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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Co-operation
(PC-CP)

**Draft Recommendation CM/Rec (2016) XX on
the European Rules on community sanctions
and measures**

Document prepared by the Directorate General
Human Rights and Rule of Law

Recommendation CM/Rec (2016) XX of the Committee of Ministers to the member states on the European Rules on community sanctions and measures

(Adopted by the Committee of Ministers on xxx at the xxx 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 combating crime and that they avoid the negative effects of remand in custody and of imprisonment;

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

Aware that with the passage of time, new possibilities for a more effective use of community sanctions and measures emerge and that therefore imprisonment must be used only as measure of last resort;

Recognising furthermore that important developments and changing practice in the area of sanctions and measures enforced in the community and the issues identified by member states call for regular updating of the provisions contained in the European Rules on community sanctions and measures;

Emphasising that the recourse to, and the implementation of these sanctions and measures should always be guided by respect for fundamental legal safeguards as enshrined in the European Convention on Human Rights, and by the principles laid down in the European Rules;

Recognising the relevance to the present Recommendation of Committee of Ministers Recommendations: N° R (92) 17 concerning consistency in sentencing, N° R (97) 12 on staff concerned with the implementation of sanctions and measures, N° R (99) 19 on mediation in penal matters, N° R (99) 22 concerning prison overcrowding and prison population inflation, Rec (2003) 22 concerning conditional release (parole), CM/Rec (2010)1 on the Council of Europe Probation Rules and CM/Rec (2014) 4 on electronic monitoring;

Taking further into consideration the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules);

Replaces by the text of the present Recommendation:

- Recommendation Rec (2000) 22 on improving the implementation of the European rules on community sanctions and measures; and
- Recommendation N° R (92) 16 on the European Rules on community sanctions and measures enforced

Recommends to the governments of member states to:

- be guided when reviewing their policy, legislation, and practice in relation to the creation, imposition and

implementation of community sanctions and measures, by the standards and principles set out in the Appendix to this Recommendation;

- ensure that this Recommendation and the accompanying commentary are translated in their national language and disseminated as widely as possible and more specifically among judicial authorities, probation and social services, prison administrations, as well as the media and the general public.

Appendix to Recommendation (2016) XX

Preamble

The present rules are intended to:

- a. establish a set of standards to enable national legislators and the practitioners concerned (deciding and implementing authorities) to provide a just and effective use of community sanctions and measures. This application must take into account the need to protect society and maintain legal order and at the same time support social rehabilitation, while also enabling offenders to make reparation for the harm they have caused.
- b. 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 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. 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 legitimacy upon the sanctions or measures. Implementation must not be thought of in a rigid or formalistic way, but should be undertaken with constant regard for individualisation, so that community sanctions and measures correspond with the offence and with the characteristics 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 both for offenders and for the community: offenders are in a position to continue to exercise choice and assume their social responsibilities, while 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.

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 offenders with respect as responsible human beings.

The present 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.

The provisions of the present rules deal with all sanctions and measures implemented in the community, including ways of enforcing sentences of imprisonment outside prison establishments. However, measures which are specifically concerned with juveniles are not covered by the rules.

Chapter I: Basic principles, scope and application

1. Community sanctions and measures can provide just and effective supervision, guidance and assistance to suspects and offenders without resorting to deprivation of liberty. They can enhance the prospects of social inclusion on which desistance from crime usually depends.
2. National law shall provide for a sufficient range of suitably varied community sanctions and measures and these shall be made available to be used in practice.
3. The nature and the duration of community sanctions and measures shall both be in proportion to the seriousness of the offence for which persons have been sentenced or accused and take into account their personal circumstances.
4. Community sanctions and measures shall be implemented in a manner that upholds human rights and enables and encourages offenders to meet their responsibilities as members of the community. No community sanction or measure shall be created or imposed if it is contrary to international standards concerning human rights and fundamental freedoms.
- 4a. A community sanction or measure shall never involve medical or psychological treatment which is not in conformity with internationally adopted medical ethical standards.
5. There shall be no discrimination in the imposition and implementation of community sanctions and measures on grounds of race, colour, ethnic origin, nationality, gender, age, disability, sexual orientation, language, religion, political or other opinion, economic, social or other status or physical or mental condition. In order to ensure compliance account shall be taken of the diversity and of the distinct needs of individual offenders.
6. The nature, content and methods of implementation of community sanctions and measures shall respect the dignity and the privacy of offenders and their families.
- 6a. Whenever community sanctions and measures involve contact with victims, their rights shall be respected in accordance with accepted ethical standards in this area.
- 6b. In appropriate cases, and having due regard to the rights and needs of victims of crime, offenders should be enabled and encouraged to make reparation for their offences to the victims or to the community.
7. Community sanctions and measures shall be implemented in a way that does not aggravate their afflictive character. Rights shall not be restricted in the implementation of any community sanction or measure to a greater extent than necessarily follows from the decision imposing it.
8. 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.
9. National law shall provide for the regular and independent monitoring of the work of the implementing authorities. This monitoring shall be carried out by qualified and experienced persons.

Comentado [RC1]: Is there a need for any further rule about victims or is it enough to leave this for the EM?

Chapter II: Legal Framework

Legislation

10. The use, as well as the types, duration and modalities of implementation of community sanctions and measures shall be regulated by law.
11. The conditions and obligations attached to the community sanctions and measures shall be defined by clear and explicit provisions, as shall be the consequences of non-compliance with these conditions and obligations.
12. The authorities responsible for the implementation of community sanctions and measures shall be laid down in law, as will their duties and responsibilities. The powers of these 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 also be laid down in law.
13. {Moved to 20a.}
14. {Deleted}
15. National law shall allow for reducing recourse to sentences involving deprivation of liberty by providing for non-custodial sanctions or measures as usual sanctions for certain offences.
16. Any formal obstacles that prevent the use of community sanctions and measures with serious and repeat offenders or in relation to certain types of offence should be reviewed and removed so far as possible.
17. Rights to benefits in any existing social security system or any other civic right (apart from those forming part of the sentence) shall not be limited by the imposition or implementation of a community sanction or measure.

Sentencing

18. The duration of a community sanction or measure shall be fixed by the authority empowered to make the decision within the limits laid down in law.
19. The nature and the duration of a community sanction or measure shall be in proportion to the seriousness of the offence or allegation and shall take into account assessed risks and the offender's personal circumstances. In particular, the requirements of the sanction or measure should not adversely affect the individual's family life or employment.
20. 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 professional staff of an organisation laid down in law.
- 20a. The offender shall have the right to appeal to a higher deciding authority against a decision subjecting him to a community sanction or measure.

Comentado [RC2]: Please note that 19 and 20 have changed places from earlier texts.

21. Judicial authorities and implementing authorities should create channels of communication that facilitate regular discussion of the practical aspects of recommending and implementing community sanctions and measures.

Chapter III: CSM implementation and methods

General

22. The imposition and implementation of community sanctions and measures shall seek to develop the offender's sense of responsibility to the community. Community sanctions and measures should therefore be made as meaningful as possible to the offender and shall seek to contribute to their personal and social development. Methods of supervision shall serve these aims.

23. The implementing authority shall ensure that information about the rights and obligations of those subject to community sanctions and measures is made available to them, and shall provide assistance to secure those rights and to enable them to meet these obligations. Professional staff and participating organisations and individuals drawn from the community shall be made aware of their duties in these respects.

24. The implementation of community sanctions or measures shall seek to secure the co-operation of offenders and to enable them to see the sanction as a just and reasonable reaction to the offence committed. Offenders shall therefore have the right to make oral or written representations prior to any decision concerning the implementation of a community sanction or measure and should participate, as far as possible, in such decision-making.

25. Decisions about the implementation of a community sanction or measure shall be explained clearly to the offender. Instructions given to the offender by the implementing authority shall be practical and precise. There shall be clear and prompt procedures to resolve significant disagreement between an offender and a supervisor.

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

27. Implementation methods shall be individually adapted to the particular circumstances of each case and the authorities and the staff responsible for implementation shall therefore enjoy a sufficient degree of discretion to enable this.

28. Where an individual is found to be in need of particular personal, social or material assistance in relation to implementation, fair and proper provision shall be made to enable them to meet their obligations without additional burdens and to take advantage of such benefits that the sanction or measure may bring.

29. 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 offence committed or alleged, shall take into consideration the personal circumstances of the offender, including risk and needs factors, and shall be limited by the aims of the sanction or measure imposed.

30. Implementing authorities shall use methods of work which are evidence based and consistent with established professional standards.

31. The costs of implementation should not be borne by the offender.

Supervision and Unpaid Work

31a. Community sanctions and measures should always work to support desistance and never just involve surveillance or control.

32. Programmes and interventions for offender rehabilitation should be based on a variety of methods. The allocation of offenders to specific programmes and interventions should be guided by explicit criteria.

33. Tasks provided for offenders doing community service shall not be pointless, but shall be socially useful and meaningful and enhance the offender's skills as much as possible.

34. Community service shall not be undertaken for the purpose of making profit for the implementing authorities, their staff or for commercial profit.

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

Case records, data protection and confidentiality

36. Individual case records shall be created 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.

37. 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.

38. The supervisor shall ordinarily inform offenders of the content of the case record and of any reports made and explain the content to them.

39. The offender, or a person acting on their behalf, shall have access to their individual case record to the extent that it does not infringe the right to privacy of others.

40. The offender shall have the right to contest the content of the case record. The substance of any unresolved disagreement shall be written into the case record.

41. 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.

42. At the end 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 national data protection legislation.

43. 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, it shall normally exclude information about the offence.

Comentado [RC3]: Is this section still too heavily weighted towards unpaid work as opposed to other CSM - e.g. probation?

Comentado [RC4]: Is it better to say *rehabilitation* or *reintegration* here?

Comentado [RC5]: Is there any need to make allowance for social enterprise, which can be a feature in many of our systems now?

Chapter IV: Community participation

44. As reintegration into the community is an important aim of community sanctions and measures, implementing authorities shall work actively in partnership with other public or private organisations and local communities to meet the needs of offenders, promote their social inclusion and to enhance community safety.

45. The community, including private individuals and private and public organisations and services, shall be encouraged to participate in the implementation of community sanctions and measures. This shall be used to assist offenders in developing meaningful ties in the community, in broadening their opportunities for contact and support and will encourage the community to make a positive contribution to their social reintegration.

45a. Community participation shall never be undertaken for the financial profit of individuals or organisations.

46. {Deleted. Moved to 96a.}

47. 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. In such circumstances, the deciding or implementing authorities shall preserve their overall responsibility for the proper carrying out of the community sanction or measure and shall do all they can to ensure the probity and integrity of all participants.

48. Participating organisations and individuals drawn from the community shall be encouraged to express their opinion on matters falling within their competence as well as those concerning individual cases. They shall receive appropriate feedback information.

50. Participating organisations and individuals drawn from the community shall be bound by the demands of confidentiality and by respect for the rights of offenders.

51. Where the implementing authority engages directly with an organisation or individual to provide services for offenders subject to a community sanction or measure, an agreement will be drawn up which specifies, in particular, the nature of their duties and the way they are to be carried out.

52. {Deleted}

Chapter V: Consent, cooperation and enforcement

53. A community sanction or measure shall only be imposed when the appropriate conditions or obligations have been decided upon and it is known that the offender is likely to co-operate and comply with them.

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

55. Such consent shall never have the consequence of depriving offenders of any of their fundamental rights.

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

Comentado [RC6]: Is this Rule necessary or is already covered sufficiently by 34? (The rationale was to prohibit explicitly (e.g.) community service or work experience placements as a source of cheap labour.

Comentado [RC7]: is this feasible? Responsibility of the public services is one thing but ensuring integrity of all participants is another. Any commissioning process should do everything possible to gain assurance that all participants are fit and proper people to undertake such work.

Comentado [RC8]: Or 'should' ?

57. Any conditions or obligations specified in a community sanction or measure shall be determined taking into account the offenders' individual needs and circumstances, and their risks of reoffending (and in particular of causing serious harm).

58. In addition to formal documentation, offenders shall be clearly informed about the nature and purpose of the sanction or measure and the conditions or obligations that must be respected before the start of the implementation in a language they understand and, if necessary, in writing.

Chapter VI: Non-compliance and revocation

60. At the start of the implementation of a community sanction or measure, offenders shall be informed about the content of the sanction or measure and what is expected of them, of the consequences of non-compliance with the conditions and obligations stated in the decision and of the circumstances in which they may be brought back before the deciding authority in respect of non-compliance or inadequate compliance.

61. The implementing authority shall clearly define the procedures to be followed in the event of the offender's non-compliance or inadequate compliance with the requirements.

62. Minor transgressions 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. In such cases, the offender must be given the opportunity to make comments. The procedure and outcome shall be written into the individual case record and explained promptly and clearly to the offender.

63. 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.

64. 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.

65. The decision to modify or revoke a community sanction or measure shall be taken by an authority defined by law. This deciding authority shall only give a ruling on the modification or the partial or total revocation after making a detailed examination of the facts reported by the implementing authority.

66. 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 relevant documents and to present their case regarding the alleged violation of any condition or obligation imposed. The offender shall be entitled to legal assistance.

67. 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.

68. 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.

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

Comentado [RC9]: Should there be a reference to legal assistance at this point? Or does this belong in 66?

Comentado [RC10]: Please see comment above

70. Any condition or obligation laid down in a community sanction or measure may be modified by the deciding authority, having regard to changes in circumstances and / or to progress made by the offender. An application to modify may be made by the offender or by the implementing authority.

71. The deciding authority shall 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. The application to terminate on these grounds may be made by the offender or by the implementing authority.

Chapter VII: Organisation, staff, and resources

71a. The structure, status and resources of implementing agencies shall correspond to the volume of the tasks and responsibilities they are entrusted with and shall reflect the importance of the services they provide.

71b. Implementing agencies shall work in co-operation with other agencies of the justice system, with support agencies and with the wider civil society in order to carry out their tasks and duties effectively and fairly.

72. The work of authorities responsible for the implementation of community sanctions and measures shall be based on an explicit policy statement describing their function, purposes and basic values. The policy statement should be supplemented by written service plans and practice instruction and guidance.

72a. Implementing agencies shall regularly submit general reports and feedback information regarding their work to the competent authorities.

73. {Deleted – to EM}

Professional staff

74. Implementing agencies should have staff of high professional quality, recruited, trained and employed in accordance with the principles laid down in Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions and measures.

74a. Professional staff shall be accountable to the implementing authority. This authority shall determine the duties, rights and responsibilities of its staff and shall arrange for the management and supervision of such staff and assessment of the fairness, efficiency and effectiveness of their work.

74b. There shall be arrangements for management to consult with staff as a body on general matters and, especially, on matters to do with their conditions of employment.

75. There shall be no discrimination in the recruitment, selection and promotion of professional staff on grounds of race, colour, ethnic origin, gender, sexual orientation, religion, political or other opinion, economic or social status.

76. Staff recruitment and selection should take into consideration specific needs of particular categories of persons and the diversity of the offenders to be supervised.

Comentado [RC11]: Is this clear and appropriate? We need a strong statement here about the adequate resourcing and recognition of the implementing agencies.

Comentado [RC12]: Is this clear and appropriate? The rationale is that implementing agencies must be formally accountable competent authorities – e.g. the Ministry of Justice?

Comentado [RC13]: Is a cross-reference like this appropriate in the Rules or would it be better in the EM?

77. The staff responsible for implementation shall be sufficiently numerous to carry out their duties effectively. They shall possess the personal qualities and professional qualifications necessary for their functions.

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

79. Salaries and conditions of service shall be commensurate with the staff's skills and responsibilities. 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 matches that of other professional staff with comparable functions.

80. {Deleted}

81. {Moved to 74b}

Use of volunteers

82. The implementing authority should consider the recruitment of individual volunteers to contribute to its work to enhance the involvement of the community in the implementation of sanctions and measures (in accordance with Chapter IV of these Rules).

83. Volunteers should not undertake work which should be carried out by professional staff.

84. The implementing authorities shall define criteria and procedures according to which individual volunteers drawn from the community are selected, informed about their tasks, responsibilities, limits of competence, accountability and other issues. Suitable training shall be provided.

85. Volunteers shall be guided and supported by professional staff and enabled to perform duties appropriate to their skills and interest within the boundaries of their role.

86. Volunteers 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.

Financial resources

87. 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.

88. 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.

Chapter VIII: Complaints procedures, inspection, monitoring

89. A fair, simple and impartial 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.

90. The implementing authority shall respond to and investigate complaints concerning the implementation of a sanction or measure. Complaints shall be examined and decided on without undue delay.

91. {Deleted: incorporated into 90.}

92. 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 such a wish has been expressed.

93. 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.

94. A complainant may be advised or assisted by a person of their choice and if necessary shall receive legal assistance.

Chapter IX: Research, evaluation, work with media and the public

95. New community sanctions and measures in accordance with internationally approved ethical standards may be introduced on a trial basis. Any pilot projects or experimentation undertaken should be carried out in accordance with the spirit of the European Rules on Community Sanctions and Measures and be carefully monitored and evaluated.

96. Policy makers, legislators, judicial authorities and the general public should receive recurring information on the economic and social benefits accruing from a reduced recourse to imprisonment and on the positive advantages of community sanctions and measures. There should be a declared public relations policy concerning local media.

96a. 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 can understand them and perceive them as adequate and credible responses to criminal behaviour.

97. {Deleted}

98. Judicial authorities should be involved in the process of devising and revising policies on the use of community sanctions and measures, and should be informed about their results, with a view to ensuring widespread understanding in the judicial community of their nature.

98a. Implementing authorities shall enable and encourage offenders to inform them of their experience of being supervised so that policies and practices can be improved.

99. Criteria of effectiveness should be laid down so as to make it possible to assess from various perspectives the costs and benefits associated with programmes and interventions with the aim of

Comentado [RC14]: This is a new Rule and the Committee's guidance and ruling are needed.

maximising the quality of their results. Standards and performance indicators for the execution of programmes and interventions should be established.

100. Research on community sanctions and measures shall be encouraged. They should be regularly evaluated. Programmes and interventions should be structured in accordance with knowledge derived from relevant research.

Chapter X: Reviewing of the Rules

101. These Rules shall be reviewed regularly.