



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 7 October 2009

14133/09

**Interinstitutional File:
2009/0811 (CNS)**

COPEN 191

NOTE

from : Presidency
to : Working Party on Cooperation in Criminal Matters
No. prev. doc. : 13054/09 COPEN 173 + COR 1
Subject : **Proposal for a Council Framework Decision on the transfer of proceedings in criminal matters**

1. By letters received by the General Secretariat in June and July 2009, the Kingdom of Belgium, Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Lithuania, Republic of Latvia, Republic of Hungary, the Kingdom of the Netherlands, Romania, the Republic of Slovenia, the Slovak Republic and the Kingdom of Sweden, presented an Initiative for a Council Framework Decision on transfer of proceedings in criminal matters.
2. By the letter of 28 July 2009 Coreper invited the European Parliament to deliver its opinion on the proposal by 17 December 2009.
3. DK, IE, FR, MT, NL, PL, SE and UK entered parliamentary scrutiny reservations on the proposal and UK also has a general scrutiny reservation on the text.
4. The Working Party on Cooperation in Criminal Matters discussed the proposal during its meetings in July and September 2009.

5. During the discussions of the proposal some delegations expressed concerns regarding the scope of the provision on competence (Article 5) in relation to the criteria for requesting transfer of proceedings (Article 7) and the grounds for refusal (Article 12). A few delegations called for a deletion of Article 5. However, a great majority of delegations were in favour of keeping the provision. In an attempt to find an acceptable compromise the Presidency proposed to amend the wording of Article 5 in conjunction with a division of Article 7 into two paragraphs, with a more limited list of criteria for requesting transfer in cases where the competence is based exclusively on Article 5. The amendments were an attempt to limit the obligation for Member States, to provide for an extension of jurisdiction, only to those cases where a transfer of proceedings would be likely to take place in practice, thus, without limiting the added value of the provision. The amendments in Articles 5 and 7 were combined with a restructure of Articles 11 and 12, dealing with the grounds for non-acceptance of transfer.

6. The Working Party discussed the Presidency proposal for amendments in Articles 5, 7, 11 and 12, on the basis of 13504/09 COPEN 173 + COR 1, as well as a DE compromise proposal in relation to Article 5 during its meeting on 28-29 September. Some Member States supported the DE proposal, which entailed a limitation of the scope of Article 5. According to the DE proposal Member States would have to extend their jurisdiction only in relation to offences where jurisdiction is based on the principle of territoriality, the active personality principle and the passive personality principle. However, a majority of delegations opposed the DE proposal, questioning the added value of such a limitation, particularly in relation to the 1972 Council of Europe Convention on the Transfer of Proceedings in Criminal Matters. NL proposed to adopt a two tier approach, making it possible for those Member States which have acceded the Council of Europe Convention to cooperate on the basis of the original wording of Article 5 in the Framework Decision, while other Member States could adopt a more basic level of cooperation, based on the DE proposal. The NL proposal did not gain support in the Working Party where a general opposition to a two tier approach to cooperation in the EU was voiced.

7. The structure of dividing Article 7 into two paragraphs, with different lists depending on whether the receiving Member State has original jurisdiction or whether jurisdiction is created in accordance with Article 5, was generally accepted by the Working Party. However, some Member States questioned the cross references between Articles 5 and 7. The Presidency, determined not to dilute the added value of Article 5 while at the same time not creating problems of cross references, proposes a new wording of the provision, moving the list of circumstances in which jurisdiction could be created from the previous Article 7.2 to Article 5. The list of circumstances should be seen as a minimum requirement. The Presidency also proposes to reinsert paragraph 2 of Article 5.
8. A majority of delegations supported the revised structure of Articles 11 and 12. The Presidency therefore proposes to keep the new structure with some smaller amendments as regards the wording.
9. During its meeting on 28–29 September the Working Party also concluded a third examination of Articles 3, 4, 10, 10bis, 13, 14, 15, 18 and 19. The Article 36 Committee examined these Articles at its meeting on 6-7 October 2009 on the basis of 13878/09 COPEN 186.
10. The amended text is set out in the Annex to this note. The text of the above Articles is reproduced in the Annex to this note as it was presented to the Article 36 Committee. Specific observations made by the delegations are reflected in the footnotes to the relevant Articles.

DRAFT COUNCIL FRAMEWORK DECISION 2009/.../JHA**of****on the transfer of proceedings in criminal matters**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(1)(a) and Article 34(2)(b) thereof,

Having regard to the initiative of ...,

Having regard to the opinion of the European Parliament¹,

Whereas:

- (1) The European 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 Union² 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) Eurojust was created to stimulate and improve the coordination of investigations and prosecutions between competent authorities of the Member States.

¹ Opinion of ...

² OJ C 53, 3.3.2005, p. 1.

- (4) The Council Framework Decision on prevention and settlement of conflicts of jurisdiction in criminal proceedings¹ addresses the adverse consequences of several Member States having criminal jurisdiction to conduct criminal proceedings ("proceedings") in respect of the same facts relating to the same person. That Framework Decision establishes a procedure for exchange of information and direct consultations, aimed at preventing infringements of the *ne bis in idem* principle.
- (5) Further development of judicial cooperation between Member States is needed to increase the efficiency of investigations and prosecutions. Common rules between the Member States regarding the transfer of proceedings are essential in order to address cross-border crimes. Such common rules help to prevent infringements of the *ne bis in idem* principle and support the work of Eurojust. Furthermore, in an area of freedom, security and justice there should be a common legal framework for the transfer of proceedings between Member States.
- (6) Thirteen Member States have ratified and applied the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972. The other Member States have not ratified that Convention. Some of them have relied, for the purpose of enabling other Member States to bring proceedings, on the mechanism of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, in conjunction with the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union² of 29 May 2000. Others have used bilateral agreements or informal cooperation.
- (7) An agreement between the Member States of the European Communities on the transfer of proceedings in criminal matters was signed in 1990. That agreement has, however, not entered into force due to a lack of ratifications.
- (8) Consequently, no uniform procedure has been applied to cooperation between Member States regarding transfer of proceedings.

¹ 8535/09.

² OJ C 197, 12.7.2000, p. 3.

- (9) This Framework Decision should establish a common legal framework for the transfer of criminal proceedings between the Member States. The measures provided for in the Framework Decision should be aimed at extending cooperation between competent authorities of the Member States with an instrument which increases efficiency in criminal proceedings and improves the proper administration of justice, by establishing common rules regulating the conditions under which criminal proceedings initiated in one Member State may be transferred to another Member State.
- (9bis) For the purpose of applying this Framework Decision, criminal proceedings should be understood in accordance with Member States' national laws, which implies that a transfer may take place at various stages of proceedings, pre-trial as well as trial stage.
- (10) Member States should designate the competent authorities in a way that promotes the principle of direct contacts between those authorities.
- (11) For the purpose of applying this Framework Decision, a Member State could acquire competence where that competence is conferred upon the Member State by another Member State
- (12) Several Council Framework Decisions 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 Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties¹, 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 Union² and 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 sanctions³. This Framework Decision should supplement the provisions of those Framework Decisions and should not be interpreted as precluding their application.

¹ OJ L 76, 22.3.2005, p. 16.

² OJ L 327, 5.12.2008, p. 27.

³ OJ L 337, 16.12.2008, p. 102.

- (13) The legitimate interests of suspected or accused persons, as well as those of (...) victims should be taken into account in applying this Framework Decision. Nothing in this Framework Decision should, however, be interpreted as undermining the prerogative of the competent judicial authorities to determine whether proceedings will be transferred.
- (13a)¹ The obligation to inform the suspected or accused person of the intended transfer, provided for in this Framework Decision, should not be interpreted as an obligation to provide information (...) where it would prejudice (...) criminal proceedings against that person (...)
- (13bis)² The rights of victims, referred to in Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, should be taken into account in applying this Framework Decision.
- (13ter) This Framework Decision should not be interpreted as preventing Member States from granting victims more extensive rights under national law.
- (14)³ Nothing in this Framework Decision should be interpreted as affecting any right of individuals to argue that they should be prosecuted in their own or in another jurisdiction if such a right exists under national law.
- (15) The competent authorities should be encouraged to consult each other before a transfer of proceedings is requested and whenever it is felt appropriate to facilitate the smooth and efficient application of this Framework Decision.
- (16) When proceedings have been transferred in accordance with this Framework Decision, the receiving authority should apply its national law and procedures.
- (17) This Framework Decision does not constitute a legal basis for arresting persons with a view to their physical transfer to another Member State so that the latter can bring proceedings against the person.

¹ Recital to address CZ concerns. See footnote to Article 8.

² NL has a scrutiny reservation.

³ UK suggested to move this recital to Article 8.

- (17bis) This Framework Decision respects the principle of subsidiarity provided for by Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community in so far as it aims to approximate the laws and regulations of the Member States, which cannot be done adequately by the Member States acting unilaterally and requires concerted action in the European Union. In accordance with the principle of proportionality, as set out in Article 5 of the Treaty establishing the European Community, this Framework Decision does not go beyond what is necessary in order to achieve that objective.
- (18) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. Nothing in this Framework Decision should be interpreted as prohibiting a refusal to cooperate when there are objective reasons to believe that proceedings have been initiated for the purpose of punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced on any one of those grounds,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Objective and scope

The purpose of this Framework Decision is to increase efficiency in criminal proceedings and to improve the proper administration of justice, including the legitimate interests of victims and suspected or accused persons, within the area of freedom, security and justice by establishing common rules facilitating the transfer of criminal proceedings between competent authorities of the Member States .

Article 2

Fundamental rights

This Framework Decision shall not have the effect of modifying the obligations to respect the fundamental rights and principles recognised by Article 6 of the Treaty on European Union.

Article 3¹

Definitions

For the purposes of this Framework Decision:

- (a) "offence" shall mean an act constituting an offence pursuant to national criminal law;
- (b) "transferring authority" shall mean an authority which is competent to request transfer of proceedings and to take all other measures provided for under this Framework Decision;

¹ FI proposed the following additional definitions in Article 3: "Transferring state" means the Member State issuing the request for transfer ; "Receiving state" means the Member State to which the request for transfer is issued.

- (c) "receiving authority" shall mean an authority which is competent to receive a request for transfer of proceedings and determine whether it will be accepted, as well as to take any other measure provided for under this Framework Decision.

Article 4

Designation of transferring and receiving authorities

1. Each Member State shall designate which judicial authorities, under its national law, are competent to act as transferring authority and receiving authority pursuant to this Framework Decision.
- 2¹. Member States may designate non-judicial authorities (...) as transferring and receiving authorities, provided that such authorities under their national law and procedures have competence for taking equivalent decisions in domestic criminal proceedings.
3. Each Member State may, if necessary due to the organisation of its internal system, designate one or more central authorities to assist the transferring or receiving authorities with the administrative transmission and reception of the requests.
4. Each Member State shall inform the General Secretariat of the Council of the designated authorities in accordance with paragraphs 1-3. The General Secretariat of the Council shall make the information received available to all Member States and the Commission.

¹ A majority of MS supported the current wording of this paragraph. FR proposed the following wording for this paragraph: "*Member States may designate non-judicial authorities to act as transferring and receiving authorities for taking decisions under this Framework decision, provided that such authorities under their national law and procedures have competence to initiate criminal prosecution.*" ES/BE supported this proposal, while IE/MT/UK strongly opposed it.

Article 5¹
(...) Jurisdiction²

- 1 ³For the purpose of applying this Framework Decision, any Member State shall (...) ensure that it has jurisdiction to prosecute, under its national law, any offence to which (...) the law of the (...) Member State of [the transferring authority]⁴ is applicable (...) , if the act constitutes an offence where it was committed and at least in the following situations:⁵
- (a) most of the effects of the offence or a substantial part of the damage caused by the offence was sustained in the territory of the other Member State;
- (b) the suspected or accused person is a national of or ordinarily resident in the other Member State;
- (c) there are ongoing proceedings against the suspected or accused person in the other Member State;
- (d) there are ongoing proceedings in respect of the same or related facts involving other persons, in particular in respect of the same criminal organisation, in the other Member State;
- (e) the victim is a national of or ordinarily resident in the other Member State or a transfer of proceedings would serve other significant interests of the victim.

1 AT/CY/FI entered scrutiny reservations. PL/DE wants a deletion of the Article. DE/FI/IE considers the scope of the provision to be too wide. IE questioned the legal basis of the provision.

2 Following observations by IT the wording has been changed from “competence” to “*jurisdiction*” throughout the Framework Decision.

3 FR proposed to modify the wording of this paragraph as follows: “*Member States shall ensure that their competent authorities have jurisdiction to prosecute under their national law any offence for which the proceedings have been transferred in accordance with this Framework Decision.*” The Presidency suggests modifying the wording along the lines of a proposal from DE.

4 DE proposed to limit the scope of applicable criminal law to the Member State requesting transfer.

5 DE suggested to insert in this paragraph criteria (a), (b) and (e) from Article 7.2, which the Presidency supports. However, all of the criteria in Article 7.2 should be moved. The list of criteria should be seen as a minimum requirement.

2. The jurisdiction established by a Member State exclusively by virtue of paragraph 1 may be exercised only pursuant to a request for transfer of proceedings.¹

Article 6

Waiver of proceedings

Any Member State having (...) jurisdiction under its national law to prosecute an offence may, for the purposes of applying this Framework Decision, waive, [suspend] or (...) discontinue² proceedings against a suspected or accused person³, in order to allow for the transfer of proceedings in respect of that offence to another Member State.

CHAPTER 2

TRANSFER OF PROCEEDINGS

*Article 7*⁴

*Conditions for requesting transfer of proceedings*⁵

When a person is suspected or accused of having committed an offence under the law of a Member State, the transferring authority of that Member State may request the receiving authority in another

¹ Following a proposal from DE the Presidency proposes to reinsert the text of paragraph 2. Contrary to the proposal by BE/DE/FI/RO to change the timing for when jurisdiction may be exercised to “*the acceptance of the transfer of proceedings*”, the Presidency proposes to keep the reference to “*the request*”. The Presidency is of the opinion that a change in timing may give rise to a gap in competence for the receiving authority, in between receiving the request and taking the decision to accept transfer, which might prove problematic in relation to potential provisional measures.

² AT and NL questioned the wording of “*waive or desist*”, which derives from Article 3 of the 1972 Convention. AT suggested to align the wording with Article 16.1 of this Framework Decision, “*suspend or discontinue*”. “*Suspend*” or “*discontinue*” deal with situations where proceedings are already under way in the transferring Member State. “*Discontinue*” can replace “*desist*” since the words are synonymous. However, waiving proceedings means that the transferring authority can refrain from initiating proceedings, if a transfer is instituted at an earlier stage.

³ AT suggested to add wording along the lines :“*The decision to waive or desist from proceedings against a suspected or accused person shall be provisional pending the final decision being made in the receiving Member State*”.

⁴ Scrutiny reservation entered by CZ/DE/IT/LV/SK.

⁵ Following observations by delegations on the cross references between Articles 5 and 7 the Presidency proposes to move the list of criteria in paragraph 2 to Article 5.1.

Member State (...) to take over the proceedings if that would improve the efficient and proper administration of justice, in particular¹ in one or more of the following situations:

- (a)² the offence has been committed wholly or partly in the territory of the other Member State, or most of the effects or a substantial part of the damage caused by the offence was sustained in the territory of the other Member State;
- (b) the suspected or accused person is a national living in³ or is ordinarily resident in the other Member State;
- (c)⁴ substantial parts of the most important evidence are located in the other Member State;
- (d)⁵ there are ongoing proceedings against the suspected person in the other Member State;
- (e) there are ongoing proceedings in respect of the same or related facts involving other persons, in particular in respect of the same criminal organisation, in the other Member State;
- (f)⁶ the suspected or accused person is serving or is to serve⁷ a sentence involving deprivation of liberty in the other Member State;

¹ DE considered "such as" a better wording than "in particular" to emphasize that the list is illustrative. NL opposed it.

² NL suggested to add the following recital in relation to this paragraph: "*The receiving authority can, where the acts/offences underlying a request for transfer have been committed wholly or partly in the territory of the receiving Member State or have substantial effects of caused damage on the territory of that State, take into account its policy and practice prosecuting similar offences, when assessing whether the proper and efficient administration of justice is served by the transfer.*"

³ Nationality as a criterion for transfer was added on suggestion from DE, which was supported by AT. NL, which opposed the reference being made to nationality, suggested to further qualify the criteria by adding "living in... the other Member State" and was supported by EE and EL.

⁴ PL, supported by FI, IT, NL and RO, considered that this point should be deleted as its objectives could be better fulfilled by other instruments on mutual recognition and MLA. NL proposed the following recital to address this: "*The transferring authority should take into account possibilities to obtain evidence from other Member States via mutual assistance, before considering transfer of proceedings on the ground that most important evidence is located in the other Member State.*" PL and RO supported the proposal. FR and LV wanted to keep the paragraph.

⁵ FI and IT suggested deletion of this paragraph.

⁶ HU suggested deletion of this paragraph.

⁷ SK proposed to add the wording: "is to serve *on the grounds of a final decision*", to clarify that the sentence must have been pronounced, but FR opposed. EE proposed to add a recital to the same effect.

- (g) [deleted]
- (h) the victim is a national (...) ¹ living in or is ordinarily resident in the other Member State or a transfer of proceedings would serve other significant interests of the victim².
2. [deleted]

Article 8

Informing the suspected or accused person

Before a request for transfer is made, the transferring authority shall, where appropriate and in accordance with procedures in national law, inform the suspected or accused person of the offence of the intended transfer.³ If that person presents an opinion on the transfer, the transferring authority shall inform the receiving authority thereof.

Article 9

The rights of the victim⁴

Before a request for transfer is made, the transferring authority shall, if possible and in accordance with procedures in national law inform the victim of the offence of the intended transfer. If that person presents an opinion on the transfer, the transferring authority shall inform the receiving authority thereof.

¹ NL proposal. See footnote to paragraph (b).

² AT/FI/HU/SK wanted a deletion of "other significant interests of the victim". HU and EL proposed to clarify the concept further in a recital.

³ CZ/DE entered a scrutiny reservation DE, supported by EE, suggested to reinforce the obligation to inform, making it mandatory insofar as it does not interfere with the ongoing investigation. CZ suggested to either just add the following text at the end of this paragraph: "*in so far as rendering of such information does not interfere with ongoing criminal proceedings.*" or adding the same text and at the same time deleting "where appropriate" in the first line of this paragraph. PL/SK supported the proposal but DE/NL/PT and UK opposed it. Following the suggestion made by IT the Presidency proposes to incorporate the CZ proposal into Recital 13(bis?).

⁴ CZ preferred the previous wording of this provision which made a more generic reference to the rights of victims. EL argued the need for a more explicit wording. BE/EL/NL regretted that the Framework Decision didn't provide for more extensive rights for victims. The presidency proposes a new recital (13ter).

Article 10¹

Procedure for requesting transfer of proceedings²

1. Before the transferring authority makes a request for transfer of proceedings in accordance with Article 7, it may³ inform and consult with the receiving authority, in particular as regards whether the receiving authority is likely to invoke one of the grounds for refusal referred to in Article 12.
2. A request for transfer shall be made in writing, using the standard form set out in the Annex, and shall be accompanied by any relevant information. The request shall be forwarded by the transferring authority directly to the receiving authority by any means that leave a written record under conditions that allow the receiving authority to establish its authenticity. All other official communications shall also be made directly between those authorities.
3. Where and whenever it is felt appropriate the receiving authority may request any additional information it deems necessary for deciding on the request. The transferring authority shall comply with the request without undue delay.
4. When the receiving authority has accepted the transfer of proceedings the transferring authority shall without delay forward the original or a certified copy of the criminal file, relevant parts thereof or equivalent documentation, and any other relevant documents.
5. [deleted]
6. [deleted]
7. If the receiving authority is not known to the transferring authority, the latter shall make all necessary inquiries, including through the contact points of the European Judicial Network, in order to obtain the contact details of the receiving authority.

¹ Scrutiny reservation on the entire article entered by CZ in relation to the discussions on Article 19.

² RO proposed to add a paragraph making it possible for the receiving authority to ask for additional documentation after a transfer of proceedings has been accepted. Such requests could, however, be argued to fall outside the scope of the Framework Decision. The Presidency is of the opinion that there is no need for such a provision, since it can be dealt with through mutual legal assistance.

³ COM, UK, BE, LU prefer mandatory consultation. NL suggested insertion of “where appropriate”.

8. If the authority which receives the request is not the competent authority under Article 4, it shall transmit the request *ex officio* to the competent authority and shall without delay inform the transferring authority accordingly.

Article 10bis

Information to be given by the transferring authority

The transferring authority shall inform the receiving authority of any procedural acts or measures with a bearing on the proceedings that have been undertaken in the Member State of the transferring authority after the transmission of the request. This communication shall be accompanied by all relevant documents.

Article 10ter¹

Withdrawal of the request

The transferring authority may withdraw the request for transfer at any time prior to the receiving authority's decision under Article 13(1) to accept transfer.

Article 11

(...) Transfer [impediments]²

1. A request for transfer of proceedings shall not be accepted if the act³ underlying the request for transfer does not constitute an offence under the law of the Member State of the receiving authority.

¹ Scrutiny reservation entered by CZ/DE. CZ would like to supplement the wording of this provision along the lines of Article 12 of the 1972 Convention, which concerns withdrawal of an acceptance of transfer. NL and PT supported the proposal. In room document DS 533/09 HU proposed a consultation mechanism in Article 16(2) and 16(3) to address situations where the receiving authority decides to discontinue proceedings after having accepted transfer.

² A majority of delegations supported the current structure of Articles 11 and 12. However, RO suggested to merge paragraphs 1 and 2 of Article 11. CY opposed. NL wanted to change the headline of Article 11 to better reflect the content and was supported by a number of delegations.

³ IT was of the opinion that it is inconsistent to use different wording in paragraph 1 and 2 when it comes to "acts underlying the request" and "facts underlying the request".

- 2¹. In addition, a request for transfer of proceedings shall not be accepted if criminal proceedings, under the national law of that Member State, cannot be brought against the suspected or accused person in relation to the facts underlying the request, in particular²:
- (a) if taking proceedings would lead to the infringement of the *ne bis in idem* principle;
 - (b) if the suspect cannot be held criminally liable for the offence due to his or her age;
 - (c) if there is an immunity or privilege under the law of that Member State which makes it impossible to take action;
 - (d) if the criminal prosecution is statute-barred in accordance with the law of that Member State; or
 - (e) if the offence is covered by amnesty in accordance with the law of that Member State.

Article 12³
Grounds for refusal

1. [deleted]
- 1 bis. The receiving authority may, if a transfer is not considered to improve the efficient and proper administration of justice in accordance with Article 7, after consultations with the transferring authority⁴, refuse transfer.
2. [deleted]

¹ NL proposed to change the heading as follows: “*A transfer shall not take place if: ...*”. BE objected and noted that the provision should be directed at the receiving authority and not the transferring authority.

² A majority of delegations considered that the list of conditions set out in paragraph 2 should be an open list. BE/EE/FR/ES/NL/SI wanted to go back to a closed list. As a compromise, FR proposed to add a paragraph to a closed list, making it possible to refuse transfer if the facts underlying the request, in a national case, would not have been prosecuted.

³ Scrutiny reservation entered by AT, DE and PT.

⁴ Wording proposed by UK, to further specify the consultation mechanism. SK suggested reinsertion of paragraph 3. DE suggested deletion of the reference to consultations. BE/EE wanted to keep it. BE argued that there should be consensus between the transferring and receiving authorities. BU/CZ/NL were of the opinion that the consultations should be facultative.

3. [deleted]

Article 13

Decision of the receiving authority

1. When a request for transfer of proceedings has been received, the receiving authority shall within the deadline¹ indicated by the transferring authority, or, if no deadline has been indicated, without undue delay determine whether a transfer of proceedings will be accepted and shall take all necessary measures to comply with the request under its national law. When the transferring authority indicates a deadline it shall provide the reasons for the deadline².
- 1bis. If the receiving authority cannot take a decision within the deadline set by the transferring authority, it shall promptly inform the transferring authority of the reasons thereof and indicate the deadline within which it shall take the decision.
2. The receiving authority shall without delay inform the transferring authority, by any means that leave a written record, of its decision. If the receiving authority decides not to accept transfer, in accordance with Article 11, or to refuse transfer, in accordance with Article 12, it shall inform the transferring authority of the reasons for its decision.

Article 14

Consultations between the transferring and receiving authorities

Without prejudice to Articles 10(1) and 12(1bis) the transferring and receiving authorities may, where and whenever it is felt appropriate, consult each other with a view to facilitating the smooth and efficient application of this Framework Decision.

¹ A majority of delegations and the COM supported the current wording, which derives from the "FD on conflicts of jurisdiction". CZ suggested to insert the following wording: "the transferring authority may indicate a deadline for that purpose provided that special circumstances of a particular case so require". LV/AT/SK supported this proposal. DE/NL opposed it.

² Proposal by NL supported by DE/RO/UK and Eurojust. The Form will be amended to that effect.

Article 15

Cooperation with Eurojust and the European Judicial Network

The transferring and receiving authorities may, at any stage of the procedure, request the assistance of Eurojust or the European Judicial Network¹. (...)

Article 16

Effects in the Member State of the transferring authority²

1. At the latest upon receipt of the notification of the acceptance by the receiving authority of a transfer of proceedings, the proceedings related to the facts underlying the request³ for transfer shall, in accordance with national law, be suspended or discontinued in the Member State of the transferring authority, except for any necessary investigations, in order to provide legal assistance to the receiving authority⁴, and maintaining, when necessary, the provisional measures previously adopted by the transferring authority.⁵
2. (...) If the receiving authority decides to discontinue⁶ the proceedings related to the facts underlying the request, the transferring authority may open or reopen proceedings.
3. ⁷[The transferring authority may not open or reopen proceedings when it has been informed by the receiving authority of a decision delivered at the end of the proceedings in

¹ EE suggested to modify the wording in order to enhance the role of Eurojust and EJM in the process. The delegation suggested to replace "may" by " shall, if appropriate". Some delegations opposed this proposal.

² CZ preferred wording along the lines of Article 21 of the 1972 Convention

³ NL/DE considered that the reference made to "proceedings related to the facts underlying the request" was too broad.

⁴ DE suggested to add the following wording at the end of this paragraph; "or to another Member State".

⁵ Proposal made by ES in order to enable the Member State of the transferring authority to uphold any provisional detention in view of securing a "transfer" of the suspected or accused person in accordance with, e.g., the Framework Decision on the EAW. This addition could also allow for ensuring that objects seized in the Member State of the transferring authority are secured pending trial. The Presidency suggests to add to the form an obligation for the transferring authority to inform the receiving authority of any provisional measures taken. Furthermore, the Presidency suggests to add a recital, stating the applicability of other Framework Decisions when it comes to provisional measures taken in connection with a transfer of proceedings.

⁶ AT suggested to add reference to the proceedings being "suspended". However, the purpose of this provision is to address the situations where the case is finally disposed of in the Member State of the receiving authority.

⁷ AT suggested making a cross reference between paragraphs 3 and 2.

the Member State of the receiving authority, if opening or reopening proceedings (...) would constitute an infringement of the principle of "ne bis in idem"]¹.

- 4². This Framework Decision is without prejudice to the right of victims to initiate criminal proceedings against the offender, when so provided for by national law.

Article 17

Effects in the Member State of the receiving authority

1. The proceedings transferred shall be governed by the law of the Member State (...) of the receiving authority.
- 2³. Where compatible with the law of the Member State of the receiving authority, any act for the purpose of proceedings or preparatory inquiries performed in the Member State of the transferring authority or any act interrupting or suspending the period of limitation⁴ shall have the same validity in the other Member State as if it had been validly performed in or by the authorities of that Member State⁵.
- 3⁶. [deleted]

¹ Following observations made by delegations, the Presidency suggests to replace the text of this paragraph with a recital referring to Article 54 of the Schengen Convention to avoid having a text in this instrument which might contradict the principle of "ne bis in idem" as established on the basis of that Convention.

² In the Form set out in the Annex I an additional point will be made in the box regarding details about the victim. The transferring authority should indicate whether the victim has been informed about the transfer and whether the law in the Member State of the transferring authority allows the victim to initiate criminal proceedings. A number of Member States supported this proposal only BE entered scrutiny reservation on this proposal.

³ Scrutiny reservation entered by DE/CY/PT/IT.

⁴ DE considered that this provision might be inconsistent with article 12.1 and in contradiction with the prohibition of retroactive criminal law.

⁵ ES suggested the following wording of this paragraph; "*Any act for the purpose of proceedings or preparatory inquiries performed in the Member State of the transferring authority or any act interrupting or suspending the period of limitation shall have the same validity in the other Member State as if it had been validly performed in or by the authorities of that Member State, provided that those acts were not incompatible with fundamental legal principles of the Member State of the receiving authority.*" This suggestion was supported by BE and EL but was opposed by DE and PT.

⁶ The paragraph was deleted on the request of several Member States. NL suggested that the wording of this paragraph should actually be changed in order to cover situations before the request is accepted.

4. If proceedings are dependent on a complaint in both Member States, the complaint brought in the Member State of the transferring authority shall also have validity in the member State to which the proceedings have been transferred.
- 5¹. Where only the law of the Member State of the receiving authority requires that a complaint be lodged or another means of initiating proceedings be employed, those formalities shall be carried out within the time limits laid down by the law of that Member State. The other Member State shall be informed thereof. The time limit shall start to run on the date on which the receiving authority decides to accept a transfer of proceedings².
- 6.³ In the Member State of the receiving authority the sanction applicable to the offence shall be that prescribed by its own law unless that law provides otherwise. Where the jurisdiction is exclusively based on Article 5, the sanction pronounced in the Member State to which the proceedings have been transferred shall not be more severe than that provided for in the law of the Member State of the transferring authority.

Article 18

Information to be given by the receiving authority

The receiving authority shall inform the transferring authority in writing of the discontinuation of proceedings or of any decision delivered at the end of the proceedings, including whether that decision presents an obstacle to further proceedings under the law of the Member State of the receiving authority, or of other information of substantial value. Where possible, it shall forward a copy of the written decision.

¹ DE considers that this provision may give rise to the situation where the time limit for initiating the proceedings which have lapsed in the transferring state may be started again in the receiving MS by the sole fact of transfer of proceedings. However, it could be considered that once the time limits have lapsed in the transferring state, there will be no proceedings in the transferring state which could be subject to transfer under this framework decision.

² RO proposed that the time limits for lodging of a complaint should start running from the date when the victim is informed about the formalities of lodging the complaint in the receiving MS.

³ Scrutiny reservation entered by: CY/DE/EE/EL/IT/PT. DE and NL suggested the deletion of this provision.

Article 19¹

Languages

1. The form set out in the Annex and any other written information accompanying the request shall be translated into the official language or one of the official languages of the Member State to which they are forwarded, including any additional information forwarded to the receiving authority in accordance with Article 10.3 and 10.4².
2. Any Member State may, upon the adoption of this Framework Decision or later, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation into one or more other official languages of the institutions of the European Union. The General Secretariat shall make that information available to the other Member States and the Commission.

Article 20³

Costs

Costs resulting from the application of this Framework Decision shall be borne by the Member State of the receiving authority, except for costs arising exclusively in the territory of the other Member State.

¹ Scrutiny reservations by DE/PT.

² A majority of MS supported the current wording of this Article. FR, supported by ES/AT suggested to delete the reference to Article 10.4 and add the following text: "*When the receiving authority has decided to accept a transfer, it may request the translation of the criminal file and of all other relevant documents into one of its official languages.*" NL/CZ/SK strongly opposed this proposal.

³ DE and NL have scrutiny reservations on this article. The current wording has been used in previous Framework Decisions. However, the Presidency is of the opinion that "Costs resulting from the *application* of this Framework Decision" in this Framework Decision could be understood as costs resulting from *the procedure of transferring* proceedings, e.g. translations, since costs resulting from the actual proceedings in the receiving Member State fall outside the scope of the Framework Decision, namely after a transfer has been successfully effected. Such an understanding of the provision makes it possible for the transferring authority to reclaim from the receiving authority costs of e.g. translations. Thus, the Presidency proposed the following alternative wording: "*Member States may not claim from each other the refund of costs resulting from application of this Framework Decision.*", which was supported by DE but opposed by NL and UK.

CHAPTER 4

FINAL PROVISIONS

Article 21

Relationship with other agreements and arrangements

1. In relations between Member States that are bound by the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972, the provisions of this Framework Decision shall apply instead of the corresponding provisions of that Convention from the date referred to in Article 22(1).
2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force, in so far as they allow the objectives of this Framework Decision to be extended or help to further simplify or facilitate the transfer of proceedings.
3. Member States may conclude bilateral or multilateral agreements or arrangements after the entry into force of this Framework Decision in so far as such agreements or arrangements allow the provisions of this Framework Decision to be extended and help to simplify or facilitate further the transfer of proceedings.
4. Member States shall notify the Council and the Commission by [...] of the agreements and arrangements referred to in paragraph 2 which they wish to continue applying. Member States shall also notify the Council and the Commission of any agreement or arrangement referred to in paragraph 3, within three months of signing it.

Article 22

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by [...].
2. Member States shall transmit to the General Secretariat of the Council and the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

Article 22bis

Review

1. By XXXX, the Commission shall draw up a report on the basis of the information received from the Member States under Article 22(2).
2. On the basis of this report, the Council shall assess:
 - (a) the extent to which the Member States have taken necessary measures in order to comply with this Framework Decision; and
 - (b) the application of this Framework Decision.

Article 23

Entry into force

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at,

For the Council

The President

ANNEX

FORM FOR TRANSFER OF CRIMINAL PROCEEDINGS
(referred to in Article 10 of Framework Decision 2009/.../JHA)

This form is used as:

a means to inform and consult regarding a possible transfer of proceedings

a request for transfer of proceedings

Member State of the transferring authority:

Member State of the receiving authority:

Transferring authority (or other authority referred to in Article 4) – contact details:

Name:

Address:

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

Fax no.: (country code) (area/city code)

Details of the person(s) to be contacted

Name:

Position (title/grade):

File reference:

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

Fax no.: (country code) (area/city code)

E-mail (if any):

The receiving authority which has been consulted:

Name:

Address:

No consultation has been made.

Details of the person(s) contacted, if the receiving authority has been consulted:

Name:

Position (title/grade):

File reference (if known):

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

Fax no.: (country code) (area/city code)

E-mail (if any):

Details of the suspected person(s):

Name:

Nationality:

Date of birth:

Place of birth:

Identity number or social security number (if any):

Address:

Language(s) understood (if known):

The suspected person has been informed about the intended transfer.

The suspected person has presented an opinion on the intended transfer. The opinion of the suspected person:

Description of facts of the alleged offence(s) (including where, when and how it was committed):

Nature and legal classification of the alleged offence(s):

The criminal file or its certified copy is enclosed.

Relevant parts of the criminal file or their certified copies are enclosed.

A copy of the relevant legislation is enclosed.

A copy of the relevant legislation is not enclosed. A statement of applicable legislation:

Criteria for requesting transfer of proceedings:

the offence has been committed wholly or partly in the territory of the Member State of the receiving authority;

most of the effects or substantial part of the damage caused by the offence was sustained in the territory of the Member State of the receiving authority;

the suspected person is ordinarily resident in the Member State of the receiving authority;

substantial parts of the most important evidence are located in the Member State of the receiving authority;

there are ongoing proceedings against the suspected person in the Member State of the receiving authority;

there are ongoing proceedings in respect of the same or related facts involving other persons, in particular in respect of the same criminal organisation, in the Member State of the receiving authority;

the suspected person is serving or is to serve a sentence involving deprivation of liberty in the Member State of the receiving authority;

enforcement of the sentence in the Member State of the receiving authority is likely to improve the prospects for social rehabilitation of the person sentenced;

there are other reasons for a more appropriate enforcement of the sentence in the Member State of the receiving authority.

Please indicate the reasons:

the victim is ordinarily resident in the Member State of the receiving authority;

the victim has another significant interest in having the proceedings transferred.

Please indicate the reason:

Stage of the proceedings that has been reached, including any procedural acts taken in the Member State of the transferring authority:

Information about evidence collected so far:

Details of the victim(s) (if applicable):

Name:

Nationality:

Date of birth:

Place of birth:

Identity number or social security number (if any):

Address:

Language(s) understood (if known):

Other details of interest:

The victim has been informed about the intended transfer.

Additional information:

Other relevant documents have been enclosed, namely:

Signature, date and official stamp: