

ANALYSIS OF THE REPLIES TO THE GREEN PAPER ON THE APPLICATION OF EU CRIMINAL JUSTICE LEGISLATION IN THE FIELD OF DETENTION

On 14 June 2011 the Commission adopted a Green Paper on the application of EU criminal justice legislation in the field of detention which aimed to consult Member States and concerned stakeholders on issues related to the *pre* and *post*-trial detention in the European Union. The European Commission wished to explore the extent to which detention issues impact on mutual trust, and consequently on mutual recognition and judicial cooperation within the European Union.

The Commission received a total of 81 replies to the Green Paper, essentially from national governments, practitioners, international organisations, NGOs and academics.

A summary of the replies to the Green Paper is set out below.

1)Pre-trial: What non-custodial alternatives to pre-trial detention are available? Do they work? Could alternatives to pre-trial detention be promoted at European Union level? If yes, how?

A large majority of Member States indicated that the implementation of the Framework Decision 2009/829 on the application of the principle of mutual recognition to decisions on supervision measures **(ESO) should be assessed before developing new legal measures in this area.**¹ Indeed, this Framework Decision directly provides for the promotion of such measures as one of its objectives. Therefore, it seems necessary to first evaluate the functioning of this instrument and to identify the needs that have arisen in practice. It should be noted that Member States welcomed this new cooperation mechanism. It was seen as an important step in the promotion of alternatives to pre-trial detention which may contribute to reducing the use of pre-trial detention within the whole EU.

Non-legislative initiatives, such as the exchange of best practices², would be welcomed by the respondents. Certain Member States highlighted the need for practitioners to increase their practical knowledge of other Member States' systems of alternatives to custody through the publication of descriptive reports, the organization of seminars, conferences and exchange programmes for judges or prosecutors.³ The EU should encourage such initiatives in order to reach a high level of mutual trust between Member States regarding the efficiency of systems of alternatives to detention. Prosecutors and magistrates should be aware of how these measures operate and their effectiveness.

¹ PL, SE, EE, IE, BE, FR, CZ, DE, SI, LV, FI, NL, DK

² NL, SI

³ IT, SI, FR

Only three Member States called for an EU instrument promoting alternatives to pre-trial detention ⁴ identifying a list of possible measures and criteria for their application.⁵

Finally, two Member States raised **concerns about EU competence** in this area and relied upon the principle of subsidiarity.⁶ PL indicated that the EU is not competent regarding the unification of alternatives to pre-trial detention supervisory measures. DK stated that there is no need for EU promotion to increase the use of these measures in light of the principle of subsidiarity.

International Organisations, NGOs and Professional Associations pointed out the importance of alternatives to pre-trial detention. They indicated that pre-trial detention of persons suspected of an offence must be the exception rather than the norm and invited Member States to explicitly prescribe in law that pre-trial detention should only be used where its purposes cannot be achieved by other means. Some organisations highlighted the **value of alternatives** to pre-trial detention and called for a more frequent use of such measures.⁷ These measures could help to reduce prison overcrowding and consequently improve detention conditions. In addition, these organisations made the point that non-custodial measures can be cheaper than custodial measures.

Possible obstacles which may hinder the use of non-custodial measures were mentioned such as the fact that some of them are not available in a significant number of Member States (e.g.: electronic monitoring and house arrest). It was also underlined that these measures must be compatible with the ECHR, which is particularly relevant to release on bail.

The measures most frequently mentioned by these organisations were **house arrest, release on bail, electronic monitoring** and **supervision under probation services. Banning pre-trial detention** was also suggested for certain categories of persons or for certain categories of offences such as minor offences.⁸ Regarding **release on bail**, many organisations criticised the fact that a suspect must provide a financial guarantee since it could be seen as a form of discrimination against the poorest part of the population who cannot afford such guarantees.⁹ Therefore, these organisations called upon Member States to set bail at a level proportionate to the suspect's income. Certain criticisms were also expressed concerning **electronic monitoring**. It was mentioned that this is only a short-term measure and is poorly tolerated after a few months' application.¹⁰ Finally, French organisations explained

⁴ PT, RO Senate, NL Council for the Administration of Criminal Justice and Protection of juveniles

⁵ PT, RO Senate

⁶ PL, DK

⁷ COE, AEDH, JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS, CEP, OPEN SOCIETY, EUROCHIPS, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, EURAD, FNARS, SECOURS CATHOLIQUE, ENLACE, FARAPEJ, ANTIGONE, GENERAL COUNCIL OF SPANISH LAWYERS, EPSU, ORAK

⁸ ANTIGONE, JUSTICE AND PRISONS

⁹ QUAKER COUNCIL FOR EUROPEAN AFFAIRS, COE, JUSTICE AND PRISONS

¹⁰ CGLPL, AEDH, SECOURS CATHOLIQUE

that **community service** does not work in France as there are not enough offers and not enough people applying for the jobs.¹¹

Some respondents **criticised the practice of pre-trial detention in Member States**. Although all Member States recognize that pre-trial detention should be exceptional, these organizations raised concerns about an **overuse** of pre-trial detention by national Courts and regretted the **limited use of non-custodial measures across Member States**.¹² They indicated that pre-trial detention is often automatic and that many judges are not willing to use alternative measures. Moreover, regular reviews of continued detention, required by nearly all domestic systems, are often a simple formality rather than being an effective safeguard against unjustified pre-trial detention.¹³ In addition, some organizations drew attention to the **situation of non-nationals**, who are often considered a flight risk and detained irrespective of the offence with which they are charged.¹⁴ According to these organisations, the overuse of the pre-trial detention could be a causal factor of the overcrowding of prisons in Member States.

Many organisations also underlined the **serious impact of pre-trial detention upon persons detained** who are presumed to be innocent.¹⁵ They highlighted the risk of suicide, the consequences for detainees' health and family life, the financial impact suffered through a lack of earning capacity and the difficulties experienced in preparing the accused person's defence. According to the organisations consulted, education about these negative effects among police, prosecutors and judges is necessary.¹⁶

A large majority of International Organisations, NGOs and Professional Associations would **welcome the promotion of alternatives to pre-trial detention at EU level**.¹⁷ The following EU actions were proposed to promote alternatives and to reduce the use of pre-trial detention:

- **Promotion of the COE Recommendations** which constitute European standards agreed upon by all the EU Member States and contain practical recommendations;¹⁸
- **Gathering information and exchanging best practices**.¹⁹ This could be done through a best practice guide, or by creating working groups to identify and disseminate good practices;

¹¹ AEDH, CGLPL

¹² AEDH, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, GENEPI, FTI, COE, OPEN SOCIETY, SECOURS CATHOLIQUE, ECBA, ORAK

¹³ ECBA

¹⁴ JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS, FTI, QUAKER COUNCIL FOR EUROPEAN AFFAIRS

¹⁵ FTI, AEDH, JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS, COE, SECOURS CATHOLIQUE, BAN PUBLIC, GENERAL COUNCIL OF SPANISH LAWYERS

¹⁶ JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS

¹⁷ COE, UN, JUSTICE and INTERNATIONAL COMMISSION OF JURISTS, OPEN SOCIETY, ENLACE, BAN PUBLIC, ANTIGONE, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, CEP, SECOURS CATHOLIQUE, PL HELSINKI FOUNDATION, EUROCHIPS, ECBA, EPSU

¹⁸ Namely - Rec.(99)concerning prison overcrowding and prison population inflation; - Rec.(2006) on the European Prison Rules; Rec. (2006) on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse and Rec (2010) on the COE Probation Rules

¹⁹ OPEN SOCIETY, ENLACE, EPSU

- **Organising training sessions** for judges and other practitioners involved in cross-border cases on the use of alternatives measures.²⁰ Awareness should be raised in order to ensure that judges make proper use of existing alternatives;
- **Funding** projects which deal with alternatives to pre-trial detention;
- Supporting **exchange programs/study visits** to enable practitioners to spend a period of time in another Member State which has implemented effective alternatives to pre-trial detention;
- Supporting **academic studies** and **research** to assess the usefulness and effectiveness of alternative measures in Member States.²¹ As a priority, the EU should examine and compare the different alternative measures applied in Member States;²²
- **Informing civil society and supporting educational activities** which aim to explain the benefits and added value of alternative measures to pre-trial detention;
- Supporting Member States to implement the Framework Decision 2009/829 (**ESO**) and to ensure effective use of this new mechanism. The **ESO** was generally welcomed. It was seen as a useful alternative to pre-trial detention which should eliminate discrimination against EU non-nationals in decisions on release pending trial.²³ To ensure its proper functioning, some organisations called upon the EU to provide **training and information**²⁴ and/or to issue **guidelines**²⁵ for practitioners on the use of the ESO. Taking into consideration the existence of the EAW and the future implementation of Framework Decision 2009/829, some organisations invited Member States, when assessing the flight risk of a person, to determine whether he or she has concrete ties within the EU rather than focusing only on his or her concrete ties to the State where the trial is to take place.²⁶

Only **two NGOs called for an EU legislative instrument** to promote alternatives to pre-trial detention at the EU level.²⁷ **One association indicated that the EU is not competent to take actions in this area.**²⁸

2) *Post-trial*: What are the most important alternative measures to custody (such as community service or probation) in your legal system? Do they work? Could probation and other alternative measures to detention be promoted at European Union level? If yes, how?

The vast majority of Member States **called for an assessment of the implementation of the Framework Decision 2008/947** on the application of the

²⁰ PL HELSINKI FOUNDATION, ECBA, FACULTY OF ADVOCATES

²¹ CEP, QUAKER COUNCIL FOR EUROPEAN AFFAIRS

²² European Committee of the Bundesrechtsanwaltskammer, GENERAL COUNCIL OF SPANISH LAWYERS

²³ FAIR TRIAL INTERNATIONAL, EUROCHIPS, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, EPSU, CCBE, ENCJ, FACULTY OF ADVOCATES, ORAK

²⁴ FAIR TRIAL INTERNATIONAL, ECBA, CCBE

²⁵ QUAKER COUNCIL FOR EUROPEAN AFFAIRS

²⁶ ECBA, CCBE

²⁷ OPEN SOCIETY, ENLACE. GENERAL COUNCIL OF SPANISH LAWYERS also suggests adopting mandatory rules on MS.

²⁸ GERMAN ASSOCIATION OF JUDGES

principle of mutual recognition of probation decisions and alternative sanctions which aims to promote alternatives to custodial sentences.²⁹ It appears premature to examine the need for other EU legislative proposals in that area. The responding Member States clearly welcomed the Framework Decision. It was seen as an important step forward in the promotion of alternative forms of custody in the EU. Furthermore, it has the potential to limit the number of prison sentences imposed on offenders who are nationals of another Member State, and could therefore ease their social reintegration.

A number of Member States suggested adopting **measures increasing knowledge and promoting the exchange of good practices** in this field.³⁰ Increasing exchanges of information between Member States' authorities about national systems would allow the development of national measures and promote mutual trust among Member States regarding the use of conditional and alternative sanctions. In this respect, the Member States called for:

- The organisation of **thematic study visits, conferences and seminars** involving academics, practitioners and politicians, organized with the involvement of the EU, the CoE, or the CEP;³¹
- **Training and exchanges for practitioners** to strengthen familiarity and trust concerning the systems of other Member States;³²
- Systems of regular conditional release and probationary release under supervision could be promoted in MS, i.e. through the dissemination of information on the good experiences obtained therefrom;³³
- Producing **diagnosis reports, and implementation programmes**, undertaking comparative analyses, or co-hosting international fora promoting standards in probation institutions;³⁴
- A **prior assessment of the European region** to build an overview and to identify the needs and opportunities in this area discovered by other countries with experience in this field;³⁵
- **Twinning projects or any other bilateral projects.** These would add value to this field as they would allow Member States to become familiar with non-custodial penalties, both in legislative terms and in terms of how effectively they are applied in practice in each Member State;³⁶
- The creation of common databases for **probation services**, joint training courses for probation staff, the development of comparative studies on legislation and the practices of various probation jurisdictions, under the umbrella of the European Organisation for Probation and/or bilateral projects.³⁷

²⁹ DE, EE, SE, BU, IE, PL, EE, FR, CZ, FI, SI, MT

³⁰ PL, FR, CZ, NL, RO, EE, FI

³¹ PL

³² SI, FR, RO

³³ FI

³⁴ PL

³⁵ RO

³⁶ RO

³⁷ RO

A large **majority of International Organisations, NGOs and Professional Associations indicated that alternatives to post-trial detention need to be promoted at EU level.**³⁸It was mentioned that alternative measures to custody are a helpful tool against prison overcrowding. Their positive effect on the rehabilitation of offenders and their reintegration into society was also highlighted. These organizations called on the EU to take measures aimed at reducing the unnecessary use of custodial sentences where credible alternatives exist. In this respect, these organizations invited the EU to:

- Support the role of **social and probation services**;³⁹
- Support **research** and other projects to increase understanding of alternatives to detention. The EU should fund research on alternatives to imprisonment in different Member States, their costs and their effectiveness.⁴⁰ The results of such research should be disseminated among the public in order to explain the advantages of this type of measure;
- Gather information about **best practice** in alternatives to detention and fund projects to share such practices among Member States.⁴¹ This could be done through national organizations with responsibility for overseeing and supervising such disposals or at judicial level with judicial training courses;⁴²
- Organize and/or fund **training sessions** amongst judges and other EU practitioners on how these mechanisms can be utilized;⁴³
- Give more information to **the public and the media** in order to boost confidence in these measures which are seen as soft options for less serious crimes.⁴⁴

Amongst the alternative measures that the EU should promote, organizations were most divided concerning **electronic surveillance**. Some supported the idea that the EU should promote the application of electronic monitoring on a wide scale as this would reduce overpopulation in prisons and contribute to the social rehabilitation of sentenced persons.⁴⁵ On the contrary, other respondents criticized electronic surveillance.⁴⁶ It was mentioned that it does not have a positive effect on prison overcrowding and is not tolerated after a few months.

Although the smooth functioning of the Framework Decision 2008/947 requires comparable alternative sentencing systems, wide **variations between legislation in Member States** were emphasized.

³⁸ COE, JUSTICE and INTERNATIONAL COMMISSION OF JURISTS, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, PL HELSINKI FOUNDATION, EUROCHIPS, ANTIGONE, PCS UK, UK QUAKER COUNCIL, EPSU, CCBE, GENERAL COUNCIL OF SPANISH LAWYERS, FACULTY OF ADVOCATES, UNIVERSITY OF BOLOGNA, UNIVERSIDADE DA CORUNA

³⁹ COE, EPSU, CCBE. COE suggested organizing jointly with the EU the regular Probation Conferences and Conferences of Directors of Prison Administration (CDAP). CCBE called the EU to ensure that adequate resources are put in place in terms of providing expert probation services

⁴⁰ EPSU, ENLACE, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, ECBA, CEP

⁴¹ JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS, PCS UK, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, CEP

⁴² FACULTY OF ADVOCATES

⁴³ JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS, ECBA, CCBE, PL HELSINKI FOUNDATION.

⁴⁴ JUSTICE AND PRISONS, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, SECOURS CATHOLIQUE, ENLACE

⁴⁵ PL HELSINKI FOUNDATION, ECBA, ORAK

⁴⁶ SECOURS CATHOLIQUE, AEDH, OBF, BAN PUBLIC

3) How do you think detention conditions may affect the proper operation of the EAW? And what about the operation of the Transfer of Prisoners Framework Decision?

Member States' replies appeared divided on the question of the effects of detention conditions on the operation of the **EAW**:

- Some Member States indicated that detention conditions may undermine mutual trust between Member States and consequently have an effect on the proper operation of the EAW.⁴⁷ In light of article 1(3) of the Framework Decision 2002/584 on the EAW⁴⁸, some Member States mentioned that when the issue of detention conditions in the issuing Member State is raised, these conditions should be assessed prior to the surrender of a person as part of the review of the effect of surrender on fundamental rights.⁴⁹ Thus, conditions of deprivation of liberty in the receiving Member State could be grounds for refusal to surrender a person, if, based on the facts and circumstances, it would result in a breach of the person's fundamental rights.
- Other Member States supported the idea that inadequate prison conditions should be applied as a human rights ground for refusal only in exceptional cases with respect to major specific findings and based on reliable evidence.⁵⁰ Indeed, they stated that the systematic identification of such information would be inconsistent with the objectives of the Framework Decision 2002/584.
- Finally, other Member States underlined that detention conditions are not a criterion for the issue and execution of the EAW since no cases of this nature have been reported up until now.⁵¹

Concerning the **Transfer of Prisoners** :

- 10 Member States affirmed that detention conditions may affect the proper application of the Framework Decision 2008/909.⁵² National authorities could be reluctant to transfer a person where his basic human rights would be infringed. This is particularly relevant in situations where the consent of the person to be transferred is not required.
- The UK was the only Member State to indicate that differences in prison conditions should not adversely affect the operation of the Framework decision 2008/909.
- All other Member States explained that it is impossible to give a proper answer to this question since Framework decision 2008/909 is not yet in

⁴⁷ BU, SP, DK, IE, IT, DE, MT, NL, LV

⁴⁸ Article 1(3) provides that the Framework Decision will not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the TEU

⁴⁹ NL, DK, IE, DE, LV

⁵⁰ PL, BE, FR, CZ, FI

⁵¹ AT, EE, PT

⁵² BU, AT, DK, SE, EE, IE, SI, LV, NL, MT

force in every Member States.⁵³ A certain period of time would be needed to evaluate its proper functioning. RO, CZ and EE underlined that under the current application of the COE's Convention on the Transfer of Sentenced Persons, no concerns have been encountered regarding prison conditions in other EU Member States.

It should be noted that some Member States underlined the **practical issue of finding up-to-date information** concerning the prison conditions and criminal justice systems of other Member States.⁵⁴ Such information should be easily accessible as they are crucial for allowing the issuing Member State to take account of all relevant factors before surrendering a person under an EAW or before initiating a transfer.

A large majority of International Organisations, NGOs and Professional Associations recognised that **poor or inadequate detention conditions could affect** the proper operation of the EAW and of the Transfer of Prisoners Framework Decision.⁵⁵ Accordingly, the low standard of conditions in some Member States would undoubtedly affect mutual confidence within the European judicial area and damage mutual trust among Member States regarding the sufficient protection of the fundamental rights of detainees and prisoners in the issuing State.

Some organisations called upon executing Member States to **assess whether detention will be applied in accordance with international standards** after the individual is surrendered.⁵⁶ They also invited Member States to refuse to execute an EAW or to transfer a detainee if this would threaten a breach of the fundamental rights of the person. In this respect, some NGOs indicated that instructions should be taken from the EHCR case law on the deportation of Asylum seekers which oblige Member States to investigate the reality facing asylum seekers sent to other countries under the Dublin II Regulation.⁵⁷ This ruling would similarly be applicable in respect of the transfer of a prisoner under EU legislation (the EAW or Framework decision 2008/909) to a Member State where detention conditions are inadequate.

Moreover, the need to adopt **common minimum standards of detention** was stressed by NGO's.⁵⁸

As regards the **Framework Decision 2008/909 on transfer of prisoners**, particular attention should be paid to the respect of the fundamental rights of the person as this system does not require the consent of the prisoner.⁵⁹ Indeed, some

⁵³ NL, SP, PL, EE, BE, FR, RO, PT, FI, DE

⁵⁴ CZ, DK, LV, RO, NL, Council for the Administration of Criminal Justice and Protection of juveniles

⁵⁵ AMNESTY INTERNATIONAL, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, OIP, ENLACE, PL HELSINKI FOUNDATION, PUBLIC AND COMMERCIAL SERVICES UNION, IPRT, FACULTY OF ADVOCATES, ECBA, CCBE, JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS, ANTIGONE

⁵⁶ AIRE CENTRE, PL HELSINKI FOUNDATION, ENCJ.

⁵⁷ JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS, AIRE CENTRE. See EHCR, *MSS v. Belgium and Greece* no. 30696/09

⁵⁸ CCBE, ENCJ, ENLACE, PL HELSINKI FOUNDATION, GENERAL COUNCIL OF SPANISH LAWYERS

⁵⁹ UN, QUAKER COUNCIL FOR EUROPEAN AFFAIRS

organisations regretted that this Framework Decision removed the requirement that the sentenced person must consent to transfer.⁶⁰ This is particularly relevant where less favourable regimes might apply in the executing Member State. Furthermore, a number of respondents warned against the risk that Member States may use this Framework Decision to tackle prison overcrowding in their prisons by transferring prisoners abroad.

Finally, **information on prison conditions in the EU should be more easily accessible**. Such information is crucial for surrendering States in deciding whether to transfer the prisoner or not.⁶¹ This was also a concern due to the difficulties often experienced in providing courts with sufficient evidence about the situation in the issuing Member State.⁶² The difficulties in providing an adequate evidential basis to justify a refusal of surrender could explain why, until now, the ECtHR has not accepted that the execution of an EAW could constitute a breach of Art 3 ECHR.

4) There is an obligation to release an accused person unless there are overriding reasons for keeping them in custody. How is this principle applied in your legal system?

All Member States indicated that it is obligatory, in their national legislation, to release the accused person if there are no overriding reasons for keeping them in custody. According to these Member States, **pre-trial detention is a last resort measure which is subject to a number of safeguards and specific requirements** in each Member States. Various sorts of restrictions are provided for as regard the possibility of applying pre-trial detention. The main ones are: the strict definition of grounds for detention, rules on time limits and legislation on regular reviews. It should be noted that maximum duration has not been set for pre-trial detention in every Member States.

In contrast, a number of **organisations underlined the gap between the legislation of Member States and the apparent excessive use of pre-trial detention** in practice.⁶³ They highlighted the overuse of pre-trial detention in the EU, the overcrowding in remand facilities, and the situation of non nationals who are more likely to suffer excessive pre-trial detention. Such a situation would be incompatible with the principle of presumption of innocence.

5) Different practices between Member States in relation to rules on (a) statutory maximum length of pre-trial detention and (b) regularity of review of pre-trial

⁶⁰ OBF, CCBE, EPSU, OBJG, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, ANTIGONE, UN

⁶¹ UN, ENCJ

⁶² CCBE, ENCJ

⁶³ FTI, BAN PUBLIC, ENLACE, PL HELSINKI FOUNDATION, ANTIGONE, ECBA, CCBE, OBF, ORAK, GENERAL COUNCIL OF SPANISH LAWYERS, MADRID BAR ASSOCIATION

detention may constitute an obstacle to mutual confidence. What is your view? What is the best way to reduce pre-trial detention?

7) Would there be merit in having European Union minimum rules for maximum pre-trial detention periods and the regular review of such detention in order to strengthen mutual trust? If so, how could this be better achieved? What other measures would reduce pre-trial detention?

Some Member States noted **that certain EU common standards regarding pre-trial detention, if shared, could have a positive** impact on cooperation between Member States in criminal proceedings.⁶⁴

It was felt by some Member States that common minimum standards regarding **obligatory and regular reviews** of the grounds for detention could enhance mutual trust among Member States and thus result in more efficient judicial cooperation. Such rules would allow the use of long periods of detention to be reserved for cases where they are truly necessary. Such standards could oblige national authorities to verify, at certain intervals, whether the prerequisites for detention continue to exist, to review the detention decision at any time where there has been a change in circumstances and to assess whether detention is the optimal preventive measure.⁶⁵

Among the Member States that supported the adoption of EU common rules, the vast majority supported **only the adoption of standards on regular review** and was **not in favor of any legislative action aimed at harmonising maximum time periods of pre-trial detention**.⁶⁶ According to these Member States, EU standards on regular review would be a more effective limit on pre-trial detention than the fixing of maximum terms of detention. Indeed, some Member States stressed that adopting maximum time periods of pre-trial detention would not guarantee short detention times. On the contrary, the authorities may decide to make full use of the maximum time available, thus extending pre-trial detention periods⁶⁷. Moreover, the duration of provisional detention would depend on many other parameters such as the judicial system, the crime rate and the national penalties applying to the relevant criminal offences.⁶⁸ The importance of avoiding automatic release where the absolute maximum period of detention has been exceeded was also highlighted.

Certain Member States underlined the necessity to pay attention, while exploring options, to the **potential impact actions would have on the criminal justice systems** of Member States. Extreme prudence was called for. Before

⁶⁴ BU, AT, SP, SE, BE, FI, IT, NL, EE, CZ, RO Senate

⁶⁵ FI, SP, EE

⁶⁶ BU, AT, SP, SE, BE, FI, IT, NL are against a harmonization of maximum time periods of PTD. Only EE, CZ and RO Senate are in favour of EU standards establishing common rules on both the review and the time limits of pre-trial detention.

⁶⁷ SE, FI

⁶⁸ SP, BE, NL, CZ

establishing common rules, the different national criminal justice systems should be analyzed in detail and an appropriate impact analysis should be made. Common standards should not be too strict and should be introduced gradually.⁶⁹

Finally, a number of **other Member States did not support the adoption of common rules in this field.**⁷⁰ According to these Member States, the differences that exist between the regimes of pre-trial detention in different legal systems find reasonable justification and do not impact upon judicial cooperation.⁷¹ It should be accepted that differences will arise between different legal systems within the parameters established by the EHCR, the Charter of Fundamental rights and the jurisprudence of the ECtHR.⁷² It was also indicated that the EU is not competent to act in this area as the TFEU does not cover issues of pre-trial detention.⁷³ Finally, the smooth functioning of the European Arrest Warrant was presented as an example to show how differences regarding the regimes of pre-trial detention have very little impact on judicial cooperation among Member States.⁷⁴

Concerning the **other measures liable to reduce pre-trial detention**, Member States suggested that:

- Courts should prioritize cases involving detention;⁷⁵
- Effective non-custodial alternative measures should be developed and used where provisional detention is not strictly necessary, such as surveillance using electronic devices;⁷⁶
- The Framework Decision 2009/829 establishing the ESO should be properly implemented and applied.⁷⁷ It may reduce the application of pre-trial detention where the defendant is not a resident of the trial state;
- Exchange of information and best practices between national authorities regarding the pre-trial detention regime in other Member States should be improved;⁷⁸

A number of **International Organisations, NGOs, and Professional Associations supported the adoption of minimum rules** at EU level to establish a more uniform system of pre-trial detention across Member States. Indeed, differences between national legislations and practices were seen as an obstacle to mutual trust. A reduction in the use of pre-trial detention is a shared priority for these organizations in lowering the overall prison population.

Two organisations were against the adoption of such rules. The **CEP**, on the one hand, invited EU institutions to focus on the implementation of the current Framework Decisions and the Prison and Probation Rules of the COE in coming

⁶⁹ UK, EE, BE, IT, SI

⁷⁰ PL, DK, IE, FR, UK, DE, LV, PT, MT

⁷¹ PL, DK, IE, FR, UK, DE, MT

⁷² IE, FR, UK, DE

⁷³ PL, DK

⁷⁴ FR, DK

⁷⁵ PL, SE, SI

⁷⁶ PL, SP, FI

⁷⁷ PL, SP, NL

⁷⁸ SE, BE, FI, UK

years. On the other hand, the **German Association of Judges** indicated that the EU does not have any jurisdiction under the Lisbon Treaty to act in this field.

Although all were in agreement on the principle of adopting rules at EU level, the **organizations consulted were divided concerning the content** of such rules. A strong majority of organizations expressed their support for the adoption of an EU maximum term of pre-trial detention.⁷⁹ Indeed, only few organizations were against the adoption of such maximum time limits for pre-trial detention.⁸⁰ Certain organizations were in favour of EU standards covering both the length of pre-trial detention and review of the lawfulness of detention.⁸¹

The following **measures aimed at reducing the use of pre-trial detention** were also suggested by International Organizations, NGOs and Professional Associations:

- Promoting and expanding the use of non-custodial measures;⁸²
- Supporting research projects on topics such as the use of pre-trial detention, alternatives to detention, sentencing in MS and the reasons why practices differ so widely across Member States;⁸³
- Setting up a European Observatory for pre-trial detention which would examine the various legal systems and would identify those alternatives to prison which yield better results;⁸⁴
- Providing for proper information to the public opinion to explain the positive impact of alternative sentencing;⁸⁵
- Introducing EU standards for the collection of comparable data regarding pre-trial detention in Member States;⁸⁶
- Exchanging best practices, for instance through conferences funded by the EU Commission;⁸⁷
- Pre-trial detention could be applied only for certain criminal offences.⁸⁸

Some organisations **criticised the misuse of pre-trial detention** in certain Member States where it is being used when not strictly necessary and often for too long.⁸⁹ The **harsh consequences of pre-trial detention** for the individuals concerned and the adverse impacts on his/her family were also emphasized.⁹⁰ The

⁷⁹ JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS, FTI, GENEPI, SECOURS CATHOLIQUE, FARAPEJ, ENLACE, ANTIGONE, ECBA, GENERAL COUNCIL OF SPANISH LAWYERS, FACULTY OF ADVOCATES, ENCJ, European Committee of the Bundesrechtsanwaltskammer, AEDH, UN, FTI, EUROCHIPS, OIP, BAN PUBLIC, IPRT, CCBE, CCBE, GERMAN BAR ASSOCIATION, ORAK, JUSTICE AND PRISONS, MEIJERS COMMITTEE, EUROCHIPS, PL HELSINKI FOUNDATION

⁸⁰ OPEN SOCIETY, QUAKER COUNCIL FOR EUROPEAN AFFAIRS

⁸¹ JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS, FTI, GENEPI, SECOURS CATHOLIQUE, FARAPEJ, ENLACE, ANTIGONE, ECBA, GENERAL COUNCIL OF SPANISH LAWYERS, FACULTY OF ADVOCATES, ENCJ, European Committee of the Bundesrechtsanwaltskammer.

⁸² AEDH, UN, BAN PUBLIC, ENLACE, PL HELSINKI FOUNDATION, IPRT, EPSU, GENERAL COUNCIL OF SPANISH LAWYERS

⁸³ FTI, JUSTICE AND PRISONS, CEP

⁸⁴ GENERAL COUNCIL OF SPANISH LAWYERS, ENLACE

⁸⁵ UN

⁸⁶ JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS, OPEN SOCIETY

⁸⁷ QUAKER COUNCIL FOR EUROPEAN AFFAIRS

⁸⁸ FARAPEJ, OIP, SECOURS CATHOLIQUE

⁸⁹ FTI, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, MEIJERS COMMITTEE, BAN PUBLIC, AUMONERIE CATHOLIQUE DES PRISONS, PL HELSINKI FOUNDATION, ANTIGONE, MADRID BAR ASSOCIATION

⁹⁰ EUROCHIPS, FTI, BAN PUBLIC, ECBA, GENERAL COUNCIL OF SPANISH LAWYERS

situation of **non-nationals** was highlighted since they are more likely to be detained than nationals on the basis that they present a flight risk.⁹¹

Finally, the **significant disparities existing between Member States** as regards pre-trial detention regimes, terminology, and practices were pointed out.⁹²

6) Courts can issue an EAW to ensure the return of someone wanted for trial who has been released and allowed to return to his home State instead of placing him in pre-trial detention. Is this possibility already used by judges, and if so, how?

In AT and SW, such use of the EAW is possible but rarely made.

In SI, DE, SP, PL, CZ, RO, MT the law allows for this possibility. However, no specific information on the extent to which the courts have made use of this possibility is given.

BU, IE, IT, and NL do not have any information regarding this question.

Finally, in FR, EE, BE, UK, PT, DK and FI, the EAW is usually not used for this purpose.

Some respondents underlined the need to conduct EU research to confirm whether the EAW is being used for this purpose.⁹³ This should also be one of the questions in the annual review of the functioning of the EAW. The necessity of providing training sessions for judges and practitioners on the EAW was highlighted.⁹⁴

8) Are there any specific alternative measures to detention that could be developed in respect of children?

Many contributions raised concerns about the differences existing between Member States concerning the **age of criminal responsibility**.⁹⁵ Some supported the adoption of an agreed minimum age of criminal responsibility.⁹⁶

Regarding child offenders, many respondents stressed the **crucial importance of alternative measures** to deprivation of liberty.⁹⁷ Measures such as probation, community service, educational activities, treatment and other forms of supervision should be prioritized as they allow young people to remain in their

⁹¹ AEDH, FTI, IPRT

⁹² FTI, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, CEP, OPEN SOCIETY, JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS

⁹³ ECBA

⁹⁴ CCBE

⁹⁵ PL, AEDH, AIRE CENTER, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, JUSTICE AND PRISONS, BAN PUBLIC, FARAPEJ, ECBA, DAV

⁹⁶ AEDH, SECOURS CATHOLIQUE, BAN PUBLIC, FARAPEJ, ECBA, DAV

⁹⁷ PL, FI, AEDH JUSTICE and INTERNATIONAL COMMISSION OF JURISTS, COE, OPEN SOCIETY, JUSTICE AND PRISONS, SECOURS CATHOLIQUE, IJJO, QUAKER EU, GENEPI, OIP, ECBA, ENCJ, ORAK

families and in their communities. The EU should promote the exchange of best practices regarding such alternative measures.

A number of respondents highlighted the **importance of relevant international standards** such as the standards included in the UN Convention on the Rights of the Child, the UN Beijing Rules and the COE Recommendations.⁹⁸ Several respondents emphasised the need to promote and evaluate the implementation of such international rules.⁹⁹ Many contributions indicated that the detention of children should only be **a measure of last resort** and last for the shortest period of time.¹⁰⁰ Certain organizations mentioned that educational solutions should always be prioritised.¹⁰¹

As regard **EU actions** in this field, it was suggested that:

- The EU should promote alternatives to deprivation of liberty;¹⁰²
- The EU should support research in this field;¹⁰³
- The EU should support the exchange of best practices;¹⁰⁴
- The EU should promote the harmonization of the rights of children placed in juvenile detention centres.¹⁰⁵

9) How could monitoring of detention conditions by the Member States be better promoted? How could the EU encourage prison administrations to network and establish best practice?

Many Member States highlighted the **need for prison administrations to network, to cooperate and to exchange information and best practices**.¹⁰⁶ In this respect, regular meetings should be organized.

Also, the need for European prisons to be represented at EU level was underlined.¹⁰⁷ In this regard, existing networks such as **CEP**¹⁰⁸ in the field of probation and EUROPRIS was mentioned. Indeed, many Member States stressed the important role of **EUROPRIS**.¹⁰⁹ It is expected to be a forum for networking in order to improve cooperation and to establish best practices among European prison and correctional services. The role of the annual Conference of Directors of

⁹⁸ LV, COE, EUROCHIPS, IJJO, AIRE CENTRE, EUROCHIPS, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, AMNESTY INTERNATIONAL, JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS

⁹⁹ LV, COE, EUROCHIPS, IJJO

¹⁰⁰ PL, COE, FARAJEJ, JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS, OPEN SOCIETY, QUAKER EU, FNARS, ENCJ

¹⁰¹ FNARS, BAN PUBLIC, ENLACE, EPSU

¹⁰² OPEN SOCIETY, IJJO

¹⁰³ QUAKER COUNCIL FOR EUROPEAN AFFAIRS

¹⁰⁴ SECOURS CATHOLIQUE, CGLPL, FARAJEJ

¹⁰⁵ OMBUDSMAN OF SPAIN CGLPL

¹⁰⁶ EE, BE, CZ, SI, FI, LV, NL

¹⁰⁷ DE, HESSIAN Ministry

¹⁰⁸ FR, NL

¹⁰⁹ DK, IE, CZ, FI, NL

Prison Administration (**CDAP**) was also mentioned as an important forum for the exchange of experiences and cooperation.¹¹⁰

Some Member States underlined the **effective monitoring currently carried out by existing mechanisms** such as National Preventive Mechanisms (NPMs) and the COE Anti-torture Committee (CPT).¹¹¹ The need for continuing and strengthening the network of NPMs and other national bodies through the EU was stressed.¹¹²

Many Member States supported the idea that **existing monitoring mechanisms (at CoE and OPCAT level) are sufficient**. According to these respondents, there is no need to create additional systems at EU level for monitoring detention conditions.¹¹³ Such EU initiatives would duplicate the efforts of existing mechanisms. Furthermore, the issue of the existence of an adequate legal base for EU action in this field was raised.¹¹⁴

Nonetheless, some Member States called for **better coordination** of existing networks and highlighted the potential role of an EU coordinator in this area.¹¹⁵

In addition, **information on good practices** should be collected and disseminated at the EU level via specialist journals, exchange trips and visits, seminars, conferences and workshops.¹¹⁶ Consequently, the EU would be able to provide guidance on the operation of prisons and treatment of detainees in the Member States. This could encourage harmonization/standardization of detention conditions in Europe and use of best practices.

Finally, the need for **EU financial support** in order to facilitate the exchange of best practices, information, exchange trips and visits, technical assistance, training and education etc was mentioned.¹¹⁷

Many International Organizations, Professional Associations and NGOs stressed the crucial importance of **internal and external monitoring** of detention conditions.¹¹⁸ They indicated that internal administrative mechanisms are important but not enough. Independent external monitoring of all places of detention would be key in ensuring minimum standards and improving detention conditions.¹¹⁹

¹¹⁰ DK, AT. AT invited Representatives of the EU Commission to attend this conference in order to exploit synergies and avoid duplication

¹¹¹ BU, AT, PL, CZ, MT

¹¹² BU, SE, AT, CZ

¹¹³ FR, EE, BE, UK, MT, CZ, NL, HESSIAN Ministry, NL COUNCIL JUVENILE affairs

¹¹⁴ IE, NL, CZ

¹¹⁵ UK, FI

¹¹⁶ SP, PL, IT, PT, HESSIAN Ministry

¹¹⁷ FR, SP, SI, NL, DE

¹¹⁸ CGLPL, UK CHIEF INSPECTOR OF PRISONS, AUMONERIES CATHOLIQUES DES PRISONS, OIP, AEDH, OPEN SOCIETY, CCBE, APT

¹¹⁹ The ratification of OPCAT obliges States Parties to set up one or more independent domestic monitoring bodies known as NPMs. A range of other actors should have a part to play in monitoring places of detention as NGOs, independent inspectorates, ombudspersons offices.

A number of organisations regretted that several EU Member States have still not signed and/or ratified the **OPCAT**. Therefore, they called upon the EU to encourage Member States to sign, ratify and effectively implement the OPCAT.¹²⁰ The EU should also promote the establishment of OPCAT compliant **NPMs** where they do not exist and support networking between NPMs. In this respect, many organizations strongly supported the establishment of an **active NPMs network in Europe**.¹²¹ They highlighted the crucial importance of bi-lateral and multi-lateral exchanges between NPMs which would strengthen the sharing of experiences, information and good practices and thereby improve detention conditions in Member States. The organizations concerned further emphasized that there would be considerable benefit in continuing this project, which they see as a valuable learning opportunity. For this reason, they called upon the EU to finance concrete and operational exchanges between NPMs more intensely. In addition, efforts to facilitate regular contacts between European NPMs and the European CPT as well as the UN SPT should be made.

In view of the existing monitoring mechanisms, some organizations raised the question of **how better to coordinate the work of monitoring bodies**.¹²² Indeed, the risk of duplication, the need for coherence between such mechanisms and the risk of contradicting recommendations were pointed out.

It was also indicated that the **dissemination of Recommendations from monitoring bodies should be improved**. Reports of SPT and CPT visits should be published promptly.¹²³

The persistence of poor prison conditions and the variation in detention conditions in the Member States were highlighted.¹²⁴ In this respect, many organizations called for the **adoption of EU minimum standards on detention conditions**.¹²⁵ Such binding standards could raise the existing level of detention conditions throughout the EU and thus strengthen mutual trust between Member States. These standards would support the effective implementation of international COE and UN standards in national law and practice.¹²⁶ Furthermore, such

¹²⁰ CGLPL, OIP, COE, ENLACE, ANTIGONE, UK CHIEF INSPECTOR OF PRISONS, AEDH, UN, JUSTICE AND PRISON, APT, OPEN SOCIETY, AMNESTY INTERNATIONAL, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, IPRT. APT and QUAKER COUNCIL FOR EUROPEAN AFFAIRS underlined the risk of double standards since the EU regularly urges non EU countries to ratify the OPCAT.

¹²¹ CGLPL, SPANISH OMBUDSMAN, UK CHIEF INSPECTOR OF PRISONS, COE, FARAPEJ, ENLACE, OIP, ANTIGONE, AMNESTY INTERNATIONAL, JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS, SECOURS CATHOLIQUE, GENEPI, PL HELSINSKI FOUNDATION, QUAKER COUNCIL FOR EUROPEAN AFFAIRS. The European NPM Project was a pilot project for tri-partite cooperation between the CPT, the SPT and the NPMs. It was originally established and funded by the "Peer-to-Peer II Project", a joint project between the EU and the COE, the SPT decided to contribute and joined the project in 2009.

¹²² APT, European Committee of the Bundesrechtsanwaltskammer, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS

¹²³ COE, APT, ECBA, UNIVERSITY OF BOLOGNA

¹²⁴ JUSTICE AND PRISONS, AEDH, UK CHIEF INSPECTOR OF PRISONS, AIRE CENTRE, SECOURS CATHOLIQUE, QUAKER COUNCIL FOR EUROPEAN AFFAIRS

¹²⁵ MEIJERS COMMITTEE, SECOURS CATHOLIQUE, UK CHIEF INSPECTOR OF PRISONS, JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS, ENLACE, EUROCHIPS, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, UK QUAKER COUNCIL

¹²⁶ Such as the European Prison Rules, the UN rules, the Recommendations of the Council of Ministers of the COE, the recommendations of the CPT and the SPT.

legislation would give the EU the follow-up role of monitoring the compliance of Member States with such standards and their implementation.

It was also suggested that the EU should foster the development of **networks of prison and judicial professionals** to exchange experience and expertise on detention issues.¹²⁷ Prison administrations should have exchanges with a variety of different actors, such as NGOs, NPMs, and academics. Dialogue and awareness about detainees' rights among prison administration staff should also be promoted.¹²⁸

Finally, according to the respondents, **a new monitoring body at the EU level is not necessary**. It could aggravate the risk of duplication of work and potential contradictions in the findings.¹²⁹ The EU should instead expand the level of **financial and organizational support** it offers to existing systems. The EU should notably help to finance the implementation of recommendations made by the CPT, SPT and NPMs.¹³⁰ Furthermore, the EU should assist Member States in meeting international and regional human rights standards related to detention. It should offer technical assistance to Member States namely through workshops or the development of common training curricula for prison staff on the relevant standards.¹³¹

10) How could the work of the Council of Europe and that of Member States be better promoted as they endeavour to put good detention standards into practice?

Some Member States and organizations stressed the **leading role of the Council of Europe** (COE) in monitoring detention conditions due to its substantial experience and work in the field.¹³² They also underlined the crucial importance of the European Prison Rules. The **monitoring work carried out by the CPT** was also highlighted.¹³³ The EU should use the outcome of monitoring to develop EU policy and legislation in the field of detention. It should also support and promote the implementation of CPT recommendations.

Some Member States and organizations called upon **the EU and the COE to closely collaborate** in order to ensure the respect of relevant European standards.¹³⁴ This would contribute to the successful implementation of the COE

¹²⁷ AEDH, APT, EUROCHIPS, CEP, JUSTICE AND PRISONS, ECBA, EPSU, ENCJ, UNIVERSIDADE DA CORUNA, Dr Roberto Bezzi. COE suggested to serve as a platform for offering regular access to and updates of information shared during the CDAP. COE also highlighted a project to create an electronic platform for discussion between prison and probation services.

¹²⁸ AEDH, APT.

¹²⁹ JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS, JUSTICE AND PRISONS, QUAKER EU COUNCIL

¹³⁰ COE, APT, JUSTICE AND PRISON, QUAKER COUNCIL FOR EUROPEAN AFFAIRS

¹³¹ JUSTICE AND INTERNATIONAL COMMISSION OF JURISTS, JUSTICE AND PRISONS

¹³² AT, FR, UK, LV, NL, COE, AMNESTY INTERNATIONAL, OIP, APT, ENLACE, EPSU, GENERAL COUNCIL OF SPANISH LAWYERS, UNIVERSIDADE DA CORUNA. ENLACE suggested making the EPR an additional Protocol to the ECHR which would enable the Strasbourg Court to use them formally in its case law where they are infringed.

¹³³ COE, AMNESTY INTERNATIONAL, APT, OIP, PL HELSINKI FOUNDATION, CCBE, EPSU

¹³⁴ AT, DK, DE, NL, COE, AMNESTY, APT, AIRE CENTRE, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, European Committee of the Bundesrechtsanwaltskammer

standards in Member States. Furthermore, they should coordinate their actions to avoid duplication of work.

The **EU should support the COE's activities** in different ways:

- Support could take the form of **financial assistance**. The EU should fund projects aimed at improving standards in this field.¹³⁵
- **EU training for prison staff**. The importance of training was mentioned, which has the potential to contribute to the dissemination of COE standards.¹³⁶
- Efforts to further **disseminate knowledge regarding the COE standards and best practices** between prison administrations.¹³⁷
- The creation of a **European prisons cooperation network** was also suggested.¹³⁸

A number of organizations underlined the **importance of the ECtHR's case law**.¹³⁹ According to these organizations, the ECtHR's judgments on the subject of detention conditions should be disseminated broadly and national governments should make their response to national rulings known. The EU's future accession to the ECHR was also mentioned.¹⁴⁰ According to the respondents, this would constitute a major step forward.

Many Member States indicated that they **did not support the introduction of binding EU rules on detention standards**.¹⁴¹ Only Slovenia expressed its support for such rules, which would transpose international standards into national legislation.

In contrast, and due to the diversity of practices in different Member States, a strong majority of organizations **supported the adoption of EU minimum standards on detention conditions**. Such binding EU rules would incorporate international standards into national legislation, thus raising the standard of detention conditions across the MS.¹⁴² Some NGOs warned the EU of the **risk of diluting or undermining the existing standards** by duplicating them during the EU legislative process.¹⁴³

The **importance of civil society** in monitoring detention conditions was also highlighted.¹⁴⁴ The EU should support NGOs working for prisoners' rights (e.g. through an EU fund).

¹³⁵ UK, DE, BU, SE, FI, SI

¹³⁶ SE, BE, FR, RO

¹³⁷ PL, SE, FI, RO, PT, MT. MT suggested that COE set up a web site featuring good practices in prison management. PT proposed the creation of a European Observatory to monitor detention conditions in prisons and to disseminate the EPR

¹³⁸ SE, EE, DE

¹³⁹ CGLPL, COE, AMNESTY INTERNATIONAL, APT, ENLACE, PL HELSINKI FOUNDATION, GENERAL COUNCIL OF SPANISH LAWYERS, UNIVERSIDADE DA CORUNA. ENLACE invited the EU to create mechanisms ensuring wide-scale dissemination of the Court's rulings in all MS languages.

¹⁴⁰ EPSU, GENERAL COUNCIL OF SPANISH LAWYERS

¹⁴¹ DK, EE, CZ, FI, NL

¹⁴² AMNESTY INTERNATIONAL, AEDH, OIP, QUAKER COUNCIL FOR EUROPEAN AFFAIRS, GENEPI, SECOURS CATHOLIQUE, PL HELSINKI FOUNDATION, GENERAL COUNCIL OF SPANISH LAWYERS, EPSU, FACULTY OF ADVOCATES, UNIVERSIDADE DA CORUNA

¹⁴³ QUAKER COUNCIL FOR EUROPEAN AFFAIRS, AMNESTY INTERNATIONAL

¹⁴⁴ AEDH, EUROCHIPS, AIRE CENTRE, FARAPEJ, ECBA

Finally, **other measures** were suggested such as:

- Specifying the **maximum capacity** of each individual detention establishment and respecting it without exception;¹⁴⁵
- Adopting **good working conditions** for prison and probation staff.¹⁴⁶

¹⁴⁵ COE, FARAPEJ

¹⁴⁶ COE, EPSU

ANNEX 1

ALTERNATIVES TO PRE-TRIAL DETENTION

Alternatives to pre-trial detention exist in every Member States which have contributed to the Green Paper (21MS).

Among these measures, one could highlight:

- **Bail:** in BU, PL, SP, EE, IE, BE, FR, CZ, SI, LV, PT, DK.
- **House arrest:** in BU, AT, SP, EE, FR, UK, SI, RO, PT, MT.
- **House arrest with electronic monitoring:** AT, SP, EE, FR, UK but not in Scotland, Lander Hessen, PT. CZ and FI are looking into the possibility of using electronic monitoring.
- **Restraining order to refrain from certain activities / types of behaviour** (injunction to stay away from a certain place or individual, residing in a particular place...) in BU, AT, SP, EE, IT, FR, FI, LV, PT, DK.
- **Ban on leaving the territory of the given Member State:** in BU, PL, SE, FR, CZ, IT, FI.
- **Obligation to report to the authorities at regular interval:** in AT, SE, FR IT, DE, FI, SI, PT, DK.
- **Temporary confiscation of ID documents, driving licences...**in AT, PL, FR, DK.
- **Instruction to live in a particular place:** in AT, SP, IT, LV, DK.
- **Instruction to undergo medical treatment (for drug addiction, psychotherapy measure ...):** in AT, SP, FR, DE.
- **Written promise (for appearance, to leave one's place of residence, not to hinder the investigations...):** in BU, AT, CZ.
- **Supervision by a probation officer:** in AT, CZ, MT.

These measures are used to prevent the same person from committing another serious crime, absconding, interfering with witnesses, destructing evidence, or otherwise obstructing the course of justice.

Some Member States¹⁴⁷ underlined the difficulties to apply these measures in practice regarding the control over their enforcement. According to these Member States, it is difficult to check compliance with the obligations to be executed. This may have practical consequences on the effective use of these alternatives to pre-trial detention. In this respect, certain Member States stressed the crucial role that the electronic monitoring could play.

¹⁴⁷ BU, CZ, and NL

ANNEX 2

ALTERNATIVES TO POST-TRIAL DETENTION

Alternatives to post-trial detention exist in every Member States which have contributed to the Green Paper (21MS).

Among these measures, one could highlight:

- **Fines:** in AT, PL, SP, SE, IE, DE, FI, LV, NL.
- **Conditional release:** in AT, SP, EE, BE, FR, IT, DE, FI, LV, RO.
- **Conditional suspension of prison sentences:** in AT, PL, SP, IE, BE, DE, SI, LV, RO, PT, MT, NL, DK.
- **Community services:** AT, PL, SP, EE, IE, BE, FR, UK, FI, SI, LV, PT, MT, NL, DK.
- **Supervision under electronic surveillance:** in AT, PL, SE, EE, BE, FR, UK, FI, HESSIAN LANDER.
- **Probation orders:** in SE, PL, IE, BE, UK (no Scotland), IT, SI, LV, PT, MT, NL.

ANNEX 3

LIST OF RESPONDENTS

Member States

- BU Prosecutor's Office
- AT Ministry of Justice
- PL Ministry of Justice
- SP Ministry of Justice
- SE Ministry of Justice
- EE Ministry of Justice
- IE Ministry of Justice, Department of Justice and Equality
- SI Ministry of Justice
- BE Ministry of Justice
- CZ Ministry of Justice
- DE Ministry of Justice Hessen
- FI Ministry of Justice
- RO Senate
- UK Ministry of Justice
- IT Ministry of Justice
- LV Permanent representation
- FR Représentation permanente
- PT Ministry of Justice
- DE German Federal Ministry of Justice
- DK Ministry of Justice
- MT Ministry for Justice, Dialogue and Family
- NL Ministry of Security and Justice
- NL Council for the Administration of Criminal Justice and Protection of Juveniles
- VVD Parliamentary Group, the Netherlands
-

National Preventive Mechanisms

- Jean-Marie Delarue, Contrôleur général français des lieux de privation de liberté
- UK HM Inspectorate of Prisons for England and Wales
- Ombudsman of Spain

Civil Society, Non-Governmental Organizations, Others

- International Commission of Jurists and Justice
- The Council of Europe (COE)
- Consortium of non-governmental organizations
- OHCHR + UNODC + UNICEF
- AEDH - Association pour la défense des droits de l'Homme
- European Forum for Applied Criminal Policy
- Amnesty International
- APT Association for the Prevention of Torture

- Fair Trials International, UK
- Quaker Council for European Affairs
- EUROCHIPS European Network for Children of Imprisoned Parents
- EURAD Europe Against Drugs
- European Network of Councils for the Judiciary
- Meijers Committee
- EuroPris
- European Organisation for Probation (ECP)
- International Juvenile Justice Observatory (IJJO) + European Council for Juvenile Justice
- Irish Human Rights Commission IHRC
- AIRE Centre Advice on Individual Rights in Europe
- UK Justice and prisons organisation
- Anex
- PL Helsinki Foundation for Human Rights
- IE Irish Penal Reform Trust (IPRT)
- Secours Catholique, Reseau Mondial Caritas
- FR FNARS Fédération nationale des Associations d'accueil et de réinsertion sociale
- Aumônerie Catholique des prisons de France
- Ban Public-Association pour la communication sur les prisons
- FR Groupement Etudiant National d'Enseignement aux Personnes Incarcérées (GENEPI)
- FR FARAPEJ Fédération des Associations Réflexion-Action Prison et Justice
- FR Observatoire International des Prisons
- FR ANVP Association Nationale des Visiteurs de Prison
- ES ENLACE Andalusian Federation
- IT Associazione Antigone
- IT Associazione Comunità Papa Giovanni XXIII
- UK Family outside organisation
- UK Quaker Service response
- The Public and Commercial Services union (PCS), UK
- EPSU European Public Service Union
- DE German Federal Bar
- ES General Council of Spanish Bar
- Austrian Bar Association (Österreichischer Rechtsanwaltskammertag- ORAK)
- German Association of Judges (Deutscher Richterbund)
- Madrid Bar Association
- BE Ordre des Barreaux Francophones et Germanophones de Belgique (OBFGB)
- ECBA European Criminal Bar Association
- CCBE Council of Bars and Law Societies of Europe - Conseil des barreaux européens
- DE German Bar Association (DAV)
- UK - Faculty of Advocates - Advocates Library, Parliament House
- ES University of Coruña
- University of Bologna
- Duncan McLaughlan
- Dott.sa Paola Balbo
- Dott. Roberto Bezzi, II Casa di Reclusione di Milano (Bollate)
- BE Claire CAPRON