

Regulation on the Transfer of Criminal Proceedings Published



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News

On 18 December 2024, [Regulation \(EU\) 2024/3011 of the European Parliament and of the Council on the transfer of proceedings in criminal matters](#) was published in the EU's Official Journal L 2024/3011. The Regulation lays down rules on the transfer of criminal proceedings between the EU Member States with a view to improving the efficient and proper administration of justice within the common area of freedom, security and justice. It applies in all cases of transfer of criminal proceedings conducted in Member States, including Ireland (which opted in), but except Denmark (which is not part due to its opt-out in the EU's justice and home affairs policies).

The main aim of the Regulation is that the best-placed Member State investigates and prosecutes a criminal offence, thus preventing unnecessary parallel criminal proceedings in different EU Member States. It also aims that criminal proceedings can take place if the surrender of a person for criminal prosecution is delayed or refused pursuant to the Framework Decision on the European Arrest Warrant, thus avoiding impunity.

The Regulation was proposed by the European Commission on 5 April 2023 (→[eucri](#)m 1/2023, 40) and a political agreement between the European Parliament and Council was reached in March 2024 (→[eucri](#)m 1/2024, 38-39). The legal act was finally signed on 27 November 2024. The following summarises the main elements of the Regulation.

Jurisdiction

In order to ensure that it is possible for criminal proceedings to be transferred in accordance with the Regulation, the Regulation establishes jurisdiction in specific cases so that the requested State is able to exercise jurisdiction in relation to the criminal offences to which the national law of the requesting State is applicable. Jurisdiction is, for instance, established in situations in which the execution of a European Arrest Warrant is refused, if the criminal offence produces its effects or causes damage mainly in the requested state, and when criminal proceedings against the suspect or accused person are already ongoing.

Entitlements for requests

A request for a transfer of criminal proceedings can be issued by an authority in a EU Member State in which criminal proceedings are being conducted (the requesting authority) either on its own initiative, or after consultations with an authority in a Member State which is to take over those proceedings (requested authority). A request can also be proposed by a suspect/accused person, or by a victim. The proposal can be made to the competent authorities of the requesting or the requested State. Such proposals, however, do not

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impose an obligation for the requesting authority to file a request or to consult the authority in the requested State.

Criteria for the transfer

As a general rule, the Regulation clarified that a request for the transfer of criminal proceedings may be issued only where the requesting authority considers that the objective of efficient and proper administration of justice, including proportionality, would be better served by conducting the relevant criminal proceedings in another Member State. When considering whether to request the transfer of criminal proceeding, the requesting authority needs to take into account, *inter alia*, the following criteria:

- The criminal offence has been committed on the territory of the Member State to which the proceedings are to be transferred or most of the effects of the offence or a substantial part of the damage occurred in that Member State;
- One or more suspects or accused persons are nationals of or residents in the Member State to which the proceedings are to be transferred;
- One or more suspects or accused persons are present in the requested State and that State refuses to surrender those persons for whom a European arrest warrant has been issued, if it finds that there are, in exceptional situations, substantial grounds to believe, on the basis of specific and objective evidence, that surrender would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in Art. 6 TEU and the Charter of Fundamental Rights of the EU;
- Most of the evidence relevant to the investigation or the majority of the relevant witnesses are located/reside in the requested Member State;
- There are ongoing criminal proceedings in respect of the same or other facts against the suspect or accused person in the Member State which would become responsible for the proceedings;
- The enforcement of the sentence in the requested State is likely to improve the prospects of social rehabilitation of the person sentenced or enforcement of the sentence in the requested Member State would be more appropriate due to other reasons;
- One or more victims are nationals of or residents in the requested State.

Procedure

The request for the transfer of criminal proceedings must be drawn up by the requesting authority using the standardised form annexed to the Regulation and the request must be duly substantiated. The Regulation lays down the pieces of information that the request must contain, the documents to be accompanied and the modus operandi of the transmission.

Refusal

The Regulation lays down mandatory and optional grounds for which the requested authority can refuse the transfer of criminal proceedings.

A mandatory ground is, for example, if the conduct, for which the transfer is sought, is not a criminal offence in the requested State. In addition, a request has to be refused if the taking over of criminal proceedings would be contrary to the principle of *ne bis in idem* or the suspect/accused person cannot be held criminally liable due to his/her age.

Importantly, a mandatory refusal ground also applies if the conditions for prosecuting the criminal offence in the requested State are not fulfilled. This could be the case, for example, if a complaint by the victim, which is necessary for prosecuting the criminal offence in the requested State, has not been filed in time.

Optional refusal grounds include, *inter alia*, if the suspect/accused person benefits from a privilege or immunity under the national law of the requested State, and if the requested authority believes that the transfer at issue is not justified in the interests of efficient and proper administration of justice.

Time limit

The requested authority will communicate on whether to accept or refuse the transfer of criminal proceedings without undue delay and in any case no later than 60 days after the receipt of the request for the transfer of criminal proceedings. The time limit set may be extended once by a maximum of 30 days.

Rights of the suspect/accused person and victim

The country in which the criminal investigation is taking place and which wishes to transfer the proceedings to another country must, for instance, give due consideration to the legitimate interests of the suspect or accused person as well as the victim. In addition, the suspect/accused and the victim must be informed about the intention to transfer proceedings and should be given the opportunity to provide an opinion about this transfer. They are furthermore informed during other relevant phases of the procedure.

Right to an effective legal remedy

Suspects, accused persons and victims must have the right to an effective legal remedy in the requested State against a decision to accept the transfer of criminal proceedings. The right will be exercised before a court or tribunal in the requested State. The time limit for seeking the remedy will be no longer than 15 days from the date of receipt of the reasoned decision to accept the transfer of criminal proceedings. The final decision on the legal remedy must be taken without undue delay and, where possible, within 60 days.

The recitals of the Regulation clarify that the requested authority has a broad discretion in assessing whether the transfer of criminal proceedings is in the interests of efficient and proper administration of justice and whether the request should be refused on any of the optional grounds for refusal. Thus, the judicial review should be restricted as to whether the limits of discretion have been manifestly exceeded. In addition, the legal remedy should not entail any review of the merits of the case, such as whether the evidence is sufficient to justify opening or continuing an investigation, whether the elements of the offence are established, or whether statements had been credible.

Effects of the transfer in the requesting State

The acceptance of the transfer of criminal proceedings by the requested authority should result in the suspension or discontinuation of criminal proceedings in the requesting State. The latter can, however, undertake necessary urgent investigative or other procedural measures, including measures to prevent the suspect or accused person from absconding or freezing measure. The Regulation also allows the requesting State to continue or reopen criminal proceedings if the requested authority decided to discontinue criminal proceedings related to the facts underlying the transfer, under the condition that this would not entail a violation of the *ne bis in idem* principle in Arts. 54/55 CISA and Art. 50 CFR, as interpreted by the CJEU.

Effects of the transfer in the requested State

Once criminal proceedings are transferred in accordance with the Regulation, the requested authority applies its relevant national law and procedures. In particular, it maintains any prosecutorial discretion provided for in national law.

Provided that it is not contrary to the fundamental principles of law of the requested State, any act carried out for the purposes of the criminal proceedings or preparatory inquiries performed by competent authorities in the requesting State shall have the same validity in the requested State as if it had been validly performed by competent authorities in the requested State. Furthermore, any act validly performed in the requesting State that interrupts or suspends the period of limitation shall have the same effect of interruption or suspension of the period of limitation in the requested State provided that such act would have that effect under its national law.

The Regulation clarifies that evidence gathered in the requesting State may be used in criminal proceedings in the requested State, provided that the admissibility of such evidence is in accordance with the national law of the requested State, including its fundamental principles of law. The power of the trial court to freely assess the evidence is not affected by the Regulation.

Regarding sentencing, the Regulation provides that in cases where the criminal offence was committed on the territory of the requesting State, the requested authority *may* take into consideration, in accordance with applicable national law, the maximum sentence under the national law of the requesting State, where to do so would be to the benefit of the accused person. The maximum sentence provided for in the national law of the requesting State should always be taken into account where jurisdiction of the requested State is based exclusively on the Regulation (see above).

Cooperation and communication

The requesting authority and the requested authority may, at any stage of the procedure for the transfer of criminal proceedings, request the assistance of Eurojust or the European Judicial Network in accordance with their respective competences. In order to ensure swift, direct, interoperable, reliable and secure exchange of case-related data, including the exchange of the request form, communication under the Regulation between the involved authorities should, as a rule, be carried out through a decentralised IT system. The Commission is tasked with establishing the IT system by 8 January 2027.

Next steps

Regulation (EU) 2024/3011 entered into force on 7 January 2025 and applies from 1 February 2027. The Regulation will then replace the corresponding provisions in the respective Council of Europe Conventions which are applicable between the Member States bound by the Regulation. This framework will govern requests for the transfer of criminal proceedings received before 1 February 2027.

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