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**EUROPEAN COMMITTEE ON CRIME PROBLEMS
COMITÉ EUROPÉEN POUR LES PROBLÈMES CRIMINELS
(CDPC)**

**COMMITTEE OF EXPERTS
ON THE OPERATION OF EUROPEAN CONVENTIONS
ON CO-OPERATION IN CRIMINAL MATTERS**

**COMITÉ D'EXPERTS
SUR LE FONCTIONNEMENT
DES CONVENTIONS EUROPÉENNES DANS LE DOMAINE PÉNAL
PC-OC**

**COMPENDIUM OF ANSWERS TO THE QUESTIONNAIRE
ON JURISDICTION AND TRANSFER OF PROCEEDINGS**

***COMPILATION DES REPONSES AU QUESTIONNAIRE
SUR LA COMPETENCE JUDICIAIRE ET LA TRANSMISSION DES PROCEDURES***

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QUESTIONNAIRE (ENGLISH)

Introduction

The first objective of this questionnaire is to gather information about the application (or the lack of it) of the Council of Europe's existing instruments on the 'transfer of proceedings'. The second is to obtain the member states' points of view regarding the need for the development of a new instrument in this field or for initiatives to improve the effectiveness of the current instruments.

For the first objective detailed statistics are not necessary. It is more important to indicate legal or policy-related reasons for the ways in which the instruments are (not) used. To this end, some indication of the number of outgoing and incoming requests for the transfer of proceedings, the laying of information and / or the application of the 'aut dedere, aut judicare'-principle over the past few years should be sufficient to give a clear view of the practical application of the instruments.

The term 'transfer of proceedings' covers roughly three variants. The questionnaire reflects this division.

The first is the 'real' transfer of proceedings as regulated by the 1972 European Convention *on the Transfer of Proceedings in Criminal Matters* (CETS No. 073). A 'proper' transfer of proceedings is in essence a transfer of jurisdiction. Upon agreement to transfer a case, the requesting party will lose its original forum to prosecute the matter, while the requested party will acquire procedural jurisdiction over a case that was 'built' abroad. A transfer of proceedings may require a treaty basis.

The 1972 Convention has not been very successful in terms of ratification. Out of 47 member states, 25 have ratified the instrument. 10 other member states have signed it. The reasons for not ratifying the instrument that existed in the '70s are perhaps no longer relevant in 2011. Other member states however may (still) have very fundamental reasons for not signing or ratifying this particular instrument. In part the questionnaire aims to assess the fundamental reasons against accession to this particular instrument or even against the very concept of the 'transfer of proceedings'.

On the other side of the spectrum, Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters provides for the mere possibility to *lay information* to another state. The laying of information does in no way create obligations. There is no transfer of jurisdiction and thus a maximum level of appreciation lies on the requested state's side. In fact, the laying of information does not usually require a treaty basis. The flexibility of this type of co-operation is also its inherent weakness. Anything that cannot be prosecuted can be deferred to the state that seems to be competent on the basis of the nationality of the perpetrator, the victim or the (partial) location of the offence for instance. On the receiving end, such transmissions can easily be disposed of.

The laying of information is probably widely used. At the same time one could question whether the high volume of requests matches the expected results. Maybe only a fraction of the requests under Article 21 actually lead to the prosecution of the offence. It is important to obtain information on the follow-up to such requests.

A third, intermediate, situation concerns, the 'aut dedere, aut judicare' principle for cases of the refusal of the extradition of nationals. This principle is laid down in Article 6§2 of the 1957 Convention on Extradition. The 'transfer' of the proceedings is a possible consequence of the refusal of an extradition because of the nationality of the person sought. The principle implies an obligation to assess the legal possibilities to prosecute.

Some member states do extradite their nationals, even unconditionally, which means that the 'aut dedere, aut judicare' principle is never applied or is applied only in cases of refusal of extradition on (certain) other grounds. One of the questions related to this type of 'transfer of proceedings' is about the possibility of widening the scope of the principle. Other grounds of refusal could be envisaged which would 'trigger' the application of the principle.

The answers to the questionnaire should not be limited to legal reasons (limited extraterritorial jurisdiction, double criminality and double lapse of time, evidence requirements, etc.) for not applying

either one of the three types of 'transfer', but should also cover practical issues such as budget constraints, translation issues, the incompleteness of transferred case files or domestic policy regulations, for instance with respect to 'de minimis cases' or prosecutorial priorities.

* * *

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?
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?
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?
 - 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)?
 - c. Can you provide an indication of the 'success-rate'?
 - d. What legal and / or practical obstacles have you faced in the implementation of the Convention?
 - e. What are the considerations that motivate the decision to request a transfer of proceedings rather than to pursue a domestic prosecution?
 - 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?
 - g. Do you see any scope for the improvement of the provisions of the Convention and / or its practical implementation?

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*:
 - a. How frequently is the possibility to transmit information to another State Party used by your authorities?
 - 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)?
 - c. What are the considerations that motivate the decision to utilise Article 21 (ETS No. 30) rather than to pursue a domestic prosecution?
 - 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.
 - 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?

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.
 - 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?
 - c. Is this principle implemented in your internal 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?
 - 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?
 - f. Have you had any problems regarding the ‘ne bis in idem’ principle?
 - 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?

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

QUESTIONNAIRE (FRANÇAIS)

Introduction

Le présent questionnaire a pour premier objectif de réunir des informations sur l'application (ou la non-application) des instruments existants du Conseil de l'Europe sur la « transmission des procédures ». Son deuxième objectif est d'avoir le point de vue des Etats membres sur la nécessité d'élaborer un nouvel instrument dans ce domaine ou sur celle d'initiatives permettant d'améliorer l'efficacité des instruments actuels.

S'agissant du premier objectif, des statistiques détaillées ne sont pas nécessaires. Il est plus important d'indiquer les raisons juridiques ou celles liées aux politiques pour lesquelles les instruments (ne) sont (pas) utilisés. A cette fin, des indications sur le nombre de demandes de transmission de procédures adressées et reçues, la dénonciation et/ou l'application du principe « *aut dedere, aut judicare* » ces dernières années devraient être suffisantes pour avoir une vision claire de l'application pratique des instruments.

L'expression « transmission des procédures » recouvre schématiquement trois variantes, ce dont le questionnaire tient compte.

La première variante est la transmission « réelle » des procédures telle qu'elle est réglementée par la Convention européenne de 1972 *sur la transmission des procédures répressives* (STCE n° 073). Une « bonne » transmission des procédures est essentiellement un transfert de compétences. Lorsqu'elle accepte de transmettre une affaire, la partie requérante n'est plus compétente pour poursuivre, alors que la partie requise acquiert la compétence procédurale sur une affaire « engagée » à l'étranger. Une transmission des procédures peut exiger une base conventionnelle.

La Convention de 1972 n'a pas été un succès en termes de ratification. Vingt-cinq des 47 Etats membres l'ont ratifiée. Dix autres Etats membres l'ont signée. Les raisons de ne pas ratifier l'instrument invoquées dans les années 1970 ne sont peut-être plus valables en 2011. D'autres Etats membres peuvent cependant (toujours) avoir de bonnes raisons de ne pas signer ou ratifier cet instrument. Le questionnaire vise en partie à analyser les raisons fondamentales qui s'opposent à l'adhésion à cet instrument particulier, voire à la notion même de « transmission des procédures ».

A l'autre extrémité du spectre, l'article 21 de la Convention européenne d'entraide judiciaire en matière pénale de 1959 prévoit la simple possibilité *d'adresser une dénonciation* à un autre Etat. La dénonciation ne crée aucune obligation. Il n'y a pas de transfert de compétences et l'Etat requis dispose donc d'une marge d'appréciation maximale. En règle générale, la dénonciation n'exige pas de base conventionnelle. La souplesse de ce type de coopération réside aussi dans sa faiblesse intrinsèque. Un acte ne pouvant donner lieu à des poursuites peut être soumis à l'Etat qui semble compétent en fonction de la nationalité de son auteur, de la victime ou du lieu (partiel) de l'infraction par exemple. De l'autre côté, il est facile de rejeter ces transmissions.

La dénonciation est probablement très largement utilisée. Parallèlement on peut se demander si le nombre élevé de demandes est à la mesure des résultats attendus. Il se peut qu'une fraction seulement des dénonciations prévues à l'article 21 débouche sur des poursuites effectives. Il importe d'avoir des informations sur les suites données à ces dénonciations.

Une troisième situation intermédiaire concerne le principe « *aut dedere, aut judicare* » en cas de refus d'extradition de ressortissants. Ce principe est énoncé à l'article 6, paragraphe 2 de la Convention d'extradition de 1957. La « transmission » des procédures est une conséquence possible d'un refus d'extradition fondé sur la nationalité de la personne recherchée. Le principe suppose une obligation d'évaluer les possibilités juridiques de poursuites.

Certains Etats membres extradent leurs ressortissants, même sans condition, ce qui signifie que le principe « *aut dedere, aut judicare* » n'est jamais appliqué ou ne l'est qu'en cas de refus d'extradition pour (certains) autres motifs. L'une des questions relatives à ce type de « transmission des procédures » porte sur la possibilité d'élargir le champ d'application du principe. D'autres motifs de refus « déclenchant » l'application du principe pourraient être envisagés.

Les réponses au questionnaire ne devraient pas se limiter aux raisons juridiques (compétence extraterritoriale limitée, double incrimination et double laps de temps, exigences en matière de preuves, etc.) de ne pas appliquer l'un des trois types de « transmission », mais devraient aussi porter sur des questions pratiques comme les contraintes budgétaires, les problèmes de traduction, le caractère incomplet des dossiers des affaires transmises ou des réglementations internes, par exemple en ce qui concerne les « affaires de minimis » ou les priorités en matière de poursuites.

* * *

A. Bonne transmission des procédures en application de la Convention européenne sur la transmission des procédures répressives (STE n° 73)

1. Si votre Etat n'est pas Partie à la Convention européenne de 1972 sur la transmission des procédures répressives, quelles sont les raisons de la non-ratification ? L'effet de la Convention sur la compétence judiciaire pose-t-il un problème ?
2. Votre Etat est-il en mesure de transmettre des procédures (et d'accepter de telles transmissions) sans base conventionnelle, c'est-à-dire sur la base de la législation interne et/ou sur celle de la réciprocité ?
3. Si votre Etat est Partie à la Convention européenne sur la transmission des procédures répressives :
 - a. A quelle fréquence appliquez-vous la Convention en tant qu'Etat requérant et en tant qu'Etat requis ?
 - b. Quels types d'affaires traitez-vous le plus souvent (s'agissant par exemple du type d'infraction et/ou de la sanction minimale et maximale infligée) ?
 - c. Pouvez-vous donner une indication du taux de réussite des transmissions ?
 - d. Quels obstacles juridiques et/ou pratiques avez-vous rencontrés dans l'application de la Convention ?
 - e. Quelles sont les considérations qui motivent la décision de requérir une transmission de procédure plutôt que d'engager des poursuites internes ?
 - f. Avez-vous appliqué l'article 8, paragraphe 2, de la Convention, c'est-à-dire avez-vous requis ou accepté de poursuivre une personne étant définitivement condamnée ? A cet égard : avez-vous rencontré des problèmes concernant l'application du principe 'ne bis in idem' découlant de l'article 35 de la Convention ?
 - g. Pensez-vous que les dispositions de la Convention et/ou son application pratique pourraient être améliorées ?

B. Dénonciation en application de l'article 21 de la Convention européenne d'entraide judiciaire en matière pénale de 1959 (STE n° 30)

4. En ce qui concerne le recours à l'article 21 de la Convention européenne d'entraide judiciaire en matière pénale de 1959 relative à la *dénonciation* :
 - a. A quelle fréquence les autorités de votre pays recourent-elles à la possibilité de transmettre des informations à un autre Etat partie ?
 - b. A quel pourcentage estimez-vous le nombre d'affaires pour lesquelles ces dénonciations donnent lieu à des mesures concrètes de la part de/dans la Partie requise, compte tenu de l'obligation de cette Partie de faire connaître la suite donnée à cette dénonciation (article 21, paragraphe 2) ?
 - c. Quelles sont les considérations qui motivent la décision de recourir à l'article 21 (STE n°30) plutôt que d'engager de poursuites internes ?
 - d. Rencontrez-vous des obstacles juridiques ou pratiques dans les suites à donner aux dénonciations adressées par une autre Partie en vue de poursuites pénales (y compris la phase préalable au procès ou de détention provisoire) de votre pays ? Veuillez préciser.
 - e. Avez-vous rencontré des problèmes concernant l'application du principe 'ne bis in idem', que ce soit en tant qu'Etat requérant ou requis ?

C. Transmission de procédures comme alternative à l'extradition : application du principe « *aut dedere, aut judicare* » en vertu de l'article 6, paragraphe 2 de la Convention européenne d'extradition (STE n° 24)

5. S'agissant de l'obligation d'extrader ou de poursuivre (*aut dedere, aut judicare*) énoncée à l'article 6, paragraphe 2 de la Convention européenne d'extradition de 1957 (STE n° 24) :
- a. Merci de donner des informations sur la fréquence avec laquelle ce principe est mis en pratique lorsque votre Etat n'accorde pas l'extradition ou lorsque votre demande d'extradition est refusée par l'Etat requis.
 - b. Appliquez-vous le principe *aut dedere, aut judicare* exclusivement dans les limites prévues à l'article 6, paragraphe 2 de la Convention d'extradition, c'est-à-dire dès lors que l'extradition a été refusée *uniquement au motif de la nationalité* ou élargissez-vous son application à d'autres motifs de refus ?
 - c. Ce principe est-il appliqué en droit interne ?
 - d. Quels sont les principaux obstacles à l'application de ce principe et pensez-vous qu'il soit nécessaire d'y remédier au moyen de normes ayant, ou n'ayant pas, force contraignante ?
 - e. Votre pays envisage-t-il de modifier son droit interne en ce qui concerne le champ d'application du principe *aut dedere, aut judicare* ? Dans l'affirmative, dans quel sens et dans quelle mesure ?
 - f. Avez-vous rencontrés des problèmes concernant l'application du principe 'ne bis in idem' ?
 - g. Pouvez-vous appliquer, et appliquez-vous, l'article 6, paragraphe 2, concernant les personnes déjà condamnée et/ou les personnes reconnues coupables auxquelles l'extradition est refusée au motif de la nationalité ou pour un autre motif, ou exigez-vous une base juridique de nature conventionnelle supplémentaire pour exécuter un jugement étranger contre une personne condamnée ?

D. Questions générales

6. Pensez-vous que le Conseil de l'Europe devrait, en complément des normes existantes, agir en vue du règlement des conflits de compétence négatifs ou positifs ou élaborer des recommandations/lignes directrices pour améliorer leur mise en œuvre ?
7. Veuillez détailler votre réponse pour ce qui est de la « bonne » transmission des procédures (Convention sur la transmission des procédures), de la dénonciation (article 21, Convention européenne d'entraide judiciaire en matière pénale) et du principe *aut dedere, aut judicare* (article 6, paragraphe 2, Convention d'extradition).
8. Veuillez indiquer, le cas échéant, toute remarque, information ou proposition pertinente pour les thèmes couverts par le présent questionnaire.

CHAPTER A / CHAPITRE A

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

ALBANIA / ALBANIE

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?

Not applicable

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?

Yes. There is no legal obstacle for Albania to accept the transfer of proceeding on the basis of reciprocity, according to domestic legislation. But there are some difficulties for Albania to request the transfer proceedings to other states to fulfill the conditions required according to their domestic legislations.

The transfer of proceedings is regulated by the Criminal Procedure Code, complemented by Law No.10 193, dated 3.12.2009 "On Jurisdictional Relations with Foreign Authorities in Criminal Matters", applicable by 14.02.2010.

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

Albania is party to the European Convention on the Transfer of Proceedings in Criminal Matters ratified by the Albanian Parliament by Law N.8497, date 10.06.1999.

The problem consists in the fact that not all the European countries are party to this Convention. This means that in many cases, if there is no bilateral agreement, the requests will be based on the principle of reciprocity and on domestic legislations, which sometimes have different provisions on the procedure to be followed or sometimes the acts have to be translated in the language of the requested party that can create difficulty in the correct translation of voluminous files.

Another problem regarding the implementation is the lack of updated information by the requested state on the progress of the proceeding or its final results.

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

This Convention has been applied by Albania as requesting state in few cases, at an average of 5 cases per year and 1 or 2 cases per year as a requested state.

Mostly we apply the Convention as requesting State in all the cases when the proofs and evidences are found in the territory of the other neighbor 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)?

The types of cases most often dealt with are those relating to organized crimes (mostly trafficking of drugs or human beings) and those on murders, punishable at maximum by 20 years imprisonment.

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

We have information on the acceptance of our requests for transfer of proceeding, but we have no information on the results of these proceedings, as a requesting state.

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

Referring to practical obstacles, we have faced some difficulties providing the translation of voluminous files according to reserves of some the states for their languages.

Regarding article 16 par 2, we state that not in all cases we get updated information on the progress of the proceedings transferred.

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

i- The extradition of the prosecuted subject has been refused by the requested state because of its nationality, of an asylum application;

ii- The suspected subject has his residence in the requested state, when the subject is being prosecuted in both states at the same time for the same criminal offenses and when the transfer of proceeding serves a due legal process;

- 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?

Yes we have mostly applied article 8 paragraph 2 of the convention. We do not have any case to have accepted the prosecution of a person who is finally sentenced, but we have 1 or 2 cases, where the requested state of extradition after the refusal, suggested Albania should transfer the proceeding after the refusal of Albanian citizens, considering the decision given in absentia by the Albanian court as not executable. This suggestion was not accepted because it would cause the breach of the "ne bis in idem" principle and the Albanian Constitution as well. We have not encountered any problem with respect to the application of the principle of "ne bis in idem" under article 35 of the Convention.

- g. Do you see any scope for the improvement of the provisions of the Convention or its Practical implementation?

Improvement of its practical implementation would be necessary.

Given the fact that according to this Convention (pursuant to article 21), the requesting state cannot follow the proceeding against the suspected subject, the requested state should inform the requesting state according to the provisions of article 16, not only on the decision of registration of this proceeding, but also on the final decision and resolution of this case.

If no information can be given for a long period of time, then we probably can't be sure of the efficiency of transfer of the proceeding.

ARMENIA / ARMENIE

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

The European Convention on the Transfer of Proceedings in Criminal Matters was signed by the Republic of Armenia on November 8, 2001, and ratified on March 18 2009.

In case when the Republic of Armenia receives the request on the transfer of proceedings from the country which has not acceded to the European Convention on the Transfer of Proceedings in Criminal Matters, and at the same time there are no bilateral or multilateral international agreements with the given country, then the transfer of proceedings implements with the relevant articles of the Chapter 54.1 of The Criminal Procedure Code of the Republic of Armenia.

Particularly, in the absence of international agreement between the Republic of Armenia and foreign country about legal assistance on procedural actions in criminal matters, assistance between the competent state bodies and officials of the given country and the court, prosecutor, investigator, investigation body of the Republic of Armenia may be granted in exceptional cases on the basis of reciprocity by the agreement on legal assistance reached through the diplomatic channels, which would be previously agreed:

- 1) with the Ministry of Justice of The Republic of Armenia concerning to the procedural activities on judicial proceedings in criminal matters and implementation of the sentences.
- 2) with the Prosecutor General's Office of the Republic of Armenia concerning to the procedural activities on the cases in pre-trial stage.

The abovementioned communication and mutual legal assistance between the competent state bodies and the officials of the foreign country and the court, prosecutor, investigator and investigation body of the Republic of Armenia continued until the conclusion of an international bilateral agreement or ratification of the multilateral international treaty on the mutual legal assistance in criminal matters by both countries.

AUSTRIA / AUTRICHE

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?
Austria is Party to the above-mentioned Convention.
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?
Yes, on the basis of the principle of reciprocity.
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?
There are no specified statistical data on the legal basis of requests for transfer of proceedings. Taken all requests together, i.e. requests on the basis of the Convention and requests under Article 21 of the 1959 Convention you get the following figures:

Year	2006	2007	2008	2009
Austria as requesting state	760	819	959	1016
Austria as requested state	214	147	88	132

- 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)?
Most of the cases deal with minor crimes which do not reach the threshold to take the suspect into preliminary custody.
- c. Can you provide an indication of the 'success-rate'?
Unfortunately there are no precise statistical data on this question available. It can be stated however, that in the vast majority of cases the requested State complies with the request by instituting domestic proceedings.
- d. What legal and / or practical obstacles have you faced in the implementation of the Convention?
The most important obstacle is the low number of ratifications by MS of the CoE.
- e. What are the considerations that motivate the decision to request a transfer of proceedings rather than to pursue a domestic prosecution?
Usually it is the place of evidence or the suspect being in his/her home-country again.
- 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?
Cases under Art 8 para 2 have rarely been noticed. The provision of Art 35 has also been transferred to Austrian domestic law.
- g. Do you see any scope for the improvement of the provisions of the Convention and / or its practical implementation?
Direct communication between the judicial authorities would be a great achievement.

AZERBAIJAN / AZERBAÏDJAN

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

1. Despite the fact that Azerbaijan joined to the European Convention on "The Transfer of Proceedings" (1972), it has not ratified it yet.
2. The Azerbaijan legislation does not provide the transfer of proceedings if there is not the treaty between Azerbaijan and the Requesting State.

BELGIUM / BELGIQUE

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?

Belgium has not yet ratified the 1972 Convention. The reasons for this non-ratification – at least initially - date back from the '70ies. Not unlike the 1970 International Validity Convention, the 1972 Convention was ahead of its time. In its turn this explains the reluctance that existed – and still persists to exist in some member states – to ratify and apply the instrument.

Given the fact that the laying of information (B) is a rather flexible and successful *alternative* – despite not being a legal alternative at all – there is a lack of a perceived 'need' or 'necessity' to ratify the 1972 Convention.

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?

No.

3. Not applicable

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

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?

Bosnia and Herzegovina is a member of the European Convention on the Transfer of Proceedings in Criminal Matters.

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?

Yes. Namely, the Law on International Legal Assistance in Criminal Matters of Bosnia and Herzegovina, which regulates the manner and procedure of providing international legal assistance in criminal matters, does not contain an explicit ban on the transfer of proceedings, unless it is otherwise determined by a bilateral agreement. Regarding that, this transfer is made on the basis of reciprocity, and it has already become a common practice with the countries with which Bosnia and Herzegovina has not concluded bilateral agreement that would regulate this area.

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?

Since the countries of the region, with which Bosnia and Herzegovina has the greatest extent of international legal assistance, as well as the other state members of the Council of Europe are parties to this Convention, provisions of the Convention are applied in more than a half of the total number of cases. However, it can be noted that in this area certain authorities, both domestic and foreign, rather apply bilateral agreements, which are more restrictive in relation to the Convention. In that regard, Ministry of Justice of Bosnia and Herzegovina recommends application of the Convention in all cases, where possible.

- 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)?

Generally, there is a wide range of criminal offences where there is no possibility to conduct procedure in the country where the criminal offence was committed, but with regards to the sentence there are restrictions provided by Convention, as well as by bilateral agreements. Therefore, even proceedings for the most serious criminal offences are transferred if there is no possibility to extradite the perpetrator or to hold trial in the country where the offence was committed (Bosnia and Herzegovina).

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

In principle, proceedings itself take a longer period of time, which is reflected through the phase of transfer of criminal prosecution, its taking over by the other country and conducting of

the proceeding by the country that has taken over the proceeding. These proceedings are transferred, in principle, in 90% cases, and proceeding is ended by final and binding court decision after a year or even longer period, so that total success rate can be traced only through a longer period of time (several years), and only after the state that has taken over the prosecution informs Bosnia and Herzegovina that the proceeding is completed in that country. However, there are cases where the person convicted in other country requires, on the basis of the Convention on the Transfer of Sentenced Persons, to serve sentence in Bosnia and Herzegovina.

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

Main obstacle is of the practical nature, and is reflected in the fact that authorities which transfer criminal prosecution do not quite understand relation between domestic legislation and the Convention. Ministry of Justice of Bosnia and Herzegovina, as the central authority, constantly underlines the fact that domestic law is applied only in cases when it is not stipulated otherwise by an international agreement (this is regulated by Article 1 paragraph 1 of the Law on International Legal Assistance in Criminal Matters). Therefore, the Convention has primacy over domestic legislation, so that all restrictions related to the transfer of criminal prosecution in Bosnia and Herzegovina do not have the effect abroad.

- 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 reason is the unavailability of a person to the criminal prosecution authorities. Other reasons are usually related to the country that wants to take over the prosecution, especially if a national of that country is concerned. One of the very often reasons is also the higher amount of evidence material in another country.

- 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?

This Article is fully understandable to the Ministry of Justice of Bosnia and Herzegovina, and the Ministry provided and still provides its opinion in order to encourage transfer and taking over of the criminal prosecution in the situations when it is not possible to execute sanction in relation to the convicted person. Since the courts are independent in their work, it often happens that this position is disregarded, and so it is claimed that there is no possibility of exception to the rule „ne bis in idem“. For this reason, there is no such case where criminal prosecution was transferred or taken over on these basis, with the note that we believe that the opinion of judicial office holders has matured in terms that in concrete situations provision of this Article should be applied in a manner suggested by the Ministry of Justice of Bosnia and Herzegovina.

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

Eventually, clearer definition of certain provisions, and especially provisions of the Article 8 paragraph 2, in a manner that enables every practitioner to act in accordance with it.

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

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?

The Czech Republic is a State Party.

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?

The Czech Republic can take over the criminal proceedings from another State without a treaty basis – on the basis of domestic legislation (section 447 of the Czech Criminal Procedure Code) and reciprocity (prescribed by section 376(1) of the Czech Criminal Procedure Code). Section 447(1) of the Czech Criminal Procedure Code gives this possibility only in cases of criminal offences committed in the territory of the requesting State by the Czech national. The Czech Republic can transfer the criminal proceedings to another State without a treaty basis – on the basis of domestic legislation (Section 448 of the Czech Criminal Procedure Code). Section 448(1) of the Czech Criminal Procedure Code gives this possibility only in cases of criminal proceedings conducted for criminal offences committed in the territory of the Czech Republic if the suspect is a foreign national or criminal offences committed by such a person in the territory of a foreign State; criminal proceedings can be transferred to the State of nationality of the suspect or to the state of locus delicti commissi.

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?

The Convention is often used in our practice, especially towards the Slovak Republic and Ukraine. We have dozens of cases each year, both as the requesting State and as the 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)?

The most frequent types of offences are neglect of compulsory maintenance, road traffic criminal offences, theft, fraud, embezzlement. The maximum imposable term of imprisonment usually does not exceed five years.

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

The vast majority of the request for transfer of criminal proceedings is accepted, i. e. the criminal proceedings are taken over, in both directions (i. e. both requests from and requests to the Czech Republic). "Success" of the criminal proceedings in the requested state is another story. The authorities of the requested States often terminate the criminal proceedings for lapse of time (statutes of limitations), lack of dual criminality or because the offender cannot be located in the requested State.

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

An important practical problem is the necessity to translate the whole file into the language of the requested state.

Too daring concept of subsidiary jurisdiction under Article 2 of the Convention and too wide set of conditions for transfer in Article 8(1) of the Convention. Legal practice in the Czech Republic has a problem to accept the concept of subsidiary jurisdiction. It seems that the concept has never been used and in fact criminal proceedings are being taken over on the basis of the Convention only if the act constituting a criminal offence falls into the own jurisdiction of the Czech Republic (usually the principle of active personality).

Another problem is the lapse of time (statutes of limitations) if the requested State counts the limitation period from the time when the offence had been committed and fails to recognize procedural acts of the requesting State as interruptive acts vis-à-vis the limitation period.

Also re-transfer of criminal proceedings, i. e. if the requested State, having taken over criminal proceedings, transfers those criminal proceedings back to the originally requesting State, instead of trying to reach agreement under Article 12(2)(c) of the Convention.

Not really clearly regulated "grey zone" between sending of the request to the requested State and decision of the requested State on the request in Article 21(1) of the Convention, especially as regards the possibility of the requesting State to perform certain acts in criminal proceedings, continue in search for the perpetrator abroad for the purposes of extradition etc.

Unclear scope of application of Article 26(2) of the Convention in relation to the exclusion in Article 11(f) of the Convention.

Not really clearly regulated relationship to other conventions in Article 43(1) of the Convention.

Some practitioners do not read the Convention up to Article 47 and then they are surprised by the fact that the Convention regulating transfer of criminal proceedings, i. e. a procedural matter, has such provision on time applicability.

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

It is crucial to consider whether the purposes of criminal proceedings can be achieved better in the requested State. In this sense Czech domestic regulations impose on public prosecutors a duty to take into consideration, before requesting transfer of criminal proceedings to another State, in particular the following:

- a) whether it is possible to attain extradition or surrender (under the European arrest warrant) of the accused person to the Czech Republic,
- b) fulfillment of conditions for transfer under applicable international treaty, Criminal Procedure Code or other legal regulations and, if there is no international treaty in force between the Czech Republic and the foreign State, also experiences from the mutual relations between the Czech Republic and the foreign State as regards transfer of criminal proceedings,
- c) whether all available evidence has been gathered, possibly also through a request for mutual legal assistance,
- d) whether there is general interest in punishing the suspect or accused person in the Czech Republic or vice versa in the foreign State, following from the particular facts of the case,
- e) personal situation of the suspect or accused person,
- f) whether the transfer would violate international commitments of the Czech Republic in the area of protection of Human Rights,
- g) possibilities of the foreign State to conduct criminal proceedings in the given matter,
- h) whether the suspect or accused person has his/her place of residence in the territory of the foreign State,

- i) whether division of criminal proceedings conducted against more suspects or accused persons would be feasible and whether it would not lead to failure of evidence and the criminal proceedings as such,
 - j) whether all important witnesses and damaged persons/entities as well as other important evidence are located in the territory of the Czech Republic and whether transfer would not cause delays in obtaining their statements or such evidence,
 - k) whether the damaged person/entity would not be deprived of the possibility to claim their rights (e. g. for damages) because of the transfer,
 - l) whether authorities of the foreign State conduct criminal proceedings for the same facts,
 - m) whether there are things, other property values or property seized in criminal proceedings in the Czech Republic.
- 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?

As regards the Czech Republic as the requested State, there were some requests of one member state of the European Union invoking Article 8(2) of the Convention several years ago. The requests were not granted, as the Czech Republic has very wide implementation of the principle of ne bis in idem with regard to decisions of courts or other judicial authorities of other Member States of the European Union in Section 11(4) of the Criminal Procedure Code. This regulation is wider than Article 35 of the Convention or Article 54 of the Convention Implementing Schengen Agreement – e. g. as regards the judgments of convictions, the application of the principle of ne bis in idem is not limited by the condition that the penalty has already been enforced, is actually in the process of being enforced or can no longer be enforced under the law of the sentencing State. The same problem has been encountered also in cases when the Czech Republic was the requesting State, as certain other States (not Member States of the European Union) recognize the res judicata effects (i. e. apply the principle of ne bis in idem) of all foreign judgements [even if those judgements had not been recognized (exequatur) in those States].

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

It could be very useful to expressly provide that the obligation to translate the file has the requesting State; the burden associated with the transfer of criminal proceedings would thus be shared between both States more equally.

As regards other improvements of the provisions of the Conventions, see reply in point 3.d.

As for practical implementation of the Convention, perhaps a more practice-oriented Explanatory Report or another document (maybe a recommendation) providing practical comments on the provisions of the Convention would be useful.

DENMARK / DANEMARK**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?

Not applicable as Denmark is party to the Convention.

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?

Yes.

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?

There are no available statistics on the number of times the Convention has been applied as the requesting or the requested state. However, on the basis of our file records it is estimated that from 1 January 2011 until the present date the Convention has been applied approximately 8 times. In two of these cases Denmark was the requesting state pursuant to the Convention. In the remaining six cases Denmark was requested state pursuant to the Convention.

Please note, that Denmark is party to a Nordic prosecutors' general understanding about transfer of proceedings from February 1970. It is estimated that a substantial number of requests are made pursuant to this agreement.

- 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)?

There are no available statistics to give an indication of the typical type of case.

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

There are no available statistics on the result of initiated or requested transfer of criminal proceedings. However, it is the general impression that most cases, in which a transfer is requested, criminal proceedings are successfully transferred.

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

There are no available statistics to give an indication of the most common faced legal or practical obstacles.

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

The assessment of whether the request to transfer the proceedings in a specific criminal case is more suitable than to initiate domestic prosecution will be made on the basis of a range of specific characteristics identified on a case by case basis.

It will in this regard inter alia be given weight whether the perpetrator is no longer present on the territory of Denmark and whether the majority of important evidence and witnesses are present on the territory of another State.

The character of the criminal offence committed will also be assessed, and the transfer of proceedings in cases involving severe crime will normally not be considered.

It will finally be assessed whether the crime in question would create basis for a possible request to the courts to issue an unlimited or limited entry ban on the person if convicted. If this is the case a request for the transfer of proceedings is most likely not to be made.

- 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?

According to the information available there have been no registered cases in which applied article 8, paragraph 2, was applied.

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

At the present Denmark sees no specific need for action in this field.

ESTONIA / ESTONIE

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?

Estonia is a Party to this convention since 29.07.1997.

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?

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?

Estonia as requesting state send out:

2008 - 26 requests,
2009 - 10 requests
2010 - 11 requests.

Estonia as requested state received in:

2008 - 33 requests,
2009 - 12 requests
2010 - 39 requests.

- 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)?

Most often the computer related crimes as forging credit cards etc.

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

Most of the cases (about 80% of the request) are taken over.

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

Actually the biggest problem is the small number of parties to the Convention, not the implementation of Convention between states both already parties to that.

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

If there are reasoned grounds to believe that the person committed a crime is living/staying permanently in the requested country and most of the evidences etc are in this country.

- 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?

Estonia applies the 'ne bis in idem' principle.

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

FINLAND / FINLANDE

A. Proper transfer of proceedings under the European Convention on the Transfer of Proceedings in Criminal Matters (ETS 73)

1. Finland is not Party to the 1972 Convention on the Transfer of Proceedings in Criminal Matters. Apparently, the 1972 Convention was considered a bit complicated and not practical enough. It seems that non-ratification has not caused any particular problems, since there are other instruments that may be used instead and Finnish national law is flexible enough. The question whether to ratify the 1972 Convention has not been raised since 1970s. According to our understanding for many States the question of admissibility of evidence is a reason to ratify the Convention, but this is not the case with Finland where there is free evaluation of evidence.
2. There is a special Act on International Legal Assistance in Criminal Matters enacted in 1994. Pursuant to Article 1 of the Act the scope of legal assistance shall include, inter alia, requests on "institution of criminal proceedings". Finland can accept incoming requests without treaty basis and without reciprocity. Requests usually come via the Ministry of Justice (Central Authority). Furthermore, Chapter 1 of the Finnish Criminal Code regulates prosecution of offences committed outside the territory of Finland: As a main rule, charges for an offence which is committed abroad shall not be brought unless the Prosecutor General has ordered it. Normally, prosecution requires double criminality.
3. –

FRANCE

A. Bonne transmission des procédures en application de la Convention européenne sur la transmission des procédures répressives (STE n° 73)

1. Si votre Etat n'est pas Partie à la Convention européenne de 1972 sur la transmission des procédures répressives, quelles sont les raisons de la non-ratification ? L'effet de la Convention sur la compétence judiciaire pose-t-il un problème ?

Outre l'élargissement particulièrement important que la ratification d'une telle Convention aurait eu en matière de compétence, il doit être observé que le mécanisme institué par cet instrument

n'est pas spécialement adapté pour tenir compte des systèmes fondés sur le principe de l'opportunité des poursuites.

La France a ainsi estimé ne pas devoir signer la Convention européenne sur la transmission des procédures répressives, au motif notamment que sa législation nationale et les stipulations de la Convention européenne d'entraide judiciaire en matière pénale du 20 avril 1959 lui paraissent offrir un cadre à la fois suffisamment large pour permettre le transfert efficace de procédures pénales, et suffisamment souple de manière à préserver le principe fondamental de l'opportunité des poursuites et les règles nationales relatives à l'application de la loi pénale dans l'espace.

2. Votre Etat est-il en mesure de transmettre des procédures (et d'accepter de telles transmissions) sans base conventionnelle, c'est-à-dire sur la base de la législation interne et/ou sur celle de la réciprocité ?

Oui, la transmission de procédure est possible (dans le sens actif et passif) sans base conventionnelle, sur le fondement de la réciprocité, dès lors que les faits sont constitutifs d'une infraction pénale au regard de la législation nationale.

GEORGIA / GEORGIE

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?

Georgia is not Party to the European Convention on the Transfer of Proceedings in Criminal Matters of 1972. The reason is that in practice Georgia effectively applies Article 21 of the European Convention on Mutual Assistance in Criminal Matters and Article 6 of the European Convention on Extradition. During the last 4 years, there has been no case, when the requests under the provisions referred to above have not resulted in initiating investigation/prosecution either in Georgia or another State Party. Besides, Article 21 of the European Convention on Mutual Assistance in Criminal Matters and Article 6 of the European Convention on Extradition are broadly applied by the competent Georgian authorities at the time of cooperation with other State Parties. In addition, according to Article 2 of the law of Georgia on International Cooperation in Criminal Matters, Georgia can transfer/accept proceedings even in case of non-existence of a treaty basis for cooperation. Therefore, currently Georgia does not feel any need for the ratification of the European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 73).

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?

As mentioned above, Georgia is able to transfer proceedings (and accept such transfers) without a treaty basis. Namely, according to Article 2 of the law of Georgia on International Cooperation in Criminal Matters, in case of absence of the binding international treaty, Georgia can conclude *ad hoc* agreements with its foreign counterparts or cooperate with them on the basis of the reciprocity principle.

GERMANY

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?

Germany has neither signed nor ratified the Council of Europe Convention on the Transfer of Proceedings in Criminal Matters of 1972. The German judicial authorities use the provisions of Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters in order to submit requests to other States for the transfer of criminal prosecution. This runs smoothly with many States, which is why Germany has had and continues to have no reason to believe that the 1972 Convention, as an addition to the existing legal framework, should lead to any real improvements in practice.

With regard to the transfer of criminal prosecution, a fundamental distinction should be made between three possible scenarios: (1) The requesting State does have jurisdiction. It requests that another State take over the criminal prosecution. This constitutes a typical case for the application of Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters. (2) Both States have jurisdiction according to the applicable law. Strictly speaking, this is also not a case of criminal prosecution being transferred from one State to another. Rather, one State refrains from pushing ahead with its proceedings in favour of the other State. These possible scenarios can be solved without any problems also using Article 21 of the European Convention on Mutual Assistance in Criminal Matters. (3) The requested State does not have jurisdiction. In this case, jurisdiction is established only with the transfer of the criminal prosecution. Any such retrospective extension of national laws concerning the applicability of criminal law, as provided for by Article 2 of the Council of Europe Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972, would cause constitutional problems for Germany. This holds true in particular to the extent that this jurisdiction (i.e. the applicability of German criminal law) is tied to procedural circumstances that arise only after the offence. Unlike in other Member States of the European Union, the provisions in Germany of sections 3 et seqq. of the Criminal Code (*Strafgesetzbuch*, StGB) governing the applicability of criminal law are also subject to the strict ban on retroactivity stipulated by Article 103 (2) of the Basic Law (*Grundgesetz*, GG). Fundamentally, this means that German criminal law must already have been applicable at the time the offence was committed, and that such applicability may not be established simply by a subsequent transfer of proceedings or any other subsequently arising circumstances.

Furthermore, there is no discernable practical need for such provisions. The question of whether there is the need to establish jurisdiction by means of such transfer will potentially depend on the scope of the extraterritorial jurisdiction of the judicial system of the State in question. However, we believe that such provisions not only create new jurisdictions; they create new potential conflicts of jurisdiction as well.

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?

In Germany, the question of taking over criminal prosecution hinges on whether German law is applicable, since this is prerequisite to having the domestic competence to prosecute. If German law is applicable, the transfer can be effected without further regulation by a treaty. If Germany does not have the jurisdiction to prosecute, however, prosecution cannot be taken over either on a treaty or on a non-treaty basis (see response to question 1). As a rule, it is unlikely that a proposal will be made for another State to take over proceedings (on a non-contractual basis) because of the lack of prospect that this will succeed.

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

1. Greece has signed but has not ratified the aforementioned Convention. Ratification is now under consideration in view of the setting up of a legislative committee upon the incorporation of the EU Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings into Greek law.
2. In Greece, within the framework of international judicial cooperation in criminal matters, the 'European Convention on mutual legal assistance in criminal matters' (Strasbourg, 1959) is in effect and, unless there is a bilateral or a multilateral convention, the generally acknowledged principle of reciprocity also applies and by extension the provisions of articles 27 and following of the Code of Penal Procedure.
3. As above, in question 1.

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

1. The relevant Hungarian law, the Act No XXXVIII of 1996 on international legal assistance in criminal matters provides the possibility to cooperate with other States in criminal matters among judicial authorities (including judges, prosecutors, ministers of justice).

The Act shall be applied unless otherwise stipulated by an international treaty. If there is no treaty in force between Hungary and the other State, the Act can serve as a basis to co-operate, when the domestic legislation of the other State provides for the same possibility as to co-operate without any relevant treaty.

Thus Hungary can provide assistance concerning requests of transfer of proceedings without being Party to the European Convention on the Transfer of Proceedings in Criminal Matters (ETS No. 73).

Moreover, Hungary has a number of bilateral agreement on international legal assistance in criminal matters with other States which provide rules for transfer of proceedings and those provisions are still in force and frequently used.

2. Yes, see the answer given to point 1. Moreover, Hungary can provide assistance also on the basis of reciprocity. According to Act No XXXVIII of 1996 on international legal assistance in criminal matters, the minister (of justice) may request statements of reciprocity from Foreign States and may make such statements of reciprocity at the request of Foreign States. If there is no reciprocity, the minister or the chief public prosecutor shall reach a decision on the execution of requests for legal assistance submitted by foreign states in agreement with the minister of foreign affairs.
3. –

ICELAND / ISLANDE**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?

There are no specific reasons for the non-ratification, other than this Treaty simply hasn't been ratified yet. The reason for non-ratification is not because the effect of the Convention on jurisdiction is considered a problem. We are willing to look further into necessary ratification procedures.

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?

There is nothing in Icelandic legislation that prevents the possibility of transfer of proceedings. According to Article 25, Paragraph 3, of the Icelandic Act on Extradition of Criminals and other Assistance in Criminal Proceedings, No. 13/1984, extradition and other assistance in criminal proceedings is permitted under the Act even though Iceland is not obliged to provide such assistance under an agreement on these matters with the state involved.

Furthermore, it states in Article 5 of the Icelandic General Penal Code No. 19/1940:
„Penalties shall be imposed in accordance with the Icelandic Penal Code on account of offences committed by Icelandic citizens or residents of Iceland:-

1. If the offence was committed in a place outside the criminal jurisdiction of other States under International Law, provided that it was also punishable under the Law of the offender's home State;
 2. If the offence was committed in a place under the criminal jurisdiction of another State under International Law, provided it was also punishable under the Law of that State.“
3. *NA*

IRELAND / IRLANDE**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?

Ireland is not party to the European Convention on the Transfer of Proceedings in Criminal Matters. Ireland extradites its own nationals and residents. Ireland has no plan to ratify this Convention. Jurisdiction issues arise in relation to it, together with difficulties arising from different legal systems.

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?

NO.

- 3.

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

1. Italy is not a Party to the CETS 073. Due to the nature and characteristic of transnational crimes that might and indeed does create problems (see example made under para 1.5 of General remarks). Now Italian judicial authorities, mainly prosecutors do rely on Eurojust in cases where concurrent jurisdiction might come out, but: 1. that works only within the EU; 2. Italy does not have specific rules governing concurrent/conflicts of jurisdictions.
2. Italy would not be in a position to transfer proceedings in the absence of a treaty, because of mandatory prosecution provided for by its law and in the absence of provisions providing for transfer. The example made in para. 1.6. above though shows that a solution outside could be found, but the absence of specific provisions would make that depending on judicial/prosecution decisions that might differ each other in the State.
3. Italy is not a party to CETS 73.

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

1. Lithuania is a party to the European Convention on the Transfer of Proceedings in Criminal Matters of 1972.
2. Yes. In accordance with the provisions of national law, Lithuania shall have the right to apply for taking over of prosecution to another state or take over from another state the prosecution even in default of the international treaty.
3.
 - a. It should be noted that the Republic of Lithuania has concluded the bilateral international treaties of legal assistance with the States, with which legal cooperation in this field is the most intense. These international treaties contain the provisions governing the transfer of

proceedings; therefore, namely bilateral international treaties are usually applied in practice. In cases, where the State, with which the bilateral international treaty is concluded, is also a member of the European Convention on the Transfer of Proceedings in Criminal Matters of 1972, where applying to it as to transfer of prosecution or taking over prosecution from it, both aforementioned legal grounds could be applied or, arbitrarily, only bilateral international treaty or only the aforementioned Convention.

- b. The cases of transfer of proceedings in criminal matters are related to various crimes: minor crimes (for which the sentence does not exceed 3 years of deprivation of freedom), less serious crimes (the sentence of 3-6 years of deprivation of freedom), serious crimes (sentence of 6-8 years of deprivation of freedom). More common crimes are made in relation to property, property rights, and property interests (theft, fraud), criminal acts relevant to document falsification, criminal acts relevant to disposal of narcotic or psychotropic substances, violations of road traffic safety or vehicle operation rules are rather common as well. There are cases, when the act, as concerning which it is requested to take over prosecution, is deemed to be criminal in the requesting state.
- c. Approximately 80 percent of all requests to take over prosecution, submitted by Lithuania to other states based on the European Convention of 1972, are satisfied. Moreover, Lithuania takes over 70 percent of prosecution cases, transferred by other states as per the aforementioned Convention.
- d. Lithuania has not faced bigger problems in practice.
- e. Lithuania refers to other states as concerning takeover of prosecution, when a person, who has potentially committed a criminal act, is identified and when he is in a foreign state, however, the extradition or takeover of such person according to the European warrant of arrest to Lithuania is impossible or does not measure up to the principle of proportionality and when any and all possible steps of investigation of criminal act have been taken in Lithuania and when there are no reasons that would necessitate prosecution in Lithuania and not in a foreign state.
- f. In practice Lithuania did not has any cases of application of Article 8(2) of the European Convention of 1972.
- g. International legal cooperation applying the instrument of transfer of proceedings takes place rather smoothly. Lithuania upholds flexible position in consideration of requests for legal assistance of the foreign states to take over prosecution. In every single case, where making the decision on transfer / takeover of proceedings in criminal matters, Lithuania applies the most appropriate legal ground – Convention of the European Council, bilateral treaties, or such proceedings take place without regulation under the international treaty.

MOLDOVA

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?

The Republic of Moldova has ratified the European Convention on the Transfer of Proceedings in Criminal Matters of 1972, on 11.03.2006.

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?

The Republic of Moldova can accept requests of transfer of proceedings under national law and on the basis of reciprocity.

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?

As a requesting state, the Republic of Moldova did not applied this Convention, as a requested state, the Republic of Moldova applies the Convention very often.

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)?

The Republic of Moldova does not have such a statistics.

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

About half of the requests are executed, and the transfer of proceedings is made.

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

At national level, Moldova has some obstacles related to implementation of the Convention (lack of offense committed on foreign territories in the Criminal Code of the Republic of Moldova), but internationally it has not.

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

The absence of the person on the territory, where the criminal offence has been committed.

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?

The Republic of Moldova has accepted requests, the condemning of persons, in accordance with Moldovan legislation.

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

There is no suggestion or proposal.

NETHERLANDS / PAYS-BAS

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?

The Netherlands is a Party to the said Convention.

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?

Yes, but only when we have jurisdiction.

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?

Unfortunately it is not registered if a transfer of proceedings takes place on the basis of the Convention.

A general count shows that:

- in 2009: 145 cases were transferred to other States and 459 cases were taken over
- in 2010: 154 cases were transferred to other States and 532 cases were taken over

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)?

- theft
- fraud
- drugs (soft, hard, synthetic)

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

No (due to lack of clarity in registration).

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

A practical problem in taking over cases is that cases concern criminal acts that were often committed a considerable time before the request for transfer was received. It is very hard to prove a case if the criminal acts have been committed a long time ago. Sometimes undue delay can be an issue. It would be preferable if the request would be preceded by a summary of the case and a description of the evidence. This way a case that might be fit for transfer could be assessed quickly without making too many costs (translation).

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

A transfer should be in the interest of efficiency, e.g.:

- the suspect is already being detained in the other State
- the suspect is a national of the other State
- the most important evidence is already in the other State
- a possible judgment can not or only with great difficulty be executed in the Netherlands
- the suspect is already being prosecuted by the other State for different, or the same, criminal acts
- the convicted person has a better possibility for rehabilitation in the other State

A case will in general not be transferred when:

- the criminal act caused a great shock in Dutch society
- the accomplices can only be tried in the Netherlands
- the most important evidence is in the Netherlands and cannot be handed over
- the interest of the victim prevails above transfer

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?

This question concerns exceptional situations.

In these cases we prefer to convert a sentence on the basis of the European Convention on the International Validity of Criminal Judgments (1970) or the Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences.

Dutch law does however provide for a possibility to prosecute in the cases referred to in the question, when a person is irrevocably convicted abroad but has not or not completely served his sentence. This possibility has been put in practice.

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

As mentioned before, it would be a good idea if a request would 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 costs (translation).

When a State decides that it would dismiss a case, the Requesting State should be contacted. That State could subsequently decide to take the case back.

PORTUGAL

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

1. Si votre Etat n'est pas Partie à la Convention européenne de 1972 sur la transmission des procédures répressives, quelles sont les raisons de la non-ratification ? L'effet de la Convention sur la compétence judiciaire pose-t-il un problème ?

Portugal a signé mais n'est pas Partie de cette Convention. Les raisons de cette omission sont ignorées. Pourtant la transmission de procédures, voire de compétences, est pratiquée avec fréquence, en application de la loi interne qui prévoit cette forme de coopération internationale. Ainsi on peut dire que cette omission ne nuit pas à la pratique portugaise relative à la transmission de compétences/procédures.

2. Votre Etat est-il en mesure de transmettre des procédures (et d'accepter de telles transmissions) sans base conventionnelle, c'est-à-dire sur la base de la législation interne et/ou sur celle de la réciprocité ?

Oui, par application des articles 79 et suivants de la loi interne 144/99 du 31 août, qui peut être consultable à <http://www.gddc.pt/legislacao-lingua-estrangeira/francais/Lei%20144-99%20F%20rev.HTML>

- 3.

ROMANIA / ROUMANIE

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

1. Romania is party to the European Convention on the Transfer of Proceedings in Criminal Matters of 1972
2. We could accept such transfers without a treaty basis but only on the basis of reciprocity.

3.
 - a) We can't offer a number of requests, but anyway this type of requests represents approximately 1% of the total amount of request regarding international cooperation in criminal matters.
 - b) The most frequent offences related to these requests are theft, felony, forgery and car accidents.
 - c) The success rate is difficult to estimate but in most of the cases – maybe 90% - the request are approved and almost 15% of the cases go to court (if we talking about the transfer of criminal prosecution. The requests issued in trial stage are less frequent).
 - d) The legal obstacles which we face in the application of the Convention are related to the fact that some states are not parties to the Convention.
 - e) The reasons for requesting transfer of proceedings, rather than pursue a domestic prosecution, are related to the the offender's domicile on the territory of the requested state and therefore the difficult task to ensure his presence during criminal proceedings. Also, one of the main reasons is that the offender is a citizen of the requested state, which doesn't extradite its nationals.
 - f) We didn't apply the provisions of article 8 par.2 of the Convention because, in cases of persons already sentenced we apply the provisions of the European Convention on the International Validity of Criminal Judgements.
 - g) Regarding the practical implementation of the Convention we think that the cooperation would be much improved if the files transmitted along with the requests would contain accurate and complete information. Also it is important that the notification of the offences to be realised as soon as possible after the facts were committed.

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

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

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?

Yes, it can in accordance with Articles 458, 459 of the Criminal Procedure Code of the Russian Federation.

3. If your State is a 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?

Since the date of its coming into force for the Russian Federation (27 September 2008) the Convention was used by the Russian Federation as a requesting state on one occasion (a request to the Ukraine).

The Prosecutor General Office of the Russian Federation received from the competent authorities of foreign states 10 requests for criminal proceedings based on the Convention (6 – from the Ukraine, 2 from Bulgaria; 2 – from Latvia).

- 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)?

Most often the cases dealt with are based on the requests for criminal proceedings in connection with the crimes against the life and health (homicides, inflicting grave bodily injuries and other), crimes against ownership (theft, fraud, open stealing, assault with intent to rob).

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

On one occasion as a requesting State. On ten occasions as a requested State.

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

If a crime is committed in the Russian Federation by a foreign national who later left its territory, and his participation in the proceedings in Russia seems to be impossible, all the materials of the instituted and investigated criminal case will be forwarded to the competent authorities of the foreign state of the person's citizenship for his criminal prosecution.

- 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?

Since the date of the Convention coming into force for the Russian Federation (since 27 September 2008) paragraph f of Article 8 of the Convention has never been applied.

One of the reservations made by the Russian Federation when it ratified the Convention is as follows:

«The Russian Federation declares in accordance with paragraphs (h) of Appendix 1 to the Convention, that it will apply Part V of the Convention to the extent that this does not conflict with the principle of inadmissibility of a double conviction for the same crime».

The reservation with regard to the application of Part V of the Convention to the extent that this does not conflict with the principle of inadmissibility of a double conviction for the same crime is made to conform with the provisions of the Constitution of the Russian Federation (Part 1 Article 50) and the Criminal Code of the Russian Federation (Part 2 of Article 6) which set forth the *ne bis in idem* principle.

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

We believe it is necessary to work out a document within the Council of Europe which will set standards for the contents and form of the request for criminal proceedings.

From a practical point of view when forwarding the materials of a criminal case to the competent authorities of the requested State with the view of a criminal proceedings it would be helpful to indicate if there is a procedural decision on instituting a criminal case. In our opinion this will allow to determine without mistake the stage of the criminal proceedings in accordance with the legislation of the requested State and to avoid double receipt of evidence in the case provided earlier by the requesting State.

SAN MARINO / SAINT-MARIN

With reference to the "Questionnaire on jurisdiction and transfer of proceedings", prepared by the Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters within the European Committee on Crime Problems (CDPC) and received through diplomatic channels, the Department of Foreign Affairs of the Republic of San Marino, although for the time being a San Marino expert cannot take part in the activity of the CDPC, wishes to answer to the questions of the questionnaire, taking into account the importance of such fact-finding investigation in the Council of Europe's Member States.

In this regard, the following information is provided, on the basis of relevant indications received by the San Marino Court (criminal section) :

- As regards letter A) of the Questionnaire, the Republic of San Marino is one of those States which have not signed the European Convention on the Transfer of Proceedings in Criminal Matters of 1972. Therefore, given the fact that San Marino has not acceded to said Convention and has not any relevant domestic legislation in place, the Court has not yet transferred any criminal proceedings.

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

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?

Slovak Republic is a State Party of the European Convention on the Transfer of Proceedings in Criminal Matters.

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?

Slovak Republic is also able to transfer proceedings on the basis of reciprocity.

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?

As the requesting State the Slovak Republic has approximately 10 cases per month (120 cases per year 2010 and we expect the same or little bit higher number pre this year). As the requested State the Slovak Republic has 125 cases per year 2010.

- 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)?

Most frequently types of cases are offences against the property and human health (such as theft, fraud, robbery, harm injury) and the offence of neglect of compulsory maintenance. In principle the structure of offences in transfer of proceedings is similar to the general structure of offences in Slovak Republic.

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

The mostly part (about 95 %) of our requests are successfully accepted by the requested State.

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

Slovak Republic has not any obstacles concerning the implementation of above mentioned Convention.

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

Slovak authorities decide to request a transfer of proceedings in cases when is it not possible to successfully continue in domestic prosecution with application of other legal institutes of judicial

cooperation in criminal matters (such as extradition or mutual legal assistance). Its usually in cases when the suspected person is a ordinarily resident in the requested State, is a national of the requested State, is undergoing or is to undergo a sentence involving deprivation of liberty in the requested State.

- 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?

Yes, there are some cases where Slovak authorities apply Article 8, paragraph 2 of the Convention (statistics are not available). We did not encounter any problems with respect to the application of the principle of 'ne bis in idem'.

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

We consider that the current mechanism of the Convention is convenient and optimal, according Slovak opinion there is no reason for its change.
For the practical application could be beneficial the higher number of states which are State Parties of this useful instrument.

SLOVENIA / SLOVENIE

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?

The main reason for non ratification is quite complex and detailed mechanism of the convention,, which also gives the possibility for declarations and is not really users – practitioners friendly as well as circumstance that only few states actually ratified this instrument and apply it in practice. We did not see any added values, since the practice has shown that existing legal basis (1959 MLA Convention, principle of reciprocity as well as bilateral MLA treaties), provide sufficient legal basis for cooperation in this field. We did not see the effect of the Convention on jurisdiction as a problem, since Slovenian criminal system in general incriminates all forms (principles) of jurisdiction (territorial, universal, active and passive personality principle, reality principle).

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?

YES, both institutes of the transfer of criminal proceedings the active as well as passive form, is possible on the basis on principle of reciprocity - on the basis of domestic legislation

3. Not applicable.

SWEDEN / SUEDE

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?

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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?

Sweden may accept transfer of proceedings to and from Sweden under the European Convention on the Transfer of Proceedings in Criminal Matters, only in relation to those countries that are a party to the Convention (see 1 § Law on the international transfer of proceedings (1976:19)). It is however also possible to transfer proceedings on the basis of national law/reciprocity, see below.

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?

The Swedish system used for registration of filed cases of transfer of proceedings does not include information about the treaty/agreement on which the request is based. It is therefore difficult to give a precise answer to this question. However, according to our estimation, those cases are not more than one or two a year.

- 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)?

The most common types of offence are theft, assault and fraud.

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

The 'success-rate' in terms of convictions is fairly lower than that for national crimes.

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

The problems encountered have in most cases had to do with poor translations, the lack of translations or with lack of structure in the request.

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

Considerations that motivate the decision to request a transfer of proceedings rather than to pursue a domestic prosecution are that the suspect is residing permanently abroad and that most of the evidence is located abroad.

- 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?

No such statistics available.

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

One scope of improvement would be to increase the use of direct contact between the competent authorities. The use of a standard form for these cases would also facilitate the handling of these cases.

SWITZERLAND / SUISSE**A. Bonne transmission des procédures en application de la Convention européenne sur la transmission des procédures répressives (STE n° 73)**

1. Si votre Etat n'est pas Partie à la Convention européenne de 1972 sur la transmission des procédures répressives, quelles sont les raisons de la non ratification ? L'effet de la Convention sur la compétence judiciaire pose-t-il un problème ?

La Convention régit une matière des plus complexes, laquelle entraîne d'importantes difficultés quant à son application et nécessite vraisemblablement des modifications législatives. En effet, la réglementation de la Convention s'écarte sur plusieurs points de la législation nationale, notamment de la Loi fédérale du 20 mars 1981 sur l'entraide internationale en matière pénale (loi sur l'entraide pénale internationale). Pour ces motifs, la ratification de la Convention qui présente certes un intérêt pour la Suisse, poserait sans doute des problèmes juridiques, politiques ou pratiques. Vu que la Suisse peut largement coopérer avec les autres Etats dans le domaine de la délégation (voir aussi réponse 2) une ratification n'a ainsi pas été envisagée jusqu'ici.

2. Votre Etat est-il en mesure de transmettre des procédures (et d'accepter de telles transmissions) sans base conventionnelle, c'est-à-dire sur la base de la législation interne et/ou sur celle de la réciprocité ?

Oui. La loi sur l'entraide pénale internationale permet à la Suisse, à certaines conditions, de réprimer à la demande de l'Etat où l'infraction a eu lieu, un acte commis à l'étranger ou d'inviter un Etat étranger à assumer la poursuite pénale d'une infraction relevant de la juridiction suisse (art. 85-93 de la loi).

3. Sans objet

TURKEY / TURQUIE**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?

Answer: Turkey is Party to the Convention

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?

Answer: Turkey is able to transfer proceedings without a treaty basis on the basis of reciprocity.

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?

Answer: Between 2001-2010 Turkey applied the Convention 1 time as the requesting state, Turkey was applied the Convention 8 times as the 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)?

Answer: The types of cases that most often dealt with are fraudulent, deforcement with gun and drug crimes.

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

Answer: No, we can't provide an indication of the "success of rate.

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

Answer: In the case of deforcement with gun, after transferring, Turkish Court punished the perpetrator and Public prosecutor executed the sentence. The perpetrator returned to Germany and Germany arrested him and opened a new public case.

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

Answer: I think, if a perpetrator is a national of requested state, he/she won't be extradited, so requested state can prosecute after transferring of proceedings.

- 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?

Answer: Yes. I mentioned in A-d.

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

Answer: Yes. I see a large scope for improvement of the provisions of the Convention and its practical implementation.

UKRAINE

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?

Ukraine is a Party to the European Convention on the Transfer of Proceedings in Criminal Matters (1972).

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?

According to Paragraph 2 of Article 481 of the Criminal-Procedure Code of Ukraine the transfer of proceeding (and the accept of such transfer) is possible only on the basis of the international treaty of Ukraine.

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?

The General Prosecutor's Office of Ukraine as the central authority of Ukraine concerning requests by bodies of pre-trial investigation under the Article 13 of the European Convention on the Transfer of Proceedings in Criminal Matters (1972) applies the abovementioned Convention as the requesting State and as the requested State rather frequently.

For example, in 2010 the General Prosecutor's Office of Ukraine received 71 requests on the transfer of criminal proceedings from foreign states, and sent 93 requests to the competent authorities of foreign states. In 2011 the General Prosecutor's Office of Ukraine sent 69 requests to the competent authorities of foreign states and received 47 requests on the transfer of criminal proceedings from foreign states.

However, the Ministry of Justice of Ukraine as the central authority concerning requests by courts applies the Convention is not frequently.

For example, in 2010 the Ministry of Justice of Ukraine received 2 requests on the transfer of criminal proceedings from foreign states, and sent 5 requests to the competent authorities of foreign states. In 2011 the Ministry of Justice of Ukraine sent 2 requests to the competent authorities of foreign states, and received 3 requests on the transfer of criminal proceedings from foreign states.

- 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)?

Legal assistance concerning the transfer of criminal proceeding is asked in investigation of crimes of different types, for which any punishment, provided for by the criminal law of the requested State, may be imposed.

Cases, received by the Ministry of Justice of Ukraine according to this Convention, often deal with crimes against property.

- c. Can you provide an indication of the 'success-rate'?
- d. What legal and / or practical obstacles have you faced in the implementation of the Convention?

The main obstacles are the procrastinations in the transfer of criminal cases (upon the expiry of several years) and the lack of translation of the investigation and trial materials into Ukrainian. As criminal cases often consist of a huge amount of materials it takes much time to make translation and it often results in the expiration of the statute of limitations.

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

The main ground for taking a decision to request a transfer of proceedings in criminal matters is the fact that prosecuted person is on the territory of the requested state and the completion of the investigation in criminal matter is impossible without his/her presence.

- 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?

The Ministry of Justice of Ukraine does not apply Article 8 of the Convention. According to Article 481 of the Criminal-Procedure Code of Ukraine the criminal proceeding may be transferred till the judgement has been pronounced by court.

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

/

UNITED KINGDOM / ROYAUME-UNI

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?

UK is not a party to the convention. Currently, UK jurisdiction for criminal offences is generally territorial i.e. it is concerned with acts committed on UK territory. There are exceptions to the general position where extra-territorial jurisdiction exists, for example on the basis of nationality or rarely the ordinary residence of the suspect. Such extra-territorial jurisdiction is created in UK law on an offence-specific basis and the exercise of extra territorial jurisdiction by the UK is more limited than by many other Member States. This convention would constitute a change to the UK's approach to jurisdiction and require a move away from the idea of territorial jurisdiction.

- 2. Scotland is able to transfer proceedings on the basis that where another Member State has jurisdiction, then they may be invited to take over jurisdiction. To that extent it falls within the second scenario i.e. ECMLA 1959 art 21.

CHAPTER B / CHAPITRE B

Laying of information under Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No.30)

ALBANIA / ALBANIE

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*:

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

5% of rogatory letters per year (out of a total of 700 rogatory letters per year).

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)?

5% of cases referred above.

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

Request for prosecution according to Article 21 (ETS No.30) is submitted when the evidence is mostly found in the requested state, when the suspected subject is member of a criminal organization being under investigation, when the suspected subject has been arrested in the requested state and he can not be extradited because of a trial for another criminal offense or any other reason.

Also serves as an alternative way of the transfer of proceedings in those cases when the European Convention on the Transfer of Proceedings can not be applied because it has not been signed or ratified by requested state.

d. Do you face any legal or practical obstacles in acting on information laid by another Party with a view to proceedings in the courts of your country? Please provide details.

No. In many cases, we have had a very good cooperation with neighbor countries, mostly with Italy as well as other European countries such as France and Belgium, including Joint Rogatory Commissions.

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?

Not until now, but it may happen as far as the proceedings can continue either in the requesting state or in the requested state.

ARMENIA / ARMENIE**4. Concerning the use of Article 21 of the European Convention on Mutual Assistance in Criminal Matters of 1959 on laying of information.**

- a. The frequency of information transmitted connected with the frequency of requests received by the member states of the Convention.

Data analysis of provided information by the Ministry of Justice in order established by the Convention shows that during 2009-2011 the Ministry of Justice received and duly implemented 69 requests from the member states of the European Convention on Mutual Assistance in Criminal Matters. During the same period the Republic of Armenia as a requesting party send 7 requests to member states of the Convention. These requests are not under the Article 21 of the Convention.

- b. According to the paragraph 2 of the Article 21 the Ministry of Justice has notified the requesting Parties of any action taken on such information and forwarded copies of records of any verdict pronounced.
- c. The Ministry of Justice hasn't any request concerning the Article 21. This is due to absence of necessity to request the information in connection with proceedings, but from the abovementioned does not follow that in case on necessity the Republic of Armenia shall not request for the information in connection with proceedings under the Article 21, in order to improve efficiency and performance of procedural acts, as well as to promote the cooperation in the field of legal assistance in criminal matters among the member states of the Convention.
- d. During the implementation of the Convention the Ministry of Justice does not meet any legal or practical problems.
- e. The Republic of Armenia applies the principle of «ne bis in idem». That is ensured by the Article 22 of the Constitution according to which no one can be tried twice for the same crime.

The provision of the Article 10 paragraph 2 of the Criminal Code and Article 21 of the Criminal Procedure Code are also constitutes the inadmissibility of repeated conviction and criminal prosecution for the same crime.

The Criminal Procedure Code also provides that after the judgment of the court enters into legal force, the person involved shall be guaranteed, with respect to the same event, against any resumption of criminal prosecution or any replacement of the charge or the penalty with a more severe one.

Taking into account the abovementioned we can constitute that either as the requesting or the requested state the Republic of Armenia has no problems with respect to the application of the principle «ne bis in idem».

AUSTRIA / AUTRICHE**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:

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

See above Question 3.a - the far bigger part of requests is based on Art 21 of the European Convention on Mutual Legal Assistance.

- 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)?

Although no significant statistical data are available there is a high percentage (estimated more than 70% of cases) leading to an action of the requested Party.

- c. What are the considerations that motivate the decision to utilise Article 21 (ETS No. 30) rather than to pursue a domestic prosecution?
See above Question 3.e - the same reasons apply also here.
- 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.

The most important problem in practice is the transfer of information and evidence to the requested Party, above all the question of translation. If a translation is not required due to bilateral agreements the requesting authorities should point out which part of the file or which kind of information is essential for the prosecution in the requested State in order to avoid high costs for translation of useless information. From the legal point of view sometimes the lack of double criminality hinders the opening of criminal proceedings in the requested State.

- 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?

No. If questions of ne-bis-in-idem arise the direct communication between the judicial authorities will allow to receive necessary additional information.

AZERBAIJAN / AZERBAÏDJAN

B. Laying of information under Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No. 30)

4.

- a. During 2010 in relation to legal assistance in criminal matters 1 request had been sent to Germany and 215 requests to Turkey, while through the diplomatic channels 2 requests had been received from the Germany, 1 request from the State of Israel and 1 request from the France. The requests that had entered the Ministry of Justice were sent in accordance with the requirements of European Convention on Mutual Assistance in Criminal Matters (1959) to the relevant bodies for their consideration and the obtained information about the results of the requests was sent through the diplomatic channels to the requesting party.

During the first half of 2011 in relation to legal assistance in criminal matters 2 requests had been sent to the Turkey, 1 request to the Israel, 1 request to the France, 1 request to the Egypt, 1 request to the Iran and 1 request to the United States of America, while through the diplomatic channels 245 requests from the Turkey and 1 request from the Germany had entered the Ministry of Justice.

- b. Based on the information and materials gathered by the Azerbaijan in the France, in the United Kingdom of Great Britain and Northern Ireland as well as in the Israel the trials in criminal matters have been fully implemented. In this regard from the diplomatic representations of the abovementioned countries the letters of thankfulness for the provision of information on the results of the trials as well as the shown cooperation have entered the Ministry of Justice.
- c. For the purpose of a full, comprehensive and objective investigation of the criminal cases, if a need arises to implement separate procedural actions on the territory of any state based on request appropriate information and materials are submitted to the opposite side.

BELGIUM / BELGIQUE**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*:

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

Statistics will be made available at a later stage.

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)?

There is no reliable data on the success-rate of such requests. The overwhelming majority of these requests are closer to a spontaneous transmission of information, rather than the laying of information since the 'files' that are being transmitted contain (very) basic information.

For example – for some years (early 2000's) Belgium was overwhelmed by French so-called *drug tourists* that drove from (Northern) France to Belgian cities in order to purchase and also use drugs in Belgium. Many of these individuals were briefly arrested during dedicated road traffic controls on the main roads connecting Northern France and these cities.

Consultations between the French and Belgian governments on this particular problem led to the solution that Belgium would lay the information concerning these offenders to France. France promised to prosecute these individuals.

As a start, a package of 99 files – containing just an initial police report - were transmitted on the basis of article 21. However, only very few were actually prosecuted. The great majority of the cases were not pursued, for policy reasons or for lack of evidence.

Most of the laying of information requests are indeed limited to the transmission of an initial police report that identifies the suspect and indicates the offence and the facts. There is at that stage very little evidence enabling the prosecution of the matter in Belgium.

A prima facie link to another state is often sufficient to consider the laying of the information to that State and leave eventual prosecution to that State. Most of these cases regard rather 'minor' offences committed in Belgium by foreigners with no (apparent) ties to Belgium. Mostly, these suspects are ' (accidental) tourists' or passers-by while there is also no apparent (Belgian) victim. All of these elements combined explain the rather low 'success rate' of standard cases of laying of information.

By contrast: Belgium did lay quite *complete* files to for instance Albania – these cases are actually applications of the 'aut dedere, aut judicare principle' (C).

Also with Albania, Belgium did extradite two Albanian nationals that have committed a murder. The victim was also an Albanian national and the murder took place in Belgium. Instead of prosecuting the matter ourselves, we opted for an understanding with Albania to (1) extradite both suspects and (2) lay the investigative file to Albania. As such the 'total package' could be relocated to the proper jurisdiction, the one of the nationality of both the suspects and the victim. Albania 'received' the suspects plus the file.

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

The nationality, the usual location of either or both the suspect, the victim or the majority of either or both of these as well as the (extra-) territorial location of the offence or substantial elements of the offence.

- 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.

Prominent practical problems arise with respect to the translation and the time needed and the costs attached to translations of voluminous files.

- 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?

Up to now, a case whereby a substantial file was transmitted under article 21 – usually following the application of the 'aut dedere, aut judicare principle' (see under C) did not run into a ne bis in idem issue.

In cases whereby the suspect was eventually prosecuted, tried and sentenced, it is possible that the requesting state also prosecutes, tries and sentences that person since the laying of information does not imply the 'transition' of jurisdiction. The requesting state does not lose its original jurisdiction.

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

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:

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

It is important to mention that this transfer of data has tendency of growth over the previous two years, when prosecutors from the countries of the region concluded the special Memorandum on data transfer. Since then all data are delivered in a greater extent than previous years.

- 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)?

We do not have feedback information on these cases, maybe because those data are being delivered only recently and it is well known that some proceedings take a longer period of time. The other reason is that these data are not delivered to the Ministry of Justice of Bosnia and Herzegovina, since prosecutor's offices mainly have direct communication between themselves (it happens that authority that is conducting proceeding delivers the feedback information only directly to the authority from which the information was received). Our recommendation is that complete communication of this type has to include Ministry of Justice of Bosnia and Herzegovina, i.e. it has to receive at least copy of the request and/or feedback information, or that this communication takes place through the Ministry of Justice to have updated information.

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

See explanation given under 3.e.

- 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.

It is possible that judicial office holders could face this problem, because they are completely independent and autonomous in their work, and they also consider that they do not have reporting obligation.

- 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?

See explanation given under 3.f.

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

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:

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

Article 21 of the Convention is the most frequently used legal basis for transfer of criminal proceedings in our practice. There used to be hundreds of cases each year, both being the requesting State (in pre-trial proceedings) and the requested State, but nowadays vast majority of this agenda is dealt with in direct contact between judicial authorities (especially on the basis of Article 6 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000).

- 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)?

The reply can in essence be the same as in point 3.c.

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

See the reply in point 3.e.

- 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.

No.

- 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?

No.

DENMARK / DANEMARK**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*:

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

On the basis of our file records it is estimated that since 1 January 2011 until the present date Denmark has applied the Convention as the requesting state 9 times. In the same period Denmark has received 77 requests pursuant to the convention. Please note, that these numbers relate to the number of times the Convention has been applied in general and not exclusively to the application of Article 21. Denmark has no specific statistics on the application of Article 21.

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)?

There are no available data on the percentage of cases where the information leads to concrete action by the requested party. However, as the requesting state the information received is almost always used to pursue a domestic prosecution.

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

The assessment will in general be identical to the considerations present when assessing whether to request the transfer of proceedings under the European Convention on the Transfer of Proceeding in Criminal Matters. It should however be noted that Article 21 of the European Convention on Mutual Assistance in Criminal Matters is very scarcely applied in Denmark.

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.

There are no specific problems encountered concerning this matter.

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?

There are no specific problems encountered concerning this matter.

ESTONIA / ESTONIE**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*:

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

In fact almost all transfer cases between Estonia and other countries (specially Germany and Finland) are based on Article 21 of the MLA 59 Convention and it works very well so far.

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)?

The average percentage is 80%.

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

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.

No

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?

FINLAND / FINLANDE**B. Laying of information under Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No. 30)**

4.

a. The Central Authority keeps statistics about cases going through it. According to statistics there were 7 incoming requests and 1 outgoing request in 2010 regarding laying of information. There are no reliable statistics about requests that local prosecutors send directly, for instance between the Nordic States.

b. In December 2010 a small research was made by a state prosecutor in the archives of the Central Authority as regards 2007–2010. One of the most important findings was that, in many cases, the requesting State (Finland) did not receive any information from the requested State about the outcome of the case. If some information was received, it appeared that the suspected person was not accused at all—usually because of insufficient evidence. One state often informed that the act “does not constitute an offence”. This information is too laconic and the Finnish prosecutor cannot understand if the decision was made due to objective or subjective reasons. As conclusion, the researcher suggests that the requested State should always send an acknowledgement of receipt with a notification which local authority is handling the case, and finally inform about the outcome of the case.

c. When a Finnish prosecutor has a case with international elements, he/she must also consider if there are better possibilities for prosecuting for this offence outside of Finland. There are many referring points: the nationality/place of residence of the suspected person, the nationality/place of residence of the victims and the situation of the evidence. The priority for Finland is to seek prosecution in that country the offence has been committed in. The territorial

principle is, for various reasons, not always achievable. When it comes to transfer of proceedings between Finland and a non-EU state, the most common situation is the following: The person is suspected for committing a crime in Finland, but he has fled back to his home country. Since extradition of the accused person is not possible because of his nationality, a request for transfer is motivated. Very often also the victim is a foreigner which supports the decision about transfer. If the victims are Finnish citizens or reside in Finland, the prosecutor normally asks also the victims' opinion about transfer. A successful transfer requires that the evidence is in such form that it can be sent over the border and used in the requested State.

- d. When receiving information from abroad a Finnish prosecutor must do some basic scrutiny; for example, if the act is punishable in Finland. According to the above-mentioned research, Finnish authorities receive many requests that concern minor offences and therefore they are often statute barred already when crossing the Finnish border. Furthermore, the files do not always include information about a victim or his/her claims for compensation, which causes problems for the Finnish prosecutor who must take care also of the victims' rights. As noted before, it happens relatively often that the result of the consideration in the requested State is waiving of charges (non-prosecution). Similarly, a Finnish prosecutor can make a decision on non-prosecution e.g. in case there is not sufficient evidence, for certain fairness reasons, or if the act is a minor offence. It is suggested that prosecutors should, if possible, contact each other before transferring the case. They should obtain information, for instance, if the act is punishable in the requested State and about thresholds in prosecution. Actually, this is the usual practice between Finland and Estonia and facilitated by a Finnish liaison prosecutor in Estonia. In addition, it would be useful to include an extract from criminal register to the request. But the biggest improvement would be to ensure that the requested State informed the requesting State about the outcomes of the case.
- e. No special problems have been faced regarding *ne bis in idem*.

FRANCE

B. Dénonciation en application de l'article 21 de la Convention européenne d'entraide judiciaire en matière pénale de 1959 (STE n° 30)

- 5. En ce qui concerne le recours à l'article 21 de la Convention européenne d'entraide judiciaire en matière pénale de 1959 relative à la *dénonciation* :
 - a. A quelle fréquence les autorités de votre pays recourent-elles à la possibilité de transmettre des informations à un autre Etat partie ?

Entre le 1^{er} janvier 2000 et le 1^{er} septembre 2011, la France a adressé 1573 dénonciations officielles aux autres Etats parties à la Convention européenne d'entraide judiciaire en matière pénale. Ces données statistiques ne tiennent toutefois pas compte des dénonciations faites directement entre autorités judiciaires en application des dispositions de l'article 6.1 de la Convention relative à l'entraide judiciaire en matière pénale entre les Etats membres de l'Union européenne du 29 mai 2000.

- b. A quel pourcentage estimez-vous le nombre d'affaires pour lesquelles ces dénonciations donnent lieu à des mesures concrètes de la part de/dans la Partie requise, compte tenu de l'obligation de cette Partie de faire connaître la suite donnée à cette dénonciation (article 21, paragraphe 2) ?

La France n'est pas en mesure d'estimer ce pourcentage. En effet, bien souvent, en l'absence d'information transmise par l'Etat requis à la suite d'une dénonciation officielle, il n'est pas possible de déterminer si l'affaire a effectivement donné lieu à des actes d'enquête ou de poursuites de la part des autorités de la Partie requise.

- c. Quelles sont les considérations qui motivent la décision de recourir à l'article 21 (STE n°30) plutôt que d'engager des poursuites internes ?

Les autorités françaises ont pour pratique de recourir aux dénonciations officielles prévues par l'article 21 de la Convention européenne d'entraide judiciaire dès lors :

qu'elles sont en mesure de déterminer de façon objective qu'une demande d'extradition n'aura pas de chance d'aboutir, quel qu'en soit le motif ;

-
- qu'il apparait, au regard des éléments de commission de l'infraction, que la Partie requise est mieux à même de mener les investigations.

- d. Rencontrez-vous des obstacles juridiques ou pratiques dans les suites à donner aux dénonciations adressées par une autre Partie en vue de poursuites pénales (y compris la phase préalable au procès ou de détention provisoire) de votre pays ? Veuillez préciser.

Les autorités judiciaires françaises n'ont pas signalé de tels obstacles à l'autorité centrale.

- e. Avez-vous rencontré des problèmes concernant l'application du principe 'ne bis in idem', que ce soit en tant qu'Etat requérant ou requis ?

Les autorités judiciaires françaises n'ont pas signalé de *tels problèmes à l'autorité centrale*.

GEORGIA / GEORGIE

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:

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

Georgia addresses other State Parties with the requests for laying of information almost in all cases when there is the necessity of it. Namely, in 2008, Georgia sent 3 requests to other State Parties. In 2009-2010, the number of the outgoing requests amounted to 3 and 2 respectively. There was no request for laying of information sent in 2011.

- 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)?

According to the information submitted by the relevant foreign authorities, all Georgian requests for laying of information sent in 2008-2010 resulted in initiating investigation and/or prosecution in other State Parties.

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

The reasons for not pursuing domestic prosecution and utilising Article 21 (ETS No. 30) are different and they depend on each individual case. The main considerations in this regard are the following: more availability of evidence in another State Party; the whereabouts of victim, (partial) location of the offence, the nationality of the alleged perpetrator. In addition, according to the law of Georgia on International Cooperation in Criminal Matters, the competent Georgian authorities are also able to transfer the case files to the respective foreign states, in case: a) the Georgian investigative authorities subsequently reveal that they do not have jurisdiction over the crime and the relevant foreign state has. b) the transfer of the case materials to another

state is likely to improve the prospects for the better social rehabilitation of the alleged perpetrator.

- 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.

Georgia has not faced any significant legal or practical obstacles in acting on information laid by another Party with a view to criminal proceedings in Georgia.

- 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?

Georgia has not encountered any significant problem with respect to the application of the principle of 'ne bis in idem', either as the requesting or the requested State.

GERMANY

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*:

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

Because no statistical records are kept by the German public prosecution offices on requests for criminal prosecution to be taken over, this figure can only be estimated. Furthermore, numbers vary depending on the size of the public prosecution office and its proximity to the border. According to the estimates, there are approximately 24 transmissions per annum in the smaller *Länder* (Thuringia), and over 600 transmissions per annum in the larger *Länder* (Bavaria).

- 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)?

The number of cases where the requested State takes concrete action and notification thereof is given can also only be estimated because of a lack of statistics. Generally, with exceptions, the public prosecution offices estimate this percentage to be rather high (average of approx. 80%). However, considerable differences arise depending on the requested State.

Most public prosecution offices report a considerable number of cases where requests are answered only after several subsequent enquiries have been made, and in some cases following considerable delays of up to several years. In isolated cases, the involvement of the EJM contact has made it possible for the necessary information to be obtained.

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

Prosecution authorities decide on the application of Article 21 if criminal prosecution is not possible in the Federal Republic of Germany. This is the case if absolute procedural impediments exist under German law, e.g. German prosecution authorities cannot establish jurisdiction in accordance with German provisions governing the applicability of the country's criminal law (sections 3-7 of the Criminal Code).

Alternatively, Article 21 is applied if criminal prosecution in Germany has little prospect of success. This is the case, for example, if the perpetrator is abroad and, because of legal impediments, cannot be extradited or extradition would be disproportionate with regard to the anticipated penalty (see no. 145 of the Guidelines on Relations with Foreign Countries in Criminal Law Matters (*Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten*, RiVAST). Or if the proceedings are conducted against a juvenile or young

adult who is mainly resident abroad, meaning that any measures imposed by a youth court could not be implemented or could only be implemented with great difficulty in Germany.

Furthermore, Article 21 is applicable if the public prosecution office considers that criminal prosecution abroad would be considerably more favourable in practical terms. This is the case, for example, if evidence is located in the requested State, if criminal proceedings with the same subject-matter have already made major progress in the requested State, or if the perpetrator has already committed further acts of a similar nature in the requested State.

- 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.

Practitioners have reported only isolated legal problems. This is the case, for example, if the limitation period for the offence underlying an incoming request has already expired according to German law. Furthermore, deadlines under German law for submitting a request to prosecute (which is required for certain offences) may constitute a problem in isolated cases as well. To this extent it is questionable, for example, whether these deadlines can also be complied with when the proceedings are transferred to a foreign authority.

A lot more frequently it is practical problems that are reported. For example, the translation of files sent by the requesting State makes for a heavy workload. Occasionally, the files that are transmitted are also incomplete or are no longer up-to-date. This makes it more difficult, for example, to investigate and summon witnesses. Often, for the institution of investigation proceedings in Germany, it is also necessary to have exact knowledge of the relevant criminal provisions and procedural rules applicable abroad. The need to research these from Germany often creates a disproportionately large amount of work, which in certain cases may even result in a refusal to take over proceedings. Often, investigative measures that would need to have been taken in the requesting State also delay the further course of the proceedings. Finally, problems also arise for German authorities and courts if a particularly large number of foreign witnesses must be heard during the main court hearing. This is often extremely time-consuming and entails significant costs.

- 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?

Hardly any problems arise in Germany with regard to the principle of *ne bis in idem*. In isolated cases, criminal prosecution authorities report difficulties regarding the scope of this principle and when exactly it applies. These occur, for example, if the proceedings in the requested State have been concluded with a type of decision that is unfamiliar to the requesting State. Frequently, details have to be requested – often on several occasions – from the authorities of the requested foreign State about the decision that concluded the proceedings in order to be able to solve any questions concerning *ne bis in idem*.

Conversely, for a State making a request pertaining to specific offences, it may not be entirely clear from the conviction whether these offences also form the basis of the conviction.

GREECE / GRECE

B. Laying of information under Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No. 30).

4

- a. Our office frequently receives requests of judicial assistance for the lodging of criminal prosecution against persons, for whom extradition is not allowed.
- b. Our country carries out in full the obligation arising from article 21, par. 2 of the 'European Convention on mutual judicial assistance in criminal matters'(Strasbourg, 1959).
- c. Given that the transfer of criminal proceedings presupposes the commission of the offence abroad by a person being in our country, our office awaits the competent foreign authority to submit a request of judicial assistance as well as to send the complete file of the case, in order

to initiate penal prosecution. It is through the file of the case that the legal basis of the request, the provisions to be enforced, the precise circumstances of commission and the evidence clearly arise.

- d. To the present our office has not faced any substantial difficulties in enforcing article 21 of the aforementioned Convention.
- e. To the present our office has not faced any problems in applying the 'ne bis in idem' principle, in the framework of article 21 of the aforementioned Convention.

HUNGARY / HONGRIE

B. Laying of information under Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No. 30).

- 4.
 - a. Whenever a crime committed against a Hungarian national abroad by a foreign or an unknown perpetrator and the Hungarian victim informs against the perpetrator before the Hungarian authorities, the Chief Public Prosecutor's Office transmit the denunciation to the foreign State if there are well founded reasons to believe that the criminal proceeding can be carried out abroad with more success. If the act committed against the Hungarian victim is an administrative offence, the *laying of information* is not transmitted to the other State Party. If the Hungarian authorities have information about the foreign perpetrator and he/she resides in Hungary, the criminal proceedings is instituted against him/her in Hungary.

The types of cases (in terms of type of offence) most often dealt with in this regard are frauds committed through internet, misuses of documents, crimes against property.

- b. Generally speaking, the Chief Public Prosecutor's Office always gets feedback about the measures taken by the foreign authorities on the basis of information laid by the competent Hungarian authority, but not necessarily about the result of the proceedings carried out abroad. There is however no specific statistics available in this regard.
- c. The chief public prosecutor particularly considers whether the commission of the crime is better provable abroad and whether there is any information available about the perpetrator who does not reside in Hungary. If there is relevant bilateral agreement in force between Hungary and the other State, submitting request for transfer of the proceedings prevails, since in the latter case the requested State has the obligation to prosecute.
- d. If the foreign State does not provide sufficient information about the perpetrator, the Hungarian authorities can hardly take efficient measures to carry out the procedure againsts the perpetrator in order not to avoid justice.
- e. If the Chief Public Prosecutor's Office has official knowledge about any foreign criminal proceeding which is based on the same facts as the Hungarian procedure, the Office transmits the file of the investigation to the foreign competent authority for further use in the proceeding there.

Hungary has had no problem regarding the 'ne bis in idem' principle so far.

ICELAND / ISLANDE

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*:

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

It has never been used.

IRELAND / IRLANDE

B. Laying of information under Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No. 30)

Ireland entered a reservation to Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters on ratification.

4. Concerning the use of Article 21 of the European Convention on Mutual Assistance in Criminal Matters of 1959 on *laying of information*:

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

There is no provision under mutual assistance legislation for the laying of information.

- 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)?

N/A

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

N/A

- 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.

N/A

- 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?

N/A

ITALY / ITALIE

B. Laying of information under Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No. 30)

- 4.
- a. Not that frequently, due to the extraterritorial principle which would make, at least the most serious offences, prosecutable under our law independently of the place of commission. When crimes committed abroad are petty or minor crimes (which would be intended in a wide sense) proceeding would not be possible under Italian law.
- b. No answer (see above).
- c. idem.

- d. When Italy receives an information under article 21 of MLA Convention, proceedings are instituted. Usually that is the case of crimes committed in Italy where the victims were foreign citizens (very often: thefts and assumed frauds). In most cases criminal proceedings were dismissed because perpetrators were unknown; in some cases (serious frauds) Italian authorities acted effectively; the information provided us by the Requesting State were in general sufficient. Proceedings might be slow, also because victims are not in the State (which would not be a good reason itself; yet a MLA request is necessary and that might take time); it happened that cases were closed (unknown authors of the crime) but the competent judicial authority did not inform neither the Italian Ministry of justice nor the foreign authority.
- e. No major problems as to *ne bis in idem* (some problems in extradition in reference to the *aut dedere aut iudicare* principle).

LITHUANIA / LITUANIE

B. Laying of information under Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No. 30)

- 4.
 - a. – c. Having reviewed the practice over the last few years, there was no case, when Lithuania would apply the provisions of Article 21 of the European Convention on Mutual Assistance in Criminal Matters of 1959 to transfer the information on criminal acts. In all similar cases Lithuania cooperated with other European Union member states, therefore, applying the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 2000, which was approved by the Council in accordance with Article 34 of the EU Treaty.
 - d. There were several cases, where Lithuania received information on criminal act based on Article 21 the European Convention on Mutual Assistance in Criminal Matters of 1959. We would like to indicate a problem of failure to provide the translation into the required language (the Republic of Lithuania, when ratifying the European Convention on Mutual Assistance in Criminal Matters of 1959, indicated that it may request the translation of requests for legal assistance and enclosed documents into official languages of the European Council).
 - e. There were no problems faced.

MOLDOVA

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*:

During the practice, the Republic of Moldova has not applied art. 21 of the European Convention on Mutual Assistance in Criminal Matters, but in the future, does not see any obstacles in implementing it.

NETHERLANDS / PAYS-BAS

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

These kinds of requests are not registered as such. However, in practice many outgoing requests are based on this possibility. Within the EU we use the possibility of spontaneous provision of information (art. 7 EU treaty on mutual legal assistance).

- 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)?

A request based on art. 21 will always be dealt with. If the Netherlands has jurisdiction, a case can be investigated and according to the results the decision can be taken to continue prosecution in the Netherlands.

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

If there is no specific treaty to base a request on. See A.3.e.

- 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.

Yes. Due to capacity problems it is very often impossible to investigate in order to gather more evidence. This concerns mainly smaller (trifle) cases. In those cases the chance that a case will be dismissed is high.

- 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?

Yes, some States do not recognize a dismissal as a ground for ne bis because it is not a decision made by a judge.

PORTUGAL

B. Dénonciation en application de l'article 21 de la Convention européenne d'entraide judiciaire en matière pénale de 1959 (STE n° 30)

4. En ce qui concerne le recours à l'article 21 de la Convention européenne d'entraide judiciaire en matière pénale de 1959 sur la *dénonciation* :

- a. A quelle fréquence les autorités de votre pays recourent-elles à la possibilité de transmettre des informations à un autre Etat partie ?

On peut dire que les autorités portugaises déclenchent au moins une cinquantaine de dénonciations ou transmissions par an.

- b. A quel pourcentage estimez-vous le nombre d'affaires pour lesquelles ces dénonciations donnent lieu à des mesures concrètes de la part de/dans la Partie requise, compte tenu de l'obligation de cette Partie de faire connaître la suite donnée à cette dénonciation (article 21, paragraphe 2) ?

Il n'est pas clair une fois que, même quand ces informations sont prêtées, il y a de longs délais entre la dénonciation officielle ou la transmission et l'obtention d'information sur la conclusion de la procédure.

- c. La dénonciation officielle au Portugal est réservée pour les cas ou des faits, pour l'investigation desquels les autorités portugaises ne sont pas compétentes, sont dénoncés au Portugal ou surgissent au sein d'une investigation de faits pour lesquels les autorités portugaises sont

compétentes. Dans ce cas le dossier portugais est clôturé, total ou partiellement, et la dénonciation officielle est faite.

- d. Rencontrez-vous des obstacles juridiques ou pratiques dans les suites à donner aux dénonciations adressées par une autre Partie en vue de poursuites devant les tribunaux de votre pays ?

En ce qui concerne le système portugais le traitement des transmissions, voire délégations de compétence et des dénonciations est différent. Ainsi quand il s'agit d'une vraie transmission de compétence, c'est-à-dire il y a un État qui est originairement compétent et qui, par des raisons de bonne administration de la justice, considère qu'il y a des avantages dans la transmission de sa compétence et conséquemment d'une ou plusieurs procédures, l'instrument utilisé est celui de la transmission des procédures. La dénonciation est réservée aux cas où des faits sont dénoncés devant une autorité qui n'a pas de compétence internationale pour les investiguer. Dans ce cas les autorités portugaises utiliseront la dénonciation, pas la transmission qui présuppose qu'il y a eu une compétence des autorités portugaise. Seulement la transmission est-elle réglée dans la loi interne ; il y a même une disposition qui permet qu'une décision judiciaire considère valable toute la preuve obtenue dans la procédure étrangère. Cette disposition n'existe pas pour les dénonciations officielles ce qui pose des problèmes de validité de la preuve obtenue à l'étranger, laquelle doit être plusieurs fois renouvelée dans le cadre d'une demande d'entraide internationale.

- e. Non

ROMANIA / ROUMANIE

B. Laying of information under Article 21 of the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No. 30)

4.

- a) This article, as a legal base for the transfer of proceedings, is used quite often by the Romanian prosecutor offices
- b) In the majority of cases the information leads to concrete action taken by the foreign authorities.
- c) The reasons for using Article 21 rather than to pursue a domestic prosecution refer mainly to cases where a person, having committed an offence in Romania, takes refuge in the territory of the requested country and cannot be extradited.
- d) Usually, there are practical obstacles related to the fact that the requests don't contain enough information or it happens that not all the documents have translations.
- e) Yes, there were some issues related to the *ne bis in idem* principle.

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

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 1959 European Convention on Mutual Assistance in Criminal Matters on *laying of information*:

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

Where a person who has committed a crime in the Russian Federation and later left its territory has double citizenship, and his extradition or transfer of proceedings with a request for his criminal prosecution abroad seems impossible, the copies of the criminal files are sent to the relevant foreign state for a decision to be taken in accordance with the legislation of this state.

- 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)?

As regards requests related criminal proceedings the competent authorities of the requested States reply to all of them. The Russian Federation forwards the information to the competent authorities of the requested States in each criminal case.

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

Where a person who has committed a crime in the Russian Federation and later left its territory has double citizenship, and his extradition or transfer of proceedings with a request for his criminal prosecution abroad seems impossible, the copies of the criminal files are sent to the relevant foreign state for a decision to be taken in accordance with the legislation of this state.

- 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.

It is often difficult to determine the stage of the criminal proceedings because sometimes we receive separate documents without any procedural decision on instituting a criminal case.

- 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?

No, we did not.

SAN MARINO / SAINT-MARIN

- As far as letter B) on the laying of information is concerned (both from San Marino to other States and from other States to San Marino), the data relating to 2011 show that since the start of the year 8 criminal proceedings have been initiated at the San Marino Court following acts directly transmitted by the prosecution service of another State (whereas in 2010 such situation occurred at least once, since it was possible to check only part of 2010 data).

In such situations, the information laid has been treated as any other *notitia criminis* and, therefore, it has led to the initiation of a domestic criminal proceeding, as the principle of mandatory prosecution applies.

On the other hand, in cases where the Court has declared its lack of jurisdiction (only few cases, i.e. about 5 cases every year), acts have been transmitted to the competent judicial authorities, except in those cases where the victim of the offence had also lodged a complaint in the other State.

San Marino has recently ratified the European Convention on Mutual Assistance in Criminal Matters (on 16 March 2009). At present, Article 21 of the Convention has not been invoked, but it should be stressed that the judgements delivered on the basis of information laid by a foreign authority are notified at the time of execution.

It is worth recalling that the Court has no data concerning communications between Ministries of Justice, if any. Furthermore, the "*ne bis in idem*" principle has not been applied in practice.

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE**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*:

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

In the year 2010 Slovak Republic transmitted information to another State Party in 290 cases and Slovak authorities has received information in 364 cases.

d. 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)?

Criminal proceedings started approximately in 80-90 percents of cases.

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

Absence of suspect person in the territory of Slovak Republic and higher possibility of requested State to enforce the evidence.

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.

Practical problems causes the change of residence of suspected person. In cases of long-term change of residence is right to realize a criminal proceedings returned back to requesting State.

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?

We do not encounter any problems with the direct application of the principle of 'ne bis in idem'. However there are some problems regarding to parallel criminal proceedings in requesting State (after laying of information in connection with proceedings the requesting State forget to cancel EAW or authorities of the requesting State continue in acts of criminal proceedings).

SLOVENIA / SLOVENIE**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:

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

Always, when there is no bilateral treaty, which regulates also the institute of the transfer of criminal proceedings. However not all request for the transfer of criminal proceedings from Slovenian judicial authorities are based on this instrument – they mostly refer to internal legislation regulating the institute. In such cases were the request has no reference to the

international instrument, the Ministry in the “cover letter” refers to the article 21 of the 1959 MLA Convention.

- 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)?

In most cases the competent authorities of the requested state actually take into consideration the request and take further steps in accordance to their national legislation, so we normally receive feedback from the requested state. But not all cases could be actually transferred due to the lapse of time, lack of double criminality, etc, In most cases we also receive a final decision in the transferred case.

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

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.

NO

- 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?

NO

SWEDEN / SUEDE

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:

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

No statistics available, but whenever there is a possibility, this option is used.

- 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)?

According to our estimation, most of the cases (about 90 percent) lead to concrete action by/in the requested party.

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

Considerations that motivate the use of Article 21 rather than to pursue a domestic prosecution are that the suspect is residing permanently abroad and that most of the evidence is located abroad.

- 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.

The lack of, or poor translations of requests and enclosures, may be an obstacle in handling these cases. Other problems may be the statute of limitations, dual criminality and questions of evidence. However, in the majority of cases there is no such problem.

- 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?

NO

SWITZERLAND / SUISSE

B. Dénonciation en application de l'article 21 de la Convention européenne d'entraide judiciaire en matière pénale de 1959 (STE n° 30)

4. En ce qui concerne le recours à l'article 21 de la Convention européenne d'entraide judiciaire en matière pénale de 1959 relative à la *dénonciation* :

- a. A quelle fréquence les autorités de votre pays recourent-elles à la possibilité de transmettre des informations à un autre Etat partie ?

En pratique, les autorités suisses ne font pas - comme beaucoup d'autres Etats - une différence très précise entre les cas de dénonciation et les cas selon l'art. 6, par. 2 de la Convention européenne d'extradition. Normalement une demande de dénonciation est directement adressée aux Etats qui n'extradent pas leurs ressortissants. En moyenne, la Suisse adresse environ 200 dénonciations/demandes de délégation par an aux Etats Parties aux Conventions européennes d'extradition et d'entraide judiciaire en matière pénale. A cela s'ajoutent les cas de dénonciation/délégation par voie directe pour les quelles nous ne disposons pas de statistique (env. 100 à 200 cas à l'Allemagne, à l'Autriche et à l'Italie).

- b. A quel pourcentage estimez-vous le nombre d'affaires pour lesquelles ces dénonciations donnent lieu à des mesures concrètes de la part de/dans la Partie requise, compte tenu de l'obligation de cette Partie de faire connaître la suite donnée à cette dénonciation (article 21, paragraphe 2) ?

Environ 70%.

- c. Quelles sont les considérations qui motivent la décision de recourir à l'article 21 (STE n°30) plutôt que d'engager de poursuites internes ?

Nationalité, lieu de l'infraction à l'étranger, infractions qui ne méritent pas une demande d'extradition, économie de la procédure.

- d. Rencontrez-vous des obstacles juridiques ou pratiques dans les suites à donner aux dénonciations adressées par une autre Partie en vue de poursuites pénales (y compris la phase préalable au procès ou de détention provisoire) de votre pays ? Veuillez préciser.

Absence d'éléments probatoires suffisants et/ou pas de traduction (d'une qualité suffisante).

- e. Avez-vous rencontré des problèmes concernant l'application du principe 'ne bis in idem', que ce soit en tant qu'Etat requérant ou requis?

L'application de ce principe n'est pas uniforme parmi les membres du Conseil de l'Europe.

TURKEY / TURQUIE**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*:

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

Answer: Nearly 20 times per year.

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)?

Answer: It will be very useful for cross-border crimes.

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

Answer: A state can't escape some criminals because they are in another state. If she lays information, another state can start a prosecution.

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.

Answer: Yes. Turkey can't obtain some documents from Greece especially human trafficking.

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?

Answer: Yes.

UKRAINE**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*.

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

a. The law enforcement authorities of Ukraine permanently use the possibility to transmit information concerning crimes of preparation for crimes according to Article 21 of the European Convention on Mutual Assistance in Criminal Matters (1959).

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)?

In most cases the requested States give to the competent authorities of Ukraine the results of such notifications.

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

Miscellaneous, among them are: the existence of treaty relations (participation in Convention), drawing up and sending (transfer) of a request according to the international treaty and existence of responsibility for the crime requested.

- 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.
 d. Generally there are no legal or practical obstacles in acting on information laid by another Party with a view to criminal proceedings.
- 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?

According to Article 8 Paragraph 2 of the European Convention on the Transfer of Proceedings in Criminal Matters 1972 the Ministry of Justice of Ukraine is not authorized to take proceeding of transfer of criminal proceeding against citizens of Ukraine who were sentenced in foreign State in absentia.

At the same time the transfer of the proceeding is possible in case of reversal of the judgement pronounced in absentia because the possible existence of two sentences contradicts generally recognised principle "ne bis in idem", provided for by Part 5 of the European Convention on the Transfer of Proceedings in Criminal Matters 1972.

UNITED KINGDOM / ROYAUME-UNI

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*:

The United Kingdom handed over a reservation at the time of deposit of the instrument of ratification on the 1959 convention, on 29th August 1991 noting that 'The Government of the United Kingdom reserves the right not to apply Article 21.'

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

There are 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:

1. Where for some reason it is not possible to try the person in England and Wales; e.g. if the suspect has fled to his home nation and that nation refuses to extradite its own nationals. In this scenario, inviting the other state to issue proceedings is the only method of the person being prosecuted for the offending. N.B. if extradition is possible, the Crown Prosecution Service will invariably seek the extradition of the person to the UK for prosecution here.
2. Where it is possible to try the person in England and Wales but a decision is made that the offending would best be tried in another state; e.g. transnational offending where a consideration of factors, including Eurojust's 2003 report on 'Which jurisdiction should prosecute', indicates that another state is the best venue to try all the offences.

The Crown Prosecution Service does not keep a record of the number of cases falling with scenarios 1 and 2 above. However, scenario 1 will only arise infrequently, less than 10 times in a year. Scenario 2 will arise more frequently given the transnational nature of organised crime in particular but not often. A decision on the best trial venue is ideally reached through consensus following discussions with the relevant foreign authorities.

Scotland is able to transfer proceedings on the basis that where another Member State has jurisdiction, then they may be invited to take over jurisdiction. This occurs where jurisdiction is based on the nationality of the person or it appears that there may be evidence available in the other jurisdiction which might be better placed to take proceedings.

- 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)?

Again, the Crown Prosecution Service does not keep a record of this information. However, it is common for investigators and prosecutors to retain an interest in cases that have been transferred to another state. Often this is necessitated as the foreign authority will require evidence from England and Wales to pursue the prosecution in their courts. It may also arise as a live-link of witness evidence from England & Wales may be required by the foreign authority at the trial or witness care issues may arise when a UK based witness is asked to travel to the other state for the trial.

In Scotland: 90%

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

See answer to 'a' above.

c. Considerations include greater effective and efficient justice e.g. where there has been an allegation of fraud over the internet and the seller is located in Germany and the buyer in Scotland, jurisdiction can be founded in both jurisdictions. Rather than seek recovery of evidence from Germany and then issue an European Arrest Warrant, we would consider inviting the German authorities to exercise jurisdiction. This avoids the issue of a letter of request and the extradition of a German national where the German authorities would consider the issue of jurisdiction when the EAW was received by them and they may decline to execute the EAW.

- 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 practical issue is that papers submitted to the Crown Prosecution Service must be translated into English. On occasion papers are submitted only in the language of the other state. Additionally the Crown Prosecution Service is not responsible for the investigation of crime in England and Wales. There is a clear distinction in England and Wales between the functions of investigators (including the police, the Serious Organised Crime Agency, Her Majesty's Revenue and Customs, and the United Kingdom Border Agency) and the prosecution services (including the Crown Prosecution Service and the Serious Fraud Office). A request by another state to England and Wales to 'transfer' proceedings should ideally be made after contact and consultation with both the relevant UK investigation and prosecution authority.

No difficulty has been experienced where the Scottish authorities have been invited to take over jurisdiction for offences committed abroad where jurisdiction may be exercised in Scotland. If any further evidence is required it will be recovered by the issue of a letter of request.

- 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?

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.

In Scotland no problems have been encountered with the application of the *ne bis in idem* principle.

CHAPTER C / CHAPITRE 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)****ALBANIA / ALBANIE****C. Transfer of proceedings as an alternative to extradition: the application of the ‘aut dedere, aut judicare’ principle under Article 6§2 of the European Convention on Extradition (ETS No. 24)**

5. Concerning the obligation to extradite or prosecute as contained in Article 6§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.

Referring to statistics of this year, there are 4 cases where Albania has not granted the extradition because of Albanian nationality of subjects, 2 cases because of statute of limitation or delays in submitting the request and documents according to article 12 of the European Convention on Extradition.

Albania is willing to accept transfer of proceeding to Albania, if the requesting state considers this convenient and submits the request.

There are 5 cases where our extradition requests have been refused. There has been no obstacle for Albania to proceed with transfer of proceedings but there have been problems with the validity of criminal judgments in cases of final judgments rendered by the Albanian judicial authorities.

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? Do you have knowledge of diverging applications by other (requested) Parties?

Yes. This principle is applicable within article 6/2 of the Extradition Convention, in cases when the subject cannot be extradited because of its nationality. Referring to divergent applications by other Parties, application for asylum or judgment in absentia have been mostly the reasons of refusal as well as the delays in submitting the request for extradition or irregularities with the copies of documents required by article 12 of the European Convention on Extradition.

c. Is this principle implemented in your internal legislation?

Yes. According to article 122 of the Albanian Constitution, any convention ratified by law becomes part of the domestic legislation and is prevalent in case of conflicts or contradictions that mean that it becomes directly applicable.

Secondly, the implementation of this principle in Albania is complemented by a regulation in Law No.10 193, dated 3.12.2009 “On Jurisdictional Relations with Foreign Authorities in Criminal Matters”, applicable by 14.02.2010.

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?

When transfer of the proceedings or execution of final judicial decisions is requested by Albania as result of the refusal of its national, we state that difficulties are not found in the formal requests for transfer of files but in their progress, which is delayed because of an

asylum right application or a “judgment in absentia” and the lack of evidence which sometimes can bring a possible suggestion for retrial in the requested state to this effect. In this case, the necessary evidence cannot be complete if the crime has been committed in the requesting party (Albania).

- 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?

As mentioned in the answer of part (C), the implementation of this principle is complemented lately by a regulation of Law No.10 193, dated 3.12.2009 “On Jurisdictional Relations with Foreign Authorities in Criminal Matters”, applicable by 14.02.2010. The scope of this law is to regulate in a more detailed and efficient way a) the application of an automatic retrial on the basis of guaranties given by the Minister of Justice; to set a deadline of 5 days for the Ministry of Justice and Prosecution to take action on the basis of an international arrest warrant; b). the procedure for transfer of proceedings; and c) the procedure of validity of criminal judgments according to the European Convention on the International Validity of Criminal Judgments.

- f. Have you had any problems regarding the “ne bis in idem” principle?

No. We have not faced any problem regarding the “ne bis in idem” in this context.

- 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?

No, we do not apply Article 6 paragraph 2, with respect to convicted and sentenced persons where extradition is denied. It would cause a breach of the “ne bis in idem” problem. In these cases we apply the Convention on the validity of criminal proceedings in order to convert and execute the sentences or bilateral treaties. If there are no treaties then we apply our requests based on reciprocity.

ARMENIA /ARMENIE

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:

Taking into account that The Ministry of Justice of The Republic of Armenia is not a direct competent authority for the implementation of the European Convention on Extradition of 1957 (ETS No.24) so, answers are on those questions which are concerning to legal regulations in the Republic of Armenia.

- c. The *aut dedere, aut judicare* principle under the Article 6, paragraph 2, of the European Convention on Extradition (ETS No.24) is ensured in the Constitution of the Republic of Armenia and RA legislation.

Thus, the Article 30.1 of The Constitution of the Republic of Armenia prescribes that a citizen of the Republic of Armenia may not be extradited to a foreign state with the exception of cases stipulated in international treaties ratified by the Republic of Armenia.

According to the Article 16 paragraph 1 of the Criminal Code of the Republic of Armenia the citizens of the Republic of Armenia who committed a crime in another state are not extradited to that state.

However paragraph 5 of the same article constitutes that the citizens of the Republic of Armenia who committed a crime in another state are not extradited to that state. In case of refusal to extradite the person who committed a crime, the prosecution for the crime committed

in the territory of a foreign country is done in accordance with the legislation of the Republic of Armenia.

Article 494, paragraph 1 of the Criminal Procedure Code of the Republic of Armenia prescribes that the preliminary investigation body must with consent of the institution which submitted the request, carry out appropriate criminal prosecution of citizens of its state who are suspected in the commitment of crime in the country which submitted a request.

In accordance with the Article 495, paragraph 2 of the Criminal Procedure Code of the Republic of Armenia the instruction is attached to the materials and evidences possessed by the institution which sent the request. When sending the criminal case initiated by the institution which presented the request, the investigation of the case is continued by the institution which received the request, in accordance with the legislation of its country.

Article 478 Criminal Procedure Code of the Republic of Armenia stipulates that sending the case materials for continuation of the criminal prosecution in the case of the crime committed by a foreign citizen in the territory of the Republic of Armenia and in the case of his departure from the country, all materials of the initiated case are forwarded to the Prosecutor Office of the Republic of Armenia which decides the issue of sending them to the appropriate institutions of the foreign country for the continuation of the investigation.

- e. The Republic of Armenia does not make any changes in its legislation concerning the scope of application of the *aut dedere, aut judicare* principle.
- g. Considering that the Republic of Armenia does not apply the European Convention on Extradition concerning the scope of the transfer of sentenced persons, therefore the Article 6, paragraph 2, of the European Convention on Extradition does not apply. In case of sentenced persons the Republic of Armenia applies the European Convention on the Transfer of Sentenced Persons (Strasbourg, 21.III.1983).

At the same time Article 17 of the Criminal Code of the Republic of Armenia prescribes that the court ruling in a foreign country can be taken into account, provided the RA citizen, foreign citizen or a stateless person was convicted for a crime committed outside the RA, and committed a repeated crime in the RA.

Recidivism, unserved punishment or other legal consequences of a foreign court ruling are taken into account when qualifying the new crime, assigning punishment, and exempting from criminal liability or punishment.

AUSTRIA / AUTRICHE

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.

The Austrian authorities are obliged by law to institute domestic proceedings if extradition is denied for other reasons than the type and nature of the offence. Statistical data to this question is not available.

- 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?
- c. Is this principle implemented in your internal legislation?

See Art. 65 Austrian Penal Code– Offences committed abroad punishable only if they are subject to punishment under the law of the place where they are committed

- (1) Austrian criminal law is applicable to offences committed abroad other than those described in Articles 63 and 64, provided that those offences are also punishable under the law of the place where they are committed:

1. if the perpetrator was an Austrian citizen at the time the offence was committed or if he acquired the Austrian citizenship thereafter and still possesses it at the time the criminal proceeding is instituted;

2. if the perpetrator was a foreign citizen at the time the offence was committed, is found on the national territory and may not be extradited to a foreign country for reasons other than the type or nature of the act.

- (2) The penalty shall be determined so that the perpetrator does not find himself in a situation globally less favourable than the one that would derive from the law of the place where the offence was committed.

- (3) In case no criminal authority exists in the place where the offence was committed, the fact that the offence is punishable under Austrian law is sufficient.

- (4) An offence is however not punishable:

1. if, according to the law of the place where it was committed, this offence is not punishable anymore;

2. if the perpetrator was acquitted by a final judgement or otherwise set free of prosecution by a court of the State in which the act was committed;

3. if the perpetrator has been condemned by a final judgement by a foreign court and the penalty has been fully served or, as far as it has not been served, remission has been given or statutory limitation applies on the execution of the penalty according to the foreign law;

4. as long as the execution of the penalty imposed by the foreign court has been fully or partly suspended.

- (5) Preventive measures foreseen in Austrian law shall also be ordered against an Austrian, in case all preconditions are met, if he can not be prosecuted in Austria for one of the reasons mentioned in the preceding paragraph.

- 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?

The success of domestic proceedings to be instituted on the basis of this principle depend largely on the cooperation with the State that requested extradition because usually all the factual material is in the hands of its authorities. In many cases where an exchange of evidence fails the domestic proceedings can not be continued or finished.

- 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?

For the time being no.

- f. Have you had any problems regarding the 'ne bis in idem' principle?
Not in this context.
- 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?

Apart from Member States of the EU we need another treaty basis to execute a foreign judgment against an Austrian citizen.

AZERBAIJAN / AZERBAÏDJAN

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

- a. Up to present no appropriate requests have been sent to any country in regard to conduction of criminal prosecution about their citizens, even in cases where rejections are received for the requests sent by the Azerbaijan under The European Convention on Extradition (1957) as well as under bilateral agreements on extradition,
- b. According to the 3rd Article's 3rd paragraph of the "Note" part of the Law of the Republic of Azerbaijan on "Extradition of people who have committed crimes" if a request for extradition has been rejected on the grounds that the legislation of the requesting state envisages capital punishment for the offence that he/she had committed then that person can be charged with a criminal offence in accordance with requesting state's petition.

According to the Article 13.3 of the Criminal Code of the Azerbaijan, if a person who has committed a crime beyond the borders of the Azerbaijan is not extradited to a foreign state and if his deed (act or omission) is considered to be a crime according to the Criminal Code, then they are charged with a criminal offence in the Azerbaijan.

- c. According to the 3rd Article's 3rd paragraph of the "Note" part of the Law of the Republic of Azerbaijan on "Extradition of people who have committed crimes", if the requested person is a citizen of the Republic of Azerbaijan and a request for his/her extradition has been rejected, that person can be charged with a criminal offence in accordance with requesting state's petition.

According to the Article 502.1 of Criminal Procedural Code of the Azerbaijan, based on foreign state authority's official appeal the Prosecution Authorities of the Azerbaijan have to in accordance with the legislation of the Azerbaijan proceed with criminal prosecution of Azerbaijani citizens who are suspected in committing criminal offences on the territory of the requesting state.

- d. Lack of practical experience in the area doesn't enable to define such obstacles
- e. Lack of practical experience in the area doesn't enable for the modification of the national legislation.
- f. Lack of practical experience in this area doesn't enable to express opinion on existence of any problem.
- g. So far no request about the extradition of the convicted persons according to The European Convention on Extradition (1957) has been sent and none has entered the ministry.

According to the Article 521 of Criminal Procedural Code of Azerbaijan Republic, the courts of Azerbaijan Republic consider the execution of foreign state courts' decisions or other final decisions in accordance with the aforementioned Code, criminal and other laws of the

Azerbaijan as well as with the provisions of international treaties which the Republic of Azerbaijan is a party to.

BELGIUM / BELGIQUE

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.

There are no numbers available, since that situation is either way very exceptional.

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?

Yes. If the Belgian nationality of the person sought is indeed established, we *invite* the requesting state to transmit the case file under article 6§2. It does happen that the requesting state does not transmit the file, despite having high chances for an effective prosecution in Belgium.

The other way around, we did apply the principle to assure the prosecution of Albanian nationals that have committed serious offences in Belgium but could not be extradited by Albania. Albania requested Belgium to lay the information – also a sort of invitation but then formally as a mutual legal assistance request.

These cases are similar to the example given under B.4.b. the prosecution of intra-Albanian violence committed in Belgium is being 'transferred' to the most appropriate jurisdiction, either when the perpetrator is in Belgium (via extradition + laying of information) or when the perpetrator is in Albania (via *aut dedere, aut judicare*).

c. Is this principle implemented in your internal legislation?

No. We rely on article 6§2 which is part of domestic law through the ratification of the Convention.

The application of the principle of course relies entirely on domestic criminal procedure law esp. regarding (extra)territorial jurisdiction and lapse of time primarily.

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?

The most fundamental obstacle is of course domestic criminal (procedure) law. Once a foreign matter becomes a domestic one, one is bound by the limits of one's own law. From a Belgian perspective for instance, we may well encounter issues re. lapse of time since the delays are rather limited.

For instance: an extradition request re. aggravated theft happens to concern a Belgian national. Extradition is therefore not possible.

If it were possible, lapse of time according to Belgian law is reached after 10 years for the prosecution, counting from the date of the last fact or the last day of the incriminated period.

The 10-year period applies to crimes, the most serious kind of offences. According to the Belgian Criminal Code, aggravated theft is a crime since the maximum penalty is more than 5 years of imprisonment.

Under the extradition regulations, double criminality and consequently, double lapse of time have to be considered in abstracto – meaning not taking into account eventual mitigating circumstances that affect the concrete way in which the offence would have been dealt with if Belgium had jurisdiction over the offence. If for instance the offence was committed 9 years ago, extradition is perfectly possible.

If extradition would not be possible and *aut dedere, aut judicare* would apply. The outcome is totally different. Belgium should then prosecute the aggravated theft. Belgium acquires jurisdiction on the basis of the active personality principle, i.e. the Belgian nationality of the perpetrator. Like many crimes, aggravated theft is automatically re-qualified from a crime to an offence, a lesser offence, by taking into account mitigating circumstances. This is done to avoid overburdening the Court of Assizes that exclusively deals with 'crimes'. Since this court is not even a permanent jurisdiction and applies a jury trial, it would be far to time consuming and expensive to have all crimes such as aggravated thefts brought before this type of court.

The consequence of this re-qualification is that the maximum sentence lowers to – in principle 5 years of imprisonment and as a consequence of that, the delay for lapse of time is just half of the 10-year delay for crimes, i.e. 5 years.

This means that for the same matter – the 9 year old aggravated theft: extradition is possible, but if extradition is barred by the nationality exception, the application of the *aut dedere, aut judicare* principle is excluded for reasons of lapse of time.

To ensure the proper application of *aut dedere, aut judicare* and the formal transfer of prosecution, domestic law should be adapted or serve as a basis for specific legislation that is based upon international obligations. One element of such legislation would be the application of an in abstracto evaluation of double criminality and lapse of time. This is a very complex matter since it could lead to a different treatment of nationals that have committed offences abroad. In other words: a Belgian who committed a very similar aggravated theft in Belgium would benefit from a lower maximum penalty and a much shorter lapse of time delay.

- 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?

No.

- f. Have you had any problems regarding the 'ne bis in idem' principle?

Insofar the foreign case is indeed pursued, while the same person is under investigation or prosecuted for the same facts, that would exclude a *ne bis in idem* issue.

- 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?

The lack of a conventional *aut dedere, aut exequi* principle is a mayor void in international cooperation in criminal matters. Executing a foreign sentence requires a separate conventional basis that can be applied to overcome a bar to extradition, such as the nationality exception.

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

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.

In all cases where Bosnia and Herzegovina does not allow extradition, it invites the requesting party, by act explaining the reasons for its decision, to transfer criminal prosecution to the competent authorities of Bosnia and Herzegovina. There are certain problems in the application of the Convention, i.e. judicial office holders, independent and autonomous in their work, apply in those cases domestic legislation that contains certain restrictions of the transfer of criminal prosecution (sentence, nationality, stage of proceeding). We have already mentioned that the position of the Ministry of Justice of Bosnia and Herzegovina is that Convention has primacy over domestic legislation, that it is directly applicable to all relations with the foreign countries and that legal restrictions are applicable only within Bosnia and Herzegovina. The result of those interpretations is that Bosnia and Herzegovina is taking over twice as many cases from other countries in relation to the cases transferred to the other countries. Ministry of Justice of Bosnia and Herzegovina has clear position on this matter and constantly points out that this relation is not good for Bosnia and Herzegovina, both from the aspect of number of cases and from the aspect of conducting proceedings and executing the imposed sentence.

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?

We think that this principle should be applied in all cases where possible, especially when it comes to the serious crimes and crimes against humanity and international law.

c. Is this principle implemented in your internal legislation?

Yes, through already mentioned Law on International Legal Assistance in Criminal Matters.

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?

There is an evident problem in the transfer of criminal prosecution for war crimes and crimes against humanity and international law among the countries of the region. Namely, due to the events that preceded disintegration of former Yugoslavia it is clear that there is certain political pressure from the previously warring countries in relation to the transfer of those cases. In that regard, we consider as extremely well the previous provisions of the Rome Agreement that determined competencies of certain countries in terms of processing.

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?

Law on International Legal Assistance in Criminal Matters has included international standards in this area, and thus avoided restrictions preventing those proceedings. At the same time, Criminal Code and Criminal Procedure Code of Bosnia and Herzegovina contain provision of universal jurisdiction, which means that domestic authorities can prosecute all perpetrators of criminal offences. Beside that, legal provisions are continuously being monitored by the special

team of experts comprised of prominent scholars in this area, judges, prosecutors and representatives of the executive branch, i.e. law proponents.

- f. Have you had any problems regarding the 'ne bis in idem' principle?

See explanation given under 3.f.

- 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?

Bosnia and Herzegovina has concluded with great number of countries bilateral agreements on the execution of foreign court decisions and it is also a party to the European Convention on the Transfer of Sentenced Persons. In our opinion, Article 8 paragraph 2 of the European Convention on the Transfer of Proceedings in Criminal Matters presents sufficient legal basis to prosecute a person convicted abroad, who cannot be extradited and in relation to whom the sanction cannot be executed in Bosnia and Herzegovina. This relates only to the cases where Bosnia and Herzegovina does not have concluded bilateral agreement on the execution of court judgements in criminal matters, which would completely regulate that matter.

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

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.

The Czech Republic as the requested State attempts to apply the principle of aut dedere aut judicare (as provided in Czech law – see below) as often as possible. Since 2002 there have been the following 34 instances of application or attempted application of the aut dedere aut judicare principle (including cases when the previous extradition request had not been based on the European Convention on Extradition):

Year	Grounds for refusal of extradition	Result of criminal proceedings in the Czech Republic instituted under the aut dedere aut judicare principle
2002	asylum	Evidence not provided by the requesting State.
2002	asylum	The person left the territory of the C.R.
2002	political persecution	The person left the territory of the C.R.
2002	asylum	Extradition not requested properly (by the competent authority), no further action taken.
2003	risk of torture	Evidence not provided by the requesting State.
2003	risk of torture	Sentence recognized in the C.R. and enforced.
2004	lack of fair trial	Evidence provided, prosecution in the C.R. terminated for insufficiency of the evidence.
2005	asylum	Lack of dual criminality (after further examination).
2005	risk of torture	Lapse of time (statutes of limitation).
2005	subsidiary protection	Lapse of time (statutes of limitation).
2005	subsidiary	The person left the territory of the C.R.

	protection	
2005	risk of torture	The person left the territory of the C.R.
2005	subsidiary protection	The person left the territory of the C.R.
2005	asylum	Lapse of time (statutes of limitation).
2005	subsidiary protection	Termination of the criminal proceedings in the requesting State, the same in the C.R.
2006	risk of torture	Lapse of time (statutes of limitation).
2006	subsidiary protection	Evidence not provided by the requesting State..
2007	political persecution	Lack of dual criminality (after further examination).
2007	asylum	Evidence not provided by the requesting State.
2007	subsidiary protection	Lapse of time (statutes of limitation).
2007	asylum	Lapse of time (statutes of limitation).
2007	risk of torture	Evidence not provided by the requesting State.
2008	humanitarian concerns	Evidence provided, prosecution in the C.R. terminated for insufficiency of the evidence.
2008	humanitarian concerns	Prosecution on-going.
2009	risk of torture	Evidence not provided by the requesting State.
2009	subsidiary protection	Evidence not provided by the requesting State.
2009	subsidiary protection	Evidence provided, currently under examination.
2009	risk of torture	Lapse of time (statutes of limitation).
2010	risk of torture	The person left the territory of the C.R.
2010	risk of torture	The person left the territory of the C.R.
2010	risk of torture	The person left the territory of the C.R.
2010	subsidiary protection	Lapse of time (statutes of limitation).
2010	asylum	Evidence not provided by the requesting State.
2011	risk of torture	Institution of prosecution currently under consideration.

As far as extradition requests submitted by the Czech Republic are concerned, it should be pointed out that the success rate is quite high and that if extradition to the Czech Republic is refused, it is mainly on the basis of the lack of dual criminality, so there would be no point in requesting that the requested State prosecutes the person, or by Common Law countries (e.g. Canada) that rely on the territoriality principle and can't prosecute Czech nationals for offences committed in the Czech Republic anyway.

- b. Do you apply the aut dedere aut iudicare 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?

No. The law of the Czech Republic makes a clear distinction between the principles of active personality and subsidiary universality (which is the domestic reflection of the international aut dedere aut iudicare principle). Czech nationals are prosecuted for offences committed abroad on the basis of their nationality in all cases, irrespective of any request for their extradition (the Czech Republic does not extradite its own nationals anyway), while foreigners are prosecuted for such offences only if not extradited, for example on the grounds of Article 3 of the Torture Convention (i.e. when the conditions in prisons of the requesting State are unsatisfactory) or if they are granted asylum or subsidiary international protection. This approach is in accordance with many other international conventions (e.g. United Nations conventions) that do not limit the aut dedere aut iudicare principle to nationals. The principle of subsidiary universality in Czech law is not limited to application of the European Convention on Extradition or its State Parties.

- c. Is this principle implemented in your internal legislation?

Yes, in Section 8(1)(3) of the Criminal Code 2009 (as had been in all previous criminal codes of Czechoslovakia and the Czech Republic, including the Criminal Code of 1852 and the Military Criminal Code of 1855 “inherited” from Austria-Hungary).

- 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?

See the chart above. The main obstacles are lapse of time (statutes of limitation), willingness of the State that had requested extradition to provide the evidence necessary for prosecution of the person whose extradition is refused in the requested State and securing presence of the person in the requested State between refusal of his/her extradition and arrival of the necessary evidence from the requesting State. We do feel a need to address these obstacles through either binding or (preferably, as consensus on a binding instrument would be even more difficult to reach than on a non-binding one) non-binding 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?

The Draft Act on International Co-operation in Criminal Matters that is currently under review in the comments procedure, contains a provision amending Section 8(1) of the Criminal Code 2009, making application of the aut dedere aut judicare principle subject to an express request of the requesting State that the Czech Republic prosecutes the person whose extradition is refused.

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

No.

- 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?

Treaty basis is not strictly required for enforcement of foreign judgements in the Czech Republic, provided that the condition of exceptionality of the case is met (such exceptionality can be given in cases where enforcement of the foreign judgement is the only way to bring the offender to justice). So far, this has been done in only one case and has not involved a Czech national (see above).

DENMARK / DANEMARK

- 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)

6. 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.

There are no available statistics on this matter.

- 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?

There are no available statistics on this matter.

- c. Is this principle implemented in your internal legislation?

The principle of '*aut dedere, aut judicare*' is stated in the Danish Criminal Code section 8.

- 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?

At the present Denmark sees no specific need for action in this field.

- 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?

Please note, that a jurisdiction committee commissioned by the Danish Ministry of Justice in 2007 published an extensive report on the Danish Criminal Code and Danish criminal jurisdiction. Thus, the question has been subject of extensive examination and accordingly the Criminal Code was amended substantially in this field. Therefore, there are no current plans to alter these provisions.

- f. Have you had any problems regarding the '*ne bis in idem*' principle?

The principle of '*ne bis in idem*' is recognized in the Danish Criminal Code cf. Section 10a. The principle poses no problem within the context on Article 6, paragraph 2.

- 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?

In cases where a request for the extradition of a person for the purpose of serving a sentence is rejected it could be assessed whether the sentence imposed in the requesting state could be enforced in Denmark.

This assessment will normally be based on the European Convention on the International Validity of Criminal Judgments if applicable. It does however follow from Section 10 in the Danish Act on the International Enforcement of Sanctions that it is in certain cases possible to enforce a sanction imposed in another State even if no treaty basis exists.

On this bases Article 6, paragraph 2, of the European Convention on Extradition would probably not be applied when the person who is being requested extradited has already been sentenced in the requesting State. There are no available statistics in this field, but Denmark does not seem to have received any requests after Article 6, paragraph 2.

ESTONIA / ESTONIE**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.

As Estonian Constitution allows to extradite Estonian nationals unconditionally, there is no practical cases related to refusal of extradite and instead taking over the proceedings (acting as requested country).

As requesting country Estonia has had some cases between Estonia and Russia where Russia refused to extradite its own nationals and therefore Estonia has transferred the case to Russia.

But these are very exceptional cases in practice.

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?

No practical cases on this matter so far.

c. Is this principle implemented in your internal legislation?

Yes

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?

No obstacles from our side

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?

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

No

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?

In such cases Estonia will require additional treaty base to execute a foreign judgment.

FINLAND / FINLANDE

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. The principle of *aut dedere aut judicare* is applied very seldom in practice. During the last 15 years there has been one case where a foreign state, after its request of extradition has been rejected, has sent a request to Finland to initiate proceedings here.
 - b. In principle, Finland applies the principle of *aut dedere aut judicare* not only with regard to refusals for reasons of nationality but also for other grounds of refusals.
 - c. The principle is addressed indirectly in Chapter 1, Article 8 of the Criminal Code of Finland where it is provided that Finnish law shall apply to an offence committed outside of Finland if the State on whose territory the offence was committed has requested the offender's extradition but extradition has been denied.
 - d. As a rule, no need for new standards.
 - e. No amendments are foreseen regarding regulation of the *aut dedere aut judicare* principle.
 - f. There may be room to link the *non bis idem* principle with *aut dedere aut judicare* principle. There is a risk that if the extradition has been rejected and the request to prosecute has not been successful the requesting state, not pleased with the outcome (non-prosecution), interprets the principle of *ne bis in idem* in such a way that it finds chances to prosecute for the same or affiliated act.
 - g. If extradition is requested for enforcement of sentence and extradition is denied, Finland can execute the sentence even in the absence of an international obligation solely on the basis of its domestic law.

FRANCE

C. Transmission de procédures comme alternative à l'extradition : application du principe « *aut dedere, aut judicare* » en vertu de l'article 6, paragraphe 2 de la Convention européenne d'extradition (STE n° 24)

5. S'agissant de l'obligation d'extrader ou de poursuivre (*aut dedere, aut judicare*) énoncée à l'article 6, paragraphe 2 de la Convention européenne d'extradition de 1957 (STE n° 24) :
 - a. Merci de donner des informations sur la fréquence avec laquelle ce principe est mis en pratique lorsque votre Etat n'accorde pas l'extradition ou lorsque votre demande d'extradition est refusée par l'Etat requis.

Dans les cas où la France est Etat requérant, une dénonciation officielle des faits est en règle générale adressée à l'Etat requis.

Toutefois, dans l'immense majorité des cas, la nationalité de la personne recherchée est connue avant même que ne soit formée une demande d'extradition. Lorsqu'il est manifeste que l'intéressé est ressortissant de l'Etat requis, les autorités françaises privilégient d'emblée le recours à une procédure de dénonciation officielle, telle que prévue par l'article 21 de la Convention européenne d'entraide judiciaire.

Dans les cas où la France est l'Etat requis, conformément à l'article 6.2 de la Convention européenne d'extradition, si l'extradition est refusée par la France sur le fondement de la nationalité et si une dénonciation officielle est adressée par l'Etat requérant, des investigations seront menées et, le cas échéant, la personne sera poursuivie devant la juridiction française compétente.

Il convient de rappeler que l'extradition est une procédure de moins en moins mise en œuvre puisque le mandat d'arrêt européen remplace la procédure d'extradition entre plus d'une trentaine d'États et que la nationalité n'est pas un motif de refus dans le cadre de la procédure du mandat d'arrêt européen.

- b. Appliquez-vous le principe *aut dedere, aut judicare* exclusivement dans les limites prévues à l'article 6, paragraphe 2 de la Convention d'extradition, c'est-à-dire dès lors que l'extradition est refusée uniquement au motif de la nationalité ou élargissez-vous son application à d'autres motifs de refus ?

L'article 113-8-1 du Code pénal français dispose que, sans préjudice des règles de compétence liées à la compétence personnelle active (auteur des faits de nationalité française), la loi pénale française est également applicable à toute infraction punie d'au moins cinq années d'emprisonnement commise hors du territoire français par un étranger dont l'extradition a été refusée pour l'un des motifs suivants :

- la peine encourue dans l'Etat requis est contraire à l'ordre public français ;
- la personne réclamée aurait, en cas de remise, été jugée dans l'Etat requis par un tribunal n'assurant pas les garanties fondamentales de procédure et la protection des droits de la défense ;
- le fait à l'origine de la demande revêt le caractère d'infraction politique.

- c. Ce principe est-il appliqué en droit interne ?

Voir réponse ci-dessus au point C.5.b.

- d. Quels sont les principaux obstacles à l'application de ce principe et pensez-vous qu'il soit nécessaire d'y remédier au moyen de normes ayant, ou n'ayant pas, force contraignante ?

La France, dans certains cas, doit obtenir une dénonciation officielle de l'Etat requérant ou une plainte de la victime avant de pouvoir initier des poursuites. Il s'agit des délits commis par des ressortissants français à l'étranger, ainsi que des délits commis à l'étranger par un ressortissant français ou étranger sur une victime française.

- e. Votre pays envisage-t-il de modifier son droit interne en ce qui concerne le champ d'application du principe *aut dedere, aut judicare* ? Dans l'affirmative, dans quel sens et dans quelle mesure ?

La France examine actuellement la possibilité d'étendre les cas où elle pourrait se reconnaître comme compétente sur le fondement du principe « *aut dedere, aut judicare* ». En effet, deux obstacles sont apparus à l'occasion de demandes d'extradition qui ont été refusées mais pour lesquelles la mise en œuvre de l'article 113-8-1 du code pénal s'est avérée impossible :

- d'une part, il est arrivé qu'un décret d'extradition soit annulé pour d'autres motifs que ceux visés à l'article 113-8-1 précité ;
- d'autre part, certains États ont refusé d'adresser une dénonciation officielle, considérant comme non fondé le refus d'extradition de la France au regard des risques ayant justifié le refus d'extradition (refus fondé sur le maintien de la peine de mort dans la législation malgré un moratoire du Gouvernement sur l'application de la peine de mort et une abolition de fait de cette peine).

Un projet de loi comprenant certaines modifications de l'article 113-8-1 du code pénal a été soumis au Conseil d'État et devrait être soumis prochainement au Conseil des ministres puis au Parlement.

- f. Avez-vous rencontré des problèmes concernant l'application du principe '*ne bis in idem*' ?

A ce jour, les autorités judiciaires françaises n'ont pas signalé de telles difficultés à l'autorité centrale.

A ce titre, il doit être observé que la législation française énonce que nul ne peut être de nouveau poursuivi s'il justifie qu'il a été définitivement jugé à l'étranger pour les mêmes faits et, en cas de condamnation, qu'il a purgé l'intégralité de sa peine ou que sa peine est prescrite.

La jurisprudence a étendu ce principe aux personnes condamnées ayant fait l'objet d'une mesure de grâce.

En pratique, au regard de cette définition et des conditions posées par le droit français, il paraît peu probable en pratique qu'une difficulté liée à l'application du principe ne bis in idem puisse surgir dans l'exercice de poursuites par la France à l'encontre de l'un de ses ressortissants à la suite d'une dénonciation officielle fondée sur la règle « aut dedere, aut judicare ».

- g. Pouvez-vous appliquer, et appliquez-vous, l'article 6, paragraphe 2, concernant les personnes déjà condamnées et/ou les personnes reconnues coupables pour lesquelles l'extradition est refusée au motif de la nationalité ou pour un autre motif, ou exigez-vous une base juridique de nature conventionnelle supplémentaire pour exécuter un jugement étranger contre une personne condamnée ?

La législation française ne permet pas à l'heure actuelle d'exécuter en France une condamnation prononcée dans un Etat tiers lorsque cette condamnation n'a pas fait l'objet d'un commencement d'exécution à l'étranger¹ dans la mesure où la France n'a pas ratifié la Convention européenne sur la valeur internationale des jugements répressifs du 28 mai 1970 (STE n°70).

Les seuls hypothèses envisageables de transfert de l'exécution d'une peine sont celles prévues :

- dans le cadre de l'Union européenne et en particulier par l'article 4 de la décision-cadre 2002/584/JAI du Conseil du 13 juin 2002 relative au mandat d'arrêt européen et aux procédures de remise entre Etats membres : cette disposition permet à l'Etat d'exécution de refuser la remise de l'un de ses ressortissants ou d'un résident à condition qu'il s'engage à assurer l'exécution de la peine à l'origine de l'émission du mandat d'arrêt européen ;
- dans le cas d'application de l'article 68 de la Convention d'application de l'accord de Schengen ;
- en application de l'article 2 du protocole additionnel à la convention sur le transfèrement des personnes condamnées du 18 décembre 1997 (STCE n°167).

En dehors de ces cas, si l'extradition de la personne est refusée par la France sur le fondement de la nationalité française de l'intéressé, s'il apparaît que la personne recherchée n'a pas été jugée définitivement pour les faits pour lesquels l'extradition a été demandée et si les conditions légales sont réunies, des poursuites pourront être engagées, sur le fondement de l'article 6.2 de la convention européenne d'extradition², si une dénonciation officielle des faits est adressée aux autorités françaises.

¹ Lorsqu'un français condamné à l'étranger a commencé à purger sa peine dans un Etat de condamnation lié par l'accord de Schengen (les Etats de l'Union européenne et les Etats associés (notamment l'Islande, la Norvège et la Suisse), l'article 68 de la Convention d'application de l'accord de Schengen permet de mettre à exécution le reliquat de la peine. Ainsi une demande d'extradition visant un français qui s'est évadé sera refusée au motif de sa nationalité mais sera mise à exécution sur le fondement de cet article 68.

² e fait que l'extradition soit refusée au motif de la nationalité n'exclut pas que d'autres motifs de refus d'extradition auraient pu faire obstacle à son extradition (par exemple la prescription des faits ou l'absence d'une peine d'emprisonnement supérieure ou égale à deux ans) et fasse obstacle à l'engagement de poursuite en France (prescription des faits, absence d'incrimination en France, immunité personnelle,

GEORGIA / GEORGIE**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.

In 2008, Georgia sent 3 requests to other State Parties on the basis of Article 6§2 of the European Convention on Extradition of 1957. In 2009-2011, the number of the outgoing requests amounted to 3, 2 and 1 respectively.

In 2008-2011, the number of the incoming requests on the basis of Article 6§2 of the European Convention on Extradition of 1957 amounted to 13, 10, 14 and 6 respectively.

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?

In practice, Georgia generally applies the *aut dedere aut judicare* principle within the limits of Article 6§2 of the Extradition Convention, i.e. insofar as the extradition was refused solely for reason of nationality. However, on a case-by-case basis, Georgia can also widen the application of the above mentioned principle to other grounds for refusal of extradition depending on the nature, type and gravity of the crime (e.g. the crime of terrorism).

c. Is this principle implemented in your internal legislation?

Article 37(b) of the law of Georgia on International Cooperation in Criminal Matters provides possibility of transferring case files to a foreign state, if the person charged is a national of that state and therefore, his/her extradition is impossible. In the given case, the local investigative authorities are entitled to move before the Ministry of Justice of Georgia with the request for the transfer of the case files to another state. The Ministry of Justice of Georgia has the authority to make the final decision in this regard, and in case of a positive decision, the certified copies of the case files as well as the material evidence are transferred to the appropriate country. Besides, according to Article 42 of the above mentioned law, in case of receiving case files from another state regarding the person whose extradition has been refused due to his/her Georgian nationality, the Ministry of Justice of Georgia is authorized to submit the transferred materials to the relevant local investigative authorities. In the given case, the investigation/prosecution is conducted in accordance with the legislation of Georgia and the respective requesting state is duly notified about the results.

In addition, Georgia is a party to a number of international treaties which contain provisions regarding the *aut dedere aut judicare* principle. These treaties constitute part of the Georgian legislation and are self-executing at the national level. Therefore, the *aut dedere aut judicare* principle defined in various international treaties binding for Georgia is also applied at the domestic level even in case of refusing extradition for the grounds other than nationality.

etc.). La plupart des conventions bilatérales d’extradition précisent, contrairement à la convention d’extradition du 13 décembre 1957 que le principe « *aut dedere, aut judicare* » ne s’applique que lorsque l’extradition est refusée au **seul** motif de la nationalité.

- 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?

Georgia has not had any significant obstacles to the application of the *aut dedere aut judicare* principle.

- 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?

Currently Georgia does not contemplate any change in its domestic legislation concerning the scope of application of the *aut dedere, aut judicare* principle. The reason is that Georgia has not encountered any significant difficulty in the application of the principle referred to above.

- f. Have you had any problems regarding the 'ne bis in idem' principle?

Georgia has not had any significant problems regarding the 'ne bis in idem' principle.

- 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?

Georgia does not apply Article 6§2 with respect to already convicted and/or sentenced persons where extradition is denied on nationality or other grounds. In the given case, Georgia can only execute a foreign criminal judgment against the convicted person on a treaty basis as well as in case the relevant *ad hoc* agreement is concluded with the appropriate foreign state.

GERMANY / ALLEMAGNE

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.

Here too there are no statistical indications. The prosecution authorities estimate that this principle is hardly applied, the probable reason for this being that many extraditions take place in accordance with the provisions of Council Framework Decision of 13 June 2002 (2002/584/JHA) on the European arrest warrant, which then override this principle in relation to such extraditions. It should also be noted, however, that the prosecution authorities abroad are often aware that Germany does not extradite its own citizens and, conversely, German prosecuting authorities are also frequently aware if other States follow the same procedure, which means that extradition requests are not submitted in such cases in the first place.

- 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?

and

- c. Is this principle implemented in your internal legislation?

Since German prosecuting authorities are already obliged by the principle of mandatory prosecution (section 152 (2) of the German Code of Criminal Procedure, StPO) to launch investigations if sufficient factual indications exist – which may also arise from an incoming extradition request – there has not been any need for the additional express implementation of

this principle in domestic law. Section 7 (2), no. 1 of the German Criminal Code (perpetrator was a German at the time of the offence or became one thereafter) thus provides the connecting factor through which German prosecuting authorities establish jurisdiction.

Investigations are therefore launched directly in accordance with German law governing the applicability of criminal law (sections 3-7 of the Criminal Code) upon refusal of the extradition exclusively on the grounds of citizenship, and not with reference to the principle of *aut dedere aut judicare* set forth in Article 6 (2) of the Extradition Convention.

- 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?

To the extent that obstacles exist in individual cases, these of a purely practical nature. There is therefore no need for regulation.

- 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?

No.

- f. Have you had any problems regarding the 'ne bis in idem' principle?

The criminal prosecution authorities of the *Länder* have not reported any such problems.

- 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?

The enforcement of judgments issued in a foreign State proceeds independently of any preceding extradition proceedings and is governed by sections 48 et. seqq of the Act on International Legal Assistance in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*, IRG) to the extent that no special treaty provisions exist, e.g. Convention on the Transfer of Sentenced Persons of 21 March 1983 (section 1 (3) IRG). The enforcement of a foreign judgment cannot be founded on Article 6 (2) alone.

GREECE / GRECE

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.
- a. Pursuant to article 6, par. 1a of the European Convention on Extradition in combination with article 438 ... a' of the Code of Penal Procedure our country does not satisfy extradition requests made by foreign authorities, when the requested person is a Greek national. In these cases, the foreign authority is requested to submit the case to the competent Greek authorities in order that penal prosecution may be initiated.
- b. Our country applies the 'aut dedere, aut judicare' principle, not exclusively within the limits of par. 2 of article 6 but also in every other case provided for by the European Convention on Extradition, in which extradition is not granted, e.g. political, military, fiscal offences.
- c. The 'aut dedere, aut judicare' principle is implemented in the offences which are exclusively listed in article 8 of the Penal Code.
- d. To the present our office has not faced substantial obstacles in the application of this principle.
- e. Our office is not aware of any contemplation of change in the domestic legislation.
- f. To the present there have been no problems regarding the application of this principle.

- g. In addition to the implementation of article 6, par. 2, our country also requires the submission of a request for judicial cooperation with a view to a penal prosecution, pursuant to article 21 of the 'European Convention on mutual assistance in criminal matters' (Strasbourg, 1959).

HUNGARY / HONGRIE

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. 245).

6. 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. According to Article 28 of Act No XXXVIII of 1996 on international legal assistance in criminal matters, if extradition is refused by the minister, the minister shall send the documents to the chief public prosecutor for consideration of initiation of criminal proceedings or other measures.

This provision shall always be applied when the extradition is refused by the minister and regardless to the nationality of the person whose extradition is refused.

When a Hungarian request for extradition is refused by a requested foreign State, it happens quite often that the foreign State applies the *aut dedere aut judicare* principle, however there is no statistics available in this regard.

- b. See the answer given to point a.
- c. Yes. As it is stated above, Article 28 of Act No XXXVIII of 1996 on international legal assistance in criminal matters provides for the provision to apply this principle.
- d. If domestic legislation provides for rules to the application of this principle, there is no need for having any binding or non-binding standards.
- e. No.
- f. Hungary has had no problem regarding the 'ne bis in idem' principle so far.
- g. As it has been mentioned above, according to the relevant Hungarian law Hungary can proceed on the basis of its national legislation with respect to already sentenced person where extradition is refused on the ground of nationality and can execute a foreign judgment against a Hungarian person convicted abroad even without any treaty basis. However with those States who are Parties to the European Convention on the transfer of sentenced person (ETS No. 112), Hungary applies that Convention.

ICELAND / ISLANDE

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.

This has been applied once.

- 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?

No.

- c. Is this principle implemented in your internal legislation?

No, not directly. Article 2 of the Icelandic Act on Extradition of Criminals and other Assistance in Criminal Proceedings, No. 13/1984 only states that Icelandic citizens may not be extradited.

- 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?

There are no obstacles.

- 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?

No, but if so it would be an extension.

- f. Have you had any problems regarding the 'ne bis in idem' principle?

No.

- 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?

No, we require a further treaty basis to execute a foreign judgement against a convicted person.

IRELAND / IRLANDE

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.

Ireland extradites its own nationals and this principle has never been applied.

- 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?

N/A

- c. Is this principle implemented in your internal legislation?

Yes. However, as Ireland extradites its own nationals it has never been applied.

- 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?

Ireland does not see a need to address this matter further.

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

NO

- f. Have you had any problems regarding the 'ne bis in idem' principle?

NO

- 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?

In order to execute a foreign judgement against a convicted person, a request for transfer of execution of sentence must be made under the *Additional protocol to the Convention on the Transfer of Sentenced Persons, 1997*

ITALY / ITALIE

C. Transfer of proceedings as an alternative to extradition: the application of the 'aut dedere, aut iudicare' 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 iudicare* principle:

- a. No significant figures. It should be noted that according to Italian Constitution extradition of citizens is possible, where provided for by international instruments (either bilateral or multilateral). On the basis of my experience and also after having asked fresh information from the Italian Ministry of justice, no cases have been quoted. On the other hand it should be mentioned that, although article 6 of the 1957 Convention makes a linkage between *aut dedere aut iudicare* principle and citizenship, Italy had a case where that principle was applied in case of a national, but not because of refusal of extradition on basis on nationality; as a matter of fact (the case was the Venezia case, between Italy and USA, under the bilateral treaty) the Italian Constitutional court declared that the relevant provision of the said treaty was not consistent with the Italian Constitution. The issue at stake was that according to US law death penalty was possible; US DOJ gave assurances that death penalty would not have been imposed (according to usual rule, similar to article 11 of 1957 Convention), but our Constitutional court stated that because right to life is an absolute right also guarantees have to be absolute and where such guarantees rely on a decision made by a Government, it cannot be considered as absolute³.
- b. idem
- c. see Italian legislation

³ There should be a document by the Italian side (Selvaggi) produced at an early meeting of PC-OC (the decision of the Italian Constitutional Court dates back to 1996).

- d. Given that refusals of extradition are based usually on principle of nationality, it must be observed that the Requesting State is the State which is placed in a better position to proceed, as it is the State where the crime was committed, were victims and witnesses usually are etc. Asking the Requested State to apply the *aut dedere aut iudicare* principle might result in a miscarriage of Justice. As a matter of fact it would be more convenient to prosecute and try at home (in the place of the commission of the crime) and have a decision *in absentia* (where that is admissible according to the law of that State). That was a rule that often Italy (that have trial *in absentia* in its law) followed; one might say that the end of justice was not accomplished, in that the person sought found save haven in his/her country; but it is also true that once he/she goes somewhere else then the “red notice” would apply or a provisional arrest might be asked. It is also true though that this approach would work in a system where trial *in absentia* would not be a legal obstacle to extradite. That is the case of Protocol no. 2 to Extradition Convention (CETS no. 98). However, one should make a distinction depending on whether the State where that person goes is a State where extradition is applied or whether it is a EU member State; in the latter case the EAW regime would apply along with the obligation for the requesting State to ensure a re-trial of the person concerned.
- e. No changes are foreseen at the moment.
- f. No major problems. But: one of reasons why Italy might not ask the requested State (which is also the State of citizenship of the person sought) to apply the *aut dedere aut iudicare* principle (*in concreto* Italy would NOT ask extradition in such a case), is that should the individual be tried in his/her country, there could be a possible conflict of *ne bis in idem*, that the defence might use before courts (taking into account that Italy has trial *in absentia* possibility, see above no. 5.d).
- g. See under para 5 above in general. In cases where Italy has extraterritorial jurisdiction (that happens for most of crimes, almost all of serious crimes, i.e. punished with lot less than a three years prison punishment) Italy can try that person again, at the request of the Minister of Justice (article 11 of penal code).

According to the Italian Supreme Court *ne bis in idem* principle is not a principle of international law and is to be applied only where it is included in treaties or conventions (although that ruling is under discussion, as it should be regarded as a fundamental human right; see for instance Nizza Chart).

LITHUANIA / LITUANIE

- C. Transfer of proceedings as an alternative to extradition: the application of the ‘aut dedere, aut iudicare’ 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 iudicare* principle:
- a. Having reviewed the practice over the last few years, there was no case of application of provisions of Article 6(2) of the European Convention on Extradition of 1957. The main reason thereof is that commonly it is determined in advance that a person is a citizen of the requesting state and cannot be extradited; therefore, the procedure of extradition is not even commenced by proceeding to consideration of possibility of transfer of proceedings in criminal matters.
- b. It is not possible to answer this question due to the lack of practice.
- c. /
- d. The main obstacle for more common application of the principle is the necessity to perform the prosecution in the state, where the criminal act is committed.

- e. Currently no amendments in the national law as to *aut dedere aut judicare* principle are considered.
- f. No.

MOLDOVA

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.

The Principle "aut dedere aut Judicare" has not been applied by the Republic of Moldova, as the state that does not grant extradition. As it concerns the requests of extradition that are refused by the states, the Republic of Moldova has applied this principle (Russian Federation, Ukraine).

- 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?

The Republic of Moldova apply this principle “solely for reason of nationality”

- c. Is this principle implemented in your internal legislation?

This principle is not applied in the internal legislation of Republic of Moldova.

- 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?

The Republic of Moldova does not have any obstacle in applying this principle.

- 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?

The Republic of Moldova does not contemplate any change in domestic legislation concerning the scope of application of the “aut dedere, aut judicare” principle.

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

According to the practice of the Republic of Moldova, the competent authorities do not have any problems / obstacles in applying the principle “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?

In case the request of extradition is denied on the ground of nationality, the competent authorities of the Republic of Moldova request the execution of national judgment against a convicted person on the basis of other international instruments, but in the future they will take into consideration the art.6 paragraph 2 of the named Convention.

NETHERLANDS / PAYS-BAS**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.

Requests are not registered as such.

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?

The principle of *aut dedere aut judicare* as laid down in Dutch legislation sees on the situation that extradition is declared inadmissible or denied. The grounds for not extraditing can be besides nationality also be found in the nature of the offence (e.g. political offences or terrorism). There is a special provision for *aut dedere aut judicare* concerning terrorism offences.

c. Is this principle implemented in your internal legislation?

Yes, see above.

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?

The main obstacles can be found in the lack of jurisdiction (when the Convention on the Transfer of Proceedings is not applicable), double criminality, lapse of time, *ne bis in idem*, special (mental or physical) conditions concerning the person involved.
We can not see the necessity for extra binding 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?

No.

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

Yes. 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 also 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?

For the execution of a foreign judgment the Netherlands always needs a treaty basis.

PORTUGAL

C. Transmission de procédures comme alternative à l'extradition : application du principe « *aut dedere, aut judicare* » en vertu de l'article 6, paragraphe 2 de la Convention européenne d'extradition (STE n° 24)

5. S'agissant de l'obligation d'extrader ou de poursuivre (*aut dedere, aut judicare*) énoncée à l'article 6, paragraphe 2 de la Convention européenne d'extradition de 1957 (STE n° 24) :
 - a. Dans le cas du Portugal en tant qu'État requis ce principe est souvent appliqué. L'expérience du Portugal comme État requérant, surtout avec les Pays CPLP, révèle l'application de plus en plus fréquente de ce principe.
 - b. Le Portugal applique ce principe aussi dans d'autres cas où l'extradition est refusée parce qu'elle est contraire à la Constitution, comme est le cas des crimes punis avec prison à perpétuité. Aussi, le Mandat d'Arrêt Européen a donné lieu à d'autres cas où des transmissions de procédures s'avèrent nécessaires, comme ce sont les cas de l'article 4 n°2 (pour les cas où il y a un conflit partiel de juridictions) ou n° 6 (pour l'exécution de peines des résidents).
 - c. Oui, comme il a déjà été mentionné le principe est immanent à l'article 5 du Code Penal qui prévoit que, en cas d'impossibilité d'extradition, la compétence des tribunaux portugais pour investiguer et juger les faits est originaire.
 - d. Les principaux obstacles surgissent non du principe lui-même mais des difficultés qui résultent d'une investigation à la distance, appuyé sur des principes de coopération internationale souvent lents ou incomplets.
 - e. Non, notre champ d'application de ce principe nous paraissant déjà assez large.
 - f. Non
 - g. Pour le cas des personnes condamnées le Portugal devra entamer une procédure de révision et confirmation/conversion de la décision étrangère avant de pouvoir l'exécuter. La base pour cette procédure est prévue dans la loi interne raison par laquelle une base juridique conventionnelle n'est pas absolument nécessaire.

ROMANIA / ROUMANIE

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) This principle is applied by Romania mainly in relation with countries like Moldavia, Ukraine and Turkey, which don't extradite their nationals
 - b) The *aut dedere aut judicare* principle is applied exclusively within the limits of the Article 6 paragraph 2 of the European Convention on Extradition
 - c) Yes, this principle is implemented in our internal legislation (article 23 of the Law 302/2004 on international judicial cooperation in criminal matters)
 - d) The main obstacles to the application of this principle are related to the domestic legislation of the countries that have a different legislation regarding the *in absentia* cases.

- e) No.
- f) Yes.
- g) Yes, we can apply Article 6 paragraph 2 of the European Convention on Extradition with respect to already sentenced persons where extradition is denied on nationality ground. If the extradition was denied on other grounds, we would need further treaty basis in order to execute a foreign judgement against a convicted person.

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

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.

It is always applied in the cases when the extradition request is refused on the ground that the sought person has a Russian citizenship.

- 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?

It may be used also where there are other grounds for refusal of extradition, but only within the limits of the Russian jurisdiction in accordance with the law or international treaties of the Russian Federation.

- c. Is this principle implemented in your internal legislation?

Yes. In accordance with Article 12 of the Criminal Code of the Russian Federation foreign citizens and stateless persons not residing permanently in the Russian Federation who committed a crime outside the territory of the Russian Federation are criminally liable under this Code in cases where the crime was committed against the interests of the Russian Federation or against a citizen of the Russian Federation or against a stateless person permanently residing in the Russian Federation and also in cases provided for by the international treaty of the Russian Federation, unless foreign citizens and stateless persons who do not permanently reside in the Russian Federation were convicted in a foreign state and are prosecuted in the territory of the Russian Federation.

- 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?

We have no obstacles to the application of this principle.

- 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?

We do not have official information on this issue.

- f. Have you had any problems regarding the 'ne bis in idem' principle?

There have been no problems in connection with carrying out criminal proceedings.

- 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 judgement against a convicted person?

In order for a foreign judgement to be enforced in the Russian Federation in respect of the convicted person a treaty basis is required.

SAN MARINO / SAINT-MARIN

- With regard to letter C), it should be stressed that after the ratification of the European Convention on Extradition (through Parliamentary Decree no. 28 of 16 March 2009), the request for extradition has been refused only in one case and solely because the person to be extradited was a San Marino national (and, therefore, not for other reasons).

Always with reference to the specific case, given the fact that the person to be extradited gave himself up to the requesting authority, there were no reasons to apply the procedure referred to in Article 6, paragraph 2 of the Convention on Extradition.

As no other cases have occurred, it is not possible to report any obstacles to the application of the principle referred to in the above-mentioned Article.

However, it should be pointed out that there is not any domestic legal framework regulating the scope of the "*aut dedere aut judicare*" principle.

Prior to the ratification of the Convention on Extradition, a San Marino national served a sentence imposed by the Court of another State in the territory of the Republic of San Marino on the basis of a bilateral Convention.

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

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.

After the implementation of the Council Framework Decision on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) to the legal order of Slovak Republic is the *aut dedere aut judicare* principle applied almost exclusively in the connection with the proceeding on European arrest warrant (up to 5 cases per year), where is this principle a facultative possibility.

- 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?

Yes, Slovak Republic apply the *aut dedere aut judicare* principle exclusively within the limits of Article 6 para. 2 of the Extradition Convention.

- c. Is this principle implemented in your internal legislation?

Yes, this principle is implemented in Slovak internal legal order – Article 510 para. 3 of the Code of Criminal Procedure (“When the minister of justice does not grant the extradition, the ministry of justice submits the matter to general prosecutor’s office for the purpose of criminal proceedings according to legal order of Slovak Republic.”).

- 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?

The main obstacle is the evidence located in the territory of the requesting State, but this problem could be solved by instruments concerning the mutual legal assistance in criminal matters.

Other obstacle is the absence of double criminality, but this problem cannot be solved by any international treaty.

- 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?

NO

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

NO

- 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?

In such cases the Slovak Republic prefers to require a further treaty basis to execute a foreign judgment against a convicted person, primarily the Convention on the Transfer of Sentenced Persons or similar bilateral treaties.

SLOVENIA / SLOVENIE

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.

There were cases where competent Slovenian authorities started the criminal proceeding against the person whose extradition was refused due to the nationality principle, however we encounter problems with regard to the active form, where Slovenian request for extradition has been refused on the basis of the nationality principle. Due to our national legislation, which regulates the institute of the transfer of proceedings and limits the application only to the offences where the prescribed penalty is less than 10 years, we could not transfer the case to the state, which refused the extradition. The competent authorities of the requested state started the proceeding *ex officio*, however due to the lack of evidence, they terminated the investigation. This “limiting” provision will be amended.

- 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?

So far has been only applied within the limits of article 6/2 of the Extradition convention, however it is possible to apply the principle also in other cases, since the domestic provision regulating the principle aut dedere aut judicare has no limitation .

- c. Is this principle implemented in your internal legislation?

YES article 13 of the Penal code determines that the Penal Code of the Republic of Slovenia shall also be applicable to any foreign citizen who has, in a foreign country, committed a criminal offence against a third country or any of its citizens if he has been apprehended in the territory of the Republic of Slovenia, but was not extradited to the foreign country. In such cases, the court shall not impose a sentence on the perpetrator heavier than the sentence prescribed by the law of the country, in which the offence was committed).

- 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?

In our opinion main obstacles are undoubtedly connected or arising from the evidentiary procedure – lack of evidences, admissibility of evidences, problems with witnesses, etc. It is hard to asses whether adoption of any binding or non biding instrument would solve the problems connected with evidences. There are already several instruments allowing the transfer of evidence, regulating the obtaining of the evidence through MLA, etc.

- 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?

NO

- f. Have you had any problems regarding the 'ne bis in idem' principle? -

- 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?

It is possible to apply the principle also in those cases – but not ex officio, we would need a request from the competent authorities for the transfer of the execution of foreign judgment.

SWEDEN / SUEDE

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.

The principle has seldom been applied when Sweden has not granted extradition, due to the fact that the Requesting State has not made a request according to Article 6 paragraph 2. Swedish authorities may also proceed outside the framework of the principle of aut dedere aut judicare on the basis of Swedish extraterritorial jurisdiction.

The principle is very seldom used in cases concerning extradition to Sweden due to the fact that Swedish authorities in the majority of cases do not request extradition when a refusal is expected due to the nationality of the person sought.

- 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?

The *aut dedere aut judicare* principle may be used also outside the limits of article 6 § 2 of the Extradition Convention. If other international conventions/treaties/obligations poses this obligation on Sweden, it may be applied also to other grounds for refusal.

- c. Is this principle implemented in your internal legislation?

No.

- 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?

One obstacle when proceedings have been initiated in Sweden as the requested state may be difficulties in getting supporting documents from the State that has requested extradition/transfer of proceedings pursuant to this principle.

- 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?

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?

No.

- 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?

Sweden could in principle apply the Article in these cases. It has however never been used in practice.

SWITZERLAND / SUISSE

C. **Transmission de procédures comme alternative à l'extradition : application du principe « *aut dedere, aut judicare* » en vertu de l'article 6, paragraphe 2 de la Convention européenne d'extradition (STE n° 24)**

5. S'agissant de l'obligation d'extrader ou de poursuivre (*aut dedere, aut judicare*) énoncée à l'article 6, paragraphe 2 de la Convention européenne d'extradition de 1957 (STE n° 24) :

- a. Merci de donner des informations sur la fréquence avec laquelle ce principe est mis en pratique lorsque votre Etat n'accorde pas l'extradition ou lorsque votre demande d'extradition est refusée par l'Etat requis.

Voir réponse 4a.

La Suisse reçoit environ 100 demandes de l'étranger par an (à ceci s'ajoutent les cas transmis par voie directe, pas de statistique).

- b. Appliquez-vous le principe *aut dedere, aut judicare* exclusivement dans les limites prévues à l'article 6, paragraphe 2 de la Convention d'extradition, c'est-à-dire dès lors que l'extradition a été refusée *uniquement au motif de la nationalité* ou élargissez-vous son application à d'autres motifs de refus ?

Ce principe n'est pas appliqué exclusivement dans les limites de l'art. 6, par. 2.

Les autres raisons pour une application élargie peuvent être:

- existence d'une juridiction suisse pour les faits faisant l'objet de la demande d'extradition,
- cas d'importance mineure avec chance d'un meilleur reclassement social en Suisse (l'Etat requérant renonce pour cette raison à demander l'extradition),
- statut de réfugié.

- c. Ce principe est-il appliqué en droit interne ?

Oui.

- d. Quels sont les principaux obstacles à l'application de ce principe et pensez-vous qu'il soit nécessaire d'y remédier au moyen de normes ayant, ou n'ayant pas, force contraignante ?

Voir réponse 4d.

Un autre problème est que l'Etat qui se voit refuser une extradition (notamment pour la raison de poursuites politiques, statut de réfugié) renoncera à demander l'ouverture d'une poursuite pénale dans l'Etat requis. Ce dernier ne peut donc pas disposer des preuves nécessaires pour engager ou mener à bien une poursuite pénale.

- e. Votre pays envisage-t-il de modifier son droit interne en ce qui concerne le champ d'application du principe *aut dedere, aut judicare* ? Dans l'affirmative, dans quel sens et dans quelle mesure ?

Non.

- f. Avez-vous rencontrés des problèmes concernant l'application du principe 'ne bis in idem' ?

Voir réponse 4e.

- g. Pouvez-vous appliquer, et appliquez-vous, l'article 6, paragraphe 2, concernant les personnes déjà condamnée et/ou les personnes reconnues coupables auxquelles l'extradition est refusée au motif de la nationalité ou pour un autre motif, ou exigez-vous une base juridique de nature conventionnelle supplémentaire pour exécuter un jugement étranger contre une personne condamnée ?

Selon le droit suisse, une peine prononcée à l'étranger peut à certaines conditions être exécutée en Suisse. A cette fin, la Suisse a besoin d'une demande en la matière.

TURKEY / TURQUIE

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.

Answer: Nearly 10 times.

- 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?

Answer: Yes. Turkey applies this principle especially for the reason of nationality.

- c. Is this principle implemented in your internal legislation?

Answer: No.

- 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?

Answer: Sometimes, especially terror crimes, some European states refuses Turkey's extradition request, but after, they don't prosecute them.

- 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?

Answer: No.

- f. Have you had any problems regarding the 'ne bis in idem' principle?

Answer: Yes. I mentioned C-d.

- 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?

Answer: Yes, we can apply Article 6 para 2 with respect to already convicted person.

UKRAINE

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.

In practice this principle is applied rather often, when the requested state refuses extradition.

In case Ukraine does not grant extradition we use paragraph 3 of Article 466 of the Criminal Procedural Code of Ukraine, which provides that in case of refusal to extradite on the grounds of citizenship and possession of the status of refugee or on any other grounds, which do not exclude proceedings, The General Prosecutor's Office of Ukraine, upon the request of the competent authority of foreign state, shall assign a pre-trial investigation authority to investigate the criminal case with regard to this person according to the procedure established by the Code.

- 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? c Is this principle implemented in your internal legislation?

This principle is applied when the extradition is refused regardless of the reasons for refusal. The main condition is that the person stays at the territory of the requested state at the moment of receiving of the request on the transfer of criminal proceeding.

- c. Is this principle implemented in your internal legislation?

This principle is implemented in the Criminal Procedural Code of Ukraine (Article 466) as well as in the laws on ratification of the relevant international treaties.

- 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?

There are no obstacles for the application of this principle.

- 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?

We do not face such problems.

- f. Have you had any problems regarding the 'ne bis in idem' principle?

No, we have not.

- 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?

Where extradition is denied for the reason of nationality or other grounds to already convicted or sentenced persons, Ukraine can execute a foreign judgment against a convicted person on the basis of the relevant international treaty, in particular, under Article 2 of Convention on the Transfer of Sentenced Persons (1983) or European Convention on International Validity of Criminal Judgments (1970).

UNITED KINGDOM / ROYAUME-UNI

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.

The UK has no bar on the extradition of own nationals, so does not apply this principle to extradition requests received. The Home Office is not aware of any recent instances where a UK extradition request has been refused solely on the grounds of the person's nationality.

- 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?

The UK has no bar on extradition of own nationals.

- c. Is this principle implemented in your internal legislation?

No.

- 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?

The UK considers the bar on extradition of own nationals to be an obstacle to the interests of justice and generally the interests of the victim. Extradition is much preferable to prosecution of the person in the Requested State. Prosecution in the Requested State should be resorted to only where it best serves the interests of the victim(s) and the interests of justice.

- 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?

No.

- f. Have you had any problems regarding the 'ne bis in idem' principle?

No.

- 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?

No. The UK has no bar on extradition of own nationals.

CHAPTER D / CHAPITRE D

D. General questions

ALBANIA / ALBANIE

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?

We would appreciate any recommendation/guideline to be drafted in order to improve their implementation within the existing standards.

7. Please specify for 'proper' transfer of proceedings (Transfer of Proceedings Convention), laying of information (Article 21, MLA-Convention) and *aut dedere aut judicare* (Article 6§2, Extradition Convention).

We would appreciate any 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.

And also the states who have not signed or ratified yet this convention would be welcomed to reconsider their decisions in order this convention can be applicable.

Regarding the laying of information (Article 21, MLA Convention) we consider to have no suggestion for any improvement to be necessary.

Regarding article 6/2 of the Convention on Extradition (Aut dedere, aut Judicare), we think that improvement of its implementation needs to be recommended 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, causing the requested state undertake no further action as a consequence.

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

AUSTRIA / AUTRICHE

D. General questions

7. 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?

In most cases conflicts of jurisdiction do not lead to major problems in practice and can be solved in most cases easily when an efficient exchange of information can be established. In order to prevent and/or solve problems it could be useful to consider some guidelines (exchange of information; timelimits; criteria for suspending proceedings when parallel proceedings are pending, etc.).

8. 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).

See above.

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

AZERBAIJAN / AZERBAÏDJAN

D. General questions

8. Please note below problems arise while implementing “European Convention on Extradition” and “European Convention on Mutual Assistance in Criminal Matters”.
- Due to lack of legal force of documents submitted via e-mail and fax, also including delays in sending extradition related documents through diplomatic channels creates difficulties in processing requests within the time limits defined in Convention;
 - In several cases European governments along with rejecting extradition request also don't prosecute the requested person and because of this person committed crime remains unpunished;
 - In terms of securing human rights, it is considered appropriate to harmonize The European Convention on Extradition with the European Convention on “Protection of Human Rights and Fundamental Freedoms”.

The norms of “European Convention on Extradition” do not have imperative character and this creates conditions for evasion from their implementation. For example, Azerbaijan is a party to various bilateral or multilateral treaties with some CIS countries their there is direct obligation to transfer or extradite a person upon a request of the Contracting Party.

BELGIUM / BELGIQUE

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?

From a practical point of view, I suggest that a set of guidelines can be envisioned that is based on the outcome of this questionnaire.

One essential guideline would be to limit transfer of prosecutions to serious crime and never without proper preliminary consultations between the parties concerned. By the time the formal request for transfer is actually transmitted, there should be clear understanding that the matter will indeed be pursued by the to-be-requested party.

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

BOSNIA AND HERZEGOVINA / BOSNIE-HERZEGOVINE

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?

Recommendations of the Council of Europe regarding the application of provisions of certain conventions are considered as recommendation of the authority, which has binding character. Such recommendations would certainly affect judicial office holders to make decisions in a manner that has already been suggested. It is very important to emphasize here that the institute of independency of judges and prosecutors leads to different practice, which causes that one court acts in one way, while the other court, in almost same situations, acts in another way. For that reason we consider Council of Europe recommendations as very useful.

CZECH REPUBLIC / REPUBLIQUE TCHEQUE

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?

Yes. As far as positive conflicts of jurisdiction are concerned, it could be useful to consider, how to revive part IV of the Convention which does not seem to be frequently applied, although it is based on good idea. Appropriate starting point could be to set up the list of non-binding criteria for determination of the most suitable jurisdiction for prosecution.

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).

The answer would depend on the results or information from the Member States, gathered through the present questionnaire.

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

No further comments.

DENMARK / DANEMARK

D. General questions

7. 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?

As stated above under question C, nr. 5 e, the Danish Provisions on criminal jurisdiction have recently been examined and amended intensively. At the present, Denmark sees no specific need for Council of Europe action in this field.

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).

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

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ESTONIA / ESTONIE

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?

A discussion during one of next PC-OC meetings could be a good “starting point”. The discussion could follow with guidelines.

FINLAND / FINLANDE

D. General questions

6. Need for actions on conflicts of jurisdiction?

No.

7. Finland is not a party to the 1972 Convention and therefore it has accepted requests regarding *aut dedere aut judicare* on the basis of Article 6, paragraph 2 of the Convention on Extradition.

8. Any more comments?

Sometimes it seems that the requesting State is transferring prosecution 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.

FRANCE

D. Questions générales

6. Pensez-vous que le Conseil de l'Europe devrait, en complément des normes existantes, agir en vue du règlement des conflits de compétence négatifs ou positifs ou élaborer des recommandations/lignes directrices pour améliorer leur mise en œuvre ?

En ce qui concerne les conflits de compétence positifs, le thème a déjà été traité au sein de l'Union européenne et a donné lieu à l'adoption de la décision-cadre 2009/948/JAI du Conseil du 30 novembre 2009 relative à la prévention et au règlement des conflits en matière d'exercice de la compétence dans le cadre des procédures pénales. La négociation de cet instrument a mis en évidence la grande complexité du sujet. Au demeurant, force est de constater que ladite directive ne fixe aucune règle contraignante et n'impose qu'une obligation de dialogue : les autorités compétentes doivent « [prendre] contact avec l'autorité compétente de [l'] autre État membre pour obtenir confirmation de l'existence de cette procédure parallèle », engager des contacts directs et les autorités de l'autre État ont une obligation de répondre.

En ce qui concerne les conflits de compétence négatifs, la situation semble encore plus délicate.

En outre, quand bien même la poursuite est juridiquement possible en cas de refus d'extradition, soit au motif de la nationalité de la personne demandée soit pour tout autre motif (peine de mort encourue, considérations humanitaires, etc.), il semble très difficile de mener à bien un procès sur le seul fondement des éléments mentionnés dans une demande d'extradition sans avoir copie du dossier et des éléments de preuve déjà recueillis dans l'État requérant. Il conviendrait en conséquence de favoriser la mise en œuvre rapide des dénonciations officielles à la suite de refus d'extradition et encourager l'exécution efficace des demandes d'entraide qui pourraient être émises à la suite de l'application du principe *aut dedere, aut judicare*.

En dernier lieu, le développement de bonnes pratiques tendant à faciliter l'échange d'informations et le suivi de dénonciations officielles faites entre Etats parties devrait être soutenu.

GEORGIA / GEORGIE

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?

Georgia will appreciate any action taken at Council of Europe level to tackle positive or negative conflicts of jurisdiction in addition to the existing standards as well as the drafting of recommendations/guidelines in order to improve their implementation.

GERMANY / ALLEMAGNE

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?
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).

The Ministry does not presently perceive any corresponding need for regulation either from a practical or a substantive perspective. At most, improvements could potentially be made in practice in relation to other Member States with the creation at Council of Europe level of suitable rules of procedure, including procedural deadlines. The aim could therefore be to provide uniform and binding procedural rules for all Member States according to which the justice authorities of a Member State may transfer running investigation or criminal proceedings to the justice authorities of another Member State. Consideration could be given, for example, to 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.

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

No further comments appear necessary.

Legal provisions cited

Criminal Code (Strafgesetzbuch, StGB)

Version: New version by promulgation of 13 November 1998 I 3322;
last amended by Article 4 of the Act of 23 June 2011 I 1266

Section 3: Applicability to offences committed on the territory of the Federal Republic of Germany

German criminal law shall apply to acts committed on the territory of the Federal Republic of Germany.

Section 4: Offences committed on German ships and aircraft

German criminal law shall apply, regardless of the law applicable in the place where the act was committed, to acts committed on a ship or an aircraft entitled to fly the federal flag or the nationality mark of the Federal Republic of Germany.

Section 5: Offences committed abroad against domestic legal interests

German criminal law shall apply, regardless of the law applicable in the place where the act was committed, to the following acts committed abroad:

1. Preparation of a war of aggression (section 80);
2. High treason (sections 81 to 83);
3. Endangering the democratic state governed by the rule of law
 - a) in cases under sections 89, 90a (1) and 90b if the perpetrator is German and has the centre of his life within the territorial scope of this act, and
 - b) in the cases under sections 90 and 90a (2);
4. Treason and endangering national security (sections 94 to 100a);
5. Offences against the national defence
 - a) in cases under section 109 and sections 109e to 109g, and
 - a) in cases under sections 109a, 109d und 109h if the perpetrator is German and has his the centre of his life within the territorial scope of this act;
6. Abduction and casting political suspicion on another (sections 234a, 241a) if the act is directed against a German who has his domicile or usual residence in Germany;
- 6a. Abduction of a minor in cases under section 235 (2) no. 2, if the act is directed against a person who has his domicile or usual residence in Germany;
7. Violation of business or trade secrets of a business located within the territorial scope of this act, an enterprise which has its registered place of business there, or an enterprise with its registered place of business abroad which is dependent on an enterprise with its registered place of business within the territorial scope of this act and constitutes with it a group;
8. Offences against sexual self-determination
 - a) in cases under section 174 (1) and (3) if the perpetrator and the person against whom the act was committed are Germans at the time of the act and have the centre of their lives in Germany, and
 - b) in cases under sections 176 to 176b and 182 if the perpetrator is a German;
9. Termination of pregnancy (section 218) if the perpetrator at the time of the act is a German and has the centre of his life within the territorial scope of this act;

10. False unsworn testimony, perjury and false affirmations in lieu of an oath (sections 153 to 156) in a proceeding pending before a court or other German agency within the territorial scope of this act which is competent to administer oaths or affirmations in lieu of an oath;

11. Offences against the environment in cases under sections 324, 326, 330 and 330a, which were committed within the area of Germany's exclusive economic zone, to the extent that international conventions on the protection of the sea permit their prosecution as criminal offences;

11a. Offences under section 328 (2), nos. 3 and 4, as well as subsections (4) and (5), also in conjunction with section 330, if the perpetrator is a German at the time of the act;

12. Acts committed by a German public official or a person with special public-service obligations during an official stay or in connection with his duties;

13. Acts committed by a foreigner as a public official or a person with special public-service obligations;

14. Acts which someone commits against a public official, a person with special public-service obligations, or a soldier of the Bundeswehr during the discharge of his duties or in connection with his duties;

14a. Bribery of a member of parliament (section 108e) if the perpetrator is a German at the time of the act or if the act was committed in relation to a German;

15. Trafficking in organs and human tissues (section 18 of the Transplantation Act) if the perpetrator is a German at the time of the act.

Section 6: Acts committed abroad against internationally protected legal interests

German criminal law shall further apply, regardless of the law applicable at the place of their commission, to the following acts committed abroad:

1. (repealed)

2. Crimes involving nuclear energy, explosives and radiation in cases under sections 307 and 308 (1) to (4), section 309 (2) and section 310;

3. Assaults against air and maritime transport (section 316c);

4. Trafficking in human beings for the purpose of sexual exploitation and for the purpose of the exploitation of labour, as well as assisting in the trafficking in human beings (sections 232 to 233a);

5. Unauthorized distribution of narcotics;

6. Dissemination of pornographic writings in cases under sections 184a, 184b (1) to (3) and 184c (1) to (3), also in conjunction with section 184c, first sentence;

7. Counterfeiting of money and securities (sections 146, 151 and 152), of guaranteed payment cards and blank Eurocheques (section 152b (1) to (4), as well as the preparation thereof (sections 149, 151, 152 and 152b (5));

8. Subsidy fraud (section 264);

9. Acts which, on the basis of an international agreement binding on the Federal Republic of Germany, are to be prosecuted even if they are committed abroad.

Section 7: Applicability to offences committed abroad in other cases

(1) German criminal law shall apply to acts committed abroad against a German if the act is a criminal offence at the place of its commission or if that place is not subject to any criminal jurisdiction.

(2) German criminal law shall apply to other acts committed abroad if the act constitutes a punishable offence at the place of its commission or if that place is not subject to any criminal law jurisdiction, and if the perpetrator

1. was a German at the time of the offence or became a German after the commission of the offence, or

2. was a foreigner at the time of the offence, is discovered in Germany and, although the extradition law would permit extradition for such an offence, is not extradited because a request for extradition within a reasonable period of time is not made, is rejected, or extradition cannot be executed.

Guidelines on Relations with Foreign Countries in Criminal Law Matters (*Richtlinien für den Verkehr mit dem Ausland in strafrechtlichen Angelegenheiten, RiVAST*)

Version: 8 December 2008

No. 145: Conditions for an outgoing prosecution request

(1) If a person is being prosecuted on the territory of the Federal Republic of Germany for a criminal offence for which extradition cannot be granted (cf. no. 88) or for a regulatory offence, but is resident abroad, the prosecution authorities shall ascertain whether prosecution is to be requested of the foreign State. The principle of proportionality shall be observed in doing so.

(2) The same shall be done if a request for assistance in enforcement (cf. no. 105) cannot be granted.

Code of Criminal Procedure (*Strafprozessordnung, StPO*)

Version: New version by promulgation of 7 April 1987 I 1074, 1319;
last amended by Article 5 of the Act of 23 June 2011 I 1266

Section 152

(1) The public prosecution office shall have the authority to prefer public charges.

(2) Except as otherwise provided by law, the public prosecution office shall be obliged to take action in relation to all prosecutable criminal offences, provided there are sufficient factual indications.

Act on International Legal Assistance in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen, IRG*)

Version: New version by promulgation of 27 June 1994 I 1537;
last amended by Article 1 of the Act of 18 October 2010 I 1408

Section 1: Scope of application

(1) Relations with foreign countries relating to legal assistance in criminal matters are governed by this Act.

(2) Criminal matters within the meaning of this Act include proceedings relating to an act which, pursuant to German law, constitutes a regulatory offence and is punishable with a regulatory fine or which, pursuant to foreign law, is subject to a comparable penalty, provided a court also with jurisdiction in criminal matters can determine this penalty.

(3) Provisions of international agreements shall supersede the provisions of this Act provided they constitute directly applicable national law.

(4) Support for proceedings in criminal matters with another Member State of the European Union shall be governed by this Act.

Part IV: Legal assistance by enforcement of a foreign decision

Section 48: General principle

Legal assistance may be provided for proceedings in a criminal matter in the form of enforcement of a final and binding penalty or other penalty imposed abroad. Part IV of this Act shall also be applicable to requests for the enforcement of an order for forfeiture or confiscation handed down by a court in the requesting State not having jurisdiction over criminal matters, provided that the order is based on a punishable offence.

Section 49: Additional permissibility criteria

(1) Enforcement shall be permissible only

1. if a competent authority of the foreign State has requested it, submitting the complete, legally binding and enforceable decision;
2. if, in the proceedings on which the foreign decision is based, the sentenced person has had an opportunity to be heard in accordance with the law, has been provided with an adequate opportunity for defence, and the penalty has been imposed by an independent court or, in the event of a regulatory fine, has been imposed by an authority whose decision may be appealed to an independent court;
3. if, also under the law in force in the area of application of this Act, notwithstanding any procedural bars and, if need be, on analogous application of the facts, a criminal penalty, a measure of reform and prevention or a regulatory fine could have been imposed in respect of the act forming the basis of the foreign decision or, where the enforcement of an order for forfeiture or confiscation is requested, such an order could have been made notwithstanding section 73 (1), second sentence, of the Criminal Code;
4. if the limitation period for enforcement has not expired under the law in force in the area of application of this Act, or would not have expired after analogous conversion of the facts, and
5. if no decision of the type described in section 9 (1) has been made.

(2) If a penalty entailing deprivation of liberty has been imposed in a foreign State and the sentenced person is present there, enforcement shall further be admissible only if the sentenced person, after having been informed of his rights, has consented to it and this consent has been recorded by a judge of the requesting State or by a German career consular official who is empowered to authenticate expressions of intent. Any such consent cannot be revoked.

(3) Enforcement shall not be permissible if the law in force in the area of application of this Act does not provide for any penalties equivalent in type to the penalties which have been imposed in the foreign State.

(4) Where a ruling has been handed down in the foreign order for forfeiture or confiscation concerning the rights of third parties, it shall be binding unless

- a) the third party has not been given sufficient opportunity to assert his rights, or
- b) the ruling is incompatible with a civil ruling handed down in the same matter in the area of application of this Act, or
- c) the decision relates to third-party rights to real estate or to an interest real estate located on federal territory; third-party rights shall also include priority notices.

(5) Deprivation or suspension of a right, a prohibition and loss of a capacity shall extend to the area of application of this Act if an international agreement approved by law in accordance with Article 59 para. 2 of the Basic Law so provides.

Section 50: Subject-matter jurisdiction

The decision regarding the enforceability of a foreign decision shall be made by the Regional Court. The public prosecution office at the Regional Court shall prepare the decision.

Section 51: Local jurisdiction

(1) Local jurisdiction for the decision regarding the enforceability of a foreign decision shall be determined by the place of residence of the person convicted.

(2) If the person convicted does not have a place of residence in the area of application of the Act, jurisdiction shall be determined on the basis of the place where he has his habitual place of residence, or, if such a place cannot be established, at his last place of residence, otherwise at the place where he had been apprehended, or, in the event that he was not apprehended, where he was first located. If the request is exclusively for the enforcement of an order for forfeiture or confiscation or of a criminal or regulatory fine, jurisdiction shall be exercised by the court in the district where the

object to which the forfeiture or confiscation pertains is located, or, if the forfeiture or confiscation does not pertain to a particular object, or the enforcement pertains to criminal or regulatory fines, by the court in the district where the sentenced person's assets are located. If the assets of the sentenced person are located in the districts of various Regional Courts, jurisdiction shall be determined according to which Regional Court is seized of the matter, or, if no Regional Court has yet dealt with the matter, which public prosecution office at the Regional Court dealt with the matter first.

(3) If venue pursuant to para. 1 cannot be established, it shall lie at the seat of the Federal Government.

Section 52: Preparation of the decision

(1) If the documents submitted are insufficient to permit a decision on the permissibility of the enforcement, the court shall render its decision only after the requesting State has been given the opportunity to submit additional documents.

(2) Section 30 (1), second sentence; subsection (2), second and fourth sentences; subsection (3), and section 31 (1) and (4) shall apply *mutatis mutandis*. If the convicted person is located within the area of application of this Act, section 30 (2), first sentence, and section 31 (2) and (3), shall also apply *mutatis mutandis*.

(3) Prior to the decision, the convicted person as well as any third persons who, depending on the circumstances of the case, may assert rights with regard to the object in the case of a request for enforcement of a foreign order for forfeiture or confiscation, must be given the opportunity to make statements.

Section 53: Counsel

(1) The convicted person as well as any third persons who, depending on the circumstances of the case, may assert rights with regard to the object in the case of a request for enforcement of a foreign order for forfeiture or confiscation, shall be able to avail themselves of the assistance of legal counsel at any stage in the proceedings.

(2) If the convicted person has not yet chosen a legal counsel, an attorney shall be assigned to him,

1. if, on account of the complexity of the factual and legal situation, the assistance of legal counsel appears necessary;
2. if it is apparent that the person convicted cannot himself adequately exercise his rights, or
3. if the convicted person is being held in custody outside the area of application of this Act and there are doubts as to whether he himself can adequately exercise his rights.

(3) The provisions of Chapter 11 of Part 1 of the Code of Criminal Procedure, with the exception of sections 140, 141 (1) to (3), and section 142 (2) shall apply *mutatis mutandis*.

Section 54: Conversion of the foreign penalty

(1) To the extent that the enforcement of the foreign decision is permissible, the decision shall be declared enforceable. At the same time, the penalty imposed therein shall be converted into the most closely equivalent penalty under German law. The foreign decision shall be decisive insofar as the severity of the penalty to be established is concerned; however, it may not exceed the maximum penalty imposable for the offence in the area of application of this Act. This maximum penalty shall be replaced by a maximum of two years' deprivation of liberty if, in the area of application of this Act, the offence is punishable

1. by a maximum of two years' imprisonment or
2. as a regulatory offence, by a financial penalty, whereas in accordance with the second sentence the foreign penalty is to be converted into a penalty involving deprivation of liberty.

(2) When converting a criminal fine or regulatory fine, the sum of money calculated in foreign currency shall be converted into Euros at the exchange rate prevailing when the foreign decision was given.

(2a) Where a forfeiture or confiscation order concerns a specific object, the declaration of enforceability shall relate to this object. Where it is determined in terms of value, subsection (2) shall apply *mutatis mutandis*.

(3) When converting a penalty imposed on a juvenile or a young adult, the provisions of the Youth Court Act shall apply *mutatis mutandis*.

(4) Any part of the sentence already served by the convicted person in respect of the offence in the requesting State or in a third State as well as any detention suffered pursuant to section 58 shall be deducted from the penalty to be established. Where such deduction has not been made at the time of the decision on enforceability or where the conditions for it to be made are fulfilled subsequently, the decision shall be amended.

Section 55: Decision concerning enforceability

(1) The Regional Court shall rule on the enforceability by issuing a court order. To the extent that the foreign decision is declared enforceable, the decision as well as the type and degree of severity of the penalty to be enforced shall be indicated in the operative part of the decision.

(2) The public prosecution office at the Regional Court, the convicted person and any third persons who have asserted rights with regard to the object in the case of a request for enforcement of a foreign order for forfeiture or confiscation may lodge the remedy of immediate complaint against the order of the Regional Court. For the further procedure, section 42 shall apply *mutatis mutandis*.

(3) A copy of the final and binding decisions made by the court shall be transmitted to the Federal Central Criminal Register. This shall not apply to the extent that the penalty imposed in the foreign decision has been converted into a regulatory fine or the subject-matter of the final and binding decision is exclusively an order for forfeiture or confiscation. If the foreign decision is to be entered into the Federal Central Criminal Register, the decision on enforceability shall be noted in the entry. Sections 14 to 18 of the Federal Central Criminal Register Act shall apply *mutatis mutandis*. If the decision pertains to a foreign order for forfeiture and the circumstances of the case give cause to assume that the person aggrieved by the offence underlying the order, who does not constitute a third party at the same time, has obtained an enforceable judgment on the territory of the Federal Republic of Germany pertaining to the damage he has suffered as a result of the offence, a copy of the final and binding decision shall be transmitted to the court exercising local jurisdiction pursuant to section 32 of the Code of Civil Procedure in order for the aggrieved party to be informed.

Section 56: Grant of legal assistance

(1) Legal assistance may be granted only if the foreign decision has been declared enforceable

(2) The decision regarding the granting of legal assistance shall be forwarded to the Federal Central Criminal Register. Section 55 (3), second to fourth sentences, shall apply *mutatis mutandis*.

(3) If legal assistance is granted, the offence may no longer be prosecuted under German law.

(4) The granting of a request for legal assistance that aims at the enforcement of an order for forfeiture or confiscation shall be equivalent to a final and binding order and decision within the meaning of sections 73d, 74e of the Criminal Code.

Section 56a: Compensation of the aggrieved person

If, in the case of a request for enforcement of a foreign order for forfeiture, the aggrieved person does not constitute a third party at the same time and if he has suffered damage as the result of the offence underlying the foreign order, he or his legal successor shall, upon application, be compensated from the State Treasury to the extent that at the time the request is received by the competent authority an enforceable decision has been made by a German court on the claim for compensation. The amount of compensation shall be restricted by the value of the assets declared forfeited. If a number of aggrieved persons have obtained such a decision, the compensation of these persons shall be determined by the order in which they submitted their applications. The application shall be inadmissible if two years have passed since the granting of the request for legal assistance aimed at the enforcement of an order for forfeiture.

Section 57: Enforcement and execution

- (1) After the granting of legal assistance, the public prosecution office that is competent pursuant to section 50, second sentence, shall carry out the enforcement as enforcing authority.
- (2) The enforcement of the remainder of a penalty involving deprivation of liberty may be suspended on probation. The provisions of the Criminal Code shall apply *mutatis mutandis*.
- (3) The decision pursuant to subsection (2) and subsequent decisions which pertain to the suspension of a sentence on probation shall be rendered by the court with jurisdiction pursuant to section 462a (1), first and second sentences, of the Code of Criminal Procedure or, if jurisdiction pursuant to these provisions cannot be established, the court with jurisdiction for the decision pursuant to section 50.
- (4) The provisions of the Youth Court Act shall apply *mutatis mutandis* to enforcement of a penalty which has been converted to a penalty permissible in accordance with the Youth Court Act (*Jugendgerichtsgesetz*).
- (5) Enforcement of the converted penalty shall be governed by those provisions which would be applicable to a penalty imposed in the area of application of this Act.
- (6) Enforcement shall not be carried out if a competent authority of the requesting state advises that the conditions for enforcement have ceased to exist.

Section 58: Detention to ensure enforcement

- (1) Detention for the purpose of ensuring enforcement of a penalty entailing deprivation of liberty may be ordered against the sentenced person if a request for enforcement within the meaning of section 49 (1) no. 1 has been received, or if, prior to receipt of a request for enforcement, a competent authority in the requesting State makes a request for such detention, providing details of the offence that has led to the sentence, the time and place it was committed and as exact a description of the sentenced person as possible, provided, on the basis of certain facts, that
 1. there is reason to suspect that the sentenced person will evade the proceedings relating to enforceability or enforcement, or
 2. there is reason for the strong suspicion that he will improperly obstruct the investigation of the truth in the enforceability proceedings.
- (2) The court having jurisdiction pursuant to section 50 shall make the decision regarding detention. Sections 17, 18, 20 and 23 to 27 shall apply *mutatis mutandis*. The Higher Regional Court shall be substituted by the Regional Court; the public prosecution office at the Higher Regional Court shall be substituted by the public prosecution office at the Regional Court. The remedy of complaint shall be admissible against decisions of the Regional Court.
- (3) Section 67 (1) shall apply *mutatis mutandis* if the request for enforcement relates to a criminal fine, a regulatory fine or an order for forfeiture or confiscation.
- (4) Subsections (1) and (3) shall not apply if it appears from the outset that enforcement will not be permissible.

Basic Law for the Federal Republic of Germany

Version: last amended by Article 1 of the Act of 21 July 2010 I 944

Article 103

- (1) In the courts every person shall be entitled to a hearing in accordance with the law.
- (2) An act may be punished only if it was defined by a law as a criminal offence before the act was committed.
- (3) No person may be punished for the same act more than once under the general criminal laws.

GREECE / GRECE**D. General questions**

6. It is our view that it would be expedient 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'.
7. By 'laying information' the submission of a request- complaint by a foreign authority is meant, followed by a legal basis, provisions to be applied, precise circumstances of commission and evidence. By the 'aut dedere, aut judicare' principle everything already established is meant.

HUNGARY / HONGRIE**D. General questions**

6. No.
7. 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.
8. Transfer of proceedings costs a lot because of the translation of the whole documentation, thus States mainly use this way of cooperation when the successful completion of the criminal procedure by transfer of proceeding looks more promising than carrying out any domestic procedure.

IRELAND / IRLANDE**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?

Ireland believes there is no need for action at Council of Europe level.

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)

Ireland believes there is no need for further action at the Council of Europe on any of these issues.

ITALY / ITALIE

1. **General remarks** (which include also answers to point 8 of para. D - general questions).

Why such a poor number of signatures/ratifications?

- 1.1. Looking at the 1972 European Convention on the Transfer of Proceedings in Criminal Matters (CETS no. 073) it appears that it is an excellent convention, very well drafted, covering almost all of the issues at stake. Taking into consideration the time it was drafted, one might conclude

that it was quite premature, for a number of reasons that it would be useless to enumerate (i.a.: transnational crime and movement of individuals were not that main issue of criminal justice in Europe). The problem now comes because it might be difficult for States to sign and/or ratify a convention that dates back to 40 years ago. Looking at signatures and ratifications one might conclude that 25 ratifications plus 10 more signatures are not that small number; such a conclusion appears not to be totally correct in my opinion: a number of the "late" accessions come from States that became parties to the CoE after the fall of the Berlin Wall, so one might assume that most (or at least some) of the said accessions were deemed to be useful -or even a prerequisite- for that purpose.

1. 2. It could perhaps be worth mentioning the European Communities Convention, Rome, 6th, November 1990 on Transfer of Criminal Proceedings, which makes reference to CETS no. 73. That convention also was ratified by a very small number of States. The mechanism is peculiar though, as it is tailored as giving effect to the principle of asking the other State to initiate or promote a criminal proceeding, in relation to article 21 of the CoE MLA Convention (CETS no. 30) which in fact is expressly mentioned in the Preamble.
1. 3. Nowadays transnational criminality is a wide accepted concept and the need to effectively fight against it is a shared opinion among us. Individuals now move freely and more frequently than before (including criminals). Cybercrimes are transnational in nature. Trafficking in human beings likewise, as the more dangerous forms of nowadays criminality.
1. 4. As a consequence, concurrent jurisdiction is not as rare as it was forty years ago. Concurrent jurisdiction often damages the proper course of justice and it is human and financial resources consuming. It also creates double judgements that are either useless or in conflict each other; as a consequence the problem of *ne bis in idem* might amount to a major problem. Because of the European judicial space in the EU the issue of conflicts of jurisdictions and the way to solve it has become an important issue at the EU level. Yet it appears to be a major obstacle to effective justice in the "wider" Europe.
1. 5. It should also be taken into account that concurrent jurisdiction might impinge over human rights (*ne bis in idem*/double jeopardy being on of the fundamental individual rights).
1. 6. Possible inconsistencies with domestic provisions, even constitutional ones, should not be decisive. I am referring to legal systems that are based on mandatory prosecution (which is often established in the Constitution, as it is in Italy). Mandatory prosecution often means that the State has to prosecute and has no discretion to that extent⁴; but that would not exclude that one other jurisdiction might prosecute or try. The problem then is only which jurisdiction is placed in a better position to proceed against the perpetrator or which jurisdiction should be considered as having "more right" or "more interest" to proceed.

I will now quote an example in order to better explain myself.

Once, as a EJM Contact Point, I was asked by an Italian prosecutor what to do in a case where he asked the Spanish authority to execute a MLA request and he was told that there was an ongoing procedure in Spain for the same facts. The problem stemmed from the Italian system which is based on mandatory prosecution and does not provide for a dismissal of the proceeding in the instant case nor Italy has provisions on transfer of criminal proceedings. My answer was to ask the Italian judge to dismiss the case on the basis of a wide interpretation of *ne bis in idem* principle (article 54 Schengen Agreement); as a matter of fact, at the end of the day *ne bis in idem* would have applied later on and therefore it would have been a waste of human and financial resources to carry on concurrent proceedings in the two jurisdictions (that would have been a way to avoid *ne bis in idem* at an earlier stage). It goes without saying that the case just mentioned could be a matter for conflict of jurisdictions. [I do not know whether my suggestion was followed nor did I follow the case]

⁴ However, that it is not an absolute rule: in Italy prosecution is mandatory, but upon request of the public prosecutor the judge may dismiss the case when the perpetrator is unknown or where there are not enough grounds to believe that trial would be successful for the prosecution.

One might ask whether transfer (once inserted in a binding international instrument) would hamper national sovereignty; that is a wrong approach in my view: on the contrary one might assume that it makes criminal jurisdiction more effective, because it makes it possible to decide which jurisdiction is placed in a better position to make justice.

- 1.7. The issue of conflicts of jurisdictions is very much linked to the other issue related to the existence or not existence of extraterritorial jurisdiction in the State concerned.

Where extraterritorial jurisdiction is provided for by a national legislation, then cases of concurrent jurisdiction are more frequent⁵. Extraterritorial jurisdiction means that a State is competent as to crimes committed abroad (often under certain conditions); universal jurisdiction means that a State is competent as to crimes that are relevant in the international law, such as crimes against humanity or genocide. ICC has international jurisdiction (although under the subsidiarity principle) as to crimes provided for by the Statute; ICTY and others similar have competence for crimes committed in certain territories (former Yugoslavia, Rwanda) in a limited period of time; in the latter cases international jurisdiction would prevail over national jurisdictions (both extraterritorial and universal).

- 1.8. Due to the transnational character of certain crimes (drug, trafficking of human beings, money laundering, cybercrimes etc.) the possibility to have concurrent jurisdiction, i.e. more than none State being competent or willing to proceed, is very high. However, some points should or could be agreed upon as to the need of having an effective and well working instrument governing concurrent jurisdiction and providing means to solve possible conflicts :
- more frequent of movement of individuals and transnational nature of certain crimes;
 - need to avoid human and financial resources consuming;
 - need to solve *ne bis in idem* problems at an earlier stage;
 - ensure better protection of human rights
 - at the end of the day: make criminal justice more effective.

LITHUANIA / LITUANIE

D. General questions

6. As mentioned above, the international legal cooperation when transferring / taking over the prosecution takes place rather smoothly. It could be distinguished several states, with which the cooperation in this field is the most intense, thus, the matters are successfully settled with the help of bilateral consultations.
7. Transfer of proceedings in criminal matters in accordance with the European Convention on the Transfer of Proceedings in Criminal Matters of 1972.
8. See the answers A g and D 6.

MOLDOVA

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?

⁵ Italy has numerous cases of extraterritorial jurisdiction (on crimes committed abroad) provided for in the substantive penal code: a. when specific crimes are committed abroad but a strong interest of the State is damaged or hampered (counterfeiting of State seals, national currency - now euro); b. crimes, when committed by citizens, when the penalty is not less than three years, even crimes committed by foreign citizens where the penalty is again above a certain threshold but under the condition that the person concerned is in the territory of the State; a request of the Minister of justice is usually required.

Not.

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).

Taking into consideration the above mentioned answers, the Republic of Moldova does not have the possibility to specify for "proper" transfer of proceeding.

NETHERLANDS / PAYS-BAS

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?

No, but we would like to see that the European Convention on the International Validity of Criminal Judgments (1970) would be more broadly ratified and used.

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).

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

As mentioned before it would be preferable if a request would preceded by a summary of the case and a description of the evidence. This way the case could be assessed quickly without making too many costs (translation of the full request plus accompanying documents).

When proceedings concerning more serious crime would be dismissed after transfer, we would prefer it if – before dismissing the case – there would be contact between the requested and requesting States.

And (also mentioned before) we would like to see that the European Convention on the International Validity of Criminal Judgments (1970) would be more broadly ratified and used, especially concerning sentenced persons.

PORTUGAL

D. Questions générales

6. Pensez-vous qu'outre les normes existantes, le Conseil de l'Europe doit prendre des mesures en vue du règlement des conflits de compétence négatifs ou positifs ou élaborer des recommandations/lignes directrices pour améliorer leur mise en œuvre ?

L'expérience du Portugal avec cette combinaison de règles internes/réciprocité en ce qui concerne la transmission de procédures/compétences et instruments internationaux en ce qui concerne les dénonciations et *l'aut dedere aut judicare* n'est pas malheureuse. Pourtant des réflexions et débats sur le besoin de faire traduire des pièces procédurales volumineuses par application de la règle de l'article 16, dans les cas où l'État requérant n'est en fait pas compétent pour faire l'investigation et doit se dessaisir de la procédure par application de l'article 21 de la Convention 1959, nous seraient bienvenues.

7. Pas de réponse

8. Voir réponse à question 6

ROMANIA / ROUMANIE

D. General questions

Yes, action at Council of Europe level in order to tackle positive or negative conflicts of jurisdiction would be very welcomed.

RUSSIAN FEDERATION / FEDERATION DE RUSSIE

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?

Due to a short-time experience in the Russian Federation of application of the Convention it seems impossible to provide a substantiated opinion on this question.

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).

The following examples can illustrate successful co-operation in the transfer of proceedings with regard to the criminal cases received:

- from the Swiss Confederation in respect of the citizen of the Russian Federation, convicted by the judgment of the Moscow City Court of 26.01.2007 for the commission of homicide and illegal deprivation of freedom. He was sentenced to 19 years of imprisonment with serving punishment in a correctional colony with a strict regime;
- from the Republic of Cyprus in respect of the citizen of the Russian Federation, convicted by the judgment of the Chelyabinsk District Court of 12.05.2009 for the commission of assault with robbery and homicide. He was sentenced to 14 years of imprisonment with serving punishment in a correctional colony with a strict regime.

Here is one of the examples where Russia was a requesting state.

On 27.07.2009 a criminal case was forwarded to the Ministry of Justice of the Federal Republic of Germany pursuant to Article 6 (2) of the European Convention on Extradition of 13.12.1957 in respect of the German citizen who was suspected of the commission of a crime, specified in Article 264 (5) of the Criminal Code of the Russian Federation (violation by a person driving a vehicle of rules for road traffic, which caused, by negligence, the death of two persons).

According to the information of the Ministry of Justice of the Federal Republic of Germany in accordance with the order of the Munster local court of 04.11.2009 a conditional punishment was imposed on him for a term of one year with a 2 year probation period.

SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE

D. General questions

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

Slovak Republic considers that the current legal regulation is optimal and there is no need to change.

For the practical application and successful enforcement of criminal proceedings could be beneficial the increase of number of State Parties of current instruments in this area, particularly the European Convention on the Transfer of Proceedings in Criminal Matters.

SLOVENIA / SLOVENIE

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?

NO

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).

Unclear question

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

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SWEDEN / SUEDE

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?

Sweden sees no immediate need for action at Council of Europe level in addition to the already existing standards in this regard. However, one problem in the practical use of the Convention on the Transfer of Proceedings is that not all Council of Europe states have ratified the Convention. If more states would ratify the Convention, co-operation in this regard would most probably be improved.

The Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings is in the process of being implemented in EU member states at present. The Framework decision partly relates to the issues dealt with in this questionnaire. Once implemented, the Framework decision and an evaluation of its use may prove to be helpful in identifying further needs of tackling positive or negative conflicts of jurisdiction in addition to the already existing standards at the Council of Europe level.

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).

No statistics available.

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

-

SWITZERLAND / SUISSE

D. Questions générales

6. Pensez-vous que le Conseil de l'Europe devrait, en complément des normes existantes, agir en vue du règlement des conflits de compétence négatifs ou positifs ou élaborer des recommandations/lignes directrices pour améliorer leur mise en œuvre ?

Des recommandations pour le "déroulement" de telles demandes/transmissions de dénonciations pourraient être utiles (par exemple prévoir une obligation de confirmer la réception de la demande/dénonciation ou de communiquer l'acceptation d'une demande et la clôture de la procédure sans retard).

7. Veuillez détailler votre réponse pour ce qui est de la « bonne » transmission des procédures (Convention sur la transmission des procédures), de la dénonciation (article 21, Convention européenne d'entraide judiciaire en matière pénale) et du principe *aut dedere, aut judicare* (article 6, paragraphe 2, Convention d'extradition).

8. Veuillez indiquer, le cas échéant, toute remarque, information ou proposition pertinente pour les thèmes couverts par le présent questionnaire.

Les problèmes suivants peuvent également se poser:

- les délais de prescription plus courts à l'étranger.
- le classement sans suite pour manque de preuve, sans qu'il soit précisé que des compléments auraient été demandé ou sans que des vérifications/enquêtes supplémentaires aient été engagées.

Pour remédier à ce dernier problème une recommandation pourrait être utile.

UKRAINE**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?

Yes. There is need to determine correlation of applying of the provisions of the European international treaties, in particular the European Convention on Mutual Assistance in Criminal Matters (1959) and the European Convention on the Transfer of Proceedings in Criminal Matters (1972), because many difficulties arise in connection with the interpretation and application of the conventions.

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).

The "proper" transfer of proceedings is the transfer of proceedings made according to the provisions of the European Convention on the Transfer of Proceedings in Criminal Matters (1972).

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

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UNITED KINGDOM / ROYAUME-UNI**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?

Scotland: Provided jurisdiction can be exercised elsewhere other than Scotland and that such provides a more effective and efficient forum for prosecution both for the interests of justice and the person who is the subject of proceedings (and not forgetting the rights of the victim) then there is no requirement for any further action.

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