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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)

Proposal from the Netherlands for the draft protocol amending the Additional Protocol to the Convention on the Transfer of sentenced persons (ETS No. 167), to amend Article 17 of the Convention on transfer of sentenced persons.

The Hague, 7 May 2015

Proposal from the Netherlands for the draft protocol amending the Additional Protocol to the Convention on the Transfer of sentenced persons (ETS N 167), to amend article 17 of the Convention on transfer of sentenced persons.

The Netherlands is in agreement to amend the Additional Protocol to the Convention on transfer of sentenced person and will study the preliminary draft in document PC-OC Mod (2015) 01 rev very carefully.

In the meantime it would like to enter a further proposal to amend the Convention. The Netherlands would like to propose to include its proposal in the amending protocol.

The proposal of the Netherlands concerns the Article 17 of the Convention on translation and costs. It is a twofold proposal, which is made on the basis of more than 35 years of experience active application of the Convention by the Netherlands. It envisages to facilitate the application of the Convention as well as the Additional Protocol and focuses on a) simplifying the requirements on translation and b) a more balanced division of costs.

a) Translation

Most State Parties have made a declaration under paragraph 3 of Article 17 and require a translation of the request and supporting documents. The translation of supporting documents is time consuming and it is costly. In the Netherlands judgments are relatively short but it is our experience that in many State Parties the judgements can be very lengthy. Therefore in most States Parties the translation of the judgment contributes considerably to the costs of translation.

It is the finding of judges in the Netherlands, who are involved in the assessment whether a requests for transfer fulfils the conditions, that they do not need to get acquainted with all the details of the foreign judgement. Against this background the Netherlands has already undertaken steps with some States to accept that they limit the translation of the judgment to the parts that are essential for a decision on transfer. This has reduced the costs of translation in the sentencing State drastically and - even more important - it has facilitated the transfer of sentenced persons with these States.

Against this background the Netherlands proposes to add a new paragraph 3a to article 17 of the Convention which reads as follows:

3a. Notwithstanding the declarations made under paragraph 2, the sentencing State may limit the translation of the judgment referred to in Article 6, paragraph 2, point b, of the Convention to the parts of the judgment that describe the offences the sentenced person was charged with, the reasoning leading to the conviction, the conviction of the sentenced person by the judge or the court, including the offences for which the person has been found guilty and the penalties imposed.

b) Costs

The division of costs between the sentencing State and the administering State dates back to 1983, when the number of Member States of the Council of Europe was very limited and the geographical distances between those Member States were limited. In those years it was quite normal that the

transfer of a sentenced person was conducted as part of the regular transportation of prisoners within the States Parties. The same applied even to persons who were transferred for the purpose of extradition. Such a transfer could take several days or sometimes even weeks but it had the advantage that it was very low in costs. This form of transportation was the main reason for including a provision on transit in the Extradition Convention as well as in the Convention on transfer of sentenced persons. This is a practice of the past.

Since then the number of States Parties have increased considerably not only due to the growth of the Council of Europe but also due to ratification by non Member States. Except for neighboring States transportation in general is conducted by air. This has increased the costs of the transfer and since they are not made on the territory of the sentencing State those costs are to be borne by the administering State. The administering State does not only pay for the execution of the sentence but also pays for the transfer. This results in an unbalanced division of costs.

Some years ago the Member States of the EU have agreed on a change in the division of costs between the sentencing and the administering State in such a way that the costs for transfer of the sentenced persons are paid by the administering State. The Netherlands considers this to be a more balanced sharing of costs and proposes to introduce an amendment to paragraph 5 of Article 17 to that effect. This will mean a shift of some costs to the sentencing State but it this is compensated by a reduction of costs for translation for the same State.

Article 17, paragraph 5 will then read as follows:

5. Any costs incurred in the application of this Convention shall be borne by the administering State, except costs incurred exclusively in the territory of the sentencing State as well as the cost of transferring the sentenced person from the sentencing State to the administering State.