



Council of the
European Union

Brussels, 26 July 2019
(OR. en)

11254/19

JAI 806
COPEN 298
DROIPEN 112
EUROJUST 133
EJN 64

NOTE

From: Presidency
To: Delegations

No. prev. doc.: 9728/19

Subject: Alternative measures to detention
- Presidency paper

In view of the meeting of the Friends of the Presidency (COPEN) scheduled to take place on 6 September 2019, delegations will find attached a discussion paper with questions, as drafted by the Presidency.

Alternative measures to detention - Presidency paper

During the Austrian Presidency, the Council adopted conclusions on ‘Promoting mutual recognition by enhancing mutual trust’¹. According to these conclusions (point 5), Member States are encouraged to have legislation in place that, where appropriate, allows use to be made of alternative measures to detention in order to reduce the population in their detention facilities, thereby furthering the aim of social rehabilitation and also addressing the fact that mutual trust is often hampered by poor detention conditions and the problem of overcrowded prisons.

In the June 2019 Justice and Home Affairs Council meeting, the Council took note of a Presidency report² in which several issues relating to detention conditions and how they affect the use of mutual recognition instruments were pointed out. Several measures that could be used to build up mutual trust and improve judicial cooperation were addressed. In the opinion of the Presidency the suggested measures are valuable and can provide partial solutions to the issues encountered in the use of mutual recognition instruments.

Detention conditions and prison overcrowding have been brought up on several occasions during recent years. As a whole, it is a complex problem to which there are no simple solutions. The use of alternatives to imprisonment is one possibility to address the issue. The Presidency is of the opinion that Member States and the system of mutual recognition as a whole could benefit from further discussions on these topics. Experience has shown that the EU has an important role to play as a forum for sharing best practices and identifying the need for common action. Increasing cooperation between the EU and the Council of Europe regarding these themes could be useful as well.

In the informal meeting of Justice and Home Affairs Ministers on 19 July 2019, the Justice Ministers were invited to share their views on these topics, with the focus on exploring possibilities to increase the use of alternatives to detention and on non-legislative measures³.

¹ OJ C 449, 13.12.2018, p. 6.

² 9728/19, ‘The way forward in the field of mutual recognition in criminal matters’.

³ The discussion paper “Future of justice: Detention and its alternatives” can be found online under the heading “Discussion papers” here: <https://eu2019.fi/en/events/2019-07-18/informal-meeting-of-ministers-for-justice-and-home-affairs>

The discussion that followed was overall very positive and the ministers largely supported the idea of discussing further with the aim to increase the use of alternatives to imprisonment in the EU. As pointed out also in the discussion, the use of alternatives to imprisonment can have various other benefits relating to the effectiveness of criminal sanctions than only offering a partial solution to the problem of prison overcrowding. Alternatives to imprisonment have societal benefits, e.g. fewer costs for maintaining prisons, better prospects for social rehabilitation and accordingly, less recidivism. Also in cases, where a prison sentence is indeed deemed to be the correct criminal sanction, different systems of early release, including adequate control and support during this process, may lead to offenders being more fit for society upon release. This in turn leads to a more secure society.

In the light of the foregoing, the Presidency considers it useful and appropriate to continue the discussions initiated by previous presidencies on ensuring effective judicial cooperation in criminal matters by overcoming obstacles to mutual recognition, with a particular focus on the use of alternatives to imprisonment. The motivation behind continuing and deepening these discussions is to ensure the functioning of the mutual recognition instruments and, promote the core values of EU. Possibilities and advantages of increasing the use of alternatives to imprisonment throughout the entire criminal justice chain could be further explored, while bearing in mind that imprisonment should only be used as a last resort solution if no other sanction is appropriate, like in cases where the imprisonment is justified on the basis of seriousness of the offence.

The Presidency intends to continue the discussions at the meeting of the Friends of the Presidency (COPEN) scheduled for 6 September 2019, and at further meetings of the Working Party in October. Since the discussions should be based on the most recent knowledge on the subject matter, the Presidency has invited experts representing the Council of Europe, the European Union Agency for Fundamental Rights (FRA), the European Organisation of Prison and Correctional Services (EuroPris), the Confederation of European Probation (CEP) and the European Forum for Restorative Justice (EFRJ) to share their knowledge on the topic at the meeting on 6 September.

In the meeting of 6 September, the experts will first give presentations on the work that has already been carried out in the field of detention conditions and alternative measures to imprisonment. Subsequently, Member States are invited to share their views on these matters on the basis of the following questions:

- 1) *In your country, what role do alternative sanctions play in criminal policy?*
 - 2) *What are the best practices you would like to share with other EU Member States in this regard?*
 - 3) *What role could the EU play in supporting the efforts of the Member States to reduce prison population, especially with the focus on exploring possibilities to increase the use of alternatives to imprisonment and on non-legislative measures?*
 - 4) *Is there anything else that you would like to inform the Presidency / other Member States about as regards the use of alternatives to imprisonment?*
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