

Replies to the questions in the Green Paper of 14 June 2011

Questions on mutual recognition instruments

1. The Italian system contains various non-custodial alternatives to pre-trial detention (e.g. home detention, ban on residing/obligation to reside in a certain place) which I consider effective, particularly where there is no real or serious need for detention, especially in the case of first offenders and people with no links to organised crime. These could be promoted at European level if major efforts were made to raise awareness among the Member States about how they are applied; detention would then be regarded as the last resort in the pre-trial stage.
2. In the Italian penal system alternatives to custody are day release (not exactly an alternative), home detention and placement on probation with the social services. There is also parole, which is now almost exclusively applied to (and requested by) those serving a life sentence. On the other hand there is no real form of probation for adult offenders; it exists for minors who are placed on probation with the social services. I believe these are more effective than detention and this is supported by the figures for re-offending, which are significantly lower where such measures are applied. Provision can also be made (particularly in probation with the social services) for punishments involving reparation, which contribute significantly to the rehabilitation of offenders. The European institutions could engage in a mass campaign to disseminate data on the effectiveness of alternative measures in terms of public safety and also to counter the criticism of these measures in the mass media, where they are often depicted as unsafe or even encouraging crime themselves.
3. I think that detention conditions in different Member States are a decisive factor in the proper operation of the EAW and, more generally, for mutual trust between the countries' judicial institutions. I believe it is right to apply the 'favor rei' principle of preventive monitoring of detention conditions (or the application of pre-trial detention) in the country to which the suspect would be transferred. It is also fully in line with the European rules, and should act as a warning or stimulus to all countries.

Questions on pre-trial detention

4. The question of whether to release or detain suspects is regulated in Italian law by a number of articles of the Code of Criminal Procedure (Article 272 ff of Book IV Supervision Measures). Depending on the need for detention identified by the judge (and the type of crime involved), one of the prescribed measures may be applied. In practice, the situation tends to be the opposite of that described in your question, so that suspects will be released if they meet the specific criteria for release. Consequently pre-trial detention is used extensively here. Another factor is that Italian courts often have to deal with minor offences (but committed by foreign nationals without papers or a fixed address who present a potential flight risk) or offences where it is necessary to avoid any risk of the evidence being tampered with during the investigation (for example cases involving organised crime or white-collar crime).

5. I think that differences between countries in the way crimes and defendants are classified, and in the policy choices they make on law and order may be at the root of the differences in maximum periods, monitoring and use of pre-trial detention, and hence a factor in mutual trust. In order to reduce pre-trial detention we should examine more carefully the possibility of applying other non-custodial measures. In certain cases, some sort of preliminary character assessment could be carried out (as already happens under the criminal procedure for minors) to help the judge in charge of preliminary enquiries assess the defendants' character and social resources, on the one hand, and the impact detention might have on them, on the other.
6. I do not know how much the EAW has been used in Italy.
7. I am in favour of Union rules on maximum pre-trial detention periods and of regular reviewing of such detention. Non-custodial measures could be applied where there is no real and overriding need for detention, more frequent use could be made of alternative pre-trial procedures and it could be made easier for those subject to coercive measures to carry out work for the community, while still bearing in mind that they are presumed innocent until proved guilty. I think it is much less harmful for people to have performed community service in the pre-trial period and then been found innocent, than to have been deprived of their liberty, possibly in overcrowded conditions and without proper support.

Question on children

8. In addition to the alternative measures already described for adults, the criminal procedure for minors provides in certain specific situations for the trial to be suspended and the minor placed under supervision. This is a form of judicial probation, successful completion of which results in the offence being extinguished.

Question on monitoring of detention conditions

9. There should be more extensive and regular monitoring of detention conditions, and the EU could encourage networking to promote closer contacts between prison administrations (for example through exchanges and joint training) aimed at improving knowledge of other Member States' prison regulations and providing a positive stimulus.

As someone who works in a prison known throughout Italy for the high quality of its living environment and its exceptional educational achievements, I have personally had direct experience of other European prisons under the Gruntvig project (with a visit to the Quatre Camins prison in Barcelona). As part of the Social project I also had a very interesting encounter with the Romanian prison service (and a visit to the Craiova prison). I believe such experiences provide a strong stimulus to review prison practices and consider alternative ways of understanding our role within the prison setting. Despite such exchanges I do not have an adequate understanding of the prison systems of other European countries and believe it is important to gain such knowledge and extend it to all prison staff, who are often hidebound by tradition and afraid of innovation.

Question on detention standards

10. I am convinced that only a careful and far-reaching campaign to raise awareness of the data on the effectiveness or ineffectiveness of detention (purely in terms of retribution) can generate greater interest within the Council and thus bring about a

thorough review of the approach, which should be tied to achieving the objectives laid down by the legislation. In addition to the system of sanctions there could be some sort of reward for countries that are best at achieving the objectives.

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