



***Strengthening mutual trust in the European Judicial Area – a
Green Paper on the application of EU criminal justice legislation
in the field of Detention
(COM (2011) 327/3)***

**Consultation response by the European Network for Children of Imprisoned Parents
(EUROCHIPS)**

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1. Introduction

1.1 Who are we?

The European Network for Children of Imprisoned Parents (EUROCHIPS), founded in 2000, is the sole European network devoted fully to the issue of children with imprisoned parents. It represents a growing network of 22 organisations from 15 European countries, most of which are within the European Union, but also including Croatia, Norway and Switzerland. Acting as a voice for prisoners' children, EUROCHIPS has forged a consensus on the support needs of this group of children and on the good practice standards that help meet these needs, regardless of whether the parent is detained under continental law, common law or Scandinavian law. All EUROCHIPS members are dedicated to improving the treatment of children in the European Union affected by parental incarceration, helping combat the social exclusion and discrimination they often face and fostering resilience.

Our Mission is to safeguard the social, political and judicial inclusion of children with an imprisoned parent, while fostering the pursuit and exchange of knowledge which enhances good practices, and contributes to a better understanding of the psychological, emotional and social development of these children. We are working to ensure that children do not interpret separation from a parent due to incarceration as abandonment. Regular contact with an imprisoned parent can have longstanding, far-reaching benefits for children.¹

¹ It has been demonstrated that if communication between a parent and young children is secure at least a third of the time or more, this is sufficient to support a secure relationship. See, for example, Parenting: Attachment, Bonding and Reactive Attachment Disorder, supported by Santa Barbara Graduate Institute and Center for Clinical Studies and Research & LA

We believe that:

- Children have a right to maintain contact with an imprisoned parent when it is in his or her best interest, a right enshrined in the 1989 UN Convention on the Rights of the Child.
- The issue of children with an imprisoned parent is a public health issue. Difficulties frequently associated with deprivation of contact with a father and a mother can compromise children's future interpersonal relationships and ability to parent responsibly as adults through repetition of the cycle of attachment difficulties with their own children. Supporting children with imprisoned parents is a long-term vision crucial to the wellbeing of the child and thereby to society.

Our Practices

- All of our action is guided by the best interests of the child.
- We take a holistic approach, not only working with the child, but with all those involved in the child's life to produce healthier family dynamics.
- We preserve our credibility by remaining independent and objective.

1.2 Pan-European work & publications

- 2000 - EUROCHIPS founded
- 2004, Council of Europe - The COE invited EUROCHIPS to submit recommendations on young children imprisoned with their mothers for the European Prison Rules (EPR, 1987), then under revision.
- 2005, Glasgow - EUROCHIPS organised a European seminar with prison governors from five European countries to explore how prison training can enhance family contact.
- 2006, Paris - EUROCHIPS held the first major pan-European conference on the subject of children with imprisoned parents.
- 2006 - EUROCHIPS published *Children of Imprisoned Parents: European perspectives on good practice*²: this book looks at European practice on working with children with imprisoned parents. Currently available in English, French and Italian.
- 2007, EU - EUROCHIPS emphasised the importance of family ties at a European Parliament hearing on 'Women in Prison', organised by the Committee on Women's Rights and Gender Equality, focussing on an own-initiative report sponsored by Greek MEP Marie-Panayotopoulos-Cassiotou entitled "Women in Prison and the Impact of Incarceration of Parents on Family and Social Life."
- 2008 - EUROCHIPS secured EU grant for a Grundtvig Programme transnational project on education in prison. Partners included NGOs from Belgium, France, Italy and Great Britain. Results included the development of a model for training prison staff on issues relevant to children and their imprisoned parents.
- 2009, EU - EUROCHIPS invited to co-steer the first EU-funded transnational project on children separated from imprisoned parents³, piloted by the Danish Institute for Human Rights and funded by the EC Fundamental Rights & Citizenship Programme (completed

County Early Identification and Intervention Group; http://healingresources.info/children_attachment.htm

² Ayre et al., *Children of Imprisoned Parents: European Perspectives on Good Practice*. Eurochips. Paris 2006.

³ When the Innocent are Punished – Children of Imprisoned Parents.

May 2011). The project aimed to contribute to the development of mutual legal rights and administrative practices within the EU for the treatment with dignity of children of imprisoned parents, focussing on the application of children's rights frameworks.

- 2010 - EUROCHIPS piloted a European-wide National Awareness Week for Children of Imprisoned Parents, now an annual event.
- 2010, ECtHR - Aire Centre (UK) requested third-party participation by EUROCHIPS to add leverage to a cross-border criminal justice case between the UK and the Netherlands in which a Dutch prisoner was denied transfer to the Netherlands to be closer to his children; currently pending before European Court of Human Rights.⁴
- 2010, EU - EUROCHIPS agreed to participate in the first EU-funded project on prisoners' children involving the direct participation of prisoners' children. Funded by the FP7 Framework Programme, the three-year research project⁵ aims to investigate the characteristics of children with imprisoned parents, their resilience, and their vulnerability to mental health problems. Includes partners from the UK, Germany, Sweden and Romania, and two umbrella organisations (Quaker United Nations Office and Eurochips). Research findings expected to have European-wide and international application.
- 2011, Brussels - EUROCHIPS, in collaboration with The Danish Institute for Human Rights, University of Ulster and Bambinisenzasbarre, launched the report *Children of Imprisoned Parents* (Editors: Peter Scharff-Smith and Lucy Gampell) at the European Parliament (cf 2009 reference to Fundamental Rights & Citizenship Programme project).
- 2011, Geneva - EUROCHIPS participated in the United Nations CRC General Day of Discussion on Children of Imprisoned Parents.

1.3 Background to our response

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration**"⁶.

It is estimated that every day, some 800,000⁷ children across the European Union live separated from a parent due to the latter's imprisonment – sometimes in other jurisdictions. This is likely to be a conservative estimate and the true number of children so affected is unknown as data is not systematically collected (or, where it is collected by prison authorities, it is not systematically recorded and analysed). In addition, there are many more children who, over the course of their childhood, will experience the incarceration of one or both of their parents. In the UK alone, this figure is estimated to represent 7% of the school population⁸. For a minority of these children, it may be in their best interest when the parent is removed from the family home, for example, if the imprisoned parent has been abusive; **but** for the vast majority of these children this is not the case.

Children who have parents in prison are unquestionably a vulnerable group, yet their situation is rarely considered in State policies and practices of imprisonment and their support needs often go unaddressed. Common to all countries within the EU is the difficulty in not knowing how many children are affected by having a parent in prison. As stated, data is not systemically collected and

⁴ HS & oths v UK, pending.

⁵ Children with Imprisoned Parents: Interventions and Mitigations for Mental Health, or "COPING" Project

⁶ UNCRC Art. 3

⁷ This figure is a minimum estimate as no official data is recorded on the number of children in EU member states with a parent in prison. Estimate based on INSEE demographic "parenting rate" (1.3 offspring per detainee) established during 1999 national census, which included 1,700 male offenders.

⁸ "Children of Offenders Review", Ministry of Justice and Department for Children, Schools and Families, London 2007.

it is therefore very hard to arrive at an accurate figure which makes it extremely difficult to protect the interests of these children and ensure that they and their family receive the services and support needed to cope with the situation of the imprisonment of one or other of their parents — or indeed in knowing which prisoners have children under 18 with whom contact should be maintained. A recent study carried out by EUROCHIPS in collaboration with the Danish Institute for Human Rights⁹ found, for example, that in Poland, a figure is derived based on those prisoners found to be making maintenance payments to their children; in Northern Ireland, it is estimated based on visits by children, and in Italy and Denmark, the figure is based on data from prisoners who have disclosed their parental status.

The desire for punishments to be seen to be tougher, where deprivation of liberty is seen as the only meaningful punishment is growing. Whilst this submission refers specifically to children whose parents are imprisoned, many thousands more children are affected by the imprisonment of their siblings, grandparents, uncles, aunts and other family members with whom they have a close relationship. The effects and experiences on those children will often be similar to those children whose parent goes to prison and also need protecting under EC criminal justice legislation.

Considering issues of detention from the perspective of the prisoners' child and family is also important as research shows that prisoners who are able to maintain close family ties are less likely to re-offend and more likely to have both a home and employment on release.¹⁰

1.4 Our response

EUROCHIPS welcomes this timely consultation and the European Commission's stated desire to do more to develop mutual trust and foster judicial co-operation and consistent standards across Member States to protect the rights of suspected and accused persons. Prison populations across the EU are rising and with border migration increasingly common, the numbers of people arrested in another EU state from where they have residency is also increasing.

Whilst the EU Charter sets a common standard which all EU Member States must comply with when implementing EU law and criminal justice procedures, and other standards also exist to strengthen protection against the mistreatment of EU citizens who are detained in Member States - such as the European Convention on Human Rights (see 2.2 below), EUROCHIPS would agree that there are still doubts about the way in which standards are upheld across the EU. In considering changes to European instruments governing mutual recognition of judicial decisions in the area of freedom, security and justice, we advocate the need to do so from the perspective of the **rights of the child** and not just the individual rights of the prisoner/detainee. Our response will be limited to this perspective and we defer to others more knowledgeable on the general issues of detention (such as the Quaker Council for European Affairs (QCEA) to respond more fully to the detailed questions posed in the consultation document.

2. The legal framework

2.1 Human Rights instruments concerning the treatment of prisoners

Prison Services in most Member States have dual objectives: to detain the prisoner and to work to limit the prisoner's alienation from society, with a vision to preventing reoffending; by definition, Member States *in principle* have the duty to take into consideration family ties with respect to the latter objective. This dual obligation is embodied in specific human rights instruments concerning the treatment of prisoners, such as The *European Prison Rules (2006)*, which serve as guiding principles for governments of Member States, providing basic standards of decency and, with the 2006 update of the Rules¹¹, include sections relating to vulnerable groups in prison such as women

⁹ *Children of Imprisoned Parents*. Danish Institute for Human Rights, Eurochips, University of Ulster, Bambinisenzasbarre. Copenhagen, 2011.

¹⁰ See, for example, Ditchfield, J. "Family Ties and Recidivism." Home Office Research Bulletin 36, London, 1994.

¹¹ Rec (2006) 2. Recommendation of the Committee of Ministers of the COE to Member States on European Prison Rules.

and foreign prisoners. The Rules themselves are powerful in that they embody *principles and objectives*, not the *means* for implementing these objectives, and as a legal framework, find their legitimacy in these very principles and objectives. This holds true for a more recent instrument (2010), the *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders* (commonly known as the “Bangkok Rules”), which sets out standards for institutions detaining women, and includes guidance on the treatment of children detained with their mother.

The next step lies in defining how Member States should implement these overarching principles and obligations—through the adoption of the European Prison Charter, for example, which would lay down robust standards for the treatment of prisoners throughout the criminal justice process. In 2004, the Parliamentary Assembly of the Council of Europe adopted a recommendation on the situation of European prisons and pre-trial centres, recommending that the Committee of Ministers draw up a European Prison Charter in tandem with the European Union.¹² The Charter would promote a genuine European prisons policy which would “establish fully binding standards and common criteria for the member states, and allow the harmonisation of detention conditions and the monitoring of standards’ enforcement, ensuring therefore that the rights and dignity of persons deprived of their liberty are respected.” The Charter would not only make particular provision for children with imprisoned parents, but would make provisions for other vulnerable groups, such as foreign nationals. These include:

Contact with the outside world

- Prisoners may not be denied communication with the outside world for a long period.
- Prisoners are entitled to visits and shall be allowed to correspond freely, by letter, with their families, other persons and representatives of outside organisations.
- Procedures for controlling professional visitors such as legal representatives, social workers and medical practitioners, etc., shall be the subject of consultation with their professional bodies so as to ensure a balance between security and safety and the right of confidential professional access by such visitors to their clients or patients.
- Family visiting facilities must be provided.
- Special visiting facilities and suitable premises must be provided to allow contact with families, especially children, under humane conditions compatible with the demands of security.
- Foreign nationals, especially those who are not residents of the country where they are being held, deserve special attention because of the situation of particular distress they may be experiencing. They must be allowed to have visits from their country’s consular staff or, failing that, from groups of inspectors from their own country, or from trusted persons who live in the country and, where applicable, are able to communicate in their language.
- Visits are not restricted to family members and close relatives, but may also be made by friends and trusted persons. Extended visits must be allowed by families which live a long way away.¹³

However the Committee of Ministers of the Council of Europe¹⁴ has not followed up on this recommendation.

EUROCHIPS strongly urges that the European Prison Charter be adopted and implemented. This Charter should incorporate EU standards on visits criteria for children visiting imprisoned parents (See response to Q3, page 18).

¹² Parliamentary Assembly Recommendation 1656 (2004).

¹³ European Prisons Charter. Doc 10922.Parliamentary Assembly report. Committee on Legal Affairs and Human Rights. 3 May 2006.

¹⁴ See Doc. 11041 of 2 October 2006 — reply from the Committee of Ministers.

2.2 Human Rights instruments which protect family life

All Member States of the European Union and the Council of Europe are signatories to both the European Convention on Human Rights (ECHR) and the UN Convention on the Rights of the Child (CRC) 1989 and are therefore required to put into practice the rights included in both. The CRC is the most ratified human rights instrument in the world¹⁵ demonstrating the high level of consensus among States on the necessity to protect the specific needs and rights of children.

2.2.1 Within the ECHR Article 8 protects the right to privacy and to family life; whilst within the CRC those rights of particular relevance to the situation of children whose parents are in prison are:

- the right to be **free from discrimination**, including where such discrimination might be consequences of the status and actions of their parents (Art.2);
- protection of the **best interest of the child** (Art. 3);
- the right to have **direct and frequent contact with parents** from whom the child is separated (Art. 9);
- the right of the child to **express his or her views** and to be heard in matters affecting their situation (Art. 12);
- the child's right to **protection of their family life and their privacy** (Art.16).
- the right of the child to **protection from any physical or psychological harm or violence** (Art. 19)

2.2.2 The European Charter of Fundamental Rights

Art. 24(3). Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Following the entry into force of the Lisbon Treaty in 2009, the European Charter of Fundamental Rights has the same legal value as the European Union treaties.

2.2.3 International and regional legally binding instruments (eg., the International Covenant on Civil and Political Rights - ICCPR), as well as the jurisprudence from the European Court of Human Rights, play a pivotal role in upholding human rights as its judgements are legally binding on the States to which each case relates. There are also soft law instruments such as recommendations and resolutions from the Parliamentary Assembly or the Committee of Ministers of the Council of Europe¹⁶ or reports from special UN or Council of Europe monitoring bodies which, whilst not legally binding in the way in which international treaties are, are signed by States and are engagements of States to make efforts to comply with the provisions that they contain.

2.3 Yet, despite the 'protection' of such instruments, the rights of children of prisoners are insufficiently addressed: they often feel ashamed, unsupported and 'different' because their parent is in prison. They may experience bullying and harassment from their peers or the whole community in which they live; they may experience difficulties in school. They are at risk of developing emotional difficulties that impact on their development and their future. For some, their material situation will change – or pre-existing poverty deepen – due to parental incarceration. Their lives may change beyond recognition from the moment of arrest, in particular if this is their first experience of parental detention, and they often live in fear, anxious and worried about their parents. In short – children of imprisoned parents often bear the consequences of their parents' actions in a way that no child should be expected to bear; they become "the invisible victims of

¹⁵ 193 States parties to the CRC. UNICEF talks about a "near universal" ratification of the Convention on the Rights of the Child, see: http://www.unicef.org/crc/index_protecting.html. All case study countries involved in the project have ratified the CRC.

¹⁶ Council of Europe: *Penitentiary questions. Council of Europe conventions, recommendations and resolutions*. Strasbourg: Council of Europe, 2009.

crime and the penal system".¹⁷ For children with a parent imprisoned in another country, the uncertainty, loss of contact and associated trauma can be even more severe.

2.4 Children's rights

2.4.1 Protection of the best interest of the child

The principle of the protection of the best interest of the child is reflected in the national law of the four countries concerned with the study, either in domestic provisions (such as national Human Rights law or legislation relating to safeguarding children) and through incorporation of the CRC. The principle of the best interest of the child is also present in national and European Prison Rules 2006. For example, the European Prison Rules state that:

'the arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible'. However, as can be seen from the studies undertaken within this report, the interpretation of these rules and principles are open to interpretation and the reality for children of imprisoned parents is that all too frequently, the policy and intent does not match up with the practice and experiences of children, with security concerns often cited as being paramount, over and above the needs of children.

In order to monitor States compliance with the CRC, states must present a report on implementation of the Convention to the Committee on the rights of the child every five years (often supplemented with shadow reports by NGOs). The Committee reviews the report and formulates observations on the situation in the country. At the domestic level, the legal status of the CRC varies from one country to another even though the Committee insists on the fact that the CRC must be made directly applicable in domestic law.¹⁸ Significantly, in Poland, the CRC is directly enforceable according to article 91 of the 1997 Constitution and forms part of the legal system¹⁹, so that the Constitutional Court in Poland, for instance, can examine the law and practices' compatibility with the UNCRC directly, therefore providing judicial scrutiny of the implementation of the Convention.

When it comes to applying the rights of children of prisoners within the law however, all too frequently they are over-ridden by considerations concerning public safety, security, punishment and the need to avoid discrimination between offenders where for example a parent appearing before the Court should not be treated differently to other defendants. In addition, the right of the parent generally takes precedent over the right of the child: for example, the right of the child to frequent and regular contact with his or her parent in prison is applied through the **prisoner's right** to respect for family rather than being addressed through the **child's rights**. Yet if the human rights standards protecting the best interests of the child are to be applied consistently, sentencing practice and principles, along with the treatment of prisoners, will need to take full account of the rights of children of prisoners.

2.4.2 The right of the child to express his or her view and to be heard in matters affecting the child

According to article 12(1) of the CRC:

the child who is capable of forming his or her own views has the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. [This right concerns] any judicial and

¹⁷ Marshall, K. (2008) *Not Seen. Not Heard. Not Guilty: The Rights and Status of the Children of Prisoners in Scotland*, Edinburgh: Scotland's Commissioner for Children and Young People, p. 8.

¹⁸ See, for example, in the case of Denmark, where the CRC is not incorporated in Danish legal order: Committee on the Rights of the Child, Concluding observations on Denmark, 2005 CRC/C/DNK/CO/3

¹⁹ See *Children of Imprisoned Parents*, Chapter 7, p. 174, *Op. cit.*

administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

This should mean that whenever the consideration is being given to taking a parent into custody (whether at arrest, pre-trial or sentencing) and when decisions are subsequently made regarding location, visits and release, their children ought to have their views taken into consideration. In recent years many countries (such as the UK) are affording such rights to victims of crime, allowing victim impact statements to be read in court or at hearings where the prisoner's release is being considered yet this study found few examples where children's views were taken account of within the legal framework.

2.4.3 Non-discrimination principle

Article 2(2) of the CRC contains a non-discrimination provision, which states:

“States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.”²⁰

In the context of children of imprisoned parents, this implies that children must not be discriminated against because of the activities of their parents. There is to date no indication of how the non-discrimination principle may be received by domestic courts or the Committee as an element to substantiate claims of children of imprisoned parents. Yet children repeatedly report feeling stigmatised, bullied or ashamed as a result of having an imprisoned parent and by the reaction of those around them. This is particularly acute where the crime is of a more serious nature (particularly for a sexual offence) and where there are salacious media stories covering the crime and trial leading to the identification of the accused children.

2.4.4 The right to respect for family life

The detention of the parent is one of the situations where, as the consequence of detention, children and parents are separated from each other (with the exception of babies and very young children being kept in prison with their mother). However as stated above, the ECHR states:

“Detention, like any other measure depriving a person of his liberty, entails inherent limitations on his private and family life. (...) However, it is an essential part of a detainee's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family”.

The right to keep contact with family members, including children is three fold. It includes:

- I. a right to be informed of the whereabouts of each other (in order to establish contact),
- II. a right to communicate with each other,
- III. and a right of prisoners to receive visits.

In addition, it imposes positive obligations on the State such as the obligation to offer legal guarantees when decisions are made by public authorities on contacts or the obligation for relevant public authorities to assist parents and children to maintain ties during the period of detention. It must be added here that interference with parental rights can only be justified in exceptional cases (for example in child abuse situations where continued contact is deemed not to be in the child's best interests): an automatic ban on exercising parental rights for prisoners is therefore deemed unacceptable by the ECHR.

²⁰ UN Convention on the Rights of the Child. 20 November 1989.

2.4.5 Findings from DIHR/ EUROCHIPS research study 2011

Our recent study concluded that whilst the human rights framework is in place, the effective protection of the human rights of children of imprisoned parents lies in children's rights and in the right to respect for family life of the children of imprisoned parents as well as the prisoner.

The countries²¹ in which the survey was undertaken do have some laws and enforceable prison rules that place some focus on prisoners' family relationships. In practice, however, both the quality and quantity of the contact between parents and children depends very much on individual prisons. From our wider knowledge across many EU states, EUROCHIPS is aware that good practice can be found in all jurisdictions but, unfortunately, these are rarely mainstreamed across the whole prison estate, social services or police service and it is clear that security and control issues often override children's interests, and that the rights of the prisoner are generally placed above those of their child/ren.

In particular, the results of the study undertaken in the four countries indicate that while all four are signatories to the UN Convention on the Rights of the Child, the practice in relation to the situation of children of imprisoned parents does not place sufficient focus on these rights. When dealing with children of imprisoned parents the perspective of the child entails that:

- the child has a right to be informed about what is going on;
- the child has the right to see his/her imprisoned parent(s) on a regular basis and in a manner that respects his/her physical and moral integrity;
- the child has a right to be assisted by public authorities that have the obligation to facilitate his/her contact with the imprisoned parent(s).

The main challenge is that children in their own capacity are very seldom in a position to claim their rights, either because they do not know they have such rights or because they have no way of addressing their claim. The most fundamental right to be in contact with a separated parent is often undermined by restrictions imposed on the prisoner's contact with the outside world or by the imprisoned parent themselves denying their child access to visit. In addition to the CRC, all States involved in the study are bound by the ECHR. Whilst prisoners are increasingly turning to the European Court of Human Rights to seek redress, very few children have yet taken a case to the Court in their own right, and lawyers rarely take their perspectives into account. Lawyers must therefore enhance the perspective of the children of imprisoned parents in matters such as access to visits in order for the best interests of the child to be taken into account in matters which concern them (whether directly or indirectly).

The report, therefore, makes one overall recommendation to all Member States of the European Union, which we urge the EC to promote with a Council Framework Decision - to:

Incorporate the UN Convention on the Rights of the Child into European standards, national laws and practice, with regard to children of imprisoned parents, so as to ensure that children of imprisoned parents are able to maintain contact with their parents; are consulted and receive timely information regarding what had happened to their parent; are free from discrimination on the grounds of the acts of their parent and have their views taken into account wherever appropriate.

²¹ Denmark, Italy, N. Ireland and Poland.

2.5 European Mutual Recognition Instruments – general comments

This consultation is particularly concerned with mutual recognition instruments that have a bearing on detention and the need to increase trust in their being applied uniformly across EU Member States. In particular reference is made to the Council Framework Decisions on the European Arrest Warrant (EAW) the European Supervision Order.

2.5.1 The Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments imposing custodial sentences or measures involving deprivation of liberty is to be implemented imminently (5 December 2011). This establishes a system for transferring convicted persons back to the Member State of nationality or habitual residence (or to a Member State where they have close ties). Whilst this might appear to be a positive decision, the authorities of the State in which a person is imprisoned will have the power to return him **without** seeking his consent. EUROCHIPS asserts that clear procedures must be established to ensure that in transferring a prisoner, the decision takes account of the prisoner's **current** family situation above their nationality, so as to ensure that he/she will not be further separated from his/her children and family. For example, a prisoner may be a national of Member State A but living with a family in Member State B where he is convicted and imprisoned. A decision by Member State B to transfer him back to his state of nationality (Member State A) would deprive him of his right to family life, render the child's right to remain in contact with the parent subservient to this decision, and potentially result in greater harm to the child. Conversely, where the prisoner's family reside in another Member State, this should be considered to be a primary factor in the consideration of his/her transfer.

EUROCHIPS would urge the EC to recognise that all decisions regarding transfers should be made compatible with the child's right to maintain contact with an imprisoned parent and that such information should be afforded high consideration alongside issues of prison conditions and other factors (for example, concerning release) when making decisions on transferring prisoners between Member States. If a decision to transfer is made, the onus must be on Member States to ensure that the child's right to family life is not violated.

2.5.2 The Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition of probation decisions and alternative sanctions is also to be implemented imminently (6 December 2011).

This Framework Decision relates to the post-trial stage. It applies the principle of mutual recognition to many of the alternatives to custody and measures facilitating early release. Article 1(4) provides that Member States must respect fundamental rights and fundamental legal principles. The probation decision or other alternative sanction would be executed in a Member State other than the one in which the person was sentenced, and can be executed in any Member State **as long as** the person concerned has consented.

*EUROCHIPS welcomes this measure and urges the EC to promote its use widely at Union level in order to encourage greater use of non-custodial sanctions in lieu of detention in recognition that the individual's right to family life **and the Rights of the Child** need to be considered.*

2.5.3 The European Supervision Order (ESO)

Council Framework Decision 2009/829/JHA of 23 October 2009 on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention is to be implemented by 1 December 2012. Article 5 provides that Member States must respect fundamental rights and fundamental legal principles.

The ESO concerns provisional release in the pre-trial stage. It will enable a non-custodial supervision measure to be transferred from the Member State where the non-resident is suspected

of having committed an offence to the Member State where he is normally resident. This will allow a suspected person to be subject to a supervision measure in his home Member State until the trial takes place in the foreign Member State, and thus provides a way to reduce pre-trial detention of non-resident European Union citizens in the future.

Again, EUROCHIPS welcomes this measure and urges the EC to promote its use widely at Union level in order to encourage mutual trust and a greater use of non-custodial conditions in lieu of detention, particularly during the pre-trial stage UNLESS there is clear evidence that the person concerned is likely to be a significant danger to the public or be likely to abscond. Furthermore, once again we urge that greater weight be placed on the person's right to family life and the rights of their child/ren.

2.6 European standards in practice

Detention conditions within EU Member States vary considerably and this is no less acutely apparent in their arrangements for contact between prisoners and their children and families in the form of visits, telephone and other types of contact. It is very clear from EUROCHIPS' work that the quality, frequency and methods of contact vary enormously according to the conditions, culture, arrangements and locality of the prison in relation to the child's home and are rarely introduced on a nationwide basis. Legal frameworks for prison rules and orders that place some focus on prisoners' family relationships and what is required to maintain those are common among Member States throughout the EU. Whilst these guidelines tend to support locating prisoners near to their home in order to facilitate contact with their families and children, in reality, they are all too often sent many kilometres away, making visits extremely problematic and costly for families.

The child's rights to contact, in contrast, is rarely at the forefront of decisions regarding contact with their imprisoned parents, and those cases which have gone before the European Court of Human Rights have been taken from the perspective of the prisoner, **not** the child. They have covered issues such as: refusal of visits (to partners and children), limitation of frequency and duration of visits, the conditions under which visits take place (eg., closed visits behind glass) and the distance a prisoner is held from his family. In Italy, in particular, there are issues regarding restrictions on visits to those convicted of Mafia crimes, and in Northern Ireland, the specific sectarian and political prisoner issues give rise to unique challenges and problems. However, the Court is clear that in the absence of an established security risk, a special regime that denies any physical contact between a prisoner and his visitors cannot be justified.

There is no doubt that prisoners have a right to receive visits in prison and that children have a right to contact. Contact can be maintained through visits, phone calls, letters and generally later on in sentence, through day release, as well as structured temporary release on licence— although this is not available to all prisoners.

2.6.1 Visits

Visit conditions and arrangements vary considerably across Europe, with some Member States only permitting non-contact visits between prisoners and their families, for example at the pre-trial stage. Across the EU, good practice examples have been observed regarding support with family contact both on a regular basis, and in cases of an emergency with many examples of flexibility being offered by prison regimes in relation to visits to prisons. For example, in Poland, prisoners who have custody of children below 15 years of age can request one additional visit per month. In Poland and Denmark, it is also possible to combine a number of visits a month into longer ones – this means the visits will be rarer but may have a better quality, especially for families that have to travel considerable distances to visit their relative in prison. In many countries (including Italy, the UK, France, Poland, Sweden, Norway, Belgium), some prisons organise special visits for children with their imprisoned parent where they are able to spend quality time together; however these are

sometimes linked to the prisoner's good conduct as opposed to being prioritised to meet the needs of the child.

Furthermore these initiatives are generally at the discretion of the prison governor and often rely on the goodwill of staff who may even undertake such duties in their own time and are therefore open to being withdrawn at any time. Many of the good practice initiatives are also dependent on the input from NGOs such as Relais Enfants Parents (France, Belgium), Bambinisenzasbarre (Italy), NIACRO (Northern Ireland), Niños sin barreras (Spain), RiksBryggan (Sweden) or Prison Advice and Care Trust (UK), whose work is vulnerable to lack of funding or policy change.

The high cost and inconvenience of travelling to prisons (especially if using public transport), which are often a long way from where the family live and located some distance from public transport stops, deter many families from visiting. In the UK, the government's Assisted Prison Visits Scheme provides a right to financial support for families on low income. In Sweden, the *kommuns* (municipalities) cover the travel costs of children visiting imprisoned parents. In Poland, financial support is discretionary and can depend on the area the family is living. In Denmark the legal framework is relatively well suited for supporting prisoner's families and children of prisoners financially, but often the local authorities and social service are simply unaware of the children and the relevant family situations; without any contact support cannot follow.

Every aspect of the relationship between children and their imprisoned parent is in some way regulated by the fact that the parent is behind bars. Prison security and convenience dictate the visiting times, the duration of the visit, whether or not prisoners can have physical contact with their relatives. Little about visiting a parent in prison is 'natural' and the impact on the child's relationship with an imprisoned parent of visits to prison is therefore profound. The experience of the visit also depends on a range of dynamic factors:

- their own relationship with their imprisoned parent;
- the relationship between the two parents or between the imprisoned parent and carer who accompany the child on the visit (as where this has broken down the child may be prevented from visiting);
- the child's feelings about the crime the parent committed;
- the way he or she is treated by the prison staff; and what kind of physical environment children find themselves in while visiting the prison. This is particularly the case for older children for whom there is very little to do on a visit as most of the activities which are provided are geared towards younger children.

The atmosphere and culture of prisons are rarely 'child-friendly'. Many visiting facilities are designed with adults and security in mind – equipped with tables and a fixed number of chairs only, with not enough space for children to play. In some countries (Denmark, Italy, Norway, Sweden, UK), greater attention is being given to the needs of children visiting with improvements being made to the environment within which visits take place to allow for greater privacy and quality contact. Some prisons offer the opportunity for overnight visits which can be especially important for improving the bond between parent and child, especially in the months leading up to release.

Innovative approaches have been taken in a number of prisons in respect of understanding the visit from the perspective of the child:

- Denmark has established children's officers in each prison; the Danish Prison Service has also set up a Children's Forum where children's NGOs, the DIHR and others meet to influence policy and practice and the Service is currently extremely committed to creating child-friendly visiting conditions across the system.

- In Northern Ireland and Scotland, there are Family Link Officers in every prison responsible for improving the experience of visiting for children and families.
- In Sweden, there are Children's Ombudspersons present in every prison who work to ensure that visits facilities and procedures are child-friendly.
- Alongside these initiatives, Children's Committees and Family Groups have developed, enabling dialogue between children, families and the prison. Children's Ombudspersons Offices in Scotland, Sweden, Croatia, Norway have implemented initiatives that raise awareness and work to promote the rights of children with imprisoned parents, sometimes working in tandem with the UN Committee on the Rights of the Child to incorporate the views and opinions of these children.

Another factor identified in the work EUROCHIPS has carried out is the impact that the way in which children are treated by staff has on the quality of visits. This relates to the culture in individual prisons, the approach of staff and their training. In some Member States, prison staff are receiving training (generally delivered by an NGO), including the UK, Sweden and Italy. In Italy, the Justice Ministry issued a circular instruction in December 2009 instructing prison staff in all Italian prisons to pay particular attention to children visiting the prison and foster quality contact²² wherever possible.

Search procedures are a particularly sensitive area where there is a need for greater direction on the obligation to respect children's rights, and in particular respect their right to privacy and bodily integrity. This has implications for 'pat-down' searches of children and the use of drug dogs, which can be particularly frightening to child and deter them from wanting to visit again. Security staff need to be specially trained to talk with children appropriately and in particular in how to minimise the fear and negative effect of searching procedures on children.

2.6.2 Telephone & letters

Visits are not the only form of contact between prisoners and their children and indeed some prisoners do not want their children to come to visit them in prison, relying instead on maintaining contact through letters and phone calls. These forms of communication must be guaranteed for prisoners who are detained in a Member State (or country) different to that where their children and family reside. This is the only way to ensure that the child's right to maintain "regular and direct contact" with the imprisoned parent is ensured, given the difficulty of prison visits from another Member State (or country).

Advances in technology over recent years mean that people rarely stay 'out of reach' in their day to day life. Children are accustomed to being able to communicate instantly with their family and friends using mobile phones and Internet. Yet neither of these is available in prison, primarily for security concerns. Additionally, telephone contact is restricted to one-way calls only (the prisoner has to generate the call), do not take place in private and the cost of calls to prisoners (who have limited finances available) can make restrict their ability to call. In the UK for example, prisoners are charged significantly more to contact their families in comparison to the cost on the outside:

Very few prisons allow children to phone into the prisons to talk to their parents, although some prison staff reported that they would facilitate such contact in an emergency (Poland). Since April 2010 'medium security' prisoners in Italy have been able to use mobile phones thereby facilitating two-way contact between parents and their children and in Denmark, the Prison and Probation Service, is currently conducting a trial project installing mobile phones in the cells in an open prison.²³

²² Ministry of Justice Circular DPP: PEA 16/2007/2009

²³ The phones are secured to the wall in the cell but allow text messages back and forth, enabling prisoners' children to have regular contact with their imprisoned parent.

The vast majority of prisons do not allow the use of Internet for communication with families, although some exceptions are made for prisoners whose children are abroad (Northern Ireland). There are also limited initiatives in place to allow children to e-mail their parents in prison (Maghaberry Prison, Northern Ireland) but the parent can only respond to such communication by using the phone or writing a letter. Where Internet contact is allowed, it is closely monitored, raising concerns about the prisoner's and the children's right to privacy. In Denmark, Internet access is allowed for some prisoners, especially in open prisons, but this requires a special permit.

Children **should** be able to communicate with their parents in ways that resemble their normal forms of communication outside. In particular, more should be done to enable children to call their parents in prisons or to contact them using modern technology such as mobile phones or email.

2.6.3 Mothers & babies

The question of mothers and babies in prison poses a particular dilemma in relation to the rights and best interests of the child: 'on the one hand, prisons clearly do not provide an appropriate environment for babies and young children, and on the other hand, the forcible separation of mothers and infants is highly undesirable'.²⁴ The general approach advocated by the Parliamentary Assembly of the Council of Europe is that the overwhelming majority of female offenders with young children should be managed in the community while a more humane approach must be found to those few mothers of young children who have committed serious offences and who must be sentenced to detention.²⁵ Where babies and young children are imprisoned with their mothers the welfare of the children should be the paramount concern. This principle is set down in the European Prison Rules (Rule 36) and has been reinforced by the Committee on the Prevention of Torture:

Where babies & young children are held in custodial settings, their treatment should be supervised by specialists in social work and child development. The goal should be to produce a child-centred environment, free from the visible trappings of incarceration, such as uniforms and jangling keys.²⁶

With this in mind, EUROCHIPS emphasises the great importance of including the imprisoned mother in all of her infant's activities²⁷. Whilst all countries studied uphold this principle, there is no consensus as to the optimum age at which children should remain with their parents, with practice varying from 9 months to 3 years within the countries studied. Italy has some of the most progressive laws²⁸ aimed at reducing the numbers of mothers sent to prison. In addition, a pilot project in a small prison in Milan (ICAM) presents a potentially radical alternative to mother and baby units in larger prison establishments, placing the needs of the child at the centre of its existence and practice. In Denmark, a special initiative exists with the Engelsborg Halfway house for women offenders allowing prisoners to stay with their entire family in an environment very similar to ordinary housing and the family and the children receive help and counselling from community-based professional staff.

EUROCHIPS urges the prioritisation of alternatives to custody for mothers with infants, and, in cases where it is absolutely necessary for a mother to be imprisoned with her child, for greater consistency in standards of care and treatment within 'Mother and Baby units' across Member States.

²⁴ 10th General Report by the Committee for the Prevention of Torture (CPT), 2000, CPT/Inf.(2000)13 (EN), pt. 28.

²⁵ "Mothers and Babies in Prison". Report by Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe (Doc. 8762, 9 June 2000) - (summary).

²⁶ 10th General Report the Committee for the Prevention of Torture (CPT), 2000 [CPT/Inf.(2000)13 (EN)], chapter on 'Women Deprived of their Liberty' (p. 29).

²⁷ For example, if the infant is taken to a daycare centre outside the prison, it is crucial that the mother be able to accompany the child; if this is not feasible, daycare facilities should be provided on the prison premises.

²⁸ Finocchiaro Law (L40/2001); Ministry of Justice Circular, DPP: PEA 16/2007.

3. Response to specific consultation questions

QUESTIONS ON MUTUAL RECOGNITION INSTRUMENTS

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?

All EU countries possess provisions for alternatives to pre-trial detention (remand), but not all Member States explicitly legislate that it should be reserved for only those cases where its purposes cannot be achieved by other means. In some countries there is a presumption in favour of bail however, in reality it is often used all too infrequently. The requirement that a suspect must provide a financial guarantee is seen in many judicial systems as discriminatory against those on lower incomes, who cannot afford such guarantees and it undoubtedly places strain on the family – however this is generally likely to be less severe than the impact of the pre-trial detention of a parent or family member, particularly where they have been the financial provider within the home.

Bail is an extremely effective alternative to remand. There are examples of other alternatives to remand which can be used to offer suspects the opportunity to address the underlying problems to their offending such as drugs and mental health. Sanctions such as Drug Treatment and Testing Orders or attendance at mental health rehabilitation centres can be effective in diverting people from custody at both the pre-trial and post trial stage.

EUROCHIPS would encourage the EU to take action to strengthen its use across Member States. In addition, EUROCHIPS would encourage the EU to strengthen the use of electronic tags as an alternative to remand.

According to the UN CRC, the Courts are allowed, and even expected, to take into consideration the family circumstances of the person accused of the crime when making decisions about both remand and sentence.

Where the defendant has child-caring responsibilities, the Committee recommends that the principle of the best interest of the child ...is carefully and independently considered by competent professionals and taken into account in all decisions related to detention, including pre-trial detention and sentencing, and decisions concerning the placement of the child²⁹

This is particularly the case if the person before the court is a primary carer of children. The EUROCHIPS /DIHR³⁰ study found that in Poland, the Code of Criminal Procedure explicitly states that pre-trial detention may not be appropriate if such person is the sole carer of a child or if they are the only person providing financial means to the family. One mechanism that could be explored to inform the decision-making process would be for children to be permitted to make statements to the Court on the impact their parent's imprisonment would have on them.

EUROCHIPS welcomes measures such as the European Supervision Order and urges the EC to promote its use widely at Union level in order to encourage mutual trust and a greater use of non-custodial conditions in lieu of detention, particularly during the pre-trial stage UNLESS there is clear evidence that the person concerned is likely to be a significant danger to the public, be likely to abscond or likely to interfere with the criminal investigation thereby perverting the course of justice if permitted to remain at large in the community. Furthermore, once again we urge that greater weight be placed on the person's right to family life and the rights of their child/ren and that alternatives to remand should be prioritised in cases where the suspect has parental responsibility for children under 18.

²⁹ UN Committee on the Rights of the Child, Forty-first session, Concluding observations: Thailand, 17/3/2006 CRC/C/THA/CO/2

³⁰ *Children of Imprisoned Parents, Op. cit.*

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?

There are a wide range of alternatives to custody including many different Community sentences, fines, suspended or deferred sentences, drug treatment orders in EU States and other respondents will be better placed to comment on the detail and effectiveness of these. However these need to be enforced through sentencing laws and practice which could be strengthened by EC support. Again our recent study³¹ found that in Northern Ireland, for example, the family situation of a defendant can be an important factor in deciding what the sentence should be and increasingly judges take into consideration the needs of children before sending the parent to prison. Judges are increasingly making reference to the impact of a custodial sentence on children within their judgments and in some cases this has resulted in a reduced tariff (even if a custodial sentence has still been imposed). Such cases are, however, still rare and cases persist of parents, including mothers, being imprisoned for minor, non-violent offences. In Denmark, the Children's Council has recommended that how children will be brought up

*should be a significant factor in the choice of punishment. Here it would be relevant to prioritise sentences which limit the separation between the child and parent, for example, a form of punishment where the parent continues to sleep-over in the home.*³²

There is also the possibility of the courts passing a suspended sentence in cases where the defendant is pregnant or where the needs of the children require it. In Northern Ireland, a number of recent examples cited in this study suggest that judges are increasingly taking account of such factors when passing sentence.

However, EUROCHIPS would like to draw attention to the particular need for the greater use of alternatives for **women in prison**, especially those who are primary carers and whose children are disproportionately affected by their separation as a result of imprisonment. A major study of women in the criminal justice system in the UK³³, the Corston Report, concluded that women offenders and women at risk of offending are a highly vulnerable and marginalised group. More than half of all women prisoners have experienced domestic violence, and a third have experienced sexual abuse; up to 80% have mental health problems, and the number of self-harm incidents reported for women in prison is four times higher than for male prisoners; more than a third are alcoholics, and 27% have a serious drug problem. It also concluded that imprisonment has a serious impact on women's children: 95% of children of women offenders have to leave their home on the conviction of their mother, with many getting split up from their siblings and going into statutory care.

In the UK, the number of women sentenced to custody has increased by more than half between 1998 and 2008. In 2008, 8,862 women, not including those on remand, were sentenced to custody. In the last decade, the women's prison population has risen by 44 per cent; in comparison, the male prison population has risen by 26 per cent.

In particular, the numbers of women passing through prison on very short sentences is increasing rapidly. Such short sentences make meaningful engagement with rehabilitation programmes impossible. As a result the criminal justice system treatment of women is expensive and largely ineffective as it fails to prevent offending or help women get their lives back on track.

³¹ *Children of Imprisoned Parents, Op. cit.*

³² Report to the UN Committee on the Rights of the Child. Supplementary report to Denmark's 3rd periodic report 'Children's Committee', January 2005.

³³ "The Corston Report: A review of women with particular vulnerabilities in the Criminal Justice system", Ministry of Justice, London 2007.

Part of the solution is reducing the use of custody for low-level non-violent women offenders. This prevents women being further entrenched in offending and becoming more vulnerable. Secondly, there needs to be a move towards helping sort out the reasons why multiply-excluded women commit crime in the first place. This should run alongside credible community punishments. Community sentences can most effectively be run alongside integrated women offender services (also known as women's community projects or one-stop-shops). These services, usually run by NGOs, demonstrate how women offenders can be supported to deal with their problems, complete community sentences and cease offending in a way that has less impact on the wellbeing of the their children and greater effect in supporting women to turn their lives around.

Italy has arguably taken the most steps to incorporate the need to take account of the disproportionate impact of imprisoning mothers and primary carers into national law, where, for over two decades a succession of laws have sought to address this issue. The *Simeone-Saraceni Law (1998)* introduced the possibility of house arrest for health or family reasons, especially for pregnant women and mothers with children under age 10. The law also applied to fathers, if they were the main carer. This law also established the minimum requirements for play areas operating in prisons or in women's sections in order to enable imprisoned mothers to keep children with them up to age 3. This was followed by the *Finocchiaro Law (2001)*, which introduced special house arrest for mothers with children under age 10, even for sentences of less than four years, provided that there is no possibility to commit further crimes and that they have served at least one-third of their sentence. The subject may be authorised to leave the residence to work, for assisting children on the outside, and if there is no job, and for the sole purpose of taking care of their children. The Law also gives the right for a third lawyer to represent the child within the special family court. However since the Law was passed there have been a number of problems over its practical implementation —remand prisoners are ineligible, for example,—and recent amendments have come into force from March 2011.

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?

The European Arrest Warrant (EAW) requires the surrender between Member States of any person wanted for both trial or to serve a sentence and is therefore relevant to both pre-trial and post-trial detention. This is clearly an important instrument to ensure that criminals cannot escape justice. Under Article 1(3) of the EAW Member States must respect fundamental rights and legal principles. In the context of visits and communications with family prison conditions are known to vary widely across Member States (as stated at 2.5.1 and 2.5.2). Transfer under the EAW could either adversely or positively affect contact between a prisoner and his/her children due to the conditions they will face if transferred and whether contact will be more easily facilitated or become harder.

EUROCHIPS recommends that:

- The child's best interest must be considered when a parent is sentenced, with regard to the choice of sanction and, if imprisoned, in the choice of where the sentenced is served to ensure that face-to-face contact with their child can be maintained.
- The Council of Europe Resolution 1663 of April 2009, regarding women in prison, should be followed and implemented.

Furthermore, we recommend the adoption of minimum EU standards for visiting facilities to create a child-friendly environment, incorporating the following:

- All staff working on visits (including security staff) should be trained in understanding the perspective and needs of children visiting their parent in prison.
- Clear, easy to grasp and age-appropriate information should be available for children, and those accompanying, about the visits procedures and arrangements, including, for instance, what visitors are allowed to bring into the prison; proof of identity requirements, searching, etc. Information material should be available in other languages for children and other family members.
- An age-appropriate selection of toys and activities for girls and boys (including teenagers) and the opportunity of being outside during visits should be provided in the visits area.
- A standard minimum surface area for visits areas should be established.
- Toilets and baby-changing facilities should be available during visits.
- Visits areas outside the prison should be provided, when possible.

In addition, there should be EU standards on the frequency and duration of prison visits, including age-sensitive standards—for example, granting children under age 3 the right to four visits per week (of shorter duration).

EUROCHIPS would advocate that the prisoner's right to family life and the Rights of the Child need to be considered within decisions to execute the EAW. In considering these, the case both for, or against, surrender would be strengthened and both the rights of the person concerned and their children would be upheld. This could be particularly important to the case of mothers or primary carers arrested/convicted in one Member State but whose children live in another Member State.

QUESTIONS ON PRE-TRIAL DETENTION

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?

Non-applicable as EUROCHIPS is an NGO with a European remit.

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?

EUROCHIPS feels that binding time limitations should be set on the length of pre-trial detention, based on the crime or infraction for which the detainee is accused. We also want to underscore that the issue is not only about reducing time periods but also about reducing the adverse impact of pre-trial detention on children and families, by fostering contact and communication with the external world.

6) Courts can issue a 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?

Non-applicable as EUROCHIPS is an NGO with a European remit.

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?

EUROCHIPS feels that there would be merit in having European Union minimum rules for maximum pre-trial detention periods. EUROCHIPS suggests that to set minimum rules, draw on legislation of the Member State that limits pre-trial detention periods to the greatest extent and hold up as a standard for others in applying at the national level. This type of initiative would highlight best practice in Europe, drawing on the best that Europe has to offer.

Unquestionably there are times where pre-trial detention is considered necessary, The *European Prison Rules* (2006) are clear that the status on prisoners awaiting trial should not be influenced by the possibility that they may be convicted in time of a criminal offence. The Rules are also clear that the right of remand prisoners to visits and other contact with the outside world can only be restricted in exceptional circumstances. If there are exceptional circumstances, however, EUROCHIPS believes that the onus is on the State to ensure that all security measures are compatible with the child's right to maintain "regular and direct contact" with the imprisoned parent when it is in the child's best interest. The State must provide measures to ensure this contact.

The period of detention on remand represents a particularly difficult time for families of those arrested, and for remand prisoners. Families find themselves in often unfamiliar situations (particularly those for whom pre-trial detention is a new experience), having to deal with loss of contact, loss of income, legal procedures, possible involvement of social services in their life, and a lack of information. Additional stress is inevitably caused by the uncertainty of the outcome of criminal investigation and the anxiety around whether or not to let their children and wider family members know about the fact of arrest.

In a lot of ways, this period is different to the time of imprisonment on sentence, particularly in those countries where the Inquisitorial system is in place as prosecutors and the police may be concerned that the accused will try to influence witnesses or in other ways try to derail the criminal investigation. As a consequence these countries may favour the use of pre-trial detention. The EUROCHIPS /DIHR study found that in Poland and Denmark in particular remand prisoners are only allowed very limited contact with the outside world, including with their children and family. In Poland, for example, all remand prisoners have to make an application to the police and the prosecutor to be allowed visits. In Denmark, many visits and correspondence are supervised by the police and some remand prisoners are held in solitary confinement which impacts not only on the quality of contact permitted between the prisoner and his child but also potentially on the prisoner's mental wellbeing and ability to relate positively to their visitors. The Swedish government repeatedly has been criticised by the CPT for its imposition of restrictions on communication (no visits or telephone calls) for remand prisoners, which can have a highly negative impact on children separated from an imprisoned parent.³⁴

As stated above, the child's right to visit a parent in prison is generally contingent upon the parent's desire to see them. Some children may have to wait for months to see their parent who is held on remand due to restrictions on visits and then, even where visits are allowed, these will usually happen under very strict conditions (for example, with no physical contact). Such restrictions impact directly on the right of the child to be in a "regular and direct contact with both parents".

EUROCHIPS would urge the Commission to consider how it could strengthen the implementation of mutual practice in this area to ensure that any cross Member States transfers do not adversely impact contact between children and their imprisoned parent.

³⁴ See Mulready-Jones, A. "Hidden Children: A study of services for children with incarcerated parents in Sweden and the United States." London. July 2011.

QUESTION ON CHILDREN

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

EUROCHIPS strongly emphasises the need to house children and young offenders in re-education centres specifically designed for that purpose, instead of detaining them in penal establishments and that such centres be located as close to their home area as possible.

QUESTION ON MONITORING OF DETENTION CONDITIONS

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?

EUROCHIPS has a European remit, yet provides an example based on the experience of certain network members. The UK, for example, has a well-established and effective dual mechanism for monitoring detention conditions:

- I. Her Majesty's Inspectorate of Prisons (HMIP) for England & Wales³⁵ is an independent inspectorate supported by the Ministry of Justice which reports on conditions for and treatment of those in prison, young offender institutions and immigration detention facilities. The role of HMIP is to provide independent scrutiny of the conditions for and treatment of prisoners and other detainees, promoting the concept of 'healthy prisons' in which staff work effectively to support prisoners and detainees to reduce reoffending or achieve other agreed outcomes. The Inspectorate's work constitutes an important part of the United Kingdom's obligations under the Optional Protocol to the United Nations Convention against Torture and Inhuman and Degrading Treatment: to have in place regular independent inspection of places of custody. Prisons are inspected and reported on using clearly defined criteria ('Expectations') with clear recommendations made for improvements. These criteria are used to examine every area of prison life, from reception to resettlement, including: safer custody, health services, good order and discipline, work, diversity, resettlement (including visits and contact with family and friends).
- II. In addition to HMIP, every prison, immigration removal centre and some short term holding facilities at airports in the UK has an Independent Monitoring Board (IMB). IMB members are independent, unpaid and work an average of 2-3 days per month. Their role is to monitor the day-to-day life in their local prison or removal centre and ensure that proper standards of care and decency are maintained.

IMB Members have unrestricted access to their local prison or immigration detention centre at any time and can talk to any prisoner or detainee they wish to, out of sight and hearing of a members of staff if necessary. Board members also play an important role in dealing with problems inside the establishment. If a prisoner or detainee has an issue that he or she has been unable to resolve he or she can put in a confidential request to see a member of the IMB. Problems might include concerns over lost property, visits from family or friends, special religious or cultural requirements, or even serious allegations such as bullying.

- III. The HMIP is recognised as an international example of good practice and the EC should encourage the establishment of similar bodies in all Member States as well as considering promoting the establishment of lay monitoring panels such as the UK's IMB model. Were these to be created, a network of representatives of such bodies from Members States

³⁵ There is a similar body for Scotland and N. Ireland.

could enable sharing of good practice and consistency of standards which would further mutual trust and co-operation across Member States.

In addition to the Committee for the Prevention of Torture (CPT) inspection of Europe's prisons and detention centres, some countries like the UK have a prison ombudsperson (or in France, a *contrôleur général*) who are able to take up complaints from prisoners and address issues of poor treatment and conditions in custody. As previously mentioned, Sweden has a children's ombudsperson in every prison in the country; Norway is currently following suit and moving to set up a children's ombudsperson in every prison in that nation as well.

In terms of how the EU could encourage prison administrations to network and establish best practice, EUROCHIPS would propose that the most effective way to do this is by fostering the creation of European networks dedicated to prison issues; they are the sole vehicles capable of gathering information from the field, analysing and systematising it, and disseminating it. In addition, it is crucial to promote the interconnectivity of NGOs working in the various sectors which to date remain discrete — criminal justice, social welfare, family affairs, child rights, child welfare, prison issues, etc. This will provide great incentive for prison administrations to network, allowing them to exchange information and best practice and work to define and implement best practice norms.

QUESTION ON DETENTION STANDARDS

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?

The support of NGOs is crucial to promoting the work of the Council of Europe and Member States in that NGOs can galvanise public opinion and raise awareness by organising centralised events such as European Study Days and pan-European Days of Discussion. The adoption of the binding Council of Europe European Prison Charter would be instrumental in providing NGOs with a barometer for the standards being promoted and implemented across Europe.

With respect to EUROCHIPS' remit, the COE could engage the Children's Ombudspersons across Europe to set up a national monitoring body for children with imprisoned parents per Member State, drawing on the standards embodied in the European Prison Charter. This would allow for better, more accurate information and statistics on children with imprisoned parents; and in turn provide guidelines for Children's Ombudsman's Offices who are increasingly called upon to mediate in situations in which children with imprisoned parents are involved.

We thank you for this opportunity.