



**COUNCIL OF
THE EUROPEAN UNION**

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16437/09

COPEN 231

NOTE

from : Presidency

to : COREPER/Council

No. prev. doc. : 15895/09 COPEN 226

Subject : **Draft [...] on Transfer of proceedings in criminal matters**

I. INTRODUCTION

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. In the course of discussions, eight Member States entered parliamentary scrutiny reservations on the proposal for a Framework Decision. Two Member States have also entered general scrutiny reservations and one delegation entered a linguistic reservation on the text of a Framework Decision.

3. The Working Party on Cooperation in Criminal Matters has discussed the proposal during its meetings in July through November 2009. During that period, four readings of the text were completed.
4. On 23 October 2009 the JHA Council confirmed support for the proposal to set up a common legal framework for the transfer of criminal proceedings between Member States, in order to increase efficiency in criminal proceedings and improve the proper administration of justice in an area of freedom, security and justice.
5. Furthermore, the provisions on the overall procedure for transferring proceedings were subject to a preliminary agreement confirmed by the JHA Council, on the basis of 14308/1/09 REV 1 COPEN 194, on the understanding that further discussions may show that there is a need to revisit the provisions. The remaining provisions were subsequently scrutinised.
6. The Presidency intention is to pursue the debate on the text in order to strive for political guidance from Coreper/Council on the substance of an Instrument on transfer of proceedings in criminal matters which would be tabled under the Lisbon Treaty.
7. Coreper is invited to give guidance on the questions set out below and to submit them to Council for political guidance.
8. The text which is set out in Annex II to this note is the outcome of the discussions held so far in the Council preparatory bodies. Specific observations made by the delegations are reflected in the footnotes to the relevant Articles and recitals.

II. ISSUES REFERRED TO COREPER/COUNCIL

9. In the view of the Presidency and of a large number of delegations, a mechanism creating subsidiary jurisdiction (meaning that if a Member State does not have original jurisdiction the jurisdiction is created through the actual transfer), for the purpose of transfer of proceedings, creates an added value to the mechanisms already provided for by the draft Framework Decision. The draft Framework Decision therefore has included in **Article 5** a mechanism establishing subsidiary jurisdiction (see Annex). However, it is apparent from the discussions of the proposal that the issue is complex.
10. Following the observations made by delegations on the various drafts of the proposal, the Presidency concluded that a majority of Member States supports the creation of subsidiary jurisdiction but several Member States have difficulties with this aspect of the proposal. Different versions of the provision have been proposed, including possible opt in and opt out solutions, to meet concerns of Member States having fundamental difficulties with the provision. Concerns have been raised regarding such solutions.
11. Currently there are several different legal possibilities to transfer criminal proceedings within the Union. This contributes to legal uncertainty, incompatibility between legal systems and is contrary to the Treaty objective of creating an Area of justice within the Union. The Presidency is convinced that transfer of proceedings is a missing link in the cooperation between Member States and that a provision on the creation of jurisdiction would become a cornerstone in such cooperation.

12. Consequently, the Presidency is hesitant to dilute the mechanism creating jurisdiction, to make it acceptable to those Member States objecting to such a mechanism. This could mean that a lower level of cooperation than is currently adopted by thirteen Member States, i.e. those that have ratified the 1972 Council of Europe Convention on Transfer of Criminal Proceedings would be created. The Presidency would suggest, that if the European Union is determined in its objective of developing the common area of freedom, security and justice, the lowest common denominator should not be the suggested way forward.
13. Against that background, the Presidency is of the opinion that all Member States should make an effort to take a step forward to contribute to the progress of a common area. All Member States should, for the purpose of applying an instrument on transfer of proceedings, to some extent be obliged to extend their national rules on jurisdiction to include other offences committed outside the territory of their Member State. This would contribute to the fight against cross border crime. The aim should be to create a common solution for all Member States.
14. However, those Member States that have ratified the 1972 Council of Europe Convention, and thus already have accepted a wide ranging provision on creation of jurisdiction, should, in view of the Presidency, be able to continue to cooperate on the basis of that Convention.
15. The following criteria for taking jurisdiction are used in some or all of the Member States: the territory where the offence was committed, the nationality or residence of the suspected or accused person or of the victim of the offence (the active and passive personality principle) and where the offence is directed against the sovereignty or the security of the State. Furthermore, the principle of universality is used in some Member States.
16. The Presidency suggests that two main options could be envisaged in the future: one would be an alternative that would correspond to what most (but not all) Member States have in their national law today, the other would be an alternative which would seem to correspond more to the Treaty objective of creating an Area of Justice. This alternative would mean a rethinking for some Member States of criminal law within the Union:

Option A

In this option, transfer would be enabled

- when the offence or a substantial part of the damage caused by the offence was sustained in the territory of the receiving State;
- when the suspected or accused person is a national of, or ordinarily resident in, the receiving State;
- when the victim is a national of, or ordinarily resident in, the receiving State.

This option would mean that several Member States would have to change their laws, especially as regards the taking into account of the victims' interest. It would however correspond to what could be seen as modern trends of taking into account of victims' interests in criminal law.

Option B

This would imply a more far-reaching option, but it would seem to correspond more closely to what the Treaty objective is, namely to create an Area of Justice where criminal justice has no borders (or at least as few borders as possible). It also corresponds better to decisions already taken by the Council, and in particular Framework Decision 2008/675/JHA on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings. Under that Framework Decision, Member States shall ensure that previous convictions handed down against the same person for different facts in other Member States are taken into account and given equivalent legal effects as if it had been a national conviction. It would therefore seem to the Presidency that, instead of having to take the conviction into account in either the transferring State or the receiving State (whichever judgment comes first), a simpler option would be to transfer the ongoing criminal proceeding from one Member State to the other so that all the criminality of the accused person could be judged in one single criminal proceeding.

This option would therefore mean that to the Option A above would be added

- when there are ongoing proceedings against the suspected or accused person in the receiving Member State; or
- when 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 receiving Member State.

This additional alternative would be motivated by trends in modern crime, in particular in respect of terrorism and organised crime, where criminal organisations operate in several countries and across borders. The Presidency is of the opinion that this option should be the suggested way forward to make progress towards a common area of freedom, security and justice. This option is reflected by the suggested wording of Article 5 in Annex I.

17. *The Presidency therefore suggests that the Council hold an orientation debate on the following issues:*

- a) Do Ministers believe that those Member States that have ratified the 1972 Council of Europe Convention should be able to continue their cooperation on the basis of that Convention?
- b) Do Ministers believe that the Union should have a system of transfer of criminal proceedings which should not represent only a lowest common denominator?
- c) If the answer to that question is yes, which of the above options should be guiding for future work in this area within the Union?

*Article 5**(...) Jurisdiction*

- [1 For the purpose of applying this [...], a Member State shall (...) ensure that it has jurisdiction to prosecute, under its national law, any offence to which (...) the law of another (...) Member State is applicable (...) in at least the following situations:
- (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.
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.]
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DRAFT [...]
on the transfer of proceedings in criminal matters

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 Union¹ 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.
- (4) The Council Framework Decision on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings² 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.

¹ OJ C 53, 3.3.2005, p. 1.

² OJ L.....

- (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 Union¹ 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 OJ C 197, 12.7.2000, p. 3.

- (9) This [...] should establish a common legal framework for the transfer of criminal proceedings between the Member States. The measures provided for in the [...] 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 [...], criminal proceedings should be understood in accordance with Member States' national laws and procedures, which implies that a transfer may take place at various stages, 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 [...], 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 [...] should supplement the provisions of those Framework Decisions and should not be interpreted as precluding their application.
- (12bis) The transferring authority should take into account possibilities of obtaining evidence from other Member States via mutual recognition of judicial decisions and mutual legal assistance, before considering transfer of proceedings on the ground that the most important evidence is located in the other Member State.
- (12ter) When considering whether a transfer of proceedings should be requested, on the ground that a transfer would serve significant interests of the victim, the transferring authority may, in particular, take into account situations where the victim, although not residing in the other Member State, is temporarily staying there, e.g. due to the victim being moved there as a victim of a trafficking offence; or situations where the victim has objective reasons not to travel to the Member State of the transferring authority, e.g. due to the victim being part of a witness protection program.

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 [...]. Nothing in this [...] should, however, be interpreted as undermining the prerogative of the competent judicial authorities to determine whether proceedings will be transferred.
- (13a)¹ When assessing the legitimate interest of the suspected or accused person to be informed about the intended transfer, account should be taken of the risk of prejudicing criminal proceedings against that person.
- (13bis) 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 [...].
- (13ter) This [...] should not be interpreted as preventing Member States from granting victims more extensive rights under national law.
- (14) Nothing in this [...] 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 [...].

¹ Scrutiny reservation by one Member State. One delegation proposed to replace "should" by "may".

- (15bis) When considering a request for transfer the transferring authority should consult with the receiving authority in all cases where this is deemed useful. In cases where the request for transfer results from consultations carried out in accordance with the Framework Decision on Conflicts of Jurisdiction, further consultations should not be deemed necessary, unless new circumstances point to the contrary.
- (15ter) The acceptance of transfer of proceedings by the receiving authority results in the suspension or discontinuation of proceedings in the MS of the transferring authority, except for investigations or provisional measures which may be necessary to comply with requests for mutual legal assistance or to execute decisions based on mutual recognition instruments. In that case, the transferring authority may indicate a deadline for issuing such a decision or request¹. (...). If prescribed by national law, the transferring authority may however decide to (...) put an end to the provisional measures at any time.
- (16) When proceedings have been transferred in accordance with this [...], the receiving authority should apply its national law and procedures.
- 16(bis) In order to ensure the widest and effective application by all Member States of the mechanism enshrined in this [...], the receiving authority should consider, in the cases where their national law foresees the application of a custodial life sentence or life-detention order, providing upon request a guarantee that a review of the penalty or measure imposed will take place in accordance with the national system of that Member State, on request or at the latest after 20 years, or that measures of clemency to which the person is entitled to apply for under the law or practice of that Member State can be applied, aiming at a non-execution of such penalty or measure.

¹ Modification was introduced following intervention made by one delegation. This delegation maintains its reservation on Article 16 (1bis).

- (16ter) The application of the principle of "ne bis in idem", as set out in Article 54–58 of the 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, and as interpreted by the European Court of Justice, should be respected when transferring proceedings between Member States in accordance with this [...].
- (17) This [...] 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.
- (17bis) This [...] 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 [...] does not go beyond what is necessary in order to achieve that objective.
- (18) This [...] 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 [...] 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...:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Objective and scope

The purpose of this [...] 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 [...] 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 3

Definitions

For the purposes of this [...]:

- (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 [...];
- (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 [...].

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 [...].

- 2 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.

Article 5¹

Jurisdiction

[...]

Article 6

Enabling transfer of proceedings

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

¹ A number of delegations express concerns in respect of the proposed wording of this provision. Some delegations have made various drafting suggestions.

CHAPTER 2

TRANSFER OF PROCEEDINGS

Article 7¹

Conditions for requesting transfer of proceedings

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

- (a) 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 in or is ordinarily resident in the other Member State;
- (c)² substantial parts of the most important evidence are located in the other Member State;
- (d)³ there are ongoing proceedings against the suspected or accused person in the other Member State;

¹ Six delegations maintain scrutiny reservation entered on this provision.

² One delegation has a scrutiny reservation on this point due to the fact that it will not have (original) jurisdiction in these situations.

³ One delegation suggested deletion of this point. This delegation proposed to merge points d) and e) to read as follows: " there are ongoing proceedings in respect of the same or related facts against the suspected or accused person or involving other persons, in particular in respect of the same criminal organisation, 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)¹ the suspected or accused person is serving or is to serve a sentence involving deprivation of liberty in the other Member State;
 - (g) [deleted]
 - (h) the victim is a national 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 inform the suspected or accused person of the offence of the intended transfer unless there are reasonable grounds not to, in accordance with procedures in national law. If that person presents an opinion on the transfer, the transferring authority shall inform the receiving authority thereof.

Article 9

The rights of the victim

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 One delegation suggested deletion of this point.

² One delegation suggested the deletion of the reference to other significant interest of the victim.

Article 10

Procedure for requesting transfer of proceedings

1. Before the transferring authority makes a request for transfer of proceedings in accordance with Article 7, it shall, where appropriate inform and consult with the receiving authority, in particular as regards whether the receiving authority is likely to invoke the ground 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.
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 10ter

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

Impediments to transfer

1. A request for transfer of proceedings shall not be accepted if the act underlying the request for transfer does not constitute an offence under the law of the Member State of the receiving authority.
2. 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 the following cases:
 - (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;
- (e) if the offence is covered by amnesty in accordance with the law of that Member State; or
- (f) if the national law of the Member State of the receiving authority would not have permitted proceedings in an equivalent national case due to other reasons.

Article 12

Ground 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 refuse transfer.
- 2. [deleted]
- 3. Before deciding to refuse transfer, the receiving authority shall, where appropriate, consult with the transferring authority.

Article 13

Decision of the receiving authority

- 1. When a request for transfer of proceedings has been received, the receiving authority shall within the deadline 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 deadline.

- 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 [...].

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 Network.

Article 16

Effects in the Member State of the transferring authority

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 request for transfer shall, in accordance with national law, be suspended or discontinued in the Member State of the transferring authority .

- 1bis. Notwithstanding paragraph 1, the transferring authority may, if in accordance with national law :
- (a) undertake necessary investigations in order to reply to a request of mutual legal assistance or to execute a decision based on a mutual recognition instrument;
 - (b) maintain necessary investigations and provisional measures previously adopted that are necessary in order to execute a decision based on a mutual recognition instrument or a request of mutual legal assistance when the receiving authority indicates that it will transmit such a decision or request;¹
2. If the receiving authority decides to discontinue the proceedings related to the request, the transferring authority may open or reopen proceedings.
3. [deleted].
- 4². The previous paragraphs are without prejudice to the right of victims to initiate criminal proceedings against the offender in the Member State of the transferring authority, when the national law of that Member State so provides.

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.

¹ Scrutiny reservation by one delegation as mentioned in footnote to Recital 15ter.

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.

2. 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 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.
3. [deleted]
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.
5. 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 transferring authority and, where possible, the victim of the offence, shall be informed thereof.
- 6.¹ 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.

¹ Scrutiny reservations entered by two delegations. Three delegations maintain their proposal to delete this provision. However, since this issue is linked to Article 5 it will be further examined once agreement is reached on that Article.

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.

Article 19

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 10.4.
2. Any Member State may, upon the adoption of this [...] 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 20¹

Costs

Member States may not claim from each other the refund of costs resulting directly from application of this [...].

¹ Scrutiny reservation by one delegation.

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 [...] 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 [...] 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 [...] in so far as such agreements or arrangements allow the provisions of this [...] 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 [...] by [...] ¹

¹ No period for implementation is proposed at this stage, due to the changed legal basis.

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 [...].

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 [...]; and
 - (b) the application of this [...].

Article 23

Entry into force

This [...] 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)

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: