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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)**

**Draft commentary to the Recommendation on the [Practical] Application of the  
European Convention on the Transfer of Sentenced Persons and the Additional  
Protocol thereto**

**As proposed by the PC-OC Mod**

## I. Introduction

1. Since the opening for signature of the Convention on the Transfer of Sentenced Persons in March 1983, 67 States Parties have acceded to the Convention and an Additional Protocol was opened for signature in December 1997 which was modified by an amending Protocol in November 2017. The Committee of Ministers have also adopted Recommendation No. R(84)11 to Member States concerning information about the Convention on the Transfer of Sentenced Persons and two Recommendations (Recommendations No. R(88)13 and No. R(92)18) concerning the practical application of the Convention on the Transfer of Sentenced Persons. Over the years, Parties have gained much experience in transfer procedures and an assessment of the effective functioning of these instruments has led to the conclusion that it is necessary to promote, facilitate and accelerate the application of the existing Convention and Additional Protocol by updating and replacing the existing recommendations by a single comprehensive one, including new, practical guidelines contained in the appendices to this recommendation.
2. In November 2013, on the occasion of the 30th anniversary of the Convention on the Transfer of Sentenced Persons, the Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters (PC-OC) devoted a thematic session to the functioning of the Convention and its Additional Protocol. In preparation for this event, Parties to the Convention (ETS No. 112) and the Additional Protocol (ETS No. 167) replied to a questionnaire regarding their implementation. The replies received – available in document [PC-OC \(2013\) 10 Rev.2](#) and summarised in doc [PC-OC \(2013\) 10 ADD Rev.2](#) - revealed certain legal and practical obstacles to the effective application of the Convention as well as of the Additional Protocol thereto and contained proposals for amendments. These were discussed during the 65th and 66th plenary meetings of the PC-OC (November 2013 and May 2014).
3. Among the legal and practical problems encountered as regards the implementation of the Convention, the following were mentioned (in decreasing order from the most to the least mentioned):
  - Length of proceedings;
  - Obstacles due to differences in procedures;
  - Documentation provided or requested (incomplete, unclear, too lengthy and too costly to translate);
  - Communication problems between the competent authorities of the parties concerned ;
  - Withdrawal of the consent of the person concerned;
  - Informing the person concerned about the consequences of his/her transfer;
  - Lack of information about the detention conditions/ early release policies in other parties;
  - Difficulties in dealing with transfers of mentally-ill persons;
  - Difficulties related to the conversion of sentences;
  - Time needed to arrange the practical aspects of the transfer (travel etc.);
  - Prison overcrowding prevents acceptance of transfer requests;
  - How to deal with sentences including payment of fines;
  - Economic cost associated with transfers;
  - Lack of information on follow up after transfer (Article 15).
4. As regards the Additional Protocol, the PC-OC made a proposal to the CDPC that the Additional Protocol should be amended so as to address certain difficulties identified by its Parties. In December 2014, during its 67th plenary meeting, the CDPC instructed the PC-OC to prepare a draft protocol to amend the Additional

Protocol to the Convention. The text of the amending Protocol was examined and approved by the CDPC on 30 June 2016 and submitted to the Committee of Ministers for adoption. The amending Protocol (CETS No. 222) was opened for signature on 22 November 2017. The Protocol will enter into force once it has been ratified by all Parties to the Additional Protocol, however, it is foreseen that it can be provisionally applied among Parties who made a declaration to this effect (Article 5).

5. The changes introduced by the amending Protocol are the following:
  - extension of the scope of Article 2 of the Additional Protocol to situations where the person, subject to a final sentence, did not flee but moved freely to the country of his or her nationality;
  - deletion of the consequential link between the expulsion or deportation order and the sentence imposed in Article 3, paragraph 1 of the Additional Protocol;
  - extension of the scope of Article 3, paragraph 3a to cases where the person concerned refuses to give an opinion on the transfer. It was felt that transfer should also be possible in those cases;
  - introduction of a time-limit (90 days) as regards the decision making related to the application of the rule of speciality in the Additional Protocol. (Article 3, paragraph 4a);
  - reduction of the time limit of immunity against prosecution, due to the speciality principle, from 45 to 30 days of final discharge, where the person, having had the opportunity to leave legally the territory of the administering State, has not done so. (Article 3, paragraph 4b).
6. In respect of the Convention, the PC-OC equally made an attempt to address the main obstacles identified by drafting a further additional Protocol on issues including a limitation of translation requirements and a possible shift of the burden of costs of the transfer to the sentencing state. Given the difficulty to find an agreement, the idea was abandoned. It was decided therefore to improve the practical application of the Convention and its Additional Protocol, as amended, by the development of comprehensive guidelines which would take into account proposals and concerns of the Parties, and update and replace the existing Recommendations of the Committee of Ministers. These concern the aforementioned Recommendation No. R(84)11 concerning information about the Convention on the Transfer of Sentenced Persons, and Recommendations No. R(88)13 and No. R(92)18 concerning the practical application of the Convention on the Transfer of Sentenced Persons.
7. The drafters considered that most of these recommendations are still valid today and much of their content has been reflected in the guidelines contained in Appendix 1 to this new recommendation. Referring to the practical experience of the Parties, obsolete provisions in the former recommendations were removed or updated and new ones, addressing practical obstacles identified, were introduced.

## II. Comments to the text of the recommendation

8. **The preamble** reinstates the double purpose of the Convention and its Additional Protocol: furthering the ends of justice and the social rehabilitation of sentenced persons. It also underlines that the recommendation aims to facilitate and accelerate the application of these instruments and improve international co-operation so as to allow as many foreign prisoners as possible to serve their sentences in their home country. It is commonly accepted that enabling prisoners to serve a sentence in their own country not only avoids the suffering and isolation inherent to a detention

abroad<sup>1</sup>- due to differences in language, culture, customs and religion, and lack of family ties and contact with the outside world – but also increases their chances of a successful rehabilitation.

9. The preamble also refers to another key purpose of the recommendation, conditional to the effective application of the instruments, namely the need to improve the exchange of information between the sentencing and the administering state as well as the information provided to sentenced persons.
10. **The recommendation** by the Committee of Ministers itself is threefold and invites governments of member States, Parties to the Convention and those, less numerous, to the Additional Protocol:
  - to ratify the latter, as amended, and to allow for its provisional application by making a declaration to this effect;
  - to have regard to the guidelines to promote and facilitate the application of the Convention and its Additional Protocol, contained in Appendix 1. It is to be noted that these Guidelines contain a reference to appendices 2 and 3 to the recommendation, which contain standard texts providing information of States to their nationals sentenced abroad on the possibilities and conditions for a transfer under, respectively, the Convention and the Additional Protocol;
  - to ensure translation and dissemination of these texts, including the commentary, to all national authorities concerned.

### **The guidelines**

11. The guidelines contained in Appendix 1 to the Recommendation are structured around 7 general objectives to improve the application of the Convention on the Transfer of Sentenced Persons and its Additional Protocol, each of which foresee several practical recommendations to achieve them.
12. The most obvious objective, contained in **guideline 1**, is to achieve the widest possible application of the Convention and its Additional Protocol so as to provide the benefits of a transfer to as many persons as possible. There are indicators that many more foreign inmates could benefit from a transfer. A report published in 2018 by the Council of Europe [Foreign offenders in prison and under probation in Europe](#) indicates that the number of foreign inmates in Europe between 2005 and 2015 is not diminishing and tends to increase in EU States and those of the European Free Trade Association (EFTA).
13. Guideline 1.a, stemming from Recommendation No. R (88)3, invites Parties to consider widening the application of the Convention and its Protocol by defining the term “national” in a wide sense. This can be achieved by using the possibility foreseen in Article 3, paragraph 4 of the Convention to declare which persons they consider as nationals for the purpose of the Convention. This provision encourages Parties to consider as “nationals” also persons with a double or foreign nationality who, for instance, have usual residence in the territory of the Party concerned and established close personal ties. The drafters felt that also sentenced persons with a double nationality, including the nationality of the sentencing state should be considered for transfer if their ties with the country of their second nationality are

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<sup>1</sup> Reference is made to Recommendation [CM/Rec\(2012\)12](#) of the Committee of Ministers to member States concerning foreign prisoners

closer. The main indicator for close ties is the presence of family and, in particular, of children. Nurturing the ties between prisoners and their children is important, particularly for the development of the children<sup>2</sup>. The justification for a wide definition of the notion of “national” lies in the spirit of the Convention which seeks to improve the chances of successful rehabilitation of sentenced persons by allowing them to serve their sentence in their home country, where they know the language and culture, where their family lives and where they are likely to stay after having served their sentence. It is noted that Article 3, paragraph 4 of the Convention allows Parties to make a declaration to define the term national or to make a new declaration to widen its scope at any time.

14. Guideline 1.b, addresses the situation where sentenced persons cannot benefit from a transfer because of unpaid financial obligations in the sentencing State. This can be the case when, in addition to a prison sentence, they have been sentenced to pay a fine, compensation to a victim, or subjected to a confiscation or forfeiture order. It may also be the case that they have civil obligations such as outstanding debts to pay or alimonies to children or former spouses. In all these cases, Parties are encouraged to consider possible solutions so as to enable transfer. A similar recommendation was also contained in Recommendation No. R(92)18.
15. When outstanding obligations are based on a criminal judgment, international co-operation can be sought with the administering state by a request for the recognition and effective enforcement of the sentence on the basis of the European Convention on the International Validity of Criminal Judgments [\[ETS No 70\]](#) or any other Treaty or bilateral agreement to this effect. In case of non-compliance with confiscation or forfeiture orders, international co-operation can also be achieved on the basis of the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime [\[ETS No 141\]](#) or the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime and on the Financing of Terrorism [\[CETS No 198\]](#). In all these cases the co-operation procedure concerning the financial penalty can be either embedded in the transfer procedure or conducted separately. The sentencing State could also envisage, in accordance with national law and in consultation with the sentenced person concerned, to replace an unpaid financial sanction, by a substitute custodial sanction and request the administering State to take over the enforcement of the custodial sanction imposed in default of payment. Such a term of imprisonment by default satisfies the requirements of Article 1.a of the Convention in that it is a measure involving deprivation of liberty imposed by a Court for a limited or unlimited period on account of a criminal offence. Finally, in the case of a small fine, the sentencing State could use its discretion to waive the fine and proceed with the transfer.
16. In the case of civil law debts, solutions could be found by co-operation on the basis of instruments developed by the Hague Conference on Private International Law, such as the Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children or the Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters or any other bilateral treaty or agreement between the sentencing and the administering State.
17. Guideline 1.c concerns the widening of possibilities for the transfer of mentally-ill persons. Article 1 specifies that, for the purpose of the Convention, the word

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<sup>2</sup> Reference is made to [Recommendation CM/Rec\(2018\)5 concerning Children with Imprisoned Parents](#)

sentence covers both judgments and measures ordered by a Court for a limited or unlimited period of time. The Convention applies therefore to all mentally-ill persons who committed a criminal act, were found wholly, partly or not responsible for the acts committed and are deprived of their liberty further to a sentence ordered by a Court in spite of their mental illness or before their mental illness was declared. However, there are situations where Parties have experienced difficulties in applying the Convention because the mentally-ill person who committed the criminal act was not considered criminally responsible and was subjected to a measure ordered by an authority, other than a Court. Considering the general aim of the Convention, the drafters agreed that the notion “Court” should be interpreted widely, so as to encompass situations where measures of deprivation of liberty on account of a criminal offence were imposed by specialised independent authorities, established by law, provided that their decisions can be challenged by a Court, in conformity with Article 5, paragraph 4 of the European Convention on Human Rights.

18. Reference is also made to Article 9, paragraph 4 of the Convention which enables a Party who, according to its national law, cannot use one of the procedures foreseen by the Convention (see Article 9 and guideline 2a) to enforce a measure imposed by another Party on persons who, for reasons of mental condition, have been held not criminally responsible for the commission of an offence, to make a declaration indicating the procedure it will follow in these cases.
19. Drafters underline that where the country of origin (the administering State) can provide satisfactory treatment for mentally-ill sentenced persons, transfer should be facilitated. It is recalled that, in compliance with the European Prison Rules (Rule 12), “Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an establishment specially designed for the purpose. If such persons are nevertheless exceptionally held in prison there shall be special regulations that take account of their status and needs.” As regards the consent of the mentally-ill person, reference is made to the commentary made to guideline 5.
20. **Guideline 2** seeks to improve international co-operation, transparency and legal certainty so as to take away further obstacles to the application of the Convention and improve mutual trust among Parties.
21. **Guideline 2a**, repeats a recommendation contained in Rec No.R (88)13 concerning the choice of enforcement procedure by virtue of Article 3, paragraph 3 of the Convention. The Convention foresees, in its Article 9, two possible enforcement procedures for the administering State: continued enforcement of the original sentence (Article 10) or conversion of the sentence (Article 11). The Convention allows Parties to make a choice at each transfer, depending on the case. Most Parties however, choose to avail themselves of the possibility offered by Article 3, paragraph 3 to exclude one of the procedures by virtue of a declaration. Since each procedure may entail difficulties for other Parties, and for the sentenced person concerned, Parties are advised to consider their choice carefully and to provide as much information as possible on the consequences of the procedure chosen so as to ensure that contracting Parties as well as persons who could benefit from transfer obtain as much legal certainty and foreseeability as possible. Reference is made to guidelines 2b and 3. Finally, Parties are invited to find solutions for situations where the choice of the enforcement procedure would be an obstacle to a transfer. See also paragraph 18 of this commentary.

22. Guideline 2b provides a practical indication on how Parties to the Convention and its Additional Protocol can inform each other on national procedures and requirements for transfer procedures. The PC-OC developed a template for country information concerning the national procedures applicable to the Convention on the Transfer of Sentenced Persons and its Additional Protocol. Access to relevant and updated information on the procedure applicable in each State Party is essential for the efficient preparation and execution of co-operation requests. All Parties are therefore invited to regularly check and update the information available on the website dedicated to the Convention: <https://www.coe.int/en/web/transnational-criminal-justice-pcoc/transfer-of-sentenced-persons-country-information>
23. Guideline 2c refers to exceptional circumstances, where there is a lack of foreseeability or uncertainty as regards the consequences of a transfer for the sentence to be enforced. In order to enable a transfer in such circumstances there is a need to reinforce the trust between contracting Parties. It is suggested that this can be achieved by an addendum to the transfer decision spelling out mutual expectations as regards the commitment by the administering state to enforce a sentence. The guideline is inspired by Resolution 2022(2014) of the Parliamentary Assembly of the Council of Europe on Measures to prevent abusive use of the Convention on the Transfer of Sentenced Persons. This Resolution was adopted further to a situation where an administering State had pardoned a transferred person at the moment of his arrival, by virtue of Article 12 of the Convention<sup>3</sup>.
24. **Guideline 3** concerns the need to inform persons sentenced abroad of the possibility of being transferred, the conditions to be fulfilled and the legal and, as far as possible, the practical consequences of the transfer. This information needs to be provided precisely and clearly and as soon as possible so as to ensure that the persons can take an informed decision and give their consent (in the case of the Convention) or opinion (in case of the Additional Protocol). Reference is made to Article 7, paragraph 1 of the Convention and to Article 3, paragraph 3 of the Additional Protocol. Recommendation No. R (84)11 concerning information about the Convention on the Transfer of Sentenced Persons as well as Recommendation No. R (92)18 concerning the practical application of the Convention also highlighted the importance of providing this information in an adequate way.
25. Guideline 3a refers to the standard texts of information for nationals sentenced abroad contained in Appendices 2 and 3. The standard text contained in Appendix 2 informs nationals on the conditions for transfer and its legal consequences under the Convention and the one in Appendix 3 does so under the Additional Protocol. The standard text in the Convention is very close to the one attached to Recommendation No. R (84)11 but was updated to take into account EU legislation<sup>4</sup>. Since the standard text is to be addressed to nationals sentenced abroad, each Party is invited to translate it and to incorporate specificities due to the existence of reservations or declarations, such as the choice of enforcement procedure under Article 3 paragraph 3.
26. Guideline 3b which echoes a guideline from Recommendation No. R (92)18, invites Parties to complete the standard text with information regarding national legislation

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<sup>3</sup> Measures to prevent abusive use of the Convention on the Transfer of Sentenced Persons (ETS No. 112) [Parliamentary Assembly Resolution 2022 \(2014\) Final version](#); [Parliamentary Assembly Recommendation 2057 \(2014\) Final version](#)

<sup>4</sup> Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.



on, in particular, the rules that will be applied to determine the length of the sentence to be served, the conditions of enforcement of the sentence (such as, for example, the prison regime, the location of the prison, possibilities for labour, health care, training, visits, leave, etc.) the conditions for being eligible for early or conditional release and all other relevant details concerning the expected effects of a transfer. Depending on national legislation and policy, Parties are free to provide the information deemed necessary to assist their nationals in taking an informed decision when giving their consent or opinion regarding a possible transfer.

27. Guideline 3c concerns the need to ensure that the information provided is accurate, made readily available to all nationals of Parties sentenced in another Party and gives them the opportunity to ask questions. The guideline foresees that the prison authorities of the sentencing State should provide this information as well as the consular representatives concerned. Parties should ensure that the information is readily available and up to date. Parties can achieve this by posting and, when necessary, updating the information on the dedicated website of the Council of Europe ([www.coe.int/tcj](http://www.coe.int/tcj)) and by informing their consular representatives accordingly. Parties should also ensure that their prison services are provided with, or know where to find, the relevant information referred to in guideline 3a and b from the countries of origin of their inmates. Using this procedure, prison services will be able to inform foreign prisoners about the general procedures and conditions for transfer to their respective countries of origin. For more detailed questions, the prison services will have to refer the prisoner to the consular representatives of the State concerned.
28. Guideline 4 addresses one of the key obstacles to the successful application of the Convention and its Additional Protocol, namely the excessive length of the proceedings as well as the lack of communication between the sentencing and the administering States and the absence of information provided to the person concerned during the decision making process. Guidelines 4a to 4i aim to address these obstacles. The reference to Article 5, paragraph 4 of the Convention recalls the obligation of Parties who received a request for transfer to promptly inform the requesting State about the decision taken.
29. Guideline 4a invites Parties who make or receive a request for transfer to agree on a target date for the decision making, taking into account the length of the sentence left to be served, and to appoint contact persons in charge of processing the request so as to facilitate communication. Parties are encouraged, as far as possible, to reach a decision on a transfer request within 9 Months
30. Guideline 4b invites States who received a request for transfer to consult with the other State on difficulties concerning the request, for example missing documentation or unpaid fines, and where possible find solutions. The requesting State should also be informed about the estimated delay certain difficulties may cause in the procedure. The guideline furthermore invites Parties to provide information to the sentenced person where appropriate. This would apply to situations where this delay is likely to be significant.
31. Guideline 4c invites Parties to make as much use as possible of electronic means of communication, so as to avoid delays produced by the use of traditional means of communication (diplomatic channels or post). Although many Parties still require the use of these traditional means or channels for the sending of the official requests and supporting documents, the speed of the procedure could be enhanced if the exchange of information could take place by using direct communication (phone, e-



mail, etc.) where possible. While the use of diplomatic channels or post is generally justified by security reasons, technology is developing quickly and will soon be able to provide an equivalent level of security. The drafters share the conviction that electronic transmission of requests for transfer and supporting documents as well as the use of secure electronic platforms for the communication between the Parties would substantially facilitate and accelerate the procedure and will therefore progressively replace transmission by diplomatic channels or by post.<sup>5</sup> It is recalled that, regardless of the means of communication chosen, due account should be taken of the requirement to protect the personal data of the persons concerned<sup>6</sup>.

32. Guideline 4d addresses the problem encountered by requested States who receive requests that are incomplete by inviting States requesting a transfer to provide the information foreseen in Article 4, paragraph 3 of the Convention as soon and as fully as possible in order to avoid unnecessary delays in the decision making.
33. Guideline 4e seeks to accelerate proceedings by inviting administering States, on the basis of either the consultation referred to in guideline 4b or the country information appearing on the dedicated Council of Europe website, to send supporting documents required by the sentencing State without waiting for the official request pursuant to Article 6, paragraph 1.
34. Guideline 4f equally seeks to accelerate and simplify proceedings by inviting States to limit as much as possible requests for supporting documents by virtue of Article 6, paragraph 3 and to limit in particular requests for translations, by virtue of Article 17, paragraphs 2 and 3, given that translations are both very time-consuming and costly. This is particularly the case for judgments, which can be very lengthy and can contain many elements that are irrelevant for the assessment of the transfer request and conversion or enforcement of the sentence of the person concerned. Examples of irrelevant parts concern for example considerations referring to case law of the sentencing State or parts concerning co-authors of the crime committed by the person to be transferred. When examining the possibility to amend the Convention so as to limit translation requests, it was proposed that Parties may request translation of all the relevant parts of the judgment referred to in Article 6, paragraph 2, point a, of the Convention, those provisions that describe the offences the sentenced person was charged with, the reasoning leading to the conviction, the conviction of the sentenced person by the judge or the court, including the offences for which the person has been found guilty and the penalties imposed.
35. Guideline 4g repeats a guideline contained in Recommendation No. R (88)13 and aims at assisting the administering State in anticipating the enforcement of the sentence and in particular its length by providing it with all information required to

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<sup>5</sup> A proposal, introduced by Israel in 2014, to set up a specific E-transfer tool for this purpose, including a possibility for the person concerned to introduce a request for transfer on this platform and to receive information on the decisions taken, met considerable support among the members and observers of the PC-OC but revealed difficult to develop within the Council of Europe. This proposal, to set up an E-transfer tool is contained in doc [PC-OC Mod \(2014\)04](#) and was closely examined and discussed during several meetings of the PC-OC (from the 67th until the 73rd meeting) At the same time several other initiatives to enable electronic transmission of requests by the creation of dedicated and secure platforms have emerged, notably within the EU, INTERPOL and IberRed.

<sup>6</sup> Reference is made in particular to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its amending Protocol (CETS No. 223) opened for signature on 10 October 2018 as well as to the General Data Protection Regulation (EU) 2016/679 ("GDPR") and Data Protection Directive for Police and Criminal Justice Authorities (EU) 2016/680 ("Police Directive").

calculate the length of the sentence to be served. This information should be provided before the transfer, based on an estimated target date. When this it is not possible, this should be done as soon as possible after the transfer.

36. Guideline 4h encourages States to send informal advance copies of requests, supporting documents by e-mail or a secured electronic channel before sending the official request and documents through the traditional channels. This practice is already used by several Parties and has proven its efficiency in speeding up the proceedings by allowing the requested State to assess the request and anticipate the decision and the follow up to be taken. Where a sentenced person suffers health or social problems, advance copying of social and medical reports referred to in guideline 5c is to be encouraged. Advance copying also allows the requested State to consult the requesting State in a timely manner if it detects a problem in a request or document.
37. Guideline 4i invites States who decided not to allow a transfer to explain the reasons for the refusal, as far as possible. It is recalled that the Convention contains no obligation to do so and that there are situations where this is not possible due to sensitive law enforcement interests or concerns of the State involved. However, providing reasons can be helpful to assess future chances of success of requests for transfer. This might be the case if a transfer is refused because the requested country applies certain general criteria to be met by a request, for example the existence of sufficient ties of the sentenced person with his or her country of origin or the availability of a suitable place in the prison system at the time of the request. If the reason for refusing a transfer can be communicated, it would be good practice if the State who refused the transfer could also communicate it to the person concerned. This may avoid the situation addressed in guideline 6c where persons whose request for transfer has been refused immediately submit a new request.
38. Guideline 5 invites States who agreed to a transfer to effect it as soon as possible after the sentenced person has given his or her voluntary and informed consent, as verified in conformity with Article 7 of the Convention, or opinion, in conformity with Article 3, paragraph 3a of the Additional Protocol. Reference is also made to guideline 3 which aims to ensure that consents are well informed. As regards the consent, particular attention is drawn to cases where the person cannot give this informed consent because of his or her mental or physical condition or age. In this case the voluntary and informed consent should be provided by the legal representative of the person concerned. Reference is made to Article 3, paragraph 1d of the Convention. It is recalled that transfers conducted under the Additional Protocol do not require the consent of the person concerned but only a declaration indicating the opinion of the person concerned, or, as indicated in the amending Protocol, a declaration indicating the absence of such opinion. To effect a transfer speedily after the decision has been taken is essential for the well-being of the person concerned and the effective application of the Convention. The guidelines contained in 5a to c seek to address possible obstacles in this regard.
39. Guideline 5a underlines the need for efficient co-ordination at national level between the authorities involved in the transfer. These authorities may be many including those in charge of the organisation of the physical transfer including transits, those in charge of the transport and escort of the persons concerned and those in charge of the co-ordination with the authorities of the administering State.
40. Guideline 5b reminds sentencing States of the need to provide the administering State, in a timely manner (for example at the day of the transfer) and in conformity

with Article 6, paragraph 2c of the Convention, with an updated 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. This applies both to States who, in line with guideline 4g, provided the administering State in advance with the information required to calculate the length of the sentence to be served, as well as to those who have not been able to do so. It should be avoided that a transfer is delayed due to the absence of such a statement.

41. Guideline 5c addresses the need for sentencing States, referred to in Article 6, paragraph 2d of the Convention, to provide the medical services in charge of the prison administration of the administering State, with all relevant social and medical reports, including psychiatric assessments, information on medical treatment prescribed and possible recommendations on further treatment. This should be done “as appropriate”, referring in particular to persons with physical or mental health problems or with a complicated social background. The purpose of delivering such reports is to enable the administering State to ensure a successful transfer and to ease the adjustment of the transferred person to his or her new location. The ability of the administering State to address the medical and social challenges faced by a transferred person is of crucial significance for his or her welfare and future rehabilitation. Such information should also be provided before the decision on the transfer has been taken (reference is made to guideline 4h).
42. The guideline underlines that the transmission of such sensitive personal data should take place under conditions ensuring confidentiality. This requirement is referred to in [Recommendation Rec. R \(98\) 7](#) of the Committee of Ministers concerning the ethical and organisational aspects of health care in prison which states in rule 18 “*All transfers to other prisons should be accompanied by full medical records. The records should be transferred under conditions ensuring their confidentiality. Prisoners should be informed that their medical record will be transferred. They should be entitled to object to the transfer, in accordance with national legislation.*” This is why this guideline stipulates that social and medical reports should be sent to the socio-medical services of the administering State and why sentenced persons, or, when they are legally incompetent, their legal representatives should be informed that these records will be transferred and be entitled to object against the transfer of these records in accordance with the law of the sentencing State.
43. Guideline 6 addresses the risk of having to annul a transfer in an advanced stage of the proceedings because the person concerned withdraws his or her consent. While the consent of the person is a requirement of the Convention and paramount for the success of his or her rehabilitation, the loss of time spent and expenses made by the Parties during the procedure may justify that certain measures are taken to reduce the risk of a last-minute withdrawal of consent. It is recalled that the Convention foresees that “*the procedure for giving [...] consent shall be governed by the law of the sentencing State*” (Article 7, paragraph 1 of the Convention). The risk addressed by this guideline is not present in a transfer procedure under the additional protocol where the consent of the person is not required.
44. Guideline 6a invites States to take the measures necessary to ensure that the person concerned is regularly informed about the progress made in the transfer procedure, possible delays as well as the expected date of the transfer. For security reasons, authorities may prefer not to indicate a precise date for the expected transfer but a time period. Article 4, paragraph 5 of the Convention, refers to the obligation to inform the sentenced person, in writing, about any action or decision taken. This

guideline encourages States to be as transparent and communicative as possible so as to ensure that the prisoner remains interested in being transferred.

45. Guideline 6b points out that States, and especially those who are regularly confronted with a situation where sentenced persons withdraw their consent to a transfer at the last minute, might consider the possibility of introducing a reasonable time limit for the revocation of consent, for example until the agreement by the administering State has been received. Exceptions to this time limit should however apply to situations where the situation of the person concerned changes unexpectedly affecting his or her ties with the administering State and the interest or purpose of a transfer.
46. Guideline 6c addresses the situation where persons whose request for transfer has been refused submit a new request immediately. Parties who are confronted with this problem could envisage to introduce a minimum period of 12 months before the person concerned can make a new application. As in the previous guideline, exceptions to this time limit should be made in exceptional circumstances, such as important events (birth, illness, etc.) relating to close family members in the administering State.
47. Guideline 7 seeks to improve the application of the Convention and its additional Protocol by reinforcing the trust of Parties and victims that sentences rendered are effectively implemented by administering States. This can be best achieved by enhancing communication with the sentencing State on the enforcement of the sentence after transfer has taken place. The Convention foresees, in Article 15, that sentencing States are to be informed on the end of enforcement of the sentence, including by the granting of a pardon or amnesty, or on the escape of the person before the execution of the sentence is completed or whenever a special report is requested. It is recommended that Parties go beyond these requirements by adopting a pro-active approach as foreseen in guidelines 7a and b.
48. Guideline 7a stems from Recommendation No. R (92)18 and urges administering States to inform the sentencing State whenever it is unable to enforce the completion of the sentence because the transferred person has escaped and left the territory of the administering State. In the latter case, the sentencing State is allowed to complete the enforcement of the sentence [when this is possible] / [when the person concerned is arrested outside the territory of the administering State]. This recommendation applies unless otherwise provided for through national law, international conventions or bilateral agreements.
49. Guideline 7b underlines the importance for the administering State also to inform the sentencing State without delay of any other important change affecting the enforcement of the sentence. This covers, for example, situations where the prison sentence has been commuted or where the sentenced person is no longer in custody because he or she was granted early or conditional release or was subjected to electronic monitoring or house arrest.