

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 05/06/2018  
[PC-OC/DOCS2018/PC-OC(2018)03]  
<http://www.coe.int/tcj>

PC-OC(2018)03  
English only

**EUROPEAN COMMITTEE ON CRIME PROBLEMS**

**COMITE EUROPEEN POUR LES PROBLEMES CRIMINELS**  
**(CDPC)**

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

**COMITE D'EXPERTS**  
**SUR LE FONCTIONNEMENT DES CONVENTIONS EUROPEENNES**  
**SUR LA COOPERATION DANS LE DOMAINE PENAL**  
**(PC-OC)**

**Draft elements for an updated Recommendation on the Transfer of Sentenced Persons**

**Including norms from Recommendations N° R (84) 11, R (88)13 and R (92)18 as well as  
further proposals made**

**Comments from**

**Ms Barbara Goeth-Flemmich(Austria) and Ms Tetiana Shorstka (Ukraine)**

	<b>(Ensuring a wide)SCOPE OF APPLICATION</b>
Recommendation No. R (88)13	<p><b>1. [Concerning the choice of enforcement procedure: continued enforcement or conversion of the sentence]</b></p> <p>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;</p> <p>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.</p> <p><u>Should be maintained. Support</u></p>
Recommendation No. R (88)13	<p><b>2. [Concerning the application to "nationals" (Article 3.4 of the convention )]</b></p> <p>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;</p> <p><u>Should be maintained. Support</u></p> <p><u>In this respect, it is assumed that the Parties (the Sentenced and/or Administering States) could consider the possibility to transfer of a sentenced person, who has a double nationality, taking into account, in particular, a person's interests in being transferred as well as a wide sense the definition of term "national" under national rules and the Convention proposes. I endorse Tetiana's idea.</u></p>
Recommendation No. R (92)18	<p><b>1. [Recommends the governments of member states:]</b></p> <p>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;</p> <p><u>Should be maintained. Some further advise how to avoid such situations are more than welcome, however I fear compromise ideas are lacking (see comment on F below).</u></p>
Mod 17 <sup>th</sup> , PC-OC 66 <sup>th</sup> .	<i>Non-payment of fines or compensation to victims,</i>
France	Consider the possibility to recognise and enforce financial penalties by the administering State to prevent the latter from being the sole ground for refusing the transfer.
	<u>F: All ideas are welcome which help to avoid refusals on transfer because of unsatisfied fines. In practice however, ideas as proposed by F are rejected by countries refusing transfer because of an unsatisfied fine. It seems unrealistic to reach agreement by these (mainly overseas) States Parties. IT seems to be the only European State that pays such fines in order to avoid transfer refusals. To my experience the Italian approach is the only one that is effective.</u>

	<p><u>Ukraine as the Administering State has significant practice on recognition and enforcement financial penalties in the transfer procedure to avoid of refusing the transfer by the Sentenced State. For example, under the national rules the Ministry of Justice of Ukraine as a Central Authority applies to competent court on this issue. In accordance with the CCP of Ukraine and the application of the Ministry of Justice of Ukraine, the court may also consider the issue of enforcing execution the additional punishment imposed by the sentence of a foreign state's court. Unexecuted additional punishment imposed by the sentence of a foreign state's court shall be enforced if Ukrainian law establishes such punishment for the commission of the given criminal offence. It shall be executed within the scope and according to the procedure prescribed by Ukrainian law.</u></p> <p><u>When considering the issue of enforcing the sentence, the court may in the meantime decide on the issue of executing the sentence of the foreign state's court in terms of civil claim and in terms of procedural expenses, if an appropriate request exists.</u></p> <p><u>We may consider such example to update the recommendation</u></p> <p><u>In order to prevent the <b>administering State</b> from refusing the transfer I endorse the proposal by F and Tetiana's comments.</u></p> <p><u>To my experience, however, the real problem is to obtain the consent of the <b>sentencing State</b> to the transfer, where the sentencing State has imposed a fine/compensation to victims in addition to the prison term and the fine/compensation is not paid until the date of transfer.</u></p> <p><u>As a <b>recommendation to the administering State</b> we should in any case insert the French proposal and Tetiana's ideas. However I'm not sure that we can find a <b>convincing/satisfying recommendation to the sentencing State?</b></u></p>
Mod 17th, PC-OC 66th	<i>Impossibility to transfer mentally ill persons who have committed a crime and whose detention is imposed as a measure by a non-judicial authority.</i>
Switzerland	Transfers for measures of detention handed down by a court or measures imposed on people declared irresponsible by an extrajudicial authority remain problematic or impossible for some States. Therefore, it would be useful to explore this point.
	<u>CH: Where the medical treatment and safeguards for society in the administering State are satisfactory, the transfer of mentally ill persons should be recommended. The country information now provides useful information on the possibility to transfer mentally ill persons.</u>
	<p><u>In this respect, in my opinion, it should be necessary to focus in our recommendation on two situations of the transfer of mentally ill persons under the Convention:</u></p> <p><u>1 – when a person is criminally insane and cannot be convicted to imprisonment, just a medical treatment imposed;</u></p>

	<p><u>2- when a sentenced person became mentally ill after being convicted. In a second case it seems no big problem to apply the Convention, but some particularities have to be taken into account, that also concerns a first case. The Sentencing Party should check if a treatment was imposed by the judicial authority and can be acceptable for recognition/execution in the Administering State. The country information contains some useful information for it. A verification of the consent of mentally ill person, especially, when there are no legal representative or close relatives may be problematic in some cases, as well as concerning the withdrawal of his consent. The Administering State has to take necessary measures to find an appropriated kind of medical hospital to continue a treatment. Both States should solve an issue of keeping in custody while delivery and escort a person from an institution for the criminally insane in the one State to another one, that may be problematic under the Convention . It is recommended to use national regulations if applicable and available.</u></p> <p><u>With regard to the Swiss proposal to explore the transfer of measures imposed by a non-judicial authority: The Convention itself just speaks of i.a. <b>measures</b> involving deprivation of liberty <b>ordered by a court</b> (Article 1.a). Also the Explanatory Report (pt 14) indicates that the Convention applies only to sentences/measures imposed by a court of law. (I do not share Tetiana's view that the Convention cannot be applied to situations where the person concerned cannot be held criminally liable). To my mind a recommendation seems to be useful allowing a transfer also where such a measure has been imposed by a non-judicial authority. What seems to be important is that measures involving deprivation of liberty are imposed in line with the principles of the ECHR (Article 5) providing adequate safeguards against arbitrariness. If it is possible from a legal point of view (against the wording of the Convention and the Explanatory Report ?) maybe it could be useful to propose a recommendation defining "<b>ordered by a court</b>" in such a broad sense and referring to the different legal situation in the States Parties. In Austria e.g. measures are always ordered by a court, irrespective of the possibility to hold the defendant criminally liable or not.</u></p>
France	<p>The question regarding the possibility for a sentenced person, who is not serving his sentence but who is in the territory of the sentencing State, to benefit from the application of the Convention could be debated.</p> <p><u>To my mind we cannot include this proposal as the text of the Convention provides, that only a person serving his/her sentence can be <b>transferred</b>.</u></p>

	<b>INFORMATION TO SENTENCED PERSONS</b>
<b>Recommendation No. R (84)11</b>	<p><b>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</b></p>

	<p>ratification, acceptance or approval of the convention  <u>Should be maintained, provided that the standard text will be updated.</u></p>
	<p>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  <u>s. above.</u> <a href="#">Support</a></p>
Recommendation No. R (88)13	<p>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;  <u>Should be maintained. Maybe we should add a reference to the relevant information available at the PC-OC website.</u> <a href="#">Support</a></p>
Recommendation No. R (92)18	<p>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 of the sentence in the event of them being transferred;    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;  <u>1h of Rec No R (92)18 repeats in principle Art 4 of Rec (88)13; these two provisions should be merged.</u>    <u>1j of Rec No R (92)18 is also repetitive and could be deleted.</u>  <a href="#">Support</a></p>
Questionnaire	<p><i>The lack of information on early release given prior to the transfer to the person concerned: appeal to all Parties to provide this information as foreseen in appendix to Rec No R(84)11</i></p>
Terms of reference	<p><i>Completing/updating standard text providing information in the Appendix to Rec R 84(11)</i>  <u>The standard text in Appendix 1 should be updated/completed.</u> <a href="#">Support</a></p>
France	<p>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.</p>

Norway	<p>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)</p> <p>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.</p> <p><u>N: I support the idea to include information on the additional protocol. However, this should be made in an extra document. It would be useful to define situations where better social rehabilitation can be expected in the administering State without the consent of the sentenced person to his/her transfer. - Support</u></p>
Israel	E-transfer tool

	<b>CRITERIA FOR AGREEMENT OR REFUSAL TO TRANSFER</b>
Recommendation No. R (92)18	<p><b>1. [Recommends the governments of member states:]</b></p> <p><b>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;</b></p> <p><b>d. to communicate the text of such guidelines, as well as any future amendments thereto, to the Secretary General of the Council of Europe;</b></p> <p><u>I'm not sure we should keep 1c as I do not see the practical use, relevance?</u></p>

	<b>PROCESSING OF THE REQUEST</b>
Recommendation No. R (88)13	<p><b>3. [Concerning the processing of transfer requests]</b></p> <p><b>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;</b></p> <p><b>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;</b></p> <p><b>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;</b></p> <p><u>We should update at least a. (replacing explanatory notes/letters/aide-memoire by a reference to the country information) and c. (by inserting electronic means). Support</u></p>
Recommendation No. R (88)13	<p><b>5. [concerning the transfer of the sentenced person]</b></p> <p><b>a. that they effect agreed transfers as soon as possible after the sentenced person has given his consent;</b></p>

	<u>Should be maintained.</u> <a href="#">Support</a>
<b>Recommendation No. R (92)18</b>	<b>1. [Recommends the governments of member states:]</b> <b>b. to proceed diligently and urgently in processing requests for transfer in such a way that the provisions of Article 5, paragraph 4<sup>1</sup>, of the convention are entirely complied with;</b> <u>Should be maintained.</u>
<i>Mod 17<sup>th</sup>, PC-OC 66<sup>th</sup></i>	<i>Translation requirements</i>
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
Switzerland	As regards the question of translations, as already discussed, it would be necessary to define if the documentation must be translated or if only a part is sufficient (especially when multiple instances are involved or when there are several judgments but the information necessary for a transfer procedure remains unchanged). Switzerland is aware however that it is difficult to define which documents should be translated and the FOJ doesn't have a practice that is well established or confirmed by a Swiss Court
	<u>J and CH: The idea limiting the obligation to translate the documentation should be taken on board, though the majority of delegations does not seem to be in favour. We will need a discussion on the essential parts to be translated in any case (summary of facts, concrete sanction imposed, sentence, reasoning of the court with regard to the concrete sanction imposed, applied law describing the criminal offence, etc)</u>
<i>Mod 17<sup>th</sup>, PC-OC 66<sup>th</sup></i>	<i>Introduce time limits as regards: procedures/the revocation of consent/the actual transfer</i>
France	-The definition of a withdrawal period for the sentenced persons's consent could avoid all efforts to carry out the transfer procedure being lost; - 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
	<u>F: To my mind time limits as regards procedures, the revocation of consent and the actual transfer should be introduced in a new Recommendation. However, if I remember our last discussions correctly the majority of delegations does not seem to be in favour.</u> <a href="#">I support the idea</a>
<i>Mod 17<sup>th</sup>, PC-OC 66<sup>th</sup></i>	<i>Organisation and costs of the transfer</i>
France	A minimum period could be imposed on the sentenced persons before any new transfer request can be made (in the absence of new elements) in order to avoid unnecessary examination of files ( for example 2 years as in USA)

<sup>1</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.

	<p><u>F: The idea to provide for a minimum “cooling off” period of e.g. 2 years can be supported.</u></p> <p><u>F: I do not remember what is exactly meant by “advanced copying”?</u></p> <p><u>I: I hesitate to endorse the proposal as it is meant for very specific situations, whereas the Recommendation should reflect general principles.</u></p> <p><u>I support the idea, moreover I suggest to increase a minimum period up to 3 years. For example, Ukrainian CCP contains such provision, when a new consideration of the issue of transferring a sentenced person shall not be possible before the lapse of three years after the refusal to transfer, or the sentenced person’s refusal to be transferred. The concrete time limit for a “cooling off” period will have to be discussed.</u></p>
France	The effective practice of advanced copying (used by France , Israel, US and Switzerland) could be generalised.
Italy	<p>Recommends drafting a Recommendation stemming from the Resolution of the PA on the Safarov case. <i>PACE Resolution2022 (2014): 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;/</i></p> <p><i>PACE Recommendation2057 (2014 : 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.</i></p>
	<b>INFORMATION AND COMMUNICATION BETWEEN STATES</b>
<b>Recommendation No. R (88)13</b>	<p><b>5. [concerning the transfer of the sentenced person]</b></p> <p><b>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;</b></p> <p><u>Should be maintained. Support</u></p>
<b>Recommendation No. R (92)18</b>	<p><b>1. [Recommends the governments of member states:]</b></p> <p><b>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;</b></p>
Norway	The “acknowledgment of the request for information about prisoner repatriation,” in Recommendation No. R (92)18 Appendix 1 should be evaluated as it is never used in practice.



<b>Recommendation No. R (92)18</b>	<b>1. [Recommends the governments of member states:]</b> <b>g. when handing over the transferred person, to give the administering state an updated statement in conformity with Article 6, paragraph 2.b)<sup>2</sup>;</b> <u>Should be maintained. Support</u>
<i>Mod 17<sup>th</sup>, PC-OC 66<sup>th</sup></i>	<i>The difficulty in communicating with the authorities in charge of the surrender (Solved by country information?)</i>
Switzerland	With regard to the transmission of the documentation, we stress the importance to be able to obtain, from the sentencing State, all medical reports, including in particular the psychiatric assessments, information on possible treatments prescribed to the person concerned in the sentencing State and all possible recommendations on further treatment in the executing State;
France	Art 6.1, which provides that a mere declaration of the executing State is sufficient to prove the national status of the sentenced person, and Article 6.2a requiring the sentencing State to provide a certified copy of the judgment before the positioning of the executing State should not be forgotten.
	<u>N: In practice Appendix I to Rec No. R (92) 18 is never used. The information requested by the form should be provided by the communication of Parties in a transfer proceeding. In addition essential information on the officers in charge is now provided by contact persons for transfer and by the country information. I am in favour of deleting 1a of Rec No R (92)18. Support</u>  <u>CH: I endorse the proposal made by CH. The interference with data protection rules should be examined.</u>  <u>F: So far I did not encounter problems raised by F. In any case I would not like to elaborate a Rec in 2018 stressing the need to provide a <b>certified</b> copy of the judgment before the positioning of the executing State.</u>
Israel	<i>E-transfer tool</i>

	<b>COMMUNICATION POST TRANSFER</b>
<b>Recommendation No. R (92)18</b>	<b>1. [Recommends the governments of member states:]</b> <b>k. unless otherwise provided for through national law, international</b>

<sup>2</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;

	<p>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>3</sup>;</p> <p><u>Shall be maintained. Support</u></p>
PC-OC 66 <sup>th</sup> /Mod 17 <sup>th</sup>	<i>Provision of information on the execution of the sentence by the administering State</i>
France	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.
Switzerland	It is also important that in the exchange of information between States, the sentencing State shall communicate to the executing State remissions of sentences granted.
	<p><u>F: To my mind the idea was to ensure that the administering State informs the sentencing State of any measure imposed replacing custody. As soon as the sentenced (especially dangerous) person is released from custody the sentencing State (not least also in the interest of victims) should be informed of measures replacing custody, such as early release, electronic bracelet, etc. The obligation laid down in Art 15a of the Convention asks for information only when the enforcement of the sentence is considered completed, that means when any measure restricting the liberty, free movement of the sentenced person is lifted. To my mind the idea should be reflected in the new recommendation.</u></p> <p><u>CH: Art 12 of the Convention provides that each Party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or its laws. Of course the sentencing State should inform the administering State immediately about such measures taken. Though I never encountered problems in this respect in practice I agree to insert the idea.</u></p>
	<b>COMMUNICATION IN CASE OF REFUSAL</b>
<b>Recommendation No. R (92)18</b>	<p><b>1. [Recommends the governments of member states:]</b></p> <p><b>e. as far as possible and without prejudice to the rules in the convention, to give reasons for all decisions refusing a transfer;</b></p> <p><u>Should be maintained.</u></p>

<sup>3</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;

	<b>TRANSMISSION OF THE RECOMMENDATION TO ALL PARTIES</b>
<b>Recommendation No. R (84)11</b>	<b>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</b>
<b>Recommendation No. R (88)13</b>	<b>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.</b>
<b>Recommendation No. R (92)18</b>	<b>2. Instructs the Secretary General of the Council of Europe:</b> <b>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;</b> <b>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.</b> <u>Should be maintained, merged and updated.</u>

**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>4</sup>, (an indication as to how your sentence might be converted following your transfer)<sup>5</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.

---

<sup>4</sup> Applies to states using the "continued enforcement" procedure.

<sup>5</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 : .....
<b>Officer responsible for further action in the requested state (if not addressee):</b> Name : ..... Position : ..... Address : ..... ..... No. Tel. : ..... No. Fax : ..... <b>Summary of action now being taken:</b> ..... ..... ..... <b>Date by which next response may be expected:</b> ..... <b>Reference to be quoted in correspondence:</b> ..... .....	

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.