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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**

The Netherlands is in agreement to amend the Additional Protocol to the Convention on transfer of sentenced persons, and in particular amending article 2, in order to extend the scope of application of this article.

The Netherlands hereby proposes the following text for an amended article 2:

#### *Article 2*

*Where a national who is the subject of a sentence imposed by a judgement imposed in the territory of the sentencing State, has fled to or otherwise returned to the state of his nationality in view of the criminal proceedings pending against him or her in the sentencing State or following the judgement in order to avoid the execution or further execution of the sentence in the sentencing State, the sentencing State may request the State of nationality to take over the execution of the sentence when the execution of the sentence in its territory is not possible.*

It is important to state that (in absentia) verdicts, that have become irrevocable without the sentenced person being in any way aware of the verdict against him, do not fall within the scope of the proposed text. This is made clear in the text by the sentence 'in view of the criminal proceedings pending against him or her in the sentencing State.'

Furthermore, the text is clear about the scope of the article, the transfer of an irrevocable verdict is possible if the person has fled or left the state before or after the sentence has become irrevocable.

By referring to two concrete examples of cases that occurred in the past years, the Netherlands would like to illustrate the usefulness of the proposed text.

#### Example 1:

Two Dutch nationals were prosecuted because of a suspicion of serious crimes, amongst others large scaled production of child pornography, in State B. They were sentenced by the foreign court in first instance to serve sentences of 8 and 11 years. The suspects appealed against their sentences and were conditionally released, with the duty to report weekly at the police station. After that, the suspects managed to flee to the Netherlands. Subsequently, the foreign authorities proceeded with the case, which lead to a irrevocable verdict of 17 years.

As a result of a treaty between the Netherlands and country B, containing a provision as proposed above, the Netherlands was able to successfully execute the foreign sentence.

#### Example 2:

A criminal case is pending against a suspect in State A, which leads to a judgment in first instance. The suspect appeals this decision, and awaiting the trial in appeal, the authorities of State A decide to release the suspect. The suspect goes to State B (his country of origin) and in State A, the trial is continued and the verdict becomes irrevocable.

This practice occurs quite frequently and the proposed article 2 could be used to realize execution of the sentence in State B.