

Alternatives in Belgian practice

Usefulness, effectiveness, limits

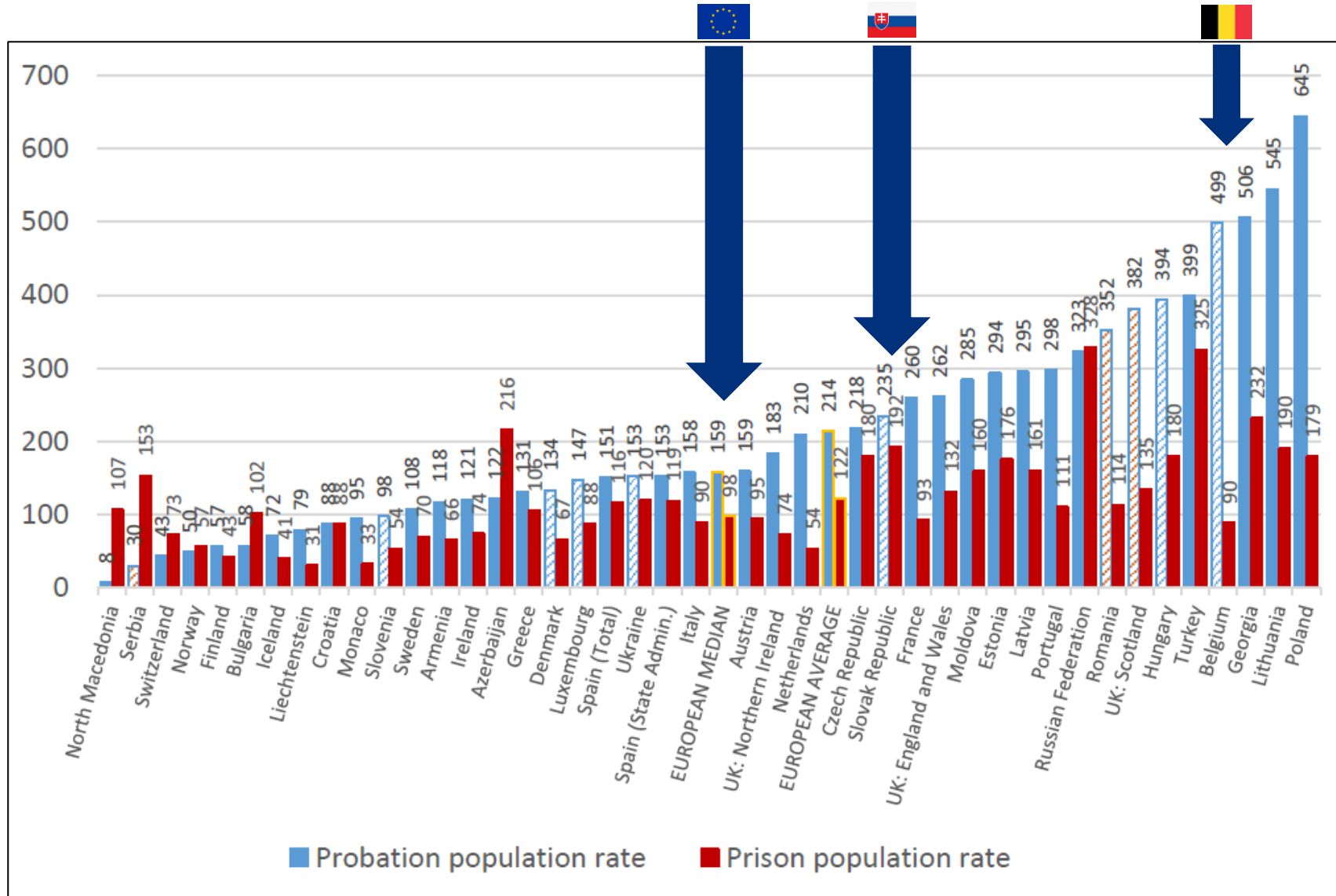
Annie DEVOS
CEP President

Presentation plan

- European data (SPACE I & SPACE II) : overall picture
- Belgian national data – Net widening: a case study
- Recommendation of the European Commission (08/12/2022)
- How to move forward ?
 1. Acting on sentencing
 2. Avoiding the "mass supervision" effect
 3. Which target audience?
 4. Making sense
 5. Burden of supervision
 6. Consultation with the judicial authorities
 7. Impact of the news
 8. Towards an inclusive society?

European data (SPACE I & SPACE II) : overall picture

Rate of prison and probation populations (per 100,000 inhabitants) at 31 January 2021 (N=41)

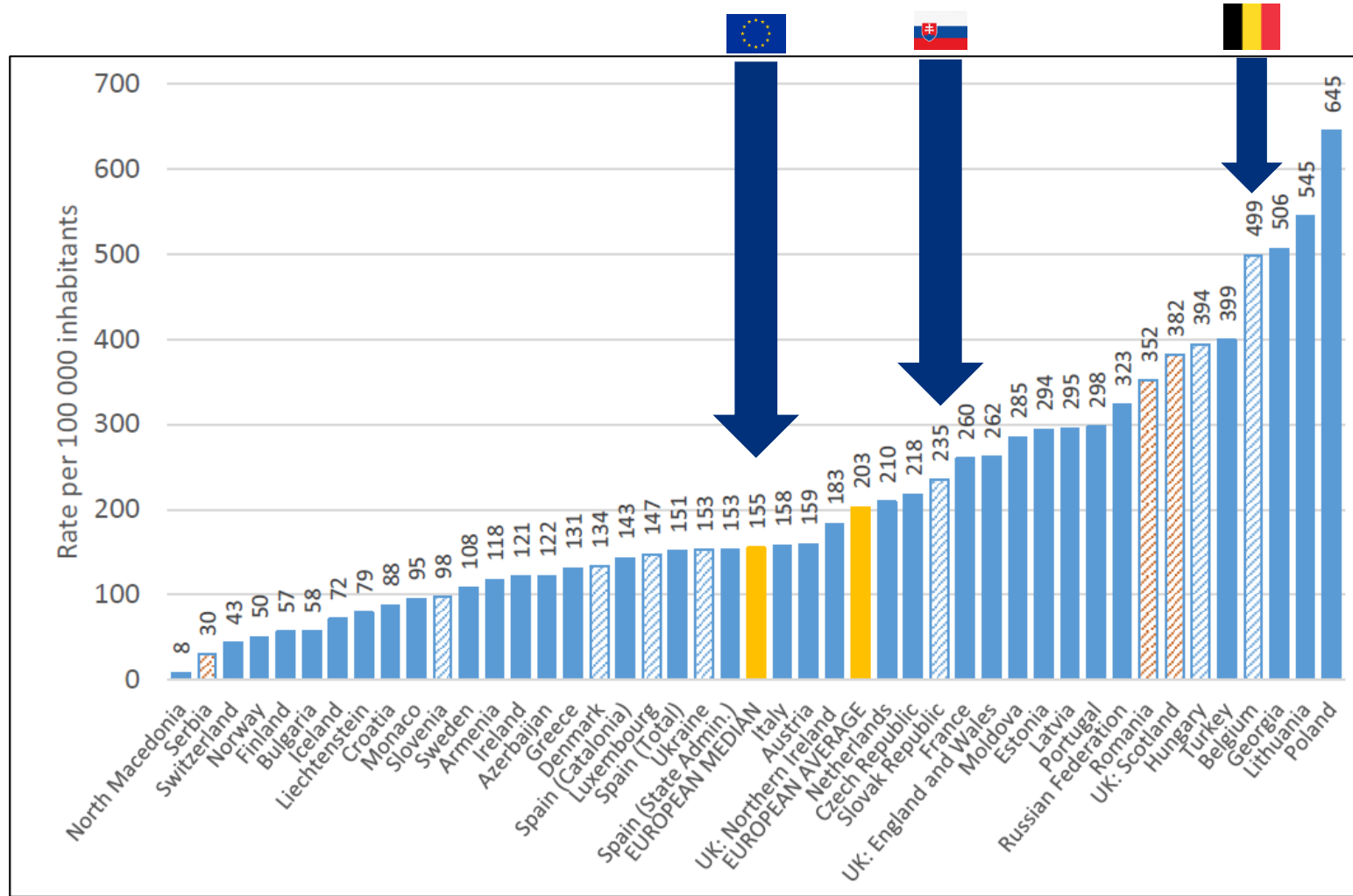


AEBI M., COCCO E. & HASHIMOTI Y.Z. (2022), Probation and Prisons in Europe, 2021: Key Findings of the SPACE reports, Series UNILCRIM 2022/4, Council of Europe & University of Lausanne. Strasbourg & Lausanne

European data (SPACE I & SPACE II) : overall picture

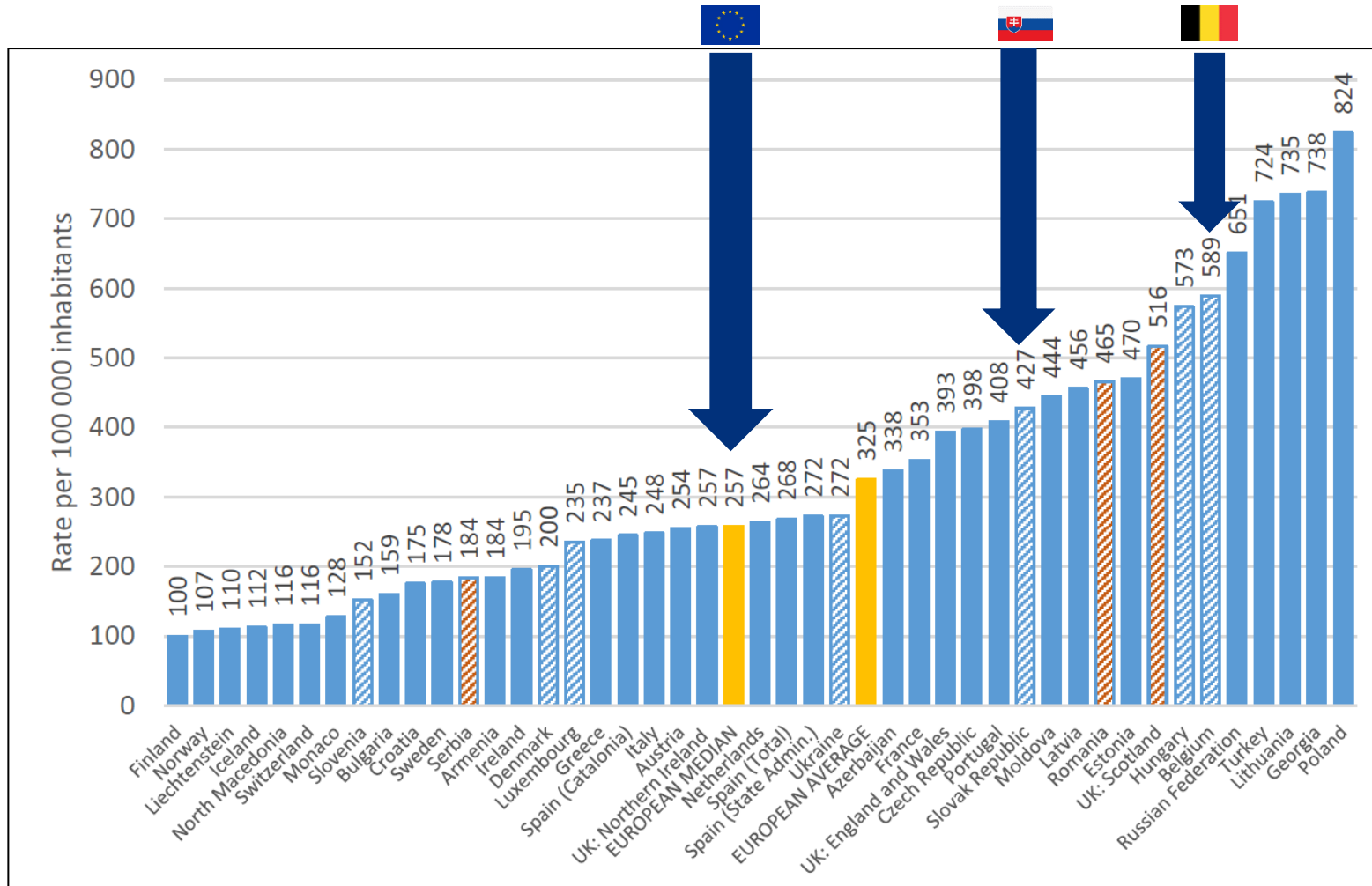
Rate of population on probation (per 100,000 inhabitants) on 31 January 2021 (N=45)

AEBI M., COCCO E. & HASHIMOTI Y.Z. (2022), Probation and Prisons in Europe, 2021: Key Findings of the SPACE reports, Series UNILCRIM 2022/4, Council of Europe & University of Lausanne. Strasbourg & Lausanne



European data (SPACE I & SPACE II) : overall picture

Estimated penal population rate (prisoners + probationers) per 100,000 inhabitants on 31 January 2021 (N=42)

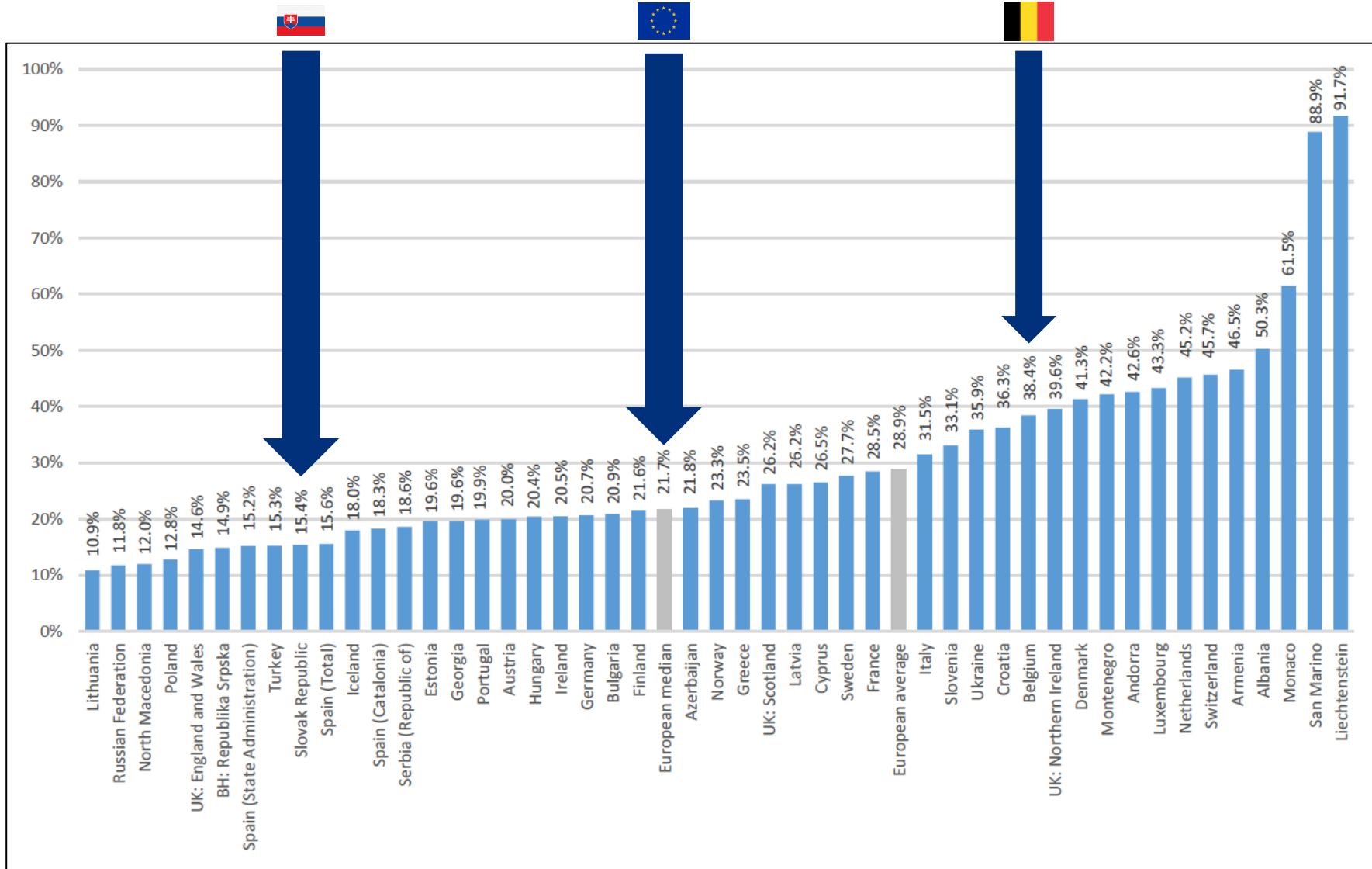


AEBI M., COCCO E. & HASHIMOTI Y.Z. (2022), Probation and Prisons in Europe, 2021: Key Findings of the SPACE reports, Series UNILCRIM 2022/4, Council of Europe & University of Lausanne. Strasbourg & Lausanne

European data (SPACE I & SPACE II) : overall picture

Percentage of detainees in pre-trial detention on 31 January 2021 (N=49)

AEBI M., COCCO E., MOLNAR, L. & TIAGO, M. (2022), Prisons and Prisoners in Europe 2021: Key Findings of the SPACE I report, Series UNILCRIM 2022/3, Council of Europe & University of Lausanne, Strasbourg & Lausanne



Belgian national data – Net widening: a case study

Country	Total prison population	Pre-trial detention rate
Belgium	10.379	3.983 (38,4%)
Slovak Republic	10.489	1.618 (15,5%)

Country	Total probation population	Pre-trial EM / Alternative to pre-trial detention rate
Belgium	57.688	3.383 (5,9%)
Slovak Republic	12.838	1.074 (8,3%)

Belgian national data – Net widening: a case study

Annual flow of pre-trial electronic monitoring (PT-EM) and alternatives to pre-trial detention between 2017 and 2021

Year	2017	2018	2019	2020	2021
Pre-trial detention	11.682	10.706	10.944	10.309	10.472
Pre-trial EM	906	1.298	1.455	1.821	2.290
Alternatives to pre-trial detention	5.454	5.921	5.944	5.732	5.689
TOTAL	18.042	17.925	18.343	17.862	18.451

Belgian national data – Net widening: a case study

**Alternatives have not reduced
the use of pre-trial detention**

**Longer duration of
APtD not taken into
account in the
calculation of the
sentence**

Early sentencing?

**Progressive logic: from
pre-trial detention to
PT-EM to conditional
release**

**Extension of the
supervision at the level of
the sentence**

Recommendation of the European Commission (08/12/2022)

➤ **Obstacles identified by the EU :**

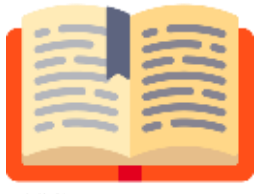
- Law
- Trust (between stakeholders)
- The weight of responsibility
- Understanding of criminal justice
- Foreign nationals/accused without address



Recommendation of the European Commission of 08/12/22
on the procedural rights of suspected and accused persons in pre-trial detention
and on the material conditions of detention

Recommendation of the European Commission (08/12/2022)

- Pre-trial detention as a last resort, promote alternatives;
- Only for offences liable to a sentence exceeding one year;
- Importance of motivated decisions;
- Periodic (monthly) review;
- Limited duration (not exceeding the duration of the potential sentence);
- Deduct any period spent in pre-trial detention prior to sentencing, including when served under alternative measures, from the duration of any prison sentence subsequently imposed.



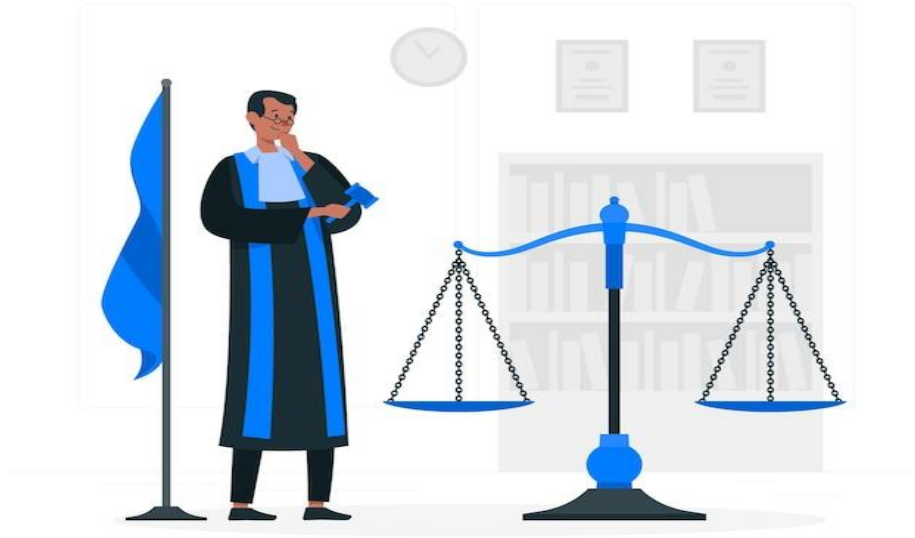
How to move forward?



1. Acting on sentencing

Prison as *ultimum
remedium*

Reducing
penal inflation



Stop
penalising
the social

Diversion

2. Avoiding the "mass supervision" effect

Principle of
proportionality



Damage limitation for
the litigant and his
relatives

Respect for
human rights

3. Which target audience?

Number of accused in the Belgian prisons on May 1st, 2023	
Belgian nationals	1.797
Foreigners with residence permit	644
Foreigners without residence permit	1.685

- More than 40% of the prison population in pre-trial detention has no residence permit
- The people in this category of inmates remain longer in pre-trial detention.



Mechanisms should be put in place to support these people outside prison so that they are in a position to obtain release.

4. Making sense

Individualise the measure (meaningful conditions)



Importance of using social enquiries:
providing information to the authority for them to take the most appropriate measure
according to the individual's situation

5. Burden of supervision

- Alternatives are seen as a favour : underestimating the burden of being under conditions and supervised
- Major investment at the beginning of the guidance: more efficiency and effectiveness
- Limitation of duration and/or intensity when objectives are met

6. Consultation with the judicial authorities

- Collective responsibility of all actors in the penal chain
- Prison and probation services must relay the difficulties of the accused
- Importance of communicating how sentences and measures are carried out



7. Impact of the news

- Real educational work needs to be done with the general public and the media to ensure that the nature and role of non-custodial measures and sanctions are understood and that reasonable expectations are placed on them.
- Exceptional individual situations often lead to even more repressive laws, more prison time...
- Conditions are often stricter for "high profile" convicts, more



8. Towards an inclusive society?

- Many obstacles to reintegration: the criminal record, the digital gap, the problem of debts, etc.



- Society must be more inclusive and promote the reintegration of probationers. Probationers respect their conditions but get tired because "it's still not enough" to reintegrate, get a job, etc.
- Importance of rehabilitation



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