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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)/Council
Subject:	Council conclusions on small-scale detention : focusing on social rehabilitation and reintegration in society - Approval

1. The Presidency has proposed a draft for a set of Council conclusions on “small-scale detention: focusing on social rehabilitation and reintegration in society”. The proposal was examined in the Council Working Party “COPEN”. The draft was modified on a few points and then finalised in document 9932/1/24 REV1.
2. Delegations have subsequently confirmed the final text, by not having raised any objections when the deadline expired on Thursday 16 May 18:00.
3. In the light of the above, the Permanent Representatives Committee is therefore invited to:
 - (a) confirm agreement on the text of the Conclusions as set out in Annex to this note.
 - (b) recommend that the Council approve the Conclusions as set out in the Annex to this note.

(draft)

Council conclusions

‘Small-scale detention: focusing on social rehabilitation and reintegration into society’

Introduction

- a) The 2004 Hague Programme and the 2009 Stockholm Programme recognised that detention and alternatives to detention were an important area of EU justice policy.
- b) The key priority of the Strategic Agenda 2019-2024, adopted by the European Council on 20 June 2019, is protecting citizens and freedoms. To that end, the European Union should defend the fundamental rights and freedoms of its citizens, as recognised in the treaties, and protect citizens against existing and emerging threats. In light of this the fight against terrorism and cross-border crime must be expanded and strengthened.
- c) Europol’s annual EU terrorism situation and trend report (TE-SAT) has indicated that detained persons can be a target for recruitment networks for terrorism and organised crime¹. It is crucial to actively combat this phenomenon.
- d) The Strategic Agenda 2019-2024 also stands for change towards a greener, fairer and more inclusive future. Addressing the various forms of detention with the objectives of sustainability and social reintegration reflects those cross-cutting priorities.

¹ Europol’s 2022 and 2023 EU terrorism situation and trend reports.

- e) The Council of Europe has a long tradition of addressing issues relating to detention and has acquired a great depth of knowledge in this field. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) assesses how detained persons are treated and publishes regular reports and recommendations in order to strengthen the respect for their fundamental rights.
- f) In its conclusions on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism², adopted on 20 November 2015, the Council invited the Commission to allocate as a matter of urgency the necessary financial resources for the follow-up to those Council conclusions, in particular in support of the development of rehabilitation programmes, as well as risk assessment tools to determine the most appropriate criminal justice response, taking into account individual circumstances and security and public safety concerns.
- g) In its Aranyosi/Căldăraru³ judgment of 5 April 2016 and follow-up judgments, the Court of Justice of the European Union acknowledged the importance of detention conditions in the context of mutual recognition and the operation of Framework Decision 2002/584/JHA as regards the European arrest warrant⁴.
- h) The European Union has repeatedly stressed the importance of reintegration and rehabilitation processes, in line with fundamental rights⁵.

² Council conclusions on enhancing the criminal justice response to radicalisation leading to terrorism and violent extremism, 14350/15.

³ Judgment of 5 April 2016 in Joined Cases C-404/15 and C-659/15, Aranyosi and Căldăraru, EU:C:2016:198.

⁴ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190, 18.7.2002, pp. 1–20.

⁵ See e.g. Council Framework Decision 2008/909/JHA on custodial sentences, recital 9 and Article 4(2) concerning social rehabilitation as one of the aims of that Framework Decision.

- i) In its resolution of 5 October 2017 on prison systems and conditions⁶, the European Parliament called on Member States to prioritise small units with accommodation for a restricted number of incarcerated persons in order to prevent recidivism and encourage reintegration into society.
- j) In the Council conclusions on promoting mutual recognition by enhancing mutual trust⁷, adopted on 7 December 2018, Member States were encouraged to make use of alternative measures to detention in order to reduce the population in their detention facilities, thereby furthering the aim of social rehabilitation and also addressing the fact that mutual trust is often hampered by poor detention conditions and the problem of overcrowded detention facilities.
- k) In the Council conclusions on alternative measures to detention⁸, adopted on 3 December 2019, Member States were encouraged to counter prison overcrowding and to promote reintegration of offenders into society taking into account the impact on reducing recidivism and the risk of radicalisation in prison. In those Council conclusions, it was also noted that criminal sanctions and measures used, and the way in which they are enforced, contribute to the prevention of reoffending and thereby affect security in society.
- l) Those conclusions also highlighted that the sharing of best practices is a useful way in which the Member States can learn from each other and improve their own legislation, procedures and practices. The EU can also benefit from closer cooperation with the Council of Europe and other relevant organisations.

⁶ European Parliament resolution of 5 October 2017 on prison systems and conditions, OJ C 346, 27.9.2018, pp. 94–104.

⁷ Council conclusions on mutual recognition in criminal matters — ‘Promoting mutual recognition by enhancing mutual trust’, OJ C 449, 13.12.2018, pp. 6–9.

⁸ Council conclusions on alternative measures to detention: the use of non-custodial sanctions and measures in the field of criminal justice, OJ C 422, 16.12.2019, pp. 9–13.

- m) At the Justice and Home Affairs Council meeting on 7 and 8 October 2021, discussions reflected ministers' joint commitment to continue improving detention conditions, based on the principle of mutual recognition of judgments and judicial decisions.
- n) The Member States, the Commission, the European Union Agency for Fundamental Rights (FRA), Eurojust, the European Judicial Network in criminal matters and practitioners working on a daily basis with mutual recognition instruments in the field of deprivation of liberty should, if appropriate, strive to find and implement solutions for current challenges, including for improving rehabilitation and reintegration strategies.
- o) The European Organisation of Prison and Correctional Services (EuroPris) supports policymakers in an advisory capacity on prison-related matters. It also builds relationships and exchanges information with other organisations working in the field of criminal justice area with a view to developing best practice in the field. EuroPris rules have underscored that a working method based on staff building relationships with people in prison through communication and interaction contributes to ensure safety, security and good order, as well as to rehabilitation and preparation for release.
- p) FRA's criminal detention database, launched in December 2019, provides an overview of detention conditions in all Member States, and is a useful and publicly accessible tool for judicial authorities faced with questions concerning detention conditions. FRA's report 'Criminal detention conditions in the European Union: rules and reality' outlines selected minimum criminal detention standards in the Member States.
- q) On 8 December 2022 the Commission adopted a Recommendation on the procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions⁹.

⁹ Commission Recommendation (EU) 2023/681 of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions, *OJ L 86, 24.3.2023, pp. 44–57*.

- r) Alongside minimum standards for detention conditions in line with fundamental rights, the Commission recommends that Member States invest in the social rehabilitation of detained persons, taking into account their individual needs. To help detained persons prepare for their release and to facilitate their reintegration into society, Member States should also ensure that all detained persons have access to safe, inclusive and accessible educational programmes that meet their individual needs while taking into account their aspirations.
- s) The 18-month Council programme covering the period from 1 July 2023 to 31 December 2024 prioritises judicial cooperation and improving the overall efficiency and resilience of justice systems, and also combating the risk of social exclusion of those who are most vulnerable or at risk of exclusion, in the context of the implementation of the European Pillar of Social Rights Action Plan.
- t) At the informal Justice and Home Affairs Council meeting on 26 January 2024, the Member States expressed a willingness to reflect further on small-scale detention facilities.
- u) The European Symposium on Detention Houses on 20 and 21 March 2024, organised by the RESCALED network¹⁰ under the auspices of the Belgian Presidency, focused on small-scale detention and detention houses. During the symposium, it was demonstrated that small-scale detention contributes to a better sense of community and better social integration and can lead to a lower recidivism rate. Such forms of detention therefore contribute to achievement of the objective of safer communities and lower criminality.

¹⁰ RESCALED is a European network organisation with members in Austria, Belgium, Croatia, Czechia, Finland, France, Germany, Ireland, Kosovo, Malta, the Netherlands, Norway, Portugal, Romania and Spain. RESCALED has national offices in six countries: Belgium, Czechia, Germany, the Netherlands, Norway and Portugal. The various national offices, members and partner organisations each support the implementation of detention houses in their own way.

- v) Incarcerated, and formerly incarcerated, persons are citizens who are particularly vulnerable to social exclusion and the 2030 targets set in the areas of employment, skills and poverty reduction by the European Pillar of Social Rights Action Plan also pertain to them.
- w) Detention remains an indispensable tool in our criminal justice systems. Different forms of detention or types of facility can meet the distinct requirements and needs of different groups of detained persons, depending on a range of criteria, such as their age, gender, socio-economic circumstances, the nature of the offence committed, the outcome of a risk assessment, relations with the victim, and whether the person is in pre-trial detention or is serving a custodial sentence. The most appropriate detention environment may also change in the course of the detention period.
- x) Extensive research and good practices already existing in various Member States have shown that small-scale detention facilities are a means to shape individual approaches for social rehabilitation, build individual relationships and shape social interactions, and prioritise building responsibility and mutual involvement through integration in the local community. Small-scale detention facilities are to be understood as structures with a smaller capacity compared to large-scale prisons. This smaller capacity can be beneficial in terms of living environment, dynamic security, social inclusions, and therefore a better atmosphere for reintegration. Detention houses – which are a form of small-scale detention – are to be understood as small-scale, differentiated, community-integrated facilities with suitable programmes focusing on social rehabilitation and reintegration, taking into account individual needs and with a focus on building autonomy and taking responsibility.

- y) Existing small-scale detention facilities in the Member States and the progress already made in this area should be welcomed.
- z) Small-scale detention facilities promote the creation of an inclusive society through innovative approaches that address social challenges, as prioritised in the European Commission's Research and Innovation Framework Programme.
- aa) Small-scale detention facilities can assist in preventing recidivism, ensure social rehabilitation and reintegration of detained persons, and help to build more inclusive communities.

Conclusions of the Council

General considerations:

1. Member States and the European Union play a key role in protecting fundamental rights, including the rights of detained persons.
2. The aim of promoting the social rehabilitation and reintegration of detained persons serving custodial sentences is reaffirmed.
3. Social rehabilitation plays an important role in the successful reintegration into society of detained persons, and reduces the chances of reoffending.
4. Investing in the development of rehabilitation programmes, taking into account the individual circumstances of detained persons, could be considered a potential criminal justice response to radicalisation.
5. Small-scale detention can improve both the working conditions for staff in detention facilities and the quality of life of detained persons, and facilitate the creation of a constructive climate for reintegration.

6. Small-scale detention facilities may further contribute to respect for fundamental rights and may increase the sense of security in detention facilities.
7. Respectful and constructive interaction with and between detained persons contributes to building responsibility and autonomy and to integration in the local community.
8. Small-scale detention facilities which provide guidance in returning to society, as one of the possible ways to facilitate social rehabilitation and reintegration, can contribute to minimising the negative effects of detention and the risk of reoffending.
9. Involvement of the community as a whole and cooperation of institutions beyond the criminal justice system are of vital importance in achieving reintegration and prevention of reoffending.
10. When exploring the use and benefits of small-scale detention, it is important to keep in mind the particularities and specific features of Member States, including differing legal systems and policy choices.

The Council invites the Member States to:

11. Further explore the scope and potential benefits of forms of small-scale, differentiated and community-integrated detention, including detention houses, in comparison with large prison institutions.
12. Raise awareness of the potential benefits of small-scale detention, including detention houses.
13. Where appropriate, consider enabling the use of small-scale detention and other alternative forms of detention that facilitate the social rehabilitation of detained persons, with the aim of better preparing offenders for reintegration into society and of helping prevent reoffending.
14. Consider, where appropriate, the use of small-scale detention facilities for custodial purposes, including detention houses, with the aim of limiting the negative impacts of detention, and ensure better guidance for incarcerated persons on returning to society.

15. Where small-scale detention facilities are used, establish selection criteria for detained persons, such as the nature of the offence committed, the outcome of a risk assessment and the interests of victims. In accordance with national legislation and practices, small-scale detention or alternative forms of detention could be considered for vulnerable persons such as persons with disabilities, women during pregnancy and after childbirth, children above the age of criminal responsibility and young adults.
16. Consider implementing digitalisation aspects in the small-scale detention facilities, and, where appropriate, following a risk assessment and consideration of the interests of victims, consider enabling communication by digital means, in order to enable detained persons to maintain contact with their families, to improve autonomy to apply for jobs or continue with their jobs, take training courses or to look for accommodation in preparation for release.
17. Map good practices in the use of small-scale detention and share this information with the relevant institutions and agencies in the European Union and other Member States.
18. Take into consideration the recommendations set out in the abovementioned Commission Recommendation of 8 December 2022.
19. Consider small-scale detention, including detention houses, as a way to make communities more inclusive, ultimately contributing to a fairer and more inclusive future for detained persons.
20. Provide targeted training for staff and practitioners in small-scale detention facilities on working methods, professional ethics and procedures to ensure better security, interaction with the detained persons and preparation for social rehabilitation and reintegration.

21. Where appropriate, provide detained persons in small-scale detention with opportunities to obtain remunerated work of a useful nature or support for social and professional integration and accessible educational programmes.
22. Consider improving the capacities and resources of social services and other services and actors intervening in detention, including in small-scale detention facilities, with the aim of contributing to social reintegration and improving detention conditions.

The Council invites the Commission to:

23. Assess the need to study and analyse the use of small-scale detention facilities in all Member States so as to support the dissemination of national good practices and to provide a possible evidence base for the use of small-scale detention as an effective model of custody which increases rehabilitation and decreases reoffending.
24. By organising meetings of experts, increase awareness and exchange of good practices between policymakers and legal practitioners on small-scale, differentiated and community-integrated detention and how to overcome challenges and obstacles.
25. Where appropriate, and with taking into account the situation and specific features of Member States, promote the use of small-scale detention, including detention houses, as part of its agenda to safeguard the rights protected by European policies in the fields of justice, education, health and well-being, employment, social affairs and inclusion, and family life.

26. Explore funding opportunities under existing and possible future EU funds, without prejudice to future multiannual financial frameworks, for the setting up and further development and implementation of small-scale detention, including detention houses, capacity-building with city councils, pilot projects, training protocols and methodologies for staff.
27. Encourage Member States to seek funding under existing and possible future EU funds.
28. Explore funding opportunities for organisations which might contribute to the development of small-scale detention, such as the European Forum for Restorative Justice (EFRJ), Children of Prisoners Europe (COPE), European Penitentiary Training Academies (EPTA), EuroPris and the Confederation of European Probation (CEP).

The Council invites the Commission and the Member States to:

29. Work closely with the Council of Europe and other relevant organisations, institutions and agencies to reflect on optimal cooperation and awareness-raising with regard to the possibility developing and using small-scale detention, including detention houses, as an alternative to large-scale detention.