Article 1

Law

on Cooperation with

the International Criminal Court

(ICC Act)

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Article 1

Law

on Cooperation with

the International Criminal Court

Part 1

Scope of Application

§ 1

Scope of Application

(relating to Article 1, Article 17,

Article 86, and Article 34 of the Rome Statute)

The International Criminal Court supplements German criminal law jurisdiction. Based upon this law and the Rome Statute of the International Criminal Court (“Rome

Statute") of 17. July 1998 (Federal Law Gazette 2000 II p. 1393) the Federal Republic of Germany shall work together with the International Criminal Court.

Within the context of this law, the term "Court" refers to the International Criminal Court established by the Rome Statute, including its Presidency, chambers, Prosecution Office, court administration, and those belonging to these bodies.

Part 2

Surrender of Persons

§ 2

Principle

(relating to Article 89 para. 1 and

Article 91 para. 2 and 3 of the Rome Statute)

Persons, the surrender of whom is requested by the International Criminal Court pursuant to the Rome Statute and who are located within the Federal Republic of Germany, shall be surrendered for criminal prosecution and execution of a sentence in accordance the Rome Statute and this law.

Surrender for execution of a sentence, in agreement with the Court, may also be carried out by direct transfer of the suspect to the responsible authority in the state in which a prison sentence that has been imposed by the Court should be executed (state of enforcement).

§ 3

Requests for Surrender and

Earlier Criminal Proceedings

Before the Court or in a Foreign State

(relating to Article 89 para. 2 sentence 1 of the Rome Statute)

During the surrender proceedings, if the suspect makes a statement that he has already been convicted or acquitted by the Court or a court in another state of the criminal act that is the basis of the surrender request from the Court, the office to which the statement was made by the suspect, notwithstanding § 68 para. 3 sentence 3 and 4, shall immediately inform the public prosecution office attached to the Higher Regional Court. The Higher Regional Court shall temporarily stay the surrender proceedings in accordance with Article 89 para. 2 sentence 3 of the Rome Statute, until the Court reaches a decision regarding permissibility. The suspect will not be surrendered when the Court rules that the implementation of a criminal proceeding is not permissible.

§ 4

Requests for Surrender and

Requests for Extradition

(relating to Article 90 of the Rome Statute)

(1) If a foreign state requests extradition of a person on the basis of a criminal act over which the Court has jurisdiction, the Court may be informed of the submission of the request. Upon request, the Court will be given a copy of the extradition request and the accompanying documents, when the foreign state does not object to the transmittal and the transmittal does not contradict other international law agreements.

(2) Should the Court request surrender and a foreign state request extradition of the same person, the Court and the state will each be notified of the other request. If the request for surrender and the request for extradition are each based upon the same criminal act, this shall be included in the notification required in the first sentence.

(3) If extradition has not been approved at the time of receipt of the request of the Court for surrender, the decision regarding this will be deferred conditional upon paragraph 5 until a decision regarding approval of the surrender. The decision regarding which request will be given priority will be made in accordance with Article 90 para. 2, 4, and 7 (a) of the Rome Statute.

(4) In cases under Article 90 para. 2-6 of the Rome Statute, after approval of the request for surrender the decision on the approval of extradition shall be deferred

until a final decision in the proceedings before the Court regarding the criminal acts upon which the request for surrender was based.

(5) In a case under Article 90 para. 5 of the Rome Statute, if the Court has not decided on permissibility within two months after the notification pursuant to Article 90 para. 1 of the Rome Statute, a decision may be made regarding approval of the extradition when the other prerequisites are met.

(6) In cases under Article 90 para. 6 and 7 (b) of the Rome Statute, the request of the Court will be given priority to the extent that, when considering all of the criteria in these provisions, the reasons in favor of approving the extradition request are not clearly predominant.

(7) The Court will be notified in all cases of the decision regarding the extradition request.

§ 5

Documents for Surrender of Persons

(relating to Article 91 para. 2 and 3 and

Article 111 of the Rome Statute)

(1) Surrender of a person is only permissible when the documents set forth in Article 91 para. 2 of the Rome Statute (surrender for criminal prosecution) or in Article 91 para. 3 of the Rome Statute (surrender for execution of sentence) are submitted. If the request for surrender is for the prosecution of more than one criminal act, a document by the Court detailing the alleged criminal act of the suspect will suffice instead of an arrest warrant for those additional acts. In the documents described in Article 91 para. 2 (c) of the Rome Statute, the applicable provisions shall be set forth. To the extent regulations of the Rome Statute are at issue, it shall be sufficient to name these provisions.

(2) The execution of the approved surrender for execution of a sentence by the state of enforcement (§2 para. 2) is permissible only when, in addition to the documents named in Article 91 para. 3 of the Rome Statute:

1. a certificate of the state of enforcement, in which its agreement with the enforcement is stated or a declaration of the Court that the state of enforcement is in agreement with the enforcement is presented, and

2. the Court, in its request or the accompanying documents, has stated its agreement with the surrender of the suspect by the German authorities to the state of enforcement.

§ 6

Approval of Surrender

The surrender, except in the case of § 32, shall only be approved when the court has declared it permissible.

§ 7

Subject Matter Jurisdiction

(1) The Higher Regional Court shall pass judgment in the absence of other agreement. Judgments of the Higher Regional Court are non-appealable.

(2) The public prosecution office attached to the Higher Regional Court shall prepare the decision regarding the surrender and shall implement approved surrenders.

§ 8

Venue

(1) Venue lies with the Higher Regional Court and the public prosecution office attached to the Higher Regional Court in whose district the suspect is apprehended for the purpose of surrender or, when there has been no apprehension, where the first investigation took place.

(2) If multiple suspects, because of participation in the same criminal act or in connection therewith, are captured or investigated in the districts of different Higher Regional Courts for the purpose of surrender, venue is determined by which Higher

Regional Court was first involved is or, when none was yet involved, by which public prosecution office attached to the Higher Regional Court was first involved.

(3) When the whereabouts of the suspect is unknown, venue is determined by the seat of the federal government.

§ 9

Investigation Measures

(relating to Article 59 para. 1 of the Rome Statute)

(1) After receipt of a request by the Court for arrest and surrender based upon Article 89 para. 1 of the Rome Statute or provisional arrest based upon Article 92 para. 1 of the Rome Statute, measures necessary for determination of the whereabouts of the suspect as well as for arrest of the suspect shall be taken. The provisions in para. 9a of Part One of the Criminal Procedure Code (*Strafprozessordnung*) apply *mutatis mutandis*.

(2) No special request by the Court is required for ordering individual investigation measures. The public prosecution office attached to the Higher Regional Court is responsible issuing an arrest notice.

§ 10

Detention of Persons to be Surrendered

(relating to Article 59 para. 1 of the Rome Statute)

Upon receipt of the request for arrest and surrender along with the documents required for surrender for criminal prosecution pursuant to Article 91 para. 2 of the Rome Statute or for surrender for execution of sentence pursuant to Article 91 para. 3 of the Rome Statute, detention of the suspect prior to surrender shall be ordered.

§ 11

Provisional Detention of Persons to be Surrendered

(relating to Article 59 para. 1 and

Article 92 of the Rome Statute)

When there is a request of the Court for provisional arrest accompanied by the documents set forth in Article 92 para. 2 of the Rome Statute, provisional detention for surrender shall be ordered. The order of detention for surrender shall be rescinded when the suspect has been detained for a total of 60 days for the purpose of the surrender since the day of capture or provisional arrest without a request by the Court for arrest and surrender, nor presentation of the documents required by the Statute to the office responsible pursuant to § 68 para. 1, nor a declaration by the suspect within this deadline of his agreement with streamlined surrender (§ 33).

(2) Prior to receipt of the request for arrest and surrender or a request for provisional arrest, provisional detention for surrender may be ordered when the person has committed an act that would subject him to surrender to the Court and based upon certain criminal acts there is strong suspicion, and

1. danger exists that the suspect will flee prior to the surrender proceedings or implementation of the surrender, or
2. based upon certain criminal acts strong suspicion exists that the suspect will hinder the investigation of the truth in the Court's proceedings or hinder the surrender proceedings.

Regarding a suspect against whom there is a strong suspicion of genocide (Article 6 of the Rome Statute) or crimes against humanity (Article 7 of the Rome Statute), provisional detention for surrender may also be ordered when certain criminal acts provide a basis that, without arrest of the suspect, the explanation of the acts that the suspect is accused of committing could be endangered. The appropriate measures should be used to ensure that the office responsible pursuant to § 68 para. 1 can inform the Court of the order of detention pursuant to sentence 1 or 2.

(3) An of arrest for surrender pursuant to para. 2 shall be rescinded when the Court states that it does not want to make a corresponding request or the suspect, since the day of capture or provisional arrest, has spent one month in detention based upon the surrender, without a request by the Court for arrest and surrender or for provisional arrest having been received by the office responsible pursuant to § 68 para. 1. Upon receipt of a request by the Court for arrest and surrender or for provisional arrest, the deadline referred to in para. 1 sentence 2 shall be applied.

§ 12

Warrant of Arrest for Surrender

(1) Provisional detention for surrender and detention for surrender shall be ordered based upon a written arrest warrant (*Überstellungshaftbefehl*) by the Higher Regional Court.

(2) The written arrest warrant for surrender shall state:

1. the suspect,

2. the alleged criminal acts of the suspect,

3. the request and the accompanying surrender documents or, in the case of § 11 para. 2 sentence 1 or 2, the reason for detention and the criminal acts that are the basis therefore, as well as the acts from which arises a strong suspicion that the suspect committed an act upon which his surrender may be based.

(3) A written arrest warrant for surrender shall be rescinded when the request is withdrawn, the Court states that proceedings upon which the surrender request is based are impermissible, or the surrender has been declared impermissible.

§ 13

Provisional Arrest

(1) When the prerequisites for an arrest warrant for surrender have been fulfilled, the public prosecution office and the officers of the police force are authorized to effect the provisional arrest. In accordance with the conditions set forth in § 127 para. 1 sentence 1 of the Criminal Procedure Code, any person is entitled to conduct a provisional arrest.

(2) If the suspect is taken into custody, he shall be informed of the reason therefore.

(3) When an arrest warrant for surrender exists, the suspect must be promptly informed thereof. The suspect is to be given a copy.

§ 14

Procedure After Capture Based Upon an Warrant of Arrest for Surrender

(relating to Article 59 para. 2 of the Rome Statute)

(1) If the suspect is captured based upon an arrest warrant for surrender, the suspect must be brought without delay, at the latest on the day after capture, before a judge of the next District Court (*Amtsgericht*).

(2) The judge of the District Court will examine the suspect promptly after the presentation, at the latest on the next day, regarding his personal circumstances, in particular, regarding his citizenship. He shall inform him, that in each phase of the proceedings he may use legal assistance (§ 31) and that it is up to him whether or not to make statements regarding the criminal act he is accused of committing. He shall then inform the suspect that he may apply for suspension of execution of the arrest warrant for surrender, as well as that he may at any time approach the Court regarding its arrest warrant, and he shall question him as to whether and, if necessary, upon which grounds, he seeks to raise objections to the surrender; § 41 para. 5 sentence 1 applies *mutatis mutandis*. In cases under § 11 para. 2 the examination also extends to the topic of the charge; in most cases, information provided by the suspect shall be included in the record of proceedings. Provided that the Court requests, it shall be provided with a copy of the record of proceedings.

(3) If the examination shows that:

1. the captured person is not the person referred to in the arrest warrant for surrender,

2. the arrest warrant for surrender has been revoked, or

3. execution of the arrest warrant for surrender has been suspended,

the judge of the District Court shall order release. The decision shall be issued after a hearing by the public prosecution office attached to the Higher Regional Court that is responsible for ruling on the permissibility of the surrender.

(4) If the detention order has been rescinded or its execution suspended, the judge of the District Court shall order that the suspect is to remain in custody until a decision by the Higher Regional Court has been made when:

1. the prerequisites for a new arrest warrant for surrender based upon the criminal act exist or

2. there is a basis to order execution of the arrest warrant for surrender.

The public prosecution office attached to the Higher Regional Court shall promptly obtain a of the Higher Regional Court.

(5) If the suspect files a motion to quash execution of the arrest warrant for surrender or raises other objections to the arrest warrant for surrender or its execution that are not obviously unfounded, or if the judge at the District Court has reservations about maintaining the detention, notwithstanding § 68 para. 3 sentences 3 and 4, he shall promptly inform the public prosecution office attached to the Higher Regional Court. The public prosecution office attached to the Higher Regional Court shall promptly obtain a decision of the Higher Regional Court; § 16 para. 2-4 apply *mutatis mutandis*.

(6) If the suspect does not raise any objections to the surrender, the judge of the District Court shall inform him of the possibility of streamlined surrender and its legal consequences (§ 33) and shall include the explanation in the record of proceedings. Para. 2 sentence 5 applies *mutatis mutandis*.

(7) The decision of the judge of the District Court is non-appealable.

§ 15

Procedure After Provisional Arrest

(1) If the suspect is provisionally arrested, he shall be brought without delay, at the latest on the day after arrest, before a judge of the next District Court (*Amtsgericht*).

(2) § 14 para. 2 applies *mutatis mutandis* to the examination of the suspect.

(3) If the examination reveals that the captured person is not the person to which the request or the criminal acts within the meaning of § 11 para. 2 relate, the judge of the District Court shall order his release. Otherwise the judge of the District Court shall order that the suspect shall remain in detention until there is a decision by the Higher Regional Court. The public prosecution office attached to the Higher Regional Court shall promptly obtain a decision of the Higher Regional Court; participation of

the Court shall be in accordance with Article 59 para. 4-6 of the Rome Statute. § 14 para. 5-7 apply *mutatis mutandis*.

§ 16

Decision on Detention, Suspension of Execution of Warrant of Arrest for Surrender

(relating to Article 59 para. 4-6 of the Rome Statute)

(1) The Higher Regional Court shall rule on objections of the suspect to the arrest warrant for surrender or its execution.

(2) The Higher Regional Court may suspend the execution of an arrest warrant for surrender that is based upon a request by the Court only under the conditions set forth in Article 59 para. 4 of the Rome Statute. The execution of an arrest warrant for surrender based upon § 11 para. 2 sentences 1 and 2 may be suspended when less drastic measures offer the protection that the arrest for surrender would also offer.

(3) Prior to a decision pursuant para. 1 or para. 2 sentence 1, the Court shall be given the opportunity to present its position. Any recommendations shall be considered in accordance with Article 59 para. 5 sentence 2 of the Rome Statute. To the extent that there is a deviation from a recommendation of the Court, the Court shall be presented with the reasons therefore and given the opportunity to present its position. If execution of the arrest warrant for surrender is suspended, the Court shall, upon request, be informed of the matter.

(4) § 116 para. 1 sentence 2, para. 4, §§ 116a, 123, and 124 para. 1, 2 sentence 1, para. 3 of the Criminal Procedure Code apply *mutatis mutandis*.

§ 17

Review of Detention

If the suspect is in detention for surrender or provisional detention for surrender, the Higher Regional Court shall rule on suspension of execution of the arrest warrant for surrender when the suspect, since the day of capture, provisional arrest, or the last prior decision on the execution of the arrest warrant for surrender, has been in detention on the basis of the surrender for a total of two months. Review

of the arrest warrant for surrender will be repeated every two months. The Higher Regional Court may order that review of the arrest warrant for surrender take place within a shorter time-frame. § 16 para. 2 and 3 apply *mutatis mutandis*.

§ 18

Execution of Detention

(1) As to temporary detention for surrender, detention for surrender, and detention based upon an order of a judge of the District Court, the provisions of the Criminal Procedure Code (*Strafprozessordnung*), the Prison Act (*Strafvollzugsgesetz*), and if the suspect is an adolescent, the Juvenile Court Act (*Jugendgerichtsgesetz*), apply *mutatis mutandis* regarding execution of the pretrial custody.

(2) The public prosecution office attached to the Higher Regional Court determines the institution where the suspect will be held.

(3) Judicial orders shall be issued by the chairperson of the responsible senate attached to the Higher Regional Court.

§ 19

Examination of the Suspect

(1) Upon receipt of the request for arrest and surrender, the Higher Regional Court shall examine the suspect when he does not state his acceptance of streamlined surrender (§ 32).

(2) The Higher Regional Court shall examine the suspect regarding his personal circumstances, in particular, regarding his citizenship. § 14 para. 2 sentences 2 and 3 apply *mutatis mutandis*. The suspect shall be examined regarding the charge when moved for by the public prosecution office attached to the Higher Regional Court; in most cases, the information provided by the suspect shall be included in the record of proceedings. § 14 para. 2 sentence 5 and para. 6 apply *mutatis mutandis*.

§ 20

Permissibility Proceedings

(1) If the suspect does not state his agreement with streamlined surrender (§ 32), the public prosecution office attached to the Higher Regional Court shall apply for a ruling by the Higher Regional Court whether the surrender is permissible.

(2) If the surrender documents are insufficient to judge the permissibility of the surrender, the Higher Regional Court shall rule only after the Court is given the opportunity to provide additional documentation.

(3) The Higher Regional Court may examine the suspect. It may collect additional evidence on the permissibility of the surrender and conduct an oral hearing. The form and scope of the taking of evidence is determined by the Higher Regional Court, without being bound by motions, waivers, or earlier decisions.

§ 21

Conduct of the Oral Hearing

(1) The public prosecution office attached to the Higher Regional Court, the suspect, and his legal assistance (§ 31) shall be informed of the place and time of the oral hearing. A representative of the public prosecution office attached to the Higher Regional Court and the legal assistance ordered for the suspect must be present at the oral hearing. Members of the Court and the suspect's defense counsel in the proceedings before the Court may be allowed to be present and to propose questions.

(2) If the suspect is in detention he is to be brought before the court, unless he has waived his presence at the hearing or his presence is impaired by sickness, intentionally-produced incapacity, absence due to illegal conduct, or another obstacle for which the suspect is liable and which cannot be eliminated.

(3) If the suspect is at large, the Higher Regional Court shall, at regular intervals, order his personal appearance, as long as there are no significant reasons against such an order. If the suspect does not appear as properly ordered and his absence is not sufficiently excused, the Higher Regional Court shall order his appearance and shall implement the measures necessary to secure a later surrender.

(4) Participants who are present at the oral hearing shall be heard. A record shall be made of the hearing. § 14 para. 2 sentence 5 applies *mutatis mutandis*.

§ 22

Decision on Permissibility

Reasons must be provided for a decision regarding the permissibility of the surrender. The public prosecution office attached to the Higher Regional Court, the suspect, and his legal assistance (§ 31) shall be informed thereof. The suspect shall receive a copy.

§ 23

Renewed Decision on Permissibility

(1) Should circumstances arise after the decision of the Higher Regional Court on the permissibility of the surrender that support a different decision on the permissibility, the Higher Regional Court upon its own motion, upon motion of the public prosecution office attached to the Higher Regional Court, or upon motion of the suspect, shall again rule upon the permissibility of the surrender.

(2) If, after the decision of the Higher Regional Court, circumstances become known that support a different decision on the permissibility, the Higher Regional Court may again rule on the permissibility of the surrender. Paragraph 1 applies *mutatis mutandis*.

(3) Paragraphs 1 and 2 apply *mutatis mutandis* in the case where the suspect has agreed to streamlined surrender, with the exception that instead of a decision of the Higher Regional Court, the statement by the suspect of his agreement with streamlined surrender applies.

(4) § 20 para. 3, §§ 21 and 22 apply *mutatis mutandis*.

(5) The Higher Regional Court may order a postponement of the surrender.

§ 24

Detention for Execution of Surrender

If the execution of an arrest warrant for surrender is stayed, the Higher Regional Court shall order execution after approval of the surrender, to the extent no

significant grounds against the detention exist and the implementation of the surrender is in some other way ensured.

§ 25

Speciality

(relating to Article 101 of the Rome Statute)

(1) As to a suspect surrendered to it, the Court may, in accordance with Article 101 para. 2 of the Rome Statute, prosecute, punish, or impose a limitation on his personal freedom, for criminal acts other than the one for which the surrender was approved, to the extent the criminal acts are within its jurisdiction.

(2) If a foreign state successfully challenges the permissibility of the criminal proceedings before the Court in accordance with Article 19 in conjunction with Article 17 para. 1(a) of the Rome Statute and if the Court intends, therefore, to surrender the suspect to the authorities of that state, para. 1 is not applicable. In this case, the Court shall be promptly requested to return the surrendered person. The extradition law provisions apply to further proceedings.

(3) Para. 1 is also not applicable insofar as a foreign state requests of the Court, of the state in whose sovereign territory the Court has its seat (Host State, Article 3 of the Rome Statute) or of the state of enforcement, the extradition, temporary extradition, deportation, or other transfer to its sovereign territory for criminal prosecution, execution of a sentence, or other sanction. Return of the suspect shall be requested of the Court when adherence to the extradition law provisions applicable to the requesting state cannot be guaranteed in some other way.

§ 26

Request for Surrender

After Previous Extradition

(1) If the extradition of a suspect to a foreign state has taken place and the Court requests approval for prosecution or execution of a sentence, approval shall be granted when:

1. it has been shown that the suspect had the opportunity to respond to the request and that the Higher Regional Court had decided that because of the criminal act the surrender would be permissible, or

2. it has been shown that the suspect has stated on the record of the proceedings of a judge of the Court or the state to which he was extradited, his agreement with prosecution or with execution of a sentence, and because of the criminal act the surrender would have been permissible.

If the request is based upon the same criminal act, the Court shall be notified thereof.

(2) § 20 para. 1 applies to the proceeding, provided that, in place of the suspect's acceptance of streamlined surrender, he agrees within the meaning of para. 1 sentence 1 number 2, as well as § 20 para. 2 and 3 sentences 2 and 3, § 21 para. 1, 2 sentence 2, para. 4, §§ 22, 23 para. 1 and 2 as applicable. The Higher Regional Court that was responsible in the extradition proceedings for a decision on the permissibility of the extradition is responsible for judicial decisions pursuant to para. 1 sentence 1 number 1.

(3) If the extradition has not yet occurred, approval of a request of the type set forth in para. 1 will be granted when, because of the criminal act, surrender to the Court would have been permissible. Para. 1 sentence 2 applies *mutatis mutandis*. §§ 19-23 apply to the proceedings *mutatis mutandis*.

§ 27

Temporary Surrender

(relating to Article 89 para. 4 of the Rome Statute)

(1) If the approved surrender is postponed because there is a domestic criminal proceeding against the suspect or incarceration or measures for the prevention of crime and the reformation of offenders (*Maßregel der Besserung und Sicherung*) are to be executed, the suspect may be temporarily surrendered when the Court guarantees to return him at a particular point in time.

(2) Return of the suspect may be waived.

(3) If, in the proceedings for which the surrender was postponed, a fixed term of incarceration or a fine is imposed, the detention served up until the return or a waiver

of return will be set-off in the proceedings before the Court. If the surrender is postponed because a fixed term of imprisonment is to be enforced against the suspect, the first sentence applies as appropriate.

(4) The office responsible for calculating the time spent in custody referred to in para. 3 shall determine the standards at its own discretion after a hearing with the public prosecution office attached to the Higher Regional Court. It may order that the set-off either completely or partially not occur when:

1. the deprivation of liberty ordered by the Court already completely or partially accounts for a punishment imposed or to be enforced by it, or
2. the set-off, in light of the conduct of the suspect after his surrender, is not justified.

§ 28

German

Criminal Proceeding and Request for Surrender

(1) If a criminal proceeding based upon a criminal act set out in Article 5 of the Rome Statute takes place domestically and the Court has declared to the Federal Ministry of Justice or another office responsible pursuant to § 68 para. 1 that in the event the German proceeding is discontinued it will seek a surrender of the suspect, the public prosecutor may refrain from prosecution when it appears to be in the public interest, based upon extraordinary reasons against domestic criminal prosecution. If the public charges have already been preferred, the court may, upon a corresponding request by the public prosecution office, temporarily discontinue the criminal proceedings at any stage. The decision whether to approach the Court for an explanation within the meaning of the first sentence, is within the competency of the office responsible pursuant to § 68 para. 1.

(2) If provisional detention for surrender of the suspect is ordered pursuant to § 11 para. 2 and the Court has not requested provisional arrest within the deadline foreseen in § 11 para. 3, the proceedings will be resumed. The proceedings will also be resumed when provisional detention for surrender of the suspect has been ordered based upon a request for provisional arrest pursuant to § 11 para. 1 sentence 1 and the Court has not requested arrest and surrender within the deadline

set forth in § 11 para. 1 sentence 2. If the court has temporarily discontinued the proceedings, a court decision is required for resumption. Nothing shall hinder a discontinuance in accordance with para. 1 of a proceeding that had previously been resumed.

(3) The decision to discontinue proceedings and the decision to resume proceedings are non-appealable.

(4) The costs and necessary expenses shall be decided in the final accounting of the proceedings before the Court. §§ 464-473 of the Criminal Procedure Code apply *mutatis mutandis*.

§ 29

Surrender of Objects

in the Surrender Proceedings

(1) In connection with a surrender, objects may be surrendered to the Court without special request pursuant to § 51 when:

1. it can be used as evidence in the proceedings before the Court, or
2. it was obtained by the suspect or a participant directly or indirectly from the criminal act for which the surrender was approved, or could have been obtained as payment for such objects.

(2) The surrender is only permissible when it is guaranteed that the rights of third parties remain affected and with the reservation that surrendered objects will be promptly returned upon demand.

(3) Under the prerequisites in para. 1 and 2, objects may also be surrendered when the approved surrender cannot be executed upon on account of factual reasons.

(4) The Higher Regional Court shall rule on the permissibility of the surrender, an objection of the suspect, a motion of the public prosecution office attached to the Higher Regional Court, or a motion of a person who asserts that the surrender would result in injury to his rights. If the Higher Regional Court declares the surrender permissible, costs to the public treasury may be awarded against the party who

moved for the decision. The release shall not be approved when the Higher Regional Court has declared it impermissible.

(5) To the extent the objects to be surrendered contain personal data of the suspect, upon surrender it shall be indicated that the data may only be used to fulfill the duties of the Court as set forth in the Statue. If personal data of third parties is so connected to the personal data of the suspect that separation is not possible or is possible only with unjustifiable effort, the transfer of this data is also permissible, as long as the justified interests of the suspect or a third party to their secrecy is not apparently greater.

§ 30

Search and Seizure

(1) Objects under consideration for surrender to the Court may be seized or otherwise secured even prior to receipt of the request for surrender. To this end, a search may also be undertaken.

(2) The Higher Regional Court that is responsible for the surrender proceedings is responsible for ordering the measures in para. 1. It is also responsible for ordering measures regarding objects that are located outside of its district. § 7 para. 1 sentence 2 and para. 2 apply *mutatis mutandis*.

(3) If there is a danger in delay, the public prosecution office and its assistant officers (§ 152 of the Judicature Act (*Gerichtsverfassungsgesetz*)) are authorized in accordance with the provisions of the Criminal Procedure Code to order a search and seizure.

§ 31

Legal Assistance

(1) The suspect may, at any stage of the proceedings, use legal assistance.

(2) An attorney will be ordered as the legal assistance for a suspect who has not chosen legal assistance at the latest after the first examination pursuant to § 14 para. 2 also in connection with § 15 para. 2.

(3) The provisions of Chapter 11 of Part One of the Criminal Procedure Code, with the exception of §§ 140, 141 para. 1-3, and 142 para. 2, apply *mutatis mutandis*.

§ 32

Streamlined Surrender

(relating to Article 92 para. 3

sentence 2 of the Rome Statute)

(1) The surrender of a person against whom there is an arrest warrant for surrender and as to whom the Court has requested arrest and surrender or provisional arrest, may be approved without implementing formal surrender proceedings when the suspect, after instruction by the court that is set forth in the court record of proceedings, declares his agreement with such streamlined surrender.

(2) The agreement cannot be rescinded.

(3) Upon motion of the public prosecution office attached to the Higher Regional Court, in cases under §§ 14 and 15, the judge of the District Court or otherwise the Higher Regional Court, shall instruct the suspect regarding the possibility of streamlined surrender and the legal consequences thereof (paragraphs 1 and 2) and shall enter its explanation into the record of proceedings. Jurisdiction lies with the judge of the District Court in whose district the suspect is located.

§ 33

Appeal to the Federal Supreme Court

(1) If the Higher Regional Court considers a decision of the Federal Supreme Court necessary to clarify a legal question of fundamental importance or it seeks to deviate from a decision of the Federal Supreme Court or a decision of a different Higher Regional Court regarding a legal question on surrender issues with the International Criminal Court, it shall provide reasons for its position and shall request a decision of the Federal Supreme Court on the legal question.

(2) The decision of the Federal Supreme Court will also be requested when the Federal Public Prosecutor or the public prosecution office attached to the Higher Regional Court moves for clarification of a legal question.

(3) The Federal Supreme Court shall give the suspect the opportunity to comment. The decision shall be made without an oral hearing.

Part 3

Transit

§ 34

Principle

(relating to Article 89 para. 3 of the Rome Statute)

Persons, whose transit has been requested by the Court or, with its agreement, the state from which the suspect shall be surrendered to the Court (state of surrender) or the state of enforcement, shall be transported through Germany for criminal prosecution or execution of a criminal penalty in accordance with the Statute and this law.

§ 35

Transit Documents

(relating to Article 89 para. 3 of the Rome Statute)

(1) Transit to the Court pursuant to Article 89 para. 3 of the Rome Statute for criminal prosecution or execution of a criminal penalty upon request of the Court is permissible only when the documents set out in Article 89 para. 3 (b)(i) – (iii) of the Rome Statute have been presented.

(2) For transit to the state of enforcement, in addition to the documents set forth in Article 89 para. 3 of the Rome Statute, a certificate from the state of enforcement stating its agreement with the execution of the penalty imposed by the Court or a

statement by the Court that the state of enforcement is in agreement with the enforcement must be presented.

(3) If the state of surrender requests transit to the Court or the state of enforcement requests transit for the execution of a penalty imposed by the Court, in addition to the documents required in paragraph 1 and, in the case of transit to the state of enforcement, paragraph 2, a statement by the Court shall be included, stating its agreement with the request.

§ 36

Jurisdiction

(1) Judicial decisions shall be made by the Higher Regional Court. § 7 para. 1 sentence 1 and para. 2 apply *mutatis mutandis*.

(2) Local jurisdiction is

1. in the case of transit over land or sea, the Higher Regional Court in whose district the suspect will probably be surrendered within the scope of this law,
2. in the case of transit by air, the Higher Regional Court in whose district the first landing will occur.

(3) If jurisdiction pursuant to para. 2 number 2 is unfounded, jurisdiction shall lie with the Higher Regional Court in Frankfurt am Main.

§ 37

Transit Proceedings

(relating to Article 89 para. 3(c) of the Rome Statute)

(1) If the transit appears to be permissible, the suspect will be detained to ensure it.

(2) The detention will be ordered via a written arrest warrant (*Durchbeförderungshaftbefehl*) of the Higher Regional Court. § 12 para. 2, § 20 para. 2 apply *mutatis mutandis*.

(3) Transit shall only be approved when an arrest warrant for transit has been issued.

(4) The suspect shall be informed of the arrest warrant for transit promptly upon his entry into Germany. The suspect shall receive a copy.

(5) If it appears that the transit cannot be completed by the end of the day following the surrender, the suspect shall promptly, at the latest the day after his entry into Germany, be brought before a judge of the next District Court. The judge of the District Court shall examine him regarding his personal circumstances, in particular, regarding his citizenship. He shall inform him that at each stage of the proceedings he may use legal assistance and that it is up to him whether or not to make statements regarding the criminal act he is accused of committing. He shall then question him whether and, if necessary, upon which grounds he seeks to raise objections to the arrest warrant for transit or to the permissibility of the transit; § 14 para. 5 and § 16 apply *mutatis mutandis*.

(6) § 12 para. 3, §§ 18, 23 para. 1, 2, and 5, and § 33 apply *mutatis mutandis*. § 17 applies with the exception that instead of a two month deadline, a one month deadline shall apply. § 31 applies with the exception that legal assistance shall be ordered when:

1. because of the difficulty of the factual or legal situation the involvement of legal assistance seems advisable, or
2. it is obvious that the suspect is incapable of sufficiently protecting his rights.

(7) Objects that were taken in regard to the transit may be surrendered concurrently with the surrender of the suspect without a specific request.

§ 38

Repeated Transit

(1) If the first transit for surrender of the suspect to the Court is approved, the suspect may upon request, which refers to the documents transmitted in relation to the first transit, without a renewed decision of approval, for execution of a penalty imposed by the Court, also be surrendered to the state of enforcement when a certificate of the state of enforcement stating its agreement with the execution of the penalty imposed by the Court or a statement of the Court in which the state of enforcement is in agreement with the execution is presented. Sentences 1 and 2 are also applicable to additional transit instances.

(2) In a case under para. 1, the arrest warrant for transit shall also apply to additional instances of transit.

(3) Paragraphs 1 and 2 are, in the case of a return of the surrendered person subsequent to a temporary surrender to the state of surrender, applicable to the extent the circumstances of the later return of the surrendered person was recognizable at the time of the first transit.

§ 39

Unscheduled Landing

(relating to Article 89 para. 3(e) of the Rome Statute)

(1) In the case of an unscheduled landing in Germany, the office that first knew of the landing and is involved based upon this law shall promptly inform the Court and the office responsible pursuant to § 68 para. 1 of the landing. The office responsible pursuant to § 68 para. 1 shall ask the Court for a transit request in accordance with Article 89 para. 3 (b) of the Rome Statute. The public prosecutor and the officers of the police force are authorized to conduct the provisional arrest.

(2) The suspect shall promptly, no later than the day after the arrest, be brought before a judge of the next District Court. He shall be released from detention by the judge when, 96 hours have passed since the unscheduled landing without a transit request or the necessary documents having been received by the office responsible pursuant to § 68 para. 1.

(3) In addition, §§ 35-35 apply *mutatis mutandis*.

Part 4

Mutual Assistance through the Execution of Decisions and Orders of the Court

§ 40

Principle

Mutual Assistance shall be provided through the enforcement of non-appealable criminal penalties imposed by the Court in accordance with the Rome Statute as well as this law. Orders of forfeiture pursuant to Article 77 para. 2(b) of the Rome Statute as well as decisions under Article 75 of the Rome Statute shall also be enforced.

§ 41

Enforcement of Prison Sentences

(relating to Article 77 para. 1,

Article 103 para. 1 and 2, and

Articles 105, 106, and 110 of the Rome Statute)

(1) Prison sentences shall be enforced when:

1. requested by the Court upon presentation of a complete final and enforceable court ruling on guilt and punishment, and

2. the Court and the office responsible pursuant to § 68 para. 1 have agreed upon assumption of responsibility for the enforcement.

Upon assumption of jurisdiction over the convicted person a statement by the Court regarding the portion of the imposed penalty remaining to be enforced shall be presented.

(2) The prison sentence shall be enforced to the extent set forth by the Court. The provisions of the Criminal Code (*Strafgesetzbuch*) regarding suspension of enforcement of the remainder of a set period or a life-long prison sentence (§§ 57-57b of the Criminal Code) and the Criminal Procedure Code regarding enforcement of a prison sentence are inapplicable. The enforcement shall end when the Court so notifies.

(3) Upon request of the Court, the convicted person shall be surrendered to the Court or to a state designated by it. To the extent the Court does not explicitly notify that the convicted person is to be released from custody, he shall be held in custody until surrender to the Court or to the authorities of a state designated by it. Should the Court at a later point in time request a resumption of the enforcement of a

criminal penalty already partially enforced domestically, the documents referred to in para. 1 number 1 are not required to be resubmitted. Para. 1 sentence 1 number 2 and sentence 2 apply *mutatis mutandis*.

(4) The Court is responsible for decisions relating to enforcement of the penalty, including pardon, reinstatement of the proceedings, and reduction of the sentence by the Court, as well as for other decisions that could encompass a stopover for the convicted person outside of the institution in which the convicted person may be detained without guard. To the extent circumstances arise that, under German law, would enable a postponement, a temporary postponement, an interruption in enforcement, a termination of the enforcement, a set-off against the prison sentence to be served, or enforcement orders allowing a stopover outside of the enforcement institution without guard, a decision of the Court shall be obtained. The enforcement of the penalty shall, in addition, be arranged according to German regulations and correspond to the enforcement of penalties that are imposed by German courts for similar criminal acts. The provisions of the Prison Act (*Strafvollzugsgesetz*) regarding objection proceedings and court proceedings are inapplicable to the extent the Court is responsible for rulings on enforcement measures.

(5) Communications between the convicted person and the Court shall be unimpeded and confidential. Upon request of the Court, members of the Court shall be granted admittance to the penal institution. If the convicted person raises objections to the enforcement of the penalty or files motions regarding which the Court must rule, a ruling by the Court shall be obtained.

(6) Costs arising from the enforcement shall be borne by the federal government in accordance with an agreement to be entered into with the states (*Länder*). This does not apply to the extent costs are to be assumed by the Court pursuant to law or other regulations.

§ 42

Escape and Speciality

(relating to Article 108,

Article 111 of the Rome Statute)

(1) Should the convicted person escape or otherwise evade justice, the office responsible pursuant to § 46 para. 1 shall issue an arrest warrant and shall use further measures as required to establish the whereabouts and to effect arrest of the suspect. A request of the Court is not required for the ordering of individual investigative measures. § 31 para. 2 sentence 1 of the Law on the Administration of Justice (*Rechtspflegergesetz*) applies *mutatis mutandis*. The Court will be promptly informed of the escape; in addition, the proceedings shall be handled in accordance with Article 111 of the Rome Statute.

(2) Prosecution for criminal acts that the convicted person committed prior to his surrender to the German authorities or the execution of a prison sentence imposed prior to surrender or measures for the prevention of crime and the reformation of offenders (*Maßregel der Besserung und Sicherung*) shall occur subject to the provisions of Article 108 para. 3 of the Rome Statute only upon agreement of the Court.

(3) If a foreign state requests extradition, provisional extradition, deportation, or other transfer to its sovereign territory for criminal prosecution or execution of a sentence or other sanction, approval may be given when the Court, subject to the provisions of Article 108 para. 3 of the Rome Statute, has given prior approval and the extradition is permissible according to the extradition regulations applicable to the requesting state.

§ 43

Enforcement of Monetary Fines

(relating to Article 77 para. 2(a),

Article 109 para. 1 of the Rome Statute)

(1) Monetary fines shall be enforced when:

1. requested by the Court upon presentation of a complete final and enforceable court ruling on guilt and punishment, and
2. the request states up to which amount the monetary fine is to be enforced domestically insofar as the Court has requested enforcement of monetary fines from more than one state.

To the extent that the monetary fine to be enforced is stated in a currency other than Euro, the exchange rate officially set on the day of receipt of the request shall be used for the conversion.

(2) The Court-Fee Collection Ordinance (*Justizbeitreibungsordnung*) applies to the enforcement of monetary fines as far as this law does not otherwise provide.

(3) The fine is due upon receipt of the request. For interpretation of the rulings on guilt or sentencing, the calculation of the imposed penalty, objections to the permissibility of the enforcement of the penalty, or when under German law the prerequisites of § 459a of the Criminal Procedure Code would be met, a decision of the Court shall be obtained. The progress of the enforcement shall not be inhibited hereby; the office responsible pursuant to § 46 para. 2 may, however, postpone or suspend the enforcement. A continuation of enforcement at a later point in time shall be ensured by appropriate measures; to this end, a search of the convicted person, his living quarters and possessions, as well as the confiscation of objects, is allowed.

(4) § 459b and 459c para. 2 and 3 of the Criminal Procedure Code apply *mutatis mutandis*. The result of the enforcement shall be reported to the Court and the fine collected shall be transferred to it.

(5) To the extent the Court, because of the uncollectability of a monetary fine, lengthens the imposed detention based upon a criminal act in Article 5 of the Rome Statute or, because of the uncollectability of an imposed monetary fine based upon a criminal act as set forth in Article 70 para. 1 of the Rome Statute, imposes a prison sentence, §§ 41 and 42 apply to the enforcement of the prison sentence.

§ 44

Enforcement of Forfeiture Orders

(relating to Article 77 para. 2(b), Article 109 para. 2 of the Rome Statute)

(1) Orders pursuant to Article 77 para. 2(b) of the Rome Statute (Forfeiture Orders) shall be enforced when:

1. requested by the Court upon presentation of a complete final and enforceable court ruling on guilt and punishment, and

2. the objects at issue are located in Germany.

(2) To effect enforcement, the court shall order forfeiture of the object. § 73 para. 2-4, §§ 73a and 73b of the Criminal Code apply *mutatis mutandis*.

(3) If the forfeiture of an object is ordered, ownership of the object or the forfeited right, upon the approval of the mutual assistance, transfers through the office responsible pursuant to § 68 para. 1 to the Court, when the party affected by the order was at that time the owner thereof. Prior to the authorization, the order has the effect of a prohibition on sale within the meaning of § 136 of the Civil Code (*Bürgerliches Gesetzbuch*); the prohibition also encompasses other dispositions than sale. Objects, the forfeiture of which has been ordered, will be surrendered to the Court upon approval of the mutual assistance.

(4) To the extent that a forfeiture order of the Court contains a decision regarding the rights of third parties, these are binding, unless:

1. the third party obviously did not have the opportunity to enforce his rights,
2. the decision cannot be reconciled with a domestic civil law decision reached in the same matter, or
3. the decision relates to the rights of third parties to real property or real property rights located in Germany; priority notices also constitute third party rights.

If one of the cases in sentence 1 exists, the Court shall have the opportunity to provide comments in the proceedings under § 68 para. 1. The rights of third parties to the objects remain to the extent foreseen by the Statute. Third parties who, under the circumstances of the case could exercise rights over the object, shall have, prior to a ruling, the opportunity to provide comments to the extent they have not already been able to provide comment to the Court. They may use legal assistance at each stage of the proceedings.

(5) To the extent an order for the forfeiture of an object is under consideration based upon a request of the Court, it may be seized to guarantee the forfeiture. To this end, a search may also be undertaken. Jurisdiction is determined in accordance with § 46 para. 3. In addition, §§ 111b – 111h and 111l of the Criminal Procedure Code apply *mutatis mutandis*. § 111k applies *mutatis mutandis* with the exception that prior to return to the injured party, the opinion of the Court shall be obtained; return shall not occur insofar as the Court in its opinion is against it.

§ 45

Enforcement of Restitution Orders

(relating to Article 75 para. 2,

Article 109 of the Rome Statute

Restitution Orders that require the payment of a sum of money shall be enforced when:

1. requested by the Court upon presentation of a complete final and enforceable court ruling on guilt and punishment, as well as an order pursuant to Article 75 of the Rome Statute, and
2. the request states up to what amount the Restitution Order is to be enforced domestically to the extent the Court has requested enforcement by more than one state.

In addition, the enforcement shall occur in accordance with § 43.

§ 46

Jurisdiction,

Appeal to the Federal Supreme Court, Legal Assistance

(1) The office responsible for the enforcement of prison sentences of the Court (§§ 41 and 42) is the public prosecution office attached to the Higher Regional Court in whose district the institution is located in which the convicted person is in custody.

(2) Jurisdiction for the enforcement of monetary fines per § 43 and Restitution Orders per § 45 lies with the public prosecution office attached to the Higher Regional Court in whose district the convicted person has his legal residence or, in the absence thereof, where he habitually resides. If the legal or habitual residence cannot be determined, jurisdiction lies with the public prosecution office attached to the Higher Regional Court in whose district objects belonging to the convicted person are situated. If objects are situated in the districts of different Higher Regional Courts, jurisdiction is determined based upon which public prosecution office was first involved in the matter. For as long as jurisdiction under sentences 1-3 cannot be

determined, jurisdiction is determined by the seat of the federal government. The necessary judicial orders shall be made by the Higher Regional Court. Rulings by the Higher Regional Court are non-appealable.

(3) The judicial orders required for enforcement of an order of forfeiture of the Court (§ 44) shall be made the Higher Regional Court. Para. 2 sentence 6 applies *mutatis mutandis*. The public prosecution office attached to the Higher Regional Court shall prepare the decisions. Local jurisdiction lies with the Higher Regional Court and the public prosecution office attached to the Higher Regional Court in whose distract the object is situated. If objects are situated in the districts of different Higher Regional Courts, jurisdiction is determined based upon which Higher Regional Court or, as long as no Higher Regional Court is involved, upon which public prosecution office was first involved in the matter. For as long as jurisdiction under sentence 2 or sentence 3 cannot be determined, jurisdiction is determined by the seat of the federal government.

(4) As to proceedings before the Higher Regional Court, § 20 para. 2 and 3, § 21 para. 1 and 4, §§ 22, 23, and 29 para. 4, § 33, as well as the provisions of Chapter 11 of Part One of the Criminal Procedure Code with the exception of §§ 140 – 143 apply *mutatis mutandis*. § 31 applies *mutatis mutandis* with the exception that legal assistance is to be ordered when:

1. because of the difficulty of the factual or legal situation the involvement of legal assistance seems advisable, or
2. it is obvious that the suspect is incapable of sufficiently protecting his rights.

Part 5

Additional Mutual Assistance

§ 47

Principle

(relating to Article 93 para. 1,

Article 96 para. 1 and 2 of the Rome Statute)

(1) Subject to § 58 para. 2, additional mutual assistance shall be provided to the Court upon request in accordance with the Rome Statute and this law.

(2) Mutual assistance within the meaning of para. 1 is all support given to the Court in its activities based upon the Rome Statute, independent of whether the mutual assistance is carried out by a court or by a government office.

(3) If the government office responsible for approval of the mutual assistance finds that the prerequisites for provision of mutual assistance exist, the government authority responsible for providing mutual assistance is bound thereto. § 50 remains unaffected.

(4) The treatment of conflicting requests for additional mutual assistance shall be dealt with according to Article 93 para. 9(a) of the Rome Statute. To the extent Article 90 of the Rome Statute applies, § 4 applies *mutatis mutandis*.

§ 48

Postponement of Completion

In matters under Article 93 para. 3-5, 9(b), Article 94 para. 1 and Article 95 of the Rome Statute, completion may be postponed until it has been determined how to proceed with the request in accordance with the Rome Statute.

§ 49

Jurisdiction

(1) To the extent mutual assistance is to be provided by a public prosecution office, local jurisdiction lies with the public prosecution office in whose district the mutual assistance shall be provided. Should the provision of mutual assistance be required in the districts of different public prosecution offices, jurisdiction lies with the public prosecution office that was first involved in the matter. For as long as jurisdiction under sentence 1 or sentence 2 cannot be determined, jurisdiction is determined by the seat of the federal government.

(2) Para. 1 applies *mutatis mutandis* to the jurisdiction of the court to the extent judicial action for the provision of mutual assistance is required or when other judicial decisions are to be made.

(3) The Higher Regional Court is responsible for judicial decisions regarding the surrender of property pursuant to § 50 para. 1 sentence 2, for an order of search and seizure of objects (§ 52 para. 1 and 2) and a seizure of assets (§ 52 para. 4), for a decision on detention in the case of a temporary assumption of jurisdiction over a suspect (§ 55 para. 1) and a transfer (§ 55 para. 6) as well as for court orders in the case of telecommunications surveillance (§ 59 para. 1) and for covert measures (§ 59 para. 2). In the case of a temporary assumption of jurisdiction over a suspect, venue lies with the Higher Regional Court in whose district the office that will provide the mutual assistance is located. In the case of a transfer, § 31 para. 2 and 3 apply *mutatis mutandis*.

(4) Insofar as the jurisdiction of the court is well-founded, the public prosecution office attached to the Higher Regional Court shall prepare the decision and take the measures necessary for its implementation. It is also responsible for ordering and implementing a temporary surrender (§ 54), the preparation of a decision regarding approval of the surrender of objects and the implementation of the approved surrender. In the case of a temporary surrender, local jurisdiction lies with the public prosecution office attached to the Higher Regional Court in whose district the incarceration shall be carried out.

§ 50

Judicial Decision

(1) Mutual assistance in cases under § 52 para. 1, 2, and 4, § 55 para. 1 and 6, and § 59 para. 1 and 2, shall only be approved when the Higher Regional Court has issued the required measures for providing the assistance. The Higher Regional Court shall further decide on the permissibility of the surrender of objects upon motion of the public prosecution office attached to the Higher Regional Court or upon motion of one who shows that the surrender will result in injury to his rights. Decisions of the Higher Regional Court are non-appealable.

(2) As to proceedings before the Higher Regional Court, § 20 para. 2 and 3, § 21 para. 1 and 4, §§ 22, 29 para. 4 sentence 2, § 31 para. 1, § 33, as well as the provisions of Chapter 11 of Part One of the Criminal Procedure Code with the exception of §§ 140 – 143 apply *mutatis mutandis*. For the additional proceedings, § 23 para. 1, 2, and 4, with the exception that instead of the motion of the suspect

referred to in § 23 para. 1, the motion of a party affected by measures pursuant to § 52 para. 1, 2, or 4 applies, and regardless of the presence of the prerequisites in § 23 para. 1 and 2, also upon the motion of the affected party, a renewed ruling on the provision of the mutual assistance shall be issued, when the affected party is not heard prior to the first time the measures are ordered.

(3) If a court other than the Higher Regional Court is responsible for providing the mutual assistance and finds that the prerequisites for providing mutual assistance are not met, it shall justify its opinion and shall obtain a ruling by the Higher Regional Court. The Higher Regional Court decides further upon a motion by the public prosecution office attached to the Higher Regional Court regarding whether the prerequisites for the provision of mutual assistance have been met. The mutual assistance shall not be approved when the Higher Regional Court has ruled that the prerequisites for the provision of mutual assistance have not been met. The ruling by the Higher Regional Court is binding on the courts and governmental authorities responsible for the provision of mutual assistance.

(4) As to proceedings before the Higher Regional Court, § 20 para. 2 and 3, § 21 para. 1 and 4, §§ 22, 23 para. 1, 2, and 4, § 29 para. 4 sentence 2, § 31 para. 1, § 33, as well as the provisions of Chapter 11 of Part One of the Criminal Procedure Code, with the exception of §§ 140 – 143, apply *mutatis mutandis*.

§ 51

Surrender of Objects

(1) Notwithstanding the provision of § 58 para. 3, objects will be surrendered upon request of a responsible office of the Court:

1. if they may be used as evidence in proceedings before the Court,
2. if they could have been obtained by a suspect or participant directly or indirectly from an act that is within the jurisdiction of the Court or as compensation for such an object.

(2) Surrender is permissible when:

1. a decision of an office of the Court responsible therefore is presented that orders the seizure of the objects or the freezing within the meaning of Article 93 para. 1(k) of the Rome Statute, and

2. it is guaranteed that the rights of third parties remain unaffected and with the proviso that surrendered objects shall be promptly returned upon request.

(3) To the extent that objects to be surrendered contain personal data of the suspect, upon surrender it shall be indicated that the data may only be used to fulfill the duties of the Court as set forth in the Rome Statue. If personal data of third parties is so connected to the personal data of the suspect that separation is not possible or is possible only with unjustifiable effort, the transfer of this data is also permissible, as long as the justified interests of the suspect or a third party to their secrecy is not apparently greater.

§ 52

Search and Seizure,

Asset Seizure

(1) Objects, the surrender of which to the Court is under consideration, may be seized or otherwise secured even prior to receipt of the request for release. To this end, a search may also be undertaken.

(2) Objects may, under the prerequisites set forth in § 51 para. 1 number 1, also be seized or otherwise secured when necessary for the fulfillment of a request that is not directed at the surrender of the object. Para. 1 sentence 2 applies *mutatis mutandis*.

(3) Notwithstanding the provisions of § 49 para. 3 and 4, when there is imminent danger the public prosecution office and its auxiliary officials (§ 152 Judicature Act) are authorized to order search and seizure in accordance with the provisions of the Criminal Procedure Code.

(4) Regardless of the existence of the prerequisites of § 51 para. 1 number 1 or 2, upon request of the Court, property located within Germany or individual objects of property of an affected party against whom the charge (*Anklage*) confirms (Article 61 of the Rome Statute) a criminal act within Article 5 of the Rome Statute or against

whom an arrest warrant has been issued (Article 58 of the Rome Statute) may be seized or attached. § 51 para. 2 number 1 applies *mutatis mutandis*. Seizure includes property that is later received by the accused. Para. 1 sentence 2 applies *mutatis mutandis*.

(5) Notwithstanding the provisions in § 49 para. 3 and 4, when there is imminent danger the public prosecution office may issue a provisional order of seizure pursuant to para. 4. The provisional order under sentence 1 becomes ineffective when it is not confirmed by the court within three days.

(6) Seizure pursuant to para. 4 shall be revoked upon request of the Court, at the latest, however, after the court that ordered the seizure has learned that the arrest warrant was revoked or that the proceeding was ended in the first instance. §§ 291, 292, and 293 para. 2 of the Criminal Procedure Code apply *mutatis mutandis* to seizures pursuant to para. 4 or para. 5.

§ 53

Personal Appearance of Witnesses

(1) Should the Court request the personal appearance of a person who is at large in Germany as a witness for questioning, for confrontation, or for inspection by the court, it may be ordered via a summons from a German court or a German public prosecution office.

(2) To the extent the Court assures a person that their testimony will not be used, the information from the person within the scope of the assurance of the Court shall not be used in a German criminal proceeding without the permission of the person. Testimony before the Court also may not be used in a German criminal proceeding without the permission of the person when the person was under a duty to provide information to the Court but under German law could have refused to provide such information.

§ 54

Temporary Surrender

(relating to Article 93 para. 1 and 7 of the Rome Statute)

A person in Germany who is in pretrial detention or imprisoned or is in detention based upon an order regarding measures for the prevention of crime and the reformation of offenders (*Maßregel der Besserung und Sicherung*) shall be, upon request of the Court, temporarily surrendered to the Court or the authorities of a state designated by the Court for a different investigation there, for the taking of evidence in a proceeding pending against another, or for another objective foreseen in Article 93 para. 7(a) sentence 1 of the Rome Statute when:

1. after instruction set forth on the court record by a judge of the District Court in whose district the institution where is in custody is located, he declares his agreement therewith,
2. there is no expectation that as a result of the surrender the objective of the criminal proceeding or the execution of the sentence will be impaired,
3. it is ensured that the affected party, during the time of his surrender, with the exception of measures based upon criminal acts under Articles 70 and 71 of the Rome Statute, shall not be punished, nor subjected to another penalty, nor pursued by measures that could not also have been taken in his absence, and that in case of his release, he may leave the guest state or the state designated by the Court, and
4. it is ensured that the affected party will be returned promptly after the taking of evidence, unless that has been waived.

Agreement (sentence 1 number 1) may not be retracted. The detention served due to the surrender shall be set-off against the detention to be served in Germany. § 27 para. 4 applies *mutatis mutandis*. This does not apply to detentions based upon Article 70 para. 3 of the Rome Statute that have been imposed by the Court and are to be enforced.

§ 55

Temporary Assumption of Jurisdiction and Transfer

(1) Persons outside the area in which this law is in force who are in detention or imprisoned or are in custody based upon an order imposing deprivation of liberty, shall be temporarily transferred upon request of the Court for an investigation taking place there or for the taking of evidence within the area of applicability of this law in a

proceeding pending there and returned at an agreed point in time or upon request of the Court, except in the case where the Court waives the return, when it is guaranteed that the transferee, in the case of a waiver of return surrender by the Court, will be taken in by a foreign state. Prior to implementation of the temporary assumption of jurisdiction over the affected party, arrest shall be ordered in writing when the Court so requests or the return surrender could not otherwise be guaranteed.

(2) The arrest warrant shall contain:

1. the affected party,

2. the request for the taking of evidence in the presence of the affected party,

3. the information of the Court to the office to which the return surrender will occur, as well as

4. the reason for arrest.

§ 13 para. 3, § 14 para. 1, 2 sentence 1 and 3, para. 5 as well as § 18 apply *mutatis mutandis*.

(3) The arrest warrant shall be rescinded when:

1. the Court provides notice that detention is no longer necessary,

2. the Court gives its consent pursuant to para. 2 sentence 2,

3. the affected party shall be returned to the Court or to a state designated by the Court, or

4. the Court has waived return surrender.

(4) The Higher Regional Court shall rule on objections of the affected party against the arrest warrant for transfer or against its execution. With agreement of the Court, the Higher Regional Court may revoke the arrest warrant for transfer or suspend it. § 116 para. 1 sentence 2, para. 4, §§ 116a, 123, and 124 para. 1, 2 sentence 1, para. 3 of the Criminal Procedure Code apply *mutatis mutandis*. If the Court does not agree to a revocation or quashing performance of the arrest warrant for surrender, the affected party shall promptly be returned to the Court or the authorities of a state designated by it. The affected party shall remain in custody throughout the completion of the return surrender.

(5) The Higher Regional Court shall rule regarding the continuation of the detention for transfer when the suspect has been in custody for a total of two months based upon an arrest warrant for transfer. Review of the order shall be repeated every two months. The Higher Regional Court may order that the review of the order shall take place within a shorter timeframe. Para. 4 sentences 2 – 5 apply *mutatis mutandis*.

(6) Persons outside the area in which this law is in force who are in detention or imprisoned or are in custody based upon an order imposing deprivation of liberty, shall be, upon request of the Court, brought for an investigation taking place against another there or for the taking of evidence within the area of applicability of this law in a proceeding pending against another and returned after the taking of evidence. Para. 1 sentence 2 as well as para. 2 – 5 apply *mutatis mutandis* with the exception that instead of the deadline in para. 5 of two months, a deadline of one month applies. In addition, § 14 para. 5, §§ 18, 20 para. 2, § 37 para. 4 and 5 sentence 1, 2 and 4 apply *mutatis mutandis*.

§ 56

Protection of Persons

(relating to Article 93 para. 1(j)

of the Rome Statute)

The provisions regarding protection of victims of criminal acts and protection of persons who participate in a German criminal proceeding apply *mutatis mutandis* to a party allegedly injured by a criminal act subject to the jurisdiction of the Court or to a witness in a proceeding before the Court.

§ 57

Service of Process

(relating to Article 58 para. 7 sentence 4, Article 93

para. 1 (d) of the Rome Statute)

(1) The provisions of the Code of Civil Procedure (*Zivilprozessordnung*) apply *mutatis mutandis* to proceedings regarding service of process.

(2) Service of a summons of the Court on the accused in the form of substituted service is not allowed.

§ 58

Disclosure of Officially Obtained Findings and Information

(1) Upon request of an office of the Court responsible therefore, subject to para. 3, German courts and government offices shall send officially obtained information to the Court within the framework of its jurisdiction, to the extent it would be admissible in a German court or a German public prosecution office for a criminal proceeding, when it is guaranteed that:

1. information from the Federal Central Register (*Bundeszentralregister*) and information obtained via telephone surveillance (§ 59 para. 1) or other covert measures (§ 59 para. 2), shall not be sent to offices outside of the Court, and
2. other findings shall be sent to offices outside of the Court only after prior agreement of the office responsible pursuant to § 68 para. 1.

With the transmittal of the information, maximum deadlines applicable under German law for the storage of the information as well as that the information sent shall only be used for the fulfillment of the tasks of the Court pursuant to the Rome Statute, shall be indicated in an appropriate manner. Should it become evident that incorrect information or information that should not have been sent was transmitted, the Court shall promptly be notified and corrected information or destruction of the information shall be requested.

(2) Subject to para. 3, information within the meaning of para. 1, with the exception of information from the Federal Central Register, may be transmitted to the Court without a request when the prerequisites set forth in para. 1 sentence 1 are otherwise fulfilled and the transmittal is suitable:

1. to begin a proceeding before the Court.
2. to support a proceeding already begun there, or
3. to prepare a request for mutual assistance of the Court.

Para. 1 sentence 2 and 3 apply *mutatis mutandis*.

(3) If the Court requests the transmittal of information that a German court or a German governmental authority received from a foreign state or an intergovernmental or supra-national entity with the request that it treat the information confidentially, the information shall not be transmitted to the Court as long as there is no agreement by the originator pursuant to Article 73 sentence 1 of the Rome Statute. The Court shall be informed.

§ 59

Telecommunications Surveillance and

Other Covert Measures

(relating to Article 93 para. 1(l)

of the Rome Statute)

(1) The ordering of surveillance of telecommunications (§ 100a of the Criminal Procedure Code) and the transmittal of the information gained therefrom is only permissible when:

1. a decision of a judge of the Court is presented ordering telecommunications surveillance,

2. the additional prerequisites in the Criminal Procedure Code for the ordering of measures are met, with the exception that instead of the criminal acts referred to in § 100a para. 1 sentence 1 of the Criminal Procedure Code, the criminal acts set forth in Article 5 of the Rome Statute apply, and

3. it is guaranteed that the provisions of the Criminal Procedure Code regarding the notification of parties affected by the measures (§ 101 para. 1 of the Criminal Procedure Code), regarding the use of the information obtained in other criminal proceedings before the Court (§ 100b para. 5 of the Criminal Procedure Code), and regarding the destruction (§ 100b para. 6 of the Criminal Procedure Code) shall be observed.

(2) Upon request of the Court, the covert measures set forth in § 100c para. 1 of the Criminal Procedure Code shall be ordered. Para. 1 applies *mutatis mutandis*.

§ 60

Presence During Mutual Assistance Activities

(relating to Article 99 para. 1 of the Rome Statute)

Members of the Court and authorized representatives thereof, as well as other persons named in a request by the Court, shall, upon request, be allowed to be present during the undertaking of domestic mutual assistance activities; they may raise questions or propose measures. Members of the Court may take notes as well as make sound, photo, or video recordings of the mutual assistance activities. As long as the affected parties agree, sound, photo, and video recordings are allowed even when the prerequisites of the Criminal Procedure Code therefore are not met. Recordings that are made in accordance with sentence 3 shall not be used in a German criminal proceeding.

§ 61

Court Hearings

(relating to Article 3 para. 2 of the Rome Statute)

(1) Upon request of the Court, the conduct of court hearings in Germany will be allowed.

(2) As to the enforcement of a monetary fine pursuant to Article 71 para. 1 of the Rome Statute, § 43 applies *mutatis mutandis*.

§ 62

Direct Action by the Court

(relating to Article 99 para. 4(b)

of the Rome Statute)

Upon special request and upon agreement with the responsible German authorities, members of the Court and authorized representatives thereof shall be permitted to independently conduct questioning, inspections, and similar evidence gathering in Germany. Mutual assistance may be approved under the conditions within the meaning of Article 99 para. 4(b) of the Rome Statute. The ordering and

implementation of compulsory measures are in all cases reserved for the responsible German authorities and shall be carried out in accordance with German law.

§ 63

Commencement of a German Criminal Proceeding

(relating to Article 70 para. 4 of the Rome Statute)

If the Court requests the commencement of a criminal proceeding pursuant to Article 70 para. 4(b) of the Rome Statute against a person suspected of an offense set forth in Article 70 para. 1 of the Rome Statute, the Court shall be informed as soon as possible of the activities undertaken based upon the request. Upon completion of the proceedings, it shall be sent a copy or a certified copy of the final decision. Remaining objects and files shall be returned, provided that the Court so requests.

Part 6

Outgoing Requests

§ 64

Form and Content of the Request

(relating to Article 93 para. 10,

Article 96 para. 4 of the Rome Statute)

A request made to the Court pursuant to Article 93 para. 10(a) of the Rome Statute for mutual assistance or surrender of persons, as well as the accompanying documents, must have the prescribed form set forth in Article 96 para. 1 in connection with para. 4 of the Rome Statute and the content set forth in Article 96 para. 2 in connection with para. 4 of the Rome Statute.

§ 65

Return of Surrendered Person

(1) When a person is temporarily surrendered by the Court for a criminal proceeding against him in Germany upon request and on the condition that the person will be returned later, the person shall be returned at the agreed time to the Court or to the authorities of a state designated by it, insofar as the Court has not waived this. Prior to implementation of the temporary surrender, arrest of the suspect will be ordered in a written arrest warrant when the Court makes the surrender dependent upon the conduct in custody or when the return otherwise would not be guaranteed. The detention served based upon an order pursuant to the second sentence shall be set-off against detention imposed in a German criminal proceeding corresponding to § 51 of the Criminal Code.

(2) § 55 para. 2 applies *mutatis mutandis* to the arrest warrant. Otherwise § 13 para. 3, § 14 para. 1, 2 sentence 1 and 3, para. 5, §§ 18 and 55 para. 3 – 5 apply *mutatis mutandis*. The Higher Regional Court shall decide regarding objections to the arrest warrant for return surrender or a motion to quash such order only after execution of the arrest based upon the arrest warrant for return surrender.

(3) The arrest decision shall be made by the Higher Regional Court in whose district the court that is involved with the domestic criminal proceedings is located and, prior to commencement of the public action, the Higher Regional Court in whose district the public prosecution office leading the proceedings is located. The ruling is non-appealable. The public prosecution office attached to the Higher Regional Court that has jurisdiction per sentence 1 is responsible for ordering and implementing the return surrender.

§ 66

Temporary

Surrender for a German Proceeding

(1) When a person is in pretrial detention or imprisoned based upon an order of the Court and was temporarily transferred based upon a request by a German court or a German authority made on condition of later return surrender for a domestic criminal proceeding against another for the taking of evidence, he will be returned at an agreed point in time to the Court or the authorities of a state designated by it

insofar as the Court has not waived this. Prior to execution of the temporary surrender, arrest of the suspect will be ordered in a written arrest warrant when the Court makes the surrender dependent upon the conduct in custody or when the return surrender otherwise would not be guaranteed. 55 para. 2 applies *mutatis mutandis* to the arrest warrant. Otherwise, § 13 para. 3, § 14 para. 1, 2 sentence 1 and 3, para. 5, §§ 18 and 55 para. 3 – 5, as well as § 65 para. 3 apply *mutatis mutandis*.

(2) When a person is in pretrial detention or imprisoned in Germany or detained based upon an order of measures for the prevention of crime and the reformation of offenders (*Maßregel der Besserung und Sicherung*), he may be temporarily transferred to the Court for a domestic criminal proceeding when the prerequisites in § 54 sentence 1 number 1, 3, and 4 are met. § 49 para. 4 sentence 2 and 3, as well as § 54 sentence 2 – 5 apply *mutatis mutandis*.

§ 67

Conditions

Conditions that the Court has tied to the mutual assistance shall be complied with.

Part 7

General Provisions

§ 68

Federal Jurisdiction

(1) The Federal Ministry of Justice shall rule on requests for mutual assistance by the Court and on the submission of requests to the Court for mutual assistance in agreement with the Federal Foreign Office and with other federal ministries whose departments are affected by the mutual assistance. If the authority responsible for providing mutual assistance belongs to a different federal ministry, that ministry takes the place of the Ministry of Justice; the decision shall be made in agreement with the

Ministry of Justice and the Federal Foreign Office. The competent federal ministry pursuant to sentences 1 and 2 may transfer the exercise of their authority in individual cases to subordinate federal authorities. The federal government may transfer to a state government (*Landesregierung*) the exercise of its authority regarding decision on a request of the Court pursuant to Part 5 of this law and a request of the Court for mutual assistance in individual cases. The state governments may transfer the authority transferred pursuant to sentence 4 to another authority competent under state law.

(2) The Federal Ministry of Justice, in agreement with the Federal Foreign Office and with other highest federal authorities whose departments are affected, shall reach decisions in particular regarding:

1. referral of a situation pursuant to Article 14 para. 1of the Rome Statute,
2. notification pursuant to Article 18 para. 2 of the Rome Statute and the filing of an appeal pursuant to Article 18 para. 4 of the Rome Statute,
3. challenges pursuant to Article 19 para. 2 of the Rome Statute,
4. filing of an appeal pursuant to Article 19 para. 6 of the Rome Statute,
5. intervention in a proceeding pursuant to Article 72 para. 4 of the Rome Statute,
6. filing of an appeal pursuant to Article 82 para. 2 of the Rome Statute, or
7. request for waiver pursuant to Article 101 para. 2 of the Rome Statute.

(3) To the extent that consultations with the Court or notifications to the Court are foreseen in the Rome Statute or this law, para. 1 sentence 1 applies *mutatis mutandis*. If an office other than the office responsible in sentence 1 becomes aware of acts that under the Rome Statute or this law that makes consultations with or notifications to the Court necessary, that office shall promptly inform the office responsible pursuant to sentence 1 for the leadership of the consultation. To the extent there are certain circumstances of which the Court should be informed or its decision or agreement to be obtained, the office responsible pursuant to sentence 1 shall take the necessary steps therefore. In urgent matters, the office first aware of the circumstances creating a duty of notification or the acts making a decision or agreement of the Court necessary, shall inform the Court of the circumstances or acts beforehand.

(4) The authority of the Federal Office of Criminal Investigations over the transfer of data, bidding, and identification upon a request of the Court, are to be performed in accordance with § 14 para. 1 sentence 1 number 2 and § 15 para. 1-3 of the Law on the Federal Office of Criminal Investigations (*Bundeskriminalamtgesetz*).

§ 69

German Criminal Proceeding and

Earlier Criminal Proceeding before the Court

(relating to Article 20 para. 2,

Article 70 para. 2 of the Rome Statute)

(1) No one shall, based upon a crime described in Article 5 of the Rome Statute or a criminal act described in Article 70 para. 1 of the Rome Statute for which he has already been judged guilty or acquitted by the Court, be brought before another court.

(2) If, during a criminal proceeding taking place domestically against a person, it becomes known that there is a final judgment against that person or he has been acquitted by the Court based upon all or a portion of the acts that are the basis of the German proceeding, the proceeding as to the acts as to which the Court has ruled, at the cost of the State, shall be terminated. If the proceedings are pending before a court, a decision of the court is required for the termination.

(3) The ruling of the Court on the questions of guilt and penalty shall be used as a basis for the decision to be made regarding compensation for criminal prosecution measures.

§ 70

Notification

(relating to Article 27 of the Rome Statute)

If a request of the Court seeks the surrender of or other mutual assistance against a member of the German Federal Parliament (*Bundestag*) or a legislative organ of a state (*Land*) or investigative acts within their territory, the Federal Ministry of Justice or the office responsible pursuant to § 68 para. 1 shall inform the president

of the body to which the affected party belongs or which will be affected by the requested investigative acts of the receipt of the request. Appropriate measures shall be taken to ensure that the implementation of the proceedings before the Court or the surrender proceedings will not be endangered by the notification.

§ 71

Costs

(relating to Article 100,

Article 107 para. 2 of the Rome Statute)

The repayment of costs to be borne by the Court for the mutual assistance may be waived.

§ 72

Use of Other Procedural Provisions

To the extent that this law does not contain particular procedural provisions, the provisions of the Judicature Act (*Gerichtsverfassungsgesetz*) and the Introductory Act to the Judicature Act (*Einführungsgesetz zum Gerichtsverfassungsgesetz*), the Criminal Procedure Code (*Strafprozessordnung*), the Criminal Code (*Strafgesetzbuch*), the Juvenile Court Act (*Jugendgerichtsgesetz*), and the Tax Code (*Abgabeordnung*) apply as appropriate.

§ 73

Limitation of Fundamental Rights

The fundamental right of physical integrity (Article 2 para. 2 sentence 1 of the Basic Law (*Grundgesetz*)), freedom of the person (Article 2 para. 2 sentence 2 of the Basic Law), privacy of correspondence, post, and telecommunications (Article 10 para. 1 of the Basic Law), inviolability of the home (Article 13 of the Basic Law), and the prohibition on extradition (Article 16 para. 2 sentence 1 of the Basic Law), are limited in accordance with this law.