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From: Presidency

To: Permanent Representatives Committee/Council

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Subject: Proposal for a Regulation of the European Parliament and of the Council
on the transfer of proceedings in criminal matters
- Statement by the delegation of Ireland

Delegations will find attached a statement by Ireland for the minutes of Coreper and of the Council.

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

Statement by Ireland

Ireland notified its intention to take part in the adoption and application of this proposal under Article 3.1 of Protocol 21 to the Treaty on European Union and to the Treaty on the Functioning of the European Union (TFEU) (on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice) by letter dated 13th July 2023.

This is in line with the Declaration by Ireland on Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice (Declaration C. 56), in which Ireland declares its firm intention to exercise its right under Article 3 to the maximum extent it deems possible.

Ireland wishes to recall Article 67(1) of the TFEU, which sets out that “The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.”

Ireland has demonstrated its clear desire to co-operate as regards transfers of criminal proceedings by opting in to this proposal. However, in order for Ireland to be able to operationalise the Regulation and to co-operate effectively with other EU Member States, the final text adopted must take into account common law criminal justice systems.

Ireland is of the view that this aim is achieved by the proposed General Approach contained in the Annex to document 15657/23 of 24 November 2023, which we support.

The amended definition of “requested authority” at Article 2(4) ensures that the decision on a transfer of proceedings in criminal matters is taken by a judge, a court, an investigating judge or a public prosecutor. However, it decouples this decision-making from the taking of preparatory or subsequent measures. In this way, the definition can be applied in a common law system, in which investigators, prosecutors and judges act independently in the exercise of their powers and exercise separate, distinct functions.

We wish to thank the Presidency, General Secretariat of the Council, Council Legal Service and Member States for their assistance in finding a solution that is legally sound, respects the legal basis of the Regulation, and does not negatively impact Member States with a different legal tradition.

We are strongly of the view that the amended version of Article 2(4) included in the General Approach should be retained in trilogue negotiations so as not to seriously impact Ireland's ability to ensure this Regulation is operable within its criminal justice system.
