

Council of Europe
Conseil de l'Europe



COE247724

0605
93/1855

ARCH / CDPC (93)2

**European Rules
on Community Sanctions and Measures**

**Recommendation N° R (92) 16
and Explanatory Memorandum**

**Règles européennes sur les sanctions et mesures
appliquées dans la communauté**

Recommandation N° R (92) 16

RECOMMENDATION N° R (92) 16

**on the European Rules
on Community Sanctions and Measures**

**adopted by the Committee of Ministers
of the Council of Europe
on 19 October 1992**

and

Explanatory Memorandum

RECOMMANDATION N° R (92) 16

**relative aux Règles européennes
sur les sanctions et mesures appliquées dans la communauté**

**adoptée par le Comité des Ministres du Conseil de l'Europe
le 19 octobre 1992**

RECOMMANDATION N° R (92) 16
DU COMITE DES MINISTRES AUX ETATS MEMBRES
RELATIVE AUX REGLES EUROPEENNES
SUR LES SANCTIONS ET MESURES
APPLIQUEES DANS LA COMMUNAUTE

(adoptée par le Comité des Ministres le 19 octobre 1992,
lors de la 482ème réunion des Délégués des Ministres)

Le Comité des Ministres, en vertu de l'article 15.b du Statut du Conseil de l'Europe,

Considérant qu'il est de l'intérêt des Etats membres du Conseil de l'Europe d'établir des principes communs en matière pénale, afin de renforcer la coopération internationale dans ce domaine;

Constatant le développement considérable dans les Etats membres du recours aux sanctions et mesures pénales dont l'exécution a lieu dans la communauté;

Considérant que ces sanctions et mesures constituent des moyens importants de lutte contre la criminalité et qu'elles évitent les effets négatifs de l'emprisonnement;

Considérant l'intérêt qui s'attache à la mise en oeuvre de normes internationales pour la création, l'imposition et la mise à exécution de ces sanctions et mesures,

RECOMMANDE aux gouvernements des Etats membres de s'inspirer dans leurs législation et pratique internes des principes retenus dans le texte des Règles européennes sur les sanctions et mesures appliquées dans la communauté, tel qu'il figure en Annexe à la présente Recommandation, en vue de leur mise en oeuvre progressive et de donner à ce texte la plus large diffusion possible.

RECOMMENDATION N° R (92) 16
OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON THE EUROPEAN RULES
ON COMMUNITY SANCTIONS AND MEASURES

**(Adopted by the Committee of Ministers on 19 October 1992
at the 482nd meeting of the Ministers' Deputies)**

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering the importance of establishing common principles regarding penal policy among the member States of the Council of Europe in order to strengthen international co-operation in this field;

Noting the considerable development which has occurred in member States in the use of sanctions and measures whose enforcement takes place in the community;

Considering that these sanctions and measures constitute important ways of combatting crime and that they avoid the negative effects of imprisonment;

Considering the importance attaching to the development of international norms for the creation, imposition and implementation of these sanctions and measures;

RECOMMENDS that the governments of member States be guided in their internal legislation and practice by the principles set out in the text of the European Rules on community sanctions and measures, appended to the present Recommendation with a view to their progressive implementation and to give the widest possible circulation to this text.

P R E A M B U L E

Les présentes règles ont pour but:

- a. d'établir un ensemble de normes permettant au législateur national et aux praticiens concernés, autorités de décision comme organes chargés de l'exécution, d'assurer une application juste et efficace des sanctions et mesures appliquées dans la communauté. Cette application doit viser à maintenir un équilibre nécessaire et souhaitable entre, d'une part, les exigences de la défense de la société, dans son double aspect de protection de l'ordre public et d'application de normes visant à réparer le préjudice causé aux victimes, et, d'autre part, l'indispensable prise en compte des besoins du délinquant en termes d'insertion sociale;
- b. de fournir aux Etats membres des critères de base destinés à assortir la création et le recours aux sanctions et mesures appliquées dans la communauté de garanties contre les risques d'atteinte aux droits fondamentaux de la personne humaine de ceux auxquels elles s'appliquent. De même, convient-il de veiller à ce que l'application de ces sanctions et mesures n'aboutisse à quelque abus que ce soit, qui se traduirait par exemple en un usage au détriment de certains groupes sociaux. Aussi, les avantages et les désavantages sociaux, de même que les risques potentiels résultant ou susceptibles de résulter de telles sanctions ou mesures doivent-ils être examinés soigneusement. Et le simple fait que soit poursuivi le but de substitution à l'emprisonnement ne saurait justifier le recours à n'importe quel type de mesure ou de modalité d'exécution;
- c. de proposer aux personnels chargés de faire exécuter les sanctions ou mesures appliquées dans la communauté, et à tous ceux qui dans la communauté sont impliqués à cet égard, des règles de conduite claires pour s'assurer que cette exécution est conforme aux conditions et obligations imposées et partant, conférer toute crédibilité aux sanctions et mesures. Ce qui ne signifie pas que l'exécution doive être conçue de manière rigide ou formaliste. Au contraire, elle doit être menée dans un souci constant d'individualisation, c'est-à-dire d'adéquation entre les faits commis, la réponse pénale, la personnalité et les aptitudes du délinquant. Et le fait de pouvoir se référer à une réglementation établie au niveau international devrait favoriser les échanges d'expériences, notamment dans le domaine des méthodes de travail.

On ne saurait trop insister sur le fait que les sanctions et mesures appliquées dans la communauté, telles que prévues dans le cadre de ces Règles, présentent une réelle utilité, aussi bien pour le délinquant que pour la communauté, puisque le délinquant est à même de continuer à exercer ses choix et à assumer ses responsabilités sociales. Et l'exécution des sanctions pénales au sein de la communauté plutôt que par un processus de mise à l'écart peut offrir à long terme une meilleure protection de la société, en sauvegardant naturellement les intérêts de la ou des victimes.

Aussi, le prononcé et la mise à exécution des sanctions et mesures appliquées dans la communauté doivent-ils être guidés par ces considérations, de même que par l'objectif essentiel de considérer le délinquant comme un être humain respectable et responsable.

P R E A M B L E

The present Rules are intended:

a. to establish a set of standards to enable national legislators and the practitioners concerned (deciding authorities and authorities responsible for implementation) to provide a just and effective application of community sanctions and measures. This application must aspire to maintain a necessary and desirable balance between, on the one hand, the need to protect society both in the sense of the maintenance of legal order as well as the application of norms providing for reparation for the harm caused to victims, and, on the other hand, the essential recognition of the needs of the offender having regard to his social adjustment;

b. to furnish member States with basic criteria so that the creation and use of community sanctions and measures may be combined with guarantees against the danger that the fundamental human rights of offenders subject to such sanctions and measures are curtailed. Similarly, it is important to guard against the application of these sanctions and measures leading to any kind of abuse such as might, for example, result from their use to the detriment of particular social groups. Full consideration needs to be given to the social advantages and disadvantages of, as well as the potential risks resulting from, or likely to result from, such sanctions and measures. The simple fact of pursuing the aim of achieving a substitute for imprisonment does not justify recourse to any kind of sanction or measure or means of implementation;

c. to propose clear rules of conduct to staff responsible for the implementation of community sanctions and measures and to all those in the community who are involved in this field in order to ensure that this implementation is in conformity with any conditions and obligations imposed, thereby conferring credibility upon the sanctions or measures. This does not mean, however, that implementation is to be thought of in a rigid or formalistic way. Instead, it should be undertaken with constant concern for individualisation, that is, the achievement of a correspondence between the offence and the penal response as well as the personality and the capabilities of the offender. Furthermore, the fact that reference can be made to a set of rules which have been established internationally should facilitate an exchange of experience, in particular concerning methods of work.

It cannot be too strongly emphasised that community sanctions and measures applied within the framework of the present Rules are of value for the offender as well as the community since the offender is in a position to continue to exercise choice and assume his social responsibilities. And the implementation of penal sanctions within the community itself rather than through a process of isolation from it may well offer in the long term better protection for society including, of course, the safeguarding of the interests of the victim or victims.

Consequently, the imposition and the implementation of community sanctions and measures must be guided by these considerations as well as the essential aim of treating the offender with respect as a responsible human being.

Conçues comme un parallèle aux Règles Pénitentiaires Européennes de 1987, les présentes Règles ne sauraient être considérées comme des règles types. Elles forment plutôt un corpus d'exigences susceptibles d'être communément admises et observées; et il ne saurait y avoir d'application satisfaisante des sanctions ou mesures appliquées dans la communauté sans respecter ces exigences.

De par son expérience et la vision d'ensemble de la situation dans les Etats membres, le Conseil de l'Europe est en mesure de veiller à ce que ces Règles guident et aident ceux qui édictent les dispositions légales nationales et ceux qui les appliquent dans chaque pays.

Les dispositions des présentes Règles s'appliquent aux sanctions ou mesures telles que définies dans le glossaire, dont l'exécution s'exerce dans la communauté, y compris les mesures consistant en une modalité d'exécution d'une peine d'emprisonnement hors d'une institution pénitentiaire. En sont toutefois exclues les mesures spécifiques concernant les mineurs.

The present Rules, conceived as a parallel to the European Prison Rules, are not to be regarded as a model system. Instead, they form a corpus of requirements susceptible of being commonly accepted and acted upon. Without respect for these requirements there can be no satisfactory application of community sanctions and measures.

Both from its experience as well as its comprehensive view of the situation in the member States, the Council of Europe is well able to see that these Rules guide and assist those responsible for national law as well as those who apply it.

The provisions of the present Rules deal with all sanctions and measures implemented in the community as defined in the glossary, including ways of enforcing a sentence of imprisonment outside a prison establishment. However, measures which are specifically concerned with juveniles are not covered by the Rules.

PREMIERE PARTIE - PRINCIPES FONDAMENTAUX

FIRST PART - GENERAL PRINCIPLES

Règle/Rule 1

Les présentes règles doivent être appliquées de manière impartiale.

The present rules shall be applied impartially.

Règle/Rule 2

Les définitions des termes contenus dans le glossaire figurant en Annexe doivent être considérées comme faisant partie intégrante des règles.

The definitions of terms in the glossary contained in the Appendix are to be considered as an integral part of the rules.

CHAPITRE I - CADRE LEGAL
CHAPTER I - LEGAL FRAMEWORK

Règle/Rule 3

La définition, l'adoption et l'application des sanctions et mesures appliquées dans la communauté doivent être prévues par des dispositions légales.

The definition, adoption and application of community sanctions and measures shall be laid down in law.

Règle/Rule 4

Les conditions et obligations des sanctions et mesures appliquées dans la communauté, qui sont fixées par l'autorité de décision, doivent être définies par des dispositions légales claires et explicites, de même que les conséquences qui peuvent résulter du non-respect de ces conditions et obligations.

The conditions and obligations of community sanctions and measures which are fixed by the deciding authority shall be defined by clear and explicit legal provisions as shall the consequences of non-observance of these conditions and obligations.

Règle/Rule 5

Aucune sanction ou mesure appliquée dans la communauté ne doit être d'une durée indéterminée.

La durée des sanctions et mesures appliquées dans la communauté doit être fixée par l'autorité chargée de prendre la décision, dans les limites prévues par les dispositions légales en vigueur.

No community sanction or measure shall be of indeterminate duration.

The duration of community sanctions and measures shall be fixed by the authority empowered to make the decision within the limits laid down in law.

Règle/Rule 6

La nature et la durée des sanctions et mesures appliquées dans la communauté doivent aussi bien être proportionnées à la gravité de l'infraction pour laquelle un délinquant a été condamné ou une personne est inculpée, que tenir compte de sa situation personnelle.

The nature and the duration of community sanctions and measures shall both be in proportion to the seriousness of the offence for which an offender has been sentenced or of which a person is accused and take into account his personal circumstances.

Règle/Rule 7

Les autorités chargées de la mise à exécution des sanctions et mesures appliquées dans la communauté doivent être prévues par des dispositions légales.

Les obligations et responsabilités de l'autorité d'exécution doivent également être prévues par des dispositions légales.

The authorities responsible for the implementation of community sanctions and measures shall be laid down in law.

The duties and responsibilities of the implementing authority shall also be laid down in law.

Règle/Rule 8

Les pouvoirs des autorités chargées de la mise à exécution, de décider des méthodes d'exécution, de déléguer le cas échéant leurs prérogatives quant à l'exécution à des tiers, ou encore de passer avec le délinquant, d'autres autorités ou des tiers, des accords en vue de cette exécution, doivent être prévues par des dispositions légales.

The powers of the implementing authorities to decide on methods of implementation, to delegate their implementing duties to third parties if necessary, or to enter into agreements concerning implementation with the offender, other authorities or third parties, shall be laid down in law.

Règle/Rule 9

L'arrestation et le recours à l'emprisonnement durant l'exécution d'une sanction ou mesure appliquée dans la communauté, lorsque le délinquant ne respecte pas les conditions ou obligations imposées, doivent être prévus par des dispositions légales.

Where the offender does not observe the conditions or obligations laid down in the decision subjecting him to a community sanction or measure, recourse to arrest and custody during the implementation shall be regulated by law.

Règle/Rule 10

Il ne doit pas y avoir de dispositions dans la loi quant à la conversion automatique en un emprisonnement d'une sanction ou mesure appliquée dans la communauté, en cas de non-respect des conditions ou obligations imposées par cette sanction ou mesure.

No provisions shall be made in law for the automatic conversion to imprisonment of a community sanction or measure in the case of failure to follow any condition or obligation attached to such a sanction or measure.

Règle/Rule 11

Le contrôle régulier et externe de l'activité des autorités chargées de l'exécution devrait être prévu par des dispositions légales. Ce contrôle doit être effectué par des personnes qualifiées et expérimentées.

The regular and external scrutiny of the work of the implementing authorities should be provided for in law. This scrutiny shall be carried out by qualified and experienced persons.

CHAPITRE II - GARANTIES JUDICIAIRES ET PROCEDURES DE RECOURS
CHAPTER II - JUDICIAL GUARANTEES AND COMPLAINTS PROCEDURES

Règle/Rule 12

La décision relative à l'imposition ou à la révocation d'une sanction ou d'une mesure présententielle appliquée dans la communauté doit être prise par une autorité judiciaire.

The decision to impose or revoke a community sanction or pretrial measure shall be taken by a judicial authority.

Règle/Rule 13

Le délinquant doit avoir le droit d'exercer un recours devant une autorité de décision supérieure contre la décision lui imposant une sanction ou mesure appliquée dans la communauté, modifiant ou révoquant une telle sanction ou mesure.

The offender shall have the right to make a complaint to a higher deciding authority against a decision subjecting him to a community sanction or measure, or modifying or revoking such a sanction or measure.

Règle/Rule 14

Toute décision relative à la mise à exécution d'une sanction ou mesure appliquée dans la communauté doit être susceptible d'appel devant l'autorité judiciaire dès lors que le délinquant souhaite se plaindre qu'une restriction de sa liberté ou que cette décision est illégale, ou contraire au contenu de la sanction ou mesure imposée.

An appeal against a decision concerning the implementation of a community sanction or measure shall be submitted to a judicial authority whenever the offender wishes to complain that a restriction of his liberty or the decision is unlawful or contrary to the content of the imposed sanction or measure.

Règle/Rule 15

Une procédure de recours doit être mise à la disposition du délinquant qui souhaite se plaindre d'une décision relative à la mise à exécution d'une sanction ou mesure appliquée dans la communauté, rendue par l'autorité chargée de cette exécution, ou de l'omission de prendre une telle décision.

A complaints procedure shall be available to an offender who wishes to complain against a decision concerning the implementation made by the implementing authority, or the failure to take such a decision.

Règle/Rule 16

La procédure concernant le dépôt du recours devra être simple. Le recours devra être examiné rapidement et tranché dans les meilleurs délais.

The procedure for the initiation of complaints shall be simple. Complaints shall be examined promptly and decided on without undue delay.

Règle/Rule 17

L'autorité ou l'organe chargé de traiter le recours devra obtenir toute l'information nécessaire pour lui permettre de prendre une décision. A cet égard, devra être examinée soigneusement l'opportunité d'entendre le plaignant en personne, spécialement si ce dernier le demande.

The complaints authority or body shall obtain all necessary information to enable it to decide on the complaints. Careful consideration shall be given to the desirability of hearing the complainant in person, especially when he has expressed such a wish.

Règle/Rule 18

La décision motivée de l'autorité ou de l'organe chargé de traiter le recours doit être communiquée par écrit au plaignant et à l'autorité chargée de l'exécution.

The decision of the complaints authority or body and the reasons for the decision shall be communicated in writing to the complainant and the implementing authority.

Règle/Rule 19

Il ne peut être refusé au délinquant de se faire assister par une personne de son choix ou, le cas échéant, par un défenseur commis d'office, si une telle assistance est prévue par la législation, dès lors qu'il souhaite exercer un droit de recours contre une décision relative à l'imposition, à la modification ou à la révocation d'une sanction ou mesure appliquée dans la communauté, ou contre une décision relative à l'exécution d'une telle sanction ou mesure.

Permission to be assisted by a person of his choice or if necessary by an officially appointed lawyer, where legislative provision is made for such assistance, may not be withheld from an offender who wishes to exercise a right of complaint against a decision concerning the imposition, modification or revocation of a community sanction or measure, or against a decision concerning the implementation of such a sanction or measure.

CHAPITRE III - RESPECT DES DROITS FONDAMENTAUX
CHAPTER III - RESPECT FOR FUNDAMENTAL RIGHTS

Règle/Rule 20

Il ne devra pas y avoir de discrimination dans l'imposition et l'exécution des sanctions et mesures appliquées dans la communauté pour des motifs de race, de couleur, d'origine ethnique, de nationalité, de sexe, de langue, de religion, d'opinion politique ou toute autre opinion, de situation économique, sociale ou autre, de condition physique ou mentale.

There shall be no discrimination in the imposition and implementation of community sanctions and measures on grounds of race, colour, ethnic origin, nationality, gender, language, religion, political or other opinion, economic, social or other status or physical or mental condition.

Règle/Rule 21

Aucune sanction ou mesure appliquée dans la communauté restreignant les droits civils ou politiques du délinquant ne doit être créée ou imposée si cela est contraire aux normes acceptées par la communauté internationale concernant les droits de l'homme et les libertés fondamentales. Ces droits ne sauraient être restreints lors de la mise à exécution de la sanction ou mesure appliquée dans la communauté dans des proportions plus importantes qu'il ne découle normalement de la décision imposant cette sanction ou mesure.

No community sanction or measure restricting the civil or political rights of an offender shall be created or imposed if it is contrary to the norms accepted by the international community concerning human rights and fundamental freedoms. These rights shall not be restricted in the implementation of the community sanction or measure to a greater extent than necessarily follows from the decision imposing this sanction or measure.

Règle/Rule 22

La nature des sanctions et mesures appliquées dans la communauté, et la manière dont elles sont mises à exécution doivent être en accord avec tous droits humains du délinquant garantis sur le plan international.

The nature of all community sanctions and measures and the manner of their implementation shall be in line with any internationally guaranteed human rights of the offender.

Règle/Rule 23

La nature, le contenu et les méthodes d'exécution des sanctions et mesures appliquées dans la communauté ne doivent pas mettre en danger la vie privée ou la dignité des délinquants ou de leur famille, ni conduire au harcèlement.

De même qu'elles ne doivent pas porter atteinte au respect de soi-même, aux liens familiaux et avec la communauté, et à la faculté des délinquants d'être partie intégrante de la société. Des garanties devront être adoptées pour les protéger de toute insulte et de toute curiosité ou publicité inopportunes.

The nature, content and methods of implementation of community sanctions and measures shall not jeopardise the privacy or the dignity of the offenders or their families, nor lead to their harassment. Nor shall self-respect, family relationships, links with the community and ability to function in society be jeopardised. Safeguards shall be adopted to protect the offender from insult and improper curiosity or publicity.

Règle/Rule 24

Toutes les instructions prises par l'autorité d'exécution et, en particulier, celles concernant des exigences quant au contrôle, doivent être pratiques, précises et limitées à ce qui est nécessaire à l'exécution effective de la sanction ou de la mesure.

Any instructions of the implementing authority, including, in particular, those relating to control requirements shall be practical, precise and limited to what is necessary for the effective implementation of the sanction or measure.

Règle/Rule 25

Une sanction ou mesure appliquée dans la communauté ne doit jamais comporter de traitement ou de technique médical ou psychologique non conforme aux normes éthiques reconnues sur le plan international.

A community sanction or measure shall never involve medical or psychological treatment or procedures which are not in conformity with internationally adopted ethical standards.

Règle/Rule 26

La nature, le contenu et les méthodes d'exécution d'une sanction ou mesure appliquées dans la communauté ne doivent pas entraîner de risques indûs de dommage physique ou mental.

The nature, content and methods of implementation of a community sanction or measure shall not involve undue risk of physical or mental injury.

Règle/Rule 27

Les sanctions et mesures appliquées dans la communauté devront être exécutées d'une manière qui n'aggrave pas leur caractère afflictif.

Community sanctions and measures shall be implemented in a way that does not aggravate their afflictive character.

Règle/Rule 28

Le droit au bénéfice du système de protection sociale existant ne doit pas être limité par l'imposition ou l'exécution d'une sanction ou mesure appliquée dans la communauté.

Rights to benefits in any existing social security system shall not be limited by the imposition or implementation of a community sanction or measure.

Règle/Rule 29

Lorsqu'il existe des dispositions permettant à des organisations ou à des personnes individuelles dans la communauté de fournir, moyennant rémunération, une aide à l'autorité d'exécution sous forme d'activité appropriée de prise en charge, c'est à l'autorité d'exécution que revient la responsabilité de veiller à ce que les services proposés soient conformes aux exigences des présentes Règles. Elle doit déterminer les mesures à prendre lorsqu'elle estime que l'aide ainsi fournie n'est pas conforme à ces exigences.

L'autorité d'exécution doit aussi décider des mesures à prendre lorsque les activités de prise en charge révèlent que le délinquant n'a pas rempli une condition ou une obligation mise à sa charge, ou encore une instruction prise pour la mise à exécution de la sanction ou mesure appliquée dans la communauté qui a été imposée.

Where arrangements are made for the provision of help to the implementing authority in the form of appropriate supervising activities carried out against payment by organisations or individuals drawn from the community, responsibility for ensuring that the services provided meet the requirements of the present Rules shall rest with the implementing authority. The implementing authority shall decide on the action to be taken if the help so provided does not meet these requirements.

The implementing authority shall also decide on the action to be taken if the supervising activities reveal that the offender has not complied with a condition or obligation or instruction arising from the community sanction or measure imposed.

CHAPITRE IV - COOPERATION DU DELINQUANT ET CONSENTEMENT
CHAPTER IV - CO-OPERATION AND CONSENT OF THE OFFENDER

Règle/Rule 30

L'imposition et l'exécution des sanctions et mesures appliquées dans la communauté doivent poursuivre le but de développer chez le délinquant le sens de ses responsabilités envers la société et, plus particulièrement, envers la ou les victimes.

The imposition and implementation of community sanctions and measures shall seek to develop the offender's sense of responsibility to the community in general and the victim(s) in particular.

Règle/Rule 31

Une sanction ou mesure appliquée dans la communauté ne doit être imposée que si l'on est assuré des conditions ou des obligations qui peuvent être appropriées au délinquant et de sa volonté de coopérer et de les respecter.

A community sanction or measure shall only be imposed when it is known what conditions or obligations might be appropriate and whether the offender is prepared to co-operate and comply with them.

Règle/Rule 32

Toutes les conditions ou obligations que doit observer un délinquant faisant l'objet d'une sanction ou mesure appliquée dans la communauté doivent être déterminées en prenant en compte aussi bien ses besoins individuels qui ont un rapport avec l'exécution, ses possibilités et droits, que ses responsabilités sociales.

Any conditions or obligations to be observed by the offender subject to a community sanction or measure shall be determined taking into account both his individual needs of relevance for implementation, his possibilities and rights as well as his social responsibilities.

Règle/Rule 33

Indépendamment du document qui formalise la sanction ou mesure appliquée dans la communauté, le délinquant doit, avant que ne commence l'exécution, être informé, le cas échéant, par écrit, de manière claire et dans la langue qu'il comprend, de la nature de cette sanction ou mesure et du but poursuivi ainsi que des conditions ou obligations à respecter.

Notwithstanding the issue of the formal document conveying the decision on the community sanction or measure imposed, the offender shall be clearly informed before the start of the implementation in a language he understands and, if necessary, in writing, about the nature and purpose of the sanction or measure and the conditions or obligations that must be respected.

Règle/Rule 34

Etant donné que la mise à exécution d'une sanction ou mesure appliquée dans la communauté doit être conçue de manière à obtenir la coopération du délinquant et à lui faire comprendre la sanction comme une réaction équitable et raisonnable à l'infraction commise, il devrait autant que possible participer au processus de prise de décisions en matière d'exécution.

Since the implementation of a community sanction or measure shall be designed to secure the co-operation of the offender and to enable him to see the sanction as a just and reasonable reaction to the offence committed, the offender should participate, as far as possible, in decision-making on matters of implementation.

Règle/Rule 35

Le consentement d'une personne inculpée devrait être recueilli pour l'imposition de toute mesure appliquée dans la communauté avant le procès ou aux lieu et place d'une décision sur la sanction.

The consent of an accused person should be obtained before the imposition of any community measure to be applied before trial or instead of a decision on a sanction.

Règle/Rule 36

Lorsque le consentement du délinquant est requis, il doit être donné de manière éclairée et explicite.

Un tel consentement ne saurait avoir pour conséquence de le priver de l'un quelconque de ses droits fondamentaux.

Where the offender's consent is required it shall be informed and explicit.

Such consent shall never have the consequence of depriving the offender of any of his fundamental rights.

DEUXIEME PARTIE - RESSOURCES HUMAINES ET FINANCIERES
SECOND PART - HUMAN AND FINANCIAL RESOURCES

CHAPITRE V - PERSONNEL PROFESSIONNEL
CHAPTER V - PROFESSIONAL STAFF

Règle/Rule 37

Pour le recrutement, la sélection et la promotion des personnels professionnels chargés de l'exécution, nul ne peut faire l'objet d'une discrimination fondée sur la race, la couleur, le sexe, la langue, la religion, les opinions politiques ou autres, l'origine nationale, ethnique ou sociale, les biens, la naissance ou tout autre motif. Le recrutement et la sélection devraient tenir compte des actions spécifiques menées en faveur de catégories particulières de personnes; de même que de la diversité des délinquants à prendre en charge.

There shall be no discrimination in the recruitment, selection and promotion of professional staff on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status. Staff recruitment and selection should take into consideration specific policies on behalf of particular categories of persons and the diversity of the offenders to be supervised.

Règle/Rule 38

Le personnel chargé de l'exécution devra être en nombre suffisant pour assumer effectivement les diverses tâches qui lui incombent. Il devra avoir les qualités de caractère et les qualifications professionnelles nécessaires à l'exercice de ses fonctions. Des normes et des politiques devront être définies pour que le nombre et la qualité du personnel correspondent à la quantité de travail ainsi qu'aux qualifications et à l'expérience professionnelle spécifique requises.

The staff responsible for implementation shall be sufficiently numerous to carry out effectively the various duties incumbent upon them. They shall possess the qualities of character and the professional qualifications necessary for their functions. Norms and policies shall be developed to ensure that the quantity and quality of staff are in conformity with the amount of work and the professional skills and experience required for their work.

Règle/Rule 39

Le personnel chargé de l'exécution devra recevoir une formation adéquate et disposer d'une information lui permettant d'avoir une perception réaliste de son champ d'activité particulier, de ses activités concrètes et des exigences déontologiques de son travail. Sa qualification professionnelle devra être régulièrement améliorée et développée par des cours de perfectionnement, des analyses et des évaluations de son travail.

The staff responsible for implementation shall have adequate training and be given information that will enable them to have a realistic perception of their particular field of activity, their practical duties and the ethical requirements of their work. Their professional competence shall be regularly reinforced and developed through further training and performance reviews and appraisals.

Règle/Rule 40

Le personnel professionnel doit être nommé selon des conditions juridiques, financières et de durée de travail qui garantissent la continuité de son action, permettent de développer son sens des responsabilités, et lui assurent un statut d'emploi égal à celui d'autres personnels professionnels exerçant des fonctions comparables.

Professional staff shall be appointed on such a legal, financial and working-hours basis, that professional and personal continuity is ensured, that the employees' awareness of official responsibility will be developed and that their status in relation to conditions of service is equal to that of other professional staff with comparable functions.

Règle/Rule 41

Le personnel professionnel devra être responsable envers l'autorité d'exécution prévue par la loi.

Cette autorité doit définir les obligations, les droits et les responsabilités de son personnel, et prendre toutes dispositions pour en contrôler l'activité et en évaluer l'efficacité professionnelle.

Professional staff shall be accountable to the implementing authority set up by law.

This authority shall determine the duties, rights and responsibilities attaching its staff and shall arrange for the supervision of such staff and assessment of the effectiveness of their work.

CHAPITRE VI - RESSOURCES FINANCIERES
CHAPTER VI - FINANCIAL RESOURCES

Règle/Rule 42

Les autorités d'exécution devront disposer de ressources financières adéquates prises sur les fonds publics. Des tiers peuvent apporter une contribution financière ou toute autre contribution ; mais l'autorité d'exécution ne devra jamais dépendre financièrement de ceux-ci.

The implementing authorities shall have adequate financial means provided from public funds. Third parties may make a financial or other contribution but implementing authorities shall never be financially dependent on them.

Règle/Rule 43

Dans le cas où les autorités d'exécution disposent de la contribution financière de tiers, des règles devront définir les procédures à suivre, les personnes investies de responsabilités spécifiques dans ce domaine, et les modalités de contrôle de l'utilisation des fonds.

In cases where implementing authorities make use of third parties' financial contributions, there shall be rules defining the procedures to be followed, the persons invested with specific responsibilities in this matter and the means for auditing the use of funds.

CHAPITRE VII - IMPLICATION ET PARTICIPATION DE LA COMMUNAUTE
CHAPTER VII - COMMUNITY INVOLVEMENT AND PARTICIPATION

Règle/Rule 44

Des informations appropriées sur la nature et le contenu des sanctions et mesures appliquées dans la communauté, et sur les modalités de leur exécution doivent être diffusées afin que le public, et notamment les personnes privées, et les organismes et services publics et privés concernés par l'exécution de ces sanctions et mesures, puissent en comprendre le bien-fondé et les considérer comme des réponses adéquates et crédibles aux comportements délinquants.

Appropriate information about the nature and content of community sanctions and measures as well as the various ways in which they are implemented shall be disseminated so that the general public, including private individuals and private and public organisations and services involved in the implementation of these sanctions and measures, can understand them and perceive them as adequate and credible reactions to criminal behaviour.

Règle/Rule 45

L'intervention des autorités chargées de l'exécution des sanctions et mesures appliquées dans la communauté doit être relayée par toutes ressources utiles dans la communauté afin de procurer à ces autorités des moyens adaptés pour répondre aux besoins des délinquants et maintenir leurs droits. A cette dernière fin, on devra également recourir le plus possible à la participation d'organisations et de personnes individuelles dans la communauté.

The work of the authorities responsible for the implementation of community sanctions and measures shall be supplemented by using all appropriate resources existing in the community in order to make available to these authorities suitable ways of meeting the needs of offenders and upholding their rights. To this latter end, maximum use shall also be made of participation by organisations and individuals drawn from the community.

Règle/Rule 46

La participation communautaire doit être utilisée afin de permettre aux délinquants de développer des liens réels avec la communauté, de les rendre conscients de l'intérêt que la communauté leur témoigne et d'élargir leurs possibilités de contacts et de soutien.

Community participation shall be used to assist offenders to develop meaningful ties in the community, become aware of the community's interest in them and broaden their possibilities for contact and support.

Règle/Rule 47

La participation communautaire doit se manifester sous forme d'un accord conclu avec l'autorité d'exécution précisant notamment la nature et les modalités des tâches à accomplir.

Community participation shall be provided under an agreement with the responsible implementing authority which specifies, in particular, the nature of the duties and the way they are to be carried out.

Règle/Rule 48

Le rôle de prise en charge ne peut être exercé par les organisations communautaires et par les personnes individuelles dans la communauté que s'il est prévu par des dispositions légales ou défini par les autorités responsables de l'imposition ou de l'exécution des sanctions ou mesures appliquées dans la communauté.

Participating organisations and individuals drawn from the community shall undertake supervision only in a capacity laid down in law or defined by the authorities responsible for the imposition or implementation of community sanctions or measures.

Règle/Rule 49

Le recours aux personnes individuelles dans la communauté ne doit pas être considéré comme un substitut au travail qui devrait être effectué par le personnel professionnel.

Recourse to individuals drawn from the community shall not become a substitute for work which should be carried out by professional staff.

Règle/Rule 50

Les autorités d'exécution doivent définir des normes et procédures de sélection des personnes individuelles dans la communauté, et d'informations concernant leurs tâches, leurs responsabilités, les limites de leur compétence, les personnes auxquelles elles doivent rendre compte, et tous autres éléments utiles.

The implementing authorities shall define criteria and procedures according to which individuals drawn from the community are selected, informed about their tasks, responsibilities, limits of competence, accountability and other issues.

Règle/Rule 51

Les personnes individuelles dans la communauté doivent être guidées, dans la mesure du possible, par le personnel professionnel et mises à même d'assumer les tâches qui correspondent à leurs capacités et à leurs possibilités. Une formation adaptée devra être assurée en cas de besoin.

Individuals drawn from the community shall be guided to the extent necessary by professional staff and enabled to perform those duties which correspond to their capacities and possibilities. Suitable training shall be provided as necessary.

Règle/Rule 52

Les organisations communautaires et les personnes individuelles dans la communauté sont tenues par les exigences du secret professionnel.

Participating organisations and individuals drawn from the community shall be bound by the demands of professional confidentiality.

Règle/Rule 53

Dans l'exercice de leurs fonctions, les personnes individuelles dans la communauté doivent être couvertes par une assurance contre les accidents et les dommages causés par les tiers, de même qu'en matière de responsabilité civile. Les dépenses nécessaires à leur travail doivent leur être remboursées.

Individuals drawn from the community shall be insured against accident, injury and public liability when carrying out their duties. They shall be reimbursed for necessary expenditures incurred in the course of their work.

Règle/Rule 54

Les organisations communautaires ainsi que les personnes individuelles dans la communauté doivent être entendues au sujet des questions d'ordre général relevant de leur compétence, de même que sur les questions portant sur les cas individuels, et disposer de toutes informations en retour.

Participating organisations and individuals drawn from the community shall be heard on matters of general character falling within their competence as well as those concerning individual cases. They shall receive feedback information.

TROISIEME PARTIE - GESTION DES SANCTIONS ET MESURES

THIRD PART - MANAGEMENT ASPECTS OF SANCTIONS AND MEASURES

CHAPITRE VIII - CONDITIONS DE MISE A EXECUTION
CHAPTER VIII - CONDITIONS OF IMPLEMENTATION

Règle/Rule 55

L'exécution des sanctions et mesures appliquées dans la communauté devra être conçue de manière à ce qu'elles aient la plus grande signification possible pour le délinquant et à ce qu'elles contribuent au développement personnel et social nécessaire du délinquant afin de permettre son insertion sociale. Les méthodes de prise en charge et de contrôle devront poursuivre ces objectifs.

Community sanctions and measures shall be implemented in such a way that they are made as meaningful as possible to the offender and shall seek to contribute to personal and social development of relevance for adjustment in society. Methods of supervision and control shall serve these aims.

Règle/Rule 56

Tout avis communiqué au tribunal ou au ministère public concernant la préparation, l'imposition ou la mise à exécution d'une sanction ou mesure appliquée dans la communauté ne peut être fourni que par le personnel professionnel ou par une organisation prévue par la loi, ou par l'intermédiaire du personnel professionnel.

Advice to the court or the public prosecutor concerning the preparation, imposition or implementation of a community sanction or measure shall only be provided by or through professional staff, or by an organisation laid down in law.

Règle/Rule 57

L'autorité d'exécution doit s'assurer que l'information concernant les droits de ceux qui font l'objet de sanctions et mesures appliquées dans la communauté est mise à leur disposition, de même qu'une aide pour l'exercice de ces droits. Les personnels professionnels, les organisations communautaires et les participants individuels doivent être informés de ces dispositions.

The implementing authority shall ensure that information about the rights of those subject to community sanctions and measures and assistance to secure those rights are made available to them. Professional staff and participating organisations and individuals drawn from the community shall be informed of these provisions.

Règle/Rule 58

Le délinquant doit avoir le droit de faire des observations orales ou écrites avant toute décision concernant l'exécution d'une sanction ou mesure appliquée dans la communauté.

L'autorité d'exécution doit garantir au délinquant la possibilité d'entrer en contact dans un délai minimum avec un membre du personnel professionnel exerçant une fonction de responsabilité, en cas de conflit ou de crise.

The offender shall have the right to make oral or written representations prior to any decision concerning the implementation of a community sanction or measure.

The implementing authority shall ensure that the offender can contact a responsible member of the professional staff with minimum delay in case of conflict or crisis.

Règle/Rule 59

L'autorité d'exécution doit accueillir et examiner avec soin les plaintes formulées par le délinquant, concernant l'exécution de la sanction ou mesure dont il est l'objet. Elle doit aussi examiner très attentivement la demande du délinquant tendant à changer la personne exerçant la prise en charge ou toute autre personne qui exerce une responsabilité à son égard.

The implementing authority shall respond to and investigate complaints concerning the implementation of the sanction or measure imposed on the offender. It shall responsibly and seriously consider an offender's request for a change of supervisor or other person charged with a duty concerning the offender.

Règle/Rule 60

L'autorité d'exécution établit un dossier individuel pour chaque délinquant. Ce dossier doit être tenu à jour afin notamment qu'il soit possible d'établir tout rapport utile quant à l'observation par le délinquant des conditions ou obligations qui lui incombent au titre de la sanction ou mesure.

Individual case records shall be established by the implementing authority. They shall be kept up-to-date so that inter alia any necessary report can be prepared about the offender's compliance with the conditions or obligations of the sanction or measure.

Règle/Rule 61

Les informations contenues dans le dossier individuel ne devront comporter que les aspects intéressant la sanction ou mesure prononcée et sa mise à exécution. Elles devront être aussi objectives et fiables que possible.

Information in individual case records shall only encompass matters relevant to the sanction or measure imposed and its implementation. Such information shall be as reliable and objective as possible.

Règle/Rule 62

Le délinquant ou une personne agissant en son nom doit avoir accès à son dossier individuel à condition qu'il n'y ait aucune atteinte au respect de la vie privée d'autrui. Le délinquant devra avoir le droit de contester le contenu du dossier. L'objet de la contestation devra être porté au dossier.

The offender, or a person acting on behalf of the offender, shall have access to his individual case record to the extent that it does not infringe the right to privacy of others. The offender shall have the right to contest the content of the case record. The substance of the contestation shall be written into the case record.

Règle/Rule 63

La personne en charge d'un délinquant doit normalement l'informer du contenu du dossier et des rapports qu'elle a rédigés, et lui en expliquer le sens.

The supervisor of an offender shall ordinarily inform him of the content of the case record and any reports made and explain the content to him.

Règle/Rule 64

Les informations figurant dans le dossier individuel ne seront divulguées qu'aux personnes ayant le droit d'y accéder. Les informations ainsi divulguées se limiteront à ce qui est nécessaire à l'autorité qui les demande pour s'acquitter de sa tâche.

Information in any individual case record shall only be disclosed to those with a legal right to receive it and any information disclosed shall be limited to what is relevant for the task of the authority requesting information from a case record.

Règle/Rule 65

Une fois que l'exécution de la sanction ou mesure a pris fin, les dossiers que possède l'autorité d'exécution doivent être détruits ou archivés selon une réglementation prévoyant des garanties en ce qui concerne la divulgation de leur contenu à des tiers. Il ne pourra en être ainsi avant que les effets juridiques de la sanction ou mesure ne soient épuisés, ni au-delà de la période de temps définie par la législation en vigueur.

After the termination of the community sanction or measure, case records in the hands of the implementing authority shall be destroyed or kept in archives in accordance with rules providing safeguards on revealing their content to third parties. This shall not be done before the legal effects of the sanction or measure have ceased nor later than the time limit fixed by the legislation.

Règle/Rule 66

La nature et le volume des renseignements sur les délinquants qui sont fournis aux organismes assurant leur placement professionnel ou leur fournissant une aide sur les plans tant personnel que social, seront définis dans le cadre de l'action menée avec le délinquant et limités à cet objet. En seront notamment exclus, sauf accord exprès et informé du délinquant, toute information sur le délit et sur ses antécédents, de même que tout autre renseignement susceptible de lui être socialement défavorable ou de constituer une ingérence dans sa vie privée.

The kind and amount of information about offenders given to agencies which provide work placements or personal and social assistance of any kind shall be defined by, and be restricted to, the purpose of the particular action under consideration. In particular, without the explicit and informed consent of the offender, it shall exclude information about the offence and his personal background, as well as any other information likely to have unfavourable social consequences or to constitute an intrusion into private life.

Règle/Rule 67

Les tâches confiées aux délinquants effectuant un travail pour la communauté ne doivent pas être dépourvues d'intérêt, mais être socialement utiles et significatives, et doivent leur permettre de développer autant que possible leurs aptitudes. Ces travaux ne doivent pas être exécutés dans un but lucratif pour quelque entreprise que ce soit.

Tasks provided for offenders doing community work shall not be pointless, but shall be socially useful and meaningful and enhance the offender's skills as much as possible. Community work shall not be undertaken for the purpose of making profit for any enterprise.

Règle/Rule 68

Les conditions de travail et d'emploi des délinquants effectuant des travaux pour la communauté devront être conformes à la législation en matière de santé et de sécurité. Les délinquants devront être assurés contre les accidents et les dommages résultant de l'exécution, de même qu'en matière de responsabilité civile.

Working and occupational conditions of offenders carrying out community work shall be in accordance with all current health and safety legislations. Offenders shall be insured against accident, injury and public liability arising as a result of implementation.

Règle/Rule 69

Les frais d'exécution ne doivent pas, en principe, être mis à la charge du délinquant.

In principle, the costs of implementation shall not be borne by the offender.

CHAPITRE IX - METHODES DE TRAVAIL
CHAPTER IX - METHODS OF WORK

Règle/Rule 70

L'exécution des sanctions et mesures appliquées dans la communauté doit se fonder sur la gestion de programmes individualisés et le développement de relations de travail appropriées entre le délinquant, la personne en charge du délinquant et toutes autres organisations communautaires ou personnes individuelles dans la communauté.

The implementation of community sanctions and measures shall be based on the management of individualised programmes and the development of appropriate working relationships between the offender, the supervisor and any participating organisations or individuals drawn from the community.

Règle/Rule 71

Les méthodes de travail mises en oeuvre pour exécuter les sanctions et les mesures appliquées dans la communauté seront adaptées à chaque cas particulier. Les autorités et le personnel d'exécution disposeront à cette fin d'une latitude suffisante pour qu'il puisse en être ainsi sans que s'ensuivent des graves inégalités de traitement.

Implementation methods shall be individually adapted to the particular circumstances of each case. The authorities and the staff responsible for the implementation shall therefore enjoy a sufficient degree of discretion for this to be possible without leading to serious inequality in treatment.

Règle/Rule 72

Lorsqu'un besoin individuel nécessaire à l'exécution de la sanction ou mesure est identifié, une aide personnelle, sociale ou matérielle doit être fournie à un niveau de qualité avéré.

Where an individual need of relevance for the implementation of the sanction or measure is identified, personal, social or material assistance of established quality shall be provided.

Règle/Rule 73

Les instructions que peut prendre l'autorité chargée de l'exécution de la décision imposant la sanction ou mesure, doivent être pratiques et précises. Elles ne doivent pas imposer au délinquant des exigences plus grandes que celles résultant de cette décision.

Instructions of the implementing authority issued for the implementation of the decision on the sanction or measure shall be practical and precise. They shall not subject the offender to requirements beyond those resulting from that decision.

Règle/Rule 74

Les activités de contrôle seront exercées uniquement dans les limites où elles sont nécessaires à une stricte exécution de la sanction ou mesure appliquée dans la communauté, et fondées sur le principe d'intervention minima. Elles seront proportionnées à cette sanction ou mesure et limitées aux buts qui lui sont assignés.

Controlling activities shall only be undertaken to the extent that they are necessary for the proper implementation of the sanction or measure imposed and shall be based upon the principle of minimum intervention. They shall be in proportion to the sanction or measure and limited by its aims.

Règle/Rule 75

Les autorités d'exécution doivent recourir à des méthodes de travail faisant appel à des techniques professionnelles avérées. Ces méthodes doivent être actualisées en tenant compte des développements de la recherche, du travail social ainsi que de tous autres domaines d'activité concernés.

Implementing authorities shall use methods of work which are consistent with proven professional standards. These methods shall take cognizance of developments in research, in social work and in allied fields of activity.

**CHAPITRE X - DEROULEMENT DES SANCTIONS OU MESURES ET
CONSEQUENCES DE L'INEXECUTION**

**CHAPTER X - OPERATION OF THE SANCTION OR MEASURE AND
CONSEQUENCES OF NON-COMPLIANCE**

Règle/Rule 76

Au début de la mise à exécution d'une sanction ou mesure appliquée dans la communauté, le délinquant doit se voir expliquer le contenu de la mesure et ce qu'on attend de lui. Il doit également être informé des conséquences du non respect des conditions et obligations énoncées dans la décision, et des règles en application desquelles il pourra être renvoyé devant l'autorité de décision, eu égard à l'inexécution ou à l'exécution inadéquate de la sanction ou mesure.

At the start of the implementation of a community sanction or measure the offender shall be informed about the content of the sanction or measure and what is expected of him. He shall also be informed of the consequences of non-compliance with the conditions and obligations stated in the decision and of the rules under which he may be returned to the deciding authority in respect of non-compliance or inadequate compliance with the requirements of the sanction or measure.

Règle/Rule 77

L'autorité d'exécution doit définir clairement les procédures que ses personnels doivent appliquer à l'égard tant du délinquant que de l'autorité de décision, en cas d'inexécution ou d'exécution inadéquate par le délinquant des conditions ou obligations qui lui sont imposées.

The implementing authority shall clearly define the procedures which implementing staff shall use vis-à-vis the offender and the deciding authority in the event of the offender's non-compliance or inadequate compliance with the conditions or obligations imposed.

Règle/Rule 78

Les manquements mineurs aux instructions prises par l'autorité d'exécution ou aux conditions ou obligations, qui n'entraînent pas le recours à la procédure de révocation de la sanction ou mesure, doivent être réglés rapidement dans le cadre du pouvoir discrétionnaire ou, si nécessaire, par une procédure administrative.

Minor transgressions against instructions of the implementing authority or against conditions or obligations which do not require the use of a procedure for revocation of the sanction or measure shall be promptly dealt with by discretionary means or, if necessary, by an administrative procedure.

Règle/Rule 79

Tout entretien dans le cadre d'une procédure administrative concernant les manquements mineurs doit laisser au délinquant la possibilité de faire des commentaires. Le contenu de cet entretien ou de tout autre mesure d'investigation doit figurer au dossier individuel et être communiqué sans délai et clairement au délinquant.

In any interview of administrative character concerning minor transgressions the offender shall be given the opportunity to make comments. The content of this interview and any other investigatory action shall be written into the individual case record and conveyed promptly and clearly to the offender.

Règle/Rule 80

Tout manquement significatif au respect des conditions ou obligations fixées par une sanction ou mesure appliquée dans la communauté doit sans délai être signalé par écrit par l'autorité d'exécution à l'autorité de décision.

Any significant failure to comply with the conditions or obligations laid down in a community sanction or measure shall be promptly reported in writing to the deciding authority by the implementing authority.

Règle/Rule 81

Tout rapport écrit sur le manquement aux conditions ou obligations de la sanction ou mesure devra contenir des informations objectives et détaillées sur la manière dont a eu lieu le manquement, et les circonstances dans lesquelles il s'est produit.

Any written report on failure to comply with conditions or obligations shall give an objective and detailed account of the manner in which the failure occurred and the circumstances in which it took place.

Règle/Rule 82

Il ne peut être statué par l'autorité de décision sur la modification ou la révocation partielle ou totale d'une sanction ou mesure appliquée dans la communauté qu'après un examen détaillé des faits rapportés par l'autorité d'exécution.

The deciding authority shall only give a ruling on the modification or the partial or total revocation of a community sanction or measure after making a detailed examination of the facts reported by the implementing authority.

Règle/Rule 83

Avant de statuer sur la modification ou la révocation partielle ou totale d'une sanction ou mesure appliquée dans la communauté, l'autorité de décision devra s'assurer que le délinquant aura eu l'occasion d'examiner les documents sur lesquels se fonde la demande de modification ou de révocation, et de faire connaître ses observations sur la violation prétendue de toute condition ou obligation imposée.

Before deciding on the modification or partial or total revocation of a community sanction or measure, the deciding authority shall ensure that the offender has had the opportunity to examine the documents on which the request for modification or revocation is based, and to present his comments on the alleged violation of any condition or obligation imposed.

Règle/Rule 84

Le non-respect des conditions ou obligations fixées par une sanction ou mesure appliquée dans la communauté, qui peut se traduire selon la législation en vigueur par la modification ou la révocation partielle ou totale de la sanction ou mesure, ne doit pas constituer en soi une infraction.

Failure to comply with conditions or obligations attached to the sanction or measure, which may under the legislation in force lead to the modification or partial or total revocation of the sanction or measure, shall not in itself constitute an offence.

Règle/Rule 85

Lorsqu'est envisagée la révocation d'une sanction ou mesure appliquée dans la communauté, il devra être tenu compte de la manière et de la mesure dans lesquelles les conditions et obligations fixées par cette sanction ou mesure ont été respectées par le délinquant.

Where the revocation of a community sanction or measure is being considered, due account shall be taken of the manner in which and the extent to which any conditions and obligations laid down have been complied with by the offender.

Règle/Rule 86

La décision de révoquer une sanction ou mesure appliquée dans la communauté ne doit pas aboutir nécessairement à imposer une peine d'emprisonnement.

The decision to revoke a community sanction or measure shall not necessarily lead to a decision to impose imprisonment.

Règle/Rule 87

Toute condition ou obligation fixée par une sanction ou mesure appliquée dans la communauté devrait pouvoir être modifiée par l'autorité de décision dans le cadre de la législation en vigueur, en fonction des progrès accomplis par le délinquant.

It shall be possible for any condition or obligation laid down in a community sanction or measure to be modified, having regard to progress made by the offender, by the deciding authority in accordance with the legislation in force.

Règle/Rule 88

L'autorité de décision devrait pouvoir mettre fin avant terme à une sanction ou mesure appliquée dans la communauté, lorsqu'il est établi que le délinquant a respecté les conditions et obligations fixées, et dès lors qu'il ne s'avère plus nécessaire de les maintenir pour atteindre le but de cette sanction ou mesure.

The deciding authority should be able to terminate a sanction or measure before it is due to end when it is established that the offender has observed the conditions and obligations required and it appears no longer necessary to maintain them to achieve the purpose of the sanction or measure.

CHAPITRE XI - RECHERCHE ET EVALUATION DU FONCTIONNEMENT DES SANCTIONS ET MESURES APPLIQUEES DANS LA COMMUNAUTE

CHAPTER XI - RESEARCH ON, AND EVALUATION OF, THE WORKING OF COMMUNITY SANCTIONS AND MEASURES

Règle/Rule 89

La recherche sur les sanctions et mesures appliquées dans la communauté doit être encouragée. Ces sanctions et mesures devraient être régulièrement évaluées.

Research on community sanctions and measures shall be encouraged. They should be regularly evaluated.

Règle/Rule 90

L'évaluation des sanctions et mesures appliquées dans la communauté devrait comporter, quoique sans s'y limiter, un bilan objectif de la mesure dans laquelle leur utilisation:

- répond aux attentes des autorités définissant les dispositions légales, des autorités judiciaires, des autorités de décision, des autorités d'exécution et de la communauté, eu égard aux finalités assignées à ces sanctions et mesures;
- contribue à faire baisser les taux d'emprisonnement;
- permet de répondre aux besoins des délinquants en rapport avec l'infraction;
- est positive en termes de rentabilité;
- contribue à la réduction de la délinquance.

Evaluation of community sanctions and measures should include, but not be limited to, objective assessment of the extent to which their use:

- conforms to the expectations of law makers, judicial authorities, deciding authorities, implementing authorities and the community concerning the goals of community sanctions and measures;
- contributes to a reduction in the rates of imprisonment;
- enables the offence-related needs of offenders to be met;
- is cost-effective;
- contributes to the reduction of crime in the community.

ANNEXE - GLOSSAIRE
APPENDIX - GLOSSARY

1. **Sanctions et mesures appliquées dans la communauté**
Community sanctions and measures

La notion de "sanctions et mesures appliquées dans la communauté" se réfère à des sanctions et mesures qui maintiennent le délinquant dans la communauté et impliquent une certaine restriction de sa liberté par l'imposition de conditions et/ou d'obligations, et qui sont mises à exécution par des organismes prévus par les dispositions légales en vigueur.

Cette notion désigne les sanctions décidées par un tribunal ou un juge, et les mesures prises avant la décision imposant la sanction ou à la place d'une telle décision, de même que celles consistant en une modalité d'exécution d'une peine d'emprisonnement hors d'un établissement pénitentiaire.

Bien que les sanctions pécuniaires ne soient pas visées par cette définition, toute activité de prise en charge ou de contrôle entreprise pour assurer leur exécution entre dans le cadre des Règles.

The term "community sanctions and measures" refers to sanctions and measures which maintain the offender in the community and involve some restriction of his liberty through the imposition of conditions and/or obligations, and which are implemented by bodies designated in law for that purpose.

The term designates any sanction imposed by a court or a judge, and any measure taken before or instead of a decision on a sanction as well as ways of enforcing a sentence of imprisonment outside a prison establishment.

Although monetary sanctions do not fall under this definition, any supervisory or controlling activity undertaken to secure their implementation falls within the scope of the Rules.

2. **Dispositions légales**

2. **Law - laid down in, regulated by**

Par dispositions légales, il faut entendre aussi bien la loi votée par le parlement que les décrets (ou ordonnances) pris et publiés par le gouvernement pour l'application de la loi.

The expressions "laid down" or "regulated by" both refer to law made by parliament and to published governmental decrees (ordinances or orders) for the implementation of law.

3. Autorité judiciaire
3. Judicial authority

Dans le cadre des présentes Règles, le terme d'autorité judiciaire désigne un tribunal, un juge ou un procureur.

For the purposes of the Rules, the term "judicial authority" means a court, a judge or a prosecutor.

4. Autorité de décision
4. Deciding authority

Le terme d'"autorité de décision" désigne toute autorité judiciaire habilitée par les dispositions légales en vigueur à imposer ou révoquer une sanction ou mesure appliquée dans la communauté, ou à modifier ses conditions et obligations, de même que tout organisme pareillement habilité.

La notion d'autorité de décision est plus large que celle d'autorité judiciaire.

The term "deciding authority" means a judicial authority empowered by law, to impose or revoke a community sanction or measure or to modify its conditions and obligations, or any body which is similarly empowered.

The notion of deciding authority is wider than that of judicial authority.

5. Autorité d'exécution
5. Implementing authority

Par "autorité d'exécution" on entend tout organisme habilité et responsable au premier chef de la mise à exécution, dans la pratique, d'une sanction ou une mesure appliquée dans la communauté. Dans de nombreux pays, c'est le service de probation qui remplit ce rôle.

The "implementing authority" is the body or bodies empowered to decide on, and with primary responsibility, for the practical implementation of a community sanction or measure. In many countries the implementing authority is the probation service.

6. Exécution ou mise à exécution et application
6. Implementation and application

Par "exécution" (ou "mise à exécution") on entend les aspects pratiques du travail de l'autorité d'exécution pour s'assurer qu'une sanction ou mesure appliquée dans la communauté est bien effectuée.

Par "application" on entend à la fois l'imposition et la mise à exécution d'une sanction ou mesure appliquée dans la communauté.

Le deuxième terme a un sens plus global que le premier.

By "implementation" is meant the carrying out of the practical aspects of the work of the implementing authority to ensure that a community sanction or measure is properly enforced.

By "application" is meant both the imposition and the implementation of a community sanction or measure.

The latter term has therefore a more general meaning than the former.

7. Conditions et obligations
7. Conditions and obligations

Par "conditions et obligations" on entend toutes les exigences qui sont partie intégrante de la sanction ou mesure imposée par l'autorité de décision.

By "conditions and obligations" is meant any requirements which are integral to the sanction or measure imposed by the deciding authority.

8. Recours
8. Complaint

Le terme "recours" désigne aussi bien l'appel devant une autorité judiciaire que le dépôt d'une plainte devant une autorité administrative.

The term "complaint" refers both to an appeal to a judicial authority and to making of a complaint to an administrative body.

9. Prise en charge
9. Supervision

Le terme de "prise en charge" concerne aussi bien les activités d'aide exercées par une autorité d'exécution ou par délégation de celle-ci aux fins de maintenir le délinquant dans la communauté que les activités visant à s'assurer que le délinquant remplit toutes conditions ou obligations imposées.

The term "supervision" refers both to helping activities conducted by or on behalf of an implementing authority which are intended to maintain the offender in society and to actions taken to ensure that the offender fulfils any conditions or obligations imposed.

10. Contrôle
10. Control

Le terme "contrôle" désigne les activités consistant seulement à vérifier que toutes les conditions et obligations imposées sont remplies de même que les activités consistant à en assurer le respect par le recours ou la menace de recours aux procédures applicables en cas de non-respect.

La notion de contrôle est plus restreinte que celle de prise en charge.

The term "control" refers to activities which are limited to ascertaining whether any imposed conditions or obligations are fulfilled as well as to activities to secure compliance by using, or threatening to use, the procedures available in the event of non-compliance.

The notion of control is narrower than that of supervision.

11. Délinquant
11. Offender

Uniquement dans un souci de brièveté, le terme de "délinquant" doit être compris comme s'appliquant aussi bien à une personne inculpée qu'à une personne condamnée.

Solely in the interest of brevity, the term "offender" is to be understood as covering both an accused as well as a sentenced person.

12. Participation communautaire

12. Community participation

Le terme de "participation communautaire" couvre toutes les formes d'aide, rémunérée ou non, exercée à temps complet, partiel ou intermittent, et proposée à l'autorité d'exécution par des organisations publiques ou privées et par des personnes individuelles dans la communauté.

The term "community participation" refers to all those forms of help, paid or unpaid, carried out full-time, part-time or intermittently, which are made available to the implementing authority by public or private organisations and by individuals drawn from the community.

13. Genre

13. Gender

Dans un souci de brièveté, seul le genre masculin est utilisé dans les Règles. Le genre féminin doit être considéré comme sous-entendu lors de l'emploi du genre masculin.

In the interest of brevity, the Rules make use of the masculine gender only (e.g. "his", "him", "he"). The feminine gender (e.g. "hers", "her", "she") is always to be understood in conjunction with the masculine gender.

14. Temps des verbes

14. Verb forms

Les dispositions dans les Règles qui concernent des exigences essentielles sont formulées par l'emploi des verbes "devra/devront" et "doit/doivent". A l'inverse, les interdictions essentielles sont exprimées par l'utilisation de la forme négative de ces verbes. Les dispositions se référant à ce qui est désirable mais non absolument essentiel, sont exprimées par l'utilisation du temps conditionnel "devrait/devraient". Ce que l'on souhaite seulement interdire est exprimé par la forme négative de ce temps.

Statements in the Rules which refer to essential requirements are formulated using "shall" and "must" as verb forms. Conversely, essential prohibitions use these verb forms in the negative. Statements which refer to what is desirable but not absolutely essential have "should" or "ought" as verb forms. What, desirably, should be prohibited uses these verb forms in the negative.

DRAFT EXPLANATORY MEMORANDUM

**CONCERNING THE EUROPEAN RULES
ON COMMUNITY SANCTIONS AND MEASURES**

INTRODUCTION

Within the framework of international co-operation in penal matters, the question of non-custodial sanctions and measures has already given the Council of Europe the opportunity to elaborate some important instruments of regulation. Among these are the Convention dating from 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, Resolution (65) 1 on Suspended Sentence, Probation and other Alternatives to Imprisonment and Resolution (76) 10 on Certain Alternative Penal Measures to Imprisonment.

However, these regulatory instruments, although they reflect positive developments in the application of non-custodial sanctions, deal only with limited aspects of the questions considered. They do not constitute a body of comprehensive and up-dated doctrine, especially where the norms which should regulate the implementation of such sanctions and measures are concerned.

The last two decades have seen an unprecedented development in non-custodial sanctions and measures in the legislation of the majority of member States which make possible a more creative approach to dealing with the problem of offences and sanctions. This is due, *inter alia*, to an augmentation of criminal law intervention in combatting crime, a desire to diversify sanctions so as to achieve a more adequate reaction to offences and to the deficiencies of imprisonment which has not been shown to be more effective in terms of preventing recidivism than sanctions and measures implemented in the community, but which does entail high costs.

The emphasis on the community component constitutes the most fundamental element of these sanctions and measures. The involvement of the community is the most necessary and original element in their implementation and essential also for the aim of attempting to secure the resettlement of the offender. For this reason, it is necessary to confer a full and autonomous status on these sanctions and measures, so far as their imposition is concerned, in relation to other penal sanctions and measures. That is why the draft Recommendation and Rules refer to community sanctions and measures.

These sanctions and measures provide possibilities, qualitatively speaking, to react credibly to offences of minor and medium gravity. But the desire to achieve credibility both as to their character as a sanction and even cost-effectiveness, can entail a risk, so far as the requirements imposed upon the offender are concerned, of an unjustified degree of control. This means in consequence that there is a danger that there can be an absence of equity and justice inconsistent with the values which have inspired the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Therefore it is important to guard against the misuse of such sanctions and measures and, above all, to ensure that, when used in combination with a custodial sanction, they do not lead an aggravation of the custodial sanction. It is no less necessary to ensure that the introduction of new technologies and new developments in matters of supervision and control as well as pressure for greater cost-effectiveness, do not compromise the offender's rights. It is without doubt necessary to set forth a general principle, in accordance with

which each new provision concerning non-custodial sanctions and measures ought not to go beyond certain limits. And, at least, special attention should be focused on the advantages and disadvantages in terms of social costs which attach to the introduction of such sanctions and measures as well as the potential dangers which may arise in the course of their implementation.

This is why, at a time when the political transformations to be seen in Europe as well as the free movement of goods and persons makes the use of homogeneous juridical rules more than ever necessary, it has seemed useful to formulate European Rules for this further area of law on the implementation of sanctions and measures to reinforce international co-operation in the penal field.

COMMENTARY

Preamble

The national application of the present European Rules cannot be thought about without considering them in the light of the purposes they have been designed to serve. The preamble to the Rules explains these purposes, which are three in number.

The Rules are intended to constitute a corpus of norms for national legislators and the practitioners in the application of community sanctions and measures. This means the enactment of laws and regulations which define such sanctions, decisions on their use in individual cases and their subsequent implementation. All of these processes need to be carried out in ways that are both just and effective. A community sanction or measure, if it is to be beneficial and useful, should be carefully selected and imposed in such a way that there can be no doubt that the reaction to the harm caused has an appropriate penal value. It needs to be carried out realistically and correctly so that it is widely seen as meaningful in the view of everyone - by society and the victim but also, of course, by the offender. In order to achieve this it is essential that there be an inter-relation between the three polarities of society, the offender and the victim. And the application of community sanctions and measures should seek to find a point of balance between the essential components of the penal response, i.e. the protection of the legal order in society and the resettlement of the offender.

The Rules are also intended to ensure respect for the fundamental rights of those upon whom community sanctions and measures are imposed and their families, as these are defined in the European Convention for the Protection of Human Rights and the international instruments accepted by the member States of the Council of Europe (the United Nations Universal Declaration of Human Rights of 1948 and the International Covenant on Civil and Political Rights of 1966). The application of these sanctions and measures, i.e. their creation in legislation, their imposition and their implementation, must not occasion any risk of a reduction of these rights nor lead to their abuse. In addition, it is essential to ensure that pursuing the aim of applying alternatives to imprisonment does not lead to justifying a similarly extreme degree of intervention. Instead, the principle should always be to restrict intervention to the minimum and for it to stand in proportion to the offence committed or the sanction or measure imposed.

A further purpose of the Rules is to set forth professional standards for the use of staff so as to enable them to carry out the implementation of community sanctions and measures correctly and exactly and without arbitrariness which can result in inappropriate implementation. The credibility of this kind of sanction or measure is largely dependent on this being so. They will be accepted and hence imposed if it is apparent that their implementation is not rashly undertaken. This underlines the importance of well defined

standards of professional conduct during the implementation phase which alone guarantee true efficiency. It is therefore essential to ensure that the services responsible for implementation use methods of work based on professional standards of high quality which are constantly revised in the light of developing knowledge. In this respect the rules should facilitate exchanges of experience concerning methods of work within the framework of European co-operation in the field of the application of penalties and pre-trial measures.

*

*

*

Even if the purpose of the Rules is not primarily to promote the use of non-custodial measures it is nevertheless impossible to deny a priori that they may indirectly have such an effect. There can be no doubt that these sanctions and measures should occupy an essential place in the spectrum of penal reactions since they present advantages in comparison with sanctions involving deprivation of liberty. By avoiding social exclusion they facilitate the adjustment of the offender in society and, in the last analysis, provide for better account to be taken of the protection of society and, in particular, of the victim or victims. They thus contribute to the prevention of crime.

Moreover, the Rules have a place in the efforts to humanise penal sanctions in that the imposition and implementation of community sanctions and measures permit the offender to be treated with respect as a responsible human being. In choosing to implement the sanction in the community the traditional aims of penal reaction are linked to the aim of social reconciliation.

The present European Rules should be seen as constituting a parallel to the European Prison Rules which were the subject of Recommendation (87) 3 adopted by the Committee of Ministers of the Council of Europe. But like the latter set of Rules, the present Rules are not to be regarded as constituting a model system. The aim pursued is rather to define a body of European law for the application of community sanctions and measures which can serve as a source of reference for member States, guiding and assisting them in their legislation and practice.

The Rules formulate a set of requirements which can be generally accepted and respected. To make use of community sanctions and measures which fall short of these requirements would be inconsistent with the principles and values for which the Council of Europe stands.

The preamble defines the scope of the Rules. In terms of the definition of the sanctions and measures given in the Glossary this is a wide and comprehensive field. Not only sanctions but also measures imposed before or even in place of trial are included as well as ways of enforcing a prison sentence outside a penal establishment as is the case with conditional release.

Finally, it should be noted that the Rules are addressed not only to national authorities responsible for law but also to national authorities empowered to impose community sanctions and measures as well as those responsible for their implementation.

FIRST PART - GENERAL PRINCIPLES

The rules presented in the first part are not of greater importance than those to be found in the other two parts since all rules have equal worth. It is only that their scope is different. Unlike the rules in the other two parts which deal with matters of an essentially practical character, the rules in the first part are of a general and comprehensive nature. They deal with general principles in the sense that the norms laid down constitute the philosophy and framework for legislative action, pronouncement of sentences and implementation of community sanctions and measures.

The very titles of the four chapters which form the first part clearly indicate the primary areas upon which European law on community sanctions and measures must be based, belonging as they do to the fundamental notion of the rule of law. Thus, rules are presented which deal successively with the principle of legality, then with judicial guarantees and, more generally, complaints procedures and, finally, with respect for the fundamental rights of the offender. These are followed by rules concerning the co-operation and consent of the offender. These deal with matters of paramount importance for achieving stated aims since community sanctions and measures have the unique characteristic of making possible the exercise of control over the offender's behaviour whilst allowing it to evolve under normal and natural circumstances. This offers opportunities for the development of the offender's sense of responsibility and is why the implementation of community sanctions and measures presupposes at least a certain degree of co-operation from the offender.

Rule 1:

This rule and Rule 2 have been placed at the outset since they concern all aspects of the application of the European Rules on Community Sanctions and Measures. No rule should entail the consequence that an individual or some group of individuals should be favoured at the expense of another individual or group.

Rule 2:

In order to avoid misunderstanding in the use of terms employed it has been deemed necessary to define a number of key-words. For convenience, these definitions have been placed in an appendix to the rules. The definitions have the same value for establishing norms as the rules themselves.

CHAPTER I - LEGAL FRAMEWORK

Rule 3:

It is a general principle applicable to all kinds of penal sanctions that they must be subject to the principle of legality. This means that the authority to create and apply them must stem from law in the sense that that term is defined in the Glossary. Community sanctions and measures cannot be excluded from the principle of legality. This means that their definition, adoption and application must be laid down in law. The term "application", as defined in the Glossary, includes both the imposition of a community sanction and measure and its implementation.

The rule provides no obstacle to setting up experiments prior to legal regulation. The field of sanctions - and especially community sanctions and measures - is in a state of constant evolution. It would be contrary to the aim of humanising punishment and securing adapted sanctions in accordance with the principles described in the Preamble if this process of evolution were stultified. Governments should, however, ensure that any experiments undertaken are in accord with the spirit of the European Rules on Community Sanctions and Measures.

Rule 4:

This Rule, corollary to Rule 3, applies the legality principle to the content of community sanctions and measures. This means, according to the definition in the glossary, to any requirement integral to the sanction or measure imposed. In particular, since the requirements constitute instructions which the offender is expected to follow, the legal provisions should be concise and intelligible so as to be comprehensible by ordinary persons, leaving no doubt as to their meaning.

The purpose of the Rule is also to ensure that there are legal provisions about possible consequences of non-observance of instructions. In its turn this raises the question of defining the power of the authority empowered to deal with a breach of conditions or obligations attached to a community sanction or measure. Only the objective exercise of this power, based as it should be on legal provisions, gives real impact to the sanction or measure.

Rule 5:

The dimension of duration is an essential element of any community sanction or measure since it allows a quantitative relation to be established between the offence and the penal reaction as well as a link between the means employed (control and all appropriate forms of help) and the aim pursued (the integration of the offender in society).

The Rule begins with a general statement expressed, having regard to its absolute character, in negative form. Unlike certain forms of imprisonment, no community sanction or measure is to be of indeterminate duration. There are two arguments against indeterminacy. In the first place the notion of indeterminacy is incompatible with the principle of proportionality. In the second place indeterminate sanctions and measures run the risk of maintaining the offender in a state of dependency which is contrary to the purpose pursued, i.e. the development of the offender's autonomy in society.

Furthermore, the Rule requires that the legality principle obtain with the duration of community sanctions and measures since they must not exceed the maximum legally provided for nor be less than the minimum where such a minimum is laid down in law. This double requirement is to be observed both by the authority empowered to impose such a sanction or measure as well as that empowered to implement it. Hence, the implementing authority may not prolong any control of the offender beyond the point in time fixed by the decision to impose the sanction or measure.

Rule 6:

The imposition or implementation of a community sanction or measure must take account, on the one hand, of the protection of the legal order in society and, on the other, the attempt to secure the resettlement of the offender. Any such sanction or measure should therefore, both as to its nature and duration, meet two requirements. It must stand in proportion to the offence committed or alleged by the prosecution and allow for individualisation having regard to the accused person's or offender's personal situation, i.e. to his personal characteristics, his family, material and social circumstances as well as any previous criminal record.

Rule 7:

The legality principle applies to the implementation phase of community sanctions and measures and that firstly by defining the authorities to whom responsibility is to be given for implementing this kind of sanction and measure. Their management presupposes a proven competence both to check that any requirements are imposed on the offender are met as well as to ensure any necessary forms of help. It is for national law to provide guarantees of such competence. The guarantees given should also define the responsibilities and the duties of the implementation authorities.

Rule 8:

The purpose of this Rule is to provide for a legal definition of the discretionary powers enjoyed by the implementing authority. This means that the methods of implementation are also subject to the principle of legality. Ways of carrying out implementation should offer the same guarantees of clarity and absence of the arbitrary as with the sanction or measure. The same is true where it becomes necessary to make use of third parties - whether private persons or public or private organisations - and delegate certain implementation tasks to them. The principle is also to be applied whenever the means of implementation presupposes the obtaining of agreement from third parties or from the offender himself by staff responsible for implementation.

Rule 9:

The legality principle which also applies to the consequences of breach of conditions as laid down in Rule 4, necessarily therefore governs the two most serious decisions which can be taken during implementation when the offender does not fulfil his obligations, i.e. recourse to arrest and custody. It is for national law to determine the criteria which shall regulate the powers to arrest or incarcerate the offender under these conditions.

However, even if it must be expected that a certain number of offenders will not respect the conditions laid down and thereby render it necessary to arrest them or place them in custody, these possibilities should be reserved only for the most serious cases. The expression "regulated by law" is defined in the Glossary.

Rule 10:

That which characterises the aim with a community sanction or measure is the attempt to avoid incarceration. It would be paradoxical, and certainly contrary to the end sought, if imprisonment were to constitute the necessary and only reaction to breakdown. This is why the Rule prohibits provision in national law for an automatic recourse to imprisonment in such cases. But this does not mean that deprivation of liberty can never be a consequence of non-observance of the requirements imposed with a community sanction or measure.

Rule 11:

The Rule states that it is desirable that the work of the implementation authorities should be subject to scrutiny. The term "scrutiny" refers both to inspections carried out within the framework of the criminal justice system as well as those carried out by another administration, for example, health authorities.

The nature and ways carrying out scrutiny may well vary according to the legal characteristics of different countries. Nevertheless, two requirements must be fulfilled if efficiency and credibility are to be ensured. Scrutiny should be undertaken regularly, that is, neither casually nor in an ad hoc fashion. It should be conducted by external persons, that is to say, persons who are independent of the activity in question in order to guarantee objectivity and impartiality.

A high quality of scrutiny, where it is provided for in national law, requires that it be undertaken by qualified and experienced persons.

CHAPTER II - JUDICIAL GUARANTEES AND COMPLAINTS PROCEDURES

Rule 12:

The Rule states the principle according to which competence to decide on the imposition or revocation of a community sanction must be reserved for a judicial authority, i.e. a court, judge or prosecutor only. The same is true where a pre-trial measure is concerned, i.e. a measure imposed before determination of sanction.

The affirmation of a principle limiting such decisions to a judicial authority, which is in itself a guarantee of fundamental freedoms and rights, secures independence having regard to the doctrine of the separation of power and impartiality in relation to the principle of two-tier jurisdiction. It constitutes a manifestation of the principles underlying the rule of law which are jointly admitted and shared by the member States of the Council of Europe.

Rule 13:

The exercise of the right to complain to a higher authority by the offender is a customary manifestation of the right of defence. The Rule encompasses all categories of decision, including administrative decisions, which have been taken by the deciding authority as defined in the Glossary. Not only the imposition or revocation of a sanction or measure is concerned but also the modification of its content, e.g. its duration and the conditions or obligations to be fulfilled.

Rule 14:

The principle requiring the intervention of a judicial authority has as consequence that the offender must have a right to appeal to a judicial authority about any decision - usually an administrative decision - concerning implementation when such a decision, or the restriction of liberty resulting from implementation, results in a manifest worsening of his situation. The criteria for a manifest worsening are, on the one hand, that the decision is unlawful or, on the other, incompatible with the requirements resulting from the sanction or measure imposed.

Rule 15:

The legal principles which underline these Rules must also take account of the way in which implementation is carried out. The right of the offender to make a complaint must therefore also be possible concerning decisions which affect the practical ways of implementing the sanction or measure. And this applies equally to omitting to take a decision on a question of implementation having regard to the damaging consequences which such an omission may have for the offender.

This requirement, although absolute, should not, however, hinder the implementing authority from exercising its discretionary power concerning the offender. The use of this power in the daily work of implementation must not be impeded by the use of delaying tactics through the making of complaints at the risk of reducing the necessary exercise of this power to nothing or rendering it chancy, thus preventing a proper implementation of the sanction or measure.

Rules 16 and 17:

Every kind of complaints procedure must, as a guarantee of efficacy, meet certain requirements. Thus, it shall be possible for anyone to initiate a complaint without difficulty and for the complaint to be examined and decided on without delay (Rule 16). Furthermore, whoever has to decide on the matter must have at his disposal the information necessary for the decision, in particular any observations provided by the offender (Rule 17).

This last-named requirement must not be conceived rigidly. It is desirable to give the competent authority latitude to assess in each particular case whether it is useful to formally hear the offender, even where the latter has requested this. The recognised right of the offender as complainant does not necessarily mean that he can insist upon being heard in person.

Rule 18:

Requiring reasons for the decision of the authority or complaints body, whether this be of judicial or administrative character, as well as that the decision shall be communicated in writing, is based on the importance of information to the persons and services concerned. Even if the sanction or measure has been terminated, for instance by revocation, it remains useful for the implementing authority to know the reasons for that decision. It goes without saying that the information should be transmitted promptly.

Rule 19:

The right to defend oneself is an imprescriptible right acknowledged in all European legislations. The purpose of the Rule is to inform the offender of the existence of this right and to prevent him from being in any way hindered in the exercise of the right. The offender is therefore to have the right to be assisted by a person of his choice in connection with any complaint against the imposition, revocation or modification of the conditions of a community sanction or measure or any decision concerning the implementation of such a sanction or measure. And free choice in the matter of the person to assist him is a necessary element in the exercise of the right even if there is some danger that this person may lack the specific professional qualifications required.

The Rule also provides for the offender to be helped by an officially appointed lawyer (and naturally therefore to be informed of the possibility) where provision is made for this in national law.

CHAPTER III - RESPECT FOR FUNDAMENTAL RIGHTS

Rule 20:

The purpose of Rule 20 is to ensure that community sanctions and measures are imposed and implemented justly and fairly, that is, without discrimination. Discrimination in the imposition or implementation of community sanctions and measures means the unjust or unfair exercise of discretion for any of the reasons mentioned in the Rule. The grounds listed should not, however, be regarded as exhaustive. Other similar kinds of grounds for discrimination are forbidden by the Rule.

A distinction must be made between discrimination and differentiation. A prohibition on discrimination does not mean that all offenders must be identically dealt with. To some extent offenders must be treated differently in order to solve special individual problems, meet special individual needs or take account of special individual situations. Differentiation, unlike discrimination however, is expected to relieve any disproportionate disadvantage on the part of the offender or to achieve some betterment in him or his situation.

Rule 21:

Community sanctions and measures usually entail some restriction of the offender's liberty of action as a way of controlling crime and dealing with offenders. However, the restriction of liberty inherent in sanctions and measures can give rise to opportunities to usurp human rights and fundamental freedoms. Rule 21 therefore prohibits the creation or imposition of community sanctions or measures which are contrary to the international instruments adopted, notably by the United Nations and the Council of Europe, for the protection of human rights and fundamental freedoms. Moreover, the only restriction of such rights during implementation which is permissible is that which necessarily follows from the decision of the deciding authority. Any more far-reaching restriction of civil or political rights is prohibited by this Rule.

Rule 22:

The present Rule is of all-embracing character since it asserts in purely general terms that the nature and manner of implementation of community sanctions shall be in line with any internationally guaranteed rights accorded to the offender. This general Rule was formulated because the creation and application of community sanctions and measures often involves the delicate matter of balancing the interests of the protection of the legal order in society against the interests of the offender. Moreover, such a balancing of interests has to be seen not only in relation to widely existing and applied community sanctions and measures but also to those which may come into being in the future. It is, of course, particularly difficult to forecast the exact nature of all problems which may arise in the balancing of respective interests and relate them to specific international guarantees. The difficulty is especially marked so far as future forms of community sanctions and measures are concerned. Accordingly, the rule has been formulated and foreseen in general terms in order to provide proper safeguards for the rights of the offender even in relation to contingencies which cannot be foreseen.

Rule 23:

The right to respect for private and family life is guaranteed by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Under this Article no public authority may interfere with the exercise of this right except in accordance with law and with reference to what is strictly necessary for *inter alia* the prevention of disorder or crime. The nature, content and methods of implementation of community sanctions and measures fall under this heading since, in order to prevent crime, they may entail conditions and obligations about the ordering of the offender's lifestyle and that information be obtained about whether the offender fulfils the conditions or obligations imposed.

Nevertheless, the principle of respect for private and family life remains paramount and any interference with this right should be strictly limited. The Rule requires therefore that the privacy and dignity of offenders shall always be respected and not be placed in danger of being eroded or damaged in a way which would be incompatible with international guarantees of this right (cf Rules 21 and 22). In particular, harassment, by which is meant the vexing, troubling or worrying of an offender or his family through unduly frequent controlling or checking activities, is prohibited by the Rule.

Similar considerations apply to jeopardising the offender's sense of self-respect, family relationships, links with the community and the ability to function in the community. There is a further danger, namely that community sanctions and measures, just because they leave the offender in society, expose him to the risk of public opprobrium or social stigmatisation. The Rule requires that adequate safeguards be adopted to protect the offender from insult and improper curiosity or publicity. Finally, it should be noted that to endanger the rights listed in the Rule can also be expected to be counter-productive so far as securing the offender's co-operation in the implementation of the sanction or measure is concerned.

Rule 24:

Rule 24 emphasises the importance of giving instructions in general, and those related to control requirements in particular, a practical, precise and limited character. Moreover, they should never be more extensive or intensive than is necessary for effective implementation and should always stand in proportion to the community sanction or measure imposed.

There are two reasons for the Rule. Firstly, it is manifestly unjust to give instructions which lack practicality or are unclear or unduly far-reaching. The injustice is particularly great if there is no reasonable relation between the instructions and the particular community sanction or measure imposed. A drug misusing offender who enters a therapeutic community for treatment as part of a community sanction should not, for example, be subject to intensive surveillance by some other body or agency.

Secondly, there is an obvious danger that instructions that are vague, impractical and wide-ranging are not only unjust but are operationally ineffective. Indeed, they constitute a serious impediment to securing the offender's collaboration and thereby endanger resettlement aims.

Rules 25 and 26:

Medical and psychological experimentation on persons who are in a coercive situation has, historically, led to grave infringements of human rights. Such experimentation is considered unethical in European countries and customarily is forbidden. An offender subject to a community sanction or measure is in a situation of restricted liberty backed up by the coercive force of law. Serious doubts about the ethical rightness of experimentation must therefore arise.

On the other hand, it would seem unreasonable to forbid experimentation where there is no reason to fear infringement of human rights and where benefits of relevance for implementation might accrue to the offender. Better methods to help offenders deal with educational difficulties and drug dependence, for instance, are urgently needed and cannot be developed without experimentation. Rule 24 therefore limits experimentation to that which is in conformity with ethical standards adopted by the international community. Rule 25 requires that experimentation shall not entail any undue risk of physical or mental injury.

It should be added that one of the internationally adopted ethical rules is that any potential subject of an experiment should receive full information about the purpose, nature and methods of the experiment as well as the guarantees given. An informed consent is therefore a sine qua non of participation.

The Hawaii Declaration of the 18th (1964) World Medical Assembly as amended by the 29th (1975) Assembly and the 35th (1983) Assembly, states that a physician should be cautious about obtaining informed consent when the patient is in a dependent relationship to him. In such cases the informed consent should be obtained by an independent physician engaged in the research project in question. Similar considerations should apply to experimentation concerning community sanctions and measures.

Rule 27:

Community sanctions and measures have a certain inherent afflictive character caused by the restrictions imposed on personal liberty and supervision and control activities. The fact that the afflictive nature of community sanctions and measures may be less serious than the afflictive character of custodial sanctions does not mean that it does not exist or can be ignored. But implementation methods which aggravate this inherent degree of affliction go beyond what justice demands. Such aggravation of the afflictive character of the sanction or measure is not only unjust. It can also be expected to create resistance and unwillingness to co-operate in any attempt to secure the offender's law-abiding adjustment in the community. This Rule therefore lays down that implementation methods shall not aggravate the afflictive nature of community sanctions and measures beyond what is necessary in the interests of justice.

Rule 28:

The intention with this Rule is to ensure that anomalies do not arise in matters of social security by reason of the imposition or implementation of a community sanction or measure. Unemployment benefits, for example, maybe contingent upon two conditions - that the person concerned is available for work and that no work can be found for that person. However, an unemployed offender doing unpaid work under a community service may be held not to be available for ordinary employment and therefore refused unemployment benefits. In order to avoid situations of this kind arising the Rule requires that social security rights and benefits shall not be limited by reason of a community sanction or measure.

Rule 29:

It is by no means unusual in the various European countries for paid help to be given to the implementing authority by organisations or individuals draw from the community. Thus, for example, in some countries supervision of the offender is undertaken by paid private persons who, in their turn, are guided by professional probation workers. Similarly, arrangements are often made to pay for drug misusing offenders to receive treatments in privately run therapeutic communities.

It is, however, the implementing authority which bears the final responsibility for the proper implementation of the sanction or measure in question. In consequence, it is a first duty of the implementing authority to ensure that the help provided always meets the standards laid down in the present Rules. Where this is found not to be the case the implementing authority is required to take appropriate action, i.e. to decide what should be done taking into account the nature and degree of the failure to meet the requirements of the Rules.

A further consequence of the responsibility borne by the implementation authority is that it should decide what action should be taken when, as a result of supervisory activities undertaken as part of paid supplementary help, it becomes known that the offender has breached an imposed condition or obligation. The person or organisation providing the paid help should never take such a decision.

CHAPTER IV - CO-OPERATION AND CONSENT OF THE OFFENDER

Rule 30:

Community sanctions and measures keep offenders in contact with all the normal mechanisms of social control in the community. They thereby offer opportunities for adjustment to social life which are greatly superior to those offered by custodial sanctions. On the other hand the absence of the strict framework which characterizes prison life makes greater demands on the individual offender's sense of responsibility. An appeal to this sense of responsibility is the starting point for work with offenders sentenced to community sanctions and measures.

However, the offender's sense of responsibility should, where necessary, be developed beyond this point. Indeed, an improved sense of responsibility is also the goal of such work as well as its starting point. All forms of help that are offered to the offender must therefore have the further development of this capacity for responsible choice and action as their fundamental aim. Helping offenders to adjust in society means helping them to exercise a developed sense of responsibility towards the community in general. The position of the victim of crime has rightfully been given greater recognition in recent years. Developing a greater sense of responsibility towards society on the part of the offender should therefore include those who have been wronged by the offence.

Rule 31:

Unlike the punishments of imprisonment and fines which can be coercively enforced regardless of the will of the offender, community sanctions and measures require the co-operation of the offender if they are to achieve their aims. This has been widely recognised in relation to such sanctions as community service. If the offender is manifestly not prepared to co-operate and comply with appropriate conditions there would seem to be little point in a court deciding on a community sanction or measure.

The pre-sentence inquiry is clearly an important way of ascertaining and informing the court about the kind of conditions that would be appropriate and whether the offender is willing to co-operate. Careful pre-sentence inquiries enable the court to take its decision on the basis of good information.

Rule 32:

Rule 32 requires that any conditions and obligations which are to be observed by an offender subject to a community sanction or measure, shall be imposed only after a full assessment of the offender's situation. In making this assessment, attention shall be given to the offence-related needs of the offender, the possibilities that he has of complying with the conditions or obligations, his rights as a citizen and, finally, his social responsibilities. By social responsibilities is meant first the personal responsibilities of the offender, for instance, to a family. But the term also refers to the offender's wider responsibilities to the community at large, for instance to make reparation or to compensate a victim.

Rule 33:

Considerations of justice and practicality demand that the offender clearly understands from the beginning of the implementation what is required of him by the particular community sanction or measure. Likely conditions and obligations may well have been discussed during the preparation of a social inquiry report as an important pre-requisite to the decision to impose the community sanction or measure in question. Even so, once the decision has been taken, it is of formal and practical importance to make sure that the offender fully understands all the implications of the decision.

In addition to the more formal requirements a number of practical details may need to be decided on and explained. It is essential that these explanations be given in a simple and clear language which is understood by the offender. An equally simple and clear statement in writing which describes the nature of the sanction, the obligations and rights which follow from it and the practical arrangements made, may be a useful reminder for the offender to have in his possession.

Rule 34:

Rule 34 states an important principle for the successful use of community sanctions and measures, i.e. the need to secure a willing response from the offender. To that end the Rule urges that the offender be involved to the greatest possible extent in the making of decisions about the practical details of implementation. There are a number of gains in involving the offender as much as possible in decision-making. An appeal is thereby made to the offender's sense of responsibility. He is treated as a person who is able and willing to learn to take responsibility. The learning process consists of examining the practical choices available in the light of their probable consequences. This examination can also bring to light any resistance to collaboration in proposed courses of action. Identifying and dealing with such resistance on the part of the offender is fundamental to ongoing progress. By contrast, autocratic decision-making runs the risk of creating resistance to collaboration on the part of the offender or of leaving some existing resistance unexpressed and therefore untouched.

Rule 34 does not, however, require that the offender participate in every decision on the practical details of implementation. Situations can arise for instance which require a unilateral and perhaps coercive decision on the part of the implementing authority in order to ensure the fulfilment of basic conditions of the sanction or measure or set necessary limits to destructive behaviour.

Rule 35:

The Rule relates to pre-trial proceedings or measures used instead of a decision on a sanction. It is an accused - and therefore in principle an innocent - person that is meant in the present Rule. Because of the presumption of innocence caution needs to be exercised before a community measure is imposed.

One example of such a measure would be a requirement for a homeless accused person to live in a hostel and report regularly to some designated person instead of being detained pending trial in a prison. Such a solution nevertheless requires the accused to accept a responsibility for his behaviour which would not be required of him were he remanded in custody in prison. The consequences of failing to live in accordance with the measure can be serious for the accused. He should therefore be asked to consent to the proposed community measure.

It must, however, be emphasised that the consent of the accused to such a community measure should not be obtained by offering inducements related to an admission of guilt or a reduction of the criminal charge preferred.

Rule 36:

In this Rule "consent" refers to any situation in which the offender is asked to assent to some course of action prior to the taking of a decision on the matter. Such a situation can arise in connection with the imposition of a community sanction or measure (cf. Rule 31). But there are other situations in which the offender's assent may be sought, e.g. when making a decision concerning implementation and, in particular, when planning some particular form of treatment (cf. Rule 34). Another such situation is dealt with in

Rule 35. Whatever the situation, considerations of fairness and justice require that whenever the offender is asked to give a consent, he shall do so in full knowledge of what he is consenting to. Nor shall the consent be of tacit nature. The offender must know that he is being asked to give his consent. This means that the giving of consent must always be an explicit procedure.

The giving of consent, even with the safeguards provided here, shall never have the consequence of depriving the offender of any of his fundamental rights.

SECOND PART - HUMAN AND FINANCIAL RESOURCES

CHAPTER V - PROFESSIONAL STAFF

Rule 37:

The professional staff with the responsibility of implementing community sanctions and measures must, to the extent that it fulfils conditions laid down in national law, be given equality of opportunity to be employed for this purpose, i.e. without discrimination. Discrimination concerning recruitment, selection and promotion for any of the reasons listed in the Rule constitutes an unjust and disloyal exercise of discretion. These reasons, however, should not be considered an exhaustive list and discrimination for any other similar reasons would also be prohibited by the Rule.

The principle of non-discrimination in matters of recruitment and selection should not, however, hinder the promotion of specific policies of action on behalf of particular categories of persons, for example, women. Similarly, the principle of non-discrimination should not prevent differential recruitment and selection in order to deal effectively with particular categories of offenders, for example, ethnic minorities.

Rule 38:

The Rule affirms the fundamental importance of the staff both from a quantitative and qualitative point of view (the latter refers both to personal character and to professional qualification) in order to ensure a proper carrying out of its sensitive functions.

The Rule provides no absolute indication concerning the number of staff in relation to number of offenders being dealt with. When account is taken of the great variation in community sanctions and measures and the heterogeneous structure of European sanction systems it would be neither possible nor expedient to quantify this relation. Nevertheless, the second part of the Rule specifically requires the various administrations to define their own norms so as to provide a precise frame of reference within each system having regard to the particular community sanctions and measures in existence and the complex tasks facing the staff. Such norms can be useful for the qualitative and quantitative evaluation of the staff and the adoption of policies which seek to secure coincidence between the situation in reality and the optimal situation required by the norms.

Rule 39:

This Rule formulates a number of requirements about the training of the staff and the necessary conditions for the exercise of their functions. Training is essential as a way of giving the staff an awareness of its precise responsibilities in relation to the offender and to the community. Similarly, having regard to the fact that community sanctions and measures involve the wider society, staff must be made aware of the need to co-ordinate its activities with that of other useful organisations in the community.

Before entering into service staff should receive a specific and relevant initial training. Thereafter they should be given the opportunity to improve their knowledge and skills through developmental training. With both forms of training it is necessary to take particular account of the need to provide information - especially that derived from sociology and criminology - about various practical aspects of the work as well as on professional and ethical requirements. These matters should be dealt with over and above theoretical professional and technical aspects.

With further training it will be necessary to undertake the practical examination and evaluation of different work situations so as to maintain and develop professional competence. The necessary resources for instance, training, notably financial resources, should be provided by governments.

Rule 40:

The purpose of this Rule is to define the essential elements of the professional staff's conditions of service in order to guarantee stability of employment and ensure dignity of status.

A staff which is established for an indeterminate period and which has legally defined conditions of service and adequate remuneration is more likely to function better than temporarily hired staff. Stability of employment is extremely important in this kind of work where the nature of the task is both demanding and complex, the psychological pressures often intense and in which it is often necessary to have frequent, even daily, contact with others working in the penal system - police, judges, other judicial, prison staff - equipped with a different professional training. The professional staff should therefore have a status in relation to conditions of service similar to these other categories of staff with comparable responsibilities.

The Rule does not require that the professional staff be established as State civil servants. This is because there is a great diversity of both public and private organisation in member States of the staff responsible for implementing community sanctions and measures.

Rule 41:

The implementing authority, in the sense defined in the Glossary, and which is most frequently the probation service, is the body to which reference is made in matters of implementation. Collectively it consists of a professional staff which is accountable towards the authority.

The Rule states that, apart from its functional duties (ensuring recruitment, selection, payment of salaries, promotion, etc) it also lies within its competence to establish norms of service. This means defining the obligations, rights and responsibilities of its staff.

Finally, since the effectiveness of implementation vis-a-vis the offender depends primarily on the quality of work done by the staff, the implementing authority should avail itself of all useful ways of supervising the work of the staff, in particular by assessing the effectiveness of work carried out.

CHAPTER VI - FINANCIAL RESOURCES

Rule 42:

This Rule, which is addressed to governments and concerns budgetary allocations, makes an important statement about the financial resources necessary to implement community sanctions and measures. Although they may cost considerably less to apply than imprisonment, they nevertheless require a certain degree of financing. The financial means necessary should be obtained from the budgetary allocations of the State and be subject to strict budgetary control.

The Rule gives no quantitative indications in this matter but is limited to emphasising that, in the interest of a well-functioning service, there should be fully adequate balance between the financial means accorded and the needs of the implementing authority, regardless of whether it exists in the public or private sector.

The second part of the Rule provides that the implementing authority may make use of resources which do not stem from a State budget. Such resources may come from bodies or private persons considered as "third parties" in relation to the implementing authority. The resources in question may be of strictly financial character or take some other form such as, for instance, the provision of organisational assistance or ancillary staff. But such a contribution must never determine the total activities of the implementing authority.

Rule 43:

This Rule is the corollary to the second part of the preceding Rule. Even if implementing authorities may receive funds from other than public monies it is essential to avoid any risk of losing independence of action, even partially, as a result of such financing. The Rule provides, therefore, for a procedure to ensure the proper use of such funding, a procedure which it is the responsibility of governments to set up. It is thus necessary to provide for specific procedures concerning budgetary appropriations derived from private funds, to designate the persons responsible in this matter as well as the ways and means of auditing the use of such funds.

CHAPTER VII - COMMUNITY INVOLVEMENT AND VOLUNTARY PARTICIPATION

Rule 44:

Justice cannot be effectively administered in isolation from the community it seeks to serve: it requires both the acceptance and the respect of the public. This level of confidence and commitment is most likely to be achieved if members of the public are encouraged and enabled to participate in the administration of justice.

This Rule emphasises the importance of good communications in creating social conditions in which such sanctions and measures are accepted as appropriate and credible reactions to criminal behaviour. The purpose of the Rule is to ensure that decisions are made and opinions formed on the basis of reliable information rather than uninformed speculation.

The term "appropriate information" is used to reflect the need to ensure that the information provided is consistent with the reasonable and legitimate needs of those to whom it is directed.

The general public have both a need and a right to know what community sanctions and measures are available, what conditions apply, what the rights and responsibilities of offenders are and, in general terms, how effective the various sanctions and measures prove to be.

The awareness of the general public can be stimulated by use of the various media of mass communication - radio, television, newspapers and magazines. Conferences, seminars and lectures can also be used to disseminate information and influence public opinion.

Rule 45:

The implementing authorities cannot themselves handle every offender need emerging in relation to the offence. Furthermore, it is not their function to do so. They need therefore to rely on all the resources available to citizens and existing in the community, for instance, in matters of work, housing, health, etc. and, in particular, the upholding of the offender's rights.

The involvement of members of the local community greatly facilitates access to an extensive range of human and material resources and social support systems. Offenders are able to establish links with voluntary welfare agencies, trade unions and staff associations, social and recreational clubs, religious groups, charitable bodies and other organisations and individuals with the capacity to provide them with assistance and support. The maintenance of links with the wider society is likely to enhance the prospects of an offender's social re-integration.

Because the range of supplementary help mobilised in the community can be very extensive such limited terms as "volunteer" and "voluntary assistance" are not employed in the Rules. Instead reference is made to community participation, and participation by organisations or individuals drawn from the community.

Rule 46:

Every community has a vested interest in the successful re-integration of offenders into society and to that extent has a responsibility to facilitate that process. Community involvement in the implementation of community sanctions and measures provides an opportunity for citizens, both individually and collectively, to make a contribution to the rehabilitation of offenders and thereby to the protection of society and its members.

Community participation in the implementation process can have important effects on the offender. The offender's attitudes to the community are more likely to become responsible when the offender becomes aware of the community's interest in the improvement of his personal and social situation. At the same time the offender is provided with opportunities to take up or renew meaningful ties in the community and possibilities for contact and support.

Rule 47:

It is in the interest of the implementing authority, participating organisations and individuals drawn from the community and ultimately the offenders, that there should be no ambiguity in their inter-relationship. In particular, it is necessary that there should be clarity in respect of terms of service, responsibilities and the chain of accountability, the range and nature of the duties to be undertaken, the human and material resources which can be provided and, perhaps most importantly, the nature and limits of the authority exercised. For this reason it is important to provide for community participation through an agreement which ordinarily should be of written character.

Rule 48:

The supervision function exercised by participating organisations or individuals drawn from the community must be seen as being of supplementary character to that of the professional staff. Their powers and authority should therefore be defined and limited by law or by the deciding or implementing authority in order to avoid capricious or arbitrary practice.

Rule 49:

Because the work of individuals drawn from the community is supportive and complementary to that of the staff of the implementing authority, they should not be used to reduce professional caseloads by being required to undertake work which should properly be carried out by such staff.

Rules 50 and 51:

Working with offenders is often difficult and demanding and requires those who undertake it to have special knowledge, skills and experience. It also demands particular personal qualities. The contribution of individuals drawn from the community to the implementation process can be invaluable, but not everyone who might wish to be involved will have, or be able to acquire, the necessary knowledge, experience and personal qualities. It is therefore necessary that there should be a formal and clearly defined system of recruitment, selection and training.

The necessary qualifications for recruitment should be clearly defined and the selection process should be based on criteria which take account of the diversity of offenders and their needs and the wide variety of skills and personal qualities required to provide appropriate responses.

Initial and continuation training should be provided: it should reflect the nature and priorities of the work to be done and should be flexible enough to respond to the needs of individuals participating drawn from the community.

The training should aim to familiarise them with the nature of community sanctions and measures and clarify their responsibilities in relation to the rehabilitation of offenders, the protection of human rights, the safety of society and their inter-relationships. It should enable them to be flexible and creative in dealing with offenders and, in particular, give them an understanding of the needs of offenders and their families.

The definition of tasks, responsibilities, working arrangements and associated matters should form part of a formal agreement between the parties (see Rule 47) and should take account of the nature and degree of the technical supervision and support to be provided by the professional staff of the implementing authority.

Rule 52:

To work effectively with offenders, particularly in the context of the implementation of community sanctions and measures, requires the development of relationships in which mutual trust is an important ingredient. If a satisfactory working relationship is to be established it is essential that the offender has confidence in participating organisations or individuals drawn from the community to observe the same conventions with regard to the confidentiality of information as the staff of the implementing authority. The nature and extent of that confidentiality is one of the matters to be discussed and understood by both parties.

Rule 53:

Because individuals drawn from the community have a valuable contribution to make to the implementation process it is important that nothing is done to create conditions which might dissuade them from coming forward to offer their services. To that end it is important that their working conditions are in accordance with prevailing occupational health and safety regulations, that they are provided with insurance against accident, injury and public liability when carrying out their duties.

The extent to which they may be financially disadvantaged as a result of their work should be minimised by ensuring that any consequential and necessary expenditure is repaid.

Rule 54:

The contribution made by organisations and individuals drawn from the community should not be limited to their contact with individual offenders. This work may well give them a particular perspective which would make a valuable contribution to discussions on organisational, managerial and administrative matters as well as particular issues relating to the implementation process. In addition, they may be able to provide information and expertise which could be useful to the implementing authority. They should be enabled to participate in regular reviews and evaluations of the implementation process with a view to improving the quality and effectiveness of the service provided.

They also have a right to be kept informed about relevant changes of policy or practice as well as the results of their work.

THIRD PART - MANAGEMENT ASPECTS OF SANCTIONS AND MEASURES

CHAPTER VIII - CONDITIONS OF IMPLEMENTATION

Rule 55:

The present Rule should be read in the light of Rules 30, 32 and 34. It is a natural consequence of the principles stated in these latter Rules that the implementation community sanctions and measures must be made as meaningful as possible if the offender's cooperation is to be obtained and his sense of personal responsibility developed. The present Rule also states that ways and means of implementing community sanctions and measures shall never be divorced from the attempt to improve the offender's situation in ways that are relevant for a law-abiding life. Such a requirement also implies abstention from methods of implementation which are likely to blunt the offender's sense of responsibility or worsen his capacity to lead a law-abiding life. All methods of supervision and control shall serve these aims.

The present Rule provides criteria by which any method of supervision and control shall be judged in addition to those laid down in Rules 22, 30, 32 and 34. These criteria assume special importance should the question arise of using new technologies for control, such as electronic monitoring.

Rule 56:

The Rule seeks to ensure that information provided for decision-making in matters of implementation by a prosecutor or court shall be reliable and of good quality. It requires, therefore, that such information be provided by a professional body or, alternatively, a body laid down in law. However, it will often be desirable to obtain information from other sources and this is not prohibited by the Rule. But in such cases the Rule requires that information so obtained shall be provided through a professional or legally designated body.

Rule 57:

A main purpose of the present Rules is to secure a proper balance between the conditions imposed on the offender, the obligations that he is required to assume and his rights as a human being. Other Rules deal with the necessity of making the conditions and obligations plain to the offender. It is no less important, if his rights are to be upheld, that he should be informed what these rights are and given assistance to secure them. The Rule requires that professional staff as well as participating organisations and individuals drawn from the community be informed about the rights accorded to offenders. The degree of detail and specificity of such information should be determined by the nature of the responsibilities assumed by professional staff or participating organisations or individuals.

Rule 58:

Chapter II of the Rules makes provision inter alia for complaints procedures. The present Rule seeks to obviate complaints about implementation by giving the offender the right to make oral or written representations prior to the taking of any decision on implementation. It may be necessary to provide assistance by an interpreter in order to make the offender's expression of his point of view fully possible.

Conflicts and crises can be expected to arise during the period of implementation which, unless they are dealt with constructively, may well lead to some form of breakdown. The Rule seeks to obviate this by requiring that the offender has the possibility of contacting responsible members of staff with minimum delay should he become involved in a conflict or crisis.

Rule 59:

A complaint by the offender about some aspect of implementation may or may not be justified. If a complaint is justified, appropriate action needs to be taken. If the complaint is not justified, the offender needs to be so informed and to feel that he has been dealt with fairly. The Rule therefore requires the implementing authority to respond to and investigate complaints.

An offender may request a change of supervisor or other person charged with a duty towards him. As with a complaint this request may or may not be justified. Since the relationship with the supervisor or other person charged with a duty towards the offender is important for effective implementation the implementing authority is required under the Rule to seriously and responsibly examine such requests.

Rule 60 :

During the implementation of a community sanction or measure account must be taken of various kinds of information concerning the offender which exist or emerge at different moments in time. The information will relate, for example, to the offence, to conditions and obligations imposed and to the personal and social situation of the offender. The last-named, in particular, may be expected to change over time. It is essential for effective implementation that these various kinds of information be assembled in an individual case record. All notes, whether of formal or informal character, should be part of, and contained in, the case record.

The case record information should be kept up to date. A further reason for updating the case record is given in Rule 61, namely that it may be necessary on occasion to prepare a report about the offender's compliance with any conditions or obligations imposed. In addition, however, updated information makes possible a continuous review of the nature of any progress made during implementation. Such a review is necessary as a basis for the planning and re-planning of any action intended to ensure effective implementation. A final reason for keeping case records up-to-date is that they are an important source of information if changes of staff mean that persons not previously acquainted with individual offenders must take over their cases.

Rule 61:

The nature of the information to be written into the case record is broadly defined in Rule 62 as encompassing only such matters as are relevant to the sanction or measures imposed and its implementation. It is doubtful if an absolute criteria of relevance can be given. Clearly, however, information which infringes the rights of the offender or his family must not be written into the case record. On the other hand, information which has an obvious bearing on the offender's response to the conditions and obligations imposed should be included. Since the information in the case record serves as a basis for the taking of important decisions it is vital that it should be of reliable character. Of recent years criticism has been levelled at the writing of subjective assessments in case records - assessments which have often been subsequently found to have little basis in facts or reality. Rule 62 emphasises the desirability therefore of recording information which shall be as objective as possible. The use of subjective assessments is not thereby prohibited but the Rule implies that they should be used with caution.

Rule 62:

The Rule requires that an offender shall have access to his case record and be able to read what is written there about him. The offender may contest what is written about him. The purpose of this requirement is to provide a check against loosely based information being written into the case record. As with any other form of complaint the contestation may or may not be justified. The substance of the contestation must, however, be written into the record regardless of the outcome of the complaint made. The right to read and contest what is recorded is accorded insofar as it does not involve an infringement of the rights of others. A person acting on behalf of the offender has the same right. Ordinarily this person will be the offender's legal representative but the Rule does not require this to be so. Anyone enjoying the confidence of the offender may act on his behalf.

Rule 63:

The Rule recognizes a use, but also a right, in connection with case records. The supervisor can use them to inform and explain to the offender about the progress of implementation and any plans or decisions which need to be made. Conversely, the offender has a right to know what is being recorded about him. This consideration applies to any case record or report concerning the offender. Therefore, the contents of records or notes should be discussed with the offender. The Rule is not absolute. Particular circumstances may arise which justify not revealing to the offender some particular aspect of the record or report. This would be so concerning information which infringes the rights of others or concerns sensitive medical matters.

Rule 64:

Information in the individual offender's case record is to be regarded as confidential. For this reason it should only be disclosed to those with a legal right to receive it. This does not mean, however, that all information in the case record shall necessarily be disclosed to those with such a right. The Rule is restrictive and requires that any information disclosed shall be limited to what is relevant for the work of the requesting authority.

Rule 65:

The purpose of the Rule is to prevent case records being kept and exercising an effect after the community sanction or measure has been terminated. It requires therefore that they be destroyed once the sanction or measure or its legal effects are exhausted or must be lodged with an authority which has rules about providing safeguards on revealing their content to third parties. The Rule states the criteria for the earliest and latest times of handing over the case record to such an authority.

Rule 66:

Community sanctions and measures frequently mean that a variety of agencies and organisations become involved in providing work or other forms of help for the offender. The Rule deals with the question of the extent to which they may receive information about the offender. In general, the Rule provides for restrictive practice. The nature of the work or other help provided may make it necessary to disclose information in fairness to the agency providing assistance. Undue risks may be run, for instance, if certain kinds of offenders are allowed to perform community service with children or old people. If, however, it is necessary to disclose sensitive information this shall only be done if the offender explicitly consents after having been given a clear account of what information is to be disclosed and why this is necessary. By sensitive information is meant information about the offence or the offender's personal background, information of a purely private character or any other information which might lead to unfavourable social consequences such as stigmatisation or job refusal.

Rule 67:

An important aim of community sanctions and measures is to facilitate the adjustment of the offender in society. Such sanctions and measures are, by their very nature, heavily dependent upon the co-operation of the offender. This co-operation is unlikely to be furthered if community work tasks are pointless. The ultimate aim of these sanctions or measures thereby becomes endangered. Conversely, work which is clearly socially useful and enhancing of the offender's skills is both likely to improve the will to co-operate and strengthen the sense of responsibility to the community.

The use of community sanctions and measures is likely to run into difficulties if they are perceived as ways in which enterprises secure cheap labour. For this reason the Rule prohibits community work by offenders which is undertaken for the purpose of making profit.

Rule 68:

It is clearly necessary to ensure that offenders who are engaged in community work are not disadvantaged so far as industrial accidents or health and safety regulations are concerned. The Rule therefore requires that they be afforded the same kinds of protection as are given to other citizens under existing legislation.

Rule 69:

It is a general principle for the implementation of all sanctions that the offender is not required to pay any necessary costs. The principle is valid for community sanctions and measures. But an exception can be considered under certain circumstances. If offenders possess financial means they might pay or contribute to subsidiary expenses arising from implementation, e.g. travel costs to a community service site.

CHAPTER IX - METHODS OF WORK

Rule 70:

Rule 32 provides that any conditions or obligations to be observed by the offender shall take account of his needs, possibilities, rights and social responsibilities. It follows that a general methods of work must be based upon managing programmes of individualised character. Whilst this is an essential first step it will not alone suffice to guarantee effective implementation. To be effective programme management must ensure that every effort is made to develop and utilise good working relationships between those involved in implementation, that is, between the offender, his supervisor and any other organisation or individual drawn from a community.

Rule 71:

Whilst Rule 32 is limited to relating conditions and obligations to the individual circumstances of the offender, the present Rule goes somewhat further and requires that all methods of implementation shall be individualised. This is only possible if authorities and staff responsible for implementation have a sufficient degree of discretion to adapt methods to particular cases. Nevertheless, the process of individualisation must not be taken to the point where injustice arises because similar cases are treated very differently.

Rule 72:

The purposes of community sanctions and measures presuppose proper and effective implementation. If the individual offender has personal, social or material needs which are relevant to implementation but which are not met, the implementation process will be hindered. The Rule accordingly requires that such needs must be met although the responsibility for meeting them does not necessarily belong to the implementing authority. Recourse should be made where necessary to other social agencies. Moreover, the assistance provided shall not be of a weak or token character. It shall be of established quality, that is the effort should be made to afford the offender the best response to the needs in question.

Rule 73:

By instructions is meant defining in precise terms what must be done for the carrying out of a condition or obligation, for example, to report to a particular workplace at a particular time on specified days. By definition such instructions have their ground in the conditions or obligations to be observed and for this reason must not require more than is implicit in them. Since they constitute essential information to the offender about how he is to fulfil any conditions or obligations imposed they must be of a completely precise and practical character.

Rule 74:

Community sanctions and measures offer unique opportunities to enmesh offenders in the informal forms of social control which operate on all ordinary citizens. Over and above these informal forms of social control, formal controlling activities by those involved in implementation may be necessary. In order to promote law-abiding adjustment in society a major goal, however, must be to develop the various forms of informal social control and reduce the formal controlling activities as much as possible. For this reason the Rule states the principle of minimum intervention in the offender's life through formal controlling activities by the implementing authority. Such controlling activities shall stand in proportion to the particular sanction or measure being enforced and be limited by its aims.

Rule 75:

The present Rules seek not only to establish just and humane principles for the creation, imposition and implementation of community sanctions and measures but also to secure high standards of professional competence in implementing authorities. The present Rule therefore requires such authorities to use methods which are consonant with proven professional knowledge.

Since this knowledge is constantly expanding it is necessary to take account of developments occurring in social work or similar fields of activity as well as that generated by research.

**CHAPTER X - OPERATION OF THE SANCTION OR MEASURE AND
CONSEQUENCES OF NON-COMPLIANCE**

Rule 76:

The Rule deals with the adaptation of the principle presented in Rule 33 concerning information to the offender about the nature, content and consequences of the sanction or measure imposed to the implementation phase.

No matter how information has been given to the offender in the decision of imposition (for instance, by written document, legal notice, oral explanation by the deciding authority), the beginning of the actual implementation constitutes a special and favourable moment. Considerable receptivity on the part of the offender about the significance and consequences of the sanction or measure can ordinarily be expected providing that the information given is clear, comprehensive and explicit. A good understanding of what is expected has a considerable influence on the proper implementation of the sanction or measure.

The information should in the ordinary way be given orally so as to permit a dialogue to take place between the practitioner and the offender. The fact that explanations are given orally does not exclude the possibility of giving the offender a written statement recalling the conditions and obligations that he is required to respect and providing other generally useful information about the implementation of the sanction or measure.

Rule 77:

The procedures to be followed by staff responsible for implementation when confronted by difficulties stemming from breach or poor fulfilment of imposed conditions must be precisely defined so that staff are not inadequate to such situations. This Rule is really the mirror image of the preceding Rule. If it is essential in the interest of efficient implementation to give the offender a clear idea about the situation, it is no less important to do so for the staff.

The purpose of the Rule is not, however, to require a comprehensive regulation of this matter. The discretionary power enjoyed by the staff should enable it to resolve a number of the difficulties arising during implementation. The Rule seeks rather to ensure that certain limits are laid down with a view to maintaining equality of treatment as between individual offenders.

Finally, the delicate matter of dealing with non-compliance or poor performance on the part of the offender and, in particular, knowing when and when not to invoke formal procedures which can have serious consequences, calls for clear, open and trusting relations between the implementing staff and the deciding authority.

Rule 78:

The implementation of a community sanction or measure - something which persists over a certain period of time - can well be interspersed with practical difficulties. These may be considered to be incidents which do not need to be characterised as grave deficiencies. They may amount to no more than some minor non-observance of imposed conditions or obligations for which it is unnecessary to make use of a procedure for revocation of the sanction or measure. The same applies to minor transgressions against the instructions of the implementing authority.

The individual discretionary powers of the implementing staff normally allow such difficulties to be regulated through daily routines within the framework of the conditions or obligations imposed.

For the rest, the Rule allows for the possibility of recourse to a formal administrative procedure to deal with this kind of difficulty where the exercise of discretionary power does not suffice. Such a procedure would ordinarily be the province of the implementing authority.

Rule 79:

The use of the administrative procedure provided for under Rule 79 should be combined with certain guarantees for the offender without thereby thwarting action by the implementing staff. Thus, the interviews to which the procedure give rise should be conducted in an objective and reasonable way and issue in a dialogue between the practitioner and his client which enables the former to state precisely the grounds for complaint and the latter to make comments and pose questions. It should be a routine measure for the case record to contain an account of the interview conducted as well as, more generally, any other investigative activity undertaken within the framework of the administrative procedure.

Rule 80:

The term "significant failure" can be compared with that of a "minor transgression" used in Rule 79. The former term can be seen as the contrary of the latter and refers to a breach of conditions which is so serious that it can give rise to a reconsideration of the sanction or measure imposed. Although such breaches are normally laid down in law since they may give rise to revocation or modification of the sanction or measure, it is for the implementing authority to assess whether the failure shall be considered significant because it is truly grave.

The serious nature of the breach requires that the deciding authority be formally informed of it. Such information should be conveyed promptly, since the situation is one of crisis, and in written form, bearing in mind the importance of making precise facts available.

Rule 81:

Proper information to the deciding authority presupposes the trustworthiness of the written complaint. The report asserting non-compliance with the requirements of the sanction or measure should therefore be based on statements which are precise and clear with subjective assessments excluded. The statements should relate both to the facts of the case as well as the context in which they are situated. This is a necessary condition for the deciding authority to be able to make a true assessment of the breach complained of and to decide on the possible modification or revocation of the sanction or measure.

Rules 82 and 83:

Since the decision to modify or revoke a community sanction or measure is a serious matter which entails the consequence of exposing the offender to a greater degree of coercion, the deciding authority must be bound by certain guarantees of fairness. The most obvious of these consists in the deciding authority's careful scrutiny of the component parts of the breach reported to it by the implementing authority. It is no less important to ensure that the offender had a real opportunity to examine the documents reporting the alleged breach and to make his comments thereon.

Rule 84:

The prohibition contained in this Rule is an example of the general penal law principle that the same illicit act generate a series of further illicit acts as a result of which the cumulative penalties would be entirely disproportionate to the harm caused. If the fact of non-compliance with the conditions and obligations of a community sanction or measure were in itself to constitute an offence, the non-compliance could give rise to a penal reaction which was disproportionate to the original offence or even to an accumulation of penalties. This would, of course, violate the principle of proportionality between the sanction imposed and the original offence.

For the foregoing reason, the penalty for breaching the conditions imposed should only be the complete or partial revocation of the sanction or measure or its modification.

Rule 85:

The initiation of the procedure for revocation should be the occasion for an evaluation of the implementation of the sanction or measure. The negative aspects should be studied as well as, in fairness, the positive aspects.

Thus, even a partial implementation of the sanction or measure (as occurs, for instance, when only a proportion of the hours of work in community service have been carried out) or a deficient implementation (as occurs, for instance, when efforts have been made to compensate a victim even if incompletely) can constitute indications which illuminate the way in which implementation has been carried out and thereby give reason to weigh the decision on revocation.

Rule 86:

This Rule should be considered in relation to Rule 10, to which it is a complement, and Rule 85 of which it is an extension. Thus, even where non-compliance with a condition or obligation necessitates revocation it should still be possible to deal flexibly with the non-observance and not necessarily impose imprisonment. This might, for example, be the case where a serious failure to observe a condition or obligation occurs towards the end of a probationary period during which compliance has, up to that point, been wholly satisfactory. The substitutive character attaching to community sanctions and measures would be reduced to nothing if a failure in implementation required the deciding authority to impose nothing but imprisonment. The deciding authority, possessing as it does a total power of assessment, should contemplate a variety of possible solutions, imprisonment being considered as the ultimate sanction to be used only in the absence of a possibility to impose some other appropriate community sanction or measure.

Rule 87:

Where a positive development of the offender's behaviour shows fulfilment of the conditions or obligations imposed, the content of the sanction or measure should ordinarily be adjusted towards easement. Thus, for instance, an offender who gives proof of having compensated a victim should no longer be made the subject to a condition for compensation. Similarly, an offender should not be compelled to continue in treatment once it has been established that his drug dependence has been dealt with and is unlikely to give rise to further offending. National legislation should set out the precise criteria for the use of this power by the deciding authority.

Rule 88:

The Rule deals with the possibility of terminating the sanction or measure before the normal term of expiration. Two cumulative conditions, of differing nature, have to be fulfilled for the use of this possibility. Firstly, the requirements inherent in the sanction or measure must have been fulfilled. Secondly, it must appear no longer expedient to maintain the requirements to achieve the ends of the sanction or measure. Here again, complete latitude must be given to national legislations concerning the application of the second condition. This can well be considered to be a matter for sovereign assessment by the deciding authority.

**CHAPTER XI - RESEARCH ON, AND EVALUATION OF, THE WORKING OF
COMMUNITY SANCTIONS AND MEASURES**

Rule 89:

Research is concerned inter alia with procedures of objective description, assessment and evaluation. Research is essential for knowledge as opposed to beliefs - about the working of community sanctions and measures. Unless this knowledge is available there is no trustworthy basis for describing and assessing the extent to which such sanctions and measures are used and with what results. The further development of criminal policy and practical work with offenders as well as the use of public financial resources becomes less than effective in the absence of such descriptions and assessments. There is therefore everything to be said for instituting descriptive and evaluative research on community sanctions and measures. The present Rule therefore urges the promotion of such research.

Rule 90:

Evaluation is concerned with assessing the way in which a given procedure is carried out as well as its effects and the extent to which aims are met. The formulation of the Rule takes account of the fact that all sanctions and measures serve a number of purposes. They are expected, for instance, to protect society, to express society's reprobation of crime, to satisfy moral ideas about justice and to provide - or at least not unduly hinder - opportunities for the offender's betterment.

These multiple functions need to be recognized when evaluating the working of community sanctions and measures. Rule 90 identifies therefore some important areas of concern which should receive attention when evaluation research is conducted on community sanctions and measures. The list given is not intended to be exhaustive.

The first item on the list is concerned with whether community sanctions and measures meet the expectations of various groups in society. Community sanctions and measures are greatly dependent on their possessing credibility and support among a number of social groups. It is therefore important to assess how such sanctions and measures are perceived with a view to correcting any possible weaknesses in the way they are used or misperceptions of their nature and implementation.

The second item on the list address the issue of whether community sanctions and measures are really being used to reduce reliance on imprisonment - a policy goal for all member governments of the Council of Europe - or are only serving as substitutes for other non-custodial sanctions, for example, fines.

The third item focuses upon those personal and social handicaps among offenders which tend to be associated with criminality. Alcohol or drug dependence and educational or vocational deficiencies are examples of such difficulties. Offenders need to be helped to overcome them and enabled to make a law-abiding adjustment in society. Community sanctions and measures offer opportunities for such help. It remains for research to demonstrate whether such help is offered and accepted and to suggest ways of improving the efficacy of helping methods. It should be noted that the Rule refers only to those needs which can reasonably be thought to be related to criminality.

The fourth item requires that research examine the cost of administering community sanctions and measures in relation to various criteria of effectiveness. One such criterion has been the relative cost of administering various sanctions or measures. But, for the most part, only simplistic comparisons have been made in European jurisdictions using only the average cost per offender per day in the probation system and the prison system. Such comparisons ignore the fact that if only small numbers of offenders are sentenced to community sanctions and measures the number of prisons and their staff remains unchanged. More careful analyses of costs and benefits are necessary which are based on how changes in the number of offenders sentenced to the various community sanctions and measures, fines and imprisonment produce real savings by reducing the cost of imprisonment.

Finally, the fifth item requires that research be undertaken to ascertain to what extent the use of community sanctions or measures represents an effective way of dealing with crime in the community. Such research would need to utilise any studies made under items 1 to 4.