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#### **NOTE**

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From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	10970/23
No. Cion doc.:	8231/23 + ADD 1 + ADD 2 + ADD 3
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the transfer of proceedings in criminal matters - Revised text by the Presidency following the COPEN meeting on 6 July 2023

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#### **Introduction**

On 6 July 2023, the Working Party on Judicial Cooperation in Criminal Matters (COPEN) continued the examination of the above-mentioned proposal on the basis of a revised text submitted by the Presidency (10970/23). Articles 1-18 were discussed.

During the meeting, various Member States provided comments. Following a call by the Presidency, which was later confirmed in writing (CM 3816/23), several Member States also provided written comments (11889/1/23 REV 1).

#### **Revised text**

On the basis of the comments received from the Member States, both orally and in writing, the Presidency has revised the text on several points, see the Annex.

During this work, the Presidency also took account of editorial changes suggested by the lawyer-linguists.

Changes compared to the Commission text have been marked by **bold** characters (for additions) and by ~~strike-through~~ (for deletions). New additions - compared to the version in 10970/23 - have also been underlined.

Like in previous documents, explanations have been set out in boxes relating to the relevant provisions. Some comments have also been inserted in footnotes.

Several Member States still maintain a scrutiny reservation on (parts of) the text.

### **Examination at COPEN / JHA Counsellors + experts meeting**

The Presidency intends examining this text at the COPEN / JHA Counsellors (+experts) meeting that is scheduled to take place on 14 and 15 September 2023.

At that occasion, Member States are invited to indicate if they cannot accept the suggested changes, or if they consider that any other changes should be made in respect of the modified articles.

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), second subparagraph, points (b) and (d),<sup>2</sup> 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 Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> Position of the European Parliament of ... [(OJ ...)/(not yet published in the Official Journal)] and decision of the Council of ....

- (2) The Hague Programme for strengthening freedom, security and justice in the European Union<sup>1</sup> 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 matters<sup>2</sup> 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~~ **Such common rules** 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 Warrant, **pursuant to Council Framework Decision 2002/584/JHA<sup>3</sup>**, is delayed or refused for reasons such as those that parallel criminal proceedings for the same criminal offence are ongoing in the other Member State, in order to enable the person being prosecuted to avoid impunity.

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<sup>1</sup> OJ C 53, 3.3.2005, p. 1.

<sup>2</sup> OJ C 12, 15.1.2001, p. 10.

<sup>3</sup> Council Framework Decision **2002/584/JHA** 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).

- (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 Union.
- (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/JHA<sup>1</sup> aims ~~at to~~ **preventing** 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 **the loss** ~~waste~~ of time and resources of the competent authorities concerned. ~~When~~**are** 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. <sup>2</sup>
- (9) Other legal **acts** ~~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 Council<sup>3</sup> **and** Council Framework Decisions 2002/475/JHA<sup>4</sup> and ~~Council Framework Decision~~ 2008/841/JHA<sup>5</sup>, include provisions referring to the factors to be taken into account with the aim of centralising proceedings in a single Member State 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~~ **accordance** 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.

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<sup>1</sup> 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).

<sup>2</sup> One delegation noted that the relationship between the proposed Regulation and the provisions on consultations set out in Council Framework Decision 2009/948/JHA is not entirely clear, i.e. whether, in the case of parallel criminal proceedings, consultation should be carried out under Council Framework Decision 2009/948/JHA or whether the proposed Regulation should be applied as a basis. The Presidency refers to recitals 29 and 45.

<sup>3</sup> 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).

<sup>4</sup> Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (~~2002/475/JHA~~)-(OJ L 164, 22.6.2002, p. 3).

<sup>5</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

- (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/JHA<sup>1</sup>, 2008/909/JHA<sup>2</sup> and 2008/947/JHA<sup>3</sup>. 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 **Union legal** acts ~~of Union law~~.
- (12) This Regulation **should** ~~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) 2017/1939<sup>4</sup>.
- (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.

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 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).

- (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 **for the administrative transmission and reception of requests for the transfer of criminal proceedings, as well as for other official correspondence relating to such requests.** Such central authorities could also provide administrative support, **and** 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 activities **pursuant to Directive (EU) 2017/541<sup>†</sup>** or to the counterfeiting of the euro **pursuant to Directive 2014/62/EU of the European Parliament and of the Council<sup>2</sup>** in cases where the surrender of a person is refused.

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<sup>†</sup> ~~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).~~

<sup>2</sup> 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).

*Recital 16: The additional text has been inserted following comments by Member States under Article 3(1).*

- (16) This Regulation provides **for** jurisdiction in specific cases, in order to ensure that, for criminal proceedings to be transferred in accordance with this Regulation, wherever 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 **the criminal offence in question. The rules on jurisdiction provided for in this Regulation should not prevent Member States from adopting national measures to ensure that they can exercise jurisdiction in the specific cases provided for in this Regulation.**
- (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~~ **partially 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 ~~have the power~~ **be able to** waive its jurisdiction in the prosecution of the person concerned for the criminal offence for which the transfer is sought. On ~~that~~ **is** 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 and~~ Directives 2010/64/EU<sup>1</sup>, 2012/13/EU<sup>2</sup>, 2013/48/EU<sup>3</sup>, (EU) 2016/343<sup>4</sup>, (EU) 2016/800<sup>5</sup> and (EU) 2016/1919 of the European Parliament and of the Council<sup>6</sup>. **In particular, the requesting authority should ensure that these rights, as provided for under Union and national law, are respected when requesting a transfer of criminal proceedings under this Regulation.**
- (21) Member States should ensure that, when applying this Regulation, the needs of vulnerable persons are taken into account. According to the Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (2013/C 378/02)<sup>7</sup>, 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.

<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> ~~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).~~

- (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 **(EU) 2023/681** ~~(C(2022) 8987 final)~~<sup>1, 2</sup>.
- (23) **A requesting authority ~~can~~ should be able to request a transfer of criminal proceedings either on its own initiative, or following consultations with a requested authority, a demand proposal from a suspect or accused person, or a demand proposal from a victim.** This Regulation should not impose any obligation to request or a transfer ~~of~~ criminal proceedings. When assessing whether a request for **the** transfer of criminal proceedings should be issued, the requesting authority should examine whether such a transfer **would serve the objective of an efficient and proper administration of justice.** ~~is necessary and appropriate.~~ **That** ~~is~~ assessment, **which could include an examination of the question as to whether the transfer would be proportionate,** 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.

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<sup>1</sup> Commission Recommendation **(EU) 2023/681** 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)~~ **(OJ L 86, 24.3.2023, p. 44)**.

<sup>2</sup> One delegation opposed making a reference to the Commission Recommendation in this legislative act and suggested deleting the recital.

- (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 interests of justice. For instance, where the criminal offence has been committed ~~wholly~~ **in whole** or in part ~~on~~ **in** the territory of the requested State, or most of the effects or damage caused by the criminal offence were sustained ~~on~~ **in** the territory of the requested State, that State may be considered **to be** 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 ~~is~~ **are** located in the requested State, a transfer of criminal proceedings 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 **or, if there are more suspects or accused persons, one or more of them,** 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~~ **one or more** victims are nationals or residents in the requested State, a transfer can be justified to allow victims to easily 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.<sup>1</sup> 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 ~~by 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~~ **for determining** 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.~~

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<sup>1</sup> Drafting suggestion by a Member State for this sentence:

*“Where only limited information is available, such an assessment ~~could also~~ should be the object of consultations between the requesting and the requested authorities **in order to confirm residence of the suspect, accused person or a victim in the requested State. When considering such consultations,** [v]arious 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.”*

- (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 **persons** 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 that~~ 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 Council<sup>1</sup>, 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.

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<sup>1</sup> 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).

*Recital 29: Further to comments from Member States, 'demand' was replaced by 'propose/proposal'. See also Article 5(3).*

- (29) Suspects or accused persons or victims should have the possibility to **propose** request that ~~for the~~ criminal proceedings concerning them ~~to~~ be transferred to another Member State. ~~These requests~~ **Such a proposal** 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 **proposal** request of **for** 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.~~ **for example** 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 **or reach** the suspect or accused person despite ~~its~~ reasonable efforts being made, the obligation to inform such person should apply from the moment ~~tho~~ese circumstances change.

- (31) The rights of victims set out in Directive 2012/29/EU of the European Parliament and of the Council<sup>1</sup> should be taken into account ~~when~~ 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 victims~~ to effectively exercise their rights in the criminal proceedings concerned. This encompasses, for example, the possibility and arrangements available for victims to testify during trial in the requested State if ~~it's~~ ~~that~~ ~~it~~ ~~is~~ 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<sup>2</sup> protection programmes in the requested State. The victims' rights to compensation should not be prejudiced by the transfer of criminal proceedings. This Regulation is not to affect rules on compensation and ~~the~~ 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~~ **accordance** with Regulation (EU) No 606/2013 of the European Parliament and of the Council<sup>2</sup> or ~~the~~ Directive 2011/99/EU of the European Parliament and of the Council<sup>3</sup>.

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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).

- (33a) The requesting authority should inform as soon as possible the victims residing in the requesting State and who have requested to receive information on the criminal proceedings in accordance with Directive 2012/29/EU of the intended transfer and should provide for the possibility for such persons 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. Where the requesting authority considers it necessary in view of the victim’s age or his or her physical or mental condition, the opportunity to express an opinion on the transfer should be given to victim’s legal representative. When assessing the legitimate interest of victims 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 the criminal proceedings, for instance 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.**
- (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 ~~the~~ **accordance** 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), **established by Regulation (EU) 2018/1727 of the European Parliament and of the Council**<sup>1</sup>.

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<sup>1</sup> 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 (O L 295, 21.11.2018, p. 138).

- (36) The requesting authority should consult with the requested authority prior to issuing a request for **the** 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.

*Recital 37: new addition to explain the notion of “essential parts”:*

- (37) When transmitting a request for **the** 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. **The completed request and with a view to reducing translation costs and time, at least the essential parts of any written supporting documentation or information accompanying the request for the transfer of criminal proceedings, should be translated by the requesting authority into an official language of the requested State or any other accepted language in accordance with this Regulation. The essential parts of the documents concerned are meant to be those extracts that appear necessary for the requested authority to take an informed decision on the request for 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 **or refuse** 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~~ **that time limit**, for instance if it considers that additional information is necessary, it may only be extended **by a** ~~for~~ further 30 days to avoid excessive delays.

- (40) Transfer of a criminal proceedings 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 requested State does not have jurisdiction over that criminal offence, unless it exercises jurisdiction provided under this Regulation. **The requested authority should also not accept the transfer of criminal proceedings if the conditions for prosecuting the criminal offence in the requested State are not fulfilled. This could be the case, for example, if a complaint by the victim, which is necessary for prosecuting the criminal offence in the requested State, has not been filed in time, or where, because in case of death or insanity of the suspect or accused person, prosecution has become impossible pursuant to the law of the requested State. 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. **for example** 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 **request form certificate** for a request for transfer is incomplete or **manifestly incorrect and has not been** ~~was incorrectly completed~~ **or corrected** 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 Agreement of 14 June 1985<sup>1</sup> 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.

*Recital 42: alignment with Article 13(3)*

- (42) Before deciding ~~not to~~ **refuse** ~~accept~~ a request for **the** 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 **the** 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.

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<sup>1</sup> 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).

- (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.

*Recital 45: addition added to mirror Article 21:*

- (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 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. **At least the essential parts of such information and of the final written decision delivered in the requested State, should be translated by the requested authority into an official language of the requesting State or any other accepted language in accordance with this Regulation. The essential parts of the information and the decision are meant to be those extracts that appear necessary for the requesting authority to have knowledge of their general content.**
- (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 ~~on~~ 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 ensuring 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.

*Recital 49: change made following a suggestion by a Member State*

- (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, **in particular** 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 **request form 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 **would** also reduce translation costs and contribute to **a** higher quality of requests.
- (51) The **request form certificate** should only include personal data necessary to facilitate the requested authority's decision on the request. The **request form certificate** should contain an indication of the categories of personal data, such as whether the related person is **a** suspect, **an** accused **person** or **a** victim, as well as the specific fields for each of ~~those~~ categories.

- (52) In order to effectively address a possible need for improvement regarding the **request form certificate** to be used to request **the** transfer of criminal proceedings, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (**TFEU**) 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-Making<sup>1</sup>. 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 **the** 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]<sup>2</sup>. In particular, the decentralised IT system should, as a rule, be used for the exchange of the **request form 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.

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<sup>1</sup> OJ L 123, 12.5.2016, p. 13.

<sup>2</sup> 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 ...).

- (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) 2018/1725<sup>1</sup> and (EU) 2016/679<sup>2</sup> of the European Parliament and of the Council and Directive (EU) 2016/680 of the European Parliament and of the Council<sup>3</sup>, in particular the obligations of data protection by 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.<sup>4</sup>

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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 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).

<sup>4</sup> The Commission has been asked to verify this ‘statement of fact’.

- (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 Council<sup>1</sup>.

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<sup>1</sup> 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).

- (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~~accordance with Article 8 and Article 10, point (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~~to the processing of ~~the~~ personal data under that Directive. The central authorities could 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 Council~~<sup>1</sup>.
- (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 (TEU). 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.

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<sup>1</sup> ~~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).~~

- (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 TEU Treaty on European Union and ~~to the TFEU Treaty on the Functioning of the European Union~~, Ireland has notified, **by letter received on 19 July 2023**, of its wish to take part in the adoption and application of this Regulation.<sup>1</sup> ~~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 TEU Treaty on European Union and to the TFEU 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 TEU Treaty on European Union and to the TFEU 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 Council<sup>2</sup> and delivered an opinion on [...] **22 May 2023**,

HAVE ADOPTED THIS REGULATION:

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<sup>1</sup> 12049/23.

<sup>2</sup> ~~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).~~

**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) At an earlier stage, a majority of Member States expressed the wish to delete the words “from the time where a person has been identified as a suspect”. Following discussions with the Commission and some Member States, the Presidency invites Member States to reconsider whether such deletion is appropriate, given that in cases where no suspect has yet been identified, the application of the rules of this Regulation – which require transmission of information in connection with the suspect – could be disproportionate. Informal consultations might be more appropriate in such cases.*

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.~~<sup>1 2</sup>

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<sup>1</sup> Two delegations suggested that simple cases with unknown suspects should continue to be handled by apostilles, and not through this Regulation. The following drafting suggestion for paragraph 2 was suggested by one of the delegations:

*2. This Regulation shall apply in all cases of transfer of criminal proceedings in the Union regarding suspects from the time where a person has been identified as a suspect.*

***2a. For the application of this regulation, suspect means a person who is de facto suspected of having committed a criminal offence and who is identifiable to such an extent that he can be distinguished with certainty from other persons.***

<sup>2</sup> One Member State suggested the following alternative drafting :  
“2. This Regulation shall apply in all cases of transfer of criminal proceedings that are being conducted in Member States of the Union.”  
See also the suggestion in Article 2(1). The Presidency takes a neutral position on this proposed change.

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 **TEU** of the Treaty of the European Union.

*Article 2*  
*Definitions*

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

*(1) and (2): further to a comment from a Member State, the text was further precised.*

- (1) ‘requesting State’ means a Member State in which **criminal proceedings are being conducted** ~~have been initiated and in which~~ a request for transfer of ~~those~~ criminal proceedings **to another Member State is or consideration is given to it being issued.**
- (2) ‘requested State’ means a Member State to which a request for **the** transfer of criminal proceedings is **or consideration is given to it being** transmitted for the purpose of taking over of criminal proceedings;
- (3) ‘requesting authority’ means:
- (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 **the** 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 **the** competence to take a decision on whether to accept **or refuse** transfer of criminal proceedings in accordance with Article 12 and to take **subsequent measures in accordance with this Regulation or any measure as provided for in its national law;**<sup>1</sup>
- (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 **or a legal person, as defined in national law, that has suffered harm or economic loss as a direct result of a criminal offence that is the object of criminal proceedings to which this Regulation applies.**

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<sup>1</sup> One delegation asked to expand this definition with ‘*any other competent authority which is designated as such by the requested State (...)*’. The Commission noted that the involvement of a judicial authority is crucial so that the legality of the measure has been checked and that the request does not unduly impinge on fundamental rights. This is necessary to comply with the proposal's legal basis.

*Article 3*  
*Jurisdiction*

*1. Following a suggestion by a Member State, the words ‘and which is punishable at the place where it was committed’ have been added in view of the general (international law) principle of non-intervention. At the COPEN meeting on 6 July, diverging views were expressed on the advisability of this addition. The question was also put whether the assessment would be in concreto or in abstracto. **The Presidency would like to invite Member States to consider this matter again and express their positions.***

1. **Unless jurisdiction is already provided for by the national law of the requested State, for the purposes of this Regulation, the requested State shall have jurisdiction over any criminal offence to which the law of the requesting State is applicable [and which is punishable at the place where it was committed], in situations where:<sup>1</sup>**
- (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, **point** (7), ~~point~~
- (b), of the Framework Decision 2002/584/JHA;

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<sup>1</sup> Two delegations considered that the rules on jurisdiction are of substantive law and do not lend themselves to be established through a Regulation, at least as they are worded currently. In the opinion of these delegations, Member States should be obliged or at least allowed to implement Article 3 to ensure its compatibility with existing rules on jurisdiction. They proposed the following wording:  
**“...Member States shall, in accordance with national law, ensure that they have jurisdiction over any criminal offence to which the law of the requesting State is applicable, in situations where they are the requested State and:...”**  
The Presidency observes that this is a Regulation which will be directly applicable. While that does not exclude that Member States may need to adopt national legislation around the Regulation to make it work, this should not pose a problem, provided sufficient time is left to Member States before the entry into force of the Regulation (e.g., 24-36 months). However, in order to meet the concerns of the Member States concerned, the Presidency proposes additional wording in recital 16.

- (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 ~~TEU 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 **are or** is part of the constituent elements of the criminal offence, occurred ~~on~~ 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 **of** or resident **in** 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 **of** or resident **in** 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 **under this Regulation**.

#### *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 **when considering whether to request the transfer of criminal proceedings**:

*2(a) Precision inserted following a comment by a Member State:*

- (a) the criminal offence has been committed ~~wholly~~ **in whole** or partly ~~on~~ **in** the territory of the requested State, or most of the effects **of the criminal offence** or a substantial part of the damage caused by the criminal offence occurred ~~on~~ **in** the territory of the requested State;

*2(b) Following comments by Member States, the Presidency suggests taking out the 'plural-option', since that should then be done everywhere for consistency, which seems not workable. In recital 25, however, a reference was inserted.*

- (b) the suspect or accused person ~~or, when there are more suspects or accused persons, one or more of them,~~ 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 ~~that~~his person to the requesting State ~~either~~ on the basis of:
- (i) Article 4, point (2) of ~~the~~ Framework Decision 2002/584/JHA; ~~or of~~
  - (ii) Article 4, point (3) of Framework Decision 2002/584/JHA 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~~
  - (iii) Article 4, point (7) of ~~that~~ Framework Decision 2002/584/JHA;
- (d) the suspect or accused person is present in the requested State and that State refuses to surrender ~~that~~his 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 TEU ~~of the Treaty on European Union~~ and the Charter;
- (e) most of the evidence relevant to the investigation is located in, ~~or~~ the majority of the relevant witnesses are resident ~~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) Alignment with Recital 17*

- (g) there are ongoing criminal proceedings in the requested State in respect of the same, partially the same or related facts against other persons;

*(h) one delegation observed that the mere fact that a suspect/accused person is serving or is to serve a sentence in the requested State is not in itself sufficient reason for the transfer of criminal proceedings, since the suspect/accused person may be surrendered based on another instrument, including the EAW. Hence, the text was slightly changed. <sup>1</sup>*

- (h) the suspect or accused person is serving or is to serve a sentence involving deprivation of liberty in the requested State **and his presence in person at the proceedings in that State cannot be ensured in another way;**
- (i) the enforcement of the sentence in the requested State is likely to improve the prospects ~~of~~ **of** social rehabilitation of the person sentenced or there are other reasons for a more appropriate enforcement of the sentence in the requested State;<sup>2</sup>
- (j) ~~the majority of~~ **one or more** victims are nationals of or residents in the requested State.

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<sup>1</sup> The Commission observed that it does not see this addition as extremely problematic, but that it would still prefer to delete the addition as, *prima facie*, it appears to narrow down the criterion to very limited situations where the suspect is serving or is to serve a sentence in the requested State and an EAW, issued by the requesting State, was refused (in situations other than those already covered by points c) and d) of this Article). The Commission considers that there could be reasons other than that of ensuring presence of the person at trial in the requested State, able to justify a transfer on this ground, such as for instance the possibility of allowing cumulation of sentences in the requested State, if the suspect is also accused in the proceedings object of the transfer.

<sup>2</sup> One Member State suggested deleting paragraph (i): the fact that the execution of the sentence will be more appropriate in another MS (without giving any other reasons) is not a reason for transfer of criminal proceedings, when it is possible to transfer the person (after a possible conviction in the State where the criminal proceedings are conducted) for the execution of the prison sentence based on Framework Decision 2008/909/JAI.

3. Further to a request from some delegations, 'demand' was modified into 'propose/proposal', and 'may decide' was reinserted. See also recital 29.

3. ~~The suspect or accused person the majority of, or a victim, or a lawyer on their behalf,~~ may, **in accordance with procedures in national law, propose request,** the competent authorities of the requesting State or of the requested State to ~~initiate a procedure for transferring that~~ criminal proceedings **be transferred under the conditions of this** Regulation. **If the proposal demand request is made to the competent authority in the requested State, that authority should consider may decide to consult the competent authority in the requesting State in accordance with Article 15(2). Proposals demands** ~~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: The last part was transferred to recital 20.*

1. Before a request for transfer of criminal proceedings is issued, the requesting authority shall, in accordance with **the** 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.~~
- 1a. **The rights set out in paragraphs 2 and 3 ~~and 4~~ of this Article and in Article 15a apply to suspects or accused persons in criminal proceedings from the time when they are made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence, and irrespective of whether they are deprived of liberty.**
2. Provided that it would not undermine the confidentiality of an investigation **or otherwise prejudice the investigation, the requesting authority shall inform** the suspect or accused person ~~shall be informed~~ of the intended transfer of criminal proceedings, **in accordance with the applicable national law** and in a language which they understand, and shall ~~be given~~ **provide them with** an opportunity to state their opinion orally or in writing, unless that person cannot be located **or reached** despite reasonable efforts being made by the requesting authority. [Where the requesting authority considers it necessary in view of the **age, physical or mental condition 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.]<sup>1</sup> Where the request for **the** transfer of criminal proceedings follows a **proposal** request from the suspect or accused person under Article 5(3), such a consultation with the suspect or accused person who made the **proposal** request is not required.

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<sup>1</sup> See comment under Article 7(2). The Commission considers important that this wording in kept in the text, as it provides an essential safeguard for vulnerable suspect or accused persons. To be noted that this wording mirrors existing wording under Article 6(3) of FD 2008/909/JHA.

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. *[moved to Article 15a]*

*Article 7*

*The rights of the victim*

1. Before a request for **the** transfer of criminal proceedings is **issued** ~~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: Following comments by delegations, the Presidency suggests

- restricting the obligation to inform victims to those victims that reside in the requesting State and that have requested to receive information on the criminal proceedings in accordance with Directive 2012/29/EU;
- transferring the sentence about providing the opportunity to the victim's legal representative to new recital 33a;<sup>1</sup>
- adding (at the end) a sentence mirroring the sentence in Article 6(2).

2. Provided that it would not undermine the confidentiality of an investigation **or otherwise prejudice the investigation, and where the the requesting authority shall inform the victim who resides in the requesting State and who has requested to receive information on the criminal proceedings in accordance with Directive 2012/29/EU they, of the intended transfer of criminal proceedings,** in accordance with **the** applicable national law, ~~be informed of the intended transfer of criminal proceedings,~~ in a language which they understand, and shall **provide them with** ~~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.~~ **Where the request for the transfer of criminal proceedings follows a proposal from a victim in accordance with Article 5(3), the requesting authority is not required to provide the above information to such victim.**
3. The opinion **of the victim** 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. *[moved to Article 15b]*

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<sup>1</sup> If Member States agree to transfer the sentence "*Where the requesting authority ... legal representatives*" to the recitals, the Presidency suggests doing the same with the corresponding sentence in Article 6(2).

Article 8

Right to a legal remedy

[Moved to Article 15c]

Article 9

Procedure for requesting the transfer of criminal proceedings

1. The request for the transfer of criminal proceedings shall be drawn up by the requesting authority using the ~~certificate~~ **request form** set out in the Annex. The requesting authority shall sign the **request form** ~~certificate~~ and shall certify its content as being accurate and correct.
2. The request for the transfer of criminal proceedings shall be duly substantiated and shall, in particular, contain the following information:
  - (a) **information** ~~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) At the meeting on 6 July, several delegations expressed concerns about the practical application of this provision. In this light the Presidency suggest adding the following text:*

- (e) an assessment of the impact of the transfer of criminal proceedings on the rights of suspect or accused person and victim, **on the basis of information available to the requesting authority, including, where applicable, the opinion of the persons concerned obtained in accordance with Article 6(2) or 7(2);**

(f) information on procedural acts or measures with a bearing on the criminal proceedings that have been undertaken in the requesting State, **including any ongoing temporary coercive measure and the time limit for the application of such measure(s)**;

(g) any applicable specific conditions ~~of~~ **for the** 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 where 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 **the** transfer of criminal proceedings shall be accompanied by any additional relevant information and documents.

*5. Alignment with other parts of the Regulation:*

5. The completed **request form certificate** referred to in paragraph 1, **as well as the essential parts if not all of** ~~and, where so agreed with the requested authority,~~ any other written information accompanying the request for **the** transfer of criminal proceedings, ~~at least the essential parts thereof,~~ 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 **the** 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 **as provided for by Council Decision 2008/976/JHA**<sup>1</sup>, in order to determine which authority is competent for taking the decision under Article 12.

*7a. 'As soon as possible' was replaced by 'without undue delay', in line with other parts in the text. Following comments by delegations, the fixed deadline was deleted.*

- 7a. ~~Upon~~ Without undue delay after receipt of a request form, the requested authority shall send to the requesting authority an acknowledgement of receipt ~~as soon as possible and in any event within seven days of receipt [using the form ...].~~ Where a central authority has been designated in accordance with Article 18, this obligation applies both to the central authority and to the requested authority which receives the request for transfer of criminal proceedings from the central authority.**
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.

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<sup>1</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

## Article 10

*The title of this Article has been clarified to adjust it to its content: it applies to information to be provided after the transmission of the request. Initial information has already been sent pursuant to Article 9.*

*Information to be given by the requesting authority **after the transmission of the request***

*(all changes in this Article have been suggested by lawyer-linguists)*

The requesting authority shall inform the requested authority of any procedural acts or measures with a bearing on the criminal proceedings that ~~were~~ **have been** undertaken in the requesting State after the transmission of the request without undue delay. **When communicating that this information to the requested authority, the requesting authority shall include accompany all relevant documents.** ~~This communication shall be accompanied by all relevant documents.~~

**The essential parts if not all of ~~t~~The information and ~~the~~ relevant documents, ~~at least the essential parts thereof,~~ referred to in the first paragraph shall be translated by the requesting authority 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).**

## Article 11

### *Withdrawal of the request*

1. The requesting authority may withdraw the request for **the** transfer of criminal proceedings at any time before receiving the **decision of the** requested authority's ~~decision~~ to accept the transfer of criminal proceedings in accordance with Article 12. **In such an event, the requesting authority shall immediately inform the requested authority thereof.**

2. Some delegations suggested that Art. 11(2) be deleted since it would not add any additional information; others did not oppose. The Presidency decided to keep it for the sake of clarity. The verb “stay” has been replaced by “remain”, since the latter seems more accurate.

2. **Where~~n~~ the requesting authority has informed the requested authority, in accordance with paragraph 1, of its decision to withdraw the request for the transfer of criminal proceedings, the criminal proceedings shall remain ~~stay~~ with the requesting authority<sup>1</sup>.**

*Article 12*

*Decision of the requested authority*

1. The requested authority shall take a reasoned decision on whether to accept **or refuse** the transfer of criminal proceedings and shall decide, in accordance with its national law, **on the** ~~what~~-measures to **be** ~~taken~~ thereon.
- 1a. **The requested authority shall inform the requesting authority of its reasoned decision referred to in paragraph 1, in accordance with the time-limits under Article 14.**
2. If the requested authority **considers** the information communicated by the requesting authority to be insufficient to allow it to decide whether to accept or refuse the transfer of criminal proceedings, it may request ~~the~~ additional information **as** it deems necessary. **The requesting authority shall provide the requested additional information without undue delay, together with a 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).**

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<sup>1</sup> One delegation suggests the following change in paragraph 2:  
**Where~~n~~ the requesting authority has informed the requested authority, in accordance with paragraph 1, of its decision to the withdrawal of the request for the transfer of criminal proceedings, the criminal proceedings shall stay with the requesting authority**

- ~~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. <sup>1</sup>~~
- ~~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. ~~Where~~ the requested authority has accepted the transfer of criminal proceedings, the requesting authority shall without undue 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).
- 5a. For the purposes of applying paragraphs 2 and 5, ~~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.**

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<sup>1</sup> *Paragraphs 3 and 4 have been deleted in the light of Articles 15a and 15b, and the above paragraph 1a.*

*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 ~~or pursued~~ against the suspect or accused person in relation to the facts underlying the request for the 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;

*Subparagraph (d): At the COPEN meeting on 6 July, delegations expressed the opinion that that ground (da), with “if the conditions for prosecuting the criminal offence in the requested State are not fulfilled”, had become too wide. The Presidency therefore suggests narrowing this ground, by splitting the subparagraph in two and narrowing the grounds. See also recital 40.*

- (d) if the criminal prosecution is statute-barred in accordance with the law of the requested State;
- (da) ~~if the conditions for prosecuting the criminal offence in the requested State are not fulfilled;~~ **if a complaint by the victim necessary for prosecuting the criminal offence in the requested State has not been filed in time;**
- (db) if prosecution has become impossible, pursuant to the law of the requested State, due to the death or insanity of the suspect or accused person;**

- (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, **including jurisdiction which derives from Article 3** ~~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 **of the following** grounds exist:
- (a) there is a privilege or immunity<sup>1</sup> 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 interests of **the** ~~an~~ efficient and proper administration of justice;
- (c) the criminal offence has not been committed **either in whole** ~~wholly or in part~~ ~~in~~ ~~non~~-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 ~~on~~ ~~in~~ the territory of that State, and the suspect or accused person is not a national of or resident in that State;
- (d) the request form ~~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 **of this Article**.
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, **where appropriate**, consult the requesting authority ~~by any appropriate means~~ and, where necessary, shall request **that it** ~~it~~ to provide any necessary information without **undue** delay.

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<sup>1</sup> The order of the words ‘immunity or privilege’ was reversed, in line with other recent instruments.

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 ~~that that authority it to~~ exercise that power without undue delay. ~~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 that authority ~~to~~ exercise that power.

*Article 14*

*Time limits*

1. The requested authority shall communicate to the requesting authority its decision on whether to accept **or refuse** the transfer of criminal proceedings without **undue** delay and in any case no later than 60 days after the receipt of the request for the 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~~ privilege or immunity under the law of the requested State, the time limit referred to in paragraph 1 shall not **commence** ~~start running~~ unless, and ~~counting~~ from the day on which ~~when~~, the requested authority is informed of the fact that the ~~the~~ privilege or immunity has been waived.

Article 15

*Consultations between the requesting and requested authorities*<sup>1</sup>

1. Where necessary and without prejudice to Articles 12(2), ~~12 and (5)~~, **Article** 13(3) and **Article** 17(2), the requesting authority and requested authority shall consult each other without **undue** delay to ensure the efficient application of this Regulation.
2. Consultations **between the requesting and requested authorities** may also take place before the request for **the** transfer of criminal proceedings is issued, in particular with a view to determining whether the transfer would serve the interests of **the** efficient and proper administration of justice. In order to propose ~~that the transfer of criminal proceedings from the requesting State~~ **be transferred**, the requested authority may also consult ~~with the requesting authority~~ **as to whether it would be** about the possibility ~~possible to of issue~~ **issuing** a request for **the** transfer of criminal proceedings.
3. ~~When~~ the requesting authority consults the requested authority prior to making a request for **the** transfer of criminal proceedings, it **may** ~~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, **which are made in application of under this Article**, shall be answered without **undue** delay.

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<sup>1</sup> One delegation noted that the relationship between this proposed Regulation and the provisions on consultations set out in Council Framework Decision 2009/948/JHA is not entirely clear, i.e. whether, in the case of parallel criminal proceedings, consultation should be carried out under Council Framework Decision 2009/948/JHA or whether the proposed Regulation should be applied as a basis. It was proposed to put a clarification in the Recitals. See a similar remark under recital 8.  
The Commission observed that three recitals already cover the relationship of the proposed Regulation with FD 947, namely recitals 8, 29 and 45.

Article 15a

Information to **be provided to** the suspect and accused person

*1. Following a comment by several delegations, the words "where possible" were deleted.*

1. Where the requested authority has taken a decision in accordance with Article 12(1) **to accept the transfer of proceedings**, the ~~requesting~~ **requested** authority shall, provided that it would not undermine the confidentiality of an investigation **or otherwise prejudice the investigation**, ~~immediately~~ inform the suspect or accused person **without undue delay**, in a language which they understand, about the issuing of the request for ~~the~~ transfer of criminal proceedings and the subsequent acceptance ~~or refusal~~ of the transfer by the requested authority, unless that person cannot be located **or reached** despite reasonable efforts being made by the **requested** authority. ~~Where possible, the~~ **requested authority shall provide the suspect or accused person with a copy of the reasoned decision accepting the transfer of proceedings. The requested authority shall also inform the suspect or accused person about their right to an effective legal remedy in the requested State, including ~~about~~ the time limits for such a remedy. Where appropriate, the requested authority may seek the assistance of the requesting authority in order to carry out the tasks referred to in ~~inform the suspect or the accused person in accordance with~~ this paragraph.**

2. Where the requested authority has taken a decision in accordance with Article 12(1) to **refuse the transfer of proceedings**, the requesting authority shall, provided that it would not undermine the confidentiality of an investigation **or otherwise prejudice the investigation**, ~~immediately~~ inform the suspect or accused person **without undue delay**, 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 **or reached** despite reasonable efforts being made by the **requesting** authority. **Where appropriate, the requesting authority may seek the assistance of the requested authority in order to carry out the tasks referred to in inform the suspect or the accused person in accordance with this paragraph.**

*Article 15b*  
*Information **be provided to** to the victim*

*1. Following comments by Member States, the Presidency suggests that only victims who have signalled their interest to receive information regarding the proceedings should be informed.*

1. Where the requested authority has taken a decision in accordance with Article 12(1) **to accept the transfer of proceedings**, the ~~requesting~~ **requested** authority shall, provided that it would not undermine the confidentiality of an investigation **or otherwise prejudice the investigation**, ~~immediately~~ inform **without undue delay** the victim **who has requested to receive information on the criminal proceedings in accordance with Directive 2012/29/EU**<sup>1</sup>, in a language which they understand, about the issuing of the request for ~~the~~ transfer of criminal proceedings and the subsequent acceptance ~~or refusal~~ of the transfer by the requested authority, unless that person cannot be located **or reached** despite reasonable efforts being made by the **requested** authority. ~~Where possible, t~~**The requested authority shall provide the victim with a copy of the reasoned decision accepting the transfer of proceedings. The requested authority shall also inform the victim about their right to an effective legal remedy in the requested State, including regarding ~~about~~ the time limits for such a remedy. Where appropriate, the requested authority may seek the assistance of the requesting authority in order to carry out the tasks referred to in ~~inform the victim in accordance with~~ this paragraph.**

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<sup>1</sup> See in particular Article 6, paragraph 1, under a, of Directive 2012/29/EU.

2. Where the requested authority has taken a decision in accordance with Article 12(1) to **refuse the transfer of proceedings**, the requesting authority shall, provided that it would not undermine the confidentiality of an investigation **or otherwise prejudice the investigation**, ~~immediately~~ inform **without undue delay** the victim **who has requested to receive information on the criminal proceedings in accordance with Directive 2012/29/EU**, 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 **or reached** despite reasonable efforts being made by the **requesting** authority. **Where appropriate, the requesting authority may seek the assistance of the requested authority in order to carry out the tasks referred to in ~~inform the victim in accordance with~~ this paragraph.**

Article 15c

*Title and other places: the word 'effective' (before legal remedy), which was not consistently used in the Commission proposal, has been added where relevant.*

*Right to an **effective** 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. Further to a question by a Member State, the Presidency wonders whether it would be advisable to precise what the court should examine. A possible drafting suggestion has been inserted.<sup>1</sup> Delegations are invited to express their opinion on it.*

2. The right to an **effective** legal remedy shall be exercised before a court in the requested State in accordance with its law. **The court shall examine the validity of the decision to accept the transfer of criminal proceedings in the light of the relevant provisions of this Regulation, including Articles 5 and 13.**

[2a]<sup>2</sup>

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<sup>1</sup> As both Article 5 and Article 13 leave a very wide margin of discretion, one delegation suggested adding a recital clarifying that insofar as prosecutorial discretion was exercised, the examination of the court is limited to reviewing whether this discretion was exercised in a lawful manner.

<sup>2</sup> A further limitation of the right to judicial remedy could be achieved by inserting a new paragraph along the following line:

*"Where the national law of the requesting Member State provides for a legal remedy against the decision to request the transfer of criminal proceedings, such remedy shall be limited to verifying whether that decision complies with the formal and procedural requirements set out in this Regulation or in the national law."*

The suggestion is inspired by considerations of AG Capeta in Case C-281/22 concerning the interpretation of Article 31 of EPPA Regulation.

*3. At the COPEN meeting on 6 July, several delegations wondered if putting a 'fixed deadline' of 60/90 days would make sense, given that the deadline should be respected 'if possible' and that there are no consequences in case of non-respect of the deadline. Delegations are invited to indicate if they prefer setting a 'fixed deadline', and if so, if they prefer 60 or 90 days.*

3. The time limit for seeking an effective legal remedy shall be no longer than 20 days from the date of receipt of information about the decision **to accept the transfer of criminal proceedings** referred to in Article 12(1). **The court in the requested State shall take its decision on the legal remedy without undue delay [and, where possible, within [60] [90] days].**
4. Where the request for **the** transfer of criminal proceedings is issued after the **indictment of the** suspect's or accused person's indictment, the invocation of an effective legal remedy against a decision to accept the transfer of criminal proceedings shall have suspensive effect.

*4a. Following a suggestion by Member State, the Presidency suggests inserting a paragraph about the result of a successful remedy. This paragraph could be accompanied by a recital, explaining i.a. that if the decision has been annulled for a small procedural error, the court could allow that the error is repaired and that the proceedings remain in the requested State. See also the comment under paragraph 2a.*

- 4a. In case the legal remedy sought is successful, the criminal proceedings will revert to the requesting State, unless the competent court in the requested State decides otherwise.**

*5. It seems appropriate that the requesting authority is also informed about the final outcome of the legal remedies.*

5. The requested authority shall inform the requesting authority about the **effective** legal remedies sought under this Article, **and about their final outcome.**

## 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 **the application of** ~~consultations referred to in~~ Articles 12(2), **Article** 13(3), **Article** 15 and **Article** 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 **the** 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*

*At the COPEN meeting on 19/20 June, various Member States expressed concerns that the requesting State should be able to continue proceedings for some time before the evidence is transferred to the requested State. It was also observed that long periods of time might be necessary to produce a translation of the case file. In this light, the Presidency suggests deleting the words 'At the latest' and inserting a new sub-paragraph (c) in paragraph 2.*

*Member States are invited to indicate if these changes are acceptable, and if any more changes are necessary.*

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 **the requesting authority has already done so under Article 4 or** a legal remedy under Article **15c** & 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 **the basis of** 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 the basis of Framework Decision 2002/584/JHA or another mutual recognition instrument or a request for mutual legal assistance;

**(c) undertake necessary urgent investigative or procedural measures until the documents mentioned under referred to in Article 12(5) are transmitted to the requested State.**

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 the 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 the right of victims to initiate or to request the reopening of criminal proceedings against the suspect or accused person in the requesting State, ~~where~~ 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 the at requested State.<sup>1</sup>

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<sup>1</sup> One delegation proposed deleting this provision, stating that it could be left to national law. The Commission observed that is important to keep the provision, as it reflects the CJEU's case-law on the interpretation of a 'final decision' for the purpose of assessing *ne bis in idem* violations.

*Article 20*  
*Effects in the requested State*

*The question whether a provision on provisional arrest should be included in the text, merits further discussion. Member States do not seem univocal on this matter. While various Member States indicated that they do not need such a provision, others said that without such a provision, they would not be able to provisionally arrest a person. Some drafting suggestions were provided, see below under paragraph 2a.*

*While the Presidency is inclined to think that if the provision could help some Member States and is not needed for – but neither harms – others, it could make sense to include such a provision, **the Presidency would like to invite Member States who need the provision to state more clearly the reasons therefore.***

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. **Without prejudice to Article 13(1), point (d), any act that interrupts ~~interrupting~~ or suspends ~~suspending~~ the period of limitation shall have the same effects in the requested State.**<sup>1</sup>

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<sup>1</sup> One delegation suggested reverting to the original text, or using the following wording:

*“2. Provided that it is ~~not contrary to~~ **compatible with** 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 **and the same effects** in the requested State as if it had been validly performed by its own authorities.”*



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<sup>1</sup> Possible new paragraph on provisional arrest. Two drafting suggestions provided by Member States:

**Option 1:**

*“2a. When the requesting State announces its intention to transmit a request for proceedings, the requested State whose competence is exclusively grounded on article 3 may provisionally arrest the suspect or accused person if:*

- (a) the law of the requested State authorises remand in custody for the offence, and*
- (b) there are reasons to fear that the suspect or accused person will abscond or that he will cause evidence to be suppressed.*

*The provisional arrest shall be governed by the law of the requested State. The provisional arrest shall in any event be terminated if the requested State does not receive the request for transfer of criminal proceedings within 18 days from the date of the arrest.*

*2b. Upon receiving a request, the requested State [whose competence is exclusively grounded on article 3] may apply all such provisional measures, including remand in custody of the suspected person and seizure of property, as could be applied under its own law if the offence in respect of which proceedings are requested had been committed in its territory.”*

**Option 2:**

*“Where the suspect or accused person is in the requested State, the requested State may, at the request of the requesting State, once it has received the transfer request and the related file, and before the decision to accept the transferred procedure is made, arrest the suspect or accused person, or take any other measure to ensure that the suspect or accused person remains in its territory, pending a decision to accept the transfer of criminal proceedings.”*

*3. The addition of the words relating to the power of the trial court to freely assess the evidence presented, in line with Article 37 of the EPPO Regulation, was welcomed by delegations. Further to a suggestion by some Member States, it is however proposed to reinstate the second sentence, which does not seem to be in contradiction with the newly added sentence.*

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. **The power of the trial court to freely assess the evidence presented by the defendant, the victim or the prosecution shall not be affected by this Regulation.**
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. Two Member States were in favour of deleting the second sentence of this provision; one of them felt that such sentence would not be reasonable, *inter alia* since the proceedings could also have started in the requested State and the latter may have original jurisdiction (i.e. jurisdiction not based on Article 3 of the Regulation).

The rationale is that if the requested State has original jurisdiction, it would also have competence to prosecute the offence without a request to transfer the proceedings, by, for instance, issuing a EAW where the requesting State (executing State in the context of the EAW) would not oppose the ground for refusal foreseen in Art. 4.2 of FD 2002/584/JHA.

Parallel proceedings in the context of organised criminal groups under investigation may be ongoing before a request for transfer of proceedings is issued. If both Member States have identical power to prosecute, it would not be justifiable that the criteria that the court may take into account vary depending on whether the subject is being tried following a EAW or a transfer of proceeding according to this Regulation. It may also lead to different sentencing criteria for members of the organised criminal group being sentenced for the same level of responsibility.

Finally, for Member States that would like to take into account the maximum sentence foreseen in the requesting State, the first sentence in Art. 20(6) already provides for such possibility through the sentence “unless that law (the law of the requested State) provides otherwise”, which gives margin of discretion for Member States to foresee in the national legislations such possibility.

Neither Article 25 of the 1972 Convention nor Article 17.6 of the 2009 Draft FD on the transfer of proceedings in criminal matters does foresee a similar provision.

The Presidency would however appreciate hearing from other Member States.

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, **where** when the criminal offence **was** has been perpetrated ~~on~~**in** the territory of the requesting State, and **where** ~~whenever~~ **this is to the benefit of the accused person**. 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<sup>1</sup>.

*Article 21*

*Information to be ~~given~~ **provided** by the requested authority*

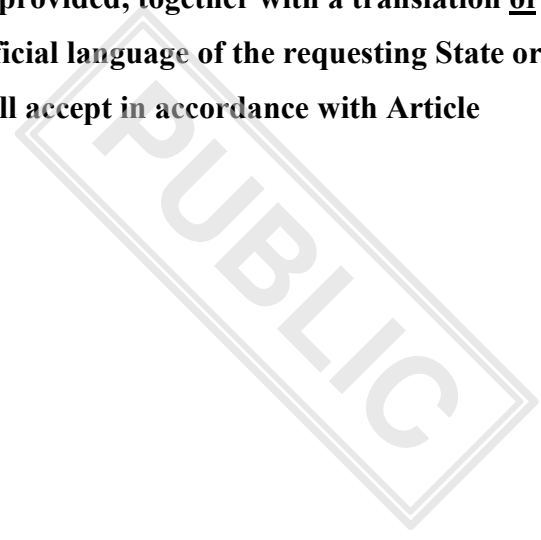
- 1.** The requested authority shall inform the requesting authority of the discontinuation of criminal proceedings or of any decision delivered at the end of the criminal proceedings, including whether that decision, under the national law of the requested State, definitively bars further prosecution 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 **final** written decision delivered at the end of the criminal proceedings to the requesting authority.

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<sup>1</sup> One Member State proposed an alternative wording:

*The sentence applicable to the criminal offence shall be the one prescribed by the law of the requested State unless that law provides ~~otherwise~~ **that the sentence imposed shall not be more severe than the maximum sentence set out in the law of the requesting state. 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, whenever this is to the benefit of the accused person.** 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.*

**1a.** The information and the final decision shall be provided, together with a translation of at least of the essential parts thereof, into an official language of the requesting State or any other language that the requesting State will accept in accordance with Article 30(1), point (c).



**CHAPTER 4**  
**MEANS OF COMMUNICATION**

*Article 22*

*Means of communication*

1. Communication under this Regulation, including the exchange of ~~certificate~~ **the request form** 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), **and** 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(5) 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:<sup>1</sup>
  - (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 **of the European Parliament and of the Council**<sup>2</sup>.
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*].

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<sup>1</sup> Note: similar wording is set out in paragraph 12(1) of the Digitalisation Regulation (“*The Commission shall adopt implementing acts establishing the decentralised IT system, setting out the following:*”).

<sup>2</sup> Regulation (EU) 2022/850 of the European Parliament and of the Council of 30 May 2022 on a computerised system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system), and amending Regulation (EU) 2018/1726 (OJ L 150, 1.6.2022, p. 1).

*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 **the reference implementation software** 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 **access points 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 ~~that~~**is** system.

*Article 26*

*(moved to Article 29a)*

## CHAPTER 5 FINAL PROVISIONS

### Article 27

*Title: One Member State observed that the use of the term "statistics" and the absence of any reference to Regulation 223/2009 on European statistics could cause difficulties. It was therefore suggested to replace the title "statistics" with "information" or "monitoring", as is the case, for example, in the Proposal for a Regulation on the digitalisation of judicial cooperation and access to justice in cross-border cases (11779/1/23 REV 1, Art. 17).*

*The Presidency proposes using "monitoring", which is used in paragraph 1, also since "information" is already used in Articles 15a and 15b. In the corpus of the article, however, "information" has been used.*

### **Monitoring Statistics**

*1. Several Member States expressed concerns on the statistical information to be provided under c, e and f, which would constitute a substantial administrative burden for Member States. The Presidency suggests reformulating paragraph 1, with an obligatory set of statistics to be provided under paragraph 1a, and an optional set of statistics to be provided in paragraph 1b.*

1. Member States shall regularly collect comprehensive **information** statistics **in order for** ~~for the purpose of~~ **the Commission to** monitoring the application of this Regulation ~~by the Commission~~. **The competent** ~~a~~ authorities **of the Member States** shall maintain **that information** ~~those statistics~~ and shall send **it** ~~them~~ to the Commission each year. They may process personal data necessary for the production of **that information** ~~the statistics~~.

**1a.** The **information** statistics **referred to in paragraph 1** shall include:

- (a) the number of requests for **the** transfer of criminal proceedings issued, including the criteria for requesting the transfer, by **the requesting** requested State;
- (b) the number of accepted and refused transfers of criminal proceedings, including the grounds for refusal, by **the requested** requesting State;
- (c) [transferred to paragraph 1b under a]
- (d) the length of time to transmit information on the decision whether to accept **or refuse** the transfer of criminal proceedings;
- (e) [transferred to paragraph 1b under b]
- (f) [transferred to paragraph 1b under c]

**1b. The information referred to in paragraph 1 may also include:**

- (a)** the number of investigations and prosecutions that were not pursued following the acceptance of a transfer of criminal proceedings;
- (b)** 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;
- (c)** 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.

*2a.: Following a suggestion by a delegation, the Presidency suggests inserting a time provision, like in Article 17(2) of the proposal for a Regulation on the digitalisation of judicial cooperation and access to justice in cross-border cases (11779/1/23 REV 1).*

**2a. The information referred to in paragraph 1a of this Article shall be transmitted as of two years after the date of entry into force of the implementing acts referred to in Article 23(2).**

#### *Article 28*

##### *Amendments to the ~~certificate~~ request form*

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 the Annex. **Such amendments shall be in accordance with this Regulation and shall not affect it.**

#### *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~~ **to adopt delegated acts** referred to in Article 28 shall be conferred **on the Commission** for an indeterminate period of time from [*date of application of this Regulation*].

*2a. Suggestion by the Presidency following consultation of the Council Legal Service:*

**2a. Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.**

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 **on** 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 **of 13 April 2016** 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~~**two** 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~~ **two** months at the initiative of the European Parliament or of the Council.

*Article **29a** (ex 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 182/2011<sup>†</sup>.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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<sup>†</sup> ~~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 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 **their** ~~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) Minor precision, like in other instruments:*

- (c) languages accepted for requests to transfer criminal proceedings, ~~and other~~ **for the submission of supporting information and for any communication between authorities, both when acting as requesting and requested States.**
2. The Commission shall **ensure that** ~~make~~ the information received under paragraph 1 is **made** publicly available, ~~either on a dedicated website or on the website of the European Judicial Network created by the Council Decision 2008/976/JHA<sup>1</sup>.~~

*Article 31*

*Relationship with international agreements and arrangements*

1. Without prejudice to their application between Member States and third States, this Regulation replaces, **within its scope of application**, 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.

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<sup>1</sup> See Article 9(7).

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 **to 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*

1. **This Regulation shall apply to request forms transmitted on or after [date of application of this Regulation]. Requests for the transfer of criminal proceedings received before [date of application of this Regulation] shall continue to be governed by existing instruments relating to the transfer of criminal proceedings.**
2. 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*.

Question: is the deadline of two years long enough to take the necessary legislative measures around the Regulation?

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*