

TENDER FILE / TERMS OF REFERENCE
(Competitive bidding procedure / One-off contract)

Purchase of consultancy services in order to develop a study on Prison Systems Refocus from Punitive to Rehabilitative Approach in Execution of Criminal Sanctions



Contract N° 4758/2021/06/03

The Council of Europe is the leading European intergovernmental organisation with an extensive and recognised standing in the area of protection of the human rights of sentenced persons. The work in this area is based on the established synergy between the relevant Council of Europe standards, the monitoring mechanisms put in place to supervise their implementation by the member States and the technical assistance activities provided to help countries in need to improve the work of the prison and probation staff, detention conditions and the treatment of detainees.

The Council of Europe and the European Union are currently implementing Joint Project "Further Support to Penitentiary Reform in Ukraine" (SPERU). Among other things, SPERU focuses on the improvement and development of modern prison management methods and instruments for more rehabilitative regimes.

In that context, it is looking for a Provider for the provision of consultancy services in order to develop a study on Prison Systems Refocus from Punitive to Rehabilitative Approach in Execution of Criminal Sanctions (See Section A of the Act of Engagement).

Background and rationale

Prisons are essential part of the criminal justice system, but they are often low priority for the governments. Time spent in prison often exacerbate challenges faced by individuals in conflict with the law. Whenever there are appropriate, non-custodial measures, rehabilitation within the community should be the preferred option over imprisonment. When prison sentences are necessary, they need to be implemented in a way that fosters the ability of prisoners to lead self-supporting lives upon release. Given the fact that prisoners will eventually return to society, it is essential to actively promote their rehabilitation process and social reintegration in order to protect society from crime.

The conscious shift from a punitive to a rehabilitative approach to imprisonment has been at the forefront for many European prison services in recent years. Some Council of Europe member States commenced the transformation and are in the process or have already achieved significant progress, such as Nordic countries, for example.

This transformation process is particularly complex in post-soviet penal systems, many of which remain biased towards retributive and punitive approaches, on the grounds that isolation from the community by imprisonment had been a default choice of criminal justice sentencing tradition for centuries.

As underlined by the Committee of Ministers Recommendations and by the European Court of Human Rights (ECtHR) case law, the deprivation of liberty should remain a measure of last resort. It should be used only [...] *"when the seriousness of the offence combined with consideration of the individual circumstances of the case would make any other sanction or measure clearly inadequate. [...] Unfortunately, [...] too often deprivation of liberty is a measure of first resort instead of being seen and accepted as an exceptional method of execution of a penal sanction"*.¹ According to the recent Council of Europe's Annual Penal Statistics on Prison Populations for 2020, the overall European imprisonment rate - the number of persons in prison per 100 000 inhabitants - fell again slightly in 2020, consolidating a trend that started in 2013. Nevertheless, it was observed that Eastern European countries are among those with the highest incarceration rate (e.g. Georgia, Azerbaijan, Russia etc.).² In addition, in a number of Eastern European countries, it is still difficult to proceed with individualisation of prison sanctions due to rather a rigid sentencing policy and legislation (the crime committed being decisive for the type of prison/ treatment and any changes in the prison regime are to be done only upon court decision).

¹ White Paper on Prison Overcrowding, [CM\(2016\)121-add3](#), European Committee on Crime Problems (CDPC), 23 August 2016, see paragraphs 84 and 86, pages 15-16.

² Council of Europe's Annual Penal Statistics on Prison Populations for 2020 (SPACE) <https://www.coe.int/en/web/portal/-/europe-s-imprisonment-rate-continues-to-fall-council-of-europe-s-annual-penal-statistics>.

"The execution of judicial decisions in quite a few European countries is carried out by the executive under judicial control. This derives from the logic that the specific manner of execution of individual penal sanctions and measures should better be placed under the primary responsibility of the prison and probation services and not of the judiciary as these are the services whose staff is in everyday contact with persons deprived of their liberty. This allows more flexibility and better individualisation of these sanctions and measures in order to adapt them to the specific offenders and thus to contribute to their management and rehabilitation. However, [...] in some countries, not only the initial but all subsequent re-classifications of prisoners in the course of the execution of prison sentences is decided by the judiciary. [This] does not allow the prison administration to take decisions in this respect, including action in case of severe overcrowding by transferring prisoners from closed to open or semi-open institutions".³ Creation of a favourable legal basis for more appropriate penal measures, such as more lenient sentencing, transfer into different regimes, alternative measures to deprivation of liberty, is recommended. They should be complemented by tailor-made programmes in prison based on risk and needs assessment (RNA) that will serve both the inmates and the society.

Owing to their membership in the Council of Europe, the expert communities in these countries became more aware of the Council of Europe and other international deliberations on the philosophy of punishment. Destructive personal experiences of custodial sanctions started to be acknowledged, and the cross-cutting concepts of individualisation in sentencing and alternatives to imprisonment gradually paved their way not only in theory but in practice. However, reforming the penal system is a long process, and efforts to be undertaken to make the change from punitive into a rehabilitative approach in a number of Eastern European countries are many.

While the European Prison Rules focus on good prisoners-staff communication and proper coordination of all the departments, both inside and outside the prison, in order to facilitate the reintegration⁴, the European Probation Rules⁵ and European Rules on community sanctions and measures⁶ highlight the importance of cooperation among probation agencies, the prison authorities, the offenders, their family, public or private organisations and local communities in order to prepare their release and reintegration into society.

The European Committee for the Prevention of Torture Inhuman or Degrading Treatment or Punishment (CPT) highlighted in numerous country-specific reports and in its general standards the importance of RNA, individual sentence planning, rehabilitation programmes for inmates, such as *inter alia* proper involvement of prisoners in meaningful activities that will assist them in the process of resocialisation, contact with families, vocational training etc.

In addition, in its role of supervising the execution of the ECtHR judgments concerning, among many others, the Eastern European countries⁷, the Committee of Ministers encouraged/urged the countries to adopt alternative measures to detention to streamline their efforts in promoting alternative sanctions and minimising the use of pre-trial detention in order to further develop the probation systems.

The Council of Europe's technical cooperation projects/programmes have been actively promoting the concept of offender rehabilitation, encouraging rebalancing the custodial regime towards supportive treatment to make this paradigmatic shift from the traditionally endorsed punitive regimes to more rehabilitative approaches.

Based on the experience of various countries supported by the Council of Europe and other international Organisations (e.g. UNODC,) which provide technical assistance and capacity-building, as well as support to the normative work, research and expertise, the following pathways can be identified in the context of pre- and post-release process in the Council of Europe member States:

³ White Paper on Prison Overcrowding, [CM\(2016\)121-add3](#), European Committee on Crime Problems (CDPC), 23 August 2016, see §§ 101-102, pp. 17-18.

⁴ Recommendation [Rec\(2006\)2-rev](#) of the Committee of Ministers to member states on the European Prison, §§ 6 and 83 (b).

⁵ Recommendation [CM/Rec\(2010\)1](#) of the Committee of Ministers to member states on the Council of Europe Probation Rules, §59.

⁶ Recommendation [CM/Rec\(2017\)3](#) to member States on the European Rules on community sanctions and measures, §§ 31, 50-51.

⁷ See, for example, 1390th meeting (DH) (1-3 December 2020) - H46-31 Sukachov (Application No. 14057/17), Nevmerzhiitsky group (Application No. 54825/00), Yakovenko group (Application No. 15825/06), Logvinenko group (Application No. 13448/07), Isayev group (Application No. 28827/02) and Melnik group (Application No. 72286/01) v. Ukraine, [CM/Del/Dec\(2020\)1390/H46-31](#); 1377th meeting (DH) June 2020 - H46-21 I.D. group v. Republic of Moldova (Application No. 47203/06), [CM/Del/Dec\(2020\)1377/H46-21](#).

- a) individual RNA-based sentence planning;
- b) psychological and psycho-social support to provide social reinforcement and help enforce behavioural change, i.e. treatment programmes;
- c) vocational and technical training and educational programmes for offenders and ex-offenders to develop the necessary skills for reintegration;
- d) business mentoring to support ex-offenders establishing their businesses and developing business ideas;
- e) legal aid in order to address legal and administrative issues upon release;
- f) multi-stakeholder partnerships such as employment and social welfare agencies and local governments, public-private partnerships between those authorities and the community;
- g) awareness-raising on the importance of the public acceptance of offenders as members of the community and the role of the families and community organisations (volunteers) to prevent social exclusion.

Purpose and scope of the Study

The main purpose of the **Study** is to understand how to navigate the journey from punitive to rehabilitative approach, what is the rationale of punishment as "an end in itself" in contrast to "a means towards an end" approach and the importance of appropriate legislation and domestic courts' practice on individualisation of sentencing in order to assist policy and decision-makers to appreciate the complexity of the process and to make informed decisions. The Study is also meant to be a practical tool that will emphasise good practices registered in the countries that moved towards a rehabilitative approach. Emphasis will be placed on the following:

- Factors that contributed to move from a punitive to a rehabilitative approach;
- The importance of rehabilitation programmes in this process ;
- Identify good practices, main challenges and set the minimum standards that would provide for improved methodology and tools for rehabilitation of prisoners and ex-offenders.

Target audience

Senior managers of the penitentiary and probation services in the Council of Europe member States facing the challenge of shifting from one approach to the other; ministries of justice of the partner countries in the region; representatives of the judiciary, academic circles; civil society organisations.

Methodology and timeline - please see the [Act of Engagement](#).

Budgetary requirements

The overall budget for the preparation of the Study (including the Handbook) shall not exceed **€40,000**. All related costs, including interpretation, translation into local languages, travel and accommodation only/where/ if needed, should be budgeted and included in the final offer.

A. TENDER RULES

This tender procedure is a competitive bidding procedure. **In accordance with Rule 1395 of the Secretary General of the Council of Europe on the procurement procedures of the Council of Europe⁸, the Organisation shall invite to tender at least three potential providers for any purchase between €2,000 (or €5,000 for intellectual services) and €55,000 tax exclusive.**

This specific tender procedure aims at concluding a **one-off contract** for the provision of deliverables described in the Act of Engagement (See attached). A tender is considered valid for 120 calendar days as from the closing date for submission. The selection of tenderers will be made in the light of the criteria indicated below. All tenderers will be informed in writing of the outcome of the procedure.

The tenderer must be a legal person.

⁸ The activities of the Council of Europe are governed by its [Statute](#) and its internal Regulations. Procurement is governed by the Financial Regulations of the Organisation and by [Rule 1395 of 20 June 2019 on the procurement procedures of the Council of Europe](#).

Tenders shall be submitted **by e-mail only** (with attachments) **to the e-mail address indicated in the table below, with the following reference in subject: Tender - Refocus from Punitive to Rehabilitative Approach.** Tenders addressed to another e-mail address **will be rejected.**

The general information and contact details for this procedure are indicated on this page. You are invited to use the CoE Contact details indicated below for any question you may have. **All questions shall be submitted at least 5 (five) working days before the deadline for submission of the tenders and shall be exclusively addressed to the e-mail address indicated below with the following reference in subject: Question: Tender - Refocus from Punitive to Rehabilitative Approach.**

Type of contract ▶	One-off contract
Duration ▶	Until complete execution of the obligations of the parties (See Article 2 of the Legal conditions as reproduced in the Act of Engagement)
Deadline for submission of tenders/offers ▶	16 July 2021
Email for submission of tenders/offers ▶	policeprisons.projects@coe.int
Email for questions ▶	policeprisons.projects@coe.int
Expected starting date of execution ▶	02 August 2021

B. EXPECTED DELIVERABLES

The expected deliverables are described in **Section A of the Act of Engagement** (See attached).

C. FEES

All tenderers are invited to fill in the **table of fees** as reproduced in **Section A of the Act of Engagement**.

Tenderers **subject to VAT** shall also send **a quote (Pro Forma invoice)** on their letterhead including:

- the Service Provider's name and address;
- its VAT number;
- the full list of services;
- the fee per type of deliverables (in the currency indicated on the Act of Engagement, tax exclusive);
- the total amount per type of deliverables (in the currency indicated on the Act of Engagement, tax exclusive);
- the total amount (in the currency indicated on the Act of Engagement), tax exclusive, the applicable VAT rate, the amount of VAT and the amount VAT inclusive.

D. ASSESSMENT

Exclusion criteria and absence of conflict of interests

(by signing the Act of Engagement,⁹ you declare on your honour not being in any of the below situations)

Tenderers shall be excluded from participating in the tender procedure if they:

- have been sentenced by final judgment on one or more of the following charges: participation in a criminal organisation, corruption, fraud, money laundering, terrorist financing, terrorist offences or offences linked to terrorist activities, child labour or trafficking in human beings;
- are in a situation of bankruptcy, liquidation, termination of activity, insolvency or arrangement with creditors or any like situation arising from a procedure of the same kind, or are subject to a procedure of the same kind;
- have received a judgment with res judicata force, finding an offence that affects their professional integrity or serious professional misconduct;
- do not comply with their obligations as regards payment of social security contributions, taxes and dues, according to the statutory provisions of their country of incorporation, establishment or residence;
- are or are likely to be in a situation of conflict of interests;

⁹ The Council of Europe reserves the right to ask tenderers, at a later stage, to supply the following supporting documents:

- An extract from the record of convictions or failing that an equivalent document issued by the competent judicial or administrative authority of the country of incorporation, indicating that the first three above listed exclusion criteria are met;
- A certificate issued by the competent authority of the country of incorporation indicating that the fourth criterion is met;
- For legal persons, an extract from the companies register or other official document proving ownership and control of the Tenderer;
- For natural persons (including owners and executive officers of legal persons), a scanned copy of a valid photographic proof of identity (e.g. passport).

- are or if their owner(s) or executive officer(s), in the case of legal persons, are included in the lists of persons or entities subject to restrictive measures applied by the European Union (available at www.sanctionsmap.eu).

Eligibility criteria

In order to be eligible, a Provider must:

- Have at least four years of experience of the tenderer (*not its staff*) in providing services to national public or private entities/and or international bodies/institutions in the areas described in the call;
- Have proven track record of having concluded and completed at least one study/research/survey/assessment in the areas related to this call;
- Be constituted as a legal person;
- Have sufficient operational capacity, including staff, to carry out activities described in the call;
- Present excellent oral and written English of the proposed tender's staff that will undertake the study at the level C1-C2 of the Common European Framework of Reference for Languages.

Award criteria

- Quality of the offer (80%), including:
 - *Criterion 1:* Submitted proposal and methodology (see below under Section F) (50%);
 - *Criterion 2:* Thematic expertise in the relevant area (20%);
 - *Criterion 3:* Previous similar assignments with international organisations/Knowledge of the regional context in the areas covered by this call (10%);
 -
- Financial offer (20 %).

The Council reserves the right to hold interviews with eligible tenderers.

Multiple tendering is not authorised.

E. NEGOTIATIONS

The Council reserves the right to hold negotiations with the bidders in accordance with Article 20 of Rule 1395.

F. DOCUMENTS TO BE PROVIDED

Tenderers are invited to submit:

- **A completed and signed copy of the Act of Engagement¹⁰ (See attached);**
- For tenderers subject to VAT only: **a quote, describing their financial offer**, in line with the requirements of section C of the Tender File (see above);
- A list of all owners and executive officers, for legal persons only;
- Registration documents;
- Bank statement confirming the existence of the bank account in the name of the tenderer;
- At least one example of previous work/deliverables such as assessments/analyses, reports, studies, surveys, researches etc. relevant to the experience the tenderer claims and relevant for the areas covered by this call submitted as a link or pdf attachment (in English);
- Narrative proposal (not exceeding seven pages) demonstrating the relevance and added value of the proposal with regard to the objective of the call The proposal must include: 1. short background of the legal person relevant for this call and proven years of experience in the field; 2. short information on the operational capacity and staff to conduct the study; 3. (*main part of the proposal*) detailed methodology for carrying out the study and proposed structure of the final Study;
- Three relevant references from previous clients (name, surname, phone number or e-mail) of the tenderer (not its staff), preferable from relevant international organisations.

¹⁰ The Act of Engagement must be completed, signed and scanned in its entirety (i.e. including all the pages). The scanned Act of Engagement may be sent page by page (attached to a single email) or as a compiled document, although a compiled document would be preferred. For all scanned documents, .pdf files are preferred.

All documents shall be submitted in English, failure to do so, the Council of Europe reserves the right to exclude the tenderer from the tender.

If any of the documents listed above are missing, the Council of Europe reserves the right to reject the tender.

The Council reserves the right to reject a tender if the scanned documents are of such a quality that the documents cannot be read once printed.

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