# Judicial cooperation: transfer of proceedings in criminal matters

2023/0093(COD) - 05/04/2023 - Legislative proposal

PURPOSE: to lay down rules on the transfer of criminal proceedings between the Member States.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: Member States currently transfer criminal proceedings between themselves using a variety of legal instruments, with no uniform legal framework across the EU. The most comprehensive international legal framework on the transfer of criminal proceedings - the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972 - has only been ratified and applied by 13 Member States. The majority of the Member States therefore rely on Article 21 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, under which transfer is largely unregulated and relies on national laws.

With an increase of cross-border crime, EU criminal justice is increasingly confronted with situations where several Member States have jurisdiction to prosecute the same case. Parallel or multiple prosecutions can be inefficient and ineffective, but also possibly detrimental to the rights of the individuals concerned as a person may not be prosecuted or punished for the same offence twice.

**Common rules** on transfer criminal proceedings from one Member State to another are necessary to ensure that the best-placed Member State investigates or prosecutes a criminal offence. Such common rules will help:

- prevent unnecessary parallel proceedings concerning the same facts and the same individual in different Member States, that could result in an infringement of the fundamental principle that a person may not be prosecuted or punished for the same offence twice (ne bis in idem principle);

- avoid cases of impunity where surrender under a European Arrest Warrant is refused.

CONTENT: therefore, in the absence of a common legal framework and due to differences among Member States' national criminal justice systems, the Commission is proposing a Regulation on the transfer of criminal proceedings between Member States.

The proposal establishes rules under which a Member State may take over criminal proceedings at the request of another Member State. It should apply in **all cases of transfer of criminal proceedings** in the Union from the time where a person has been identified as a suspect. It should cover all criminal offences.

'Criminal proceedings' are understood as covering all stages of the criminal proceedings, including pre-trial and trial stage. This proposal should not apply to requests for transfer of administrative proceedings.

The proposed Regulation does not impose any obligation to request a transfer of criminal proceedings. If the requesting authority considers that transferring a criminal proceeding is necessary and appropriate, it may request the other Member State that is better placed to prosecute the criminal offence to take over those criminal proceedings. Whether a request for transfer of criminal proceedings is justified should be

carefully assessed on a case-by-case basis in order to identify the Member State that is best placed to prosecute the criminal offence in question and any request should be clearly motivated.

Under this proposal, the suspected or accused person could also request the competent authorities of the requesting of the requesting State or of the requested State to initiate a procedure for transferring criminal proceedings. Such requests do not, however, create an obligation for the requesting or the requested State to request or transfer criminal proceedings to the requested State.

The proposal also includes common rules such as:

- a list of common criteria for transfer of proceedings, as well as grounds for refusing the transfer of proceedings;

- a **time limit** for a decision on the transfer of proceedings. The requested authority should have **60 days** to decide whether to accept or refuse the transfer of criminal proceedings. If it refuses the transfer of proceedings, it must provide reasons for such refusal. However, if the transfer of proceedings is accepted, the requesting authority must transfer the case to the requested authority of another Member State;

- rules on costs for translation and on the effects of the transfer of proceedings;

- obligations with respect to the rights for the suspects and accused persons as well as legal remedies;

- rules on the use of electronic communication between the requesting and requested authorities, as well as with central authorities and with Eurojust, through a decentralised IT system.