



Ms Viviane Reding
 Vice-President of the European Commission
 Commissioner for Justice, Fundamental Rights and Citizenship
 B-10409 Brussels
 Belgium

9 September 2013

Dear Vice-President Reding

Pre-trial detention in the EU

As the European Commission, Council and Parliament have recognised, ‘excessively long periods of pre-trial detention are detrimental to the individual, can prejudice cooperation between the Member States, and do not represent the values for which the European Union

stands'.¹ We are writing to you now to follow-up on the European Union's work to tackle this problem and to urge the Commission to continue its work in this area beyond the current legislative programme, including developing a timeframe for tabling a legislative proposal setting common minimum standards for the use of pre-trial detention in the EU.

We understand that the European Commission is at this stage intending to focus on monitoring the implementation of three Framework Decisions: the European Supervision Order (**ESO**); the Prisoner Transfer Framework Decision; and the Framework Decision on the application of mutual recognition to judgments and probation decisions and is not currently proposing legislation. We take note of this emphasis on effective implementation but would highlight that only one of the three Framework Decisions, the ESO, has the potential to impact on pre-trial detention. While it may go some way to alleviating problems faced by non-nationals by enabling them to return home while awaiting trial, even this is very limited in scope. In addition, the three Framework Decisions are all pre-Lisbon measures and the European Commission therefore currently has no enforcement powers if problems with their implementation are identified.

Pre-trial detention can be validly imposed where necessary to ensure that justice is served, evidence and witnesses are protected and suspects do not escape prosecution. However, the reality is that standards in pre-trial detention regimes vary widely across the EU and frequently fall short of human rights and other international standards. We therefore welcomed the Commission's Green Paper and engaged actively in the Commission's consultation. The Commission's consultation attracted widespread recognition of problems with pre-trial detention in Europe, its impact on the effective operation of mutual recognition measures and considerable support for EU intervention to tackle the problem (a summary of these uncontroversial conclusions and recommendations is enclosed). In particular:

- i. In December 2011, Members of the European Parliament overwhelmingly supported a resolution on detention in the European Union, which called for a legislative proposal on the rights of persons deprived of their liberty to ensure pre-trial detention remains an exceptional measure, used in compliance with the presumption of innocence and the right to liberty;
- ii. Over fifty non-governmental organisations responded to the consultation and overwhelmingly agreed that new EU laws would help to address the problems with pre-trial detention in Europe; and
- iii. Six Member States stated that legislative action is required. Several other Member States accepted that the current system of pre-trial detention poses a threat to mutual trust and continued judicial cooperation across EU borders.

There is much more that needs to be done to: (i) reduce the excessive periods of time that people arrested and accused of criminal offences spend in pre-trial detention before they have been convicted of any crime, and (ii) to increase the use of alternatives. This is particularly important in relation to children and other vulnerable suspects, who can suffer serious long term effects from even a short time in pre-trial detention. We also believe that more systematic information gathering will be crucial in order to understand how pre-trial detention is being used in practice across the EU. This will provide a strengthened basis for

¹ Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention, COM(2011) 327, Brussels 14 June 2011.

future decisions on the effect that the Commission's work on detention is having and on what further steps (legislative or non-legislative) are needed to protect fundamental rights and prevent unjustified and excessive pre-trial detention from undermining mutual trust and cooperation.

We therefore urge the Commission to:

- 1) use its powers² to introduce a proposal to include the development, production and dissemination of statistics on pre-trial detention in the European statistical programme to assess the use of alternatives to, and length of, pre-trial detention in Member States and the numbers of cases in which non-nationals are permitted to return home pending trial. We would, of course, be delighted to assist with the development of such a proposal; and
- 2) commit to take further EU action to establish minimum and enforceable EU standards on pre-trial detention under the next Commission work programme and to review the need for a legislative proposal on common minimum standards on the use of pre-trial detention if, as we expect, the implementation work and statistical information collected shows this to be necessary.

Yours sincerely

Amnesty International
Association Européenne pour la Défense des Droits de l'Homme
APADOR
Association for the Prevention of Torture
Czech Helsinki Committee
Defence for Children International
European Criminal Bar Association
Federation Internationale de L'ACAT
Fair Trials International
Harm Reduction International
Human Rights Monitoring Institute, Lithuania
Hungarian Helsinki Committee
International Centre for Prison Studies
Irish Penal Reform Trust
JUSTICE
Law Society of England and Wales
League of Human Rights, Czech Republic
Liga voor Mensenrechten
Observatoire International de Justice Juvenile
Open Society Justice Initiative
Quaker Council on European Affairs
Prisoners Abroad

² See Article 13(3) of the European Statistical Law (Regulation (EC) No 223/2009)

Cc:

PPE Group

Salvatore Iacolino , Manfred Weber, Simon Busuttil, Carlos Coelho, Elena Oana Antonescu, Georgios Papanikolaou, Roberta Angelilli, Mario Mauro, Erminia Mazzoni

S&D Group

Birgit Sippel, Claude Moraes, Sylvie Guillaume, Rita Borsellino, Emine Bozkurt, Roberto Gualtieri, Tanja Fajon, Carmen Romero López, Silvia Costa

ALDE Group

Niccolo Rinaldi, Renate Weber, Baroness Sarah Ludford, Nathalie Griesbeck, Cecilia Wikström, Ramon Termosa i Balcells, Andrea Zanoni, Leonidas Donskis, Louis Michel

Verts/ALE Group

Judith Sargentini, Jan Philipp Albrecht, Tatjana Ždanoka, Rui Tavares, Raül Romeva i Rueda

ECR Group

Timothy Kirkhope

GUE/NGL Group

Kyriacos Triantaphyllides, Cornelius de Jong, Cornelia Ernst, Nikolaos Chountis, Marisa Matias

Director-General, Legal Adviser to the Council - Hubert Legal

Director-General (General Secretariat to the Council), Justice and Home Affairs - Rafael Fernandez-Pita Y Gonzalez

Permanent Representative of Austria – Walter Grahammer

Permanent Representative of Belgium - Dirk Wouters

Permanent Representative of Bulgaria - Dimiter Tzantchev

Permanent Representative of Croatia – Vladimir Drobnjak

Permanent Representative of Cyprus – Kornelios S. Korneliou

Permanent Representative of Czech Republic - Martin Povejsil

Permanent Representative of Denmark – Jeppe Tranholm-Mikkelsen

Permanent Representative of Estonia – Matti Maasikas

Permanent Representative of Finland – Jan Store

Permanent Representative of France – Philippe Etienne

Permanent Representative of Germany – Peter Tempel

Permanent Representative of Greece – Théodoros N. Sotiropoulos

Permanent Representative of Hungary – Péter Gyorkos

Permanent Representative of Ireland – Rory Montgomery

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Permanent Representative of Latvia – Ilze Juhansone

Permanent Representative of Lithuania – Raimundas Karoblis

Permanent Representative of Luxembourg – Christian Braun

Permanent Representative of Malta – Marlene Bonnici

Permanent Representative of Netherlands – Pieter De Gooijer

Permanent Representative of Poland – Marek Prawda

Permanent Representative of Portugal – Domingos Fezas Vital

Permanent Representative of Romania – Mihnea Ioan Motoc

Permanent Representative of Slovenia – Rado Genorio

Permanent Representative of Slovakia – Ivan Korcok

Permanent Representative of Spain – Alfonso Dastis Quecedo

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