

Transfer of Criminal Proceedings (TROP)

Online Conference
20 January 2022

Organized by:
Erasmus School of Law, University of Bielefeld
and Public Prosecution Office Amsterdam



About TROP

Transfer of criminal proceedings in the European Union

This research project will provide policy makers and legislators with a clear view and an in-depth analysis of the current practice of the transfer of criminal proceedings in the EU, as an essential instrument for cooperation in criminal matters. In addition, it will provide shared, cross checked (by scholars and policy makers) proposals for improvement, based on the experience and visions of practitioners.

The project is a collaboration between the Erasmus University Rotterdam (EUR), the Dutch Ministry of Justice and Security (MIN OF JUSTICE), the University of Bielefeld (UNIBI) and the Belgian Federal Public Service for Justice (FOD JUSTITIE) / Federal Prosecution Office. The project is funded by the European Commission as a part of the Justice programme (JUST-AG-2019).

Research partners

Erasmus
University
Rotterdam

OPENBAAR
MINISTERIE

UNIVERSITÄT
BIELEFELD



Service public fédéral
Justice

Research team



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Schedule

- 10.00 **General introduction TROP project**
presentation of provisional results and your questions
*prof. Pieter Verrest, prof. Michael Lindemann and
Mrs. Leonie Lunshof*
- 11.00 **Plenary Discussion**
General thoughts on the improvement of the transfer of
criminal proceedings in the EU
Animated by prof. Pieter Verrest and Mr. Kasper van der Schaft
- 12.00 (Lunch) break
- 13.15 **Workshop round 1**
In this booklet you will find information about the Workshops
- 14.45 (Coffee) break
- 15.00 **Workshop round 2**
For more information on the different workshops see below
- 16.30 **Plenary wrap up and closing**
How to proceed and what to expect?
Animated by prof. Pieter Verrest
- 17.00 End of the conference

Plenary discussion

Improving the transfer of criminal proceedings in the EU

Animated by prof. Pieter Verrest and Mr. Kasper van der Schaft

Since several years, experts and MS have been pointing at the need to improve the framework for the transfer of criminal proceedings. The research project on the basis of this Working Conference is aimed at analyzing the current practice and identifying possibilities for improvement.

Now, we are on the eve of a European Commission proposal for a new legislative instrument dedicated to the transfer of criminal proceedings announced later this year. After the presentation of the preliminary results of our research project, we would like to continue the Working Conference with some basic questions.

- What would really improve the transfer of criminal proceedings? How could a new EU instrument contribute to that?

In this plenary discussion we would like to focus in general on experiences with the transfer of criminal proceedings, ideas for improvement of the current practice and expectations. Every participant is invited to taking the floor to share her/his experiences and ideas in the field of the transfer of criminal proceedings or making a statement.

In the Workshops in the afternoon, we will have the possibility to prolong the discussion and to focus more in depth on the different challenges.

Workshops

There will be a two rounds of Workshops, each consisting of the same four Workshops.

Workshop 1 **Improving the transfer of criminal proceedings: the perspective of a new instrument**

Chair: prof. Michael Lindemann

Rapporteur: ms. Vivianne Mooren

In this Workshop we will focus on some important questions about the place and role the transfer of criminal proceedings within the entire framework of judicial cooperation between MS. We can distinguish between types of cases where a transfer of criminal proceedings might be at hand and between specific reasons to consider a transfer in those cases.

- In which situations the transfer of criminal proceedings is/ should be considered?

Our research shows that we can think of at least three types of situations where a transfer of criminal proceedings in some form is taking place: 1) in the context of transborder organized crime, 2) for all kinds of other criminal offences, and 3) minor incidents specifically in border regions.

With regard to a new EU legal instrument, should we strive to have a one fits all solution for the transfer of criminal proceedings? Or leave some situations out, as other forms of cooperation like spontaneous exchange of information provide a sufficient solution?

- What are/should be the main criteria to consider a transfer of proceedings?

We are all familiar with the different criteria that together form a framework for assessing what would be in the interest of an efficient and proper administration of justice. Our research points out that all these criteria can individually constitute a legitimate and decisive ground for a request for transfer of criminal proceedings. However, the contrary is also true: the mere fact that one of the criteria is met, does not mean that the requested MS is per se 'in a better position to prosecute'. Should the latter give reason to an additional requirement?

Finally, a question of another nature. The transfer of criminal proceedings should take place in full respect of procedural rights.

- How can the positions of both the suspect and the victim be properly taken into account?

This issue can be addressed in different ways. One could lay down in a provision that while considering a request for the transfer of criminal proceedings, the rights of the suspect and the victim should be expressly taken into account by the issuing authority. Reference could be made to the directives on procedural rights and the directive on the minimum rights for victims (2012/29/EU).

But is this sufficient to ensure a proper protection of those rights? Another approach might be to describe the right to be informed: this concerns both the suspect and the victim. Their view on the transfer could be collected (if the need of confidentiality of the investigations does not oppose this). It could be added that MS ensure that they are properly assisted by counsel and have translation if needed.

In addition, both the suspect and the victim should receive information about a possible (depending on the domestic law of the issuing MS) legal remedy against transferring the proceedings. However, a requirement of consent seems to go too far, given the fact that the transfer of proceedings does not infringe the right of a fair trial (assured in the executing MS).

Workshop 2

Mutual recognition and grounds for refusal

Chair: prof. Pieter Verrest

Rapporteur: mrs. Leonie Lunshof

The EU-legal framework for the judicial cooperation in criminal matters is built upon the principle of mutual recognition. When applied to the transfer of criminal proceedings, this principle causes a real paradigm shift compared to the current practice; that practice is mainly built upon an open ended and non-binding instrument (Article 21 of the '59 Convention).

- What should be the meaning of mutual recognition in respect to the transfer of criminal proceedings?

Does mutual recognition refer to the acceptance of establishment of the facts, the collected evidence etc.? Or does it also entail mandatory execution of the request by the receiving MS (except in case of grounds for refusal)? If mutual recognition implies mandatory executing, then it becomes even more important to have requirements in place for the motivation/justification of the request by the issuing authority.

- How strong should the obligation be for the issuing authority to motivate the request?

Also, if the binding character of a request would be considered, a clearly drafted and exhaustive list of grounds for refusal will be important.

- What grounds for refusal should be foreseen?

Grounds of refusal could notably be the lack of double criminality, bis in idem, and other legal barriers like the statute of limitations. Should a ground for refusal be introduced for instances where the receiving authority is of the opinion that there is only a weak link to its MS, and that it is not in a better position to prosecute the case than the issuing MS? Or would in those instances a possibility to challenge the request and ask for further explanation be sufficient?

The final topic in this Workshop is jurisdiction. If the receiving MS does not have jurisdiction for the offence, it will be forced to refuse a request for transfer. Our research indicates that most MS have extensive extraterritorial jurisdiction and are able to prosecute offences that have been committed elsewhere in the EU. However, some MS do not have jurisdiction for offences committed outside their territory by persons who have their habitual residence in their state. This may cause concern: a lack of jurisdiction could lead to impunity.

- Is a regulation on additional jurisdiction needed?

Several solutions could be envisaged if additional jurisdiction would be deemed necessary. The first one is the legal fiction of subsidiary jurisdiction that would be attached to the transfer of the case (as foreseen in the '72 Convention on transfer of proceedings and in the draft Council Framework Decision of 2008). A second option might be a provision that creates jurisdiction in case of taking over proceedings regarding a person who has her/his habitual residence in the requested MS.

Workshop 3

The procedure for the transfer of criminal proceedings

Chair: ms. Nynke Bakkenes

Rapporteur: mrs. Sanne Salverda

Based on our findings, it would be of great added value for practitioners if they would be given more hold while considering, issuing, deciding and executing a request for transfer of criminal proceedings. This could be materialized by describing the procedure to be followed step by step. Also, a standardized form to request the transfer of criminal proceedings is seen as helpful.

- Which should be the requirements for a standard form for the request? What information about should be given in a standard form?

How could we ensure that the form strikes the right balance between informative and easy to use? During our interviews, some experts expressed their disappointment with the standard form for the EIO, which they considered to be too bureaucratic.

Our research shows that practitioners would like to have a legal instrument that describes the different steps in the procedure for requesting a transfer of proceedings, the decision about the request and the subsequent execution of the case by the requested/executing MS.

- What different steps can be distinguished in the procedure: (prior) consultation (which may include a prognosis of the possible outcome of the proceedings after taking over), the decision to issuing the request, the confirmation of the receipt of the request by the requested authority, the decision about the request, the further execution of the case, and finally feedback on the outcome of the proceedings?

For each step, the added value of communication with the other authority should be stressed. How could this best be materialized in the description of the procedure? Should the role and possible content of prior consultation be further specified?

Another issue is the translation of the request and relevant parts of the file supporting the request. In order to be able to decide on taking over the proceedings, the executing authority should dispose of the request and relevant parts in its own (or another accepted) language.

- Whose responsibility should the translation of both the request and relevant parts of the file be? Could we determine what are the pieces of file / the information that should be considered as relevant parts and thus be translated and joined to the request?

During the interviews experts frequently mentioned that they sometimes had to wait months before they got an answer to their request for transfer or did not get an answer at all.

- Could a timeframe for a decision on the request by the executing MS be determined?

The final step in the procedure is providing feedback to the issuing MS of the outcome of the case. This subject is to be discussed in Workshop 4.

Workshop 4

The execution of a case after a transfer of the proceedings

Chair: prof. Paul Mevis

Rapporteur: ms. Ylonka Zwaan

This Workshop is dedicated to the situation after the transfer of proceedings. The executing MS has taken over the proceedings and ensures further prosecution. This has some legal and practical consequences. Think of the fact that the issuing MS cannot pursue prosecution (this would be an infringement of the ne bis in idem principle). Also, the proceedings in the executing MS are of course reigned by the domestic law of that state. This determines the different modalities of prosecution (out of court settlement, court procedure), applicable penalties, the possibility to drop charges, judicial review etc.

- Should it be determined that after taking over the case, the law of the executing MS is exclusively applicable?

If charges are dropped during the proceedings in the executing MS, the issuing MS might recover its right to prosecute.

- How could this recovering of the right to prosecute best be regulated?

The provisional results of our research project show that evidence collected in the issuing MS can generally be used in the executing MS. An exception should be made for (types of) evidence that are not permitted under the domestic law of the executing MS. Also, some extra requirements might be posed by the procedural law of the executing MS: such as the need to hear witnesses in court.

- On what conditions can evidence collected in the issuing MS be used in the executing MS? Is it necessary to have a provision in place which confirms the value of evidence gathered in the issuing MS?

Finally, information about the progress and outcome of the case after the transfer are appreciated. Sometimes, the issuing authority needs information about the outcome of the proceedings in the executing MS to be able to officially close the case in the issuing MS.

- How could feedback of the outcome of the procedure in the executing MS be materialized?

Feedback seems subject to challenges mostly of an organizational character. The ability to provide feedback to the issuing MS requires that the executing MS has track and tracing in place for criminal proceedings that stem from a transfer. Only then, proper communication about the outcome of the proceedings - sometimes years after the transfer - can be guaranteed. Perhaps, digital communication tools on the EU-level could also play a role.

Online form for remarks

On the website of the research project (<https://www.eur.nl/en/esl/research/current-research/eu-projects/transfer-criminal-proceedings-trop/conference>), you will find an online form that allows you to send us further comments, views, and/or questions that you were not able to express during the conference, or that you may think of at a later time. If you would like to share this information with us we sincerely invite you to do so. All additional information is valuable to us.

Contact coordinator: EU-Trop@law.eur.nl



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Online conference via ZOOM

Due to the current Covid situation, we have been forced to host the conference digitally. For this we are using the online platform 'Zoom'. Below are the links that will give you access to the different activities of the Working Conference.

For those who find this useful, we have sent separately a document containing further tips and information on how to use Zoom. If you are not yet familiar with the use of Zoom, we recommend that you register in time to use ZOOM so that you have some time to find out how things work. But don't worry: Zoom is very user-friendly.

Finally we note that in some secure environments Zoom cannot be opened. This has to do with the secure network of your organization which, for security reasons, blocks external applications.

If this is the case for your organization, we recommend/ask you to participate in the Zoom meetings from your personal device (own laptop/tablet/(smart phone)).

Zoomlinks

Plenary introduction and discussion

<https://eur-nl.zoom.us/j/93680934991?pwd=cVoxVmUrVid5YnZZcmRKeTJtaUIRZz09>

Meeting ID: 936 8093 4991
Passcode: 985278

Workshop 1

Improving the transfer of criminal proceedings: the perspective of a new instrument

<https://eur-nl.zoom.us/j/97004708545?pwd=QXVMVXpjL0xyVWd4M1VWckpYeWlhUT09>

Meeting ID: 970 0470 8545
Passcode: 373421

Workshop 2

Mutual recognition and grounds for refusal

<https://eur-nl.zoom.us/j/93008186760?pwd=YzJvdVMvZzBVSVUzL3dRemhOYnM1dz09>

Meeting ID: 930 0818 6760
Passcode: 436677

Workshop 3

The procedure for the transfer of criminal proceedings

<https://eur-nl.zoom.us/j/98359713116?pwd=Q0g0VmVtMkV4TWdWeCtyYWxYkMDdz09>

Meeting ID: 983 5971 3116
Passcode: 562027

Workshop 4

The execution of a case after a transfer of the proceedings

<https://eur-nl.zoom.us/j/99898723130?pwd=Tkh4MG9TbzcrR2FKWmFSc0htQm1udz09>

Meeting ID: 998 9872 3130
Passcode: 178006

Plenary wrap up and closing

<https://eur-nl.zoom.us/j/96617626208?pwd=cVNkZi9XTk1hS2JVdUpQZGJRT1RaQT09>

Meeting ID: 966 1762 6208
Passcode: 937251