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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

Summary of replies
to the questionnaire on jurisdiction and transfer of proceedings

INTRODUCTION

The PC-OC decided at its 60th plenary meeting to send out a questionnaire related to the transfer of proceedings and jurisdiction so as to gather information about the application of the relevant Council of Europe instruments and to assess the need for initiatives to improve their effectiveness or for the development of a new instrument in this field.

The following instruments and/or specific provisions are concerned by the questionnaire

- The European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 73)
- Laying of information under Article 21 of the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30)
- Transfer of proceedings as an alternative to extradition: the application of the 'aut dedere, aut judicare' principle under Article 6, paragraph 2, of the European Convention on Extradition (ETS No. 24)

The questionnaire, its introductory note and the compendium of replies are contained in Document PC-OC(2011)14.

The questionnaires were sent out on 8 June 2011 inviting PC-OC members to reply by 1 September 2011. A reminder was sent on 24 August.

The present summary covers the 32 replies received from Albania*, Armenia*, Austria*, Azerbaijan, Belgium, Bosnia and Herzegovina*, Czech Republic*, Denmark*, Estonia*, Finland, France, Georgia, Germany, Greece, Hungary*, Iceland, Ireland, Italy, Lithuania*, Moldova*, the Netherlands*, Portugal, Romania*, Russian Federation*, San Marino, Slovak Republic*, Slovenia, Sweden*, Switzerland, Turkey*, Ukraine* and the United Kingdom. The 17 states marked with "*" are Parties to the European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 73)

SUMMARY OF REPLIES TO CHAPTER A

A. *Proper transfer of proceedings under the European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 73)*

1. If your State is not Party to the European Convention on the Transfer of Proceedings in Criminal Matters of 1972, what are the reasons for the non-ratification? Is the effect of the Convention on jurisdiction considered a problem?

Out of 32 replies, 15 came from States that had not ratified the Convention. Two States might still consider ratification (Azerbaijan and Iceland). The main reasons for non ratification were the following:

- a lack of perceived need (existence of alternatives in particular Article 21 of the mutual legal assistance convention and article 6 of the extradition convention and bilateral treaties);
- complexity of the Convention.

Only 4 States (Ireland, France, Germany and the United Kingdom) mentioned the effect of the Convention on jurisdiction as a problem.

- 2. Is your State able to transfer proceedings (and accept such transfers) without a treaty basis, i.e. on the basis of domestic legislation and / or on the basis of reciprocity?**

Twenty-one States (Albania, Armenia, Austria, Bosnia-Herzegovina, Czech Republic, Denmark, Finland, France, Georgia, Greece, Hungary, Iceland, Lithuania, Moldova, The Netherlands, Portugal, Russian Federation, Slovak Republic, Slovenia, Sweden, Switzerland and Turkey) indicated that they were able to transfer proceedings (and accept such transfers) without a treaty basis, i.e. on the basis of domestic legislation and / or on the basis of reciprocity. Transfer of proceedings to Germany without a treaty basis is possible if German law is applicable and Germany has the competence to prosecute. Transfer of proceedings from Germany to another State is unlikely to succeed without a treaty basis.

- 3. If your State is Party to the European Convention on the Transfer of Proceedings in Criminal Matters:**

- a. How frequently do you apply the Convention as the requesting State and as the requested State?**

Seventeen States replying to the questionnaire have ratified the Convention. Their indications on the frequency of use (question 3 a) as a requesting or as a requested state are mostly estimates. They vary from dozens per year (Czech Republic), half of the total number of cases (Bosnia-Herzegovina) to an estimation of 1% of the total amount of request regarding international cooperation in criminal matters (Romania) or an estimation of one or two per year (Sweden). Some replies were more specific, indicating an average frequency of use as a requesting state and requested State of respectively 1016 and 132 (Austria-figures include requests on the basis of ETS 30), 154 and 532 (The Netherlands), 120 cases and 125 (Slovak Republic), 93 and 71 (Ukraine 2010) 11 and 39 (Estonia), 2 and 6 (Denmark), 5 cases and 1 or 2 (Albania), 1 and 10 (Russian Federation) and 1 case and 8 per year (Turkey). One State (Moldova) indicated that the Convention was never used as a requesting State but very often as a requested State.

- b. What are the types of cases most often dealt with (e.g. in terms of type of offence and / or minimum and maximum sentence)?**

Indications on the types of cases most often dealt with (e.g. in terms of type of offence and / or minimum and maximum sentence) revealed a wide range of offences ranging from very serious offences such as murder, organised crime related to the trafficking of human beings or drugs to assault, robbery, theft, fraud, forgery (credit cards for example) or even road traffic offences.

- c. Can you provide an indication of the 'success-rate'?**

Most replies regarding the success rate revealed that the vast majority of requests for transfer of proceedings were satisfied. Four replies did not contain indications on this aspect. However, four other Parties (Albania, Bosnia and Herzegovina, Czech Republic, Sweden) referred to the outcome or success of the criminal proceedings or convictions following transfer of proceedings, indicating that these rates were considerably lower or unknown.

- d. What legal and / or practical obstacles have you faced in the implementation of the Convention?**

Answers indicated problems related to translation, poor presentation or difficulties in reading the request (Albania, Czech Republic, the Netherlands, Sweden, Ukraine), the gathering of information on the progress of proceedings transferred (Albania), lapse of time

(Ukraine), misunderstandings concerning the relation between national legislation and the Convention (Bosnia and Herzegovina); the concept of subsidiary jurisdiction (Article 2) time limitations and re-transfer of proceedings, application of Article 21 (1), the scope of application of Article 26(2) of the Convention in relation to the exclusion in Article 11(f) of the Convention and the lack of regulation of the relationship to other conventions in Article 43(1) of the Convention. Mention was also made of the fact that practitioners do not always read the Convention up to Article 47 and then they are surprised by the provision on time applicability.(Czech Republic). The Netherlands indicated difficulties in dealing with requests made for crimes that have been committed a long time ago and issues of undue delay in proceedings. One Party (Turkey) mentioned a case were after transfer, prosecution, court sentence and execution of the sentence the perpetrator returned to the requesting state and faced a new arrest and prosecution. Three Parties to the Convention reported they had no difficulties (Estonia, Lithuania and Slovak Republic). Finally, a few answers mentioned the poor level of ratifications of the Convention as a problem.

e. What are the considerations that motivate the decision to request a transfer of proceedings rather than to pursue a domestic prosecution?

The most common considerations motivating the decision to request a transfer of proceedings rather than to pursue a domestic prosecution are the place of residence of the suspect, the location of the evidence or the impossibility to extradite. Some Parties (Czech Republic, Denmark and the Netherlands) mentioned considerations of efficiency of proceedings, including specific criteria to be taken into account.

f. Did you apply article 8, paragraph 2 of the Convention, i.e. did you request or accepted to prosecute a person who was finally sentenced? In this respect: did you encounter problems with respect to the application of the principle of ‘ne bis in idem’ under article 35 of the Convention?

Answers revealed that article 8, paragraph 2 of the Convention is rarely applied, in particular as a requested state. The interpretation of the “ne bis in idem principle” was hereby mentioned by Albania, Bosnia Herzegovina, the Czech Republic, Estonia and Turkey (see Turkey’s answer to 3 “d” above). Four Parties (Denmark, Lithuania, Romania and Ukraine) indicated they never applied this provision. Sweden had no information available on this subject. Romania and the Netherlands indicated that where sentenced persons were concerned they applied the provisions of the European Convention on the International Validity of Criminal Judgments. The Russian Federation referred to its reservation made in respect of Part V of the Convention which it will apply “to the extent that this does not conflict with the principle of inadmissibility of a double conviction for the same crime”.

g. Do you see any scope for the improvement of the provisions of the Convention and / or its practical implementation?

Three Parties, Austria, the Czech Republic and Turkey saw a scope to improve the provisions of the Convention. Austria saw a scope to give a clearer definition of certain provisions and in particular those of article 8, paragraph 2. The Czech Republic felt that a provision should be added that the requesting state should have the obligation to translate the file.

The Russian Federation indicated its wish that the Council of Europe develop a document which would set standards for the contents and form of the request for criminal proceedings.

Several Parties felt there was scope for improvement of the practical implementation of the Convention, their wishes concerned in particular:

- the possibility for the requesting state to be informed about the follow-up to the proceedings (Albania);
- direct communication between competent/judicial authorities (Austria, Sweden);
- a more practice-oriented Explanatory Report or another document (maybe a recommendation) providing practical comments on the provisions of the Convention (Czech Republic);
- that a request would be preceded by a summary of the case and a description of the evidence. This way proceedings that might be fit for transfer could be assessed quickly by the other State without making too many translation costs (The Netherlands);
- that files transmitted along with the requests would contain accurate and complete information and that the notification of the offences be realised as soon as possible after the facts were committed. (Romania);
- The use of a standard form for these cases (Sweden).

SUMMARY OF REPLIES TO CHAPTER B**B. *Laying of information under Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No. 30)*****4. *Concerning the use of Article 21 of the European Convention on Mutual Assistance in Criminal Matters of 1959 on laying of information:***

In their answers, Ireland and the United Kingdom recalled that they had made a reservation with regard to Article 21. Iceland, Lithuania and Moldova indicated that they had never used this provision in practice.

a. *How frequently is the possibility to transmit information to another State Party used by your authorities?*

Replies on the frequency of information transmitted to another state varied considerably from “always when there is no bilateral treaty”(Slovenia), “permanently” (Ukraine), “almost all transfer cases” (Estonia), the “overwhelming part of requests” (Austria), “frequently” (Greece), “used quite often” (Romania), “not that frequently” (Italy) “tendency of growth” (Bosnia and Herzegovina), “hundreds each year” (Czech Republic). Relatively few Parties seemed in a position to give precise statistics or numbers, and important differences can again be found among the numbers of cases where information was transmitted– 290 (Slovak Republic), 216 (Azerbaijan), 200 (Switzerland), 86 (Denmark), 50 (Portugal), 20 (Turkey), 8 (San Marino), 7 (Finland) or 3 (Georgia). One Party (Armenia) indicated a percentage of 5% of rogatory letters per year. France indicated that since January 2000 the number of transmissions made on the basis of Article 21, amounted to 1573. Germany estimates the number of transmissions at 24 per year for smaller Länder to over 600 for the larger. It is to be noted that some of these replies/figures are not solely based on information transmitted under Article 21 of the Convention on Mutual Legal Assistance but include information received under this Article or information transmitted on the basis of Article 6 of this same Convention and/or on the basis of the EU Treaty on mutual legal assistance. The United Kingdom, who made a reservation with regard to Article 21, makes a limited use of this possibility but indicated two scenarios in which a request may be made by the Crown Prosecution Service to another State to take proceedings in respect of offending that is triable in England and Wales.

b. *What is your evaluation of the percentage of cases where this information leads to concrete action by/in the requested Party, based on the obligation of the requested Party to give notification of any such action (Article 21, paragraph 2)?*

Replies indicating a percentage of cases leading to concrete action by the requested Party include those from Albania (5%), Austria (70%), Estonia (80%), Germany (80%), Georgia(100%), Slovak Republic (80-90%), Sweden: 90%, Switzerland (70%) and the United Kingdom as regards Scotland (90%). Romania, Slovenia and Ukraine indicated that concrete action was taken in a majority of cases. Other replies revealed that there were no measurable data on the success-rate of such requests, sometimes because the majority of these request were closer to spontaneous transmission of very basic information rather than laying of information (Belgium), more often because no feedback information on the outcome of these cases was available (Bosnia and Herzegovina, Denmark, Finland, France, Hungary and Portugal). Germany, although estimating a high success rate, also mentioned the existence of a considerable number of cases where feedback was lacking.

c. *What are the considerations that motivate the decision to utilise Article 21 (ETS No. 30) rather than to pursue a domestic prosecution?*

Considerations motivating the use of Article 21 of the Convention on Mutual Legal Assistance in Criminal matters rather than to pursue a domestic prosecution are in most cases identical to those that motivate the decision to request a transfer of proceedings (see answers to question 3.e). They concern in particular the efficiency of judicial proceedings with regard to the location of the suspect, the victim, the evidence, lack of jurisdiction and/or the impossibility to extradite. Albania indicated that this provision was used as an alternative to the European Convention on the Transfer of Proceedings with States who were not a Party to this Convention. Armenia indicated it had never had the necessity to use this provision. Denmark indicated that it was rarely used. Slovenia added that not all states are able to apply the institute of the transfer of proceedings on the basis of the principle of proportionality.

d. Do you face any legal or practical obstacles in acting on information laid by another Party with a view to criminal proceedings (including the first stage pre-trial or trial proceedings) of your country? Please provide details.

A considerable number of replies (12) indicated no legal or practical obstacles. Legal obstacles mentioned regarded the lack of double criminality (Austria), and in particular with regard to minor offences (Finland). Germany indicated isolated cases where the lapse of time for the offence underlying an incoming request had expired according to its domestic legislation. More practical obstacles mentioned included above all a lack of adequate, complete and/or updated information from the requesting state or translation problems. Germany mentioned the difficulty and time needed to obtain exact knowledge of the relevant criminal provisions and procedural rules applicable abroad, as was often needed for the institution of investigations. The necessity to hear a particularly large number of foreign witnesses was also reported as a time consuming and costly burden for German authorities and courts. The Russian Federation mentioned that it was often difficult to determine the stage of criminal proceedings because they sometimes receive separate documents without any procedural decision on instituting a criminal case. Some replies (Finland, Italy, Netherlands) mentioned the lack of capacity to deal with minor offences, the impossibility to find the suspect, and the difficulty to gather evidence. The United Kingdom underlined that problems could be avoided if a request by another state to England and Wales to 'transfer' proceedings be made after contact and consultation with both the relevant UK investigation and prosecution authority.

e. Did you encounter problems with respect to the application of the principle of 'ne bis in idem', either as the requesting or the requested State?

A majority of replies (19) indicated they had no or hardly any problem with the application of the "ne bis in idem" principle, 7 replies indicated the existence of an issue. Albania, Belgium and the Slovak Republic noted that laying of information does not imply transition of jurisdiction and in cases where the suspect was prosecuted and sentenced in the requested state, the requesting state can still prosecute and sentence the person. Switzerland highlighted that the application of this principle varies between Council of Europe member states. The Netherlands noted that some States do not recognise a dismissal as a ground for "ne bis in idem" because it is not a decision made by a judge. Bosnia and Herzegovina indicated a difference in interpretation of the "ne bis in idem" principle between its Ministry of Justice and the judiciary. The United Kingdom highlighted that prior discussions with the foreign judicial authority, e.g. as envisaged by both the Eurojust guidelines and by Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings should alert all authorities to the possibility of 'ne bis in idem' and to enable them to deal with issues arising accordingly. Ukraine indicated that "transfer of proceedings is possible in case of reversal of the judgment pronounced in absentia because the

possible existence of two sentences contradicts the generally recognised principle “ne bis in idem”.

SUMMARY OF REPLIES TO CHAPTER C

- C. *Transfer of proceedings as an alternative to extradition: the application of the ‘aut dedere, aut judicare’ principle under Article 6, paragraph 2, of the European Convention on Extradition (ETS No. 24)***
- 5. Concerning the obligation to extradite or prosecute as contained in Article 6, paragraph 2, of the European Convention on Extradition of 1957 (ETS No. 24) – the *aut dedere aut judicare* principle:**
- a. Please provide information on how often this principle is applied in practice in cases where your state does not grant extradition, or where your extradition request is refused by the requested state.**

Many replies indicated that the principle had never or seldom be applied (Azerbaijan, Belgium, Estonia, Finland, Germany, Iceland, Ireland, Italy, Lithuania, San Marino, Sweden, United Kingdom and Turkey). Estonia, Ireland, Italy and the United Kingdom indicated that this was due to the fact that domestic law allowed the extradition of its own nationals. Lithuania explained the lack of application by the fact that extradition requests are not made to countries whose law prohibits extradition of national citizens. Among those who did apply the “aut dedere aut judicare” principle, Austria, Bosnia and Herzegovina, Hungary and Portugal indicated that this principle was applied automatically (de jure) without information on the frequency of application. Hungary specified that foreign states quite often accept to prosecute where extradition to Hungary was refused. France and the Russian Federation apply the ‘aut dedere au judicare’ principle in conformity with Article 6.2 of the extradition convention when their authorities refuse extradition for reasons of nationality. France specified that when acting as a requesting State the nationality of the person wanted is usually known in advance and in such cases authorities prefer to lay information under Article 21 of the Convention on mutual assistance in criminal matters. Moldova and Ukraine mention that they apply the principle where their requests for extradition are refused. The Czech Republic indicated that as a requested State they applied the principle as often as possible and provided a detailed table indicating the 34 extradition requests that had been refused since 2002. As a requesting State, prosecution was mostly no alternative since extradition to the Czech Republic was mainly refused for lack of dual criminality. Greece indicated that since nationals are not extradited foreign authorities are invited to submit a request for prosecution instead. Georgia mentioned 6 outgoing requests in the last three years and 43 incoming requests. Bosnia and Herzegovina indicated that due to misinterpretation of the relationship between the Convention and domestic legislation by judicial officials, the number of cases taken over from other countries were twice as frequent as the cases transferred abroad. Turkey indicates a frequency of 10 cases. Denmark, Germany, Switzerland and the Netherlands indicate that they have no precise statistics on the application of Article 6, paragraph 2.

- b. Do you apply the *aut dedere aut judicare* principle exclusively within the limits of Article 6§2 of the Extradition Convention, i.e. insofar as the extradition was refused solely for reason of nationality or do you widen its application to other grounds for refusal of extradition?**

Six states (Albania, Belgium, Moldova, Romania, Slovak Republic and Turkey) replied that they applied the principle exclusively within the limits of Article 6, paragraph 2 i.e. refusal of extradition for reasons of nationality. Two further States (Georgia, Slovenia) indicated that although this had not been done so far, other grounds for refusing extradition and applying the “aut dedere aut judicare” principle could also be invoked. Most States indicated that extradition could also be refused on other grounds and give rise to prosecution instead.. Reference was hereby made to grounds such as: capital punishment or life-sentence in

requesting state, lack of procedural guarantees and fair trial, asylum, political offenses, terrorism and other grounds permitted by the European Convention on Extradition. The Czech Republic replied that its legislation doesn't allow for extradition of its nationals but that it applies the principle of active personality which implies that Czech nationals may be prosecuted for all offenses committed abroad irrespective of any request for extradition and the principle of subsidiary universality which implies that foreigners may be prosecuted for these offenses if they cannot be extradited (for example when this would be contrary to the European Convention on Human Rights). According to their reply to question 5c, Austria seems to have a similar system. France also indicates the existence in their legislation of the principle of active personality and, under certain conditions, of the principle of subsidiary universality.

c. Is this principle implemented in your internal legislation?

The majority of states replied positively to this question and mentioned the relevant legislation. Finland and Iceland indicated that the principle was indirectly addressed. Belgium, Moldova, Sweden, Turkey and the United Kingdom replied that this principle was not implemented in their domestic legislation.

d. What are the main obstacles to the application of this principle and do you feel a need to address such obstacles through binding or non-binding standards?

It appears from the replies (Albania, Belgium, Austria, Czech Republic, Italy, Portugal, Sweden) that the main obstacle lies in the difficulties to cooperate quickly and efficiently, to gather the supporting documents including factual material and in particular the evidence within the delays imposed by national law (lapse of time) and to secure the presence of witnesses and the suspect/accused. The lack of jurisdiction and differences in legislation with regard to double criminality, lapse of time, *ne bis in idem*, in absentia cases, mental or physical conditions of the persons concerned are also mentioned (Netherlands, Romania). Bosnia and Herzegovina raises the difficulties of transfer of prosecution in case of war crimes and crimes against humanity among the countries of the region. Turkey mentions this problem with regard to terrorist crimes. The United Kingdom considers the bar on extradition of own nationals to be an obstacle. Switzerland mentions that states do not always request prosecution when extradition has been refused. Similarly, France indicates that in certain cases (offenses committed abroad by French nationals or against a French victim) prosecution is only possible on the basis of an official request by the foreign State. The Czech Republic sees a need to address such obstacles through binding or (preferably) non-binding standards. Other replies indicate no obstacles and no need to address the matter by additional standards.

e. Does your country contemplate any change in its domestic legislation concerning the scope of application of the *aut dedere, aut judicare* principle? If so, in which direction and to what extent?

Albania recently adopted a regulation of their law dated 3.12. 2009 "On Jurisdictional Relations with Foreign Authorities in Criminal Matters" to regulate its scope in a more detailed and efficient way. Bosnia and Herzegovina has included international standards in their law on International Legal Assistance in Criminal Matters and has adopted the principle of universal jurisdiction in their legislation. The Czech Republic reports that a Draft Act on International Co-operation in Criminal Matters contains a provision amending the Criminal Code, which makes the application of the "*aut dedere aut judicare* principle" subject to an express request of the requesting State to the Czech Republic to prosecute the person whose extradition is refused. Denmark reported that further to a 2007 report on the Danish Criminal Code and Danish Criminal Jurisdiction by the Ministry of Justice the criminal code had been substantively amended in this field. France indicates that it is presently considering certain amendments to Article 113-8-1 of the criminal code so as to

remove certain obstacles to the application of the aut dedere aut judicare principle. Finally, the Swedish Act on Extradition is currently being reviewed. It is however too early to say if this principle will be included in the revision of the Swedish extradition laws.

f. Have you had any problems regarding the ‘ne bis in idem’ principle?

Most states did not report any problems regarding the ‘ne bis in idem’ principle. Finland observes a possible link between the non bis idem principle and the aut dedere aut judicare principle in that a requesting state whose request for extradition and/or prosecution has been refused may be inclined to prosecute the offense himself. In Italy the risk to have “a bis in idem trial” of an Italian citizen by a foreign jurisdiction might occur given the possibility of trial in absentia in Italy and the non extradition of national citizens. It has happened that in a Dutch case the accused fled to his home State when the case was already brought to court. The home State could not extradite him to the Netherlands on the ground of nationality. Because the case was already in court, the proceedings could not be transferred to the other State and the Netherlands could not reply to requests for mutual legal assistance concerning the same offences from that State because of ne bis in idem.

g. Can and do you apply Article 6, paragraph 2, with respect to already convicted and/or sentenced persons where extradition is denied on nationality or other grounds, or do you require a further treaty basis to execute a foreign judgment against a convicted person?

Eleven states (Czech Republic, Finland, Hungary, Moldova, Portugal, Romania, Slovenia, Turkey and , in principle also Denmark, Sweden and Switzerland) can apply Article 6, paragraph 2 with respect to already convicted and/or sentenced persons without any further treaty basis. This is not the case for the other States. Belgium considers that the lack of a conventional ‘aut dedere, aut exequi’ principle is a mayor void in international cooperation in criminal matters.

SUMMARY OF REPLIES TO CHAPTER D**D. General questions**

- 6. Do you think that there is any need for action at Council of Europe level to tackle positive or negative conflicts of jurisdiction in addition to the existing standards or for recommendations/guidelines to be drafted to improve their implementation?**

Twelve states (Albania, Austria, Belgium, Bosnia and Herzegovina, Czech Republic, Estonia, Georgia, Greece, Portugal, Romania, Switzerland, Ukraine) replied, in principle, positively to this question. Albania would appreciate the drafting of recommendations/guidelines in order to improve the implementation of existing standards. Austria indicated that it could be useful to develop guidelines (on exchange of information, timelimits, criteria for suspending proceedings when parallel proceedings are pending etc) in order to prevent and/or solve conflicts of jurisdiction. Belgium mentioned the need to develop a guideline to limit transfer of prosecutions to serious crime and never without proper preliminary consultations between the parties concerned. The Czech Republic suggested to consider how to revive part IV of the Convention. Appropriate starting point could be to set up the list of non-binding criteria for determination of the most suitable jurisdiction for prosecution. Germany suggested the creation at Council of Europe level of suitable rules of procedure, including procedural guidelines with the aim to provide uniform and binding rules of procedure according to which the justice authorities of a Member State may transfer running investigations or criminal proceedings to the authorities of another Member State. Greece suggested to set reasonable time limitations to the submission of a request for penal prosecution, according to article 21 of the 'European Convention on mutual assistance in criminal matters'. Portugal suggested to discuss the need to translate important volumes of procedural papers by application of Article 16 in cases where a requesting state is not competent by virtue of Article 21 of the European Convention on Mutual Assistance in Criminal Matters. Switzerland would welcome recommendations for the processing of requests or transmissions of laying of information (for example by creating an obligation to confirm reception of a request/laying of information or to communicate without delay the acceptance of a request or ending of a procedure). Ukraine underlined the need to determine the correlation between the application of the provisions of the European Convention on Mutual Assistance in Criminal matters and those of the European Convention on the Transfer of Proceedings in Criminal Matters so as to solve difficulties in interpretation and application. France indicated a need to encourage the swift implementation of laying of information further to a refusal of extradition, as well as an efficient follow up to requests for mutual legal assistance. Support was given to the development of good practices to facilitate the exchange of information and the follow up of official requests of laying of information between Parties.

7. Please specify for 'proper' transfer of proceedings (Convention on the Transfer of Proceedings), laying of information (Article 21 of the Convention on Mutual Assistance in Criminal Matters) and *aut dedere aut judicare* (Article 6, paragraph 2, of the Convention on Extradition).

Few replies were received to this question, see however the replies received to question 6. Albania would appreciate a recommendation/guideline to be drafted in order to ensure an efficient implementation of article 16 of the Convention on Transfer of Proceedings, regarding the updated information on progress of the proceedings. They would also appreciate an improvement of the implementation of the *aut dedere aut judicare* principle in Article 6, paragraph 2 of the Extradition Convention especially for cases when the requesting states after refusal of their extradition requests do not submit any request for transfer of proceeding or for execution of judicial decisions. Germany noted that consideration could be given to develop uniform and binding standards for processing information laid pursuant to Article 21 of the Convention on Mutual Assistance in Criminal Matters, which would establish a duty to transmit immediately a confirmation of receipt as well as a time limit of no more than three months for a decision on the taking over of investigations. Hungary noted that transfer of proceedings is a very useful way of cooperation when it is known that the perpetrator has the nationality of the State where he/she is arrested, or resides and that State does not extradite own nationals. One of the added value of the transfer of proceedings compared to the laying of information is that on the basis of a request for transfer of proceeding the requested State has an obligation to prosecute. The Russian Federation indicated some examples of successful co-operation in transfer of proceedings.

8. If appropriate, please indicate any comments, information or proposals of relevance to the issues covered by this questionnaire.

Four states highlighted the need to increase the number of ratifications of existing instruments whereby the Netherlands mentioned the European Convention on the international validity of criminal judgments, Albania, the Slovak Republic and Sweden mentioned the European Convention on the transfer of Proceedings. In this respect, reference is made to the detailed analysis by Italy of the possible reasons explaining the lack of ratification.

Azerbaijan mentioned the following problems related to the implementation of the "European Convention on Extradition" and "European Convention on Mutual Assistance in Criminal Matters":

- difficulties in dealing with request within the time limits defined in the Conventions;
- impunity of crimes where requested States decide not to extradite nor to prosecute;
- securing fundamental rights by harmonizing the European Convention on Extradition with the European Convention on Human Rights.

Switzerland mentioned two further implementation problems: the shorter lapses of time in other jurisdictions and secondly the discontinuation of a case because of lack of evidence without stating that a complement of information could have been asked or without initiating any further investigations or verifications. Switzerland felt that a recommendation could usefully address this issue.

Finland noted that transfer of procedures is sometimes requested despite the fact that the case is as difficult to handle in the requested State as it was in the requesting State. In other words there is no added value for transfer. Hungary and the Netherlands underlined the translation costs linked to transfer of proceedings. In order to avoid unnecessary costs, it was recommended that a request be preceded by a summary of the case and a description of the evidence so that the requested state could assess the situation. The

Netherlands furthermore recommend that when proceedings concerning more serious crime would be dismissed after transfer, contact between the requested and requesting state is established before dismissing the case.

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