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EUROPEAN COMMITTEE ON CRIME PROBLEMS

(CDPC)

COMMITTEE OF EXPERTS

ON THE OPERATION OF EUROPEAN CONVENTIONS

ON CO-OPERATION IN CRIMINAL MATTERS

(PC-OC)

**Overview of possible non-binding measures to improve the functioning of the Convention on
the transfer of sentenced persons and its additional Protocol**

**Including recent proposals by Parties to the Convention on a possible update of existing
Recommendations**

Note by the Secretariat

The present note is a non-exhaustive overview of proposals and existing guidelines and tools elaborated by the PC-OC to facilitate the application of the Convention on the Transfer of sentenced Persons and its Additional Protocol. It seeks to assist the PC-OC in considering the most adequate steps to be taken for further improvement of these instruments.

It is recalled that the Terms of reference of the PC-OC invite the Committee to *“Continue improving the functioning of the Convention on the Transfer of Sentenced Persons and its Additional Protocol, as amended, and consider, in particular, updating of the recommendations Rec(88)13 and Rec(92)18 of the Committee of Ministers concerning the practical application of the Convention of the Transfer of Sentenced Persons as well as Rec(84)11 concerning information about the Convention or the development of further standards or guidelines, referring to the replies received to the questionnaire on the implementation of the Convention.”*

Further to the decision taken not to update the Convention on the Transfer of Sentenced Persons, due to a lack of consensus, the PC-OC considered, during its 73rd meeting, the content of Recommendations R 88 (13) and R (92) 18 by the Committee of Ministers on the practical application of the Convention on the Transfer of Sentenced Persons as well as Recommendation R(84) 11 concerning information about this Convention.

The Committee also considered the two options proposed by the PC-OC Mod: either to draft a new recommendation to update and complement the existing ones, or to draft a comprehensive recommendation to replace them. Experts expressed no preference for either of the options but agreed that an update would be necessary.

Proposals for future action:

The summary of replies received to the questionnaires regarding the implementation of the Convention on the transfer of sentenced persons (ETS N° 112) and its Additional Protocol (ETS N° 167) identifies the problems raised by the Parties to these instruments as well as the solutions proposed. [PC-OC \(2013\) 10 ADD Rev.2](#)

The [Presentations](#) made during the special session of the PC-OC on the transfer of sentenced persons in November 2013, and in particular the presentation by Ms Joana Gomes Ferreira (Portugal) on the future of the Convention on the Transfer of Sentenced Persons proposed different options for improvement (second additional Protocol, recommendation, practical guidelines).

Above documents were the main basis for the identification of problems to be addressed and proposals made to address them by the PC-OC Mod during its 17th meeting ([List of decisions](#)) and the PC-OC plenary ([List of decisions](#)) during its 66th meeting. See table below.

The e-transfer proposal by Israel to develop an electronic tool to facilitate transfer procedures is also to be considered [PC-OC Mod (2014)04].

Existing non-binding instruments and practical tools could be considered for further development or update. These concern:

- [Rec. R \(84\) 11](#) by the Committee of Ministers concerning information about ETS°112
- Standard text providing information about the Convention on the transfer of sentenced persons[Appendix to Recommendation R (84) 11] [PC-OC INF 12](#) (translations, incomplete)
- [Rec. R \(88\) 13](#) and [R \(92\) 18](#) by the Committee of Ministers concerning the practical application of ETS°112
- Country information on national procedures on the transfer of sentenced persons, (updated template);
- National requirements with respect of languages in transfer requests [PC-OC Inf 7](#) could be reconsidered.

Table of obstacles identified and solutions proposed

Obstacle	Treaty modification	Recommendation	Other
widening the scope of the Convention to persons who returned voluntarily to their country of origin before having served their sentence	Mod 17th PC-OC66th		Modified in CETS 222
deletion of the consequential link between the expulsion or deportation order and the sentence imposed in Article 3, paragraph 1 of the Additional Protocol	ETS 167 Mod 17th PC-OC 66th		Modified in CETS 222
introduction of time-limits as regards the application of the rule of speciality in the Additional Protocol.	Mod 17th ETS 167 PC-OC 66th		Modified in CETS 222
translation requirements	Mod 17th PC-OC 66th	Mod 17th	
time-limits as regards: procedures; the revocation of consent; the actual transfer	Mod 17 th PC-OC66th		Recommendation?
organisation and cost of the actual transfer	Mod 17th PC-OC 66th	Mod 17th	
non-payment of fines or compensation to victims	Mod 17th PC-OC 66th	Mod 17th	
provision of information on the execution of the sentence by the administering state	PC-OC 66th	Mod 17th	
impossibility to transfer mentally ill persons who have committed a crime and whose detention is imposed as a measure by a non-judicial authority.			Mod 17 th PC-OC 66 th (further debate)
the lack of information on early release given prior to the transfer to the authorities involved <u>and</u> to the person concerned			For authorities: Country information For prisoners: appeal to all Parties to provide this information as foreseen in appendix to Rec No R(84)11?
the difficulty in communicating with			solved? (country information)

the authorities in charge of the surrender			
standard text providing information on the Additional Protocol (as revised?)		Terms of reference	Completing/updating the standard text providing information in the Appendix to Rec R 84(11)
update of the "acknowledgment of the request for information about prisoner repatriation" in Appendix 1 to Recommendation No. R (92)18		Terms of reference	
Principles for national guidelines on criteria for transfer in Appendix 2 to Recommendation No. R(92)18		Terms of reference	To be implemented/updated?
E-transfer tool			Proposal by Israel PC-OC Mod (2014)04
country information on procedures			Solved by new templates?

Proposals by Parties

France (translation: original text in French)

The French representation would like to see a single recommendation covering/including all previous recommendations that are still useful and that could be completed and updated gradually by the Committee so as to avoid a wide dispersion of information and thereby a loss of visibility.

The application of the Convention 112 by the Office of international legal assistance in criminal matters of the Ministry of Justice draws your attention to the following observations and questions for debate:

- The definition of a withdrawal period for the sentenced person's consent could avoid all the efforts to carry out the transfer procedure being lost;
- A minimum period before any new transfer request (in the absence of new elements) could be imposed on the convict in order to avoid unnecessary examination of files (for example the USA imposes a minimum period of two years between two requests);
- A quantified delimitation of the «reasonable period of time» for the examination and organisation of the surrender of the sentenced person could make the proceedings between State Parties more equal;
- It may be useful to consider the possibility of recognising and enforcing financial penalties by the administering State to prevent these from being the sole grounds for refusing the transfer (which is a recommendation of R 92, 1f);
- The effective practice of advanced copying (used by France, Israel, the US and Switzerland) could be generalised;
- The question regarding the possibility for a sentenced person, who is not serving his/her sentence but who is in the territory of the sentencing State, to benefit from the application of the Convention could be debated;
- Article 6.1, which provides that a mere declaration of the executing State is sufficient to prove the nationality of the sentenced person, should not be forgotten;
- Article 6.2 requiring the sentencing State to provide a certified copy of the judgment before the positioning of the executing State should not be forgotten;
- The obligation imposed on the executing State to inform the sentencing State of the arrangements for the execution of the transferred sentence could be the subject of exchanges of good practice.

The French representation would also like to assess the recommendation I of Rec N° (84)11 regarding the provision by each Party of a translation in their national language(s) of the standard text explaining the transfer procedure and the modalities of the execution of the sentence. The distribution of this document, established by each state Party, by the competent consular authorities would indeed greatly contribute to the visibility and understanding of the transfer procedure by foreign citizens in prison.

Italy

- Draft an Omni comprehensive Rec. which would take the previous ones (including the deletion of those parts that might be out of date) and add something more; a firmly included Recommendation stemming from the Resolution of the PA on the Safarov case.

Resolution 2022 (2014): The Assembly therefore:

5.1. condemns the use of Article 12 of the convention by Azerbaijan in the case of Mr Safarov as a violation of the principles of good faith in international relations and of the rule of law;

5.2. confirms its position, expressed in [Recommendation 1527 \(2001\)](#) on the operation of the Council of Europe Convention on the Transfer of Sentenced Persons – critical analysis and recommendations, that the convention is not designed to be used for the immediate release of prisoners upon return to their home country;

5.3. underscores the importance of applying the convention in good faith and, in interpreting its provisions, adhering to the principles of the rule of law, in particular in transfer cases that might have political or diplomatic implications;

5.4. recommends to States Parties to the convention to make, where appropriate, ad hoc arrangements between a sentencing and an administering State in the form of an addendum to a transfer agreement under the convention, which would spell out mutual expectations and provide for adequate assurances by the administering State.]

[Recommendation 2057 \(2014\)](#). 1. The Parliamentary Assembly refers to its [Resolution 2022 \(2014\)](#) on measures to prevent abusive use of the Convention on the Transfer of Sentenced Persons (ETS No. 112), as well as its [Recommendation 1527 \(2001\)](#) on the operation of the Council of Europe Convention on the Transfer of Sentenced Persons – critical analysis and recommendations. It further recalls Committee of Ministers Recommendation No. R (84) 11 concerning information about the Convention on the Transfer of Sentenced Persons, as well as Recommendations Nos. R (88) 13 and R (92) 18 concerning the practical application of this convention.

2. The Assembly invites the Committee of Ministers to:

2.1. reiterate that the Convention on the Transfer of Sentenced Persons is not primarily intended to be used for the immediate release of prisoners upon return to their home countries, and clearly state that this understanding should also guide the application of Article 12 of the convention which provides for pardons and amnesties;

2.2. recommend to States Parties to the convention to conclude, in particular in cases which may have political or diplomatic repercussions, ad hoc arrangements between a sentencing and an administering State, in the form of an addendum to a transfer agreement under the convention which would stipulate stringent assurances by the administering State to abide by the general principles of the convention; such an addendum could, inter alia, comprise information by the administering State, in a specific case, concerning the manner in which it intends to apply Article 12 of the convention.

Japan

- Specify in the new recommendation that it suffices for transfer procedures to translate an essential part of the judgment such as (1) sentence, (2) criminal fact and (3) reason for sentencing or make a summary of these items and that it is allowed to omit other matters (supplementary explanation of the offences etc.) from a translation.

The Netherlands

- Commence with a stocktaking of the existing recommendations, and clarifying which parts are still up to date and useful before deciding on what to do with the old recommendations.
- As to the question of how to proceed (update or a comprehensive new recommendation), the answer to this question I believe might depend on the outcome of the stocktaking exercise. Perhaps it could even prove most effective to address any updates or best practices that have been identified during the stocktaking exercise in a practitioners' manual or other practitioners' tool, rather than going through the process of drafting new recommendations?

Norway

- The standard text should include information on the additional protocol. But it might be best to have information on the convention and the additional protocol in two separate documents.
(R (84) 11)
- The information on the additional protocol should include an explanation on the reasons behind the possibility to transfer without the sentenced person's consent, e.g. social rehabilitation etc.
- Appendix I should be evaluated as it is never used in practice. (R (92) 18)