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**NOTE**

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From:	General Secretariat of the Council
To:	Delegations
Subject:	63 <sup>nd</sup> plenary meeting of the EJN (Budapest, 6-8 November 2024) – Conclusions of Workshop II: transfer of proceedings in criminal matters, case management experiences and current issues

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Delegations will find attached the above-mentioned conclusions.

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# **63<sup>rd</sup> PLENARY MEETING EUROPEAN JUDICIAL NETWORK**

**6-8 November 2024**

**Budapest, Hungary**

## **EJN CONCLUSIONS**

### **TRANSFER OF PROCEEDINGS IN CRIMINAL MATTERS**

#### **Case management experiences and current issues**

During Workshop II of the 63rd EJN Plenary Meeting, held on 7 November 2024 in Budapest, Hungary, the EJN Contact Points addressed the pressing issue of the transfer of proceedings in criminal matters. Discussions focused on the shortcomings of the current system regulating the transfer of criminal proceedings, ongoing developments in the EU legislative process, practical application challenges, and case management experiences. Below is a summary of the outcomes related to the European Commission's proposal for a Regulation on the transfer of criminal proceedings.

#### **A. Background Information**

The transfer of proceedings is a long-standing and vital tool for judicial cooperation between Member States. It enables the transfer of investigations and prosecutions for cross-border offenses to another State, fostering expediency and efficiency while resolving positive jurisdictional conflicts.

Despite its potential, the absence of uniform EU-level rules and the divergence of Member States' legal systems have hindered its practical effectiveness. Casework highlights several

challenges, including prolonged procedures, insufficient communication between judicial authorities, and a high rejection rate.

This cooperation mechanism is currently undergoing a comprehensive reform. In April 2023, the European Commission presented a proposal for a Regulation aimed at overhauling the existing framework. The EU legislative process is now nearing completion. On 6 March 2024, the European Parliament and the Council provisionally agreed on the proposed Regulation. This agreement retains most elements of the Commission's proposal and aligns with its objectives. In the meantime, Regulation (EU) 2024/3011 of 27 November 2024 on the transfer of proceedings in criminal matters has been published, following its formal adoption by the Council on 5 November 2024, and will apply two years after its entry into force.

The proposal is part of the 2021–2025 EU strategy to combat organized crime and stems from the Hague Programme for strengthening freedom, security, and justice in the EU. It also aligns with the Programme of Measures to implement the principle of mutual recognition of decisions in criminal matters, as well as calls for action by the Council and the European Parliament.

In June 2023, the EJP Plenary in Stockholm had already discussed the Commission's initiative, including amendments proposed by the Council. Since then, several additional changes have been made to the draft Regulation, which is now substantively final. Furthermore, new annexes have been added to the legislation. Given these developments, the EJP Contact Points participating in Workshop 11 deemed it fitting to revisit the issue of transfer of proceedings at the 63rd EJP Plenary Meeting.

## **B. Points discussed**

Several provisions of the new Regulation have raised significant challenges and concerns among EJP legal practitioners as they prepare for its implementation.

Against this backdrop, the EJM Contact Points were invited to deliberate on the following key topics:

1. General comments and expectations
2. Proportionality
3. Obligation to inform and opportunity to state an opinion on the intended transfer
4. Admissibility of evidence
5. Role of Central Authorities
6. Role of the EJM

### **1. General comments and expectations**

The Hungarian Presidency shared its experiences with the EJM Contact Points regarding the execution of requests for the transfer of criminal proceedings in recent years, prior to the adoption of the new Regulation. Hungary has accepted only about half of such requests. One of the most frequent reasons for refusal was that the requesting State had not conducted the investigative measures deemed necessary within its jurisdiction, measures that would have required the issuance of a European Investigation Order in the requested State following the transfer of proceedings.

Other challenges included incomplete case files accompanying the requests and issues related to the lack of translation. When Hungary requested another country's judicial authority to assume criminal proceedings, the rejection rate was similarly high, with refusals often lacking detailed explanations. In some cases, it took more than six months to receive a response from the Member State's authority. Additionally, identifying the relevant documents in case files for translation purposes frequently proved challenging.

The stated intention of the adoption of the new EU Regulation on the transfer of proceedings in criminal matters is to enhance this form of cooperation by establishing clear and detailed rules for the transfer of criminal proceedings. These include provisions encouraging coordination between authorities and imposing deadlines, which should

make this mechanism more efficient compared to existing legal tools for transferring criminal proceedings, such as:

- 1959 European Convention on Mutual Assistance in Criminal Matters (Council of Europe)
- 1972 European Convention on the Transfer of Proceedings in Criminal Matters (Council of Europe)
- 2000 Convention on Mutual Assistance in Criminal Matters between Member States of the EU
- Various Treaties and UN Conventions, e.g. UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna 1988), UN Convention against Corruption (New York 2003)

Practitioners, although at the time of the workshop only familiar with the content of the Regulation in a general way (as the process of its approval had not yet been completed), expressed some doubts as to whether the above stated objective would be achieved. Some were even of the opinion that, for the reasons mentioned below, the transfer process could be significantly prolonged, could bring unnecessary administrative burden for judicial authorities, could be too complicated and could be more expensive.

A notable change introduced by the Regulation is the broad definition of the rights of suspects and victims concerning the transfer of criminal proceedings. While these enhanced rights represent a significant change, they are likely to impose additional burdens on Member State authorities. For example, the obligation to inform parties to proceedings in another Member State may negatively affect the timeliness of proceedings.

Workshop II participants identified additional potential challenges posed by the new Regulation, including:

**Translation Requirements:** The increased scope of the Regulation necessitates comprehensive translation of case files, evidence, and other essential documents to



meet the linguistic needs of the authorities and parties involved. This is expected to place a significant strain on resources, particularly in cases involving voluminous documentation or multiple languages.

**Procedural Bottlenecks:** While the Regulation introduces deadlines to enhance efficiency, the absence of sufficiently stringent or clearly defined time limits for certain procedural steps may create delays. These bottlenecks could undermine the Regulation's objective of promoting timely and effective judicial cooperation.

**Cost Inefficiency:** The expanded procedural requirements, including translations, additional notifications, and coordination efforts, will likely increase administrative costs for Member States. Smaller jurisdictions or those with limited resources may face difficulties in meeting these financial and logistical demands, potentially impacting their ability to comply fully with the Regulation's provisions.

## 2. Proportionality

The criteria for initiating the transfer of proceedings were expanded during the legislative procedure to include the principle of proportionality [Recital 24, Articles 5(1) and 14(2)]. However, the Regulation does not clarify how proportionality should be interpreted within the specific context of transferring proceedings as a form of judicial cooperation. If, based on the jurisprudence of other EU judicial cooperation instruments, proportionality requires an assessment of the seriousness of the offense, this could either limit the number of cases eligible for transfer or lead to an increase in the number of discretionary refusals.

This issue is further complicated by the fact that, in practice, many referrals involve minor offenses. Workshop II participants agreed that the principle of proportionality should not result in the exclusion of petty crimes from the transfer process.

Some participants also suggested that proportionality may be linked to the relation to other legal tools, such as the European Arrest Warrant (EAW) or the European Investigation Order (EIO), in other words, the notion of proportionality will require practitioners to

consider what is the most appropriate and proportionate judicial cooperation instrument in the particular criminal case to overcome the challenges posed by parallel jurisdictions.

### **3. Obligation to Inform/Opportunity to state an opinion on the intended transfer**

Regarding the prior information to be provided to suspects and victims, a legislative phrase discussed at the 60th EJM Plenary Meeting and widely supported by participants—"where appropriate"—was removed during the legislative procedure [Articles 6(3) and 7(2)].

However, further amendments clarify that the suspected or accused person must be informed of the intended transfer of proceedings and given an opportunity to express their views if they are in the requested State [Article 6(4)]. A specific form to facilitate this notification with the help of the requested State authority has been created (Annex II), although no time limit is established for its execution. According to the current wording of the Regulation, prior notification of the suspect or accused person may be omitted only if it would undermine the confidentiality of the investigation or otherwise prejudice its integrity, or if the suspect or accused person cannot be located or reached despite reasonable efforts. Article 6(2) of the Regulation defines a suspected or accused person as one who has already been formally notified of the suspicion or accusation by the relevant authority. However, the circumstances under which notifying the suspect about the planned transfer may jeopardize the investigation remain unclear.

Overall, serious concerns were raised about the practical value of the imposed obligation. Some EJM Contact Points expressed fears that this new requirement could discourage practitioners from implementing the Regulation and lead them to focus on other legal instruments, such as the European Arrest Warrant (EAW) or the European Investigation Order (EIO), which may be perceived as more straightforward or effective alternatives.

### **4. Admissibility of Evidence**

Due to time constraints, this topic was not discussed during the Workshop II.

## **5. Role of Central Authorities**

Currently, in some Member States, including Hungary, only the highest judicial authorities have the power to decide on the substance of the transfer and take-over of criminal proceedings. In contrast, other Member States delegate this responsibility to regional or local judicial authorities.

Article 20 of the adopted Regulation allows each Member State to designate one or more central authorities responsible for the administrative transmission and reception of requests for the transfer of proceedings, as well as for other official correspondence related to such requests. Recital 15 of the preamble further clarifies that these designated authorities may play a coordinating and facilitating role in promoting the acceptance of transfer requests.

Workshop II participants emphasized the importance of distinguishing the roles of central authorities. They noted that central authorities are suitable for administrative handling but should not hold decision-making power, which should remain with the judicial authorities.

## **6. Role of the EJM**

The adopted Regulation refers to the European Judicial Network (EJM) in several provisions, highlighting its potential role, particularly in relation to determining the competent authority in Member States [Articles 8(7) and 18].

The EJM can provide important assistance in facilitating communication and consultations between competent authorities. Additionally, the Network can support Member States in cases where language barriers pose difficulties.

Particularly in cases covered under Article 8(7), where the requested authority is not known to the requesting authority, the requesting authority is required to make all necessary inquiries to identify the competent authority in the requested State. This can be done through the Contact Points of the European Judicial Network, as outlined in Council





Decision 2008/976/JHA, which helps in determining the authority competent to make decisions under Article 11(1).