

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 16 January 2014
[PC-OC/Docs 2013/ PC-OC(2013)10 Bil.rev.]

PC-OC (2013)10 Bil.rev.

EUROPEAN COMMITTEE ON CRIME PROBLEMS
COMITÉ EUROPÉEN POUR LES PROBLÈMES CRIMINELS
(CDPC)

COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS
COMITÉ D'EXPERTS
SUR LE FONCTIONNEMENT
DES CONVENTIONS EUROPÉENNES DANS LE DOMAINE PÉNAL
(PC-OC)

Compilation of replies to the questionnaires regarding the implementation of the Convention on the transfer of sentenced persons (ETS N° 112) and its Additional Protocol (ETS N° 167)

Compilation des réponses aux questionnaires sur la mise en œuvre de la Convention sur le transfèrement des personnes condamnées (STE N°112) et de son Protocole additionnel (STE N° 167)

Contents

Questionnaire 1	4
Questionnaire 2	4
Albania	5
Armenia.....	6
Austria.....	7
Azerbaijan	9
Belgium	10
Bosnia and Herzegovina.....	13
Czech Republic	14
Denmark	16
Estonia	18
France.....	19
Georgia	20
Germany	21
Greece	23
Hungary	24
Iceland	25
Italy	26
Liechtenstein	28
Lithuania	29
Moldova	30
Montenegro	31
Netherlands.....	32
Norway	34
Poland.....	35
Portugal.....	36
Slovakia	37
Sweden	38
Switzerland.....	39
Turkey	41
Ukraine.....	42
Australia	44
Chile.....	46
Costa Rica.....	47
Ecuador.....	48
Israel	49
Japan	50
Korea	51
Mexico.....	52
United States of America	53

Appendix I: France in original language	56
Appendix II : Switzerland in original language	57

Questionnaire 1
to the parties to the Convention on the transfer of sentenced persons (ETS N° 112)

1. How many requests for transfer based on ETS 112 did you receive in the period 2011-2012? How many of these have led to an effective surrender of the person concerned?
2. How many requests for transfer based on ETS 112 did you send out in the same period? How many of these have led to an effective surrender of the person concerned?
3. Did you encounter any legal or practical problems in dealing with these requests? Please specify:
4. Do you have any proposals to improve the functioning of this Convention? Please specify:

Questionnaire 2
to the parties to the additional Protocol to the Convention on the transfer of sentenced persons (ETS N° 167)

1. How many requests for transfer based on ETS 167 did you receive in the period 2011-2012? How many of these have led to an effective surrender of the person concerned?
2. How many requests for transfer based on ETS 167 did you send out in the same period? How many of these have led to an effective surrender of the person concerned?
3. Did you encounter any legal or practical problems in dealing with these requests? Please specify:
4. Do you have any proposals to improve the functioning of this Protocol? Please specify:

* * *

Questionnaire 1
aux parties à la Convention sur le transfèrement de personnes condamnées (STE N° 112)

1. Combien de demandes pour un transfèrement dans le cadre de la STE 112 avez-vous reçu dans la période 2011-2012? Combien de ces demandes ont effectivement abouti au transfèrement de la personne concernée?
2. Combien de demandes pour un transfèrement dans le cadre de la STE 112 avez-vous fait dans la période 2011-2012? Combien de ces demandes ont effectivement abouti au transfèrement de la personne concernée?
3. Avez-vous rencontré des problèmes juridiques ou pratiques dans le traitement de ces demandes ? Merci de préciser.
4. Avez-vous des propositions pour améliorer le fonctionnement de cette Convention? Merci de préciser.

Questionnaire 2
aux parties au Protocole additionnel à la Convention sur le transfèrement de personnes condamnées (STE N° 167)

1. Combien de demandes pour un transfèrement dans le cadre de la STE 167 avez-vous reçu dans la période 2011-2012? Combien de ces demandes ont effectivement abouti au transfèrement de la personne concernée?
2. Combien de demandes pour un transfèrement dans le cadre de la STE 167 avez-vous fait dans la période 2011-2012? Combien de ces demandes ont effectivement abouti au transfèrement de la personne concernée?
3. Avez-vous rencontré des problèmes juridiques ou pratiques dans le traitement de ces demandes ? Merci de préciser.
4. Avez-vous des propositions pour améliorer le fonctionnement de ce Protocole? Merci de préciser.

Albania

Questionnaire 1

1. 57 requests for transfer have been received by Albania from other countries during the period 1 January 2011 to 31 December 2012 based on ETS 112. From these requests, 4 are in process of surrender.
2. Reply: 6 requests for transfer have been sent to other states in the same period. From these requests, 2 subjects have been surrendered and 4 others are in process of surrender.
3. With reference to request for transfer from other countries to Albania, the main problem facing is lack of penitentiary capacities and in that direction measures are being taken by government in the framework of the penitentiary system reform.

Secondly, the incompatibility of the reservations or declarations regarding article 9 parag (a) or (b). In accordance with Article 3, paragraph 3, the Republic of Albania has made declaration that excludes the application of the procedures provided for in Article 9, paragraph 1, letter "a" of the Convention.

In some cases problems regarding the different procedures provided by national laws and the form of acts (original or authenticated and sealed) in order to be acceptable by courts in appliance of Criminal Code of Procedure.

Another problem facing are the uncompleted file (absence of the consent of the sentenced person, or disposition, or information on the dynamic of the execution of sentence))

4. No.

Questionnaire 2

Albania has not signed the Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS 167).

Actually Albania has signed bilateral agreements with some countries, avoiding the legal obstacle of conversion procedure with reference to Convention on transfer of sentenced persons (ETS112) and providing also the transfer without consent of the subjects where the sentence passed on the latter, or an administrative decision consequential to that sentence, includes an expulsion or deportation order or any other measure as the result of which that person will no longer be allowed to remain in the territory of the sentencing State once he or she is released from prison. Since these agreements have been ratified lately we have still no statistics available.

Armenia

Questionnaire 1

1. In the period from 1 January 2011 to 31 December 2012 Ministry of Justice of Armenia have received 24 requests for transfer based on ETS 112. Only 6 of the convicted persons were transferred.
2. In the period from 1 January 2011 to 31 December 2012 the Ministry of Justice of Armenia have sent 22 requests for transfer based on ETS 112. Effective surrender of 2 concerned persons has led.
3. Ministry of Justice of Armenia hasn't encountered any legal problem in dealing with the requests based on ETS 112, but we has a practical problem in dealing with the requests based on ETS 112 in case of early release of the transferred prisoners or immediate pardon after the transfer.
4. No, we have not any proposals on improving the functioning the Convention.

Questionnaire 2

The Republic of Armenia have signed the Additional Protocol to the Convention on the transfer of sentenced persons (ETS 167), but it hasn't been ratified yet.

Austria

Questionnaire 1

1. In the year 2011 Austria received 20 requests based on ETS 112, 8 of them have led to a surrender of the person concerned.

In 2012 8 requests were forwarded to Austria, 4 of them have led to an effective surrender.

2. Concerning 2011 Austria forwarded 119 requests based on ETS 112. 69 of them have led to an effective surrender.

In the year 2012 Austria sent out 129 requests whereof 34 have led to a surrender of the person concerned. A considerable number of these proceedings is still pending.

3. a) The inappropriate **length of transfer proceedings** constitutes a major problem. Transfer proceedings very often take up to 12 months and sometimes even longer, though the period indicated in Article 3 para 1 lit c of the Convention on the Transfer of Sentenced Persons would imply transfer proceedings of less than 6 months. In many cases even the coordination of the date of surrender takes weeks or months. Due to the exorbitant length of transfer proceedings in many cases the request for transfer has to be revoked as meanwhile the prisoner had to be released in the sentencing State according to provisions on conditional release or even because the sentence was fully served.

b) Problems also arise due to the fact that according to the Convention the **consent of the person concerned is not irrevocable**. Accordingly often – sometimes even at a very late stage of the proceedings – the request has to be withdrawn.

c) The **competent authorities to coordinate the effective transfer** of the person concerned differ from country to country. In most, but not all countries the national Interpol bureaux are responsible for coordinating the effective transfer in cooperation with the judicial authorities. The fact that different authorities are responsible in different States produces uncertainty and sometimes unnecessary delays in coordinating time and place of surrender.

4. It should be considered to **introduce time-limits** for the conversion procedure as well as the effective transfer as soon as the administering State has decided to consent to the transfer (s.3.a).

It should be considered also to supplement Article 7 of the Convention by making the **consent irrevocable** or introducing a **time-limit until which the consent may be revoked** at the latest (s.3.b).

Questions in relation to the **coordination of the effective surrender** of prisoners should be discussed and the elaboration of guidelines/ a recommendation (?) considered (s.3.c).

Questionnaire 2

1. In the year 2011 Austria received 2 requests based on ETS 167, none of them has led to a surrender of the person concerned.

In 2012 Austria received 4 requests based on ETS 167, none of them has led to an effective surrender.

2. In 2011 Austria forwarded 57 requests based on ETS 167 whereof 30 have led to an effective surrender.

In the year 2012 Austria forwarded 189 requests, 26 of them have led to a surrender of the concerned person. A considerable number of these proceedings is still pending. (In relation to 11 Member States of the EU, which have until now implemented the Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgements in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the EU, transfer proceedings are nowadays dealt with according to this new EU instrument. According to this new instrument Austria sent out another 62 requests in 2012. Until now 21 have led to an effective surrender. A considerable number of these proceedings is still pending).

3.
 - a) Some States decline a request for transfer if the request is based on an **expulsion or deportation order** which is **not consequential to the sentence imposed** (s. the wording in Article 3 para 1 of the additional Protocol). If the competent authority of the sentencing State has however already issued an expulsion or deportation order, which prevents the sentenced person to reenter the territory of the sentencing States for a long period of time (10 years or an unlimited period of time) it seems to be redundant to issue after each new conviction a new deportation or expulsion order stating more or less the same which was already stated in the first expulsion or deportation order. According to the legislation in some States it is therefore not foreseen to issue a new expulsion or deportation order consequential to a new conviction. In such cases a transfer is impossible, even though an expulsion or deportation order for an unlimited period of time exists.
 - b) Some States also decline **requests for transfer based on Article 3 of the Additional Protocol** arguing that the person concerned has **not consented** to his/her transfer and therefore **rehabilitation** in the administering State seems impossible. In this context some questions should be discussed: Is there a real chance of rehabilitation in the sentencing State if there is an expulsion or deportation order for an unlimited period of time issued against the prisoner and he/she will have to return to the administering State as soon as he/she will be released from prison in the sentencing State? Is the situation different if intense family or social ties exist in the sentencing State? etc.
4. It should be considered to change Article 3 para 1 of the Additional Protocol by **deleting "consequential to that sentence"** (s.4.a).

Questions related to (best/ better chances for) **rehabilitation** in the sentencing/administering State should be discussed and the elaboration of guidelines/ a recommendation (?) considered (s.4.b).

Azerbaijan

Questionnaire 1

(regarding the Convention on the transfer of sentenced persons (ETS 112))

1. The relevant authorities of the Republic of Azerbaijan received 157 requests for transfer based on ETS 112 in the period of 2011-2012, of these 12 requests have led to an effective surrender of the person concerned.
2. The relevant authorities of the Republic of Azerbaijan sent out 228 requests in the same period, of these 101 have led to an effective surrender of the person concerned.
3. /
4. /

Questionnaire 2

(regarding the additional Protocol to the Convention on the transfer of sentenced persons (ETS 167))

The Republic of Azerbaijan is not a party to the Additional Protocol to the Convention on the transfer of sentenced persons (ETS 167).

Belgium

Questionnaire 1

1. How many requests for transfer based on ETS 112 did you receive in the period from 1 January 2011 to 31 December 2012? How many of these have led to an effective surrender of the person concerned?

During the period January 2011 – December 2012, Belgium has received 88 transfer requests based upon the 1983 Convention (CETS N° 112). Of those, 4 sentenced persons were transferred to Belgium.

2. How many requests for transfer based on ETS 112 did you send out in the same period? How many of these have led to an effective surrender of the person concerned?

During the period January 2011 – December 2012, Belgium has transmitted 70 transfer requests based upon the 1983 Convention (CETS N° 112). Of those, 33 sentenced persons were transferred to their respective countries of nationality or residence.

3. Did you encounter any legal or practical problems in dealing with these requests? Please specify:

A. Transfer proceedings in general, perhaps even more so in case the proceedings are based on the Additional Protocol (*see below, questionnaire 2*), appear to have become an instrument to try to manage prison overpopulation. Incoming transfer requests are more likely to be refused. The double purpose of the Convention and the Additional Protocol – proper law enforcement and reinsertion of the sentenced person – are thus not respected. Both goals of the transfer instruments, while appearing to be contradictory, are actually closely linked. Insofar the transfer helps reinsertion, it may well avoid future offending (recidivism) which is beneficial to the public and society as a whole.

B. On average, transfer proceedings are very lengthy. With respect to some Parties, proceedings may take a very considerable amount of time. Some Parties maintain a very formal approach by – for instance – requiring the diplomatic transmission of requests or a final decision that must be taken by the whole Government (the Council of Ministers, rather than one delegated Minister). For that reason alone, Belgium advises against transfer in cases whereby the sentence is less than 3 years or the remaining portion of the sentence is not substantial anymore. In all the 6-month delay in the Convention is not realistic.

C. The transfer from Belgium to other countries and to a lesser extent the other way around, always raises issues regarding the adaptation of the sentence and the applicable legislation re. conditional release. If the sentence would be reduced substantially and / or the sentenced person is likely to 'gain' due to a seemingly more favourable conditional release system, the transfer may well be refused for that reason alone.

4. Do you have any proposals to improve the functioning of this Convention? Please specify:

A. The *recommendations* regarding the application of the Convention should be re-appraised. Their implementation in domestic legislation and practises seems to be inadequate. Perhaps one all-encompassing and modernized recommendation is needed.

- B. There is definitely a need for more – detailed – *information* from the parties, esp. related to the execution of the sentence and conditional release (parole) legislation and practises, the application of the convention (or not) to mentally ill offenders and re. the adaptation or the conversion of the sentence (post-transfer issues). Perhaps it is time to, prepare a booklet similar to the *Standards* re. extradition?
- C. Parties should consider to review their reservations and recommendations to the Convention. Esp. those Parties that still require a diplomatic transmission of transfer requests may consider to apply more direct ways for the transmission and the communication during pending proceedings.
- D. More detailed regulation re. the *consent* of the sentenced person (level of information, time limits for withdrawal, ...) is needed.

Questionnaire 2

1. How many requests for transfer based on ETS 176 did you receive in the period from 1 January 2011 to 31 December 2012? How many of these have led to an effective surrender of the person concerned?

During the period January 2011 – December 2012, Belgium has received 1 transfer requests based upon the 1997 Protocol (CETS N° 176). This request did not lead to the transfer of the sentenced person.

2. How many requests for transfer based on ETS 176 did you send out in the same period? How many of these have led to an effective surrender of the person concerned?

During the period January 2011 – December 2012, Belgium has transmitted 29 transfer requests based upon the 1997 Protocol (CETS N° 176). 6 of those requests have resulted in the transfer of the sentenced persons.

3. Did you encounter any legal or practical problems in dealing with these requests? Please specify:

- A. The general issues related to the Convention are essentially the same as for the Protocol (*see above, Questionnaire 1*). The Protocol's main feature is the link between the illegal status (of the sentenced person) and the 'forced' nature of the transfer based upon that status. The Protocol offers thus an alternative for a mere expulsion that does not allow the continuation of the enforcement of the sentence.

A critical reflexion regarding the original purpose – the ratio legis – of the Protocol is needed. The Protocol should not be a mere tool to manage prison overpopulation. This is the prime responsibility of the states themselves. The Protocol is, just like the Convention, an instrument to enhance reintegration *while* ensuring a proper administration of the law. The Protocol simply links that purpose to the illegal status of an increasing portion of the prison population that will be removed from the sentencing State's territory anyway. The expulsion, if effectively carried out, does not provide guarantees for any form of reintegration while the remainder of the sentence is 'lost'. There is no 'control' whatsoever over the sentenced person after he or she is released before the end of the sentence.

- B. Parties to the Protocol, including Belgium, tend to use the Protocol as a tool to 'empty prisons'. This is the very reason for some CoE member states and other states, mostly Parties to the Convention, NOT to sign, ratify* or accede to the Protocol. Some States may fear an unmanageable flow of incoming requests, due to a high number of nationals detained abroad.

- C. A special, yet sometimes ignored feature of the Protocol is its article 2. Article 2 is actually not about transfer of sentenced persons, but about the transfer *of the sentence* in case the sentenced person fled the state where he was supposed to be imprisoned. The article is an almost exact copy of article 68 of the Convention implementing the Schengen Agreement. It is unfortunate that some parties have made a reservation that excludes the application of article 2. Esp. in cases where – for instance – the nationality of the person sought / the sentenced person *bars extradition*, article 2, can be a valuable tool, i.e. a legal basis for *aut dedere, aut exequere* and thus complement article 6§2 of the Extradition Convention.
4. Do you have any proposals to improve the functioning of this Protocol? Please specify:
- A. Apart from the remarks re. the Convention (see above): There is no recommendation re. the application of the Protocol. Either a separate recommendation or an integration of specific recommendations in a new, global recommendation could be envisaged.
 - B. Parties should consider reviewing their reservations and declarations to the Protocol, esp. the reservation made with respect to article 2.

Bosnia and Herzegovina

Questionnaire 1

In dealing with transfer of sentenced persons Bosnia and Herzegovina is applying provisions of the Convention on the transfer of sentenced persons, as well as provisions of the bilateral agreements. Ministry of Justice of Bosnia and Herzegovina holds database, that shows number of requests for transfer of sentenced persons and enforcement of foreign judgements, but all together.

In that sense, and according to database, in period 01. January 2011 – 31. December 2012, Bosnia and Herzegovina:

- received 171 request for transfer of sentenced persons and recognition and enforcement of foreign judgements. In 25 cases request has not been completed,; 31 has been completed and in 115 cases procedure is in progress;
- sent 145 requests for transfer of sentenced persons and recognition and enforcement of foreign judgements. In 17 cases request has not been completed; 24 has been completed and in 104 cases procedure is in progress.

We emphasise that above mentioned data reflect number of received/sent requests for transfer of sentenced persons, on the base of the Convention and bilateral agreements, together with number of requests for enforcement of foreign judgements.

Questionnaire 2

As far as Questionnaire 2 is concerned we would like to inform you that Bosnia and Herzegovina is not member of the additional Protocol to the Convention on the transfer of sentenced persons.

Czech Republic

Questionnaire 1

1. The Ministry of Justice of the Czech Republic received 21 requests in that period.

Only 1 of the requested has led to the surrender yet.

2. The Ministry of Justice of the Czech Republic sent 6 requests in the same period.

Only 1 of the requests has led to the surrender yet.

3. One of the problems that concern both the Convention and the Protocol is that the person may repeatedly consent to its transfer and then withdraw its consent and this can be done unlimited number of times until the very real surrender of the person.

There is also problem with obtaining the medical report and sometimes even social report.

Some countries do not reply at all or within long period.

Some countries request to be sent documents according to Article 6(1) before sending the documents according to Article 6(2) of the Convention. However, it is not possible for the administering State to send the documents mentioned in Article 6(1)(b) and (c) without having knowledge of the final judgment.

The Ministry of Justice of the Czech Republic has also faced a problem that the sentenced person got married and changed her surname and until we have been informed about the maiden name we could not have certified her citizenship.

In some case an address of the sentenced person in the administering State was not provided and it was also problem for establishing the identity of the person and to confirm her citizenship.

4. For enforcement of the sentence the Czech authorities generally need to know in which type of prison the person has served his sentence and what kind of restriction were imposed on him, especially whether the person has a possibility of work and whether the person can move freely in the prison and /or also outside. Therefore, it might be helpful if the States write some general information that would be posted on the website concerning the types of prisons in the State and what kind of restrictions are usually connected with the specific type of prison.

Questionnaire 2

1. The Ministry of Justice of the Czech Republic received 9 requests in that period.

None of the requests has led to the surrender.

2. The Ministry of Justice of the Czech Republic sent 1 request in the same period.

The request has not led to surrender yet.

3. /

4. /

Denmark

First of all, it should be noted that as the case handling system in the Danish Ministry of Justice was changed from a manual system to an electronic system, the statistics given below may contain some uncertainty. This is the case as some request might have been sent or received in the first half of 2011, but that the file has been closed before the new, electronic system came into force in the summer of 2011. In these cases the requests do not appear in the new system. However, it is the assessment of the Danish Ministry of Justice that the numbers would not have been much higher, if it had been possible to count these requests as well.

Questionnaire 1

1. The Ministry of Justice has in the given period received 4 requests for transfer based on ETS 112 from other Member States of the Council of Europe. Furthermore, the Ministry of Justice has received 8 requests for transfer from Danish nationals, who were sentenced to imprisonment abroad. In these cases, the Danish Ministry of Justice has approached the countries with a request to take over the sentence pursuant to ETS 112.

In 9 of the 12 cases, the persons have been transferred to Denmark for execution of the foreign sentence. In 2 of the 12 cases, transfer has not happened yet.

2. The Danish Ministry of Justice sent out 18 requests for transfer pursuant to ETS 112 in the given period.

8 of the requests led to the physical surrender of the persons concerned. In 2 of the cases, the persons concerned withdrew their consent to the transfer, which led to requests for transfer based on ETS 167 instead (both of these requests then led to the physical surrender of the person concerned).

3. The main problem in cases involving a request from Denmark for transfer (both pursuant to the ETS 112 and ETS 167) has been the processing time of the request in the requested country. The Danish Ministry of Justice has been forced to close a number of cases concerning transfer, because the requested country has not processed the request before the time of release on parole of the sentenced person.

Furthermore, it appears that the views upon in which situations a transfer will benefit a person's "social rehabilitation" differ from country to country. For instance, in nearly all Danish cases involving a request for transfer, the sentenced person will at the same time have been expelled from Denmark. In these cases, the person will – after having served (part of) his sentence – be deported to the country to where the request for transfer is sent. It is the view of the Danish authorities that a transfer in these cases will as a main rule facilitate the social rehabilitation of the persons concerned. However, in some of these cases the authorities of the requested country have declined to take over the enforcement of the Danish sentence on the grounds that a transfer of the person would not facilitate the social rehabilitation of the person concerned.

4. The Danish Ministry of Justice suggests that it should be discussed whether time limits should be introduced as regards replies to requests for transfer as it is the case with for instance the EU Council Framework Decision on recognition and enforcement of sentences.

Furthermore, it is the view of the Danish Ministry of Justice that establishing bilateral contact points in the Member States of the European Council could benefit the process in these cases.

Questionnaire 2

1. The Danish Ministry of Justice has only received 1 request for transfer based on ETS 167 in the given period.

None.

2. The Danish Ministry of Justice has sent out 36 requests for transfer in the given period.

16 of these requests have led to a psychical surrender, while 7 are still pending.

3. Reference is made to the remarks made under questionnaire 1, 3rd question.

4. Reference is made to the remarks made under questionnaire 1, 4th question.

Estonia

Questionnaire 1

1. From 1 January 2011 up to 31 December 2012 Estonia has received 13 requests for the transfer of sentenced persons under ETS 112 and 9 of these led to an effective surrender of the person concerned.
2. Estonia send out from 1 January 2011 up to 31 December 2012 20 requests and 7 of these has been successfully executed, 7 are still pending and in 6 cases the requested MS refused to execute the request.
3. Actually there are two main problems regarding the practical implementation of ETS 112 – almost every MS interpret the provisions of the Convention a bit differently and secondly almost every MS would like to see that the transfer of sentenced persons could/should/must be regulated in all MS by the same way as it is regulated in it's country. For example – some MS requires that prior the transfer there **must** be a court decision of the transfer and despite it contrary to Estonian legislation it has been a ground for refusal of the transfer.
4. We have to find common position how to speed up the procedure.

Questionnaire 2

1. From 11 January 2011 up to 31 December 2012 Estonia has received 15 requests for transfer based on ETS 167 and 10 of these led to transfer of the person concerned.
2. During this period Estonia hasn't send out any request based on ETS 167.
3. No
4. No

Beside the transfer on the basis of CoE conventions Estonia also applies the Article 5 para 3 of the Framework Decision on the European arrest warrant and the surrender procedure between Member States and surrender Estonia nationals on condition that the sentence must be executed back in Estonia. And on this ground from 1 January 2011 up to 31 December 2012 12 Estonian nationals has been transferred back to Estonia after their surrender on the basis of EAW for serving the sentences.

France

Questionnaire 1

1. 202 requests for transfer from 01.01.2011 to 31.12.2012, including:
 - 99 in 2011 and 103 in 2012
 - 180 from Council of Europe member countries (85 in 2011 and 95 in 2012)
 - 22 from non-member countries signatories to Convention ETS 112 (14 in 2011 and 8 in 2012)

118 of these have led to the transfer of the sentenced person, including:

 - 84 between 2011 and 2012 and 34 in 2013 and to date
 - 110 from Council of Europe member countries (including 34 in 2013)
 - 8 from non-member countries signatories to Convention ETS 112 (including 2 in 2013)
2. 129 requests for transfer from 01.01.2011 to 31.12.2012, including:
 - 78 in 2011 and 51 in 2012
 - 128 to Council of Europe member countries (77 in 2011 and 51 in 2012)
 - 1 to a non-member country signatory to Convention ETS 112 in 2011

30 of these have led to the transfer of the sentenced person, including:

 - 19 between 2011 and 2012 and 11 in 2013 and to date
 - 30 to Council of Europe member countries
3. Specific case of persons found criminally responsible and sentenced, but whose state of mental health leads to provision which is peculiar to the sentencing State. The legal framework for this type of care differs markedly from one State to another, making it virtually impossible to approve the sentenced person's transfer (care ordered by the trial court or during imprisonment, care under coercion or at the sentenced person's request, interruption or otherwise of the enforcement of the sentence in the event of confinement, care in prison or hospital, etc.)
4. /

Questionnaire 2

1. 10 requests for transfer from 01.01.2011 to 31.12.2012, including:
 - 10 requests for transfer from Council of Europe member countries
 - 9 requests in 2011 and 1 in 2012

2 requests have led to the transfer of the sentenced person between 2011 and 2012
2. 3 requests for transfer from 01.01.2011 to 31.12.2012
 - including 3 requests in 2011 and none in 2012

1 request has led to the transfer of the sentenced person between 2011 and 2012
3. Nothing to report
4. /

Georgia

Questionnaire

1. In the period from 1 January 2011 to 31 December 2012 Georgia received 155 requests for transfer based on ETS 112. Out of the mentioned requests, 10 of them are still pending, 32 requests led to an effective surrender of the sentenced persons, 32 requests were rejected and proceedings regarding 81 requests were terminated due to the fact that the persons concerned were released in Georgia based on amnesty or pardon.
2. In the period from 1 January 2011 to 31 December 2012 Georgia sent out 41 requests for transfer based on ETS 112. Out of the mentioned requests, 21 of them are still pending, 15 requests led to an effective surrender of the sentenced persons and 5 requests were rejected by the relevant foreign states.
3. Georgia did not encounter any significant legal or practical problems in dealing with the requests for transfer based on ETS 112.
4. /

Questionnaire 2

1. In the period from 1 January 2011 to 31 December 2012 Georgia received 1 request for transfer based on ETS 167. The examination of the request is still pending.
2. In the period from 1 January 2011 to 31 December 2012 Georgia did not send out any request for transfer based on ETS 167.
3. Georgia did not encounter any significant legal or practical problems in dealing with the requests for transfer based on ETS 167.
4. /

Germany

Due to national regulations concerning the collection of statistical data, Germany will only be able to provide data that includes transfers according to both the Convention on the transfer of sentenced persons and its additional protocol.

Furthermore, Germany understands the term “effective surrender” as those requests granted within the applicable time period, irrespective of the actual surrender.

Last, Germany can only provide numbers of requests granted in the applicable time period. The figures do not necessarily correspond to the number of incoming or outgoing requests, but can also relate to requests from a previous time period.

Considering this, Germany provides the requested statistical data as follows:

1. How many requests for transfer based on ETS 112 and on ETS 167 did you receive in the period from 1 January 2011 to 31 December 2012?

321 requests
2. How many [of these] have led to an effective surrender of the person concerned?

242 requests
3. How many requests for transfer based on ETS 112 and on ETS 167 did you send out in the same period?

570 requests
4. How many [of these] have led to an effective surrender of the person concerned?

756 requests
5. Did you encounter any legal or practical problems in dealing with these requests? Please specify:

Germany would like to raise one practical problem in connection with Article 3 para 1 (c) of the Convention on the transfer of sentenced persons (ETS 112):

Under Article 3 para 1 (c), a sentenced person may be transferred, among other reasons, if at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve. The idea behind this is that the social rehabilitation of the sentenced person can be successfully promoted only if the remaining sentence to be served is of sufficient duration.

In the past questions have arisen as to the interpretation of the minimum duration of the sentence left to be served.

German courts have proceeded on the assumption that the time to be served relates to the overall sentence imposed and that a potential early release involving a suspension of the sentence on probation are not to be taken into account. Similarly to Article 54 of the Convention Implementing the Schengen Agreement, it must be borne in mind that the suspension of the sentence can be revoked during the probation period; in addition, in the case of a conditional release or release on probation, the person concerned can be subject to instructions or conditions. Moreover, the probation period particularly serves the purpose of social rehabilitation of the sentenced person. Taking over enforcement of sentence can serve to reintegrate the sentenced person into the probation regime of

the executing state and thus contribute to his or her social rehabilitation. In addition, early release is not automatic under German law; rather, it is merely a theoretical possibility.

In the past, German judicial authorities have encountered a different interpretation of Article 3 para 1 (c) by foreign judicial authorities, which refers to the date of a potential early release involving a suspension of the sentence on probation.

Greece**Questionnaires 1+2**

1. In 2011 we received 10 requests for transfer and we sent 12 requests pursuant to the Convention of Strasbourg. One request was executed.
2. In 2012 we received 310 requests for transfer and we sent 7 requests pursuant to the Convention of Strasbourg. One request was executed.
3. In 2012 we received one request for transfer pursuant to the Additional Protocol to the Convention of Strasbourg. The request was not executed.

Hungary

Comment: Unfortunately Hungary does not keep a separate register for the data concerning the Convention and the additional Protocol; therefore we are unable to give separate answers.

1. Hungary received 55 requests: 38 of them have led to an effective surrender and 17 of them were denied by the Minister of Public Administration and Justice.
2. Unfortunately we don't have statistics on the requests we sent out exactly, but 2 of the requests have led to an effective surrender.
3. In some cases the convicted person is already staying legally in the Executing State. Since he/she is not detained in Hungary at that moment the Convention is not applicable in those cases. Our national law permits the transfer of the execution of the sentence in these cases as well. The problem arises when the national law of the Executing State(s) does not regulate this issue.
4. /

Iceland**Questionnaire 1**

1. 4 and all of them successful (3 from Spain and 1 from Lithuania).
2. 1 and it was successful (to Germany).
3. No.
4. Do you have any proposals to improve the functioning of this Convention? Please specify:

Questionnaire 2

1. Answer: 0
2. Answer: 0
3. Answer: N/A
4. /

Italy**Questionnaire 1**

1. Requests received: 704. Transfer made: 156
2. Request sent out: 144. Transfer accepted: 37.
3. /
4. Proposal to improve the functioning of this Convention:
 - a) In order to accelerate procedures the principle could be introduced, in article 6, according to which the Sentencing State and the Administering State shall promptly accomplish the relevant acts.
 - b) In order to enable the Administering State to be informed without delay of each circumstance concerning the custody served by the prison in the Sentencing State, and to take a prompt decision as to the granting the prison himself any benefit, it can be useful that the Sentencing State encloses, when the prison is transferred, also a report on his/her behaviour during the detention period already served. This report could be included in the documents provided for by article 6, paragraph 2, subparagraph b).

**Comments from Mr Eugenio Selvaggi
Questionnaire 1**

3. Major difficulties rely on: **A.** excessive length of procedures. **B.** Other problems: it happened that prisoners transferred from Germany who were sentenced to life imprisonment realized only after their transfer that in Germany they would have granted with conditional release after 15 years, where in Italy the law fixes a minimum term of 26 years. As a consequence they asked to be returned to Germany (which was not possible). I would not exclude that similar situation would arise in relation to other penitentiary benefits. I understand that some of these problems would be solved should the Recommendation on information to be given to detainees be fully implemented. **C.** One other problem is that when Italy requests information on the period served at home and whether the person concerned did behave properly (in order to be granted with penitentiary benefits such as early release) answers are late to arrive. **D.** The human rights issue may be also relevant (e.g. the poor condition of prisons in the administering State: is that a point that may be taken into account by Courts/authorities that decide on transfer?
4. Better information on consequences of transfer, including the non-application of the specialty rule. Some States (e.g. US) do require that victims give their consent to transfer (which is probably seen as a way to ensure that the ends of justice are pursued.

Questionnaire 2

Italy has signed but not yet ratified the Protocol. However Italy has signed (and ratified) bilateral treaties with Albania and Rumania which replicate the Protocol. Figures were not given by the Ministry of Justice as they are within those related to the ETS 112 Convention as a whole.

OBS: We have noted that many States which are the States of origin of those individuals that may be returned to their own countries to serve the sentence Where an expulsion order is provided for by the law to be executed after the sentence be fully served, are very reluctant to receive detainees (due to financial implications); that is the main reason why the ETS167 is not that successful convention.

Liechtenstein**Questionnaire 1**

1. 0/0
2. 5/3
3. In one case the requested state refused the transfer of the sentenced person and in the other case Liechtenstein is still waiting for a response of the requested state also all the required documents were translated into the language of the requested state and transmitted nearly one year ago. We have been informed that the competent court of the requested state has to pass a new verdict regarding the person sentenced in Liechtenstein.
4. /

Questionnaire 2

1. 0/0
2. 1/0
3. One request was both based on ETS 112 and ETS 167 and this proceeding is still pending. The reasons were mentioned above (Questionnaire 1 Point 3)
4. /

Lithuania

Questionnaire 1

1. Approx. 130 requests were received.

 Approx. 85 persons of these requests were transferred.
2. No requests were sent.
3. Possibility to be released conditionally. In some cases transfer of sentenced person is not effective, when the person can be conditionally released shortly. It leads to the withdrawal of requests. Examining of documents by the central authorities and practical arrangements for the transfer approx. takes up to 5 months upon the receipt of the request, which may end up with withdrawal of the request due to forthcoming conditional release. Therefore, in order to have effective and fruitful cooperation, in our view, the upcoming date for conditional release and the time required for arranging transfer should be both taken into account before providing the request.

 Languages. In some cases the documents are received without translation into language which is acceptable by Lithuania as an administering State.
4. It should be considered whether it is expedient to initiate the transfer proceedings if the person will be conditionally released after less than 6 months.

Questionnaire 2

1. Approx. 2/3 of the requests mentioned under point 1 of Questionnaire 1 were received based on ETS 167.
2. No requests were sent.
3. See question 3 of Questionnaire 1.
4. See question 4 of Questionnaire 1.

Moldova**Questionnaire 1**

1. The Ministry of Justice of the Republic of Moldova does not have a statistics in this sense, due to the fact that starting with April 1, 2013, it has been established to organize such a statistics.
2. The Ministry of Justice of the Republic of Moldova does not have a statistics in this sense, due to the fact that starting with April 1, 2013, it has been established to organize such a statistics.
3. No, the Ministry of Justice of the Republic of Moldova did not encounter any legal or practical problems in dealing with these kind of requests.
4. No, there are no proposals in this sense.

Questionnaire 2

1. The Ministry of Justice of the Republic of Moldova does not have a statistics in this sense, due to the fact that starting with April 1, 2013, it has been established to organize such a statistics.
2. The Ministry of Justice of the Republic of Moldova does not have a statistics in this sense, due to the fact that starting with April 1, 2013, it has been established to organize such a statistics.
3. No, the Ministry of Justice of the Republic of Moldova did not encounter any legal or practical problems in dealing with these kind of requests.
4. No, there are no proposals in this sense.

Montenegro

Questionnaire 1

1. In period from 1 January 2011 to 31. December 2012, competent bodies of Montenegro received 4 requests for transfer of sentenced Montenegrin citizens for further serving of sentence of imprisonment in Montenegro based on the Convention on transfer of Sentenced Persons. Three transfers were realised.
2. There were 4 requests for transfer from Montenegro based on the Convention, without results.
3. /
4. /

Questionnaire 2

1. In period from 1 January 2011 to 31. December 2012 competent bodies of Montenegro received 5 requests based on the Additional Protocol to the Convention on the Transfer of Sentenced Persons. There were not surrender of the persons concerned.
2. There were not requests for transfer based on ETS 167 in the same period from our side.
3. /
4. /

Comment

It is interesting in cases of transfer in 2012, that the Convention and the Protocol represented legal grounds for transfer of sentenced persons in less than 25% cases (2012), and less than 20% in 2011.

For the most cases of transfer of sentenced persons (more than 80% cases in 2011 and more than 75% cases in 2012), legal grounds were bilateral agreements on mutual enforcement of judgements in criminal matters, signed by Montenegro and the countries from the region.

Netherlands

Hereby I give you the answers to your questionnaire.

We do not have a separate list of people who did have their transfer on the additional protocol.

I can give you the figures of the years 2011 and 2012.

Number of requests from other countries in 2011: 246

Effective surrender in 2011: 192

Number of requests from other countries in 2012: 353

Effective surrender in 2012: 94

Total number of requests: 599

Total effective surrender: 285

Number of requests from the Netherlands in 2011 to other countries: 24

Effective surrender in 2011: 27

Number of requests from the Netherlands in 2012 to other countries: 55

Effective surrender in 2012: 08

Total number of requests: 79

Total effective surrender: 35

Perhaps it seems strange that there are more effective surrenders in 2011 than incoming requests. This is caused by the fact that the effective surrenders are the result of procedures which started the year before.

Problems we encounter and questions we would like to discuss within the PC-OC and with other member states

In the Netherlands we often use the Treaty on Sentenced Persons to get Dutch citizens into the Dutch prison, so they can reintegrate into Dutch society. One of the demands is therefore that a person will have a remaining time of at least six months in the Dutch prison by the time he arrives in the Netherlands, so integration into the society will be in fact possible. (the remainder of six months is an estimated time, that is checked by the time of arrival of the request of the transfer).

When accepting the Treaty in the '80, the government was very reluctant to use the form of continued enforcement, therefore the government stated that the Netherlands should use the form of the conversion of the sentence into a Dutch sentence (article 9 1b). Only in exceptional cases the form of the continued enforcement of the sentence (article 9 1a) could be used, for example if a country refuses to transfer a person by the use of the conversion of the sentence by principal.

In some cases we nowadays encounter problems to effectuate the demand of a remaining sentence of 6 months. Which means that there are a lot of Dutch citizens who are not transferred to the Netherlands at all. One of the reasons could be of course the fact that the Netherlands convert the sentence and (in most cases) reduce the length of the sentence, but in fact there are in practice nowadays a lot of countries where we use the continued enforcement of the sentence.

This brings us to another problem we encounter (because of our demand to convert the sentence): Our experience is that in particular with countries in South and Middle America the 'Transfer of Sentence-process' will take a very long time (before we receive a request at all and the

actual procedure to get a sentenced person to the Netherlands). This means for some people that there is no sentence left to execute in the Netherlands.

The Dutch prisoners in South and Middle America complain a lot about the Dutch policy in the 'transfer cases'. They state that other countries get their citizens out in a few months. If so, we would be very glad to learn the tips and tricks of these countries in their cooperation with the South and Middle America countries.

We can imagine as a proposal for improving the functioning of the protocol that it might be useful to make arrangements, which describe which element of the sentence are essential to realise the transfer of a person.

Sometimes we receive very very long sentences. The translation of these long sentences costs time and money. So, one of the options we thought of is the use of an extract of the often very long judgment, which can be translated.

Concluding: The questions we would like to ask the PC-OC:

1. How do countries deal with the reintegration goal of the Treaty? Do countries transfer people even though there is no remaining punishment left? Are there other ways countries use to deal with the integration goal of the Treaty?
2. Which other countries, apart from the Netherlands, use the instrument of conversion of the sentence? In which cases?
3. Do countries recognize the 'problem' with (South and Middle) America countries? Could the PC-OC members and the convention members think of ways to shorten the length of the procedure of the transfer of sentence?

Norway

Unfortunately, we are not able to present the number of requests Norway received in the period from 1 January 2011 to 31 December 2012. Our statistics does not cover the amount of requests received during a specific year, but rather the number of effective surrenders within that specific year. Even though a transfer is executed during a specific year, the request might have been received in the previous year. The questions are therefore answered on that basis.

Questionnaire 1

1. In 2011 Norway had a total of 2 effective surrenders to Norway based on ETS 112.

In 2012 we also had 2 effective surrenders.

As of 16 October 2013 Norway has had only 1 successful transfer to Norway based on ETS 112.
2. In 2011 Norway had a total of 30 effective surrenders based on ETS 112.

In 2012 Norway had a total of 22 effective surrenders based on ETS 112.

As of 16 October 2013 Norway has had 10 effective surrenders based on ETS 112.
3. Norway has experienced that the administrating states in general spend quite some time on deciding on the cases, and that Norway as a result often are obligated to end on-going cases due to the fact that the sentenced person in the meantime has been released or the time left to his/her preliminary release date is too short.

Norway has also experienced a couple of problems relating to the time spent arranging the actual transfer, in the sense that we do not receive a travel confirmation within reasonable time and that some cases as a result of this take quite some time to be effectuated.
4. We should discuss whether the regulatory framework should be modernized in order to include time limits for the processing of cases.

Questionnaire 2

1. Norway has received no requests for transfer to Norway based on ETS 167 in the mentioned period.
2. In 2011 Norway had a total of 22 effective surrenders based on ETS 167.

In 2012 Norway had a total of 23 effective surrenders based on ETS 167.

As of 16 October 2013 Norway has had 15 effective surrenders based on ETS 167.
3. See questionnaire 1.

Norway has also experienced a tendency that some transfers based on ETS 176 are not accepted without giving any further reasons. The situation is that the sentenced person does not consent to the transfer and the Requested State seems to be of the opinion that the sentenced person will be better rehabilitated in Norway than in his/her home country in spite of the fact that the person has an expulsion order.
4. Discussion concerning the situation when the Requested State does not consent to a transfer.

Poland**Questionnaire 1**

1. Please kindly be advised that we do not keep any detailed statistics in this area. The overall number of the cases registered from 1 January 2011 to 31 December 2012 related to the transfer of the sentenced person from Poland was 240. We assume that in the half of them the proceedings has been finished in the same year.
2. Please kindly be advised that we do not keep any detailed statistics in this area. The overall number of the cases registered from 1 January 2011 to 31 December 2012 related to the transfer of the sentenced person to Poland was 394. We assume that in the half of them the proceedings has been finished in the same year.
3. /
4. /

Questionnaire 2

1. Please see the answer to the point 1 of the Questionnaire 1.
2. Please see the answer to the point 1 of the Questionnaire 1.
3. /
4. /

Portugal

Council of Europe ETS 112

Information provided by Portugal related with 2012 only.

Requests from Portugal abroad concerning foreign prisoners	Requests sent 121	Transfers made 70
Requests from abroad to Portugal concerning Portuguese prisoners	Requests received 54	Transfers made 15

Questionnaire 1: major difficulties derive from:

- 1) Lengthy procedures, also at the national level. There is a judicial authority that considers necessary to send a request for mutual legal assistance to the sentencing State in order to serve the prisoner with a copy of the request that the Prosecutor makes on behalf of him or her, in order to start the procedure of confirmation of the foreign decision;
- 2) Time and money consuming translations: almost all States made reservations to article 17º nº3 and therefore requires for a full translation of all documents, including decisions from the national jurisdictions in case of appeal. This could lead to more than one hundred pages.
- 3) Late removals: after a final decision is made on the admissibility of the transfer, and it is regularly communicated to the executing State, several months elapsed and sometimes the person is not removed after all.

Questionnaire 2

Portugal is not a State Party to this Convention and therefore is unable to share experience on its application.

Slovakia**Questionnaire 1**

1. 36
25
2. 28
18
3. There aren't any special problems with requests, but sometimes sentenced person cancelled his consent with the transfer nearly before the date of realisation of this transfer.
4. /

Questionnaire 2

The Slovak Republic did not sign and ratify this additional protocol.

Sweden**Questionnaire 1**

1. During the period 1 January 2011 to Sweden registered 40 cases concerning transfer to Sweden from member states of the 1983-Convention. In 16 of these cases the Swedish Government decided to consent to the transfer. 10 transfers were effectuated.
2. During the same period 243 requests for transfers were made to other Member States of the 1983-Convention and its protocol (it is not possible to separate the statistics). In 92 of these cases transfers were effectuated.
3.
 - Delays in replies, either to requests for transfer or to request for additional information.
 - In some cases the Administering State has denied transfer due to the fact that the sentenced person is a recidivist.
 - There has in Sweden been a discussion on how to interpret Article 3.1.c. Whether there should be six months still to be served in the Sentencing State or in the Administering State (after transfer).
4. /

Questionnaire 2

1. None.
2. See answer to question 2 in questionnaire 1.
3.
 - Some Member States deny, on a regular basis, transfers under the Additional Protocol, due to the fact that the sentenced person does not consent to transfer.
 - Delays in replies, either to requests for transfer or to request for additional information.
4. A discussion on the implementation of the Additional Protocol and the expectations on States that ratify the Protocol would perhaps be helpful.

Switzerland

Questionnaire 1

1. In 2011 Switzerland received 24 requests for transfer. In 2012, Switzerland received 18 requests for transfer.

In 2011, 6 requests led to an effective surrender of the person concerned. In 2012, 2 requests led to an effective surrender of the person concerned.

2. In 2011, 34 requests for transfer were made. In 2012, 32 requests for transfer were made.

In 2011, 14 requests led to the transfer of the person concerned. In 2012, 9 requests led to the transfer of the person concerned.

3. In general, the duration of the transfer procedure is comparatively long, which is not in the interests of the sentenced person. That is why in most cases where a request is refused, the ground is that the remainder of the sentence to be served, even if it amounts to 6 months as provided by the Convention, is too short having regard to the duration of the procedure.

Some countries stipulate far more formalities than are prescribed by the Convention such as, notably, affixing a marginal note to the supporting documents of requests for transfers. These requirements also increase the duration of the transfer procedure.

Not every country has the same perception of the transfer procedure. In this connection Switzerland observes that it would be useful to know exactly how much of the sentence remains to be served at the time when transfer has been agreed to by all parties.

As soon as the transfer has been agreed to by both states, it is observed that a comparatively long interval can elapse until the transfer is actually effected.

Once the transfer is effected, a lack of information is noted concerning the enforcement of the sentence, as specified in Article 15 of the Convention.

4. It might be wise to shorten the duration of the transfer procedure as well as the execution of transfers, specifying time limits. For example, in so far as the Convention provides that at least six months of the sentence should remain to be served, it might be envisaged that the transfer procedure should not exceed that duration, or even that the transfer procedure should be concluded within 3 months after the lodging of the request for transfer. Where time limits for the execution of transfers are concerned, modelling them on the extradition procedure might be envisaged.

Questionnaire 2

1. We did not receive any requests for transfer based on ETS 167 in the specified period.

2. In 2011, one request for transfer was lodged. In 2012, one request for transfer was lodged.

In 2011, the single request for transfer lodged on the basis of ETS 176 was refused. In 2012, the single request for transfer on the basis of ETS was granted (transfer to Bulgaria).

3. Switzerland was refused a transfer chiefly on the ground that the sentenced person, with no ties nor family in Switzerland and due to be deported at the end of his sentence, had not consented to the transfer. This decision is surprising to say the least since the administering State, in ratifying the additional Protocol to the Convention on transfer, acknowledges that, for several reasons and in the interests of the sentenced person, his consent is no longer a precondition for transfer.

We have observed that other countries have ratified the additional Protocol to the Convention on transfer but nevertheless refuse to proceed with a request for transfer unless the sentenced person has consented.

4. Cf. questionnaire 1, item 4.

Turkey

1. Turkey received from other states;
In 2011, a total number of 145 transfer requests (applications). Among these, 14 of them have come to the stage of acceptance. As the result of made and completed transfer requests, 31 convicts have been transferred.
In 2012, a total number of 101 transfer requests (applications). Among these, 7 of them have come to the stage of acceptance. As the result of made and completed transfer requests, 37 convicts have been transferred.
2. As for the transfer requests made by Turkey to the other states;
In 2011, a total number of 86 transfer requests (applications). Turkey has given consent to 6 of them. As the result of made and completed transfer requests, 8 convicts have been transferred.
In 2012, a total number of 130 transfer requests (applications). Turkey has given consent to none of them. As the result of made and completed transfer requests, 5 convicts have been transferred.
3. As stated below, two types of problems come into prominence in Turkey's practices; general and special problems

General Problem:

In most transfer requests, we experience a deficiency of required documents in order to initialize and continue the process of transfer. This situation causes a need for new correspondences to obtain these missing documents. This prolongs the process for 6 months to 1 year's time.

A list of needed documents and their contents that Turkey stipulates for the transfer process will be added to the country profile at the website of PC-OC (Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters)

Special Problem:

In order to transfer the convicts from Turkey to another state, according to Turkish domestic law, if the verdict of conviction includes a pecuniary penalty and individual right, then it is stipulated that these penalties and court expenses must be paid. However, in some cases, the convicts stated that they cannot afford those expenses.

Several alternatives are considered to tackle this problem.

- First of all, we may give consent to the transfer, on condition that, the convict agrees to pay his/her debt by instalments when he/she returns to the state of his/her nationality. Also, that state must give a warrant for pursuing the payment and if necessary, the state must itself make the payment.

- As a second possible solution, we may also give consent to the transfer in this case: the pecuniary penalty may be converted into imprisonment and this extra term of imprisonment is to be added to the original term of imprisonment and this total term is to be served by the convict in that state and a warrant is to be given by the relevant state to do so.

We are of the opinion that, a supplementary protocol may be considered if this situation occurs in other states, as well.

Ukraine

Questionnaire 1

During the period from 2011 to 2012 the Ministry of Justice of Ukraine received and sent 321 requests, based on ETS 112, among them:

1. Received 221 requests;
2. Sent out 100 requests.

The actual transfer of 137 sentenced persons was carried out.

3. Lack of translation of the attached to the request documents, received by the Ministry of Justice of Ukraine, delays the process of consideration of the request as well as of taking the decision on the request. Although Ukraine did not make declaration with respect to the Convention about the necessity of the translation of documents, the Code of Criminal Procedure of Ukraine foresees that in case of lack of translation of the documents the consideration of the request lasts 3 months. Sometimes it creates some difficulties during the evaluation of the reasonability of transfer under the condition provided for by Article 3 (1c) of the Convention, i.e. when at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve.

Regarding some cases there exist a problem on the certification of the copies of judgments and other court decisions, as well as texts of legal provisions sent by the sentencing State in accordance with Article 6 (2a) of the Convention, as the documents are certified partially or are not certified at all.

Regarding some cases there appeared such situations in which the Ministry of Justice of Ukraine before the actual transfer of the sentenced person had informed about the consent to the transfer and had sent the copy of the Ukrainian court's decision, as a guarantee of the execution of foreign judgment, and after that the foreign state refused to transfer the person or released such person conditionally, or a sentenced person refused to be transferred.

4. It is proposed to amend Article 3 (1c) of the Convention, in particular to increase the 6-month period or to count the 6-month period not from the time of the receipt of the request for transfer, but as an obligatory term of sentence, which the sentenced person has to serve in the administering State.

It is also proposed to study an issue concerning an inclusion into a list of conditions provided for by Article 3 of the Convention of an additional condition, i.e. «if a property damage caused by a criminal offense is reimbursed as well as procedural costs, if any». Although the abovementioned condition is not cited in Article 3 of the Convention, some States Parties to the Convention, including Ukraine, actually do not agree to the transfer under Article 3 (1f) of the Convention, if the damage caused by a crime is not reimbursed. Besides that such condition is provided for by 12 bilateral international treaties on the transfer of sentenced persons, concluded between Ukraine and other states, as well as it is provided by the Code of Criminal Procedure of Ukraine.

In my opinion, it is also necessary to address via the Convention an issue on the limitation of possibility of a sentenced person to refuse to be transferred on late stage, for instance, before a decision on the transfer of sentenced person has been taken by the central (competent) authority, and if the sentenced person refuses from previously given consent to his/her transfer, he/she will have a right to apply for the renewed consideration of an issue on his/her transfer only after some time, for example in 3 years.

It is proposed to extend a sphere of effect of Article 12 for the release on parole.

Questionnaire 2

1. During 2011-2012 the Ministry of Justice of Ukraine received 12 requests (9 of them were received under Article 3 of the Additional Protocol, 3 – under Article 2 of the Additional Protocol). Beside that 2 requests, received under Article 2 of the Additional Protocol, were withdrawn by a foreign State; regarding other 2 requests the sentenced persons were released on parole in the sentencing States, which had made relevant requests on the transfer; 6 requests are being still considered. Actually 2 sentenced persons were transferred.
2. During 2011 the Ministry of Justice of Ukraine made 1 request for taking over of the execution of the sentence under Article 2 of the Additional Protocol, concerning which a refusal of the administering State was received. During 2012 there was not sent out any request.
3. The main problem, which the Ministry of Justice of Ukraine faces during implementation of Article 3 of the Additional Protocol is an absence of person's consent to his/her transfer, supposing that the most favourable conditions for rehabilitation of a person can be achieved, if a person gives a consent to his/her transfer, which is the main objective of the Convention (1983), and taking into consideration the fact that in accordance with the Code of Criminal Procedure of Ukraine the person's consent to his/her transfer is obligatory; the consent is not required if a person is on the territory of Ukraine.
4. The Ministry of Justice of Ukraine under Article 2 of the Protocol considered the case on the transfer of the execution of the Ukrainian court's judgment, execution of which in Ukraine was postponed on the ground of probation, which was further canceled by Ukrainian court, because of the non-fulfillment by the sentenced person of an obligation to adhere to the probation. After cancelation of probation the Ministry of Justice of Ukraine requested to a foreign State to take over the execution of an actual sentence, but the request of the Ministry of Justice of Ukraine was refused by a foreign State, as the Additional Protocol and its Explanatory Report do not clearly provide for, whether it is possible in such case to apply Article 2 of the Additional Protocol.

Australia

Questionnaire 1

Since the inception of the International Transfer of Prisoners (ITP) Scheme in Australia in 2002, the Attorney-General's Department has received 349 outgoing transfer applications and 88 incoming transfer applications for Convention countries. During this time there have been 75 transfers from Australia and 8 transfers to Australia.

1. Australia received 55 applications for transfers from Australia. Five prisoners were transferred from Australia to their home country during this period. However, only one of the 55 applications received during this time transferred within this time frame.

Of the 55 applications received, 30 cases were closed without transfer, the Australian Government is continuing to progress 19 applications and 6 prisoners were transferred after 31 December 2012. Reasons for closing a case without a transfer include the denial of consent by Australia or the foreign country, the prisoner withdrawing their application and the prisoner being released on parole and deported prior to the finalisation of the transfer application.

2. Australia received 16 applications for transfers to Australia. While four prisoners were transferred to Australia during this period, none of them were from the 16 applications received during this time frame.

Of the 16 applications received, seven cases were closed, the Australian Government is continuing to progress eight applications and one prisoner was transferred. Reasons for closing a case without a transfer include the denial of consent by Australia or the foreign country, the prisoner withdrawing their application and the prisoner being released on parole and deported prior to the finalisation of the transfer application.

3. Australia does not have concerns with the legal aspect of the Convention. However, we have encountered several practical problems.

1. Transferring a prisoner internationally can be a complex and lengthy process. Australia acknowledges that there are, at times, delays within Australia when the Federal Government is required to liaise with the Australian States and Territories. However, the Federal Government is committed to working with the States and Territories in an effort to reduce these delays.

Australia acknowledges that member countries may also have similar constraints, however in some instances Australia experiences very lengthy delays in receiving advice and documentation from other member countries.

2. While some countries provide comprehensive documentation regarding the prisoner's sentence and incarceration (as required under Article 6(2)), other countries provide limited information in relation to the facts of the case, sentence details, and medical/social reports on the prisoner. This results in Australia needing to seek further information from the foreign country, which in turn leads to further delays when progressing transfer applications.
3. In instances where Australia is dealing with a foreign country for the first time, it is not always clear where to send the initial correspondence to. This can lead to some delay in the request reaching the relevant authority.
4. Australia recognises that cooperation and goodwill are essential to the successful operation of the ITP Scheme. Perhaps it is possible to create further opportunities to enhance cooperation under the Scheme, for example:
 - Discussions about ways in which countries can work together to avoid delays in the ITP processes

- The sharing of information about each countries sentencing regimes in order to gain a better understanding of the context when it comes to proposing terms of sentence enforcement
- Creating a central register of contact details of the relevant authorities for each country (if not already done so) and
- Establishing more forums, including secure virtual forums, whereby there is the opportunity to exchange ideas, share experiences (including practices and procedures) and discuss common issues (such as what is being done with this meeting)

Chile

Questionnaire 1

1. Chile has received nine (09) requests for transfer based on ETS 112 in the period from 1 January 2011 to 31 December 2012.

A Spanish national was transfer to his home country.

Two persons were pardoned; two were expelled, two withdrew their transfer requests, and one served his sentence that was reduced because of good behaviour.

There is only one request that is still being processed.

2. Chile has sent six (6) requests for transfer based on ETS 112 in the period from 1 January 2011 to 31 December 2012.

There has not been made any transfer.

3. The main problems we have faced in the implementation of the Convention on the Transfer of Sentenced Persons are the following:

- a) Economic cost associated with transfers.

- b) In some cases we have not received information concerning a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, and any other factor, such as cancellation of fines imposed in sentences, relevant to the enforcement of the sentence, (Art. 6.2.b) or any recommendation for the further treatment in the administering State (Art. 6.2.d.)

4. The main proposals that can be made to improve the implementation of the Convention on the Transfer of Sentenced Persons are the following:

- a) Reinforce the principle that states communications have to be made by the Ministry of Justice of each State.
- b) Reaffirm that the requests and replies can be communicated in one of the official languages of the Council of Europe.
- c) Establish procedures in each Party to address the situation of the fines, imposed in the sentence, in case they have not been cancelled.
- d) Request States Parties to keep information contained in the templates updated, so as to have information about the person to whom inquiries can be sent in special cases.

Costa Rica

Questionnaire 1

1. 14 inmates applied for transfer and 9 were successful.
2. We applied for 13 and 6 were successful
3. I don't find any legal problem, it mostly practical since there should be a website we should be able to reach out to find the right people to access and coordinate things so we can speed up the process for transfer.
4. Create a website that should have information such as Authority of each State member, phone numbers, e mail address, Police or Penitentiary Police in charge for moving towards the airport the inmates when the transfer takes place (it is important since there are things that are not included in the Treaty but by practice they have become important-medical reports, finger prints-behaviour while he is in prison, etc) I might believe it could already exists but I have no information, even though I have been working on this field for the last 8 years.

I also believe, that We should think about allowing inmates to be transfer by escorts of the sentencing country when they have to pick up their own nationals in the foreign country where the inmate will want to return. This will save time and money since the trip still needs to be made. I understand that some countries might hesitate about this idea, but financial crisis is also a problem to make this work..

Ecuador

Questionnaire 1

1. On that period of time, we received around 180 transfer requests between both Ecuadorian and foreigner inmates in Ecuador. Out of those, we transferred 2 foreign citizens on 2011, and 26 on 2012.
2. On that period of time, we received around 180 transfer requests between both Ecuadorian and foreigner inmates in Ecuador. Out of those, we have received 7 Ecuadorians on 2011, and

In addition, and to answer questions 1 and 2, and to our experience, it is usually the person who seeks transfer, whether Ecuadorian abroad or foreign in Ecuador who usually asks to be transferred back to his or her home country. By exception, we learn about transfer requests whenever they are placed by their family or friends.

3. The problems that we have encountered relate to several issues:
 - a. Supporting Documents
 - There are a lot of countries that do not have consular or diplomatic representation in the Ecuador, or vice versa. Hence this imposes a difficulty for obtaining the supporting documentation.
 - There are countries that do not translate their documentation either to English or Spanish.
 - Depending on how far the country is, the required documentation takes a long time to arrive.
 - b. Fines or monetary penalties
 - In Ecuador, the law imposes besides an imprisonment sentence a monetary fine which has to be paid
 -
4. It is very important to raise awareness to those countries that do not exert the treaty to its fullest or completely, for lack of information on prisoners may cause them to not know the full extent of the possibilities to return to their home countries to carry out the rest of their imprisonment sentence.

Also it is very important to gather new members for the convention of transfer of sentenced persons, for there are many different legislation or legal Systems that may not share completely the same point of view regarding as to why executing a transfer. For instance, Ecuador has been trying to sign a bilateral transfer treaty with Senegal with very little luck thus far. And establish an effective way or communication system between central authorities for this convention. This effort will ease the work regarding the transfer of a person whose country does not have a diplomatic or consular representation.

Israel

Questionnaire 1

1. Between the years 2011 – 2012 Israel received 16 Prisoner Transfer requests, asking to be transferred to serve the remainder of their sentence abroad, pursuant to the European Convention on the Transfer of Sentenced Persons. Some of the requests were denied by one of the two states and some are still being processed. Israel has transferred 2 prisoners for whom requests were submitted prior to 2011.

2. In the said years, our department has received 50 applications of Israeli prisoners asking to be transferred to serve the remainder of their sentence in Israel in the frame of the said convention. Out of them, 15 prisoners were transferred to Israel, and the rest were denied by one of the contracting states, or their application is still being processed.

 10 out of the 15 prisoners who were transferred to Israel, had been previously extradited by Israel to the sentencing state and their extradition was conditioned in their transfer to Israel for the serving of the remainder of their sentence, if they should be convicted, sentenced to an imprisonment and express their will to be transferred. In addition, 6 other prisoners, who submitted their requests before 2011, were transferred to Israel during 2011 – 2012.

3. Issues and Problems in applying the convention:
 - A. Lack of congruity regarding the sequence of states' approvals: On several occasions Israel was asked to approve the transfer of an Israeli prisoner to Israel, prior to the consideration of his request by the sentencing state. (Please see Section 4 for further elaboration).

 - B. Although not a phenomenon, in determining the parallel offence in the penal code of the administrative state for the purpose of the double criminality clause, it happened that a state used the prisoner's application as reference to the facts rather than the detailed summary of facts provided by us. Subsequently, the choice of the said offence might have resulted in a shorter sentence than was decided by the Israeli Court.

4. In our view, generally, the burden of the first approval of the transfer request should rest on the sentencing state, who is the "possessor" of the sentence, whose laws were breached by the prisoner and who holds most of the information as for the offence and the actual state of the prisoner. This does not preclude the administrating state of the right to indicate initially, in the course of information exchange, that it will not agree to the transfer (see Article 6.2 of the convention), that will make the decision redundant. However, unique circumstances might lead the sentencing state to ask for the approval of the administrating state issued first.

Japan

Questionnaire 1

1. The Government of Japan received 58 requests for transfer during the abovementioned period and, of those requests, 31 cases led to an effective surrender.
2. The Government of Japan did not send out any requests during the same period.
3. As for information on enforcement provided by the administering State to the sentencing State, Japan recognizes that there is tendency of delayed provision of such information, which can be problematic. Such information includes, in particular, information provided by the administering State to the sentencing State when the former State considers the enforcement of the sentence to have been completed as stipulated in Article 15, paragraph a of the Convention.
4. Nothing in particular.

Questionnaire 2

N/A, because Japan is not a party of the said additional Protocol.

Korea**Questionnaire 1**

1. From 1 January 2011 to 31 December 2012, I received 8 requests based on ETS and 5 cases of effective surrender of the person concerned have been led.
2. There were 48 requests I made based on ETS in the same period, and 25 cases of effective surrender of the person concerned has been made.
3. In dealing with the requests, there are some countries, which I could not get an answer from, therefore, there had been delays in proceeding the transfer.
4. There should be a regular meeting of persons in charge. And to facilitate the transfer procedure, the central authority of the Convention should inform each member country of the contact number and E-mails of the contact point in each member country.

Mexico

Questionnaire 1

1. Mexico received 1 and surrendered 1 (Lithuania)
2. Mexico is currently processing (9 cases)
3. One of the main reasons for delay that we have encountered is that requests from fellow citizens who are abroad, specifically in Japan, are NOT sent with the documents stipulated by article 6, paragraph 2, which are required to decide on whether or not to agree to the transfer.
 "Article 6 – Supporting documents.
 a) A certified copy of the judgement and the law on which it is based
 b) *A statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, and any other factor relevant to the enforcement of the sentence;*
 c) *A declaration containing the consent to the transfer as referred to in Article 3.1.d; and*
 d) *Whenever appropriate, any medical or social reports on the sentenced person, information about this treatment in the sentencing State, and any recommendation for his further treatment in the administering State."* In this case, such supporting documents would be the technical personality studies (medical, criminological, psychological, education, work, social, work studies), to the extent that Prisons in the different States formulate them.

Likewise, the authorities of the States (Japan), with which we have pending requests for transfer of Mexican citizens, specifically request for each one of the sentenced persons more information than that prescribed by the Convention, such as the manner in which the Mexican criminal system operates regarding the treatment of sentenced persons. Furthermore, they also request that the following questions are answered:

Must sentenced persons being transferred work in prison?

- a) What type of treatment in addition to work is given sentenced persons?
- b) Are there any mandatory activities for inmates?
- c) What would an inmate's daily routine be?
- d) How is the probation system (early release in Mexico) operated and applied? Is there a minimum term to be served? Under what circumstances is it granted? Is any type of treatment or supervision given to sentenced persons who obtained said benefit? If so, how is it and for how long is it given?

The foregoing, far from facilitating the application of the Convention, has delayed transfer proceedings for more than one year to the detriment of the various request presented by sentenced persons.

To this date, we have not received any Mexican national in accordance with said Convention.

4. We deem convenient to determine or bind the member States to disclose the manner in which they have adopted the provisions of Article 9, of the Convention in connection with the effects of transfer for administering State, since, in the case of Mexico, paragraph 1, subsection b), of Article 9 shall not be applicable when it has the capacity of administering State. This shall facilitate the fulfilment of requirements.

United States of America

Questionnaire 1

1. How many requests for transfer based on ETS 112 did you receive in the period from 1 January 2011 to 31 December 2012? How many of these have led to an effective surrender of the person concerned?

Answer: During this period, the United States received 2,625 transfer requests from foreign national prisoners. The majority of these requests (1661) came from Mexico our largest transfer treaty partner; although Mexico is a party to the COE Convention, its transfers with the United States are conducted pursuant to the bilateral transfer treaty between our two countries. Of the remaining 964 application requests, 798 were from COE Convention countries. It is important to note, however, that with some of these countries, the United States has transfer relationships pursuant to one or two other transfer treaties and, thus, it is possible that the transfer request might have been made pursuant to one of those transfer agreements. The countries with which the United States has more than one transfer treaty relationship are: Bolivia, Canada, Chile, Costa Rica, Czech Republic, Ecuador, France, Mexico, Panama, Turkey, and Venezuela.

The United States processed 2,818 applications during this period; 839 of these applications were from COE Convention countries. It transferred 430 foreign national prisoners, 209 of whom were from COE Convention countries. The year in which a transfer application is received and processed frequently differs from the date of actual transfer. This is attributable to a number of factors including: (1) applications received at the end of a year that are not processed by the United States until the next year; and (2) applications that are approved by a foreign government in a year different from when approved by the United States. In this regard, it is important to note that a number of countries deny a significant number of applicants approved by the United States. In addition, many countries are very slow in processing transfer requests, and it is not uncommon not to receive a decision in time to make transfer practicable.

2. How many requests for transfer based on ETS 112 did you send out in the same period? How many of these have led to an effective surrender of the person concerned?

Answer: During this period, the United States received 117 applications from American nationals convicted and sentenced abroad who wished to transfer to the United States to complete service of their sentences. The majority of these Americans were sentenced in Mexico. Eighty (80) Americans transferred during this period. For the same reasons articulated in our response to Question 1 above, many of these transferees applied for transfer before the year that transfer occurred and many of the applicants were forced to wait long periods of time before the sentencing countries made a decision on the transfer application.

3. Did you encounter any legal or practical problems in dealing with these requests? Please specify.

Answer:

Practical Problems:

a. Long Decisional Time

One of the major problems we have is with the slow decisional time of some of our transfer treaty partners. The United States currently has almost 600 open cases in which the United States has approved the transfer but the foreign country has not made a decision in the case. In addition to having to spend resources to monitor the cases and to send reminder notices, the delay in deciding transfer applications, prolongs a prisoner's time in the United States and, in cases where the release date is near, risks rendering a transfer, which was once feasible, impractical. Sometimes this delay is related to the bureaucratic, and

sometimes judicial, processes that a country must follow to obtain the requisite transfer approval. Other times, the delay is attributed to a country not allocating sufficient resources and staff, to process the requests. We have also noticed that some country make a large number of requests for various types of information many of which appear to have little relevance to the transfer determination. These requests, in addition to requiring significant investigative effort, also delay the transfer process.

b. Communication Issues/Inappropriate Requests

Another practical problem that we have experienced is poor communication between the country's transfer decision-maker and its Embassy in Washington. Frequently, there appears to be little coordination between these two entities, which results in duplicative inquiries, confusion, and wasted time. A related problem arises when we are asked to perform actions that are more appropriately performed by a country's embassy or consulate. Such actions include, but are not limited to: requests to serve documents on a prisoner and to provide a signed acknowledgement of receipt; requests to deliver materials to a prisoner; and requests to obtain a prisoner's commitment to reimburse his government for the transfer transportation costs. Many of these requests are more appropriately handled by the country's consular officers.

Legal Problems:

a. Relationship of Federal Government to the States

Confusion still persists in other countries as to the relationship or control that the federal government of the United States has over the participation of the individual states in the United States in the transfer program. When a foreign national is convicted and sentenced in a U.S. state, that state must process and approve a transfer application before the federal government is able to consider the transfer request. Although the federal government works to increase state participation in the transfer program and assists foreign governments in communicating with the states, it is without the power to compel a state to transfer a foreign national prisoner in its custody.

b. Transfer of Mentally Ill Offenders

Although not a frequent problem, confusion still seems to persist regarding the transfer of mentally ill prisoners. Because governments handle mentally ill offenders in different ways, when a mentally ill prisoner seeks transfer, complex issues arise regarding the transferability of such offenders, what arm of the government is responsible for taking custody of the prisoner and how is a transferred sentence of a mentally ill offender administered.

c. Requests to Predict How a Transferred Sentence Will Be Administered

A transferring state considers many factors when deciding whether to approve a transfer request. For some countries, how a receiving country will administer the transferred sentence is very important information while for other countries, this information is less significant. All of the countries who have acceded to the COE Convention have different procedures to process transfer requests and to administer transferred sentences when the prisoner returns to his home country. The governmental entities that process the requests may or may not have a role in the decisions bearing on how the sentence will be administered. For example, in some countries, a court will make this decision while in others it may be an administrative body. Some countries can provide a relatively accurate statement as to how the sentence will be administered while other countries are unable to do so. The United States falls into this latter category. Although the United States is able to describe the process of how the administration of the transferred sentence will be determined, the information that is important to that determination, and the guidelines that are used, it is unable to state specifically how the sentence will be administered and the length of time the prisoner will spend incarcerated or on supervised release. These determinations are made by the U.S. Parole Commission, an independent entity that will hold a hearing after the prisoner returns and assess all of the information pertinent to the sentencing administration

issue. For a country seeking a definitive explanation as to how the sentence will be administered, the inability to provide exact details about the length and term of how the transferred sentence will be administered may create frustration. Nevertheless, these countries need to understand that the United States is unable to provide the specificity demanded by some countries.

d. Additional Country Imposed Restrictions For Transfer Eligibility

The COE Convention provides basic requirements for transfer eligibility. Although the transfer determination is a discretionary one that considers a wide range of variables, some countries have imposed significant substantive restrictions on the eligibility of a prisoner to transfer. For example, some countries will not permit a prisoner to transfer unless he has served a specific portion of his sentence. Such a restriction is not part of the COE Convention and imposes a limitation to transfer that has no rational relationship to the goals of prisoner transfer.

4. Do you have any proposals to improve the functioning of this Convention? Please specify.

- Have countries update their description of transfer procedures and requirements followed in their countries.
- Annual reporting requirements would provide a helpful prospective on the scope and functioning of the transfer programs of the countries party to the COE Convention. These statistics should include: number of applications; number of applications processed; number of applications approved; number of applications denied; number of transfers and countries to which they were transferred.
- Explore whether there are any viable means to expedite the processing of transfer applications.

Appendix I France in original language

Questionnaire 1

1. 202 demandes de transfèrement du 01.01.2011 au 31.12.2012 :
 - dont 99 en 2011 et 103 en 2012
 - dont 180 de pays membres du Conseil de l'Europe (85 en 2011 et 95 en 2012)
 - dont 22 de pays non membres signataires de la convention STE 112 (14 en 2011 et 8 en 2012)

118 de ces demandes ont abouti au transfèrement de la personne condamnée

 - dont 84 entre 2011 et 2012 et 34 en 2013 et à ce jour
 - dont 110 depuis des pays membres du Conseil de l'Europe (dont 34 en 2013)
 - 8 de pays non membres signataires de la convention STE 112 (dont 2 en 2013)
2. 129 demandes de transfèrement du 01.01.2011 au 31.12.2012
 - dont 78 en 2011 et 51 en 2012
 - dont 128 vers des pays membres du Conseil de l'Europe (77 en 2011 et 51 en 2012)
 - dont 1 vers un pays non membre signataire de la convention STE 112 en 2011

30 de ces demandes ont abouti au transfèrement de la personne condamnée

 - dont 19 entre 2011 et 2012 et 11 en 2013 et à ce jour
 - dont 30 vers des pays membres du Conseil de l'Europe
 -
3. Cas particulier des personnes reconnues responsables pénalement et condamnées, mais dont l'état de santé psychique conduit à une prise en charge propre à l'Etat de condamnation. Le cadre juridique de ce type de soins diffère nettement d'un Etat à l'autre, ce qui rend quasiment impossible d'accorder le transfèrement du condamné (soin ordonné par la juridiction de jugement ou pendant l'incarcération, soin contraint ou à la demande du condamné, interruption ou non de l'exécution de la peine en cas d'internement, soins en milieu pénitentiaire ou hospitalier etc.)
4. /

Questionnaire 2

1. 10 demandes de transfèrement du 01.01.2011 au 31.12.2012
 - dont 10 demandes de pays membres du Conseil de l'Europe
 - dont 9 demandes en 2011 et 1 en 2012

2 demandes ont abouti au transfèrement de la personne condamnée entre 2011 et 2012
2. 3 demandes de transfèrement du 01.01.2011 au 31.12.2012
 - dont 3 demandes en 2011 et aucune en 2012

1 demande a abouti au transfèrement de la personne condamnée entre 2011 et 2012
3. RAS
4. /

Appendix II

Switzerland in original language

Questionnaire 1

1. En 2011, la Suisse a été saisie de 24 demandes de transfèrement. En 2012, la Suisse a été saisie de 18 demandes de transfèrement.

En 2011, 6 demandes ont effectivement abouti au transfèrement de la personne concernée. En 2012, 2 demandes ont effectivement abouti au transfèrement de la personne concernée.

2. En 2011, 34 demandes de transfèrement ont été faites. En 2012, 32 demandes de transfèrement ont été faites.

En 2011, 14 demandes ont abouti au transfèrement de la personne concernée. En 2012, 9 demandes ont abouti au transfèrement de la personne concernée.

3. De manière générale, la durée de la procédure de transfèrement est relativement longue, ce qui n'est pas dans l'intérêt de la personne condamnée. C'est pourquoi, dans la plupart des cas de refus d'une demande, la motivation est que le solde de peine à subir, même s'il s'élève à 6 mois comme prévu par la Convention, est trop court compte tenu de la durée de la procédure.

Certains pays exigent beaucoup plus de formalités que ce qui est prévu par la Convention, comme notamment l'apposition d'une apostille sur les documents à l'appui des demandes de transfèrements. Ces exigences prolongent également la durée de la procédure de transfèrement.

Chaque pays n'a pas la même optique de la procédure de transfèrement. A ce sujet, la Suisse constate qu'il serait utile d'avoir connaissance du solde exact de peine que le condamné doit encore exécuter au moment où le transfèrement a été accordé par toutes les parties.

Dès que le transfèrement a été accordé par les deux Etats, on constate qu'un certain laps de temps relativement long peut s'écouler jusqu'à ce que le transfèrement soit effectivement exécuté.

Une fois le transfèrement exécuté, on constate qu'il n'y a pas d'informations concernant l'exécution de la condamnation, comme spécifié à l'article 15 de la Convention.

4. Il serait peut-être judicieux de raccourcir la durée de la procédure de transfèrement ainsi que l'exécution des transfèrements, en fixant des délais. Par exemple, dans la mesure où la Convention prévoit un solde de peine à subir d'au moins six mois, il pourrait être envisagé que la procédure de transfèrement ne devrait pas dépasser cette durée, voir même que la procédure de transfèrement soit clôturée dans les 3 mois qui suivent le dépôt de la demande de transfèrement. Concernant les délais pour l'exécution des transfèrements, il pourrait être envisagé de s'inspirer de la procédure d'extradition.

Questionnaire 2

1. Nous n'avons pas reçu de demandes de transfèrement dans le cadre de la STE 167 pour la période mentionnée.

2. En 2011, une demande de transfèrement a été déposée. En 2012, une demande de transfèrement a été déposée.

En 2011, l'unique demande de transfèrement déposée dans le cadre de la STE 167 a été refusée. En 2012, l'unique demande de transfèrement dans le cadre de la STE 167 a abouti (transfèrement vers la Bulgarie).

3. La Suisse s'est vu refuser un transfèrement au motif notamment que la personne condamnée, sans aucune attache ni famille en Suisse et faisant l'objet d'une expulsion à la fin de sa peine, n'avait pas donné son consentement au transfèrement. Il s'agit d'une décision pour le moins surprenante puisque l'Etat d'exécution, en ratifiant le Protocole additionnel à la Convention sur le transfèrement, reconnaît que, pour plusieurs raisons et dans l'intérêt de la personne condamnée, son consentement n'est plus une condition préalable au transfèrement.

Nous avons constaté que d'autres pays ont ratifié le Protocole additionnel à la Convention sur le transfèrement mais refusent toutefois d'entrer en matière sur une demande de transfèrement sans que la personne condamnée n'ait donné son consentement.

4. Cf. questionnaire 1, point 4.