First Implementation Report on Recommendation on Detention Conditions

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News

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On 23 September 2026, the European Commission presented the first report on how the 2022 Recommendation on Detention Conditions in the EU (→eucrim 4/2022, 250) has been implemented across the 27 EU Member States. The Recommendation was set up in response to growing mistrust caused by poor detention conditions and the overuse of pre-trial detention in Member States. This affected the instruments of judicial cooperation in criminal matters within the bloc, such as the European Arrest Warrant. The Recommendation provided guidance on two main areas: (1) minimum standards for procedural rights of suspects and accused persons subject to pre-trial detention, and (2) minimum standards for material detention conditions.

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Preprint eucrim 2026, Vol. 21(2)
ISSN: 1862-6947
https://eucrim.eu

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The implementation report of September 2026 is based on a questionnaire that was submitted via EU Survey in July 2024. The report assesses the various issues of the Recommendation under 18 subtitles. Each issue concludes with a statement on overall trends.

With regard to pre-trial detention to be used as a last resort and alternatives to detention, the report states, for instance, that reliance on alternative measures to pre-trial detention, such as bail, electronic monitoring or movement restrictions, varies widely among the Member States in practice. In some cases, their application is hindered by technical limitations and a lack of trust or resources. The use of the European Supervision Order remains limited.

With regard to the grounds for pre-trial detention, for example, the Commission found that, across all Member States, courts rely on a combination of evidentiary thresholds and risk-based justifications to determine whether pre-trial detention is warranted. However, the threshold for imposing pre-trial detention, such as "reasonable suspicion" or "serious indications of guilt", is defined very differently across Member States.

As regards material detention conditions, and here specifically hygiene and sanitary conditions, for instance, the report found that hygiene standards vary widely across Member States. Access to warm water and shower frequency vary greatly, reflecting infrastructure disparities. Infestations remain an issue in some Member States.

In its conclusions, the Commission highlights not only shortcomings, but also best practices. Overall, Member States have established solid legal frameworks and safeguards that are broadly aligned with EU and international standards. However, a recurring gap between law and practice exists across all Member States in both areas of the Recommendation (pre-trial detention and material detention conditions).

Best practices include the expanded use of non-custodial measures, specialised support for vulnerable detainees, strengthened prison monitoring systems and innovative approaches to rehabilitation and reintegration.

Ultimately, the Commission pointed out that the report, with its comparative assessment, is only the first step. It provided an overview of the current situation within the EU. The second step will see the Commission develop country fact sheets, in close cooperation with the Council of Europe, setting out the detention situation in each Member State. In parallel, discussions will follow on how the questionnaire developed for the report can be used by EU prison monitoring bodies in order to achieve a consistent approach in monitoring practices. Training activities on the implementation of the Recommendation will also be prioritised.

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The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).

Co-funded by
the European Union