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**NOTE**

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From: Presidency  
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Delegations will find in Annex attached a Report by the Finnish Presidency of the Council on its work on the issue of alternative measures to detention during its mandate period in the second half of 2019. In the appendix to the report (Annex 2), delegations will find a list of documents and tools relating to detention and alternative sanctions and measures.

Alternative measures to detention – Towards a new era in European criminal justice  
Report by the Finnish Presidency

**I. Introduction**

The Council adopted conclusions on alternative measures to detention on 3 December 2019 (OJ C 422 16.12.2019 p. 9).

The objective of this report is to give a brief overview of the discussions during the Finnish Presidency that preceded the adoption of the conclusions. Furthermore, another objective of the report is to distribute a list of relevant documents and tools relating to detention and alternative sanctions and measures that have been mentioned in the discussions or brought up by the experts heard during the process (see Appendix).

The use of mutual recognition instruments, together with complex themes relating to prison conditions, prison overcrowding, prison radicalisation and alternatives to detention, have been raised within the EU during previous Presidencies, particularly those of Austria and Romania.

The Finnish Presidency considered it important to keep the discussions going, and decided to approach those issues in particular from the point of view of the increased use of alternatives to detention. The primary motivation for continuing and deepening those discussions was to promote the EU's core values by upholding human rights and ensuring security for citizens and also to ensure the functioning of the mutual recognition instruments.

The Presidency's aim was to provide EU Member States with an opportunity to discuss and learn from each other by sharing best practices, thus raising awareness of the benefits of using alternatives to detention.

## **II. Description of the Presidency process**

The Presidency raised the subject at the meeting of Justice and Home Affairs Ministers held in Helsinki on 19 July 2019. The ministers had a very positive discussion on the ‘Future of justice: detention and its alternatives’. The discussion was based on questions to the ministers (see III). Questions similar to those discussed by the ministers were then re-examined at the COPEN working party meeting on 6 September. The subject and draft conclusions were discussed further at COPEN working party meetings in October.

Experts from organisations and other bodies with relevant knowledge of topics relating to this theme have also been heard during this process, in particular at the COPEN working party meeting on 6 September.

## **III. Discussions: comments and suggestions by Member States and summary of the hearing of experts**

### **a) Discussion in Council**

The three questions below were examined at the Justice and Home Affairs Ministers meeting in Helsinki on 19 July, at the COPEN working party meeting in Brussels on 6 September and in accordance with the written consultation procedure:

1) In your country, what role do alternative sanctions play in criminal policy, and what are the best practices you would like to share with other EU Member States?

*Replies from Member States:*

- *Member States in general agreed that alternatives to detention is an important issue.*
- *A substantial number of Member States brought forward examples of domestic legislation pertaining to alternative sanctions and measures, such as electronic monitoring, probation, financial penalties and various community sanctions. In some jurisdictions, short prison sentences can be commuted into community sanctions.*

- *A substantial number of Member States commented on the need for rehabilitation and reintegration into society. Non-custodial sanctions offer better opportunities for rehabilitation than detention, and rehabilitation reduces the risk of reoffending.*
- *Some Member States use restorative justice, which has been found to lead to more satisfactory outcomes than criminal justice for offenders, victims and society.*

2) *Do you agree that long-term efforts and a joint commitment by EU Member States, the Commission and the Council of Europe are needed to tackle all obstacles to judicial cooperation in criminal justice? Do you agree that in this context attention must be given to the use of alternative sanctions, as they could provide partial solutions to problems related to mutual recognition and prison overcrowding?*

*Replies from Member States:*

- *Member States in general agreed with the need for long-term efforts and a joint commitment.*
- *Several Member States agreed that the wider use of alternative sanctions is important, especially because such sanctions have several benefits in comparison with detention and also because they could provide partial solutions to problems relating to mutual recognition and prison overcrowding.*
- *Several Member States pointed out that the ninth round of mutual evaluations on Framework Decisions on probation and alternative sanctions (2008/947/JHA) and on European supervision order (2009/829/JHA), to be carried out in 2019-2020, is likely to provide valuable information on the scarce use of these EU's mutual recognition instruments.*
- *Some of the Member States brought up that detention might increase the risk for radicalisation.*

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?

*Replies from Member States:*

- *Member States in general stated that alternative sanctions and measures play an important role in the EU.*
- *Most Member States emphasised that future work on alternative sanctions should focus on measures other than legislative measures.*
- *Most Member States assessed that the main role of the EU is to facilitate the exchange of best practices as well as to facilitate the raising of awareness and the dissemination of information regarding the use of non-custodial sanctions and measures.*
- *Several Member States voiced their desire for enhanced cooperation between the different stakeholders.*
- *Several Member States stated that prison overcrowding is still an issue and that support from the EU to solve this would be welcome.*

#### **b) Summary of the hearing of experts**

At the COPEN working party meeting held in Brussels on 6 September, representatives from the following organisations shared their knowledge of and views on the topic: the European Union Fundamental Rights Agency (FRA), the European Judicial Network (EJN), the Council of Europe (CoE), the European Forum for Restorative Justice (EFRJ) and the Confederation of European Probation (CEP). The key messages of the experts' presentations can be summarised as follows:

- *There is already abundant information and documentation regarding detention and its alternatives and matters pertaining to that theme.*

- *Alternatives to detention have several advantages for both individuals and society, such as better prospects of social rehabilitation and, accordingly, less recidivism, as well as lower costs in terms of maintaining prisons.*
- *While Member States are committed to the EU Framework Decision on probation and alternative sanctions, the practical implementation of that Framework Decision leaves room for improvement and wider use.*
- *While Member States are committed to the EU instruments concerning the transfer of prisoners, the European arrest warrant and the European supervision order, the use of some of the instruments is scarce. This is partly due to poor prison conditions and prison overcrowding in the recipient countries.*
- *A strengthened common approach on the part of the EU to alternatives to detention would, as such, already serve as a means to strengthen mutual trust, hence the use of mutual recognition instruments.*
- *There are no mechanisms in place to ensure comprehensive data collection on the use of the above mentioned EU mutual recognition instruments.*
- *Training of prosecutors and judges as well as prison and probation service officials is necessary in order for the entire criminal justice chain to be aware of the consequences of decisions taken at various stages.*
- *Electronic monitoring should preferably be combined with supervision.*
- *Electronic monitoring can be used at all stages of the criminal justice process.*
- *Restorative justice is an alternative means of conflict resolution. It can be used either instead of or in combination with criminal sanctions.*
- *Restorative justice takes a broader approach to dealing with crime than traditional criminal justice as it concentrates on repairing the harm that has occurred. It takes into account not only the offender, but also the victim and society as a whole.*
- *Research shows that restorative justice has several advantages over traditional criminal justice, such as greater satisfaction with the outcome and a greater feeling of fairness, lower costs and less institutionalisation.*
- *Even though alternatives to detention are less cost-intensive than imprisonment, sufficient resources must be allocated for non-custodial sanctions and measures.*

## **V. Conclusion of the Presidency regarding the further development of alternative measures to detention**

The Presidency considers that the EU can play a significant role in promoting the use of alternative measures to detention. As the criminal sanctions system falls within the competence of the Member States the focus should be on non-legislative measures. The discussions between Member States and the adoption of the conclusions show that there is a common view on the importance and benefits of the use of alternative measures to detention. The Commission also expressed its support for the Presidency's work and the adoption of the conclusions.

There are several measures that can be taken within the EU regarding the use of alternative measures to detention: first, at national level, secondly, at EU level and thirdly, at a broader level in cooperation with the Council of Europe and other relevant organisations. The conclusions adopted in December form a good base for future discussions and actions.

**DOCUMENTS AND TOOLS RELATING TO DETENTION AND ALTERNATIVE  
SANCTIONS AND MEASURES**

**EU:**

[Probation Measures and Alternative Sanctions in the European Union \(Daniel Flore, Stéphanie Bosly, Amandine Honhon, Jacqueline Maggio, Insentia, 2012\)](#)

Study on alternatives to coercive sanctions as response to drug law offences and drug-related crimes (European Commission, 2016)

Alternatives to imprisonment in Europe: A handbook of good practice (Catherine Heard, European Prison Observatory. Alternatives to detention, Antigone Edizione, 2016)

Procedural Rights and Detention Conditions – Cost of Non-Europe report (EPRS European Parliamentary Research Service, 2017)

Reducing prison population: advanced tools of justice in Europe (JUST/2013/JPEN/AG/4489, [www.reducingprison.eu](http://www.reducingprison.eu))

Reducing the prison population in Europe: Do community based sentences work? (Omid Firouzi Tabar, Michele Miravalle, Daniela Ronco, Giovanni Torrente, Antigone Edizione, 2016)

**European Union Agency for Fundamental Rights (FRA)**

Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfers, 2016

Rights in practice: access to a lawyer and procedural rights in criminal and European Arrest Warrant proceedings, September 2019 (Council document 12802/19), <https://fra.europa.eu/en/publication/2019/criminal-proceedings-rights>

Criminal detention conditions in the European Union: rules and reality, 2019



## **Links to some relevant rulings of the European Court of Justice:**

Aranyosi and Căldăraru judgment, Joined Cases C-404/15 and C-659/15 PPU

Dorobantu judgement of 15 October 2019 (C-128/18)

## **COUNCIL OF EUROPE:**

### **a. Committee of Ministers texts: <https://www.coe.int/en/web/cm>**

- Recommendation No R(99)22 of the Committee of Ministers to the member states concerning prison overcrowding and prison population inflation <https://pjp-eu.coe.int/documents/3983922/6970334/CMRec+%2899%29+22+concerning+prison+overcrowding+and+prison+population+inflation.pdf/1d28cea8-31d2-4e2f-911c-870119b189c9>
- European Prison Rules (Recommendation Rec(2006)2 of the Committee of Ministers to the member states) <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>
- Recommendation CM/Rec (2017) 3 of the Committee of Ministers to member states on the European Rules on community sanctions and measures [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680700a5a](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680700a5a)
- Recommendation CM/Rec(2018)8 of the Committee of Ministers to member states concerning restorative justice in criminal matters [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016808e35f3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808e35f3)
- Recommendation CM/Rec(2014)4 of the Committee of Ministers to member states on electronic monitoring, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805c64a7](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c64a7)

- Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805d2716](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d2716)
- Recommendation Rec(2003)22 of the Committee of Ministers to member states on conditional release (parole), [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805df03f](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805df03f)
- Council of Europe Handbook for Prison and Probation Services regarding Radicalisation and Violent Extremism, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805df03f](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805df03f)
- Compendium of conventions, recommendations and resolutions relating to prisons and community sanctions and measures <https://rm.coe.int/compendium-e-2018/16808ae2cf>
- White paper on prison overcrowding - <https://rm.coe.int/white-paper-on-prison-overcrowding-cm-2016-121-add3-e/16807c886b>

**b. Relevant case law of the European Court of Human Rights:**

<https://www.echr.coe.int/Pages/home.aspx?p=home>

Links to some relevant cases of the European Court of Human Rights:

- <http://hudoc.echr.coe.int/eng?i=001-167483>
- <http://hudoc.echr.coe.int/eng?i=001-108465>
- <http://hudoc.echr.coe.int/eng?i=001-115860>
- <http://hudoc.echr.coe.int/eng?i=001-150771>
- <http://hudoc.echr.coe.int/eng?i=001-152784>
- <http://hudoc.echr.coe.int/eng?i=001-95314>
- <http://hudoc.echr.coe.int/eng?i=001-173105>

- c. **CPT reports** - [www.coe.int/cpt](http://www.coe.int/cpt)
- 26<sup>th</sup> General Report of the CPT <https://rm.coe.int/168070af7a>
  - 27<sup>th</sup> General Report of the CPT <https://rm.coe.int/16807bc1cf>
  - Living space per prisoner in prison establishments <https://rm.coe.int/16806cc449>
- d. **Council of Europe Annual Penal Statistics (SPACE I - prisons and SPACE II - community sanctions and measures)** <http://wp.unil.ch/space>
- e. **Interventions and conclusions of the High-Level Conference ‘Responses to Prison Overcrowding’** <https://www.coe.int/prisonovercrowding>

## **UNITED NATIONS**

United Nations Standard Minimum Rules for the Treatment of Prisoners (‘The Nelson Mandela Rules’), adopted by the United Nations General Assembly resolution A/RES/70/175 on 17 December 2015.

English: [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf)

French: [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-F-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-F-ebook.pdf)

Spanish: [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-S-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-S-ebook.pdf)

Portuguese: [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-P-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-P-ebook.pdf)

German: [https://www.unodc.org/documents/justice-and-prison-reform/17-01095\\_ebook\\_REVISED.PDF](https://www.unodc.org/documents/justice-and-prison-reform/17-01095_ebook_REVISED.PDF)

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('The Bangkok Rules'), adopted by the United Nations General Assembly resolution A/RES/65/229 on 22 December 2010.

English: [https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/UN\\_Rules\\_Treatment\\_Women\\_Prisoners\\_Bangkok\\_Rules.pdf](https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/UN_Rules_Treatment_Women_Prisoners_Bangkok_Rules.pdf)

French: [https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/65\\_229\\_French.pdf](https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/65_229_French.pdf)

Spanish: [https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/65\\_229\\_Spanish.pdf](https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/65_229_Spanish.pdf)

All UN standards and norms, including **United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules')**, adopted by the United Nations General Assembly resolution 40/33 of 29 November 1985 and **United Nations Standard Minimum Rules for Non-custodial Measures ('The Tokyo Rules')**, adopted by the United Nations General Assembly resolution 45/110 of 14 December 1990, are available in the "UN Compendium of the UN Standards and Norms in Crime Prevention and Criminal Justice" in the below link:

English: [https://www.unodc.org/documents/justice-and-prison-reform/English\\_book.pdf](https://www.unodc.org/documents/justice-and-prison-reform/English_book.pdf)

French: [https://www.unodc.org/documents/justice-and-prison-reform/F\\_Ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/F_Ebook.pdf)

Spanish: [https://www.unodc.org/documents/justice-and-prison-reform/S\\_Ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/S_Ebook.pdf)

**UNODC Handbook for Prison Managers and Policymakers on Women and Imprisonment (UNODC, 2008)**

English: [https://www.unodc.org/documents/justice-and-prison-reform/women\\_and\\_imprisonment\\_-\\_2nd\\_edition.pdf](https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf)

Spanish: [https://www.unodc.org/documents/justice-and-prison-reform/Manual\\_Mujeres\\_2da\\_edicion.compressed.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Manual_Mujeres_2da_edicion.compressed.pdf)

## **UNODC Handbook of basic principles and promising practices on Alternatives to Imprisonment**

English: [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_of\\_Basic\\_Principles\\_and\\_Promising\\_Practices\\_on\\_Alternatives\\_to\\_Imprisonment.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_of_Basic_Principles_and_Promising_Practices_on_Alternatives_to_Imprisonment.pdf)

French: [https://www.unodc.org/documents/justice-and-prison-reform/Alternatives\\_emprisonment.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Alternatives_emprisonment.pdf)

Spanish: [https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Handbook\\_of\\_basic\\_principles\\_and\\_promising\\_practices\\_on\\_Alternatives\\_to\\_Imprisonment\\_Spanish.pdf](https://www.unodc.org/documents/justice-and-prison-reform/crimeprevention/Handbook_of_basic_principles_and_promising_practices_on_Alternatives_to_Imprisonment_Spanish.pdf)

## **UNODC Handbook on Strategies to Reduce Overcrowding in Prisons**

English: [https://www.unodc.org/documents/justice-and-prison-reform/Overcrowding\\_in\\_prisons\\_Ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Overcrowding_in_prisons_Ebook.pdf)

French: [https://www.unodc.org/documents/justice-and-prison-reform/HBonOvercrowding/Ebook\\_HB\\_on\\_Prison\\_Overcrowding\\_F.pdf](https://www.unodc.org/documents/justice-and-prison-reform/HBonOvercrowding/Ebook_HB_on_Prison_Overcrowding_F.pdf)

Spanish: [https://www.unodc.org/documents/justice-and-prison-reform/HBonOvercrowding/UNODC\\_HB\\_on\\_Overcrowding\\_ESP\\_web.pdf](https://www.unodc.org/documents/justice-and-prison-reform/HBonOvercrowding/UNODC_HB_on_Overcrowding_ESP_web.pdf)

## **Assessing Compliance with the Nelson Mandela Rules: A Checklist for Internal Inspection Mechanisms**

English: [https://www.unodc.org/documents/justice-and-prison-reform/17-04946\\_E\\_ebook\\_rev.pdf](https://www.unodc.org/documents/justice-and-prison-reform/17-04946_E_ebook_rev.pdf)

French: [https://www.unodc.org/documents/justice-and-prison-reform/Checklist-Mandela\\_Rules-French.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Checklist-Mandela_Rules-French.pdf)

Spanish: [https://www.unodc.org/documents/justice-and-prison-reform/Checklist-Mandela\\_Rules-Spanish.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Checklist-Mandela_Rules-Spanish.pdf)

German: <https://www.unodc.org/documents/justice-and-prison-reform/V1705344-German.pdf>

**UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters**  
(2000), <https://www.unodc.org/unodc/en/justice-and-prison-reform/criminaljusticereform.html#restorative>

**UN Handbook on Restorative Justice Programmes** (2006),  
<https://www.unodc.org/unodc/en/justice-and-prison-reform/criminaljusticereform.html#restorative>  
(available in English and French). *Upcoming*: A new version of this Handbook will be published at the end of 2019 or in the beginning of 2020.

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