

# Council Conclusions on Alternative Measures to Detention

**Thomas Wahl**

**News**

One of the topics high on the agenda of the Finnish EU Council Presidency in the second half of 2019 was the debate on alternative measures to detention (see [euclid 2/2019](#), p. 109). The topic concerns EU policy debate since many years, but gained increased attention in the last years when prison overcrowding and bad prison condition in some EU Member States has undermined mutual trust and thus has hampered judicial cooperation between the EU Member States (see also, for instance, [euclid 3/2019](#), pp. 177-178 [the *Dorobantu* case]). At its meeting on 2-3 December 2019, the ministers for justice of the Member States adopted [conclusions on alternative measures to detention](#). The conclusions identify a number of concrete actions to be taken at the national level, the EU level and the international level. Member States are encouraged to do the following:

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- Explore the opportunities to enhance, where appropriate, the use of non-custodial sanctions and measures, such as a suspended prison sentence, community service, financial penalties and electronic monitoring (and similar measures based on emerging technologies);
- Consider enabling the use of different forms of early or conditional release;
- Consider the scope for and benefits of using restorative justice;
- Provide for the possibility to apply non-custodial measures also in the pre-trial stage of criminal proceedings;
- Ensure that information concerning the legislation on non-custodial sanctions and measures is easily available for practitioners throughout criminal proceedings;
- Provide adequate legal training to practitioners;
- Improve practical training notably as regards the use of EU instruments designed to prevent detention in cross-border situations, i.e. Framework Decision on probation and alternative sanctions (2008/947/JHA) and Framework Decision on European supervision order (2009/829/JHA);
- Pay particular attention to the needs of vulnerable persons, e.g. children, persons with disabilities and women during pregnancy and after giving birth;
- Improve capacity for probation services;
- Share best practices.

Regarding the EU level, particularly the Commission is invited to:

- Increase awareness of the benefits of non-custodial sanctions and measures among policy-makers and practitioners;
- Carry out a comparative study to analyse the use of non-custodial sanctions and measures in all Member States so as to support the dissemination of national best practices;

- Enhance the implementation of the mentioned two Framework Decisions;
- Develop training for judges and prosecutors through the European Judicial Training Network (EJTN), as well as for prison and probation staff through the European Penitentiary Training Academies (EPTA);
- Launch regular experts' meetings on detention and non-custodial sanctions and measures.

Regarding the international level, the conclusions mainly emphasise the importance of close cooperation with the Council of Europe, so that synergies can be found. The Commission and the Member States should consider ways in which to promote the dissemination of the Council of Europe standard-setting texts, the relevant ECtHR case-law and the CPT recommendations regarding detention and the use of non-custodial sanctions and measures.

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