Council of the European Union

Brussels, 26 September 2023
(OR. en)

13262/1/23
REV 1

LIMITE

COPEN 323
JAI 1183
CODEC 1649

Interinstitutional File: 2023/0093(COD)

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	12551/23 + COR 1
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 - Written comments from Member States on the text in 12551/23

At the meeting on 14/15 September, the COPEN Working Party / JHA Counsellors + Experts continued the examination of the draft Regulation on the basis of a revised text by the Presidency (12551/23 + COR 1). Various Member States provided comments.

At the end of the meeting, the Presidency announced that Member States had the possibility to provide written comments. This was later confirmed in writing.

The input received further to this announcement has been set out in the Annex.[1]

[1] If additional comments are provided, a REV doc will be made.

Contents

AUSTRIA

We present the following comments on the text as set out in 12551/23 + COR 1:

Article 2

AT supports the extension of the scope to procedures against unknown perpetrators. Practicioners point out the need for the transfer of proceedings in such cases. This does not limit the possibility of spontaneous exchange of information between judicial authorities (recital 11), even less so the exchange of information at the level of police cooperation. We can, however, not share the notion expressed by IE (11430/2023) that a transfer of proceedings might take place at the level of police cooperation. That notwithstanding we are willing to work on a solution for the IE situation on the basis of their proposal to allow for a validation of requests for transfer from non-judicial authorities.

Articles 3 and 4

AT reiterates the position that both provisions should be drafted in a way to allow for transposition by the MS. Article 3 establishes rules for jurisdiction, Article 4 regulates the waiving of proceedings and other measures of criminal procedure. Such rules are part of substantive law and should not be established through a Regulation, at least as they are worded currently. In our opinion Member States should be obliged or at least allowed to implement Article 3 to ensure its compatibility with national law. Contrary to some opinions expressed at COPEN it is not unusual for Regulations to impose an obligation on Member States to transpose Regulations at least partially cf. e.g. the provisions on sanctions in the Market Abuse Regulation (Article 30) or the Regulations on restrictive measures (e.g. Article 8 of Regulation 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine). Without such an explicit provision the transposition of a Regulation is in general not permissible (e.g. C-20/72, Belgium/Cobelex, C-39/72, Commission/Italy; C-34/73, Variola; C-94/77, Fratelli Zerbone). Recital 16 is not sufficient to ensure the possibility to transpose these provisions. We therefore propose the following that provides the necessary leeway for Member States to decide whether or not they need to transpose Art. 3:

"…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:..."

For Article 4 we propose the wording: "Member States having jurisdiction under their national law to prosecute a criminal offence shall, in accordance with national law, ensure that judicial authorities 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."

Articles 9 and 10

The rules on translation are of critical importance for the practical application of the Regulation. The current practice is that the request for a transfer of proceedings is translated (except bilateral arrangements allow to refrain from translating the request) and transmitted without any other information. If the requested state asks for additional information this is supplied, if necessary translated. Usually this is sufficient to allow the requested country to decide whether to accept the transfer of proceedings. After the transfer has been accepted the requested state is forwarded a certified copy of the complete case file, if necessary translated.

The current proposal is a step back from this efficient practice insofar as it requires more information to be translated and transmitted before the acceptance of the transfer of the proceedings.

AT therefore objects to the wording of Article 9 para 5, Article 10 and recitals 37 and 45 that enlarge the need to provide additional translations. We object in particular to the new addition in Article 9 para 5 "…as well as the essential parts if not all…" and propose that at least the words "if not all" should be removed from Article 9 para 5 and Article 10 as we see no reason why the translation cannot be limited to essential parts before the transfer is accepted.

Article 15c

Para 2: in our opinion the legal remedy should not examine the validity of the decision to accept the transfer of proceedings as the concept of validity is very unclear and might limit the examination to formalities. We propose to phrase the second sentence in a more general way by removing the wording "…the validity of…": "The court shall examine the decision to accept the transfer of proceedings…"

AT supports the notion in para 4a that a successful legal remedy does not necessarily mean that the criminal proceedings revert to the requesting state as such an automatic reversal would not serve the efficient administration of justice and would – in many cases – mean that the requesting state will request the transfer of the same proceedings again.

To underline this concept we want to elaborate our proposal from footnote 1, which gained some support from other MS. We propose the following additional recital (or an addition to recital 34): "Insofar as judicial authorities exercise discretion when deciding to accept the transfer of criminal proceedings the examination of the court in the case of legal remedy is limited to reviewing whether this discretion was exercised in a lawful manner."

Article 20

AT does not see the necessity for a provision on provisional arrest in the requested state. This should be left to the procedural law of the Member States, who – it should be presumed – all have provisions on the provisional arrest. To create special provisions on provisional arrest in cases of transfer of proceedings would only cause problems in relation to existing provisions in criminal procedure law. This applies for both options proposed in 12551/23, but in particular for option 2 insofar as it foresees that the requested state can request the provisional arrest.

Article 20 para 2

AT still doubts whether acts in interrupting or suspending the period of limitation in the requesting state should have the same validity in the requested state. This concept creates practical problems to apply the law of the requesting state by the requested authority and may violate the principle of legality of criminal offences (Article 49 CFR). We propose to consider a prolongation for a fixed period as foreseen in Article 23 of the European Convention on the Transfer of Proceedings in Criminal Matters; however, it should be examined whether any prolongation, interruption or suspension is necessary at all as the Regulation, in particular the time limits foreseen in Article 14 should guarantee an efficient and relatively fast procedure.

CROATIA

Following the COPEN meeting on 14th and 15th September 2023 and referring to the last revised text contained in the document no. 12551/23, we would like to submit written comments as follows.

RECITALS

(18) Situations of mandatory prosecution in the requested State are not taken into account.

(34) Article 47 of the Charter is not applicable to a decision on the transfer of criminal proceedings but to a criminal proceedings itself, in which the defendant must be guaranteed the rights to a fair trial and an effective legal remedy, i.e. the corresponding rights of the victim in accordance with the relevant Directives. The subject matter of the Regulation is *ex officio* proceedings.

(40) Transfer of ~~a~~ criminal proceeding**s** 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.* …**

***** Words "for example" should be added as those are only some of the reasons for not accepting the transfer, that is; it is not a case of categorically stated reasons for non-acceptance.

(43) We find it necessary to emphasize the difference between the temporary suspension that occurs when the requested State takes over the prosecution (suspension) and the permanent suspension of the procedure (discontinuance) when the effects of the *ne bis in idem* of the meritorious decision made in the requested State occur.

(44) From our point of view if this would be the case, there would not be a legal basis for surrender of the person in cases in which the defendant is deprived of liberty in the requesting State, but it is expedient for the proceedings to be conducted in the requested State

Recital 45: addition added to mirror Article 21:

(45) **And Article 21. Paragraph 1a.**

We suggest and find it useful to prescribe the obligation to inform the requesting State about the execution of the sentence, that is, the circumstances that prevent its execution (executed/not executed due to statute of limitations, amnesty, pardon), and considering the international effects of *ne bis in idem*.

TEXT OF THE PROPOSAL

Article 1.

Subject matter

We prefer that the Regulation cover procedures in which the perpetrator has not yet been identified. Otherwise, in such cases (which there are in practice) we should still use Article 21 of the European convention on mutual legal assistance in criminal matters from 1959 as a legal basis, which is what we want to avoid by adopting this Regulation.

If the scope would be broader, there should be written *„criminal prosecution“* instead of *„criminal proceedings“* in paragraph 2, and having in mind the practice of ECHR according to which the proceedings against unknown perpetrator is not possible.

However, we will not insist on an expanded scope of application, and we can accept the Commissions original proposal.

Article 2

Definitions

Paragraph 4

We find the wording *"judicial authority competent to initiate criminal proceedings"* more appropriate here. Namely, in almost none of the MS, the court does not decide on criminal prosecution. Even those that have an investigative judge in charge of conducting the investigation, he acts on the proposal of the prosecutor.

Article 3

Paragraph 1

We suggest deleting the words *„which is punishable at the place where it was committed"*, considering that, for certain criminal offences, the State may have jurisdiction regardless of the fact that the act is not punishable in the State where it was committed.

Ad c)

We propose to harmonize it with Recital (17) which emphasizes that damage as a consequence represents the characteristics of a criminal offense according to the law of 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."*

Paragraph 2.

In our opinion, it is necessary to add: *"Unless jurisdiction is already provided for by the national law of the requested State"*, at the beginning of this paragraph.

Otherwise, in cases where States have original jurisdiction, based on national law (all cases from paragraph 1), they will not be able to exercise it without the request of another State.

Article 4.

Waiver, suspension or discontinuation of criminal proceedings

We propose to replace wording *„may"* with *„must"* in order to ensure legal certainty and avoid conducting two procedures in two MS.

Article 5.

Criteria for requesting a transfer of criminal proceedings

Paragraph 2 (c)

We find that in this case it should be taken into account that in 90% of cases the procedure will already be initiated in the requested State. Therefore, requested State will not be able to take over the prosecution in the proceedings it is already conducting.

Considering the above, we believe that it is necessary to regulate the procedure in such cases.

Paragraph 2 (c) point (ii)

In this case the question of *ne bis in* idem principle arises, given that Article 4. point 3 of the FD on EAW refers to "*if the judicial authorities of the executing Member State have given up prosecution for the criminal offense for which a European Arrest Warrant has been issued or have decided to suspend the proceedings*".

Especially if the discontinuance / waiver, occurred after a detailed investigation was carried out, that is, after the defendant fulfilled his obligations.

Article 6.

The rights of the suspect or accused person

Paragraph 2

We fear that the existing wording would contribute to the delay of the procedure in the requesting State. We suggest deleting words "*despite reasonable efforts*" or alternatively add "*unless it is established that the defendant fled*". Otherwise, it will be necessary to issue an EAW or IAW in order to inform the defendant of the intention to transfer criminal prosecution.

We also find necessary to delete wording "*consultations*" (with the suspect or accused person) in the last sentence, as the authorities competent for criminal prosecution should not consult with the defendant.

Article 7.

The rights of the victim

Paragraph 2

This provision limits notification obligation only to the victims residing in the requesting State. We support such a solution. Moreover, it also represents an additional argument that a similar solution should be foreseen in relation to the obligation to inform the defendant (address known, accessible to the authorities of the requesting State, resides/is located in the requested State).

Article 12

Decision of the requested authority

Paragraph 5 and 5a

We find necessary to prescribe the obligation to submit the complete case file. It is the only way for the requested State be able to determine the complete factual situation and make a legal decision. At the same time, the defendant can exercise the right to inspect the entire case file. Otherwise, the defendant will not be able to perform the right to a fair trial guaranteed by the Article 6 of the ECHR.

Article 13.

Grounds for refusal

Paragraph 1.

The person in relation to whom criminal prosecution is taken over may have the position of the accused in the requesting State but the position of defendant in the requested State (he/she will be became accused when the indictment is submitted to the court of the requested State, or when the conditions proscribed by the law of the requested State are fulfiled).

We would also like to use this opportunity to stress that it would be expedient to prescribe at what stage the criminal proceedings can be transferred to another State.

Paragraph 1 (d)-(da)

We are in favour to keep the general wording "*if the conditions for prosecuting the criminal offence in the requested State are not fulfilled*", because otherwise we find that the provision would not be clear and precise enough and there will be a legal gap.

Namely, the procedural legislation of the Member States differ and are not uniform in relation to the legal prerequisites for initiating criminal proceedings, and if the general wording is not maintained, cases will appear in practice in which the requested State will not be able to undertake criminal prosecution because the conditions according to its legislation are not met and the same are not prescribed by the Regulation.

At the same time, the right to equality before the law and the principle of legality should be kept in mind. This is even more so since in most cases referred to in Article 3 of the Regulation, the requested State has original jurisdiction based on its own legislation and not on the Regulation.

(db)

We would like that words "*due to the death or insanity of the suspect or accused person*" are deleted, as insanity is not a basis for refusing to take over criminal prosecution in all MS.

Even more so because it is not clearly stated what kind of "*insanity*" is involved (unaccountability/reduced accountability due to "insanity" *tempore criminis* or incapacity to stand trial, that is, insanity at the time of prosecution).

At the same time, none of the above-mentioned forms of "*insanity*" is a basis for refusing to take over criminal prosecution, but for terminating the procedure/conducting a special procedure/imposing security measures.

(e)

We suggest including pardon to this reasons for refusal.

(f)

We find the wording unclear. Article 3 of the Regulation prescribes cases in which the requested State has jurisdiction. At the same time, part of the cases refer to the original jurisdiction/jurisdiction provided by the domestic legislation and part to the jurisdiction based on the Regulation (for example, in the requested State, proceedings are being conducted against the defendant for another offense).

In these cases, the requested State acquires jurisdiction based on the request to take over criminal prosecution and cannot refuse to take over criminal prosecution because it does not have jurisdiction.

Therefore, if there are circumstances from Article 3 of the Regulation, it cannot be refused to take over criminal prosecution because the requested State does not have jurisdiction.

Perhaps a better wording would be "*if the assumptions from Article 3 of the Regulation are not met.*"

Paragraph 2. (c)

It is unclear why these bases for establishing jurisdiction, i.e. the absence of them in a specific case, were included as an optional reason for refusing to take over criminal prosecution, while the other grounds represent a mandatory reason for refusing to take over criminal prosecution (previous paragraph).

Article 15.a

Information to be provided to the suspect and accused person

We remain with the comment that the wording "*despite reasonable efforts*" would lead to an unnecessary delay in the procedure.

We are of the opinion that the obligation to notify by the requested State should only exist when the defendant is on its territory.

This would reflect the meaning of the transfer of criminal prosecution itself - the transfer of the authority to conduct criminal proceedings to the State, which can conduct effective proceedings.

Therefore, if the defendant is not available to the requested State, there will be no takeover of criminal prosecution because such takeover would be contrary to all the principles declared in this Regulation.

Article 15.b

Information ***be provided to*** *the victim*

The same comment as regarding Article 15.a.

At the same time we would like to emphasise that this kind of wording could cause the prolongation of the procedure if dozens of victims are involved (for example, war crime cases) who are not located in the territory of the requested State.

Therefore, we propose to change the existing wording with the words, for example: "*if the victim is available to the requested State*" or to regulate cases with a large number of victims separately.

Article 15.c

Right to an ***effective*** *legal remedy*

We stay with the position that an appeal against the decision to accept the transfer of criminal proceedings is not acceptable here, and especially that the court decides on such an appeal, because in that case the court itself would *de facto* become the plaintiff.

We remain of the position that this is essentially a decision to initiate criminal proceedings.

We agree that procedures for providing international legal assistance are *sui generis* procedures, but in the specific case, the requested State decides to initiate criminal proceedings (as is evident from the reasons for refusing to take over criminal prosecution). Please note that in a large number of cases, the requested State has original jurisdiction.

The introduction of a legal remedy for the decision to initiate criminal proceedings with this Regulation intervenes in domestic criminal procedural laws of Member States, that is, this Regulation exceeds the principle of proportionality prescribed by the Article 5, paragraph 3 of the TEU ("Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties").

Namely, the introduction of a legal remedy unknown to the domestic legislation will affect the criminal procedure laws of all Member States of the EU, as well as call into question the fundamental principles of the legal order of the Member States of the EU according to which the state attorney/prosecutor decides on criminal prosecution, and the court on the accusation. Proposed provision questions the functions of prosecutors and judges in the respective legal systems of the EU MS[2].

Any assumption of the role of the prosecutor by the court would call into question the accusatory principle as a fundamental principle of the criminal procedure and return the procedural legislation of the Member States hundreds of years into the past when the prosecutor (inquisitor) sued and tried at the same time.

Therefore, we could not accept this provision.

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[2] Opinion No. 12 (2009) of the Consultative Council of European Judges and opinion no. 4 (2009) the Consultative Council of European Prosecutors (Bordeaux Declaration):
9 " In every system the judges' role is therefore different to that of the public prosecution. Their respective missions remain nevertheless complementary."
20. Judges and public prosecutors should be independent from each other and also enjoy effective independence in the exercise of their respective functions. They discharge different duties in the justice system and in society at large. Therefore different perspectives of institutional and functional independence exist (Declaration, paragraph 3).

Having in mind position of some other Member States regarding the right to a legal remedy, we suggest to be left to domestic legislation and to have a right to legal remedy against the decision to accept the transfer of criminal proceedings only in relation to cases of so-called representative jurisdiction, i.e. jurisdiction based on this Regulation.

At the same time, each EU Member State should, decide which independent judicial authority would decide on the legal remedy, according on its legal system.

In this context, we note that in some Member States the prosecutor's office is an independent judicial authority like a court. Therefore, this kind of solution would call into question the legality of the decisions of the prosecutor's office, as well as its independence (according to the practice of ECJ, not all prosecutors' offices are under the influence of the executive authority). Some states, like Croatia, have an independent prosecutor's office, and in these States it is necessary to ensure that the decision on the legal remedy is made by a higher prosecutor's office.

Article 19

Effects in the requesting State

Paragraph 1

It is necessary to clearly prescribe the effects of taking over criminal prosecution. For example, the requesting State temporarily loses the right to prosecute and can take actions that do not suffer delay and provide legal assistance or execute orders for judicial cooperation. Only after a final decision is made in the requested State and it is executed in sense of Article 54. of CISA the requesting state permanently loses the right to prosecute.

It would be useful expedient to prescribe that the requesting State is obliged, before the transfer of criminal prosecution, to undertake all evidentiary actions on its territory that will enable effective proceedings to be conducted in the requested State (and prevent the subsequent issuance of EIO and other judicial instruments cooperation).

It would also be useful to prescribe the consequences of the freezing measure in the requesting State (whether they remain in force until the decision to take over the criminal prosecution is brought and then they are replaced by the freezing measures imposed on the basis of recognized freezing order issued by the requested State in terms of the Regulation (EU) 2018/1805 of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders).

Without prescribing how to proceed in cases where freezing measures have been imposed in Requested State, the sustainability of those measures and the assurance of confiscation of property benefits are called into question.

Paragraph 3 and 4

It should harmonize the effects of final decision with the jurisprudence of the ECJ (it is not enough that the decision is final/final according to the law of the requested State, but it is necessary that it has been executed/is being executed/cannot be executed). Otherwise, it could happen that the defendant avoids criminal responsibility if the requested state failed to enforce the prison sentence, and the requesting state finally suspended its proceedings.

One of the goals of the EU is not only legal certainty, but also the prevention of evasion of criminal responsibility in the area of freedom, justice and security.

Article 20

Effects in the requested State

Paragraph 2

We propose a solution from Article 27 of the European Convention on the Transfer of Proceedings in Criminal Matters. We are of the opinion that without this provision, the requested State would not be able to order pre-trial detention against the defendant before taking over criminal prosecution. The only way to deprive a person of liberty would be on the basis of an EAW issued by the requesting State, which we do not consider expedient.

Paragraph 5

It should be taken into account that there can be cases where the criminal proceedings can only be initiated following a complaint in one of the States (e.g. the requested State).

In these cases the requested State shall take into account all actions taken by the authorised person in the Requesting State in order to establish the existence of the complaint as legal precondition for prosecution in the Requested State.

Namely, some procedural laws proscribe time limits for submission of the complaint and these time limits can expire before the request for transfer of proceedings is submitted to the Requested State. So, the Requested State cannot take over the proceedings because the time limit for submission of the complaint is expired due to its procedural law. In order to establish whether the complaint was timely submitted to the authorities of the Requested State should be informed about all the actions taken by the authorised person in the Requesting State, although the law of the Requesting State does not prescribe the submission of criminal complaint as precondition for initiation of prosecution.

Paragraph 6

We believe that the wording "*may*" should be replaced by "*must*". The wording "*may*" can lead to legal uncertainty and call into question the principle of legality (the provision of punishment in the law).

Article 21

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

Paragraph 1a.

We suggest and find it useful to prescribe the obligation to inform the requesting State about the execution of the sentence that is, the circumstances that prevent its execution (executed/not executed due to statute of limitations, amnesty, pardon), and considering the international effects of *ne bis in idem*.

CZECH REPUBLIC

CZ Comments (*the CZ delegation also refers to what was said during the meeting last week)*

(Comments concern only the normative text regarding discussed articles during the COPEN meeting on 6 July and are additional to those already submitted by CZ earlier)

Article 1

CZ is one of the Member States that support the Regulation allowing the transfer of criminal proceedings even against an unknown offender.

The possibility of transfer of criminal proceedings only from the "*time where person has been identified as a suspect*" is a very vague and unclear concept for the purpose of this Regulation. The criteria for determining when a person is identified as a suspect may be quite different in different MS.

The concept since *"person has been identified as a suspect*" is completely unreviewable. It is a subjective assessment in terms of the national law of the Member State and only the material aspect is considered here.

If the proposal completely excludes all criminal proceedings against an unknown perpetrator and even those where it has not been possible to inform them that they are suspected or accused, it means that majority of transfers of criminal proceedings taking place in practice today will continue to be dealt with under Article 21 of the 1959 Convention and/or 1972 Convention. In our opinion, this is contrary to the objective, i.e. to create a legal instrument to unify the procedure for the transfer of criminal proceedings.

Examples of cases where criminal proceedings against unknown perpetrators can be transferred in practice (at the request of the Commission) :

- Victim - FR young woman who was raped in the CZ. After her return to FR, she filed a criminal complaint. The perpetrator was unknown. Witness interviews, medical examination of the victim and other evidence has been lawfully obtained in FR were carried out in FR. Subsequently, the FR transferred the criminal proceedings to the CZ. CZ took over the criminal proceedings and started its own criminal proceedings. Evidence obtained in the FR could be used as evidence in the CZ criminal proceedings. In the case of exchange of spontaneous information under Article 11 of the 1959 Convention (or Article 7 of the 2000 Convention), the applicability of evidence lawfully obtained (in FR, in this example) is not clearly guaranteed, as is the case in the forthcoming Article 20(2) of the Regulation for the transfer of criminal proceedings.

- CZ victims of computer fraud. It was found that the attacks were carried out from one computer whose IP address was located in RO, it was also found that the victims sent payments to different bank accounts maintained in CZ and RO banks. Tree victims were interviewed, documentary evidence, e-mail communication, statements from CZ and RO bank accounts from which//to which payments were made were secured. Offender was unknown. CZ requests to take over the criminal proceedings in RO because the evidence so far (and, for example, police cooperation) shows that an organized group of perpetrators is involved in criminal activity in the RO. While all evidence has already been taken in the CZ, extensive evidence (surveillance, wiretaps, house searches, arrests of perpetrators, etc.) can be expected in the RO.

- Two CZ students were attacked on the train on the way from DE to CZ before crossing the state border. The two attackers beat the students and took their computers, one's mobile phone, money. One assailant (who had a minor involvement in criminal activity) had his driver's license fall out of his pocket, which he did not notice (it was a DE driving license issued to a DE national). They then fled the scene. After returning to the CZ, the students filed a criminal complaint, one victim's health deteriorated and required surgery. Criminal proceedings have been initiated in the CZ. During the criminal proceedings, evidence was obtained - hearings of witnesses and victims, medical report, statements of the insurance company and others. One attacker could be identified, the other was unknown. Given that the crime occurred on the territory of DE, the perpetrators were most likely DE nationals, CZ requests the transfer of criminal proceedings to DE, because this State is in a better position to identify both offenders and effectively end the criminal proceedings (all evidence available in CZ were obtained in the CZ criminal proceedings and could be used in DE criminal proceedings).

- Sexual coercion, underage victim - A 10-year-old girl in CZ was coerced over the Internet by unknown perpetrators to send him repeatedly nude photographs of herself. The crime was reported in CZ by the victim's parents, interviews were conducted with the particularly vulnerable victim (child), parents, school friends (who together with the victim also communicated with the NP via the Internet), records from the victim's PC were seized and MLA was requested, the results of which showed that the unknown perpetrator communicated from an IP address located in Sweden. It can be assumed that covert investigations will have to be carried out in Sweden (e-mail monitoring, interception of communications, and later, if the perpetrator is identified, surveillance, searches, and examination of his PC). Although it would be possible to request all these evidence via several EIOs, it is better to request the taking over of the criminal proceedings in Sweden. If the Regulation is followed, all the evidence obtained in the Czech Republic will be applicable in the proceedings in the requested State (Sweden) and it will not be necessary to repeat the interrogation of the minor (thus avoiding secondary victimization).

Article 3

Paragraph 1 - We have already mentioned this several times. CZ is in favor of deleting the part in square brackets.

If this part remains there, it is necessary to specify (and probably in the normative text) if it is only necessary to examine whether the conduct in question is a criminal offence in general (*in abstracto*) or whether it is also necessary to examine whether all the conditions for prosecution are met in a given case, so that an assessment will have to be made in the specific case (*in concreto*). If this is not provided for, the judicial authority will not know how to proceed in this case.

Then, in the Recital it will need to be explain why *in abstracto* or why *in concreto*.

Article 6

Paragraph 2 (*similar comments are valid also for Article 7*)

We have suggested in the past, that **this should be given as an option for the requesting authority whenever it considers this necessary/appropriate/effective**, as it will itself need this opinion to assess whether it is appropriate to transfer the criminal proceedings, or to assist the requested authority in considering whether to take over the criminal proceedings. When this point was discussed at the working conference in Rotterdam (7 April 2022), the wording “where appropriate” was proposed. The formulation "where appropriate" was also used in the original 2009 SE initiative proposal on the FD on transfer of criminal proceedings. For us it was probably a better solution as regards the obligation to inform and request an opinion. Unfortunately, this solution was not supported during the negotiations.

1/ In the first sentence, we suggest adding "proper handling of the case" and using the term "case."

Argumentation: The criminal proceedings can be transfer in the investigation phase of the criminal proceedings, but also after indictment. There are not a many cases in practice, but cases of transfer of criminal proceedings even at this advanced stage of criminal proceedings have been recorded. It should also be possible to protect these cases in some way. Because at this stage of the proceedings it is no longer possible to talk about the confidentiality of an investigation, we propose adding "proper handling of the case" and using the more general term "case “, which applies to cases involving the transfer of criminal proceedings before and after indictment.

This is nothing new in EU legislation, similar wording is already used in Directive 2012/29/EU in Recital 29, Article 6(1)(a)(i). 2(b)

Why it is necessary:

One of the reasons for not providing suspects/accused/victims with an opportunity to state their opinion is "not to undermine the confidentiality of an investigation"; this applies only to pre-trial proceedings, as the proceedings are no longer "confidential" in court proceedings.

However, for all stages of the proceedings, including court proceedings, it remains the case that it will not be in the interests of "proper handling of the case" (as it still is in pre-trial proceedings) to provide the opportunity to state the opinion" **if there are many parties to the proceedings.**

Consider an organized internet fraud case where there are 6 perpetrators and 55 victims in several states. If the term "otherwise prejudice the investigation" remains, it will only be possible to dispense with the mass opinion ascertainment (e.g., sending more than 55 letters to several states, e.g., even via MLA requests) in INVESTIGATION (= pre-trial proceedings), but this will no longer be possible in court proceedings.

2/ We propose to limit this obligation, as in the case of victims (see Article 7/2), to the suspected/accused person who resides in the territory of the requesting State ("...who resides in the requesting State..."). Similarly, the possibility to express his/her views orally or in writing is limited only to convicted persons who are still in the territory of the issuing State (in the case of transfer of convicted persons under RR 909, specifically Art. In all cases where the sentenced person is still in the issuing State... ")

Argumentation: - The objective of the transfer of the criminal proceedings is an efficient and proper administration of justice. If it is necessary to inform persons who are not in the territory of the requesting State, this will unnecessarily prolong, complicate, and make more expensive the entire procedure and would certainly not contribute to the objective pursued - to speed up and simplify the transfer of criminal proceedings.

Why it is necessary:

Requesting authority will have to arrange for the translation of the document, arrange for its delivery, possibly via a judicial authority. In view of the length of time it takes to serve procedural documents between EU Member States at present (at least 5 months, likely more. Yes, this is unfortunately the current reality of mutual assistance in criminal matters in the EU), there is already a significant prolongation of the procedure at this stage; it will then be necessary to wait for the suspect/accused to respond and then translate his/her statement. Even more in the case where there would be more suspect/accused.

Article 11 and 12

We only draw attention to what we mentioned during the meeting.

We have two moments:

(a) the moment when the requested State decides and inform the requesting authority of its reasoned decision (Article 12/1a)

(b) the moment when the take charge decision goes through the whole appeal procedure and becomes final, and the requested authority shall inform (the requesting authority) about the final outcome of the legal remedies (Article 15c/5).

The obligation to send the file with the translation should not be linked to the moment ad a), as it is possible that the decision will not become final and the taking over will not take place after all.

However, since this obligation is linked to moment (b), then the requested State should, in addition to informing the requesting State of the obligation under Article 12/1a, also inform the requesting State that the decision is final and that it is appropriate to have the file translated and sent.

Thus, the requested authority first informs the requesting State that it has issued a decision (not yet final) - according to Article 12/1a - at this moment the requesting State loses the possibility to withdraw the request (Article 11).

The second information (only for a positive decision if a legal remedy is lodged) would be given by the requested State after the decision has become final (i.e., information on the final decision to take over the criminal proceedings), and from this information the requested State would be obliged to have the file translated. (Art. 12/5).

In practice, there will be two stages of information only in the case of a positive decision of the requested State to take over the criminal proceedings, as only there is to be an admissible legal remedy.

If the requested State decides to refuse the request for take over the criminal proceedings, there will be only one notification (and, of course, there will be no reason to translate the file).

Article 15

This is not a major issue, but we believe that the following text better reflects what the provision of paragraph 3 is trying to say. This text is, in our view, sufficiently flexible, it does not force the requesting State to provide information about the criminal proceedings before the requests are made but provides that the necessary information must be provided for the consultation to take place at all.

> *When the requesting authority consults the requested authority prior to making a request for transfer of criminal proceedings, it provides the necessary information regarding the criminal proceedings to the requested authority.*

Article 15a (*similar comments are valid also for Article 15b*)

Paragraph 1 - The recital will need to state (for legal certainty) what is understood by "assistance" requested/provided from/by the requested authority.

Paragraph 2 - If the requested authority decides to refuse to transfer proceedings, the obligation to provide information must be linked to the fact that the suspect/accused has already been "effectively consulted". So, he/she has been given the opportunity to express his/her views under Article 6(2)/7(2) or if the suspect/accused person exercises his/her right to propose the transfer of criminal proceedings. Otherwise, we may end up in a nonsensical situation where the suspect/accused is not consulted about any intention to transfer criminal proceedings at all (so he/she doesn't know about the request of transfer of proceedings) but is informed that the transfer has been refused. He/she is therefore informed that he/she is still being prosecuted in the requesting state (what is the real value that this information has for him/her?).

Article 15c

Unfortunately, until now we are not convinced of the necessity of its existence in this regulation.

1/ If the legal remedy is necessary in view of a possible violation of rights and freedoms guaranteed by EU law. Which rights of the suspected/accused person or victim might be violated by the transfer of proceedings? It must be clearly identified. What right of the suspected/accused person or victim is affected by the transfer of the case? Here we have two states - both have jurisdiction to prosecute - and there is no right to be prosecuted in state X and not be prosecuted in state Y.

2/ Even if the legal remedy was successful – it will prevent the transfer of the criminal proceedings based on a specific request, it will not prevent the public prosecutor from initiating his/her own criminal proceedings on his/her own initiative and based on known facts (The decision to transfer the criminal proceedings is only declaratory!). It may be different in other member states, but in our case the court cannot impose the prosecutor in which cases to conduct proceedings and in which cases not to.

In a situation where the public prosecutor first accepted the request of transfer of procedure, i.e., was interested in transferring the criminal proceedings, this will be common, as the "prosecution" sees a reason to conduct criminal proceedings in that case (and what means he wants to prosecute). So, on the one hand we will have a decision that it's not possible to take over criminal proceedings, but on the other hand we're going to have criminal proceedings for the same acts.

This will bring two major disadvantages which are certainly not the intention of this legislation:

1. it will create two parallel proceedings

2. in the newly initiated proceedings in the requested State, it will not be possible to use the evidence already obtained in the requesting State (i.e., the benefits of Article 20/2 will not be available) and there will be a need to request legal aid (MLA, EIO) = which means additional burden for the judicial authorities. So, evidence (e.g., interviews of witnesses, victims, requesting bank details, etc.) will be taken on the basis of these MLAs, EIOs in duplicate - once already taken in the criminal proceedings to be transferred, the second time in the newly initiated proceedings on the basis of the MLA, EIO.

Moreover, we can have the situation in which the parallel criminal proceedings are being conducted in two Member States - according to the FD on conflicts of jurisdiction, the competent authorities consult and, because of the consultation, conclude that it is more appropriate for the criminal proceedings to be conducted in one Member State. So, there will be a request sent under this Regulation - again there will be a right to legal remedy - and we can get a situation where the court decides that there should be no transfer of criminal proceedings. Will parallel criminal proceedings continue to be conducted? We're once again in an absurd situation (however, the current regulation allows this).

3/ Impossibility of a proper review

- How can a court review a decision to take over criminal proceedings? This is in circumstances where, under the provisions of paragraph 3, the Court will review 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

- it will have to ask for the file to be sent to it, probably with a translation (it is hardly permissible for the court to take a decision without proper knowledge of all the circumstances of the case, only based on a request

4/ Limitation of the right of legal remedy in the context of 15a and 15b

Insofar as Article 15c grants a right to legal remedy to the victim/suspect/accused person in general terms, it is necessary to consider in the context of Articles 15a/1 and 15b/1 that there is a de facto restriction on access to right to legal remedy for those persons who will not be served with decisions under the conditions set out in Articles 15a/1 and 15b/1. This restriction may be potentially problematic from a constitutional point of view. A possible solution would be to clearly define the range of persons and conditions under which a legal remedy could be lodged. The Council's Legal Service will need to be consulted on this issue.

We cannot support the current wording of the provision as contained in Article 15c.

Should there be a remedy

- it should be left entirely to the national law of the requested State - in which case there would be no need to regulate the time limits for the decision

- it should not be decided by the only by court but by the 'competent judicial authority' (depending on the national law of the requested State and depending on which judicial authority decides on the transfer of the criminal proceedings - e.g., an appeal against a court decision would be decided by the superior court, an appeal against a prosecutor's decision would be decided by the superior prosecutor). If the prosecutor decides to take over the criminal proceedings and legal remedy is lodged, which will be decided by a superior prosecutor - the prosecutor who decided to take over the criminal proceedings will have to be bound by this decision. In this case, therefore, the legal remedy will make sense, in contrast to the situation where the court would decide on it (see argumentation above).

In view of all the arguments set out above and considering what has already been stated by CZ in the past (see also our written comments), we send the draft of the provision in question.

Option 1 - we prefer this option. As it refers to a procedure under national law, there is no need to provide for further details.

Article 15c

Right to a 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. The right to a effective legal remedy shall be exercised before judical authorities in the requested State in accordance with its law.

3. The invocation of an effective legal remedy against a decision to accept the transfer of criminal proceedings shall have suspensive effect.

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

Option 2

Article 15c

Right to a 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. The right to a effective legal remedy shall be exercised in the requested State in accordance with its law. **The competent judicial authority shall examine the validity of the decision to accept the transfer of criminal proceedings in the light of the Article 13 (1).**

3. The invocation of an effective legal remedy against a decision to accept the transfer of criminal proceedings shall have suspensive effect.

4. 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 competent judicial authority in the requested State shall take its decision on the legal remedy without undue delay and, where possible, within [60] [90] days.**

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

Article 19

Paragraph 1 - We suggest deleting the part "*or a legal remedy under Article 8 has been invoked with suspensive effect and until such time when the final decision on the legal remedy is taken*".

Paragraph 2 – The requested authority will decide whether to take over the criminal proceedings in the form of a decision (Article 12). If we allow the existence of legal remedy against the decision to take over the criminal proceedings, this decision will only take effect after the legal remedy has been decided. So, it should have a suspensive effect both for cases where it is decided to take over the criminal proceedings before the filing of the indictment, as well as after the filing of the indictment.

As a rule, from at least the moment when the criminal proceedings are suspended in the requesting State (under Article 4 or Article 19/1) until the requested judicial authority initiates its own proceedings, it should have the power to carry out all urgent and non-repeatable acts and measures or measures necessary for the transfer of the criminal proceedings. The provision of the newly inserted (c) is not clear:

- what is the difference between (a) and (c)? Could not necessarily urgent investigative or procedural measures be subsumed under (a)?

- Why is the possibility to take urgent measures in (c) limited in time to the transmission of the file under Article 12/5 and this limitation is not present in subparagraph (a)? Does this mean that non-urgent measures are not limited in time?

- We do not want to leave a "vacuum" in which it would be impossible for neither the requested nor the requesting state to take the necessary measures. In our opinion, this provision could be drafted in more simple way:

- to provide in Article 4 for a general obligation (in all States) to suspend criminal proceedings before the request for take over the criminal proceedings is sent to the requested State ; even if we set this obligation for all States already in Article 4, it does not mean that we are imposing a new obligation on those States that do not need to suspend/discontinue the criminal proceedings in order to be able to send the request for takeover of such proceedings. The obligation to suspend/discontinue applies to all, only some States have "postponed" this obligation until the moment foreseen in Article 19/1. The advantage of this proposal is that all States decide on the suspension/discontinuation at the same stage of the transfer procedure. Moreover, it will be possible to remove the provisions of Article 19(1);

- to provide for the possibility for the requesting authority to take all necessary urgent and irreversible measures or measures necessary for the transfer of criminal proceedings until the criminal file has been sent within the meaning of Article 12/5;

- once the requesting authority has sent the file, it can in principle no longer take any measure;

- during the period of waiver, suspension or discontinuation of the criminal proceedings it shall not be possible to continue criminal proceedings except just for urgent and irreversible acts and acts necessary for the transfer of criminal proceedings;

- the Recital would state what is mean by necessary urgent and irreversible measures or measures necessary for the transfer of criminal proceedings. For exemple: An urgent measure is such an act which, due to the risk of its destruction or loss of evidence, cannot be postponed for the purpose of the criminal proceedings. An irreversible act is an act which cannot be performed in the future (e.g. it may be necessary to secure funds in an account, to hear a person who is in serious health etc.)

Option 1

Article 4

Waiver, suspension or discontinuation of criminal proceedings

Any Member State having jurisdiction under its national law to prosecute a criminal offence shall, 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.

Article 19

Effects in the requesting State

1. During the period of waiver, suspension or discontinuation of the criminal proceedings, until the criminal file is sent within the meaning of Article 12(5), the requesting authority may in accordance with its national law undertake necessary urgent or irreversible measures or measures necessary for the transfer of criminal proceedings.

2. The requesting authority may continue or reopen criminal proceedings, if the requested authority informs it of its decision to refuse the transfer of criminal proceedings in whole or in part or to discontinue criminal proceedings related to the facts underlying the request for transfer of criminal proceedings, unless that decision, under the national law of the requested State, definitively bars further prosecution and therefore prevents further criminal proceedings, in respect of the same acts, in the requested State.

3. Paragraph 3 shall not affect to the right of victims to initiate or to request reopening of criminal proceedings against the suspect or accused person in the requesting State, when the national law of that State so provides, unless the decision by the requested authority to discontinue criminal proceedings, under the national law of the requested State, definitively bars further prosecution and therefore prevents further criminal proceedings, in respect of the same acts, in that State.

Option 2

Article 19

Effects in the requesting State

1. At the latest upon receipt of the information of its reasoned decision of the acceptance by the requested authority of a transfer of criminal proceedings, those criminal proceedings shall be waived, suspended or discontinued in the requesting State in accordance with national law unless the requesting State has done so under Article 4.

2. During the period of waiver, suspension or discontinuation of the criminal proceedings, until the criminal file is sent within the meaning of Article 12(5), the requsting authority may in accordance with its national law undertake necessary urgent or irreversible measures or measures necessary for the transfer of criminal proceedings.

3. The requesting authority may continue or reopen criminal proceedings, if the requested authority informs it of its decision in whole or in part to discontinue criminal proceedings related to the facts underlying the request for transfer of criminal proceedings, unless that decision, under the national law of the requested State, definitively bars further prosecution and therefore prevents further criminal proceedings, in respect of the same acts, in the requested State.

4. Paragraph 3 shall not affect to the right of victims to initiate or to request reopening of criminal proceedings against the suspect or accused person in the requesting State, when the national law of that State so provides, unless the decision by the requested authority to discontinue criminal proceedings, under the national law of the requested State, definitively bars further prosecution and therefore prevents further criminal proceedings, in respect of the same acts, in that State.

Beyond our comments above, we believe, as we already stated at previous meetings, that it is necessary to establish a legal regime for the freezing (*for the purposes of evidence, compensation of victims, freezing of proceeds of crime, etc.*) that was made during criminal proceedings in the requesting State before the request for the transfer of criminal proceedings has been sent.

- **Freezing made for the purpose of obtaining evidence**, there should be no problem in transferring the items to the requested State together with the criminal file (if the item cannot be attached to the file, e.g., firearm, motor vehicle, etc., the police can be asked to transfer it).

- **Freezing for other purposes** (*subsequent return of the victim's property or confiscation*) should last on the territory of the requesting State until the competent judicial authority of the requested State either decides that the freezing is no longer necessary or sends a decision to return the victim's property or a confiscation order.

FINLAND

We would like to thank the Presidency for the opportunity to present written comments. Please note that the comments below are subject to possible subsequent changes, especially taking into account the tight schedule. We are still scrutinizing the text nationally. The text still includes relevant parts that should be discussed more. Below are some comments more in detail regarding certain Articles. If needed, we will revert back with additional comments.

Article 3 para 1

We support para 1 of Article 3 as it is in the latest text. We consider the beginning of para 1, ("*Unless jurisdiction is already provided for by the national law of the requested State*") very important and it should be kept in the text.

It is important for Finland that the Regulation (Article 3) clearly indicates that, in addition to the applicability of the law of the requesting State, the application of the Regulation requires that the requested State has jurisdiction either 1) under its ordinary national rules of jurisdiction, or 2) on the basis of the situations specified in the Article 3.

However, we do not support the suggested addition in brackets (in para 1). Regarding the text in brackets we do not see any added value with it. In addition, it might cause unnecessary problems (of interpretation). Therefore any unnecessary ambiguities should be avoided. The text in brackets should be deleted.

Article 5, para 2, subpara b

We would prefer not to delete the suggested part (**~~or, when there are more suspects or accused persons, one or more of them~~)**. However, if needed, we can be flexible in this matter taking into account the corresponding addition/reference is made to/in recital 25.

Article 5, para 2, subpara h

We do not support the suggested addition to subpara h (*and his presence in person at the proceedings cannot be ensured in another way*).

Article 6 para 1

We do not support the deletion of the last sentence ("*and ensure that their procedural rights under Union and national law are respected*"). It should be retained in the Article. No sufficient reasons for its deletion have been presented.

Article 7 para 1

We do not support the deletion of the last sentence ("*and ensure that their procedural rights under Union and national law are respected*"). It should be retained in the Article. No sufficient reasons for its deletion have been presented.

Article 7 para 2

Finland does not support the suggested/added limitation according to which the authorities shall only inform the victim if the victim has requested to receive information on the criminal proceedings in accordance with Directive 2012/29/EU (*Victims' Rights Directive/VRD*). Finland considers that victims should be informed on the intended transfer of the criminal proceedings in all cases, whether or not the victim has requested to be informed. This would also be in the best interests of the victims. Therefore, we support removing the added text from the article and recital 33 a. The obligation to inform the victim has already been limited to those who reside in the requesting State.

If, however, the text stays in the article, at the very least, the reference to Victims' Rights Directive needs to be clarified. We assume that the article on which the text refers to is Article 6 (particularly para 2) in the Victims' Rights Directive. However, it should be clarified, what information the victim should have requested to receive in order to be informed on the intended transfer. Or, if the idea was, that victims should specifically be informed on the right to receive information on an intended transfer, and that they would then be informed on the intended transfer only on request, this should also be clarified.

In the last meeting on 14 September the Commission pondered whether a refence to Article 6 (para 2) of the Victims' Rights Directive should be made. Furthermore, it is not completely clear if the idea was to refer also/or only to para 1 of Article 6 of the Victims' Rights Directive – this also should be clarified. In other words, at this point it is not complete clear if the Commission suggested to refer only to Article 6 of the Victims' Rights Directive or para 2 of it, or also to para 1 of Article 6. Overall, this question needs to be clarified. But as mentioned, Finland primarily does not support the suggested/added limitation according to which the authorities shall only inform the victim if the victim has requested to receive information on the criminal proceedings in accordance with Victims' Rights Directive.

Taking into account the aforementioned, however, it must also be noted that the Victims' Rights Directive applies only to natural persons and not to legal persons. Therefore, there is a problem with the said "limitation regarding the VRD" in relation to legal persons as victims. In other words, it seems like legal persons would not be covered at all with respect to Article 7 of the proposed Regulation. This seems unaccebtable. This problem regarding not covering legal persons needs to be fixed in the text if it is decided that the so-called "VRD-limitation" stays in the text.

In addition, the said limitation to the Victims' Rights Directive (*only victims who has requested to receive information on the criminal proceedings in accordance with VRD*) would also have broader consequences in the proposed Regulation, especially regarding legal persons. For example, it seems as if Article 15b (*information to be provided to the victim*) would not either apply to legal persons (as victims). Moreover, it seems like the right to an effective legal remedy (Article 15c) would also not be available for legal persons due to the aforementioned limitation to the Victim's Rights Directive.

Against this background, the limitation suggested (*victims who have requested to receive information on the criminal proceedings in accordance with VRD*) in Articles 7 and 15b are not appropriate and they have far-reaching impact throughout the text, particularly, among other things, regarding legal persons as victims (as defined in para 6 of Article 2 of the proposed Regulation; just for the sake of clarity, we strongly support covering also legal persons in this Regulation). These impacts also concern legal remedies, i.e. if there is no knowledge of a transfer or decision related to it, how can effective legal remedies be available.

Overall, we do not support the suggested limitation (victims who have requested to receive information on the criminal proceedings in accordance with VRD) in Articles 7 and 15b – among other things, for the reasons set out above. At the very least the reference to the VRD needs to clarified as described above and legal persons also need to be covered accordingly. Further discussion regarding this/these issues are needed.

Article 15b para 1 and 2

As mentioned above regarding Article 7, we do not support the suggested limitation to the Victims' Rights Directive (VDR) according to which obligation to inform without undue delay would only be done to the victim who has requested to receive information on the criminal proceedings in accordance with VRD. Regarding more detailed comments, we refer to the comments above in Article 7. However, and in addition, it is important to notice that here also it seems like legal persons as victims would not be covered. This would also have effects to the right to effective legal remedies.

Both Articles 7 and 15b are extremely important. Therefore, special attention to them is required. Further discussion about these Articles is needed.

Article 15c

It is important that effective legal remedies are included in the Regulation. Effective legal remedies are important in the requested State. The Commission and the CLS have multiple times mentioned reasons for the need to have legal remedies included in the Regulation, e.g. taking into account the case-law of the CJEU.

In addition, at the very least, it should be assessed whether it would be appropriate for the legal remedy (available in the requested State) to also apply to a decision to refuse a request taking into consideration situations of Article 5 para 3 according to which the suspect, or accused person or victim may, in accordance with procedures in national law, propose the competent authorities of the requesting State or of the requested State that criminal proceedings be transferred under the conditions of the Regulation.

The addition to para 2 of Article 15c (last sentence) seems appropriate. We do not support further limitations to the discretion of the court in this regard.

With regards the possibility for legal remedies in the requesting State (against the decision to request the transfer of criminal proceedings) we preliminarily are of the opinnion that this should be left to be decided in national laws of the Member States, if needed.

With respect to time limits (para 3 of Article 15c), we consider that time limits should be left to be decided in accordance with national law. If something is needed to be said about time limits, we consider sufficient to refer to "without undue delay". If the deadlines have to be included, then as long as possible, i.e. 90 days in this situation. "Where possible" in the sentence would be useful.

Article 20

Para 2

As we have mentioned many times previously (also in writing) we do not support adding the last sentence regarding interrupting the period of limitation. This would mean mutual recognition of such measures. Regarding the suggestion in footnote 2, what does "*provided that it is compatible with the fundamental principles of law of the requested State*" mean? Would this mean, for example, that if the interrupting act or measure would not be available (not lawful) in the requested State (such as informing via public notice/announcement), the interrupting act used in the requesting State would not need to be accepted in the requested State.

Overall, we do not support adding the last sentence regarding interrupting the period of limitation. In the previous meeting Germany seemed to also oppose the last sentence of para 2 and mentioned that it needs to be reformulated, at the very least, so that measures interrupting the period of limitation done in the requesting State would be acceptable in the requested State only if such measure(s) are also acceptable according to the law of the requested State. For example, if the interrupting act or measure would not be acceptable in the requested State (such as informing via public notice/announcement), the interrupting act used in the requesting state would not need to be accepted in the requested State.

Para 2a (Provisional arrest)

We are still analyzing this question nationally. However, preliminarily we consider appropriate an option that would allow provisional arrest before a decision to accept the transfer is made (i.e. after a request for transfer is received). However, maybe a request of the requesting State (to arrest) might not always be needed, i.e. maybe the power to arrest should also be available even without the request of the requesting State (to arrest) in accordance of the law of the requested State. In other words the requested State should be able, if needed, to use coercive measures (such as arrest) if they would be available in similar situations nationally, i.e. if the investigations would have started originally in the requested State.

Therefore, at this point, preliminarily option 2 would seem appropriate. Maybe some elements from para 2b of option 1 could be considered to be included in option 2. In anyway, a possible para on provisional arrest must have a may-formulation and only be optional for Member State to use if needed. In addition, maybe a reference to national law needs to be included, for example, "may … arrest the suspect or accused person, or take any … **in accordance with its national law** …"**.**

Regarding option 1, that is based on Article 27 of the 1972 European Convention on the Transfer of Proceedings in Criminal Matters, it concerns situations "where the requesting State *announces its intention to transmit a request* for proceedings". There is no guarantee that a subsequent official request will follow. Option 1 thus regulates a totally different situation/state of the proceedings. For these reason, we preliminarily consider that it should not be possible to arrest a person on too vague grounds, i.e. when there is no guarantee that an official request for transfer would follow after the announcement of the intentions of the requesting State. Therefore, at this point, we are not in favor of option 1.

Article 21 + some remarks on translation

Our practitioners noted that it might be better if the decision could be sent in its original language as it is, including short explanations in English or in an official language of the requesting State of the grounds for the decision. The requesting State could then translate the whole text if it deems it necessary.

Furthermore, in the last meeting an interesting idea was brought up regarding provisions on translations in the Regulation. Because these provisions are currently "scattered" around the text in different Articles, it might be feasible for the sake of clarity to have one Article in the text regarding translations. This interesting idea should be further analysed and discussed.

Article 34

We would prefer a longer period of time than two years.

Annex – Request form for the transfer of criminal proceedings

We think it is also important at some point in Copen to discuss about the request form (annex).

For example, the content, typography and usability should be further discussed and, if needed, developed. In terms of personal data to be entered on the form, the order of the data is important from a practical point of view, for example: last name, first name, date of birth, nationality, possible identification document details (type, issuer, period of validity, document number) and contact details (address and other contact details) etc.

FRANCE

(French text, with courtesy translations in English)

La présidence espagnole trouvera ci-dessous les commentaires écrits formulés par les autorités françaises concernant les dispositions de la troisième version révisée proposition de règlement sur la transmission des procédures pénales publiée le 1er septembre 2023, suite aux réunions du groupe COPEN et des Conseillers JAI + experts transmission des procédures pénales des 14 et 15 septembre 2023

Sur l'article 1er paragraphe 2 (Objet) :

Les autorités françaises maintiennent leur soutien à l'extension du champ d'application du texte et sollicitent donc la suppression des termes « *from where a person has been identified as a suspect ».* Elles considèrent qu'une limitation du champ de cet instrument aux transmissions de procédures pénales dans le cadre desquelles un suspect a été identifié conduirait à ce que les hypothèses dans lesquelles, a contrario, un suspect n'aurait pas été identifié soient régies par les règles plus souples de la dénonciation officielle aux fins de poursuite et, de fait, à une disparité de régimes juridiques, ce qui leur semble incohérent.

Courtesy translation

The French authorities maintain their support for extending the scope of the text and therefore request that the words "from where a person has been identified as a suspect" be deleted. They consider that limiting the scope of this instrument to the transmission of criminal proceedings in which a suspect has been identified would mean that cases in which, a contrario, a suspect has not been identified would be governed by the more flexible rules of official information for the purposes of prosecution and, in fact, would lead to a disparity of legal regimes, which seems inconsistent to them.

Sur l'article 2 paragraphes 1, 2 et 6 (Définitions) :

Sur les paragraphes 1 et 2 :

Les autorités françaises indiquent que la formulation « or consideration is given to it being » pourrait nécessiter un travail de clarification et formulent donc les propositions rédactionnelles suivantes :

(1) « is issued or considered to be issued»

(2) « is transmitted or considered to be transmitted »

Sur le paragraphe 6 :

Les autorités françaises sollicitent qu'un renvoi exprès soit opéré à l'article 2 paragraphe 1 point b) de la directive 2012/29/EU en ce qu'il liste limitativement les « membres de la famille » désignés à l'article 2 (1) a ii).

Elles ne s'opposent pas à la nouvelle formulation proposée du considérant 23.

Courtesy translation

Paragraphs 1 and 2:

The French authorities indicate that the wording "or consideration is given to it being" could require clarification and therefore make the following drafting proposals:

(1) « is issued or considered to be issued»

(2) « is transmitted or considered to be transmitted »

Paragraph 6:

The French authorities request that an express reference be made to Article 2(1)(b) of Directive 2012/29/EU insofar as it lists restrictively the "family members" designated in Article 2(1)(a)(ii).

They do not object to the proposed new wording of recital 23.

Article 3 paragraphe 1 (Compétence) :

Les autorités françaises peuvent faire preuve de souplesse s'agissant de la référence à la nécessité du caractère punissable des faits sur les lieux où ils ont été commis. Elles souhaiteraient néanmoins obtenir de la présidence un exemple concret de l'intérêt opérationnel que présente cette nouvelle disposition.

Courtesy translation

The French authorities can be flexible when it comes to referring to the need for the acts to be punishable at the place where they were committed. However, they would like the Presidency to provide a concrete example of the operational value of this new provision.

Article 5 (Critères pour solliciter la transmission d'une procédure pénale) :

Sur le paragraphe 2 b) :

Les autorités françaises sont favorables à la suppression de la formulation renvoyant à une pluralité d'auteurs, parmi lesquels figurerait un résident ou ressortissant, étant entendu que celle-ci est sous-entendue par la proposition initiale de la Commission.

Sur le paragraphe 2 point h) :

Les autorités françaises sont défavorables aux modifications apportées à cette disposition, dès lors que le critère selon lequel le suspect ou la personne poursuivie purge ou doit purger une peine privative de liberté dans l'Etat requis semble pertinent en soi, indépendamment de la question de la présence de la personne concernée sur le territoire de l'Etat requis.

En effet, cette hypothèse peut notamment présenter un intérêt opérationnel manifeste lorsque le suspect purge une longue peine dans l'Etat requis et qu'il peut légitimement être considéré qu'une courte peine est susceptible d'être prononcée dans l'Etat requérant.

<u>Sur le paragraphe 2 point i)</u> :

Les autorités françaises soutiennent par ailleurs le maintien du point i), qui vise les perspectives de réinsertion sociale de la personne et la nécessaire bonne exécution de la peine, enjeux qu'elle considère comme essentiels.

<u>Sur le paragraphe 3</u> :

Les autorités françaises acceptent l'insertion du terme « propose », de même qu'elles avaient accepté le terme « demand », en lieu et place de celui de « request ». Elles indiquent également privilégier les termes « may decide » à ceux de « should consider » dans la deuxième phrase, dans le prolongement de l'intervention du Service juridique du Conseil lors de la réunion du groupe COPEN du 6 juillet 2023.

<u>Courtesy translation</u>

Paragraph 2 b):

The French authorities are in favour of deleting the wording referring to a number of authors, including a resident or national, on the understanding that this is implied by the Commission's initial proposal.

Paragraph 2(h):

The French authorities are opposed to the amendments made to this provision, since the criterion that the suspected or accused person is serving or is due to serve a custodial sentence in the requested State seems relevant in itself, independently of the question of the presence of the person concerned on the territory of the requested State.

In fact, this hypothesis may be of manifest operational interest where the suspect is serving a long sentence in the requested State and it may legitimately be considered that a short sentence is likely to be handed down in the requesting State.

Paragraph 2(i)

The French authorities also support the retention of point (i), which refers to the prospects of the person's social reintegration and the necessary proper execution of the sentence, issues which they consider to be essential.

Paragraph 3:

The French authorities accept the insertion of the term "propose", just as they had accepted the term "demand" instead of "request". They also indicate that they prefer the term "may decide" to "should consider" in the second sentence, in line with the statement made by the Council's Legal Service at the COPEN Group meeting on 6 July 2023.

Article 6 (Droits du suspect ou de la personne poursuivie) :

Sur le paragraphe 1 :

Les autorités françaises sont favorables à la suppression des termes « *and ensure that their procedural rights under Union and national law are respected* ».

Courtesy translation

Paragraph 1:

The French authorities are in favour of deleting the words "and ensure that their procedural rights under Union and national law are respected".

Sur l'article 7 (Droits des victimes) :

Sur le paragraphe 2 :

Les autorités françaises souhaitent que soit explicitement visé dans ce paragraphe l'article 6 paragraphe 1 point a) de la directive 2012/29/UE établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité, pour que puisse être déterminé de manière plus aisée par les Etats membres le stade procédural auquel l'information est due à la victime.

Elles soutiennent par ailleurs l'ajout de la dernière phrase de ce paragraphe.

Courtesy translation

Paragraph 2:

The French authorities would like this paragraph to refer explicitly ***to Article 6(1)(a)*** *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, so that it is easier for Member States to determine the procedural stage at which information is due to the victim.*

They also support the addition of the last sentence of this paragraph.

Sur l'article 9 (Procédure de demande de transmission de procédures pénales) :

Sur le paragraphe 7 point a) :

Les autorités françaises saluent la reformulation opérée par la présidence qui tient compte des observations formulées par les autorités françaises, et notamment la réintroduction des termes « without undue delay ».

Courtesy translation

Paragraph 7(a):

The French authorities welcome the rewording by the Presidency, which takes account of the comments made by the French authorities, and in particular the reintroduction of the words "without undue delay".

Sur l'article 10 (Informations à fournir par l'autorité requérante) :

Les autorités françaises n'ont pas d'opposition à la modification du titre de cette disposition et aux modifications rédactionnelles opérées par la présidence.

Courtesy translation

The French authorities have no objections to the change in the title of this provision and the drafting changes made by the Presidency.

Sur l'article 11 (Retrait de la demande) :

Sur le paragraphe 2 :

Les autorités françaises n'identifient pas l'intérêt opérationnel de ce paragraphe dès lors qu'à l'évidence, le dossier dont la transmission n'a pas encore été autorisée ou a été refusée par l'Etat requis se trouve toujours dans l'Etat requérant.

Courtesy translation

The French authorities do not see the operational relevance of this paragraph since it is clear that the file whose transmission has not yet been authorised or has been refused by the requested State is still in the requesting State.

Article 12 (Décision de l'autorité requise) :

Sur le paragraphe 2 :

Les autorités françaises indiquent que, si elles ne sont pas opposées sur le principe à ce que l'autorité requise doive transmettre des informations complémentaires, il leur semble nécessaire de moduler cette obligation en prévoyant que l'autorité requise puisse s'y soustraire, notamment lorsqu'elle ne dispose pas de la capacité de transmettre ces informations complémentaires ou que d'autres raisons lui semblent justifier la non-transmission de cette information.

Les autorités françaises précisent qu'une rédaction de type « *s'il l'estime opportun et que ces informations sont disponibles* » lui semblerait appropriée afin de traduire cette idée.

Courtesy translation

Paragraph 2:

The French authorities state that, while they are not opposed in principle to the requested authority having to transmit additional information, they feel that this obligation should be modulated by providing that the requested authority may refrain from doing so, in particular where it does not have the capacity to transmit this additional information or where other reasons seem to justify the non-transmission of this information.

*The French authorities specify that a wording along the lines of "*if appropriate and if this information is available*" would seem appropriate in order to reflect this idea.*

Sur l'article 13 (Motifs de refus) :

Sur le paragraphe 1 litera da) :

Les autorités françaises sont favorables à la réinsertion d'une précédente formulation proposée par la présidence suédoise « *if a complaint by the victim necessary for prosecuting the criminal offence in the requested State cannot be obtained* », qui présentait une plus grande clarté en mentionnant explicitement l'absence de plainte de la victime. Plus particulièrement, elles considèrent que le renvoi à l'hypothèse dans laquelle une plainte n'a pas été déposée en temps utile dans l'Etat requis figure dans la formulation proposée par la présidence ne lui paraît pas opportun, notamment si les faits objets de la procédure ne nécessitent pas une plainte dans l'Etat requérant et qu'il s'agit de la raison pour laquelle elle ne figure pas au dossier.

Sur le paragraphe 1 d b) et le considérant 40 :

Les autorités françaises indiquent que si la référence à l'impossibilité de poursuite pour cause de décès ne leur semble pas poser de difficulté, il leur apparait préférable de faire référence à l'altération du discernement au litera (c), pour que ce sujet soit davantage présenté sous le prisme de la responsabilité pénale de la personne que sous celui de l'impossibilité de poursuites. En effet, l'altération du discernement n'entraine pas nécessairement l'abandon des poursuites. Ces observations concernent également le considérant 40.

Courtesy translation

Paragraph 1, letter da):

The French authorities are in favour of reinstating the previous wording proposed by the Swedish Presidency "if a complaint by the victim necessary for prosecuting the criminal offence in the requested State cannot be obtained*", which was clearer because it explicitly referred to the absence of a complaint by the victim. More particularly, they consider that the reference, in the wording proposed by the Presidency, to the situation where a complaint has not been filed in time in the requested State does not seem appropriate, particularly if the facts which are the subject of the proceedings do not require a complaint in the requesting State and that is the reason why it is not in the file.*

Paragraph 1(d)(b) and recital 40:

The French authorities state that while the reference to the impossibility of prosecution on account of death does not seem to them to pose any difficulty, it seems preferable to them to refer to the insanity of the suspect in litera (c), so that this subject is presented more from the point of view of the person's criminal responsibility than from that of the impossibility of prosecution. Impaired judgement does not necessarily mean that prosecution should be discontinued. These observations also apply to recital 40.

Sur l'article 14 (Délais) :

Les autorités françaises regrettent qu'il n'ait pas été fait droit à leur demande afin que soit privilégié un délai de 90 jours avec possibilité de prorogation à titre exceptionnel. Toutefois, à titre de compromis et dans un esprit d'ouverture, elles indiquent accepter la formulation actuelle de l'article.

Courtesy translation

The French authorities regret that their request for a 90-day period with the possibility of an exceptional extension was not granted. However, as a compromise and in a spirit of openness, they indicate that they accept the current wording of the article.

Sur les articles 15a) (informations à fournir au suspect et à la personne accusée) et 15b) (Informations à fournir à la victime) :

Sur le paragraphe 1 :

Les autorités françaises soutiennent le maintien de la formule « *where possible* » concernant la remise de la décision motivée à la personne. Elles sollicitent que cette mention concerne aussi l'information relative au droit de recours, afin de ne pas entraîner une charge administrative excessive pour les autorités compétentes.

Sur le paragraphe 2 :

Les autorités françaises n'ont pas d'opposition au mode opératoire mis en place par cet article s'agissant de l'information du suspect ou de la victime en cas refus du transfert de la procédure pénale.

Courtesy translation

Paragraph 1:

The French authorities support the retention of the wording "where possible" concerning the delivery of the reasoned decision to the person. They request that this reference also concern information on the right of a legal remedy, so as not to create an excessive administrative burden for the competent authorities.

Paragraph 2:

The French authorities have no objections to the modus operandi established by this article with regard to informing the suspect or the victim if the transfer of criminal proceedings is refused.

Sur l'article 15b) (Informations à fournir à la victime) :

Sur les paragraphes 1 et 2 :

Les autorités françaises sollicitent que soit explicitement visé l'article 6 (1) a de la directive 2012/29/EU pour déterminer le stade auquel l'information de la victime est nécessaire.

Courtesy translation

Paragraphs 1 and 2:

The French authorities request that explicit reference be made to Article 6 (1) a of Directive 2012/29/EU to determine the stage at which information to the victim is necessary.

Sur l'article 15 c (Droit à un recours juridictionnel) :

Sur les paragraphes 1 et 2 :

Les autorités françaises n'ont pas d'opposition au fait qu'il soit prévu la mise en place d'un recours au sein de l'Etat requis. Elles considèrent toutefois, après analyse approfondie de cette question, que l'examen de ce recours par la juridiction de l'Etat requis ne saurait intervenir que sur le fondement de la seule légalité du transfert, et plus particulièrement sur les critères visés par les articles 5 et 13 (**paragraphe 1 et, le cas échéant, paragraphe 2 (a), (c), et (d) uniquement**). En effet, il ne saurait être envisagé un recours formé par la victime ou le suspect en cours d'enquête, sur des critères visés à l'article 13 paragraphe 2 (b), qui vise la *bonne administration de la justice* alors qu'à ce stade de la procédure, la personne ne dispose que de certaines pièces du dossier, et pas de l'entière procédure. Une situation inverse pourrait contrevenir à la nécessité d'assurer la confidentialité de certaines enquêtes.

Sur le paragraphe 2a

Les autorités françaises n'ont pas d'opposition à la création de ce paragraphe, tel que rédigé en note de bas de page. Elles considèrent en effet que, dans le cas où un recours juridictionnel serait déjà prévu dans l'Etat requérant, il est opportun que le droit à un recours juridictionnel soit limité à la vérification de la conformité de la décision de demande de transmission d'une procédure pénale avec les exigences formelles et procédurales énoncées par le règlement ou le droit national

Sur le paragraphe 3 :

Les autorités françaises sont favorables à un délai de 90 jours et à la formule « and, where possible, within 90 days ».

Sur le paragraphe 4a) :

Les autorités françaises indiquent que ce paragraphe lui convient en l'état et que l'insertion d'un considérant ne leur semble pas nécessaire, dès lors que ce nouveau paragraphe 4a prévoit déjà que s'il est fait droit au recours, la procédure soit renvoyée dans l'Etat requérant, sauf décision contraire de la part de la juridiction saisie.

Courtesy translation

Paragraphs 1 and 2:

The French authorities have no objection to the provision for a judicial remedy within the requested State. However, after an in-depth analysis of this question, they consider that the review of this appeal by the court of the requested State can only take place on the basis of the legality of the transfer, and more specifically on the basis of the criteria referred to in Articles 5 and 13 ***(paragraph 1 and paragraph 2 (a), (c) and (d) only).*** *An appeal by the victim or suspect during the investigation cannot be considered on the basis of the criteria set out in Article 13(2)(b), which is aimed at the proper administration of justice, when at the investigation stage the person only has access to certain documents in the file, and not to the entire procedure. The opposite situation could run counter to the need to ensure the confidentiality of certain investigations.*

Paragraph 2a

The French authorities have no objection to the creation of this paragraph, as drafted in the footnote.

Paragraph 3:

The French authorities are in favour of a time limit of 90 days and the wording "and, where possible, within 90 days".

Paragraph 4(a):

The French authorities state that this paragraph is acceptable to them as it stands and that the insertion of a recital does not seem necessary to them, since this new paragraph 4a already provides that if the remedy is granted, the proceedings are to be returned to the requesting State, unless the court to which the case is referred decides otherwise.

Sur l'article 20 (Effets de la transmission dans l'Etat requis) :

Sur le paragraphe 2 :

Les autorités françaises privilégient la formulation figurant en note de bas de page, reprenant les termes « compatible with » et « and the same effects ».

Sur le paragraphe 2a :

Les autorités françaises soutiennent la deuxième option, directement inspirée de l'article 14 de la décision-cadre 2008/909/JAI relative à l'application du principe de reconnaissance mutuelle aux jugements en matière pénale. Cette option permet en effet à l'Etat requis, à la demande de l'Etat requérant, une fois qu'il a reçu la demande de transmission et les éléments d'informations associés à cette demande de prendre toute mesure, en amont de l'adoption de la décision d'accepter la procédure de transmission, pour s'assurer que le suspect ou la personne poursuivie reste sur son territoire dans l'attente de l'acceptation du transfert.

A l'inverse, les autorités françaises s'opposent formellement à la première option, en ce qu'elle entrainerait une mesure de privation de liberté ordonnée par l'Etat en voie d'être requis alors même que celui-ci n'a pas reçu de requête formelle en transfert, ni de document afférent, lui permettant d'étudier la pertinence d'une telle mesure.

Sur le paragraphe 6 :

Les autorités françaises soutiennent le maintien de la deuxième phrase de ce paragraphe relative au fait que l'autorité requise peut prendre en considération, conformément au droit national applicable, la peine maximale prévue par la législation de l'Etat requérant, lorsque l'infraction pénale a été commise sur le territoire de l'Etat requérant et que cela profite à la personne poursuivie. Elles notent qu'il est laissé aux autorités compétentes, par le biais de la mention « may », une latitude dans la prise en compte ou non de la peine encourue dans l'Etat requérant.

Courtesy translation

Paragraph 2:

The French authorities prefer the wording in the footnote, using the terms "compatible with" and "and the same effects".

Paragraph 2a:

The French authorities support the second option, directly inspired by Article 14 of Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters. This option allows the requested State, at the request of the requesting State, once it has received the request for transfer and the information associated with that request, to take all measures, prior to the adoption of the decision to accept the transfer procedure, to ensure that the suspect or accused person remains on its territory pending acceptance of the transfer.

Conversely, the French authorities are formally opposed to the first option, in that it would result in a measure of deprivation of liberty being ordered by the State in the process of being requested, even though the latter has not received a formal request for transfer or any related document enabling it to study the appropriateness of such a measure.

Paragraph 6:

The French authorities support the retention of the second sentence of this paragraph relating to the fact that the requested authority may take into account, in accordance with the applicable national law, the maximum penalty provided for by the law of the requesting State, where the criminal offence was committed in the territory of the requesting State and where this benefits the person prosecuted. They note that the reference to "may" gives the competent authorities discretion as to whether or not to take account of the penalty incurred in the requesting State.

Sur l'article 27 (Statistiques) :

Les autorités françaises remercient la présidence pour avoir tenu compte de leurs observations en substituant le terme de « monitoring » à celui de « statistiques », dès lors que ce dernier ne s'inscrivait pas dans un cadre générique de référence incluant la réduction de la charge pesant sur les répondants et les conditions d'élaboration de statistiques, en l'absence de référence au règlement 223/2009 relatif aux statistiques européennes.

Elles saluent le fait que le point de départ de la collecte de données intervienne bien à l'issue de la mise en place par la Commission du système informatique décentralisé.

Elles regrettent toutefois qu'il n'ait pas été fait droit à leur demande de limiter expressément la collecte d'informations aux procédures transmises via le système information décentralisé, lorsque ces données sont disponibles et solliciteront de nouveau l'ajout de cette mention. Enfin, elles souhaitent que la Commission confirme que l'ensemble des statistiques, en ce compris notamment les critères de transmission de la procédure et les motifs de refus, pourront bien être implémentées dans le système informatique décentralisé qu'elle établira. Elles constatent en effet qu'une telle collecte serait très complexe à mener au niveau national.

Courtesy translation

The French authorities thank the Presidency for having taken account of their comments by replacing the term "statistics" with "monitoring", since the latter did not form part of a generic reference framework including the reduction of the burden on respondents and the conditions for compiling statistics, in the absence of any reference to Regulation 223/2009 on European statistics.

They welcome the fact that the starting point for data collection will be once the decentralised IT system has been set up by the Commission.

They regret, however, that their request to expressly limit the collection of information to procedures transmitted via the decentralised information system, when such data are available, has not been met and will ask for this to be added once again. Finally, they would like the Commission to confirm that all the statistics, including in particular the criteria for forwarding the procedure and the reasons for refusal, can indeed be implemented in the decentralised IT system that it will set up. They note that such data collection would be very complex to carry out at national level.

Article 34 (Entrée en vigueur et mise en œuvre) :

Les autorités françaises considèrent que les périodes de deux ans visées pour la mise en œuvre du règlement et l'obligation faite aux autorités compétentes d'utiliser le système informatique décentralisé à la suite de l'établissement des actes d'exécution par la Commission, constituent des durées incompressibles qui ne sauraient, en tout état de cause, être écourtées.

Courtesy translation

The French authorities consider that the two-year periods referred to for the implementation of the Regulation and the obligation placed on the competent authorities to use the decentralised IT system once the implementing acts have been adopted by the Commission are incompressible lengths of time which cannot, in any event, be shortened.

GERMANY

Position statement by the Federal Republic of Germany following the COPEN meeting on 14 and 15 September 2023:

Article 1

We understand that in certain individual cases where a suspect has not yet been identified, a transfer of proceedings may appear disproportionate. In these cases, however, usually there will be no request for the transfer of proceedings. In any case a request can be refused according to Article 13 (2) (b). However, there are also cases in which it may make sense to transfer the proceedings even before a suspect is identified. For example, if during the investigation of a series of burglaries it turns out that the majority of the crime scenes are in another MS. For this reason, we are in favour of applying the regulation also in cases where a suspect is not identified yet.

We see a need to discuss the possible consequences of the different requirements national legislations provide for a suspect status.

Article 3

We are in favour of the addition „and which is punishable at the place where it was committed". Clarity on this point is particularly important for cases in which the place where the crime was committed is in neither the requesting nor the requested State. For example, someone who does something in Switzerland that is allowed there cannot be prosecuted for it in Germany. The fact that the proceedings in that case were transferred from another Member State to Germany does not change this.

Article 4

We welcome the retention of Article 4.

Article 5

We do not agree with the addition made in Article 5(2)(h). As pointed out by the Commission the possibility of allowing cumulation of sentences in the requested State might be another reason for a transfer.

We have no reservations about the further changes to Article 5.

Article 6 and 7

We are fine with transferring the sentence about providing the opportunity to the suspect's/defendant's or victim's legal representative to the new recital 33a. We were proposing to delete that sentence simply because it goes without saying that a person who cannot state their opinion themselves has the right to a legal representative.

In the second sentence of recital 33a we propose inserting "for example" after "Where the requesting authority considers it necessary". In our opinion the wording should be more open for other situations where victims may have a legal representative (e.g. because of other reasons than because of age or mental condition). Moreover, we propose inserting "if available" at the end of the second sentence after "legal representative" to make sure that there is only an obligation to provide information to the legal representative if the victim has one.

We welcome limiting the requirement to hear victims to those victims who reside in the requesting State and have requested the information set out in Article 6(1)(a) of Directive 2012/29/EU.

Article 9

We consider the deletion in Article 9 (7a) to be problematic. If no form for confirmation of receipt will be used, it needs to be clarified in the text what additional information should be transmitted with the confirmation of receipt. In our opinion that information should include the receiving authority's case number and the name of the relevant member of staff. We also point out that without a specified maximum time limit for the confirmation of receipt, there is also the possibility of a delay with regard to the time limits set out in Article 14 and Article 12 (1a).

Article 11

We have no reservations about the addition of Article 11(2) for the purposes of clarification.

Article 12

We have no reservations about the changes to Article 12.

Article 13

We have no reservations about the changes to Article 13.

Article 15b

We support that only victims who have signalled their interest to receive information regarding the proceedings should be informed about the transfer. In addition, it should be included as a limiting criterion that the victim must be residing in the requesting state. At least victims that are not a resident of the requesting state should be excluded from the requested state's obligation to provide a copy of the reasoned decision accepting the transfer.

Without such a restriction, a requirement to send all victims a copy of the reasoned decision would also appear excessive. In cases of Internet fraud with a large number of victims in multiple states, such a procedure would be possible but would place a disproportionate burden on the authorities concerned.

Article 15c

- From our point of view only victims that are a resident in the requesting state should be entitled to a legal remedy against the transfer. We don't see any legitimate legal interest of a victim that is a resident in the requested state to prevent the transfer to that state. Here, too, restricting the right to exercise a legal remedy to those victims who have requested the information set out in Article 6(1)(a) of Directive 2012/29/EU should be considered: if a victim makes no such request, this indicates that they have no interest in the outcome of the proceedings.

- We would like to thank the presidency for presenting a text proposal for the first time in Article 15c (2) which sets the standard for deciding on legal remedies. We support the suggestion in footnote 1 to add 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. In this respect we are wondering why the suggested recital is limited to prosecutorial discretion (hence when the request was made in the investigative phase) and does not also include decisions of courts to accept the transfer of a criminal proceeding.

- We also thank the Presidency for regulating the legal consequences of a successful legal remedy in Article 15c (4a). In our opinion, it should be clarified in the text or in a recital that, when there are several suspects/accused persons/victims, one successful legal remedy would result in the proceedings as a whole not being transferred. The Regulation therefore also needs to stipulate that other suspects/accused persons and victims who have previously been heard and notified of the decision to transfer proceedings must also be notified of a successful legal remedy.

- The first sentence of Article 15c (2) should be amended as follows: "in accordance with its **national** law".

- Regarding a time limit for the decision on the legal remedy we support a deadline of 60 days with the addition “where possible”. Even though there are no consequences in case of non-respect, a deadline might help to speed up the decision-making.

Article 19

In our view, Article 19 needs to include an obligation for the requested authority to inform the requesting authority of whether further prosecution is not possible under the law of the requested State following a decision to discontinue proceedings. Otherwise, the requesting State will not know whether or not it is able to reopen the proceedings. If the other member states think that Article 19 (3) already clearly expresses such an obligation, we suggest clarifying this point in a recital.

Article 20 (2)

Article 20 (2) is still problematic for us. We had advocated only recognising measures that are also accepted under the law of the requested State as interrupting or suspending the period of limitation. This would put suspects in the same position as if the proceedings had been conducted in the requested State from the outset. In our view, the provision should, moreover, only apply to acts that are admissible under the law of the requesting State and have been effectively undertaken. The requesting State should notify the requested State accordingly.

Article 20 (2a)

We are still analysing the regulations on provisional arrest proposed by some member states. However, we take a rather negative view of these provisions at this current stage. In particular, the proposal to allow a provisional arrest in cases where the requesting State has only announced that it will request a transfer goes too far. In general, the practical relevance of the proposed regulations is not yet clear to us. We would be grateful if the member states that submitted the proposals could provide examples.

Article 20 (3)

We welcome sentence 3 of Article 20 (3), which corresponds to Article 37 (2) of the EPPO Regulation. However, we are opposed to the reintroduction of sentence 2. This sentence massively interferes with the procedural autonomy of the member states. We do not believe that sentence 2 is necessary. In the event that a majority of the member states want to keep sentence 2, the phrase “not contrary to the fundamental principles of law” should at least be replaced with “in accordance with its own national law”.

Article 20 (4)

With regard to Article 20 (4), we believe that in extreme cases there should be a possibility of exceptions to the deduction of all periods of detention spent in another member state. For example, it should be possible for the court to refuse the reduction if the convicted person has provoked the detention with the intention of obtaining a reduction. We therefore suggest replacing “shall deduct” with “shall as a rule deduct” in order to provide greater flexibility for extreme cases.

Article 20 (6)

We support the deletion of the second sentence of Article 20 (6). We are convinced by the idea that the requesting State is ultimately making use of a jurisdiction that already exists in national law, even without the transfer of a proceeding. It is therefore difficult to understand why the requested State should have the opportunity to consider the maximum sentence provided for in the law of the requesting State. For cases of Article 3, where jurisdiction is exclusively based on the Regulation, there is Article 20 (6) sentence 3.

Article 23

We welcome the introduction of our comment as a footnote to Article 23 (1). However, in the interest of consistency, we suggest aligning the introductory wording in Article 23 (1) with that in the Digitalisation Regulation.

Article 27

We welcome the fact that, under the Presidency's proposal, the categories of data set out in the former Article 27 (1) (c), (e) and (f) are no longer mandatory.

The requirement to maintain statistics of the categories of data set out in Article 27 (1) (a), (b) and (d) should be restricted to "data available at a central level of the Member State concerned" in line with Article 18 (2) of the PIF Directive. Otherwise, these requirements could not be met in Germany in the short or medium term because of the country's federal structure, as they would place a disproportionate burden on the federal states.

HUNGARY

Drafting suggestions by Hungary.

NB: these comments have been issued previously in WK 11468/23

Article 2(6)

Our first set of comments relate to specifying which rights victims can exercise in the criminal procedure. We are mindful of the arguments raised by the Commission on 06 July in favour of the definition of '*victim'* as it stands now, but we remain sceptical about the unrestricted application of the term solely based on Article 2(1)(a) of Directive 2012/29/EU, not taking into consideration the fact that not all victims should participate in criminal proceedings. (Please note that this argument is not related to the definition of victims.) **The situation that not all victims are the same and they do not participate in the criminal procedure in a similar manner is reflected by Directive 2012/29/EU as well** [see ie. recital (20) or Article 11(1)]. In our view, the victims' rights provided by this regulation should not be different from the ones stemming from Directive 2012/29/EU. In this respect, we maintain our previous views.

Here are some possible practical examples that the current provisions might lead to:

1. According to the definition of 'victim' as it is proposed now, in the case of the offence of drug trafficking, the persons who purchased and consumed drugs, and later suffered harm as a direct result of the bad quality of the acquired narcotics, would be considered as a victim in terms of transfer of criminal proceedings, despite their conducts, which make them suspects of the offence of drug possession.

2. The situation is the same in the case of certain special corruption offences, where one party asks for an undue advantage by dishonestly claiming that they have influence over a public officer (passive trading in influence), while the other party gives a certain advantage to this person – claiming to have influence over a public officer (active trading in influence). These are special corruption offences in the sense that they involve corruption-related fraudulent, deceptive behaviours, but both active and passive side is criminalised all the same. Both parties will be charged based on the same set of conducts, but the active side of the offence could claim victims' rights on the basis of suffering loss directly stemming from the fraudulent, deceptive conduct of the passive side.

We are sceptical about this approach and would prefer language that avoids potential misinterpretation of the regulation.

Article 15a (moved from Article 6(4))

Information to the suspect and accused person

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, 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 **requested** authority. ~~***Where possible, t T***~~**he 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 a legal remedy in the requested State, including ~~*about*~~ the time limits for such a remedy. Where ~~*appropriate*~~ *necessary*, the requested authority may seek the assistance of the requesting authority in order to 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, 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 ***~~requested~~*** ***requesting*** authority. **Where ~~*appropriate*~~ *necessary*, the requesting authority may seek the assistance of the requested authority in order to inform the suspect or the accused person in accordance with this paragraph.**

In general, we can support the direction in which Articles 15a and 15b are developing. We made some minor textual refinements however. Furthermore, reasonable efforts to locate or reach the accused should be made by the authority doing the act of informing, and that is the requesting, not the requested authority in the case of refusals under paragraph (2). **Our textual proposals apply *mutatis mutandis* to Article 15b as well.**

Article 15c (moved from Article 8)

Right to a legal remedy

While maintain our reservation about the rules on remedies, we are also thankful and mindful of the arguments raised by COM and CLS on 06 July. We still consider that this kind of remedy does not serve its intented purpose – namely safeguarding the rights and interests of the victims and defendants –, and it also raises a false sense of security that the matter of the lawfulness of the transfer is settled, when in reality, it is not. Even if the decision on accepting the transfer is upheld at this stage by the relevant forum, the trial court will always have the authority to adjudicate on all of the relevant factors of the case, including the ones supporting the tranfer, so it can still decide that the transfer of the criminal proceeding was unwarranted.

For the event of Article 15c staying as it is proposed now, we have to emphasise that **the forum adjudicating on the remedy under Article 15c should only be able to review the mandatory grounds of refusal provided for by Article 13(1).** In case of Article 13(1), the existence of a mandatory ground of refusal should result in the refusal of the transfer. However, the optional grounds of refusal in Article 13(2) are practical, almost economic factors in the complete discretion of the requested authority, and against the discretionary element there can be no remedy.

Articles 19, 20, 21 and 27

In our 1st set of written comments, we made proposals and observations on Articles 19, 20, 21 and 27 as well. Since we did not have the time to discuss those articles on 06 July, we maintain those observations for now, and we only make a reference to them without repeating.

IRELAND

Thank you for facilitating such a useful discussion at COPEN last week. As highlighted in our non-paper circulated prior to the meeting and further outlined by our expert during the meeting, Ireland's main concerns revolve around the extension of the scope of the Regulation to cover unknown suspects and the definition of Requested Authority.

Scope

Our strong preference remains to retain the scope included in the Commission's original proposal. We would question the rationale of creating such an open-ended provision and would caution against encompassing cases that it appears would rarely be the subject of a transfer and including them in a regulation. We welcome the Presidency's call for Member States to provide examples of cases involving unidentified suspects that may necessitate having the option of making a transfer under this regulation, and we look forward to hearing examples of such cases from other Member States at the next COPEN meeting on 9 October 2023. We also look forward to reviewing any proposed particularised text for inclusion in the recitals, which we understand may be included in the next version of the text.

We consider that further detailed discussion is required on the important issue of scope. Excluding cases involving unknown suspects from the scope of this regulation will not preclude them from being transferred through other mechanisms, and would avoid the risk of the regulation becoming ineffective and inefficient. That being said, we are hopeful that we can find a mutually agreeable solution that will ensure the regulation's effectiveness and prevent the system from being inundated with cases that could be more appropriately dealt with through other channels.

Article 2 – Definitions

We also explained in our non-paper that a broader definition of Requested Authority will be essential to allow us sufficient flexibility to implement the proposal in Ireland. It will be particularly important for Ireland to include this expanded definition in the absence of a *de minimus* requirement under Article 5. Our suggestion is as follows:

> *"a) a judge, a court, an investigating judge or a public prosecutor* ***or any other authority so designated by the Requested State****, having competence to take a decision on whether to accept or refuse transfer of criminal proceedings in accordance with Article 12 to the extent provided for in national law.*
>
> ***b) an authority designated by the requested State in accordance with national law, with competence to take subsequent measures in accordance with this Regulation or any measure as provided for in its national law.***
>
> ***Before the decision on whether to accept a transfer of criminal proceedings is transmitted to the requesting authority, it shall be validated by a judge, a court, an investigating judge or a public prosecutor in the requested State."***

We note some reservations expressed in relation to our suggested textual amendment to Article 2(4). We are currently considering alternative options that might allow us to implement the regulation effectively in Ireland while respecting the legal base and we remain open to engaging on this point.

As stated previously we feel that the regulation is overly prescriptive, and we would suggest consideration be given to the benefit of replacing the word "requesting/requested authority" with "requesting/requested **State**", where practicable throughout the text.

In relation to the remainder of the text we submit the following amendments:

Article 3 – Jurisdiction

As noted by our expert at COPEN, we prefer the original text of this article. The new text seems to suggest that jurisdiction could be qualified by national law. The concept of "punishable" is very vague, and introduces a further limitations. We would prefer if this text could be deleted.

Article 5 – Criteria for requesting a transfer of criminal proceedings

It is clear that if the extended scope remains we need to revisit the criteria for requesting a transfer – as such we maintain our scrutiny reservation. It appears only three of the criteria, 2(a), 2(e) and 2(j) are to be considered in cases where there is an unknown suspect.

In order to avoid potential unnecessary over-use of the regulation by Member States that have a legal system based on mandatory prosecution, we would like see the following text inserted into article 5(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* ***and may not be issued for the sole purpose of fulfilling a duty to prosecute under national law."***

We are also concerned that the factors to be considered in advance of requesting a transfer listed in Article 5(2) may be viewed in isolation and that this could lead to over-use of this regulation in situations where it is not strictly required. For example, in a situation where Article 5(2)(e) is engaged because evidence is located in another Member State, there will be cases where a simple MLA request may be more appropriate.

We consider that further thought needs to be given to ensuring that this regulation is only engaged where really necessary. We would be in favour of mirroring the language included at Recital 28 regarding use of existing instruments of mutual recognition and mutual legal assistance in the first instance before considering transfer of criminal proceedings.

Article 9 – Procedure for requesting the transfer of criminal proceedings

We do not consider the addition of the words "if not all" in Article 9(5) useful as it becomes unclear what must be translated. We suggest that the text of article 9(5) be amended as follows;

> "The completed **request form** ~~certificate~~ referred to in paragraph 1, **as well as the essential parts** ~~**if not all of**~~ ….".

Article 19 – Effects in the requesting State

As suggested at COPEN, to highlight the ongoing need for cooperation and compliance with formalities of other Member States even after the transfer has taken place we suggest the inclusion of the following text in paragraph 2, directly before 2(a):

> *"Notwithstanding paragraph 1,* ***the requesting authority shall, in accordance with national law, comply with the formalities and procedures expressly indicated by the requested Member State, unless otherwise provided in this Regulation and provided that such formalities and procedures are not contrary to the fundamental principles of law in the requesting Member State. Formalities and procedures may include, but are not limited to…..***"

Consideration might also be given to making Section E of the request form annexed to the regulation more explicit regarding procedural acts already undertaken and measures that may need to be taken by the requested State. A checklist may be useful in this regard.

Article 20 – Effects in the requested State

We are still considering the issue of explicitly including provisional arrest, in consultation with our experts. As such, we wish to maintain our scrutiny reservation against this article.

We are in favour of the text at article 20(3). Ireland has consistently maintained the view that the issue of admissibility of evidence is a matter for national law.

In relation to the recitals we submit the following:

Recital 23 – We would prefer if the text of recital 23 stated that the assessment should include an examination of the question as to whether the transfer be proportionate, as follows:

> *" That~~is~~ assessment, which **should** 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".*

Recital 28 – Ireland does not participate in Directive 2014/41/EU on the European Investigation Order. We would like to see the following addition:

> *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, **in accordance with national law,** such as the Directive 2014/41/EU of the European Parliament and of the Council, 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.*

Recital 33 – Ireland participates in 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, but not Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order. We therefore request the following addition:

> *Whenever there is a need to ensure that the protection provided to the victim in the requesting State is continued in the requested State, competent authorities in the requesting State should consider the issuance of a European protection order in line with Regulation (EU) No 606/2013 of the European Parliament and of the Council or the Directive 2011/99/EU of the European Parliament and of the Council**, in accordance with national law**.*

It is clear from the last COPEN meeting that further discussion of this important proposal is required, and we look forward to working with colleagues to make further improvements to the text at the next meeting in October. In the meantime we will continue to engage and consult with colleagues both at home and abroad to explore potential solutions to the issues raised to date.

NETHERLANDS

Comments on the draft Regulation on the Transfer of Criminal Proceedings

The Netherlands

With reference to the meeting held on 14-15 September, NL would like to submit the comments enclosed in this document. Changes to the text revised by the Presidency (document 12551/23) have been marked by **bold and underlined characters** (for additions) and by ~~**bold strike through**~~ (for deletions).

Article 6, paragraph 1a

In article 6, paragraph 1a, there is a reference to paragraph 2 and 3 of article 6 and to article 15a. We suggest to also mention article 15c here.

Article 13, para 2(b) and (c)

NL would like to propose wording for a recital clarifying the relation between (b) and (c) of paragraph 2 in article 13, and more specifically that paragraph 2(c) should not be seen as limiting the ground for refusal mentioned in paragraph 2(b).

> **(40a) A transfer of criminal proceedings may also be refused if the transfer is not in the interests of the efficient and proper administration of justice. An example of this is the situation where the criminal offence has not been committed either in whole or in part on 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 the territory of that State, and the suspect or accused person is not a national of or resident in that State. Because the ties between the criminal proceedings and the requested State are so limited in this case, for reasons of clarification, this situation is mentioned separately. (Other) examples of situations where a transfer may be refused because it is not in the interests of the efficient and proper administration of justice are situations where the criteria for transfer or other circumstances of the case, alone or taken together, lead to the conclusion that the requested Member State is not best-placed to take on the criminal proceedings.**

Articles 15b and 15c

The text of articles 15b and 15c refers to 'victims' without further specification. In order to clarify to whom the rights set out in those articles apply, NL proposes the following text:

Article 15b

(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, inform without undue delay 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, 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 this paragraph.

Article 15c

(1) Suspects, accused persons, and victims **who reside in the requesting State and who have requested to receive information on the criminal proceedings in accordance with Directive 2012/29/EU** shall have the right to effective legal remedies in the requested State against a decision to accept the transfer of criminal proceedings.

Article 20, paragraph 2a

For NL, a provision enabling the requested State to take provisional measures before the proceedings are transferred, is of great importance. Issuing a EAW cannot, according to NL, serve to fill the legal gap, since the option of provisional arrest is needed for situations in which the suspect already remains in the requested State. We therefore welcome the suggestions made in the last version of the proposal to add such a provision.

Article 20, paragraph 3

As the last sentence of paragraph 3 contains superfluous wording, NL would like to propose the following text:

> **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.**

POLAND

Legal basis and choice of legal act to regulate the transfer of proceedings

In the first place, after examining the content of the document published on 1 September and following the consultation with national experts, it is necessary to consider whether the legal basis indicated in the draft – namely Article 82(1) points (b) and (d) of the second subparagraph of the Treaty on the Functioning of the European Union are the appropriate legal basis for the form of regulation. It would therefore be necessary to consider whether, a directive would not be a more appropriate legal act for the transfer of criminal proceedings between Member States.

Article 1

Poland reiterates the position expressed at COPEN that it remains flexible with regard to the amendment proposed in the draft regulation regarding when the transfer of proceedings will be possible. The draft reinstates the previous wording of the Regulation. The transfer of the proceedings at the earliest stage will undoubtedly contribute to the proper concentration of evidence, the collection of evidence in accordance with the national rules of the receiving Member State, the guarantee of procedural rights of the parties to the proceedings in accordance with the national rules of the State where the proceedings will ultimately take place, as well as an appropriate criminal response to the offence committed, such as the identification of the suspect, the application of preventive measures or security of property. In addition, the transfer of proceedings, in both situation, will contribute to the unification of the legal framework within the European Union, without having to refer to the provisions of the European Convention on Mutual Assistance in Criminal Matters. In addition, we consider it appropriate to delete from recital 7 of the draft regulation the definition of criminal proceedings.

Article 2

Poland welcomes the harmonization of the definition of victim, which includes a legal person who has suffered harm as a direct result of a crime. It is satisfying that, with regard to the definition of a legal person, the draft Regulation refers to national law. The reference to Directive 2012/29 of 25 October 2012, which also includes family members, seems to be too broad as regards the definition of a victim relating to a natural person. The definitions of the victim – thus legal person and natural person – should be aligned with the corresponding reference to national law.

Article 3

That provision draws a distinction between jurisdiction under national law and jurisdiction under the Regulation, establishing *de facto* principle that a Union regulation may constitute an independent basis for jurisdiction in criminal matters despite the absence of appropriate regulation in national law. It would therefore be necessary to consider whether this constitutes an interference with the powers of the national legislature. According to Poland, the EU Treaties doesn't provide for the competence of the EU legislator to determine, irrespective of national law, the scope of jurisdiction in criminal matters. In Poland's view, the amendment of this provision should be supported, in line with the argument put forward by one of the Member States: *„Member States shall ensure, in accordance with national law, jurisdiction over any offence to which the law of the requesting State applies in situations where they are the requested State."*

An analysis of the proposed Article 3, as it stands, may suggest that the regulation imposes on a State incompatible with its national law jurisdiction in a foreign criminal case, which is intended to lead to a situation where the Member State is not able to refuse to accept the case on the basis of its own rules of jurisdiction. According to Poland, the wording the draft regulation *"and which is punishable at the place where it was committed*" is not appropriate, especially since Article 3 of the draft regulation regulates the secondary jurisdiction of a Member State. Thus, the wording of the paragraph 1 and paragraph 2 Article 3 is some what contradictory.

Recital 26 sets out criteria indicating objective grounds for considering that a person is staying in a Member State, such as „*bank account*", „*registered vehicle"* and „*registered vehicle"*, but „*registered telephone number"* was deleted. It is incomprehensible to leave the first two criteria and to delete the last refund. Moreover, leaving the criteria of a "registered vehicle" or "bank account" seems inappropriate, especially in the context of the possibility to work in different countries. These should not be criteria for considering them as grounds for a person's stay in the country. Thus, Poland proposes not to lay down such conditions.

Poland continues to stress that the grounds for the transfer of jurisdiction, in particular those described in paragraph 1 (c) need to be clarified *"most of the effects of the criminal offence or a substantial part of the damage"*.

In the situation described in Article 3 paragraph 1 (d) instead of facilitating the conduct of proceedings, the solution proposed in the project can be a practical problem, for example, when another country wishes to transfer and attach its own proceedings, although against the same person, but for other acts, to the ongoing proceedings against a particular person, based solely on personal communication. Given that different acts of the same person committed in different countries may be revealed in economic or organised crime cases, there is a real possibility that the next transfer will lead to a significant prolongation of criminal proceedings. The requested State will not be able to refuse to take charge of the case on the ground that it lacks jurisdiction because it is precluded by both Article 3 and Article 13 paragraph 1(f).

As regards the criteria justifying the transfer of proceedings from one Member State to another, it would be justified to accept those conditions under Council Regulation (EU) 2017/1939 of 12 October 2017 establishing the European Public Prosecutor's Office, namely: the criterion of the place where the criminal activity is concentrated, the place where the majority of the offences were committed or the place where the main financial damage was caused.

Article 5

According to Poland, clarification is required in Article 5 paragraph 2 (a) the wording: "*most of the effects of the criminal offence or a substantial part of the damage caused by the criminal offence*" and used in Art. 2 (j) "*more victims*".

In the case of more suspects, under no circumstances shall this oblige the requested State to take over the prosecution of all. The requested State should be able to take over prosecutions only of its own nationals /residents – Article 5 paragraph 2 (c).

Poland disapproves of the premise in the draft regulation that a person is serving a sentence as grounds for the transfer of proceedings, as referred to in Article 5 paragraph 2 (h). That fact cannot determine the transfer of the proceedings. It is contrary to the objective of the Regulation, which is the efficient administration of justice. The surrender of such a person for the purpose of evidence may take place by means of a European Investigation Order.

The current drafting of the provision of Article 5(3), in which the word "request" has been replaced by "propose" is generally satisfactory. However, the draft does not regulate, in any way, the issue of informing the party (suspect, accused, victim) that its application has not been accepted.

Article 6

In Poland's view, it is necessary to clarify whether the failure to consent to the transfer of proceedings to another country, by the suspect or accused person and the victim, definitely excludes the possibility for the competent authority of a Member State to transfer request.

In the course of the work on the document, consideration should also be given to the introduction of a time limit within which the suspect or accused person and the injured party submit their opinion on the transfer of the proceedings. A reference to compliance with national law should be sufficient, but it would be more appropriate to formulate *„in so far as national law so provides"*.

It is reasonable to inform only those suspects who reside in the Member State concerned of their intention to transfer the proceedings. This would also be consistent with the draft regulation's goal of efficient administration of justice.

Article 7

Poland remains flexible in relation to the proposed changes to inform the victim who is present in the territory of the requesting State of the intention to transfer the proceedings, provided that this does not prejudice the investigation. It is justified to inform only those victims who reside in the Member State concerned. Such a limitation of the obligation to provide information will be consistent with the objective of the draft regulation, namely the efficient administration of justice.

Article 9

The request referred in Article 9 paragraph 2 should also contain a concise description of the evidence carried out, their form and the findings made as a result of them, as well as information on whether and on what legal basis the statue limitation period was interrupted (Article 20 paragraph 2).

It should be welcomed that the provision of the acknowledgement of receipt of the form by the requested State should be made with *„without undue delay*." This so, Poland supports the replacement of the term „*as soon as possible"* with „*without undue delay"*.

Article 10

In our opinion, such information should be sent together with the request. The wording of Article 10 should also be consistent with Article 9 of the Regulation, which specifies what information is to be provided. The wording *„relevant documents",* should be replaced by an appropriate reference to the information indicated in Article 9. The wording that translations of the relevant documents should be carried out „*at least in their essential parts*" is also a matter of concern. Translation of documents can affect the efficient transfer of proceedings, prolonging the proceeding.

Article 13

According to Poland, the wording that the requested State refuses to surrender the proceedings „*in whole*" or „*in part*" may cause doubts. First of all, it would be necessary to consider whether that provision gives rise to a partial transfer of the proceedings, which may, in turn, preclude the essential objective of the draft regulation, which is the proper administration of justice.

Moreover, the grounds for refusing to transfer the proceedings are not clear. In Article 13 paragraph 1(a) is an indication that the conduct of a person does not constitute a criminal offence. It would be necessary to consider whether this provision is contrary to Article 3, which, after all, establishes the jurisdiction of the requested State on the basis of that regulation.

Article 13 also mentions, in addition to conditions which are substantive (behaviour which is not a criminal offence) conditions which are of a procedural nature (for example, age, action from the beneficiary or prohibition of ne bis in idem).

In Article 13 paragraph 2 (c), a conjunction *„and"* should be replaced by a word *„or"*. Under the current wording of that provision, refusal is possible only if all the conditions are cumulative.

Article 15c

In Poland's view, it is reasonable to maintain the right to an effective legal remedy against the transfer decision. The provision that a remedy against the decision to transfer proceedings will be heard by the court of the requested State is acceptable.

In our opinion, only the formal and procedural criteria of the transfer decision must be taken into account by the court. Court shouldn't examine the „*validity"* decision. The criteria described in Article 5 shall be addressed in particular to the requesting State.

The remedy procedure should be defined in such a way that it does not result in the excessive length of criminal proceedings. In our opinion, the time limits of 60 or 90 days for the court to examine the appeal, it appears too long. Poland accept the time limits of 60 days.

Article 15 (c) paragraph 4 is not clear. The bringing of indictment by the requesting State and the subsequent transfer of the proceedings, in our opinion, contradicts the objective of sound administration of justice.

Article 19

In Poland's view, the provision of Article 19 of the Regulation, which contains the effects of the transfer of proceedings, should be maintained. It should also be welcomed that further measures in the context of criminal proceedings are to be taken in accordance with national rules.

The application of preventive or other procedural measures in the requesting State prior to the transfer of the material, in accordance with the provisions of Article 19 paragraph 1 and 2 from (a) – (c) and when referring to national legislation, in Poland's view, it should be considered acceptable.

Article 20

The provision which expressly stipulates that the criminal proceedings transferred should be conducted in accordance with the regulation of national law is preferable.

The Spanish Presidency's proposed two versions of this provision, and Poland supports second proposal. The decision to apply preventive measures, including pre-trial detention, should be taken on the basis of at least a request for surrender and the file of those proceedings. Moreover, it should be explicitly stated in the Regulation that preventive measures should be applied in accordance with national law.

Poland also proposes that the provision of Article 20 paragraph 6 was worded as follows: *'The penalty to be applied in the case of an offence shall be that provided for by the law of the requested State, unless otherwise provided for in that law. Where jurisdiction is based solely on Article 3, the penalty imposed in the requested State shall not be more severe than the maximum penalty provided for by the law of the requesting State."*

If the offence is committed in the territory of the requesting State, the requested authority may take into account, in accordance with the applicable national law, the maximum penalty provided for by the law of the requesting State.

Article 27

According to Poland, the collection of so many statistical data is an additional administrative burden for the Member States.

PORTUGAL

We would like to thank the Presidency by the progress made so far. Portugal considers that the changes made in the document generally go in the right direction.

Portugal is still consolidating its internal position on this proposal. Nevertheless, in addition to the positions that have been expressed during the meetings, and without prejudice to the evolution of our positions in the light of the arguments put forward during future meetings, we take this opportunity to make some preliminary remarks on the text as it was presented on the meetings of 14 and 15 September (document 12551/23).

- Article 1

Portugal is aware of the divergent opinions regarding the deletion of "from the time where a person has been identified as a suspect" in article 1. In particular, we take into consideration the arguments put forward by IE. Despite remaining open to continue discussions on the subject and to find a solution fit for all, at this stage we still continue to favor the elimination of this reference as we believe the inclusion of the cases where the suspect is still not identified would be positive as it would allow to establish a common procedure for all cases avoiding the complexity brought by the application of parallel regimes.

- Article 3

We agree with the concerns pointed out by the Presidency and expressed by CZ in its written comments as to whether the expression "and which is punishable in the place where it was committed" requires an assessment *in concreto* or *in abstrato*. Without prejudice to further discussions on the issue, it is not clear to us the beneficial impact of this addition and we would support reverting to the original text in this respect.

- Article 5

With regard to the changes made to Article 5, we are still assessing the changes introduced in 2(h), but, after the discussions in the last COPEN meeting, we tend to agree with the reversion to its previous version. We also note our support for the changes introduced on paragraph 3 of the same article, as it reflects the concerns we had previously signaled.

- Article 7 and 15b

Regarding the rights of the victim, in particular the restriction of the obligation to inform victims to the ones residing in the requesting State and that have requested to receive information on the criminal proceedings, we have some concerns with this restriction and would in principle favor a broader obligation to inform victims as proposed by the Commission in the initial text. We are of the opinion that the right to information is one of the most important elements to ensure the right of the victim to participate in the criminal proceedings. Despite being aware that the negotiations on the proposal for revision of the victim's directive is only starting, we believe that the restriction of the right to information goes against the general spirit of this Directive and its effort to promote a more victim centred approach to justice.

- Article 9

Portugal agrees with the Presidency's amendments to paragraph 2(e) of the article in question, as they improve the feasibility of the provision by making the obligations imposed on the competent authorities more proportionate**.**

- Article 11

With regard to paragraph 2 of the article, we have a flexible position but agree that it does not add much value to the text and therefore can be deleted.

- Article 15c

With regard to Article 15 c), it is important to reiterate the position previously expressed in favor of extending the possibility of appeal to the decision to issue a request for transfer of files, as is the case with our national legislation.

Regarding the introduction of a time-limit for the decision of the appeal, we have serious reservations about this possibility given the precedent that this would set and the lack of a parallel in national law. In this sense, we believe that the reference to "undue delay" is sufficient, as it adequately and realistically expresses the need to guarantee that the opportunity to exercise the right to appeal does not disproportionately jeopardize the interests of the criminal investigation and the realization of justice.

It is also important to express our agreement with 4a in order to clarify the effects of the decision recognizing the right of appeal.

- Article 20

With regard to Article 20, a provision on provisional arrest should be included, although this matter is still being analyzed, we tend to agree with the position expressed by the Presidency but note our preference, albeit preliminary, for option 2 for the drafting suggestion as it limits this possibility to the receipt of a transfer request.

Still with regard to this article, and with regard to paragraph 6, we would favor keeping the second sentence of the text, which determines the application of the most favorable law (*lex mitior*) for the purposes of defining the applicable sentence. Nevertheless, it seems to us that is also true that this possibility would continue to be safeguarded considering that the provision determines that the penalty applicable to the criminal offence is that prescribed by the law of the requested State, unless that law provides otherwise.

SLOVENIA

Slovenia supports the aim of the proposal, and we believe that the amendments made by the Presidency improve the draft considerably. Yet, some weaknesses remain that must be addressed before we could support the proposed text.

Recital 22

We insist that the Regulation should not require Member States to implement any Commission Recommendations. The language of Recital 22 should be redrafted in line with Recital 21, e.g., "Similarly, **the Commission Recommendation (EU) 2023/681** ~~**Member States should ensure that, when applying this Regulation,**~~ **has set out** 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**~~."

Recital 26

We have already explained why the "residence criterion" as defined in this recital can only be relevant in the initial stage of the proceedings, and not when the requested authority is determining whether the requested State in in fact in better position to conduct proceedings – where the actual residence will have to be determined. This has to be reflected in the recital's text, we have already proposed an amendment in this regard in previous written comments.

Article 3

Slovenia supports the possibility to establish jurisdiction rules in domestic laws of Member States, to ensure consistency with basic principles of domestic criminal law.

We are hesitant about including the text in the square brackets "and which is punishable at the place where it was committed" in paragraph 1 as it might lead to unwanted consequences. Without clear added value being demonstrated we do not support its inclusion.

In paragraph 1, points (d) and (e), words "or resident in" should be deleted (we could support these elements to constitute non-obligatory jurisdiction bases). As already explained, the proposed approach is inconsistent with rules on jurisdiction from e.g. Article 14 of the Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence – General approach, Article 11 of the Proposal for a Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures – General approach, Article 12 of the Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law – General approach. Procedural rules from e-evidence regulation are irrelevant in this regard as they apply to procedural measures when jurisdiction for investigation/prosecution already exists.

Article 7

In paragraph 2 we can support further limiting down the obligation to provide information to victims that (actually, see the comment on Recital 26) reside in the requesting State and have requested to receive information on the criminal proceedings in accordance with Directive 2012/29/EU, with some amendments: the victims should be informed in advance about the consequences arising from this Regulation if they will not request to receive such information (including the eligibility to a legal remedy); in addition to natural persons legal persons should also be covered.

Article 11

We can support the deletion of paragraph 2 as it has no added value.

Article 15c

Where in our view the exercise of the right to an effective legal remedy of the victim is not directly linked to this victim's request to receive information, we do agree that the scope of this article needs to be aligned with Article 15b (since if the victim is not provided with a copy of the reasoned decision accepting the transfer of proceedings, an effective legal remedy is *de facto* not available to such victim). We are not convinced that the victims that do not reside in the requesting State and have not requested to receive information would in principle have no interest in the place where the proceedings are conducted and would therefore be inclined to giving a possibility for a legal remedy to all the victims (meaning that the reasoned decision to accept the transfer should be to all the victims) or at least allow flexibility to the competent authorities to decide whether such possibility should be made available in a specific case.

We agree with those delegations that have stated that stating too broad grounds for legal remedy will most certainly disproportionally burden the proceedings. Additional clarity will be needed in determining what circumstances are relevant in the procedure with the legal remedy.

In paragraph 4, we support extending the suspensive effect to all stages of the proceedings.

Article 22

We see the need to allow, if necessary, the transfer of a case file (Article 12(5)) in paper form as well.

SWEDEN

We would like to thank the Presidency for the opportunity to provide written comments on the revised text that was discussed during the meeting September 14-15. Changes compared to the text in ST12551/23 have been marked by ***bold italic underlined*** characters for additions and ~~***bold italic strike through***~~ for deletions.

Articles 1 and 5 (recitals 24, 27 and 28) Subject matter and Criteria for requesting a transfer of criminal proceedings

Regarding the scope of the regulation, our practitioners tell us that proceedings where the suspect is not yet identified are currently transferred based on article 21 in the European Convention on Mutual Assistance in Criminal Matters from 1959. Such transfers can take place when, in view of the result of the investigative measures carried out, there are reasons to believe that the suspect is operating from another Member State, for example, IP-addresses in online child pornography cases or IP-addresses, bank accounts etc. in online fraud cases. As pointed out by Germany during the last meeting, it can also be useful to concentrate ongoing proceedings in different Member States to one of them even if the suspects are still unknown, for example in cases of cross-border burglaries or online frauds.

If the scope of the regulation excludes proceedings where the suspect is unknown, such proceedings would still have to be transferred based on article 21 of the European convention from 1959. The legal framework would then still be fragmented and continue to pose legal and practical challenges. This would not be in line with the intention of the new regulation.

Like most of the Member States who expressed themselves at the last meeting, we are therefore in favour of an extended scope. We don't believe that this would affect the police cooperation as the regulation only targets judicial cooperation. It can also be noted that at the 60th Plenary Meeting of the European Judicial Network, the participants welcomed the extension of the scope.

Since proceedings with unknow suspects are already being transferred, extending the scope of the regulation would not be such a novelty. At the last meeting, the Council Legal Service suggested adding text in Article 1 on certain situations or criteria that should apply to proceedings with unknown suspects. After reflection, this seam difficult. It could still fragment the legal framework. Also, practitioners appear to assess the opportunity of a transfer along the same lines as foreseen in this regulation although the specific criteria relating to known suspects would not apply. Our practitioners have also pointed out that in proceedings with unknown suspects, it is important that necessary investigative measures have been carried out, such as issuing a European investigation order or requesting mutual legal assistance, before requesting the transfer of proceedings. This is to ascertain that the proceedings are really linked to another Member State either because it appears that the suspect is operating from that Member State or because there are ongoing proceedings in that Member State regarding the same, partially the same or related facts even though the suspects are not yet identified. Thus, instead of adding text to Article 1, we would suggest adding some wording in recitals 24, 27 and 28 and in article 5 to cover situations where it could be in the interest of an efficient and proper administration of justice to transfer criminal proceedings with unknown suspects.

(24) (…) 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. ***This could also be the case where a suspect is still not identified but the investigation indicates that the suspect is operating on the territory of the requested State.*** (…)

(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 ***or when criminal proceedings are ongoing in the requested State in respect of the same, partially the same or related facts and the suspects are unidentified***, e.g. in cases of prosecution of cross-border criminal organisations, where different co-accused **persons** might be prosecuted in different Member States. (…)

(28) When ***considering*** 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 , and mutual legal assistance, where applicable, before ~~***considering***~~ ***requesting*** the transfer of criminal proceedings ***where the suspect is not identified or*** on the sole ground that most of the evidence is located in the requested State.

Article 5 (…) (g) there are ongoing criminal proceedings in the requested State in respect of the same, **partially the same** or related facts against other persons ***or where the suspects are unidentified***;

Article 3 Jurisdiction and Article 13 Grounds for refusal

The rules on jurisdiction should improve the possibilities to transfer criminal proceedings and we welcome the text proposed by the Commission with the minor improvements that have been made. However, regarding the suggested wording in brackets, we think that such a horizontal criterion would be too broad and risk limiting possibilities to transfer jurisdiction in some cases. There are exceptions in national law to the general principle of international law that crimes should be punishable in the place where they were committed, e.g. for certain serious crimes such as war crimes or murder. To avoid that the principle of double criminality is applied too broadly and without any margin of appreciation, we think that a possible solution could be to introduce the principle as a facultative ground for refusal instead. We suggest the following wording.

Article 3.1 ~~***Unless jurisdiction is already provided for by the national law of the requested State***~~**,** ~~F~~f***F***or the purpose**s** of this Regulation**, *and if jurisdiction is not already provided for by the national law of the requested State*** ~~,~~ 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 (…)

Article 13.2 (…) ***aa) the criminal offence is not punishable at the place where it was comitted***

Articles 5.2 h) and i),

Regarding article 5.2 h) we prefer the Commission's proposal. We see no reason to limit the article in the way suggested. The added text should therefore be deleted. Regarding article 5.2 i) it is important to maintain it for the reasons developed during the last meeting.

5.2 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.***~~

Article 9.2 e)

We welcome the added text. However, our practitioners pointed out that it is still not clear to them what assessment is expected under this provision. Clarifying that in a recital would have added value for practitioners that will apply the regulation.

Article 11 Withdrawal of the request

As developed during the meeting we believe that Article 11.2 is superfluous. If it is still retained, we prefer deleting the words "its decision to".

11.2 Where~~n~~ the requesting authority has informed the requested authority, in accordance with paragraph 1, of ~~its decision to~~ *the* withdraw*al of* the request for the transfer of criminal proceedings, the criminal proceedings shall remain ~~stay~~ with the requesting authority

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

It is important to find a balance between the rights of individuals and the effectiveness of judicial cooperation. We think the changes in the text go in the right direction. However, the text of Article 15b.1-2 should reflect that of Article 7.2. We suggest adding that information should be given to victims who reside in the requesting State.

15b.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 *resides in the requesting State and who* has requested to receive information on the criminal proceedings in accordance with Directive 2012/29/EU** (…)

15b.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 *resides in the requesting State and who* has requested to receive information on the criminal proceedings in accordance with Directive 2012/29/EU.**

15c Right to an effective legal remedy

It is important that the new instrument brings added value to the cooperation regarding transfer of criminal proceedings. The rights of individuals must of course be ensured. However, as developed in detail during the last meeting, we are for several reasons not convinced that establishing a legal remedy at this stage of the proceedings is judicious, especially if there are ongoing parallel proceedings in different Member States. Nevertheless, considering the arguments put forward by the Council Legal Service regarding the case-law of the ECJ on legal remedies, we agree that it may still be useful to establish an appropriate legal remedy in the regulation.

When forming the legal remedy, it is important to find a balance between the rights of individuals and the effectiveness of judicial cooperation. The rights of victims to a legal remedy should mirror the text in article 7 and 15b. If there are already ongoing criminal proceedings in the requested State in respect of the same facts against the same suspect or accused person, we don't see the benefits of a legal remedy. The result of a successful remedy would be that the criminal proceedings would revert to the requesting State. Parallel proceedings would then continue in the two different Member States. We also believe that it is important to precise the criteria to be examined. This should be the criteria in article 13 otherwise the review will be too wide. Only substantive grounds shall be examined. As suggested by a Member State, we welcome 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. Regarding article 15c.2a we could accept wording along the lines of footnote 2 on p. 55. To ensure effectiveness we believe that it's important to put in fixed deadlines for the courts review. If not, a legal remedy could lead to very lengthy proceedings and prejudge the ongoing criminal proceedings. The right to a fair trial within a reasonable time is also right that must be respected. It is useful to insert a paragraph about the result of a successful remedy that could also be accompanied by a recital. As mentioned by the Commission, we agree that the proceedings should only revert to the requesting State if the remedy is successful on substantive grounds. We think this should be clarified already in Article 15c.2. In that way a legal remedy can only be successful on substantive grounds. We can then change the wording in 4a accordingly. It doesn't seem useful that a legal remedy can be successful and at the same time the court could decide that proceedings should remain in the requested state. We therefore suggest the following text.

Article 15c

1. Suspects, accused persons, and victims ***who resides in the requesting State and who has requested to receive information on the criminal proceedings in accordance with Directive 2012/29/EU,*** shall have the right to effective legal remedies in the requested State against a decision to accept the transfer of criminal proceedings, ***except if criminal proceedings are already ongoing in the requested State in respect of the same or partially the same facts against the suspect or accused person.***

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 in light of the relevant provisions of this Regulation, including~~ based on substantive grounds in* Article*~~s 5 and~~* 13.**

   2a We could accept wording along the lines of footnote 2 on p. 55.

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,~~* *and at the latest*** **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. In case the legal remedy sought is succesful the criminal proceedings will revert to the requesting State. *~~unless the competent court in the requested State decides otherwise that.~~*

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