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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)**

Norms contained in the existing Recommendations on the Transfer of Sentenced Persons

Recommendation No. R(84)11

concerning information about the convention on the transfer of sentenced persons

Recommendation No. R(88)13

concerning the practical application of the convention on the transfer of sentenced persons

Recommendation No. R(92)18

concerning the practical application of the convention on the transfer of sentenced persons

Norms contained in the existing Recommendations on the Transfer of Sentenced Persons	
	Ensuring a wide scope of application
Recommendation No. R (88)13	1. [Concerning the choice of enforcement procedure: continued enforcement or conversion of the sentence] a. that, when considering whether to exclude, by virtue of Article 3.3 of the convention, the application of one of the enforcement procedures provided for in Article 9.1, they take due account of any difficulties which such an exclusion might entail for the application of the convention or the functioning of the transfer mechanism; b. that, if they have made the declaration under Article 3.3, they take account of the difficulties which that declaration might entail for the application of the convention or the functioning of the transfer mechanism in relation to other Contracting States, and seek a solution which would enable the transfer of the sentenced person, taking into account in particular his interest in being transferred.
Recommendation No. R (88)13	2. [Concerning the application to "nationals" (Article 3.4 of the convention <sup>1</sup> )] that they consider availing themselves of the possibility under Article 3.4 to define the term "national" in a wide sense, having regard to any close ties the persons concerned have with the administering state;
Recommendation No. R (92)18	1. [Recommends the governments of member states:] f. to take steps enabling them not to have to refuse a transfer on the sole grounds that fines imposed on the sentenced person in connection with his sentence remain unsatisfied, or that <i>contrainte par corps</i> has been imposed;
	Information to sentenced persons:
Recommendation No. R (84)11	I. Recommends the governments of member states to provide an authoritative translation of the standard text annexed to this recommendation (Appendix II) into their official language or languages, taking into account any reservations or declarations to the convention of which the potential transferees would need to be aware, and deposit the translation with the Secretary General of the Council of Europe at the time of ratification, acceptance or approval of the convention
	II. Instructs the Secretary General of the Council of Europe to forward copies of the translations so received to each of the Contracting States for use by their prison authorities
Recommendation No. R (88)13	4. [Concerning information to be supplied to the sentenced person] that, to enable the sentenced person to give his informed consent, the competent authorities of the sentencing state endeavour to provide him with all relevant details of the expected effects of his transfer, including, if possible, information on the conditions for early release;
Recommendation No. R (92)18	1. [Recommends the governments of member states:] h. as far as possible, to make available to their nationals - before the latter have given their consent to a transfer - precise and easily comprehensible information on the rules that will be applied to them with respect to determining the length of the sentence to be served as well as the terms and conditions of enforcement

<sup>1</sup> Article 3 – Conditions for transfer: 4 Any State may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, define, as far as it is concerned, the term "national" for the purposes of this Convention.

	<p>of the sentence in the event of them being transferred;</p> <p>j. to enlarge and improve on the "Standard text providing information about the Convention on the Transfer of Sentenced Persons" provided for in Recommendation No. R (84) 11 in such a way as to make its content easily comprehensible to all and to ensure that the person concerned is advised that the conditions for being eligible for parole, conditional release, etc. in the administering state will differ from those applicable in the sentencing state;</p>
	Criteria for agreement or refusal to transfer
Recommendation No. R (92)18	<p>1. [Recommends the governments of member states:]</p> <p>c. to adopt, in accordance with the principles reproduced in Appendix II hereafter, guidelines on the criteria to be met when taking a decision whether or not to agree to transfer requests submitted to them;</p> <p>d. to communicate the text of such guidelines, as well as any future amendments thereto, to the Secretary General of the Council of Europe;</p>
	Processing of the request
Recommendation No. R (88)13	<p>3. [Concerning the processing of transfer requests]</p> <p>a. that they establish procedures and make organisational arrangements for the effective handling of transfer requests and inform the other Parties thereof, with a view to making them aware of the procedure in all its stages; this could be effected by addressing explanatory notes or letters to the other Parties or by means of an aide-mémoire;</p> <p>b. that they deal with transfer requests and take decisions on whether or not to agree to a transfer as expeditiously as possible, and, to that effect, consider introducing target dates for the processing of cases; where a request raises particular difficulties likely to cause delay, the other Party and the sentenced person should be so informed;</p> <p>c. that, to expedite the processing of transfer requests, particularly in urgent cases, the competent authorities make the widest possible use of modern means of telecommunication, such as telex and telefax facilities;</p>
Recommendation No. R (88)13	<p>5. [concerning the transfer of the sentenced person]</p> <p>a. that they effect agreed transfers as soon as possible after the sentenced person has given his consent;</p>
Recommendation No. R (92)18	<p>1. [Recommends the governments of member states:]</p> <p>b. to proceed diligently and urgently in processing requests for transfer in such a way that the provisions of Article 5, paragraph 4<sup>2</sup>, of the convention are entirely complied with;</p>
	Information and communication between states
Recommendation No. R (88)13	<p>5. [concerning the transfer of the sentenced person]</p> <p>b. that they ensure that information on any remission earned by the prisoner in the sentencing state and any other factors relevant to the enforcement of the sentence, based on a hypothetical date of transfer, is supplied to the administering state before the transfer is effected; where this is not possible, the information should be supplied as soon as possible after transfer;</p>

<sup>2</sup> Article 5 – Requests and replies: 4 The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

Recommendation No. R (92)18	1. [Recommends the governments of member states:] a. to include with other necessary documents the form set out in Appendix I hereafter both when making a request for transfer and when acknowledging receipt of such a request;
Recommendation No. R (92)18	1. [Recommends the governments of member states:] i. to encourage direct contacts between national administrations entrusted with the operation of the convention, in particular through the informal channels of communication that are available to them through the lists mentioned below in item 2.a;  2. Instructs the Secretary General of the Council of Europe: a. to keep an updated list containing precise information on the names and addresses as well as the telephone, telefax and telex numbers of the persons responsible in each Party for the operation of the convention and to transmit a copy of such a list as well as any necessary updates to each of these persons;
Recommendation No. R (92)18	1. [Recommends the governments of member states:] g. when handing over the transferred person, to give the administering state an updated statement in conformity with Article 6, paragraph 2.b) <sup>3</sup> ;
	Communication post transfer
Recommendation No. R (92)18	1. [Recommends the governments of member states:] k. unless otherwise provided for through national law, international conventions or bilateral agreements, when the transferred person has escaped custody and left the territory of the administering state, and when that state is unable to obtain custody to enforce completion of the sentence, it shall inform the sentencing state that the enforcement of the sentence cannot be completed, and the sentencing state may then enforce completion of the sentence. This does not obviate the need to inform the sentencing state in accordance with Article 15.b) <sup>4</sup> ;
	Communication in case of refusal
Recommendation No. R (92)18	1. [Recommends the governments of member states:] e. as far as possible and without prejudice to the rules in the convention, to give reasons for all decisions refusing a transfer;
	Instructions to SG: Transmission of the Recommendation to all Parties
Recommendation No. R (84)11	II. Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of the non-member states which have participated in the elaboration of the convention and to the governments of states invited to accede to the convention

<sup>3</sup> Article 6 – Supporting documents: 2 If a transfer is requested, the sentencing State shall provide the following documents to the administering State, unless either State has already indicated that it will not agree to the transfer: b a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, and any other factor relevant to the enforcement of the sentence;

<sup>4</sup> Article 15 – Information on enforcement: The administering State shall provide information to the sentencing State concerning the enforcement of the sentence: b if the sentenced person has escaped from custody before enforcement of the sentence has been completed;

Recommendation No. R (88)13	II. Instructs the Secretary General of the Council of Europe to transmit this recommendation to the governments of non-member states party to the convention and to the governments of states invited to accede to the convention.
Recommendation No. R (92)18	2. Instructs the Secretary General of the Council of Europe: b. to transmit to the governments of all the Parties to the convention copies of the national guidelines that will be communicated to him under the terms of Recommendation 1.d above; c. to transmit this recommendation to the governments of the non-member states which are Parties to the convention as well as to the governments of states invited to accede to the convention.

## Appendix to Recommendation No. R. (84) 11

Standard text providing information about the Convention on the Transfer of Sentenced Persons

The Convention on the Transfer of Sentenced Persons enables, under certain conditions, persons who have received a custodial sentence in a country other than their own to be transferred to their home country to serve the sentence there. A brief explanation of these conditions is given below. This document does not constitute an exhaustive description of the convention. If, therefore, you wish to enquire into the possibility of being transferred to serve your sentence in (administering State), you should ask the prison authority, or the appropriate authority in (administering State), for more detailed information, for example, to arrange for you to receive a copy of the convention and for both States to consider the possibility of your transfer. You may also address any request for information to a consular representative of (administering State).

*Who has to agree to the transfer?*

A transfer requires:

- a. the consent of the person concerned or, where requisite, that of his legal representative;
- b. the consent of the State where he was sentenced; and
- c. the consent of the State to which transfer is requested.

*Who may benefit from a transfer to (administering State)?*

You may be eligible for transfer to (administering State) if the following conditions are fulfilled:

- a. if you are considered a national of (administering State);
- b. if the judgment by which your sentence was imposed is final;
- c. if, as a general rule, at least six months of your sentence remain to be served, though in exceptional circumstances this period may be less; and
- d. if the offence for which you were tried is a criminal offence under the law of (administering State).

*What sentence would need to be served following transfer?*

- (States using the "continued enforcement" procedure:)

The maximum sentence to be served following transfer would be the amount of the original sentence which remained after deduction of any remission earned in (sentencing State) up to the date of transfer. If the sentence imposed in (sentencing State) was longer or of a different nature than the sentence which could be imposed for the same offence in (administering State), it would be adapted to the nearest equivalent sentence which was available under the law of (administering State) without being longer or more severe than the original sentence.

- (States using the "conversion of sentence" procedure:)

It would not be possible to confirm before transfer the precise nature and length of the sentence to be served in (administering State), because the original sentence would need to be converted by (a court) (the competent authorities) in (administering State) following transfer to a sentence which could have been imposed if the offence had been committed in (administering State). You would be given some idea, however, of the nature and length of the sentence to which the original sentence might be converted in (administering State), to help you to decide whether to seek a transfer. Under the terms of the convention a sentence converted in this way will not be more severe nor longer than the original sentence, will not be subject to any minimum which the law of (administering State) may provide for the offence, and will take account of the full period spent in custody before transfer.

If you are transferred, your sentence will be enforced in accordance with the law and regulations which apply in (administering State).

#### *Prosecution for other offences*

Please note that in the event of your transfer the authorities of (administering State) are entitled to prosecute, sentence or detain you for any offence other than that for which your current sentence was imposed.

#### *Pardon, amnesty, commutation*

Your transfer would not prevent you from benefiting from any pardon, amnesty or commutation of sentence which might be granted by either (sentencing State) or (administering State).

#### *Review of original judgment*

If new information came to light after your transfer which you considered grounds for a review of the original judgment passed in (sentencing State), it would be for (sentencing State) alone to decide on any application for review.

#### *Termination of enforcement*

If for any reason whatsoever the sentence originally imposed in (sentencing State) ceased to be enforceable in (sentencing State), the (administering State) authorities, as soon as they were informed of this, would release you from the sentence being served. Similarly, when the sentence being served in (administering State) ceased to be enforceable there, you could no longer be required to serve the original sentence imposed in (sentencing State) if you should return there.

#### *Some information on the procedure*

You may express your interest in being transferred to the authorities of either (sentencing State) or (administering State).

If the (sentencing State) authorities are prepared to consider your transfer, they will provide the (administering State) authorities with information about you, about the facts relating to your conviction and sentence and about the nature and length of your sentence. If the (administering

State) authorities are prepared to consider your transfer, they will respond by providing (information about the nature and duration of the sentence you would need to serve after transfer)<sup>5</sup>, (an indication as to how your sentence might be converted following your transfer)<sup>6</sup>, together with information about the arrangements for remission, conditional release, etc. in (administering State).

Provided both States are content to agree to your transfer, you will be asked whether, having received and considered the information provided by (administering State), you consent to being transferred under the convention.

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<sup>5</sup> Applies to states using the "continued enforcement" procedure.

<sup>6</sup> Applies to states using the "conversion of sentence" procedure.



Appendix I to Recommendation No. R (92) 18

Council of Europe Convention  
on the Transfer of Sentenced Persons

Acknowledgement of request for information about prisoner repatriation

Name of prisoner : .....  
Prisoner number\* : .....  
Location\* : .....

Requesting state : .....	Requested state : .....
Name : .....	Name : .....
Position : .....	Position : .....
Address : .....	Address : .....
.....	.....
No. Tel.: .....	No. Tel.: .....
No. Fax : .....	No. Fax : .....
Date request made : .....	Date request received : .....
Originator's reference : .....	Recipient's reference : .....
Officer responsible for further action in the requested state (if not addressee):	
Name : .....	
Position : .....	
Address : .....	
.....	
No. Tel.: .....	
No. Fax : .....	
Summary of action now being taken:	
.....	
.....	
.....	
Date by which next response may be expected : .....	
Reference to be quoted in correspondence : .....	
.....	

Signature : ..... Name : ..... Date : .....

Note: The original of this acknowledgement should be signed and returned to sender in the requesting state within five working days of receipt. The copy should be retained by the requested state.  
\* if known.

## Appendix II to Recommendation No. R (92) 18

*Principles applicable to national guidelines concerning the criteria to be met when taking a decision whether to accept or to refuse a request for transfer*

1. The guidelines should indicate:

a. whether the Party applies continued enforcement under Article 10 of the convention or converts the sentence under Article 11 of the convention;

b. any deviation consented upon from the provisions of Article 6 of the convention or to the requirements stated in conformity with Article 17, paragraph 3, by way of which information and supporting documents might not be totally or partially translated.

2. The guidelines might inter alia indicate:

a. the mandatory grounds for refusing requests;

b. the usual grounds for refusing requests, for example, that the Party concerned will refuse transfer of those of its nationals that have left or remained outside their country with the intention of abandoning it as their place of permanent residence and/or have no social or family ties there.