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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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ISRAELI RESPONSE TO REPLIES

Short introduction

The e-transfer tool aims to speed-up transfer procedures, to enable direct communication between applicants and central authorities and between central authorities themselves, to open a window of transparency in the process and to provide guidance to applicants and practitioners. It is a tool which should be designed according to the needs of its users (the practitioners), and be submitted to their requirements, but it should also ease the assimilation of good practice, regarded as such by the current practitioners. Sophisticated tools of communication exist already today, but as they are not tailored to Prisoners' Transfer working processes, they don't seem to serve the abovementioned goals very efficiently. Instruments like the Dutch "Transfer Hotline" are admirable, however, if information from one central authority to another does not flow easily, the central authorities' willingness to inform the applicant what is the current stage of his request, in the sentencing state and in the administering state, might not bear fruit.

As hinted to in the presentation, the modification of the E-transfer tool into an instrument which serves the application of other conventions (including the Additional Protocol, CETS 167) seems possible. The mother convention - CETS 112, and the E-transfer tool are maximalists as they include the applicants among their players. Most, if not all, other conventions exclude the subject of the request (prisoner / fugitive etc.) from participation in the process, and therefore any modification would be a derivative of the E-transfer tool.

E-transfer operation V. domestic legislation

The E-transfer tool is an interface which aims to enable an easy transmission of information. It does not intend to affect the decision whether to grant a transfer request or to deny it. It does not intend to interfere with policies of states in this field, embedded in their legislation and regulations. Therefore, conditions such as submission of hard copies, use of diplomatic channels or receipt of the formal authenticated/in-person consent of the inmate, can still be respected, while a parallel online submission might enable the central authority to be informed of the request, to gather information and to consider its position. We believe such practice can save months of delay.

Federal Systems

The German reservation provides us with an opportunity to elaborate (in general lines) on the aspects of USERS and AUTHORIZATIONS.

In our view, the system should be run by the CoE, which should operate it as an extension of its website.

Within its current vision, the 64 national central authorities for the matter of Transfer of Convicted Persons have a key role. Each one of them should be defined as a(national) user. Every national user should be entitled to have multiple access points, enabling access for as many central authority's officials as needed. All requests which were submitted through the COE/E-transfer website (not only sensitive ones) would therefore be open to the two relevant central authorities' officials only: those of the sentencing state and those of the administering state. No third central authority would be authorized to handle the request or to be exposed to the materials submitted (see the Swiss reservation, paragraph 1.c).

We are aware of the major role of different authorities, ministries and institutes, in various countries, along the process, such as regional authorities, courts, correctional services etc. (hereinafter: "involved bodies"). In order to maintain the effectiveness of a close system and for

the sake of the ability to impose norms of good practice, involved bodies should not be defined as users and should not get access, hence, they should not be able to directly receive any material nor add any input. Nevertheless, any user (i.e. central authority) should be able to send any involved body a link with a simplified version of the request, including documents (see p. 16 of the PowerPoint presentation).

Indeed, in case a central authority cannot stay in the picture after its initial involvement, coverage of the request within the E-transfer system would be quite brief, and in some of its most important phases it would not enjoy the advantages offered by the system. Even so, initial submission of a request for transfer through the E-transfer system should be much more easy and quick than it is done today, and might avoid months of delay. The applicant would anyways enjoy the benefits of the system if the other state (sentencing or administering) would use the system fully.

Accessibility to the Internet

Indeed, in most correctional systems prisoners are deprived from direct access to the internet. However, officials of correctional services who deal with the prisoner's welfare, and consulate officials who take care of the submission of the request, do enjoy such access, and the E-transfer program might assist them to do so much more effectively. Furthermore, we believe that their involvement with the online process might contribute to the speed and quality of the process.

Moreover, we should remind that also today, a significant amount of requests are submitted by relatives of the prisoners, on their behalf. Opening new paths to the submission of a request for transfer of a relative or even a friend, along with the guidance that the system provides and the transparency it promotes, serves the goals of the entire process.

Data Protection

Issues of data protection were raised by most of the commentators and are of extreme significance. Vis-à-vis the sensitive materials in this field, no vulnerable and risky system should be introduced. It is, however, a discussion that should include the COE's IT experts, and it has to weigh the current alternatives, including the computerized ones.

We also believe that thorough study of the E-extradition project, as suggested by Switzerland, is a necessary step. It is however important to emphasize that to the best of our understanding, the E-extradition should be operated via Interpol channels, with no further features. Therefore, the main significance of this study concerns data protection, and not necessarily the work flow it introduces.

BELGIUM

COMMENTS

The current – and even past – status of IT-Technology allows anyone to render processes almost fully automatic.

Justice – contrary to for example the police - is always been a sector that lags behind when introducing modern technology. Justice is still a matter of paper. IT projects in the sector are still a matter of on paper.

Just recently projects have emerged to use IT as a way to cooperate more efficiently. There is of course Interpol's E-Extradition initiative and on the EU-level much time and effort is being dedicated to the E-Codex system that should render cooperation within the EU, on the basis of the mutual recognition instruments, basically a matter of database applications.

Thus far, the concrete realization of these projects remains a subject of discussions. There is no clarity or sufficient clarity on how it all works in practise.

From the initial document and esp. the PowerPoint presentation of the E-Transfer proposal that question is basically solved. This project is really a bottom-up project since it is developed from the workflow up.

The system as presented is very simple and therefore an example of something 'just what we need'. From the PowerPoint I understand that a simple application embedded into the PC-OC website is adequate to send, follow and close transfer cases within the CoE realm, i.e. on the basis of the Mother Convention and the Protocol (the latter aspect is a bit vague).

As presented, the system contains all the relevant information, nothing less, nothing more and is therefore exactly what practitioners need.

As far the proposal goes, I am fully in favour.

A COUPLE OF QUESTIONS REMAIN HOWEVER:

- Who will put the system in place?
- What about the budgetary implications?
- A part that is a bit missing: security. We need the most stringent assurances.
- The Additional Protocol CETS n° 167 (18.12.1997): It should not be very complicated to adapt the system to the Protocol by adding a function: "non-consensual / illegal alien". I think we should limit that function, logically to article 3 (Protocol) applications and not article 2 (of the Protocol) since the latter has in fact nothing to do with the transfer of prisoners since that is a provisions in line with article 68 Schengen, regulating the transfer of sentences and not also the sentenced persons.
- Another addition in my view should deal with parallel requests: what is the sentenced person is also wanted for extradition / EAW (for instance, other combinations are of course possible) by another (third) state? This complication can be overcome by limiting the system to transfers, yet on the other hand: the combination of several types of cooperation between several states regarding the

same person – not always regarding the same offences – may well necessitate a decision re what will need to be done (first).

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.

FINLAND

Finland fully supports the Israeli e-transfer proposal. The advantages of such a website would be palpable in terms of shortening the transfer cycle. That said, however, we would like to limit the inmate's role to posting (and revoking) the application on the website and monitoring its progress without creating anything resembling a chat room. The inmate could also be informed about new developments concerning his application for example via email to the prison.

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.

HUNGARY

As regards the very interesting presentation and also the attached document on the E-transfer proposal made by Israel, Hungary has the following comments to make:

The prisoners/their representatives may contact our Department directly or through the concrete penal institution, where the prisoner is incarcerated and are informed immediately through the National Headquarters of the Hungarian Prison System.

In our point of view the communication between the participants is going smoothly even without a special electronic communication system.

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.

PORTUGAL (TRANSLATION)

The position of Portugal

Portugal welcomes a system, which should add speed and transparency to the transfer of sentenced persons, of which the slowness and formality are well known.

In our opinion, the fact that the documents will still be sent in paper form does not compromise the benefit of the project. This early sending will allow the analysis of documents, any possible requests for additional information will also start earlier and translation procedures, for instance, will begin well before the arrival of documents.

With regard to the actual situation in Portugal, the most significant difficulties arise from:

1. Prisoners do not have access to the Internet. Thus, one of the main benefits, which is to allow applicants to follow themselves the procedure, is not available to prisoners;
2. The transfer procedure in Portuguese national law involves court intervention in order to review and confirm the foreign decision, a stage which will surely not be speeded up by E-Transfer.
3. Questions related to data protection and system security, as well as a decision on whether or not there should be compatibility between national systems, are still key points to be clarified and to be answered.

SLOVENIA

I would like to kindly notify you that Republic of Slovenia does not have any remarks on the proposal of Israel. We do however support the proposal and find it very useful,

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.

UNITED STATES OF AMERICA

The United States strongly supports the concept of creating an e-transfer system that would allow each country to monitor the status of transfer requests submitted by their nationals.

Although security, privacy, and logistical concerns exist, the United States is optimistic that these issues could be successfully resolved and that many countries would ultimately be able to participate in and benefit from such an informational system.

At the preliminary stages of examining this proposal, the two major concerns for the United States are the security of the system and ensuring that any privacy interests of the prisoners are protected. Although the United States, because of security concerns, would be unable to provide direct access to prisoner transfer data in its data systems, it believes, however, that it would be able to create a separate file, probably in the form of an Excel spreadsheet, that would contain the information deemed pertinent and that could be transmitted to the COE on a regular basis for download. With respect to the privacy interests of the prisoner, the United States would request that the COE limit a country's access to only information pertaining to its prisoners.

For work on this system to begin, it is first important to identify what type of information would be placed in the system. This would include not only identifying the targeted information but also the stages of the process that would be monitored. Next, it would be critical to understand the system that the COE would create to receive, protect and allow access to this information. Obviously, all of these determinations will involve a collaborative process in which all participants must participate. Once these determinations were made, the next step for the United States would be to review them with its information technology experts and then receive appropriate internal approvals to participate in the system.

I commend Israel for taking the initiative to prepare this thoughtful proposal which has a significant potential to improve and enhance how countries share prisoner transfer information. Once in place, this system would improve the transparency of the transfer process as well as improving the efficiency of how we exchange information. If the COB determines that it would be able to support such a data sharing system, I would offer my assistance to any committee that would be formed to move this proposal forward.

APPENDIX – PORTUGAL VERSION ORIGINALE

Le Portugal est favorable à un système qui vraisemblablement ajoutera de la vélocité et de la transparence aux procédures de transfèrement de personnes condamnées, dont la lenteur et la formalité sont bien connues.

Le fait que les documents devront toujours être envoyés en papier ne compromet pas l'avantage présentée par le projet, à notre avis, une fois que son envoi anticipé permettra que l'analyse des documents et un besoin éventuel d'informations complémentaires démarre plus tôt aussi et les procédures de traduction, par exemple, pourront démarrer bien avant l'arrivée des documents.

Du point de vue de la réalité portugaise les difficultés plus significatives adviennent des faits suivants:

1. Les détenus n'ont pas d'accès à INTERNET. Donc, un des principaux avantages, celui de permettre aux requérants de suivre la procédure eux-mêmes, n'est pas accessible aux détenus dans les prisons portugaises.
2. La procédure de transfèrement dans le droit interne portugais implique l'intervention des tribunaux, pour réviser et confirmer la décision étrangère, phase qui ne sera surement pas accélérée par E-Transfer.
3. Les questions liées à la protection de données et à la sécurité du système et aussi la conclusion sur si oui ou non devra-t-il y avoir de la compatibilité entre systèmes nationaux restent des points clé à clarifier et à répondre

APPENDIX –SUISSE VERSION ORIGINALE

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^{ème} 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.