

Commission Recommendation on Detention Conditions in the EU

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News

On 8 December 2022, the European Commission presented a [recommendation on detention conditions](#).

It responds to the JHA Council's demand of October 2021 to improve detention conditions in the EU countries and to enhance the use of alternative measures instead of EU legislation (→ [eucrim 2021, 158-159](#)). This demand particularly came in the context of the negative impact of differences in detention conditions between the EU Member States on mutual trust and judicial cooperation in criminal matters. Especially with regard to mutual recognition and the operation of the European Arrest Warrant (EAW), the differences sparked a hot debate. Since 2016, several courts in EU Member States delayed or refused the execution of EAWs on grounds of real risk of breach of fundamental rights (nearly 300 cases) after the CJEU's landmark judgment in the *Aranyosi/Căldăraru* case of April 2016 (→ [eucrim 1/2016, 16](#)).

The recommendation now tabled also builds on preparatory work done by the Commission, in particular its non-paper of September 2021 that identified relevant aspects on material detention conditions and procedural rights in pre-trial detention resulting from existing international standards (→ [eucrim 2021, 158-159](#)).

Next to general principles, the recommendation provides guidance on minimum standards for procedural rights of suspects and accused persons subject to pre-trial detention as well as minimum standards for material detention conditions. The Commission recommends, for instance, minimum standards for cell size, outdoor time, nutritional and health conditions, and reintegration initiatives. Pre-trial detention should be a last resort and regularly reviewed.

The recommendation also tackles the issue of preventing radicalisation in prisons. Authorities could take measures to prevent terror suspects from having direct contact with vulnerable detainees. Other specific measures are suggested with regard to women and girls, LGBTIQ, foreign nationals, persons with disabilities and other vulnerable detainees, such as adequate access to professional interpretation services.

The recommendation was accompanied by a [statistical overview](#) of the different detention situations in the Member States. The overview shows substantial divergences among Member States in relation to important aspects of pre-trial detention and material detention conditions, such as:

- The maximum time limit for pre-trial detention as laid down in the national laws of different Member States ranges from less than 1 year to more than 5 years; six Member States do not provide for a maximum time-limit in their national law;

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- The average length of pre-trial detention in 2020 was between 2.4 and 12.9 months;
- Eight Member States had a prison population density of more than 100 inmates per 100 places;
- The costs of imprisonment vary between €6.50 and €332.63 per day per detainee.

The recommendation came into effect immediately and is not binding to the Member States. The Commission encouraged the Member States, however, to take the necessary steps at national level to align practices with the recommendation.

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