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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Council for Penological Co-operation
(PC-CP)

**Draft Recommendation CM/Rec (2016) XX of the Committee of
Ministers
to the member states 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 Recommendations CM/Rec (2010)1 on the Council of Europe Probation Rules, 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 and Recommendation 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 Recommendations Rec (2000) 22 on improving the implementation of the European rules on community sanctions and measures and Recommendations N° R (92) 16 on the European Rules on community sanctions and measures enforced by the text of the present Recommendation and

Recommends that governments of member states:

- be guided when reviewing their policy, legislation, and practice in relation to the creation, imposition and implementation of community sanctions and measures, by the principles set out in the Appendix to this Recommendation;
- ensure that this Recommendation and the accompanying commentary are translated and disseminated as widely as possible and more specifically among judicial authorities, probation agencies, penitentiary services, as well as the media and the general public.

Appendix to Recommendation

Preamble

The present rules supersede and replace R (92) 16 on the European Rules on community sanctions and measures and Rec (2000) 22 on improving the implementation of the European Rules on community sanctions and measures. These 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 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. 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 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 the offender and for the community: the offender is in a position to continue to exercise choice and assume his 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 the offender with respect as a responsible human being.

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 as defined in the glossary, including ways of enforcing sentences of imprisonment outside prison establishments. However, measures which are specifically concerned with juveniles are not covered by the rules.