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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

**COMMITTEE OF EXPERTS**  
**ON THE OPERATION OF EUROPEAN CONVENTIONS**  
**ON CO-OPERATION IN CRIMINAL MATTERS**  
**(PC-OC)**

**Comments on E-transfer proposal by Israel**

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## **COSTA RICA**

I have read the proposal and it seems to me a very useful tool, nevertheless, I must be sincere with you and say that we will need to have the financial support to create a platform to manage that system and to have someone doing that job. Unfortunately, in my Unit I am the only one managing all the transfers either foreigners or Costaricans. What I have discuss locally is the possibility to create an excel simple page that will be update it every week with names of inmates, country of origin, date the application was submitted to us and the current status of the application. That information would be available to any state member that will have a link to see that information. The information will saved in a carpet that will also have our legal framework, Penal Code and other information that might be useful for other countries.

I also have to comment that according with our system, the proposal submitted by Israel even though seems to be very useful, we will still need to have the hard copy of all documents.

**GERMANY**

As I announced during the meeting in May, I think that the E-Transfer proposal is a very interesting one and it could be very useful to speed up the transfer proceedings in the future. But at the moment, from the German point of view, I see some problems regarding the realization.

First of all, in many transfer cases the competence to grant or not lies within the Bundesländer so that the Federal Office of Justice in Bonn is no longer involved. And even if they have competence to grant a transfer, first of all a regional have to decide if the foreign decision is enforceable in Germany. So it would be quite difficult to update the system recently because not all different actors won't all get access thereto. And the Federal Office of Justice itself doesn't have enough staff to update the information in this forum recently.

Moreover prisoners in Germany normally don't have access to the Internet so that they were not able to use the system to request their transfer.

**JAPAN**

It is considered that introduction of the E-transfer system has very little advantage for us as follows; (1) In Japanese penal institutions, inmates are not allowed to use the Internet. (2) E-mail is available to communicate and share the information between central authorities, and we actually do so as needed.

Furthermore, according to our security policy for protecting personal information, it is prohibited to upload any personal information of inmates on the Web because we cannot deny the possibility of leak of the information, even if the security is ensured.

## **LATVIA**

Latvia has become acquainted with the e-transfer proposal by Israel.

In the Republic of Latvia the competent authority regarding transfer of convicted persons is the Ministry of Justice, which was asked to provide an opinion in this regard.

The Ministry of Justice responded that the relevant suggestion would be effective. Their only objection or question is connected with the receipt of the original documents. And namely, whether the documents sent-posted on the home page of the Council will be considered as sent and no documents will be additionally sent by mail?

The Ministry of Justice of the Republic of Latvia cannot accept this approach since all the documents regarding requests of legal assistance should be sent by mail.

## **NETHERLANDS**

In response to the Israel transfer for e-transfer, I hereby send you the Dutch (preliminary) comments.

-in principle, the NL is in favor of digitalization, also referring to the specific projects made within E-Codex;

-therefore, the NL also supports the main idea of realizing e-transfer, in order to reach a more efficient procedure for transfer of sentences;

-in the Dutch view, an e-transfer system should be mainly used between central authorities, to communicate about the state of affairs, and possibly also to transmit formal requests for transfer;

-Practically speaking, it is possible for prisoners (as a main rule) in the Netherlands to have access to a computer (internet), although this is under supervision. However, it is to be advised to mainly create a system for the benefits of correspondence between states;

-regarding this aspect, it is important to realize that there are various ways to create a transparent transfer procedure for the prisoner concerned.

For instance, the Netherlands for many years has a special "transfer hotline", as a service from the central authority dealing with these requests. A prisoner or his contact person or lawyer can daily call this number to ask for the state of affairs. Also, there is a general e-mail address. Furthermore, this authority has a website, explaining the procedure for transfer. Also, there are various folders that are available within the prison facilities in the Netherlands. Therefore, in the Dutch view there are also alternative ways, perhaps less expensive, to create a transparent system for dealing with transfer requests. Perhaps it is an idea that the MOD makes an inventory on how the various countries deal with this;

-furthermore, an e-system could speed up the process, but fact is, that in many countries, a court also has a role in the process, and this phase of the process can not be included in the system, and can not easily be made faster.

**NORWAY**

The Directorate of Norwegian Correctional Service is now handling the transfer cases. I have submitted the request to the Directorate and I hereby send their statement:

The Directorate supports the suggestion to introduce the online procedure regarding such cases, it is an interesting idea. However, for the time being, we see technical challenges, as well as problems regarding data security. The Directorate does not see this as a viable option for the time being.

Such an option presupposes that every country introduces the same technical system, it is unproductive to run two different systems. Furthermore, the system must guarantee protection of information of a personal sensitive character, as well as data security in general.

Yet another question to be settled is which state is to manage and take care of such a data system, including the issue of jurisdiction; which legal system should govern the operation of the system (archives, data protection and other issues).

The Directorate does see some problems if a prisoner were given the opportunity to access his/her own case on the internet. Obviously, there will be certain documents which should not be shared with the person concerned. As a matter of fact, present legislation in Norway does not guarantee access to internet for all inmates. There is also the risk that other persons would be given access to this information. This requires a procedure where sensitive pieces of information are anonymized, a process which might increase the workload.



**SWEDEN**

Sweden thinks it is an excellent proposal, and we fully endorse it. Used properly and by a majority of the ratifying countries it would certainly facilitate and streamline the handling of transfer cases.

From a Swedish standpoint we see no major obstacles, either technically or in substance, with implementing the proposed tool.

However, a couple of questions need to be answered and more information is needed with regards to confidentiality and information safety. How will the information be safeguarded? How long will the information be saved in the system and who will have access to what information? Which information would be available to individual applicants and relevant authorities other than the Central Authorities?

**SWITZERLAND (TRANSLATION)****1. From the legal viewpoint**, the E-transfer project prompts the following comments:**a. Legal basis**

There is no provision for the transmission of information by electronic means in the existing instruments relating to the transfer of sentenced persons. It will probably be necessary to amend Convention 112 or to supplement its article 5, along the lines of the 4th additional Protocol to the European Convention on extradition (art. 6).

**b. Data protection**

The transmission of personal data in the digital age is discussed in various international bodies with a view to harmonising and reinforcing the level of data protection at international level. The Council of Europe Convention of 1981 and its 2001 Protocol on data protection and security (ETS 108 and 181) have been completely overhauled. The EU is also holding discussions on this point. The question arises, therefore, as to how much an impact the new instruments will have on the E-transfer project.

**c. Confidentiality / sensitive cases**

A platform "obliging" the central authorities of the States parties to Convention no. 112 to exchange information on ongoing transfers could render procedures more transparent. However, since the information exchanged on the platform is accessible to all the States parties and relates to all transfer procedures, there may be a problem of confidentiality. In sensitive cases, the sentencing State or State of origin will not necessarily wish to divulge information on a platform and communicate electronically, in which case the tool does not generate any added value and the setting up of a system that restricts access to a transfer procedure to the two States concerned should be envisaged. This would make it possible to respect procedural confidentiality on the one hand and the confidential nature of information exchanged between the sentencing State and the administering State on the other hand.

**2. In practical terms**, the following questions arise:**a. Scope**

The tool is restricted to the central authorities but they are not necessarily the competent authorities for deciding on the enforcement of a foreign judgment, especially in federal States. However, centralised access with a view to exchanging information and transmitting documents is justifiable where the platform's main aim is to speed up and simplify the transfer procedure between the States concerned. On this point, the project probably needs more in-depth discussion.

**b. Data security**

With regard to the technical aspects, the States parties should apply the same principles and meet the same standards, which is a complex task probably requiring long-term work. It would be interesting to consider this question in the light of the E-extradition project.

**c. Encryption of data and digital signature**

Data encryption and secure connection require the systems of the States parties to be compatible and the users to operate similar systems, which lays down a major challenge for the project. In this connection, the E-extradition project could serve as a model.

**d. Added value**

E-transfer could provide added value to transfer procedures on the assumption that it is realistically feasible to remove the legal, technical and practical obstacles that stand in the way of the project.

**e. E-extradition**

Regarding extradition, a similar project was launched by Interpol under the title of E-extradition. The 4th additional Protocol to the European Convention on extradition takes account of this in its article 6 by providing for the electronic transmission of extradition requests, subject to certain conditions. The E-extradition project probably encountered the same obstacles, in which case it would be worthwhile establishing how the difficulties were tackled/resolved.

**Conclusions:**

Before embarking upon the E-transfer project, the PC-OC would be well advised to make a full inventory of the problems raised by the project and the solutions that might be envisaged, drawing on the E-extradition project. In this context, it should be examined to what extent that project might serve as a model or otherwise be adapted to transfers.

**APPENDIX – OBSERVATIONS DE LA SUISSE CONCERNANT LE PROJET TRANSFERT****1. Sur le plan juridique, le projet E-transfert appelle les remarques suivantes :****a. Base légale**

La transmission des informations par des moyens électroniques n'est pas prévue dans les instruments existants en matière de transfèrement des personnes condamnées. Il sera probablement nécessaire de modifier la Convention 112, voire de compléter son article 5, à l'instar du 4<sup>ème</sup> Protocole additionnel à la Convention européenne d'extradition (art. 6).

**b. Protection des données**

La transmission des données à caractère personnel à l'ère numérique est discutée dans divers organismes internationaux en vue d'harmoniser et de renforcer le niveau de protection des données au plan international. La Convention du Conseil de l'Europe de 1981 et son Protocole de 2001 en matière de protection et de sécurité des données (STE 108 et 181) ont fait l'objet d'une révision totale. L'UE procède également à des travaux en la matière. La question se pose donc dans quelle mesure les nouveaux instruments auront un impact sur le projet E-transfert.

**c. Confidentialité / cas sensible**

Une plateforme qui « oblige » les autorités centrales des États parties à la Convention 112 d'échanger des informations sur les cas de transfèrement en cours peut rendre les procédures plus transparentes. Toutefois, dans la mesure où les informations échangées sur la plateforme sont accessibles à tous les États parties et concernent toutes les procédures de transfèrement, il peut y avoir un problème de confidentialité. Dans un cas sensible, l'État de condamnation ou l'État d'origine ne souhaite pas forcément dévoiler des informations sur une plateforme et communiquer par un moyen électronique. Dans ce cas, l'outil ne crée pas de plus-value. Il conviendrait alors d'envisager la mise en place d'un système qui limite l'accès à une procédure de transfèrement aux deux États concernés. Cela permettrait de respecter le caractère confidentiel d'une part de la procédure et d'autre part celui des informations échangées entre l'État de condamnation et l'État d'exécution.

**2. D'un point de vue pratique, les questions suivantes se posent :****a. Champ d'application**

L'outil est limité aux autorités centrales. Or, les autorités centrales ne sont pas nécessairement les organes compétents pour décider de l'exequatur d'un jugement étranger, notamment dans des États fédéralistes. Toutefois, une centralisation de l'accès en vue d'échanger des informations et de transmettre des documents peut se justifier dans la mesure où le but principal de la plateforme est d'accélérer et de simplifier la procédure de transfèrement entre les États concernés. Sur ce point, le projet nécessite probablement des discussions plus approfondies.

**b. Sécurité des données**

Au niveau des aspects techniques, les États parties devraient appliquer les mêmes principes et répondre aux mêmes exigences, ce qui est une tâche complexe et nécessite vraisemblablement des travaux de longue haleine. Il serait intéressant d'examiner cette question à la lumière du projet E-extradition.

**c. Cryptage des données et de signature digitale**

Un codage des données et une connexion sécurisée exigent que les systèmes des États parties soient compatibles et que les utilisateurs se basent sur des systèmes analogues, ce qui présente un défi majeur du projet. À ce sujet, le projet E-extradition pourrait servir de modèle.

**d. *Plus-value***

E-transfert pourrait constituer une valeur ajoutée aux procédures de transfèrement dans l'hypothèse où il est réaliste de lever les obstacles juridiques, techniques et pratiques auxquelles la réalisation du projet est confrontée.

**e. *E-extradition***

En matière d'extradition, un projet similaire a été initié par Interpol appelé E-extradition. Le 4ème Protocole à la Convention européenne d'extradition en tient compte à son art 6 en prévoyant, à certaines conditions, la transmission des demandes d'extradition par voie électronique. Le projet E-extradition s'est probablement heurté aux mêmes obstacles. Il serait dès lors utile de savoir comment les difficultés ont été affrontées/résolues.

**Conclusions :**

Avant de se lancer dans le projet E-transfert, il serait indiqué que le PC-OC procède à un état des lieux complet des problèmes que soulève le projet et des solutions envisageables en s'inspirant du projet E-extradition. Dans ce contexte, il conviendrait d'examiner dans quelle mesure ledit projet pourrait servir de modèle, voire être adapté au transfèrement.