



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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from :	Incoming Presidency
to :	Delegations
Subject :	Draft Framework Decision on Transfer of Proceedings in Criminal Matters

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The first meeting on the draft Framework Decision on Transfer of Proceedings in Criminal Matters will take place on the 2 July. The incoming Presidency suggests to start with a general discussion, focusing on some key issues, prior to entering into a detailed discussion on the different articles at subsequent meetings.

Delegations will find in the [Annex](#) a note from the incoming Presidency setting out the issues for discussion at the Working Party meeting on 2 July 2009.

### **What is transfer of proceedings?**

Does transfer imply that proceedings already have been instituted and that the presumed perpetrator is known? Or would it in some instances be more appropriate to transfer proceedings immediately after the detection of the offence? Should transfer be made impossible at a certain point? Is there a need to establish what is meant by transferring proceedings in the draft Framework Decision?

The intention is not to introduce an obligation to prosecute, as a consequence of accepting transfer of proceedings. However, transfer of proceedings may suggest an obligation for the receiving authority to – at least – instigate criminal investigations. Should acceptance of a transfer entail such an obligation? If a transfer is accepted the receiving authority should apply its national law.

### **Competence/jurisdiction**

The draft Framework Decision includes a mechanism creating competence. The model in the 1972 European Convention has been used. What are the pros and cons with such a mechanism. Should another model of creating competence/jurisdiction be used (the 1990 EPC Agreement, other models).

### **Criteria for transfer of proceedings**

Which criteria should be used to enable the transferring authority to request transfer? This issue is, for obvious reasons, linked to the questions on competence and grounds for refusal. Should additional criteria be included in the list? Are there criteria which should be excluded?

### **Grounds for refusal**

The added value of a new instrument on transfer of proceedings is linked to what extent the receiving authority has to accept a request for transfer. The receiving authority should accept a transfer of proceedings, unless there are strong reasons not to do so. Therefore, a limited list of grounds for refusal is needed. Is the list too limited or is there room for deletion.

## **Double criminality**

Double criminality is a fundamental requirement for transferring proceedings between Member States. In the field of international cooperation in criminal matters, this principle may be *in abstracto* or *in concreto*. An *in abstracto* provision has been chosen, with complementary grounds for refusal. Is a provision *in concreto* preferable?

## **Interests of victims and suspects**

The Framework Decision, in general, should take into account legitimate interests of suspects and victims. However, the competent authorities should be at liberty to determine whether proceedings will be transferred or not. To what degree should provisions on suspects' and victims' rights be elaborated in a draft Framework Decision? Should these interests be catered for from a horizontal approach instead?

## **Effects of a transfer**

Transfer of proceedings will have effects in the Member State of the receiving authority as well as in the Member State of the transferring authority.

At what time should the transferring authority suspend or terminate its own proceedings? Which exceptions are needed? In which situations should the competence revert to the transferring authority?

To what extent should procedural acts, performed in the Member State of the transferring authority, be legally valid in the Member State of the receiving authority?

Should there be limitations when it comes to applicable sanctions in the Member State of the receiving authority in cases of subsidiary jurisdiction, i.e. when competence is exclusively grounded on the Framework Decision?

## **Procedure**

A consultation procedure between the transferring and receiving authorities is essential. In what manner should the consultation take place and at what stage should it be introduced?

The receiving authority needs certain information to determine whether to accept a transfer. Should the criminal file be forwarded, or is it sufficient to state some minimum information in a standard form? What should be translated and when?

Is there a need for a provision on provisional measures? It could be argued that existing instruments on judicial cooperation is sufficient.

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