

criminal proceedings regardless of whether the foreign proceedings are conducted by a court or by an executive authority and whether the legal assistance is to be provided by a court or by an executive authority.

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

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Section 60 Rendering Assistance

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

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Section 61 Decision of the Court

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

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

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

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

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Section 61 a Transmission of Personal Data Without Request

(1) Courts and the public prosecution service may transmit personal data from criminal proceedings to the public authorities of another State as well as to Inter-State and supranational authorities without request by the latter if

1. transmission without request to a German court or to a German public prosecution service were admissible,
2. facts exist which warrant the expectation that the transmission is necessary
 - a) in order to prepare a request by the receiving State for assistance for the purpose of prosecution or enforcement of a sentence for an offence which would be punishable by a maximum term of more than five years' imprisonment under German law, and the conditions for granting assistance on request would be fulfilled if such a request was made or
 - b) in the individual case to avert a danger to the existence or security of the State, or to the life, limb or freedom of a person, or to property of significant value, protection of which is in the public interest, or to prevent a crime as described under a) above, and

3. the public authority to which the data are transmitted is competent to implement the appropriate measures under no. 2 above.

If an adequate level of data protection is ensured in the receiving State, the 1st sentence no. 2 a) above shall apply with the proviso that an offence punishable under German law by a maximum term of more than five years' imprisonment shall be substituted by an offence of significant gravity.

(2) The transmission shall occur under the condition that

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

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

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

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Section 61 b **Joint Investigation Teams**

(1) If an international treaty so provides joint investigation teams may be established. A member of the joint investigation team seconded by a foreign State may be allowed to conduct investigations under the supervision of the relevant German team member if this has been previously approved by the sending State.

(2) Other persons may participate in the joint investigation team based on the law of the participating States or any agreement between them.

(3) The German officers participating in the joint investigation team may directly transmit information obtained in the execution of their office, including personal data, to the members sent by other States, insofar as this is necessary for the work of the joint investigation team.

(4) Insofar as the transmission of the information obtained under subsection (3) above requires a specific agreement amending the purpose of its use such an agreement is admissible if a request for the use of the information was admissible.

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Section 61 c **Audiovisual Examination**

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

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Section 62 **Temporary Transfer to a Foreign Country for Foreign Proceedings**

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

1. after being advised of his rights by a judge he consents to such transfer and his consent is entered into the