



Council of the
European Union

Brussels, 22 November 2023
(OR. en)

15826/23

LIMITE

COPEN 410
JAI 1546
CODEC 2225

**Interinstitutional File:
2023/0093(COD)**

NOTE

From: General Secretariat of the Council

To: Delegations

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
- Post-adoption feedback received by the Commission

**REDACTED DOCUMENT ACCESSIBLE TO THE PUBLIC (13.06.2025). ONLY
MARGINAL PERSONAL DATA HAVE BEEN REDACTED.**

Delegations will find attached the above-mentioned information.



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR JUSTICE AND CONSUMERS

The Director-General

Brussels
JUST.A.5/AT

H.E. Mr Marcos Alonso Alonso, Permanent
Representative of Spain to the European
Union

Mr [REDACTED], Chair of the Working Party
on Judicial Cooperation in Criminal Matters
(COPEN)

Subject: Post-adoption feedback received regarding the proposal for a Regulation on the transfer of proceedings in criminal matters COM(2023) 185 final

Dear Ambassador Alonso Alonso,
Dear Mr [REDACTED],

From 10 April 2023 to 15 June 2023, the public was able to submit feedback on the Proposal for a Regulation of the European Parliament and of the Council on the transfer of proceedings in criminal matters ⁽¹⁾.

During the feedback period, the Commission received 11 submissions, which are available on the Commission's website ⁽²⁾. I enclose a summary of the feedback received.

The Commission will continue to support the co-legislators during the legislative procedure on this proposal.

Yours sincerely,

Electronically signed

Ana GALLEGO

cc: [REDACTED], General Secretariat of the Council of the European Union

⁽¹⁾ COM(2023) 185 final.

⁽²⁾ [Effective justice – common conditions for transferring criminal proceedings between EU countries \(europa.eu\)](#)

Summary of the feedback received after the adoption of the European Commission's proposal for a Regulation on the transfer proceedings in criminal matters

Disclaimer

This Report is without prejudice to any position the European Commission or its services might take as regards the subject matter of this legislative proposal. It contains the summary of the feedback received following adoption by the Commission, but it does not represent the official position of the European Commission and its services and thus is not binding for the European Commission and its services.

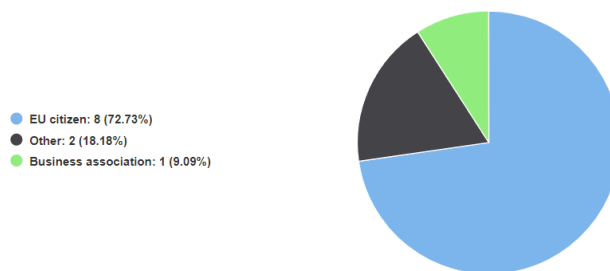
1. Introduction

On 5 April 2022, the Commission adopted a proposal for a Regulation on transfer of proceedings in criminal matters. The proposal is based on Article 82(1)(b) and (d) of the Treaty on the Functioning of the European Union (TFEU). Article 82(1)(b) and (d) provides for EU competence to act via ordinary legislative procedure to prevent and settle conflicts of jurisdiction between Member States and to facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions. The post-adoption feedback period ran from 10 April 2023 to 15 June 2023 and aims to feed these views into the legislative debate. The Commission has received in total 11 feedbacks, which are summarised in this report.

2. Statistical summary

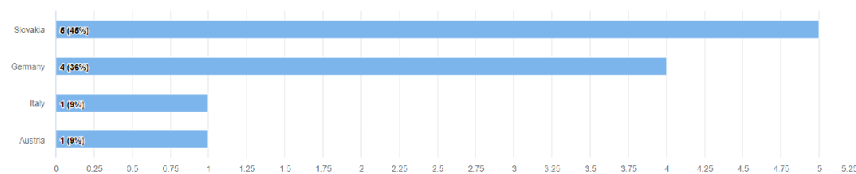
From the 11 feedbacks received, 72.73% (8 submissions) came from EU citizens. Others accounted for 18.18% (2 submissions) and business associations for 9.09% (1 submission). Among these respondents, two were Lawyers/Bar Associations, in particular the German Bar Association and Italian Association of Young Lawyers.

By category of respondent



Most feedbacks originated from Slovakia (45%), followed by Germany (36%), Italy (9%) and Austria (9%).

By country



3. Main points raised

a) Choice of the instrument

As the proposal concerns cross-border procedures, where uniform rules are required, the Commission proposed a Regulation as the legal instrument. One respondent however fears that because regulations are directly applicable in the Member States, the margin for legislative interventions at national level will be significantly reduced.

b) Jurisdiction

One respondent wondered whether the fact that an offence is planned in one Member State but actually committed in another Member State could have an effect on the determination of subsidiary jurisdiction pursuant to Article 3.

c) Right of the defence to request the initiation of transfer of criminal proceedings

According to one of the respondents, lawyers should be able to request to the competent authorities of the requesting or requested State that criminal proceedings be transferred on behalf of the suspected or accused person, or a victim. It is in fact believed that the current lack of a comprehensive legal framework in this area has so far prevented the defence from effectively initiating a transfer of criminal proceedings in the interest of their clients. Lastly, the respondent claims that, as currently phrased, the right to request a transfer of criminal proceedings is without effect if the decision on whether or not to accept the transfer is solely left to the discretion of the authorities.

d) Rights of the suspect or accused person

While one of the respondents welcomes the procedural safeguards included in Article 6 of the proposal, it is considered that the reference to national law in paragraphs 1 and 2 may lead to confusion for the suspect or accused person who may need legal advice to know what rights they may have under the various national rules. In addition, the suspect or accused person should be given the opportunity to state their opinion orally and in writing in accordance with procedures which are to be better clarified in the proposal. According to the same respondent, the right to a legal remedy should also apply against decisions to refuse the transfer of criminal proceedings. In this respect, it was also pointed out that the invocation of a legal remedy should have suspensive effect in any case and not only after indictment. Lastly, the respondent considered that the suspect or accused person should be given an opportunity to state their opinion before a ground for refusal is invoked.

e) Procedure for requesting the transfer of criminal proceedings

One of the respondents welcomes Article 9 of the proposal which regulates the procedure for requesting the transfer of criminal proceedings; however, the respondent suggests adding a reference to the right of the defence to have access to the case file, currently not provided for in the proposal. The right to have access to the case files is of fundamental importance for an effective defence. The same respondent pointed out that the entire case file should be transmitted from the requesting authority to the requested authority and considered that the possibility for “the requesting and requested authorities to consult in order to determine the necessary documents or parts of such documents to be forwarded, as well as to be translated” should not be accepted as it stands. This provision could only be maintained to the extent that the defence is consulted and agrees to the selection of the documents to be transmitted and translated from one authority to the other.

f) Consultations between the requesting and requested authority

One respondent suggests that consultations between the requesting and requested authority, either before or after the issuance of a request of transfer, should be documented/recorded and kept in the case file of the proceedings.

g) Grounds for refusal

One respondent opposes the inclusion of certain mandatory grounds for refusals, in particular Article 13(1)(a), (c) and (d), since in those cases a transfer may in any case be appropriate. Moreover, the optional ground for refusal in Article 13(2)(a) on “a privilege or immunity under the law of the requested State” should rather be used a mandatory ground for refusal, especially with respect to considerations of lawyer-client confidentiality. Lastly, the optional ground for refusal in Article 13(2)(b) on the basis

of which the requested authority may refuse the transfer of proceedings if that “is not in the interests of an efficient and proper administration of justice” is considered to be too vague.

h) Costs of proceedings

One respondent advocated for a better distribution of costs involved in the application of the Regulation and for the inclusion of a provisions on legal aid for suspects and accused persons to be effectively defended in the context of a transfer of proceedings.

i) Effects in the requested State

One respondent stated that Article 20(6), which governs the application of the sentence, does not appear sufficient to guarantee the suspects/accused the application of the law more favourable to them.

j) Relationship with international agreements and arrangements

According to one of the respondents, Article 31 of the proposal should also regulate the relationship of the proposal with the European Convention on Extradition and should contain a provision on the rule of speciality.

k) Other reasons

Several respondents, in particular EU citizens, raised concerns as to the need for such a proposal or as to the competence of the Union to propose legislation in the area of criminal law, as Member States should be able to maintain their own laws and procedures. One respondent moreover considered that the proposal introduces a cumbersome and inefficient form of cross-border cooperation.

 Electronically signed on 20/11/2023 22:24 (UTC+01) in accordance with Article 11 of Commission Decision (EU) 2021/2121