

Defending Cross-Border Criminal Cases in the EU: The New Regulation on the Transfer of Criminal Proceedings

TRAINING FOR DEFENCE LAWYERS

Online, 1 October 2026

ONLINE

EXCELLENCE IN EUROPEAN LAW

Speakers

Chad Heimrich
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Chad is an experienced defence lawyer in both German and EU criminal law with a particular focus on criminal procedure law. He defends clients in all areas of criminal law, especially commercial criminal law, as well as in extradition proceedings, against Interpol, and in proceedings of the European Public Prosecutor's Office. He also frequently publishes in the field of EU criminal law.

Jorge Espina Ramos
Public Prosecutor, Spain; former Deputy National Member for Spain at Eurojust

Jorge is a Spanish public prosecutor with extensive experience in international judicial cooperation in criminal matters. From 2017 to 2026, he served as Deputy National Member for Spain at Eurojust, where he specialised in cross-border criminal cases and EU judicial cooperation.

Key topics

- The new EU Regulation on the transfer of criminal proceedings mechanisms
- Rights of the defence: procedural safeguards, participation of suspects and accused persons, legal remedies, and judicial review
- Practical challenges in implementation
- Cross-border procedural issues

Language
English

Event number
326DT123

Organiser
Cornelia Riehle (ERA)

Co-funded by the European Union.

european.law

Transfer of Criminal Proceedings in the EU

Thursday, 1 October 2026

14:15 Connecting to the videoconference platform

14:30 Opening of the online seminar

14:35 **The New EU Regulation on the Transfer of Criminal Proceedings: Legal Framework, Objectives and Core Mechanisms**

- Why a new Regulation? Evolution from the 1972 Council of Europe Convention and earlier EU instruments to the 2024 Regulation
- Scope of application, types of transfers, and jurisdiction
- Procedural framework: initiation, consultations between authorities, decision-making process and grounds for refusal

Jorge Espina Ramos

15:15 Discussion followed by break

15:30 **Defending Clients in Cross-Border Transfers: Practical Challenges**

- Criteria for requesting a transfer, identifying when a transfer serves—or undermines—the client's interests and how to influence the decision-making process
- Protecting procedural rights during consultations, transfer requests and parallel proceedings in different Member States
- Challenging transfer decisions: legal remedies, suspensive effects and tactical considerations before national courts
- Legal consequences of acceptance or refusal of a transfer for both requesting and requested Member States

Chad Heimrich

16:00 Discussion followed by break

16:15 **Complex Legal Issues under the Regulation: Evidence, Interim Measures and Judicial Cooperation**

- Admissibility of evidence following a transfer and the interaction between national procedural law and EU principles
- Coordination of interim and provisional measures, including detention, freezing orders and investigative measures before and after acceptance of the transfer

Jorge Espina Ramos

16:45 Discussion followed by break

17:00 **Building an Effective Defence Strategy under the New Regulation**

- Managing cross-border defence: cooperation with foreign counsel, prosecutors and judicial authorities.
- Addressing risks arising from parallel proceedings, forum selection and potential misuse of transfer mechanisms.
- Protecting clients' rights in relation to evidence, detention, ne bis in idem and proportionality concerns.
- Lessons from practice, emerging trends and recommendations for defence lawyers preparing for implementation of the Regulation

Chad Heimrich

17:45 Discussion

18:00 End of the online seminar

For programme updates: **www.era.int**
Programme may be subject to amendment.

Objective

This online seminar will provide defence lawyers with a comprehensive understanding of the new EU Regulation on the transfer of criminal proceedings, focusing on its legal framework, scope, procedures, and the rights of suspects and accused persons. Participants will examine the practical and procedural challenges arising from the Regulation's implementation, including consultations between authorities, legal remedies, suspensive effects, the admissibility of evidence, and the coordination of interim and provisional measures.

Who should attend?

Lawyers in private practice with an interest in criminal law in the EU and who are citizens of eligible EU Member States participating in the EU Justice Programme (Denmark does not participate), Albania, Bosnia and Herzegovina, Kosovo*, Moldova and Ukraine.

* This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ opinion on the Kosovo declaration of independence.

Interactive online seminar

The online seminar will be hosted on the Zoom videoconference platform. You will be able to interact immediately and directly with our top-level speakers and other participants. We will make the most of the technical tools available to deliver an intensive, interactive experience. The highest security settings will be applied to ensure that you can participate safely in this high-quality online conference.

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Training for Defence

This online seminar is part of a broader project on European Criminal Law for Defence Lawyers supported by the European Commission. Further information about the European Criminal Law for Defence Lawyers project: **training-for-defence.era.int**

Terms and conditions of participation

- No registration fee.
- Participation is only open to lawyers in private practice from eligible EU Member States (Denmark does not participate in the EU Justice Programme) Albania, Bosnia and Herzegovina, Kosovo* and Ukraine.
- A list of participants including each participant's address will be made available to all participants unless ERA receives written objection from the participant no later than one week prior to the beginning of the event.
- The participant will be asked to give permission for their address and other relevant information to be stored in ERA's database in order to provide information about future ERA events, publications and/or other developments in the participant's area of interest.
- A certificate of attendance will be issued after the webinar to all those that participated for the entire event.

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The New Regulation on the Transfer of Criminal Proceedings

European Criminal Law for Defence Lawyers in a Transforming Digital Landscape

Online, 1 October 2026 (326DT123)

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Background documentation

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A1	European Convention on Extradition (Strasbourg, 13.XII.1957)
A2	European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 20.IV.1959)
A3	Second Additional Protocol to the European Convention on Extradition (Strasbourg, 17.III.1978)
A4	United Nations Convention against Transnational Organized Crime (Palermo Convention, 2000)

A5	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 (OJ C 197/1; 12.7.2000, P. 1)
A6	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 8.XI.2001)
A7	Council Act of 16 October 2001 establishing in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2001/C 326/01), (OJ C 326/01; 21.11.2001, P. 1)
A8	Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway (OJ L 292, 21.10.2006, p. 2–19)

B) Conflicts of Jurisdiction and Transfer of Proceedings

B1	European Convention on the Transfer of Proceedings in Criminal Matters (Strasbourg, 15.V.1972)
B2	Convention on the Transfer of Sentenced Persons (ETS No. 112 - Strasbourg, 21.III.1983)
B3	Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings (OJ L 328/42; 15.12.2009, P.42)
B4	Guidelines for deciding 'Which jurisdiction should prosecute?' (Eurojust 16 December 2016)
B5	Case-law by the Court of Justice of the European Union on the Principle of ne bis in idem in Criminal Matters, Eurojust, December 2021
B6	Eurojust Report on the transfer of proceedings in the European Union (Eurojust 18 January 2023)
B7	Regulation (EU) 2024/3011 of the European Parliament and of the Council of 27 November 2024 on the transfer of proceedings in criminal matters

C) Mutual Recognition Instruments

C1	Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ L 190/1; 18.7.2002, P. 1)

C2	Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence
C3	Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties
C4	Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders
C5	Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings
C6	Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ L 327/27; 5.12.2008)
C7	Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (OJ L 337/102; 16.12.2008)
C8	Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ L 81/24; 27.3.2009)
C9	Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (OJ L 294/20; 11.11.2009)
C10	European Arrest Warrant proceedings - Room for improvement to guarantee rights in practice, 26 March 2024
C11	Case law by the Court of Justice of the European Union on the European Arrest Warrant – Overview, Eurojust, October 2023
C12	Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order
C13	Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130/1; 1.5.2014)
C14	Case-law by the Court of Justice of the European Union on the European Investigation Order | Eurojust | European Union Agency for Criminal Justice Cooperation

C15	Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders
C16	Eurojust Report on Regulation 2018/1805 on the Mutual Recognition of Freezing and Confiscation Orders (6 October 2025)
C17	Regulation (EU) 2023/1543 of the European Parliament and of the Council of 12 July 2023 on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings, (OJ L 191, 28.7.2023)
C18	Directive (EU) 2023/1544 of the European Parliament and of the Council of 12 July 2023 laying down harmonised rules on the designation of designated establishments and the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings, (OJ L 191, 28.7.2023)
C19	Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation, 2.05.2024
C20	Eurojust meeting on the EU e-evidence package: Roles and responsibilities of Member States, service providers and Eurojust (18 February 2026)
C21	Directive (EU) 2016/680 ("Law Enforcement Directive" / LED)

D) Procedural Rights and Victims' Rights

D1	Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280/1; 26.10.2010)
D2	Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (1.6.2012; OJ L 142/1)
D3	Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294/1; 6.11.2013)
D4	Directive 2016/343 of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (11.3.2016; OJ L 65/1)
D5	Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132 1; 21.5.2016)
D6	Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal

	proceedings and for requested persons in European arrest warrant proceedings (OJ L 297/1, 4.11.2016)
D7	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 2001/220/JHA
D8	Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order
D9	Joint Report on the European Protection Order – Perspectives from the judiciary and support services (Eurojust / European Institute for Gender Equality, February 2025)
D10	Directive (EU) 2024/1385 of 14 May 2024 on combating violence against women and domestic violence (OJ L, 2024/1385, 24.5.2024)
D11	Directive (EU) 2026/1472 of the European Parliament and of the Council of 17 June 2026 amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L, 2026/1472, 30.6.2026)

Training for Defence

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European Criminal Bar Association (ECBA): www.ecba.org





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Training for Defence Lawyers

Online, 1 October 2026

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Evolution in judicial cooperation



Quality

Time

Diplomacy / Reciprocity

Convention 1959 (CoE)

Convention 2000 (EU)

Mutual Recognition

Mutual Recognition Instruments

1) FD European Arrest Warrant 2002
2) FD freezing evidence and goods 2003
3) FD financial penalties 2005
4) FD confiscation 2006
5) FD taking account of convictions 2008
6) FD custodial sentences 2008
7) FD supervision probation measures and alternative sanctions 2008
8) ~~FD European Evidence Warrant 2008~~
9) FD supervision measures for provisional detention 2009
10) Directive European Protection Order 2011
11) Directive European Investigation Order 2014
12) Regulation freezing and confiscation 2018
13) Regulation on e-Evidence 2023
14) Regulation on transfer of proceedings 2024



Applicable legal framework

- FD on Conflics Jurisdiction 2009/948/JHA
- CoE Convention 1959 (art 21)
  - Convention 2000 (art 6)
- CoE Convention 1972
- Palermo Convention (2000)

OVERVIEW OF THE STATE OF PLAY OF IMPLEMENTATION/RATIFICATION BY EU MEMBER STATES OF SELECTED LEGISLATIVE INSTRUMENTS

MS	European Convention on Mutual Assistance in Criminal Matters (1959)	European Convention on the Transfer of Proceedings in Criminal Matters (1972)	Convention on Mutual Assistance in Criminal Matters between the Member States of the EU (2000)	UN Convention against Transnational Organised Crime (2000)
	Ratification[1]	Ratification[2]	Ratification[3]	Ratification[4]
BE	x		x	x
BG	x	x	x	x
CZ	x	x	x	x
DK	x	x	x	x
DE	x		x	x
EE	x	x	x	x
IE	x		x[5]	x
EL	x			x
ES	x	x	x	x
FR	x		x	x
HR	x		x[6]	x
IT	x		x	x
CY	x	x	x	x
LV	x	x	x	x
LT	x	x	x	x
LU	x		x	x
HU	x		x	x
MT	x		x	x
NL	x	x	x	x
AT	x	x	x	x
PL	x		x	x
PT	x		x	x
RO	x	x	x	x
SI	x		x	x
SK	x	x	x	x
FI	x		x	x
SE	x	x	x	x

Regulation 2024/3011 on ToP

- Why a Regulation?
  - Recital 6: "*In order to ensure effective cooperation* (…) *rules on such transfer should be established by a legally binding and directly applicable act of the Union*".
- Relation with previous legal framework:
  - Spontaneous exchange not affected (recital 11)
  - Suplements other PRM (Recital 10)
  - Replaces the main ToP legal basis (art 33.1): 1959 and 1972 Conventions
  - Possibility to continue pre-existing (or conclude new) agreements if
    - Further strengthen the aims of the Regulation, and
    - simplifies or facilitates procedures of transfer, and
    - Respects the level of safeguards

Nature: Is it Mutual Recognition?

- **Mandatory** since Treaty of Lisbon: Art. 82.1 TFEU: "*Judicial Cooperation in criminal matters* ***shall be based*** *on the PMR of judgments and judicial decisions (…)*"
- Born as an alternative to full harmonisation. Includes rules to:
  - ensure **recognition of decisions**;
  - prevent and solve **conflicts of jurisdiction**;
  - Minimum rules on **procedural rights**.
- Based on
  - **Mutual trust**
  - **Direct judicial communication**
  - **Orders** or **Certificates** instead of requests
  - **Limited grounds for non execution**
  - **Safeguards and guarantees**

Scope

- **All cases** of transfer of **criminal proceedings** in MS (except DK)
- Including early stages **when the suspect has not been identified** (annex I)
- Including **when the suspect is a legal person**
- Both at **pre-trial and trial stages**
- Regardless of whether there is an open case in the requested State

Authorities

- **Requesting**
  - Judge, prosecutors or others (subject to validation)
  - Competent in the case concerned (GPs?)
- **Requested**
  - Judicial authorities (judge or prosecutor) competent
    - to accept/refuse, and
    - To take subsequent measures (exception for Common law systems)
- The principle of direct communication needs to be respected (recital 13)

Jurisdiction

- **Requested MS needs to have jurisdiction to continue with the case**
  - Stemming from the national law
  - Stemming from the Regulation
    - After refusing to surrender a person based on
      - art 4(7)(b) EAW FD (offence committed in the territory of the executing MS)
      - Breach of fundamental rights
    - If most of the effects or substantial part of damage in that MS
    - The person is national or resident and there are other open proceedings
      - against the same person
      - Against other persons on the same or related facts

Criteria to transfer

- General aim: **efficient and proper administration of Justice, including proportionality.**
- Concrete criteria:
  - Territory where crime was committed
  - Nationality, residence or mere presence of person
  - Surrender has been refused
  - Location of evidence and/or witnesses
  - Ongoing proceedings against same persons or for same/related facts
  - Execution of prison sentence
  - Social rehabilitation
  - Nationality or residence of the victims
  - Agreement reached under FD2009/948/JHA

GUIDELINES FOR DECIDING ‘WHICH JURISDICTION SHOULD PROSECUTE?’



Procedure

- Based on **certificate** (plus "***essential parts***") translated
- Consultations and communications are allowed (direct and through EJN/EUROJUST)
- **Grounds for refusal**
  - Mandatory (ne bis in idem, lack of jurisdiction, etc)
  - Optional
    - ***Not in the interest of efficient and proper administration of Justice***
- Time limits: 60 days plus 30

Effects in requesting MS

- Upon acceptance, file is suspended or discontinued except
  - Urgent measures
  - Provisional measures under other instruments
- Depending on national law, it could be reopened following a decision to discontinue in the requested MS

Effects in requested MS

- National law to be followed
- **Full validity of acts** carried out before acceptance (unless against fundamental principles), including those interrupting limitations period
- **Admissibility of evidence** not affected by the mere fact it was gathered in another MS
- **Free assesment of all evidence** by trial court
- **Obligation to report to the requesting MS about the outcome**

Coordination with other instruments

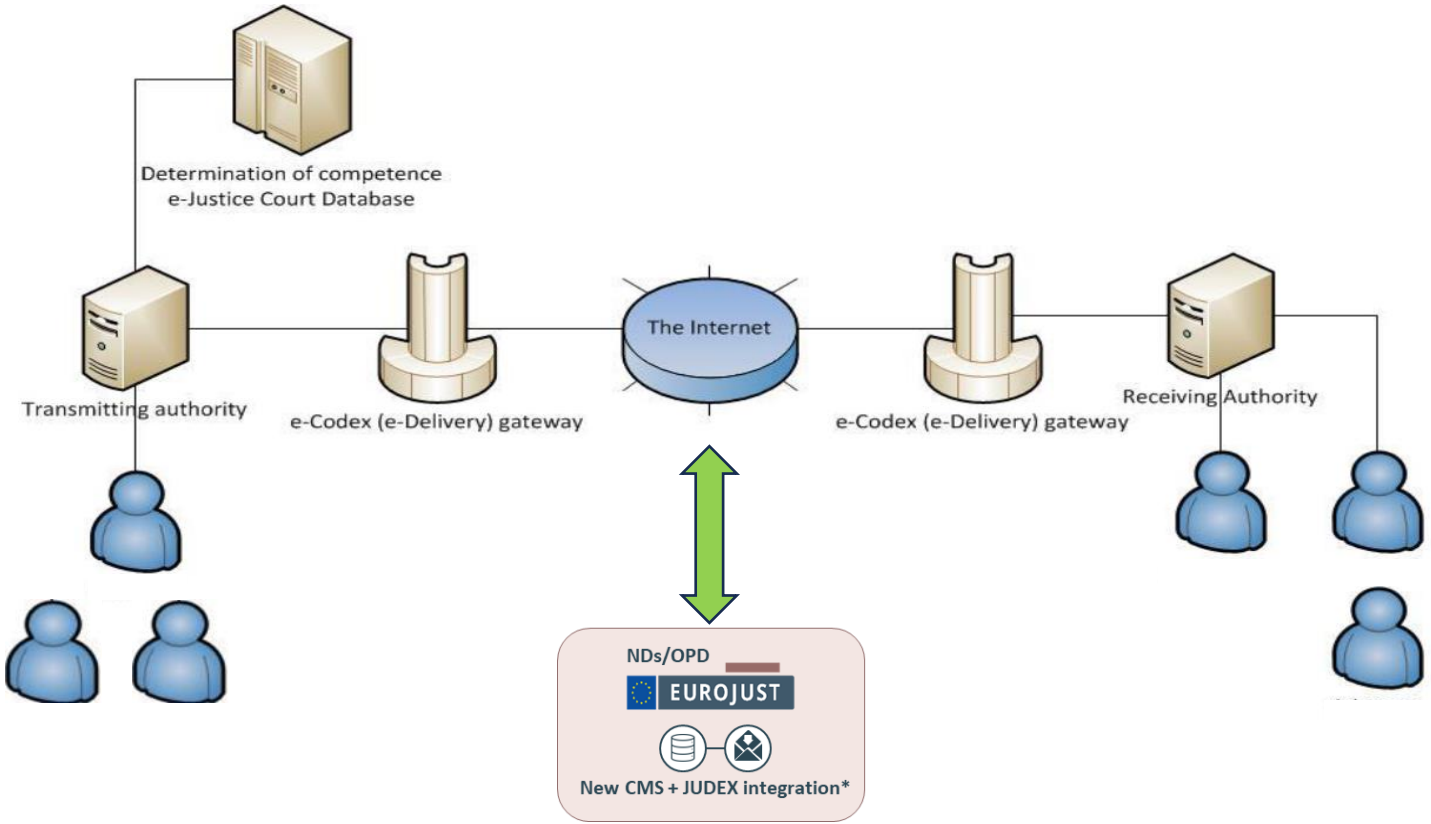
- EAW
- Freezing and confiscation
- EIO / MLA

- Instruments/measures to be undertaken by requesting / requested authority
- In cases of extension of jurisdiction, provisional measures can be taken according to national law even before acceptance

- Role of Eurojust/EJN (art 18 Reg)
  - Coordination Meetings
  - Recommendations



Decentralised IT system (JUDEX)



Underlying principles

- COM provides for the "*virtual road*" and takes it to each MS (Reference Implementation)
- It is NOT a unified EU CMS or replaces national CMSs
- It is for each MS to decide how to connect all relevant authorities to the "*virtual road*".
- The system allows communication
  - between issuing and executing autorities (and SPs for e-evidence)
  - internal exchanges, consultations during the issuance and execution phases
- The use of the system is <u>obligatory</u> (with few exceptions) as of 2031 for ToP

JUDEX

- Needs adequate technical development in all 26 MS (e-CODEX based)
  - Needs to include QES
- The CDB (Court DataBase) is crucial and needs to be properly populated and updated by MS
  - EJN repository depends on MS having sent the info to the CDB
- Access to JUDEX needs to be granted to
  - National judicial authorities
  - Eurojust

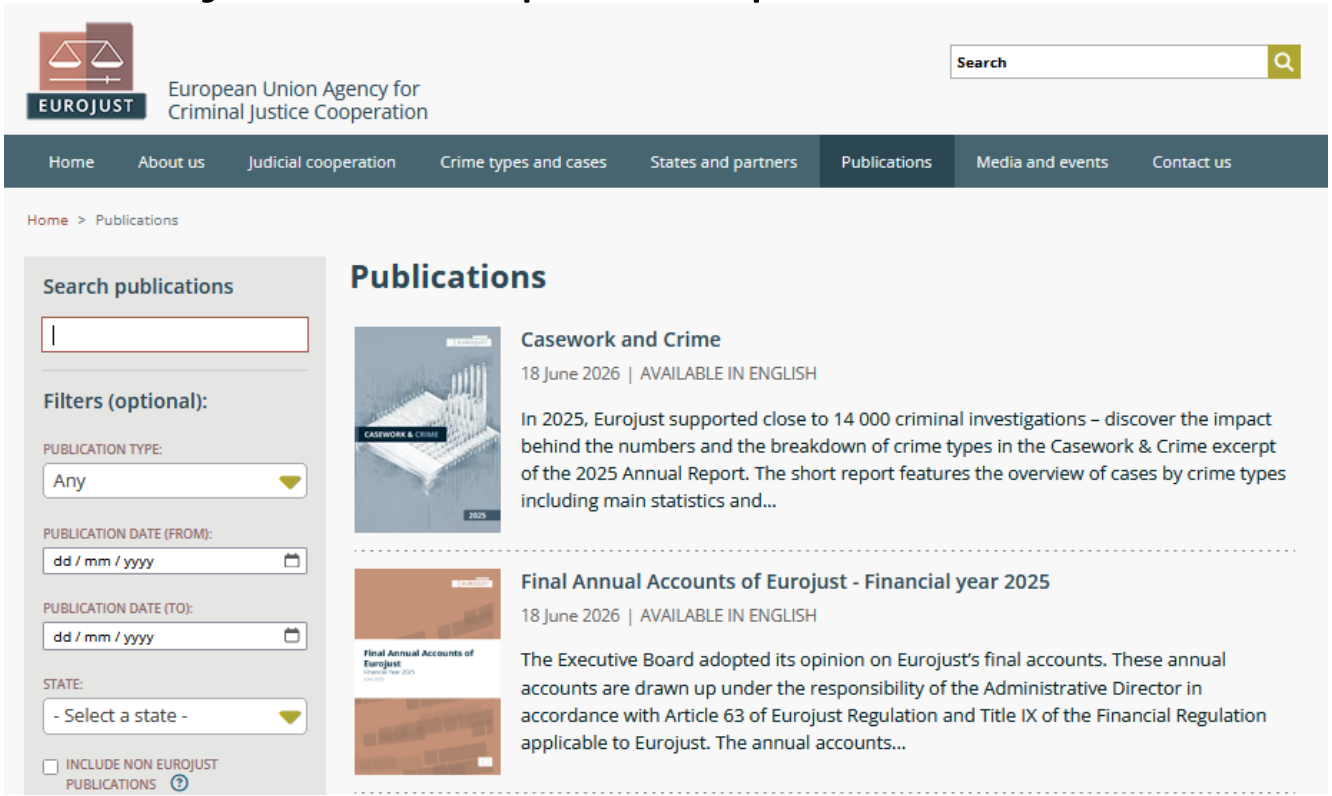
Eurojust Report on the Transfer of Proceedings in the European Union

January 2023

EUROJUST

European Union Agency for Criminal Justice Cooperation

www.eurojust.europa.eu/publications



Many Thanks!!



Jorge Espina

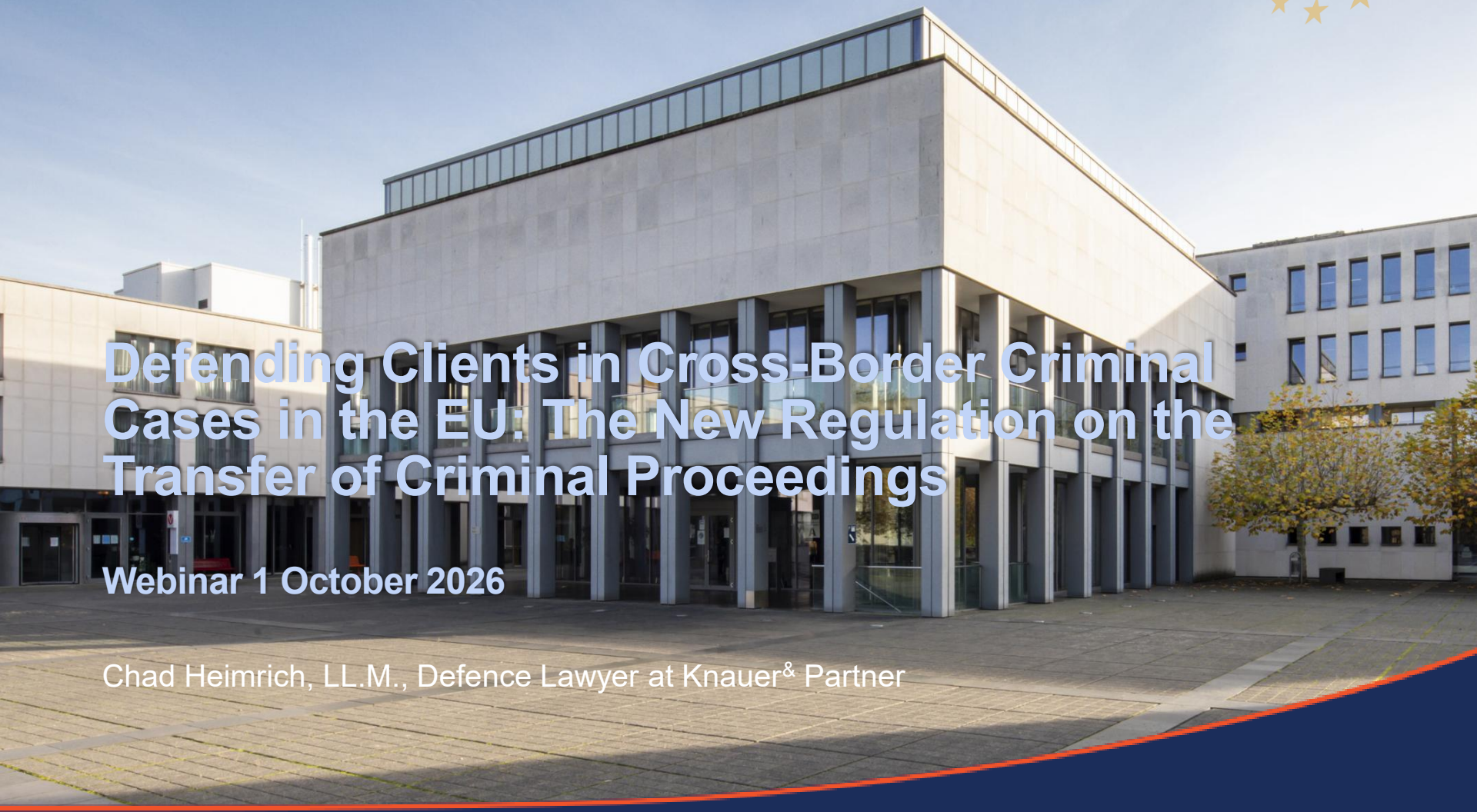
Cybercrime Unit

Spanish General Prosecutor's Office

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Defending Clients in Cross-Border Criminal Cases in the EU: The New Regulation on the Transfer of Criminal Proceedings

Webinar 1 October 2026

Chad Heimrich, LL.M., Defence Lawyer at Knauer[&] Partner

Part 2: Defending Clients in Cross-Border Transfers: Practical Challenges

CRITERIA FOR TRANSFER REQUESTS, LEGAL REMEDIES, PROTECTION OF PROCEDURAL RIGHTS

Transfer of Criminal Proceedings



Who can initiate a transfer?

Judicial authority in requesting State

- **Based on its own initative, Art. 5 para. 1**
- Requested authority may „consult“ requesting authority whether a request for transfer is possible, Art. 14 para. 2
- Requesting authority as defined in Art. 2 para. 3

Suspect/accused person/victim ?

- **Mere right to propose a transfer, Art. 5 para. 3**
- Proposal is non-binding: no obligation to transfer, to request a transfer or even to consult
- No reasoned decision, why proposal was unsuccessful

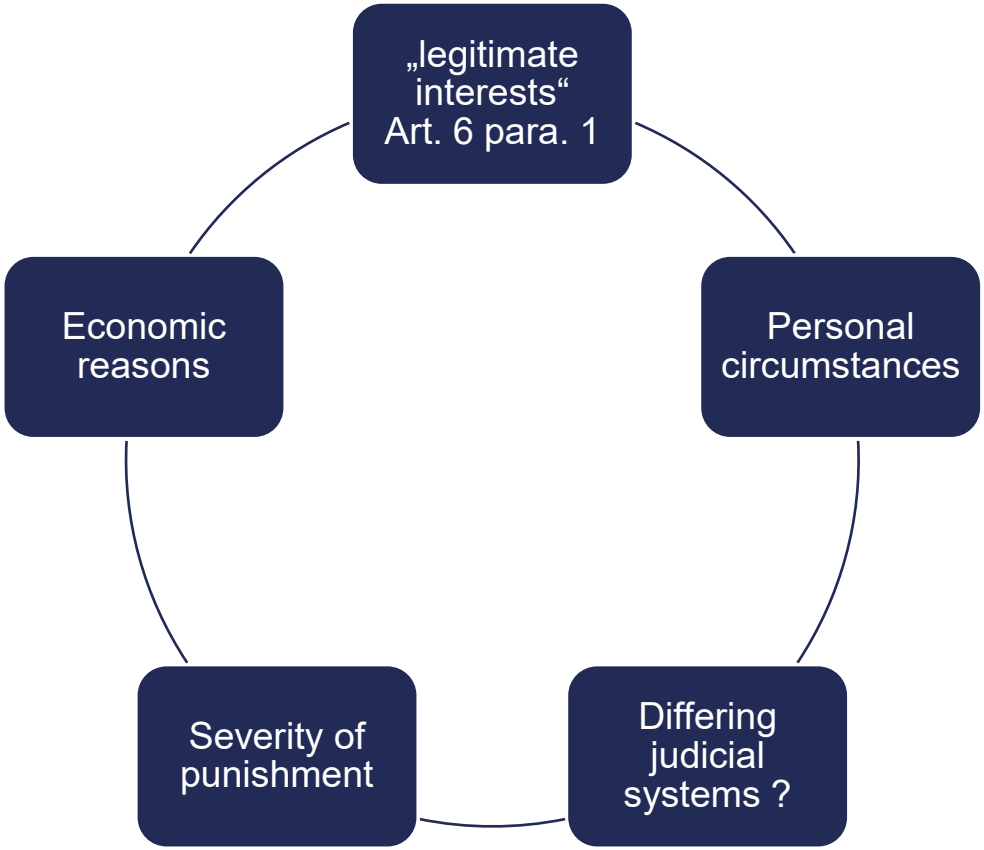
Criteria for requesting the transfer of criminal proceedings, Art. 5 para. 1 and 2

Art. 5 para. 1: „*A request […] may be issued only where the requesting authority considers that the **objective of efficient and proper administration of justice**, including **proportionality**, would be better served by conducting the relevant criminal proceedings in another Member State*.“

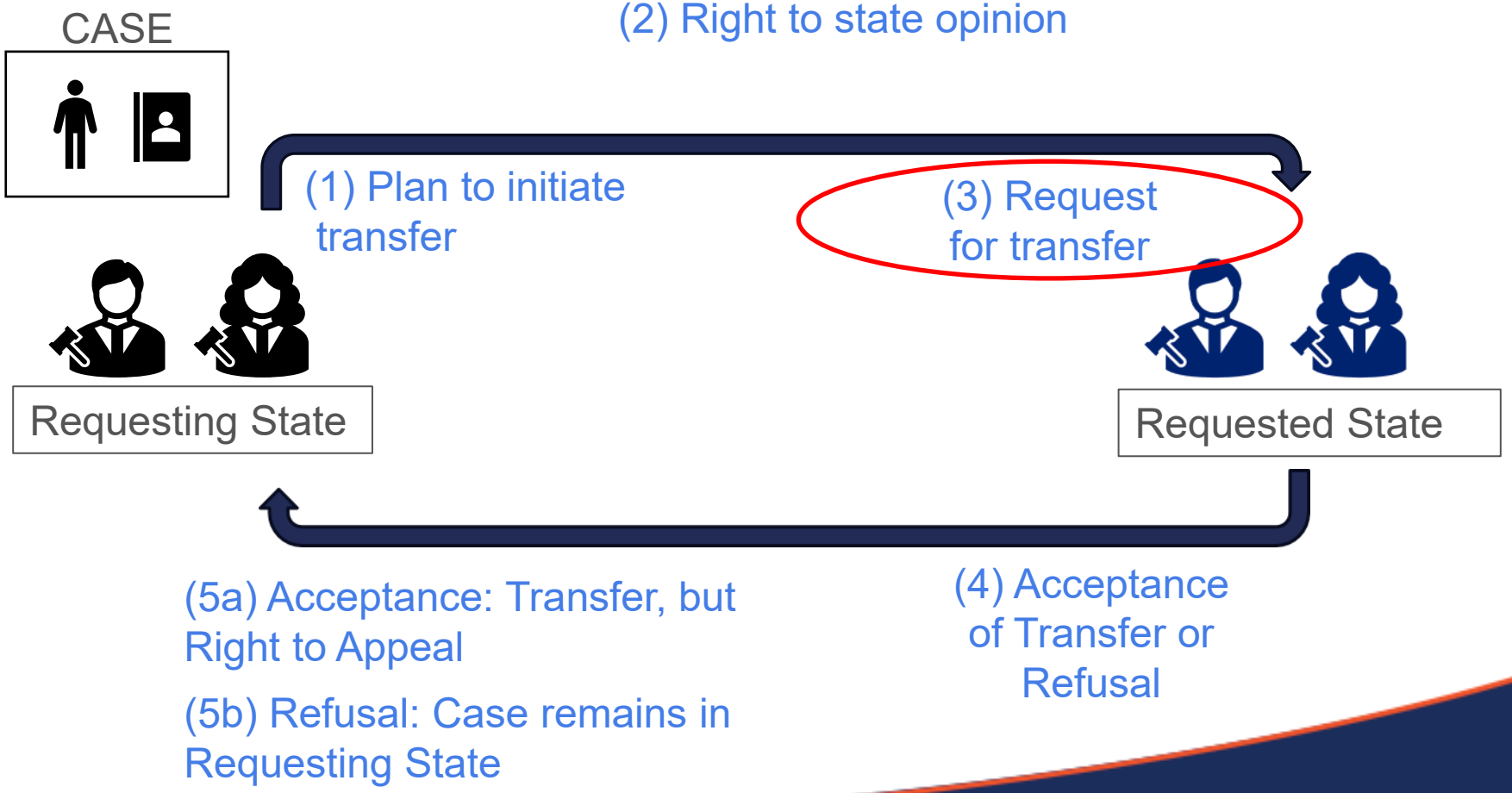
Art. 5 para. 2:

lit. a) Offence committed / damage occurred in requested State	**lit. b)** Suspect is national/resident of requested State	**lit. c) and lit. d)** Requested State refuses surrender under the EAW-framework
lit. e) Location of evidence/witnesses	**lit. f) and lit. g)** Ne bis in idem	**lit. h)** Ongoing or pending Custodial Sentence in the requested State
lit. i) Enhanced rehabilitation prospects for the suspects or other practical considerations	**lit. j)** Victim is national/resident of requested State	**lit. k)** Consensus among authorities regarding the concentration of the criminal of proceedings

Considerations in which a transfer might be in the client‘s best interest



Transfer of Criminal Proceedings



Decision on the Transfer

Art. 11 para. 1: „*The requested authority shall take a decision on whether to **accept** or **refuse** the transfer of criminal proceedings **in whole or in part**, and shall decide, in accordance with its national law, on the measures to be taken.*"

Art. 13 para. 1 and 2: 60 days (30 days extension possible)

Acceptance of transfer

- Decision must be „duly reasoned" (→ legal remedy), Art. 11 para. 1

Consequences:

- Information of suspect by requested authority about decision, right to legal remedy, Art. 15 para. 1

Refusal of transfer

- Information to requesting authority about grounds for refusal, Art. 11 para. 4

Consequences:

- Information of suspect by requesting authority about decision, Art. 15 para. 3
- Case remains in the requested State
- **NO** legal remedy!

Legal remedy against decision to accept transfer

No legal remedy against decision to refuse transfer

Art. 17 para. 1: „*Suspects, accused persons and victims shall have the right to an effective legal remedy **in the requested State** against a **decision to accept** the transfer of criminal proceedings. That right shall be exercised before a court or tribunal in the requested State in accordance with its national law.*"



Strict time limits: **15 days** since receipt of decision to accept, Art. 17 para. 2



Limited Scope: grounds for refusal set out in Art. 12, Art. 17 para. 2



Access to case file? In theory yes, scope and timing unclear, Art. 17 para. 3



Suspensive effect: only in case of indictment, Art. 17 para. 2

Legal consequences of the decision

If the requested State decides to accept the transfer:

In the requesting State

- **Proceedings shall be suspended or discontinued, Art. 21 para. 1**
- *Exception: necessary urgent investigative measures, Art. 21 para. 2, 4*
- Possibility to reopen proceedings, if requested authority discontinues proceedings „*unless that decision, under the national law of the requested State, definitively bars further prosecution and was taken after a determination had been made on the merits of the case, therefore precluding further criminal proceedings, in respect of the same acts, in the requested State*", Art. 21 para. 5

In the requested State

- Proceedings are governed by law of the requested State, Art. 22 para. 1
- Investigative measures in the requesting State shall in principle be accepted by the requested State, Art. 22 para. 2
- Evidence may not be denied on the basis that they were gathered in another Member State, Art. 22 para. 5
- Possibility to apply a lower sentence, if crime was committed on the territory of requesting State, Art. 22 para. 8

Protection of Procedural Rights during the proceedings (suspect‘s perspective)

Before the transfer request

- Right to propose a transfer, Art. 5 para. 3
- Information of the suspect about intended request for transfer; chance to state an opinion within 10 days, Art. 6 para. 3 lit. b, para. 4
- Information of the suspect about issuing of request, Art. 6 para. 6

After decision on transfer

- Information of the suspect about outcome of decision, Art. 15 para. 1 and 3
- Legal remedy against decision to accept transfer, Art. 17 para. 1

No binding effect

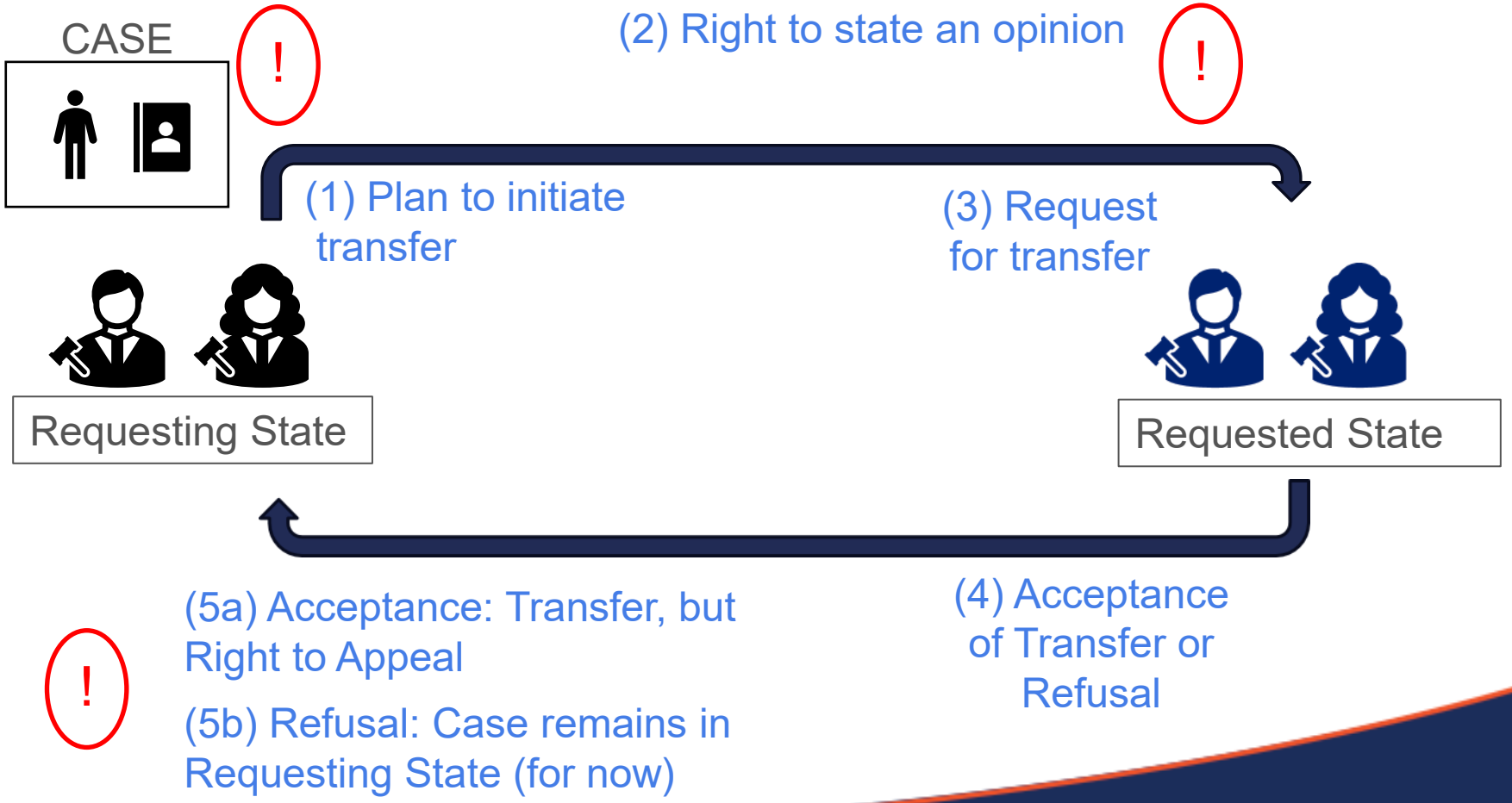
On which factual basis? Access to case file?

But: limitation regarding persons unaware of proceedings against them, Art. 6 para. 2

Part 4: Building an Effective Defence Strategy under the New Regulation

ADDRESSING RISKS OF PARALLEL PROCEEDINGS AND MANAGING CROSS-BORDER DEFENCE

„Key moments“ for the defence



Challenges for the defence (I)



limited „influence“ on transfer by suspect

Restricted legal remedy

Risk of „forum shopping“

Linguistic challenges (bad translations etc.)

Legal counsel required in both States

Different jurisdictions (lack of harmonisation)

Challenges for the defence (II)



Risk of more severe punishments

Risk of use of „inadmissible“ evidence

Rule of law concerns in requested State

Different levels of attorney-client privilege

Different levels of requirements for case files

Unpredictability regarding statute of limitations ?

What can we do as defence?

- Look out for „early signs“ / hints in case file for a possible transfer (e.g. consultations, awareness of parallel proceedings); early statement?
- Ideally, early involvement of legal counsel in (anticipated) requested State
- Advise client on possible benefits of transfer of proceedings
- Make sure that full case file is transferred to requested State (e.g. compare with old case file, if possible)

What can we do as defence?

- Check quality of translation of case file; otherwise risk of misunderstandings of factual and legal terms
- Try to obtain confirmation that case is officially suspended or discontinued in requesting State (after the transfer)
- Push for determination on the merits of the case, when case is discontinued in requested State (Art. 21 para. 5) → „secure“ ne bis in idem; otherwise risk of continuation in requesting State
- Please share experiences in your cases through your network!

Checklist for the defense: Which questions to ask the client early on?

01

What is the status of the proceedings?

02

What are the personal circumstances of the accused?

03

Which documents did the client receive, in which language?

04

Are there defence counsel available in the requested state?

05

What personal detail could be relevant to which criterion of Art.12?

Grounds for refusal, Art. 12

Mandatory grounds for whole or partial refusal

Art. 12 para. 1: „*The requested authority **shall refuse** the transfer of criminal proceedings, in whole or in part, where criminal proceedings under the national law of the requested State cannot be brought or pursued in relation to the facts underlying the request for the transfer of criminal proceedings if one or more of the following grounds apply*“

lit. a)
conduct does not constitute criminal offence under law of the requested State

lit. b)
contrary to the principle of ne bis in idem

lit. c)
No criminal liability for the criminal offence due to suspect or accused person’s age

lit. d)
criminal prosecution is statute-barred in accordance with the national law of the requested State

lit. e)
the conditions for prosecuting the criminal offence in the requested State are not fulfilled

lit. f)
the criminal offence is covered by amnesty in accordance with the national law of the requested State

lit. g)
the requested State does not have jurisdiction over the criminal offence in accordance with national law or jurisdiction on the basis of Article 3

Grounds for refusal, Art. 12

Discretionary grounds for whole or partial refusal

Art. 12 para. 2: „*The requested authority **may refuse** the transfer of criminal proceedings, in whole or in part, if one or more of the following grounds apply*“

lit. a)
privilege or immunity under the national law of the requested State

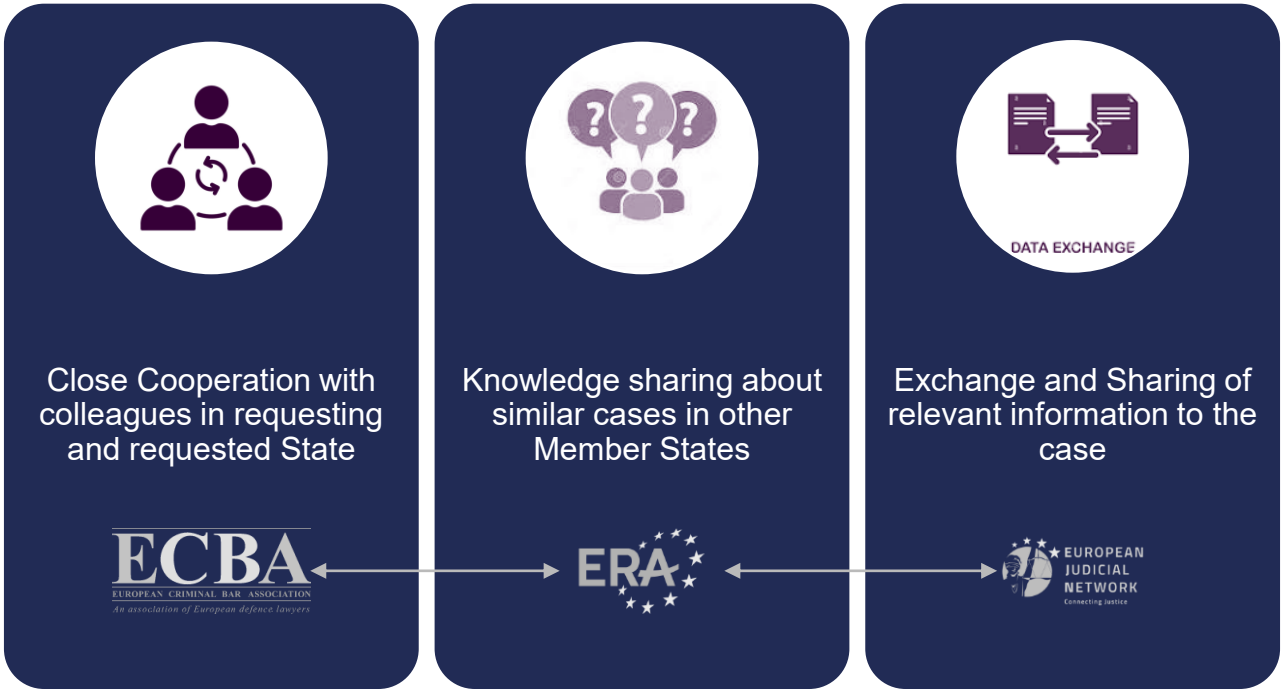
lit. b)
transfer of criminal proceedings is not in the interests of efficient and proper administration of justice

lit. c)
criminal offence / damages have not occurred in whole or in part on the territory of the requested State and the suspect or accused person is not national/resident in that State

lit. d)
request form as referred to in Article 8(1) is incomplete or manifestly incorrect

lit. e)
conduct is not a criminal offence at the place where it was committed, and the requested State has no original jurisdiction under its national law to prosecute the criminal offence

Sharing knowledge & experiences is crucial for a good defence



Thank you for your attention!



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Any questions?



Defending Clients in Cross-Border Criminal Cases in the EU: The New Regulation on the Transfer of Criminal Proceedings

Webinar 1 October 2026

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