

## **EC Green Paper *Strengthening mutual trust in the European judicial area- application of EU Criminal justice legislation in the field of detention (COM(2011)327/3)***

### **Brussels, EPSU comments, 2011**

*“ Unsafe detention conditions is a crime, it is bad for inmates as well as for workers, conversely unsatisfactory working conditions will reduce active assistance in rehabilitation and limit seriously the role model that employees in prison represent for inmates – prison officers are charged with the security but also with the rehabilitation of inmates. Poor working conditions, low pay, low status, or indeed a feeling of “impotence” have a negative impact on the quality of detention conditions” (European Parliament report, 1998).*

## **I. Introduction**

EPSU is the European Federation of Public Service Unions representing 8 million employees from 48 countries in health and social services, national government and EU administration, local and regional governments and utilities. Our membership covers a majority of unionised employees who work with offenders both at pre- and post-trial stages (security, health, social, probation, catering, maintenance...). The high trade union density within this membership allows EPSU to claim a high representativity in this sector.

EPSU also enjoys the status of European social partner, leads the trade union side in 5 European sectoral social dialogue committees<sup>1</sup>, and is the largest federation of the ETUC. Our main objective is to contribute to the development of high social standards and quality public services in the EU for the well-being of citizens and a sustainable economy.

EPSU welcomes the opportunity to provide a contribution to the Commission's Green Paper.

Like the Commission and the Council of Europe, it is EPSU policy that detention must be a last resort punishment that extends only to the deprivation of liberty, not to other human rights. Prison efficiency should rest on its rehabilitative function that should start from day one of incarceration.

It is well-known that many prisons are facing major common challenges in Europe such as overcrowding<sup>2</sup>- the source of many problems mainly due to the excessive use of imprisonment -, understaffing, poor detention conditions with access to quality healthcare as a central area of concern, heavy workload and inappropriate or insufficient training of staff notably in dealing with an increasingly diversified and complex prison population. These have grave consequences for prisoners and staff, and ultimately for public safety, whilst they make prison services probably one of the most complex and yet undervalued public service.

**From the outset, we underline that any EU initiative relating to detention conditions must be based, and indeed build upon the Council of Europe's Prison Rules adopted by all 27 Member states (as well as related Recommendations and case law) and ascertain the positive link with:**

- quality working conditions of employees dealing with offenders, sufficient staffing levels, good management by ensuring, amongst others, better enforcement of EU social standards in prison and related services;
- quality and availability of public services, notably education, healthcare, housing, a fair legal system, in line with TFEU article 14 and related protocol No 26 on SGI.

Clearly the Green Paper must be set in the broader context of austerity measures across a majority of EU member states. As part of EPSU's campaign against the EU-coordinated fiscal

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<sup>1</sup> local/regional authorities, gas, electricity, hospitals, and central government administrations.

<sup>2</sup> please see EPSU's European Action day against prison overcrowding, 28.02.2007.

consolidation policy, we argue that it is essential that governments take into account the likely social implications of their economic policies. It has been shown, time and again, that economic policies considered in isolation from their social outcomes can have dire consequences for poverty, employment, nutrition, health and education, and indeed crime rates, imprisonment and sentencing regimes, and quality of detention conditions.

## **II. General remarks on the Green Paper**

The Green Paper states detention conditions and prison management are primarily the responsibility of Member States. It however considers that detention conditions are of central importance to the mutual recognition of judicial decisions for the area of freedom, security and justice.

As a result, the focus is limited to the interplay between detention conditions (pre- and post-trial) and mutual recognition instruments – the European Arrest Warrant, the European Supervision Order, the Probation Framework Decision and the Framework Decision on Transfer of Prisoners – which rely on the ability of authorities such as judges or the police to recognise and act upon decisions made elsewhere in the EU.

It is difficult to comment on the use of these EU instruments as their implementation is still recent or are not yet transposed in domestic law and, in more general terms, have not been raised as priority subjects by our affiliates organising employees working with offenders.

We note that there are no recommendations for legislative action in the Green Paper. A number of MEPS have however asked whether the Commission will propose European legislation integrating the European Prison rules, particularly regarding access to healthcare, housing, education and legal support. EPSU looks forward to the Commission's response.

Sadly, the aspect of working conditions and staffing levels are entirely overlooked in the Green Paper.

Yet it is our firm belief that the well-being of prison staff is intimately connected to humane detention conditions and that the views of both prison staff and their trade unions (as well as of prisoners) must be taken into account by the public authorities concerned as part of a humane modernization agenda for prison services. The role of trade unions and social dialogue is central to the EU social model and, we would hope, that the latter does not stop at the doors of the prison and correctional services. An effective social dialogue between labour and management can have a positive effect on the quality of detention conditions, as recognised, amongst others, in Andrew Coyle's handbook for prison staff<sup>3</sup>. Both staff and prisoners have much to contribute to improve detention conditions, and also have pertinent views to offer on how to avoid incarceration in the first place.

Trade unions also play a key role in denouncing to the public malpractices and violations of basic standards, for instance please see our press release on the Korydallos prison in Athens following a visit last May<sup>4</sup>, where the lethal combination of severe overcrowding and understaffing prevents the protection of inmates, let alone their rehabilitation. Progress in the quality of detention conditions and in mutual trust between judicial systems also lies with raising awareness on the main problems with the broader public.

There is a wide diversity amongst prison staff from security, administrative positions, educational, health care, probation staff to maintenance staff. Each category experiences specific problems but there is a widely shared sentiment of undervaluation and of being kept on the side when reforms are devised and implemented in prison services and other related services.

The absence in the Green Paper of any questions relating to staffing level is puzzling, given the 1000-page report contracted out by the Commission on material detention conditions<sup>5</sup> finds that

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<sup>3</sup> second edition, 2009, International Centre for Prison studies, p31

<sup>4</sup> <http://www.epsu.org/a/7618>

<sup>5</sup> [http://ec.europa.eu/justice/news/consulting\\_public/0012/JLS-DC-FR\\_IRCP41\\_en.pdf](http://ec.europa.eu/justice/news/consulting_public/0012/JLS-DC-FR_IRCP41_en.pdf)

12 countries out of 24 who responded to the questionnaire report issues of shortages of staffing be it in custodial, and/or healthcare, and/or social/probation services, and/or administration.

We strongly agree with the report's finding that insufficient staffing is detrimental to good quality detention conditions, i.e. greater loss of privacy, deteriorating hygiene conditions owing to the reduction of shower access, longer waits for medical appointments and problems relating to the management of visiting rooms, tensions and violence both between warders and inmates and among inmates.

Clearly, a low staff level impedes the development of positive relations between staff and prisoners, precludes the emergence of dynamic security and has a negative influence on the quality and level of the activities provided to prisoners and thus on their rehabilitation. We cannot stress enough the importance of qualified medical staffing in prisons to ensure the appropriate levels of care to inmates, especially data available from a variety of studies continue to point to an over-representation of drug users in European prisons compared to the general population. In most countries, the proportion of drug offenders among the women's prison population is higher than men's.<sup>6</sup>

The Green Paper also fails to recognise that the criminal justice does not evolve in isolation from other policies and that in many events, the breakdown of law and order is bound to the lack of or the break-up of public services -schooling, childcare, health care -both mental and physical-, employment, training, housing, probation- and a failing economic system that does not provide enough jobs and decent wages to all.

The past decade's trend of contraction of the welfare state and expansion of imprisonment is a central concern, and a major obstacle to better prison systems.

It is a very troubling fact that the number of people in jail is increasing in the EU, from 549 399 in 1998 to 617 676 in 2008 according to Eurostat<sup>7</sup>. The same trend is also observed in the US although in much larger proportion as the prison population in this country nears 2.4 Million.

Research notably from the UK-based equality trust indicates that the root causes of imprisonment rate cannot be explained by crime rates. Rather, explanations have more to do with matters such as social equality, a balanced political economy, a responsible media and a judiciary which is independent from political and populist pressure.

The growth of prison population has come together with dramatic changes in the profile of prisoners. This has a significant effect on the way that prisons are managed and make the task of prison staff much more complex and demanding.

Many prisons are packed not with violent thugs or master criminals but with people with mental health and/or drug/alcohol addiction problems, with homeless persons, with people who hold no or the wrong identity papers, with ethnic or national minorities. Accordingly, many of our members consider that a large number of prisoners have nothing to do in prisons.

These problems are likely to be further compounded by three years of austerity measures in a large majority of EU member states. These measures hit very badly the most vulnerable groups of the population and public service jobs and pay. The situation can be as acute as recently in Romania where the pay of healthcare staff in prisons has been suspended. Against this backdrop, it will be even more difficult to improve detention conditions, invest in sound rehabilitation schemes and alternatives to imprisonment, whilst it may well further exacerbate the increasing, and inappropriate use of imprisonment.

As some countries are less impacted than others, we believe that austerity measures will also have a detrimental effect on mutual trust and thus on the implementation of EU directives.

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<sup>6</sup> The incarceration of drug offenders, Dave Bewley-Taylor, Chris Hallam, Rob Allen, March 2009

<sup>7</sup> [http://epp.eurostat.ec.europa.eu/statistics\\_explained/index.php?title=File:Prison\\_population,\\_1998-2008.png&filetimestamp=20111124170530](http://epp.eurostat.ec.europa.eu/statistics_explained/index.php?title=File:Prison_population,_1998-2008.png&filetimestamp=20111124170530)

We are also concerned that the cuts in public services will heighten the risks of privatisation. In this regard, there is much evidence that private prisons as in the UK and the US show a worse record in terms of rehabilitation of offenders, and poorer working conditions for staff than public prisons. In France or Germany, public/private partnerships are found not to be economically advantageous<sup>8</sup>.

EPSU is opposed to making profits on the back of prisoners, and considers that prison services should be kept outside EC competition rules. This is in line with the European prison rules regarding prison management and staff that state that *Prisons shall be the responsibility of public authorities (Rule 71) and that prison staff should have public service status with security of employment (rule 75)*.

To conclude, whilst we do agree with some of the general principles outlined in the Green paper, we consider that the starting point for EU common standards should be the violations of basic human rights both of prisoners and staff, not a secondary thought to help support EU legislation. In this regard, the following Lisbon treaty (TFEU) provisions could be better promoted to help back up EU initiatives:

- ✓ article 14 on Services of General Economic Interest and the Protocol N0 26 on Services of General Interest that provide both a legal and political basis to improve access to public services which can make a huge contribution to reducing crime rate, imprisonment and recidivism and increasing the rehabilitation of offenders.
- ✓ EU charter of fundamental rights' provisions on access to fair trial, health care, education, housing, social services and to a good administration.
- ✓ articles 150-153 articles on social policy and social dialogue between management and trade unions

### **III Responses to the Green Paper**

It is understood that the Green Paper is limited to detention in prisons, and does not deal with migrants' detention centres. It is EPSU policy to oppose detention of undocumented migrants who have committed no other crimes than not holding identity documents.

#### **Questions on mutual recognition instruments**

##### **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 EU level? If yes, how?**

It is EPSU policy that reducing pre-trial detention should be a priority to reduce prison population in Europe based on sufficiently resourced public alternatives which are safe for all concerned (the victims, society and offenders themselves).

The Green Paper states that all member states recognise that pre-trial detention (PTD) should be exceptional yet in practice it is the norm. The reports by International Centre for prison studies indicate<sup>9</sup> that the rate of PTD in the total prison population varies from a high 60% in Malta, through in the range of 40% in the Netherlands, Luxembourg, Cyprus, Italy, in the range of 30% in Belgium, the UK, Denmark, Greece, down to 10.4% in Bulgaria and Poland.

In some countries, our members report that untried prisoners can be more difficult to deal with, run higher risks of suicides than post-trial detainees, and that overcrowding can be more prevalent in remand prisons, which make it extremely difficult to prepare for the trials. This would justify further the need for alternatives.

Non custodial alternatives are available in many countries, at least in legislation. These range from bail and associated curfew orders and requirements to stay at a given address, not to have contacts with victims (or witnesses), and/or to wear an electronic tagging that help locate the

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<sup>8</sup> Please see, prison and marketization @ <http://www.epsu.org/r/576>

<sup>9</sup> [http://www.prisonstudies.org/info/worldbrief/wpb\\_stats.php?area=europe&category=wb\\_pretrial](http://www.prisonstudies.org/info/worldbrief/wpb_stats.php?area=europe&category=wb_pretrial)

offender. It is reminded that probation officers play a very useful role both at pre-trial and post-trial stages, as well as staff involved in health care and education/training. In Romania the introduction of a probation service, together with changes to the Criminal Procedure Code, has led to a reduction of PTD from 40% to 10% of the prison population<sup>10</sup>.

They allow people on remand to remain in contact with their family and/or friends, retain their accommodation, when they have one, and, where allowed, stay in employment, all of which is crucial to avoid recidivism.

Yet our members report problems of funds and political will to assist in their implementation. It is also essential that the court, investigative systems be fully-equipped and well-resourced to ensure that trials do take place before the time limit and in a fair and non-discriminatory way.

For alternatives to PTD to be safe and effective for all concerned, they must be supported by sufficient staffing and proper monitoring, including electronic monitoring that should remain publicly run to ensure compliance with bail conditions and protection of personal data. They also require that offenders have access to decent housing and decent income, to avoid decisions by judges to detain by default, which is the reason why it is essential that social and probation services be represented at the court.

Whilst detailed statistics are difficult to obtain or simply not available across the EU, it is often reported that non-nationals and/or ethnic minorities are overrepresented amongst untried detainees, as recently highlighted by Fair trials international, a network of legal experts in criminal justice system<sup>11</sup>. Indeed some of our members, notably from Spain and Greece, report that in some cases they simply cannot communicate with offenders and call for more interpreters as a matter of emergency.

Regarding non-nationals, the stated reason is that they would be more likely to be detained than nationals as they would present a higher flight risk and thus are less likely to be offered alternatives. Whilst this risk may be overrated, as far as EU nationals are concerned the European Supervision Order will help address this matter by allowing suspects to be supervised by the relevant authorities in their home country.

As to non-EU nationals and ethnic minorities, many of whom come from the poorest sections of the population and thus lack the means to access legal aid (and interpretation where required), we urge the Commission, in cooperation with the EU agency of fundamental rights, to look more closely at the causes for such disproportionate numbers amongst pre-trial detainees. In this regard, it would seem relevant to evaluate the implementation of the EU directive that bans discrimination on ethnic ground in the access to services.

Alternatives to PTD could be better promoted at EU level through:

- Supporting further exchanges of good practices and obstacles to sound alternatives to PTD taking account of the above points regarding the need for proper investment and the involvement of trade unions dealing with offenders to help guide policy or recommendations to member states;
- Promoting and supporting the role of social, probation services and health care services, including at police stations and the courts, notably through the EU open method of coordination;
- Given the large number of non-nationals in PTD, promoting the presence of interpreters at the courts, remand prisons and also at the police stations;
- Evaluating the impact of the EU-coordinated fiscal consolidation measures on the financing and effective use of alternatives to PTD and imprisonment rate;

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<sup>10</sup> Fair trials International, 4.2.2011 Communiqué

<sup>11</sup> *ibid*

- Assessing the implementation in the criminal justice and penitentiary systems of the EU directives (2000) that ban discrimination on the ground of ethnic origin in the access to and provision of (goods and) services and at the workplace;
- Supporting trade unions' exchange of good practices on alternatives to PTD, on working conditions in remand prisons, and on fighting discrimination on the basis of ethnic and social origins in criminal justice and penitentiary systems.

**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 EU level? If yes, How?**

As a European organization, we cannot respond in detail about a specific EU member state.

It may be stating the obvious that the most important alternative to incarceration is to avoid incarceration in the first place, which requires more investment in crime prevention and fair legal systems.

That said, fines, community services and probation together with release on parole are known to be the most common forms of alternatives to custody.

EPSU supports, and indeed promotes, alternatives to imprisonment providing that they are safe for the community, the offenders, their family and for the staff involved, and are sufficiently funded and resourced to allow proper supervision and rehabilitation.

Given the large proportion of detainees with mental health problems, learning difficulties and learning disabilities, it is important to mention initiatives geared towards transferring those detainees to more suitable places, also called " diversion programmes".

Also worth noting, is the presence of healthcare professionals at the police custody stage. In the UK, generally having nurses working closely with the police lead to improvements in care and treatment of detainees from a reduction in deaths in custody, better monitoring and assessment of the condition of detainees and transfer (where required) to a national health care hospital for treatment.

The Council of Europe promotes alternatives to imprisonment, notably for short-term sentences, for the main reason that they have a positive effect on rehabilitation.

It identifies on parole release as the most efficient and constructive measure to prevent recidivism and facilitate social rehabilitation of detainees in society. Many of our members agree with this, on the basis of a planned, well-supported and supervised system. There are a number of positive experiences with integrated offenders' programmes, i.e. social, health care, probation & security staff joining efforts and expertise with the active participation of the offender.

EPSU also strongly supports the Council of Europe's recommendation for a well-balanced spread of security and specialist social, probation, health care, educational staff working in prisons that indeed play an essential role in paving the way for on parole release.

Although further research would be needed, it is our view that countries where alternatives are most often used are also countries with a low ratio between inmates and prison staff. It is EPSU policy to favour a ratio of 1:1, in effect 1 prison employee for 3 detainees. The EC-backed survey on material conditions of detention<sup>12</sup> mentions that the average in the EU is of 1 prison officer for 4 detainees. Given the report's negative finding on staffing levels in 12 out of 24 countries, and our own experience, this hides wide disparities between and possibly within member states.

A more detailed survey on staffing in prison and related services would be much welcome as well as a better understanding of the role of probation services. For instance, it is surprising that a recent report by the general inspections of finances and judiciary affairs in France concludes that

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<sup>12</sup> Page 841 [http://ec.europa.eu/justice/news/consulting\\_public/0012/JLS-DC-FR\\_IRCP41\\_en.pdf](http://ec.europa.eu/justice/news/consulting_public/0012/JLS-DC-FR_IRCP41_en.pdf)



2900 social insertion/probation staff for 66000 detainees and some 133 000 individuals outside prisons but subject to a probation measure, is a sufficient number.

The Council framework decision of 2008 on the application of the principle of mutual recognition of probation decision and alternative sanctions, due to be implemented by 6 December this year, is helpful as it indirectly promotes probation services and alternative sanctions. It is a pity however it only applies to post-trial stage, as, as said above, probation services also work at pre-trial stage and indeed can avoid post-trial imprisonment.

We believe that probation and other alternative measures to detention should and can be promoted at EU level, in close cooperation with the EU agency on fundamental rights, in the following ways:

- EC funding for further research on alternatives to imprisonment taking into account the importance of well-resourced probation as well as other services involved in the reinsertion of offenders notably health professionals and good quality working conditions in these services;
- Ensuring a good use of the research carried out;
- As part of the Commission's work on social protection and social inclusion and the Social Protection Committee (SPC), to pay attention to the essential role that social and probation services play in both pre-trial and post-trial stages and support good working conditions and social dialogue in those public services;
- to promote regular evaluations by governments on the use of prison for people who are mentally ill, addicts and petty offenders.
- support trade unions in exchanging information across Europe on alternatives to imprisonment;
- Ensure that EC competition rules, notably state aids, do not have a negative impact on the availability of well-funded public probation services and other social services involved in the rehabilitation of offenders
- Explore the feasibility of extending the Council framework decision of 2008 on the application of the principle of mutual recognition of probation decision and alternative sanctions to the pre-trial stage.

**3. How do you think that detention conditions may have an effect on the proper operation of the EAW? And what about the operation of the transfer of Prisoners Framework decision?**

We agree that common standards on detention conditions would help reinforce mutual trust across the EU and help develop a European justice area. Inhumane detention conditions in one country are a central obstacle to mutual trust and cooperation with another judicial system. That said, the motivation for improving detention conditions should not be limited to cross-border aspects but to the mere fact that they are an affront to human dignity and the values the EU stands for. A key priority for the Commission is thus to support better detention conditions at national level.

We consider that in principle prisoners should be detained in safe, rehabilitative facilities as close as possible to their family/friends if so they wish. In this regard, we regret that the Transfer Framework decision removes the requirement that the sentenced person must consent to transfer.

Last year, our Romanian affiliate reported a case of "mass" transfer with 25.000 additional detainees due to be transferred back to Romania by the end of 2010. This was planned as the Romanian government, in cooperation with the EU and IMF, was carrying out cuts in public service jobs and pay. As far as we know there were no plans to offset the additional transfer of prisoners with the necessary additional staff.

As said above, it is essential that the issue of staffing be central to all matters relating to imprisonment and alternatives, including transfers of prisoners.

We also warn against using the transfer of prisoners as a policy option to tackle prison overcrowding in the EU. Whilst prisoners in principle should be as near, if they so wish, to their familiar surrounding, it is another thing to establish in the EU a system of transfers of prisoners to alleviate the prison population in some countries and taking the risk of increasing the prison population in others..

At national level, there are issues regarding the transfer of prisoners within the national judicial system from prisons to courts or hospitals. Those transfers particularly to hospitals can be complex and can require the close coordination of different administrations (penal, police, healthcare) or even private contractors.

For the staff involved in the transfers of prisoners, some members have reported issues of non-compliance with the working time directive and related court cases on definition of on-call time that confirm it should count as working time. For inmates, waiting time can be extremely long and can put their health at risk.

EPSU is not in a position to provide comments on the EAW.

### **Questions on pre-trial detention**

**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?**

n/a for an European organisation and please see responses to question 1

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

See question 1.

**6. Courts can issue a 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?**

n/a

**7. Would there be any merit in having EU 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?**

Please see responses to Question1

As said before reducing pre-trial detention is a key priority to reducing the overall prison population, and upholding the fundamental rights to presumption of innocence and to a fair trial regardless of one's social or ethnic origin.

However, it remains unclear whether the current priority lies with maximum pre-trial detention review (which again in many member states can be extended) and their regular reviews, or rather with the procedural rights of pre-trial detainees such as a right to appeal, presence of probation services at the courts and of interpreters where needed, sufficient funding of the legal systems and access to good legal aid. Also, as said in our response to Question 1, in the first place alternatives to PTD should be more and better used.



At this stage, EPSU will need to discuss further the merit or not of having EU minimum rules for maximum pre-trial detention periods and their review before taking a position on EU minimum rules for maximum pre-trial detention periods and the regular review of such detention.

## **Question on children**

### **8. Are there specific alternative measures to detention that could be developed in respect of children?**

Children's first fundamental right is to be protected and educated, thus educational solutions should prime over incarceration and should be more much developed.

In some countries, our members are critical of their government's increasing use of detention, as well as its disproportionate use for children from minority groups. There is much concern at the closures of educative/youth centres on the spurious argument that they are not profitable and that budgets for structures and organisation that work on youth reinsertion are reduced.

In any case, when minors are detained, an absolute requirement is that they are put in secure public care, near their homes so that family ties can be maintained. Although some offenders come from dysfunctional families, others will not and that relationship is often crucial in turning the offender away from crime at an early stage. A second requirement is that the offending minors should be dealt with by a specialised justice system, not the adult criminal justice system. Youth detention should also be regularly reviewed by a Youth Court established for the purpose and away from the adult criminal justice system.

Support for parents and better intervention from an early stage with children at risk of being involved with the justice system (such as children in care) will assist in managing all but the most serious of young offenders in the community coupled with more intensive education projects and restorative justice which has proven benefits when applied to young offenders.

We would strongly recommend that the Commission explore how it can encourage and reward Member States who are complying with international and Council of Europe's law on the detention of children, and alternatives to it.

We also strongly urge the Commission to conduct an independent assessment of the effects of public service cuts on children's fundamental rights. In this regard, it is worth noting the recent stance taken by the EU agency on fundamental human rights to mark the anniversary of the adoption of the UN Convention on the Rights of the child on 20 November last. *"Three years on and the economic and financial crisis shows no sign of abating. Vulnerable groups are most at risk. ...the FRA wishes to reaffirm its commitment to securing the fundamental rights of children, many seriously affected by public service cuts in education, health and social services."*<sup>13</sup>

## **Questions on monitoring of detention conditions**

### **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 practices?**

### **10. How could the work of the Council of Europe and that of Member states be better promoted as they endeavor to put good detention standards into practice?**

Given the potential role that the European prison rules can play in better detention conditions, we prefer to respond to both questions in a single answer.

EPSU is a strong supporter of the European prison rules and its key proviso whereby imprisonment is a last resort measure and *"prison conditions that infringe prisoners' human rights are not justified by lack of resources"*.

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<sup>13</sup> [http://fra.europa.eu/fraWebsite/news\\_and\\_events/infocus11\\_2111\\_en.htm](http://fra.europa.eu/fraWebsite/news_and_events/infocus11_2111_en.htm)

The Rules also take the right integrated approach to prisons that is linking up detention conditions to prison management and staff. Clearly, no matter how sophisticated prison buildings and security systems are, the dynamics in prisons rests essentially on the relationship between staff, managers and prisoners.

The Green Paper states that although all EU member states are subject to the European Convention on Human Rights and must comply with the EU Charter on fundamental rights, there are doubts about the way these standards are upheld. It is indeed EPSU 's view that the Prison rules, agreed by all EU governments, have yet to be fully integrated into daily prison management.

As first priority, EPSU considers that the monitoring of detention conditions would be enriched in taking due consideration of the working conditions and staffing levels in prisons in cooperation with trade unions.

**It is reminded that while the competence of the Commission in matters of detention conditions is limited and can be subject to controversy, it has a clear and undisputed duty to ensure that working conditions comply at least with EU social minimum standards and TFEU provisions on social dialogue.**

Accordingly, the setting up of a network of prison administrations would be useful providing it includes the participation of trade unions as well as of the European Sectoral social dialogue committees for central government administrations and for local and regional governments.

We would also welcome more support for independent prison inspections, both from the national level (including parliamentary inspections, probation ombudspersons) and the European Committee on prevention of torture, and the promotion of cooperation between the latter and labour inspectors and trade unions regarding issues of working conditions, work organisation and management of prisons, how they can have a positive or negative impact on detention conditions, and identify areas of improvement.

A report of this broader monitoring of the state of prisons could be presented to the EU Council of Justice ministers on an annual basis.

It is reminded that the European Prison rules state that *“Staff shall be carefully selected, properly trained, both at the outset and on a continuing basis, paid as professional workers and have a status that civil society can respect; “prison staff shall normally be appointed on a permanent basis and have public service status with security of employment, subject only to good conduct, efficiency, good physical and mental health and an adequate standard of education”, and “salaries shall be adequate to attract and retain suitable staff” ( Rules 76; 78; 79.1).*

The rules also recognise that prison officers have both a protection/surveillance and rehabilitation mission. Leaving aside that prison overcrowding prevents many prison officers from doing so, the diversity of training, both initial and at the workplace, across the EU is another concern we wish to highlight.

Most European prison administrations now have some form of training for new recruits of prison officers, but the length and quality of the training varies significantly. For instance, the length varies from 3 months to 2 years' initial training as in Denmark (or Norway amongst EEA countries). In some countries training for junior prison staff is still linked very closely with that of the police and often concentrates on military matters such as drilling and use of weapons. In other countries, in contrast, the curriculum for training prison staff is linked closely to that of other institutional workers, such as those in psychiatric hospitals and youth care centres.

In addition, the European Committee on the prevention of torture (CPT) has highlighted the need to provide proper training of prison staff to prevent violence and intimidation amongst prisoners and to intervene when necessary. In addition, qualified training for dealing with juveniles should

be a priority in some countries. A training in interpersonal communication skills as part of the in-service training of prison officers may also prove to be vital.

Stress is particularly acute in prison services which indicates breaches of the EU directive on health and safety and that the implementation of the European social partners' agreement on stress in prisons could be better promoted. The WHO Europe *"guide to the essentials in prison health"* finds that prison officers suffer higher risks of stress or even burnout compared to other psychosocial work due to a number of reasons which are worth highlighting:

- ✓ Discrepancy between their demand for an active role in the rehabilitation process and the reality that restricts their role to "guard" duties
- ✓ Lack of public respect, compared to other social work, prison officers are more often critical about their profession
- ✓ Higher risks of failures in carrying out the job due to the more complex profile of detainees, language problems
- ✓ Overcrowding and /or Understaffing that limit even further the role of prison officers to safe keepers less successful with rehabilitation
- ✓ Low influence and a lack of participation in decision-making processes
- ✓ Inappropriate pay
- ✓ Importantly the stress caused by institutional deficits "administrative practices" is more serious than the stress due to contact with detainees

It is also reminded that prison staff have often more restricted trade union rights than other workers notably the right to strike in a number of countries, the ban on the right to strike can also apply to probation officers as in France. In this regard, we would welcome the Commission's support for provisions on trade union rights and social dialogue when the European prison Rules are next revised.

The Commission could play a much more active role in the implementation of EU social directives in prison services. For instance it is doubtful whether the EU directive on health and safety that provides for a prior health risk assessment including aspects of work organisation is complied with in all EU prisons. As mentioned above, the issue of working time requires closer monitoring notably the compliance with the European case law on-call time.

To sum up, the Commission could:

➤ **Promote the positive link between humane and rehabilitative detention conditions and numbers and working conditions of employees dealing with offenders by:**

- Playing a more active role in monitoring and enforcing EU social standards at prisons (as well as police custody and migrants' detention centres), notably in relation to health and safety, working time, information and consultation rights of workers and their representatives, training, non-discrimination and gender equality.
- Relating to the above, EPSU would welcome a survey dedicated to the implementation of the European Prison rules and related recommendations regarding prison management and staff in the EU member states;
- Promoting closer cooperation between trade unions, labour inspectors (where entitled to visit prisons) and National and European prison inspectors in the monitoring of prison detentions so that proper attention be paid to the issues of working conditions and staffing levels as well as to the solutions brought forward;
- Ensuring that the state of prisons and alternatives is a regular item on the agenda of the EU Justice Ministers including both aspects of detention conditions and working conditions;
- Funding and promoting trade union exchange of experiences across the EU on working conditions and prison management and trade union rights as part of an overall strategy to uphold the European Prison rules. EPSU has established contacts with the European

Committee on prevention of torture in relation to the initial training of prison officers<sup>14</sup>, and with the Committee on penal matters with regard to the drafting of a European code of ethics for prison staff<sup>15</sup>;

- Invite the national delegations that take part in the experts' criminal justice related meetings organised by Commission's DG Justice, Directorate D, to consult and report back to the national trade unions organising prison services as a concrete expression of a balanced and integrated approach to prison management. EPSU is invited to these meetings on an ad-hoc basis and would welcome a more structured involvement, possibly also through the European social dialogue committee in central government administrations.

➤ **Better assess the role of quality public services play in improving detention conditions**

- Carrying out an independent assessment of the effects of the EU-coordinated fiscal consolidation measures on the quality of detention conditions in prisons;
- Promoting, in line with the European Prison rules (as well as the WHO), the organisation of health care in prisons in close relation with the general national public health administration. It is EPSU's view that prison health should be part of the general health services of the country rather than a specialist service under the government ministry responsible for the prisons, this would also help ensure continuity of care when inmates are released;
- Promoting and supporting the work of the European Committee on prevention of torture
- Financing research on the spread and sufficient levels of prison officers and specialist staff in prisons and quality of detention conditions;
- Supporting, as called for by EPSU and ETUC, the setting up of an observatory on public services at EU level and a moratorium on liberalization of public services;
- Monitoring the application in the criminal justice systems of the Directives that bans racial/ethnic discrimination at the workplace and in the access to and provision of services (2000);
- Promoting more actively EU accession to the ECHR, as provided for in Article 6.2 of the TFEU;

➤ **Others**

- Providing more support to the Committee on prevention of torture (CPT) and prison inspectors and promote the Optional protocol of the UN Convention against torture which has yet to be ratified by all 27 member states.
- If there are situations where the EU itself is responsible for holding people in detention, ensure that its detention facilities are monitored by independent bodies (currently, we believe the only example of EU-managed detention is the joint deportation flights organised by Frontex).
- Assessing the extent to which EU migration policy has a disproportionate effect on the number of migrants in detention

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<sup>14</sup> Please see, EPSU press release <http://www.epsu.org/a/6545>

<sup>15</sup> Please see, EPSU press release <http://www.epsu.org/a/8059>