

# Commission and Council Discuss Way Forward on Pre-Trial Detention and Detention Conditions

## News

**Thomas Wahl**

On 7 October 2021, the Justice Ministers of the EU Member States **discussed** the need for action on pre-trial detention and detention conditions in the EU. The discussion was based on a **non-paper** by the European Commission of 24 September 2021. The Commission concluded that minimum standards for detention conditions and procedural rights in pre-trial detention „have the potential to avoid inhuman or degrading treatment concerns in the context of the EAW and to lead to a smoother surrender process.“ In an Annex, the non-paper provides an overview of the most relevant minimum standards for detention conditions and procedural rights in pre-trial detention, which should be adhered to by the EU Member States. The baseline of the overview is the ECtHR case law and the standards developed within the Council of Europe (e.g., the European Prison Rules). This is supplemented by a brief evaluation of the legal orders of the EU Member States in the fields of detention conditions and pre-trial detention.

As minimum standards for material detention conditions, the non-paper identified the following items:

- Cell space;
- Hygiene and sanitary conditions;
- Time spent outside the cell and outdoors;
- Access to healthcare;
- Protection from inter-prisoner violence.

The main areas of pre-trial detention (PTD) are:

- Reasonable suspicion and ground for PTD;
- Measure of last resort;
- Alternatives to PTD;
- Reasoned decisions on PTD;
- Decision-making on PTD;
- Regular review of PTD cases;
- Hearing the pre-trial detainee in person;
- Effective remedy and right to appeal;
- Deduction of time spent in PTD from final sentence.

At the JHA meeting of 7 October 2021, the Justice Ministers of the EU Member States discussed which minimum standards should be prioritised in order to enhance mutual trust. The majority of ministers were in

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favour of [not taking additional legislative measures](#) at EU level since the standards already exist in the various international fora (particularly Council of Europe). The next steps should focus on the effective application of the existing standards, the sharing of best practices, the facilitation of training, and the funding for the improvement of material detention conditions.

At the [press conference](#) after the Council meeting, Commissioner for Justice *Didier Reynders* said that the Commission will first present recommendations on best practices in 2022.

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