,
2. the extradited person leaves the territory of the requesting State and returns there at his/her own accord, or is lawfully returned to that country from a third country, or
3. the extradition was performed in conformity with § 32.

Extradition Requests from Several Countries

§ 24. If two or more States are requesting the extradition of the same person, a decision shall be taken on the priority of the extradition requests, taking account of all circumstances, specifically treaty obligations, the place where the act was committed, the chronological sequence in which the requests were received, the nationality of the person to be extradited, the possibility of a further extradition and, if the requests relate to various punishable acts, also the severity of the punishable acts concerned (§ 34 (2)).

Surrender of Objects

§ 25. (1) In connection with an extradition, it shall be admissible to surrender objects that may be used as evidence or which the person to be extradited has obtained from the punishable act or from realizing objects originating from said act.

(2) If an extradition cannot be granted that would be admissible pursuant to the provisions of this federal law, because the person to be extradited has absconded or is deceased or could not be apprehended in Austria, objects may nevertheless be surrendered on the basis of a request for extradition or a separate request.

(3) The surrender of objects for the purposes of evidence may be granted with the proviso that these objects will be returned immediately on request.

(4) Surrender shall be inadmissible in any event if there is reason to suspect that it would frustrate or disproportionately complicate prosecution or the exercise of rights of third parties.

CHAPTER TWO Jurisdiction and Procedure

Local Jurisdiction and Jurisdiction over the Subject Matter

§ 26. (1) The public prosecutor shall conduct the extradition proceedings, applying the provisions of Part 1 and 2 of the Code of Criminal Procedure in analogy. The public prosecutor in whose district the person concerned has his/her domicile or residence shall have local jurisdiction. In the absence of such a location, the public prosecutor shall have local jurisdiction in whose district the person was apprehended. If the person concerned is kept in court confinement, the place of confinement shall determine local jurisdiction. If no specific public prosecutor can be determined when applying the present provisions, the public prosecutor's office in Vienna shall have local jurisdiction.

(2) The court decisions in extradition proceedings shall be taken by a single judge of the regional court (§ 31 (1) of the Code of Criminal Procedure) where the public prosecutor's office is located that conducts the extradition proceedings.

(3) The provisions of paragraphs (1) and (2) shall also apply to the surrender of objects in connection with an extradition (extradition of objects).. The public prosecutor in whose district the object to be surrendered is located shall have jurisdiction over the examination of a separate request for the surrender of objects.

Searches

§ 27. (1) Requests received for imposing detention pending extradition shall be examined by the public prosecutor in order to establish whether there are sufficient grounds to assume that the underlying act gives rise to an extradition. If these prerequisites are met, the public prosecutor's office shall order the search measures stipulated in Title 9 of the Code of Criminal Procedure or, if necessary, order the arrest of the sought person.

(2) A public prosecutor need not be seized in connection with a request received by way of a computer-assisted search system, by way of the International Criminal Police Organization – INTERPOL – or by way of any other official international criminal police assistance system if there are no grounds to assume that the sought person is staying in Austria and if the request only gives rise to search measures that do not require any public announcement (§ 169 (2) second sentence of the Code of Criminal Procedure).

Offer to Extradite

§ 28. (1) If there are sufficient grounds to assume that a person apprehended in Austria has committed a punishable act that can be the subject of extradition, the public prosecutor shall examine if there is cause for extradition. If this is the case, the public prosecutor shall move that the court examine the person concerned and report the matter to the Federal Minister of Justice. The latter shall ask the State in which the punishable act was committed whether it will apply for extradition. The Federal Minister of Justice may waive the

examination if it must be assumed that such a request will not be lodged, or if it can be gathered from the documents that extradition would have to be refused for one of the reasons stipulated in § 2 and § 3 (1), especially because the person concerned is afforded protection under international law. The court shall be informed that the examination is waived, also indicating the reasons for this decision. A reasonable time limit shall be fixed for receiving the extradition request. If no extradition request is received in time, the Federal Minister of Justice shall inform the court to this effect.

(2) On the basis of a notice that an examination is waived pursuant to paragraph (1), or that an extradition request was not received in time, the court shall release the person who is detained pending extradition immediately, unless the public prosecutor moves immediately that pre-trial detention be imposed. Pursuant to § 38 of the Criminal Law Code allowance shall be made for the period of detention served pending extradition in the case of a conviction by an Austrian court.

Detention Pending Extradition

§ 29. (1) Detention pending extradition may only be imposed or continued if there are sufficient grounds to assume that a person apprehended in Austria has committed a punishable act that qualifies for extradition. The provisions governing pre-trial detention shall be applied in analogy to detention pending extradition, unless the provisions of this federal law stipulate otherwise.

(2) Detention pending extradition may not be imposed or maintained if the purposes of said detention may be achieved by way of pre-trial detention, imposed by a court at the same time, or by way of punitive custody. The public prosecutor shall order the departure from imposing pre-trial detention or punitive custody, which is indispensable for the purposes of the extradition proceedings. If the purposes of detention cannot be achieved by way of imposing punitive custody at the same time, or if the extradition proceedings were to be considerably complicated by maintaining punitive custody, the court shall impose detention pending extradition. In this case, the execution of the sentence is interrupted. Allowance shall be made for the period of detention served pending extradition when determining the interrupted period of punitive custody.

(3) Prior to a decision imposing detention pending extradition, the person concerned shall be informed of the charges against him/her and shall also be informed that it is in his/her discretion to make a statement, or not to give evidence on the matter and to first consult a defense counsel. The person concerned shall also be informed of his/her right to apply for the holding of a hearing on the admissibility of the extradition.

(4) If detention pending extradition is imposed on a person who is not represented by a defense counsel, such a defense counsel shall be assigned to this person directly (§ 61 (1) item 1 of the Code of Criminal Procedure). The court shall not assign a defense counsel, if the person concerned states his/her consent to the simplified extradition procedure. § 61 (2) to (4) and § 62 of the Code of Criminal Procedure shall be applied in analogy.

(5) The effectiveness of the most recently taken decision imposing or continuing detention pending extradition shall no longer be limited by the detention period if and as soon as the person concerned states his/her consent to the simplified extradition procedure (§ 32) or if the court decides that extradition is admissible (§ 31): there are not further ex officio hearings on the detention after that date.

(6) The person concerned shall be released in any event if he/she has already spent one year in detention pending extradition, without the Federal Minister of Justice granting or refusing extradition (§ 34). The period of detention pending extradition may only be

maintained for more than six months if this is unavoidable due to the specific difficulties or the special scope of the proceedings, and if the punishable act underlying the extradition is a crime (§ 17 of the Criminal Law Code).

Processing of Received Requests

§ 30. The Federal Ministry of Justice shall forward extradition requests for further processing directly to the competent public prosecutor's office, informing the senior public prosecutor's office at the same time. The Federal Minister of Justice shall reject a request directly if circumstances prevail that oppose an extradition for any of the reasons listed in § 2 and § 3 (1) or if the request is unsuited for being processed lawfully.

Proceedings on the Admissibility of an Extradition

§ 31. (1) The court shall examine the person concerned in connection with the extradition request. § 29 (3) shall apply in analogy. The court shall decide on the admissibility of an extradition by way of a court decision in accordance with § 33.

(2) The decision shall be taken on the basis of a public oral hearing if the person concerned or the public prosecutor so move, or if the court deems it necessary in order to examine the admissibility of the extradition. If the person concerned is kept detained pending extradition, the hearing on the admissibility of the extradition shall take place in the course of a hearing on the detention in accordance with the provisions of paragraph (3). Irrespective of an application to hold a hearing, the court may always state that an extradition is inadmissible without holding a hearing. If the court decides without a hearing, the person concerned and his/her defense counsel, as well as the public prosecutor must have been given an opportunity in any event to comment on the request for extradition.

(3) The person concerned must be represented at the hearing by a defense counsel (§ 61 (1) of the Code of Criminal Procedure). If the person concerned is being detained, steps shall be taken for his/her production in court, unless he/she expressly waived being present in court through his/her defense counsel. § 172 of the Code of Criminal Procedure shall be applied in analogy.

(4) Except for the cases listed in § 229 of the Code of Criminal Procedure, the public may be excluded from the hearing, if this might affect bilateral relations. In the hearing the single judge shall first present a summary of the content of the documents received by the court and the course of the proceedings up to the hearing. The public prosecutor shall then be given leave to speak. Next, the person concerned and his/her defense counsel shall be given an opportunity to comment on the request for extradition and the statements by the public prosecutor. In any event, the person concerned and his/her defense counsel shall have the right to make the final statement.

(5) The single judge shall proclaim the decision on the admissibility of the extradition and explain the reasons for the decision. The decision shall be issued in writing and shall indicate those facts, in any event, that were decisive for stating that the extradition is admissible or inadmissible.

(6) If, in the event of an oral proclamation of the decision, the person concerned or the public prosecutor files a complaint within three days, the complainant may state further details of the complaint within fourteen days after having received the written copy. The complaint has suspensive effect. The provisions on the proceedings before the appellate court (§ 89 of the Code of Criminal Procedure) shall apply with the proviso that the higher regional court shall decide on the complaint in a public oral hearing, applying § 294 (5) of the Code of

Criminal Procedure in analogy, unless the complaint must be rejected as inadmissible pursuant to § 89 (2) first sentence of the Code of Criminal Procedure. The higher regional court shall submit its decision to the Federal Ministry of Justice, attaching the case file.

(7) If no complaint is filed, the court shall submit the case file directly to the Federal Ministry of Justice.

Simplified Extradition Procedure

§ 32. (1) On the basis of a foreign request for extradition or for imposing detention pending extradition, the person concerned may state his/her consent to the extradition and agree to being transferred without conducting the formal extradition proceedings. However, if several requests have been submitted, the consent statement is only effective if it covers all requests. However, if the person concerned is detained pending extradition, he/she may state his/her consent at the earliest at the hearing on the detention, which must be held pursuant to § 175 (2) item 1 of the Code of Criminal Procedure. In any event, the consent will only become legally valid if it is put on record by the court.

(2) The court shall inform the person concerned that, in the event of an extradition pursuant to paragraph (1), he/she shall not be entitled to the protection afforded by § 23 (1) and (2) or by the corresponding provisions of intergovernmental agreements and that he/she may not revoke his/her consent.

(3) The simplified extradition of a juvenile shall only be admissible if his/her legal representative also consents or if he/she is represented by a defense counsel.

(4) If a person concerned has consented to the simplified extradition procedure, the court shall submit the case file directly to the Federal Ministry of Justice.

Examination of the Extradition by the Court

§ 33. (1) The admissibility of an extradition shall be examined on the basis of the request for extradition and the attached documents.

(2) The court shall only examine whether the person concerned appears to be sufficiently suspected of the punishable act with which he/she is charged on the basis of the extradition documents if and to the extent that there are considerable concerns, especially if there is evidence or such evidence is offered, which might dispel the suspicion directly.

(3) The admissibility of an extradition shall be examined comprehensively concerning its legal aspects, including all prerequisites for and obstacles to an extradition of the person concerned, as they derive from intergovernmental agreements, especially in the field of asylum law, from the perspective of the personal rights that the person concerned has under the law and the federal constitution.

Granting and Refusing Extradition

§ 34. (1) The Federal Minister of Justice shall decide on the extradition request in accordance with intergovernmental agreements and the principles of intergovernmental legal relations. In so doing, the Federal Minister shall take into account the interests and the obligations of the Republic of Austria under international law. The Federal Minister shall refuse an extradition if its inadmissibility has been stated with final and enforceable effect.

(2) If an extradition is admissible in the relationship with several States, the Federal Minister of Justice shall also decide which extradition request takes precedence.

(3) If the prerequisites of § 32 are met, the Federal Minister of Justice shall order the surrender of the person to be extradited. However, if there are concerns concerning the admissibility of the extradition for one of the reasons indicated in Chapter One of Title II, the procedure pursuant to § 31, § 33, and § 34 (1), (2) and (4) shall be conducted.

(4) The Federal Minister of Justice shall communicate the granting or refusal of the extradition to the requesting State, as well as to the court; in the case of a complaint pursuant to § 31 (6) also to the higher regional court. The court shall inform the person concerned and his/her defense counsel.

Documents

§ 35. (1) In any event, the extradition documents shall comprise a copy or a certified copy or a photostat copy of the court decision on the arrest, of a document to the same effect or of a final and enforceable decision on the conviction.

(2) At any stage of the proceedings the Federal Minister of Justice may ask – at his/her own initiative or upon application by the public prosecutor, the regional court or the higher regional court – the requesting State to provide additional documents and set a reasonable time frame for their provision. If that time limit expires without any reaction, the decision shall be taken on the basis of the available documents.

Surrender

§ 36. (1) The court shall arrange for the performance of the extradition. If the person to be extradited is at liberty, the court shall order his/her arrest upon application by the public prosecutor, if the performance of the extradition cannot be ensured otherwise. The person to be extradited shall be transferred to the relevant border crossing or to any other agreed place of surrender by court prison guards. The personal belongings, which were held in safekeeping, shall also be surrendered, unless the person to be extradited has disposed of them otherwise.

(2) The surrender of a juvenile may also be performed by surrendering the juvenile to the person responsible for the juvenile's education or a person designated by the latter, if there are no opposing extradition purposes.

(3) A juvenile whose extradition may be expected to be granted, may already be surrendered before a decision has been taken on the extradition request, if this appears to be necessary in order to spare him the drawbacks of prolonged extradition proceedings and if compliance with the specialty rule is ensured. The Federal Minister of Justice shall decide on an early surrender.

Deferral of Surrender

§ 37. Upon application by the person concerned or the public prosecutor or ex officio the court shall defer the surrender if

1. the person to be extradited is not fit for being transported or
2. the public prosecutor or a court conducts criminal proceedings against the person to be extradited, he/she is being kept in pre-trial detention by the fiscal authorities, or an imposed custodial sentence or preventive measure is to be enforced concerning the person to be extradited. In case of an exemption from prosecution or execution on account of the extradition (§ 192 (1) item 2 of the Code of Criminal Procedure; § 4 and § 157 of the Execution of Punishments Act), the public prosecutor shall perform the surrender without delay.

Provisional Surrender

§ 38. (1) Irrespective of a deferral of the surrender pursuant to § 37 item 3 (correct § 37 item 2), when a custodial sentence or a preventive measure is enforced against a person that person may be provisionally surrendered to another State at its request in order to conduct certain procedural steps, especially the trial and the pronouncement of the court decision, if his/her return is ensured after these procedural steps have been completed. There shall be no provisional surrender if it might result in unreasonable drawbacks for the person to be extradited.

(2) Provisional surrender shall not interrupt the execution of the custodial sentence or preventive measure in Austria.

(3) The Federal Minister of Justice shall decide on a request for provisional surrender.

Re-opening of the Extradition Proceedings

§ 39. The extradition proceedings shall be re-opened upon application by the person concerned or the public prosecutor or ex officio if new facts or evidence emerge that appear suitable to have serious concerns about the correctness of the court decision. The court shall decide on the re-opening of the proceedings (§ 43 (4) of the Code of Criminal Procedure), applying the provisions of § 357 (2) second to fifth sentences and (3) of the Code of Criminal Procedure in analogy. The provisions of § 31, § 33 and § 34 shall apply to the further procedure following the decision to re-open the extradition proceedings.

Subsequent Extradition Proceedings

§ 40. If the person to be extradited has not been surrendered by way of a simplified extradition, § 31, § 33, and § 34 shall apply to proceedings on requests pursuant to § 23 (2), subject to the proviso that the court always decides without a hearing. Before a decision is taken, the person to be extradited shall be given an opportunity to comment on the request.

Procedure for the Surrender of Objects

§ 41. (1) § 31 to § 35 shall be applied in analogy to the surrender of objects. In the case of a separate request for surrender, a copy or a certified copy or a photostat copy of a court decision on confiscation, or a document to the same effect may replace the documents designated in § 35 (1).

(2) The surrender of objects shall be deferred for as long as they are needed in judicial or administrative proceedings pending in Austria.

(3) Pursuant to § 367 of the 1975 Code of Criminal Procedure, an object confiscated on account of a punishable act may be returned to the entitled person with the proviso of § 367 of the 1975 Code of Criminal Procedure.

TITLE III Transit

CHAPTER ONE Admissibility

General Principle

§ 42. (1) Pursuant to the provisions of this federal law, the transit of persons through the territory of the Republic of Austria for the purposes of prosecuting an act subject to judicial punishment, or for executing a punishment or preventive measure imposed on account of such an act shall be admissible at the request of a State to which the persons are to be extradited from a third State.

(2) The provisions of this Title shall also apply in analogy to requests for the transit of persons through the territory of the Republic of Austria to a third State for the purpose of taking over the criminal prosecution of a case or the execution of a foreign court decision. The transit shall also be approved in cases where extradition would not be admissible for one of the reasons listed in § 11.

Admissibility of Transit

§ 43. A transit shall only be admissible if an extradition were admissible pursuant to § 11, § 14, § 15, § 18 to § 21, and § 23.

Prohibition of Transit concerning Austrian Citizens

§ 44. (Constitutional provision) The transit of Austrian citizens through the territory of the Republic of Austria shall not be admissible.

Austrian Jurisdiction

§ 45. (1) A transit on account of a punishable act that is subject to Austrian jurisdiction shall be admissible unless – on account of this punishable act –

1. extradition to the Republic of Austria is to be obtained concerning the person to be transited, or
2. the person to be transited has already been sentenced in Austria with final and enforceable effect, or has been acquitted with final and enforceable effect, or otherwise exempted from prosecution in Austria for another reason than the absence of Austrian jurisdiction.

(2) An Austrian title to punishment against the person to be transited on account of a punishable act not covered by the request for transit shall only oppose the transit if extradition to the Republic of Austria is to be obtained on account of this punishable act.

Use of Air Transport

§ 46. (1) Consent for a transit shall not be required if air transport is to be used and no stop-over on the territory of the Republic of Austria is planned. In that case, it shall suffice that the requesting State confirms that the person to be transited is not an Austrian citizen, that he/she will not be transited for one of the punishable acts listed in § 14 and § 15 item 1 and that one of the documents indicated in § 48 (1) is available.

(2) If a flight cannot be continued without delay, in the event of an unplanned stop-over, the notice on the use of air transport shall be regarded as a request for imposing detention pending extradition.

CHAPTER TWO

Competences and Procedure

Decision

§ 47. (1) The Federal Minister of Justice shall decide on a request for transit in agreement with the Federal Minister of the Interior. The Federal Minister shall communicate this decision to the requesting State by way of the established channels of communication.

(2) A notice on the use of air transport shall be examined by the Federal Minister of Justice in agreement with the Federal Minister of the Interior. If use of air transport is not admissible, the Federal Minister of Justice shall notify the requesting State accordingly by way of the established channels of communication.

Documents

§ 48. (1) Admissibility of a transit shall be examined on the basis of the request for transit and the attached documents. These documents shall comprise, in any event, a copy or a certified copy or a photostat copy of the court decision on the arrest, a document of similar effect or an enforceable decision on the conviction.

(2) The Federal Minister of Justice may, in agreement with the Federal Minister of the Interior, demand additional documents from the State requesting the transit and fix a reasonable time limit for their submission. If this time limit expires without any reaction, the decision shall be taken on the basis of the available documents.

Surrender

§ 49. (1) When granting a transit, the border crossings shall be indicated at which the person to be transited shall be taken over, as well as surrendered. The person to be transited may only be taken over if his/her transit has been granted and the person is fit to travel.

(2) The transit shall be performed by the security authorities. In the course of the transit, the objects shall also be transported that were handed over together with the person to be transited.

(3) The performance of a transit shall be interrupted if

1. after taking over the person to be transited, new facts or evidence emerge which alone or in connection with the transit documents and the results of possible inquiries give rise to serious concerns as to the admissibility of the transit,
2. the person to be transited committed an act punishable by court and requiring ex officio prosecution, on the territory of the Republic of Austria in the course of the transit, unless prosecution or execution is waived, applying § 192 (1) item 2 of the Code of Criminal Procedure or § 4 and § 157 of the Execution of Punishments Act in analogy, or
3. the person to be transited becomes unfit to travel.

TITLE IV

Judicial Assistance to Foreign Countries

CHAPTER ONE

Requirements

General Principle

§ 50. (1) In accordance with the provisions of this federal law, judicial assistance may be granted in criminal matters upon a request by a foreign authority, including proceedings to order preventive measures and to issue a property-law order, as well as in matters of extinction and the register of criminal records, in proceedings to obtain compensation for confinement and conviction by a criminal court, in clemency petition matters and in matters concerning the execution of sentences and measures. With the proviso of § 59a, the transfer of data to a foreign authority shall be admissible without such a request.

(2) An authority within the meaning of paragraph (1) shall be a court, a public prosecutor's office, or an agency acting in matters concerning the execution of sentences or measures.

(3) Judicial assistance within the meaning of paragraph (1) shall be any support that is provided in connection with foreign proceedings in a criminal-law matter. It also includes consenting to activities as part of cross-border observations on the basis of intergovernmental agreements.

Inadmissible Judicial Assistance

§ 51. (1) Providing judicial assistance shall not be admissible to the extent that

1. the act underlying the request is either not subject to punishment by a court under Austrian law or does not qualify for extradition pursuant to § 14 und § 15,
2. extradition would be inadmissible pursuant to § 19 items 1 and 2 for the proceedings underlying the request, or
3. either the practical requirements to perform specific investigative measures, as defined in Title 8 of the Code of Criminal Procedure, do not prevail, or providing judicial assistance would result in a violation of the obligation to confidentiality, to be also observed vis-à-vis criminal courts under Austrian law (§ 76 (2) of the Code of Criminal Procedure).

(2) The absence of criminal liability under Austrian law shall not oppose the service of documents if the recipient is prepared to accept them.

Sending of Objects and Case Files

§ 52. (1) Objects or case files may only be sent if it is ensured that they will be returned as soon as possible. The return of sent objects may be waived if these are no longer required.

(2) Objects to which the Republic of Austria or third parties hold a title may only be sent with the proviso that these rights remain unaffected. It shall not be admissible to send objects and case files if there is reason for concern that this would frustrate or render disproportionately complicated the prosecution or realization of these rights.

(3) Sending objects or case files should be deferred for as long as these are required for court or administrative proceedings pending in Austria.

Summons

§ 53. (1) A request to appear before a foreign authority may only be served upon a person staying in Austria if it is ensured that the person will not be prosecuted, punished or restricted in his/her personal liberty for an act committed before leaving the Republic of Austria. It shall be admissible, though, to prosecute, punish or restrict personal liberty

1. in connection with a punishable act that is the subject of the summons of a person as a defendant,
2. if, after the examination has been completed, the person summoned remains on the territory of the requesting State for more than fifteen days, although the person was in a position and allowed to leave it, or
3. if, after leaving the territory of the requesting State, the person returns there at his/her own accord, or is lawfully returned there.

(2) Summonses that contain threats of coercive measures in the event of non-compliance may only be served with the instruction that the threatened measures cannot be executed in Austria.

(3) Witnesses and experts shall be paid a reasonable advance on their travel costs, at their request if the other State so requested and reimbursement of the advance by the other State has been ensured.

Transferring Detained Persons for the Evidence Purposes

§ 54. (1) Upon a request by a foreign authority, a person who is being kept in pre-trial detention or punitive detention or who is being kept detained for the execution of measures, may be transferred to a foreign country in order to perform important investigative measures or evidence-taking, especially for the purposes of examining or confronting him/her, if

1. the person agrees to this transfer,
2. his/her presence is not required for criminal proceedings pending in Austria,
3. his/her detention is not prolonged on account of the transfer, and
4. the requesting State ensures to keep him/her in custody, to return him/her without delay after the investigative measure or evidence-taking has been completed, as well as not to prosecute or punish him/her for an act committed prior to the transfer.

(2) A transfer shall not interrupt the serving of pre-trial or punitive detention or the execution of a preventive measure.

CHAPTER TWO Competences and Procedure

Competences for Processing Requests for Judicial Assistance

§ 55. (1) Notwithstanding paragraphs (2) and (3), the public prosecutor's office with competences for the court district in which the act of judicial assistance is to be performed shall be responsible for processing a request for judicial assistance. If the request calls for a cross-border observation, the public prosecutor's officer shall be responsible in whose court district the border is most likely to be crossed. In the case of an observation by an aircraft flying to Austria, however the public prosecutor's office shall be responsible in whose court district the aircraft is to land. If the competences cannot be determined on the basis of the present provisions, the public prosecutor's office in Vienna shall be responsible. The stipulations of Title 7 of the Code of Criminal Procedure shall apply in analogy to the processing of requests for judicial assistance.

(1a) Information about main proceedings, as well as about the execution of a custodial sentence or preventive measure shall be provided by the adjudicating court; the same shall apply to the examination of persons and for permitting the use of case files, whenever that a bill of indictment has already been filed with an Austrian court and the subject of the request for judicial assistance is connected to the Austrian proceedings. In this

case, a single judge shall conduct the examination (§ 31 (1) item 1 of the Code of Criminal Procedure).

(2) If a person to be transferred is being kept in punitive detention or is undergoing the execution of a measure, a single judge of the court indicated in § 16 of the Execution of Punishments Act shall decide about the request for transfer, or else the court that ordered the detention. The Federal Ministry of Justice shall be informed of the decision. The Federal Minister of Justice shall refuse the transfer if one of the circumstances listed in § 2 and § 3 (1) prevails. Transfer to the respective border crossing or any other agreed transfer site shall be performed by court prison guards..

(3) If a person detained in another State is to be transferred through the territory of the Republic of Austria to a third State for important investigative measures or the taking of evidence, especially for the purpose of examination or confrontation, § 44, § 47 and § 49 shall apply in analogy.

Form and Content of a Request for Judicial Assistance

§ 56. (1) Judicial assistance may only be provided if it is possible to gather from the request the facts and the classification of the punishable act underlying the request. A reference to the criminal-law stipulations applicable or applied in the requesting State shall suffice in the case of requests for the service of documents.

(2) A request for ordering and performing one of the investigative measures governed by Chapter One to Chapter Eight of Title 8 of the Code of Criminal Procedure shall comprise a copy, a certified copy or a photostat copy of the order of the competent authority. If this is not a court order, the authority requesting judicial assistance shall present a statement explaining that the prerequisites required for such measures are met under the law applicable in the requesting State.

Refusal of a Request for Judicial Assistance; Absence of Competences

§ 57. (1) If judicial assistance is not provided in full or in part, the requesting foreign authority shall be informed thereof by way of the established channels of communication, also indicating the reasons.

(2) If the requested court or the requested public prosecutor's office does not have competences for processing the request for judicial assistance, the latter shall be forwarded to the competent court or any other competent authority.

Applicable Procedural Provisions

§ 58. There shall be compliance with a request for judicial assistance which requires a procedure that differs from Austrian laws on criminal procedure, if this is compatible with the criminal procedure and its principles pursuant to the provisions of Title 1 of the Code of Criminal Procedure. If judicial assistance is provided in the form of confiscation, information about bank accounts and bank transactions, or one of the investigative measures governed by Chapter Four or Chapter Five of Title 8 of the Code of Criminal Procedure, the assistance shall be limited in time, of which the requesting foreign authority shall be informed by way of the established channels of communication.

Admitting Foreign Agencies and Persons Involved in the Proceedings to Acts of Judicial Assistance

§ 59. (1) It shall not be admissible that foreign agencies perform investigations and procedural steps on the territory of the Republic of Austria under this federal law. However, the competent foreign judge, public prosecutor and other persons involved in proceedings, as well as their legal counsels shall be permitted to attend and to participate in acts of judicial assistance if this appears to be necessary for the appropriate processing of the request for judicial assistance. The approval of the Federal Minister of Justice shall be obtained for the service operations by foreign agencies required in this context, except for cross-border observations.

(2) Persons who were allowed to attend acts of judicial assistance pursuant to paragraph (1) must not be prosecuted, punished or restricted in their personal liberty during their stay in Austria for an act committed prior to their entry to Austria. It shall, however, be admissible to prosecute, punish or restrict the personal liberty of such persons

1. if the person admitted to attend the act of judicial assistance remains on the territory of the Republic of Austria for more than fifteen days after the act of judicial assistance has been completed, although he/she was in a position and allowed to leave it, or
2. if, after leaving the territory of the Republic of Austria, he/she return at his/her own accord, or is lawfully returned.

(3) If a person who is allowed to attend an act of judicial assistance is being detained in the foreign country, he/she may be taken over at the request of the other State if the detention is based on a conviction by a competent court, or if there is a reason for detention that is also recognized under Austrian law. The transferred person shall be kept detained in Austria and be returned without delay after of the act of judicial assistance has been completed.

Data Transfer without Request

§ 59a. (1) Courts and public prosecutor's offices may communicate person-related data without a request for judicial assistance on the basis of an intergovernmental agreement, to the extent that

1. the information relates to acts qualifying for extradition,
2. communicating the information in question to an Austrian court or to an Austrian public prosecutor's office would also be admissible without a request, and
3. it can be assumed on the basis of specific facts that – on account of the content of the information – it will be possible
 - a) to initiate criminal proceedings in the other State,
 - b) to prevent a criminal act of considerable significance or to avert a direct and serious danger to public security,

(2) The data shall be communicated pursuant to paragraph (1) with the proviso that

1. without the consent of the communicating authority the communicated data will not be used for any other purpose than the purpose underlying the communication;
2. the communicated data will be deleted or corrected by the receiving authority without any delay, as soon as
 - a) the inaccuracy of the data has been established,
 - b) the communicating authority sends a notification that the data were obtained or communicated unlawfully, or
 - c) it is established that the data are not or no longer needed for the purpose underlying their communication;
3. the receiving authority shall inform the communicating authority without delay about any inaccuracy of the communicated data.

TITLE V
Taking Over the Prosecution of a Case and Surveillance;
Execution of Foreign Criminal-Court Decisions

CHAPTER ONE
Taking Over the Prosecution of a Case

Competences and Procedures

§ 60. (1) Requests for taking over the prosecution of a case shall be examined provisionally by the Federal Ministry of Justice. If the request for the prosecution of a case cannot give rise to any prosecution, the Federal Minister of Justice shall refuse any further consideration of the request; otherwise, the Federal Minister of Justice shall refer the request to the responsible public prosecutor's office. At any stage of the proceedings the Federal Minister of Justice may demand – either at his/her own initiative or upon an application by the public prosecutor's office – from the State requesting the prosecution of a case to provide additional documents. The Federal Minister of Justice shall inform the requesting State about the dispositions taken and about the result of criminal proceedings.

(2) If criminal proceedings are to be taken over, but local jurisdiction cannot be determined, the public prosecutor's office in Vienna shall be responsible.

(3) If Austrian jurisdiction is based exclusively upon an intergovernmental agreement, the public prosecutor's office shall examine the person concerned on the prerequisites for taking over the prosecution of a case.

CHAPTER TWO
Taking over Surveillance Operations

Prerequisites

§ 61. Upon request by another State, the surveillance of a person shall be admissible, who was convicted by a foreign court with final and enforceable effect, when imposing a punishment has been deferred on condition, or when a punishment or preventive measure was suspended on probation, or when the person was released on condition from a custodial sentence or a preventive measure involving deprivation of liberty, provided that

1. the decision of the foreign court was taken in proceedings that complied with the principles set forth in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Law Gazette No. 210/1958,
2. the conviction was for an act that is subject to a court punishment under Austrian law,
3. the conviction was not for one of the punishable acts listed in § 14 and § 15,
4. the convicted person is not prosecuted for the act in Austria, was not convicted or acquitted with final and enforceable effect or otherwise exempted from prosecution for it in Austria,
5. the convicted person has his/her domicile or place of residence in Austria.

Surveillance Measures

§ 62. Surveillance shall deter the offender from further acts sanctioned by punishment. To the extent necessary or expedient, the measures provided for under Austrian law (§ 51 and §

52 of the Criminal Law Code) shall be ordered, giving due consideration to the foreign court decision.

Competences and Procedures

§ 63. (1) The Federal Ministry of Justice shall forward requests to take over surveillance operations to the competent court (paragraph (2)). In the event that a request cannot give rise to a surveillance operation for one of the reasons listed in paragraphs § 2 and § 3 (1 or if the request is not suited for lawful processing, the Federal Minister of Justice shall refuse further processing of the request. At any stage of the procedure, the Federal Minister of Justice may demand additional documents from the State requesting the taking over of the surveillance operation, either at his/her own initiative or upon application by the court.

(2) The court in whose district the convicted person has his/her domicile or place of residence shall have local jurisdiction to decide on the request for surveillance, as well as to order the surveillance measures. If under Austrian law the punishable act underlying the foreign conviction comes under the competences of local courts, a local court shall be responsible for ordering the required measures; otherwise a single judge of a regional court shall have the requisite competences.

(3) The Federal Minister of Justice shall inform the requesting State about the decision on the request for taking over the surveillance operation, as well as of the measures ordered on the basis of this request, using the established channels of communication.

CHAPTER THREE Execution of Foreign Criminal-Court Decisions

Prerequisites

§ 64. (1) The execution or further execution of a decision by a foreign court imposing a fine or custodial sentence, a preventive measure or property-law order with final and enforceable effect shall be admissible upon a request by another State if:

1. the decision of the foreign court was taken in proceedings complying with the principles set forth in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Law Gazette No. 210/1958,
2. the decision was taken for an act that is sanctioned by a court punishment under Austrian law,
3. the decision was not taken for one of the punishable acts listed in § 14 and § 15,
4. under Austrian law no statute of limitation applies to the execution,
5. the person concerned by the decision of the foreign court is not prosecuted for an act in Austria, has not been convicted or acquitted with final an enforceable effect or otherwise been exempted from prosecution.

(2) The execution of a decision by a foreign court imposing a custodial sentence or preventive measure shall only be admissible if the convicted person is an Austrian citizen, has his/her domicile or place of residence in Austria and has agreed to the execution in Austria.

(3) The execution of preventive measures shall only be admissible if Austrian law provides for a similar measure.

(4) The execution of a decision by a foreign court issuing property-law orders shall only be admissible if the decision complies with the prerequisites for fines, the skimming off

of an enrichment, forfeiture or seizure under Austrian law and a comparable domestic order has not yet been issued in Austria.

(5) Moreover, the execution of a decision by a foreign court imposing a fine or the skimming off of an enrichment shall only be admissible if its collection in Austria may be expected and the person concerned has been heard, to the extent that he/she can be contacted.

(6) Moreover, the execution of a decision a foreign court imposing forfeiture or seizure with final and enforceable effect shall only be admissible if the objects or property items covered by the decision are located in Austria and the person concerned has been heard, to the extent that he/she can be contacted.

(7) Fines, skimmed off amounts of money, forfeited property items and seized objects shall accrue to the Federal State.

Austrian Decisions on Execution

§ 65. (1) If the execution of a foreign court decision in criminal matters is taken over, the punishment, the preventive measure or the property-law order to be executed shall be determined according to Austrian law, taking account of the measure imposed in the decision. A decision by a foreign court ordering forfeiture may also be executed as an act of forfeiture in Austria, if an enrichment would have to be skimmed off under Austrian law.

(2) The person concerned by the decision may not be put into a more adverse position because of the fact that the execution is taken over than he/she would be in if the execution took place in the other State.

(3) § 38 and § 66 of the Criminal Law Code shall apply in analogy.

Processing of Incoming Requests

§ 66. The Federal Ministry of Justice shall forward requests for the execution of foreign criminal-court decisions to the competent regional court (§ 67 (1)). The Federal Minister of Justice shall immediately refuse a request if circumstances have emerged already at the time when the request is received that render it inadmissible to take over the execution for one of the reasons in listed in § 2 and § 3 (1) or if the request is not suited for lawful processing. At any stage of the procedure the Federal Minister of Justice may demand additional documents from the State requesting that an execution be taken over, either his/her own initiative or upon application by the first-instance court.

Competences and Procedures

§ 67. (1) The regional court in whose district the person concerned has his/her domicile or place of residence shall be responsible for requests to execute or adapt the punishment, preventive measure or skimming off of enrichment. If these provisions do not result in any specific competences of a specific regional court, the Regional Court for Criminal Matters in Vienna shall have jurisdiction. The regional court in whose district the property item or object is located shall be responsible for requests on executing a decision on forfeiture or seizure (§ 31 (5) of the Code of Criminal Procedure).

(2) The Federal Minister of Justice shall inform the requesting State of the decision concerning the request for taking over the execution, as well as of the actual execution, by way of the established channels of communication.

(3) After a punishment or preventive measure has been taken over for execution, criminal proceedings may no longer be lodged for the act underlying the court decision.

(4) The provisions under Austrian law shall apply to the execution, release on probation, as well as to clemency acts.

(5) Execution shall be discontinued in any event if the enforceability of the punishment or preventive measure expires under the law of the requesting State.

TITLE VI

Obtaining Extradition, Transit, Delivery, Judicial Assistance, as well as Taking Over the Prosecution of a Case, Surveillance and Execution

CHAPTER ONE

Obtaining Extradition, Transit and Delivery Competences and Procedure

§ 68. (1) If the extradition of a person staying in a foreign country shall be obtained for

1. the prosecution of a case, or
2. the execution of a custodial sentence or preventive measure,

the court with competences for the proceedings in Austria shall communicate, upon application by the public prosecutor's office, to the Federal Ministry of Justice the documents required for obtaining an extradition.

(2) The Federal Minister of Justice may refrain from obtaining an extradition if:

1. an extradition is not to be expected,
2. only a fine or a minor custodial sentence or one with release on probation is most likely to be imposed,
3. the custodial sentence to be executed is a minor one, or
4. the extradition were to entail drawbacks or burdens for the Republic of Austria which would be disproportionate to the public interest in prosecuting the case or executing the punishment.

(3) The provisions of paragraphs (1) and (2) shall be applied in analogy for obtaining an extradition or the delivery of objects.

Obtaining Detention Pending Extradition

§ 69. If the prerequisites for obtaining an extradition prevail, the competent court may – upon an application by the public prosecutor's office – request the competent foreign court immediately to impose detention pending extradition, by way of the established channels of communication. The Federal Ministry of Justice shall be notified thereof without delay.

Specialty of Extradition

§ 70. (1) Without the consent of the requested State a person who was extradited to Austria may not be prosecuted, punished, restricted in his/her personal liberty or be further extradited to a third country, neither for an act committed prior to his/her surrender that is not covered by the granted extradition, nor exclusively for several acts that do not qualify for extradition when taken separately. However, the specialty of extradition shall not oppose such measures, if

1. the extradited person remains on the territory of the Republic of Austria for more than 45 days after his/her release, although he/she was in a position and allowed to leave it,

2. the extradited person leaves the territory of the Republic of Austria and returns at his/her own accord, or is lawfully returned from a third country, or
- 3 the requested State waives compliance with the specialty provision.

(2) If the act underlying the extradition were to be classified differently than in the request for extradition, or if other provisions than the originally assumed criminal-law provisions are to be applied, the extradited person may be prosecuted and punished only to the extent that the extradition would also be admissible from the new perspectives.

(3) If the extradition of a person convicted for several coinciding punishable acts was only granted for the execution of individual parts of the punishment imposed for these punishable acts, only that part may be executed. The court which took the first-instance decision shall determine by way of decision the scope of the punishment that is to be executed. If a jury court or a court of lay judges took the first-instance decision, the regional court shall decide by a panel of three judges (§ 32 (3) of the Code of Criminal Procedure).

(4) Upon application by the public prosecutor's office the court indicated in paragraph (3) shall determine by way of decision which part of an imposed punishment shall be allotted to which individual punishable act underlying a request for extradition.

(5) (Comment: revoked by Federal Law Gazette I No. 112/2007)

(6) The provisions of paragraphs (1) to (4) shall also apply in analogy to transits.

CHAPTER TWO

Obtaining Judicial Assistance

Prerequisites and Procedures

§ 71. (1) Requests for judicial assistance shall be directed, by way of the established channels of communication, to the foreign court, the foreign public prosecutor's office, or the authority engaged in the execution of punishments or measures in whose district the act of judicial assistance is to be performed. The request shall comprise the facts underlying the proceedings and other information as required for appropriate processing.

(2) Unless direct judicial assistance exchanges are in place, the Federal Minister of Justice may refrain from forwarding a request for judicial assistance for one of the reasons listed in § 2 and § 3 (1).

Summoning Persons from Other States

§ 72. (1) If the personal appearance of a person to be examined by a court proves to be necessary, the competent foreign court may request the service of a summons by way of the established channels of communication. The summons shall not contain threats of coercive measures for the event of non-compliance.

(2) The summoned person must not be prosecuted, punished or restricted in his/her personal liberty in Austria for an act committed before his/her entry into Austria. However, it shall be admissible to prosecute, punish and restrict personal liberty

1. for a punishable act that constitutes the subject of the summons for a person as a defendant,
2. if the summoned person remains on the territory of the Republic of Austria for more than fifteen days after the examination has been completed, although he/she was in a position and allowed to leave, or
3. if he/she returns at his/her own accord or is lawfully returned after leaving the territory of the Republic of Austria.

Transfer of Detained Persons for Evidence Purposes

§ 73. (1) A person kept in custody in a foreign country may be transferred to Austria in order to perform important investigative measures or to take evidence, in particular for the purpose of their examination or confrontation. The provisions of § 59 (2) and (3) shall be applied in analogy.

(2) If a person kept in pre-trial or punitive detention in Austria is to be transferred to a foreign country for the purpose of achieving an important investigative act, in particular an examination or confrontation, § 54 shall be applied in analogy. The consent of the person to be transferred (§ 54 (1) item 1) shall, however, not be required.

CHAPTER THREE

Obtaining the Taking Over of the Prosecution of a Case, a Surveillance, as well as the Execution of Criminal-Law Convictions by Foreign Countries

Obtaining the Taking Over of the Prosecution of a Case

§ 74. (1) The Federal Minister of Justice may request another State to initiate criminal proceedings against a person for a punishable act that is subject to Austrian jurisdiction if the jurisdiction of that State appears to be justified and

1. the extradition of a person staying abroad cannot be obtained, or obtaining an extradition is waived for another reason, or
2. it is expedient to adjudicate a person staying in Austria in the other State on account of an interest in ascertaining the truth or for reasons of determining the punishment, or performing the execution, and whenever this person is extradited for another punishable act, or it is to be otherwise assumed that the criminal proceedings in the other State will be conducted in the presence of this person.

(2) If the taking over of the prosecution of a case is to be obtained, the public prosecutor shall report this to the Federal Ministry of Justice, attaching the required documents of the case.

(3) A request pursuant to paragraph (1) shall not be admissible if there is reason for concern that the person would be exposed to a drawback for one of the reasons listed in § 19, or if the punishable act is sanctioned by the death penalty in the requested State.

(4) After receipt of the notice that the requested State has taken over the prosecution of a case, the criminal proceedings in Austria may be suspended for the time being. If the offender has been convicted with final and enforceable effect by the foreign court and if the punishment has been executed in full or has been remitted to the extent that it has not been executed, the proceedings in Austria shall be discontinued.

(5) Prior to a request for taking over the prosecution of a case, the accused shall be heard if he/she is staying in Austria.

Obtaining Surveillance

§ 75. (1) If there is reason to request from another State the surveillance of a person for whom a period of probation has been fixed on the basis of the decision by an Austrian court pursuant to § 43, § 43a, § 45, § 46 or § 47 of the Criminal Law Code or § 13 of the 1988 Juvenile Court Act, the presiding judge (single judge) of the court who took this first-instance

decision shall forward the documents necessary for obtaining a surveillance operation to the Federal Ministry of Justice. Prior to a request for surveillance, a statement by the public prosecutor's office shall be obtained and the convicted person shall be heard, if /she is staying in Austria.

Obtaining Execution

§ 76. (1) If there is reason to request another State to take over the execution of a final and enforceable decision which imposes or revokes a punishment or a preventative measure, or which orders the skimming off of an enrichment, the presiding judge (single judge) of the court that rendered the first-instance judgment shall send the documents required for obtaining the taking over of the execution to the Federal Ministry of Justice. The Federal Minister of Justice shall refrain from making a request if it is to be assumed that taking over the execution will be refused for the reasons listed in § 2, § 3 (1) or (3) items 2 and 3.

(2) A request for taking over the execution of a custodial sentence or preventive measure shall be admissible if

1. the convicted person is staying in the requested State and his/her extradition cannot be obtained, or there are other reasons for refraining from obtaining an extradition, or
2. the purposes of the enforcement may be better achieved by an execution or further execution in the requested State.

(3) No request for taking over the execution of a custodial sentence or a preventive measure shall be made if

1. the convicted person is an Austrian citizen, unless he/she has his/her domicile or place of residence in the requested State and is staying there,
2. there is reason for concern that the punishment or preventative measure would be executed in a manner that is not in compliance with the requirements of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Law Gazette No. 210/1958,
3. there is reason for concern that, in the event of his/her transfer to the requested State, the convicted person would have to expect a prosecution or drawbacks of the type indicated in § 19 item 3, or
4. there is reason for concern that the convicted person would be in a significantly worse position overall in the other State than would be the case in the event of an execution or further execution in Austria.

(4) A request for taking over the execution of a fine or an order for skimming off an enrichment shall be admissible, if it can be expected that the amount may be collected in the requested State.

(5) If the requested State indicates that it will take over an execution, such execution shall be provisionally suspended in Austria. If the convicted person returns to the territory of the Republic of Austria without the ordered punishment or preventive measure, which the requested State was asked to take over, having been executed in full, or without the remaining portion having been remitted, the court shall have the remaining punishment or preventive measure executed. However, the court shall refrain from a subsequent execution and remit the remaining part of the punishment conditionally or unconditionally, or release him/her from the preventative measure conditionally or unconditionally, whenever the convicted person would be in a more adverse position than would be the case if the execution enforced in the foreign county had been enforced in Austria.

(6) Austrian clemency provisions shall continue to apply to the punishment to be executed in the requested State.

(7) Austrian clemency provisions shall continue to apply to the punishment or the property-law order to be executed in the requested State.

(8) The presiding judge (paragraph (1)) shall arrange for the transfer of the convicted person to the authorities of the requested State, applying § 36 (1) in analogy.

(9) Before a request to take over an execution is made, a statement by the public prosecutor's office shall be obtained and the convicted person shall be heard, if he/she is staying in Austria. The person concerned shall have no title to the fact that a request for taking over an execution is made or not. If he/she agrees to the taking over of an execution, which the court shall put on record, he/she shall be informed that this consent may not be revoked.

TITLE VII Final Provisions

Entry into Force and Transitional Provisions

§ 77. (1) This federal law shall enter into force on 1 July 1980.

(2) Ordinances based on this federal law may be issued already as of the day following the publication of this federal law, may become effective, though, on 1 July 1980 at the earliest.

(3) After 30 July 1980, the following shall cease to be in force:

1. § 59, § 157 and § 421 (3) of the 1975 Code of Criminal Procedure, § 59 (1) of the 1975 Code of Criminal Procedure, with the proviso, though, that it shall continue to apply to extradition proceedings that were pending before an Austrian court at the time when this federal law became effective;
2. the ordinance of the Ministry of Justice of 2 September 1891 concerning the transit of offenders through Austria, Imperial Law Gazette No. 34/1891.

Implementation Clause

§ 78. (1) The Federal Minister of Justice shall be responsible for implementing this federal law, with the exception of § 6; the agreement with the Federal Minister of the Interior shall be sought with regard to § 2 and § 42 to § 49; the agreement with the Federal Government shall be sought with regard to § 6.

(2) Federal Minister of Justice shall issue, by way of ordinance, all regulations necessary for the implementation of this federal law, especially on the communication channels to be observed in exchanges with foreign authorities, on the handling of matters under the standing orders, on the form and content of requests, communications and documents in exchanges concerning extradition and judicial assistance, as well as in matters concerning the taking over of cases for prosecution, surveillance and execution, on attaching translations, and on the processing of requests by foreign authorities and the performance of an extradition or delivery.

12) EU-Police Cooperation Act (EU-Polizeikooperationsgesetz – EU-PolKG)

Section 6

(1) The Europol National Unit is the only body with direct access to the Europol information systems and is responsible for the contact with Europol.

(2) The Europol National Unit shall:

1. supply Europol on their own initiative with the information and intelligence necessary for it to carry out its tasks;
2. respond to Europol's requests for information, intelligence and advice;
3. keep information and intelligence up to date;
4. evaluate information and intelligence for the law enforcement authorities and transmit that material to them;
5. issue requests for information, intelligence, advice and analysis to Europol;
6. supply Europol with information for storage in its databases;
7. ensure compliance with the law in the exchange of information with Europol.

Section 7

„Seconding liaison officers to Europol“

„(1) The Europol National Unit has to second the required number of liaison officers to Europol. The liaison officers are members of the Europol National Unit.

(2) The main duties of the liaison officers seconded to Europol are:

1. to represent, within their remit, the Austrian interests vis-à-vis Europol;
2. to provide Europol with information from the Europol National Unit;
3. to forward information from Europol to the Europol National Unit;
4. to cooperate with the officials of Europol in the completion of the tasks of Europol;
5. to assist in the exchange of information between the Europol National Unit and liaison officers of other Member States.”

Section 9

(1): “In so far as it is necessary in individual cases for carrying out the tasks assigned to them, the Europol National Unit as well as the liaison officers have the right to process the following data in the Europol Information System relating to persons who have been convicted of having committed or having taken part in a criminal offence in respect of which Europol is competent, or who are suspected of such an offence, or if there are reasonable grounds to believe that they will commit such offences:

1. surname, maiden name, given names and any alias or assumed name;
2. date and place of birth;
3. nationality;
4. sex;
5. place of residence, profession and whereabouts of the person concerned;
6. driving licences, identification documents and passport data;
7. where necessary, other characteristics likely to assist in identification, including any specific objective physical characteristics not subject to change such as dactyloscopic data and DNA profile established from the non-coding part of DNA.”

(2) Under the conditions laid down in (1) the Europol National Unit as well as the liaison officers may also use the Europol Information System to process the following data:

1. convictions, where they relate to criminal offences in respect of which Europol is competent;
2. suspicion of punishable acts, as well as criminal offences and when, where and how they were allegedly committed or proven to have been committed;
3. means which were or may be used to commit those criminal offences;
4. suspected membership of a criminal organization;
5. information concerning legal persons;
6. departments handling the case and their filing references;
7. inputting party. [...].“

Section 10

(1): “The Europol National Unit and the liaison officers are authorized to provide information to Europol on criminal offences in respect of which it is competent for setting up work files for the purpose of analysis, provided that the law enforcement authorities are also authorized to process this information in accordance with § 53a, paragraph 2, of the Security Police Act (Sicherheitspolizeigesetz [SPG]) for the purpose of analysis.”

Section 11

(1): “The law enforcement authorities are authorized to use data from Europol data processing systems for the purpose of preventing and fighting criminal offences in the fields of organized crime and terrorism as well as other forms of serious crime and related criminal offences.”

Section 23

(1): “The law enforcement authorities are authorized to collect criminal records data from individuals if this is required to provide mutual assistance to a law enforcement authority of another Member State and provided that this measure would have been permitted also in similar domestic cases.”

Section 27

(2) “Furthermore, with the consent of the Federal Minister of the Interior and for the purpose of strengthening police cooperation, officers of the public law enforcement services can be seconded to another Member State in order to jointly carry out tasks aimed at maintaining public peace, order and security or tasks supporting the criminal police in the receiving Member State.“

Section 28

(2) “Furthermore, for the purpose of strengthening police cooperation, the Federal Minister of the Interior can, with the consent of the seconding State, entrust officers of the law enforcement authorities of other Member States with tasks aimed at maintaining public peace, order and security or tasks supporting the criminal police on the Austrian territory.“

Section 29

(1) “For the period of their deployment in the cases described in § 28, officers of law enforcement authorities of other Member States have the same powers and responsibilities as

officers of the public law enforcement services. They are treated in the same way as Austrian officers with regard to any criminal offences that might be committed by or against them.”

(2) “Officers of law enforcement authorities of other Member States are authorized [...]

5. to use the technical means necessary to complete their tasks.”

Section 30

(1): “The law enforcement authorities are authorized to query the following data from the Visa Information System (VIS) if this is required in individual cases to prevent, detect and investigate terrorist offences pursuant to §§ 278b and 278c StGB (Austrian Penal Code) as well as other serious criminal offences such as defined in Appendix 1, Part A, to the EU-JZG [point 7: corruption; point 8: fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities’ financial interests; point 9: laundering of the proceeds of crime]: 1. surname, [...] 4. main destination and duration of the intended stay; 8. place of residence.“

Section 33

(1) „The law enforcement authorities jointly run a central database application, the national Schengen Information System, providing access to alerts on persons and property. They have to supply these data to other Member States through the central Schengen Information System...”

Section 35

(1) „At the request of the courts or public prosecutor’s offices, the law enforcement authorities are authorized to enter data on persons for whom a European arrest warrant has been issued for the purpose of extradition, into the Schengen Information System.”

Section 38

(1): “At the request of the courts or public prosecutor’s offices, the law enforcement authorities are authorized to enter data on the following persons into the Schengen Information System for the purpose of ascertaining their place of residence or domicile:

1. persons sought to appear as witnesses in a judicial procedure;
2. persons summoned or persons sought to be summoned to appear before the court in connection with criminal proceedings in order to account for acts for which they are being prosecuted; [...]

Section 39

(1): “In order to detect and prosecute punishable acts and to prevent dangerous attacks, the law enforcement authorities are authorized to enter alerts on persons into the Schengen Information System for the purpose of discreet checks, provided that

1. there are reasonable grounds to believe that a person plans to commit or commits a criminal offence defined in Appendix 1 to the EU-JZG, or
2. an overall assessment of a person, in particular on the basis of past criminal offences, gives reason to suppose that that person will commit a criminal offence in the future, such as the offences referred to in Appendix 1, Part A, to the EU-JZG. [...]

13) European Convention on Extradition

Article 20

(1a): “The requested Party shall, in so far as its law permits and at the request of the requesting Party, seize and hand over property:

- a. which may be required as evidence, or [...].”

14) European Convention on Mutual Assistance in Criminal Matters (Europäisches Übereinkommen über die Rechtshilfe in Strafsachen – EuRHÜb)

Article 1

(1) “The Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.”

Article 15

(1) „Letters rogatory referred to in Articles 3, 4 and 5 as well as the applications referred to in Article 11 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.“ Chapter (2): „In case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. They shall be returned together with the relevant documents through the channels stipulated in paragraph 1 of this article.“

15) Federal Constitution Law (Bundes-Verfassungsgesetz B-VG)

Article 57

(1) The members of the National Council may never be made responsible for votes cast in the exercise of their function and only by the National Council on the grounds of oral or written utterances made in the course of their function.

(2) The members of the National Council may on the ground of a criminal offence – the case of apprehension in the act of committing a crime excepted – be arrested only with the consent of the National Council. Domiciliary visitations of National Council members likewise require the National Council’s consent.

(3) Legal action on the ground of a criminal offence may otherwise without the National Council’s consent be taken against members of the National Council only if it is manifestly not connected with the political activity of the member in question. The

authority concerned must however seek a decision by the National Council on the existence of such a connection if the member in question or a third of the members belonging to the Standing Committee entrusted with these matters so demands. Every act of legal process shall in the case of such a demand immediately cease or be discontinued.

(4) In all these instances the consent of the National Council counts as granted if within eight weeks it has not given a ruling on an appropriate request by the authority competent for the institution of legal action; the President, with a view to the National Council's adoption of a resolution in good time, shall at the latest put such a request to the vote on the day but one before expiry of the deadline. The latter does not include the period when the National Council is not in session.

(5) In case of a member's apprehension in the act of committing a crime, the authority concerned must immediately notify the President of the National Council of the occurrence of the arrest. If the National Council or when it is not in session the Standing Committee entrusted with these matters so demands, the arrest must be suspended or the legal process as a whole be dropped.

(6) The immunity of members ends with the day of the meeting of the newly elected National Council, that of functionaries of the National Council whose tenure of office extends beyond this date on the expiry of this term of office.

(7) The detailed provisions are settled by the Federal Law on the Rules of Procedure of the Austrian National Council (Rules of Procedure Law of 1975).

Article 58

The members of the Federal Council enjoy for the whole duration of their tenure of office the immunity of the members of the Diet which has delegated them.

Article 96

(1) The members of a Diet enjoy the same immunity as the members of the National Council; the provisions of Art. 57 are applied analogously.

<p style="text-align: center;">16) Federal Law on the Establishment and Organization of the Federal Bureau of Anti-Corruption (BAK-G)</p>
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Reporting Centre

Section 4

(2) The Federal Bureau of Anti-Corruption has jurisdiction over investigations within the framework of international police cooperation and administrative assistance as well as for cooperation with the competent institutions of the European Union and the investigating authorities of the EU Member States in the cases defined in paragraph 1. Regarding international police cooperation in the cases 1 to 13 defined in paragraph 1, the Federal Bureau acts as the national point of contact for OLAF, Interpol, Europol and other

comparable international institutions. Section 4, paragraph 1, of the Law on the Criminal Intelligence Service Austria [Bundeskriminalamt-Gesetz, BKA-G], BGBl. I 22/2002, remains unaffected.

(3) “The BAK shall analyse corruption phenomena, gather information on preventing and combating them and develop appropriate preventive measures.”

Section 5

Without prejudice to their duties to report in accordance with the stop 1975 (BGBl. No. 631/1975), law enforcement authorities and departments getting notice of a criminal offence defined in § 4, paragraph 1 (1-15), have to report this offence without delay and in writing to the Federal Bureau (duty to report). Federal employees must not be prevented from reporting allegations or suspicious circumstances concerning § 4, paragraph 1 (1-15), directly to the Federal Bureau without going through the official channels (right to report).

Section 6:

(2) For reasons of expediency, the Federal Bureau may assign certain investigations to other law enforcement authorities and departments. It may order the respective entity to directly report to the Federal Bureau, at regular or specified intervals, on the progress of a certain case.

(3) The Federal Bureau may transfer investigations to other law enforcement authorities and departments if there is no particular public interest regarding the importance of the criminal offence or of the person investigated. The relevant public prosecutor’s office has to be informed of such transfer.”

<p>17) Federal Law on the Rules of Procedure of the Austrian National Council – Rules of Procedure Law of 1975 (Bundesgesetz vom 4. Juli 1975 über die Geschäftsordnung des Nationalrates – Geschäftsordnungsgesetz 1975):</p>

Section 10

(1) Members shall under no circumstances be held responsible for any votes cast in the exercise of their functions; they shall be exclusively responsible to the National Council for any statement, whether oral or in writing, made in the exercise of their functions.

(2) Unless apprehended flagrante delicto in the performance of a felony, Members shall only be arrested with the approval of the National Council. Likewise, they shall be immune from searches unless approved by the National Council.

(3) Otherwise, Members shall, without approval of the National Council, only be prosecuted for punishable offences which are obviously in no way connected with their political activities. However, the prosecuting authority shall, upon demand of the Member concerned or of one third of the members of the Standing Committee having jurisdiction over such matters, seek a decision of the National Council on whether or not any such connection exists. Once such a demand has been made, the prosecuting authority shall immediately cease to take action or stop any action already undertaken. If the National Council determines that there is a connection between the alleged offence and the Member’s political activity, it shall at the same time decide on whether or not it approves the prosecution of the Member in question.

(4) The National Council shall in all such cases be deemed to have given its approval if it fails to decide within eight weeks on a request for a decision made by the competent prosecuting authority.

(5) If a Member is apprehended flagrante delicto in the performance of a felony, the authority in question shall without delay notify the President of the National Council of the arrest of the Member. On demand of the National Council or, between parliamentary sessions, of the Standing Committee having jurisdiction over such matters, the authority shall release the arrested Member or altogether refrain from prosecuting him/her.

(6) The immunity of Members shall terminate on the day the newly elected National Council meets for its first sitting or, in the case of organs of the National Council whose function extends beyond that day, when that function expires.

18) Federal Statute on Responsibility of Entities for Criminal Offences (Verbandsverantwortlichkeitsgesetz - VbVG)

Chapter 1

Scope of Application and Definitions

Entities

Section 1. (1) This Federal Statute regulates the conditions under which entities are responsible for criminal offences, the criminal penalties for such offences as well as the procedure according to which responsibility is ascertained and criminal penalties are imposed. For the purpose of this Federal Statute a criminal offence shall mean an act punishable by court under a federal statute or a provincial statute; however, this Federal Statute shall only apply to tax offences to the extent provided for in the Tax Offences Act, BGBl. [Federal Law Gazette] No. 129/1958.

(2) For the purpose of this statute entities shall mean corporations, registered partnerships [Eingetragene Personengesellschaften] and European Economic Interest Groupings.

(3) For the purpose of this statute the following shall not be entities:

1. a (deceased person's) estate;
2. the federal state, provinces and municipalities and other corporations to the extent they enforce laws;
3. recognised churches, religious societies and religious communities to the extent they are engaged in pastoral care.

Decision Makers and Staff

Section 2. (1) For the purpose of this statute decision maker shall mean a person who

1. is a managing director, an executive board member or Prokurist [translator's note: compare: authorised officer] or who is authorised in a comparable manner to represent the entity vis-à-vis third parties either according to statutory power of representation or based upon contract,
2. is a member of the supervisory board or board of directors or otherwise exercises controlling powers in a leading position, or

3. otherwise exercises relevant influence on the management of the entity.
- (2) For the purpose of this Statute staff shall mean a person who works for the entity
 1. on the basis of an employment relationship, apprentice relationship or other training relationship,
 2. on the basis of a relationship that is subject to the provisions of the Outwork Act [Heimarbeitsgesetz] 1960, BGBl. [Federal Law Gazette] No. 105/1961 or that is of an employee-like status,
 3. as an employee provided on a temporary basis as defined in Section 3 para 4 of the Act on Temporary Provision of Employees [Arbeitskräfteüberlassungsgesetz – AÜG], BGBl. No. 196/1988, or
 4. on the basis of a service relationship or other special public-law relationship.

Chapter 2

Responsibility of Entities – Provisions relating to Substantive Law

Responsibility

Section 3. (1) Subject to the additional conditions defined in paragraphs 2 or 3 an entity shall be responsible for a criminal offence if

1. the offence was committed for the benefit of the entity or
2. duties of the entity have been neglected by such offence.

(2) The entity shall be responsible for offences committed by a decision maker if the decision maker acted illegally and culpably.

(3) The entity shall be responsible for criminal offences of staff if

1. the facts and circumstances which correspond to the statutory definition of an offence have been realised in an illegal manner; the entity shall be responsible for an offence that requires wilful action only if a staff has acted with wilful intent, and for a criminal offence that requires negligent action only if a staff has failed to apply the due care required in the respective circumstances; and

2. commission of the offence was made possible or considerably easier due to the fact that decision makers failed to apply the due and reasonable care required in the respective circumstances, in particular by omitting to take material technical, organisational or staff-related measures to prevent such offences.

(4) Responsibility of an entity for an offence and criminal liability of decision makers or staff on grounds of the same offence shall not exclude each other.

Fine for the entity

Section 4. (1) If an entity is responsible for a criminal offence, a fine shall be imposed.

(2) The fine shall be assessed in the form of daily rates. The fine shall amount to at least one daily rate.

(3) The number of daily fines shall be up to 180

- if the criminal penalty for the offence is a life sentence or imprisonment of up to twenty years,

155

- if the criminal penalty for the offence is imprisonment of up to fifteen years,

130

- if the criminal penalty for the offence is imprisonment of up to ten years,

100

- if the criminal penalty for the offence is imprisonment of up to five years,

85

- if the criminal penalty for the offence is imprisonment of up to three years,
70
- if the criminal penalty for the offence is imprisonment of up to two years,
55
- if the criminal penalty for the offence is imprisonment of up to one year,
40
- in all other cases.

(4) The daily rate shall be assessed on the basis of the income situation of the entity by taking into account its other financial performance. The daily rate shall be equal to one 360th of the yearly proceeds or exceed or fall short of such amount by not more than one third; however, the daily rate shall amount to not less than 50 euros and not more than 10.000 euros. If the association serves charitable, humanitarian or church purposes (Sections 34 to 47 Fiscal Code, BGBl. No. 194/1961) or is not profit-oriented, the daily rate shall be fixed at a minimum of 2 euros and a maximum of 500 euros.

Assessment of the Fine for the Entity

Section 5. (1) When fixing the number of daily rates the court shall weigh aggravating causes and mitigating causes to the extent they have not already been used for fixing the amount of the threatened fine.

(2) The number shall, in particular, be the higher

1. the larger the damage or threat for which the entity is responsible;
2. the larger the benefit for the entity obtained from the criminal offence;
3. the more illegal conduct of staff was tolerated or favoured.

(3) The number shall, in particular, be the lower if

1. the entity took measures to prevent such offences already before the offence was committed or has told staff to observe the law;
2. the entity is merely responsible for criminal offences committed by staff (Section 3 para 3);
3. the entity substantially contributed to finding out the truth;
4. the entity made good the consequences of the offence;
5. the entity took essential steps towards future prevention of similar offences;
6. the offence already resulted in severe legal disadvantages for the entity or its owners.

Conditional Remission of the Fine

Section 6. (1) If an entity is sentenced to a fine of not more than 70 daily rates, the fine shall be conditionally remitted by fixing a probationary period of at least one and not more than three years, if applicable by giving instructions (Section 8), if it has to be assumed that this will be sufficient to keep the entity from committing further offences for which it is responsible and there is no need to enforce payment of the fine in order to counteract commission of offences in connection with the activities of other entities. In this connection, above all, the type of offence, the weight of the breach of duty or care, previous convictions of the entity, reliability of the decision maker and the measures taken by the entity after the offence shall be taken into consideration.

(2) If the remission is not revoked, the fine shall be remitted finally. Periods of time which start to run once the fine has been enforced shall, in such a case, be calculated as of the time the sentence becomes non-appealable.

Conditional Remission of Part of the Fine

Section 7. If an entity is sentenced to a fine and if the conditions of Section 6 are met with respect to part of the fine, such part, but at least one third and not more than five sixth thereof, shall be conditionally remitted by fixing a probationary period of a minimum of one and a maximum of three years, if applicable by giving instructions (Section 8).

Instructions

Section 8. (1) If a fine is conditionally remitted in whole or in part, the court may give instructions to the entity.

(2) The entity shall be instructed to endeavour to make good the damage caused by the offence unless this has been done already.

(3) For the rest, the entity may be instructed to take technical, organisational or staff-related measures to counteract commission of further offences for which the association would be responsible (Section 3).

Revocation of Conditional Remission of the Fine

Section 9. (1) If the entity is convicted on grounds of responsibility for an offence committed during the probationary period, the court shall revoke the conditional remission of the fine and enforce the fine or part of the fine if this appears to be necessary in view of the repeated conviction in addition to the same to prevent commission of further offences for which the entity would be responsible (Section 3). An offence that is committed during the period between the decision of the court of first instance and non-appealability of the decision on conditional remission shall be deemed equivalent to an offence committed during the probationary period.

(2) If the entity fails to comply with an instruction despite a formal warning, the court shall revoke the conditional remission and enforce the fine or part of the fine if this appears to be necessary in the circumstances to prevent commission of further offences for which the entity would be responsible (Section 3).

(3) If in the cases described in paragraphs 1 and 2 the conditional remission is not revoked, the court may extend the probationary period to a maximum of five years and give new instructions.

(4) If, applying of Section 31 StGB [Criminal Code], the entity is subsequently sentenced to an additional fine, the court may revoke the conditional remission of the fine in whole or in part and enforce the fine or part of the fine to the extent that the fines would not have been remitted conditionally in case of concurrent conviction. If the conditional remission is not revoked, each of the probationary periods which coincide shall last until the end of the probationary period that ends last, but not longer than five years.

Legal Succession

Section 10. (1) If the rights and obligations of the entity are transferred to another entity by way of universal succession, the legal consequences provided for in this Federal Statute shall apply to the legal successor. Legal consequences imposed on the legal predecessor shall also apply to the legal successor.

(2) Individual succession shall be deemed equivalent to universal succession if more or less the same ownership structure of the entity exists and the operation or activity is more or less continued.

(3) If there is more than one legal successor, a fine imposed on the legal predecessor may be enforced vis-à-vis any legal successor. Other legal consequences may be attributed to individual legal successors to the extent this is in line with their area of activities.

Exclusion of Recourse

Section 11. For criminal penalties and legal consequences affecting the entity on the basis of this Federal Statute there shall be no right of recourse to decision makers or staff.

Applicability of General Criminal Laws

Section 12. (1) For the rest, the general criminal laws shall also apply to entities unless they exclusively apply to natural persons.

(2) If the law provides that applicability of Austrian criminal laws to offences committed abroad is subject to the fact that the offender's domicile or habitual residence is in Austria or that he is an Austrian citizen, then the registered office of the entity or the place of operation or establishment shall be relevant with regard to associations.

(3) Enforceability shall become statute-barred after fifteen years

- if the sentence is more than 100 daily rates,
ten years

- if the sentence is a fine of more than 50 but not more than 100 daily rates, and
five years

(1) in all other cases.

19) 38th Federal Constitutional Law on Cooperation and Solidarity in the Secondment of Units and Individuals to Foreign Countries (KSE-BVG)

Section 1

(1a) „Units and individuals can be seconded to foreign countries

1. for solidarity and participation in a) peacekeeping measures including the promotion of democracy and the rule of law, as well as the protection of human rights in the framework of an international organization, the Organization for Security and Co-operation in Europe (OSCE), or the implementation of decisions of the European Union within the Common Foreign and Security Policy.“

20) (Federal Act on) Judicial Cooperation in Criminal Matters with the Member States of the European Union (EU-JZG)

Part Two

Execution of a European Arrest Warrant

Execution of a European Arrest Warrant against Austrian nationals

Section 1

(1) “The present federal law governs the cooperation between the judicial authorities of the Republic of Austria and those of the other Member States of the European Union in criminal proceedings against natural persons and associations (§ 1 (2) and (3) of the Responsibilities of Associations Act – VbVG, BGBl. (Federal Law Gazette) I No. 151/2005). This cooperation comprises

1. the recognition and execution of judicial decisions, especially by [...]

b) the freezing of evidence and property, [...]

2. judicial assistance in criminal matters, including the formation of joint investigation teams, cooperation with Eurojust and the European Judicial Network (EJN), as well as the service of documents.

3. the transfer of criminal prosecution and the transfer of the enforcement of sentences.”

(2) “Unless the provisions of the present federal law stipulate otherwise, the Extradition and Mutual Assistance Law (ARHG), BGB. (Federal Law Gazette) No. 529/1979, shall apply in analogy.”

Section 5 (Constitutional Provision)

(1) Execution of a European arrest warrant against an Austrian national by an Austrian judicial authority is only admissible on the conditions of the following provisions.

(2) The execution of a European arrest warrant against an Austrian national for acts that are subject to the jurisdiction of Austrian criminal laws is inadmissible.

(3) The execution of a European arrest warrant against an Austrian national is inadmissible if

1. the person concerned did not commit any acts on the national territory of the issuing State, and

2. acts of the same type, committed outside the national territory in keeping with Austrian law, would not be subject to the scope of application of Austrian criminal law.

(4) The execution of a European arrest warrant against an Austrian national for the enforcement of a custodial sentence or a preventive measure involving deprivation of liberty is inadmissible. If an Austrian judicial authority is requested to execute such an arrest warrant, the sentence or measure imposed by the issuing State shall be enforced in Austria according to § 39 to § 44, also without separate application by the issuing judicial authority, if the execution of this European arrest warrant would otherwise be admissible.

(5) The execution of a European arrest warrant by the surrender of an Austrian national for conducting a criminal prosecution is always admissible only on the condition that the person concerned by the surrender is returned to Austria, after having been granted to be heard in court, for serving the custodial sentence or preventive measure involving deprivation of liberty imposed by the court in the issuing State.

(6) If the Austrian national concerned is kept in pre-trial detention or detention pending surrender, he/she may renounce a ground for refusal and conditions pursuant to the present federal law only expressly and at the earliest at the hearing on his/her detention, as defined by § 20 (1) (§ 32 (1) of the ARHG, § 175 (2) item 1 of the Code of Criminal Procedure). In any event, such a renunciation shall become effective only if it is put on record in court.

Section 56

(3): “Judicial assistance, as referred to in paragraph (1), shall be any type of support that is granted in connection with foreign proceedings in criminal-law matters. It also comprises the approval of activities that are part of cross-border observations, based on bilateral agreements, of joint investigation teams, and of under-cover investigations.”

Section 60

(1) „Joint investigation teams, which perform criminal-law investigations, are formed by way of special agreement between the competent authorities of two or several Member States for a specific purpose or for a specific period of time. The purpose, duration and composition of the joint investigation team may be amended with the consent of all Member States involved.“

(2) “A joint investigation team may be formed, in particular, if

1. in investigating proceedings of a Member State difficult and complicated investigations need to be carried out to clear up criminal acts that are linked to investigations in other Member States;
2. several Member States are carrying out investigations to clear up criminal offences that require a coordinated and synchronized approach by the Member States involved on account of the underlying facts.”

Section 62

(1): „The information obtained in Austria by a joint investigation team may be used by the authorities of the Member States involved to the extent that it may also have been obtained by way of judicial assistance.“

Section 69

“ The European Judicial Network (EJN) shall serve to facilitate the direct exchange of information between authorities and the cooperation between judicial authorities of the Member States by active intermediary services and establishing direct contacts by involving the competent contact authorities of other Member States.“

Section 72

(2) “Upon request by a Member State or in agreement with another Member State a controlled delivery through Austria or from Austria to another Member State shall be granted if

1. the reasons underlying the controlled delivery or the foreign criminal proceedings meet the prerequisites for issuing a European arrest warrant, and
2. the controlled delivery will promote the clearing up of such offences or the exploration of a person who is involved in committing the offences in more than a subordinate position.”

Section 73

(1) „The deployment of an official of a Member State operating under cover or under a false identity in Austria shall only be admissible on the basis of an order issued in advance of such an operation by the public prosecutor responsible for the area in which the operation is planned to start, and only on the basis of a request by a judicial authority of a Member State, which has granted this deployment in the course of previously launched criminal proceedings or preliminary investigations.”

(2) “The deployment of a foreign undercover investigator in Austria shall be ordered if

1. the offences underlying the foreign criminal proceedings meet the prerequisites for issuing a European arrest warrant, and
2. if there were no chances of clearing up the offences, or if their clarification was seriously complicated without the planned investigating operations.”

**21) Judicial and Prosecution Service Act
(Richter- und Staatsanwaltschaftsdienstgesetz RStDG)**

Protection from discrimination

Section 58b

A judge or public prosecutor who, in accordance with § 53, paragraph 1, in good faith reports well-founded suspicions of a criminal offence laid down in § 4, paragraph 1, of the Federal Law on the Establishment and Organization of the Federal Bureau of Anti-Corruption (Federal Law Gazette [BGBl.] I, no 72/2009) must not be discriminated against by the representative of the employer as a response to such report. The same applies if a judge or public prosecutor exercises the right to report in accordance with § 5 of the Federal Law on the Establishment and Organization of the Federal Bureau of Anti-Corruption.

**22) Law on the Criminal Intelligence Service Austria
(Bundeskriminalamt-Gesetz – BKA-G)**

Article 4

(1) In order to fulfil the tasks assigned to the Federal Minister of the Interior in the field of international police cooperation, the Criminal Intelligence Service runs the National Central Bureau of the International Criminal Police Organization INTERPOL, the EUROPOL National Unit and the SRIENE Bureau.

23) PENAL CODE

Treatment of all participants as offenders

Section 12

A criminal offence is committed not only by the immediate perpetrator who commits the criminal offence, but also by anyone who instigates another person to commit the offence or who contributes to its perpetration in any other way.

Punish ability of attempt

Section 15

(1) Punitive sanctions against offenses committed intentionally do not only apply to the completed offense but also to its attempt and any participation in an attempt.
(2) An offense is considered attempted as soon as the offender puts his decision to commit the offense or have another person commit it (§ 12) into practice by taking an action immediately preceding the commission of the offense.

(3) An attempted offense and participation in an offense will not be liable to punishment if the offense could not have been completed under any circumstances for lack of the perpetrator's personal qualities or circumstances required under the law, or on account of the type of action or object that has been subject to the offense.

Confiscation

Section 19a

(1) Objects which were used or intended by a perpetrator for deliberately committing an offence, or which have been produced by this act, shall be confiscated if they are owned by the perpetrator at the time of the decision.

Forfeiture

Section 20

(1): Assets that were obtained for or through a punishable act shall be declared forfeited by the court.

(2) Forfeiture shall also cover the fruits, usufruct and replacement value of assets to be declared forfeited according to paragraph 1.

(3) As far as assets subject to forfeiture according to paragraph 1 or 2 have not been seized or attached (sections 110 paragraph 1 sub-paragraph 3, 115 paragraph 1 sub-paragraph 3 Austrian Code of Criminal Procedure) the court shall declare forfeited an amount of money corresponding to the assets obtained pursuant to paragraph 1 and paragraph 2.

Section 20a

(1) Forfeiture against third persons according to section 20 paragraph 2 and paragraph 3 is excluded when this person was unaware of the punishable act when acquiring the assets.

(2) Forfeiture is also excluded

1. when a third person was unaware of the punishable act when acquiring the assets against remuneration.

Section 20b

(2) If a criminal act according to sections 165, 278, 278c, for the commission for which or from which assets were obtained, or such a crime has been committed, the forfeiture also covers assets obtained in temporal with that act, provided that they are likely to be the proceeds of a criminal act and their legal origin cannot be proven to the satisfaction of the court.

Section 26

(1) Objects which were used or intended by a perpetrator for deliberately committing an offence or which have been produced by this act shall be confiscated if the confiscation seems to be necessary for preventing the commission of punishable acts, given the special nature of these objects.

Section 34

(1) It is particularly a mitigating ground, if the offender

...

16. has surrendered himself, although he could have easily escaped or it has been likely that he would have remained undetected;

17. made a rueful confession or contributed with his statement considerably to the establishment of the truth.

Limitation of punish ability

Section 57

- (1) Punishable actions liable to imprisonment for life or to imprisonment from 10 to 20 years or for life are not subject to the period of limitation. After a period of 20 years the lifelong imprisonment, however is replaced by imprisonment from 10 to 20 years. For this period para. 2 and section 58 apply accordingly.
- (2) The punish ability of other offences expires through limitation. The period of limitation begins as soon as the punishable action is completed or the punishable conduct has ended.
- (3) The period of limitation is
20 years, if the offence is punishable with imprisonment although not for life but for more than 10 years,
10 years, if the offence is punishable with imprisonment of more than 5 years but not more than 10 years,
5 years, if the offence is punishable with imprisonment of more than 1 year but not more than 5 years,
3 years, if the offence is punishable with imprisonment of more than 6 months but not more than 1 year,
1 year, if the offence is punishable with a maximum of 6 months imprisonment or only a fine.
- (4) When an offence has become statute-barred confiscation of profits, forfeiture and preventive measures are also no longer possible.

Extension of the period of limitation

Section 58

- (2) If the success"/effect of an offence does only occur after the punishable action has been completed or the punishable conduct has ended, the period of limitation does not end before it has also expired counted from the occurrence of the effect or if one and a half times the period of limitation or three years have passed since the date indicated in section 57 para. 2.
- (3) If the offender commits another offence stemming from the same bad inclination during the period of limitation the [former] offence is not barred by the statute of limitation until it has also expired for the latter [the newly committed] offence.
- (4) Not included in the period of limitation are:
 1. the period of time during which prosecution can not be established or continued according to law, unless the federal constitution or para. 4 do not provide otherwise;
 2. the time between the first hearing as an accused person, the first threatening or execution of official coercion against the accused (sec 93 par 1, 105 par 1 CCP), the first prosecutorial fiat to or application for the performance or approval of an investigation measure or taking of evidence as provided by the 8th chapter of the CCP for the sake of clearance of a suspicion against the perpetrator, the ordinance to search or arrest the accused, the application for the imposition of pretrial detention or the tabling of the indictment and the final termination of the proceedings; ...

[...] ...

Criminal acts committed in Austria

Section 62

The Austrian criminal law applies to all criminal acts committed within Austria.

Criminal acts committed on board of Austrian vessels and planes

Section 63

The Austrian criminal law applies to criminal acts committed on board of Austrian vessels and planes, irrespective of their location.

Criminal offences abroad being punished irrespective of the laws which are valid for the scene of the crime

Section 64

(1) The following criminal acts committed abroad are subject to prosecution according to Austrian criminal law irrespective of the criminal law of the foreign state where the criminal act was committed:

1. ...
2. criminal acts committed against an Austrian public officer (section 74 para. 1 item 4), an Austrian public official (section 74 para. 1 item 4a) or an Austrian arbitrator (section 74 para. 1 item 4c) while he/she fulfils his/her tasks or because he/she fulfils his/her tasks and criminal acts committed by someone as Austrian public officer, public official or arbitrator;
 - 2a. apart from item 2 criminal violations of the official duty, corruption and other related criminal acts (sections 302 to 309) if
 - a) the perpetrator was a national of Austria at the time the act was committed or
 - b) the act was committed for the benefit of an Austrian public official or arbitrator;

Criminal Acts abroad which are only punishable, if they are also punishable by the Law applicable at the Crime Location

Section 65

(1) For all other criminal acts committed abroad than the ones mentioned in Sections 63 and 64 Austrian criminal law applies, inasmuch as the acts are also punishable by the laws applicable at the crime location:

1. if at the time of committing the crime the offender was an Austrian national or obtained Austrian citizenship at a later time, which he/she still possesses at the time of initiating criminal proceedings,
 2. if at the time of committing the crime the offender at the time of the crime was an alien, is arrested in Austria, and cannot be extradited abroad for a different reason than for the nature and quality of his/her offence.
- (2) The punishment shall be determined in a way that in its total effect the offender's punishment shall not be less favourable than pursuant to the laws at the crime location.
- (3) If no penal power exists at the crime location, it is sufficient that the crime is punishable pursuant to Austrian laws.
- (4) Punish ability is cancelled, however:
1. if punish ability of the crime has expired pursuant to the laws at the crime location;

2. if the offender has been finally acquitted or his/her criminal prosecution has otherwise been terminated by a court in the state where the crime was committed;
3. if the offender was convicted by final judgement of a foreign court and the sentence was completely served or, if not served, was cancelled or its enforcement is statute-barred under foreign law;
4. as long as enforcement of a sentence imposed by a foreign court is wholly or partially suspended.

(5) Special measures provided by Austrian law shall be ordered again an Austrian national, if the necessary conditions prevail, even if he/she cannot be punished for one of the reasons mentioned in the paragraph above.

Time and place of a criminal act

Section 67

(1) The offender has committed the punishable offence at the time at which he has acted or at which he should have acted ; it does not matter when the result has ensued.

The offender has committed the punishable offence at each place where he has acted or where he should have acted, or where a result corresponding to the constituting elements of the offence either has totally or partially ensued or should have ensued according to the conception of the offender.

Foreign convictions

Section 73

Provided that a statute does not explicitly refer to the conviction by a domestic court, foreign convictions are equal to domestic convictions, if the offender was convicted for an offence which is punishable by a criminal court also under Austrian law, and if the judgment was rendered as a result of proceedings which were in conformity with the principles set forth in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Fed. Gaz. No. 210/1958.

Section 74

(1) According to this Federal Law

1. ...

4a. public official: anyone who

a) deleted

b) as an organ or employee discharges tasks of legislation, administration or justice for the federation, for a federal state, for an association of municipal corporations, for a commune, for a social insurance institution or its association, **for another state** or for an international organisation,

c) is otherwise authorised to perform official duties in fulfilment of the law for a body mentioned under b), or

d) acts as an organ or employee of an enterprise, where one or more national or foreign territorial corporate bodies directly or indirectly hold at least fifty per cent of the share, stock, or equity capital , where such a territorial corporate body is either the sole or joint operator with other such territorial corporate bodies or has de facto control by other financial, other economic measures or organisational measures, but at any rate every enterprise the conduct of which is subject to examination of the court of auditors or a comparable institution of the Provinces or a comparable international or foreign control institution.

Breach of trust

Section 153

(1) Whoever knowingly abuses the authority conferred to him by statute, official order or contract to dispose of property not belonging to him or to oblige this other person and causes damage to another person in this way, shall be liable to imprisonment for up to six months or a fine of up to 360 daily rates.

(2) Whoever causes a damage exceeding 3,000 Euros shall be liable to imprisonment for up to three years, whoever causes damage exceeding 50,000 Euros shall be liable to imprisonment from one to ten years.

Dealing in stolen goods

Section 164

(1) Whoever supports the perpetrator of an offense against property in concealing or realizing a property item that he has obtained through knowingly a property item, shall be liable in the same way. shall be liable to imprisonment for up to six months or a fine of up to 360 daily rates.

(2) Whoever acquires or else gets possession of such an item or makes such an item available to a third person, shall be liable in the same way.

(3) Whoever deals in stolen goods of more than 3,000 Euros shall be held liable to imprisonment for up to two years or a fine of up to 360 daily rates.

(4) Whoever deals in stolen goods of more than 50,000 Euros or on a commercial basis shall be held liable to imprisonment from six months up to five years. The dealer in stolen goods shall be held liable in the same way, if the offence through which the perpetrator has gained the item, is threatened with punishment reaching five years or more, for reasons different from committing them on a commercial basis, and the dealer in stolen goods is aware of the circumstances causing such punishment.

Money laundering

Section 165

(1) Whoever conceals property items that derive from a crime, from an offense against property threatened with imprisonment of more than one year or from a misdemeanour under sections 223, 224, 225, 229, 230, 269, 278, 278d, 288, 289, 293, 295 or 304 to 308, from a misdemeanour against intellectual property rights (if committed commercially), or from a tax offense of smuggling or evasion of import or export taxes (insofar as such an offense falls within the competence of the courts), or disguises the origin thereof, particularly by giving in legal relations false information regarding the origin or true nature of those property items, the ownership of or other rights to them, the right to dispose of them, their transfer or their location, shall be liable to imprisonment for a term not exceeding three years.

(2) Whoever knowingly acquires such property items, holds them in custody, invests, administers, converts, realizes, or transfers them to a third party, deriving from an offense according to par. 1, but committed by another person shall be liable in the same way.

(3) Whoever knowingly, acting on behalf or in the interest of a criminal organization (sect. 278a) or of a terrorist group (sect. 278b), acquires property items of that organization or group, holds them in custody, invests, administers, converts, realizes, or transfers them to a third party shall be liable in the same way.

(4) Whoever commits the offense involving items worth more than 50,000 Euro or as the member of a criminal group associated for the purpose of continuous money laundering, shall be liable to imprisonment for a term from one to ten years.

(5) A property item shall be deemed to derive from an offense when the perpetrator of the crime has obtained it through that offense or received it for the commission of that offense, or when it represents the value of the originally obtained or received property item.

Obstruction against state authority

Section 269

(1) Whoever obstructs an authority through force or threat with force as well as whoever obstructs a public official through force or through dangerous threat from performing an official act, shall be punished with imprisonment of up to three years, in case of a severe duress (§ 106) with imprisonment from six months to five years.

(2) Likewise shall be punished, whoever coerces an authority through force or through threat with force or a public official to perform an official act.

(3) Only an act shall be considered an official act within the meaning of par 1 and 2, by which the public official exercises power of order or coercive power as an organ of public authority or the judiciary.

(4) The offender shall not be punished in accordance with par 1, if the authority or the official are not entitled to perform such kind of official act, or if the official act violates criminal law.

Assault against a public official

Section 270

(1) Whoever assaults a public official during the performance of an official act (§ 269 par. 3), shall be punished with imprisonment up to six months or a fine up to 360 daily rates.

(2) § 269 par. 4 applies accordingly.

Criminal association

Section 278

(1) A person who founds a criminal association or participates in such an association as member is to be sentenced to imprisonment up to three years.

(2) A criminal association is an union planned for a longer time of more than two persons aiming the commitment of one or more crimes by one or more members of the association, other considerable acts of violence against life and limb, not only petty damages to property, thefts or frauds or misdemeanours under sects. 104a, 165, 177b, 233 to 239, 241a to 241c, 241e, 241f, 304 or 307 or under Sect 114 para 2 or 116 Aliens' Police Act.

(3) As member participates in a criminal association who commits a criminal offense within the scope of its criminal orientation or participates in its activities by providing for information or assets or in another way with the awareness that he promotes thereby the association or its criminal acts.

(4) If the association did not lead to a criminal offense in the planned way no member shall be punished if the association dissolves itself voluntarily or it results from its conduct that it has given up its plan voluntarily. Furthermore a person shall not be punished for criminal association who withdraws voluntarily from the association before an offense in the planned way has been committed or attempted; but a person who participated in the association in a leading position only in case he effects by an information of the authority (sect.151 para. 3) or in another way that the danger is removed which arises from the association.

False Testimony

Section 288

(1) Whoever as witness in court or, as far as he/she is not party to the proceedings at the same time, as respondent in the course of his/her formal interrogation, gives false testimony in substance or as an expert witness submits false findings or a false expert opinion, shall be punished by imprisonment up to two years.

(2) Whoever gives false testimony in court under oath or confirms a false testimony with an oath or swears another oath provided by law falsely shall be punished by imprisonment from six months to five years. Equivalent to an oath is the reference to a previously sworn oath as well as - concerning persons, who are exempt from the obligation to swear an oath - the affirmation designated to replace the oath.

(3) According to par 1 and 2 shall also be punished who commits an offence mentioned therein before a committee established in accordance with art 53 of the Federal Constitution or a federal, regional or municipal disciplinary authority

(4) According to par 1 shall also be punished, who as a witness or expert witness commits an offence mentioned therein during criminal investigation proceedings initiated according to the CCP before criminal police or the prosecutor's office.

Abuse of official authority

Section 302

(1) An official who abuses wilfully his authority to carry out official matters executing the laws in the name of the federal government, a land, a local government, a municipality or another person under public law with the intent to harm the right of others shall be punished by prison sentence from six months to five years.

(2) Who commits the offence carrying out official matters with a foreign power or a multilateral or bilateral institution shall be punished by prison sentence from one year to ten years. By the same sentence shall be punished who causes through the offence a damage exceeding 40 000 Euro.

Passive bribery [Bestechlichkeit]

Section 304

(1) A public official or an arbitrator, who demands, accepts or allows him/herself to be promised an advantage for him/herself or a third person for performing or refraining from performing an official act in violation of his/her duties shall be punished by imprisonment of up to three years. Likewise to be punished is an expert assigned by the court or another administrative body for certain proceedings who demands, accepts or causes someone to promise an advantage for him/herself or a third person for delivering an incorrect evidence or expertise.

(2) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euros shall be punished by imprisonment from six month up to five years, whereas whoever commits the offence with regard to a value of the advantage exceeding 50.000 Euros shall be punished by imprisonment from one year up to ten years.

Acceptance of advantages

Section 305

(1) A public official or an arbitrator who accepts or allows himself/herself to be promised an undue advantage (para. 4) for himself/herself or a third person for performing or refraining

from performing an official act in accordance with his/her duties shall be punished by imprisonment up to two years.

(2) deleted.

(3) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euros shall be punished by imprisonment up to three years, whereas whoever commits the offence with regard to a value of the advantage exceeding 50.000 Euros shall be punished by imprisonment from six months up to five years..

(4) The following advantages are not considered undue:

1. advantages, the acceptance of which is explicitly permitted by law, or which are granted in the framework of events which are being attended because of an official or objective interest,
2. advantages for charitable purposes (section 35 BAO) on the usage of which the arbitrator or official does not exercise any influence, and
3. if there are no laws in the sense of item 1 advantages of minor value given in accordance with local customs unless the act is committed on a professional scale.

Acceptance of advantages for the purpose of exercising influence

Section 306

(1) A public official or arbitrator who, apart from the cases mentioned in sections 304 and 305, demands an advantage or accepts or allows himself/herself to be promised an undue advantage (section 305 para. 4) for himself/herself or a third person with the intention to let himself/herself be influenced by this in his/her activity as public official, shall be punished by imprisonment up to two years.

(2) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euro shall be punished by imprisonment up to three years, whereas who commits the offence with regard to the value of the advantage exceeding 50.000 Euro shall be punished by imprisonment from six month up to five years.

(3) Whoever accepts or causes someone to promise only a minor advantage is not to be punished according to (1) unless the act is committed on a professional scale.

Bribery

Section 307

(1) Whoever offers, promises or gives an advantage to a public official or an arbitrator for himself or a third person for performing or refraining from performing an official act in violation of his duties, shall be punished by imprisonment up to three years. Likewise anybody is to be punished who offers, promises or gives an advantage to an expert (sec 304 par. 1) for himself or a third person for delivering an incorrect evidence or expertise.

(2) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euros shall be punished by imprisonment from six month up to five years, whereas whoever commits the offence with regard to a value of the advantage exceeding 50.000 Euros shall be punished by imprisonment from one year up to ten years.

Granting of advantages

Section 307a

(1) Whoever offers, promises or grants an undue advantage (section 305 para. 4) to a public official or an arbitrator for him/her or for a third person for performing or refraining from

performing an official act in accordance with his/her duties shall be punished by imprisonment up to two years.

(2) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euros shall be punished by imprisonment from six month up to five years, whereas whoever commits the offence with regard to a value of the advantage exceeding 50.000 Euros shall be punished by imprisonment from one up to ten years.

Granting of advantages for the purpose of exercising influence

Section 307b

(1) Who, apart from the cases of sections 307 and 307a, offers, promises or grants an undue advantage (section 305 para. 4) to a public official or an arbitrator for him/her or for a third person with the intention of influencing him/her in his activity as public official, shall be punished by imprisonment of up to two years.

(2) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euro shall be punished by imprisonment up to three years, whereas who commits the offence with regard to the value of the advantage exceeding 50.000 Euro shall be punished by imprisonment from six months up to five years.

Illicit Intervention

Section 308

(1) Who demands, accepts or allows him/herself to be promised an advantage for himself/herself or for a third person for exercising undue influence on the decision-making process of a public official or an arbitrator shall be punished by imprisonment up to two years.

(2) Likewise, anyone shall be punished, who offers, promises or gives an advantage to someone to have him/her exercise undue influence on the decision-making process of a public official or an arbitrator.

(3) Whoever commits the offence with regard to a value of the advantage exceeding 3.000 Euro shall be punished by imprisonment up to three years, whereas who commits the offence with regard to the value of the advantage exceeding 50.000 Euro shall be punished by imprisonment from six months up to five years.

(4) Influencing the decision-making process of a public official or an arbitrator is considered undue if it aims at performing or refraining from performing a legal act contrary to his/her duties or is connected with offering, promising or giving an undue advantage (section 305 para. 4) to the public official or a third person.

(5) The perpetrator is not to be punished according to the above-mentioned provisions if the act is punishable with a more severe punishment according to other legal provisions.

Acceptance of gifts and bribery of servants or agents

Section 309

(1) A servant or agent of a company, who, in the course of business activities, demands, accepts or allows him/herself to be promised an advantage for him/herself or for a third person for performing or refraining from performing a legal act contrary to his/her duties, shall be punished by imprisonment up to two years.

(2) Likewise, anyone shall be punished, who offers, promises or gives an advantage in the course of business activities to servants or agents of a company for performing or refraining from performing a legal act contrary to his/her duties.

(3) Whoever commits the offence with regard to a value of the advantages exceeding 3.000 Euro shall be punished by imprisonment up to three years, whereas who commits the offence with regard to the value of the advantage exceeding 50.000 Euro shall be punished by imprisonment from six months up to five years.

24) Police Cooperation Act (PolKG)

Section 2

(1) “International administrative assistance in the police field (hereinafter: administrative assistance) refers to mutual assistance in the completion of tasks and to cooperation in the joint completion of tasks. It takes place between law enforcement authorities on the one hand and security organizations or foreign law enforcement authorities on the other hand.”

Section 3

(1) „The law enforcement authorities are obliged to provide administrative assistance upon request

1. pursuant to international law,
2. if it serves to fulfil the duties stipulated under § 1, paragraph 1, of a foreign law enforcement authority on the condition of reciprocity, or
3. if it serves to fulfil the duties stipulated under § 1, paragraph 1, of a law enforcement organization.

(2) “The law enforcement authorities are obliged to provide administrative assistance also without being requested,

1. by using data that, pursuant to international law, have to be transmitted also due to their nature, or
2. if required to fulfil the duties stipulated under § 1, paragraph 1, of a foreign law enforcement authority on the condition of reciprocity, or
3. if required for criminal investigation activities by Interpol.“

Section 5

(1) „The law enforcement authorities are empowered to provide administrative assistance

1. in the form of any measure that does not interfere with the rights of a human being, or
2. by using person-related data in conformity with the following paragraphs and Chapter 3.“

Section 14

“Where provided for under international law and in line with the following rules, officers of the public law enforcement services are authorized to operate on foreign territory, and

officers of foreign law enforcement authorities are authorized to operate on Austrian territory if it serves to fulfil the tasks defined in § 1 (1).”

(§ 1 (1): “International cooperation serves the purposes of

1. law enforcement (police),
2. ensuring criminal justice (criminal police),
3. passport authorities, aliens police, and border control.”)

Section 18

“Authorization to conclude intergovernmental treaties: provided that the federal government is authorized to conclude treaties in accordance with Art. 66 (2) of the Federal Constitutional Law (Bundesverfassungsgesetz, B-VG), it may conclude international agreements:

[...]

2. on the intervention of law enforcement authorities carried out by officers of the public law enforcement services or customs officers in foreign countries, or the intervention of foreign law enforcement authorities on the Austrian territory pursuant to §§ 14 to 16; in this context, officers of the public law enforcement services or customs officers may only be authorized for intrusion when conducting open or undercover investigations or when directly exercising official authority and coercive power for the purpose of stopping or arresting someone; agreements on intrusion by officers of foreign law enforcement authorities may only be concluded pursuant to the provisions empowering officers of the public law enforcement services to such intrusion on the Austrian territory.[...]”

25) Police Co-Operation Convention for Southeast Europe

“Witness Protection

(1) The law enforcement authorities of the Contracting Parties designated for the witness protection shall directly cooperate in the area of witness protection programmes.

(2) The cooperation shall, in particular, include the exchange of information, assistance as regards logistics and taking over of persons to be protected.

(3) An Agreement will be signed for each particular case of taking over of persons to be protected, in order for mutual rights and obligations to be regulated.

(4) The person to be protected must have been placed under the witness protection programme of the requesting Contracting Party. The person to be protected will not be included in the witness protection programme of the requested Contracting Party.

When taking supportive measures in connection with the protection of these persons the national legislation of the requested Contracting Party shall apply accordingly.

(5) In principle the requesting Contracting Party shall bear the costs of living for the persons to be protected. The requested Contracting Party shall bear the expenses for personnel and material resources for the protection of these persons.

(6) For serious reasons and after having duly notified the requesting Contracting Party, the requested Contracting Party can cease the supportive measures. In this case, the requesting Contracting Party shall retake the person concerned.”

26) Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (Protokoll vom Rat gemäß Artikel 34 des Vertrags über die Europäische Union erstellt zu dem Übereinkommen über die Rechtshilfe in Strafsachen zwischen den Mitgliedstaaten der Europäischen Union (ProtEU-RHÜ))

Article 1

(1): “Each Member State shall, under the conditions set out in this Article, take the measures necessary to determine, in answer to a request sent by another Member State, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide all the details of the identified accounts.”

Article 2

(1): “On request by the requesting State, the requested State shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.”

Article 3

(1): “Each Member State shall undertake to ensure that, at the request of another Member State, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Member State.”

**27) SECOND ADDITIONAL PROTOCOL
TO THE EUROPEAN CONVENTION
ON EXTRADITION**

Strasbourg, 17.III.1978

The member States of the Council of Europe, signatory to this Protocol,

Desirous of facilitating the application of the European Convention on Extradition opened for signature in Paris on 13 December 1977 (hereinafter referred to as “the Convention”) in the field of fiscal offences;

Considering it also desirable to supplement the Convention in certain other respects,

Have agreed as follows:

Chapter I

Article 1

Paragraph 2 of Article 2 of the Convention shall be supplemented by the following provision:

“This right shall also apply to offences which are subject only to pecuniary sanctions.”

Chapter II

Article 2

Article 5 of the Convention shall be replaced by the following provisions:

“Fiscal offences

- 1 For offences in connection with taxes, duties, customs and exchange extradition shall take place between the Contracting Parties in accordance with the provisions of the Convention if the offence, under the law of the requested Party, corresponds to an offence of the same nature.
- 2 Extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, custom or exchange regulation of the same kind as the law of the requesting Party.”

Chapter III

Article 3

The Convention shall be supplemented by the following provisions:

“Judgments in absentia

- 1 When a Contracting Party requests from another Contracting Party the extradition of a person for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him in absentia, the requested Party may refuse to extradite for this purpose if, in its opinion, the proceedings leading to the judgment did not satisfy the minimum rights of defence recognised as due to everyone charged with criminal offence. However,

extradition shall be granted if the requesting Party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence. This decision will authorise the requesting Party either to enforce the judgment in question if the convicted person does not make an opposition or, if he does, to take proceedings against the person extradited.

- 2 When the requested Party informs the person whose extradition has been requested of the judgment rendered against him in absentia, the requesting Party shall not regard this communication as a formal notification for the purposes of the criminal procedure in that State”.

Chapter IV

Article 4

The Convention shall be supplemented by the following provisions:

“Amnesty

Extradition shall not be granted for an offence in respect of which an amnesty has been declared in the requested State and which that State had competence to prosecute under its own criminal law.”

Chapter V

Article 5

Paragraph 1 of Article 12 of the Convention shall be replaced by the following provisions:

“The request shall be in writing and shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party; however, use of the diplomatic channel is not excluded. Other means of communication may be arranged by direct agreement between two or more Parties.”

Chapter VI

Article 6

- 1 This Protocol shall be open to signature by the member States of the Council of Europe which have signed the Convention. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 2 The Protocol shall enter into force 90 days after the date of the deposit of the third instrument of ratification, acceptance or approval.
- 3 In respect of a signatory State ratifying, accepting or approving subsequently, the Protocol shall enter into force 90 days after the date of the deposit of its instrument of ratification, acceptance or approval.
- 4 A member State of the Council of Europe may not ratify, accept or approve this Protocol without having, simultaneously or previously, ratified the Convention.

Article 7

- 1 Any State which has acceded to the Convention may accede to this Protocol after the Protocol has entered into force.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect 90 days after the date of its deposit.

Article 8

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.
- 2 Any State may, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Protocol to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn by means of a notification addressed to the Secretary General of the Council of Europe. Such withdrawal shall take effect six months after the date of receipt by the Secretary General of the Council of Europe of the notification.

Article 9

- 1 Reservations made by a State to a provision of the Convention shall be applicable also to this Protocol, unless that State otherwise declares at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.
- 2 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it reserves the right:
 - a not to accept Chapter I;
 - b not to accept Chapter II, or to accept it only in respect of certain offences or certain categories of the offences referred to in Article 2;
 - c not to accept Chapter III, or to accept only paragraph 1 of Article 3;
 - d not to accept Chapter IV;
 - e not to accept Chapter V.
- 3 Any Contracting Party may withdraw a reservation it has made in accordance with the foregoing paragraph by means of declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

- 4 A Contracting Party which has applied to this Protocol a reservation made in respect of a provision of the Convention or which has made a reservation in respect of a provision of this Protocol may not claim the application of that provision by another Contracting Party; it may, however, if its reservation is partial or conditional claim, the application of that provision in so far as it has itself accepted it.
- 5 No other reservation may be made to the provisions of this Protocol.

Article 10

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Protocol and shall do whatever is needful to facilitate a friendly settlement of any difficulty which may arise out of its execution.

Article 11

- 1 Any Contracting Party may, in so far as it is concerned, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.
- 3 Denunciation of the Convention entails automatically denunciation of this Protocol.

Article 12

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to the Convention of:

- a any signature of this Protocol;
- b any deposit of an instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Protocol in accordance with Articles 6 and 7;
- d any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 8;
- e any declaration received in pursuance of the provisions of paragraph 1 of Article 9;
- f any reservation made in pursuance of the provisions of paragraph 2 of Article 9;
- g the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 9;
- h any notification received in pursuance of the provisions of Article 11 and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 17th day of March 1978, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States

**28) United Nations Convention against Transnational Organized Crime
(Übereinkommen der Vereinten Nationen gegen die grenzüberschreitende Kriminalität -
UNTOC)**

Article 27

(3) “States Parties shall endeavour to cooperate within their means to respond to transnational organized crime committed through the use of modern technology.”