

Draft Bill

of the Federal Ministry of Justice

Draft Regulation introducing the electronic legal transactions and electronic file management at the Federal Office of Justice in proceedings for the enforcement of pecuniary claims under the German-Swiss Police Treaty

(Swiss Money Claims e-Law and Records Regulation – CHGeldERAV)

A. Problem and objective

With the entry into force of the Treaty of 5 April 2022 between the Federal Republic of Germany and the Swiss Confederation on cross-border police and judicial cooperation (German-Swiss Police Treaty) on 1 May 2024 (Federal Law Gazette 2024 II No 222), for the first time in Chapter VI, rules on cooperation under enforcement law between the German and Swiss authorities in the event of infringements of road traffic regulations were put into effect. The implementation thereof shall be governed by the Act implementing the provisions of the Treaty of 5 April 2022 on enforcement assistance between the Federal Republic of Germany and the Swiss Confederation on cross-border police and judicial cooperation (German-Swiss-Police Treaty Implementation Act – DECHPoIVtrUG)), which entered into force on the same day regulating jurisdiction and procedure, including legal protection. In accordance with Section 2 DECHPoIVtrUG, the Federal Office of Justice (BfJ) was designated as the competent authority, which carries out the tasks of implementing Articles 48 to 51 of the German-Swiss Police Treaty as the central authorisation and enforcement authority for incoming and outgoing requests for enforcement assistance.

The BfJ has not yet been able to conduct enforcement assistance transactions on the basis of the German-Swiss Police Treaty and the associated files electronically due to a lack of a legal basis. Since neither the German-Swiss Police Treaty nor the DECHPoIVtrUG contain any special provisions in this regard, the corresponding provisions of the Act on International Mutual Assistance in Criminal Matters (IRG) apply *mutatis mutandis* in the implementation of Articles 48 to 51 of the German-Swiss Police Treaty pursuant to Section 1 DECHPoIVtrUG. Accordingly, in accordance with Section 77a(1) Sentence 1 and Section 77a(4) Sentence 1 of the IRG, an ordinance in accordance with Section 77b of the IRG is required for the authorisation of electronic legal transactions and electronic file management at the BfJ, in which the Federal Ministry of Justice determines the legal, organisational, and technical framework conditions.

The introduction of electronic legal transactions and electronic file management within the scope of the German-Swiss Police Treaty can contribute to simplifying and speeding up the processing of incoming and outgoing enforcement assistance requests; It may also relieve the authorities, businesses, and citizens involved in enforcement assistance. These arrangements for relieving the burden should be availed of as quickly as possible.

This draft is in the context of the jeopardised timely achievement of the objectives of the UN General Assembly resolution of 25 September 2015 'Transforming our world: the UN 2030 Agenda for Sustainable Development' and contributes to the achievement of SDG 16, promoting the rule of law at national and international levels and building effective institutions at all levels.

B. Solution

Based on Section 1 of the DECHPoIVtrUG in conjunction with Sections 77a and 77b of the IRG, a regulation is to be issued for the federal government allowing enforcement assistance under the German-Swiss Police Treaty through electronic legal transactions. In addition, electronic file management is to be introduced for the BfJ, also in the area of enforcement assistance on the basis of the German-Swiss Police Treaty.

The draft Regulation is closely aligned with the Regulation on the introduction of electronic legal transactions and electronic file management at the Federal Office of Justice within the scope of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (Framework Decision-Money Sanctions-E-Legal Transactions-and-File Management Regulation – RbGeldERAV) of 18 October 2017 (Federal Law Gazette I p. 3582), as amended by Article 17 of the Act of 7 July 2021 (Federal Law Gazette I p. 2363). This is logical, since the rules of jurisdiction and procedure established by the DECHPoIVtrUG were modelled on Sections 86 et seq. of the IRG (Bundestag document 20/8650), which in turn serve the transposition of Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties (OJ L 76 of 22 March 2005; (hereafter: RbGeld).

C. Alternatives

None.

D. Budgetary expenditure exclusive of compliance costs

With the complete conversion of enforcement assistance to an electronic specialist procedure, this Regulation reduces the additional personnel requirements of the Federal Government, particularly in the area of the office, as stated in the DECHPoIVtrUG. In the start-up phase of the German-Swiss Police Treaty starting in 2024, they will be reduced by approximately EUR 170,215, and in its operating phase from 2025 by approximately EUR 482,536 annually.

The Regulation does not create additional expenditure for the budgets of the federal states (Länder) and municipalities.

E. Compliance Costs

E.1 Compliance Costs for Citizens

Citizens shall not incur any additional compliance costs.

E.2 Compliance costs for Businesses

Businesses shall not incur any additional compliance costs.

Administrative costs under this heading arising from information obligations

None.

E.3 Compliance costs for the authorities

At the federal level, the annual compliance costs of the federal government are reduced on balance by approximately EUR 375,940.

There will in principle be no compliance costs for states as the Ordinance does not entail any obligations on states to use electronic legal transactions or electronic records. If the states decide to opt for electronic legal transactions, this may entail certain compliance costs for them because the requisite technical infrastructure must be available. However, the overall cost should be low. In any case, the possible additional costs are offset by a slight cost saving, which results from the reduction in communication by means of postal and fax mail.

F. Further costs

There are no costs for the social security systems and the economy, especially for small and medium-sized enterprises. No impact is anticipated on unit prices or general price levels, or particularly on consumer price levels.

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(Swiss Money Claims E-Law and Records Regulation – CHGeldERAV)¹⁾

Dated ...

On the basis of Section 1 of the German-Swiss Police Treaty Implementation Act of 14 December 2023 (Federal Law Gazette 2023 I) No 365; 2024 I No 165) in conjunction with Section 77b(1) No 1 to 4, (3) Sentences 1, 2, and 4 of the IRG, as last amended by Article 20 No 2 of the Act of 12 July 2024 (Federal Law Gazette 2024 I No 234), the Federal Ministry of Justice decrees:

Section 1

Electronic legal transactions with the Federal Office of Justice

(1) With the Federal Office for Justice it is possible, from ... [insert: date of entry into force pursuant to Section 7] as part of proceedings pursuant to Articles 48 to 51 of the Treaty of 5 April 2022 between the Federal Republic of Germany and the Swiss Confederation on cross-border police and judicial cooperation (German-Swiss Police Treaty) (Federal Law Gazette 2023 II No 339, p. 3; 2024 II No 222) in connection with the DECH-PoIVtrUG of 14 December 2023 (Federal Law Gazette 2023 I No 365); 2024 I No 165) including enforcement proceedings, to submit electronic documents if:

1. for the provision of enforcement assistance, the submission of written documents, including originals and certified copies, is necessary; or
2. explanations, requests or justifications must be expressly drafted or signed in writing.

(2) The Federal Office of Justice shall announce the form necessary for the transmission and processing of electronic documents as per (1), in particular, the technical formats and parameters, as well as the technically feasible means of transmission on its website, www.bundesjustizamt.de.

Section 2

Signature requirements

(1) Electronic documents in accordance with Section 1(1) shall be accompanied by a qualified electronic signature.

(2) The qualified electronic signature may be replaced by a simple electronic signature if the electronic document is submitted via a secure means of transmission. Secure means of transmission include:

¹⁾ Notified in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

1. the transmission route between the special electronic lawyer's mailboxes pursuant to Sections 31a and 31b of the Federal Lawyers' Act (Bundesrechtsanwaltsordnung) or a corresponding electronic mailbox established on a legal basis and the electronic post office of the Federal Office of Justice,
2. the transmission route between a post office box of an authority or a legal person under public law established after an identification procedure has been carried out and the electronic post office of the Federal Office of Justice,
3. the means of transmission between an electronic mailbox of a natural or legal person or other association established after an identification procedure has been carried out and the electronic mail office of the Federal Office of Justice,
4. the transmission route between a mailbox and dispatch service of a user account used after conducting an identification procedure within the meaning of Section 2(5) of the Online Access Act (Onlinezugangsgesetz) and the electronic mail department of the Federal Office of Justice.

(3) In addition to the secure means of transmission listed in (2) Sentence 2, there is also a secure means of transmission if:

1. an encrypted means of transmission based on the OSCI protocol standard or comparable standard is used and
2. the Federal Office of Justice has determined for this transmission method that the integrity and authenticity of the data are guaranteed.

Section 3

Form

For outgoing requests for enforcement assistance, the Federal Office of Justice provides an electronic form via its website www.bundesjustizamt.de, which, in addition to information on the decision to be enforced and the person concerned, also enables the declaration required under Article 48(3) Sentence 3, of the German-Swiss Police Treaty.

Section 4

Authorisation of electronic record-keeping

The Federal Office of Justice may, from ... [\[insert: date of entry into force pursuant to Section 7\]](#) keep the files electronically in proceedings pursuant to Articles 48 to 51 of the German-Swiss Police Treaty in conjunction with the DECHPoIVtrUG, including the files in enforcement proceedings;

Section 5

Management of electronic files

(1) It shall be ensured that the principles of proper file management are complied with by means of appropriate technical and organisational measures in accordance with the latest technological standards.

(2) According to the latest technological standards, the transfer of documents and objects of inspection (originals) in paper form into electronic form must ensure that the electronic document to be included in the file is visually and substantively identical to the original document if it is made legible. The transfer of an original to an electronic document may be waived if the transfer requires disproportionate effort.

(3) Where an electronic file contains both electronic and paper elements, a reference to the other part shall be included when accessing each of the parts.

Section 6

Data protection, data security and accessibility

(1) The Federal Office of Justice documents the state-of-the-art technical and organisational measures it has taken to ensure data security and data protection in accordance with the Federal Data Protection Act (BDSG), in particular, the requirements referred to in Section 64 of the (BDSG).

(2) So far as electronic legal transactions and electronic file management are permitted by this Regulation, accessibility in accordance with the Accessible Information Technology Regulation must be ensured.

Section 7

Entry into force

This Ordinance shall enter into force on the day following its promulgation.

Explanatory notes

A. General part

I. Objective of and need for the provisions

With the entry into force of the Treaty of 5 April 2022 between the Federal Republic of Germany and the Swiss Confederation on cross-border police and judicial cooperation ('the Treaty'): on 1 May 2024, a procedure was introduced in the Federal Republic of Germany for simplified cooperation under enforcement assistance law between the German and Swiss authorities in the case of infringements of road traffic regulations. The details of the proceedings, including legal protection, are laid down in the Act on the Implementation of the Enforcement Assistance Provisions of the Treaty of 5 April 2022 between the Federal Republic of Germany and the Swiss Confederation on Cross-Border Police and Judicial Cooperation (German-Swiss Police Treaty Implementation Act [DECHPoIVtrUG]), which entered into force on the same day. The tasks under Articles 48 to 51 of the German-Swiss Police Treaty as the central German granting authority for all incoming and outgoing requests were entrusted to the Federal Office of Justice (BfJ). Taking into account the typical procedural timelines, it is expected that the first requests for enforcement assistance will be made in 2024 on the basis of the German-Swiss Police Treaty. In this area, it is expected that there will be around 5,000 incoming and around 6,000 outgoing requests per year.

Insofar as the German-Swiss Police Treaty or the DECHPoIVtrUG does not contain any special provisions, the corresponding provisions of the (IRG) shall apply in the implementation of Articles 48 to 51 of the German-Swiss Police Treaty pursuant to Section 1 DECHPoIVtrUG. Sections 77a and 77b of the IRG provide for the possibility of introducing electronic legal transactions and electronic file management. The enactment of an ordinance as per Section 77b of the IRG is necessary to do this. The power to issue ordinances is now to be used in the field of enforcement assistance on the basis of the German-Swiss Police Treaty.

With the entry into force of the German-Swiss Police Treaty, enforcement assistance with Switzerland in the field of road traffic will be put on a legal basis for the first time. The aim is to design electronic enforcement assistance services in accordance with Chapter VI of the German-Swiss Police Treaty from the outset, as far as possible, and to maintain electronic files.

In view of the projected number of cases, a paper-dominated procedure would be too time-consuming and costly. The storage of paper records entails high costs for the Federal Office of Justice. The introduction of electronic legal transactions and electronic file management is intended to relieve the BfJ and other German and Swiss authorities and courts involved in the enforcement assistance procedure. It will allow for modern and efficient proceedings. It is also intended to provide citizens, businesses, and legal representatives with a modern form of communication, the use of which is optional.

In the future, legal adjustments will also be made in other areas concerning e-justice and e-filing, with the aim of further promoting the already advanced digitalisation of the judiciary in all procedural rules. In order to take into account the current framework conditions of electronic legal transactions, a timely abolition of De-Mail as a secure means of transmission is sought in the Rules of Procedure (see the draft law on the development and testing of an online procedure in civil justice; Bundestag document 20/13082). This adaptation is to be anticipated for electronic legal transactions within the scope of the German-Swiss Police Treaty. Section 2(2) Sentence 2 of the draft therefore no longer provides for

De-Mail as a secure means of transmission. In addition, the legal bases in Sections 77a and 77b of the IRG are to be recast as part of the planned reform of the IRG: The rules on electronic legal transactions and electronic file management are to be updated and, for the sake of clarity, largely transferred to the IRG instead of the previous references in the (StPO). However, their entry into force cannot be awaited, as the BfJ must be relieved as soon as possible with regard to enforcement assistance on the basis of the German-Swiss Police Treaty. The establishment of an initial paper-based procedure and the associated postponement of the transition to an exclusively electronic procedure do not appear appropriate in this context, as a four-digit caseload is already expected in 2024. In addition, mutual legal assistance must address enforcement and country-specific aspects that can be specifically accounted for by this Regulation. At the same time, the aim is to align as closely as possible with the regulatory projects prepared in parallel in order to achieve the greatest possible degree of harmonisation.

This draft is in the context of the jeopardised timely achievement of the objectives of the UN General Assembly resolution of 25 September 2015 'Transforming our world: the 2030 Agenda for Sustainable Development' and contributes to the achievement of SDG 16, promoting the rule of law at national and international levels and building effective institutions at all levels.

II. Main content of the draft

The Regulation is based on Sections 77a and 77b of the IRG, which apply *mutatis mutandis* pursuant to Section 1 of the DECHPolVtrUG, and lays down rules on enforcement assistance on the basis of the German-Swiss Police Treaty. The Federal Office of Justice is the central German awarding authority for this enforcement assistance for incoming and outgoing requests. Electronic legal transactions have been introduced for this purpose at the Federal Office of Justice and electronic record-keeping by the Federal Office of Justice is also envisaged. Section 77b(3) Sentences 1, 2 and 4 IRG permits the restriction of electronic legal transactions and electronic file management to individual criminal mutual legal assistance procedures.

In enforcement assistance proceedings under the German-Swiss Police Treaty, communication between authorities and courts is paramount. For private individuals or companies involved in the enforcement assistance procedure, electronic legal transactions are of practical relevance, particularly with regard to the possibility of lodging appeals.

1. Electronic legal transactions

The national authorities, public prosecutors' offices, and courts, as well as Swiss authorities, are enabled to conduct electronic legal transactions with the BfJ, insofar as enforcement assistance in the area of road traffic offences is concerned. The same applies to legal relations with citizens and businesses.

The Regulation is essentially based on existing regulations on electronic legal transactions, thereby linking existing technical and organisational structures at the federal and state levels. This will ensure the seamless exchange of electronic documents. Serving as a model for this was the Regulation on the introduction of electronic legal transactions and electronic file management at the Federal Office of Justice within the scope of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (Framework Decision-Money Sanctions-E-Legal Transactions-and-File Management Regulation – RbGeldERAV) of 18 October 2017 (Federal Law Gazette I p. 3582), as amended by Article 17 of the Act of 7 July 2021 (Federal Law Gazette I p. 2363). A close alignment with the RbGeldERAV is also logical from a legal perspective, as the jurisdiction and procedural rules established by the DECHPolVtrUG were modelled on Sections 86 et seq. of the IRG (Bundestag document 20/8650, p. 1), which in turn implements Framework Decision 2005/214/JHA on the appli-

cation of the principle of mutual recognition to financial penalties (OJ L 76 of 22 March 2005; (hereafter: RbGeld).

This Regulation also dispenses with the detailed technical requirements necessary for the introduction of electronic legal transactions. Under **Section 1(2)** of this Regulation, the technical details for submitting electronic documents and transmitting electronic records shall be announced by the Federal Office of Justice on its website. This procedure enables the setting of standards that are open to technology and development.

The form according to **Section 3** of the draft is to be made available electronically on the website of the BfJ as an online form, as is the case with regard to the form pursuant to Section 87a(2) of the IRG. In principle, document processing in the BfJ has so far been carried out on an internal server. A server of the federal information technology centre (ITZBund) is used to process the form. As expected, external servers must also be used as connectors for electronic enforcement assistance with the competent Swiss authorities, for example, in the E-Codex project. Section 62 of the BDSG provides a corresponding legal basis for this. The Regulation does not therefore need its own provision.

2. Electronic file management

Along with the introduction of electronic legal transactions, the option of electronic record-keeping by the Federal Office of Justice is provided for.

The rules on electronic file management are also essentially based on the RbGeldERAV.

III. Executive footprint

No interest representatives or commissioned third parties contributed significantly to the content of the draft.

IV. Alternatives

None.

V. Regulatory power

The Regulation is based on the power to issue Regulations under Section 77b of the IRG, which applies mutatis mutandis in accordance with Section 1 of the DECHPoIVtrUG.

VI. Compatibility with European Union law and international treaties

The Regulation aims to improve and speed up enforcement assistance procedures based on the German-Swiss Police Treaty and is compatible with the law of the European Union and with the other international treaties concluded by the Federal Republic of Germany.

In accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1), it is necessary to carry out a notification procedure to ensure the compatibility of the Ordinance with European provisions.

VII. Consequences of the legislation

1. Legal and administrative simplification

The introduction of electronic legal transactions and electronic file management is intended to relieve the burden on all authorities, public prosecutors, and courts involved in the proceedings. As the central German awarding authority, the Federal Office of Justice will reap the most benefit from this Ordinance. For enforcement assistance under the German-Swiss Police Treaty, a large volume of cases is expected in the future. With the conventional, paper-dominated processing method, the projected case numbers can only be managed by the BfJ with a significant amount of additional effort (especially personnel). Enabling an electronic procedure simplifies and accelerates the processing of incoming and outgoing requests. For instance, the time taken to transmit requests will be reduced. Requests from competent authorities, including from the Swiss Confederation, and from data subjects can be answered more quickly because electronic files are always available. The acceleration of proceedings is not only in the interest of authorities and courts, but also in the interest of the persons affected by the enforcement and thus burdened. In addition, the acceleration of proceedings ultimately serves the purpose of the German-Swiss Police Treaty, namely the establishment of effective enforcement assistance with Switzerland.

2. Sustainability aspects

The draft is in line with the guiding principles of the Federal Government on sustainable development in the spirit of the German Sustainability Strategy, which serves the implementation of the UN 2030 Agenda for Sustainable Development.

By introducing electronic legal transactions and electronic file management at the BfJ within the scope of the German-Swiss Police Treaty, the draft makes a direct contribution to achieving SDG 16, which, with its targets 16.3 and 16.6, requires all people to have access to justice (target 16.3) and to establish effective institutions (target 16.6). The draft promotes the achievement of these objectives by making cross-border cooperation in criminal matters between the Federal Republic of Germany and the Swiss Confederation in the area of the enforcement of fines or penalties more effective. Within the scope of application of the German-Swiss Police Treaty, an additional low-threshold means of communication is established through the facilitation of electronic legal transactions at the BfJ. Together with the introduction of the electronic file, this will also accelerate the processing of incoming and outgoing requests by avoiding media disruptions. By enabling the electronic submission of documents, the draft also contributes to the achievement of target 16.7, which requires needs-based and inclusive decision-making at all levels. The draft contributes to achieving this target by simplifying administrative procedures and reducing unnecessary bureaucracy. In addition, faster cross-border enforcement of fines or penalties strengthens both the fight against national and cross-border crime and thus increases security in the Federal Republic of Germany and Switzerland.

Reflecting the way in which the SDGs combine as a whole, the draft also contributes to the achievement of further SDGs of the UN's Agenda 2030, namely

- SDG 9: 'Build resilient infrastructure, promote inclusive and sustainable industrialisation and foster innovation' by building resilient infrastructure and supporting innovation;
- Goal 11. 'Make cities and settlements inclusive, safe, resilient and sustainable' by contributing to a reduction in energy consumption in passenger transport through reduced travel; and
- SDG 13: 'Take urgent action to combat climate change and its impacts' by contributing to avoiding the use of paper, thereby reducing resource consumption.

The draft thus takes into account the interconnections between the SDGs and their integrating nature, which is crucial for the achievement of the objective and purpose of the UN's 2030 Agenda. The draft thus follows the sustainability principles of the German Sustainability Strategy '(1.) Apply sustainable development as a guiding principle at all times and in all decisions', '(5.) Preserve and enhance social cohesion in an open society' and '(6.) Use education, science and innovation as drivers of sustainable development'.

3. Budgetary expenditure exclusive of compliance costs

On the basis of this Regulation, the additional requirements of the Federal Government as stated in the DECHPolVtrUG are reduced in terms of personnel costs for the implementation by BfJ of the enforcement assistance provisions of the German-Swiss Police Treaty (document 20/8650, p. 2, 19 et seq.).

Allowing electronic file management and the early introduction of electronic legal transactions will result in a lower average number of workers required to process a request compared to a paper-dominated procedure. Savings compared to the transposition law arise particularly in the area of file management, i.e. the registry and the office.

The additional personnel requirements will be reduced by approximately EUR 68,086 in the start-up phase in 2024, by approximately EUR 207,225 in the operational phase from 2025 and will be as follows:

Stage	Task	Value	PKS	Number	Total
Start	Office	A9 (m)	EUR 68,086	1	EUR 68,086
Operation	Head of Office	A9 mZ	EUR 74,019	0.5	EUR 37,010
	Office	A9 (m)	EUR 68,086	2.5	EUR 170,215

In addition, the introduction of e-justice will reduce the additional staffing requirements by approximately EUR 102,129 in the start-up phase, while the additional staffing requirements will decrease by approximately EUR 275,311 in the operational phase:

Stage	Task	Value	PKS	Number	Total
Start	Office	A9 (m)	EUR 68,086	1.5	EUR 102,129
Operation	Head of Office	A9 mZ	EUR 74,019	0.5	EUR 37,010
	Office	A9 (m)	EUR 68,086	3.5	EUR 238,301

There is no additional expenditure for the budgets of the federal states and municipalities.

4. Compliance costs

a) Compliance costs for citizens

Participation in electronic legal transactions with the BfJ in the field of enforcement assistance under the German-Swiss Police Treaty is not mandatory for citizens, but optional. If citizens decide to send documents electronically to the BfJ, they must have internet access in addition to a suitable terminal device. For the transmission of declarations requiring a form, either a qualified electronic signature creation device (e.g. signature card and reader) or access to a secure transmission path is required. It should be assumed that this necessary technical equipment will not be purchased just for a single enforcement assistance procedure. Anyone using the option of electronic communication generally already has the necessary technology. The use of electronic legal transactions can save time and money for citizens and thus also have a relieving effect. In any case, the possible additional costs are offset by a slight cost saving, which results from the reduction in communication by means of postal and fax mail. The negligibility results, on the one hand, from the

manageable number of cases and, on the other hand, particularly from the very limited savings (postage or fax costs) per case.

b) Compliance costs for businesses

Participation in electronic legal transactions with the BfJ is also optional for businesses, in particular for companies affected by proceedings under the German-Swiss Police Treaty. The use of electronic legal transactions can have a time- and cost-saving effect on the economy and thus also have a relieving effect. With regard to the possible burdens and reliefs and their insignificance, reference is made to the explanations in the explanatory memorandum under A.VII.4a).

c) Compliance costs for the authorities

At federal level, the BfJ's annual compliance costs for implementing the enforcement assistance provisions of the German-Swiss Police Treaty (document 20/8650, pp. 2 et seq., 21 et seq.) are reduced by approximately EUR 375,940.

The Ordinance establishes the legal basis required by Section 1 DECHPoIVtrUG in conjunction with Section 77b IRG for the introduction of electronic legal transactions and electronic file management at the BfJ.

The cost calculation must take into account the savings possibilities of the BfJ, which result from the fact that electronic legal transactions and electronic file management can already be used at the initial stage of enforcement assistance under the German-Swiss Police Treaty.

Overall, it can be assumed that the introduction of specialist electronic procedures will make the processes more efficient and cost-effective.

Even when taking into account new tasks such as indexing, validation, and specialist administration in the field, it is expected that the average number of workers required to process a request will be lower than in a paper-dominated procedure due to the approval of electronic file management and the early introduction of electronic legal transactions. This applies, in particular, in the area of file management, i.e. the registry and the office; but there will also be an increase in efficiency and thus opportunities for savings in office processing and clerical processing.

In the case of a continuation of the implementation costs used for the completion of tasks by BfJ, the regulation could save a total of around EUR 145,393 in the start-up phase in 2024, and around EUR 375,940 in personnel and material costs per year from the operational phase in 2025. The estimated savings potential is as follows:

Due to the introduction of electronic file management, it can be assumed that some tasks, particularly for the office, will no longer be carried out. As a result, costs of approximately EUR 59,152 could be saved from the estimated additional personnel costs in the start-up phase in 2024, and costs of approximately EUR 162,468 in the operating phase from 2025 onwards:

Stage	Category	Total processing time (min)	Total processing time (hrs)	Hourly labour costs	Compliance costs
Start	Clerical grade	105,003.00	1,750.05	EUR 33.80	EUR 59,152
Operation	Clerical grade	288,405.00	4,806.75	EUR 33.80	EUR 162,468

The introduction of electronic file management could also save costs on the estimated material expenses. Unless electronic record-keeping is introduced, the paper files to be managed will incur storage costs. Per m², a monthly net rent of EUR 17.70 plus 3.5 per

cent ancillary costs is incurred. For the start-up phase, approximately 16.5 m² would be required, which would entail annual costs of EUR 3,627.26. For the operating phase, approximately 40 m² would have to be estimated, which lead to storage costs of EUR 8,793.36 per year. In addition, there are expected savings in postage costs.

The implementation of further IT projects towards fully electronic enforcement assistance would allow for further savings. For the electronic processing of incoming requests from Switzerland, an adaptation of the specialist procedure already developed in the field of RbGeld may be considered. In addition to receiving requests from Switzerland electronically, this would enable further electronic processing, for example by automatically assigning file numbers, registering the procedure for the first time, and automatically consulting the data subject. In the case of outgoing requests, the introduction of an electronic form leads to a reduction of tasks in the registry. Here, too, communication with the competent authorities in Switzerland is to take place in the long term by means of an electronic procedure. The introduction of e-justice at the BfJ could save an estimated EUR 86,241 of the projected additional personnel costs in the start-up phase in 2024, and EUR 213,472 in the operational phase from 2025 onwards:

Stage	Category	Total processing time (min)	Total processing time (hrs)	Hourly labour costs	Compliance costs
Start	Clerical grade	153,090.00	2,551.50	EUR 33.80	EUR 86,241
Operation	Clerical grade	378,945.00	6,315.75	EUR 33.80	EUR 213,472

In addition, the costs of the IT programme are offset by future savings for the BfJ in the area of system development. It is not yet possible to quantify these. However, the Federal Republic of Germany will continue to digitise legal transactions and file management for the judiciary in general. Conversion is relevant for the Federal Office of Justice as regards different areas of responsibility. For the area of RbGeld as well as the German-Swiss Police Treaty, it is expected that a large part of the work now taking place will be able to be used. This will in future save or at least reduce the costs currently incurred.

In addition, the Federal Office of Justice, with systemic support, will in future be able to receive and process more incoming requests. With the electronic receipt of requests from abroad, additional income can also probably be achieved. For example, it seems plausible that cooperation with Switzerland on the basis of the German-Swiss Police Treaty could become lower-threshold and thus more intensive if requests from Switzerland can be received electronically or accessed from an interface, rather than in paper form, right from the start.

There will in principle be no compliance costs for states as the Ordinance does not entail any obligations on states to use electronic legal transactions or electronic records. If the states decide to opt for electronic legal transactions, this may entail certain compliance costs for them because the requisite technical infrastructure must be available. However, the overall cost should be low. The federal states (Länder) already all have electronic communication infrastructures such as the EGVP, which are expected to also be usable for communication with the BfJ as part of enforcement assistance under the German-Swiss Police Treaty. The certificates for the RbGeld are already completed by the issuing authorities with the necessary data using a form provided electronically by the BfJ. Experience with German fine authorities in the context of enforcement assistance under the RbGeld also shows that they are already conducting their proceedings predominantly electronically. Converting to electronic legal transactions means that certificates will no longer need to be printed out and sent to the Federal Office of Justice in hard copy. Under the Act Promoting E-Justice with the Courts of 10 October 2013 (Federal Law Gazette I p. 3786), states are already obliged in principle to convert to electronic legal transactions. This approach allows for the development and use of uniform technical standards, minimising the administrative burden. In addition, it can be assumed that an obligation on the part of the Länder to switch to electronic legal transactions already follows from the

above-mentioned law. The necessary technical equipment is therefore already in place in principle or must be set up on other grounds. Whether and to what extent further specific adjustments entailing costs will be necessary cannot be generally predicted. Any costs cannot therefore be quantified. In any case, the possible additional costs are offset by a slight cost saving, which results from the reduction in communication by means of postal and fax mail. The negligibility results, on the one hand, from the manageable number of cases and, on the other hand, particularly from the very limited savings (postage or fax costs) per case.

5. Other Costs

None.

6. Other Consequences of the Legislation

Equality and consumer policy as well as demographic impacts are not to be expected.

VIII. Time limit; Evaluation

No time limitation is imposed. Electronic legal transactions and electronic record-keeping are becoming increasingly common and should be seen as the medium of the future. There is therefore no reason for setting a time limit to the applicability of the Ordinance. Although harmonisation with other regulations on the authorisation of electronic legal transactions and electronic filing in the field of justice is desirable in the medium term, see point I, it is not yet possible to foresee when this can take place, so a time limit does not seem appropriate here. In addition, the legal bases in Sections 77a and 77b of the IRG are recast. The rules on electronic legal transactions and electronic file management are to be updated and, for the sake of clarity, largely transferred to the IRG instead of the previous references in the (StPO). However, the BfJ should be relieved as soon as possible within the scope of the German-Swiss Police Treaty. The Federal Ministry of Justice (BMJ) will monitor the question of a possible repeal or adjustment. An evaluation is not planned, as it is not considered an essential regulatory project according to the standards of the Federal Government's evaluation concept.

B. Specific part

Re Section 1 (Electronic legal transactions with the Federal Office of Justice)

Re (1)

(1) opens electronic legal communication with the BfJ for enforcement assistance proceedings under the German-Swiss Police Treaty. Written documents including originals or certified copies can be submitted as electronic documents (No 1). The same applies to declarations, requests or justifications which must be drafted or signed in writing (No 2). Written submission requires, for example, the lodging of an objection to the authorisation of enforcement in accordance with Section 7(1) Sentence 1 of the DECHPoIVtrUG. The provision is based on Section 77b Sentence 1 No 1 in conjunction with Section 77a(1) Sentence 1 of the IRG and is closely based on the wording therein. Electronic legal transactions also include enforcement proceedings conducted by the Federal Office of Justice. This is explicitly referred to in the regulatory part for clarification purposes.

The admission of electronic legal transactions does not mean derogating from the requirements of Article 47 of the German-Swiss Police Treaty for the service of official documents or from the formal requirements laid down in the DECHPoIVtrUG. On the one hand, within the scope of the German-Swiss Police Treaty, the submission of originals is not re-

quired – unlike, for example, Section 87a of the IRG concerning enforcement assistance under RbGeld (see also Sentence 3 of Article 48(3) of the German-Swiss Police Treaty). On the other hand, the electronic documents submitted become originals through the qualified signature provided for in Section 2(1) of this Regulation, or by using the means replacing the qualified signature that allow for document authentication, but in any event constitute official documents.

The term electronic document is based on the understanding that any form of electronic information (e.g. text or image files) is included if it is used to replace a written instrument or physical document and is in principle suitable for reproduction in tangible form, e.g. by printing. Pure audio and video files as well as other information that is not suitable for reproduction in tangible form do not qualify as electronic documents as defined in the provision. However, they may be transmitted — for example as an appendix to electronically submitted documents — via the means of transmission provided by the Federal Office of Justice or via data carrier.

Electronic legal transactions are not mandatory. Citizens and businesses should be able to decide for themselves whether they want to use this form of communication. The same applies to legal relations with the authorities. As the use of electronic legal communication is only optional, there is no provision for the submission of documents in paper form.

Pursuant to the first sentence of Section 77a(3) of the IRG, an electronic document is deemed received as soon as it has been recorded by the BfJ's reception facility. If a transmitted electronic document is not suitable for processing, the sender must be immediately notified as per Section 77a(3) Sentence 2 of the IRG. Further regulations concerning the issue of what applies if the transmission of electronic documents has failed and, consequently, statutory deadlines, such as pursuant to Section 7(1) Sentence 1 DECH-PoIVtrUG, have not been met, cannot be established here due to the absence of corresponding legal authorisation. In this respect, the general principles apply. If the technical problem is with the Federal Office of Justice, the illegibility of the document is harmless as long as the contents of the document can be subsequently ascertained to be intact. In this case, previous case law on fax transmission can be cited. If communication with the BfJ is not possible due to a disturbance on the part of the BfJ, there is a reason for re-establishment of rights due to a failure to comply with the deadline, in particular, via Section 7(1) Sentence 2 DECHPoIVtrUG in conjunction with Section 45 of the StPO. The sending body or person does not then need to choose any other type of submission.

The case where the BfJ itself sends electronic documents, in particular, hearing letters pursuant to Section 4 DECHPoIVtrUG, is not expressly regulated because Section 77a IRG does not contain an explicit legal basis for this. In principle, however, electronic legal transactions apply in both directions ('out as in'). As long as the national authorities and courts have not introduced electronic legal transactions, documents shall continue to be submitted in hard copy. If the BfJ keeps its files electronically, but courts involved or advisers of data subjects who request access to the file have not yet allowed electronic legal transactions, the procedure of the BfJ is governed by the relevant procedural provisions, in particular, by Section 32f of the StPO, which applies *mutatis mutandis* pursuant to Section 77a(7) of the IRG. Statements as to whether documents to be served by the BfJ, as provided for in Section 6(3) DECHPoIVtrUG for the approval decision, can also be served electronically, are likewise not made. In this respect, Section 5(4) to (7) and Section 5a of the [Administrative Service Act of 12 August 2005 \(Federal Law Gazette I p. 2354\)](#), last amended by Article 34(5) of the Act of 22 December 2023 ([Federal Law Gazette 2023 I No 411](#)) apply.

Re (2)

Pursuant to (2), the BfJ must publish on its website the form of electronic documents necessary for processing and the technically possible transmission channels used in the con-

text of the procedure on the basis of the German-Swiss Police Treaty. The provision is drafted in a technology-neutral manner. The BfJ can thus establish uniform standards for the receipt of electronic documents or adopt those that already apply to areas of responsibility outside enforcement assistance on the basis of the German-Swiss Police Treaty, for example in relation to RbGeld.

Re Section 2 (Signature requirements)

The standard is based on Section 77a(1) and (2) of the IRG and contains requirements on the signing of electronic documents.

Re (1)

(1) specifies Section 77a(1) Sentence 2 IRG and refers, in particular, to the specific formal requirements of Sections 7(1), 7(2) Sentence 2, and 11(2) DECHPoIVtrUG. Electronic documents must, in principle, have a qualified electronic signature, the definition of which has been uniformly regulated across Europe since 1 July 2016 (Article 3 No 12 of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73)). A qualified electronic signature can be used to securely verify the identity of the sending person or body (authenticity) and also to ensure that the content of the document reaches the receiving person or body unchanged (integrity).

Re (2)

(2) is based on Section 77a(2) of the IRG, whereby a qualified electronic signature can be replaced by another secure procedure that ensures the authenticity and integrity of the electronic document transmitted. To safeguard integrity it must be ensured that the documents have reached the receiving person or body with their contents intact. To ensure authenticity, it must be possible to clearly identify the issuer of the document. If the chosen technical procedure cannot guarantee the authenticity of the documents themselves, appropriate organisational measures must be taken, such as consultations with the authorities and courts involved.

A simple electronic signature by the sender is sufficient if the electronic document is sent via a secure means of transmission. The BfJ has its own special electronic authority mailbox (beBPo), which serves as an electronic post office for electronic legal transactions with the BfJ in accordance with this Regulation. A secure transmission route via the mailbox and dispatch service of a De-Mail account is not provided for, as this is to be abolished in the future in the Rules of Procedure (cf. Bundestag document 20/13082). Furthermore, the definition is based on the secure transmission paths listed in Section 32a(4) Sentence 1, No 2 to 5 of the StPO. Although these already apply mutatis mutandis to electronic communication and file management pursuant to Section 1 DECHPoIVtrUG in conjunction with Section 77a(7) Sentence 1 IRG, for reasons of clarification and user-friendliness, the listed transmission paths are adopted in the same wording. Reference is made to the explanatory memorandum to Section 32a(4) Sentence 1, No 2 to 5 of the StPO (Bundestagdocument 18/9416, p. 46 et seq. and Bundestag document 19/28399, pp. 33 et seq., 39). The adoption promotes the development of uniform technical standards and strengthens the functionality and acceptance of electronic legal transactions. Details concerning this shall be announced on the Federal Office of Justice website as per Section 1(2) of this Regulation.

Re (3)

(3) contains an opening clause for further secure transmission channels based on Section 3(1) of the Regulation on Electronic File Management at the Federal Office of Justice and on Electronic Communication with the Federal Office of Justice (BfJEAktfKV) and Section

2(2) of the RbGeldERAV. In addition to the cases mentioned in (2) Sentence 2, this is intended to cover other secure procedures, existing or future, within the meaning of Section 77a(2) of the IRG, which ensure the authenticity and integrity of the transmitted electronic document.

In order to preserve the confidentiality of electronic documents, it is first necessary, in accordance with No 1, that an encrypted transmission path is used on the basis of the protocol standard for the German public administration 'Online Services Computer Interface – OSCI' or on the basis of a standard comparable to the state of the art. The transmission channels operated on the basis of OSCI include, for example, the EGVP. At the same time, this provision enables technological openness by covering future transmission channels that are uniform at the federal level in Germany or relevant in the context of enforcement assistance with Switzerland, provided that they correspond to a standard comparable to the latest technological standard.

The draft version provides for a further clarification of the legal term 'state-of-the-art' in statutory or sub-statutory terms. This term describes the level of development of progressive procedures, devices and operating methods which, in the prevailing opinion of leading experts, makes the attainment of the legally specified objective appear assured.

For jurisprudence, the technical guidelines of the Federal Office for Information Security (BSI) are decisive with regard to the requirements to be fulfilled. The Technical Guideline 'Electronic Identities and Trust Services in E-Government' (TR-03107-1) can be used to assess a specific procedure. The provisions of the Technical Guidelines 'Cryptographic Recommendations for Projects of the Federal German Government Part 4: Communication Procedures in Applications' (TR-03116-4) must be taken into account.

No 2 also requires the BfJ to establish that the integrity and authenticity of the data are guaranteed. To safeguard integrity it must be ensured that the documents have reached the receiving person or body with their contents intact. To ensure authenticity, it must be possible to clearly identify the issuer of the document. If the chosen technical procedure cannot guarantee the authenticity of the documents themselves, appropriate organisational measures must be taken.

Further secure transmission channels and the respective details are to be published in accordance with Section 1(2) of this regulation on the website of the BfJ.

Re Section 3 (Form)

The BfJ will provide an electronic form via its website, which is modelled on the form referred to in Section 87a(2) of the IRG. The wording 'via its website', which deviates from the wording in Section 1(2) of this Regulation ('on its website'), takes account of the fact that an external server will be used to process the form — see below under II.1 in the General Part of the Explanatory Statement. Section 3 is based on Section 77b Sentence 1 No 2 of the IRG and is in line with its predecessors such as the Act Promoting E-Justice with the Courts (Gesetz zur Förderung des elektronischen Rechtsverkehrs). The standard does not prevent the Federal Office of Justice from providing other documents or information electronically in addition to this form. In this respect, however, no obligation should be laid down for the BfJ.

The provision does not require national authorities and lawyers participating in individual procedures to use the form provided because Section 77a and Section 77b of the IRG does not clearly stipulate this.

The form is initially provided as a PDF version, which is to be completed by the German exit authorities and then sent via the special electronic authority mailbox (beBPO). When using the electronic form as per Section 3, there is no longer any need to print out and send the form in hard copy. In the future, the pdf form shall be replaced by a Form Man-

agement System (FMS), provided that the budget necessary for the development of the FMS form is available.

Re Section 4 (Authorisation of electronic record-keeping)

The introduction of electronic legal transactions will be accompanied by the introduction of electronic record-keeping by the Federal Office of Justice — albeit on a merely optional basis. The provision makes use of the basis for authorisation in Section 77b(1) No 3 of the IRG and enables the BfJ to keep electronic files for the purpose of providing enforcement assistance on the basis of the German-Swiss Police Treaty. This also applies explicitly to records of enforcement proceedings. In contrast, the obligation to introduce electronic records would not be covered by the legal basis in Section 77a and Section 77b of the IRG;

Enabling electronic file management allows for the greatest possible relief effects for the BfJ in the area of enforcement assistance proceedings on the basis of the German-Swiss Police Treaty. The procedures could be more effectively designed. Authorised employees of the Federal Office of Justice will be able access records at all times. This will simplify and accelerate the processing of individual requests. In addition, the electronic file is more cost-effective in the long term than the management of paper files in the predicted mass volume under the German-Swiss Police Treaty. Personnel costs relating to record-keeping will be reduced. In addition, costs that would arise from the storage and maintenance of paper files are avoided.

If the BfJ keeps its files electronically, but courts involved or advisers of data subjects who request access to the file have not yet allowed electronic legal transactions, the procedure of the BfJ is based on the relevant procedural rules, cf. Section 77a(7) IRG.

Since the introduction of the e-file is only optional, there is no provision for substitute measures.

Re Section 5 (Keeping electronic records)

The provision supplements Section 77a(4) Sentences 2 to 4, (5) of the IRG and provides for requirements on the organisational aspects of the formation and management of electronic files in further completion of the mandate given to the regulatory authority in Section 77b(1) No 4 of the IRG.

Re (1)

Under (1), appropriate technical and organisational state-of-the-art measures must be taken to ensure that the principles of proper record-keeping are upheld. The regulation is based on Section 6a Sentence 3 of the Act on the Promotion of Electronic Administration (Gesetz zur Förderung der elektronischen Verwaltung). On the term state-of-the-art see the remarks regarding Section 2(3). For the question of what constitutes the principles of proper file management, reference can be made to general rules, such as, in particular, the guideline for the processing and management of records (files and documents) in federal ministries (GMBl. 2001 p. 471).

Re (2)

Sentence 2 provides that when transferring documents in hard copy and articles subject to visual inspection to electronic form as per Section 77a(4) Sentence 2 of the IRG, it must be ensured that the document matches the records both visually and in terms of content. The provision is based on Section 32e(2) of the StPO, which applies mutatis mutandis to electronic file management in accordance with the first sentence of Section 77a(7) Sentence 1 of the IRG. With regard to the concept of 'state of the art', reference can be made to the statement of reasons under Section 2(3). For the question of which technical re-

quirements and organisational requirements a procedure corresponding to the respective state of the art must meet, the case-law can obtain information from the Technical Guideline of BSI TR-03138 'Replacement Scanning' (RESISCAN). TR-03125 'Archival of cryptographically signed documentation (TR-ESOR)' can also be referred to.

Sentence 2 contains a general clause for exceptions to the replacement of the original in accordance with Section 77a(4) of the IRG and thus takes into account the regulatory mandate of Section 77b(1) Number 4 of the IRG. Insofar as the effort required for a transfer of the original is technically unreasonably high due to its scope or other characteristics, the BfJ may deviate from the principle set out in Sentence 1. The content of the provision is based on the wording of Section 5(2) Sentence 2, of the Act on the Establishment of the Federal Office of Justice (BfJG).

Re (3)

(3) is based on the wording in Section 5(3) RbGeldERAV, which in turn has been taken from Section 2(2) of the Model Regulation on Electronic File Management at the Courts and Public Prosecutor's Offices. The aim of the Regulation is to ensure the uniformity and completeness of the electronic file across different media in cases where, exceptionally, the original has not been replaced in accordance with (2).

Re Section 6 (Data protection, data security and accessibility)

Re (1)

The regulation is based on the model regulation in Section 6 RbGeldERAV, with the reference to the BDSG updated. Reference is now made to Section 64 BDSG, which regulates the requirements for technical and organisational data protection and thus corresponds to the regulatory content of the Annex to Section 9 Sentence 1 BDSG as amended in 2003, referred to in Section 6 RbGeldERAV. The Federal Office of Justice must document the technical and organisational measures taken to ensure data protection and data security. The measures to be taken are not explicitly listed; they are continuously recommended by the Federal Office for Information Security. As data protection legislation must already be observed, replicating detailed provisions are superfluous in the Ordinance and a reference to the Data Protection Act is sufficient. The measures must be in line with the state of the art. As regards the term 'state of the art', see the explanatory memorandum to Section 2(3) and Section 5 Article 2 of this Regulation.

Re (2)

(2) contains a merely clarifying provision that, within the scope of this Regulation, accessibility must be ensured in accordance with the Accessible Information Technology Regulation (BITV 2.0). The wording 'in accordance with' corresponds linguistically with the provision in Section 6(1) and makes it immediately clear in the text of the Ordinance that the barrier-free design of electronic legal transactions and electronic file management at the BfJ is based on the framework provided for by BITV 2.0. According to Section 2(1) of BITV 2.0, its scope includes, among other things, electronically supported administrative processes with and within the administration, including procedures for electronic file management and electronic transaction processing (No 3). For the BfJ as a federal public body within the meaning of the Disability Equality Act (BGG), the regulation on the applicability of BITV 2.0 is, therefore, purely declaratory in nature (cf. Section 12a(1) and (2) and Section 12 No 1 in conjunction with Section 1(1a) No 1 BGG). The standards to be applied in each case are derived in particular from Section 3 BITV 2.0.

Re Section 7 (Entry into force)

The Regulation shall enter into force on the day following its promulgation, in order to provide a legal basis for electronic enforcement assistance based on the German-Swiss Police Treaty and the associated electronic file management as quickly as possible.