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Part 1

Federal Law n° 135: Cooperation with the International Criminal Court
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Federal law n° 135 on Cooperation with the International Criminal Court
The National Assembly has decided the following:

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Part 1
General Provisions

1. The International Criminal Court

For the purposes of this federal law, the "International Criminal Court" refers to the International Criminal Court established by the Rome Statute of the International Criminal Court of 17 July 1998, Federal Gazette III, no. 180 (hereafter the "Statute"), including its Chambers and the Office of the Prosecutor, the members of these Chambers and of the Office of the Prosecutor, the Presidency and the Registry.

2. The principle of cooperation

1. All organs of the Federal State, in particular the courts, public prosecutors, custodial authorities and security authorities, have an obligation to cooperate fully with the International Criminal Court.
2. The obligation in paragraph 1 above shall consist in particular, pursuant to this federal law and in accordance with the Statute and the Rules of Procedure and Evidence of the International Criminal Court, in granting the Court access to information and documents concerning suspected crimes falling within its jurisdiction, providing it with judicial assistance, surrendering accused persons, accepting sentenced persons for the enforcement of sentences, and enforcing fines and forfeitures.
3. Unless otherwise stipulated in this federal law, the provisions of the law on extradition and judicial assistance (*ARHG*) and of the 1975 Code of Criminal Procedure (StPO) shall apply.

3. Competence of the International Criminal Court

The International Criminal Court, pursuant to the provisions of the Statute relative to the exercise of its jurisdiction, is competent for the prosecution and punishment of persons accused of crimes within the meaning of articles 5(1) (a) to (c), 6 to 8, and 25 of the Statute (genocide, crimes against humanity and war crimes) committed after the entry into force of the Statute (articles 10 to 13 of the Statute).

4. Austrian jurisdiction

1. The competence of the International Criminal Court does not preclude the competence of Austrian courts.
2. There is no Austrian jurisdiction however in respect of crimes for which a person has been sentenced or found not guilty by the International Criminal Court in an enforceable judgement.

5. Challenge of admissibility of proceedings and their deferral to the International Criminal Court

1. Should the International Criminal Court assert its jurisdiction in respect of a case, the Federal Minister of Justice may claim Austrian jurisdiction within the meaning of Article 18 of the Statute or challenge the admissibility of proceedings or the jurisdiction of the Court under Article 19 of the Statute.
2. Admissibility shall be challenged where:
 - (1) the person has been sentenced for or found not guilty of an act by an Austrian court in an enforceable judgement in respect of the act;
 - (2) criminal proceedings are underway before an Austrian public prosecutor or an Austrian court either on account of an act committed in Austria or by an Austrian

national or of a request from the International Criminal Court for arrest and surrender or for the provision of judicial assistance, except where priority should be given to the pursuit of criminal proceedings by the International Criminal Court in consideration of particular circumstances, especially in order to establish the truth or the relation to other crimes giving rise to proceedings before the Court; or

(3) proceedings were already underway before a public prosecutor or a court in Austria on account of the act and were suspended on other than strictly procedural grounds.

3. In order to enable challenges of jurisdiction, the competent public prosecutor shall notify the Federal Ministry of Justice of any ongoing cases involving crimes within the jurisdiction of the International Criminal Court.

4. A decision of the International Criminal Court on the admissibility of a case may be challenged within five days by the Minister of Justice by application lodged with the Court.

5. Where the admissibility of a case before the International Criminal Court or the Court's jurisdiction over it goes unchallenged, or if the International Criminal Court definitively confirms that it has jurisdiction, the competent Austrian court shall take all measures required to secure the person and evidence, and shall temporarily suspend proceedings and provide the Federal Ministry of Justice with a full photocopy of the case file for its transmission to the International Criminal Court. When evidence is enclosed and there is no need to return it, this should be indicated.

6. The Austrian criminal proceedings shall be suspended following a definitive decision by the International Criminal Court. The case may be reopened however subsequent to an application by the public prosecutor following a court ruling, if:

(1) the Prosecutor of the International Criminal Court decides not to proceed with an indictment or drops the charges;

(2) upon review, the International Criminal Court rejects the indictment;

(3) the International Criminal Court determines it does not have jurisdiction or that the case is inadmissible.

6. Referral of a situation to the International Criminal Court

1. The Federal Government shall decide on any referral to the International Criminal Court of a situation within the meaning of Article 14 of the Statute.

2. There shall be no referral of any situation in the cases referred to in paragraph 5(2) above.

7. Surrender of Austrian nationals

(Constitutional provision) Nothing precludes the surrender of Austrian nationals to the International Criminal Court (paragraphs 24 to 28 below) or their transit or transport (paragraph 31 below) or surrender to another State for the enforcement of a sentence passed by the International Criminal Court.

8. Communications with the International Criminal Court

1. As a rule, communications with the International Criminal Court shall take place via the Federal Ministry of Foreign Affairs. Documents relating to the execution of requests shall also be conveyed to the ICC via the Federal Ministry of Foreign Affairs in cases where such requests reach the Austrian judicial or administrative authorities through other channels.

2. Courts and public prosecutors shall address information and any documents relating to the execution of requests to the Federal Ministry of Justice for onward transmission.

3. In urgent cases, and in the context of judicial assistance in criminal matters, the Austrian authorities may communicate directly with the International Criminal Court or via the International Criminal Police Organisation (INTERPOL). Further, in urgent cases, any means of communication may be used which will allow the production of a written record such that the authenticity of the request may be verified. Requests thus transmitted require confirmation via the channel provided for in paragraph 1 above.

4. Requests from the International Criminal Court shall be in writing. The written request and the supporting material shall be accompanied by a certified translation into German. Executions of requests from the International Criminal Court and photocopies for the purpose of deferral of a case to it do not require translation.

9. Obligation to consult, and rejection of requests from the International Criminal Court

1. Matters arising shall be resolved through consultations with the International Criminal Court, in particular where the execution of a request from the International Criminal Court would:

- (1) run counter to a fundamental legal principle (article 93(3) of the Statute);
- (2) prejudice national security (articles 72 and 93(4) of the Statute);
- (3) violate the State immunity or diplomatic immunity of a person or property of a third State (article 98(1) of the Statute);
- (4) conflict with international obligations whereby the consent of a sending State is required to surrender a person of that State to the Court (article 98(2) of the Statute).

2. During the consultations, consideration shall be given to executing the request in other ways or under specific conditions.

3. If a matter cannot be resolved through consultations, the International Criminal Court shall be requested to amend its request. If such an amendment by the International Criminal Court cannot be considered, the request shall be rejected.

4. Any such refusal, in the cases referred to in paragraph 1, sub-paragraphs 2 to 4 above, shall be decided on by the Federal Minister of Justice with the consent of the Federal Minister of Foreign Affairs. The case in paragraph 1, sub-paragraph 2, further requires the consent of the competent federal minister. The International Criminal Court shall be informed of any refusal of a request and the grounds thereof.

10. Costs

1. The costs of executing requests made by the International Criminal Court shall be borne by the Republic of Austria, with the exception of the following:

- (1) costs arising in connection with the surrender of persons in custody for the purposes of obtaining testimony under Article 93 of the Statute;
- (2) the cost of translation, interpretation and transcription;
- (3) the cost of expert opinions or reports requested by the Court;
- (4) costs associated with the transport of a person being surrendered to the Court;
- (5) following consultation, extraordinary costs that may result from the execution of a request.

2. The Federal Ministry of Justice may forgo claiming the costs in paragraph 1 above from the International Criminal Court where these are incidental or there are other valid grounds for so doing.

3. Paragraph 1 above shall apply to requests under paragraph 21 below on the understanding that the costs, without prejudice to the cases in paragraph 1, subparagraphs 1 to 5 above, are to be borne by the International Criminal Court.

11. Confidentiality

Requests from the International Criminal Court and all supporting documents shall be handled confidentially insofar as their execution does not require their disclosure.

12. Free passage

1. Persons summoned by the International Criminal Court from a foreign country to appear before the Court or persons whose presence is required at the seat of the Court shall for such purposes have a right of free passage through Austria, where they may not be prosecuted or punished or detained on account of any act engaged in prior to their entry.
2. Prosecution, punishment or detention on account of an act engaged in prior to entry is admissible if the person summoned overstays the time required for transit through Austria and could actually have left the territory.
3. No safe passage shall be granted where the International Criminal Court requests the arrest of the person summoned (paragraphs 24 to 26 below).

Part 2

Specific provisions

Section 1

13. Investigations and proceedings of the International Criminal Court in Austria

1. The International Criminal Court shall be authorised to question witnesses and accused persons independently in Austria and to inspect public places, without making any changes to them, and to collect further related evidence as long as the Federal Minister of Foreign Affairs is given prior notice thereof and is informed of the time and purpose of the investigations and that they do not involve recourse to or the threat of recourse to coercive measures. In such cases the members and investigators of the International Criminal Court shall not require any special authorisation to carry out their work in Austria.
2. The International Criminal Court shall be authorised to hold trials, unless the Federal Minister of Foreign Affairs refuses such a request owing to grave security concerns in respect of the Republic of Austria or of the International Criminal Court.
3. The Austrian authorities shall support the members and investigators of the International Criminal Court in their independent activities in Austria. In so doing, they may have recourse to coercive measures only where there is a written request for judicial assistance from the Court and such assistance has been ordered by an Austrian court. The admissibility and enforcement of such coercive measures shall comply with Austrian law.

Section 2

14. Judicial assistance and procedural provisions for the execution of requests

1. Judicial assistance shall be provided to the International Criminal Court in accordance with the legislation in force governing judicial assistance in criminal matters.
2. Requests from the International Criminal Court for compliance with certain formal provisions shall be executed when these are compatible with the principles of Austrian criminal procedure. Audio and video recording and transmission of the assistance process shall be permitted whenever sought by the International Criminal Court.
3. Members and investigators of the International Criminal Court and others involved in the proceedings and their legal representatives may be authorised, at the Court's request, to be present at and participate in the assistance process. To this end, they shall be informed of the time and place of the execution of assistance activities.
4. A request from the International Criminal Court for criminal police investigations or information may also be executed without any referral to national courts via the Federal Ministry of the Interior pursuant to Austrian law.

15. Postponement of the execution of requests for assistance

1. The execution of a request for judicial assistance may be postponed:
 - (1) until there is a decision concerning a challenge of admissibility under articles 17 to 19 of the Statute, unless the International Criminal Court has expressly ordered that the Prosecutor may pursue the collection of evidence pursuant to article 18 or 19 of the Statute;
 - (2) for a time period agreed upon with the International Criminal Court if the immediate execution of the request would interfere with ongoing investigations or proceedings in a case other than the one to which it relates.
2. Any such postponement shall be decided upon by the Federal Minister of Justice.
3. Prior to any decision on postponement pursuant to paragraph 1(2) above, it shall be ascertained whether the requested assistance could be provided immediately under certain conditions. A request from the International Criminal Court for measures to secure evidence shall still have to be executed in the event of a postponement.

16. Summonses

1. The International Criminal Court shall be authorised to serve directly by post summonses and other documents on persons who are in the Republic of Austria. This shall not preclude service via the Federal Ministry of Justice.
2. The person summoned is not obliged to acquiesce to the summons. At the request of the person summoned, of the accused or of their counsel, the Federal Ministry of Justice shall obtain from the International Criminal Court the assurance that the person shall not be subject to prosecution, arrest or detention on account of an act engaged in prior to the person's exit from the Republic of Austria.
3. At the request of the International Criminal Court, the Austrian court shall transfer an appropriate advance for travel costs to witnesses and experts summoned by the International Criminal Court who apply for it. Should the witness or expert fail to attend the trial at the International Criminal Court or otherwise fail to fulfil the obligations arising from the summons, such an advance shall be recovered.

17. Questioning of suspects

1. Persons questioned pursuant to a request from the International Criminal Court on suspicion of having committed a crime within its jurisdiction shall, prior thereto, be informed of the crime they are suspected of and of their right to:
 - (1) remain silent without having to fear that such silence will be taken into consideration in the determination of their guilt or innocence;
 - (2) be represented by the counsel of their choice, and, where they have no counsel, to be assigned counsel pursuant to paragraph 41(2) of the Code of Criminal Procedure;
 - (3) be questioned in the presence of counsel, unless they waive this right expressly and voluntarily.
2. Such reference to their rights and the corresponding statement by the persons to be questioned shall be noted in the record. Where the conditions of paragraph 41(2) are fulfilled and the person demands to be questioned in the presence of counsel without any application for assignment of counsel, the procedure in paragraph 41(4) of the Code of Criminal Procedure shall apply.

18. Surrender of prisoners for the purposes of evidence

1. A person in custody in Austria, whether pending trial or serving a sentence, shall at the request of the International Criminal Court be surrendered thereto for the purposes of identification, questioning or comparison or other investigative processes according to conditions to be agreed upon, if the person consents to the surrender.
2. Should the person to be surrendered be in custody on the basis of a request from the International Criminal Court for the enforcement of a sentence pursuant to paragraph 33(1) below, his or her consent to the surrender is not required.
3. The surrender shall not suspend the time spent in custody, whether pending trial or serving a sentence.

19. Disclosure and transmission of information affecting national security

1. (Constitutional provision) At the request of the International Criminal Court, judicial assistance shall be provided through the transmission of objects, documents or photocopies or by granting access to records.
2. Should the documents relate to national security, and in particular to military information, the International Criminal Court shall be consulted to ascertain whether the information can be provided by another source or in another form.
3. If the matter cannot be settled through the consultations in paragraph 2 above, the Federal Minister of Foreign Affairs, with the consent of the competent federal minister, prior to granting access to records or to the transmission of photocopies, shall check whether the interests of confidentiality significantly outweigh the interests of providing evidence for an international prosecution. Should that be the case, the International Criminal Court shall be asked for assurance of the maintenance of confidentiality and for details as to how it will be maintained.
4. The Federal Minister of Foreign Affairs shall, with the consent of the competent federal minister, check whether the assurance given as to maintaining confidentiality is to be deemed sufficient. Access to records or the transmission of photocopies is to be refused where confidentiality cannot be ensured and if there are concerns that disclosure could prejudice national security.
5. Paragraphs 2 to 4 above shall also apply where a person who has been called upon to provide information or evidence refuses to do so on the grounds that disclosure would prejudice national security.
6. Prior to being questioned on the basis of a request for judicial assistance from the International Criminal Court, a person shall be informed of his/her right to refuse to

answer in order to prevent the disclosure of confidential information relating to national security. This shall be noted in the record. The admissibility of the request for judicial assistance in such cases shall be decided upon in the light of paragraphs 2 to 4 above.

20. Transmission of photocopies or information from third parties

Should the International Criminal Court seek judicial assistance such as the transmission of photocopies of documents or information which were given to Austria by another State or by an intergovernmental or international organisation subject to their confidentiality, such documents may only be transmitted to the International Criminal Court with their consent. The Court shall be informed of any refusal thereof.

21. Judicial assistance from the International Criminal Court

1. Should criminal proceedings arise before an Austrian court on account of an act constituting a crime within the jurisdiction of the International Criminal Court or any other serious crime under Austrian law, the Court may be asked for judicial assistance.
2. Requests shall be made in writing. The written request and supporting material shall be accompanied by certified translations in English or French.
3. Courts and public prosecutors shall submit requests addressed to the International Criminal Court to the Federal Ministry of Justice for onward transmission.

Section 3

22. Search

1. Should the International Criminal Court request a search for arrest or should the Austrian authorities otherwise learn of an order for arrest from the Court, the Federal Ministry of the Interior shall seek the arrest of the person for the purpose of surrender to the International Criminal Court if the request or order for arrest contains the necessary details about the person sought and the alleged offence. Referral to the competent court pursuant to paragraph 26(1) of the law on extradition and judicial assistance (*ARHG*) is not required if the person sought is not an Austrian national or if there is no reason to believe that the person is in Austria.
2. Should a person sought by the International Criminal Court be searched for or arrested in Austria, the Federal Ministry of the Interior shall inform the International Criminal Court thereof through the International Criminal Police Organisation (INTERPOL).

Section 4

Custody pending surrender, surrender and transit

23. Offer of surrender

1. Provided there are sufficient grounds to suspect a person thought to be in Austria of a crime within the jurisdiction of the International Criminal Court, and the conditions in paragraph 5(2) above do not apply, after the person has been questioned by the investigating judge, the public prosecutor shall apply to the judge for a report outlining the facts of the case to be submitted to the Federal Ministry of Justice.
2. The Federal Ministry of Justice shall enquire whether the International Criminal Court requires the person to be surrendered. If the accused person is in custody, an appropriate deadline will be set for receipt of the request for surrender. Should the latter not arrive in time, the investigating judge should be informed promptly thereof.

3. The above is without prejudice to the provisions concerning the offer of surrender to the State in which the crime was committed pursuant to paragraph 28(1) of the law on extradition and judicial assistance (*ARHG*).

24. Provisional custody pending surrender

1. In the event of a request from the International Criminal Court for provisional arrest, on application by the public prosecutor, the investigating judge shall order the arrest of the person sought and order provisional custody pending surrender if, on the basis of the facts of the case as reported by the International Criminal Court, there are sufficient grounds to believe that the person to be found in Austria committed a crime within the jurisdiction of the International Criminal Court which would warrant pre-trial custody (paragraph 180 of the Code of Criminal Procedure) had the crime been committed in Austria.

2. Provisional custody pending surrender may not be ordered or continued when the purposes of custody can be achieved through concurrent imprisonment, pre-trial custody or custody pending extradition. In such a case the investigating judge shall order any amendments to the custodial order which, for the purposes of provisional custody pending surrender, are essential to the International Criminal Court. In other respects provisional custody pending surrender shall be subject to the provisions of the Code of Criminal Procedure governing pre-trial custody.

3. Provisional custody pending surrender may be suspended if the request for surrender and the supporting material are not transmitted within 60 days of the arrest. Release does not preclude renewed arrest and surrender should the request for surrender and the supporting material be transmitted at a later time.

4. The investigating judge shall promptly transmit copies of the orders for the imposition, extension or suspension of provisional custody pending surrender for the purpose of informing the International Criminal Court through the International Criminal Police Organisation (INTERPOL) and the Federal Ministry of Justice.

25. Simplified surrender

1. Should a person being held in provisional custody pending surrender on the basis of a request from the International Criminal Court pursuant to paragraph 24(1) above agree to surrender to the International Criminal Court before the end of the time period in paragraph 24(3), the investigating judge shall order the person's surrender, without prejudice to a challenge of admissibility pursuant to paragraph 5(2) above. In such cases the person shall be surrendered to the International Criminal Court as soon as possible.

2. The investigating judge shall inform the person that his or her consent cannot be revoked. The judge's instruction shall be noted in the record.

3. In the event of simplified surrender, there is no need for the International Criminal Court to send a request for surrender and supporting material.

26. Custody pending surrender and orders for surrender

1. In the event of a request from the International Criminal Court for the arrest and surrender of an accused person, on application by the public prosecutor, the investigating judge shall initiate the surrender procedure and order the arrest of the accused person, his or her custody pending surrender and, in accordance with the following paragraphs, his or her surrender to the International Criminal Court. The investigating judge shall not have competence to consider the allegations giving rise to the arrest warrant or the grounds therefor.

2. Should there be significant doubts as to the identity of the person arrested, the investigating judge shall order appropriate investigations or ask the International Criminal Court to submit additional information. In any event, the investigating judge shall inform the accused person of the grounds of the warrant of arrest issued against him or her by the International Criminal Court and about his or her rights to challenge the surrender on account of a violation of the principle of “*ne bis in idem*” in article 20 of the Statute or of a lack of jurisdiction on the part of the International Criminal Court pursuant to articles 17 to 19 of the Statute. In addition, the person shall be informed of his or her right, pending a surrender order, to apply for interim release. The accused person shall be provided with copies (photocopies) of the arrest warrant or of the relevant allegations and provisions of the Statute together with the translations of them provided by the International Criminal Court.
3. Should the accused person wish to challenge the surrender on account of a violation of article 20 of the Statute or a lack of jurisdiction on the part of the International Criminal Court, the International Criminal Court shall be informed thereof and be provided with the requisite documents. Concurrently, the Court shall be notified of whether the challenge has a suspensive effect.
4. The decision on surrender shall be deferred only in the event of a challenge of admissibility pursuant to paragraph 5(2) above until a decision by the International Criminal Court has been taken. In the event of a challenge to the jurisdiction of the Court pursuant to articles 17 to 19 of the Statute by a third country, the procedure in paragraph 28 below shall apply.
5. Until surrender is ordered, the accused person has the right to apply for interim release. When deciding on such an application it shall be ascertained whether there are urgent and exceptional circumstances which justify interim release and whether the purpose of detention may be achieved by more lenient means (paragraph 180(5) of the Code of Criminal Procedure) regardless of the gravity of the alleged crimes. Such an application shall have no suspensive effect.
6. An application pursuant to paragraph 5 shall be notified to the International Criminal Court indicating that it has the right to submit a recommendation within seven days. The recommendation shall be taken into consideration in the decision on the application for release.
7. Should the International Criminal Court in its recommendation or the public prosecutor plead against the release of the accused person, the investigating judge shall promptly decide on the application in a custody hearing.
8. A decision dismissing the application for interim release by the accused person may be appealed against by the latter within three days before the relevant appeals court. Such an appeal shall have no suspensive effect.
9. Orders into custody pending surrender and orders for surrender may be appealed against solely pursuant to paragraph 1 of the Constitutional Appeals Law (Austrian Federal Law Gazette 864/1992). The order initiating the surrender process is not open to appeal.

27. Transfer to the International Criminal Court

1. Once the order for surrender to the International Criminal Court is enforceable, the investigating judge shall instruct the custodial authorities to promptly transfer the person to be surrendered to the International Criminal Court. Unless there are serious security concerns or the International Criminal Court seeks another form of delivery, the person to be surrendered shall be conveyed by air under the escort of Austrian officials.

2. The time of surrender shall be agreed with the International Criminal Court. Should circumstances prevent the transfer of the person to be surrendered, a new time will be agreed for the surrender.
3. The investigating judge shall submit a copy of the order for surrender to the Federal Ministry of Justice for onward transmission to the International Criminal Court.

28. Provisional transfer and repeal of the order for surrender

1. In the event of criminal proceedings against the accused person in Austria or if the latter is serving a sentence in Austria for matters other than those for which surrender to the International Criminal Court was ordered, the person may be transferred provisionally to the International Criminal Court under conditions to be agreed on with it.
2. The investigating judge shall promptly suspend custody pending surrender and repeal the order for surrender if:
 - (1) the International Criminal Court so requests or otherwise revokes its request for surrender;
 - (2) it is ascertained that in all likelihood the person arrested is not the person sought;
or
 - (3) the International Criminal Court determines its lack of jurisdiction or the inadmissibility of the proceedings before it.

29. Competing requests

1. Should the Republic of Austria receive a request for surrender from the International Criminal Court and a request for extradition from another State in respect of the same person, the Federal Minister of Justice shall decide which request is given priority pursuant to article 90 of the Statute.
2. Should the Federal Minister of Justice give priority to a request for extradition from another State over a request for surrender from the International Criminal Court, and the request for extradition is subsequently rejected or withdrawn, the International Criminal Court shall be notified of this without delay.

30. Speciality

1. A person surrendered to the International Criminal Court pursuant to this federal law may not be prosecuted, taken into custody or sentenced for any offence committed prior to transfer other than that for which he or she is being surrendered.
2. At the request of the International Criminal Court, the person may be released from the restrictions in paragraph 1. Prior to a decision in respect of such a request, the International Criminal Court may be requested to transmit a record regarding the statements of the person surrendered and additional information.
3. The decision on such a request shall be taken by the Federal Minister of Justice. Release from the said restrictions shall be granted if the offence in respect of which the request is made falls within the jurisdiction of the International Criminal Court and there are no grounds for challenging the admissibility of proceedings before the International Criminal Court pursuant to paragraph 5(2) above.

31. Transit and transport

1. At the request of the International Criminal Court, persons may be transported through Austria and held in custody to secure such transit.
2. There is no need to apply for authorisation where the person is conveyed by air and no landing is scheduled on Austria territory.

3. In the event of an unscheduled landing, the person in transit shall be arrested, and the International Criminal Court shall be requested to transmit a request for transit together with the documents referred to in article 89(3)(b) of the Statute.

4. The person in transit shall be released if the request for transit has not been received within 96 hours. Such release shall not preclude a renewed arrest on the basis of a request pursuant to paragraph 24(1) or 26(1) above.

5. The decision on transit shall be taken by the Federal Minister of Justice with the consent of the Federal Minister of the Interior. Such transit shall be approved unless it would impede or delay surrender. A domestic conviction for a criminal offence not within the jurisdiction of the International Criminal Court shall not prevent transit. The authorisation of transit is not open to appeal.

6. Paragraphs 1, 2, 3 and 5 shall apply at the request of the International Criminal Court or of a State that has agreed to enforce a sentence passed by the Court for the transit of persons through the territory of the Republic of Austria on the understanding that the International Criminal Court shall be requested to transmit a request for transit together with a copy of the enforceable judgement in the event of an unscheduled landing.

Section 5

32. Enforcement of sentences of imprisonment

General provisions

1. Through a statement addressed to the International Criminal Court, the Federal Minister of Foreign Affairs may, with the consent of the Federal Minister of Justice, state Austria's willingness to accept sentenced persons for the enforcement of sentences of imprisonment passed by the International Criminal Court. The statement may set a limit on the time for transfer for enforcement and on the number and kind of sentenced persons.

2. The sentences of imprisonment passed by the International Criminal Court shall be enforced directly. Sentences passed by the International Criminal Court may not be modified. In the light of instructions from the International Criminal Court, enforcement shall be subject to the relevant provisions of Austrian law on the understanding that the conditions of detention correspond to those under which persons convicted of similar crimes are held in Austria.

3. The enforcement of sentences of imprisonment passed by the International Criminal Court shall be subject to the supervision of the Court. At the request of the International Criminal Court, its members shall be granted access to prisons.

4. Should a person serving a sentence of imprisonment imposed by the International Criminal Court in Austria be eligible under Austrian law for more lenient treatment involving unguarded work outside the prison, the International Criminal Court shall be informed thereof before such work is allowed. Its opinion shall be taken into consideration in the decision.

5. Sentenced persons within the meaning of this section are to be granted unimpeded and confidential written communication with the International Criminal Court.

33. Procedure for the acceptance of enforcement of sentences

1. Should the International Criminal Court decide that a convicted person shall serve his or her sentence of imprisonment in Austria and seek the transfer of the convicted person for the enforcement of his/her sentence, it should address itself to the Federal Minister of Justice.

2. The Federal Minister of Justice may only refuse to accept a person for the enforcement of his or her sentence, which as stated complies with paragraph 32(1) above, if it would give rise to unacceptable consequences for the security and public order of the Republic of Austria. Enforcement of the sentences of Austrian nationals may not be refused. The decision of the Federal Minister of Justice is not open to appeal.

3. The decision by the Federal Minister of Justice shall be transmitted to the International Criminal Court with a request to suggest a time and place for the transfer of the sentenced person to the Austrian authorities.

4. Should the sentenced person escape from prison before the expiry of the sentence, the court of enforcement (paragraph 16 of the law on enforcement of sentences) shall issue a warrant of arrest and initiate a search. Should the person sought subsequently be arrested abroad, the court shall, even without an application from the public prosecutor, seek extradition custody pursuant to paragraph 69 of the law on extradition (*ARHG*) and transmit the documents required under paragraph 68 of the said law to the Federal Minister of Justice. The Federal Minister of Justice shall seek extradition if the requested State does not approve surrender without an extradition procedure, and the International Criminal Court has not decided otherwise.

5. The time spent in custody in the requested State or at the International Criminal Court shall be deducted from the sentence to be served.

6. Should persons who have escaped while serving a sentence passed by the International Criminal Court be arrested in Austria, they shall be surrendered to the State ensuring the enforcement of their sentence according to the provisions which apply for the surrender of persons to the International Criminal Court.

34. Speciality of enforcement

1. A convicted person transferred to Austria for the enforcement of a sentence passed by the International Criminal Court may not be prosecuted, punished, detained or extradited to a third country on account of an act engaged in prior to the said transfer, which was not part of the judgement of the International Criminal Court, without its consent.

2. The speciality of enforcement shall not preclude such a measure if:

(1) following release, the person did not leave the territory of the Republic of Austria within 30 days, even though he or she was able and free to do so;

(2) the person leaves the territory of the Republic of Austria, by whatever means, and returns voluntarily, or is returned legally from a third country; or

(3) the International Criminal Court forgoes applying the rule of speciality.

35. Reports about enforcement

At least once a year, and on completion of the sentence, the prison at which the convicted person is serving the sentence of imprisonment passed by the International Criminal Court shall submit a conduct and health report to the Federal Ministry of Justice. The Federal Ministry of Justice is to be notified at once if the convicted person escapes before the expiry of the sentence or if enforcement is no longer possible for other reasons. The International Criminal Court shall promptly be acquainted with such reports.

36. Conditional release and pardon

1. (Constitutional provision) Decisions regarding the conditional release, pardon or reduction of sentence of a person sentenced by the International Criminal Court shall be taken by the International Criminal Court.
2. Should the convicted person make an application for conditional release, pardon or a reduction of sentence, it shall be submitted to the Federal Ministry of Justice for forwarding to the International Criminal Court.
3. The International Criminal Court should be informed ex-officio of any circumstances which are favourable for conditional release, pardon or a reduction of sentence.

37. Transfer of enforcement of sentences to another State

1. Any request from the International Criminal Court for the surrender of the sentenced person to another State for the continuation of the enforcement of a sentence shall be promptly complied with.
2. Should a sentenced person ask to serve his or her sentence of imprisonment in another State, the request should be forwarded to the International Criminal Court.

38. Termination of sentences of imprisonment

1. Should the International Criminal Court indicate that the enforcement of a sentence of imprisonment should be terminated, the sentenced person shall be released promptly, or be transferred to the authority responsible for the enforcement of foreign orders, unless Austrian criminal proceedings or extradition proceedings are underway, or grounds exist to initiate such proceedings.
2. Prosecution, punishment or extradition on account of an act engaged in prior to the acceptance of the enforcement of sentences may only proceed consistent with paragraph 34 above.

39. Costs

1. The ordinary costs of enforcement of sentences shall be borne by Austria.
2. Other costs, including the cost of surrender of the sentenced person from or to the Court or from one State of enforcement to another and the cost of expert opinions or reports requested by the International Criminal Court shall be borne by the International Criminal Court.

40. Enforcement of sentences of imprisonment for offences against the administration of justice

Having regard to the enforcement of sentences of imprisonment imposed by the International Criminal Court for offences against the administration of justice pursuant to article 70 of the Statute, this federal law, with the exception of the provisions in paragraphs 32(1) and (5), 33(1) to (5), and 39 above, shall not apply. The procedure shall comply with paragraphs 65 to 67 of the law on extradition and judicial assistance (*ARHG*).

Section 6

41. Acceptance of enforcement of fines and forfeiture measures

1. The competent court shall comply with requests from the International Criminal Court for the enforcement of orders involving fines or forfeiture measures if it appears likely that the fine can be collected in Austria or if the objects or assets referred to in

the order are to be found in Austria. Prior to approving such enforcement, the person ordered to pay the fine and persons claiming rights to the objects or assets shall be heard. The sentenced person need not be heard where he or she cannot be reached.

2. The decision on a request for enforcement of a fine shall be taken by the Court of First Instance as referred to in paragraph 26(1) of the law on extradition and judicial assistance (*ARHG*); the decision concerning a request for a forfeiture measure shall however be taken by the Court of First Instance of the district in which the asset or object is to be found, in each case by a panel of three judges (paragraph 13(3) of the Code of Criminal Procedure) by way of a court decision. The fine or forfeiture measure ordered by the International Criminal Court may not be modified. The court decision may be appealed against by the public prosecutor or the person concerned within 14 days before the Court of Appeal.

3. A fine ordered by the International Criminal Court shall be enforced in euros. The official exchange rate as of the day of the International Criminal Court's order shall be used should the amount of the fine to be enforced be stated in a currency other than euros.

4. Any payment facilities granted by the International Criminal Court in respect of the date of payment of fines or their payment in instalments shall be taken into consideration.

5. Should the enforcement of a fine imposed by the International Criminal Court prove to be partly or wholly impossible, the International Criminal Court shall be informed thereof.

6. If the International Criminal Court cannot collect a fine but instead sentences the convicted person to imprisonment and requests Austria to enforce the sentence, the provisions in paragraphs 32 to 39 above shall apply.

7. Should the enforcement of a forfeiture measure ordered by the International Criminal Court prove impossible, measures shall be taken in accordance with paragraph 19(1) to (4) of the relevant law on financial measures (*FinStrG*) with a view to collecting amounts corresponding to the value of the assets or objects to be seized.

8. The proceeds from the enforcement of fines and forfeiture measures are to be transferred to the International Criminal Court, subject to the provision in paragraph 9 below.

9. Fines, objects and other assets may be retained in the Republic of Austria if:

(1) the injured person resides or usually lives in Austria and they are to be granted to him or her;

(2) an authority files a claim to them;

(3) a person not involved in the criminal offence claims rights thereto;

(4) they are required for legal proceedings in Austria.

10. Should a person file a claim pursuant to paragraph 9 above, any consideration as to whether to grant the money or assets requires the consent of the International Criminal Court.

11. The provisions of this section shall also apply to the enforcement of fines ordered by the International Criminal Court for offences against the administration of justice pursuant to article 70 of the Statute.

42. Acceptance of enforcement of reparation orders

1. A request from the International Criminal Court for the enforcement of a binding order by the Court for reparations in the form of money shall be admissible if it is likely that it can be collected in Austria.

2. Enforcement shall comply with paragraph 41 above.
3. Enforceable orders of the International Criminal Court for the return of property or proceeds from criminal offences shall be regarded as determinations by foreign courts which fulfil the conditions in paragraph 79(2) of the execution order.

Section 7

43. Effect of the orders of the International Criminal Court

(Constitutional provision) Where evidence is taken in respect of reparations for victims in proceedings before the Austrian courts from a sentenced person, an enforceable judgement of the International Criminal Court shall represent sufficient evidence of the determinations made. Proof of the inaccuracy of determinations shall be admissible.

Section 8

44. Accepting to prosecute offences against the administration of justice

1. At the request of the International Criminal Court, the offences listed in article 70 (1) of the Statute may be prosecuted in Austria where they have been committed on Austrian territory or by Austrian nationals.
2. In judging such offences, the International Criminal Court shall be regarded as if it were an Austrian court and its officials as if they were Austrian officials.
3. Paragraph 60 of the law on extradition and judicial assistance (*ARHG*) shall be applied with the understanding that references therein to the requesting State relate to the International Criminal Court.

Part 3

45. Entry into force and final provisions

1. This federal law shall enter into force on 1 October 2002.
2. The references in this federal law to other federal legal provisions shall be understood to refer to the versions thereof presently in force.
3. This federal law shall be enforced by the Federal Ministers of Foreign Affairs, Justice and the Interior, in their respective areas of competence.

Klestil
Schussel