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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 received to the questionnaires regarding the implementation of the Convention on the transfer of sentenced persons and its Additional Protocol.

In preparation to the special session on the transfer of sentenced persons during the 65th meeting of the PC-OC, the 64 Parties to the Convention and the 36 Parties to the Additional Protocol were invited to reply to two short questionnaires. Questionnaire 1, dealing with the Convention, was answered by 34 parties. Questionnaire 2, concerning the Additional Protocol, received 17 replies.

Questionnaire 1 on the Convention on the transfer of sentenced persons (ETS 112)

1. How many requests for transfer based on ETS 112 did you receive in the period 2011-2012? How many of these have led to an effective surrender of the person concerned?
2. How many requests for transfer based on ETS 112 did you send out in the same period? How many of these have led to an effective surrender of the person concerned?

N° of requests received	N° of transfers implemented	Basis: ETS 112 Period 2011-2012 Country	N° of requests sent out	N° of transfers Implemented
57	4	Albania	6	2
24	6	Armenia	22	2
55	5	Australia	16	4
28	12	Austria	248	103
157	12	Azerbaijan	228	101
171	31	Bosnia and Herzegovina ¹	145	24
21	1	Czech Republic	6	1
14	9	Costa Rica	13	6
9	1	Chile	6	0
12	9	Denmark	18	8
180	28	Ecuador	180	?
13	9	Estonia	20	7
202	118	France	129	30
155	32	Georgia	41	15
321	242	Germany ²	570	765
320	1	Greece	19	1
55	38	Hungary ³	0	2
4	4	Iceland	1	1
16	2	Israel	50	15
704	156	Italy	144	37
58	31	Japan	0	0
8	5	Korea	48	25
0	0	Liechtenstein	5	3
130	85	Lithuania ⁴	0	0
1	1	Mexico	9	
No data available	No data available	Moldova	No data available	No data available
4	3	Montenegro ⁵	4	0
599	285	Netherlands ⁶	79	35
	4	Norway ⁷		52
240	+/- 120	Poland	394	+/- 197
36	25	Slovakia	28	18
16	10	Sweden ⁸	243	92
42	8	Switzerland	66	23
221		Ukraine ⁹	100	

¹ Figures include requests and transfers on the basis of bilateral agreements.

² Figures include requests and transfers on the basis of ETS 167

³ Figures include requests and transfers on the basis of ETS 167

⁴ Figures include requests and transfers on the basis of ETS 167

⁵ Most requests and transfers are not included in these figures: more than 80% of cases in 2011 and more than 75% in 2012 were based on bilateral agreements with countries from the region.

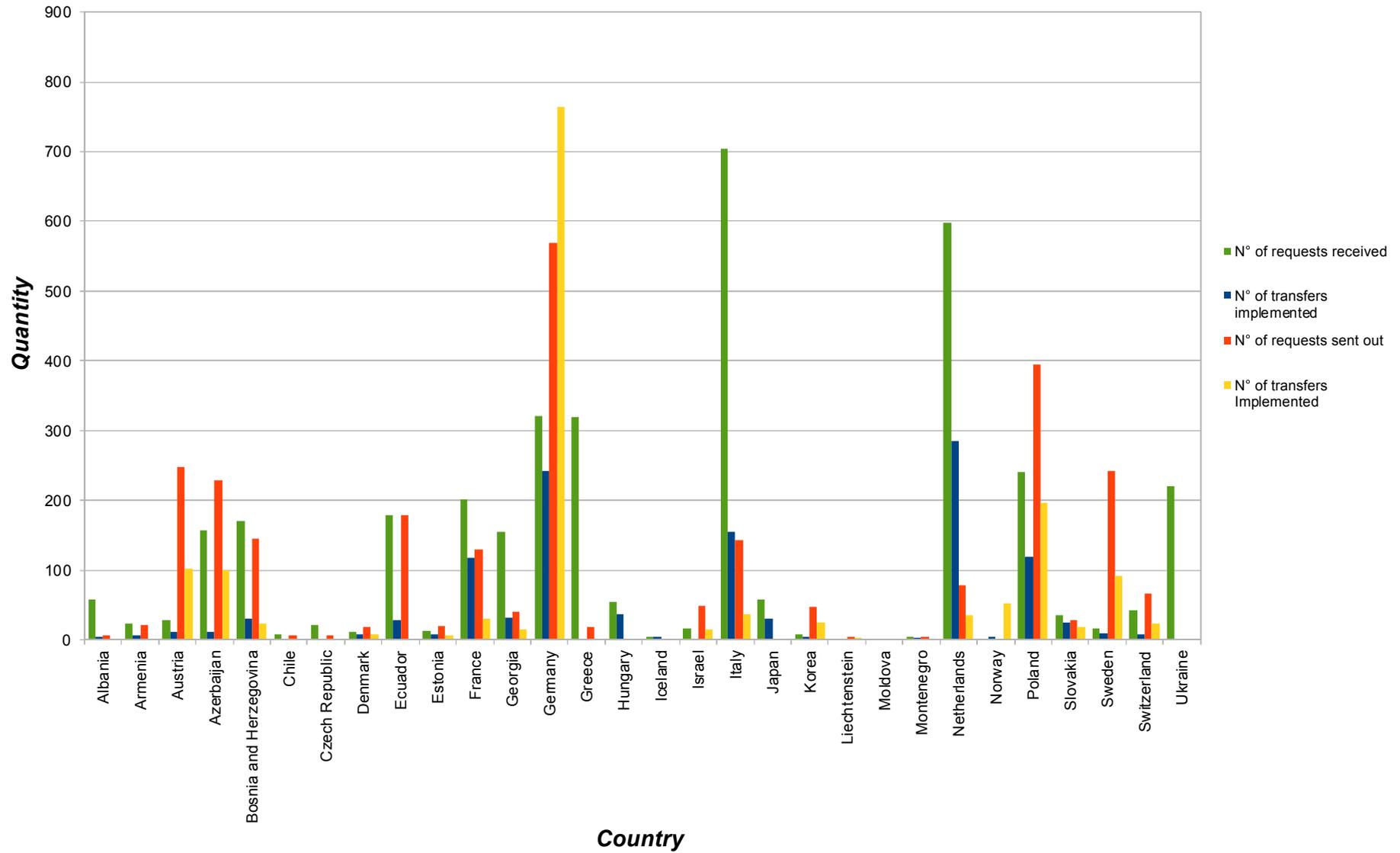
⁶ Figures include requests and transfers on the basis of ETS 167

⁷ Figures about the number of requests received or sent are not available.

⁸ Figures concerning the requests sent out and implemented include those on the basis of ETS 167.

⁹ 137 transfers were carried out, the breakdown between transfers to and from Ukraine is unknown.

Requests / Transfers



Question 3: legal and practical problems encountered as regards ETS 112

Among the legal and practical problems encountered as regards the implementation of the Convention on the transfer of sentenced persons, the following were mentioned (in decreasing order from most to least mentioned):

- Length of proceedings
- Obstacles due to differences in procedures
- Documentation provided or requested (Incomplete, unclear, too lengthy, too costly to translate)
- Communication problems between the competent authorities of the parties concerned (lack of complete and updated list of contact points)
- Withdrawal of the consent of the person concerned
- Informing the person concerned about the consequences of his transfer
- Lack of information about the detention conditions/ early release policies in other parties
- Interpretation of the 6 months prison sentence to be served + exceptions (Article 3.1.c and 3.2)
- Difficulties in dealing with transfers of mentally ill persons
- Difficulties related to the conversion of sentences
- Time needed to arrange the practical aspects of the transfer (travel etc.)
- Prison overcrowding prevents acceptance of transfer requests
- How to deal with sentences including payment of fines
- Economic cost associated with transfers
- Lack of information on follow up after transfer (Article 15)
- Problems related to the certification of the copies of judgments and other court decisions, as well as texts of legal provisions sent by the sentencing State in accordance with Article 6 (2a) of the Convention.

Question 4: Proposals for improvement as regards the functioning of ETS 112

The proposals for improvement as regards the functioning of the Convention include:

Proposals to speed up the procedures, including by establishing time-limits:

- The introduction of time-limits for the conversion procedure as well as the effective transfer as soon as the administering State has decided to consent. (Austria)
- The introduction of time limits to reply to requests for transfer. (Denmark)
- discuss whether the regulatory framework should be modernized in order to include time limits for the processing of cases. (Norway)
- To shorten the duration of the transfer procedure as well as the execution of transfers, specifying time limits For example, in so far as the Convention provides that at least six months of the sentence should remain to be served, it might be envisaged that the transfer procedure should not exceed that duration, or even that the transfer procedure should be concluded within 3 months after the lodging of the request for transfer. Where time limits for the execution of transfers are concerned, modelling them on the extradition procedure might be envisaged. (Switzerland)
- In order to accelerate procedures, the principle could be introduced, in Article 6, according to which the sentencing state and the administering state shall promptly accomplish the relevant acts. (Italy)
- We have to find a common position how to speed up the procedure. (Estonia)

Proposals regarding procedures and process management:

- Supplement Article 7 of the Convention by making the consent irrevocable or introducing a time-limit until which the consent may be revoked at the latest (Austria)
- Questions in relation to the coordination of the effective surrender of prisoners should be discussed and the elaboration of guidelines/ a recommendation (?) considered (Austria)
- It should be considered whether it is expedient to initiate the transfer proceedings if the person will be conditionally released after less than 6 months.(Lithuania)
- The upcoming date for conditional release and the time required for arranging transfer should be both taken into account before providing the request.(Lithuania)
- It is proposed to amend Article 3 (1c) of the Convention, in particular to increase the 6-month period or to count the 6-month period not from the time of the receipt of the request for transfer, but as an obligatory term of sentence, which the sentenced person has to serve in the administering State. (Ukraine)
- In my opinion, it is also necessary to address via the Convention an issue on the limitation of possibility of a sentenced person to refuse to be transferred on late stage, for instance, before a decision on the transfer of sentenced person has been taken by the central (competent) authority, and if the sentenced person refuses from previously given consent to his/her transfer, he/she will have a right to apply for the renewed consideration of an issue on his/her transfer only after some time, for example in 3 years. (Ukraine)
- It is proposed to extend a sphere of effect of Article 12 for the release on parole. (Ukraine)
- The burden of the first approval of the transfer request should rest on the sentencing state, who is the "possessor" of the sentence, whose laws were breached by the prisoner and who holds most of the information as for the offence and the actual state of the prisoner. This does not preclude the administering state of the right to indicate initially, in the course of information exchange, that it will not agree to the transfer (see Article 6.2 of the convention), that will make the decision redundant. However, unique circumstances might lead the sentencing state to ask for the approval of the administering state issued first (Israel).
- In order to enable the administering state to be informed without delay of each circumstance concerning the custody served by the prisoner in the sentencing state and to take a prompt decision as to grant the prisoner himself any benefit, it can be useful that the sentencing state encloses, when the prisoner is transferred, also a report on his/her behaviour during the detention period already served. This report should be included in the documents provided for by Article 6, paragraph 2, subparagraph b.(Italy)
- Reinforce the principle that states communications have to be made by the Ministry of Justice of each State. (Chile)
- Reaffirm that the requests and replies can be communicated in one of the official languages of the Council of Europe.(Chile)
- It is proposed to study an issue concerning an inclusion into a list of conditions provided for by Article 3 of the Convention of an additional condition, i.e. «if a property damage caused by a criminal offense is reimbursed as well as procedural costs, if any». Although the abovementioned condition is not cited in Article 3 of the Convention, some States Parties to the Convention, including Ukraine, actually do not agree to the transfer under Article 3 (1f) of the Convention, if the damage caused by a crime is not reimbursed. Besides that such condition is provided for by 12 bilateral international treaties on the transfer of sentenced persons, concluded between Ukraine and other states, as well as it is provided by the Code of Criminal Procedure of Ukraine. (Ukraine)
- Establish procedures in each Party to address the situation of the fines, imposed in the sentence, in case they have not been cancelled. (Chile)
- We should think about allowing inmates to be transferred by escorts of the sentencing country when they have to pick up their own nationals in the foreign country where the inmate will want to return. This will save time and money since the trip still needs to be made. I understand that some countries might hesitate about this idea, but financial crisis is also a problem to make this work.(Costa Rica)

- Instead of translation of long sentences, consider the use of an extract which can be translated. (Netherlands)
- We deem convenient to determine or bind the member States to disclose the manner in which they have adopted the provisions of Article 9 of the Convention in connection with the effects of transfer to the administering State, since, in the case of Mexico, paragraph 1, subsection b, of Article 9 shall not be applicable when it has the capacity of administering State. This shall facilitate the fulfilments of requirements. (Mexico)

Proposals to collect and share contact details:

- Create a central register of contact details of the relevant authorities of each country, if not already done so (Australia)
- Create a website that should have information such as Authority of each State member, phone numbers, e mail address, Police or Penitentiary Police in charge for moving towards the airport the inmates when the transfer takes place (it is important since there are things that are not included in the Treaty but by practice they have become important-medical reports, finger prints-behaviour while he is in prison, etc.) I believe it could already exist but I have no information, even though I have been working on this field for the last 8 years. (Costa Rica)
- Request States Parties to keep information contained in the templates updated, so as to have information about de person to whom inquiries can be sent in special cases.(Chile)
- Establish a list of bilateral contact points (Denmark)
- establish an effective way or communication system between central authorities for this convention (Ecuador)
- to facilitate the transfer procedure, the central authority of the Convention should inform each member country of the contact number and E-mails of the contact point in each member country (Korea)

Proposals to gather and share information on prison systems and regimes:

- Invite states to provide information on the national prison system and prison regimes for publication on the website (Czech Republic)
- Share information about countries' sentencing regimes in order to gain better understanding of the context when it comes to proposing terms of sentence enforcement (Australia)

Proposals to improve the information provided to the prisoners concerned:

- Raise awareness among prisoners about the possibilities to return to their home countries to carry out the rest of their imprisonment sentence(Ecuador)
- Give better information on consequences of transfer, including the non-application of the speciality rule (Eugenio Selvaggi, Italy).

Proposals to enhance communication between Parties to the Convention

- it is very important to gather new members for the convention of transfer of sentenced persons, for there are many different legislation or legal Systems that may not share completely the same point of view regarding as to why executing a transfer.(Ecuador)
- There should be a regular meeting of persons in charge. (Korea).
- Discussions about ways in which countries can work together to avoid delays in the processes (Australia)
- Establish more forums, including secure virtual forums whereby there is an opportunity to exchange ideas, share experiences and discuss common issues. (Australia)

Questionnaire 2 on the additional Protocol to the Convention on the transfer of sentenced persons (ETS 176)

1. How many requests for transfer based on ETS 167 did you receive in the period 2011-2012? How many of these have led to an effective surrender of the person concerned?
2. How many requests for transfer based on ETS 167 did you send out in the same period? How many of these have led to an effective surrender of the person concerned?

N° of requests received	N° of transfers implemented	Basis: ETS 167 Period 2011-2012 Country	N° of requests sent out	N° of transfers implemented
6	0	Austria	246	56
9	0	Czech Republic	1	0
1	0	Denmark	36	16
15	10	Estonia	0	0
10	2	France	3	1
1	0	Georgia	0	0
		Germany ¹⁰		
1	0	Greece	0	0
		Hungary ¹¹		
0	0	Iceland	0	0
0	0	Liechtenstein	0	0
86	27	Lithuania	0	0
5	0	Montenegro	0	0
		Netherlands ¹²		
	0	Norway ¹³		45
0	0	Switzerland	2	1
12	2	Ukraine	1	0

Question 3: legal and practical problems encountered as regards ETS 167

Among the legal and practical problems encountered as regards the implementation of the Additional Protocol to the Convention on the transfer of sentenced persons, the following were mentioned (in decreasing order from most to least mentioned):

- Length of proceedings
- Refusal due to lack/withdrawal of consent by the prisoner concerned
- Some States decline a request for transfer if the request is based on an expulsion or deportation order which is not consequential to the sentence imposed (see the wording in Article 3 para 1 of the additional Protocol)
- many States which are the States of origin of those individuals that may be returned to their own countries to serve the sentence where an expulsion order is provided for by the law to be executed after the sentence be fully served, are very reluctant to receive detainees (due to financial implications)
- The Ministry of Justice of Ukraine under Article 2 of the Protocol considered the case on the transfer of the execution of the Ukrainian court's judgment, execution of which in Ukraine was postponed on the ground of probation, which was further cancelled by Ukrainian court, because of the non-fulfilment by the sentenced person of an obligation to adhere to the probation. After cancelation of probation the Ministry of Justice of Ukraine requested to a foreign State to take over the execution of an actual sentence, but the request of the Ministry

¹⁰ No specific figures on ETS 167. See table 1

¹¹ No specific figures on ETS 167. See table 1

¹² No specific figures on ETS 167. See table 1

¹³ Figures about the number of requests received or sent are not available.

of Justice of Ukraine was refused by a foreign State, as the Additional Protocol and its Explanatory Report do not clearly provide for, whether it is possible in such case to apply Article 2 of the Additional Protocol.

Question 4: Proposals for improvement as regards ETS 167

The proposals for improvement as regards the functioning of the Additional Protocol to the Convention include:

Proposals to develop additional standards:

- It should be considered to change Article 3 para 1 of the Additional Protocol by deleting "consequential to that sentence".(Austria)
- Questions related to (best/ better chances for) rehabilitation in the sentencing/administering State should be discussed and the elaboration of guidelines/ a recommendation (?) considered. (Austria)
- It should be discussed whether time limits should be introduced as regards replies to requests for transfer as it is the case with for instance the EU Council Framework Decision on recognition and enforcement of sentences. (Denmark)
- It might be wise to shorten the duration of the transfer procedure as well as the execution of transfers, specifying time limits. For example, in so far as the Convention provides that at least six months of the sentence should remain to be served, it might be envisaged that the transfer procedure should not exceed that duration or even that the transfer procedure should be concluded within 3 months after the lodging of the request for transfer. Where time limits for the execution of transfers are concerned, modelling them on the extradition procedure might be envisaged.(Switzerland)

Proposals regarding procedures and process management:

- it might be useful to make arrangements, which describe which elements of the sentence are essential to realise the transfer of a person.(Netherlands)
- Discuss situation when requested state does not consent to a transfer.(Norway)
- A discussion on the implementation of the Additional Protocol and the expectations on States that ratify the Protocol would perhaps be helpful. (Sweden)
- establishing bilateral contact points in the Member States of the Council of Europe could benefit the process in these cases.(Denmark)