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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the transfer of proceedings in criminal matters **(first reading)** - Adoption of the legislative act = Statement

Statement by Czechia

The Czech Republic considered the proposal for a Regulation on the transfer of criminal proceedings as an opportunity to simplify, improve and harmonize the procedure for transferring criminal proceedings between Member States. That is why they took a very active part in its negotiation from the very beginning.

The Czech Republic appreciates very much that the Presidencies have taken into account many of their comments and has also taken into account many of their proposals made during the negotiation process.

The Czech Republic considers it particularly positive that the Regulation:

- creates a uniform framework for the transfer of criminal proceedings,
- allows for the transfer of criminal proceedings even against an unknown offender,
- maintains the system of requests,
- provides for the possibility to refuse the transfer of criminal proceedings in certain cases,
- is limited exclusively to the transfer of criminal proceedings.
- establishes a uniform form for the request for transfer of criminal proceedings and sets time limits for the individual acts of the transfer procedure.

From the beginning of the negotiations on the draft of the Regulation has opposed the introduction of a legal remedy for suspects/accused/victims against the decision to transfer of criminal proceeding. Unfortunately, the arguments we have continuously put forward were not considered during the negotiations and this obligation in the Regulation therefore remains. We perceive this as fundamentally negative.

- If the rights and freedoms of suspected/accused persons guaranteed by EU law are to be infringed by the transfer of criminal proceedings, those rights of the suspected/accused persons that could be affected by the transfer of proceedings must be clearly identified. There is, however, no right to be prosecuted or not prosecuted in a particular EU Member State. A key element of transfer of proceedings and its main concern is the principle of the proper administration of justice and its effective enforcement. The suspected/accused persons can hardly be expected to share this principle; their interests will often be quite different.
- Similarly, there is no violation of victims' rights by transferring criminal proceedings. In EU Member States bound by the Victims' Rights Directive, standards of protection of victims' rights in criminal proceedings are respected. In some Member States, the exercise of the victim's right may be “less comfortable”, but this should not be a reason to hinder or obstruct the transfer of criminal proceedings.
- The right of legal remedy (*the same applies to the obligation to consult in advance and obtain an opinion on the transfer of criminal proceedings, albeit partially limited in the current wording)* is not provided for in any of the normative provisions of Regulation (EU) 2017/1939 implementing enhanced cooperation for the establishment of the European Public Prosecutor's Office. While this Regulation does not regulate the transfer of criminal proceedings, given that the EPPO does not exercise its own jurisdiction, but the criminal jurisdiction of the EU Member States bound by Regulation (EU) 2017/1939, this Regulation provides rules for the transfer of a criminal case from the jurisdiction of one Member State to another. We are thus creating an environment in which suspects/accused in certain types of criminal proceedings will be favored over others.

- It is rather paradoxical that, although the Regulation newly grants a right of a legal remedy, it also effectively restricts it for those persons who will not, under certain conditions, be served with decisions to take over criminal proceedings; the assessment of these conditions is completely unreviewable and dependent on the discretion of the judicial authority of the requested State. We do not see this de facto restriction on access to a remedy, which may be potentially problematic from a constitutional point of view, as a pragmatic solution.

The transfer of criminal proceedings between Member States is the last area of international judicial cooperation in criminal matters that is not uniformly regulated between EU Member States. In order to fulfil the original intention, so to create a modern, effective, simple, clear and easy to apply Regulation for practitioners, it would be appropriate to devote even more time to its discussion in the COPEN working group format.

In spite of the above, the Czech Republic perceives and appreciates the efforts made by the Presidencies in the course of the negotiations of the draft Regulation, in an endeavor to achieve the compromise wording of the currently presented text.