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[PC-OC\Docs 1999\09 E – Note of Art. 11 mutual assistance]

**PC-OC (99) 9**

**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

**Committee of Experts on the Operation**  
**of European Conventions in the Penal Field**  
**(PC-OC)**

**NOTE OF THE DUTCH DELEGATION**  
**REGARDING THE INTERPRETATION AND THE APPLICATION**  
**OF ARTICLE 11**  
**OF THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE**  
**IN CRIMINAL MATTERS.**

On the basis of article 11 of the European Convention on mutual assistance in criminal matters a Dutch Public Prosecutor has requested the temporary transfer of a person who is in custody in the requested Party for purposes of confrontation and the hearing as a suspect and a witness. This request for temporary transfer of the suspect was done by the Public Prosecutor within the framework of the investigation against the suspect and others. The suspect has already been sentenced in the requested Party and is serving his sentence.

The requested party has refused the temporary transfer of this suspect on the basis of article 11 for reason that article 11, according to the requested party, is not meant for the temporary transfer of suspects but only for witnesses. The temporary transfer of a suspect can, according to the requested party, only take place on the basis of article 19 of the European Convention after the extradition of the suspect has been requested.

The temporary transfer of a person in custody can on the basis of article 11, paragraph 1 sub b be refused if his presence is necessary at criminal proceeding pending in the territory of the requested Party

From the Explanatory Report on article 11 does not follow that the temporary transfer of a person cannot take place when this transfer is requested in the penal procedure against the person himself thus while the person is a suspect and is serving a sentence in the requested Party.

There are several contracting Parties which made a reservation or declaration concerning article 11 in which is laid down that the temporary transfer of a person in custody will be refused save where the person concerned is serving a sentence. There are also contracting Parties which made a reservation that the transfer of a person in custody as a witness or for purposes of confrontation will be refused in general or in the cases mentioned in article 11 paragraph 1 sub a,b and c. Only Sweden made a reservation from which follows that Sweden cannot authorise a temporary transfer on the basis of article 11 of a suspect in his own penal case. The reservation of Sweden is as follows: a person in custody in Sweden may be transferred to the requesting state for a hearing or confrontation in connection with preliminary investigation or trial, if the hearing or confrontation concerns matters other than the offences committed by the person in custody.

The Netherlands delegation would like to know the opinion of the other delegations on the interpretation of article 11 in relation to the above mentioned case.