



Brussels, 5.4.2023
COM(2023) 185 final

2023/0093 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the transfer of proceedings in criminal matters

{SWD(2023) 77 final} - {SWD(2023) 78 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

With an increase of cross-border crime, EU criminal justice is increasingly confronted with situations where several Member States have jurisdiction to prosecute the same case. For instance, the preparation of a crime can be carried out in one Member State, while the crime can be committed in another Member State; its perpetrators can be arrested in a third Member State and the assets of the crime transferred to a fourth Member State. This is especially true for crimes perpetrated by organised criminal groups, such as drug trafficking, migrant smuggling, trafficking in human beings, firearms trafficking, environmental crime, cybercrime or money laundering. Multiple prosecutions of the same cases pose challenges not only in terms of coordination and effectiveness of criminal prosecutions, but can also be detrimental to the rights and interests of individuals and can lead to duplication of activities. Defendants, victims and witnesses may have to be summoned for hearings in several countries. Most notably, repeated proceedings entail a multiplication of restrictions on their rights and interests, such as of free movement. Within the European area of justice it is appropriate to avoid, where possible, such detrimental effects, and to ensure that criminal proceedings are conducted in the best-placed Member State, for example in the State where the major part of the crime occurred.

Common rules to transfer criminal proceedings from one Member State to another are therefore necessary in order to efficiently fight cross-border crime and to ensure that the best-placed Member State investigates or prosecutes a criminal offence. This cross-border cooperation tool would provide added value by improving the proper functioning of the European area of justice. It therefore would contribute to the efficient and proper administration of criminal justice in the Member States. Such common rules in particular could help to prevent unnecessary parallel proceedings in different Member States concerning the same facts and the same person, that could result in an infringement of the fundamental principle of criminal law, which is enshrined in the Charter of Fundamental Rights of the European Union ('the Charter'), that a person may not be prosecuted or punished twice for the same offence (*ne bis in idem* principle). They could also reduce the number of multiple proceedings in respect of the same facts or in respect of the same person being conducted in different Member States. It is also in the interest of effective criminal justice to ensure that a transfer of criminal proceedings can take place when the surrender of a person for criminal prosecution under a European Arrest Warrant ('EAW')¹ is delayed or refused for reasons such as those that parallel proceedings for the same criminal offence are ongoing in the other Member State. This is because, the transfer of criminal proceedings might enable the person being prosecuted to avoid impunity.

While the transfer of criminal proceedings may be necessary in a number of situations, existing measures at EU level do not regulate this form of cooperation. An agreement between the EU Member States on the transfer of proceedings in criminal matters was signed in 1990², but never entered into force due to a lack of ratifications.

¹ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

² <https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=1990106&DocLanguage=en>

In July 2009, the Swedish Presidency introduced an initiative on behalf of 16 Member States³ for a Council Framework Decision on the transfer of proceedings in criminal matters⁴. However, Member States decided to discontinue negotiations when the Lisbon Treaty entered into force on 1 December 2009⁵.

In the absence of a specific EU legal act, Member States currently transfer criminal proceedings between themselves using a variety of legal instruments, with no uniform legal framework across the EU. The most comprehensive international legal framework on the transfer of criminal proceedings – the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972 – has only been ratified and applied by 13 Member States. Most Member States use Article 21⁶ of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959⁷ as a mechanism to request the prosecution of a suspect in another party to the Convention. For this form of cooperation, however, the procedure for transfer is largely unregulated. Other legal bases of cooperation in this area include national laws, bilateral or multilateral agreements or the principle of reciprocity.

In its report on the way forward in the field of mutual recognition of judicial decisions in criminal matters of May 2019⁸, the Romanian Presidency suggested to further explore the need for a legislative proposal on the transfer of criminal proceedings. In December 2020, the Council, in its conclusions on the European Arrest Warrant⁹, invited the Commission to consider whether an EU instrument on the transfer of criminal proceedings would be feasible and would add value. Eurojust and the European Judicial Network have also raised¹⁰ a number of legal and practical issues that authorities face in the absence of clear common rules and procedures, and have called for an EU instrument in this area.

In the absence of a common legal framework and due to differences among Member States' national criminal justice systems, namely whether the prosecuting authorities of a Member State have the ability to refrain from initiating a prosecution or whether they have a duty to prosecute every crime which falls within their competence, transfers of criminal proceedings have been facing several legal and practical issues. Practical experience shows that the efficiency of the transfer procedure is hampered, in particular, by undue delays and a lack of communication between authorities. Ineffective prosecution has also been singled out as a problem, as transfers of criminal proceedings do not always take place when they would be in the interest of justice, such as in cases where the criminal offence was committed in one Member State, but both the victim and the suspect are located in another Member State. Furthermore, the requested State may not have jurisdiction to prosecute a case, if no

³ BE, BG, CZ, DK, EE, EL, ES, FR, LT, LV, HU, NL, RO, SI, SK and SE.

⁴ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52009IG0912%2801%29#ntc3-C_2009219EN.01000701-E0003

⁵ This was due to a change brought in the decision-making procedure with the expectation expressed by the Presidency of the Council that a new instrument would be tabled under the Lisbon Treaty, Council doc. 16437/09 and 16826/2/09.

⁶ Sometimes, in conjunction with Article 6 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000.

⁷ <https://rm.coe.int/1680074cc8>

⁸ <https://data.consilium.europa.eu/doc/document/ST-9728-2019-INIT/en/pdf>

⁹ [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XG1204\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XG1204(02))

¹⁰ Eurojust report on the transfer of proceedings in the EU published in 2023, 'Report on Eurojust Written Recommendations on Jurisdiction' published in 2021, the 'Report on Eurojust's casework in the field of prevention and resolution of conflicts of jurisdiction' published in 2018, and the 'Report of the strategic seminar on conflicts of jurisdiction, transfer of proceedings and ne bis in idem', organised by Eurojust in 2015. Conclusions of the 52nd EJM Plenary meeting on the role of the EJM in fostering the practical application of the EU mutual recognition instruments published in 2019.

connecting factor for jurisdiction could be established. In particular, in situations when the surrender of a person under an EAW is delayed or refused, the lack of jurisdiction to prosecute the case in the requested State might even lead to impunity. The mentioned issues may result in delays in criminal proceedings caused by lengthy transfer procedures, as well as in inefficient use of human and financial resources, such as due to proceedings taking place in parallel in two or more Member States. Furthermore, differences between national systems on the standing, rights and interests of suspects, accused persons and victims in cases of transfers may lead to legal uncertainty and insufficient protection of the rights of the individuals concerned.

To address these problems, the Commission decided to propose a new instrument on the transfer of criminal proceedings. This initiative is included in the Commission's 2022 work programme¹¹. The proposal has four objectives, namely to:

- (1) improve the efficient and proper administration of justice in the EU;
- (2) improve the respect of fundamental rights in the process of transfer of criminal proceedings;
- (3) improve efficiency and legal certainty of transfers of criminal proceedings; and
- (4) enable transfers of criminal proceedings, where they are in the interest of justice, but currently not possible between Member States, and reduce the phenomenon of impunity.

- **Consistency with existing provisions in the policy area**

Council Framework Decision 2009/948/JHA¹² sets out a procedure for the exchange of information and for direct consultations between competent authorities to achieve an effective solution and avoid any adverse consequences arising from parallel proceedings. Similarly, other EU laws concerning criminal matters, particularly for specific types of crime, such as combatting terrorism (the Directive (EU) 2017/541 of the European Parliament and of the Council, Council Framework Decision 2002/475/JHA) and organised crime (Council Framework Decision 2008/841/JHA), set out factors to be taken into account to centralise proceedings in a single Member State when more than one Member State can validly prosecute on the basis of the same facts. However, these legal acts do not regulate the procedure for the transfer of criminal proceedings, which may be a necessary solution in such cases.

Eurojust, in particular, plays a key role in facilitating preliminary contacts and consultations and resolving jurisdiction issues. Eurojust may ask the competent authorities of the Member States concerned to accept that one of them may be in a better position to undertake an investigation or to prosecute specific offences. The competent national authorities are also obliged to inform Eurojust of cases in which conflicts of jurisdiction have arisen or are likely to arise. The objectives of this proposal are consistent with Regulation (EU) 2018/1727 on Eurojust¹³. In addition, Eurojust has published guidelines on 'Which jurisdiction should prosecute?'¹⁴. By suggesting factors to be taken into consideration in multi-jurisdictional

¹¹ https://commission.europa.eu/system/files/2023-01/cwp2022_en.pdf

¹² Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

¹³ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA, OJ L 295, 21.11.2018, p. 138.

¹⁴ https://www.eurojust.europa.eu/sites/default/files/assets/eurojust_jurisdiction_guidelines_2016_en.pdf

cases, these guidelines have been helping competent national authorities to determine the jurisdiction best placed to prosecute in cross-border cases.

EU instruments for cross-border judicial cooperation in criminal matters cover the recognition of judgements and judicial decisions on: (i) enforcement of sentences¹⁵, (ii) surrender of individuals under a European Arrest Warrant; (iii) the gathering of evidence through a European Investigation Order¹⁶; as well as the procedures for mutual legal assistance, in particular, the spontaneous exchanges of information¹⁷, and the carrying out of criminal investigations through a Joint Investigation Team¹⁸. The adoption of common rules on the transfer of criminal proceedings would complement EU legislation on cross-border judicial cooperation, in particular by seeking to avoid the risk of impunity should the surrender of a person reprimanded under an EAW in order to conduct a criminal prosecution be refused. Requests under this proposed Regulation can be issued for any criminal offence. Therefore, the transfer of criminal proceedings may provide a useful alternative to the issuance of an EAW, if that proves disproportionate or impossible, for example because the penalty thresholds are not met. If after adoption of the proposed legal framework, authorities increasingly opt for the transfer of criminal proceedings, the use of EAW procedures could decrease. Similarly, it could lead to a decrease in the use of the European Supervision Order¹⁹, which allows a suspect to be subject to a supervision measure in their home Member State until the trial takes place in another Member State, instead of being placed into pre-trial detention.

The proposal builds on the existing EU minimum rules on the rights for individuals in criminal procedure, adopted with the aim to strengthen Member States' trust in each other's criminal justice systems and thus to facilitate mutual recognition of decisions in criminal matters: the six procedural rights directives 2010/64/EU²⁰, 2012/13/EU²¹, 2013/48/EU²², 2016/343²³, 2016/800²⁴ and 2016/1919²⁵, as well as in the Victims' Rights Directive 2012/29/EU²⁶.

¹⁵ Such as Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.

¹⁶ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

¹⁷ Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union.

¹⁸ On the basis of the Council Framework Decision of 13 June 2002 on joint investigation teams or of the Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union.

¹⁹ Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (OJ L 294, 11.11.2009, p. 20).

²⁰ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

²¹ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

²² Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

²³ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

- **Consistency with other EU policies**

The Hague Programme for strengthening freedom, security and justice in the European Union²⁷ requires Member States to consider possibilities of concentrating the prosecution in cross-border multilateral cases in one Member State, with a view to increasing the efficiency of prosecutions while guaranteeing the proper administration of justice.

The Programme of measures to implement the principle of mutual recognition of decisions in criminal matters²⁸ calls for an instrument enabling criminal proceedings to be transferred to other Member States.

The December 2020 Council conclusions on 'The European arrest warrant and extradition procedures – current challenges and the way forward' invite the Commission to consider preparing a legislative proposal.

The proposal is part of the 2021-2025 EU strategy to tackle organised crime²⁹.

Training justice professionals on EU law is an essential tool to ensure its correct and effective application. To prepare justice professionals, make them fit for the challenges of the 21st century, and keep them updated on developments in EU law, the Commission adopted a European judicial training strategy for 2021-2024³⁰. The strategy's objective is to ensure that justice professionals receive training on the developments of EU law. In line with that strategy, training of all justice professionals would need to be organised soon after the adoption of this proposal, to ensure the correct and seamless application and use of new digital tools.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for EU action is Article 82(1)(b) and (d) of the Treaty on the Functioning of the European Union (TFEU). This Article sets out the EU's competence to establish measures, that facilitate cooperation between judicial or equivalent authorities of the Member States on proceedings in criminal matters and prevent and settle conflicts of jurisdiction between Member States.

In line with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union (TEU) and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

²⁴ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

²⁵ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).

²⁶ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

²⁷ OJ C 53, 3.3.2005, p. 1.

²⁸ OJ C 12, 15.1.2001, p. 10.

²⁹ Commission Communication on the EU Strategy to tackle Organised Crime 2021-2025, COM(2021) 170 final.

³⁰ COM/2020/713 final.

In line with Articles 1 to 3 of Protocol No 21 on the position of Ireland, annexed to the TEU and to the TFEU, Ireland may notify the President of the Council in writing that it wishes to take part in the adoption and application of any such proposed measure, where it will be entitled to do so. The notice must be submitted within 3 months of the proposal's or initiative's presentation to the Council under Title V, Part 3 TFEU.

- **Subsidiarity (for non-exclusive competence)**

Under Article 4(1)(j) TFEU, the competence to adopt measures in the area of freedom, security and justice is shared between the EU and the Member States. Therefore, Member States may act alone to regulate transfer of criminal proceedings.

However, a legal framework on transfer of criminal proceedings cannot be sufficiently and optimally achieved by Member States acting alone since it is a cross-border matter. This is evidenced by the current fragmented legal framework, which poses legal and practical challenges. Bilateral agreements between Member States would also not address the problems, as agreements of this kind would eventually be needed between all Member States.

The replies to the public and targeted consultations confirm that EU action in this area is likely to deliver better outcomes than Member States' action.

Both the Council and the European Parliament have recognised that these challenges require action beyond the national level. The December 2020 Council Conclusions³¹ invited the Commission to consider a new proposal, and the December 2021 European Parliament Resolution³² also called for the Commission to put forward a legislative proposal.

Given the cross-border aspect of the problems outlined above, the proposal needs to be adopted at EU level in order to achieve the objectives.

- **Proportionality**

The proposal lays down rules under which a competent authority in the EU may request to take over criminal proceedings, if that would improve the efficient and proper administration of justice and provided that established criteria are respected. Throughout the proposed text, the options chosen are those that are least intrusive for the national criminal justice systems of the Member States, taking into account in particular that under some of the legal systems prosecution is mandatory (the legality principle) and under others the prosecutor has discretion not to prosecute where it is not in the public interest (the opportunity principle).

The proposal is limited to requests issued in criminal proceedings. Requests can be issued for any criminal offence and therefore the transfer of criminal proceedings would complement the system of surrender of individuals under an EAW and may provide a useful alternative to the issuance of an EAW if that proves disproportionate or impossible, for example because the penalty thresholds are not met. The proposal also gives the requested authority sufficient discretion to refuse a request, in particular if it considers that the transfer is not in the interest of an efficient and proper administration of justice. Moreover, it does not impose any obligation on the requested authority to prosecute a criminal offence.

³¹ [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XG1204\(02\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020XG1204(02))

³² https://www.europarl.europa.eu/doceo/document/TA-9-2021-0501_EN.html

It sets out a rule that evidence transferred from the requesting State must not be denied admission in criminal proceedings in the requested State on the mere ground that such evidence was gathered in another Member State, but the power of the trial court to freely assess the evidence is not affected by this Regulation. To this effect, the proposal follows rules already laid down in Council Regulation (EU) 2017/1939³³.

This Regulation provides for jurisdiction in specific cases in order to ensure that for criminal proceedings to be transferred in accordance with this Regulation the requested State can exercise jurisdiction for the offences to which the law of the requesting State is applicable. This jurisdiction can be exercised only upon the request for transfer of criminal proceedings when the interests of efficient and proper administration of justice so require.

The proposal, therefore, does not go beyond the minimum required in order to achieve the stated objective at EU level and what is necessary for that purpose.

- **Choice of the instrument**

As the proposal concerns cross-border procedures, where uniform rules are required, the Commission proposes a Regulation as the legal instrument. A Regulation is directly applicable in all Member States and binding in its entirety. It therefore guarantees that all Member States apply the rules in the same way and that the rules enter into force at the same time. It ensures legal certainty by avoiding different interpretations between Member States, thus preventing legal fragmentation and other issues currently affecting the transfer of criminal proceedings.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

In preparing the proposal, the Commission conducted extensive consultations in 2021 and 2022. The consultations targeted a wide range of stakeholders representing citizens, public authorities, academics and other relevant interest groups. The consultations consisted of (i) public feedback to the call for evidence; (ii) an open public consultation; (iii) targeted consultations with Member States' authorities, Eurojust, European Judicial Network, the European Public Prosecutor's Office, Europol, the European Union Agency for Fundamental Rights; (iv) a meeting with experts of the Member States' authorities and (v) a meeting with the Commission's Criminal Law Expert Group.

Overall, there is broad consensus that the EU should address the current problems with transfers of criminal proceedings by adopting a new legislative instrument. It has been repeatedly pointed out that a more efficient cross-border procedure is needed and that authorities face a number of issues in the current legal set-up that stem from a lack of clear common procedures, such as lack of communication, undue delays in transfer procedures, high costs of translation of documents and unjustified transfer requests.

The feedback received informed the preparation of the proposal and the accompanying staff working document. A detailed summary of the outcome of the Commission's consultations is included in the staff working document.

³³ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31.10.2017, p. 1.

- **Collection and use of expertise**

Aside from the above-mentioned stakeholder consultations, the Commission collected and used expertise from other sources.

In particular, the proposal draws on the reports from Eurojust and the European Judicial Network³⁴.

The proposal also takes into account the results of a research project on transfer of criminal proceedings in the EU³⁵ which was co-funded by the European Commission from the Justice programme.

- **Staff working document**

The proposal is accompanied by a Commission staff working document³⁶, which contains a detailed problem description and sets out the objectives of the proposal. It also analyses the proposed solution in terms of its effectiveness, efficiency, fundamental rights and coherence with other EU cross-border judicial cooperation instruments.

No impact assessment was carried out for this initiative mainly due to lack of realistic options and limited impacts on citizens and businesses³⁷. Overall, the staff working document concludes that the proposal is expected to significantly increase the effectiveness of transfer of criminal proceedings in different ways, as it would: (i) enhance security through capacity to investigate, prosecute and sanction crime; (ii) reduce delays in the transfer procedure; (iii) enable transfers of criminal proceedings where they are currently missing; and (iv) bring increased legal certainty.

By establishing a complete procedure for requesting and taking a decision on the transfer of criminal proceedings with a common list of criteria, an exhaustive list of grounds for refusal and clear obligations to respond, the proposal is expected to increase the number of successfully transferred criminal proceedings. A comprehensive legal framework would provide greater legal certainty for all stakeholders concerned and reduce the level of fragmentation.

The impact for citizens is expected to be positive. In a situation where individuals would be parties in criminal proceedings, be it as suspects or as victims, a common legal framework would contribute to ensuring the proximity of proceedings, to take place in the Member State of their nationality/residence, if possible. While this will not apply in all cases, as it will depend on the circumstances of each case (e.g. multiple suspects or victims from different Member States), an overall positive impact for them is expected.

The establishment of the decentralised IT system is expected to render communication between authorities more efficient and effective. Communication through this electronic tool is intended to save time and cost for the authorities. The decentralised IT system would allow speeding up the flow of information among its users, increase security of the exchanged data, as well as enhance transparency. The use of the digital channel can also be expected to have a positive environmental impact due to the use of less paper and postage. In addition, positive impacts are anticipated on simplification and administrative burdens.

³⁴ Supra. at 11

³⁵ <https://www.eur.nl/en/esl/research/our-research/eu-and-nwo-funded-research-projects/transfer-criminal-proceedings>

³⁶ SWD(2023) 77

³⁷ As explained further in the Staff working document.

- **Fundamental rights**

Parallel proceedings ongoing in different Member States in respect of the same crime are not only difficult to coordinate and prosecute effectively, but also create disproportionate burdens on the persons involved, who become subject to a duplication of procedures and face multiple restrictions on their rights and interests due to different arrest warrants, searches and interrogations being carried out in two or more Member States. They also risk violating the fundamental principle of criminal law that a person may not be prosecuted and punished twice for the same offence. By facilitating transfers of criminal proceedings between Member States, the proposal aims to prevent such violations and to ensure that proceedings are concentrated in the Member State that is best placed to prosecute. The increasing number of preliminary references to the Court of Justice of the European Union in the past years, seeking clarifications on the interpretation of the *ne bis in idem* principle under EU law proves that parallel proceedings, which may lead to violations of the principle, are likely to occur in practice and are often difficult to spot and resolve. This is also reflected in Eurojust's casework³⁸, where it is observed that very often, when national authorities become aware of the existence of parallel proceedings with the same facts and against the same individual in another Member State, the transfer of criminal proceedings is the essential solution to avoid violations of the *ne bis in idem* principle and to comply with Article 50 of the Charter and Article 54 of the Convention Implementing the Schengen Agreement.

The proposal includes a number of guarantees to ensure the respect of fundamental rights of the individuals involved in the transfer procedure. The intervention of a judicial authority when the transfer is requested both in the requesting and requested State ensures that the legality of the measure has been checked and that the request does not unduly impinge on fundamental rights. The requesting authority is required to ensure in the individual case that the criteria for transferring criminal proceedings are met. Moreover, the suspect or accused person, as well as victims residing in the requesting State, must be consulted on the intended transfer and must be given an opportunity to state their opinion in a language they understand. Suspects and accused persons, as well as victims residing in the requesting State, are informed of the decision whether to accept or refuse the transfer of criminal proceedings, as well as of the remedies available to challenge the decision to accept the transfer. Exceptions may apply both to the consultation obligation and the obligation to provide information about the decision taken where this might prejudice the confidentiality of investigation. The proposal specifically provides for the right to an effective remedy for suspects, accused persons and victims against the decision to accept the transfer of criminal proceedings. The review by a judicial authority serves as a further safeguard here. There are also grounds for refusal based on the non-respect of the *ne bis in idem* principle, as well as on immunities and privileges. Furthermore, as a general safeguard, the proposal explicitly states that its provisions should not be interpreted as having the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU.

Finally, since the proposal regulates the transfer of criminal proceedings, all criminal law procedural safeguards apply to those criminal proceedings. This includes in particular the right to a fair trial and the rights of defence, as enshrined in Article 6 of the European Convention on Human Rights and Articles 47 and 48 of the Charter. It also includes the relevant legislation at EU level on procedural rights for suspects and accused persons in criminal proceedings, namely Directives 2010/64/EU, 2012/13/EU, 2013/48/EU, 2016/343,

³⁸ <https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-report-on-the-transfer-of-proceedings-in-the-eu.pdf>

2016/800 and 2016/1919. By establishing minimum standards of protection in criminal proceedings across the EU these Directives lead to increased confidence in the criminal justice systems of all Member States, which, in turn, ensure more efficient judicial cooperation in a climate of mutual trust.

4. BUDGETARY IMPLICATIONS

Member States may incur one-off costs to adjust to the new rules of the Regulation, in particular costs arising from the need to train judges, prosecutors and other competent authorities on the new rules. The main recurrent costs are expected to be the translation costs of the case-file documents. However, these costs are expected to be somewhat outweighed by the efficiency gains and cost savings brought about by the Regulation.

The proposal's provisions on electronic communication through the decentralised IT system in accordance with the Regulation (EU) ... [the Digitalisation Regulation]³⁹ would also have an impact on the EU budget. These costs, to be covered by the Justice programme budget, would be minor because the decentralised IT system would not need to be developed from scratch, but would be developed for many EU tools for judicial cooperation in criminal matters under [the Digitalisation Regulation], with only small adjustments needed for the procedure put forward by this proposal.

Member States would also incur some costs to install and maintain the decentralised IT system's access points located on their territory and to adjust their national IT systems to make them interoperable with the access points. However, as noted, the bulk of these financial investments would have already been made in the context of the digitalisation of other EU instruments on judicial cooperation in criminal matters. In addition, Member States would be able to apply for grants to finance these costs under the relevant EU financial programmes, in particular the cohesion policy funds and the Justice programme.

5. OTHER ELEMENTS

• Implementation plans and monitoring, evaluation and reporting arrangements

A Regulation is directly applicable in all Member States, without first needing to be transposed into national law. Appropriate monitoring, evaluation and reporting obligations are envisaged in the proposal.

Member States' expert meetings will be organised by the Commission to discuss problems arising from the transfer of criminal proceedings. Eurojust and the European Judicial Network will play an important role in the transfer procedure. These forums, as well as other professional networks can be used to gather feedback from practitioners (Member State public authorities) on experiences and problems with the practical application of the Regulation.

The Commission will submit a report to the European Parliament and the Council within 5 years after the Regulation becomes applicable. The report will be based on the input from Member State authorities and other relevant stakeholders, among other sources.

³⁹ Proposal for a Regulation of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, COM/2021/759 final.

- **Detailed explanation of the specific provisions of the proposal**

The proposal consists of five Chapters: (i) general provisions; (ii) transfer of criminal proceedings; (iii) effects of the transfer of criminal proceedings; (iv) means of communication; and (v) final provisions.

CHAPTER I: General provisions

Article 1 sets out the subject matter of the proposal. The proposal lays down rules under which a Member State can take over a criminal proceeding upon request of another Member State. The proposal applies in all cases of transfer of criminal proceedings in the EU from the moment a person has been identified as a suspect.

Article 2 defines, for the purposes of the proposal, the terms ‘requesting State’, ‘requested State’, ‘requesting authority’, ‘requested authority’, ‘decentralised IT system’ and ‘victim’.

The definition of ‘requesting’ and ‘requested’ authority must be read together with Article 30 whereby Member States are required to notify to the Commission the competent requesting and requested authorities.

Article 3 provides for jurisdiction in specific cases. The requested authority may accept the transfer of a criminal proceeding only if it has jurisdiction to prosecute the criminal offence. In order to improve the efficiency of the procedure for transfers, this provision therefore provides that in situations listed in that Article jurisdiction is conferred to the requested State in cases where it would not otherwise have jurisdiction. The requested State should have jurisdiction to try the criminal offences for which the transfer is sought, whenever that Member State is considered as the best placed to prosecute. Such jurisdiction can be exercised only upon a request for the transfer of criminal proceedings from another Member State which has original jurisdiction to prosecute the criminal offence.

Article 4 aims to provide a legal basis for the authorities in the requesting State having original jurisdiction to institute criminal proceedings to waive, suspend or discontinue the criminal proceedings in favour of a Member State identified as being in a better position to prosecute. The provision is devised for Member States which have legal systems based on mandatory prosecution to be able to avail themselves of the provisions of this Regulation.

CHAPTER 2: TRANSFER OF CRIMINAL PROCEEDINGS

This Chapter provides for the criteria and procedure for requesting the transfer of criminal proceedings and for the procedure for taking a decision on the transfer of criminal proceedings. Such common rules aim to prevent unnecessary parallel criminal proceedings concerning the same facts and the same person being conducted in two or more Member States, as well to reduce the number of multiple proceedings and to avoid impunity where the surrender of a person for whom a European Arrest Warrant was issued is refused.

Article 5 sets out the criteria for requesting a transfer of criminal proceedings.

This Regulation covers all criminal offences. Criminal proceedings are understood as covering all stages of the criminal proceedings, including pre-trial and trial stage. This Regulation does not apply to requests for transfer of administrative proceedings.

This Regulation does not impose any obligation to request a transfer of criminal proceedings. If the requesting authority considers that transferring a criminal proceeding is necessary and appropriate and that, in particular, one or more of the criteria listed under Article 5(2) are applicable, it may request the other Member State that is better placed to prosecute the criminal offence to take over those criminal proceedings. The list of criteria is non-exhaustive. Whether a request for transfer of criminal proceedings is justified should be carefully assessed on a case-by-case basis in order to identify the Member State that is best placed to prosecute the criminal offence in question and any request should be clearly motivated.

This Regulation also gives the suspect or accused person, or the victim, the possibility to request the competent authorities of the requesting State or of the requested State to initiate a procedure for transferring criminal proceedings. Such requests do not, however, create an obligation for the requesting or the requested State to request or transfer criminal proceedings to the requested State.

Article 6 sets out rules on taking into account the rights and interests of the suspect or accused person when deciding to transfer criminal proceedings. In particular, the requesting authority is obliged to inform the suspect or accused person of the intended transfer of criminal proceedings and to give them the opportunity to state their opinion, provided this would not undermine the need to ensure confidentiality of an investigation and unless the suspect or accused person cannot be located despite reasonable efforts being made by the requesting authority. This opinion should be duly considered by the requesting authority when deciding on the transfer.

Article 7 sets out rules on taking into account the rights and interests of the victim when deciding to transfer criminal proceedings. In particular, where the victim is residing in the requesting State, the requesting authority is obliged to inform the victim of the intended transfer of criminal proceedings and to give them the opportunity to state their opinion, provided this would not undermine the need to ensure confidentiality of an investigation. This opinion should be duly considered by the requesting authority when deciding on the transfer.

Article 8 stipulates that a legal remedy should be guaranteed in the requested State against the decision to accept the transfer of criminal proceedings.

Article 9 lays down the procedure for requesting a transfer of criminal proceedings. The request for transfer of criminal proceedings must be made by completing a standard certificate set out in the Annex to the proposal. This article also sets out the translation requirements for the request and any other written information accompanying the request. The proposal provides for a direct transmission of a request between the requesting and requested authorities but also allows for the possibility of assistance by central authorities.

Article 10 requires the requesting authority to inform the requested authority without undue delay of any procedural acts or measures with a bearing on the criminal proceedings that have been undertaken in the requesting State after the transmission of the request.

Article 11 provides the possibility for the requesting authority to withdraw their request for the transfer of a criminal proceeding at any time before receiving the requested authority's decision to accept the transfer.

Article 12 stipulates that the requested authority must take a decision on whether to accept the transfer of a criminal proceeding and must take necessary measures in accordance with its

national law when it has decided to accept the transfer of criminal proceedings. The requested authority remains at liberty to decide which steps to take in respect of the criminal offence underlying the request. Nothing in this Regulation should be interpreted as interfering with any prosecutorial discretion provided for in national law and there is no obligation to prosecute a case that has been transferred. This Regulation also obliges the requesting authority to forward the necessary documents from the case file to the requested authority once the latter has accepted the transfer of criminal proceedings, but it leaves it up to the requesting and requested authorities to consult and agree among themselves which documents should be sent and translated.

Article 13 provides an exhaustive list of grounds for refusing the transfer of a criminal proceeding, both mandatory and non-mandatory. Mandatory grounds for refusal refer to situations where the prosecution of the facts underlying the criminal proceedings that are subject to the transfer would not be possible in the requested State, such as when the conduct for which transfer is sought is not considered a criminal offence in the requested State. Non-mandatory grounds for refusal cover other situations which may create an obstacle for taking over a criminal proceeding. In particular, they allow the requested authority the flexibility to refuse the transfer of a criminal proceeding that they do not consider to be in the interest of an efficient and proper administration of justice.

To ensure efficient cross-border procedures, Article 14 lays down a time limit for taking a decision on whether to accept the transfer. It also provides for the interruption of the time limit where there is a need to request a waiver of a privilege or immunity.

Article 15 encourages the requesting and requested authorities to consult each other without delay to ensure the efficient application of this Regulation.

Article 16 sets out that the requesting and requested authorities may request the assistance of Eurojust or the European Judicial Network at any stage of the procedure.

Article 17 stipulates that each Member State shall bear its own costs of transfers of criminal proceedings, however, the requesting authority may in certain cases submit a proposal on cost sharing to the requested authority.

Article 18 gives the possibility to designate central authorities for the purpose of administrative assistance. Should a Member State wish to use this possibility, it is required to notify to the Commission of the designated central authority in accordance with Article 30.

CHAPTER 3: EFFECTS OF THE TRANSFER OF CRIMINAL PROCEEDINGS

This Chapter lays down the effects of transfer of criminal proceedings.

Article 19 stipulates that in the requesting State, the transferred criminal proceedings must be suspended or discontinued upon the receipt of information confirming that the requested authority is taking over that criminal proceeding. The requesting authority may continue or reopen the criminal proceeding only if the requested authority takes a decision to discontinue it, provided that such a decision does not infringe the *ne bis in idem* principle. The possibility for the victim to initiate or to request the reopening of the criminal proceeding in the requesting State in accordance with the national law of that State remains unaffected as long as it does not infringe the *ne bis in idem* principle.

Article 20 stipulates that the national law and procedures of the requested State apply to the criminal proceeding once it is transferred. Any act, investigative measure or evidence gathered in the requesting State for the purpose of the criminal proceeding in question should have the same validity in the requested State as if it had been validly performed by its authorities, unless this would be contrary to the fundamental principles of law of the requested State. When a criminal proceeding has been transferred, the requested State should apply its national law to determine the sentence for the criminal offence in question. If the criminal offence was perpetrated in the territory of the requesting State, when determining the sentence, the requested authorities may take into consideration the maximum penalty envisaged in the law of the requesting State, as long as this is to the benefit of the accused person and in accordance with the law of the requested State. The purpose of the provision is to avoid situations where the transfer of criminal proceedings would lead to the requested State applying a higher sentence than the maximum penalty envisaged for the same offence in the requesting State. This is to ensure compliance with the principle of legal certainty and foreseeability of the applicable law for the suspects or accused persons concerned.

Article 21 obliges the requested authority to inform the requesting authority of any decision delivered at the end of the criminal proceedings.

CHAPTER 4: MEANS OF COMMUNICATION

This Chapter contains provisions on means of electronic communication between the requesting and requested authorities, as well as with central authorities and with Eurojust, through a decentralised IT system.

CHAPTER 5: FINAL PROVISIONS

This Chapter contains provisions on statistics, reporting, adoption of delegated acts should there be a need to amend the certificate annexed to this proposal, notifications by Member States, relationship of the proposal with international agreements and arrangements as well as transitional provisions on the means of communication between the authorities before the obligation to use the decentralised IT system becomes applicable.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the transfer of proceedings in criminal matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1)(b) and (d) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁴⁰,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) The Hague Programme for strengthening freedom, security and justice in the European Union⁴¹ requires Member States to consider possibilities of concentrating the prosecution in cross-border multilateral cases in one Member State, with a view to increasing the efficiency of prosecutions while guaranteeing the proper administration of justice.
- (3) The Programme of measures to implement the principle of mutual recognition of decisions in criminal matters⁴² calls for an instrument enabling criminal proceedings to be transferred to other Member States.
- (4) Further development of judicial cooperation between Member States is needed to increase the efficient and proper administration of criminal justice within the common area of freedom, security and justice and to ensure that the best-placed Member State investigates or prosecutes a criminal offence. In particular, common rules for the Member States regarding the transfer of criminal proceedings could help to prevent unnecessary parallel criminal proceedings in different Member States concerning the same facts and the same person, that could result in an infringement of the *ne bis in idem* principle. They could also reduce the number of multiple criminal proceedings in respect of the same facts or in respect of the same person being conducted in different Member States. They also aim to ensure that a transfer of criminal proceedings can take place, when the surrender of a person for criminal prosecution under a European Arrest Warrant⁴³ is delayed or refused for reasons such as those that parallel criminal

⁴⁰ OJ C , , p. .

⁴¹ OJ C 53, 3.3.2005, p. 1.

⁴² OJ C 12, 15.1.2001, p. 10.

⁴³ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) (OJ L 190, 18.7.2002, p. 1).

proceedings for the same criminal offence are ongoing in the other Member State, in order to enable the person being prosecuted to avoid impunity.

- (5) Common rules on the transfer of criminal proceedings are also essential in order to efficiently fight cross-border crime. This is especially important for crimes perpetrated by organised criminal groups, such as drug trafficking, migrant smuggling, trafficking in human beings, firearms trafficking, environmental crime, cybercrime or money laundering. Prosecuting organised criminal groups that are active in multiple Member States can create great difficulties for the authorities involved. The transfer of criminal proceedings is an important tool which would reinforce the fight against organised criminal groups that are active in the Member States across the EU.
- (6) In order to ensure the effective cooperation between the requesting and requested authorities in relation to the transfer of criminal proceedings, such rules should be established by a legally binding and directly applicable act of the Union.
- (7) This Regulation should apply to all requests issued within the framework of criminal proceedings. Criminal proceedings is an autonomous concept of Union law interpreted by the Court of Justice of the European Union, notwithstanding the case law of the European Court of Human Rights, starting from the time when persons are informed by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence until the conclusion of those proceedings, to be understood as the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal.
- (8) The Council Framework Decision 2009/948/JHA⁴⁴ aims to prevent situations where the same person is subject to parallel criminal proceedings in different Member States in respect of the same facts, which might lead to the final disposal of those proceedings in two or more Member States. It therefore establishes a procedure for direct consultations between competent authorities of the Member States concerned with the aim of achieving a consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings and avoiding waste of time and resources of the competent authorities concerned. When the competent authorities of the Member States concerned decide, following consultations in accordance with that Framework Decision, to concentrate proceedings in one Member State through the transfer of criminal proceedings, this Regulation should be used for such a transfer.
- (9) Other legal instruments in the area of criminal matters, particularly those related to specific crime types, such as the Directive (EU) 2017/541 of the European Parliament and of the Council⁴⁵, Council Framework Decision 2002/475/JHA⁴⁶ and Council Framework Decision 2008/841/JHA⁴⁷, include provisions referring to the factors to be taken into account with the aim of centralising proceedings in a single Member State

⁴⁴ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328, 15.12.2009, p. 42).

⁴⁵ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

⁴⁶ Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA) (OJ L 164, 22.6.2002, p.3).

⁴⁷ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

when more than one Member State can validly prosecute on the basis of the same facts. Where the competent authorities of the Member States concerned decide, following cooperation in line with those legal acts, to centralise criminal proceedings in a single Member State through the transfer of criminal proceedings, this Regulation should be used for such a transfer.

- (10) Several Union legal acts have been adopted on the application of the principle of mutual recognition to judgments in criminal matters for enforcement of sentences in other Member States, in particular Council Framework Decisions 2005/214/JHA⁴⁸, 2008/909/JHA⁴⁹ and 2008/947/JHA⁵⁰. This Regulation should supplement the provisions of those Framework Decisions and should be interpreted as not affecting their application.
- (11) This Regulation does not affect spontaneous exchanges of information regulated by other acts of Union law.
- (12) This Regulation does not apply to decisions to reallocate, merge or split cases on which the European Public Prosecutor's Office has exercised its competence in accordance with Council Regulation (EU) 2017/1939⁵¹.
- (13) For the purpose of this Regulation, Member States should designate the competent authorities in a way that promotes the principle of direct contact between those authorities.
- (14) With a view to the administrative transmission and reception of requests for transfer of criminal proceedings, as well as for other official correspondence relating to such requests, Member States could designate one or more central authorities where necessary due to the structure of their internal legal systems. Such central authorities could also provide administrative support, have coordinating and assisting roles, thus facilitating and promoting the acceptance of requests for transfers of criminal proceedings.
- (15) Some Union legal acts already require Member States to take necessary measures to establish jurisdiction over specific criminal offences, such as those related to terrorist activities⁵² or to the counterfeiting of the euro⁵³ in cases where the surrender of a person is refused.
- (16) This Regulation provides jurisdiction in specific cases, in order to ensure that, for criminal proceedings to be transferred in accordance with this Regulation, wherever

⁴⁸ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16).

⁴⁹ Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5.12.2008, p. 27).

⁵⁰ Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (OJ L 337, 16.12.2008, p. 102).

⁵¹ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

⁵² Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

⁵³ Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA (OJ L 151, 21.5.2014, p. 1).

the interests of efficient and proper administration of justice so require, the requested State can exercise jurisdiction for the criminal offences to which the law of the requesting State is applicable. The requested State should have jurisdiction to try the criminal offences for which the transfer is sought, whenever that Member State is considered as being the best placed one to prosecute.

- (17) Such jurisdiction should be established in situations where the requested State refuses to surrender a suspect or accused person for whom a European arrest warrant has been issued and who is present in the requested State and is a national of or a resident in that State, where such refusal is based on specific grounds mentioned in this Regulation. A requested State should also have jurisdiction when the criminal offence produces its effects or causes damages mainly in the requested State. Damage should be taken into account whenever it is one of the constituent elements of the criminal offence, in accordance with the law of the requested State. The requested State should also have jurisdiction when criminal proceedings are already ongoing in that State against the same suspect or accused person in respect of other facts so that all the criminality of such person could be judged in one single criminal proceeding, or when criminal proceedings are ongoing in that State against other persons in respect of the same or related facts, which might in particular be relevant for concentrating the investigation and prosecution of a criminal organisation in one Member State. In both cases, the suspect or accused person in the criminal proceedings being transferred should be a national of or a resident in the requested State.
- (18) In order to fulfil the purpose of this Regulation and to prevent conflicts of jurisdiction, having specific regard to those Member States which have their legal systems – or the prosecution of certain criminal offences – based on mandatory prosecution, the requesting State, when requesting a transfer of criminal proceedings, should waive its jurisdiction in the prosecution of the person concerned for the criminal offence for which the transfer is sought. On this basis, the competent authorities of the requesting State should be able to discontinue the criminal proceedings brought before them in favour of the Member State identified as being in a better position to prosecute, even where, in accordance with national law, they would be under a duty to prosecute. Such a waiver of jurisdiction should be without prejudice to the provisions on the effects of the transfer of criminal proceedings in the requesting State laid down in this Regulation.
- (19) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union (the ‘Charter’) and the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (20) This Regulation does not affect procedural rights as enshrined in Union law, such as the Charter, the procedural rights directives 2010/64/EU⁵⁴, 2012/13/EU⁵⁵, 2013/48/EU⁵⁶, (EU) 2016/343⁵⁷, (EU) 2016/800⁵⁸ and (EU) 2016/1919⁵⁹.

⁵⁴ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

⁵⁵ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

⁵⁶ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

- (21) Member States should ensure that, when applying this Regulation, the needs of vulnerable persons are taken into account. According to the Commission Recommendation (2013/C 378/02)⁶⁰, vulnerable suspects or accused persons should be understood to mean all suspects or accused persons who are not able to understand or effectively participate in criminal proceedings due to their age, their mental or physical condition or any disabilities they may have.
- (22) Similarly, Member States should ensure that, when applying this Regulation, the procedural rights of suspects and accused persons subject to pre-trial detention are taken into account in accordance with the Commission Recommendation C(2022) 8987 final⁶¹.
- (23) This Regulation should not impose any obligation to request a transfer of criminal proceedings. When assessing whether a request for transfer of criminal proceedings should be issued, the requesting authority should examine whether such a transfer is necessary and appropriate. This assessment should be carried out on a case-by-case basis in order to identify the Member State that is best placed to prosecute the criminal offence in question.
- (24) When assessing whether a request for transfer of criminal proceedings is justified, the requesting authority should have regard to several criteria, the priority and weight of which should be based on the facts and merits of each individual case. All the relevant factors should be considered in the best interest of justice. For instance, where the criminal offence has been committed wholly or in part in the territory of the requested State, or most of the effects or damage caused by the criminal offence were sustained in the territory of the requested State, that State may be considered in a better position to prosecute, given that the evidence to be collected, such as testimony from witnesses, and victims, or experts' opinions, are in the requested State and can thus be more easily gathered, if the criminal proceedings were transferred. Additionally, the initiation of subsequent proceedings for damages in the requested State would be facilitated if the underlying proceedings establishing the criminal responsibility were also held in the same Member State. Similarly, if most of the evidence are located in the requested State, a transfer of criminal proceeding might ease the collection and subsequent admissibility of the evidence gathered in accordance with the law of the requested State.
- (25) Where the suspect or accused person is a national of the requested State or a resident in that State, a transfer of criminal proceedings might be justified for the purpose of ensuring the right of the suspect or accused person to be present at trial, in accordance with Directive (EU) 2016/343. Similarly, where the majority of victims are nationals or residents in the requested State, a transfer can be justified to allow victims to easily

⁵⁷ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

⁵⁸ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

⁵⁹ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).

⁶⁰ Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (2013/C 378/02) (OJ C 378, 24.12.2013, p. 8).

⁶¹ Commission Recommendation of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions (C(2022) 8987 final).

participate in the criminal proceedings and to be effectively examined as witnesses during the proceedings. In cases where the surrender of a suspect or accused person for whom a European Arrest Warrant was issued is refused in the requested State on the grounds specified in this Regulation, a transfer may also be justified when that person is present in the requested State while not being a national of or a resident in that State.

- (26) It is for the requesting authority to assess on the basis of material before it, whether there are reasonable grounds to believe that the suspect, accused person or the victim resides in the requested State. Where only limited information is available, such an assessment could also be the object of consultations between the requesting and requested authorities. Various objective circumstances that could indicate that the person concerned has established the habitual centre of his or her interests in a particular Member State or has the intention to do so, can be of relevance. Reasonable grounds to believe that a person resides in the requested State could exist, in particular, where a person is registered as a resident in the requested State, by holding an identity card, a residence permit, or a registration in an official residence register. Where that person is not registered in the requested State, residence could be indicated by the fact that a person manifested the intention to settle in that Member State or has acquired, following a stable period of presence in that Member State, certain connections with that Member State which are of a similar degree as those resulting from establishing a formal residence in that Member State. In order to determine whether, in a specific situation, there are sufficient connections between the person concerned and the requested State giving rise to reasonable grounds to believe that the person concerned resides in that State, it is necessary to take into account various objective factors characterising the situation of that person, which include, in particular, the length, nature and conditions of their presence in the requested State or the family or economic connections which that person has with the requested State. A registered vehicle, the registration of a telephone number, a bank account, the fact that the person's stay in the requested State was uninterrupted or other objective factors may be of relevance to determine that there are reasonable grounds to believe that the person concerned resides in the requested State. A short visit, a holiday stay, including in a holiday home, or a similar stay in the requested State without any further substantial link should not be enough to establish residence in that Member State. On the other hand, an uninterrupted stay of at least three months should in most cases be regarded as sufficient to establish residence.
- (27) A transfer of criminal proceedings may also be justified when criminal proceedings are ongoing in the requested State in respect of the same or other facts against the suspect or accused person, or when criminal proceedings are ongoing in the requested State in respect of the same or related facts against other persons, e.g. in cases of prosecution of cross-border criminal organisations, where different co-accused might be prosecuted in different Member States. Moreover, if the suspect or accused person is serving or is to serve a sentence involving deprivation of liberty in the requested State for another criminal offence, a transfer of criminal proceedings may be justified to ensure the right of the convicted person to be present at the trial for which transfer of criminal proceedings is sought, while serving the sentence in the requested State. Moreover, the requesting authorities should give due consideration to whether the transfer of criminal proceedings could enhance the aim of social rehabilitation of the person concerned in case the sentence were to be enforced in the requested State: for this purpose, the person's attachment to the requested State, whether they consider it the place of family, linguistic, cultural, social or economic and any other links to the requested State should be taken into account.

- (28) When requesting a transfer of criminal proceedings, the requesting authority should take into account possibilities of obtaining evidence from other Member States through existing instruments of mutual recognition of judicial decisions, such as the Directive 2014/41/EU of the European Parliament and of the Council⁶², and mutual legal assistance, where applicable, before considering transfer of criminal proceedings on the sole ground that most of the evidence is located in the requested State.
- (29) Suspects or accused persons or victims should have the possibility to request for the criminal proceedings concerning them to be transferred to another Member State. These requests should not however impose any obligation on the requesting or requested authority to request or transfer criminal proceedings. If the authorities become aware of parallel criminal proceedings on the basis of a request of transfer submitted by the suspect or accused person, or the victim, or a lawyer on their behalf, then they are under the obligation to consult each other in accordance with the Framework Decision 2009/948/JHA.
- (30) The requesting authority should inform as soon as possible the suspect or accused person of the intended transfer and should provide for the possibility for such person to express their opinion orally or in writing, in accordance with applicable national law, to enable the authorities to take into account their legitimate interests before issuing a request for transfer. When assessing the legitimate interest of the suspect or accused person to be informed about the intended transfer, the requesting authority should take into account the need to ensure confidentiality of an investigation and the risk of prejudicing criminal proceedings against that person, e.g. whenever it is necessary to safeguard an important public interest, such as in cases where such information could prejudice ongoing covert investigations or seriously harm the national security of the Member State in which the criminal proceedings are instituted. Where the requesting authority cannot locate the suspect or accused person despite its reasonable efforts being made, the obligation to inform such person should apply from the moment these circumstances change.
- (31) The rights of victims set out in Directive 2012/29/EU of the European Parliament and of the Council⁶³ should be taken into account in applying this Regulation. This Regulation should not be interpreted as preventing Member States from granting victims more extensive rights under national law than those laid down in Union law.
- (32) When taking a decision on the transfer of criminal proceedings, the requesting authority should have due regard to the legitimate interests of victims, including their protection, and assess whether the transfer of criminal proceedings might be detrimental for the victim to effectively exercise their rights in the criminal proceeding concerned. This encompasses, for example, the possibility and arrangements available for victims to testify during trial in the requested State if it's not the Member State where they reside. Furthermore, consideration should be given to the possibility for victims to obtain and provide evidence, for instance from witnesses and experts, to claim compensation or to benefit from witnesses' protection programmes in the requested State. The victims' rights to compensation should not be prejudiced by the

⁶² Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

⁶³ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

transfer of criminal proceedings. This Regulation is not to affect rules on compensation and restitution of property to victims in national proceedings.

- (33) Whenever there is a need to ensure that the protection provided to the victim in the requesting State is continued in the requested State, competent authorities in the requesting State should consider the issuance of a European protection order in line with Regulation (EU) No 606/2013 of the European Parliament and of the Council⁶⁴ or the Directive 2011/99/EU of the European Parliament and of the Council⁶⁵.
- (34) The requested State should ensure access to effective legal remedies for suspects and accused persons, as well as for victims, against the decision to accept the transfer of criminal proceedings in line with Article 47 of the Charter and the procedures applicable under national law, whenever their rights are adversely affected in the application of this Regulation.
- (35) The proper application of this Regulation presupposes communication between the requesting and requested authorities involved, which should be encouraged to consult each other whenever it is appropriate to facilitate the smooth and efficient application of this Regulation, either directly or, where appropriate, via European Union Agency for Criminal Justice Cooperation (Eurojust).
- (36) The requesting authority should consult with the requested authority prior to issuing a request for transfer of criminal proceedings when this is necessary, in particular, in order to determine if the transfer of criminal proceedings would serve the interests of efficient and proper administration of justice, as well as if the requested authority is likely to invoke one of the grounds for refusal under this Regulation.
- (37) When transmitting a request for transfer of criminal proceedings, the requesting authority should provide accurate and clear information on the circumstances and conditions underlying the request, as well as any other supporting documentation, with a view to enabling the requested authority to take an informed decision on the transfer of criminal proceedings.
- (38) Until the requested authority has not taken a decision to accept a transfer of criminal proceedings, the requesting authority should be able to withdraw the request, for instance when it becomes aware of further elements due to which the transfer no longer appears justified.
- (39) The requested authority should inform the requesting authority of its reasoned decision on whether to accept the transfer of criminal proceedings without delay and no later than 60 days after the receipt of the request for transfer of criminal proceedings. In specific cases, when it is not feasible for the requested authority to comply with this period, for instance if it considers that additional information is necessary, it may only be extended for further 30 days to avoid excessive delays.
- (40) Transfer of a criminal proceeding should not be refused on grounds other than those provided for in this Regulation. To be able to accept the transfer of criminal proceedings, prosecution of the facts underlying the criminal proceedings that are subject to the transfer should be possible in the requested State. The requested authority should not accept the transfer of criminal proceedings when the conduct for which transfer is sought is not a criminal offence in the requested State, or when the

⁶⁴ Regulation (EU) No 606/2013 of the European Parliament and of the Council of 12 June 2013 on mutual recognition of protection measures in civil matters (OJ L 181, 29.6.2013, p. 4).

⁶⁵ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order (OJ L 338, 21.12.2011, p. 2).

requested State does not have jurisdiction over that criminal offence, unless it exercises jurisdiction provided under this Regulation. Furthermore, the transfer of criminal proceedings should not be accepted in case of other impediments to prosecution in the requested State. The requested authority should also be able to refuse a transfer of criminal proceedings, if the suspect or accused person benefits from an immunity or privilege in accordance with the law of the requested State, e.g. in relation to certain categories of persons (such as diplomats) or specifically protected relationships (such as lawyer-client privilege), or if the requested authority believes that such transfer is not justified by the interests of efficient and proper administration of justice, for instance because none of the criteria for requesting a transfer of criminal proceedings are met, or if the certificate for a request for transfer is incomplete or was incorrectly completed by the requesting authority, thus not enabling the requested authority to have the necessary information to assess the request for transfer of criminal proceedings.

- (41) The principle of *ne bis in idem*, as set out in Articles 54 to 58 of the Convention implementing the Schengen Agreement⁶⁶ and in Article 50 of the Charter, and as interpreted by the Court of Justice of the European Union, is a basic fundamental principle of criminal law, according to which a defendant should not be tried or punished again in criminal proceedings for the criminal offence for which he or she has already been finally acquitted or convicted. Therefore, the requested authority should refuse the transfer of criminal proceedings, if taking them over would be contrary to that principle.
- (42) Before deciding not to accept a request for transfer of criminal proceedings on the basis of any ground for refusal, the requested authority should consult the requesting authority in order to obtain any necessary additional information.
- (43) The acceptance of transfer of criminal proceedings by the requested authority should result in the suspension or discontinuation of criminal proceedings in the requesting State to avoid duplication of measures in the requesting and requested State. This should be without prejudice to investigations or other procedural measures which may be necessary to execute decisions based on mutual recognition instruments or to comply with requests for mutual legal assistance linked to the proceedings subject to the transfer. The notion of ‘investigative or other procedural measures’ should be interpreted broadly, as including not only any measure for the purpose of gathering evidence, but also any procedural act imposing pre-trial detention or any other interim measure. To avoid abusive challenges and ensure that the criminal proceedings are not suspended at length, if a legal remedy with a suspensive effect has been invoked in the requested State the criminal proceedings should not be suspended nor discontinued in the requesting State until a decision on the remedy has been taken in the requested State.
- (44) This Regulation should not constitute a legal basis for arresting persons with a view to their physical transfer to the requested State in order for the latter to bring criminal proceedings against that person.
- (45) The requested authority should inform the requesting authority in writing of any decision delivered at the end of the criminal proceedings in the requested State. Framework Decision 2009/948/JHA imposes a similar obligation where an agreement

⁶⁶ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239, 22.9.2000, p. 19).

was reached on the concentration of proceedings in one Member State. Where the requested authority decides to discontinue criminal proceedings related to the facts underlying the request for transfer, it should also include the reasons for such discontinuation.

- (46) If the requested authority decides to discontinue criminal proceedings related to the facts underlying the request for transfer, the requesting authority may continue or reopen criminal proceedings whenever this would not entail a violation of the *ne bis in idem* principle, i.e. whenever that decision does not definitely bar further prosecution under the law of the requested State and therefore does not prevent further proceedings, in respect of the same acts, in that State. Victims should have the possibility to initiate or to request reopening of the criminal proceedings in the requesting State in accordance with the national law of that State, provided that this would not entail a violation of the *ne bis in idem* principle.
- (47) Once criminal proceedings are transferred in accordance with this Regulation, the requested authority should apply its relevant national law and procedures. Nothing in this Regulation should be interpreted as interfering with any prosecutorial discretion provided for in national law.
- (48) The requested State should apply its national law to determine the sentence applicable to the criminal offence in question. In cases where the criminal offence has been perpetrated in the territory of the requesting State, the requested authorities may take into consideration in the determination of the sentence the maximum penalty envisaged in the law of the requesting State, whenever this is to the benefit of the accused person, and in accordance with the law of the requested State. This should be taken into account in situations where the transfer of criminal proceedings would lead to the application in the requested State of a higher sentence than the maximum sentence provided for in the requesting State for the same criminal offence, with a view to ensure a degree of legal certainty and foreseeability of the applicable law for the suspects or accused persons concerned. The maximum sentence envisaged in the law of the requesting State should always be taken into account where jurisdiction of the requested State is based exclusively on this Regulation.
- (49) Member States should not be able to claim from each other compensation for costs resulting from the application of this Regulation. However, when the requesting State has incurred large or exceptional costs, related to the translation of the documents in the case file to be transferred to the requested State, a proposal by the requesting authority to share the costs should be considered by the requested authority.
- (50) The use of a standardised certificate translated in all official Union languages would facilitate cooperation and the exchange of information between the requesting and requested authorities, allowing them to take a decision on the request for transfer more quickly and effectively. It also reduces translation costs and contributes to higher quality of requests.
- (51) The certificate should only include personal data necessary to facilitate the requested authority's decision on the request. The certificate should contain an indication of the categories of personal data, such as whether the related person is suspect, accused or victim, as well as the specific fields for each of these categories.
- (52) In order to effectively address a possible need for improvement regarding the certificate to be used to request transfer of criminal proceedings, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European

Union should be delegated to the Commission to amend the Annex to this Regulation. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁶⁷. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (53) In order to ensure swift, direct, interoperable, reliable and secure exchange of case-related data, communication under this Regulation between the requesting and requested authorities and with the involvement of central authorities, where a Member State has designated a central authority, as well as with Eurojust, should as a rule be carried out through the decentralised IT system within the meaning of Regulation (EU) .../...[Digitalisation Regulation]⁶⁸. In particular, the decentralised IT system should, as a rule, be used for the exchange of the certificate and of any other relevant information and documents, and all other communication between the authorities under this Regulation. In cases where one or more of the exceptions mentioned in the Regulation (EU) .../.... [Digitalisation Regulation] apply, in particular, where the use of the decentralised IT system is not possible or appropriate, other means of communication may be used as specified in that Regulation.
- (54) Member States could use a software developed by the Commission (reference implementation software) instead of a national IT system. This reference implementation software should be based on a modular setup, meaning that the software is packaged and delivered separately from the e-CODEX components needed to connect it to the decentralised IT system. This setup should enable Member States to reuse or enhance their existing national judicial communication infrastructures for the purpose of cross-border use.
- (55) The Commission should be responsible for the creation, maintenance and development of this reference implementation software. The Commission should design, develop and maintain the reference implementation software in a way that allows the controllers to ensure compliance with the data protection requirements and principles laid down in Regulations (EU) 2018/1725⁶⁹ and (EU) 2016/679⁷⁰ of the European Parliament and of the Council and Directive (EU) 2016/680 of the European Parliament and of the Council⁷¹, in particular the obligations of data protection by

⁶⁷ OJ L 123, 12.5.2016, p. 13.

⁶⁸ Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

⁶⁹ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁷⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁷¹ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the

design and by default as well as high level of cybersecurity. The reference implementation software should also include appropriate technical measures and enable the organisational measures necessary for ensuring an appropriate level of security and interoperability, taking into account that special categories of data may also be exchanged. The Commission does not process personal data in the context of creation, maintenance and development of this reference implementation software.

- (56) The reference implementation software developed by the Commission as a back-end system should programmatically collect the statistical data necessary for monitoring purposes and such data should be transmitted to the Commission. Where Member States choose to use a national IT system instead of the reference implementation software developed by the Commission, such a system could be equipped to programmatically collect those data and, in that case, those data should be transmitted to the Commission. The e-CODEX connector could also be equipped with a feature allowing retrieval of relevant statistical data.
- (57) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to establish a decentralised IT system. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁷².
- (58) This Regulation should create the legal basis for the exchange of the personal data between the Member States for the purposes of the transfer of criminal proceedings in line with Article 8 and Article 10(a) of the Directive (EU) 2016/680. However, as regards any other aspect, such as the time period for the retention of personal data received by the requesting authority, the processing of personal data by the requesting and requested authorities should be subject to the national laws of Member States adopted pursuant to the Directive (EU) 2016/680. The requesting and requested authority should be considered as controllers with respect of the processing of the personal data under that Directive. The central authorities provide administrative support to the requesting and requested authorities and, to the extent they are processing personal data on behalf of those controllers, they should be considered as processors of the respective controller. As regards the processing of personal data by Eurojust, Regulation (EU) 2018/1725 of the European Parliament and of the Council should apply in the context of this Regulation without prejudice to the specific data protection rules of the Regulation (EU) 2018/1727 of the European Parliament and of the Council⁷³.
- (59) Since the objective of this Regulation, namely the transfer of criminal proceedings, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and its effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

⁷² Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

⁷³ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA, PE/37/2018/REV/1 (OJ L 295, 21.11.2018, p. 138).

- (60) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified [, by letter of ...,] its wish to take part in the adoption and application of this Regulation.] OR [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]
- (61) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (62) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) No 2018/1725 of the European Parliament and of the Council⁷⁴ and delivered an opinion on [...],

HAVE ADOPTED THIS REGULATION:

Chapter 1

General provisions

Article 1 *Subject matter*

1. This Regulation lays down rules on the transfer of criminal proceedings between the Member States with a view to improving the efficient and proper administration of justice within the common area of freedom, security and justice.
2. This Regulation shall apply in all cases of transfer of criminal proceedings in the Union from the time where a person has been identified as a suspect.
3. This Regulation shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the Treaty of the European Union.

Article 2 *Definitions*

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘requesting State’ means a Member State in which a request for transfer of criminal proceedings is issued;
- (2) ‘requested State’ means a Member State to which a request for transfer of criminal proceedings is transmitted for the purpose of taking over of criminal proceedings;
- (3) ‘requesting authority’ means:

⁷⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

- (a) a judge, court, investigating judge or public prosecutor competent in the case concerned; or
 - (b) any other competent authority which is designated as such by the requesting State and which, in the case concerned, is acting in its capacity as an investigating authority in criminal proceedings with competence to request the transfer of criminal proceedings in accordance with national law. In addition, before the request for transfer of criminal proceedings is transmitted to the requested authority, it shall be validated by a judge, a court, an investigating judge or a public prosecutor in the requesting State after examining its conformity with the conditions for issuing such a request under this Regulation. Where the request for transfer of criminal proceedings has been validated by a judge, a court, an investigating judge or a public prosecutor, that authority may also be regarded as a requesting authority for the purposes of transmitting the request;
- (4) ‘requested authority’ means a judge, a court, an investigating judge or a public prosecutor having competence to take a decision on whether to accept transfer of criminal proceedings in accordance with Article 12 and to take any measure as provided for in its national law;
 - (5) ‘decentralised IT system’ means an IT system as defined in Article 2, point (4), of Regulation (EU).../... [Digitalisation Regulation];
 - (6) ‘victim’ means a victim as defined in Article 2(1), point (a), of Directive 2012/29/EU.

Article 3
Jurisdiction

- 1. For the purpose of this Regulation, the requested State shall have jurisdiction over any criminal offence to which the law of the requesting State is applicable, in situations where:
 - (a) it refuses to surrender a suspect or accused person, who is present in and a national of or a resident in the requested State, on the basis of Article 4(7), point (b), of the Framework Decision 2002/584/JHA;
 - (b) it refuses to surrender a suspect or accused person for whom a European arrest warrant has been issued and who is present in and a national of or a resident in the requested State, if it finds that there are, in exceptional situations, substantial grounds to believe, on the basis of specific and objective evidence, that surrender would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in Article 6 of the Treaty on European Union and the Charter;
 - (c) most of the effects of the criminal offence or a substantial part of the damage, which is part of the constituent elements of the criminal offence, occurred in the territory of the requested State;
 - (d) there are ongoing criminal proceedings in the requested State against the suspect or accused person in respect of other facts and the suspect or accused person is a national or resident of the requested State;
 - (e) there are ongoing criminal proceedings in the requested State in respect of the same or partially the same facts against other persons and the suspect or

accused person in the criminal proceedings to be transferred is a national or resident of the requested State.

2. The jurisdiction established by the requested State exclusively by virtue of paragraph 1 may be exercised only pursuant to a request for transfer of criminal proceedings.

Article 4

Waiver, suspension or discontinuation of criminal proceedings

Any Member State having jurisdiction under its national law to prosecute a criminal offence may, for the purposes of applying this Regulation, waive, suspend or discontinue criminal proceedings against a suspect or accused person, in order to allow for the transfer of criminal proceedings in respect of that criminal offence to the requested State.

CHAPTER 2 TRANSFER OF CRIMINAL PROCEEDINGS

Article 5

Criteria for requesting a transfer of criminal proceedings

1. A request for transfer of criminal proceedings may only be issued where the requesting authority deems that the objective of an efficient and proper administration of justice would be better served by conducting the relevant criminal proceedings in another Member State.
2. The requesting authority shall take into account in particular the following criteria:
 - (a) the criminal offence has been committed wholly or partly in the territory of the requested State, or most of the effects or a substantial part of the damage caused by the criminal offence occurred in the territory of the requested State;
 - (b) the suspect or accused person is a national of or resident in the requested State;
 - (c) the suspect or accused person is present in the requested State and that State refuses to surrender this person to the requesting State either on the basis of Article 4(2) of the Framework Decision 2002/584/JHA, or of Article 4(3) thereof where such refusal is not based on a final judgement passed upon this person in respect of the same criminal offence which prevents further criminal proceedings, or on the basis of Article 4(7) of that Framework Decision;
 - (d) the suspect or accused person is present in the requested State and that State refuses to surrender this person for whom a European arrest warrant has been issued, if it finds that there are, in exceptional situations, substantial grounds to believe, on the basis of specific and objective evidence, that surrender would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in Article 6 of the Treaty on European Union and the Charter;
 - (e) most of the evidence relevant to the investigation is located in or majority of the relevant witnesses are residing in the requested State;
 - (f) there are ongoing criminal proceedings in the requested State in respect of the same or other facts against the suspect or accused person;
 - (g) there are ongoing criminal proceedings in the requested State in respect of the same or related facts against other persons;

- (h) the suspect or accused person is serving or is to serve a sentence involving deprivation of liberty in the requested State;
 - (i) the enforcement of the sentence in the requested State is likely to improve the prospects for social rehabilitation of the person sentenced or there are other reasons for a more appropriate enforcement of the sentence in the requested State;
 - (j) the majority of victims are nationals of or residents in the requested State.
3. The suspect or accused person, or the majority of victims, or a lawyer on their behalf, may also request the competent authorities of the requesting State or of the requested State to initiate a procedure for transferring criminal proceedings under this Regulation. Requests made under this paragraph shall not create an obligation for the requesting or the requested State to request or transfer criminal proceedings to the requested State.

Article 6

The rights of the suspect or accused person

1. Before a request for transfer of criminal proceedings is issued, the requesting authority shall, in accordance with applicable national law, give due consideration to the legitimate interests of the suspect or accused person and ensure that their procedural rights under Union and national law are respected.
2. Provided that it would not undermine the confidentiality of an investigation, the suspect or accused person shall, in accordance with applicable national law, be informed of the intended transfer of criminal proceedings, in a language which they understand, and shall be given an opportunity to state their opinion orally or in writing, unless that person cannot be located despite reasonable efforts being made by the requesting authority. Where the requesting authority considers it necessary in view of the suspect's or accused person's age or their physical or mental condition, the opportunity to state their opinion shall be given to their legal representative. Where the request for transfer of criminal proceedings follows a request from the suspect or accused person under Article 5(3), such a consultation with the suspect or accused person who made the request is not required.
3. The opinion referred to in paragraph 2 of the suspect or accused person shall be taken into account by the requesting authority when deciding whether to request the transfer of criminal proceedings.
4. Where the requested authority has taken a decision in accordance with Article 12(1), the requesting authority shall, provided that it would not undermine the confidentiality of an investigation, immediately inform the suspect or accused person, in a language which they understand, about the issuing of the request for transfer of criminal proceedings and the subsequent acceptance or refusal of the transfer by the requested authority, unless that person cannot be located despite reasonable efforts being made by the requesting authority. If the requested authority has taken a decision to accept the transfer of criminal proceedings, the suspect or accused person shall also be informed about their right to a legal remedy in the requested State, including about the time limits for such a remedy.

Article 7
The rights of the victim

1. Before a request for transfer of criminal proceedings is made, the requesting authority shall, in accordance with applicable national law, give due consideration to the legitimate interests of the victim and ensure that their rights under Union and national law are respected.
2. Provided that it would not undermine the confidentiality of an investigation, and where the victim resides in the requesting State, they shall, in accordance with applicable national law, be informed of the intended transfer of criminal proceedings, in a language which they understand, and shall be given an opportunity to state their opinion orally or in writing. Where the requesting authority considers it necessary in view of the victim's age or his or her physical or mental condition, that opportunity shall be given to victim's legal representative.
3. The opinion referred to in paragraph 2 of the victim shall be taken into account by the requesting authority when deciding whether to request the transfer of criminal proceedings.
4. Where the requested authority has taken a decision in accordance with Article 12(1), the requesting authority shall, provided that it would not undermine the confidentiality of an investigation, immediately inform the victim residing in the requesting State, in a language which they understand, about the issuing of the request for transfer of criminal proceedings and the subsequent acceptance or refusal of the transfer by the requested authority. If the requested authority has accepted the transfer of criminal proceedings, the victim shall also be informed about their right to a legal remedy available in the requested State, including about the time limits for such a remedy.

Article 8
Right to a legal remedy

1. Suspects, accused persons, and victims shall have the right to effective legal remedies in the requested State against a decision to accept the transfer of criminal proceedings.
2. The right to a legal remedy shall be exercised before a court in the requested State in accordance with its law.
3. The time limit for seeking a legal remedy shall be no longer than 20 days from the date of receipt of information about the decision referred to in Article 12(1).
4. Where the request for transfer of criminal proceedings is issued after the suspect's or accused person's indictment, the invocation of a legal remedy against a decision to accept the transfer of criminal proceedings, shall have suspensive effect.
5. The requested authority shall inform the requesting authority about the legal remedies sought under this Article.

Article 9
Procedure for requesting transfer of criminal proceedings

1. The request for transfer of criminal proceedings shall be drawn up using the certificate set out in the Annex. The requesting authority shall sign the certificate and shall certify its content as being accurate and correct.

2. The request for transfer of criminal proceedings shall be duly substantiated and shall, in particular, contain the following information:
 - (a) data about the requesting authority;
 - (b) a description of the criminal offence, which is the subject of the criminal proceedings, and the applicable provisions of the criminal law of the requesting State;
 - (c) the reasons why the transfer is necessary and appropriate and in particular which of the criteria under Article 5(2) are applicable;
 - (d) the necessary information available on the suspect or accused person and the victim;
 - (e) an assessment of the impact of the transfer of criminal proceedings on the rights of suspect or accused person and victim;
 - (f) information on procedural acts or measures with a bearing on the criminal proceedings that have been undertaken in the requesting State;
 - (g) any applicable specific conditions of processing of personal data pursuant to Article 9(3) of the Directive (EU) 2016/680.
3. Where the suspect or accused person has given their opinion under Article 6(2) or the victim has given their opinion under Article 7(2), that opinion shall be forwarded to the requested authority together with the request for transfer of criminal proceedings. If the opinion of the suspect or accused person or the victim was stated orally, the requesting authority shall ensure that the written record of such statement is available to the requested authority.
4. Where necessary, the request for transfer of criminal proceedings shall be accompanied by any additional relevant information and documents.
5. The completed certificate referred to in paragraph 1 and, where so agreed with the requested authority, any other written information accompanying the request for transfer of criminal proceedings, shall be translated into an official language of the requested State or any other language that the requested State will accept in accordance with Article 30(1), point (c).
6. The requesting authority shall transmit the request for transfer of criminal proceedings directly to the requested authority or, where applicable, with the involvement of the central authority referred to in Article 18. The requesting and requested authorities shall carry out all other official communication directly or, where applicable, with the involvement of a central authority referred to in Article 18.
7. Where the requested authority is not known to the requesting authority, the latter shall make all necessary inquiries, including through the contact points of the European Judicial Network, in order to determine which authority is competent for taking the decision under Article 12.
8. Where the authority in the requested State which received the request has no competence to take a decision under Article 12, it shall without undue delay transmit the request to the competent requested authority in the same Member State and shall inform the requesting authority accordingly.

Article 10
Information to be given by the requesting authority

The requesting authority shall inform the requested authority of any procedural acts or measures with a bearing on the criminal proceedings that have been undertaken in the requesting State after the transmission of the request without undue delay. This communication shall be accompanied by all relevant documents.

Article 11
Withdrawal of the request

The requesting authority may withdraw the request for transfer of criminal proceedings at any time before receiving the requested authority's decision to accept the transfer of criminal proceedings in accordance with Article 12.

Article 12
Decision of the requested authority

1. The requested authority shall take a reasoned decision on whether to accept the transfer of criminal proceedings and shall decide, in accordance with its national law, what measures to take thereon.
2. If the requested authority finds the information communicated by the requesting authority to be insufficient to allow it to decide whether to accept the transfer of criminal proceedings, it may request the additional information it deems necessary.
3. If the requested authority decides to refuse the transfer of criminal proceedings in accordance with Article 13, it shall inform the requesting authority of the reasons for such refusal. Information to the suspect or accused person and to the victim will take place in accordance with Articles 6(4) and 7(4) respectively.
4. If the requested authority has accepted the transfer of criminal proceedings, it shall inform the requesting authority about the legal remedies available to challenge the decision to accept the transfer of criminal proceedings, including the requirements and time limits to exercise these remedies. Information to the suspect or accused person and to the victim will take place in accordance with Articles 6(4) and 7(4) respectively.
5. When the requested authority has accepted the transfer of criminal proceedings, the requesting authority shall without delay forward the original or a certified copy of the case file or relevant parts thereof, accompanied by their translation into an official language of the requested State or any other language that the requested State will accept in accordance with Article 30(1), point (c). Where necessary, the requesting and requested authorities may consult each other in order to determine the necessary documents or parts of such documents to be forwarded, as well as to be translated.

Article 13
Grounds for refusal

1. The requested authority shall refuse the transfer of criminal proceedings, in whole or in part, where criminal proceedings under the national law of the requested State cannot be brought against the suspect or accused person in relation to the facts underlying the request for transfer of criminal proceedings in one or more of the following situations:

- (a) if the conduct in connection with which the request was made does not constitute a criminal offence under the law of the requested State;
 - (b) if taking over criminal proceedings would be contrary to the principle of *ne bis in idem*;
 - (c) if the suspect or accused person cannot be held criminally liable for the criminal offence due to their age;
 - (d) if the criminal prosecution is statute-barred in accordance with the law of the requested State or the conditions for prosecuting the criminal offence in the requested State are not fulfilled;
 - (e) if the criminal offence is covered by amnesty in accordance with the law of the requested State;
 - (f) if the requested State does not have jurisdiction over the criminal offence. Such jurisdiction could also derive from Article 3.
2. The requested authority may refuse the transfer of criminal proceedings, in whole or in part, if one or more grounds exist:
- (a) there is an immunity or a privilege under the law of the requested State which makes it impossible to take action;
 - (b) the requested authority considers that the transfer of criminal proceedings is not in the interest of an efficient and proper administration of justice;
 - (c) the criminal offence has not been committed wholly or partly in the territory of the requested State, most of the effects or a substantial part of the damage caused by the criminal offence did not occur in the territory of that State, and the suspect or accused person is not a national of or resident in that State;
 - (d) the certificate referred to in Article 9(1) is incomplete or manifestly incorrect and has not been completed or corrected following the consultation referred to in paragraph 3.
3. In any of the situations referred to in paragraphs 1 and 2, before deciding to refuse the transfer of criminal proceedings, either in whole or in part, the requested authority shall consult the requesting authority and, where necessary, shall request it to provide any necessary information without delay.
4. In the situation referred to in paragraph 2, point (a), and where the power to waive the privilege or immunity lies with an authority of the requested State, the requested authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, the requesting authority shall request that authority to exercise that power.

Article 14
Time limits

1. The requested authority shall communicate to the requesting authority its decision whether to accept the transfer of criminal proceedings without delay and in any case no later than 60 days after the receipt of the request for transfer of criminal proceedings by the competent requested authority.
2. Where in a specific case the requested authority cannot meet the time limit set out in paragraph 1, it shall immediately inform the requesting authority thereof, giving

reasons for the delay. In such a case, the time limit set out in paragraph 1 may be extended by a maximum of 30 days.

3. Where there is an immunity or a privilege under the law of the requested State, the time limit referred to in paragraph 1 shall not start running unless, and counting from the day when, the requested authority is informed of the fact that the privilege or immunity has been waived.

Article 15

Consultations between the requesting and requested authorities

1. Where necessary and without prejudice to Articles 12(2), 13(3) and 17(2), the requesting authority and requested authority shall consult each other without delay to ensure the efficient application of this Regulation.
2. Consultations may also take place before the request for transfer of criminal proceedings is issued, in particular with a view to determining whether the transfer would serve the interests of efficient and proper administration of justice. In order to propose the transfer of criminal proceedings from the requesting State, the requested authority may also consult with the requesting authority about the possibility of issuing a request for transfer of criminal proceedings.
3. When the requesting authority consults the requested authority prior to making a request for transfer of criminal proceedings, it shall make the information regarding the criminal proceedings available to the requested authority and may provide it to the requested authority using a certificate set out in the Annex.
4. Requests for consultations shall be answered without delay.

Article 16

Cooperation with Eurojust and the European Judicial Network

The requesting and requested authorities may, at any stage of the procedure, request the assistance of Eurojust or the European Judicial Network in accordance with their respective competences. In particular, where appropriate, Eurojust may facilitate consultations referred to in Articles 12(2), 13(3), 15 and 17(2).

Article 17

Costs of transfers of criminal proceedings

1. Each Member State shall bear its own costs of transfers of criminal proceedings resulting from the application of this Regulation.
2. Where the translation of the case file and other relevant documents under Article 12(5) would entail large or exceptional costs, the requesting authority may submit a proposal to the requested authority that the costs be shared. Such proposal shall be accompanied by a detailed breakdown of the costs incurred by the requesting authority. Following such a proposal the requesting authority and the requested authority shall consult with each other. Where appropriate, Eurojust may facilitate such consultations.

Article 18

Designation of central authorities

Each Member State may designate one or more central authorities responsible for the administrative transmission and receipt of requests for transfer of criminal proceedings, as well as for other official correspondence relating to such requests.

CHAPTER 3

EFFECTS OF THE TRANSFER OF CRIMINAL PROCEEDINGS

Article 19

Effects in the requesting State

1. At the latest upon receipt of the notification of the acceptance by the requested authority of a transfer of criminal proceedings, those criminal proceedings shall be suspended or discontinued in the requesting State in accordance with national law, unless a legal remedy under Article 8 has been invoked with suspensive effect and until such time when the final decision on the legal remedy is taken.
2. Notwithstanding paragraph 1, the requesting authority may in accordance with its national law:
 - (a) undertake necessary investigative or other procedural measures, including measures to prevent the suspect or accused person from absconding, in order to execute a decision based on Framework Decision 2002/584/JHA or another mutual recognition instrument or to reply to a request for mutual legal assistance;
 - (b) maintain necessary investigative or other procedural measures, including measures to prevent the suspect or accused person from absconding, previously adopted that are necessary in order to execute a decision based on Framework Decision 2002/584/JHA or another mutual recognition instrument or a request for mutual legal assistance.
3. The requesting authority may continue or reopen criminal proceedings, if the requested authority informs it of its decision to discontinue criminal proceedings related to the facts underlying the request for transfer of criminal proceedings, unless that decision, under the national law of the requested State, definitively bars further prosecution and therefore prevents further criminal proceedings, in respect of the same acts, in the requested State.
4. Paragraph 3 shall not affect to the right of victims to initiate or to request reopening of criminal proceedings against the suspect or accused person in the requesting State, when the national law of that State so provides, unless the decision by the requested authority to discontinue criminal proceedings, under the national law of the requested State, definitively bars further prosecution and therefore prevents further criminal proceedings, in respect of the same acts, in that State.

Article 20

Effects in the requested State

1. The transferred criminal proceedings shall be governed by the national law of the requested State.
2. Provided that it is not contrary to the fundamental principles of law of the requested State, any act carried out for the purposes of the criminal proceedings or preparatory inquiries performed by competent authorities in the requesting State or any act interrupting or suspending the period of limitation shall have the same validity in the requested State as if it had been validly performed by its own authorities.

3. Evidence transferred by the requesting authority shall not be denied admission in criminal proceedings in the requested State on the mere ground that the evidence was gathered in another Member State. The evidence gathered in the requesting State may be used in criminal proceedings in the requested State, provided that the admissibility of such evidence is not contrary to the fundamental principles of law of the requested State.
4. Provided that a custodial sentence or detention order is issued in the requested State, the latter shall deduct all periods of detention spent in the requesting State, which were imposed in the context of the transferred criminal proceedings, from the total period of detention to be served in the requested State as a result of a custodial sentence or detention order being issued. To that end, the requesting authority shall transmit to the requested authority all information concerning the period of detention spent by the suspect or accused person in the requesting State.
5. If criminal proceedings can only be initiated following a complaint in both the requesting and the requested States, the complaint brought in the requesting State shall also have validity in the requested State.
6. The sentence applicable to the criminal offence shall be the one prescribed by the law of the requested State unless that law provides otherwise. The requested authority may take into consideration, in accordance with the applicable national law, the maximum sentence set out in the law of the requesting State, when the criminal offence has been perpetrated in the territory of the requesting State. Where the jurisdiction is exclusively based on Article 3, the sentence imposed in the requested State shall not be more severe than the maximum sentence set out in the law of the requesting State.

Article 21

Information to be given by the requested authority

The requested authority shall inform the requesting authority of the discontinuation of criminal proceedings or of any decision delivered at the end of the criminal proceedings, including whether that decision, under the national law of the requested State, definitively bars further prosecution and therefore prevents further criminal proceedings, in respect of the same acts, in that State or of other information of substantial value. It shall forward a copy of the written decision delivered at the end of the criminal proceedings to the requesting authority.

CHAPTER 4 MEANS OF COMMUNICATION

Article 22

Means of communication

1. Communication under this Regulation, including the exchange of certificate set out in the Annex, the decision referred to in Article 12(1) and other documents referred to in Article 12(5), between the requesting and requested authorities and with the involvement of central authorities, where a Member State has designated a central authority in accordance with Article 18, as well as with Eurojust, shall be carried out in accordance with Article 3 of Regulation (EU) .../...[Digitalisation Regulation].

2. Article 9(1) and (2), Articles 10 and 15 of Regulation (EU) .../...[Digitalisation Regulation] setting out rules on electronic signatures and electronic seals, legal effects of electronic documents and the protection of information transmitted shall apply to the communication transmitted through the decentralised IT system.
3. Consultations under Article 12(4) and Article 15 between the requesting authority and the requested authority and with the involvement of the central authority(ies), where a Member State has designated a central authority in accordance with Article 18, as well as with Eurojust may be carried out using any appropriate means of communication, including through the decentralised IT system.

Article 23

Establishment of a decentralised IT system

1. The Commission shall, by means of implementing acts, establish the decentralised IT system for the purposes of this Regulation, setting out the following:
 - (a) the technical specifications defining the methods of communication by electronic means for the purposes of the decentralised IT system;
 - (b) the technical specifications for communication protocols;
 - (c) the information security objectives and relevant technical measures ensuring minimum information security standards and a high level of cybersecurity for the processing and communication of information within the decentralised IT system;
 - (d) the minimum availability objectives and possible related technical requirements for the services provided by the decentralised IT system;
 - (e) the digital procedural standards as defined in Article 3, point (9), of Regulation (EU) 2022/850.
2. The implementing acts referred to in paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 26(2).
3. The implementing acts referred to in paragraph 1 shall be adopted by [*two years after the entry into force of this Regulation*].

Article 24

Reference implementation software

1. The Commission shall be responsible for the creation, maintenance and development of reference implementation software which Member States may choose to apply as their back-end system instead of a national IT system. The creation, maintenance and development of the reference implementation software shall be financed from the general budget of the Union.
2. Eurojust shall also be able to make use of the reference implementation software referred to in paragraph 1.
3. The Commission shall provide, maintain and support on a free-of-charge basis the reference implementation software.

Article 25

Costs of the decentralised IT system

1. Each Member State shall bear the costs of the installation, operation and maintenance of the decentralised IT system's access points for which they are responsible.

2. Each Member State shall bear the costs of establishing and adjusting its relevant national IT systems to make them interoperable with the access points, and shall bear the costs of administering, operating and maintaining those systems.
3. Eurojust shall bear the costs of the installation, operation and maintenance of the components comprising the decentralised IT system under its responsibility.
4. Eurojust shall bear the costs of establishing and adjusting its case-management system to make it interoperable with the access points, and shall bear the costs of administering, operating and maintaining this system.

Article 26

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011⁷⁵.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

CHAPTER 5 FINAL PROVISIONS

Article 27

Statistics

1. Member States shall regularly collect comprehensive statistics for the purpose of monitoring the application of this Regulation by the Commission. Authorities shall maintain those statistics and shall send them to the Commission each year. They may process personal data necessary for the production of the statistics. Those statistics shall include:
 - (a) the number of requests for transfer of criminal proceedings issued, including the criteria for requesting the transfer, by requested State;
 - (b) the number of accepted and refused transfers of criminal proceedings, including the grounds for refusal, by requesting State;
 - (c) the number of investigations and prosecutions that were not pursued following the acceptance of a transfer of criminal proceedings;
 - (d) the length of time to transmit information on the decision whether to accept the transfer of criminal proceedings;
 - (e) the number of legal remedies sought against the decisions to accept the transfer of criminal proceedings, including whether by a suspect, accused person or a victim, and the number of successfully challenged decisions;
 - (f) as of four years after the date of entry into force of the implementing acts referred to in Article 23(1), the costs incurred under Article 25(2).
2. The reference implementation software and, where equipped to do so, the national back-end system shall programmatically collect the data referred to in paragraph 1, points (a), (b) and (d), and transmit them to the Commission on an annual basis.

⁷⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

Article 28
Amendments to the certificate

The Commission is empowered to adopt delegated acts in accordance with Article 29 concerning the amendment of the Annex in order to update or make technical changes to this Annex.

Article 29
Exercise of delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 28 shall be conferred for an indeterminate period of time from [*date of application of this Regulation*].
3. The delegation of powers referred to in Article 28 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 28 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

Article 30
Notifications

1. By [*date of application of this Regulation*] each Member State shall notify the Commission of the following:
 - (a) the authorities which, in accordance with its national law, are competent in accordance with Article 2, points (3) and (4), to issue and/or validate and execute requests for transfer of criminal proceedings;
 - (b) the information regarding the designated central authority or authorities, if the Member State wishes to make use of the possibility provided under Article 18;
 - (c) languages accepted for the requests to transfer criminal proceedings and other supporting information.

2. The Commission shall make the information received under paragraph 1 publicly available, either on a dedicated website or on the website of the European Judicial Network created by the Council Decision 2008/976/JHA⁷⁶.

Article 31

Relationship with international agreements and arrangements

1. Without prejudice to their application between Member States and third States, this Regulation replaces, as from [*date of application of this Regulation*], the corresponding provisions of the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972 and the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, applicable between the Member States bound by this Regulation.
2. In addition to this Regulation, Member States may conclude or continue to apply bilateral or multilateral agreements or arrangements with other Member States after the entry into force of this Regulation only insofar as such agreements or arrangements make it possible to further strengthen the aims of this Regulation and contribute to simplifying or further facilitating the procedures for transferring criminal proceedings and provided that the level of safeguards set out in this Regulation is respected.
3. Member States shall notify the Council and the Commission by [*date of application of this Regulation*] of the agreements and arrangements referred to in paragraph 2 which they wish to continue applying. Member States shall also notify the Commission within three months of the signing of any new agreement or arrangement referred to in paragraph 2.

Article 32

Reporting

By five years from [*the date of application of this Regulation*], the Commission shall submit a report to the European Parliament, to the Council and to the European Economic and Social Committee on the application of this Regulation supported by information supplied by the Member States in accordance with Article 27(1) and collected by the Commission.

Article 33

Transitional provisions

Before the obligation referred to in Article 22(1) becomes applicable, communication between requesting and requested authorities and, where applicable, with the involvement of central authorities, as well as with Eurojust under this Regulation shall take place by any appropriate alternative means, taking into account the need to ensure a swift, secure and reliable exchange of information.

Article 34

Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

⁷⁶ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

It shall apply from [the first day of the month following the period of two years after the date of entry into force of this Regulation].

The obligation for competent authorities to use the decentralised IT system for communication under this Regulation shall apply from the first day of the month following the period of two years after adoption of the implementing acts referred to in Article 23.

Done at Brussels,

For the European Parliament
The President

For the Council
The President



Brussels, 5.4.2023
COM(2023) 185 final

ANNEX

ANNEX

to the Proposal for a

**Regulation of the European Parliament and of the Council
on the transfer of proceedings in criminal matters**

{SWD(2023) 77 final} - {SWD(2023) 78 final}

ANNEX

CERTIFICATE FOR THE TRANSFER OF CRIMINAL PROCEEDINGS

The purpose of this certificate is to:

- Consult on a possible transfer of criminal proceedings;
- Request a transfer of criminal proceedings.

Section A

Requesting State:
Requested authority:
Requesting State:
Requested authority:
Authority in the requested State that has been consulted prior to this request (if applicable):
.....

Section B: Identity of the suspect or accused person

1. State all information, as far as known, regarding the identity of the suspect or accused person. If more than one person is concerned, please provide the information for each person.

(i) In case of natural person(s)

Name:

First name(s):

Other relevant name(s), if applicable:.....

Aliases, if applicable:.....

Sex:

Nationality:

Identity number or social security number:

Type and number of the identity document(s) (ID card, passport), if available:
.....

Date of birth:

Place of birth:

Residence and/or known address; if address not known, state the last known address:
.....

Workplace (including contact details):.....

Other contact details (email, phone No):

Language(s) that the person understands:.....

Other relevant information:

Please describe the position the concerned person currently holds in the proceedings:

Suspect

Accused person.

(ii) In the case of legal person(s):

Name:

Form of legal person:

Shortened name, commonly used name or trading name, if applicable:
.....

Registered seat/office:.....

Registration number:.....

Address of the legal person:.....

Other contact details (email, phone No):

Name of the legal person's representative:.....

Other relevant information:

Please describe the position the concerned person currently holds in the proceedings:

Suspect

Accused person.

2. Opinion of the suspect(s) or accused person(s):

The suspect or accused person requested to initiate the procedure for transferring criminal proceedings.

The suspect or accused person was informed of the intended transfer.

The suspect or accused person was not informed of the intended transfer because:
.....

The suspect or accused person presented an opinion on the intended transfer. The opinion is attached to this request. In summary, it states that:
.....
.....

Section C: Identity of the victim

1. State all information, as far as known, regarding the identity of the victim. If more than one person is concerned, please provide the information for each person.

(i) In case of natural person(s)

Name:

First name(s):

Sex:

Nationality:

Identity number or social security number:

Type and number of the identity document(s) (ID card, passport), if available:

.....
Date of birth:
Place of birth:
Residence and/or known address; if address not known, state the last known address:
.....
Workplace (including contact details):
Other contact details (email, phone No):
Language(s) which the person understands:
Other relevant information:
(ii) In the case of legal person(s):
Name:
Form of legal person:
Shortened name, commonly used name or trading name, if applicable:
.....
Registered seat/office:
Registration number:
Address of the legal person:
Other contact details (email, phone No):
Name of the legal person's representative:
Other relevant information:

2. Opinion of the victim(s)

- The victim requested to initiate the procedure for transferring criminal proceedings.
- The victim was informed of the intended transfer.
- The victim was not informed of the intended transfer because:
.....
- The victim presented an opinion on the intended transfer. The opinion is attached to this request. In summary, it states that:
.....
.....

Section D: Summary of the facts and their legal qualification

1. Description of the conduct giving rise to the criminal offence(s) for which the request is made and a summary of underlying facts:
.....
.....

2. Stage of the proceedings has reached:

- investigation

prosecution

trial

3. Nature and legal classification of the criminal offence(s) for which the request is made:

.....

4. Maximum penalty, the statute of limitations and the text of the statutory provision/code including the relevant provisions relating to penalties:

.....

.....

Section E: Information on the procedure in the requesting State

1. Procedural acts taken by the requesting State:

.....

.....

2. Information on evidence collected:

.....

.....

3. List of documents available in the case file:.....

.....

.....

Section F: Reasons for the request

1. Reasons for the request, including a justification as to why the transfer is necessary and appropriate, and an assessment of the impacts of the transfer on the rights of suspect(s) or accused person(s) and victim(s):

.....

.....

.....

2. Criteria for requesting the transfer of criminal proceedings:

the criminal offence has been committed wholly or partly in the territory of the requested State, or most of the effects or a substantial part of the damage caused by the criminal offence occurred in the territory of the requested State;

the suspect or accused person is a national of or resident in the requested State;

the suspect or accused person is present in the requested State and that State refuses to surrender this person to the requesting State either on the basis of Article 4(2) of the Framework Decision 2002/584/JHA, or of Article 4(3) thereof where such refusal is not based on a final judgement passed upon this person in respect of the same criminal offence which prevents further criminal proceedings, or on the basis of Article 4(7) of that Framework Decision;

- the suspect or accused person is present in the requested State and that State refuses to surrender this person for whom a European arrest warrant has been issued, if it finds that there are, in exceptional situations, substantial grounds to believe, on the basis of specific and objective evidence, that surrender would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in Article 6 of the Treaty on European Union and the Charter;
- most of the evidence relevant to the investigation is located in or the majority of the relevant witnesses are residing in the requested State;
- there are ongoing criminal proceedings in the requested State in respect of the same or other facts against the suspect or accused person;
- there are ongoing criminal proceedings in the requested State in respect of the same or related facts against other persons;
- the suspect or accused person is serving or is to serve a sentence involving deprivation of liberty in the requested State;
- the enforcement of the sentence in the requested State is likely to improve the prospects for social rehabilitation of the person sentenced or there are other reasons for a more appropriate enforcement of the sentence in the requested State; or
- the majority of victims are nationals of or residents in the requested State.

Section G: Additional information and requests (if applicable)

1. If relevant, provide information related to an earlier European Arrest Warrant, European Investigation Order or another request for assistance:.....
.....
2. Other additional information, where relevant:
.....
.....
3. Indicate any specific conditions of processing of the transmitted personal data with which the requested authority must comply with (Article 9(3) of Directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data):
.....
.....
4. List of enclosures:
.....
.....

SECTION H: Details of the authority that issued the request

1. Name of authority that issued the request:
Name of representative/contact point:
File No:
Address:
Tel. No: (country code) (area/city code).....
E-mail address:.....
Language(s) in which it is possible to communicate with the requesting authority:
.....

2. If different from above, the contact details of the person(s) to contact for additional information or to make practical arrangements for the transfer of evidence:
Name/Title/Organisation:
Address:
E-mail address:
Contact Phone No:

3. Signature of the requesting authority and/or its representative certifying that:
- the content of the request as set out in this form is accurate and correct, and
- this request has been issued by a competent authority.

Name:
Post held:.....
Date:
Official stamp (if available):

SECTION I: Details of the judicial authority which validated the request (if applicable)

1. Name of the validating authority:

Name of representative/contact point:

File No:

Address:

Tel. No: (country code) (area/city code).....

E-mail address:.....

Language(s) in which it is possible to communicate with the validating authority:
.....

2. Please indicate if the main contact point for the requested State should be the:

requesting authority

validating authority

3. Signature of the validating authority and/or its representative certifying that:

- the content of the request as set out in this form is accurate and correct, and

- this request has been issued by a competent authority.

Name:

Post held:.....

Date:

Official stamp (if available):