Confederation of European Probation

SUMMARY OF THE REPLIES TO THE QUESTIONNAIRE ON THE "USE OF ALTERNATIVES TO PRE-TRIAL DETENTION" IN EU MEMBER STATES

The question of imprisonment is complex, as prison population continually rises both in the Council of Europe member States and globally. Prison overcrowding is therefore a very real and present issue. The overuse of imprisonment and its detrimental impact on criminal justice systems, individuals and societies, has led EU member states countries to implement alternative policies, alternatives to pre-trial detention, at the very early stages of the criminal justice process.

In 2020 the world has been affected by the pandemic of Covid-19 which had a huge impact on the criminal justice systems, both prison and probation. As mentioned in the document of the PC-CP WG of the Council of Europe, *"during Covid-19 pandemic times, a number of countries have introduced emergency measures aimed at decreasing prison numbers and reducing prison overcrowding like: reducing as much as possible the number of accused or sentenced persons sent to detention centres and prisons, releasing certain categories of prisoners (vulnerable prisoners due to their age or stage of health), juveniles, pregnant women or women with infant children, prisoners planned to be released in the near future or low risk offenders".* This criminal justice policy implemented in different countries might or could also be used for pre-trial detainees.

Alternatives to pre-trial detention have been, explicitly or implicitly, on CEP's and EU's agenda for several years and in many contexts, but now with the impact of Covid-19 in all criminal justice systems, it has become a much more present and crucial issue to discuss and important to implement since prisons might be(come) niduses of infections. Alternative measures to detention promote social rehabilitation and reintegration of the offenders, which is one of the key aims for using such measures. These alternative measures have also several other benefits, like contributing to reduce prisons overcrowding and promoting public security, the latter particularly through the reduction of reoffending.

With this in mind, the Confederation of European Probation wished to explore the extent to which alternatives to pre-trial detention are used in the different EU member states, what was/is the impact of Covid-19 in the use of these alternatives, and what CEP or the EU could do to promote a more frequent use of these alternative measures to pre-trial detention.

The Confederation of European Probation sent out a questionnaire with five questions to 38 EU member states jurisdictions. A total of 19 replies was received from the following jurisdictions:

Czech Republic, Estonia, France, Belgium (Wallonia), Catalonia, Croatia, Germany, Hungary, Latvia, Luxemburg, Malta, Sweden, United Kingdom, Italy, Netherlands, Northern Ireland, Moldova , Turkey and Ukraine.

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A summary of the replies to the questionnaire on the "Use of Alternatives to Pre-trial detention" is set out below.

1) **Which alternatives to pre-trial detention are used in your jurisdiction?**
2) **Are they often used?**
3) **If not, why?**

EU Member state jurisdiction	Which alternatives to pre-trial detention (Q1)	Frequency of use (Q2 and Q3)
CZECH REPUBLIC	• Probation supervision • Electronic monitoring • and/or a Preliminary measure	Probation and Mediation Service is responsible for: - more than 900 cases under probation supervision - 53 people under electronic monitoring
ESTONIA	• Commutation of holding in custody to electronic surveillance • Prohibition of departure from residence • Bail • Supervision over members of Defence Forces. *Estonia is currently in the process of revision of the Code of Criminal Procedure, in which it is planned to introduce additional alternatives to pre-trial detention such as travel restrictions/prohibition of leaving a certain area.*	In 2019 18.674 criminal processes had started. From which: - 1124 in pre-trial detention. - 1489 cases under Prohibition of departure from residence - 25 cases on electronic monitoring Aforementioned numbers indicate that restrictive preventive measures (including the alternatives) are not applied automatically in every criminal procedure, but only where necessary. Regarding the two other restrictive measures (bail and supervision over members of Defence Forces) there have been relatively few instances using these measures in the past few years.
FRANCE	• Judicial supervision • Electronic house arrest These two alternatives to pre-trial detention are usually implemented together with other obligations such as: observing orders related to residence, work and spare time ; association with certain persons and making oneself available for inquiries and reports.	Statistical data on the use of alternatives to pre-trial detention are often hard to obtain. According to penitentiary administration figures, the use of electronic house arrest is steadily increasing: 508 house arrests were ordered in 2019 against 464 in 2018. Between January and June 2020, 340 house arrests were pronounced against 249 over the same period in 2019, despite the months of general

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		confinement due to the pandemic. This increase still remains insufficient.
BELGIUM WALLONIA – BRUSSELS FEDERATION	• Release under certain judicial conditions within a specific period of time • Pre-trial detention under electronic monitoring (with or without judicial conditions).	Alternatives to pre-trial detention are often used. Magistrates generally resort to these measures as soon as the accused person meets the legal conditions for their granting. Alternatives to pre-trial detention are used more often when there is a need to relieve prison congestion.
CATALONIA	**Adults** • Bail • Prohibition to leave the country, to drive or to live in a particular place • Restraining order **Minors/juveniles** • Cautionary monitored freedom • Restraining order including prohibition to get closer than a certain distance and/or communicating with the victim • Cautionary living together with an individual, relative or an educative group	No specific data available. The mentioned cautionary measures in the criminal justice system are not considered to be "alternative" to pre-trial detention because the latter is regarded to be as a last resort cautionary measure. The general rule is that the accused will have no restrictions to his/her rights and freedoms until a prison sentence is issued. Namely, no cautionary measure, with or without detention, will be imposed unless it is really necessary. There is no sufficient evidence on the trends in using the different types of cautionary measures to really say whether or not pre-trial detention is being used excessively in Spain or Catalonia.
CROATIA	• Ban on leaving the place of residence, • Ban on visiting a certain places or areas • The obligation to report regularly to a certain person or state body • Temporary confiscation of travel and other documents for crossing the state border • Temporary revocation of the license for driving a motor vehicle • Bail • Home detention	Alternatives to pre-trial detention are the responsibility of the Police, meaning that the Probation service has no access to the date and neither knows what the situation was in regard to Covid-19.
GERMANY	Instead of pre-trail detention, conditions can be imposed. A complete list of conditions are not regulated by law.	No figures available. There are only few alternatives to pre-trial detention implemented and used in the German

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	Not legally regulated is the use of electronic monitoring as an alternative. There are only pilot projects. In addition, there are various projects in the federal states to avoid pre-trial detention, especially for young offenders: Young people (between 14 and 18 years of age) have the option in most of the federal states to apply for temporary accommodation (prevention of detention) in a youth welfare institution.	judicial system in comparison to other European countries. There is still a lot of potential to introduce in order to (more frequently) use alternatives to pre-trail detention.
HUNGARY	• Restraining order • Supervision in criminal case: a) house arrest b) home detention c) prohibition d) Reporting requirement Both measures can ordered by the court. Before indictment the court can apply a restraining order, supervision in criminal case or a restraining order with supervision in criminal case instead of pre-trial detention. The Probation Service is not responsible for the supervision of the implementation of alternative coercive measures. The court may also prescribe additional behaviour rules to ensure that the goals of supervision in criminal case are achieved. There are measures ensuring compliance with the behaviour rules of restraining orders and supervision in criminal cases: electronic monitoring of the defendant and bail.	The Act XC of 2017 on the Criminal Procedure changed the previous law concerning pre-trial detention. Due to the new law on coercive measures the rate of alternative measures to pre-trial detention has increased, and as a consequence the number of persons in pre-trial detention has decreased.
LATVIA	In Latvia there are following security measures: **<u>Adults</u>** • Notification of the change of the place of residence; • Reporting to the police authority at a specific time; • Prohibition from approaching a specific person or location; • Prohibition from a specific employment; • Prohibition from departing from the State; • Residence in a specific place;	<u>Number of security measures applied in 2019 - 2020</u> • Prohibition from approaching a specific person or location - 235 • Prohibition from a specific employment - 54 • Prohibition from departing from the State - 2060 • Personal guarantee- 6 • Bail - 72 • Placement under police supervision - 1508

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	• Personal guarantee; • Bail; • Placement under police supervision; • House arrest; • Arrest. **<u>Minors/juveniles</u>** • Placement under the supervision of parents or guardians; • Placement in a social correctional educational institution.	• House arrest - 1 • Arrest - 2490 • Placement under the supervision of parents or guardians - 3 • Placement in a social correctional educational institution - 10 • Notification of the change of the place of residence - 1377 • Reporting to the police authority at a specific time - 980 • Residence in a specific place - 4378
LUXEMBURG	Since 2006, pre-trial control measures are possible, since 2018 also in combination with Electronic Monitoring.	In 2019, 46 cases of pre-trial control were handled by the Probation Service Luxemburg; 0 cases since 2018 for pre-trial EM. Possibly in total there are much more cases of pre-trial control, as the accused can be conditioned to stay only in contact with the police, not with the Probation service. Magistrates chose either to put a person into arrest or to let him in liberty, but the "middle way" (pre-trial control or pre-trial EM) seems not to be used as much as it could, as the judiciary is apparently not used to this way of proceeding.
MALTA	• House Arrest • Confinement in an Institution such as Mental Health Hospital and Rehabilitation Centres (drug addiction)	Alternatives to pre-trial detention are often used, depending on the seriousness of the case.
SWEDEN	• Prohibition to leave the assigned place of residence (travel prohibition) • Obligation to report to the police authority	According to available statistics the measures are not often used. The Swedish code of judicial procedure states that if a main hearing is held, the evidence shall be taken at that hearing unless, in accordance with special provisions, the evidence may be taken outside the main hearing. This restricts the scope for using alternatives to pre-trial detention.
UNITED KINGDOM	• Electronically monitored curfew (Radio frequency)	All data regarding the measures are collected by HM Court and Tribunal Service and not by the National

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	• GPS Location Monitoring Tag – exclusion, inclusion, track whereabouts • Curfew without monitoring ('doorstep curfew') • No contact conditions – not to contact witness, victim, etc. • Accommodation requirement – specified address • Accommodation and Bail support service • To attend specified appointments (drug, alcohol, mental health) • Exclusion Zone (specific place, town centre). • Reporting to a local Police Station (daily or weekly, mindful of Covid-19) • Not to use electronic equipment such as PC's, laptops, mobile phone etc. (normally sex offence related).	Probation Service. However, the results of a Bail Information Service pilot in Preston Magistrates show that with an assessment to boost magistrates' confidence, the usage of remands in custody can be reduced. In the Bail Act there is a presumption that bail will be granted unless certain risks apply. Defendants are viewed as a surrender risk if they appear before the court with unsettled circumstances e.g. homelessness or addiction. The courts will frequently remand in custody if they do not have a verified information that the risks can be managed or mitigated.
ITALY	**<u>Adults</u>** • Expatriation Ban • Judicial Police Reporting • Removal from Family Home • Prohibition or Obligation to Stay in a certain Residence **<u>Minors/juveniles</u>** • Prescriptions: the Judge may impose specific educational/vocational/other kind of prescriptions on the young defendant, aimed at its upbringing, after hearing the holder of parental responsibility • Home Confinement • Foster Community Placement	No specific information for adult offenders. **<u>For minors/ juveniles:</u>** Custodial Pre-Trial Detention is the last resort in Italy's Juvenile Justice System and therefore it is exclusively enforced in extremely serious cases or in case of recidivism, which means that alternatives to pre-trial detention are often used in the Italian system.
NETHERLANDS	A conditional stay of execution of the pre-trial detention (*schorsing voorlopige hechtenis met bijzondere voorwaarden*) can be pronounced.	In 2019 in 4032 cases with supervision by probation a conditional stay of execution of the pre-trial detention were pronounced.
NORTHERN IRELAND	No answer	No answer
MOLDOVA	• Home arrest with the application of electronic monitoring together with some obligations: To keep the electronic control device active, to wear it permanently and to respond to control signals/to appear in person at the criminal	Since 1st January 2020 to 21st September 2020 there were 47 cases under home arrest with electronic monitoring. The number of people under electronic monitoring is increasing every month.

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	investigation body or in court at the appointed time.	
TURKEY	**Adults** • Judicial Control: - No permission to travel outside of the country - To regularly apply to places that will be specified by the judge within the specified time periods - To obey the calls of authorities or persons specified by the judge and, when necessary, to fulfill the measures of control with respect to the professional activities or issues of continuing education - No permission to drive any or some of the vehicles and, when necessary, leaving one's driving license to the office of registry in return for a receipt - To obey and accept the measures of medical diligence, treatment or examination, especially being hospitalized for purification from dependency of narcotics, stimulating or evaporating substances and alcohol - To deposit an amount of money as a safeguard, which shall be determined by the judge upon the motion of the public prosecutor, after taking into account the financial conditions of the suspect, and whether it shall be paid by more than one instalments and the period of payment - No permission to carry weapons and, if necessary, to leave one's guns to the judicial depositary in return for a receipt - To provide real or personal guarantee for payments to assure the rights of injured parties; the judge upon the motion of the public prosecutor shall specify the amount and the payment period of the money, - To provide assurance that the offender shall fulfill the obligations towards his/her family and that (s)he shall pay alimony regularly, pursuant to the judicial decisions - Not leaving one's house - Not leaving a particular residential area	Alternatives to pre-trial detention are often used.

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	- Not going to designated places or regions. **Minors/juveniles** • No moving outside specified peripheral boundaries • No access to certain places or access to certain places only • No contact with specified persons and/or organizations.	
UKRAINE	Probation is used but no specific information on alternatives to pre-trial detention.	No answer.

4) What could CEP or the EU do to promote a more frequent use of these alternative measures to pre-trial detention?

EU Member state jurisdiction	Proposals to promote the use of alternatives to pre-trial detention (Q4)
CZECH REPUBLIC	In the Czech Republic there are many possibilities of using alternatives to pre-trial detention. Legal framework defines the possibilities when to use the alternatives, and under what conditions the pre-trial detention might be replaced by alternatives.
ESTONIA	No answer
FRANCE	In order to encourage a more frequent use to the alternative measures to pre-trial Detention, a change of mind-set among judicial and prosecutorial personnel is required. CEP together with the EU should/could: - Encourage France to implement the framework decision FD 829 to lessen the likelihood of detention and the human impact of judicial supervision when the defendant is a foreign national. - Statistical data should be collected regarding re-offending rates in cases where a person is placed in pre-trial detention compared to cases where the person is subject to socio-educational judicial supervision or electronic house arrest – this in order to develop an understanding of the long-term advantages of those alternatives. - Investments in the training of judges (ENM, lawyer bar school) to set a standard about the use of alternative measures to pre-trial detention, in accordance with national laws and international standards

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BELGIUM WALLONIA – BRUSSELS FEDERATION	- Carry out awareness-raising actions for prosecutors and investigating judges on the merits and advantages of alternative measures to pre-trial detention. - Sensitizing magistrates to (the existence of) alternative measures to pre-trial detention. - Provide supervision and support for professionals and sufficient means to carry out these alternative measures: funding of innovative projects in the field of alternatives to pre-trial detention (citizenship training, etc...).
CATALONIA	No specific information on this question
CROATIA	No answer
GERMANY	- Ideas and possibilities of alternatives should be pointed out - an overview of what possibilities exist and are used in Europe would be very helpful. The advantages of alternatives have to be presented. In the best case, legislation should regulate that imprisonment is to be avoided and that alternatives are to be used.
HUNGARY	No answer
LATVIA	No answer
LUXEMBURG	- CEP could address the magistrates with convincing arguments, to promote the use of these measures
NORTHERN IRELAND	No answer
MALTA	- More awareness amongst the Judiciary
SWEDEN	No answer
UNITED KINGDOM	- Support the evidence based details for Bail Information Services if they exist elsewhere in Europe. Provide evidence of offending rates on bail to show the reoffending on bail and failure to surrender is not as prevalent as courts assume.
ITALY	No specific information on this question
NETHERLANDS	No answer
MOLDOVA	- To promote and share the good practices in different EU member states so they can be implemented in Moldova.
TURKEY	- Reports, recommendations and seminars that reflect good practice examples to be published by international institutions and organizations will be useful for encouragement.
UKRAINE	- To support the public awareness about the advantages of probation measures. - To participate in providing probation bodies with proper material and technical supply. - To support to the relevant legislative initiatives.

5) During Covid-19 many countries gave an early release to prisoners at the end of their sentence or the once having short sentences because of the high infection risks in prisons. Was something like this also done for alternatives to pre-trial detention?

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EU Member state jurisdiction	Use of alternatives to pre-trial detention during Covid-19 pandemic situation (Q5)
CZECH REPUBLIC	In the Czech Republic no prisoners were given an early release due to the Covid-19 pandemic. Nevertheless, it is necessary to mention that the COVID-19 spread in the Czech prisons was at minimum level. During the state of emergency declared from March 12 to May 17 minor crimes were penalized more strictly.
ESTONIA	Such measures were not taken in Estonia. Infection risks were lowered by using various other methods.
FRANCE	French authorities have released inmates from overcrowded prisons as part of efforts to deal with the coronavirus outbreak but others have seen their detentions extended as trial dates were suspended. On March 26 2020 the French government order extended the maximum duration of pre-trial detention. Risks of flight or non-presentation at triasl were the main reasons motivating a different treatment of detainees on remand.
BELGIUM WALLONIA – BRUSSELS FEDERATION	By comparing the investment figures for the period between April 1st, 2019 and August 31st, 2019 with the period between April 1st, 2020 and August 31st, 2020 corresponding to the coronavirus crisis, a stable trend between these two periods can be seen. This tends to show, in a relative way, that the coronavirus has not really directly impacted the early release decisions of prisoners held in pre-trial detention under electronic surveillance.
CATALONIA	No specific information on alternatives to pre-trial detention during Covid-19 pandemic situation.
CROATIA	Alternatives to pre-trial detention are the responsibility of the Police, which means that the Probation service do not have relevant data on this, nor on what the situation was regarding pre-trial detention and alternatives in regard to Covid-19.
GERMANY	Yes, warrants have been suspended or postponed. However these decisions are the responsibility of the individual federal states so there are no overall data for them.
HUNGARY	There have not been such measures introduced in Hungary. There have been preventive measures introduced in prisons to avoid the spread of COVID-19.
LATVIA	In Latvia during the limitations imposed by COVID-19, no early release of prisoners or pre-trial detainees was used as there were no positive COVID-19 cases in the system yet.
LUXEMBURG	This was not the case for pre-trial detention in Luxemburg
NORTHERN IRELAND	The Northern Ireland Prison Service (NIPS) did engage in a series of Early Releases in which the Probation Board for Northern Ireland (PBNI) assisted in terms of information sharing for risk assessments.
MALTA	No measure were taken.
SWEDEN	No use of these measures in Sweden.

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UNITED KINGDOM	Yes, there was an end of custody temporary release scheme, alongside a cohort of vulnerable prisoners and pregnant women offenders or those who had babies. There was accommodation funding made available for those remanded in custody but the priority group was prisoners released on licence.
ITALY	**<u>Adults</u>** For health reasons Italy tried to replace pre-trial detention with house arrest except for serious crimes like mafia related offences. **<u>Minors/juveniles</u>** The Law Decree No. 18 of 17 March 2020 on "Extraordinary Home Detention", the Circular Letters by which JCJD has ordered all its Youth Detention Centers and Social Services to carefully assess the specific circumstances (judicial situation / health / family background) of each youngster, and the promulgation of the so called "Cura Italia" Decree have encouraged the enforcement of alternative measures and measures replacing custody for minors and juveniles.
NETHERLANDS	For a limited group of prisoners a provisional stay of execution of the detention (*voorlopige schorsing*) was pronounced. This was the case for prisoners in the last stage of their sentence who were already outside the prison facility for a substantial part of their time (they worked outside of the prison and stayed overnight in the prison on workdays).
MOLDOVA	No specific information referring to alternatives to pre-trial detention during the Covid-19 pandemic situation.
TURKEY	Measures were taken for current detainees but not mentioned for pre-trial detainees.
UKRAINE	Such release of the inmates is not envisaged by the current legislation. Measures were taken for probation clients but not mentioned for pre-trial detainees.

Utrecht

15th October 2020

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