



COMPROMISE AMENDMENTS

Proposal for a Regulation of the European Parliament and of the Council on the transfer of proceedings in criminal matters

2023/0093 (COD)

Committee on Civil Liberties, Justice and Home Affairs

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Compromise Amendment 1: Chapter I, Articles 1-4

Amendments covered: 7-8, 10 Rapp, 64 EPP, 65 SD, 67 EPP, 68 Greens

Amendments falling: 66 Renew, 69 Greens, 70-72 EPP

Chapter 1 General provisions

Article 1 Subject matter

1. This Regulation lays down rules on the transfer of criminal proceedings between the Member States with a view to improving the efficient and proper administration of justice within the common area of freedom, security and justice.
2. This Regulation shall apply in all cases of transfer of criminal proceedings ***that are being conducted in Member States of the Union*** ~~from the time where a person has been identified as a *regarding* suspects.~~ **[7 Rapp, 64 EPP, 65 SD]**
3. This Regulation shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the Treaty of the European Union.

Article 2 Definitions

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

- (1) ‘requesting State’ means a Member State in which a request for transfer of criminal proceedings is issued;
- (2) ‘requested State’ means a Member State to which a request for transfer of criminal proceedings is transmitted for the purpose of taking over of criminal proceedings;
- (3) ‘requesting authority’ means:
 - (a) a judge, court, investigating judge or public prosecutor competent in the case concerned; or
 - (b) any other competent authority which is designated as such by the requesting State and which, in the case concerned, is acting in its capacity as an investigating authority in criminal proceedings with competence to request the transfer of criminal proceedings in accordance with national law. In addition, before the request for transfer of criminal proceedings is transmitted to the requested authority, it shall be validated by a judge, a court, an investigating judge or a public prosecutor in the requesting State after examining its conformity with the conditions for issuing such a request under this Regulation. Where the request for

transfer of criminal proceedings has been validated by a judge, a court, an investigating judge or a public prosecutor, that authority may also be regarded as a requesting authority for the purposes of transmitting the request;

- (4) ‘requested authority’ means a judge, a court, an investigating judge or a public prosecutor having competence to take a decision on whether to accept transfer of criminal proceedings in accordance with Article 12 and to take any measure as provided for in its national law;
- (5) ‘decentralised IT system’ means an IT system as defined in Article 2, point (4), of Regulation (EU).../... [Digitalisation Regulation];
- (6) ‘victim’ means a victim as defined in Article 2(1), point (a), of Directive 2012/29/EU, **or a legal person, as defined by national law, that has suffered harm or economic loss as a direct result of a criminal offence that is the object of criminal proceedings to which this Regulation applies** [6 Rapp, 67 EPP, 68 Greens].

Article 3 *Jurisdiction*

1. ~~**Unless jurisdiction is already provided for by the national law of the requested State**~~ [9 Rapp], For the purpose of this Regulation, the requested State shall have jurisdiction over any criminal offence to which the law of the requesting State is applicable, in situations where:
 - (a) it refuses to surrender a suspect or accused person, who is present in and a national of or a resident in the requested State, on the basis of Article 4(7), point (b), of the Framework Decision 2002/584/JHA;
 - (b) it refuses to surrender a suspect or accused person for whom a European arrest warrant has been issued and who is present in and a national of or a resident in the requested State, if it finds that there are, in exceptional situations, substantial grounds to believe, on the basis of specific and objective evidence, that surrender would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in Article 6 of the Treaty on European Union and the Charter;
 - (c) most of the effects of the criminal offence or a substantial part of the damage, which is part of the constituent elements of the criminal offence, occurred in the territory of the requested State;
 - (d) there are ongoing criminal proceedings in the requested State against the suspect or accused person in respect of other facts and the suspect or accused person is a national or resident of the requested State;
 - (e) there are ongoing criminal proceedings in the requested State in respect of the same or partially the same facts against other persons and the suspect or accused person in the criminal proceedings to be transferred is a national or resident of the requested State.

2. The jurisdiction established by the requested State exclusively by virtue of paragraph 1 may be exercised only pursuant to a request for transfer of criminal proceedings ***under this Regulation [10 Rapp]***.

Article 4

Waiver, suspension or discontinuation of criminal proceedings by the requesting State

1. Any Member State having jurisdiction under its national law to prosecute a criminal offence may, for the purposes of applying this Regulation, waive, suspend or discontinue criminal proceedings against a suspect or accused person, in order to allow for the transfer of criminal proceedings in respect of that criminal offence to the requested State.

~~***2. In case of a revival of a suspended proceeding in the requesting State, that proceeding must be subject to judicial review in order to ensure that there is an independent assessment of whether a violation of the ne bis in idem principle arises [73 Renew].***~~

Compromise Amendment 2: Chapter 2, Articles 5-8

Amendments covered: 12, 14-16, 18-19 Rapp, 22 Rapp, 77 Greens, 78 EPP, 79 Greens, 81 Greens, 82 SD, 85 EPP, 86 SD, 87 Greens, 88 EPP, 95 EPP, 96 SD, 97 EPP

Amendments falling: 11 Rapp, 21 Rapp, 74-75 Greens, 76 EPP, 80 EPP, 83 Greens, 84 EPP, 93 EPP, 94 Greens

CHAPTER 2 TRANSFER OF CRIMINAL PROCEEDINGS

Article 5

Criteria for requesting a transfer of criminal proceedings

1. A request for transfer of criminal proceedings may only be issued where the requesting authority deems that the objective of an efficient and proper administration of justice would be better served by conducting the relevant criminal proceedings in another Member State ***and that it is proportionate to do so***.
2. The requesting authority shall take into account in particular the following criteria:
 - (a) the criminal offence has been committed wholly or partly in the territory of the requested State, or most of the effects or a substantial part of the damage caused by the criminal offence occurred in the territory of the requested State;
 - (b) the suspect or accused person is a national of or resident in the requested State;

- (c) the suspect or accused person is present in the requested State and that State refuses to surrender this person to the requesting State either on the basis of Article 4(2) of the Framework Decision 2002/584/JHA, or of Article 4(3) thereof where such refusal is not based on a final judgement passed upon this person in respect of the same criminal offence which prevents further criminal proceedings, or on the basis of Article 4(7) of that Framework Decision;
 - (d) the suspect or accused person is present in the requested State and that State refuses to surrender this person for whom a European arrest warrant has been issued, if it finds that there are, in exceptional situations, substantial grounds to believe, on the basis of specific and objective evidence, that surrender would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in Article 6 of the Treaty on European Union and the Charter;
 - (e) most of the evidence relevant to the investigation is located in or majority of the relevant witnesses are residing in the requested State;
 - (f) there are ongoing criminal proceedings in the requested State in respect of the same or other facts against the suspect or accused person;
 - (g) there are ongoing criminal proceedings in the requested State in respect of the same or related facts against other persons;
 - (h) the suspect or accused person is serving or is to serve a sentence involving deprivation of liberty in the requested State;
 - (i) the enforcement of the sentence in the requested State is likely to improve the prospects for social rehabilitation of the person sentenced or there are other reasons for a more appropriate enforcement of the sentence in the requested State; ~~[11 Rapp, 76 EPP]~~
 - (j) the *victim or* **[Greens]** ~~majority of~~ victims are nationals of or residents in the requested State.
 - (k) *new the consultations of Member States' competent authorities under Framework Decision 2009/958/JHA on the prevention of conflicts of jurisdiction have resulted in an agreement on the concentration of the parallel proceedings in one Member State* [12 Rapp, 78 EPP]
 - (l) *whether the transfer of proceedings would contribute to the achievement of restorative justice objectives* [79 Greens]
3. The suspect or accused person, ~~or the majority of~~ *victim or the* victims [81 Greens, 82 SD], or a lawyer on their behalf, ~~may in accordance with national procedural law, also request contact~~ the competent authorities of the requesting State ~~or of the requested State to initiate a procedure for transferring~~ *with a proposal/ request to transfer* criminal proceedings under *the conditions of* this Regulation. *If such proposal/request of the suspect or accused person, or of the victim or victims, or a lawyer on their behalf is made to the competent authority in the requesting State, that authority may decide to consult the competent authority in the requested State in accordance with Article 15(2).* ~~Proposal~~ Requests made under this paragraph shall not create an obligation for the requesting or the requested State to request or transfer criminal proceedings to the requested State. ~~If the requesting authority~~

~~decides to transfer the criminal proceedings following a proposal under this paragraph, the decision on the request for transfer is taken by the competent authorities of the requested State. [13 Rapp mod].~~

Article 6

The rights of the suspect or accused person

1. Before a request for transfer of criminal proceedings is issued, the requesting authority shall, in accordance with applicable national law, give due consideration to the legitimate interests of the suspect or accused person and ensure that their procedural rights under Union and national law are respected. ~~[84 EPP]~~
2. Provided that it would not undermine the confidentiality of an investigation, ~~or otherwise prejudice the investigation, and only where appropriate [86 SD] / or hamper the proper administration of justice or affect the rights of the victims depending on the circumstance of the case, [15 Rapp, 85 EPP]~~ the suspect or accused person ~~shall, who has already been notified that they are suspected or accused of having committed an offence, may [15 Rapp, 85 EPP]~~ shall, in accordance with applicable national law, be informed of the intended transfer of criminal proceedings, in a language which they understand, and shall ~~may~~ be given an opportunity to state their opinion orally or in writing ~~prior to the intended transfer [87 Greens]~~, unless that person cannot be located ~~or reached~~ despite reasonable efforts being made by the requesting authority. Where the requesting authority considers it necessary in view of the 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 ~~prior to the intended transfer [87 Greens]~~. Where the request for transfer of criminal proceedings follows a request from the suspect or accused person under Article 5(3), such a consultation with the suspect or accused person who made the request is not required.
3. ~~The~~ *In case the suspect or accused person decides to state an opinion as referred to in paragraph 2, it shall ~~may~~ be delivered no later than five ten working days after [16 Rapp] of the suspect or accused person has been informed of the intended transfer or has been invited to deliver an and given the opportunity to state their opinion in accordance with paragraph 2 of this Article.* ~~and [16 Rapp] Such opinion shall be taken into account and be registered [88 EPP] by the requesting authority when deciding whether to request the transfer of criminal proceedings.~~
- ~~3a (new) The negative opinion of the suspect or accused person with regards to the transfer of criminal proceedings shall not prevent such transfer if the requested authority decides to accept it in accordance with Article 12 [17 Rapp].~~
4. *In cases where the suspect or accused person has been informed about the intended transfer in accordance with paragraph 2,* ~~Where the requested authority has taken a decision in accordance with Article 12(1), the requesting authority shall provided that it would not undermine the confidentiality of an investigation, or otherwise prejudice the investigation, and where appropriate, immediately inform the suspect or accused person who has already been notified that they are suspected or accused of having committed an offence also inform them immediately, 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 despite reasonable efforts being made by the requesting authority. If the requested authority has taken a decision to accept the transfer of criminal proceedings, the suspect or accused person shall also be informed about their right to a legal remedy in the requested State, including about the time limits for such a remedy.~~

Article 7

The rights of the victim

1. Before a request for transfer of criminal proceedings is made, the requesting authority shall, in accordance with applicable national law, **and** give due consideration to the legitimate interests of the victim and ensure that their rights under Union and national law are respected.
2. Provided that it would not undermine the confidentiality of an investigation, ~~and where the victim resides or otherwise prejudice the investigation, or hamper the proper administration of justice or affect the rights of other victims where appropriate, victims who reside in the requesting State, and who have requested to receive the information specified in Article 6(1), point (a) of Directive 2012/29/EU, as implemented by national law, may [95 EPP] they shall,~~ in accordance with applicable national law, ~~and only where appropriate [96 SD] depending on the circumstances of the case,~~ be informed of the intended transfer of criminal proceedings, in a language which they understand, and shall ~~may [95 EPP] be given an opportunity to state their opinion orally or in writing. Where the requesting authority considers it necessary in view of the victim's age or his or her physical or mental condition, that opportunity shall may [95 EPP] be given to victim's legal representative.~~
3. The opinion *of the victim* referred to in paragraph 2 ~~of the victim shall be taken into account~~ **and registered [97 EPP]** by the requesting authority when deciding whether to request the transfer of criminal proceedings. ~~The negative opinion of the victim with regard to the transfer of the criminal proceeding shall not prevent such transfer if the requested authority decides to accept it in accordance with Article 12. [20 Rapp]~~
4. *In cases where the victim has been informed about the intended transfer in accordance with paragraph 2,* ~~Where the requested authority has taken a decision in accordance with Article 12(1), the requesting authority shall, provided that it would not undermine the confidentiality of an investigation, or otherwise prejudice the investigation, and where appropriate,~~ immediately inform ~~the that~~ victim ~~that receives the information on the criminal proceedings in accordance with Directive 2012/29/EU, as implemented by national law,~~ residing in the requesting State, 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. If the requested authority has accepted the transfer of criminal proceedings, the victim shall also be informed about their right to a legal remedy available in the requested State, including about the time limits for such a remedy.~~

[Article 8 becomes Article 15c]

Article 8

Right to a 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 legal remedy shall be exercised before a court in the requested State in accordance with its law.~~
- ~~3. The time limit for seeking a legal remedy shall be no longer than 20 days from the date of receipt of information about the decision referred to in Article 12(1).~~
- ~~4. Where the request for transfer of criminal proceedings is issued after the suspect's or accused person's indictment, the invocation of a legal remedy against a decision to accept the transfer of criminal proceedings, shall have suspensive effect.~~
- ~~5. The requested authority shall inform the requesting authority about the legal remedies sought under this Article.~~

Compromise Amendment 3: Chapter 2, Articles 9-12

Amendments covered: 23-26 Rapp, 112 SD, 113 SD, 115 Greens, 117 EPP, 119 EPP

Amendments falling: 116 Renew, 118 Greens

Article 9

Procedure for requesting transfer of criminal proceedings

1. The request for transfer of criminal proceedings shall be drawn up using the ~~certificate~~ **request form** set out in the Annex. The requesting authority shall sign the ~~certificate~~ **request form** and shall certify its content as being accurate and correct.
2. The request for transfer of criminal proceedings shall be duly substantiated and shall, in particular, contain the following information:
 - (a) data about the requesting authority;
 - (b) a description of the criminal offence, which is the subject of the criminal proceedings, and the applicable provisions of the criminal law of the requesting State;

- (c) the reasons why the transfer is necessary and appropriate and in particular which of the criteria under Article 5(2) are applicable;
 - (d) the necessary information available on the suspect or accused person and the victim;
 - (e) an assessment of the impact of the transfer of criminal proceedings on the rights of suspect or accused person and victim;
 - (f) information on procedural acts or measures with a bearing on the criminal proceedings that have been undertaken in the requesting State, ***including any ongoing temporary coercive measure and the time limit for the application of such measure; [24 Rapp]***
 - (g) any applicable specific conditions of processing of personal data pursuant to Article 9(3) of the Directive (EU) 2016/680.
3. Where the suspect or accused person has given their opinion under Article 6(2) or the victim has given their opinion under Article 7(2), that opinion shall be forwarded to the requested authority together with the request for transfer of criminal proceedings. If the opinion of the suspect or accused person or the victim was stated orally, the requesting authority shall ensure that the written record of such statement is available to the requested authority.
 4. Where necessary, the request for transfer of criminal proceedings shall be accompanied by any additional relevant information and documents.
 5. The completed ~~certificate~~ ***request form [25 Rapp]*** referred to in paragraph 1 and, where so agreed with the requested authority, any other written information accompanying the request for transfer of criminal proceedings, shall be translated into an official language of the requested State or any other language that the requested State will accept in accordance with Article 30(1), point (c).
 6. The requesting authority shall transmit the request for transfer of criminal proceedings directly to the requested authority or, where applicable, with the involvement of the central authority referred to in Article 18. The requesting and requested authorities shall carry out all other official communication directly or, where applicable, with the involvement of a central authority referred to in Article 18.
 7. Where the requested authority is not known to the requesting authority, the latter shall make all necessary inquiries, including through the contact points of the European Judicial Network, in order to determine which authority is competent for taking the decision under Article 12.
 - 7a. The requested authority shall as soon as possible acknowledge the receipt of the request [112 SD, 113 EPP].***
 8. Where the authority in the requested State which received the request has no competence to take a decision under Article 12, it shall without undue delay transmit the request to the competent requested authority in the same Member State and shall inform the requesting authority accordingly.

Article 10

Information to be given by the requesting authority

The requesting authority shall inform the requested authority of any procedural acts or measures with a bearing on the criminal proceedings that have been undertaken in the requesting State after the transmission of the request without undue delay. This communication shall be accompanied by all relevant documents.

Article 11

Withdrawal of the request

The requesting authority may withdraw the request for transfer of criminal proceedings at any time before receiving the requested authority's decision to accept the transfer of criminal proceedings in accordance with Article 12. ***The requesting authority shall inform, in a language which they understand, justify the in-written and provide a short explanation to the suspect and accused person that has been informed in accordance with Article 6 (2) and the victim that has been informed in accordance with Article 7 (2) of this Regulation, about the-withdrawal decision.*** [115 Greens].

Article 12

Decision of the requested authority

1. The requested authority shall take a reasoned decision on whether to accept the transfer of criminal proceedings and shall decide, in accordance with its national law, what measures to take thereon. ***It shall inform the requesting authority of its reasoned decision in accordance with the time limits of Article 14.*** [26 Rapp, 117 EPP].
2. If the requested authority finds the information communicated by the requesting authority to be insufficient to allow it to decide whether to accept the transfer of criminal proceedings, it may request the additional information it deems necessary.
3. If the requested authority decides to refuse the transfer of criminal proceedings in accordance with Article 13, it shall inform the requesting authority of the reasons for such refusal. Information to the suspect or accused person and to the victim will take place in accordance with Articles ~~6(4)~~ 15a and ~~7(4)~~ 15b respectively.
4. If the requested authority has accepted the transfer of criminal proceedings, it shall inform the requesting authority about the legal remedies available to challenge the decision to accept the transfer of criminal proceedings, including the requirements and time limits to exercise these remedies. Information to the suspect or accused person and to the victim will take place in accordance with Articles 6(4) and 7(4) respectively.
5. When the requested authority has accepted the transfer of criminal proceedings, ***and only after the decision on the legal remedy has been taken,*** [119 EPP] the requesting authority shall without delay forward the original or a certified copy of the case file or relevant parts thereof, accompanied by their translation into an official language of the requested State or any other language that the requested State will accept in accordance with Article 30(1), point (c). Where necessary, the requesting and requested authorities may consult each other in order to determine the

necessary documents or parts of such documents to be forwarded, as well as to be translated.

Compromise Amendment 4: Chapter 2, Articles 13-15

Amendments covered: 27-29 Rapp, 120 EPP, 122 EPP, 124 EPP, 125 SD, 129 Greens, 131 SD, 133-134 EPP

Amendments falling: 121 Greens, 123 Greens, 126-127 Renew, 128 SD, 129, 130 Greens, 131 Greens, 132 SD, 135 Renew

Article 13
Grounds for refusal

1. The requested authority shall refuse the transfer of criminal proceedings, in whole or in part, where criminal proceedings under the national law of the requested State cannot be brought against the suspect or accused person in relation to the facts underlying the request for transfer of criminal proceedings in one or more of the following situations:
 - (a) if the conduct in connection with which the request was made does not constitute a criminal offence under the law of the requested State;
 - (aa) *there is an immunity or a privilege under the law of the requested State which makes it impossible to take action; [120 EPP]***
 - (b) if taking over criminal proceedings would be contrary to the principle of *ne bis in idem*;
 - (c) if the suspect or accused person cannot be held criminally liable for the criminal offence due to their age;
 - (d) if the criminal prosecution is statute-barred in accordance with the law of the requested State or the conditions for prosecuting the criminal offence in the requested State are not fulfilled;
 - (e) if the criminal offence is covered by amnesty in accordance with the law of the requested State;
 - ~~(f) if the requested State does not have jurisdiction over the criminal offence. Such *including* jurisdiction could also *which* derive from Article 3.~~
 - (f) if the requested State ~~has~~ **does neither have** jurisdiction over the criminal offence **in accordance with national law, nor jurisdiction on the basis of Article 3** ~~Such jurisdiction could also derive from Article 3.~~**

2. The requested authority may refuse the transfer of criminal proceedings, in whole or in part, if one or more grounds exist:
 - (a) there is an immunity ~~or a privilege~~ under the law of the requested State which makes it impossible to take action; [122 EPP]
 - (b) the requested authority considers that the transfer of criminal proceedings is not in the interest of an efficient and proper administration of justice;
 - (c) the criminal offence has not been committed wholly or partly in 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 in the territory of that State, and the suspect or accused person is not a national of or resident in that State;
 - (d) the ~~certificate~~ *request form* referred to in Article 9(1) is incomplete or manifestly incorrect and has not been completed or corrected following the consultation referred to in paragraph 3.
 - ~~(e) (new) the action underlying the proceedings is not a punishable offence where the action took place and hence there is no jurisdiction under the law of the requested state [124 EPP].~~
 - ~~(f) (new) the alleged offence is not an offence at the place where it was committed and the requested state has no jurisdiction according to its national law to prosecute the offence [125 SD].~~
 - ~~(e) the conduct in connection with which the request was made is not a criminal offence at the place where it was committed, and the requested State has no original jurisdiction under its national law to prosecute the offence.~~

3. In any of the situations referred to in paragraphs 1 and 2, before deciding to refuse the transfer of criminal proceedings, either in whole or in part, the requested authority shall consult the requesting authority and, where necessary, shall request it to provide any necessary information without delay.

4. In the situation referred to in paragraph 2, point (a), and where the power to waive the privilege or immunity lies with an authority of the requested State, the requested authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, the requesting authority shall request that authority to exercise that power.

Article 14
Time limits

1. The requested authority shall communicate to the requesting authority its decision whether to accept the transfer of criminal proceedings without delay and in any case no later than 60 ~~working~~ ~~[129 Greens]~~ days after the receipt of the request for transfer of criminal proceedings by the competent requested authority.

2. Where in a specific case the requested authority cannot meet the time limit set out in paragraph 1, it shall immediately inform the requesting authority thereof, giving

reasons for the delay. In such a case, the time limit set out in paragraph 1 may be extended by a maximum of 30 ~~working~~ days ~~[131 Greens]~~.

3. Where there is an immunity or a privilege under the law of the requested State, the time limit referred to in paragraph 1 shall not start running unless, and counting from the day when, the requested authority is informed of the fact that the privilege or immunity has been waived.

Article 15

Consultations between the requesting and requested authorities

1. Where necessary and without prejudice to Articles 12(2), 13(3) and 17(2), the requesting authority and requested authority shall consult each other without delay to ensure the efficient application of this Regulation.
2. Consultations ~~may~~ **shall** [28 Rapp, 133 EPP] also take place before the request for transfer of criminal proceedings is issued, in particular with a view to determining whether the transfer would serve the interests of efficient and proper administration of justice **and be proportionate**. In order to propose the transfer of criminal proceedings from the requesting State, the requested authority ~~may~~ **shall** also consult with the requesting authority about the possibility of issuing a request for transfer of criminal proceedings. [28 Rapp, 133 EPP]
3. When the requesting authority consults the requested authority prior to making a request for transfer of criminal proceedings, it shall make the information regarding the criminal proceedings available to the requested authority and may provide it to the requested authority using a ~~certificate~~ **request form** set out in the Annex.
4. Requests for consultations shall be answered without **undue** delay [29 Rapp, 134 EPP].

Compromise Amendment 5: Chapter 2, Articles 15a-15c

Amendments covered: 30-32 Rapp, 89 EPP, 91 Greens, 98 EPP, 99 Greens, 103 EPP, 105 Greens 2nd part, 107 EPP, 108 EPP, 110 EPP, 126 Renew, 135 Renew, 155 Renew

Amendments falling: 90 Greens, 92 Greens, 100 Greens, 102 Greens, 104 Renew, 106 Greens, 109 Greens, 111 Greens,

Article 15a (old Art. 6 paragraph 4)

Information to be provided 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** [89 EPP], immediately inform the suspect or

accused person, in a language which ~~they~~ **that suspect or accused person** understands, about the ~~issuing acceptance 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~~ **requested** authority. **The requested authority shall provide the suspect or accused person with a copy of the reasoned decision accepting the transfer of proceedings.** ~~If The requested authority has taken a decision to accept the transfer of criminal proceedings, the suspect or accused person shall also be informed~~ **the suspect or accused person, unless that suspect or accused person cannot be located or reached, despite reasonable efforts being made by the requested authority** about their right to an **effective** legal remedy in the requested State, including about the time limits for such a remedy. **Where appropriate, the requested authority may seek the assistance of the requesting authority in order to carry out the tasks referred to in this paragraph.** [89 EPP]

2. **Where the requested authority has taken a decision in accordance with Article 12(3) 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 the suspect or accused person who has already been notified that they are suspected or accused of having committed an offence, without undue delay, in a language which that suspect or accused person ~~they~~ understands, about the ~~issuing of the request for transfer of criminal proceedings and the subsequent~~ decision for 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 15b (old Article 7 paragraph 4)

Information to be provided to the victim

1. Where the requested authority has taken a decision in accordance with Article 12(1) **to accept the transfer of proceedings and** ~~the requesting authority shall~~, provided that it would not undermine the confidentiality of an investigation **or otherwise prejudice the investigation, the requested authority shall, immediately without undue delay,** inform the victim ~~who has requested to~~ **receives the information on the criminal proceedings in accordance with Directive 2012/29/EU, as implemented by national law** in a language which ~~they~~ **that victim** understands, 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 victim cannot be located or reached anymore, despite reasonable efforts being made by the requested authority.** ~~If The requested authority has accepted the transfer of criminal proceedings, the victim shall also be informed~~ **the victim** about ~~their~~ **his or her** right to an **effective** legal remedy ~~available~~ in the requested State, including ~~about~~ **regarding** the time limits for such a

remedy. *Where appropriate, the requested authority may seek the assistance of the requesting authority in order to carry out the tasks referred to in this paragraph.* [98 EPP]

2. *Where the requested authority has taken a decision in accordance with Article 12(3) 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 has requested to receive information on the criminal proceedings in accordance with Directive 2012/29/EU, in a language which that victim ~~he or she~~ understands, ~~about the issuing of the request for transfer of criminal proceedings and the subsequent~~ refusal of the transfer by the requested authority, unless that person cannot be located or reached anymore. 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 (old Art. 8)

Right to an effective legal remedy

1. Suspects, accused persons, and victims shall have the right to effective legal remedies in the requested State against a decision to accept the transfer of criminal proceedings.
2. The right to an *effective* legal remedy shall be exercised before a court in the requested State in accordance with its *applicable national* [105 Greens] law. *The court shall examine the validity of the decision to accept the transfer of criminal proceedings in the light of the relevant provisions of this Regulation, ~~including Articles 5 and 13 and,~~ where possible, shall take its decision on the legal remedy within 60 days. [103 EPP]*
3. *Member States shall provide that suspects, accused persons, and victims receive the decision on the acceptance of transfer and also have the right of access to ~~the file,~~ all documents that formed the basis for the decision to accept a transfer under this Regulation ~~related to the request, as well as additional information or other relevant documents accompanying the request.~~ Such access may be limited in case it would undermine the confidentiality of an investigation, or otherwise prejudice the investigation. Member States shall also provide ~~as well as~~ any other procedural rights which are necessary to effectively exercise their right to an effective remedy. [32 Rapp, 91 Greens, 99 Greens]. ~~Provided that it would not undermine the confidentiality of an investigation, or otherwise prejudice the investigation, the access to the file shall be limited to the documents related to the transfer of criminal proceedings and necessary to exercise their right to an effective remedy.~~ [32 Rapp]*

- 3 4. The time limit for seeking an *effective* legal remedy shall be no longer than ~~20~~ 14 days from the date of receipt of information about the decision *on accepting the transfer of criminal proceedings* referred to in Article 12. *The court in the requested State shall take its decision on the legal remedy without undue delay and, where possible, within 60 days.* [32 Rapp, 107 EPP]
- 4-5. Where the request for transfer of criminal proceedings is issued after the suspect's or accused person's indictment, the invocation of a legal remedy against a decision to accept the transfer of criminal proceedings, shall ~~may~~ have suspensive effect ~~where the law of the requested State so provides. Where the legal remedy sought is successful, the criminal proceedings shall revert to or remain in the requesting State, unless the court in the requested State decides otherwise.~~
- 5-6. The requested authority shall inform the requesting authority about the *effective* legal remedies sought under this Article *and about their final outcome within five working days from the moment when the decision on the legal remedies is taken.* [Rapp, 110 EPP, ~~111 Greens~~]

Compromise Amendment 6: Chapter 2, Articles 16-18

Amendments covered: 136 EPP

Amendments falling:

Article 16

Cooperation with Eurojust and the European Judicial Network

The requesting and requested authorities may, at any stage of the procedure, request the assistance of Eurojust or the European Judicial Network in accordance with their respective competences. In particular, where appropriate, Eurojust may facilitate consultations referred to in Articles 9(7), 12(2) *and* 12(5), 13(3), 15 and 17(2) and 19 (EPP). [136 EPP]

Article 17

Costs of transfers of criminal proceedings

1. Each Member State shall bear its own costs of transfers of criminal proceedings resulting from the application of this Regulation, ~~including but not limited to the legal aid that a suspect or accused person had the right to in each Member State.~~ [137 Renew]
2. Where the translation of the case file and other relevant documents under Article 12(5) would entail large or exceptional costs, the requesting authority may submit a proposal to the requested authority that the costs be shared. Such proposal shall be

accompanied by a detailed breakdown of the costs incurred by the requesting authority. Following such a proposal the requesting authority and the requested authority shall consult with each other. Where appropriate, Eurojust may facilitate such consultations.

Article 18

Designation of central authorities

Each Member State may designate one or more central authorities responsible for the administrative transmission and receipt of requests for transfer of criminal proceedings, as well as for other official correspondence relating to such requests.

Compromise Amendment 7: Chapter 3, Articles 19-21

Amendments covered: 33-34 Rapp, 73 Renew, 138-140 EPP, 141 Greens covered in 19(1), 143 EPP, 147-148 EPP, 149 Greens, 150 Renew, 151 EPP, 152 Greens, 153 EPP

Amendments falling: 141-142 Greens, 144-145 Renew, 146 Greens, 154 EPP

CHAPTER 3 EFFECTS OF THE TRANSFER OF CRIMINAL PROCEEDINGS

Article 19

Effects in the requesting State

1. At the latest upon receipt of the notification of the acceptance by the requested authority of a transfer of criminal proceedings, those criminal proceedings shall be suspended or discontinued in the requesting State in accordance with national law, unless 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. ~~{138 EPP}~~
2. Notwithstanding paragraph 1, the requesting authority may in accordance with its national law:
 - (a) undertake necessary investigative or other procedural measures, including measures to prevent the suspect or accused person from absconding, in order to execute a decision based on Framework Decision 2002/584/JHA or another mutual recognition instrument or to reply to a request for mutual legal assistance;
 - (b) maintain necessary investigative or other procedural measures, including measures to prevent the suspect or accused person from absconding, previously adopted that are necessary in order to execute a decision based on Framework Decision 2002/584/JHA or another mutual recognition instrument

or a request for mutual legal assistance. *These measures may also be maintained if the mutual recognition request has not yet been issued, under the condition that it is likely to be issued without undue delay once the request for transfer has been accepted.* [138 EPP]

(c)(new) coordinate, after transfer of criminal proceedings, with the requested authority, and with the early involvement of Eurojust, on provisional measures taken before transfer [33 Rapp, 140 EPP]

3. The requesting authority may continue or reopen criminal proceedings, if the requested authority informs it of its decision to discontinue criminal proceedings related to the facts underlying the request for transfer of criminal proceedings, unless that decision, under the national law of the requested State, definitively bars further prosecution *has been given following a determination of the merits of the case, and* therefore ~~prevents~~ *preventing* further criminal proceedings, in respect of the same acts, in the requested State. [143 EPP]. *Any decision on continuation or reopening ~~revival~~ of a suspended or discontinued proceeding in the requesting State, ~~that proceeding must~~ shall be subject to judicial review. The judicial review and the procedure shall be determined according to the national law of the requesting State ~~in order to~~ and shall ensure ~~ing that there is~~ an independent assessment of ~~whether a violation~~ on the respect of the ne bis in idem principle ~~arises~~ [73 Renew].*

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 *has been given following a determination of the merits of the case,* therefore ~~prevents~~ *preventing* further criminal proceedings, in respect of the same acts, in that State. [147 EPP]. *Any decision on continuation or reopening of a suspended or discontinued proceeding in the requesting State, shall be subject to judicial review. The judicial review and the procedure shall be determined according to the national law of the requesting State.*

Article 20

Effects in the requested State

1. The transferred criminal proceedings shall be governed by the national law of the requested State.
2. Provided that it is not contrary to the fundamental principles of law of the requested State, any act carried out for the purposes of the criminal proceedings or preparatory inquiries performed by competent authorities in the requesting State shall have the same validity in the requested State as if it had been validly performed by its own authorities.
- 2a. Any act interrupting or suspending the period of limitation shall have the same validity in the requested State ~~as if it had been validly performed by its own~~

~~authorities~~ **only if such act qualifies as an act interrupting or suspending the period of limitation under national law. [AM148]**

3. Evidence transferred by the requesting authority shall not be denied admission in criminal proceedings in the requested State on the mere ground that the evidence was gathered in another Member State. The evidence gathered **and admissible** in the requesting State may be used in criminal proceedings in the requested State, provided that the admissibility of such evidence is not contrary to the fundamental principles of law of the requested State. **The judicial discretion to assess such evidence by the court in requested State shall be maintained.[151 EPP]**

3a (new) Member States shall ensure that there are effective remedies in place in the requested State to assess the admissibility of evidence. Without prejudice to paragraph 3 of this article, the requested State shall ~~be encouraged to~~ take into account a successful remedy in respect of the gathering, admissibility or transmission of the evidence in the State where the evidence was gathered. [149 Greens, 150 Renew covered].

4. Provided that a custodial sentence or detention order is issued in the requested State, the latter shall deduct all periods of detention spent in the requesting State, which were imposed in the context of the transferred criminal proceedings, from the total period of detention to be served in the requested State as a result of a custodial sentence or detention order being issued. To that end, the requesting authority shall transmit to the requested authority all information concerning the period of detention spent by the suspect or accused person in the requesting State. **Equally, where the person is subject to detention pending proceedings in the requested state, all periods of detention spent in the requesting State ~~should~~ shall be taken into account in order to determine any maximum deadlines applicable to such provisory detention, in order to assess the proportionality of that measure in the requesteding state [152 Greens], unless the competent authority in the requested State ~~may however~~ decides that all or part of ~~the credit~~ that detention period shall be omitted, according to the national law, if it is not justified in the light of the conduct of the convicted person following the offence. [153 EPP]**

5. If criminal proceedings can only be initiated following a complaint in both the requesting and the requested States, the complaint brought in the requesting State shall also have validity in the requested State.
6. The sentence applicable to the criminal offence shall be the one prescribed by the law of the requested State unless that law provides otherwise. The requested authority may take into consideration, in accordance with the applicable national law, the maximum sentence set out in the law of the requesting State, when the criminal offence has been perpetrated in the territory of the requesting State. Where the jurisdiction is exclusively based on Article 3, the sentence imposed in the requested State shall not be more severe than the maximum sentence set out in the law of the requesting State.

Article 21
Information to be given by the requested authority

The ~~requested~~ **competent** authority **issuing the final decision in the requested Member State [34 Rapp, 156 EPP]** shall inform the requesting authority of the discontinuation of criminal proceedings or of any decision delivered at the end of the criminal proceedings, including whether that decision, under the national law of the requested State, definitively bars further prosecution and therefore prevents further criminal proceedings, in respect of the same acts, in that State or of other information of substantial value. It shall forward a copy of the written decision delivered at the end of the criminal proceedings to the requesting authority.

Compromise Amendment 8: Chapters 4-5, Articles 22-34

Amendments covered: 157 EPP, 161 Renew

Amendments falling: 158-160 EPP

CHAPTER 4
MEANS OF COMMUNICATION

Article 22
Means of communication

1. Communication under this Regulation, including the exchange of ~~certificate~~ **request form** set out in the Annex, the decision referred to in Article 12(1) and other documents referred to in Article 12(5), between the requesting and requested authorities and with the involvement of central authorities, where a Member State has designated a central authority in accordance with Article 18, as well as with Eurojust, shall be carried out in accordance with Article 3 of Regulation (EU) .../...[Digitalisation Regulation].
2. Article 97(1) and (2), Articles ~~108~~ and ~~1514~~ of Regulation (EU) .../...[Digitalisation Regulation] setting out rules on electronic signatures and electronic seals, legal effects of electronic documents and the protection of information transmitted shall apply to the communication transmitted through the decentralised IT system.
3. Consultations under Article 12(4) and Article 15 between the requesting authority and the requested authority and with the involvement of the central authority(ies), where a Member State has designated a central authority in accordance with Article 18, as well as with Eurojust may be carried out using any appropriate means of communication, including through the decentralised IT system.

Article 23
Establishment of a decentralised IT system

1. ***For the purposes of this Regulation***, the Commission shall, ~~by means of adopt~~ implementing acts ***related to***, ~~establish~~ the decentralised IT system ***referred to in Article 3(1) of [Digitalisation Regulation]*** ~~for the purposes of this Regulation~~, setting out the following:
 - (a) the technical specifications defining the methods of communication by electronic means for the purposes of the decentralised IT system;
 - (b) the technical specifications for communication protocols;
 - (c) the information security objectives and relevant technical measures ensuring minimum information security standards and a high level of cybersecurity for the processing and communication of information within the decentralised IT system;
 - (d) the minimum availability objectives and possible related technical requirements for the services provided by the decentralised IT system;
 - (e) the digital procedural standards as defined in Article 3, point (9), of Regulation (EU) 2022/850.
2. The implementing acts referred to in paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 26(2).
3. The implementing acts referred to in paragraph 1 shall be adopted by [*two years after the entry into force of this Regulation*].

Article 24
Reference implementation software

1. The Commission shall be responsible for the creation, maintenance and development of reference implementation software which Member States may choose to apply as their back-end system instead of a national IT system. The creation, maintenance and development of the reference implementation software shall be financed from the general budget of the Union.
2. Eurojust shall also be able to make use of the reference implementation software referred to in paragraph 1.
3. The Commission shall provide, maintain and support on a free-of-charge basis the reference implementation software.

Article 25
Costs of the decentralised IT system

1. Each Member State shall bear the costs of the installation, operation and maintenance of the decentralised IT system's access points for which they are responsible.
2. Each Member State shall bear the costs of establishing and adjusting its relevant national IT systems to make them interoperable with the access points, and shall bear the costs of administering, operating and maintaining those systems.

3. Eurojust shall bear the costs of the installation, operation and maintenance of the components comprising the decentralised IT system under its responsibility.
4. Eurojust shall bear the costs of establishing and adjusting its case-management system to make it interoperable with the access points, and shall bear the costs of administering, operating and maintaining this system.

Article 26
Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011¹.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

CHAPTER 5 FINAL PROVISIONS

Article 27
Statistics

1. ~~Member States shall regularly collect comprehensive~~ Statistics for the purpose of monitoring the application of this Regulation by the Commission ***shall be collected at regular intervals by the Member States. Such Authorities shall maintain those statistics should be collected through the decentralised IT system provided by the Regulation and only if they are available at a central level in the Member State concerned. and shall send them to the Commission each year. They may process*** Personal data necessary for the production of the statistics ***may be processed***. Those statistics ~~shall include~~ ***are: [157 EPP]***
 - (a) the number of requests for transfer of criminal proceedings issued, including the criteria for requesting the transfer, by requested State;
 - (b) the number of accepted and refused transfers of criminal proceedings, including the grounds for refusal, by requesting State;
 - (c) the number of investigations and prosecutions that were not pursued following the acceptance of a transfer of criminal proceedings;
 - (d) the length of time to transmit information on the decision whether to accept the transfer of criminal proceedings;
 - (e) the number of legal remedies sought against the decisions to accept the transfer of criminal proceedings, including whether by a suspect, accused person or a victim, and the number of successfully challenged decisions;

¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (f) as of four years after the date of entry into force of the implementing acts referred to in Article 23(1), the costs incurred under Article 25(2).
2. The reference implementation software and, where equipped to do so, the national back-end system shall programmatically collect the data referred to in paragraph 1, points (a), (b) and (d), and transmit them to the Commission on an annual basis.

Article 28
Amendments to the ~~certificate~~ request form

The Commission is empowered to adopt delegated acts in accordance with Article 29 concerning the amendment of the Annex in order to update or make technical changes to this Annex.

Article 29
Exercise of delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 28 shall be conferred for an indeterminate period of time from [*date of application of this Regulation*].
3. The delegation of powers referred to in Article 28 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 28 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

Article 30
Notifications

1. By [*date of application of this Regulation*] each Member State shall notify the Commission of the following:

- (a) the authorities which, in accordance with its national law, are competent in accordance with Article 2, points (3) and (4), to issue and/or validate and execute requests for transfer of criminal proceedings;
 - (b) the information regarding the designated central authority or authorities, if the Member State wishes to make use of the possibility provided under Article 18;
 - (c) languages accepted for the requests to transfer criminal proceedings and other supporting information.
2. The Commission shall make the information received under paragraph 1 publicly available **and up-to-date**, either on a dedicated website or on **the unrestricted area of** the website of the European Judicial Network created by the Council Decision 2008/976/JHA².

Article 31

Relationship with international agreements and arrangements

1. Without prejudice to their application between Member States and third States, this Regulation replaces, as from [*date of application of this Regulation*], the corresponding provisions of the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972 and the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, applicable between the Member States bound by this Regulation.
2. In addition to this Regulation, Member States may conclude or continue to apply bilateral or multilateral agreements or arrangements with other Member States after the entry into force of this Regulation only insofar as such agreements or arrangements make it possible to further strengthen the aims of this Regulation and contribute to simplifying or further facilitating the procedures for transferring criminal proceedings and provided that the level of safeguards set out in this Regulation is respected.
3. Member States shall notify the Council and the Commission by [*date of application of this Regulation*] of the agreements and arrangements referred to in paragraph 2 which they wish to continue applying. Member States shall also notify the Commission within three months of the signing of any new agreement or arrangement referred to in paragraph 2.

Article 32

Reporting

By five years from [*the date of application of this Regulation*], the Commission shall submit a report to the European Parliament, to the Council and to the European Economic and Social Committee on the application of this Regulation supported by information supplied by the Member States in accordance with Article 27(1) and collected by the Commission.

² Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

Article 33
Transitional provisions

Before the obligation referred to in Article 22(1) becomes applicable, communication between requesting and requested authorities and, where applicable, with the involvement of central authorities, as well as with Eurojust under this Regulation shall take place by any appropriate alternative means, taking into account the need to ensure a swift, secure and reliable exchange of information.

Article 34
Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [the first day of the month following the period of two years after the date of entry into force of this Regulation].

The obligation for competent authorities to use the decentralised IT system for communication under this Regulation shall apply from the first day of the month following the period of two years after adoption of the implementing acts referred to in Article 23.

Compromise Amendment 9: Recitals

Amendments covered: 1-6 Rapp, 9 Rapp, 13, 17, 20 Rapp, 35 SD, 36 EPP, 37 Greens, 38 Greens 1st part, 43 SD, 46 EPP, 48 SD, 49 EPP modified, 51 EPP, 53 EPP, 55 Greens, 59 EPP, 61 EPP, 62 Greens, 101 EPP, 114 Renew, 137 Renew

Amendments falling: 38 Greens 2nd part, 39-40 Greens, 41 EPP, 42 Greens, 44-45 Greens, 47 Greens, 50 SD, 52 Greens, 54 Greens, 56-57 EPP, 58 Greens, 60 Greens, 63 Greens

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1)(b) and (d) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee³,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) The Hague Programme for strengthening freedom, security and justice in the European Union⁴ requires Member States to consider possibilities of concentrating the prosecution in cross-border multilateral cases in one Member State, with a view to increasing the efficiency of prosecutions while guaranteeing the proper administration of justice.
- (3) The Programme of measures to implement the principle of mutual recognition of decisions in criminal matters⁵ calls for an instrument enabling criminal proceedings to be transferred to other Member States.
- (4) Further development of judicial cooperation between Member States is needed to increase the efficient and proper administration of criminal justice within the common area of freedom, security and justice and to ensure that the best-placed Member State investigates or prosecutes a criminal offence. In particular, common rules for the Member States regarding the transfer of criminal proceedings could help to prevent unnecessary parallel criminal proceedings in different Member States concerning the same facts and the same person, that could result in an infringement of the *ne bis in idem* principle. They could also reduce the number of multiple criminal proceedings in respect of the same facts or in respect of the same person being conducted in

³ OJ C , , p. .

⁴ OJ C 53, 3.3.2005, p. 1.

⁵ OJ C 12, 15.1.2001, p. 10.

different Member States. They also aim to ensure that a transfer of criminal proceedings can take place, when the surrender of a person for criminal prosecution under a European Arrest Warrant⁶ is delayed or refused for reasons such as those that parallel criminal proceedings for the same criminal offence are ongoing in the other Member State, in order to enable the person being prosecuted to avoid impunity.

- (5) Common rules on the transfer of criminal proceedings are also essential in order to efficiently fight cross-border crime. This is especially important for crimes perpetrated by organised criminal groups, such as drug trafficking, migrant smuggling, trafficking in human beings, firearms trafficking, environmental crime, cybercrime or money laundering. Prosecuting organised criminal groups that are active in multiple Member States can create great difficulties for the authorities involved. The transfer of criminal proceedings is an important tool which would reinforce the fight against organised criminal groups that are active in the Member States across the EU.
- (6) In order to ensure the effective cooperation between the requesting and requested authorities in relation to the transfer of criminal proceedings, such rules should be established by a legally binding and directly applicable act of the Union.
- (7) This Regulation should apply to all requests issued within the framework of criminal proceedings. ~~Criminal proceedings is an autonomous concept of Union law interpreted by the Court of Justice of the European Union, notwithstanding the case law of the European Court of Human Rights, starting from the time when persons are informed by the competent authorities of a Member State that they are suspected or accused of having committed a criminal offence until the conclusion of those proceedings, to be understood as the final determination of the question whether the suspect or accused person has committed the criminal offence, including, where applicable, sentencing and the resolution of any appeal. [1 Rapp, 35 SD, 36 EPP]~~
- (8) The Council Framework Decision 2009/948/JHA⁷ aims to prevent situations where the same person is subject to parallel criminal proceedings in different Member States in respect of the same facts, which might lead to the final disposal of those proceedings in two or more Member States. It therefore establishes a procedure for direct consultations between competent authorities of the Member States concerned with the aim of achieving a consensus on any effective solution aimed at avoiding the adverse consequences arising from such parallel proceedings and avoiding waste of time and resources of the competent authorities concerned. When the competent authorities of the Member States concerned decide, following consultations in accordance with that Framework Decision, to concentrate proceedings in one Member State through the transfer of criminal proceedings, this Regulation should be used for such a transfer.
- (9) Other legal instruments in the area of criminal matters, particularly those related to specific crime types, such as the Directive (EU) 2017/541 of the European Parliament

⁶ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)(OJL 190, 18.7.2002, p. 1).

⁷ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJL 328, 15.12.2009, p. 42).

and of the Council⁸, Council Framework Decision 2002/475/JHA⁹ and Council Framework Decision 2008/841/JHA¹⁰, include provisions referring to the factors to be taken into account with the aim of centralising proceedings in a single Member State when more than one Member State can validly prosecute on the basis of the same facts. Where the competent authorities of the Member States concerned decide, following cooperation in line with those legal acts, to centralise criminal proceedings in a single Member State through the transfer of criminal proceedings, this Regulation should be used for such a transfer.

- (10) Several Union legal acts have been adopted on the application of the principle of mutual recognition to judgments in criminal matters for enforcement of sentences in other Member States, in particular Council Framework Decisions 2005/214/JHA¹¹, 2008/909/JHA¹² and 2008/947/JHA¹³. This Regulation should supplement the provisions of those Framework Decisions and should be interpreted as not affecting their application.
- (11) This Regulation does not affect spontaneous exchanges of information regulated by other acts of Union law.
- (12) This Regulation does not apply to decisions to reallocate, merge or split cases on which the European Public Prosecutor's Office has exercised its competence in accordance with Council Regulation (EU) 2017/1939¹⁴.
- (13) For the purpose of this Regulation, Member States should designate the competent authorities in a way that promotes the principle of direct contact between those authorities.
- (14) With a view to the administrative transmission and reception of requests for transfer of criminal proceedings, as well as for other official correspondence relating to such requests, Member States could designate one or more central authorities where necessary due to the structure of their internal legal systems. Such central authorities could also provide administrative support, have coordinating and assisting roles, thus facilitating and promoting the acceptance of requests for transfers of criminal proceedings.

⁸ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

⁹ Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA) (OJ L 164, 22.6.2002, p.3).

¹⁰ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

¹¹ Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties (OJ L 76, 22.3.2005, p. 16).

¹² Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327, 5.12.2008, p. 27).

¹³ Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (OJ L 337, 16.12.2008, p. 102).

¹⁴ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

- (15) Some Union legal acts already require Member States to take necessary measures to establish jurisdiction over specific criminal offences, such as those related to terrorist activities¹⁵ or to the counterfeiting of the euro¹⁶ in cases where the surrender of a person is refused.
- (16) This Regulation provides jurisdiction in specific cases, in order to ensure that, for criminal proceedings to be transferred in accordance with this Regulation, wherever the interests of efficient and proper administration of justice *and the effective protection of fundamental rights of the suspect or accused persons, as well as of the victims, as enshrined in Union law*, [37 Greens] so require, the requested State can exercise jurisdiction for the criminal offences to which the law of the requesting State is applicable. The requested State should have jurisdiction to try the criminal offences for which the transfer is sought, whenever that Member State is considered as being the best placed one to prosecute.
- (17) *In addition to the jurisdiction which is already provided for by the national law of the requested State*, jurisdiction should be established *based on specific grounds mentioned in this Regulation whenever that Member State is considered as being the best placed one to prosecute (AM9 Rapp). A The requested State should have jurisdiction [38 Greens 1st part]* in situations where the requested State refuses to surrender a suspect or accused person for whom a European arrest warrant has been issued and who is present in the requested State and is a national of or a resident in that State, where such refusal is based on specific grounds mentioned in this Regulation. For example, ~~there are situations where Article 4(7) of Framework Decision 2002/584/JHA can be applied may apply. while it is possible that such situation occurs in situations where offences are committed in the territory of a requested State or in a third country by third country nationals if the relevant offence was committed on the territory of a Member State, it is also likely that this will concern offences committed in a third country, by third country nationals. This is particularly important as regards when it comes to serious crimes violating fundamental values of the international community, such as war crimes or genocide, where a risk of impunity might arise due to a European arrest warrant being refused.~~ A requested State should also have jurisdiction when the criminal offence produces its effects or causes damages mainly in the requested State. Damage should be taken into account whenever it is one of the constituent elements of the criminal offence, in accordance with the law of the requested State. The requested State should also have jurisdiction when criminal proceedings are already ongoing in that State against the same suspect or accused person in respect of other facts so that all the criminality of such person could be judged in one single criminal proceeding, or when criminal proceedings are ongoing in that State against other persons in respect of the same or related facts, which might in particular be relevant for concentrating the investigation and prosecution of a criminal organisation in one Member State. In both cases, the suspect or accused person in the criminal

¹⁵ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJL 88, 31.3.2017, p. 6).

¹⁶ Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA (OJL 151, 21.5.2014, p. 1).

proceedings being transferred should be a national of or a resident in the requested State.

- (18) In order to fulfil the purpose of this Regulation and to prevent conflicts of jurisdiction, having specific regard to those Member States which have their legal systems – or the prosecution of certain criminal offences – based on mandatory prosecution, the requesting State, when requesting a transfer of criminal proceedings, should waive its jurisdiction in the prosecution of the person concerned for the criminal offence for which the transfer is sought. On this basis, the competent authorities of the requesting State should be able to discontinue the criminal proceedings brought before them in favour of the Member State identified as being in a better position to prosecute, even where, in accordance with national law, they would be under a duty to prosecute. Such a waiver of jurisdiction should be without prejudice to the provisions on the effects of the transfer of criminal proceedings in the requesting State laid down in this Regulation.
- (19) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union (the ‘Charter’) and the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (20) This Regulation does not affect procedural rights as enshrined in Union law, such as the Charter, the procedural rights directives 2010/64/EU¹⁷, 2012/13/EU¹⁸, 2013/48/EU¹⁹, (EU) 2016/343²⁰, (EU) 2016/800²¹ and (EU) 2016/1919²². ***The requesting authority should ensure that the procedural rights under Union and national law are respected when requesting a transfer of criminal proceedings under this Regulation. [2 Rapp]***
- (21) Member States should ensure that, when applying this Regulation, the needs of vulnerable persons are taken into account. According to the Commission Recommendation (2013/C 378/02)²³, vulnerable suspects or accused persons should

¹⁷ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

¹⁸ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

¹⁹ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

²⁰ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

²¹ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

²² Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).

²³ Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings (2013/C 378/02) (OJ C 378, 24.12.2013, p. 8).

be understood to mean all suspects or accused persons who are not able to understand or effectively participate in criminal proceedings due to their age, their mental or physical condition or any disabilities they may have.

- (22) Similarly, Member States should ensure that, when applying this Regulation, the procedural rights of suspects and accused persons subject to pre-trial detention are taken into account in accordance with the Commission Recommendation C(2022) 8987 final²⁴.
- (23) This Regulation should not impose any obligation to request a transfer of criminal proceedings. When assessing whether a request for transfer of criminal proceedings should be issued, the requesting authority should examine whether such a transfer is necessary ~~and~~, appropriate, **as well as proportionate. Consequently, the requesting authority should, prior to issuing a request for a transfer undertake an examination of the case to clarify the relevant facts and identify pertinent evidence in order to ascertain the necessity, appropriateness and proportionality of a transfer.** This assessment 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, **taking into account all the relevant criteria specified in this Regulation on the basis of the investigative efforts undertaken in the requesting state prior to the issuance of the request for a transfer.**
- (24) When assessing whether a request for transfer of criminal proceedings is justified, the requesting authority should have regard to several criteria, the priority and weight of which should be based on the facts and merits of each individual case. All the relevant factors should be considered in the best interest of justice. For instance, where the criminal offence has been committed wholly or in part in the territory of the requested State, or most of the effects or damage caused by the criminal offence were sustained in the territory of the requested State, that State may be considered in a better position to prosecute, given that the evidence to be collected, such as testimony from witnesses, and victims, or experts' opinions, are in the requested State and can thus be more easily gathered, if the criminal proceedings were transferred. Additionally, the initiation of subsequent proceedings for damages in the requested State would be facilitated if the underlying proceedings establishing the criminal responsibility were also held in the same Member State. Similarly, if most of the evidence are located in the requested State, a transfer of criminal proceeding might ease the collection and subsequent admissibility of the evidence gathered in accordance with the law of the requested State.
- (25) Where the suspects or accused persons ~~is~~ **are** nationals **[3 Rapp]** of the requested State or ~~a~~ residents in that State, a transfer of criminal proceedings might be justified for the purpose of ensuring the right of the suspects or accused persons to be present at trial, in accordance with Directive (EU) 2016/343. Similarly, where the **victim or [43 SD]** ~~majority of~~ victims are nationals or residents in the requested State, a transfer can be justified to allow victims to easily participate in the criminal proceedings and to be effectively examined as witnesses during the proceedings. In cases where the surrender of a suspect or accused person for whom a European Arrest Warrant was issued is refused in the requested State on the grounds specified in this Regulation, a

²⁴ Commission Recommendation of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions (C(2022) 8987 final).

transfer may also be justified when that person is present in the requested State while not being a national of or a resident in that State.

- (26) It is for the requesting authority to assess on the basis of material before it, whether there are reasonable grounds to believe that the suspect, accused person or the victim resides in the requested State. Where only limited information is available, such an assessment could also be the object of consultations between the requesting and requested authorities. Various objective circumstances that could indicate that the person concerned has established the habitual centre of his or her interests in a particular Member State or has the intention to do so, can be of relevance. Reasonable grounds to believe that a person resides in the requested State could exist, in particular, where a person is registered as a resident in the requested State, by holding an identity card, a residence permit, or a registration in an official residence register. Where that person is not registered in the requested State, residence could be indicated by the fact that a person manifested the intention to settle in that Member State or has acquired, following a stable period of presence in that Member State, certain connections with that Member State which are of a similar degree as those resulting from establishing a formal residence in that Member State. In order to determine whether, in a specific situation, there are sufficient connections between the person concerned and the requested State giving rise to reasonable grounds to believe that the person concerned resides in that State, it is necessary to take into account various objective factors characterising the situation of that person, which include, in particular, the length, nature and conditions of their presence in the requested State or the family or economic connections which that person has with the requested State. A registered vehicle, the registration of a telephone number, a bank account, the fact that the person's stay in the requested State was uninterrupted or other objective factors may be of relevance to determine that there are reasonable grounds to believe that the person concerned resides in the requested State. A short visit, a holiday stay, including in a holiday home, or a similar stay in the requested State without any further substantial link should not be enough to establish residence in that Member State. ~~On the other hand, an uninterrupted stay of at least three months should in most cases be regarded as sufficient to establish residence.~~ **[4 Rapp, alignment with the evidence regulation]**
- (27) A transfer of criminal proceedings may also be justified when criminal proceedings are ongoing in the requested State in respect of the same or other facts against the suspect or accused person, or when criminal proceedings are ongoing in the requested State in respect of the same or related facts against other persons, e.g. in cases of prosecution of cross-border criminal organisations, where different co-accused might be prosecuted in different Member States. Moreover, if the suspect or accused person is serving or is to serve a sentence involving deprivation of liberty in the requested State for another criminal offence, a transfer of criminal proceedings may be justified to ensure the right of the convicted person to be present at the trial for which transfer of criminal proceedings is sought, while serving the sentence in the requested State. Moreover, the requesting authorities should give due consideration to whether the transfer of criminal proceedings could enhance the aim of social rehabilitation of the person concerned in case the sentence were to be enforced in the requested State: for this purpose, the person's attachment to the requested State, whether they consider it

the place of family, linguistic, cultural, social or economic and any other links to the requested State should be taken into account.

- (28) When requesting a transfer of criminal proceedings, the requesting authority should take into account possibilities of obtaining evidence from other Member States through existing instruments of mutual recognition of judicial decisions, such as the Directive 2014/41/EU of the European Parliament and of the Council²⁵, 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.
- (29) Suspects or accused persons or victims should have the possibility to request ~~propose~~ **[5 Rapp modified, 46 EPP]** for the criminal proceedings concerning them to be transferred to another Member State. These requests ~~proposals~~ should ~~shall~~ **[5 Rapp mod, 46 EPP]** not however impose any obligation on the requesting or requested authority to request or transfer criminal proceedings; *thus, if the requesting authority decides to transfer the criminal proceedings following a request made by suspects or accused persons or victims, the decision on the request for transfer should be taken by the competent authorities of the requested State. The negative opinion of the suspect or accused person or of the victim with regards to the transfer of criminal proceedings should not prevent such transfer if the requested authority decides to accept it in accordance with Article 12 [AM13, 17, 20 Rapp]*. If the authorities become aware of parallel criminal proceedings on the basis of a request ~~proposal~~ of transfer submitted by the suspect or accused person, or the victim, or a lawyer on their behalf, then they are under the obligation to consult each other in accordance with the Framework Decision 2009/948/JHA.

(30) The requesting authority should inform as soon as possible the suspect or accused person of the intended transfer and should provide for the possibility for such person to express their opinion orally or in writing, in accordance with applicable national law, to enable the authorities to take into account and ~~register~~ **[49 EPP modified]** their legitimate interests before issuing a request for transfer. When assessing the legitimate interest of the suspect or accused person to be informed about the intended transfer, the requesting authority should take into account, the need to ensure confidentiality of an investigation and the risk of prejudicing criminal proceedings against that person, e.g. whenever it is necessary to safeguard an important public interest, such as in cases where such information could prejudice ongoing covert investigations or seriously harm the national security of the Member State in which the criminal proceedings are instituted. *Based on the criteria mentioned above and where appropriate, there might be situations where the suspect or accused person is not informed, e.g. when there is the need to protect a witness or a victim before any protection measures could be adopted in the requesting State, or when it would prejudice another investigation that is intrinsically linked with the criminal proceeding under transfer. The suspect or accused person or their lawyer on their behalf ~~legal advisors shall~~ should also be kept informed of substantial developments in relation to ~~any~~ such request for transfer, provided that it would not undermine the confidentiality of the investigation or otherwise prejudice the investigation. [AM114 Renew]* Where the

²⁵ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

requesting authority cannot locate *or reach* [6 Rapp] the suspect or accused person despite its reasonable efforts being made, *the requesting authority may seek the assistance of the requested authority in carrying out this task. Where the requesting authority cannot locate the suspect of accused person despite its reasonable efforts being made, [48 SD]* the obligation to inform such person should apply from the moment these circumstances change.

- (31) The rights of victims set out in Directive 2012/29/EU of the European Parliament and of the Council²⁶, *including the right to information*, should be taken into account in applying this Regulation. *In exceptional cases, for example due to the high number of victims involved in a case, it should be possible to provide information to victims through the press, through an official website of the competent authority or through a similar communication channel, in line with Directive 2012/29/EU. [101 EPP]* This Regulation should not be interpreted as preventing Member States from granting victims more extensive rights under national law than those laid down in Union law.
- (32) When taking a decision on the transfer of criminal proceedings, the requesting authority should have due regard to the legitimate interests of victims, including their protection, and assess whether the transfer of criminal proceedings might be detrimental for the victim to effectively exercise their rights in the criminal proceeding concerned. This encompasses, for example, the possibility and arrangements available for victims to testify during trial in the requested State if it's not the Member State where they reside. Furthermore, consideration should be given to the possibility for victims to obtain and provide evidence, for instance from witnesses and experts, to claim compensation or to benefit from witnesses' protection programmes in the requested State. The victims' rights to compensation should not be prejudiced by the transfer of criminal proceedings. This Regulation is not to affect rules on compensation and restitution of property to victims in national proceedings.
- (33) Whenever there is a need to ensure that the protection provided to the victim in the requesting State is continued in the requested State, competent authorities in the requesting State should consider the issuance of a European protection order in line with Regulation (EU) No 606/2013 of the European Parliament and of the Council²⁷ or the Directive 2011/99/EU of the European Parliament and of the Council²⁸.
- (34) The requested State should ensure access to effective legal remedies for suspects and accused persons, as well as for victims, against the decision to accept the transfer of criminal proceedings in line with Article 47 of the Charter and the procedures applicable under national law, whenever their rights are adversely affected in the application of this Regulation. ~~*The grounds for refusal in Article 13 may serve as an additional basis for assessment in order to ascertain whether a legal remedy should be pursued. Where discretion is granted under Article 13(2)(b), the competent authority in the requested state should be empowered to verify whether the authority*~~

²⁶ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJL 315, 14.11.2012, p. 57).

²⁷ 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 (OJL 181, 29.6.2013, p. 4).

²⁸ Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order (OJL 338, 21.12.2011, p. 2).

~~*in the requested State has made manifest errors in the exercise of that discretion.*~~
~~*[51 EPP]*~~

- (34 a) (new) Member States shall provide that suspects, accused persons and victims have the right of access to the file as well as any other procedural rights which are necessary to effectively exercise their right to an effective remedy. The access to the file shall be limited to the documents related to the transfer of criminal proceedings and in order to exercise their right to an effective remedy. [53 EPP]*
- (35) The proper application of this Regulation presupposes communication between the requesting and requested authorities involved, which should be encouraged to consult each other whenever it is appropriate to facilitate the smooth and efficient application of this Regulation, either directly or, where appropriate, via European Union Agency for Criminal Justice Cooperation (Eurojust).
- (36) The requesting authority should consult with the requested authority prior to issuing a request for transfer of criminal proceedings when this is necessary, in particular, in order to determine if the transfer of criminal proceedings would serve the interests of efficient and proper administration of justice, as well as if the requested authority is likely to invoke one of the grounds for refusal under this Regulation.
- (37) When transmitting a request for transfer of criminal proceedings, the requesting authority should provide accurate and clear information on the circumstances and conditions underlying the request, as well as any other supporting documentation, with a view to enabling the requested authority to take an informed decision on the transfer of criminal proceedings.
- (38) Until the requested authority has not taken a decision to accept a transfer of criminal proceedings, the requesting authority should be able to withdraw the request, for instance when it becomes aware of further elements due to which the transfer no longer appears justified. *The decision to withdraw the request should be justified in written and the justification should be shared with the suspect or accused persons, and with the victims.* [55 Greens]
- (39) The requested authority should inform the requesting authority of its reasoned decision on whether to accept the transfer of criminal proceedings without delay and no later than 60 days after the receipt of the request for transfer of criminal proceedings. In specific cases, when it is not feasible for the requested authority to comply with this period, for instance if it considers that additional information is necessary, it may only be extended for further 30 days to avoid excessive delays.
- (40) Transfer of a criminal proceeding 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. Furthermore, the transfer of criminal proceedings should not be accepted in case of other impediments to prosecution in the requested State. The requested authority should also be able to refuse a transfer of criminal proceedings, if the suspect or accused person benefits

from an immunity or privilege in accordance with the law of the requested State, e.g. in relation to certain categories of persons (such as diplomats) or specifically protected relationships (such as lawyer-client privilege), or if the requested authority believes that such transfer is not justified by the interests of efficient and proper administration of justice, for instance because none of the criteria for requesting a transfer of criminal proceedings are met, or if the ~~certificate for a~~ request **form** for transfer is incomplete or was incorrectly completed by the requesting authority, thus not enabling the requested authority to have the necessary information to assess the request for transfer of criminal proceedings. ***The grounds for refusal in Article 13 provided for in this Regulation may serve as an additional basis for assessment in order to ascertain whether a legal remedy should be pursued. Where discretion is granted under Article 13(2)(b), the optional grounds for refusal provided for in this regulation, the competent authority court competent for the legal remedy in the requested State should be empowered to verify whether the authority in the requested State has made manifest errors in the exercise of that discretion. [51 EPP]***

- (41) The principle of *ne bis in idem*, as set out in Articles 54 to 58 of the Convention implementing the Schengen Agreement²⁹ and in Article 50 of the Charter, and as interpreted by the Court of Justice of the European Union, is a basic fundamental principle of criminal law, according to which a defendant should not be tried or punished again in criminal proceedings for the criminal offence for which he or she has already been finally acquitted or convicted. Therefore, the requested authority should refuse the transfer of criminal proceedings, if taking them over would be contrary to that principle.
 - (42) Before deciding not to accept a request for transfer of criminal proceedings on the basis of any ground for refusal, the requested authority should consult the requesting authority in order to obtain any necessary additional information.
 - (43) The acceptance of transfer of criminal proceedings by the requested authority should result in the suspension or discontinuation of criminal proceedings in the requesting State to avoid duplication of measures in the requesting and requested State. This should be without prejudice to investigations or other procedural measures which may be necessary to execute decisions based on mutual recognition instruments or to comply with requests for mutual legal assistance linked to the proceedings subject to the transfer. The notion of ‘investigative or other procedural measures’ should be interpreted broadly, as including not only any measure for the purpose of gathering evidence, but also any procedural act imposing pre-trial detention or any other interim measure. To avoid abusive challenges and ensure that the criminal proceedings are not suspended at length, if a legal remedy with a suspensive effect ***granted under national law*** has been invoked in the requested State the criminal proceedings should not be suspended nor discontinued in the requesting State until a decision on the remedy has been taken in the requested State.
- (43 a) (new) Once a transfer of proceedings has been granted and in order to facilitate an efficient process of the transfer the requesting and requested authorities may***

²⁹ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJL 239, 22.9.2000, p. 19).

consult each other to determine the necessary documents or parts of such documents to be forwarded, as well as to be translated, where necessary. However, the decision to only send parts of the documents should be balanced and based on a careful consideration of the documents in question so as to not prejudice the fairness of the proceedings. [59 EPP]

- (44) This Regulation should not constitute a legal basis for arresting persons with a view to their physical transfer to the requested State in order for the latter to bring criminal proceedings against that person.
- (45) The requested authority should inform the requesting authority in writing of any decision delivered at the end of the criminal proceedings in the requested State. Framework Decision 2009/948/JHA imposes a similar obligation where an agreement was reached on the concentration of proceedings in one Member State. Where the requested authority decides to discontinue criminal proceedings related to the facts underlying the request for transfer, it should also include the reasons for such discontinuation.
- (46) If the requested authority decides to discontinue criminal proceedings related to the facts underlying the request for transfer, the requesting authority may continue or reopen criminal proceedings whenever this would not entail a violation of the *ne bis in idem* principle, i.e. whenever that decision does not definitely bar further prosecution under the law of the requested State and therefore does not prevent further proceedings, in respect of the same acts, in that State. Victims should have the possibility to initiate or to request reopening of the criminal proceedings in the requesting State in accordance with the national law of that State, provided that this would not entail a violation of the *ne bis in idem* principle.
- (47) Once criminal proceedings are transferred in accordance with this Regulation, the requested authority should apply its relevant national law and procedures. Nothing in this Regulation should be interpreted as interfering with any prosecutorial discretion provided for in national law.
- (48) The requested State should apply its national law to determine the sentence applicable to the criminal offence in question. In cases where the criminal offence has been perpetrated in the territory of the requesting State, the requested authorities may take into consideration in the determination of the sentence the maximum penalty envisaged in the law of the requesting State, whenever this is to the benefit of the accused person, and in accordance with the law of the requested State. This should be taken into account in situations where the transfer of criminal proceedings would lead to the application in the requested State of a higher sentence than the maximum sentence provided for in the requesting State for the same criminal offence, with a view to ensure a degree of legal certainty and foreseeability of the applicable law for the suspects or accused persons concerned. The maximum sentence envisaged in the law of the requesting State should always be taken into account where jurisdiction of the requested State is based exclusively on this Regulation.
- (49) ***Each Member State should bear its own costs of transfers of criminal proceedings, including those related to ~~the legal aid~~ the exercise of procedural rights that the suspect or the accused person is entitled to in each of the Member States concerned, in accordance with the applicable Union and national law.*** Member States should not be able to claim from each other compensation for costs resulting from the

application of this Regulation. However, when the requesting State has incurred large or exceptional costs, related to the translation of the documents in the case file to be transferred to the requested State, a proposal by the requesting authority to share the costs should be considered by the requested authority.

- (50) The use of a standardised ~~certificate~~ **request form** translated in all official Union languages ~~would~~ **shall** facilitate cooperation and the exchange of information between the requesting and requested authorities, allowing them to take a decision on the request for transfer more quickly and effectively. It also reduces translation costs and contributes to higher quality of requests. [61 EPP]
- (51) The ~~certificate~~ **request form** should only include personal data necessary to facilitate the requested authority's decision on the request. The ~~certificate~~ **request form** should contain an indication of the categories of personal data, such as whether the related person is suspect, accused or victim, as well as the specific fields for each of these categories.
- (52) In order to effectively address a possible need for improvement regarding the ~~certificate~~ **request form** to be used to request transfer of criminal proceedings, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend the Annex to this Regulation. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making³⁰. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (53) In order to ensure swift, direct, interoperable, reliable and secure exchange of case-related data, communication under this Regulation between the requesting and requested authorities and with the involvement of central authorities, where a Member State has designated a central authority, as well as with Eurojust, should as a rule be carried out through the decentralised IT system within the meaning of Regulation (EU) .../...[Digitalisation Regulation]³¹. In particular, the decentralised IT system should, as a rule, be used for the exchange of the ~~certificate~~ **request form** and of any other relevant information and documents, and all other communication between the authorities under this Regulation. In cases where one or more of the exceptions mentioned in the Regulation (EU) .../.... [Digitalisation Regulation] apply, in particular, where the use of the decentralised IT system is not possible or appropriate, other means of communication may be used as specified in that Regulation.
- (54) Member States could use a software developed by the Commission (reference implementation software) instead of a national IT system. This reference implementation software should be based on a modular setup, meaning that the software is packaged and delivered separately from the e-CODEX components needed

³⁰ OJ L 123, 12.5.2016, p. 13.

³¹ Regulation (EU) [...] of the European Parliament and of the Council on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation (OJ L ...).

to connect it to the decentralised IT system. This setup should enable Member States to reuse or enhance their existing national judicial communication infrastructures for the purpose of cross-border use.

- (55) The Commission should be responsible for the creation, maintenance and development of this reference implementation software. The Commission should design, develop and maintain the reference implementation software in a way that allows the controllers to ensure compliance with the data protection requirements and principles laid down in Regulations (EU) 2018/1725³² and (EU) 2016/679³³ of the European Parliament and of the Council and Directive (EU) 2016/680 of the European Parliament and of the Council³⁴, in particular the obligations of data protection by design and by default as well as high level of cybersecurity. The reference implementation software should also include appropriate technical measures and enable the organisational measures necessary for ensuring an appropriate level of security and interoperability, taking into account that special categories of data may also be exchanged. The Commission does not process personal data in the context of creation, maintenance and development of this reference implementation software.

[62 Greens]

- (56) The reference implementation software developed by the Commission as a back-end system should programmatically collect the statistical data necessary for monitoring purposes and such data should be transmitted to the Commission. Where Member States choose to use a national IT system instead of the reference implementation software developed by the Commission, such a system could be equipped to programmatically collect those data and, in that case, those data should be transmitted to the Commission. The e-CODEX connector could also be equipped with a feature allowing retrieval of relevant statistical data.
- (57) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to establish a decentralised IT system. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council³⁵.
- (58) This Regulation should create the legal basis for the exchange of the personal data between the Member States for the purposes of the transfer of criminal proceedings in line with Article 8 and Article 10(a) of the Directive (EU) 2016/680. However, as

³² Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

³³ ~~Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).~~

³⁴ Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

³⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

regards any other aspect, such as the time period for the retention of personal data received by the requesting authority, the processing of personal data by the requesting and requested authorities should be subject to the national laws of Member States adopted pursuant to the Directive (EU) 2016/680. The requesting and requested authority should be considered as controllers with respect of the processing of the personal data under that Directive. The central authorities provide administrative support to the requesting and requested authorities and, to the extent they are processing personal data on behalf of those controllers, they should be considered as processors of the respective controller. As regards the processing of personal data by Eurojust, Regulation (EU) 2018/1725 of the European Parliament and of the Council should apply in the context of this Regulation without prejudice to the specific data protection rules of the Regulation (EU) 2018/1727 of the European Parliament and of the Council³⁶.

- (59) Since the objective of this Regulation, namely the transfer of criminal proceedings, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and its effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (60) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified [, by letter of ...] its wish to take part in the adoption and application of this Regulation.] OR [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]
- (61) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (62) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) No 2018/1725 of the European Parliament and of the Council³⁷ and delivered an opinion on [...],

HAVE ADOPTED THIS REGULATION:

³⁶ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA, PE/37/2018/REV/1 (OJ L 295, 21.11.2018, p. 138).

³⁷ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).