

# Transfer of Criminal Proceedings: Political Agreement and ECBA Opinion



**eu crim**

European Law Forum: Prevention • Investigation • Prosecution

**News**

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On 1 March 2024, the [European Criminal Bar Association \(ECBA\)](#) released an opinion on the proposal for a Regulation on the transfer of proceedings in criminal matters. The Commission initiated the legislation in April 2023 (→ [eu crim 1/2023, 40](#)). It aims to establish an EU instrument with uniform conditions for the transfer of criminal proceedings initiated in one EU Member State and to be transferred to another. The law will be critical in ensuring that the best-placed country investigates or prosecutes a criminal offence and in preventing unnecessary parallel proceedings (of the same suspect) in different EU Member States.

The ECBA's opinion reacts to trilogue negotiations between the Council, the European Parliament (EP) and the Commission and focuses on two aspects:

- The right to an effective remedy;
- The right of suspects or accused persons to request a transfer of proceedings.

The ECBA stresses that, given the wide discretion for national authorities as to whether a case should be transferred, the suspect and accused person must have an effective possibility of review in both the requesting and the requested Member State. Additional precise provisions are needed in this regard in line with the EP's position. These provisions must include the right to inspect the case files, in order to make an informed decision on whether to apply for remedies and on what grounds. Furthermore, the EU law must provide for a mandatory hearing before the competent judge, in order to ensure that the arguments brought before the judge are heard and considered in the subsequent court decision. The suspensive effect of the request for transfer after the issuing of an indictment, as proposed by the Commission, should be maintained.

As regards the right of suspects or accused persons to request a transfer of proceedings, the ECBA calls on the legislator not to water down the respective provision and to respect the equality of arms.

On 6 March 2024, the negotiators of the Belgian Council Presidency and the EP announced that they [reached a provisional agreement](#) on the Regulation. The suspect or accused person, or a victim, have, in accordance with the procedures laid down in national law, a right to propose to the competent authorities of the requesting or requested State that criminal proceedings be transferred under the conditions set out in the Regulation. The country in which the criminal investigation is taking place and which wishes to transfer the proceedings to another country must give due consideration to the legitimate interests of the suspect or accused person as well as the victim. The new law will also foresee an obligation that the accused or

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Published in  
2024, Vol. 19(1) [eu crim pp 38 – 39](#)

ISSN: 1862-6947  
<https://eu crim.eu>

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suspect 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.

Suspects, accused persons and victims will also have the right to an effective legal remedy in the requested State against a decision to accept the transfer of criminal proceedings. The Council and EP agreed that the time limit for seeking an effective legal remedy is 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 text now needs to be formally adopted by the Council and EP. This will happen after the elections to the EP. After having been published in the Official Journal, the Regulation can enter into force. The regulation will start to apply two years after its entry into force.

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The project is co-financed by the [Union Anti-Fraud Programme \(UAFP\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



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