Green Paper. Strengthening mutual trust in the European judicial area-
A Green Paper on the application of EU criminal Justice in the field of detention.

Questions posed in the Green Paper

1. **Pre-trial: What non-custodial alternatives to pre-trial detention are available? Do they work? Could alternatives to pre-trial detention be promoted at European Union level? If yes, how?**

Bulgaria

According to Bulgarian law the measures, alternative to pre-trial detention are the rest of the remand measures, laid down in art. 58 of the Penal Procedure Code (PPC) - signed promise for appearance, granting bail and house arrest.

The house arrest is the most repressive of all those measures. The accused is banned from leaving their house without a permission of a relevant competent authority. It should be emphasized that the house arrest is an enforcement measure, which is less intense and has an incompatibly smaller influence upon the person under detention compared to the detention in custody, although both measures are imposed and controlled by the court. The two measures differ also by their consequences. After the amendment of Art. 59, paragraph 1 of the Penal Code /SG, 27of 10.04.2009/ one day of detention in custody or two days of house arrest are equal to one day of imprisonment or 3/for the detention/, accordingly - 2 days /for the house arrest/ probation of the imposed with the sentence penalty. Before this legislative amendment was made the weight of the two measures was equal.

In the case of the house arrest the actual control over the enforcement of the measure is harder to be executed.

To some extent the limits, imposed by the pre-trial detention can be achieved also by using other enforcement measures, provided by the Penal Procedure Code. The prohibition imposed to the accused party from directly approaching the victim under Art. 67 of the PPC, as well as the prohibition imposed to the accused party from leaving the boundaries of the Republic of Bulgaria under Art. 68 of the PPC can be applied independently or in combination with other supervision measures.

We cannot evaluate the effectiveness of the supervision measures, because a specific study haven't been conducted and we don't have information on to what extent the measures, alternative to the detention in custody, can serve the criminal procedure in its pre-trial and trial phase. The answer may be searched in the statistics on the suspension and reopening of the procedure, postponed preparatory inquiries and court hearings, the extension of time periods for investigation, the number of conducted trials *in absentia*, where the presence of the accused or convicted person in regard to whom a suspension

measure, different from the detention in custody, has been taken, is not possible to be provided.

We could judge on the importance of the question from the data /statistical accounts of the Prosecutor's Office/ about the suspended pre-trial proceedings based on Art. 244, paragraph 1, p. 1, in connection with Art. 25, p. 2 of the PPC – because of the absence of the perpetrator of the offence and the impossibility to reveal the objective truth in their absence. For 2010, there are 9620 pre-trial proceedings suspended for that reason, and for the first half of 2011 – 7448 pre-trial proceedings. We cannot indicate what supervision measures have been applied in relation to those accused persons, but it's obvious that they have been different from "detention in custody" and undoubtedly they haven't been effective enough to guarantee the presence of the accused persons for the completion of the relevant procedural actions and for completing the investigation.

Denmark

Pre-trial as mentioned in question 1 is already regulated in the Danish Administration of Justice Act § 765.

England and Wales

The alternative is remand on bail which can be with or without conditions.
The conditions are tailored to address the risks which release on bail may raise and which are referred to below under the Answer to Question 4. The most effective version of this is bail to a home address with a curfew condition which is electronically monitored. In England and Wales any breach of the curfew is picked up instantly and is much more effective than a condition to report to a police station. Failure to attend the trial is itself a criminal offence punishable with imprisonment and the trial may be heard in the defendant's absence. Whilst there are defendants who breach bail terms – they are limited in number and can be said to work.

Ireland

Note: detention here, is interpreted in accordance with Article 5(1)(a) (b) and (c) ECHR following a criminal offence and not for other purpose (e.g. detention of migrants).

At the outset, at common law, it is established that judges retain discretion to deny or grant bail. Authority for this proposition is *The State v. Purcell*[1] where Hanna J. articulated that judges should only deny bail if there exists a probability that the accused person will evade justice. The judge retains discretion, regardless of objections, to the granting of bail and the judge alone can weigh up the facts and determine whether the circumstances justify granting bail.

Section 22 of the Criminal Procedure Act 1967, as amended by s. 18 of the Criminal Justice Act 2007, confers on the District Court the jurisdiction to remand a person in custody or release him conditionally on his entering into a recognisance, with

[1] [1926] I.R. 207

or without sureties[2]. The criteria to be considered in considering whether or not bail should be granted were enumerated in *People (Attorney General) v. O'Callaghan*[3]. A judge is thus entitled to take into consideration the following, *inter alia*:-
(1) The nature of the accusation or seriousness of the charge;
(2) The nature of the evidence in support of the charge;
(3) The likely sentence to be imposed on conviction;
(4) The possibility of the disposal of illegally acquire property;
(5) The possibility of interference with prospective witnesses and jurors;
(6) The prisoner's failure to answer to bail on a previous occasion;
(7) The fact that the prisoner was caught red-handed;
(8) The objection of the D.P.P;
(9) The possibility of a speedy trial.
If a person is admitted to bail he or she must comply with the requirements of s. 6 of the Bail Act 1997. Moreover, subsection (1) permits a judge to impose additional conditions if he or she considers it appropriate, having regard to the circumstances of the case. Examples of such conditions would include having to sign on on regular intervals at the local Garda (police) station, surrender of passport, etc.

Even if the prosecution have not objected to bail, a judge can refuse an application for bail based on any of the above factors. He or she retains discretion at all times. Similarly, a judge can grant bail, but subject to strict conditions. Nevertheless, a judge cannot act in excess of jurisdiction. Such will result in the infringement the accused person's rights.

In terms of pre-trial detention the same conditions apply in this jurisdiction with regard to bail pending surrender under a European Arrest Warrant and bail pending trial in the domestic courts. The test for bail in the context of the EAW was elaborated upon in *Minister for Justice, Equality and Law Reform v. Ostrovskij* [2005] IEHC 427 where the court stated that the state's obligation was to take all necessary measures to prevent the respondent absconding to the extent that it considered it necessary for the respondent to satisfy the court on the balance of probabilities that bail was appropriate.

Furthermore, in *The People (Attorney General) v. Gilliland* [1985] IR 463 it was held that there was "*no reason for applying the absconding test any differently in extradition cases as compared with ordinary criminal cases*" and that "*in either case the State's duty must operate in a way that will not conflict with the fundamental right to personal liberty of a person who stands unconvicted of an offence under the law of the State."* This was confirmed in the context of EAW in *Minister for Justice, Equality and Law Reform v. Vojik (Unreported, High Court, ex tempore, Peart J, 28th February, 2007)* where Peart J. went to state that it would be "*grossly unfair to expect a prisoner awaiting extradition in a jail in a foreign country to be in a position to adduce evidence to rebut the likelihood of his absconding where the application for bail is made by a prisoner, it is not for the party resisting that application to put forward such evidence as will enable the court to hold that there is a probability that the prisoner will abscond if granted bail."*

[2] S. 22(1), Criminal Procedure Act 1967
[3] [1966] I.R. 501

Finally as noted by in *Ostrovskij* at p.646, that as the granting or refusal of bail is concerned it *"is certainly correct that a non-national must not be discriminated against on the ground that he is a non-national. But that does not mean that the Court must not have regard to the fact that the applicant's ties here are bound to be less than those of a national who has lived here and put down roots here….this is simply a reality to which the Court must have regard, and to take it into account is not to discriminate in any unfair way as between a national or a non-national."*

Note that as the High Court is not exercising criminal jurisdiction in the case of proceedings under the EAW Act 2003, s.2 of the Bail Act of 1997 has no application. Furthermore, Article 40.4.7 of the Constitution does not apply, therefore, as contended by Farrell and Hanrahan "*in theory at least, therefore, it should be easier for a respondent to obtain bail in proceedings under the 2003 Act than in domestic criminal proceedings*[4]*".*

It is further noted by Farrell and Hanrahan "*frequently the surrender of an individual will be sought in circumstances where that person has been convicted and possibly sentenced for an offence. Given that much of the domestic jurisprudence in relation to the entitlement to bail is rooted in the presumption of innocence it remains to be seen whether the courts will draw a distinction between those respondents who stand convicted and those who simply stand accused in the context of an application for bail*[5]*."*

As regards the surrender of a non-national to face trial in another member state s. 16(7) of the European Arrest Warrant Act 2003 appears to contemplate the making of an application to the High Court for a further remand of the respondent either in custody or on bail *"for such further period as is necessary to effect the surrender unless it considers it would be unjust or oppressive to do so."* As Farrell and Hanrahan point out, this section *would "on the face of it, seem to provide for the further remand of the respondent in order to give effect to an agreement for an extension of time under s.16 (5) (b).*"

In *Rimsa v, Governor of Cloverhill Prison* [2010] IESC 47 Murray C.J. held that "*any decision by agreement to delay the surrender of a requested person pursuant to judicial order beyond* [the ten day period under the section] *must, according to Article 23* [of the Framework Decision], *be made by the judicial authorities of the two states concerned and not by any administrative authority. By this means the Framework Decision ensures that any postponement of the date on which the surrender is due to take place on foot of a judicial order already made remains under judicial control. It also avoids any extension of a period of custody pending surrender being decided by the executive authorities as a form of administrative detention.*"

Latvia

Latvian Criminal procedure law prescribes the Security Measures (Criminal Procedure Law, Section 243). Basically all these Security Measures has been enforced. Rarely is

[4] Farrell and Hanrahan "The European Arrest Warrant in Ireland" (Clarius Press, 2011) at p.76.

[5] *Ibid.*

enforced a Security Measure which is prescribed in Criminal Procedure Law, in Section 243, part two, second point – minor placement in a social correction educational institution.

Romania

In order to ensure a proper functioning of the criminal trial or in order to prevent the case when the defendant would avoid appearing before the authorities or would avoid executing the punishment, the Romanian Criminal procedure code establishes two principal alternative preventive measures to the preventive arrest:

- The obligation not to leave the locality;
- The obligation not to leave the country.

Also, the objective of the preventive measures can be also achieved by means of temporary release under judicial control or on bail.

Yes, the measures are functional and used by courts. The selection of the measure to be taken is made by the judge, according to the purpose of the measure, the degree of social danger, the health, age, antecedents and other situations related to the person towards the measure is taken.

It's hard to conceive an EU instrument which would regulate in a unitary manner such alternative measures. Instead, in addition to the instruments already adopted, as the European supervision order and the Framework Decision regarding probation, it would be desirable to adopt a directive to establish minimum standards of criminal procedural law, including the aspect of these alternative measures.

Spain

The question is not appropriately structured for our domestic legislation. As provided in Article 502(2) of the LECRIM (Criminal Procedure Act), "*Pre-trial detention will only be adopted when it is objectively necessary, in accordance with the following articles, and when there are no lighter measures available for the right to freedom through which the same purposes as with pre-trial detention can be attained*".

As is evident, it is not that there are no alternatives to pre-trial detention in our rules of criminal procedure, but rather that pre-trial detention is an alternative measure and its application will be fitting when certain purposes cannot be attained with other non-custodial measures. As provided in Article 503, for pre-trial detention to be adopted, the crime attributed to the affected party must be penalised with a maximum sentence equal to or higher than two years or a lower custodial sentence, as long as said affected party has a criminal record. Furthermore, there must be sufficient reasons in the proceedings to believe that the affected party may be responsible for the crime (the mere existence of evidence of criminality is not enough for said intents and purposes) and the pre-trial detention must pursue one of the following goals:

(a) guaranteeing the affected party's attendance at the trial when there is confirmation of a rational risk of absconding;

(b) avoiding the hiding, alteration or destruction of the sources of evidence that are relevant to the trial, as long as there is specific and justified danger;

(c) preventing the accused from acting against the victim, especially when the victim is particularly vulnerable;

(d) preventing the accused from continuing to commit other crimes.

The above-mentioned article also considers the objective requirements that must be met and the constitutionally legitimate purpose the pre-trial detention must fulfil. However, it must also be noted that Article 502(2) defines pre-trial detention as an alternative that can be used only when the purpose being pursued cannot be attained with other measures. This consideration suggests that Spanish legislation does contain alternatives to pre-trial detention, as will be shown in detail hereinafter in the regulation on provisional release and other precautionary measures.

Article 529 of the LECRIM provides that, "*When pre-trial detention has not been ordered for the accused, the Judge or Court will order, in accordance with the provisions of Article 505, whether or not the accused is to provide bail in order to continue on provisional release*". As is shown, the affected party's provisional release involves cases in which a custodial sentence is not ordered, where a guarantee for this situation may or may not be necessary. Logically, the guarantee of release on bail implies a more restrictive regime for the individual, bearing in mind that if the affected party does not provide the bail, imprisonment will apply (Article 540 of the LECRIM). However, if provisional release is ordered, with or without bail, the interested party will be required to appear before the court hearing the case on the indicated dates and as often as he/she is required to appear, where the provisional release may be revoked if said obligation is not met.

As an additional guarantee for the risk of absconding, Article 530 of the LECRIM authorises the Judge or Court to order the retention of the interested party's passport, a measure that was introduced after the reform brought about by Organic Law 13/2003 of 24 October, even though said retention was being ordered before then.

Article 508 of the LECRIM provides for a form of pre-trial detention that could be referred to as mitigated, as follows: "*1. The Judge or Court may order the pre-trial detention of the accused at his/her home, with the necessary measures of surveillance when, due to illness, imprisonment involves a serious threat to his/her health. The Judge or Court may authorise the accused party to leave his/her home during the hours required for his/her illness to be treated, always under the necessary surveillance.*
2. In the cases in which the accused party is receiving drug detox or rehab treatment and imprisonment may frustrate the result of said treatment, pre-trial detention may be replaced by admission to an official centre or an organisation that is legally recognised for continuing the treatment, as long as the facts to which the proceedings refer are prior

to the commencement thereof. In this case, the accused may not leave the centre without authorisation from the Judge or Court ordering the measure".

This provision reveals the legislator's awareness of certain situations in which imprisonment may be particularly dangerous for the affected party's health or compromise the success of detox or rehab treatments. One possible objection would be the limitation to the scope of application, whereby it would be desirable for the mitigated custody to be extended to cases in which the purpose of pre-trial detention could be satisfied by staying at home or being admitted to a non-penitentiary centre, since it would reduce the overcrowding of prisons, which has evident undesirable effects.

The protection measures provided in Article 544(a) are of particular importance. They consist of the prohibition of abode in a certain place, which may range from an autonomous community to a city quarter, or the prohibition of travelling to certain places (as above). The application of these measures has been mediated by issues such as the affected party's health and his/her family or labour situation. As in the cases of provisional release, failure to comply with the prohibition that is ordered may give rise to a more severe measure, including pre-trial detention. Furthermore, the application of the aforementioned prohibitions is not always the case, but rather is reserved exclusively for cases as regards the crimes referred to in Article 57 of the Criminal Code, in other words, crimes against life, personal safety and other personal legal rights, as well as crimes against property and socio-economic order.

The measures provided in Article 554(b) are no less important. Their application is not provided as general, since they can only be ordered for the so-called victims of what is known as domestic violence, as long as there is well-reasoned evidence of the commission of a crime or an offence against the life, personal safety or moral integrity, sexual freedom or freedom or safety of relatives or similar as referred to in Article 153 of the Criminal Code. It is particularly interesting to note that the protection order can be adopted in any criminal proceedings (including proceedings for minor offences), which implies the introduction of a truly exceptional legal system.

In criminal proceedings, the protection order does not include additional precautionary measures, since, as established in section 6 of the aforementioned article, any of those provided in procedural legislation can be applied (including pre-trial detention), subject to the general requirements, content and validity. What is really new about the protection order is that it awards the victim a statute of total protection, including civil and criminal precautionary measures, and the recognition of rights to care and social protection.

Finally, it is also appropriate to mention that the Draft Bill on the Criminal Procedure Act systematically regulates the range of personal precautionary measures, which differ from pre-trial detention, in particular, the inclusion of electronic location means.

The question also refers to the effectiveness of alternatives to pre-trial detention. Obviously, imprisonment is the measure that best guarantees the accused party's compliance with criminal procedure. However, this axiom is not followed by our

procedural system since, as mentioned earlier, pre-trial detention is subject to the fulfilment of a number of requirements and to the attainment of certain purposes that cannot be achieved with other measures. Accordingly, a precautionary measure other than pre-trial detention will be adopted when the circumstances provided for the adoption of a custodial sentence are not met or, even though they are met, none of the cases of risk referred to in Article 503 apply.

Having said that, the effectiveness of the alternative measures cannot be put in doubt, in general terms, since the cases in which said measures are adopted are those in which imprisoning the accused party to prevent the risk of absconding, destroying or hiding evidence, harming the victim or committing other criminal acts is considered unnecessary. As provided in the Green Paper, pre-trial detention is an exceptional measure in the judicial systems of every Member State, which implies that it is adopted only in the specific cases under consideration, with the option for review throughout the proceedings and with a specific maximum term. Accordingly, the above-mentioned legislation must consider alternative measures to pre-trial detention, even though, according to the report of 18/08/2011 by the Human Rights Commissioner of the Council of Europe, almost 25% of the prison population of Europe are pre-trial detainees and, in some countries, this situation is ordered through the use of stereotyped formulas, without explaining the reasons for the adoption of such an exceptional measure.

Therefore, the States' assumption of the principles provided in Recommendation 2006/13 of the Committee of Ministers to the Member States on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse, especially with regard to the promotion of alternative measures to pre-trial detention whenever possible, constitutes an effective remedy for situations in which pre-trial detention is ordered excessively or applied incorrectly.

2. Post trial: What are the most important alternative measures to custody (such as community service or probation) in your legal system? Do they work? Could probation and other alternative measures to detention be promoted at European Union level? If yes, how?

Bulgaria

In the Bulgarian legal system the most important measures, alternative to effective custodial sentence, which lead to detention in custody of the convicted person, are:

- the application of “stay of enforcement” and “stay of execution” with a probation period under Art. 66 PPC.

This legal regime has traditionally a large application, when the proprietor has not been sentenced to imprisonment towards the moment of convicting the offence. This “stay of enforcement” burdens the statute of the person, but doesn’t lead directly to their isolation from the society or to making any other commitments and it comes down to a warning to abstain themselves from committing other criminal acts in the probation

period. In case where such acts have been committed the offender would serve separately the postponed punishment as well. Because of that special feature the effectiveness of the sanction is disputable. After 2005 that effectiveness may have been increased by the additional application of a measure of probation surveillance in the probation period, by which an actual influence on the convicted person is exercised.

- the enforcement of probation as a combination of measures for influence and control.

In that form, the probation is always an alternative to the imprisonment and includes a minimum of two measures, which shall be executed by a probation officer. The experience so far, indicates that the punishment fulfills its purpose effectively. It is largely applied – for 2009, probation have been imposed to more than half of the convicted persons in the Republic of Bulgaria.

As an alternative to the imprisonment, the probation in its two forms /as an independent sanction and as a form of surveillance in the probation period of the "stay of enforcement" or a pre-term release/ should be encouraged by the European Union. In the transposition of the Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, every Member State has the heavy task of offering a set of probation measures, which should cover the large scope under Art. 4 of the Framework Decision.

The Republic of Bulgaria has enough opportunities through individualizing and combining the 6 probation measures, laid down in our law to satisfy the requirements of the Framework Decision, without an amendment to the material law.

England and Wales

The most important alternatives comprise of community orders, financial orders, and periods of conditional discharge; community orders require the court to impose at least one of twelve conditions such as unpaid work, drugs rehabilitation requirements, treatment for a mental disorder, prohibited activity and supervision by the Probation Service.

The courts can also suspend prison sentences which must also carry one of the requirements prescribed for Community Orders. There is power to defer sentences to test out the viability of non custodial sentences.

Generally such orders are seen to work – but there has been an amount of research and statistics gathered by the government which show a significant reconviction rate after such non custodial sentences – which is said to indicate a level of failure of such sentences.

It must be said that there is a similar level of reconviction after custodial sentences too.

Ireland

The most effective alternatives to a custodial sentence in Ireland are as follows:

Community Service Orders

The Criminal Justice (Community Service) Act 1983 provides for the imposition of community service orders. A community service order is an order under which an

offender is obliged to complete between 40 and 240 hours of unpaid work under the supervision of a probation officer. Community service orders give judges a sentencing option, which marks the seriousness of the offence committed by the person, without placing them in prison.
Conditions to be met before a community service order can be made:-
The order may be made by any court, other than the Special Criminal Court, in respect of any offender over 16 years of age who has been convicted of an offence for which the appropriate sentence would otherwise be one of imprisonment.
Before imposing a community service order on a person, the court must first indicate what the appropriate term of imprisonment would be but for the making of such an order. The judge will indicate the number of hours of community service imposed, in lieu of the time of imprisonment e.g. 150 hours community service, in lieu of three months imprisonment.
The person must be suitable for community service. A probation and welfare report should be ordered by the judge in which the Probation and Welfare officer will set out, after having met with the person, whether he is suitable or not.
If the person fails to do the required community service they should be brought before the court, which can then, at its discretion, impose the sentence of imprisonment.
Community service cannot be combined with other penalties.
All hours of community service imposed should be completed within one year of making the order.
The offender must consent to the community service order.
Suitable community work must be available for the person to do.

Fines
Many statutory offences provide for the imposition of fines. Often statutes will provide for the imposition of fines and/or other punishment, usually a prison sentence. E.g. section 6, Criminal Justice (Public Order) Act 1994 provides for a fine of up to €635 and/or imprisonment for three months for provoking a breach of the peace. By contrast, under s.4 of the same statute, being intoxicated in a public place, attracts only a fine of up to €127.
Some statutes provide for unlimited fines e.g. s. 4 of the Non-Fatal Offences Against the Person Act 1997 provides for imprisonment and/or an unlimited fine for causing serious harm to another.
Where a statute makes no provision as to what sentence is to be imposed on conviction, the Criminal Law Act 1997 provides a residual power to impose a fine, on its own or in addition to other penalties.
When fines are imposed the judge will usually specify a period within which a fine must be paid and may order the fine be paid immediately or give the accused person a time period in which to pay the fine.
In the case of default, an accused can be sent to prison for a time and the maximum default periods are set out in legislation.

Curfews, Exclusion Orders, Restriction on Movement Orders
From time to time, judges have used these methods as an alternative to detention. Section 3 of the Criminal Justice (Public Order) Act 2003 provides that the District Court, on

conviction of a person under ss.4, 5, 6, 7, 8 or 9 of the Criminal Justice (Public Order) Act 1994, may by order prohibit the person from entering or being in the vicinity of a specified catering premises between such times and during such periods as the court may specify. Any period in an exclusion order shall not exceed 12 months which is to commence on the date of release from custody if a custodial sentence is imposed or, in any other case, from the date of the order.

Section 101 of the Criminal Justice Act 2006 provides for restriction on movement orders. Under this regime, a court can make a restriction of movement order, as an alternative to a 3 month, or more, sentence of imprisonment. Such orders can be made only in relation to specified offences under the Criminal Justice (Public Order) Act 1994 and the Non-Fatal Offences Against the Person Act 1997 which are set out in Schedule 3 of the Act of 2006.

A restriction on movement order should only be made where a judge considers that a three month sentence of imprisonment, or more, would be appropriate. The restriction cannot be for longer than 6 months. The order can require that the offender be in a specified place at specified times, or that he stay way from specified places at specified times.

Probation Orders

This involves dismissing a charge or discharging an offender conditionally on entering into a recognisance under the Probation of Offenders Act 1907. This is a common sentencing option in the District Court. It provides the judge with a mechanism of dealing with first time offenders and persons unlikely to be in trouble again by, in effect, giving them a type of official warning, or reprimand, without imposing a punitive sentence on them.

A probation order discharges an offender on condition that he enters into a recognisance to be of good behaviour and to come before the court, for sentence, when called on to do so within any time, not exceeding three years. The court may also require sureties. Such a conditional discharge order places the offender on probation but allows him to escape without penalty if he sticks to the conditions imposed. If he fails to do so, he will be brought before the court which will then have the entire spectrum of sentencing options at its disposal.

They essentially amount to an undertaking to the court to behave and abide by conditions – to be of good behaviour, to come before the court when called upon, residing at a particular place, abstaining from intoxicants, supervision, attending counselling, attending drug treatment programmes, etc.

Binding over

Section 54 of the Courts (Supplemental Provisions) Act 1961 sets out in statutory form a long standing common law power to bind a person over to keep the peace and/or be of good behaviour. A person must enter a recognisance to be bound over, for a period of time in a stated sum of money. If a person gets into trouble within the period stated in the order, they must pay that sum or face imprisonment. This sentencing option has been described as being akin to a suspended fine.

The Poor Box

This is a method used in instances of less serious offences in the District Court. A person may be required with their agreement to pay a sum of money into the Court Poor Box. A District Court Judge can make an order entering a conviction against the person or he can simply strike out the charge. This sentencing option is most usually used in conjunction with s.1(1) of the Probation of Offenders Act 1907. It is only appropriate for minor offences such as parking offences, minor durgs offenes, offences involving animals or littering. It is only likely to be considered for first time offenders who have pleaded guilty or where there are special circumstances explaining the offending behaviour.

Forfeiture and Confiscation

Forfeiture, for example, is provided for under drugs legislation, and evidence would have to be adduced connecting the sum or thing to be forfeited with the particular substantive offence. General forfeiture powers are also contained in s.61 of the Criminal Justice Act 1994 giving the courts the power to make orders forfeiting property on conviction if it had been used for the purpose of committing or facilitating the offence or was intended by the offender to be used for that purpose. Regard must be had to the value of the property and the likely financial and other effect on the owner. The forfeiture order should bear relation to the seriousness of the crime.

Compensation

The Criminal Justice Act 1993 gives the courts the power, upon conviction, to order a person to pay compensation – this may be in addition to or in lieu of other punishment, such as a fine.

Disqualification

Disqualification orders are a finding that a person is unfit to perform a function from which they are disqualified – e.g. drive a car, or be a company director. This is most commonly employed in the case of road traffic offences.

Endorsements and Penalty Points

This pertains to road traffic offences and relates to the system of endorsements (an entry on a person's licence record of either a court order of disqualification or of penalty points) and the penalty points system introduced in 2002 and determines whether a person pays a fixed penalty rather than going to court. On accumulation of twelve penalty points within a three year period one is disqualified from driving for six months.

Latvia

Section 36 of The Criminal Law prescribes the kinds of punishment. From this Section follows that the punishments concerned deprivation of liberty are not the only kind of punishment. This Section also prescribes that in the Republic of Latvia are punishments which are not connected with deprivation of liberty. Detailed information on this issue can provide State Probation Service of Republic of Latvia.

Romania

The most important alternative measures are:

- The sanction of providing an activity for the use of community is a contravention and is established alternatively with the fine.
- The conditional suspension of punishment's execution, which may be disposed if the following conditions are met:

a) the applied sanction is imprisonment for at most 3 years or fine;
b) the offender wasn't previously convicted for imprisonment for more than 6 months;
c) it is ascertained that the goal of the punishment can be reached even without its execution.
The sanction of executing the punishment under supervision is an institution aimed at the straightening and social reintegration of persons sentenced to imprisonment, whose sentence was pardoned by law, as well as juvenile offenders for which the educative measure of integration in a social rehabilitation center was removed by law.
The measure is instituted if the following conditions are met:
a) the applied sanction is imprisonment up to 4 years;
b) the offender was not prior convicted to imprisonment for more than one year;
c) it is ascertained that, given the convicted person and its conduct after he/she committed the offence, the sentence represents a warning and, even without the execution of the punishment, the convicted person will not commit any other offences.

Yes, the measures are functional and used by courts.
Please see the answer to question nr. 2.

Spain

Article 2 of Framework Decision 947/2008 defines the following figures:
"[…] "suspended sentence" shall mean a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;
3. "conditional sentence" shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measures are imposed instead of a custodial sentence or measure involving deprivation of liberty. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;
4. "alternative sanction" shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction;
5. "probation decision" shall mean a judgment or a final decision of a competent authority of the issuing State taken on the basis of such judgment:
(a) granting a conditional release, or
(b) imposing probation measures;

6. "conditional release" shall mean a final decision of a competent authority or stemming from the national law on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measures;
7. "probation measures" shall mean obligations and instructions imposed by a competent authority on a natural person, in accordance with the national law of the issuing State, in connection with a suspended sentence, a conditional sentence or a conditional release […]".

The Spanish Criminal Code includes the figure of the suspension of the execution in Articles 80 to 87. This figure implies that the execution of the sentence handed down is suspended for a period of time and if, after said period has ended, the convicted offender has not committed a crime and has complied with the established rules of conduct, the sentence will be definitively stayed. Its general application is provided for short-term sentences (maximum of two years) when the criminal has no criminal records and has satisfied, where possible, his/her civil liabilities, although there is a specific legal system in place for those who have committed crimes as a result of their drug addiction.

Article 88 regulates the substitution of custodial sentences with a fine, community work or permanent location. In general, alternative sanctions are provided when the custodial sentence does not exceed one year (six months if it is to be substituted by permanent location) and when certain circumstances apply, as long as the sentence that is to be substituted does not exceed two years.

The Criminal Code also regulates the figure of probation, not as provided in Article 2(7) of the aforementioned Framework Decision, but rather as a non-custodial security measure whose execution applies after the sentence (with regard to some crimes) or the non-custodial security measure has been completed, as provided in Articles 105 and 106 of the Criminal Code.

Finally, Articles 90 to 93 provide for conditional release, which essentially implies that the last part of the custodial sentence is completed on release. The award of said benefit can involve the application of a number of rules of conduct whose breach will lead to a return to prison (Article 93(1)).

In short, our substantive criminal legislation does provide alternative sanctions substituting short custodial sentences. The answer to whether or not they are effective must be yes, since the aforementioned substitution contributes to avoiding the overcrowding of prisons and, at the same time, allows for the fulfilment of the pursued purpose through the execution of non-custodial sentences, without preventing the affected party from having the benefit of his/her freedom.

Obviously, any measure that fosters alternative measures to custodial sentences must be considered positive and desirable when these are short-terms sentences. In these cases, it is not easy for the State to achieve the effective rehabilitation of the convicted offender through imprisonment, which is why, when a short-term custodial sentence is executed,

priority is placed on the purpose of retribution and special prevention. However, in certain cases (not in all cases), through measures such as the conditional suspension of the execution or the substitution of the custodial sentence, a similar effectiveness is achieved without affecting the primary freedom of the convicted offender. Accordingly, it would be desirable to put in place minimum rules in order to mark out the cases and circumstances in which said measures should apply.

3. How do you think that detention conditions may have an effect on the proper operation of the EAW? And what about the operation of the Transfer of Prisoners Framework Decision ?

Bulgaria

We agree with the conclusion, contained in the Green Paper that the achieving of compatible conditions for execution of the imprisonment in the EU Member States is of crucial importance for improving the mutual thrust. This is a prerequisite for the successful use of already created instruments for international legal cooperation. This applies in regard to already settled instruments /ex. EAW/, as well as in regard to the future instruments which will become accessible after the transposition of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty. The problems are significant and they come down to the following:

1/ Material and infrastructure conditions for execution of the deprivation of liberty. Prison overcrowding.

The intensive exchange of persons, who has committed crimes or of persons convicted to deprivation of liberty under the conditions of Council Framework Decision 2008/909/JHA of 27 November 2008, outline serious challenges in front of the Bulgarian penitentiary system.

To the present moment according to EUROSTAT data /see the table annexed to the Green Paper/, the Republic of Bulgaria is on the top of the list in occupancy level by 155.6% according to the European standard. At the same time our quota of non-national prisoners is among the lowest – 1.9 %. The comparison with some of the EU States, with which we have the most intensive legal exchange, shows that they have much higher percentage of non-national prisoners in their prisons /Germany-26.3%, Belgium 41.1%, Austria-45.8%, Greece – 43.9%, Italy-36.9%, Netherlands -27.7%/. This means, that in intensive use of the opportunities for return of convicted persons for serving the sentence in their own country, Bulgaria will take additional burden of non-national prisoners upon its penitentiary system, without being able to “get free of” such persons in its establishments.

The increasing difference in the material and daily conditions, in which the deprivation of liberty is executed, will raise questions for eventual breach of Art. 5 of ECHRFF and will result in undermining the principle of mutual thrust between the EU Member States. The effectiveness of the application of the EAW and Council Framework Decision 2008/909/JHA of 27 November 2008 shall be questioned.

The solving of the issue has both political and financial dimensions and is out of the powers of the Prosecutor's Office. A commitment of the executive branch and its intentions for investments in the penitentiary sector is needed.

2/ Legal regulation of the execution of the deprivation of liberty.

The differences between the Member States regarding the legal conditions for execution of penalties, the existence of conditional pre-term release, the changes in the regime and etc. are significant and represent a negative factor in the use of mutual recognition instruments and transfer of convicted persons. The significant problems from our point of view are:

- the prerequisites for release on licence.

According to the Bulgarian law that kind of release shall be granted upon a discretion decision of the court and the percentage of the persons released on licence is relatively low, compared to the European practice. A condition for that kind of release is the effective serving of a certain time of the sentence-as a minimum half of the time, and for those sentenced for habitual offence (repetitive offence)- two thirds, but the rest of the sentence should not exceed 3 years. In other legal systems the conditions for release on licence are lighter and the application of this institute is more popular. This represents a risk when transferring a prisoner to the Republic of Bulgaria that he should be detained for a longer period of time than if he would serve the sentence in the sending country.

That may substantiate a breach of the ECHRFF because of putting the prisoner in unfavorable conditions.

Standardizing the conditions and lowering the risks may be reached by making commitments for compulsory actual execution of certain part of the sentence, imposed by the country that convicted the person, as a prerequisite for putting the question for their release on licence.

- determining the initial regime of serving the sentence.

When accepting a transferred convict for serving a sentence in the Republic of Bulgaria an initial regime of serving the sentence shall be determined under the rules of the Law on Execution of Penal Sanctions and Detention. It is often more unfavorable than the conditions of serving the sentence in the country that convicted the offender and no account is taken about the time spent in foreign prison.

- applying a reduction of the sentence as a result of work done.

In our country that question is settled by the imperative norm of Art. 41, paragraph 3 of the Penal Code, which must not be referred to periods when the convicted person has worked in a foreign prison – if the legal system in that country is not acquainted with that kind of reduction. If such a rule on reduction exists also in the country that has convicted the offender and they have worked there, the reduction shall be done according to the foreign legislation. Sometimes the information on the amount of the work done is missing when accepting the transfer and it's difficult to find procedural grounds for a new adjudgment on that matter. The Bulgarian case-law on that matter from Chapter XXXVI PCC, before the instrument of Council

Framework Decision 2008/909/JHA of 27 November 2008 started to operate was contradictory.

England and Wales

There is significant concern about detention conditions in other countries.
This is not just a concern about the standards in such custodial institutions but also the length of the periods of detention before trial and conviction or acquittal.
There is no doubt that better prison and detention conditions would have a beneficial impact on the operation of EAW and Transfers of prisoners.

Ireland

In the case of bail pending surrender under a European arrest warrant, a person in respect of whom an order of surrender is made under s. 16(1) of the European Arrest Warrant Act 2003 may be granted bail pending his surrender where the Court deems it appropriate. As has been stated recently by the Irish Supreme Court in *D.P.P. v. Rettinger* [2010] 3 I.R. 783, in the case of the surrender of an accused pursuant to an E.A.W, the burden rested on the accused to establish evidence capable of proving that there were reasonable or substantial grounds for believing that, if the accused were returned to the requesting country, he would be exposed to a real risk of being subjected to treatment contrary to Article 3 of the European Convention on Human Rights. (*Saadi v. Italy (App. No. 37201/06) (2009) 49 E.H.R.R. 30 and Soering v. United Kingdom (App. No. 14038/88) (1989) 11 E.H.R.R. 439* followed).

The Irish Supreme Court held that the test was whether there was a real risk of treatment prohibited by Article 3 of the European Convention. The mere possibility of ill-treatment was not sufficient. The Irish Court also held that the appropriate time for considering conditions in the requesting state was the time of the hearing in the High Court. On appeal to the Supreme Court, an application could be made to admit additional evidence if necessary.
It is clear that for mutual trust and confidence to exist between member states and for the execution of the EAW, conditions must be put in place by the issuing state to ensure that they can proceed with surrender of the individual concerned in a timely manner and in conformity with Article 5 ECHR, and the onus should be on the issuing state should to allay any lingering concerns that judges considering the EAW application might have in this regard.

Netherlands

<u>Role of detention conditions in issuing state in Dutch procedure</u>
Detention conditions in the issuing state may play a role in the assessment of whether the surrender would constitute a breach of a person's fundamental rights arising from unacceptable detention conditions. The court established that, even though it is at first a responsibility of the issuing state to guarantee that it lives up to its obligations under the ECHR, a person should not be surrendered if there are *substantial grounds* to

believe that there would be a *real risk* for the surrendered person to be subjected to a treatment contrary to Article 3 ECHR (or Article 4 of the EU Charter).[6]

To substantiate their claim requested persons may provide the court with different types of information, such as general information about the situation in the issuing Member State. However, a mere possibility of improper treatment is not enough. Therefore, the information should substantiate that the *individual* concerned is running a *real risk* to be treated in a way contrary to Article 3 ECHR. A sufficiently substantiated claim should lead to further investigation by the court.
So far, there has not been an individual case in which the court accepted that the execution of the EAW would constitute a breach of Article 3 ECHR (or Article 4 Charter). It concluded either that the alleged treatment was not severe enough to fall under the protection of these provisions or that the information was not specific enough to substantiate a real risk for the individual concerned.

Accordingly, in the Dutch procedure the overall detention conditions in the issuing state may have an effect on the assessment of an individual incoming EAW, as general information on detention circumstances may instigate complaints on flagrant violations of Article 3 ECHR and – if the risk for ill-treatment of the individual is well enough substantiated – create an obligation for the court to assess the situation in the issuing state.

Conclusion
Additional guarantees regarding detention conditions may diminish the number of complaints This would enhance the smooth and rapid functioning of the EAW procedure.
Furthermore, minimum standards on detention conditions and a mechanism to supervise their implementation would most likely strengthen the *factual* mutual trust of Dutch judges in the legal system of other Member States. Whether this would lead to more surrenders remains to be seen, since – as mentioned above – detention conditions have so far not been a reason to refuse the surrender of a person to an EU Member State.

Latvia

This issue is in competence of the Office of the Prosecutor General - Department of Operational analysis and Management - division of International Cooperation. A court only assesses the decision on extradition of the person.

Lithuania

Detention conditions have minimal value and minor effect on the proper operation of the EAW.

[6] Criteria derived from the jurisprudence of the ECtHR, e.g. *Saadi v. Italy* (28 February 2008, Application No. 37201/06. Rechtbank Amsterdam, 22 October 2010, 13/706685-10, http://www.rechtspraak.nl/ljn.asp?ljn= BO1448.

Romania

a. The detention conditions could affect the implementation of the framework-decision on the European arrest warrant only if they would not allow the effective transfer of the sought person. In practice, we are not aware of the existence of such cases. We believe that all the member states ensure that the minimum standards that allow the unconditional application of the Framework Decision on European arrest warrant. Romania is applying this Framework Decision (transposed in the Romanian law by Title III of Law no. 302/2004 on international judicial cooperation in criminal matters, republished) from the 1st of January 2007, and the appreciation in the Fourth Round of mutual evaluation on the implementation of EAW was a positive one.

b. The detention conditions are closely related to the implementation of the Framework Decision on the transfer of sentenced persons. Romania did not transpose this decision yet, but the Ministry of Justice is currently working on a draft law amending and supplementing Law no. 302/2004, in order to transpose the Framework Decision.

Spain

As provided in the Green Paper, the detention conditions can affect the correct operation of the EAW. Issues such as the overcrowding of prisons constitute a problem of capital importance that can have a negative effect on trust between States, especially when the information provided in the Annexes shows a situation that is by no means optimistic. Furthermore, in relation to pre-trial detention, particular importance must be placed on the extent to which the States comply with Recommendation 2006/13 of the Committee of Ministers to the Member States, since the more the principles referred to in the preamble of the aforementioned Recommendation are observed in the issuing State, the more the trust in the executing state will be strengthened.

To a good extent, the solution to the problem of mutual mistrust includes assuming the principles provided in European Parliament recommendation to the Council on the quality of criminal justice and the harmonisation of criminal law in the Member States (2005/2003 (INI)), which includes the definition of a common reference framework for all the Member States that guarantees coherent and objective evaluation and the consolidation of reciprocal trust through a mutual evaluation mechanism based on the aforementioned framework of the Quality Charter.

4. There is an obligation to release an accused person unless there are overriding reasons for keeping them in custody. How is this principle applied in your legal system?

Bulgaria

Ignoring the legally defined maximum time limits for pre-trial detention /Art. 63, paragraph 4 PPC/ which will be mentioned in the answer of the following question, in the

absence of prerequisites for continuing a pre-trial detention in custody or house arrest which has already started, the person may be released:

1/ by a prosecutor's decree in the pre-trial proceedings, when the danger that the accused would hide themselves or commit another crime drops off – Art. 63, paragraph 6 PPC.

2/ by an order of the Court in exercising *ex officio* control on the detention in the pre-trial phase of the proceedings – Art. 65 PPC.

3/ by an order of the Court in the trial phase of the proceedings, when the question for the amendment of the surveillance measure can be put at any time- Art.270 PPC.

In all the cases the adjudgment comprises of an appraisal of the superior decision making body on whether the grounds for detention had dropped off. If the maximum time period for detention in the pre-trial phase has not been exceeded there are no other compulsory prerequisites for releasing the detainee. There is no obligation for the court to check periodically and *ex officio* whether there are prerequisites for continuing the detention in the pre-trial phase. The Court performs a check only if approached by a request for amendment of the taken surveillance measure "detention in custody" or by an appeal against the refusal to amend this measure. It should be pointed out that the practice shows that those appeals are abused. Repeatedly, especially in complicated pre-trial proceedings with several accused persons, the detention in custody is challenged separately for each of them and in this way for considerate time periods the accused persons are retained as well as their lawyers, the pre-trial proceeding and the investigation is actually blocked.

Denmark

The matter of question 4 is regulated in the Danish Administration of Justice Act § 762, section 2.

England and Wales

The Bail Act 1976 gives a general right to an accused person right up to sentence to have bail (save in exceptional cases of a second homicide or rape). Bail can only be refused by the court in certain set out exceptions such as a substantial grounds for the court to believe that the accused would fail to surrender to custody (at a subsequent hearing), commit a further offence or interfere with witnesses or obstruct the course of justice or for his own protection or he is already in custody in respect of another matter.

Ireland

See Q1.

Latvia

An Section 271 till 277 of Criminal Procedure Law prescribes the legal basis, procedure and terms of the Security Measure – detention.

Romania

As stated in the Criminal procedure code, in the Romanian judiciary, when the preventive measure was taken in violation of the law or when there is no reason that

could justify a preventive measure, the measure should be revoked ex officio or upon request, ordering the release of the defendant.

Also, when the preventive measure was taken during the prosecution, by the court or by the prosecutor, the criminal prosecution body has the obligation to inform the prosecutor with regard to the change or cease of the grounds which motivated taking the preventive measure.

When the preventive measure was taken, during prosecution, by the prosecutor or by the court, the prosecutor, if he considers that the information received by the criminal prosecution body justifies the replacement or dismissal of the measure, he will order this, or, as the case may be, will inform the court.

If, on the basis of medical document, it appears that the person which is on a preventive arrest suffers from a disease that can not be treated in the medical network of the National Penitentiaries Administration, the administration of the prison orders the treatment under permanent guard in the medical network of the Ministry of Public Health. The reasons for taking such measures will be communicated as soon as possible to the prosecutor during prosecution or to the court during the trial.

Spain

Spanish criminal procedure clearly provides the obligation to release an individual who is in pre-trial detention unless there are sound reasons for him/her to continue in said situation. This is confirmed by the provisions of Article 504(1) of the LECRIM, which provide that pre-trial detention must last the time required to attain any of the purposes provided in the foregoing article and while the reasons that led to the pre-trial detention continue. Consequently, whenever the reasons that led to the adoption of the measure disappear or whenever measures that do not involve the deprivation of liberty are possible, the pre-trial detention must be ended.

In practice, after the passing of time, pre-trial detention is usually replaced by operation of law or at the request of the interested party, either because the risk of absconding is less acute or because the possibilities of hiding or destroying sources of evidence disappear, where it is less probable for the personal situation of the affected party to change when the crime is particularly serious, there is a risk of further criminal acts or danger for the victim. Furthermore, our procedural law allows for the individual in pre-trial detention to file an appeal and request a review of said situation (Article 507 of the LECRIM).

Regardless of the foregoing, as provided in Article 504 of the LECRIM, the length of pre-trial detention is subject to the following:

"*Pre-trial detention will continue for the time required to fulfil the purposes provided in the foregoing article and while the reasons that led to its adoption continue.*

2. When the provisional detention has been ordered by virtue of paragraph (a) of number 3 of section 1 or section 2 of the foregoing article, it may not exceed the term of one year if the crime led to a custodial sentence for a term equal to or less than three years or two years if the custodial sentence for the crime is greater than three years.

2. When the pre-trial detention has been ordered by virtue of paragraph (a) or (c) of section 1(3) or section 2 of the foregoing article, art.503.1 EDL 1882/1 art.503.2 EDL 1882/1, it may not exceed the term of one year if the crime led to a

custodial sentence for a term equal to or less than three years or two years if the custodial sentence for the crime is greater than three years. However, when there are circumstances that make it impossible to hear the case in said terms, the Judge or Court may, in the terms provided in Article 505, hand down an order for one single extension of up to two years if the crime is punished with a custodial sentence of more than three years, or up to six months if the crime is punished with a sentence equal to or less than three years. See arts. 35 and following CP▼ art.35 EDL 1995/16398 art.36 EDL 1995/16398, art.37 EDL 1995/16398 and art.38 EDL 1995/16398.
If the accused is convicted, the pre-trial detention may be extended to the limit of half the term finally handed down in the sentence when it has been appealed.
3. When the pre-trial detention is agreed by virtue of section 1(3)(b) of the foregoing article, it may not exceed a term of six months.
Notwithstanding the foregoing, when an order for solitary confinement or the sub judice rule has been handed down, if the solitary confinement or sub judice rule is removed before the term provided in the foregoing paragraph, the Judge or Court must give reasons for continuing the pre-trial detention. See arts. 301, 509 and 510 ▼ art.301 EDL 1882/1 art.509 EDL 1882/1 and art.510 EDL 1882/1 of this Law.
4. Release as a result of the completion of the maximum terms for pre-trial detention will not prevent the adoption thereof if the accused, without legitimate reason, fails to appear when summonsed by the Judge or Court.
5. In order to calculate the terms provided in this article, consideration will be given to the time the accused has been in custody or in pre-trial detention for the same reason.
However, the calculation will not include the time in which the case is delayed for reasons not attributable to the Justice Administration.
6. When the ordered measure of pre-trial detention exceeds two thirds of the maximum term, the Judge or Court hearing the case and the public prosecutor, respectively, will inform the President of the governing chamber of the court and the corresponding Head Prosecutor of the Court so that the necessary measures are adopted to speed up the actions as far as possible. For said intents and purposes, the proceedings will be given priority over all the others".

Finally, our legislation implicitly allows the individual in pre-trial detention to file a petition for the review of said measure, bearing in mind that Article 539 of the LECRIM states that if the Judge or Court understands that it is fitting to release the individual or amend the pre-trial detention in more favourable terms, it may issue the corresponding order, at any time, by operation of law and without the need for a petition from whatsoever party. The Draft Bill of the Criminal Procedure Act expressly provides that any legitimated party may, at any stage in the proceedings, request the modification or removal of precautionary measures (Article 219(2)). However, although said Draft Bill provides that the body that ordered the measure will establish the control conditions for maintaining said measure (Article 219), it does not specifically provide the obligation for periodical review in accordance with the terms provided in section 17(1) of Recommendation 13/2006.

The foregoing observation leads to a reflection on section 17(2) of said Recommendation, since it would be appropriate for the term of periodical review to apply despite recognition of the affected party's right to file a petition for release at any time.

5. Different practices between Member States in relation to rules on (a) statutory maximum length of pre-trial detention and (b) regularity of review of pre-trial detention may constitute an obstacle to mutual confidence. What is your view? What is the best way to reduce pre-trial detention?

Bulgaria

In the pre-trial phase of the proceedings the detention of an accused person may last for up to one year, if they are accused in committing an intentional crime, punishable with a deprivation of liberty of more than 5 years. If the accusation is for intentional crime, punishable with a deprivation of liberty of not less than 15 years or other serious penalty / life sentence and life sentence without parole/ the detention may last for up to 2 years in the pre-trial phase of the proceedings. In all other cases the maximum term of the detention is up to 2 months.

With the expiry of the relevant term, if the case was not brought to court, the prosecutor is obliged to discharge the person.

A maximum length of the detention in the trial phase is not provided and when adjudicating on the surveillance measure the court is lead by its judgment on the relativity of the measure and reasonable time limit for its application.

The adoption of compatible rules for application of that most serious form of enforcement will lead to its limitation and will facilitate the mutual thrust between the legal systems and the use of the instruments of the EU. An *ex officio* control upon the measure in every detention for more than 3 months can be provided as a step towards the creation of such compatible rules and guarantees against the excessive length of the pre-trial detention. That control shall not be influenced by the opinion and the desire of the detainee. The need for the person to remain in custody should be assessed according to the intensity of the conducted preparatory inquiries related to the offender and the progress of the investigation.

Such a rule was not adopted by the Bulgarian PPC although a recommendation was made by the Council of Europe.

England and Wales

The different practices do form an obstacle to mutual confidence.

The best way to reduce pre trial detention is to improve the criminal justice system at all levels, including improving the number of courts in operation, funding sufficiently the police, prosecution services and the courts to manage the cases waiting for trial or other disposal.

Ireland

There is no doubt that pre-trial detention periods differ between Member States of the European Union and the differences in approach to pre-trial detention in common and civil law countries, as well as between the lengths stipulated in the penal codes of civil law jurisdictions can act as a barrier to cooperation in this regard.

Nevertheless, it is asserted that as member states are subject to the common area of freedom, justice and security and are subject to the jurisprudence of the European Court of Human Rights as members of the Council of Europe, the safeguards provided by strict adherence to Article 5 ECHR, as well as Articles 47 and 48 of the Charter of Fundamental Rights should provide a means of ensuring that pre-trial detention is proportionate and only imposed where inherently necessary.

In Ireland, conditions imposed in the granting of bail, such as the surrender of a passport, requiring an individual to "sign on" daily in their local Garda (police) station, enrolment in addiction treatment programmes pending trial, curfews and surveillance orders might avoid the necessity to keep foreign nationals in custody pending trial or surrender, reducing their periods of incarceration. Such measures could be adopted in other jurisdictions or in a common European Framework.

Whilst the Framework Decision on the European Arrest Warrant has strict conditions for remand pending surrender, such periods can be easily extended, for example where a stay has been placed on their surrender pending an appeal before the Irish Supreme Court. In such circumstances reviews of pre-trial detention, perhaps via some form of case management mechanism, might ensure adherence to the strict deadlines outlined in the Framework Decision. An individual remanded in custody pending their extradition could be automatically brought before the courts after a certain number of days, in order for the judge to verify the status of the individual's surrender to their home country. The judge could encourage those acting on behalf of both sides to resolve any residual issues delaying this process and could have the power to impose financial penalties on either party in the case of delays or a failure to take the necessary steps for the individual's surrender.

Latvia

This issue is in the competence of the Ministry of Justice – Division of Criminal punishment enforcement policy.

Romania

We agree with the statement above. To remove this obstacle, we support the adoption of directives of the Parliament and of the Council according to art. 82 (2) and art. 82 (3) of the Treaty on the European Union, which establishes the minimum standards. The proportionality should also be considered.
Another way to reduce the pre-trial detention is to shorten the judicial procedures.

Spain

The Green Paper itself considers that the two circumstances mentioned in the question can breakdown mutual trust between the Member States. The loss of trust leads directly to a lower level of effectiveness of the cooperation instruments of reference, therefore any measure that helps dispel the mistrust between States will lead to an improved implementation of the corresponding collaboration mechanisms.

A question on the best way to reduce pre-trial detention is posed. To answer said question, consideration must be given to its exceptional character, but also to the instrumental character by which it is characterised. Accordingly, the absence of a maximum limit or the setting of excessively long terms must be valued negatively in all cases. However, beyond these two cases, trying to reduce terms at all costs can also have a negative effect on the instrumental side of the measure, since the processing of the proceedings is occasionally an arduous and difficult task and, in said cases, an excessive reduction of the maximum term of pre-trial detention can frustrate the purposes pursued by said measure. Therefore, the most appropriate solution includes assuming the guidelines provided in the above-mentioned Recommendation 13/2006 of the Committee of Ministers, since, besides strengthening the principle of exceptionality, the guarantees provided in said recommendation would strengthen the mutual trust that should exist between the States.

6. Courts can issue an EAW to ensure the return of someone wanted for trial who has been released and allowed to return to his home State instead of placing him in pre-trial detention. Is this possibility already used by judges, and if so, how?

Bulgaria

On the matter of application and effectiveness of the EAW, issued by a court in relation to accused persons, who deviated from criminal proceedings, the Prosecutor's Office doesn't have any statistics and cannot give a comment.

Our general observation is that much bigger number of EAW is issued against convicted persons, in relation to those issued against accused and defendants. The initiative in most of the cases comes from the prosecutors, charged with the execution of the penalties. The data of the Supreme Prosecutor's Office of Cassation about issued EAW against persons convicted *in absentia*, where relative guarantees are declared, confirm the above-stated conclusion. The courts in the country are rather passive about the use of EAW.

England and Wales

There is nothing to prevent someone who is subject to an EAW from being given bail on conditions, although is must be very likely that a court may fear that the accused will not return voluntarily for trial and/or sentence.

Ireland

In Ireland, following the ruling of the Supreme Court in *Butenas v. Governor of Cloverhill Prison* [2008] 4 I.R. 189, where the Supreme Court refused the application for release under Article 40.4 of the Constitution and held that the applicant was entitled to apply to the High Court for bail pending his surrender, it is now clear that a person in respect of whom an order for surrender has been made under s. 16(1) of the European Arrest Warrant may be granted bail pending his surrender where the Court deems it appropriate.

As suggested by Farrell and Hanrahan, it seems likely that the intention of Irish Parliament in implementing the Framework Decision was that all requested persons in respect of whom an order for surrender had been made should be kept in custody pending their surrender. They further note that there is a significant procedural lacuna in relation to the respondent who is granted bail but fails to make himself available to the Gardaí for the purpose of being transported out of the State[7].
See also Q3 above.

Lithuania

No, this possibility have never been used by judges of Lithuania.

Netherlands

General
In the Netherlands a suspect may be held in pre-trail detention to assure their attendance at the trial or the effectuation of the foreseen sentence[8], if the following demands are met:

1. the allegedly committed crime belongs to the categories for which pre-trial detention is permitted;
2. serious indications ('ernstige bezwaren') exist to believe that the suspect committed the crime;
3. grounds exist for the necessity of detention.

Do Dutch authorities issue EAWs to assure the attendance of the wanted person at the trial?
In the Netherlands suspect are not obliged to attend their trial, unless their presence is ordered by the court (and this authority is used only occasionally). Even when suspects are held in custody, they may waive their right to attend trial and not appear in court. This also has a reflection on the use of pre-trial detention; it is our impression that pre-trial detention is not often used purely to assure the presence of the suspect at the trial. We have no knowledge of whether the EAW is used by the Public Prosecutor's Office for this matter, but we would find it quite unlikely.

Are EAWs issued instead of pre-trial detention?
To establish the grounds for the necessity of the pre-trial detention, the judge may consider if there is a serious risk that the suspect will abscond. This assessment should be based on the concrete and individual circumstances of the person. The lack of an officially registered address and/or a permanent place of residence may not be the sole reason to assume this risk, but definitely plays a key role in the assessment. The majority of the courts seem to value a permanent and/or registered address in another EU member state (hereafter: EU-address) as such an address in The Netherlands.[9] One of the

[7] Farrell and Hanrahan "The European Arrest Warrant in Ireland" (Clarius Press, 2011) at p.114.
[8] Article 67a Sv, Melai/Groenhuijsen e.a., Wetboek van Strafvordering, Gevallen en gronden bij: Wetboek van Strafvordering, Artikel 67a
[9] See e.g. Rb Amsterdam, 23 April 2009, LJN: BJ4857. We also received reactions from four courts and one the Court of Appeal.

respondents remarked that the experiences with the functioning of the EAW system is definitely one of the underlying reasons for leniency in this context.
It should also be remarked however, that it was also brought forward that the liability of the stated EU-address is an issue to be taken into consideration. One of the respondents answered that the EU-address should be officially confirmed by authorities of the MS of residency. This means that the general rule may be of limited practical importance in an individual case, as – to our knowledge – this information is not always exchanged fast and easily. We therefore kindly suggest that the European Commission may research the desirability to work on the practical / alleged difficulties to verify the factual EU-address of a non-resident suspect.

Observations concerning incoming EAWs

It is observed that wanted persons contesting an incoming EAW before the court, sometimes state that the EAW is only issued to assure their attendance at the trial. Often persons add that they would have voluntarily appeared at trial if they were requested to do so. So far, the court has not been in the position to verify any of these statements. Furthermore, the court established that it may only in exceptional circumstances conclude that the issuance of an incoming EAW is disproportional. So far, there has not been a case in which the court reached that conclusion.

However, to prevent the disproportionate use of the EAW to ensure someone's presence at trial in cases involving minor offences, incitement of less intrusive instruments to assure the presence of the wanted person can only be desirable. It should be kept in mind that wanted persons may be kept in surrender detention for several months, while the executing authorities are not in a position to extensively judge the seriousness of the suspicions and the expected duration of the sentence.

Latvia
Chamber of Criminal Cases of Supreme Court does not use this possibility.

Romania

Yes, it is already used, if those who were preventively arrested and then released are escaping the prosecution or the trial. Since the ESO is not yet implemented in Romania, the courts may be reluctant to set a foreigner free under judicial control or on bail, especially as Romania is not a party to the Council's of Europe Convention on the supervision of convicted persons released under conditional suspension (ETS nr. 051). Therefore, in rare case, it is about the issuing of a European arrest warrant in the case of certain persons who escape from the obligations imposed by the release under judicial control or on bail.

Mostly European arrest warrants were issued for some people trying to escape from prosecution or trial in another Member State, in which case an arrest warrant in the absence is issued and this is the basis on which the European arrest warrant is issued.

7. Would there be merit in having European Union minimum rules for maximum pre-trial detention periods and the regular review of such detention in order to strengthen mutual trust? If so, how could this be better achieved? What other measures would reduce pre-trial detention?

Bulgaria

The answer to that question is positive and was already given in relation to question №5. We consider that the establishment of a mechanism for compulsory judicial control upon the grounds for continuing detention in the pre-trial phase would be more effective than the fixing of maximum terms of detention. Thus, an opportunity would be given for assessment of each case individually and for keeping in mind the difficulty and the nature of the investigation, the number of the accused, the need to complete massive preparatory inquiries in due time, including such related to international legal cooperation.

England and Wales

Consistent minimum rules for pre trial detention periods may well strengthen mutual trust. However there would be a need for considerable expenditure to bring all such periods into line and the result could be that Custody Time Limits which apply in England and Wales may be lengthened rather than shortened, and this is not seen as desirable. Effective Case Management and Early Guilty Plea Schemes are being conducted in England and Wales are having some effect in reducing the time between charge and trial. These require a change in attitude not only by the professions but also the judiciary.

Ireland

Yes. See Q5.

Netherlands

a- Yes, we think that EU minimum rules for maximum pre-trial detention periods and regular review of such detention would be beneficial to strengthen mutual trust, but only if the maximum period would not be extensive. It is uncertain if this would also lead to an increase of persons surrendered by the Netherlands, since no surrender has been refused because of the expected length of the pre-trial detention.

b- -

c- Pre-trial detention could be reduced by putting sanctions in the national laws on procrastinating by the Judicial Authorities; unnecessary delays could thus be reduced.

Latvia

Yes, it would be merit. How to minimize the duration of detention:

1. Minimize the judicial workload with increasing the number of judges;

2. Simplifying and aligning the legislation and Criminal Procedure Law;
3. Unifying the application of the legislation and unifying the interpretation of the legislation;
4. Continuity of the detention terms.

Lithuania

Considering that pre-trial detention is a measure of an exceptional nature in all Member States' judicial systems, that some countries have no legal maximum length of pre-trial detention and finally that excessively long periods of pre-trial detention are detrimental for the individual, and a pattern of excessively long pre-trial detention in a particular Member State can undermine mutual trust, it could be merit in having European Union minimum rules for maximum pre-trial detention periods and regular review of such detention in order to strengthen mutual trust. On the other hand each Member State have its own relevant problems regarding this issue so the terms of pre-trial detention should be sufficient length and carefully weighed before they will be stated. It should be noted, that those European Union minimum rules for maximum pre-trial detention periods and other issues should harmoniously integrate and complement with the tools of protection of the right to liberty implemented in the ECHR and ECtHR case law.

Romania

The same answer as for question no. 5.

Spain

This question has already been implicitly answered in this report. Recommendation 13/2006 of the Committee of Ministers provides for both circumstances and, consequently, the inclusion of the rules provided in said Recommendation in a Framework Decision would be a measure worthy of consideration.

8. Are there any specific alternative measures to detention that could be developed in respect of children?

Bulgaria

The detention in custody of minor persons, according to the explicit provision of Art. 386, paragraph 2 PPC, shall be acceptable only in exceptional cases. The strongly limited application of that form of enforcement related to minor persons is shown in the relatively up-to-date statistics, required towards the end of July 2011. It shows that for the whole country the accused and defendant minor persons, according to whom a surveillance measure "detention in custody" have been executed is 39 /compared to 9000 prisoners of whom 1000 are accused and defendant/. Fifteen juveniles out of the indicated 39 minor detainees have been transferred to a Correctional facility in Boichinovtsi, with a view to bringing them to the court, and in relation to the rest /24/ the surveillance measure "detention in custody" is executed in the relevant territorial units of General

Directorate for Execution of Penalties, because the pre-trial proceedings has not yet been completed.

This information corresponds to the data indicated in EUROSTAT /see the annexed to the Green Paper table/, according to which the percentage of the detained juveniles/minors is 0.5% and is among the lowest for all EU countries.

Regarding the alternatives of the detention, enforcement measures, they are laid down in Art. 386 PPC – supervision by the parents or the guardian, supervision by the administration of the educational establishment where the underage person has been placed, supervision by the inspector at the child pedagogical facility; or by a member of the local Commission for Combating Anti-Social Acts of Minors and Underage Persons. Those alternative measures are largely applied in practice.

In its attitude towards the minor offenders the Prosecutor's Office of the Republic of Bulgaria is bound also by the recommendations in Opinion № 5 of the Consultative council of the European Prosecutors of October 2010 regarding the role of the public prosecution in the juvenile justice /Yerevan declaration/. The principle that the children should be treated in a way which takes account of the needs, resulting from their age is also laid down in that document.

Taking account of the special features of the juvenile delinquency and the closer relation with the State of citizenship and residence of the offender, we consider that there are no problems with the use of the instruments of mutual recognition of the acts.

England and Wales

The commission's concerns are shared by many and this must be the subject of full research.

Ireland

In Ireland, children and young persons are subject to the same powers of arrest and detention as apply to adults and can be arrested and detained for a period specified in the relevant legislation. However, Part 6 of the Child Act 2001 contains specific provisions vis-à-vis the treatment of juveniles in Garda Stations, entitled "Treatment of Child Suspects in Garda Síochána (police) stations."

Likewise, the same bail principles apply to juveniles regarding the refusal or objection to bail as with any other offender. Where a juvenile is remanded in custody, s.88 of the Act of 2001 provides that a child shall be remanded to a "remand centre" and the Minister for Justice may designate any suitable place including part of a detention school as a remand centre. Any such designation shall specify the sex and age of the children who may be remanded.

As regards sentencing, the relevant time for considering whether a person is a juvenile is when the person is *sentenced* and not the time at which the offence took place.

The option of sending juveniles to prison is no longer available and children can only be sentenced to periods of *detention* either in children detention schools or children's detention centres. The one exception to this concerns males aged 16 or 17 years, who

may served their period of detention in St. Patrick's Institution until a suitable place of detention becomes available.

The Children Act 2001 empowers a court to impose a community sanction on a child as an alternative method of disposing of the case. Such measures aim to deal with child offenders in the community rather than in detention and a court may make an order imposing a community sanction on a child if it considers that such a sanction would be the most suitable way of dealing with a particular matter (s. 116(1) of the Act of 2001).
The court will first consider the probation officer's report and will come to a decision having heard the evidence of any person who has made a report and having given the child's parent or guardian (or spouse, if applicable) the opportunity to give evidence.
The court must explain to the child the reasons for imposing a community sanction, any conditions imposed and the expectation that the child will be of good behaviour for the duration of the order, as well as the sanctions associated with a failure to comply.

An example of possible conditions attached to a community sanction would include sanctions:

- Requiring the child to attend school regularly;
- Relating to the child's employment;
- Aimed at preventing the child from committing further offences;
- Relating to the child's place of residence;
- Relating to the child undergoing counselling or medical treatment;
- Limiting or prohibiting the child from associating with any specified persons or with person's of any specified class;
- Limiting the child's attendance at specified premises;
- Prohibiting the consumption by the child of intoxicating liquor;
- Relating to such other matters as the court considers appropriate in relation to the child.

Apart from Community Service Orders (CSOs) there is no requirement for these sanctions to be treated as alternatives to detention (or imprisonment) – their availability is not confined to situations where the court would otherwise be inclined to impose a sentence of detention (or imprisonment). Nevertheless, they provide a useful starting point for discussion on sentencing options for juvenile offenders both at national and international level.

The various community sanctions available are:

1. Community Service Order under s.3 of the Criminal Justice (Community Service) Act 1983 (only in respect of a child of 16 or 17 years)

See answer to question 2.

2. A day centre order

Directing a child to attend a specified day centre to participate in a suitable/beneficial occupation or activity. The maximum number of days for which a child can be required to attend a day centre is 90 days (this does not have to be consecutive days but cannot exceed the period of 6 months). Should the child fail to comply the court can direct compliance, substitute for another day centre or impose an alternative community

sanction, however, the court cannot impose an order of detention on the child unless it is satisfied that detention is the only suitable way of dealing with the child.

3. A probation order (under s.2 of the Probation Act 1907)

Failure to comply triggers s.6 of the Probation of Offenders Act 1907, i.e. a warrant may be issued for the child's apprehension or a summons may be issued requiring him to attend court. Ultimately this mechanism allows the court binding him over, or any District Court judge, to issue a warrant for his arrest or summons him and his sureties to attend before court. The court may then proceed to sentence him for the original offence if satisfied that he has failed to observe any condition of his recognisance.

4. A probation (training or activities) order

This is a probation order with additional requirements under s.124(2) of the Act of 2001 and requires the child to undertake a programme recommended to the court by a probation and welfare officer suitable for the child's development. Failure to comply triggers s.6 of the Probation of Offenders Act 1907. In addition the court may direct the child to comply with the condition insofar as it has not been complied with or to revoke the order and substitute another community sanction.

5. A probation (intensive supervision) order

This cannot exceed 180 days under s. 125(6)(b) of the Act of 2001 and should the child fail to comply with the order, s.6 of the Probation of Offenders Act 1907 is invoked. In addition the court may direct the child to comply with the condition insofar as it has not been complied with or revoke the order and substitute another community sanction.

6. A probation (residential supervision) order

A court may order a child to reside in a hostel residence (per s.126(1) of the Act of 2001). The order shall specify the period during which the order is in force and this cannot exceed one year. Failure to comply triggers s.6 of the Probation of Offenders Act 1907. In addition the court may direct the child to comply with the condition insofar as it has not been complied with or revoke the order and substitute another community sanction.

7. A suitable person (care and supervision) order

A court may order that a child be assigned to the care of a person, including a relative, however such an order cannot be made unless the parents or guardian of the child have consented in writing and a probation and welfare officer has informed the court that a suitable person is available.

The order will specify the period for which this order is in force, not exceeding two years. Where the child does not comply, the court can direct compliance, revoke the order and substitute another suitable person (care and supervision) order or any other community sanction. The court may also revoke the order and deal with the case in any other way in which it could have been dealt with before the order was made.

8. A mentor (family support) order

A court may order that the child is assigned to a person to help, advise and support the child and the child's family so as to prevent the child from committing further offences and monitor the child's general behaviour. Such an order can be in force for up to two years. Failure to comply with such an order will result in the court directing a child to comply, or revoking the order or attached condition to the extent that it has not been complied and appointing a new mentor or any other community sanction.

9. A restriction on movement order

Either a curfew order (commencing at 7pm each day) or a place-related order (place a child cannot frequent between specified days and/or times). Such orders are in place where the child is under the supervision of a probation and welfare officer. Failure to comply would result in revocation and substitution of another restriction of movement order or any other community sanction.

10. A dual order

Dual orders combine community sanctions, e.g. supervision of a probation and welfare officer and restricting the child's movements for a specified period not exceeding 6 months. For the purposes of supervision it shall be treated as if it were a probation order, while for the purposes of a restriction on the child's movements it shall be treated as a restriction on movement order.

Finally, one must draw attention to two innovative ways of dealing with juvenile offenders, namely (i) the Juvenile Diversion Programme and (ii) Anti-Social Behaviour Orders.

Juvenile Diversion Programme

This programme was introduced in 1963 on a non-statutory basis as a means of dealing with young offenders in a manner that avoided leaving them with a criminal record at an early age. The Act of 2001 has now placed the programme on a statutory footing. The programme aims to divert young people from committing further offences where they accept responsibility for their criminal behaviour. The diversion programme works by administering a caution, and where appropriate, placing an offender under the supervision of a juvenile liaison officer (usually a garda (member of the police force)). The offender avoids a criminal record and is not processed formally through the criminal justice system. It is particularly effective where offenders were involved in anti-social behaviour. A child cannot, however, be considered for the programme where the facts are such that to do so would not be in the interests of society.

Anti-Social Behaviour Orders (ASBOs)

Part 12A of the Act of 2001 provides for behaviour warnings and behaviour orders to be made in respect of children between 12 and 17 years who act in an antisocial manner. Such behaviour includes harassment, significant or persistent alarm, distress, fear or intimidation, as well as significant or persistent impairment of their use or enjoyment of their property.

The Gardaí (police) may issue a behaviour warning in respect of a child who has behaved in an anti-social manner and this warning remains in place for a period of three months from the date that it was issued.

A behaviour order may also be sought on application to the Children's Court by a member of the gardaí not below the rank of superintendent. Such an order can remain in place for a period not exceeding two years. Failure to comply with the order "without reasonable excuse" constitutes an offence and may result in the arrest of the child without a warrant where he or she has reasonable grounds to believe that the child has committed such an offence. Conviction may result in a maximum fine of €800 and/or 3 months detention.

Latvia

Section 285 of the Criminal Procedure Law - minor placement in a social correction educational institution – is not enough used in practice.

Romania

First of all, it should be noted that in Romania, minors under 14 are not criminally liable and those between 14 and 16 are criminally liable only if it is proved to have committed the act with discretion (art. 99 of the Criminal code).

The answer is yes, Romanian criminal code provides, in art. 100 et seq, a series of educational measures: reprimand, supervised freedom, hospitalization in a rehabilitation center, hospitalization in a medical-educational center.

Spain

The answer to this question is yes. Proof of this can be found in Articles 28 and 29 of Organic Law 5/2000, which regulates the criminal responsibility of minors and includes the following tenor:

Article 28. General rules. *1. By operation of law or at the request of the party bringing the criminal action and when there is reasonable evidence of the perpetration of a crime and the risk of avoiding or obstructing the action of justice by the minor, the public prosecutor may, at any time, ask the Judge of the juvenile court to adopt precautionary measures for the custody and defence of the minor on trial or for the due protection of the victim.*

2. In order to adopt the precautionary measure of internment, consideration will be given to the seriousness of the facts, their repercussion and the social unrest that has been produced, always taking into account the minor's personal and social circumstances. The Judge, after hearing the Public Prosecutor, as well as the technical team and the attorney of the public entity for the protection or reform of minors, which will report in particular on the appropriateness of the adoption of the precautionary measure, will decide on the proposals and take the minor's interests into special consideration. During said appearance, the Public Prosecutor and the lawyer of the minor may propose the evidence to be heard during the trial or within the following twenty-four hours.

3. The maximum term for the precautionary measure of interment will be three months and may be extended, at the request of the Public Prosecutor and by virtue of a well-reasoned order, for a further maximum term of three months.

1. By operation of law or at the request of the party bringing the criminal action and when there is reasonable evidence of the perpetration of a crime and the risk of avoiding or obstructing the action of justice by the minor, the public prosecutor may, at any time, ask the Judge of the juvenile court to adopt precautionary measures for the custody and defence of the minor on trial or for the due protection of the victim.

Said measures may consist of internment in a centre under the appropriate regime, probation, the prohibition of going near or communicating with the victim or with his/her relatives or other individuals as determined by the Judge, or living with another individual, family or educational group.

The Judge, after hearing the minor's lawyer, as well as the technical team and the attorney of the public entity for the protection or reform of minors, which will report in particular on the nature of the precautionary measure, will decide on the proposals and take the minor's interests into special consideration. The precautionary measure that is adopted may be maintained until a final judgement beyond appeal is handed down.
2. In order to adopt the precautionary measure of internment, consideration will be given to the seriousness of the facts, taking into account the minor's social and personal circumstances, the existence of a specific risk of absconding and, in particular, whether or not the minor has previously committed other serious crimes of the same type.
The Judge of the juvenile court will decide, at the petition of the Public Prosecutor or the private accusation, on an appearance before the courts attended by the minor's lawyer, the other parties involved, the representative of the technical team and the public entity for the protection or reform of minors, which will report to the Judge on the appropriateness of adopting the requested measure depending on the criteria provided in this article. During said appearance, the Public Prosecutor and the parties involved may propose the evidence to be heard during the trial or within the following twenty-four hours.
3. The maximum term for the precautionary measure of interment will be six months and may be extended, at the request of the Public Prosecutor, after hearing the minor's lawyer and by virtue of a well-reasoned order, for a further maximum term of three months.
4. The precautionary measures will be documented in the juvenile court in a record that is separate from the case records.
5. The time for the precautionary measures will be completed in full for the measures that may be applied in the same case or in other cases involving facts prior to the adoption of the former. At the Public Prosecutor's proposal and after hearing the minor's lawyer and the technical team that reported on the precautionary measure, the Judge may order the consideration of the part of the measure he/she considers reasonably compensated by their precautionary measure as executed.

Article 29. Precautionary measures in the cases of exemption from liability

If, during the enquiries made by the Public Prosecutor, it is sufficiently proved that the minor is in a situation of mental derangement or in any other of the circumstances provided in sections 1, 2 or 3 of Article 20 of the Criminal Code in force, the necessary precautionary measures will be adopted for the protection and custody of the minor in accordance with applicable civil provisions, where the actions will be brought for the disqualification of the minor and the constitution of the bodies of protection as provided in law, without prejudice to the conclusion of the enquiries and the bringing of the allegations provided in the Law in accordance with Articles 5(2) and 9 thereof and to the request, in accordance with the procedures provided therein, where applicable, for any of the therapeutic measures provided in the Law and in the minor's interests.

Said provisions show that juvenile criminal legislation provides for a number of precautionary measures as a genuine alternative to internment, such as probation and coexistence with a family or an educational group, besides the prohibition of

communicating with certain individuals and without prejudice to the measures that are fitting in certain cases of exemption from criminal liability.

The transcribed legislation specifically provides the cases in which the adoption of precautionary measures is fitting: the risk of absconding, obstructing the courts and the attempt to commit a criminal act against the victim. The possibility of handing down a precautionary measure for internment is specifically conditioned to the seriousness of the fact, the certain risk of absconding and the minor's criminal tendencies, taking into account his/her family and personal circumstances. It must be stated in this section that, although the precautionary measures in proceedings involving minors are designed essentially to fulfil the same functions as those of general proceedings, they are not void of the factors that have led to the alleged commission of the crime and also form part of the treatment that is to be given to the minor. Accordingly, the success of the treatment during the precautionary measure can lead to the measure finally handed down in the sentence being compensated not only by the term of the former, but also by that which is reasonably fitting.

9. How could monitoring of detention conditions by the Member States be better promoted? How could the EU encourage prison administrations to network and establish best practice?

Bulgaria

The competence of the Prosecutor's Office of the Republic of Bulgaria shall be related to the first sub-question of the question and that is a direct consequence of the tasks entrusted to the Prosecutor's office on by the Constitution of the Republic of Bulgaria.

By tradition /before the adoption in 1991 of the Constitution currently in force/ the Prosecutor's Office in Bulgaria has powers, related to the execution of penalties and the surveillance of the places of deprivation of liberty, detention facilities and the application of other enforcement measures. Overseeing the enforcement of penalties and other measures of compulsion is now entrusted to the Prosecutor's Office by Art. 127, point 4 of the Constitution. Laws and regulations which work out the details of the functions of the Prosecutor's Office in execution of that task have been adopted in accordance with that text:

- the general provision of Art. 46, paragraph 2, point 4 PPC, as well as specific texts in the PPC, laying down the powers of the Prosecutor's Office in applying or requiring the application of separate institutes, related to the execution of penalties – suspension of the execution of penalties / art. 415/, interruption of the execution/art.448/, early release /art. 437/.
- Art. 146 of the Law on Judiciary, indicating the specific powers of the prosecutors in executing the legal supervision on the execution of the penalties in the places of detention.

- Art. 5 of the Law on Execution of Penalties and Detention /in force as of 1 June 2009/ - for the cooperation of the administration of the places of deprivation of liberty to the prosecutor's actions in relation to the legal supervision.
- Individual provisions of the Regulation for the implementation of the Law on Execution of Penalties and Detention /in force as of 1 February 2010/, ex. Art. 34- the powers of the prosecutor when the initial regime of serving the penalty was incorrectly determined Art. 187 – Powers of the prosecutor for enforcement of compulsory medical measures regarding a person serving the penalty.

The indicated provisions require that the exertion of legal supervision regarding the execution of penalties and the enforcement measures to become one of the most important functions of the Prosecutor's Office of the Republic of Bulgaria. In historical point of view the Bulgarian Prosecutor's Office has always been a significant operator in conducting the penal and procedural repression in respect to convicted and accused persons. For that reason, far before the specialization in the framework of the individual prosecutor's units has entered broadly, in the District and Regional Prosecutor's Offices there were designated prosecutors who dealt mainly with the execution of penalties and the legal supervision in the places of deprivation of liberty. The specialization is particularly expressed in the District Prosecutor's Offices, in whose regions the operating prisons are situated, because they are entrusted with the execution of the control functions under Art. 5 of the Law on Execution of Penalties and Detention.

They are entrusted with the dealing also with the application of other legal institutes, related to the execution of penalties – interruption of the penalty "deprivation of liberty", initiating and participating in specific proceedings, as the release on licence, giving opinions in front of special jurisdictions, like the Committee on Execution of Penalties and etc.

Because of the settled tradition in profiling the prosecutors in this direction, the Prosecutor's Office disposes of reliable expert potential of experienced magistrates, who guarantee the respect of the legal standards of the detainees and those deprived of liberty. The local specialized prosecutors as well as the administrative heads of the relevant Prosecutor's Offices, to whom the law has entrusted control functions and some specific competence, are basic addressees of the issued by the Supreme Prosecutor' s Office of Cassation internal acts – Guidelines for the work on the surveillance on the execution of penalties and the enforcement measures. They compensate the normative insufficiency and the prosecutor's practice is standardized. In some cases they help to overcome some of the omissions established in that activity.

The prepared at the moment Opinion of the Consultative Council of the European Prosecutors on the same subject is expected to contribute to the approbation of common standards in the interaction between the Prosecutor's Office and the prisons and the execution of surveillance by the prosecutor.

The additional protocol to the UN Convention against torture, signed and ratified by the Republic of Bulgaria obliges our country to establish national preventive mechanism with an independent body. It is expected to include representatives of the Prosecutor's Office, which combine the function of a master of the pre-trial proceedings and a factor in the execution of the penalty. The action of that

mechanism in connection with the analogous mechanisms of the Member States of the EU would be a step forward towards the establishment of a legal standard on the detention conditions. The same applies also to the exchange of practices between the Ombudsmen of the individual Member States of the EU, who are empowered to carry out legal supervision on the activity of the administration.

England and Wales

There is much merit in promoting and developing a full network of national detention monitoring bodies as well as prison governors. It is not clear at what level such network or cooperation exists at present.

Ireland

The establishment of an independent pan-European network of organisations specialising the area of prison reform, with the mission of promoting best practice across the European Union, the implementation of the Optional Protocol of the United Nations Convention Against Torture and the coordination and implementation of National Prevention Mechanisms would be a positive step in monitoring detention conditions across the European Union. Such bodies could provide expert advice to lawmakers and policy makers, as well as coordinating with representative bodies in other EU Member States for the purpose of strengthening and highlighting the issues of prison overcrowding and excessive detention periods and gather independent data and EU-wide statistics on the various problems confronted by such organisations.

In addition, a database could be established or shared (perhaps in coordination with Europol and/or Eurojust, for example) to categorise and classify the locations with the highest rates of detention of foreign nationals, the periods of detention imposed and the breakdown of offences for which they are being detained, in order to gain a better overview of measures that need to be taken to tackle excessive detention across the EU.

Latvia

This issue is in competence of the Latvian Prison Administration.

Romania

By establishing a peer review mechanism and a network of director of prison administrations.

10. **How could the work of the Council of Europe and that of Member States be better promoted as they endeavour to put good detention standards into practice?**

England and Wales

Future EU action in this field could play a part in promoting comparable prison standards and comparable pre trial detention periods. It must be recognised that this is a

difficult and sensitive area but it is noted that it is a highly legitimate aim of all concerned in this field that all EU citizens of whatever gender, age or vulnerability when accused of a crime should be tried in a timely and proper manner and should only be in custody awaiting such court processes when it is essential for that citizen to be so detained.

Ireland

It is clear that financial supports may be needed to assist states who wish to conform to the standards set by the Council of Europe in relation to prison conditions and detention. The improvements required in some jurisdictions in order to ensure adequate prison conditions would require large-scale capital investment which might not always be possible, particularly in the current economic climate. Therefore, it is suggested that any measures taken to ensure mutual trust in the field of detention are reinforced with monetary supports to ensure the necessary investment to maintain and improve prison conditions across EU member states.
In terms of practical measures, additional translators should be provided to individuals who are subject to detention in a country where they might not speak the language, foreign nationals should be entitled to free legal aid across the European Union in order to ensure that they are afforded the benefits of the presumption of innocence while in custody and provision should be made for emergency accommodation for individuals remanded on bail in a foreign country pending trial, in particular, where have no fixed address in the jurisdiction

Romania

SCM does not have direct competences in this regard. We consider that the rules of the European penitentiaries should be distributed for each prison by the prison administrations and/or the specialized ministries and that professional training sessions should be organized for the prison personnel, judicial authorities and police.