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NOTE

From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a Regulation on the transfer of proceedings in criminal matters - Draft forms mentioned in Articles 6(2a), 15a(1a and 2a) and 15b(1a)

On 4 December 2023, the JHA Council reached a general approach on the above-mentioned proposal for a Regulation (15657/23). During the preparatory proceedings, it was decided that, in addition to the request form (henceforth called Form I), three other forms should be prepared:

- a) a form, referred to in Article 6(2a), by which the requesting authority may, when applying Article 6(2), inform the suspect or accused person through the requested authority of the intended request for transfer of proceedings and seek his/her opinion; (Form II)
- b) a form, referred to in Article 15a(1a) and (2a), by which the requested authority or the requesting authority, respectively, may, when applying Article 15a(1) or (2), inform the suspect or accused person through the requesting or requested authority of the decision to accept or refuse the transfer of proceedings; (Form III)
- c) a form, referred to in Article 15b(1a), by which the requested authority may, when applying Article 15b(1), inform the victim(s) through the requesting authority of the decision to accept the transfer of proceedings. (Form IV)

It had been decided that the forms would be prepared following the procedure mentioned in Article 28(2) of the draft Regulation. However, since there is now some time between reaching the general approach and the moment trilogues will start – the European Parliament will only vote its position at the end of January 2024 – the Presidency felt that it would be appropriate to work already on the forms at this stage. In such way, the forms can already be part of the Regulation when it will be finally adopted (hopefully still in 2024).

Please find the three draft forms attached, as drawn up in liaison with the Commission services: Form II in Annex A, Form III in Annex B, Form IV in Annex C.

If Member States agree with deciding on the forms in this way, it appears that the following changes should be made in the Regulation:

- i) the reference in Article 9(1) to the “request form set out in the Annex” should be modified into “the request form set out in Annex I”, and corresponding references should be made in Article 22 and in recital 52;
- ii) the reference in Article 6(2a) to the form “to be adopted under Article 28(2)” should be modified in a reference to “the form set out in Annex II”, the reference in Article 15a(1a) and (2a) to the form “to be adopted under Article 28(2)” should be modified in a reference to “the form set out in Annex III”, and the reference in Article 15b(1a)¹ to the form “to be adopted under Article 28(2)” should be modified in a reference to “the form set out in Annex IV”;
- iii) the reference in Article 28(1) to “Annex” should be modified in a reference to “Annexes”;
- iv) paragraphs 2 and 3 of Article 28 should be deleted.

The Presidency intends to scrutinise the draft forms at the COPEN meeting that is scheduled to take place on 20 December 2023.²

¹ To be noted that in the text as agreed (15657/23), there is no provision on assistance between competent authorities in cases of provision of information to victims about refusals of transfer, since the obligation is for the requesting authority and the only victims to be informed are those residing in that State. In the form, however, it is still possible to indicate that a request has been refused, for possible domestic use by the requesting State.

² However, if Member States indicate at the meeting on 20 December that they do not agree with this procedure, the text of the Regulation will stay as it currently stands, and the Commission will adopt the forms following the procedure foreseen in Article 28(2) and (3).

ANNEX II

Form referred to in Article 6(2a) of the Regulation

The purpose of this form is to seek your assistance to provide information and seek the opinion of the suspect/accused person on the intended request for transfer of criminal proceedings. Please, return the form when completed.

I. Competent authorities

Requesting State:

Requesting authority:

Requested State:

Requested authority:

Authority in the requested State that has been consulted prior to this request (if applicable):
.....

II. Identity of the suspect/accused person(s)

(i) In case of natural person(s)

Last name:

First name(s):

Other relevant name(s), if applicable:

Aliases, if applicable:

Sex:

Nationality:

Identity number or social security number, if available:

Type and number of the identity document(s) (ID card, passport), if available:
.....

Date of birth:

Place of birth:

Residence and/or known address; if address not known, state the last known address:
.....

Workplace (including contact details):

Other contact details (email, phone No):

Language(s) that the person understands:

Other relevant information:

(ii) Legal representative (if applicable, it is necessary in view of the suspect's or accused person's age or their physical or mental condition, the opportunity to state their opinion shall be given to their legal representative).

Last name:

First name(s):

Other relevant name(s), if applicable:

Aliases, if applicable:

Sex:

Nationality:

Identity number or social security number, if available:

Type and number of the identity document(s) (ID card, passport), if available:

Date of birth:

Place of birth:

Residence and/or known address; if address not known, state the last known address:

Workplace (including contact details):.....

Other contact details (email, phone No):

Language(s) that the person understands:.....

Other relevant information

(iii) *In the case of legal person(s):*

Name:

Form of legal person:

Shortened name, commonly used name or trading name, if applicable:

.....

Registered seat/office:

Registration number:

Address of the legal person:

Other contact details (email, phone No):

Name of the legal person's representative:

Other relevant information:

**Form for the provision of information and seeking the opinion of the suspect/accused person
on the intended request for transfer of criminal proceedings³**

A) Information to the suspect/accused person

The[requesting authority] of [requesting State] hereby informs you, [suspect/accused person] of the **intention to issue a request to transfer the criminal proceedings** initiated against you (or the person you are representing), with reference number....., to[requested State], in accordance with Article 6 of Regulation [XXXX] of the European Parliament and of the Council on the transfer of proceedings in criminal matters.

Reasons for the intended request for the transfer of criminal proceedings

1. Reasons for the intended request for transfer [e.g. on which basis and for what reasons such a transfer is considered to serve the objective of an efficient and proper administration of justice, and it is considered necessary and appropriate]

.....
.....
.....
.....
.....
.....
.....

2. Specific criteria, listed under Article 5 of Regulation [XXXX] of the European Parliament and of the Council on the transfer of proceedings in criminal matters, taken into account for the purpose of the issuing of the transfer request:

☐ the criminal offence has been committed in whole or in part on the territory of the requested State, or most of the effects of the criminal offence or a substantial part of the damage, which are or is part of the constituent elements of the criminal offence, caused by the criminal offence occurred on the territory of the requested State;

☐ one or more suspects or accused persons are a nationals of or residents in the requested State;

☐ one or more suspects or accused persons are present in the requested State and that State refuses to surrender those persons to the requesting State either on the basis of either of 1) Article 4, point (2) of the Framework Decision 2002/584/JHA, or of 2) Article 4, point (3) of Framework Decision 2002/584/JHA thereof where such refusal is not based on a final judgement passed upon this person in respect of the same criminal offence which prevents further criminal proceedings, or 3) on the basis of Article 4, point (7) of that Framework Decision 2002/584/JHA;

³ To be provided to the suspect/accused person in a language which the person understands.

- ☐ one or more suspects or accused persons are present in the requested State and that State refuses to surrender those persons for whom a European arrest warrant has been issued, if it finds that there are, in exceptional situations, substantial grounds to believe, on the basis of specific and objective evidence, that surrender would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in Article 6 TEU of the Treaty on European Union and the Charter;
- ☐ most of the evidence relevant to the investigation is located in, or the majority of the relevant witnesses are residing resident in the requested State;
- ☐ there are ongoing criminal proceedings in the requested State in respect of the same or other facts against the suspect or accused person;
- ☐ there are ongoing criminal proceedings in the requested State in respect of the same, partially the same or related facts against other persons;
- ☐ one or more suspects or accused persons are serving or are to serve a sentence involving deprivation of liberty in the requested State;
- ☐ the enforcement of the sentence in the requested State is likely to improve the prospects for of social rehabilitation of the person sentenced or there are other reasons for a more appropriate enforcement of the sentence in the requested State; or
- ☐ or more victims are nationals of or residents in the requested State. Due account shall be taken of child victims.
- ☐ the competent authorities of Member States have reached consensus on the concentration of the proceedings in one Member State
- ☐ other reasons [please specify]:.....

B) Opinion of the suspect/accused person on the intended request for transfer

You are hereby invited, if you wish so, to present your opinion on the intention of the[requesting authority] of.....[requesting State] to issue a request to transfer the criminal proceedings initiated against you to[requested State].

- ☐ I **agree** on the transfer of the proceedings;
- ☐ I **do not agree** on the transfer of the proceedings;

Add reasons, if you so wish:

.....

If you prefer to provide this information orally, instead of in writing with this form, you can also do so and your statements will be recorded in accordance with national law.

Your opinion will be taken into consideration by the[requesting authority] when deciding on whether to request the transfer.

ANNEX III**Form referred to in Article 15a(1a) and (2a) of the Regulation**

The purpose of this form is to seek your assistance to provide information to the suspect/accused person after a decision on the request for transfer of criminal proceedings has been taken. Please, return the form when completed.

I. Competent authorities

Requesting State:

Requesting authority:

Requested State:

Requested authority:

II. Identity of the suspect/accused person(s)*(i) In case of natural person(s)*

Last name:

First name(s):

Other relevant name(s), if applicable:

Aliases, if applicable:

Sex:

Nationality:

Identity number or social security number, if available:

Type and number of the identity document(s) (ID card, passport), if available:

.....

Date of birth:

Place of birth:

Residence and/or known address; if address not known, state the last known address:

.....

Workplace (including contact details):

Other contact details (email, phone No):

Language(s) that the person understands:

Other relevant information:

(ii) *In the case of legal person(s):*

Name:

Form of legal person:

Shortened name, commonly used name or trading name, if applicable:

.....

Registered seat/office:

Registration number:

Address of the legal person:

Other contact details (email, phone No):

Name of the legal person's representative:

Other relevant information:

Form for the provision of information to the suspect/accused person after a decision on the request for transfer of criminal proceedings has been taken⁴

In accordance with Article 15a of Regulation [XXXX] of the European Parliament and of the Council on the transfer of proceedings in criminal matters, the[requesting/requested authority] of [requesting/requested State] hereby informs you, [suspect/accused person] that a request for the transfer of the criminal proceedings initiated against you, with reference number,to[requested State] was issued on.....[date].

You are hereby also informed that, in accordance with Article 12 of Regulation [XXXX] of the European Parliament and of the Council on the transfer of proceedings in criminal matters, the.....[requested authority] of[requested State] on.....[date] has:

☐ **accepted** such a transfer request (the decision is attached hereto);

☐ **refused** such transfer request.

You are hereby informed that, you have the **right to an effective legal remedy** in..... [requested State] **against the decision accepting the transfer**. You can exercise this right within.....[number of] days from receipt of this form, by filing an application before.....[competent authority in the requested State].

Details of the competent authority in the requested State where you can file an application to challenge the decision accepting the transfer:

Name of the authority:

File No:

Address:

Tel. No: (country code) (area/city code)

E-mail address:

⁴ To be provided to the suspect/accused person in a language which the person understands.

ANNEX IV**Form referred to in Article 15b(1a) of the Regulation**

The purpose of this form is to seek your assistance to provide information to the victim(s) after a decision on the request for transfer of criminal proceedings has been taken. Please return the form when completed.

I. Competent authorities

Requesting State:

Requesting authority:

Requested State:

Requested authority:

II. Identity of the victim(s)

(i) In case of natural person(s)

Last name:

First name(s):

Other relevant name(s), if applicable:

Aliases, if applicable:

Sex:

Nationality:

Identity number or social security number, if available:

Type and number of the identity document(s) (ID card, passport), if available:

.....

Date of birth:

Place of birth:

Residence and/or known address; if address not known, state the last known address:

.....

Workplace (including contact details):

Other contact details (email, phone No):

Language(s) that the person understands:

Other relevant information:

(ii) *In the case of legal person(s):*

Name:

Form of legal person:

Shortened name, commonly used name or trading name, if applicable:

.....

Registered seat/office:

Registration number:

Address of the legal person:

Other contact details (email, phone No):

Name of the legal person's representative:

Other relevant information:

Form for the provision of information to the victim(s) after a decision on the request for transfer of criminal proceedings has been taken⁵

In accordance with Article 15b of Regulation [XXXX] of the European Parliament and of the Council on the transfer of proceedings in criminal matters, the[requesting/requested authority] of [requesting/requested State] hereby informs you, [victim(s)] about **the issuing of a request for the transfer** of the criminal proceedings with reference number against.....[suspect/accused person] to[requested State] on.....[date].

You are hereby also informed that, in accordance with Article 12 of Regulation [XXXX] of the European Parliament and of the Council on the transfer of proceedings in criminal matters, the.....[requested authority] of[requested State] on.....[date] has:

- ☐ **accepted** such a transfer request, by way of the reasoned decision attached in copy to this form;
☐ **refused** such transfer request.

You are hereby informed that, in cases of acceptance of the transfer request, you have the **right to an effective legal remedy** in..... [requested State] **against the decision accepting the transfer**. You can exercise this right within.....[number of] days from receipt of this form, by filing an application before.....[competent authority in the requested State].

Details of the competent authority in the requested State where you can file an application to challenge the decision accepting the transfer:

Name of the authority:

File No:

Address:

Tel. No: (country code) (area/city code)

E-mail address:

⁵ To be provided to the victim(s) in a language which the person understands.