**Subject: Meeting on minimum standards in pre-trial detention procedures, Brussels, Monday 9 February 2009, Borschette 1A**

**Peter Csonka (European Commission)** welcomed participants and explained that this was the second meeting (after one on 9 June 2006) on pre-trial detention. There is a mandate under the Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union (2005)[1] to discuss minimum standards in pre-trial detention procedures and the routines for regular review of the grounds for detention. Mr Csonka drew attention to two underlying aims of the meeting – to come up with ways to reduce prison overcrowding and to increase mutual trust between EU Member States.

Peter Csonka (European Commission) furthermore introduced Professor Anton van Kalmthout, who is also the NL representative to the CPT committee, and his team: Ms Femke Hofste -Van der Meulen (Prison Watch, NL, but at the same time researcher at the Tilburg University); Ms Pamela Lambertina, researcher, Tilburg; Ms Marije Knapen, researcher, Tilburg; and Ms Zarif Bahtiyar, researcher, Tilburg. Dr Christine Morgenstern, who also was part of this research team, could not participate due to other commitments.

The European Arrest Warrant makes provision for time spent in pre-trial detention being deducted from the final sentence but this is not always applied properly. The Council is looking into this. Key areas for discussion are if there are grounds for the EU to act to introduce minimum standards regarding the length, definition and regular review of pre-trial detention. An empirical study has been done on these issues by Tilburg University.

**Presentation of the (draft) study**

**Professor Anton van Kalmthout (Tilburg University, NL)**: Set out the main components of the study. The study is a draft so can be amended if there have been, for example, changes to the law in a particular country. In February, the final report must be sent to COM so participants have one or two weeks to send in any updates. One of the first problems is that different countries define pre-trial detention in different ways, with some defining it as from arrest until the trial starts (narrow sense) and some defining it as from arrest until the final sentence (broad sense). Tilburg University used the broad sense

[1] OC C 198, 12.8.2005, p. 1.

for its study but, based on these different definitions, care must be taken with use of the data. Key difficulties encountered in searching for data for the study:

- Terminology - pre-trial detention, preliminary detention, detention on remand – different terms may cover different things in different countries
- Accessibility of legal sources – texts only in the language of that country (penal codes should perhaps be in English too)
- Information not available (e.g. numbers of specific groups such as juveniles, women or foreigners, not registered in many countries)

**Femke Hofstee -Van Der Meulen (Prison Watch, NL)** – on the collection, analysis and comparison of data for the study: Referred to different terminology in Member States with regard to pre-trial detention, to different dates of recording data and the lack of information about pre-trial detention in police statistics.

Key points:
139,883 people in the EU-27 in pre-trial detention in 2006, i.e. nearly a quarter of the total prison population of 607,725. Considerable variation between countries – with the Czech Republic at around 12% and Italy at around 57%.
Pre-trial detention prisoner rate per 100,000 people of population varied considerably too – from 8.8 in Finland to 78 in Estonia, with 31.6 as the EU average.
In 17 out of the 27 EU Member States, the trend for pre-trial detention prison population is upwards while in ten countries it is downwards.
Prison overcrowding in 15 countries.

Recommendations – EU Member States should use a more uniform way of collecting data, should use similar definitions and reference dates and should have more detailed information on nationality, residence, gender and age of pre-trial detainees.

**Jorge Alves Costa (Individual expert, PT)**: Too many people in prison and a very high number in pre-trial detention too. Numbers of pre-trial detainees have been going down in PT since 2005/06 and are going down even faster now since the penal system was reformed. Currently 19% of prisoners are in pre-trial detention (EU average – 25%). The EU must sooner or later define and clarify exactly up to what point pre-trial detention is measured. We must have a common definition.

**Peter Csonka (European Commission)**: With nearly a quarter of the prison population being pre-trial detainees, is this an area where the EU should intervene or is it normal?

**António Delicado (Ministry of Justice, PT):** There has been a decrease in the prison population in PT, namely since the 2007 reform of our Criminal Procedure Code. After we became stricter in the application of pre-trial detention, something that has been required for long by our public opinion and our legal actors, there has been criticism linked to safety concerns.

**Giulio Iluminati (Independent expert, IT)**: Importance of definition of pre-trial detention as data can change a lot depending on the definition. The length of time trials take is a big problem in Italian justice as it means that the numbers in pre-trial detention increase.

**Francesco Cascini (Ministry of Justice, IT)**: Length of the judicial process has an effect on total numbers in pre-trial detention and determines judges' attitudes. Judges are worried about people fleeing or evidence being tampered with. Pre-trial detention is seen as a way to anticipate a sentence.

**Dr Stefan König (German Bar Association, DE)**: The percentage of pre-trial detainees has gone down in recent years. Perhaps due to attitude of judiciary to pre-trial detention as there has been no change in the legal situation in DE. Cases are coming to trial more quickly.

**Tomasz Ostropolski (Ministry of Justice, PL)**: Length of pre-trial detention is a problem in Poland and is a priority for the Ministry of Justice. Improvements have been made to the penal code with regard to the conditions for pre-trial detention as, in some cases, there has been too much freedom for the courts in the application of pre-trial detention.

In terms of pre-trial detention and the European Arrest Warrant, sees no indication (e.g. in evaluation reports and ECLAN report) that pre-trial detention is regarded as an obstacle to the use of mutual recognition. EU has already created a European Supervision Order, which may improve the situation. Doesn't see the EU getting involved in the procedures of Member States as warranted. On mutual confidence, there are more important areas to look at, such as the right to translation and the right to a defence. The recommendation of the Council of Europe regarding pre-trial detention is sufficient.

**Ilina Taneva (Council of Europe)**: The European Court of Human Rights uses a narrower definition of pre-trial detention than Recommendation Rec(2006)13 on remand in custody as the vision of the Court is that Art 6 of the ECHR should come into action as soon as possible after detention, while as the aim of the Recommendation is to provide better treatment and safeguards to as broad a spectrum of detainees as possible. Unfortunately the member States did not wish the grey area of the first contact and detention of a presumed offender by the police to be covered by the Recommendation.

**Marie-Laurence Navarri (Ministry of Justice, FR)**: Real problem with pre-trial detention in FR. There has been an explosion in the prison population and high suicide rates. In FR, pre-trial detention runs up until the first sentence (cf IT and PT which goes up to the final appeal). Police custody is not included as that is a different issue. Mutual recognition of pre-trial detention has never been mentioned as an obstacle in the implementation of the European Arrest Warrant so there is no need for urgent work on that. There is a need for minimum procedural standards (*e.g.* right to a lawyer and to a trial within a reasonable time period) but pre-trial detention does not seem to be a priority.

**Barry McCafffrey (Scottish government office in Brussels)**: Not representing UK overall. Would not focus on pre-trial detention in particular as a problem but sees overcrowding in prisons as a whole as a problem. Not sure that EU is the right level for this. Real question is how the European Court of Human Rights can have more of an impact in changing the situation. A lot can be learnt from each other, via best practice, from talking to each other as in meetings such as today's.

**Martin Schönteich (Open Society, Justice Initiative, US):** Suggested that the low proportion of pre-trial detention (as in the US) is not always a good indicator as a country may have a tough sentencing policy. A better comparative measure would be to take into account levels of crime and the effectiveness of police. Suggested using ratios such as number of arrests resulting in pre-trial detention and proportion of court appearances resulting in pre-trial detention to give an indication as to whether pre-trial detention is being used excessively or not. Other possibilities are to look at data relating to the number of pre-trial detainees acquitted and to the number of those not detained who abscond.

**Susanne Södersten (Ministry of Justice, SE)**: Important to defend rights of detainees and important that MS strive to limit the time a person is detained before a judgment is given. Long periods of detention can cause suffering to the individual (e.g. young people), can lead to bilateral problems and can undermine confidence between countries.

**Irena Vogrincic (Ministry of Justice, SI)**: Study is a good starting point for discussion. As to whether there should be further EU action, the first thing to be done is to analyse the data collected in the study and refer to the EU instruments and work done by the Council of Europe.

**Bernhard Weratschnig (Ministry of Justice, AT)**: The figures and legal base for AT changed in 2008. The numbers of detainees went down in 2008 and, after a reform of the pre-trial situation in 2009, they have gone down then too. So the data in the study do not completely reflect the reality now. Period of pre-trial detention is usually very short in AT. The time begins with imprisonment and ends with the final judgment. Sceptical about crossborder rules for this and shares FR's views in this respect.

**António Delicado (Ministry of Justice, PT)**: The issue of comparability of data needs to be developed. The COM has been working on this issue and we look forward to work on these needs. Referred to lack of proper implementation of existing Framework Decisions. Implementation and assessment of implementation are important and will help us move forward.
Different MS have different maximum time limits for pre-trial detention as they have different procedural rules and Codes, namely in what regards to eligibility of evidence.

**Jorge Costa (Individual expert, PT)**: There should be EU level intervention. Referred to work on probation and on European Supervision Order that had begun and stressed the importance of the rights of people as EU citizens.

**The representative of the Ministry of Justice, ES**: Stressed that common concepts are essential to ensure that figures are really comparable. As for the link between pre-trial detention and mutual recognition, not aware of any big problems so far. Needs to be looked at closely. Essential to have an in-depth study before taking any steps.

**Dr Sven Harms (Ministry of Justice, DE)**: Referred to some inaccuracies in figures in the study for DE. EU involvement in setting minimum standards possible but should be in line with Council of Europe recommendation. However, EU rules may not be necessary and perhaps we should wait to see if Council of Europe rules are applied.

**Sarah Khabirpour (Ministry of Justice, LU)**: There should be harmonisation. As for mutual recognition, there is not much experience in the application of procedural guarantees relating to pre-trial detention. The fact that pre-trial detention has not been identified as a problem now but this does not mean that it will not be a problem in future. Prevention is better than the cure. We should anticipate problems and so we should harmonise.

**Dr Ioan Durnescu (Bucharest University, RO)**: Referred to the high number of pre-trial detainees as a problem. Not sure if framework of mutual recognition is the best framework. Important to do something to reduce prison overcrowding. A UK study showed that 50-60% of detainees in pre-trial detention are likely to get custodial sentences. The number of pre-trial detainees affects the number of custodial sentences. The question of what can be harmonised at EU level should be discussed in more detail this afternoon.

**Professor Anton van Kalmthout (Tilburg University, NL)**: Referred to **Schönteich's** suggestions and said it would be useful if pre-trial detention data could be linked to the number of arrests and sentences imposed but that that information is not available in many countries.

**Pamela Lambertina (Tilburg University, NL)**: Talked of the issues of terminology. For example, the Council of Europe uses 'remand in custody' for pre-trial detention. There is no unanimity in terms of terminology. The scope of pre-trial detention also varies from country to country. There are minimum standards guaranteeing rights but the problem is in the practice itself (e.g. the right to have an interpreter).

**Marije Knapen (Tilburg University, NL)**: Review of pre-trial detention and length of pre-trial detention interrelate e.g. in the sense that, in countries where there is no maximum time limit there is a review mechanism, which guarantees that pre-trial detention periods are not overly long. Review is usually automatic. In some countries it may take a while for the first *ex officio* check, at the judges' initiative (i.e. only if the prisoner has not applied for release), but it does take place. Most countries have a review mechanism and, in countries which do not, prisoners can appeal for release and/or there are other alternatives. In the latter case, appeal and/or a request to be set free can be seen as review. Huge difference between countries just in the review process (e.g. from when, how it is done (mostly *ex officio*) and who does it). There is a problem of comparability as there is no European understanding of pre-trial detention. An issue to be borne in mind is that, although a country may have a maximum period of pre-trial detention up to the start of the trial (e.g. NL – 104 days), when the trial starts, it can take years to finish and the suspect could continue to be detained in the meantime.

Mutual trust could be improved with:
Good availability of legislation in official EU languages (which would stimulate debate on terminology) and if we want to go a step further common standards in criminal proceedings (taking account of work done by Council of Europe (Recommendation 2006 (13)).

Difficult to reach minimum standards on maximum time limits for pre-trial detention because of differences between MS and gap between written law and practice. Perhaps the focus should be on review as a guarantee, with other procedural rights.

**Marie-Laurence Navarri (Ministry of Justice, FR)**: Asked if the study had discovered any EU MS where there is no review. **Knapen** referred to six or seven countries where there is no review but, in that case, they have an appeals procedure and/or other ways to fight the decision to extend the remand in custody such that the appeal and/or alternatives boil down to a review.

**Professor Anton van Kalmthout (Tilburg University, NL)**: Prefers a system in which pre-trial detention can be extended for a shorter period, and if the prosecutor needs to, then they must justify it. This is better than an automatic review system.

**Dr Holger Matt (European Criminal Bar Association)**: Study is very useful as shows where there is a need for harmonisation. First, there is a need for common definitions so that statistics can be read correctly. Figures are collected differently in MS and legal bases are very very different. Maybe the EU can help on the issue of prison overcrowding. Pointed to a study showing that having a lawyer involved early can reduce the time in pre-trial detention. There can be added value at the EU level if there could be binding standards relating to pre-trial detention. Minimum standards must be introduced. There are legal infringements every day and, without a defence lawyer, there is nothing that can be done about it. There must be a right to appeal to a judge. Referred to alternatives to pre-trial detention, such as a supervision order. A key point is that a legal aid system is needed in the pre-trial detention period and that a defence lawyer should be available during this period.

**Jacob Struyker Boudier (Ministry of Justice, NL)**: With the European Supervision Order, national law can be applied and, as long as alternatives to pre-trial detention are provided then this is a working system. Asked for explanation as to why a common definition of pre-trial detention is needed.

**Ilina Taneva (Council of Europe)**: Referred to two separate aspects – the period before the defendant goes to court (where it is preferable to introduce in the law a time limitation for the investigation as otherwise the investigation can be very prolonged) and the trial phase, where automatic review by the court would probably suit better the purpose.

**Janina Tallqvist (Ministry of Justice, FI)**: Study is a big contribution to the debate. Minimum standards would be a good thing as they would facilitate mutual confidence and mutual recognition. Setting a maximum period for pre-trial detention does not seem the most straightforward though. There is no maximum limit in Finland – the judge periodically reviews the situation. Good to have minimum requirements at EU level. Useful to see how often judges carry out a review. Good idea to have minimum requirements from a procedural point of view.

**Peter Csonka (European Commission)**: Procedural rights is connected with today's discussion. Council not yet able to reach consensus on this but it is a priority of the Swedish presidency of the EU and the Commission will make a proposal on this before this summer.

**Panagiotis Meidanis (EL)**: Definition of, review of, grounds for and limits for pre-trial detention are all closely linked and cannot be dealt with separately. In EL, pre-trial detention is defined as the moment of arrest up to the moment when the first judgment/sentence is pronounced.

Setting a maximum limit for pre-trial detention is interesting as a way to put pressure to ensure cases are dealt with promptly. Not satisfied with situation in EL regarding prison overcrowding as EL is top of the list in that respect. Legislative proposal adopted late 2008 and in process of implementing it so hope to reduce figures for pre-trial detainees this summer.

**Jago Russel (Fair Trials International, UK)**: Number of foreign pre-trial detainees very high as proportion of total prison population. Knows of cases where they go for months or years without a trial, have no access to interpretation (so do not know the charges against them or when they are likely to get a hearing) and little access to a decent lawyer. European Arrest Warrant (automatic in some countries) means that suspects can be surrendered even if there is concern of there having a long pre-trial detention without access to a lawyer. Risk of a backlash against the EAW if there is no confidence in the treatment of people in the countries that they are surrendered to. Regularity of review important and a meaningful review (independent judge, ideally in public, with translation/interpreting, things done as quickly as possible) important.

**Fernando Piernavieja Niembro (Criminal Law and Human Rights Committee, ES)**: Stressed need for procedural guarantees and for protection of right to remain silent plus the principle of presumption of innocence. Pre-trial detention sometimes used to break prisoner's will. Minimum procedural guarantees should be a minimum starting point.

**Giulio Iluminati (Independent expert, IT)**: Made distinction between automatic review and possible review (allowed at request of defendant or on own initiative). Automatic review can turn into a purely bureaucratic process. Pre-trial detention can be limited in time by law or by reviews. An Italian court of cassation judgment regarding the EAW took the view that periodic judicial review was equivalent to setting a maximum time limit. We need to set legal time limits taking account of the requirements of each country. Need for a combination of both review and time limits but would prefer maximum time limits set by law if had to choose. In favour of EU adopting minimum standards providing guarantees for the defendant, not just in pre-trial detention.

**Jorge Costa (Individual expert, PT)**: In the PT system, maximum periods for pre-trial detention can never be exceeded. There is a maximum time period for pre-trial detention for each state of the process (investigation – four months, hearing, sentencing). There is also a compulsory review every three months to see whether or not to continue with pre-trial detention and whether it is the best method at that time.

**Alina Barbu (Ministry of Justice, RO)**: Big reform in 2003, which led to a reduction in the prison population. Included alternative measures and changing the mentality of judges. Judicial review during the trial done every two months. Tried a maximum limit alongside the review every two months. However many reviews there are, if we reach half of the time period for the duration of the sentence for the offence, then the accused must be freed.

**The representative of the Ministry of Justice, ES**: Broadly agreed with two previous speakers. There are guarantees in the ES system. Pre-trial detention can only be adopted after a hearing and detainee can ask for a review at any moment. Pre-trial detention is often extended beyond what is desirable – this is a practical problem. Ways other than legislation need to be considered.

**Peter Csonka (European Commission)**: Is there merit in having minimum standards in crossborder cases?

**<u>Deducting pre-trial detention periods from final sentences</u>**

**Professor Anton van Kalmthout (Tilburg University, NL)**: The key references for deducting pre-trial detention from final sentences are Article 26 of the Framework Decision on the European Arrest Warrant and Article 33 Recommendation 2006 (13) of the Council of Europe.

Regarding deduction of periods spent in pre-trial detention abroad from final sentences, information was collected on this from only a few countries as it was difficult to find. As for it being taken into account in non-custodial sentences, only a few countries have it in their codes of criminal procedure.

In some countries, the period in police custody is deductible where in some countries deduction depends on the way pre-trial detention is executed. In some countries, the period of house arrest is also deductible. Also raised the issue of the ratio of days deducted from the final sentence because of days spent in pre-trial detention.

**Mário Ernest (General Prosecutor Office, SK)**: Open to issues of pre-trial detention and sees the common problem of definitions. Pre-trial detention abroad is deductible in SK and is prescribed by the criminal code.

**Ilina Taneva (Council of Europe)**: Pointed out the difference of the strength of the wording between the three paragraphs of this rule, namely ('shall be deducted from the length of the sentence') of 1st paragraph of Recommendation 2006 (13) Article 33 where 2nd and 3rd paragraphs say 'could'.

**Bernhard Weratschnig (Ministry of Justice, AT)**: Pre-trial detention can be replaced by financial penalties.

**Professor Anton van Kalmthout (Tilburg University, NL)**: Can or should periods of pre-trial detention be deductible is the main question. There is no prescription in many countries and it is up to the judge to decide.

**Susanne Södersten (Ministry of Justice, SE)**: Under Swedish law, the court decides on deduction of pre-trial detention abroad. There are two possibilities; 1) an administrative way, and 2) in connection with the judgment.

**Ilina Taneva (Council of Europe)**: To her knowledge electronic monitoring is counted as days in prison in FR. Is that the case in other countries too?

**António Delicado (Ministry of Justice, PT)**: An obligation to stay at home (with or without electronic monitoring) is deducted from the final sentence in PT.

**Dr Sven Harms (Ministry of Justice, DE)**: As with Austria, fines and pre-trial detention must be taken into account. Pre-trial detention periods abroad are generally dealt with in the same was as periods at home – one day abroad equating to one day at home. If the conditions abroad vary from at home a lot, there may be a more flexible calculation (e.g. in 2002, 1:1.5 for Greece or in 2007, 1:3 for Macedonia). No need to take into account 1 for 1 for EU countries as basic conditions for detention should be aligned.

**Professor Anton van Kalmthout (Tilburg University, NL)**: It is difficult to know if pre-trial detention can be deducted. If someone commits a crime in BE and then spends four months in pre-trial detention before being tried in NL then the sentence is not reduced because it is not prescribed in law but the judge may take it into account. His view is that it should be taken into account wherever one is. The real problem is when judges use partly suspended and partly non-suspended sentences to cover the period of detention as that is a violation of the meaning of detention. The Council of Europe recommends that it should be taken into account more.

**Ilina Taneva (Council of Europe)**: Questionnaires have not been sent out to the member States regarding the implementation of this recommendation.

**Jacob Struyker Boudier (Ministry of Justice, NL)**: Detention abroad is deducted from the sentence and is written in law but it must be linked to the extradition request. There must be a link between the pre-trial detention abroad and the facts for which the prisoner has been convicted. Concerned about electronic monitoring and house arrest. Not clear what the compensation rate should be. A one day to one day ratio (house arrest: prison) would be logical but there is not much experience in NL.

**Professor Anton van Kalmthout (Tilburg University, NL)**: His view is that pre-trial detention should always be deducted, whether in the extradition request or not. House arrest is deducted in some countries but other alternatives restricting freedom can also be deducted in his view.

**Dirk Van Zyl Smit (Nottingham University)**: This is an example where some flexibility is needed. For alternative forms of restriction, there should be a duty to consider them but not what weight they should carry. For example, house arrest for sixteen hours is one thing and a curfew at night is another.

**Professor Anton van Kalmthout (Tilburg University, NL)**: Almost all countries have some legal provision for compensation. Some countries, such as BE and NL, distinguish between unlawful and unnecessary pre-trial detention. There are differences in terms of procedures, time limits to issue the complaint (from weeks to one or two years) and in the instances that determine the compensation (sometimes a civil court, which can take a lot of time and cost a lot of money). Compensation levels differ a lot too, from 70 euro per month of pre-trial detention in LV to 90 euro per day of pre-trial detention in NL. Some countries put a cap on the amount of compensation (e.g. Italy – 400,000 euro). Compensation comes in the form of finance in principle but can be days off prison (if another crime has been committed) or a deduction in taxation or one's debt to the state. Sometimes it is set out in law how to compensate but often it is left to judges or the courts. It can be costly (30 million euro paid out last year in NL), which is why judges may want to emphasise that there is partly a suspended sentence as then they do not have to pay any compensation.

**Dr Sven Harms (Ministry of Justice, DE)**: Eleven euro per day is paid in DE for compensation for non-material damage.

**Imbi Markus (Ministry of Justice, EE)**: There is a special budget line in the Ministry of Justice for this.

**The representative of the Ministry of Justice, ES**: Spain also has a special budget line in the Ministry of Justice. We need to distinguish between cases where there is no case to be answered or where prisoners are set free as early as possible.

**Dr Holger Matt (European Criminal Bar Association)**: If the pre-trial detention is illegal then is it not self-evident that compensation has to be paid. As it is a civil complaint, he would give it to a civil lawyer as the state protects itself fiercely from having to pay any form of compensation. Believes that this is an area where the lack of discipline in MS can be reduced and where uniform standards would be very helpful.

**Fernando Piernavieja Niembro (Criminal Law and Human Rights Committee, ES)**: The judge decides the amount of pre-trial detention but there might be bail so people can buy their freedom. The rich can pay up and get out while those who are poorer can take months to get the bail money together and may ask for it to be reduced.

**Dr Stefan König (German Bar Association, DE)**: Judges do not like to give compensation as they see it as a "defeat". A person acquitted is often blamed because of their behaviour (e.g. it was such a complex contract that it seemed like fraud).

## Alternatives to pre-trial detention

**Professor Anton van Kalmthout (Tilburg University, NL)**: Alternatives to pre-trial detention include bail (not only financial security but can be a promise to do certain things), freedom under certain conditions, controlled freedom/judicial supervision and conditional suspension of pre-trial detention/conditional release.

Electronic monitoring and house arrest are rare. The main observations:

- Little evidence that pre-trial detention is really seen as a last resort
- Little evidence that introducing alternatives has resulted in a reduction in pre-trial detention
- Courts have little time and information to consider alternatives as they are overloaded
- Bail (i.e. financial security) is not very popular in continental countries because it is perceived as being a violation of the principle of equality

Surprised at the reluctance of countries to use the bail system as is under the impression that it works well in the Anglo-Saxon system and would push that as an alternative to pre-trial detention on the continent.

**Louise Hodges (ECBA, UK)**: Popular alternatives include reporting to a police station (frequency depends on the perceived risk) and taking someone's passport (defence lawyer or investigating authorities to hold it).

**Martin Schönteich (Open Society Justice Initiative, US):** Bail needs to be treated with caution and should be made affordable to the individual accused. In practice, this does not happen as it is more convenient for judges to have set amounts with higher amounts for more serious crimes. In South Africa, one in five people granted bail cannot afford it. There needs to be a mechanism that ensures a judicial officer is made aware of the accused's access to financial resources. One area to look at is release under own cognizance, i.e. an undertaking by the person that they will return to court. Here there is no need for money to be deposited. Criteria here often include the defendant having a fixed abode, having some family contacts in the area and being employed. In the United

States, an independent agency or the probation services can run background checks and have a risk evaluation instrument. This can be done in two or three hours.

**António Delicado (Ministry of Justice, PT)**: Asked what 'courthouse services' on page 65 of the study referred to.

**Professor Anton van Kalmthout (Tilburg University, NL)**: They are a suggestion whereby background checks could be done and judges informed before taking a decision on pre-trial detention.

**Marc Nève (CPT Committee, Council of Europe)**: An investigation would be ordered by the judge so that the judge could decide if the detainee could be released on bail or not.

**Dr Stefan König (German Bar Association, DE)**: DE is considering electronic tagging.

**The representative of the Ministry of Justice, ES**: Surprised to see that various alternative measures missing from pages 63 and 64 of the study but that can be easily rectified. It is difficult to get to know situation of the details of the detainee and a quick decision on bail is needed. A review of the decision on release on bail can be possible if it is taken when not all the information is available.

**Giulio Iluminati (Independent expert, IT)**: In Italy, almost all institutions are full of foreigners in pre-trial detention. Difficult to determine what alternatives should apply to them.

**Peter Csonka (European Commission)**: Some Commission figures show that there are around 9,000 people in pre-trial detention that are considered as foreigners but are in fact 'intra-EU foreigners' and could be sent home and supervised there. Council has not accepted the figure.

**Pre-trial detention for juveniles**

**Professor Anton van Kalmthout (Tilburg University, NL)**: There are big differences in the age of criminal responsibility between MS (from seven to 18 years old for example).
Little information available on numbers of juveniles in pre-trial detention (and not known how many in non-prison institutions)
Legal possibilities to apply pre-trial detention depend largely on age of criminal responsibility
Only in half the countries is pre-trial detention for juveniles regulated by specific acts
Pre-trial detention for juveniles considered as a last resort – alternatives often developed for juveniles
Conditions for juveniles worse than adults in many countries
Juveniles not always separated from adults

**Peter Csonka (European Commission)**: Thanks for study from Tilburg University. Look forward to report. Please send in any updates within the next week or so so that the report can be finalised by the end of February.

Many participants agreed that a link between mutual recognition and pre-trial detention may exist but that it was not obvious and wanted more evidence of it. So the Commission is to explore the issue further via a Green Paper some time this year. Commission sees it as part of the procedural rights package. It will be discussed with the Swedish presidency of the EU.

**Ilina Taneva (Council of Europe):** Underlined that the Council of Europe is ready and willing to contribute to any drafting process, which might be envisaged to be undertaken by the European Commission in the future.

**Peter Csonka** drew the following conclusions:

**There are significant differences between the Member States as regards the definition of pre-trial detention, the average length of detention, the legal rules governing detention, e.g. maximum time limits for pre-trial detention, periodic review of detention or all these elements in combination.**

**One group of participants was of the opinion that differences in, for example the length of pre-trial detention between different Member States, could constitute an obstacle to the smooth functioning of mutual confidence that is necessary for mutual recognition in a common judicial space. They therefore welcomed measures at European Union level.**

**Another group of participants agreed that a link between mutual recognition and pre-trial detention may exist but that it was not obvious and wanted more evidence of it. This group was more in favour of Council of Europe recommendations.**

**It emerged that deduction of 'foreign' detention sometimes could constitute a problem (as was compensation).**

**The participants agreed that it would be a good idea to let the Commission explore these issues further via a Green Paper later this year. The Commission sees it as part of the procedural rights package. It will hopefully be discussed during the Swedish presidency of the EU.**