



**EUROJUST**

European Union Agency for  
Criminal Justice Cooperation

# Eurojust Report on the Transfer of Proceedings in the European Union

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*Criminal justice across borders*





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## Executive summary

Transfers of proceedings constitute a specific form of judicial cooperation that allows national authorities to overcome issues related to concurrent jurisdictions and multiple criminal proceedings, especially in relation to cross-border crime, in the interest not only of the effectiveness of justice but also of the fundamental rights of the suspect/accused.

In the absence of a specific EU instrument regulating transfers of proceedings, Member States currently recur to a plurality of legal bases for this purpose, which results in different conditions and procedures being observed in each case.

The aim of this report is to inform practitioners and policymakers of the main challenges encountered in Eurojust casework on transfer of proceedings and to highlight the role that Eurojust has played in overcoming such issues. The report is based on the replies to a questionnaire circulated among the Eurojust National Desks, the analysis of cases registered at Eurojust between 2019 and 2021, and is complemented by the findings of the previous documents published by Eurojust on this topic.

The report clearly indicates that the current fragmented legal framework leads to several legal issues and difficulties in practice, often making transfers of proceedings to another Member State a cumbersome and not always successful procedure. In Eurojust casework, solutions and best practices were identified, but the report also underlines a number of challenges that practitioners and policymakers should be made aware of. Based on such findings, the main conclusions and recommendations proposed are as follows.

- **Informal preliminary consultations:** engaging in informal preliminary consultations among the national judicial authorities involved before actually submitting a formal request for transfer is essential to increase the chances of the transfer being successful and minimise the risks of undue delays and unnecessary costs, by discussing the appropriateness of the transfer and the relevant conditions and procedures.
- **Involvement of Eurojust:** it is advisable to involve Eurojust at an early stage, when issues related to concurrent jurisdictions typically arise. Thanks to its mandate and tools, Eurojust plays a key role in building consensus among the national authorities involved in deciding which State is best placed to prosecute a case – an essential prerequisite for transfer of proceedings to be successful. Eurojust also assists during the entire life cycle of the case, especially with complex issues connected to transfer of proceedings, including the coordination of provisional measures such as seizures and arrest warrants.
- **Joint investigation teams (JITs):** this instrument of judicial cooperation can also play an important role in preventing conflicts of jurisdiction and in streamlining transfers of proceedings.
- **Practicalities of the transfer:** in addition to preliminary consultations, other best practices have been identified in relation to the involvement of central authorities, the information to be transmitted with the request, translations, the coordination of provisional measures, and the information on the outcome of the criminal proceedings.
- **A new EU instrument** laying down common criteria and procedures for transferring proceedings to another Member State would serve to improve the current situation in terms of legal certainty, effectiveness and efficiency.



# 1. Introduction

Even though there is no comprehensive and universally accepted definition of **transfer of proceedings in criminal matters**, in essence this occurs when the competent authorities of one country decide to transfer a criminal investigation or proceeding initiated in relation to one or more specific offences to another country considered better placed to prosecute the case, and that country agrees to take over the responsibility to pursue those proceedings further in its jurisdiction under its own procedural and substantive laws.

The transfer of proceedings is an **important instrument of judicial cooperation** that may allow national authorities to overcome conflicts of jurisdiction between Member States and jurisdictional issues more generally resulting in multiple criminal proceedings, which are specifically inherent in cases of transnational criminal activities. In other cases, it may be the only solution to avoid impunity for certain offences. Transferring criminal proceedings to another country responds not only to a principle of effectiveness and proper administration of justice in the fight against cross-border crime, but also seeks to ensure compliance with the fundamental rights of the accused, in particular the right not to be punished twice in different Member States under Article 50 of the Charter of fundamental rights of the European Union. At the same time, it represents a sensitive topic strictly related to the sovereignty of states since, in practice, a transfer of proceedings may be equal to a cession or waiver of jurisdiction in favour of another State and is therefore inevitably linked to the fundamental models and features of each national criminal justice system, including the principle of legality or opportunity in prosecutions. Despite the crucial function of this form of cooperation, there is currently **no specific EU instrument** regulating transfer of proceedings, and a plurality of legal bases is applicable across the Member States.

This is the first report specifically focused on Eurojust's casework on transfer of proceedings between the EU Member States.<sup>1</sup> This topic was nevertheless also previously addressed in other Eurojust documents, including the [Report on Eurojust Written Recommendations on Jurisdiction](#), published in 2021, the [Report on Eurojust's casework in the field of prevention and resolution of conflicts of jurisdiction](#), published in 2018, and finally the [Report of the strategic seminar on conflicts of jurisdiction, transfer of proceedings and ne bis in idem](#), organised by Eurojust in 2015.

In light of the absence of a common EU legal framework for the transfer of proceedings between the Member States, the report first includes a brief **overview of the main differences under national legislations** in the procedures and requirements for transferring proceedings to another Member State that may cause difficulties in practice (Section 2). This overview is based on a questionnaire addressed to the National Desks at Eurojust. Input to this report was provided by 22 National Desks.<sup>2</sup> Secondly, the **role of Eurojust** in cases concerning the transfer of proceedings between EU Member States is presented and the possible support that can be given is explained (Section 3). Furthermore, the present report builds on the findings of the previous documents published by Eurojust on this topic and complements them with **an analysis of the most relevant cases of transfer of proceedings** between the Member States registered at Eurojust between 2019 and 2021 (Section 4). During the reference period, 505 cases dealing with transfer of proceedings in the European Union were registered at Eurojust. Given this large number of cases, the National Desks were invited in the questionnaire to focus on the most recurrent issues, practical difficulties and best practices they encountered in their cases.

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<sup>1</sup> Transfer of proceedings between the EU Member States and third countries fall outside the scope of this report.

<sup>2</sup> Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Germany, Greece, France, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Slovenia, Slovakia, Spain and Sweden.



Finally, based on the lessons drawn from the Eurojust cases analysed, **final recommendations** are made (Section 5).

## 2. Legal framework

### 2.1. Plurality of legal bases and lack of a specific EU legal instrument

There is currently no specific legal instrument on transfer of proceedings at an EU level. **Framework Decision 2009/948/JHA** on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings<sup>3</sup> only sets out a mandatory consultation procedure for competent national authorities when parallel proceedings concerning the same facts involving the same person<sup>4</sup> are being conducted in another Member State, but it does not regulate the subsequent transfer of proceedings that may occur after an agreement has been reached on who is best placed to prosecute the case. An initiative for a Council Framework Decision on transfer of criminal proceedings was brought forward in 2009<sup>5</sup> (the so-called ‘Swedish initiative’, supported by 16 Member States), but discussions were halted with the entry into force of the Lisbon Treaty. In December 2020, the Council, in its conclusions on the European Arrest Warrant (EAW),<sup>6</sup> invited the Commission to consider whether a new proposal for an EU instrument on the transfer of proceedings would be feasible and present added value. This initiative was thus included in the Commission work programme for 2022,<sup>7</sup> with a call for public consultation concluded and the adoption of the legislative proposal expected soon.

In the absence of a specific EU instrument so far, **several different legal bases** are used across the Member States. Depending on the legal basis applied, different procedures are followed even within the same Member State. The most specialised international instrument is the **1972 Council of Europe Convention on Transfer of Proceedings in Criminal Matters** (CoE 1972 Convention),<sup>8</sup> which provides detailed conditions and procedural rules for the transfer but was ratified by less than half of the Member States. However, practice shows that another, more general, multilateral instrument is also commonly used as a basis for transferring proceedings in cases dealt with by Eurojust: **Article 21 of the 1959 Council of Europe Convention on mutual assistance in criminal matters**, (1959 MLA Convention)<sup>9</sup> in conjunction with Article 6(1) last paragraph of the 2000 EU Convention on mutual assistance in criminal matters between the Member States,<sup>10</sup> concerning the laying of information to another state with a view to proceedings before its courts. However, this provision does not contain

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<sup>3</sup> Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L328).

<sup>4</sup> Art. 3(a) of Framework Decision 2009/948/JHA.

<sup>5</sup> [Doc. no. 52009IG0912\(01\)](#), Initiative of the Kingdom of Belgium, the 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 Latvia, the Republic of Lithuania, Republic of Hungary, the Kingdom of the Netherlands, Romania, the Republic of Slovenia, the Slovak Republic and the Kingdom of Sweden for a Council Framework Decision 2009/.../JHA of ... on transfer of proceedings in criminal matters, in OJ C 219, 12.9.2009.

<sup>6</sup> Council conclusions ‘The European arrest warrant and extradition procedures - current challenges and the way forward’, Council doc. no. 13684/20, in OJ C 419, 4.12.2020, p. 23-29.

<sup>7</sup> Commission work programme 2022 of 19 October 2021, [COM\(2021\) 645 final](#).

<sup>8</sup> European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 073), signed in Strasbourg on 15 May 1972. This convention was ratified by only 13 Member States have ratified this convention, see [here](#).

<sup>9</sup> European Convention on Mutual Assistance in Criminal Matters (ETS No. 30), signed in Strasbourg on 20 April 1959.

<sup>10</sup> Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000/C 197/01).



rules on the criteria and procedures to be followed, which are therefore left to national laws. In other cases, specific **bilateral/multilateral agreements** are used; for instance, the 1970 Nordic cooperation agreement between the Nordic countries.<sup>11</sup> Finally, proceedings may be transferred even if no international convention has been concluded to regulate the matter, on the basis of the principle of reciprocity in combination with relevant **national law provisions**. In some Member States, indeed, Framework Decision 2009/948/JHA on the prevention of conflicts of jurisdiction has also been extensively implemented by regulating the procedure for the subsequent transfer of proceedings to other EU Member States. Finally, the existing legal bases, in general, leave an almost unfettered discretion to the requested State on whether to accept the transfer or not. Therefore, the actual possibility, in a specific case, to transfer the proceedings is one of the determining factors in settling jurisdictional issues, and is carefully considered in Eurojust casework.

## 2.2. Main differences under national law

The lack of a common legal framework within the EU results in divergent procedures and criteria for transferring the proceedings applicable in the Member States. Furthermore, some of these rules are significantly **influenced by the fundamental principle governing prosecution in each national system**, namely the principle of legality or the principle of opportunity in prosecutions. Far from offering an exhaustive overview, the following section presents the main differences among national legislations, as identified by the National Desks, whereby the application in Eurojust's experience often leads to difficulties in practice.

### 2.2.1. Notion of 'criminal proceedings'

Preliminarily, it must be noted that an overarching shared definition of 'criminal proceedings' applicable to both **civil law and common law countries** is still missing.<sup>12</sup> In continental systems, though some differences apply, the investigation phase led by a public prosecutor and/or by an investigative judge generally already constitutes part of criminal proceedings. In the common law tradition, the investigation phase is carried out by the police and may not be seen as part of the criminal proceedings in a strict sense. As a consequence, during investigations, there is no judicial authority involved that can request and/or accept a formal transfer of proceedings, but such a decision could, in principle, be taken only after prosecution has been brought.

### 2.2.2. Conditions and criteria for transferring proceedings

The general rationale for transferring proceedings is that, for different sets of reasons, it would be more appropriate to prosecute an offence in another Member State. While in some Member States there are **no explicit rules on the criteria** for transferring proceedings abroad, and no limitations therefore apply, most national legislations provide a **list of scenarios** where a transfer of proceedings may be requested, which very often correspond to some of those included in article 8 of the CoE 1972

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<sup>11</sup> The cooperation agreement is applicable in Denmark, Iceland, Finland and Sweden.

<sup>12</sup> A broad definition of the notion of 'criminal proceedings', though valid for the purposes of that Directive only, can be found in Article 2 of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings, which refers to 'all stages of the criminal proceedings, from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, until the decision on the final determination of whether that person has committed the criminal offence concerned has become definitive'.



Convention.<sup>13</sup> Likewise, in those Member States, national law also sets out the **grounds for not accepting a request for transfer** by another Member State, which reflect some of those provided under article 10 and 11 of said convention.<sup>14</sup> There are, however, national laws that provide specific **additional limits** to the possibility of either requesting or accepting a transfer of proceedings. These limits can be of either a substantive or procedural nature.

For instance, in relation to **procedural limits**, in some Member States, a transfer of proceedings can be requested only during the pre-trial investigation phase and not after a decision to prosecute has been taken. In another Member State, a transfer of proceedings may be requested only if parallel proceedings concerning the same facts and individuals are already ongoing abroad. Furthermore, in one Member State, a requirement of completeness of the investigation applies: a request for transfer of proceedings cannot be issued if not all evidence available in its territory has yet been gathered. In another Member State, where the victim of the offence is a national of that Member State, a transfer of proceedings cannot be requested without the consent of the victim, unless it was already possible for the victim to obtain compensation. Secondly, in that same Member State, a transfer cannot take place if a freezing order targeting the proceeds of crime was issued, unless the authorities are satisfied that the receiving Member State has adequate legislation in place that would allow the recovery of those illicit assets.

As concerns **substantive conditions**, only very few Member States adopt a *de minimis* rule discouraging transfer of proceedings in relation to petty offences and less serious cases. Furthermore, in one Member State, national legislation sets out a clear rule not allowing transfer of proceedings against its own nationals. Nevertheless, competent courts sometimes adopt a flexible interpretation of that provision, considering that surrender of own nationals to other Member States is now possible under the EAW system and, in some cases, therefore also grant the transfer of proceedings against own nationals. Another Member State adopts a rigid interpretation of the territoriality principle which, coupled with a strict principle of legality in prosecutions, does not allow a transfer of proceedings if that Member State would have jurisdiction over the crime that was committed even only in part on its territory, regardless of additional considerations concerning other relevant factors such as the availability of the evidence, the location of the suspect and the interests of the victims. Finally, there are few Member States where a transfer of proceedings cannot be requested and/or accepted if the suspect is still unknown.

### 2.2.3. Competent authorities

Member States' legislations also vary significantly in relation to the authorities competent to decide on a transfer of proceedings, both as the requesting and receiving State. In some cases, the transfer of proceedings is decided by the **judicial authorities** (public prosecutors or investigative judges) competent to investigate and prosecute the case. Alternatively, other Member States provide for the involvement of **central authorities**, either at the judicial level (for example, the General Prosecutor's Office) or the Ministry of Justice. However, the role of such central authorities may also differ: sometimes they are merely competent to transmit the request or decision; in other cases, they have true decision-making power at the proposal of the competent public prosecutor's office. Furthermore, in some

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<sup>13</sup> These conditions include, for instance, where the suspect is a national or resident of the other Member State; where the suspect is serving a sentence in the other Member State; where most of the evidence is located in the other Member State, etc.

<sup>14</sup> These grounds include for instance: where the proceedings concern an offence of political nature, where the suspect is not a national of the requested Member State, where the offence was committed outside the territory of the requesting Member State, etc.



Member States (particularly those who ratified the CoE 1972 Convention), the competent authorities may be different depending on the legal basis used for the transfer.

#### 2.2.4. Procedural safeguards and legal remedies

A transfer of proceedings to another Member State has far-reaching effects on the position of suspects and victims, in terms of both the procedural rights that they may be entitled to during the criminal proceedings and the substantive criminal law applicable to the offence. Nevertheless, significant differences exist among national legislations in relation to the **procedural guarantees granted to suspects and victims** in the context of a transfer of proceedings, both in terms of which subject is involved and the extent of their involvement.

In terms of **subjects**, a full spectrum of situations can be observed across the Member States; from no possibility of involvement by either the suspect or the victim in most Member States, to the involvement of only the victim or the suspect, to the possibility of involving both categories of subjects. Furthermore, in Member States where the involvement of the victim and/or suspect is foreseen, this can take place at **different stages**, ensuring a greater or lesser degree of participation. In most of these Member States, suspects and/or victims are already involved before a decision on the transfer is taken: they must be consulted prior to a request to transfer the case being sent to the other Member State and they can express their views on the transfer. In most cases, their opinion is not binding on the part of the authorities, but is merely taken into consideration when deciding on the transfer. There are, however, few Member States in which the transfer is subject to the consent of the victim, with some limited exceptions (for example, if it is not possible to obtain the consent). In some other Member States, the involvement of victims and/or suspect is ensured only at a later stage, with a right to be informed of the transfer, which is sometimes (but not always) coupled with the possibility of appealing against it.

With a specific reference to **suspects**, many Member States do not foresee their consultation as this would prejudice the investigations when still at a confidential stage, i.e. when the suspects are not yet aware of the investigations. In contrast, there are a small number of Member States in which the consultation of the suspect is always required, while in others suspects are entitled to participation rights only if certain conditions are met (for example, only if under pretrial detention, if present in the territory of the Member State concerned, if the transfer takes place after prosecution, if they have a right to access the case file, or in cases of subsidiary jurisdiction). In addition, in one Member State, suspects may also request a transfer of proceedings. With regard to **victims**, it is worth noting that even in those Member States where they are not involved at all in the procedure, their interests are often nevertheless taken into account when deciding on the transfer of proceedings.

Finally, many differences also exist in relation to the **legal remedies** available to the suspect and/or victims against a decision to transfer the proceedings abroad. In the vast majority of the Member States, no legal remedies are provided, even where national law foresees their consultation in the procedure for transfer. In contrast, in some Member States, legal remedies are available either only to the suspect or the victim, or else to both, regardless of whether their consultation during the proceedings was foreseen or not. In one Member State, legal remedies are available only if the transfer concerns a criminal proceeding that has already reached the trial stage.





### 2.2.5. Effects of the transfer of proceedings in the requesting State

While, in general, a decision to transfer the proceedings to another Member State ends jurisdiction on the case in the requesting State and limits its rights to prosecute, the specific consequences of the transfer on the original proceedings in the requesting State differ significantly depending on the applicable national provisions. Specifically, an initial distinction can be drawn between those Member States in which a transfer entails the closure of the criminal proceedings in the requesting State and those where it only leads to their suspension. This difference depends frequently on the fundamental features of the criminal justice system at stake, namely the existence of a principle of legality, or rather a principle of opportunity in relation to prosecutions.

Especially in Member States applying a principle of opportunity (but not only), **criminal proceedings are closed as a result of the transfer**. In such cases, a reply of acceptance of the transfer from the receiving State is often needed to be able to close the case. However, there are also a small number of Member States in which the proceedings are closed as a consequence of the mere request to transfer, regardless of its acceptance by the competent authorities of the other Member State. In contrast, being informed of the final outcome of the case in the receiving State is less important for these Member States. Such information can be nevertheless relevant where national laws provide the possibility to reopen or resume the proceedings under certain circumstances, for instance when the receiving State decided not to prosecute or discontinued the proceedings.

On the other hand, in many Member States applying a strict legality principle (but not only), the transfer of proceedings implies the **suspension of the criminal proceedings**. Most frequently, this means that prosecution cannot be brought. However, if necessary, certain (urgent) investigative measures may still be taken. In one Member State applying the opportunity principle, the proceedings are not even suspended as an effect of the transfer, rather they formally continue with the only limitation being that it is not possible to bring a prosecution. For these Member States, it is thus crucial to receive information on the outcome of the transferred proceedings in the receiving State as only this allows the State to formally close its own proceedings based on the transnational *ne bis in idem* principle under Article 54 of the Convention implementing the Schengen agreement.

Furthermore, a transfer of proceedings may or may not have an **impact on statutes of limitation**. Only in some Member States (especially those that ratified the 1972 COE Convention) a request for transfer leads to a prolongation of limitation periods, sometimes for a fixed period of six months or, in other cases, until the decision of acceptance or refusal by the receiving State. Furthermore, in certain Member States where the proceedings are suspended as a result of the transfer abroad, the statute of limitation is also suspended until the receiving Member State reaches a final decision on the case.

## 3. The role of Eurojust in cases of conflicts of jurisdiction and transfer of proceedings

The current EU legal framework confers to Eurojust a major role in assisting Member States' national authorities in preventing and settling **issues related to concurrent jurisdictions in relation to cross-border crime**, as explicitly mentioned also in Article 85 of the Treaty on the Functioning of the European Union. Indeed, in the absence of common EU rules on criminal jurisdiction, whenever an offence involves some foreign element, it is not uncommon for more than one Member State to claim



jurisdiction over the same offence, giving rise to a plurality of criminal proceedings and positive conflicts of jurisdiction. It is important that such conflicts are avoided, not only to avoid duplication of efforts, but also to prevent possible violations of the fundamental right of *ne bis in idem*. While any of these States may potentially prosecute the person in question, one jurisdiction may be less propitious than another if, for instance, most of the evidence is located abroad. The solution to a conflict of jurisdiction, which very often includes the transferring of proceedings already initiated in one state to another, always implies some form of agreement between the Member States involved, and Eurojust is particularly well-positioned to facilitate the building of such consensus.

The specific **advisory role of Eurojust** is also mentioned in Framework Decision 2009/948/JHA on the prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings, which requires Member States to enter into consultation where parallel proceedings are identified and strongly invites them to involve Eurojust where they are not able to reach any consensus.<sup>15</sup> In the absence of common rules on criminal jurisdiction at an EU level, said Framework Decision also mentions as relevant criteria to reach an agreement the Eurojust **Guidelines for deciding which jurisdiction should prosecute**, which list the main factors to be taken into account when deciding on the best jurisdiction to prosecute in concrete cases.<sup>16</sup>

Furthermore, the Eurojust Regulation stipulates at its Article 4(2)(b) and (4) that Eurojust may request national authorities to accept that one of them may be in a better position to undertake an investigation or to prosecute specific acts and, in cases of disagreement between the Member States, it shall issue a written opinion on the case. The **Eurojust written opinion**, also called ‘joint request on jurisdiction’, is based on a legal assessment of all the circumstances of the case as indicated in the above-mentioned Eurojust guidelines and normally shared among the two or more National Members involved in the case. Even though it is not binding, it provides a reasoned and commonly agreed opinion of Eurojust, to which national authorities shall respond and may refuse to comply for specific reasons.<sup>17</sup>

Within this framework, Eurojust may also provide support to national authorities to **facilitate the transfer of proceedings**, which usually represents the subsequent step following a decision on how to deal with a conflict of jurisdiction once it has been determined which State should prosecute, in order to remedy to the plurality of ongoing proceedings. Eurojust is often involved in transfer of proceeding cases because, in the absence of a specific EU instrument addressing this topic, Member States currently rely on different legal bases to transfer proceedings to another country. Therefore, as described above in Section 2, a variety of procedures to be followed and conditions to be observed are applicable across Europe, sometimes even within the same Member State, depending on the instrument used. This often leads to legal uncertainty, including for the authorities in charge, and to different practices resulting in various legal and practical difficulties that are reflected in Eurojust casework and described in section 4 below.

Therefore, the mandate of Eurojust allows it to support national authorities in relation to all the above-mentioned aspects and **during the entire lifecycle of a case**: by identifying parallel or linked proceedings in other countries and clarifying the links among them, facilitating preliminary contacts and consultations between the judicial authorities involved, facilitating the exchange of information to

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<sup>15</sup> See Article 12 of Framework Decision 2009/948/JHA.

<sup>16</sup> See Recital 9 of Framework Decision 2009/948/JHA.

<sup>17</sup> See Article 4(6) of the Eurojust Regulation. For more details on this topic, see the report on [Eurojust Written Recommendations on Jurisdiction: Follow-up at the National Level](#), 2021.



gain a complete picture of the cases, coordinating their investigative actions, ensuring a smooth application of judicial cooperation instruments, assisting the competent authorities in finding an agreement on which jurisdiction should prosecute and, finally, with the execution of the transfer of proceedings. Different tools available at Eurojust may be deployed for this purpose. These include, in particular, so-called 'level II meetings' among the National Members involved, coordination meetings with the participation of the competent national authorities, the setting up of JITs with the participation of Eurojust and coordination centres for the simultaneous execution of provisional measures such as arrests and seizures in different Member States.

Eurojust casework shows that, when **Eurojust is involved at an early stage** and provides assistance in relation to all these interrelated aspects, a consensus is reached between the competent authorities through dialogue and the building of mutual trust, very often leading to highly positive outcomes. This also limits the possible issues that could be encountered at a later stage when dealing with the transfer of proceedings, as opposed to cases in which Eurojust is only involved at a later stage and merely in relation to the transfer of proceedings.

***Case 1. Eurojust's support from an early stage during the entire lifecycle of a case***

In a bilateral case where parallel investigations were ongoing in two Member States, Eurojust was involved at a very early stage of the investigations. Eurojust organised three coordination meetings, assisted in the setting up of a JIT and in the organisation of a joint action day. From an early stage, both national judicial authorities agreed to transfer the proceedings from Member State A to Member State B so that all suspects could be prosecuted in the same jurisdiction. After the successful completion of the joint action day and the arrest of the main targets, EAWs were issued by Member State B, and Member State A granted the surrender for all requested persons. An official request of transfer of proceedings was then forwarded to the competent central authorities of Member State B via Eurojust. The request was granted and the totality of the case and the evidence gathered was consequently successfully transferred to Member State B. Eurojust played a crucial role throughout the lifecycle of the case, until the final delivery of the case file.

***Case 2. Eurojust's capabilities and instruments of international cooperation***

Three Member States initiated linked criminal investigations into a large-scale bank fraud. Eurojust was involved from an early stage and supported the national authorities by organising several coordination meetings during the entire lifecycle of the case. First, the decision was taken to set up a JIT between the three Member States involved with the assistance of Eurojust, which also provided funding to the JIT activities. Second, a joint action day was organised with Eurojust providing assistance in planning the coordinated execution of provisional measures in all Member States involved. Following the successful completion of the action day, the national authorities, with the support of Eurojust, also agreed on which country would prosecute which suspects and resolved the issues related to the subsequent transfer of proceedings. Furthermore, the Member States involved did not have to bear the costs of translation of the case file to be transferred, given that it was covered by the JIT funding provided by Eurojust.



### 3.1. Types of Eurojust cases

In Eurojust casework, it is observed that the transfer of proceedings may occur in **various situations** at different stages of the proceedings and may concern a variety of crime types.

Very often, a transfer of proceedings is primarily an option when national authorities become aware of the existence of **parallel proceedings** concerning the same facts and against the same individual in another Member State. Sometimes, parallel proceedings may be even triggered by requests for judicial cooperation: in Member States applying a strict legality principle in prosecutions, criminal proceedings are indeed opened if the information contained in a European Investigation Order (EIO) or EAW issued by another Member State concerns a criminal offence for which they also would have jurisdiction, even though the issuing Member State is already investigating it. Transferring the proceedings in such cases represents a necessary solution to avoid the violation of the principle of *ne bis in idem* in its transnational dimension.

#### ***Case 3. Transfer of proceedings after parallel proceedings were opened when executing an EIO***

Member State A was investigating a national of Member State B for a serious car accident that occurred in its territory and issued an EIO towards Member State B to carry out certain investigative measures concerning the suspect. Since Member State B also had criminal jurisdiction based on the active personality principle,<sup>18</sup> upon receipt of the EIO it opened its own parallel proceedings in relation to the car accident. Thanks to the involvement of Eurojust, the two Member States eventually agreed that the proceedings of Member State B would be transferred to Member State A to avoid the risk of *bis in idem*.

Yet this form of judicial cooperation also frequently occurs beyond the case of parallel proceedings. Transfer of proceedings are also quite common in situations where Member States conduct **linked proceedings** on different aspects of a wider form of criminality, and it is considered in the best interests of justice to concentrate the entire proceeding against the facts as a whole in a single jurisdiction. This is often the case, for instance, in relation to the prosecution of organised crime groups (OCGs) active in multiple countries, or with money laundering occurring in one country and the underlying predicate offences committed in another.<sup>19</sup>

Secondly, transfers of proceedings sometimes occur in situations where there are **no criminal proceedings pending in the other Member State** and resorting to this form of judicial cooperation represents the **only option to avoid impunity**. This is the case, firstly, where the surrender of the suspect is not possible because, for instance, there has been a **refusal to execute an EAW**. In Eurojust's experience, this relates especially to refusals of surrender based on territoriality grounds, more specifically where the executing authorities were under a rigid obligation under their national law to refuse the execution of EAWs, even when only a very small part of the crime had been committed on their territory. During coordination meetings, executing authorities sometimes acknowledged that they were not the best-placed Member State to prosecute the case. Yet they explained that, owing to the rigid grounds for non-execution, prosecution in the executing Member State would be the only viable option.

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<sup>18</sup> I.e. based on the nationality of the suspect.

<sup>19</sup> In this sense, see also the [Eurojust Report on Money Laundering](#), October 2022, p. 43.



In such cases, the focus during the coordination meeting was therefore on how to ensure that, after a refusal of the EAW, impunity could be avoided, for instance via a transfer of proceedings.<sup>20</sup>

***Case 4. Transfer of proceedings is necessary due to a national mandatory ground of non-execution of an EAW***

Two Member States opened criminal investigations into a large drug trafficking case. Due to the early consultation and involvement of Eurojust, several coordination meetings were held to discuss the parallel investigations, including which State would be best to prosecute which suspect. During one coordination meeting, it was agreed that Member State A was in a better position to prosecute a certain suspect who was a national of Member State B and under arrest in Member State A. However, while on bail, the suspect fled to Member State B. In accordance with Member State B's legislation implementing the EAW FD, surrender must be refused where the EAW relates to its own national and the offence was even partly committed on its territory. Accordingly, if Member State A were to issue an EAW against this suspect, the executing judicial authority in Member State B would, by virtue of its legislation, be required to refuse to execute the EAW, and instead initiate and pursue prosecutions for the same offences. Therefore, although both Member States agreed that Member State A was initially better placed to prosecute this suspect, Member State B was required to take over the proceedings and initiate investigations of its own.

There are also cases in which transfer of proceedings is considered an **alternative to the issuing of an EAW**, where that would be disproportionate or not possible in a specific case because, for instance, the penalty thresholds are not met, it is not possible to carry out the proceedings *in absentia*, and there are no other judicial cooperation instruments (such as for instance an EIO for the purposes of hearing via videoconference) that could ensure the presence of the accused at trial. This occurs especially in relation to minor offences in those Member States where the strict adherence to the principle of legality in the requesting State does not allow to simply dismiss the case.

***Case 5. Transfer of proceedings to ensure the participation of the accused at trial, where an EAW or EIO could not be used***

Member State A investigated a national and resident of Member State B for a fraud offence. The accused was notified of his rights under national law, namely the right to be present during the interrogations of the witnesses, as it was not possible to carry out the proceedings *in absentia*. However, the suspect refused to participate in the investigative measures in Member State A during the COVID-19 pandemic since he was of an advanced age and belonged to a particularly high-risk group. For the same reasons, it would have not been possible to ensure his presence via an EAW. It was also considered that the attendance of the accused person during the interrogations of the witnesses could not be secured through the issuing of an EIO for hearing him via video conference, since such instrument is primarily intended for the interrogation of the accused and not to secure his presence and participation in the interrogation of the witnesses. Even if the investigation could be completed and the indictment brought to the accused person, securing the attendance of the accused in the whole main trial would not be possible either physically or via video conference due to the limitations in scope of the EIO. Therefore, thanks to the facilitation offered by Eurojust, and to ensure

<sup>20</sup> In this sense, see also the [Report on Eurojust's Casework in the Field of the European Arrest Warrant](#), 2021, p. 22.



the effective exercise of the rights to defence, a transfer of proceedings to Member State B was agreed following a first refusal.

**Case 6. Transfer of proceedings as alternative to the (disproportionate) issuing of an EAW**

Member State A was investigating in relation to a minor offence (where the damage caused was around EUR 6 000) a suspect that was executing a prison sentence in Member State B. As the issuing of an EAW for the purposes of prosecution did not seem to be proportionate, Member State A requested a transfer of proceedings to Member State B as an alternative solution.

In relation to the **stage of the criminal proceedings**, transfers are normally discussed during the investigation phase before any prosecution has been initiated in the requesting State. However, it is not uncommon for transfers to also occur during later stages, and even during the trial phase, if allowed under national law and especially in relation to parallel proceedings in order to avoid an infringement of the *ne bis in idem* principle.

As far as the **type of criminal offences** is concerned, transfer of proceedings are highly common in cases of organised trans-border crime and in relation to offences with an inherently cross-border nature (such as migrant smuggling, trafficking in human beings, drug trafficking, environmental crime and cybercrime).<sup>21</sup> Nevertheless, Eurojust's casework indicates that, in principle, all types of crime can lead to parallel proceedings. This form of judicial cooperation therefore also often occurs for more ordinary types of offences, such as money laundering, fraud, murders, sexual offences or robberies, that have taken place within the territory of only one Member State and have a trans-border element, because, for instance, the suspect or victim is a foreign national.

Finally, in terms of **suspects**, it can be observed that a request for transfer of proceedings most frequently concerns the case against a specific suspect or accused. However, a transfer of proceedings is also sometimes requested with reference to a specific offence for which the suspect is still unknown.

## 4. Recurrent issues and best practices

Even though this patchwork of legal bases with its own conditions and procedures for transferring proceedings among the Member States mostly tends to offer workable solutions in day-to-day practice, it also creates difficulties that trigger the national authorities to call upon Eurojust. Eurojust casework shows that the reasons for difficulties in transferring criminal proceedings vary. The most recurrent issues encountered and best practices developed at Eurojust to overcome them, are reported in the following paragraphs.

### 4.1. (Dis)agreement on which State is best placed to prosecute and limits under applicable national laws

Eurojust's casework shows that, irrespective of the legal basis being used, an essential pre-condition for the successful execution of a transfer of proceedings is the **agreement between both Member States** that the receiving Member State is best placed to prosecute those offences and that the transfer would

<sup>21</sup> See also the [Report on Eurojust's Casework on Environmental Crime](#), January 2021, p. 14; [Eurojust Report on Trafficking in Human Beings](#), February 2021, p. 24; [Eurojust Report on Drug trafficking](#), April 2021, p. 9, 13, 14, 19 and ff.



be in the interests of justice. When no agreement on this fundamental issue is found it is extremely difficult for a transfer of proceedings to eventually take place, since different applicable rules at national level leave sufficient leeway and discretion to the national authorities of the receiving Member State to refuse a request for a transfer of proceedings. Similar refusals occur often in practice; for instance, when no prior consultation has taken place or when the request for transfer concerns cases where the suspect is still unknown, there are no specific reasons to believe that he or she would be located in the receiving Member States, and there are only very limited links between the offence under investigations and the receiving Member State (for example, only the bank account on which the money was sent was opened in that country). This is quite often the case with frauds committed online.

***Case 7. Transfer of proceedings refused as the suspect is unknown and no sufficient links to that country***

An investigation was opened in Member State A into a ransomware virus attack committed by an unidentified suspect via a provider based in Member State B. The prosecutor in charge contacted Eurojust to identify the authority in Member State B that would be competent to accept a possible transfer of proceedings. However, Member State B, where there had also been an investigation earlier, refused to accept the transfer since the suspect was still unknown and there were no elements available to indicate that he or she was located in its territory.

Yet sometimes, an agreement between the Member States involved on who is best placed to prosecute a specific case is not sufficient due to the existence of **specific limits under national law** that do not allow to either request or accept a transfer of proceedings. For instance, as mentioned previously in relation to the legal framework, there have been cases at Eurojust involving a Member State that does not allow proceedings against its own nationals to be transferred abroad. Similarly, there have also been cases related to a Member State applying a strict principle of legality that does not allow the transfer of investigations abroad concerning offences that occurred (even only in part) on its territory. As another example, a Member State does not allow the surrender of its own nationals in the execution of an EAW where the offence was partly committed on its territory. Therefore, in cases where the suspects are nationals of that Member State and located there, transferring proceedings against them to another Member State, which in principle would be best placed to prosecute them, would not lead to any concrete results in practice since the suspects may not be surrendered to the receiving State. In similar situations, Eurojust can help in identifying other solutions to allow the proceedings to be carried out effectively by a Member State, even though it would not necessarily be the best placed to prosecute in principle.

***Case 8. Transfer of proceedings refused due to a strict interpretation of the territoriality principle***

Two Member States opened criminal investigations into the same episode of sexual abuse. The victim, suspect and main witness were nationals of Member State A, who were on holiday in Member State B when the alleged offence was committed. The authorities of Member State A, where the individuals involved were also residing, contacted Member State B to request that it transfer the proceedings and the evidence collected therein, considering itself to be best placed to prosecute the case. When the request was refused, Eurojust was involved to organise a coordination meeting to seek an agreement on which country was best placed to prosecute this case and possibly arrange a transfer of



proceedings. However, during the meeting, it became clear that under the law of Member State B, a strict principle of legality based on territoriality applied, as a result of which national courts would not approve a transfer of proceedings to Member State A as the offence was committed on its territory. Therefore, the authorities involved agreed to exchange the evidence collected in their respective proceedings via an EIO, without solving the conflict of jurisdiction for the time being.

***Case 9. Execution of an EAW refused based on territoriality and no transfer of proceedings***

Member State A concluded large-scale investigations into an OCG involved in drug trafficking. Several suspects were arrested in Member State A; however, the main suspect, a national of Member State A, was arrested following the execution of an EAW in Member State B, where he lived. The description of the offences included in the EAW clarified that the offences had been mainly carried out in Member State A. The execution of the EAW was therefore finally refused because the offences were regarded as committed only partly in Member State B. As a result, Member State B opened its own criminal investigation against the main suspect for the same facts of drug trafficking. A coordination meeting was organised at Eurojust, where it was clarified that the newly opened investigations in Member State B could not progress without the evidence already gathered in Member State A. Furthermore, a transfer of proceedings to Member State A would not be possible due to limitations under the applicable national law, and a transfer of the proceedings against the other suspects in Member State A to Member State B in order to concentrate the proceedings as a whole in a single jurisdiction would also not be acceptable for Member State A. Therefore, the authorities were required to pursue separate prosecutions; the evidence gathered in Member State A would be shared via an EIO to Member State B in order for the main suspect to be prosecuted there, and Member State A would issue another EIO towards Member State B to hear the main suspect in order to finalise its investigations concerning the other co-suspects.

In similar cases, it is certainly a **best practice to organise preliminary consultations** between the competent authorities of the Member States involved before a request for transfer is transmitted. This allows for the discussion of the case and potentially the reaching of an agreement on which State should prosecute and on whether the transfer is acceptable for the receiving Member State based on its national law. It is also highly beneficial to **involve Eurojust**, which can facilitate such consultations, including through the organisation of coordination meetings. During coordination meetings, the authorities involved can exchange information on their cases and on the applicable national legislation in order to reach a well-informed decision. Especially in cases of disagreement between the national authorities or of stringent limits to transfer of proceedings under national law, **Eurojust** can provide its impartial advice by issuing a **joint request on which State should prosecute** to all authorities involved, also considering the follow-up transfer of proceedings and the applicable limits under national laws (see also section 3 above). This tool of Eurojust has proved highly effective in practice, as shown in the report on [Eurojust Written Recommendations on Jurisdiction: Follow-up at the National Level](#): in the vast majority of cases, the subsequent transfer of proceedings took place smoothly and successfully as suggested by Eurojust.

***Case 10. Swift transfer of proceedings following Eurojust recommendation on which State is best placed to prosecute***

Two suspects were arrested by Member State A when found transporting large quantities of cocaine on board a yacht, navigating under the flag of Member State B, and charged with drug trafficking and





participation in an OCG. The two suspects were also under investigation in Member State B for being part of a larger crime group involved in drug trafficking, and two EAWs were issued against them towards Member State A. Two coordination meetings were held at Eurojust to clarify whether there was an overlap between the facts under investigation in the two countries and to find a solution to this conflict of jurisdiction, since no agreement could initially be found among the authorities. The National Members involved then issued a joint request to their national authorities, suggesting that Member State B transferred its proceedings against those two suspects to Member State A, which was best placed to prosecute them. The prosecutor in charge of the case in Member State B followed Eurojust's advice and requested the authorisation for the transfer of proceedings from the competent court, also submitting to its attention the Eurojust joint request. The court, relying also on the arguments put forward in the Eurojust request, approved the transfer of proceedings, which was successfully completed with the acceptance of Member State A in less than two months. The two EAWs issued by Member State B were also accordingly withdrawn.

Eurojust joint requests can be also highly beneficial in the particularly difficult event of **negative conflicts of jurisdiction**, whereby no Member State is willing or able to investigate a specific criminal offence and thereby avoid the risk of impunity.

***Case 11. Transfer of proceedings in a case of negative conflict of jurisdiction following Eurojust joint request***

A company established in Member State A fell victim to an online fraud, thereby suffering financial losses of about EUR 150 000. As the account from which these amounts were paid had been opened in a bank situated in Member State B, the victim filed a criminal complaint in both countries and two parallel proceedings were opened. Neither of the two Member States separately collected sufficient evidence to prosecute the case, and both authorities faced difficulties in proceeding. In fact, Member State A had already requested the dismissal of the case for lack of jurisdiction. Member State B, on the other hand, seemed to be only an intermediary in the commission of the fraud given that the only action to have taken place there was the opening of the bank account. Eurojust was therefore requested to issue a recommendation on which country is best placed to prosecute to solve this negative conflict of jurisdiction. Eurojust considered the issues raised in the case and National Members involved issued a request, concluding that Member State A would have been in a better position to prosecute this case, once the evidence from Member State B would have transferred to it. Prosecution authorities from both countries agreed to follow Eurojust's recommendation. The transfer of proceedings was accepted in less than a month and, the actual transfer of the case file was fully translated into the language of Member State B five months later.

Finally, Eurojust casework shows that the **setting up of a JIT** is also highly beneficial in cross-border cases for coordinating linked/parallel proceedings and **for reaching an agreement on where to prosecute** to avoid potential *bis in idem* situations and discuss potential transfer of proceedings. Indeed, JITs may be seen not only as an investigative tool, but also as a tool for preventing conflicts of jurisdiction, especially where the **JIT agreement contains a clause** whereby parties would agree to discuss, at a later stage, the matter of which jurisdiction should prosecute and for which offences (see, for instance, case 2 in Section 3).<sup>22</sup>

<sup>22</sup> See also the [Third JIT Evaluation Report](#) by JITs Network Secretariat and Eurojust, March 2020, p. 12.



## 4.2. Involvement of central authorities

As is also the case with other judicial cooperation instruments, Eurojust is often contacted when national authorities are unsure as to which competent authority should be addressed in another Member State in relation to a request for transfer of proceedings. This general issue is even more relevant in relation to transfer of proceedings due to the absence of a common EU legal basis and given that there may be different competent authorities in the same Member States, depending on the legal basis used for the request.<sup>23</sup> The **identification of the competent authority** can cause delays, and contacting Eurojust can save time and resources and ensure a reply is given within a short period of time.

Furthermore, as mentioned above in section 2.2.3 on the legal framework, the decision to request or to accept a transfer of proceedings does not always lie (solely) with the judicial authorities competent to carry out those proceedings, rather other **central authorities**, such as Ministries of Justice or Prosecutor Generals, must also be involved. In Eurojust's casework, it is observed that the involvement of central authorities can cause significant delays and threaten the efficiency of the procedure, particularly if a case is urgent (see also case 12 under section 4.3. below). The possibility of direct contacts between judicial authorities, a main feature of the EU criminal justice area, is sometimes used as an argument for not using the CoE 1972 Convention as a legal basis for the transfer and rather use, if possible, Article 21 of the 1959 MLA Convention, in conjunction with Article 6(1) last paragraph of the 2000 EU MLA Convention.

Eurojust's cases show that, especially when a central authority is competent to decide on a transfer of proceedings, it may be useful as a **best practice** to first reach an agreement between the judicial authorities qualified to carry out the investigations (for instance, during a coordination meeting), and then inform the central authorities qualified to decide on the transfer of this provisional agreement, to ensure that the request is accepted and speed up a reply (see, for instance, case 10 under section 4.2 above).

## 4.3. Lack of communication

An issue frequently encountered in Eurojust's casework is significant delays in receiving a reply – or even the lack of any reply – from the receiving Member State. The lack of communication concerns, in the first instance, the **decision to accept the transfer of proceedings or not**. Indeed, Eurojust is often involved because, months after submitting a request, no reply has been received from the receiving Member State. Quite often, especially where central authorities are involved, delays in receiving a formal reply of acceptance occur even when the judicial authorities involved have already reached an agreement on the transfer of proceedings during preliminary consultations. For instance, in one case, although an agreement was reached on the transfer of proceedings during a coordination meeting, it subsequently took more than a year to receive a formal decision of acceptance. In the absence of any mandatory time limits for deciding on a request for transfer, similar issues may cause significant uncertainties and, sometimes, also eventually result in the transfer of proceedings not taking place. Furthermore, the source of similar difficulties seems also to lie in the differences between national legislations, linked also to the principle of opportunity or of legality in prosecutions: for some Member States, a reply of acceptance of the transfer is needed to be able to formally close the case, in others not.

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<sup>23</sup> The [Fiches Belges](#), available on the European Judicial Network (EJN) website can be also used for the purpose of identifying the competent authorities in relation to a request for transfer of proceedings.



Secondly, Eurojust is also frequently requested to assist because, after a transfer of proceedings being completed, the requesting State did not receive any **follow-up information on the state of play and final outcome of the criminal proceedings** in the receiving State. This lack of communication is especially problematic for those Member States where criminal proceedings are only suspended as a result of the transfer and can be formally closed only where the receiving State has reached a final decision on the case, by virtue of the *ne bis in idem* principle. For said Member States, it is therefore crucial also to be able to determine whether the final decision adopted in the receiving Member State concerns the same facts.

***Case 12. Delays in concluding the transfer of proceedings due to the lack of replies***

Criminal proceedings were ongoing in Member State A against a national of Member State B for fraud against the financial interests of the European Union occurred in 2009. The investigations were concluded; however, a few days before the decision to prosecute could be notified, the suspect was surrendered to Member State B in execution of an EAW issued for the purpose of prosecution in relation to drug trafficking and organised crime. Considering that the suspect was in pre-trial detention in Member State B and it would therefore not be possible to prosecute him in Member State A for the fraud offence, a preliminary agreement was reached among the competent authorities involved to transfer the proceedings concerning the fraud offence to Member State B. In 2018, a formal request for transfer was therefore sent to the Ministry of Justice of Member State B, in its capacity as the competent central authority under national law, which replied that the request would be forwarded to the competent public prosecutor's office. After a year, no information had been received as to whether the transfer had been accepted. In 2021 (more than two years after the request), the Ministry of Justice informed Member State A that the competent prosecutor's office had requested the discontinuation of proceedings as the maximum statute of limitation period had expired. Thanks to the involvement of Eurojust, it was discovered that upon the request for transfer, criminal proceedings had in fact been instigated in 2020 (two years after the request for transfer was sent) and shortly afterwards the competent public prosecutor's office had filed a request for discontinuation of the proceedings due to the expiration of the statute of limitation. The formal decision to discontinue the proceedings in Member State A was awaited by Member State B for more than three years, in order to be able to formally close the proceedings in their country.

In similar cases, **Eurojust's involvement** is helpful to swiftly obtain the required information and to limit any delays in the execution of a request and/or avoid any uncertainties on the consequences of a possible transfer of the proceedings. Considering the differences in applicable national laws, it is **best practice** for the Member State requesting a transfer of proceedings, to **already clarify what information will be required from the receiving Member State**, to prevent to the extent possible any such delays. In particular, it is important to communicate whether a formal reply of acceptance of the transfer and/or information on the final outcome of the proceedings is needed.

Finally, there have been also cases where **the initiative for a transfer of proceedings did not come from the requesting State** but rather from the Member State which, being informed of linked/parallel proceedings in another Member State, wished to take them over as well. In such scenarios, the latter Member State often also encounters difficulties in receiving replies from the competent authorities of what might subsequently become the requesting Member State. To minimise delays and lack of replies, it is important to **clarify from the outset that**, if a preliminary agreement on the transfer is reached, a



**formal request for transfer of proceedings would then need to be submitted** by the other Member State, also in order to prevent any doubts as to the applicable legal basis for the request for transfer.

***Case 13. Lack of replies to a proposal to take over the case, resulting in no transfer taking place***

Two suspects were arrested in Member State A for possession of drugs. During their conditional release pending trial, they fled to Member State B where larger investigations regarding participation in a criminal organisation involved in drug trafficking were ongoing against them, which also covered the episode of drug possession in Member State A. Member State B had enough proof to prosecute the ‘attempt at drug trafficking’, but needed information available in the proceedings of Member State A to prosecute ‘drug trafficking’. The authorities of Member State B thus contacted those of Member State A based on Framework Decision 2009/948/JHA, requesting them to consider a transfer of proceedings to Member State B so that the case could be concentrated in one jurisdiction. As no reply was received, Eurojust was asked to facilitate. Member State A insisted that a formal request under Article 21 of the 1959 MLA Convention was needed from Member State B for this purpose, even though Member State B would be receiving the case. Due to this misunderstanding and different views on the legal basis of the request, no further reply was received for months. Member State B therefore decided to continue its own proceedings without the information gathered in Member State A and to prosecute the suspects only for attempted drug trafficking. No further information is available on the proceedings ongoing in Member State A.

#### **4.4. Information transmitted with a request for transfer**

Where a transfer of proceedings is requested, an investigation has been carried out in the requesting State and some evidence has already been gathered. Such information is needed for the requested State to decide whether to take over the proceedings. However, due to the absence of specific rules on the topic, there are very **different practices** across the Member States in terms of documentation that should be transmitted in support of a request for transfer of proceedings, and this leads to several misunderstandings. If allowed under the applicable law, it is indeed important to distinguish between the information that should be transmitted with a request for transfer, and the information that will be transmitted once the transfer is accepted.

The minimal approach sometimes encountered consists of including in the request for transfer only a **summary of the case** describing the facts under investigation, the legal classification of the offences under national law and the investigative measures taken. Such limited information is not usually sufficient for the receiving Member State to make a decision and supplementary details are usually solicited. In most cases, however, in addition to this summary, the requesting State also includes in the request the ‘**essential documents**’ of the case. While certainly being useful, this practice nevertheless sometimes leads to a disagreement with the receiving Member State as to whether any other documents might be essential, and again to possible refusals of the transfer based on insufficient information on the case. There are indeed some Member States (particularly those that ratified the COE 1972 Convention) that request to receive **the whole case file** when the request is submitted, and Eurojust is therefore frequently involved in order to clarify whether the entire case file was transmitted or only part of it (see also case 17 under section 4.5 below). Attaching the entire case file to a request for transfer can have certain drawbacks, however, as it entails delays and high costs at a stage where it is not even certain whether the transfer will actually be accepted. If possible under the applicable legal basis and national



laws, it is therefore **best to request the sending of the entire case file only subsequently**, once the transfer has actually been accepted.

Furthermore, when preliminary consultations take place and especially when parallel or linked proceedings are pending in the different Member States, the national authorities involved very often agree to **exchange the evidence already available via an EIO even before sending the request** for transfer, to enable the receiving Member State to decide whether the transfer is acceptable and therefore avoid sending the request in the negative case. In such cases, where a request for transfer is then actually submitted, it is important to **keep in mind the information that was already made available** to the other Member State to avoid transmitting it (and translating it) twice.

***Case 14. Preliminary consultations to ensure all information is transmitted to the receiving Member State***

The case concerned the death of a young woman, a national of Member State A, who became unwell in Member State C while on holiday and was immediately brought to a hospital in Member State B. Member State C handled the case as a pure medical incident and no investigation was therefore conducted. All information related to the incident in Member State C was shared with Member State B upon bringing the victim to Member State B for further treatment. A few days later, the victim passed away in hospital in Member State B. Following her death, criminal proceedings were opened in Member State B, which subsequently requested to transfer the case to Member State A in view of her nationality. Before deciding on accepting the transfer of proceedings, Member State A wanted to ensure that all information on the accident was made available to it and that all investigative measures had been already executed in the other Member States, to prevent EIOs later being necessary after the transfer. The support of Eurojust was sought to facilitate close communication between all three Member States, in order to clarify that Member State C did not have any case file and/or additional information, since it handled the case as a medical incident, and that all information available to Member State B had already been included in its case file, which was then to be transferred to Member State A.

A **best practice** is to have **preliminary consultations on what information needs to be transmitted** with a request for transfer of proceedings, also considering the evidence and information that might have already been transmitted, for instance, by means of EIOs or in the framework of a JIT. A solution often agreed by the national authorities involved in many cases at Eurojust – taking into consideration also the connected translation-related issues (see below under 4.5.) – is to **include in the request not only a summary of the case and the essential documents, but also a detailed table of contents** of the case file and of the evidence gathered. This allows the receiving State to have a clear overview of what is available and to accordingly subsequently request it, if needed. At the same time, this solution avoids the need to attach (and translate) the entire case file to the request when it is not certain whether the transfer will ultimately be accepted.

## 4.5. Translations

Another aspect strictly linked to the information to be transmitted to the receiving Member State is the translation of the case file of the criminal proceedings to be transferred, including all the evidence gathered in the requesting State, which raises **major issues** in practice. Not only different rules exist under the 1972 COE Convention and the 1959 MLA Convention regarding which State should take care



of the translation depending on the Member States involved, but the financial burden of translating an entire case file should also not be underestimated and is often a major concern when discussing the appropriateness of a transfer of proceedings.

Eurojust is often called to clarify **which Member State should take care of the translation** according to the applicable legal rules, as well as **which documents should be translated** by the requesting State when sending the request: whether the whole case file or only some parts of it. As mentioned in the section above, when the translation of the entire case file is already required when submitting the request for transfer, significant delays in the procedure are to be expected as well as the risk of incurring high costs even where the decision on the transfer of proceedings might actually be negative. There have also been cases where the requesting Member State proceeded to translate the entire case file, only for it to be subsequently clarified that this was not needed, as the translation of the case summary would be sufficient for the receiving Member State.

In general, the time needed to translate the documents can significantly **delay** the proceedings. In one case, in particular, this led to a hold-up since, according to national law, a decision to prosecute cannot be taken until the translation of the entire file is received. In another case, the delays were exacerbated by a misunderstanding as to the language into which the documents were to be translated, which entailed a second translation to remedy the mistake. Further to the **cost of the translation**, there is also the issue of the **quality of the translation**. Eurojust's casework shows that translations are often of poor quality, which can lead to misunderstandings or the need to have these documents translated again by the receiving State, with additional costs.

While some of the issues mentioned above are more difficult to overcome, practical solutions and **best practices** can be found in some cases. Firstly, **preliminary consultation** with the requested State before transmitting the requests for transfers of proceedings is essential. For example, to minimise the negative effects of costs and delays resulting from the translation of files, national authorities can decide, during a coordination meeting at Eurojust, to **identify the essential documents** that need firstly and more urgently to be translated and (initially) transmitted electronically so that a decision on the transfer can proceed as swiftly as possible. Another option is to **also include in the request a clear overview of all the evidence available** in the case file that will be transferred at a later stage; for instance, by providing a translated table of contents, and therefore only certain selected material might need to be translated (see also above under 4.4). During coordination meetings, the involved Member States may agree to **split the translations**; for example, by having the requested Member State translate the case summary and table of contents while the requesting Member State takes care of the translation of the documents needed. Finally, if a JIT is set up, and if all requirements are met, translation costs may be covered by the **JIT funding** provided by Eurojust, thereby relieving the Member States from this financial burden (see also case 2 in section 3).

#### ***Case 15. Preliminary consultations to agree on the transfer of proceedings and the translation procedure***

Linked investigations were ongoing in two Member States against the same criminal organisation active in transnational drug trafficking. During a coordination meeting held at Eurojust, it was decided to carry out a joint action day for the coordinated execution of searches, arrests and hearings in the two countries. The competent authorities also agreed that, following the joint action day, the proceedings in Member State A would be transferred to Member State B, which was best placed to



prosecute the facts in their entirety. However, before sending the formal request for transfer, Member State A sent to Member State B a summary of its case by way of spontaneous exchange of information under Article 7 of the 2000 MLA Convention, so that the competent authorities of Member State B could assess whether they would have jurisdiction to take over the entire proceedings, otherwise only a partial transfer of proceedings would be formally requested by Member State A. Furthermore, the authorities involved also found an agreement on the information to be transmitted and on the issue of translations: to accelerate the procedure, the receiving Member State did not request a translation of the entire case file, rather the requesting Member State only prepared and translated a summary of its proceedings together with an index of the contents of the case file.

#### 4.6. Practical issues with the transfer of the case file

Once accepted, a transfer of proceedings entails the forwarding to the receiving Member State of all evidence, records and documents included in the case file of the criminal proceedings in the requesting State. Besides the legal issues described above, a practical issue frequently discussed in Eurojust cases concerns how to transfer the actual case file with the evidence gathered in the requesting country to the receiving state. An initial question is whether the **original documents** are necessary or whether a digital copy is sufficient, possibly followed by the originals, if required under national legislation. Despite the lack of a harmonised approach, most Member States agree that, especially in urgent cases, it is **best practice** to initially send digital copies of the file via secure email, after which the originals may be sent. The physical case file itself, if necessary, is often handed over from one police authority to another and arrangements regarding who will travel to collect the evidence and where must be made. The issues in Eurojust's casework vary as, in some cases, they are linked to the **amount of evidence** to be transmitted and, in other cases, to who should bear the **costs** of the transfer of evidence. Finally, significant delays in receiving the case file are often experienced. In some cases, Eurojust was requested to facilitate the transmission of the objects seized or of the money frozen in bank accounts as each Member State could have different legislation on the requirement for these transactions and Eurojust could clarify the applicable requirements.

In this regard, it is **best practice to consult the receiving Member State** at an early stage to clarify the relevant requirements and agree on the practicalities and logistics of the transfer, also with the **support of Eurojust**. Furthermore, in cases where a JIT has been set up between the Member States involved, the costs for the actual transfer of the case file can be covered by the **JIT funding** provided by Eurojust, thereby eliminating this issue.<sup>24</sup>

#### 4.7. Involvement of suspects

As previously mentioned, it is compulsory only in some Member States to inform or consult the suspects of the intention to transfer the proceedings to another jurisdiction. Eurojust's experience shows that this consultation may sometimes cause **difficulties in practice**, especially if the investigations are still confidential in one Member State, and significant delays in the procedure, notably where the suspect must be consulted before the request to transfer proceedings can be sent and is located abroad (see case 21 below under section 4.9). In some cases, the consultation of the suspect may also risk posing a danger to the victim, hence alternative solutions other than transfer of proceedings are sought.

<sup>24</sup> For more information on JIT funding provided by Eurojust, see the [JIT Funding Portal](#).

***Case 16. Consultation of the suspect on the transfer of proceedings risks endangering the victim***

In a case supported by Eurojust, Member State A initiated criminal proceedings into an episode of domestic violence that occurred on its territory while the suspect and the victim were there on holiday. As both the suspect and victim returned immediately to their home country, Member State B, and there were elements suggesting that other episodes of domestic violence had already occurred there, consideration was given to transferring the proceedings to Member State B, given that it was better placed to prosecute these facts in their entirety. However, informing the suspect of the request to transfer the proceedings as required under the national law of Member State A could have possibly presented a danger to the victim, since it was not also possible to request the enforcement of a protection measure by Member State B. Based on a spontaneous exchange of information, Member State B, where the victim and suspect were residing, was able to initiate its own parallel investigations in order to adopt measures with a view to protecting the victim. However, since said investigation did not cover the facts that occurred in the territory of Member State A, and upon confirmation that the investigations in Member State B were initiated, Member State A requested the transfer of proceedings to Member State B. Before requesting the transfer of proceedings, the authorities in Member State A put in place all the investigative measures that could be taken in its territory.

Finally, the availability of **legal remedies** against a decision to accept a transfer of proceedings, might also cause difficulties and delays in practice.

***Case 17. Successful appeal against a decision to accept a transfer of proceedings***

In a complex case concerning an OCG involved in the illegal trafficking of cultural goods between two Member States, the competent authorities agreed that Member State A would transfer its proceedings to Member State B so that prosecution could be concentrated in a single jurisdiction. After the transfer was completed, the defence challenged the decision of Member State B to accept the transfer of proceedings from Member State A before the appellate court, which finally allowed the appeal and annulled the decision to accept the transfer. However, the appellate court decision was delivered more than two years after the case file – consisting of 42 boxes – was actually sent to Member State B and translated into its language.

## 4.8. Involvement of victims

The consultation of victims in the framework of transfer of proceedings, despite being also a requirement in some Member States, does not appear to have led to major difficulties in the Eurojust cases identified. The **interests of victims** are often taken into consideration by the national authorities and Eurojust when deciding which State is best placed to prosecute a concrete case, even where they have no right to be involved in the transfer of proceedings under the applicable national legislation. This factor assumes a significant weight, particularly in relation to certain crime types, such as trafficking in human beings.<sup>25</sup>

In cases concerning Member States under whose national law victims have the right to be involved in the transfer procedure, Eurojust sometimes assists national authorities in clarifying **if and how the victims were informed** of the request for transfer and what would their participation rights be in the

<sup>25</sup> See also [Eurojust Report on Trafficking in Human Beings](#), February 2021, p. 24.





criminal proceedings in the receiving State. These issues are subsequently taken into consideration when assessing the appropriateness of the transfer. Furthermore, where victims have been heard in the requesting State, solutions are found with the help at Eurojust to ensure the admissibility of their statements in the receiving State without having to re-hear them abroad (see case 23 under section 4.10 below).

Finally, there have also been cases at Eurojust concerning the forwarding of the complaint made by a victim in the Member State of residence which had no jurisdiction over crimes committed abroad to the Member State where the criminal offence occurred in accordance with **Article 16 of Directive 2012/29/EU** on the rights of victims of crime.<sup>26</sup> In one case concerning an online fraud, the national authorities involved Eurojust because there was disagreement among them on where the crime actually occurred and, accordingly, on whether the transmission of the complaint should be based on Article 16 of Directive 2012/29/EU or instead be treated as an ordinary request for a transfer of proceeding. In another similar case, Eurojust was called on to clarify whether the forwarding of a complaint pursuant to Article 16 of Directive 2012/29/EU should be dealt with as a mere sharing of a *notitia criminis* in the form of a spontaneous exchange of information, or rather as a fully fledged request for transfer of proceedings, with all the relevant obligations, such as the need to transmit and translate all documents, provided by the victim.

#### 4.9. Coordination of provisional measures

In Eurojust's experience, very complex issues arise when provisional measures such as **pre-trial arrest warrants and/or freezing orders** on assets have been adopted in the requesting Member State in the framework of the proceedings to be transferred abroad.

Most frequently, it is clear to the Member States involved that said measures, unlike the evidence available in the case file, cannot be automatically handed over to the receiving Member State based on the transfer of proceedings, but need to be dealt with separately. Indeed, in many Member States, national provisional measures cease to have any effect once the proceedings are transferred to another Member State, hence if the receiving Member State wishes to keep those assets frozen or the suspect under arrest, it must first adopt its own equivalent national provisional measures and then request its execution in the transferring State by **resorting in parallel to other judicial cooperation instruments**, such as EAWs and/or freezing certificates under Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders.

However, there is not always agreement on this. In one Eurojust case, the receiving Member State expected that the assets frozen in the requesting Member State would automatically be transferred together with the case file, without any need to issue a separate freezing order and certificate. On the contrary, the national legislation of the requesting Member State was clear in excluding such a possibility, so that in the absence of any freezing certificate from the receiving State, the assets had to be restituted to the suspect following the transfer of proceedings. Furthermore, in another case, thanks to a bilateral agreement existing between two Member States involved regulating this issue, it was also possible to surrender to the receiving Member State the suspect in custody in the requesting State based only on the transfer of proceedings, without recurring to a separate EAW.

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<sup>26</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime and replacing Council Framework Decision 2011/220/JHA.



In cases involving provisional measures adopted in the requesting Member State, it is therefore crucial that the receiving State is made aware of the provisional measures in place and that the Member States involved clarify whether any additional judicial cooperation instrument should be used to maintain those measures in the receiving Member State and finally, to **coordinate the transfer of proceedings with the execution of said additional judicial cooperation instruments**, such as EAWs and/or freezing certificates, to ensure that provisional measures are kept in place without interruption.

The first issue that is normally considered where provisional measures are in place, often in the framework of preliminary consultations, is whether it is possible for the receiving Member State to **adopt equivalent measures** in its own proceedings, considering the different conditions that might be applicable under national law. Especially in **money laundering cases**, the circumstance that the receiving Member State would not be able to order, for instance, the freezing of the assets already frozen in the transferring State as proceeds of the offence can be a decisive element when considering the appropriateness of the transfer itself.<sup>27</sup> In one Member State, in particular, this is actually a legal requirement, as national law stipulates that a transfer of proceedings cannot take place if a freezing order targeting the proceeds of crime was issued and the receiving Member State does not have adequate legislation allowing to recover those illicit assets. Similarly, certain Member States are also very reluctant to transfer proceedings abroad when the suspect is already under arrest or illicit assets have been frozen.

***Case 18. The possibility to freeze the illicit assets in the receiving State is key in deciding on the transfer***

Member State A intended to transfer the ongoing proceedings in relation to a single episode of money laundering to Member State B, which was carrying out investigations on a larger scale into the whole money laundering scheme allegedly set up by the same suspect. However, during preliminary consultations supported by Eurojust in a coordination meeting, Member State B clarified that, based on the evidence available at that moment, it would be difficult, according to its national law, to obtain a freezing order on the sum already seized in Member State A as illicit profits of the offence. Therefore, to avoid the risk of restituting the funds to the suspect as a consequence of the transfer, it was agreed to postpone the decision on the transfer of proceeding until, based on the additional evidence gathered in Member State A, further clarity would be available on whether a freezing order could be issued in Member State B.

Secondly, even in the event that the requested State is able to adopt equivalent provisional measures and there has been an agreement on the transfer, the **coordination of the transfer of proceedings and the simultaneous execution EAWs and/or freezing certificates** might prove difficult and cause delays. In particular, EAWs and freezing orders must often be executed in the requesting Member State before the transfer of proceedings is finalised since, in many Member States, the provisional measures adopted by the requesting State are lifted as a result of the transfer. This implies that criminal proceedings must already be ongoing in the receiving State before the transfer is finalised for it to be able to issue its own domestic arrest warrant and/or freezing order to be executed in the requesting State (via an EAW and/or a freezing certificate). Sometimes this is already the case, yet in other instances, it is necessary for the receiving State to open its own (parallel) proceedings before the

<sup>27</sup> In this sense, see also the case examples concerning transfer of proceedings in the [Eurojust Report on Money Laundering](#), October 2022, p. 43.



transfer of proceedings. Especially in the latter situation, the receiving Member State does not necessarily have enough evidence yet to adopt said provisional measures and an exchange of evidence from the requesting State via an EIO is therefore needed before the actual transfer of proceedings. Finally, recourse to other judicial cooperation instruments for ensuring the execution of provisional measures may also have the drawback of causing delays in the transfer procedure.

***Case 19. Coordination of the transfer of proceedings with the execution of a freezing certificate***

Thanks to preliminary consultations facilitated by Eurojust, it was agreed between the competent authorities that Member State A would transfer its investigation on money laundering to Member State B, which was investigating the underlying predicate offence of cyber fraud in order to concentrate the proceedings as a whole in a single jurisdiction. The bank account on which the sums were received in Member State A had been already subject to a national freezing order in the requesting Member State A; however, it was not clear under its national law whether it would be possible to transfer the assets seized to Member State B on the basis of the transfer of proceedings. Therefore, considering the envisaged restitution of the frozen assets to the victim in Member State B and the length of the procedure for transferring the case, an alternative solution was preferred. In parallel to the procedure for transfer of proceedings, Member State B issued a freezing certificate towards Member State A in the framework of its own investigation for fraud, targeting the same assets already subject to a national freezing order in Member State A for the offence of money laundering. The decision to reconstitute the money to the victim was sent at a later stage. On the basis of said freezing certificate and restitution decision, it was possible to immediately transfer the assets to the victim in Member State B. The transfer of proceedings had some delays, due to the difficulty of serving the suspect with the final decision, so it took some time until the decision to request the transfer of proceedings became *res iudicata*, and could be sent to the central authority of Member State A. In the meantime, the investigations for fraud in Member State B were concluded and the case moved to the next stage, so it is not yet clear whether the transfer will ultimately be accepted.

Frequently, an additional layer of complexity arises where the **authorities of the requesting State competent to decide on the transfer are different from those deciding on the execution of the EAWs and/or freezing certificate**. If coordination among those authorities is not ensured, there is a significant risk that the execution of the EAW and/or freezing certificate will be postponed or refused based on the existence of ongoing proceedings in the same Member State that are precisely those intended to be transferred after the execution of said measures.<sup>28</sup>

***Case 20. Refusal to execute an EAW hinders the transfer of proceedings***

Eurojust supported a case concerning the coordination of complex investigations taking place in two Member States against an OCG trafficking cultural heritage goods, including antiquities and works of art, worldwide. Member State B was investigating only four suspects for both art trafficking and related tax offences, while Member State A was investigating for art trafficking the same four suspects in addition to many others. During a coordination meeting, the authorities involved agreed that the proceedings against those four suspects could be transferred to Member State A but only in relation to art trafficking. Member State B would therefore still retain jurisdiction against those four suspects

<sup>28</sup> Based on Article 4(2), Article 4(7)(a) or Article 24(1) of the EAW FD; based on Article 10(1) of the Regulation (EU) 2018/1805.



in relation only to the tax offences connected to the art trafficking. Member State A then issued four EAWs concerning those four suspects. However, the authority competent for the execution of the EAWs – which was different to the one that agreed, in principle, to the transfer of proceedings – refused to surrender two of the requested persons pursuant to Article 4(2) of the EAW FD because they were being prosecuted in that Member State for the same acts on which the EAW was based. In particular, the authority competent for the execution of the EAWs found that the prosecution of the tax offence would be inextricably linked to the further charge of illegal art trafficking. The surrender proceedings are still to be finalised.

In similar cases, a **best practice** consists of the **early involvement of Eurojust**, which will seek to ensure the necessary **internal coordination among the different competent authorities** of the requesting Member State. In particular, to facilitate the smooth execution of the EAWs, it is very helpful to **inform the competent executing authorities of the agreements reached at Eurojust on the transfer of proceedings**. Where possible, to avoid similar problems, a best practice is to share with the authorities competent for the execution of the EAW and/or freezing certificate the agreement reached during the coordination meeting at Eurojust, for instance, or the Eurojust joint request advising on which State should prosecute that suggests the transfer of the proceedings ongoing in their Member State to the Member State that issued the EAW.

#### ***Case 21. Coordination of a transfer of proceedings with the execution of an EAW***

Member State A was investigating an OCG active in international drug trafficking. One of the suspects was arrested *in flagrante* in Member State B while transporting drugs, as a result of which criminal proceedings were also opened against him in Member State B. A coordination meeting took place at Eurojust to discuss the way forward, as both countries agreed that it would be better to concentrate the proceedings against the criminal group as a whole in Member State A. It was agreed that Member State A would first issue an EAW against the suspect and, at the same time, a letter expressing its intention to take over the proceedings in Member State B. To ensure that the authority competent for the execution of the EAW would not refuse its execution based on the ongoing proceedings in Member State B, the agreement reached at Eurojust and the letter by Member State A was shared with it. Thanks to this internal coordination ensured by the involvement of Eurojust, the EAW was smoothly executed as well as the subsequent transfer of proceedings.

## **4.10. Admissibility of evidence**

Evidential problems may also arise in relation to the validity, admissibility and consistency of evidence transferred from one Member State to another, mostly due to differences between the applicable national laws. The experience of Eurojust with such issues is **limited**, however, since admissibility of evidence is frequently assessed at a later stage. Nevertheless, there have been cases in which Eurojust facilitated **preliminary consultations** between the competent authorities in view of a transfer of proceedings, to find solutions that would not jeopardise the admissibility of the evidence collected in the requesting State.

#### ***Case 22. Ensuring the admissibility of the evidence in the receiving State before the transfer of proceedings***



In a Eurojust case concerning the transfer of proceedings in a case involving kidnapping and drug trafficking, it became apparent during a coordination meeting that the statements rendered by the witnesses and the victim to the police in the transferring Member State A would not be admissible in the receiving Member State B given that, under its national law, witnesses may only be heard by a judicial authority. Therefore, a solution was needed to avoid a new re-hearing of the witness and victim by the authorities of the receiving Member State B, which would have required, following the transfer of proceedings, the issuing of an additional EIO, since the individuals in question were located in Member State A. In particular, it was agreed that the prosecutor of Member State A would hear the two individuals again as part of his own motion before formally requesting the transfer of proceedings, so that these statements could be included in the case file to be transferred and be admissible in Member State B.

#### 4.11. Other solutions than transfers of proceedings

As shown by the examples described, the formal transfer of proceedings from one Member State to another is usually a time-consuming and cumbersome procedure and national authorities are frequently reluctant to initiate the process. Eurojust has learned from practical experience that, sometimes, the proceedings do not need to be formally transferred as the same result can be achieved by **other means**.<sup>29</sup>

In several cases, the national authorities of the Member State in which the proceedings are to be concentrated **already have their own parallel proceedings ongoing** and have already acquired, via **EIOs**, spontaneous sharing of information under **Article 7 of the 2000 MLA Convention or JITs**, all the information and evidence at the disposal of the other Member State. Thus, *de facto*, what was available in the case file of one Member State had already been shared or nothing new needed to be transferred. In these cases, a formal transfer of proceedings is not needed and it is sufficient that the Member State that is not proceeding further ensures that, pending the prosecution and trial in the other Member State, its investigation is closed or at least suspended. However, while similar solutions can usually be followed by Member States applying a principle of opportunity in prosecutions who enjoy a wider discretion to abstain from prosecution, they are in contrast not normally possible for Member States with a strict principle of legality that do not have any legal basis to drop a case informally and must recur to a formal transfer of proceedings as a way to discharge their duty to prosecute. Discussions are therefore frequently held at Eurojust to clarify whether a formal request for transfer of proceedings is still actually needed.

##### ***Case 23. Formal transfer of proceedings is not needed since all evidence was already shared within the JIT***

With the support of Eurojust, a JIT was set up between the judicial authorities of two Member States that were conducting several linked cross-border investigations into organised illicit trafficking of waste. Following the exchange of evidence within the JIT and numerous coordination meetings, it was acknowledged that two criminal investigations were targeting the same facts and the same suspects. To avoid any risk of *bis in idem*, the judicial authorities involved therefore agreed that Member State

<sup>29</sup> In this sense, see also the Guidelines on practical measures to improve co-operation in respect of transfer of proceedings, including a model request form adopted in Strasbourg on 10 December 2012 by the Committee of experts on the operation of European Conventions on co-operation in criminal matters (PC-OC INF 78).



A was best placed to prosecute the suspects. Discussions were held as to whether it was necessary to follow the lengthy procedure for a formal transfer of proceedings given that, thanks to the existence of the JIT, all the evidence had already been shared with Member State A. The judicial authorities involved therefore agreed to an alternative solution. Member State B sent a formal request for transfer of proceedings, but Member State A replied by sending an official letter informing them that it was already investigating the same facts, specifically mentioning the provisional charges of its investigation. As such, Member State B was able to halt its proceedings and subsequently close them on the basis of the *ne bis in idem* principle once the proceedings in Member State A were finally concluded. Nevertheless, it took more than two months to send the formal request for transfer due to the time required for its translation.

Where **common law countries** are involved, a formal transfer of proceedings as such may often not take place for the reasons outlined above (see section 2.2.1., namely for the lack of judicial authority involved in the investigation phase that could take a decision on the transfer). Eurojust therefore offers its support to **identify other practical solutions** that allow the same objective to be achieved. In particular, when it is decided that the other country is best placed to prosecute a case, the police investigation in the common law country is simply suspended and all evidence gathered is shared with the foreign authorities via mutual legal assistance requests. On the other hand, if a transfer of proceedings is envisaged after prosecution has been brought in the common law country, then the means to achieve it will simply be the decision to withdraw the prosecution. Even though these practical solutions facilitate the desired result, the impossibility of proceeding to formal transfer of proceedings in the strict sense can be problematic for Member States with a strict principle of legality that requires a formal reply of acceptance regarding the request to transfer proceedings.

***Case 24. Formal transfer of proceedings is not possible, solutions found within the JIT***

In a case concerning an OCG active mainly within two Member State, a JIT was set up with the assistance of Eurojust to ensure the effective and swift exchange of evidence. At the end of the investigations, the Member States agreed to split prosecutions: certain suspects would be prosecuted in Member State A and others in Member State B. As a formal transfer of proceedings was not feasible for Member State A which had a common law system, and in the absence of a requisite domestic legal framework, following the exchange of all evidence within the JIT, Member State A suspended its proceedings while Member State B pursued the prosecution, supported by the evidence provided by Member State A. When Member State B has finalised the proceedings, the final decision is to be shared and sent to Member State A, so it can formally close its case.

## 5. Conclusions and recommendations

This report provides insights into the **main challenges identified in Eurojust's casework** concerning transfers of proceedings in the European Union, which are often linked to the **profound differences existing among national legislations**. It highlights the role that Eurojust can play in relation to those cases and, more broadly, in overcoming problems related to concurrent jurisdictions and multiple criminal proceedings, also **identifying best practices** and solutions for practitioners as well as **recommendations for the EU legislator**. However, even with the support of Eurojust, optimal



solutions cannot always be found within the patchwork of legal bases, and transfers of proceedings usually continue to be time-consuming and cumbersome. As such, there is still significant room for improvement in this field. These conclusions therefore select the **key findings and recommendations** identified in this report.

### 5.1. Informal preliminary consultations

The need for the requested Member State to ultimately agree on the appropriateness of the transfer of proceedings, as well as the different conditions and procedures applicable across the Member States and the high costs that are frequently inherent in such procedures, render it extremely important to proceed to informal **preliminary consultations** among the national judicial authorities involved **before actually submitting a formal request for transfer**.<sup>30</sup> Such preliminary consultations – which can also be **facilitated by Eurojust** within the framework of a coordination meeting – increase the chances of the transfer being successful and minimise the risks of undue delays and unnecessary costs. These consultations would ideally **cover the following issues**, where relevant:

- the appropriateness and potential success of the envisaged request;
- the need for a formal request for transfer of proceedings or the possibility to recur to other alternative solutions;
- the applicable procedures in the two Member States involved, including the competent authorities, the involvement of the suspect and/or victim and the timings;
- the documents to be included in the request and the translation issues, also in light of any evidence already exchanged with the receiving State and in order to avoid unnecessary costs;
- evidentiary issues, such as any additional investigative activity that might need to be carried out in the requesting Member State before the transfer is completed, to avoid recourse to additional EIOs in the future and to ensure the admissibility of the evidence already gathered in the receiving Member State;
- the coordination of provisional measures such as EAWs and/or freezing orders adopted in the requesting State;
- practical issues for the material transfer of the case file; and
- the information that the requesting Member State needs to receive once the transfer is accepted.

### 5.2. Involvement of Eurojust

Transfers of proceedings usually represent the final outcome and last step of a wider process aimed at overcoming issues related to concurrent jurisdictions and/or to a plurality of criminal proceedings on the same or linked facts. A transfer of proceedings can normally **only be successful with consensus among the national authorities** on which State is best placed to prosecute the case. Thanks to its mandate and tools, Eurojust is particularly well-equipped to help build such an agreement and to find practicable solutions to ensure the effectiveness of justice and compliance with the fundamental rights of the defence and the interests of victims. The support of Eurojust is therefore **very helpful during the entire life-cycle of the case**, from identifying parallel or linked proceedings to supporting preliminary consultations between the national authorities, to advising on the State best placed to prosecute, to clarifying legal and practical issues related to the transfer of proceedings or finding other alternative

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<sup>30</sup> In this sense, see also the Guidelines on practical measures to improve co-operation in respect of transfer of proceedings, including a model request form adopted in Strasbourg on 10 December 2012 by the Committee of experts on the operation of European Conventions on cooperation in criminal matters (PC-OC INF 78).



solutions, to ensuring the effective coordination of the execution of provisional measures and to facilitating swift and smooth communication including with regard to questions arising following the transfer. Therefore, when issues related to concurrent jurisdictions arise, it is advisable to **involve Eurojust from an early stage**, and not only when difficulties arise, after a request for transfer of proceedings has been sent.

### 5.3. Joint investigation teams

Even though **JITs** are an instrument of judicial cooperation with the primary purpose of carrying out criminal investigations and gathering evidence, they can also have a prosecutorial dimension and play an **important role in preventing conflicts of jurisdiction and in streamlining transfers of proceedings**. This occurs, in particular, when JIT agreements contain a clause whereby parties agree to discuss, at a later stage, which jurisdiction should prosecute and for which offences. Furthermore, the **sharing of evidence within a JIT is a very swift and smooth process** that also **strengthens its admissibility** before the national courts, which can also be helpful in the context of a subsequent transfer of proceedings. Furthermore, after the setting up of a JIT, the national authorities can apply for **JIT funding from Eurojust**, which can be used to cover the costs of translation and/or of the physical transfer of the case file, thereby avoiding discussions about which party should bear which costs and preventing unnecessary delays.

### 5.4. Practicalities of the transfer

As the procedure to be followed for transferring a proceeding abroad is governed by different national rules, various difficulties arise that often cause this form of judicial cooperation to be cumbersome and time-consuming. If permitted under the applicable national laws, the following **best practices** have been identified in Eurojust's casework, besides the preliminary consultations mentioned above, to minimise procedural issues and delays in practice.

- When **central authorities are involved** as competent authorities in deciding on a request for transfer of proceedings, it is beneficial to **inform them of any preliminary agreement** already reached by the judicial authorities competent for the investigations.
- It is important to distinguish between the information to be transmitted (and translated) with a request for a transfer of proceedings and the documents of the whole case file that will be transmitted once the transfer is accepted. To reconcile all legitimate interests involved, an effective solution is to **include in the request (and translate) a summary of the case, its essential documents and a detailed table of contents of the documents available in the case file**, so that the receiving Member State is able to have a global view of the information available and assess which specific documents are still needed to decide on the transfer.
- When provisional measures such as arrests and/or freezing of assets must be executed, **inform the authorities competent for the execution of the EAW and/or freezing certificate of the agreement reached on the transfer of proceedings** from the executing to the issuing State.
- Provide a **formal reply of acceptance of the transfer to the requesting State** as well as, subsequently, **information on the progress and final outcome of the criminal proceedings** in the receiving State.





## 5.5. A new EU legal instrument on transfer of proceedings

Eurojust's casework shows that the plurality of legal bases currently used for transferring proceedings in the European Union and the diverging rules applicable across the Member States often create difficulties in practice. A **new EU legal instrument laying down common criteria and procedures** for transferring proceedings to another Member State would therefore certainly lead to an improvement of the current situation in terms of legal certainty, effectiveness and efficiency.

Furthermore, based on the key findings of Eurojust's experience described above, the new EU legal instrument on transfer of proceedings should:

- introduce a **preliminary consultation mechanism** between the national authorities involved before sending a formal request for transferring the proceedings, which would be applicable beyond the mere cases of parallel proceedings, as it is now under Framework Decision 2009/948/JHA on conflicts of jurisdiction;
- in consideration of the strict link between transfers of proceedings and conflicts of jurisdiction, reiterate the **possibility of Member States involving and seeking the advice of Eurojust from an early stage**, namely during preliminary consultations before a request for transfer is sent, and especially in cases of disagreement among the national authorities;
- prioritise **direct contacts between competent judicial authorities** over transmission via central authorities;
- introduce **time limits** to streamline the decision-making process once a request for transfer of proceedings has been submitted;
- outline **rules on what information is to be included in a request** for transfer and on the **translation regime** and the sharing of its costs; and
- regulate the handling of **provisional measures following the transfer of proceedings**, and coordinate such provisions with other existing mutual recognition instruments such as the EAW and Regulation 2018/1805(EU) on freezing and confiscation orders.



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