

# Public Consultation on the EU's initiative for the Transfer of Criminal Proceedings at EU level

Fields marked with \* are mandatory.

## Introduction

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A transfer of proceedings allows the authorities of one State to transfer a criminal case against a particular suspect or accused person to the competent authority of another State. It is a useful tool in cases affecting two or more States, in particular when there are parallel investigations, but also where one State started investigations but another State is considered better-placed to investigate and/or prosecute.

### **Problems the initiative aims to tackle:**

The overarching problem is that in some cases, criminal proceedings are not taking place in the Member State best-placed to prosecute. Three situations can be distinguished:

**1. Parallel criminal proceedings take place in two or more Member States:** Cross-border crime (in particular organised crime), including cybercrime, is steadily increasing in the EU. As a result, Member States are increasingly confronted with situations where two or more Member States can claim jurisdiction to investigate and prosecute an offence, often leading to parallel criminal proceedings for the same crime in those countries. Beyond an inefficient use of resources, this may entail additional burdens for concerned persons, risks of conflicting or counterproductive decisions (e.g. on taking evidence and investigation strategies), or problems regarding the fundamental right of the person concerned not to be tried or punished twice for the same offence (the *ne bis in idem* principle, Article 50 of the Charter of Fundamental Rights).

**2. Criminal proceedings take place in one Member State, but not the best-placed one:** There are circumstances where it would be more efficient in the interest of justice for such criminal proceedings to take place in another Member State, e.g. where:

- o it would be easier for that other Member State to obtain the most important items of evidence;
- o the suspect or accused person is serving a criminal sentence there;
- o the offence was committed in the prosecuting Member State, but the victim and/or suspect is located in a different Member State(s);
- o the offence may be connected to structures of organised crime based or operating mainly in a certain Member State and whose authorities have specific knowledge about these structures, or
- o a Member State may have an essential interest in prosecution (e.g. regarding its national security).

**3. No pending criminal proceedings:** There is a risk of impunity, e.g. in cases where a European arrest warrant is refused based on poor detention conditions in the issuing Member State and the Member State that refuses to surrender the requested person does not have the necessary jurisdiction and/or evidence to prosecute the requested person.

In all three situations, a legal framework for transfer of proceedings would address the resulting issues and ensure that the best-placed Member State can take over the prosecution, thereby ensuring effectiveness, efficiency and legal certainty, taking into account the legitimate interests of suspects, accused persons and victims.

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## About this consultation

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### T o p i c s

Justice and fundamental rights

Type of act

Legislative

### D e p a r t m e n t s

Justice and Consumers

For further information on this initiative, please see: Effective justice – common conditions for transferring criminal proceedings between EU countries (europa.eu)

**We would like to thank you in advance for your time and input.**

If, in addition to completing this questionnaire, you wish to submit any relevant information, data or policy paper, or for any further questions please send to: JUST-CRIMINAL-JUSTICE@ec.europa.eu

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## About you

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### \* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French

- German
- Greek
- Hungarian
- Irish
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian
- Spanish
- Swedish

\* First name

Victim Support

\* Email (this won't be published)

info@victimsupporteurope.eu

\* Organisation name

*255 character(s) maximum*

Victim Support Europe

\* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

*255 character(s) maximum*

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

## \* Country of origin

Please add your country of origin, or that of your organisation.

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- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
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- Myanmar/Burma
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- Tanzania
- Thailand
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The Commission will publish all contributions to this public consultation. You can choose whether you would prefer to have your details published or to remain anonymous when your contribution is published. **For the purpose of transparency, the type of respondent (for example, 'business association', 'consumer association', 'EU citizen') country of origin, organisation name and size, and its transparency register number, are always published. Your e-mail address will never be published.** Opt in to select the privacy option that best suits you. Privacy options default based on the type of respondent selected

\* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation

- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

\* Surname

EUROPE

I agree with the [personal data protection provisions](#)

### \* Contribution publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

**Anonymous**

Only organisation details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published as received. Your name will not be published. Please do not include any personal data in the contribution itself if you want to remain anonymous.

**Public**

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

Questions marked with \* are mandatory

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## I General Questions

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**1. In principle, do you think that there is a need for a new EU legal framework on transfer of proceedings?**

- Yes
- No
- I don't know/I have no opinion

## 2. Is the EU best placed to regulate transfers of proceedings?

- Yes
- No
- I don't know/I have no opinion

Please specify why:

EU legislation would provide a common set of minimum standards, that is applicable to any transfer of proceedings in EU Member States. The EU Commission should ensure that the system for transfer of proceedings is fully coherent with EU victims' laws and provides the necessary safeguards for mitigating any harm encountered by victims.

## 3. What would be, in your view, the main benefits of a new EU legal framework on transfer of proceedings?

*(Multiple replies are possible.)*

- Improving efficiency (the capability to do something without wasting resources and time)
- Improving effectiveness (the capability of producing a desired result)
- Improving legal certainty
- Further promoting the interests of justice
- I don't know/I have no opinion

Other - please specify:

Victim Support Europe (VSE) supports the European Commission's aim to create a legal framework, which would consider the legitimate interests of suspects, accused persons, and victims, to ensure the effective, efficient, and legal certainty of prosecutions, particularly because the lack of access to justice for cross-border victims can cause further trauma and instances of secondary victimisation.

However, VSE also emphasises that solely focusing on effectiveness, efficiency, interests of justice and legal certainty is insufficient, out of touch with current legal norms, and fails to achieve full coherence with a range of EU victims' laws.

To be fully in line with the EU's commitment to victims of crime, including with the objectives of the EU Victims' Strategy, the objectives of any system should be extended to minimising the harm to participants, in particular, to victims. This should be achieved through:

- the criteria for determining jurisdiction; and
- through additional measures of EU law to mitigate risks of harm.



**4. Do you agree that European Union should aim for criminal proceedings to take place in the Member State best placed to prosecute a case?**

- Yes
- No
- I don't know/I have no opinion

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II Current situation

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**Current issues affecting transfers of criminal proceedings**

**5. What are, in your view, the main issues currently affecting transfers of proceedings between EU Member States?**

*(Multiple replies are possible)*

- Complexity, lack of legal certainty and transparency (e.g. due to different rules)
- Lack of mutual trust among the competent authorities (e.g. whether a criminal proceeding would be successfully completed in another Member State; or misgivings whether a custodial sentence that could be ultimately imposed would be appropriate)
- Lack of cooperation (e.g. no response received from authorities of a potentially receiving State)
- Lack of common minimum standards for transfers (e.g. minimum information to be provided)
- The principle of legality (an obligation to prosecute)
- Length of proceedings to take a decision, due to lack of mandatory time limits
- Language barriers
- Costs (in particular high costs of translations)
- Different minimum standards of rights for suspects/accused persons and/or victims in the receiving State
- Non-admissibility of already collected evidence
- I don't know/I have no opinion

Other - please specify:

Please provide any further information that you consider relevant:

## Criteria to transfer a criminal proceeding

### **6. To your knowledge, in which situations/based on which criteria are proceedings most frequently transferred?**

*(Multiple replies are possible)*

- The offence has been committed wholly or partly in the territory of another Member State, or most of the effects or a substantial part of the damage caused by the offence was sustained in the territory of the other Member State
- Substantial parts of the most important evidence are located in the other Member State (e.g. availability of evidence or witnesses)
- It is in the interest of the ongoing investigations (e.g. there are ongoing proceedings in respect of the same or related facts involving other persons, in particular in respect of the same criminal organisation, in the other Member State)
- Nationality/residence of a suspect/accused person of/in the other Member State
- Nationality/residence of a victim of/in the other Member State
- It is in the interest of the suspect/accused person for proceedings to take place in the other Member State (e.g. his social integration: enforcement of the sentence in the other Member State is likely to improve the prospects for social rehabilitation of the person sentenced)
- A suspect/accused person is serving or is to serve a sentence involving deprivation of liberty in the other Member State
- There are ongoing proceedings against the suspect/accused person in the other Member State
- It is in the interest of a victim for proceedings to take place in the other Member State
- It is in the interest of the other Member State (e.g. security interest of another Member State)
- It is more suitable and/or easier for the other Member State to conduct the investigation and criminal proceedings
- To prevent impunity (e.g. when a European arrest warrant is refused due to poor detention conditions in the issuing Member State)
- I don't know

Other - please specify:

**Is there a hierarchy of these criteria in your State?**

- Yes
- No
- I don't know

If 'Yes' please rank criteria:

Other - please specify:

**Grounds for refusal**

**7. To your knowledge, on which basis do you/your authorities most frequently refuse a transfer of proceedings when requested?**

*(Multiple replies are possible)*

- Ne bis in idem* (Right not to be tried or punished twice in criminal proceedings for the same criminal offence)
- Age of criminal responsibility
- Amnesty
- Lack of jurisdiction
- No double criminality
- Privileges and immunities (such as legal privilege, or medical privilege)
- The criminal prosecution is statute-barred
- Fundamental rights
- I don't know

Other - please specify:

**Rights of suspects/accused persons and victims**

**8. To your knowledge, according to applicable national provisions, is a suspect/accused person informed and/or asked to provide his/her opinion concerning a transfer of a criminal proceeding?**

- Yes
- No
- I don't know

Other - please specify:

**If yes, to your knowledge, could you please quantify, as a percentage, in how many cases have suspects/accused persons agreed to transfer of proceedings:**

**9. To your knowledge, according to applicable national provisions, is a victim informed and/or asked to provide his/her opinion concerning a transfer of a criminal proceeding?**

- Yes
- No
- I don't know

Other - please specify:

In line with the EU Victims Directive, as a matter of respect and recognition, victims should have the right to be heard and to be involved in decisions relating to their rights. Failure to provide victims with an opportunity to be heard can cause further trauma and frustration, which can ultimately affect the success of any criminal proceedings. It is worth recalling here that proceedings are often highly dependent on the victims' co-operation and continued participation. These actions, which minimise drop out of victims and maximise their ability to provide best evidence, are therefore as important for effective and efficient justice as they are for victim satisfaction and the minimisation of harm.

**If yes, could you please quantify, as a percentage, in how many cases have victims agreed to transfers of proceedings:**

**10. To your knowledge, does your national system provide a legal remedy for a suspect/accused person (e.g. an appeal proceeding) against a decision to transfer a criminal proceeding from one Member State to another?**

- Yes
- No
- I don't know

Other - please specify:

**11. To your knowledge, does your national system provide a legal remedy for a victim (e.g. an appeal proceeding) against a decision to transfer a criminal proceeding from one Member State to another?**

- Yes
- No
- I don't know

Other - please specify:

**Requirements and consequences**

**12. To your knowledge, according to your national law, does a transfer require that proceedings have already been instituted and that the presumed suspect is known?**

- Yes
- No (according to your national law, in some instances a transfer of proceedings is initiated immediately after the detection of an offence)
- I don't know

In case of either 'Yes' or 'No' please provide any additional information you consider relevant:

**13. To your knowledge, according to your national law, is a transfer precluded at a certain point (e.g. when a proceeding is almost finalised)?**

- Yes
- No
- I don't know

If 'Yes' please provide additional information:

**14. To your knowledge, have you/the authorities of your Member State when acting as a receiving Member State encountered any issues in court proceedings concerning admissibility of evidence collected by authorities of the transferring state?**

- Yes
- No
- I don't know

If 'Yes' please specify the percentage of cases where this has occurred:

**15. Please indicate if you/the authorities of your Member State transfer proceedings only conditionally, meaning that proceedings could be reverted to the transferring Member State:**

- Yes
- No (not possible)
- I don't know

Other - please specify:

**To your knowledge, what is the approximate percentage of cases that have been reverted to the transferring authority in your Member State?**

Other - please specify:

To your knowledge, please specify what have been the main reasons for reverting to the transferring Member State:

16. To your knowledge, in cases of a possibility of reverting, how is the *ne bis in idem* requirement (right not to be tried or punished twice in criminal proceedings for the same criminal offence) regulated in order to ensure that two proceedings do not formally run in parallel?

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**Questions addressed only to defence lawyers**

17. What are the main issues encountered in transfers of criminal proceedings from the perspective of a defence lawyer?

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**III. THE POSSIBLE FUTURE LEGAL FRAMEWORK (PROPOSAL FOR AN EU INITIATIVE)**

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**Criteria for transfer**

18. In which situations should a transfer of proceedings be possible? *(Multiple replies are possible)*

- The offence has been committed wholly or partly in the territory of the other Member State, or most of the effects or a substantial part of the damage caused by the offence was sustained in the territory of the other Member State
- The suspect/accused person is a national/resident of the other Member State
- Substantial parts of the most important evidence are located in the other Member State
- There are ongoing proceedings against the suspect/accused person in the other Member State
- There are ongoing proceedings in respect of the same or related facts involving other persons, in particular in respect of the same criminal organisation, in the other Member State
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The suspect/accused person is serving or is to serve a sentence involving deprivation of liberty in the other Member State

- Enforcement of the sentence in the other Member State is likely to improve the prospects for social rehabilitation of the person sentenced or there are other reasons for a more appropriate enforcement of the sentence in the other Member State
- The victim is a national/resident of the other Member State or the victim has another significant interest in having the proceedings transferred
- To prevent impunity (when none of the above criteria apply)

Other - please specify:

**19. Which Member State is best placed to take over the proceedings when suspects/accused persons and victims from different Member States are involved (e.g. a criminal organisation with numerous suspects and victims)?**

*(Multiple replies are possible)*

- The Member State with a specific interest in prosecuting (e.g. offence affecting national security)
- The Member State of nationality/residence of the majority of victims
- The Member State of nationality/residence of the majority of suspects/accused persons
- The Member State where the substantial evidence is located

Other - please specify:

**Should there be a (non-binding) hierarchy of criteria for such cases?**

- Yes
- No
- I have no opinion

If 'Yes', please specify:

Where a hierarchy of criteria for determining jurisdiction is instituted, it should take into account the provisions of EU's victims' laws and the EU's commitment to victims of crime, including the objectives of the EU Victims' Strategy. The hierarchy should thus not negatively affect the victim's right to achieve justice in a safe manner.



## Subsidiary jurisdiction

**20. Should a transfer of criminal proceedings establish a jurisdiction in the Member State to which the proceedings are being transferred, if that Member State would otherwise not have jurisdiction (= subsidiary jurisdiction)?**

- Yes, in all cases
- Yes, only in specific cases
- No
- I have no opinion

**Please elaborate on the advantages/disadvantages of subsidiary jurisdiction and describe possible situations when subsidiary jurisdiction could apply:**

The definition of a certain crime largely depends on national legislation. In the case of transfer of proceedings, the victims' access to justice should be ensured. This includes the setting up of adequate measures and safeguards in instances where national legislation of the receiving would prevent the state from instituting proceedings for a crime that is punishable by law in the transferring Member State. The loss of the rights of a victim must be a fundamental consideration when determining best jurisdiction. In addition, the EU Commission should consider what measures can be established to mitigate any loss of rights resulting from transfer. For example, where a victim has a right to legal aid in one Member State, it could be required that this is maintained in the Member State which proceeds with the case.

## Grounds for refusal

**21. In which situations should the authority requested to take over the proceedings be able to refuse the transfer?**

*(Multiple replies are possible)*

- Lack of double criminality (if the act does not constitute an offence under the law of that Member State)
- If taking proceedings would be contrary to the *ne bis in idem* principle (right not to be tried or punished twice in criminal proceedings for the same criminal offence)
- If the suspect cannot be held criminally liable for the offence due to his or her age
- If there is an immunity or privilege under the law of that Member State which makes it impossible to take action
- Where the criminal prosecution is statute-barred in accordance with the law of that Member State
-

If the offence is covered by amnesty in accordance with the law of that Member State

- A ground for a transfer does not exist
- Fundamental rights in accordance with Article 6 of the Treaty on the European Union and the Charter of Fundamental Rights of the European Union

Other - please specify:

**Rights of suspects/accused persons and victims**

**22. Do you agree that the following persons should be consulted, if feasible or appropriate, when a transfer of proceedings is envisaged?**

- The suspect(s) or accused person(s)
- The victim(s)
- Both
- None of the above
- I have no opinion

Other - please specify:

**23. Besides consulting them, are there other ways the rights of suspects /accused persons and those of victims should be strengthened in the transfer of proceedings?**

- Yes
- No
- I have no opinion

Other - please specify:

Please provide any other relevant information:

The transfer of proceedings from one Member State to another should not negatively impact on the extent of the rights of victims to participate in the criminal proceedings.

The potential loss of the participatory rights of victims must therefore be a fundamental consideration when

determining best jurisdiction. It should be considered whether practical measures to mitigate any loss of rights resulting from transfer should be established, for instance where the criminal law system of the receiving Member State, unlike the transferring Member State, does not allow victims to be recognised as an injured party or party to proceedings. Where victims cannot attend court proceedings in person following the transfer, new technology such as video conferencing tools should be provided, where possible.

To minimise potential harm caused to victims in relation to the transfer of proceedings, victims should receive timely information about the consequences of this decision and any impact thereof on their participation, and access to third-party assistance support (including legal representation and accompaniment by a person of trust to proceedings). Victims should also have access to required protection measures in the receiving Member State, which are similar in effect and scope of the measures provided in the transferring Member State.

**24. Should a new instrument provide for cooperation between lawyers in both Member States (the transferring Member State and the receiving Member State) to assist the suspect/accused person?**

- Yes
- No
- I have no opinion

Other - please specify:

To ensure equality of arms, any cooperation between lawyers in light of a transfer of proceedings should not only be available to suspects, but also to victims' lawyers.

Access to legal support and legal representation for victims is an important pre-condition for them to access justice in a safe manner. Access to legal support is even more important in cases where the receiving Member State is not the victim's Member State of ordinary residence, given potential language barriers and delays in the provision of case-related information.

Please provide any other relevant information:

**Time limits**

**25. Should the future instrument provide for strict time limits for consultations and for taking a decision whether to accept a transfer of proceeding?**

- Yes
- No
- I have no opinion

If 'Yes' please specify how long the time limits should be:

Strict time limits are implemented to ensure that the criminal justice process is not unduly delayed and prolonged. That being said, it should be examined that the strict time limits are not affecting the victim's ability to be properly consulted and involved in decisions on transfer of proceedings. As indicated in the Victims' Rights Directive, the victims' involvement in the justice process is an important aspect of their right to be recognised and respected.

### **Effects of a transfer and applicable law(s)**

#### **26. As a minimum, what should be the consequences of a transfer?**

- An obligation to investigate
- An obligation to prosecute
- I have no opinion

Other - please specify:

Regardless of the minimum obligation placed upon the receiving Member State, it should be considered that victims are an integral part of the criminal justice process. As such, victims should be timely and duly informed about any case progress and allowed to provide evidence to the competent authorities, regardless of the applicable law, as set out in the EU Victims' Rights Directive.

#### **27. To what extent should procedural acts executed in the transferring Member State, including the collection of evidence, be legally valid in the receiving Member State?**

- With no limitations (rule of equivalence)
- With limitations (e.g. only as far as it is compatible with the law of the receiving State)
- I have no opinion

Please specify:

With regard to the evidence presented by victims and victims' families, it should be considered that providing evidence and testifying can be a traumatic experience. Therefore, practical measures should be in place to reduce the number of times that the victim has to re-live the trauma and limit the number of superfluous interactions with competent authorities, which enhance the risk of secondary victimisation.

#### **28. Once a transfer takes place, the law of the receiving Member State should apply:**

- Without any exceptions
- With exceptions, meaning that the law of the transferring Member State could still apply to certain aspects

- I have no opinion

Please specify:

When determining the applicable law, it should be examined which laws ensure the broadest safeguards in relation to the rights of victims and their access to justice, without infringing on the rights of the defence. It should also be considered whether national victims' laws are effectively implemented in practice. Victim Support Europe encourages the European Commission to explore whether an additional layer of minimum victims' rights should be established in the case of transfer of proceedings.

**29. Which law should apply to sentencing following a transfer of proceedings?**

- To protect the suspect/accused person: the maximum sentence to be imposed should be the one which is the lowest of the two Member States involved (*lex mitior*)
- The law of the receiving Member State
- The law of the receiving Member State, but taking into account the advice or sentencing practice of the transferring Member State

Other - please specify:

In light of the Victims' Rights Directive, victims have the right to be heard in light of criminal proceedings, which includes decisions on sentencing. The victims' involvement in proceedings allows them to see justice being served. In deciding on the applicable law for sentencing, the victims' ability to participate and their rights in relation to such decisions should be taken into consideration.

**30. Competence reverting back to the transferring Member State: Should the transferring Member State have a possibility to (re-)open proceedings if the receiving Member State informs it of its decision to discontinue the proceedings?**

- Yes
- Yes, subject to exceptions
- No
- I have no opinion

Please specify:

In line with the Victims' Rights Directive, victims should have the right to review a decision to discontinue the proceedings. In the event that the receiving Member State does not provide remedies to victims in the case of discontinuation of such proceedings, it should be examined whether victims should not be allowed to request for a re-opening of the proceedings in the transferring Member State.

**Eurojust/European Judicial Network (EJN)**

**31. Should the future EU instrument provide a role for Eurojust and/or the European Judicial Network (EJN)?**

- Yes
- No
- I have no opinion

If 'Yes' please specify what their role should be:

These institutions can play an important role in providing capacity-building, guidance and training on how to effectively implement the system on transfer of proceeding to judicial authorities in Members States.

Such training and capacity-building activities should also include training on the needs and rights of victims of a crime and on trauma-informed approaches, with a view to minimising harm caused to victims throughout the justice process.

Please provide any other relevant information:

**Contact**

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