

Annex: Model Rules

Part I: The ambit of substantive criminal law ('jurisdiction to prescribe')

Article 1 – General principles

- (1) The Member States' criminal laws apply to criminal offences with a cross-border dimension according to the conditions set out in Articles 2 to 6 and 15.
- (2) Criminal liability under the law of a Member State is subject to the condition that the person is aware (intent) or should be aware (negligence) of the circumstances that make that Member State's criminal law applicable.
- (3) A criminal sentence may only be imposed if the circumstances on which the application of domestic criminal law is based have been proved according to the law.
- (4) Without prejudice to references to foreign law, the applicable criminal law determines the applicable rules of conduct.

Article 2 – Principle of territoriality

- (1) The criminal law of a Member State is applicable to crimes committed within its territory.
- (2) A crime is committed where the perpetrator undertakes the relevant act (place of action) or where he is physically present while violating an obligation to act (place of omission). Subject to the provisions establishing the criminal liability of legal persons under domestic law, this rule applies accordingly to the acts and omissions of legal persons.
- (3) If criminal liability requires a result to be caused by the criminal conduct, a crime is also committed where the result has occurred or was intended to occur. [*Unless otherwise provided in EU law, a Member State's criminal law is not applicable according to sentence 1 in connection with paragraph 1 if the conduct is punishable under the law of another Member State according to paragraphs 1 and 2.*]
- (4) If the result of the crime has occurred within the territory of a Member State other than the Member State where the criminal conduct occurred, criminal liability under the law of the Member State where the criminal conduct occurred (paragraphs 1 and 2) is subject to the condition that the

conduct is punishable under the law of the Member State where the result occurred (double criminality requirement).

(5) If a crime is committed by more than one person, the place of participation is where the conduct of the participant (perpetrator or accessory) or the result occurs; paragraphs 2 to 4 apply accordingly. Where criminal liability derives from the criminal conduct of another person, the rules on the place of result (paragraphs 3 and 4) apply accordingly to the place of the attributed conduct.

(6) Paragraphs 1 to 5 apply accordingly to crimes committed on a ship or an aircraft carrying the flag or the national insignia of a Member State. The first sentence does not apply to crimes committed on a ship within the internal waters of another Member State.

Article 3 – Protective Principle

(1) A Member State's criminal law is applicable to crimes against its essential security or economic interests, as provided under paragraph 4.

(2) Crimes against essential security interests are

- crimes against the integrity, security and constitutional order of the Member State concerned, in particular, treason and espionage;
- crimes against the head of state, members of government or military forces;
- security-relevant violations of the export control regime, in particular, illegal trafficking in weapons.

(3) Crimes against essential economic interests are

- crimes against the financial interests of the Member State concerned;
- crimes against the national economy, such as organised industrial espionage;
- counterfeiting of currency.

(4) The Member States decide on whether and to what extent they make their criminal law applicable to crimes under paragraphs 1 to 3 and transmit to the Commission a list of the relevant crimes under their domestic criminal law. The notification and the list are published in the Official Journal of the Union.

(5) A Member State's criminal law is applicable to crimes committed by the head of state, members of the government, military forces or other civil servants, when immunities under international law bar criminal proceedings in another Member State.

Article 4 – Active personality and domicile principle

(1) A Member State may not rely on the nationality or on the residence of the perpetrator in order to make its criminal law applicable to crimes committed in another Member State.

(2) A Member State may extend the ambit of its criminal law to crimes committed outside the Union by its permanent residents if this proves essential to prevent its residents from evading fundamental rules under domestic criminal law.

(3) A Member State may extend the ambit of its criminal law to crimes committed outside the Union by its nationals and other permanent residents when EU law or international law imposes a corresponding obligation upon the Member State.

Article 5 – Passive personality and domicile principle

A Member State may not rely on the nationality or on the residence of the victim in order to make its criminal law applicable to crimes committed abroad.

Article 6 – Universality principle

Apart from the situations falling under the previous Articles, Member States may extend the ambit of their criminal law to crimes committed outside the Union only if the conduct is punishable under international law or the conduct is to be criminalised and punished under international law and the obligation is binding upon the state where the crime is committed.

Part II: Case allocation and forum choice ('jurisdiction to adjudicate and to enforce')

Article 7 – Primacy of territorial jurisdiction; subsidiarity of derivative jurisdiction

(1) Unless otherwise agreed under paragraph 4, the Member State where the crime was committed (Article 2 paragraph 1) is competent to conduct criminal proceedings.

(2) If the crime was committed in more than one Member State, the Member State where the criminal conduct took place (Article 2 paragraph 2) is competent to conduct criminal proceedings. If the crime is not punishable or prosecution is barred under the law of that Member State, the Member State where the result of the crime occurred (Article 2 paragraph 3) is competent to conduct criminal proceedings.

(3) If the crime was committed outside the Union or the competent Member State cannot be determined according to paragraphs 1 and 2 for other reasons, criminal proceedings shall be conducted

- in the Member State where the defendant is ordinarily resident;
- in the Member State where the victim is, or the majority of victims are, ordinarily resident;
- in the Member State where the defendant has been arrested.

If the crime is not punishable or prosecution is barred under the law of the Member State that is considered to be best placed for criminal proceedings according to one of the aforementioned criteria, the competence to conduct criminal proceedings can be based upon the subsequent criterion.

(4) The Member State that is competent to conduct criminal proceedings according to paragraphs 1 to 3 may transfer the proceedings to another Member State if, in the light of a combination of the criteria mentioned in paragraphs 1 to 3 and/or additional legitimate factors, the receiving Member State appears to be better placed to conduct criminal proceedings. The transfer must be based upon a consensus between the transferring and the receiving Member State. If no consensus can be reached, criminal proceedings are conducted by the Member State that is considered to be best placed for prosecution and adjudication according to paragraphs 1 to 3. Proceedings may not be transferred once the court has confirmed the charges.

(5) If a Member State's competence to conduct criminal proceedings is based upon paragraph 3 or 4 and the law of that Member State is not applicable according to Articles 2, 3, 4 or 6, proceedings may only be initiated upon request of the state where the crime was committed (Article 2). Subject to the conditions under paragraph 3 sentence 2, proceedings may also be conducted upon the request of another state whose criminal law is applicable according to Article 3 or 4. A Member State refuses the request for proceedings if the crime is not punishable or prosecution is barred under its domestic law. The requested Member State shall promptly communicate its decision on the request for proceedings to the requesting state.

(6) If proceedings are dependent on a complaint in both the transferring state and the receiving Member State, the complaint brought in the transferring state shall have equal validity with that brought in the receiving Member State. If a complaint is necessary only in the receiving Member State, that state may take proceedings even in the absence of a complaint from the transferring state, provided the person who is empowered to bring the complaint has not objected within a period of one month from the date of his receiving notice from the competent authority informing him of his right to object. Any act which interrupts time-limitation and which has been validly

performed in the transferring state shall have the same effects in the receiving Member State. A request for proceedings under paragraph 5 shall have the effect of prolonging the time-limit for proceedings in the receiving Member State by six months.

(7) Without prejudice to the Member States' obligations under international law, paragraphs 1 and 2 apply accordingly to crimes committed on a ship or an aircraft carrying the flag or the national insignia of a Member State (Article 2 paragraph 6).

Article 8 – Transfer of proceedings to the state of residence

(1) The defendant can apply for a transfer of proceedings to the Member State where the defendant is ordinarily resident. Depending upon the state where the application has been filed, the transfer is either requested by the transferring or the receiving Member State. As a rule, requests should be accepted if the proceedings relate to petty offences or straightforward cases.

(2) Either the defendant or a victim can apply for a transfer of proceedings to the Member State where the defendant and the victim or the majority of victims are ordinarily resident. Paragraph 1 sentence 2 applies accordingly.

(3) Upon the application of the defendant, the proceedings are transferred to the Member State where the defendant is actually located if the presence of the defendant cannot be ensured at the hearing of proceedings in the Member State that is competent according to Article 7.

Article 9 – Transfer of proceedings to the affected Member State

(1) Upon the request of the affected Member State, the Member State that is competent according to Article 7 can transfer criminal proceedings related to crimes against essential state interests (Article 3) to the requesting Member State. As a rule, the request should be accepted, unless the interests of the requested Member State in maintaining its legal order prevail over the interests of the requesting Member State or, unless the crime is directed against both the requesting and the requested Member States' essential interests. In cases of Article 7 paragraph 5, the requested Member State cannot claim a prevailing interest.

(2) If the request under paragraph 1 is accepted, the receiving Member State is fully competent to prosecute and adjudicate the criminal conduct, even insofar as the crime is not directed against its own interests. In this regard, prosecution and adjudication on behalf of the transferring state is not dependant upon a request according to Article 7 paragraph 5.

(3) If the request under paragraph 1 is refused, the requested Member State, when exercising its competence to prosecute and adjudicate, shall take the interests of the requesting Member State into due consideration and, in this

respect, apply its domestic criminal law as if the crime had been committed against its own essential interests (Article 3).

Article 10 – Multiple offences

(1) If a defendant is charged with two or more connected crimes that are subject to the competences of different Member States, the proceedings shall be joined in the Member State that appears to be best placed for prosecution and adjudication, thereby taking account of the criteria mentioned in Articles 7, 8, 9 and 11. Upon request of that Member State, the connected criminal proceedings in other Member States are transferred to the requesting Member State. Criminal proceedings against the same defendant for unconnected cases may also be joined; sentences 1 and 2 apply accordingly.

(2) The defendant can apply for a request under paragraph 1 at any stage of the proceedings.

Article 11 – Multiple offenders and complex cases

(1) If two or more defendants are charged with crimes that are connected to each other but are subject to the competences of different Member States, the proceedings may be joined in the Member State that appears to be best placed for prosecution and adjudication. Upon request of that Member State, the connected criminal proceedings in other Member States may be transferred to the requesting Member State.

(2) A transfer of proceedings under paragraph 1 generally requires that the gravity and the cross-border dimension of the crimes and the extent and complexity of the investigations call for a concentration of proceedings in one Member State. The Member State best placed for prosecution and adjudication of the complex of crimes shall be determined according to the following criteria:

- place where the centre of the criminal conduct is situated;
- place where most of the harm or damage occurred, taking into account the interests of affected Member States and the interests of victims;
- place of residence or actual location of the defendants;
- location of evidence and stage of proceedings.

Article 12 – Procedure

(1) If a competent authority of a Member State has reasonable grounds to believe that parallel proceedings are being conducted in another Member State, it shall contact the competent authority of that other Member State to confirm the existence of any such parallel proceedings. Having established that parallel proceedings exist, the competent authorities enter into direct

consultations in order to determine which Member State is best placed for prosecution and adjudication according to Articles 7 to 11.

(2) Where it would not undermine the need to ensure the confidentiality of an investigation, the defendant shall be given the opportunity to make representations before the competent Member State is determined according to paragraph 1. The victim shall be given the opportunity to make such representations if it appears to be necessary for safeguarding his/her rights to effectively participate in the proceedings and if it does not improperly delay the course of proceedings or jeopardise the investigation.

(3) Before an indictment is filed, the defendant and the victim shall be given the opportunity to apply for a transfer of proceedings (Article 8, 10). Before taking a decision, the authority that has received the application shall hear the defendants and victims that did not apply for a transfer of proceedings. Paragraph 2 sentence 2 applies accordingly. The decision upon the application has to be issued in writing and contain reasons.

(4) When the competent Member State has been determined and/or Member States have agreed to transfer (Articles 7 to 9) or concentrate (Articles 10 and 11) criminal proceedings in the Member State that is best placed for prosecution and adjudication, the competent authority of that Member State shall notify the defendant and the victim of its decision to conduct the proceedings before filing the indictment. If a defendant or a victim has applied to the same authority (paragraph 3), the competent authority shall take a single decision upon its competence and the application. The decision has to be issued in writing and contain reasons.

Article 13 – Judicial Review

(1) The defendant and, in accordance with Article 12 paragraph 2 sentence 2, the victim can challenge decisions adopted under Article 12 paragraphs 3 and 4 before the competent court of the Member State where the decision has been taken. The competent court and the procedure shall be determined by national law. The decision of the national court is not subject to appeal.

(2) If the court finds that the determination of the competent Member State is unlawful and violates the plaintiff's right, the competent authority has to take a new decision upon its competence and/or make a request for a transfer of proceedings, taking the legal view of the court into consideration.

(3) When deciding upon a request for a transfer of proceedings that has been triggered by a successful challenge under paragraph 2, the requested Member State shall consider the decision that has been delivered by the court of the requesting Member State. The decision upon the request is subject to judicial review; paragraph 1 applies accordingly.

(4) If the determination of the competent Member State is not challenged or if the challenge is rejected by the court, the competent authority may file the indictment and bring the case to court.

Article 14 – Effects of court proceedings and transfer of proceedings

(1) During court proceedings on the determination of the competent Member State (Article 13 paragraphs 1 and 2), the defendant may not be prosecuted for the same facts in another Member State.

(2) When the court has confirmed the indictment, the defendant may not be prosecuted for the same facts in another Member State.

(3) When a Member State has transferred criminal proceedings to another Member State, it is relieved of its competence to prosecute the defendant for the same facts.

(4) Paragraphs 1 to 3 do not affect the Member States' competences to take provisional measures.

Article 15 – Applicable law

(1) Unless otherwise provided, criminal proceedings in the competent Member State are governed by domestic procedural law and, subject to the conditions set out in Articles 2 to 6, domestic criminal law.

[Application of foreign criminal law] (2) If domestic criminal law is not applicable under Articles 2 to 6, the competent Member State applies the criminal law of the state that has requested criminal proceedings (Article 7 paragraph 5). The sanction must not be more severe than that provided for in domestic law.

[Transformation of foreign into domestic criminal law] (2) If domestic criminal law is not applicable under Articles 2 to 6, the competent Member State applies its domestic criminal law as if the crime had been committed domestically. A sanction may only be imposed if the crime is punishable under the law of the state that has requested criminal proceedings (Article 7 paragraph 5). The nature and gravity of the criminal offences under the laws of the requesting and the requested state must be equivalent. The sanction must not be more severe than that provided for in the law of the requesting state.

(3) The application of foreign criminal law is subject to judicial review in appeal proceedings.

Article 16 – Coordination with third states

Without prejudice to their obligations under international law, Member States shall take the rules under Articles 7 to 15 into consideration when coordinating their criminal proceedings with third states.