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III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2009/829/JHA

of 23 October 2009

on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(1)(a) and (c) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) According to the Conclusions of the European Council meeting in Tampere on 15 and 16 October 1999, and in particular point 36 thereof, the principle of mutual recognition should apply to pre-trial orders. The programme of measures to implement the principle of mutual recognition in criminal matters addresses mutual recognition of supervision measures in its measure 10.
- (3) The measures provided for in this Framework Decision should aim at enhancing the protection of the general public through enabling a person resident in one Member State, but subject to criminal proceedings in a second Member State, to be supervised by the authorities in the State in which he or she is resident whilst awaiting trial. As a consequence, the present Framework Decision

has as its objective the monitoring of a defendants' movements in the light of the overriding objective of protecting the general public and the risk posed to the public by the existing regime, which provides only two alternatives: provisional detention or unsupervised movement. The measures will therefore give further effect to the right of law-abiding citizens to live in safety and security.

- (4) The measures provided for in this Framework Decision should also aim at enhancing the right to liberty and the presumption of innocence in the European Union and at ensuring cooperation between Member States when a person is subject to obligations or supervision pending a court decision. As a consequence, the present Framework Decision has as its objective the promotion, where appropriate, of the use of non-custodial measures as an alternative to provisional detention, even where, according to the law of the Member State concerned, a provisional detention could not be imposed *ab initio*.
- (5) As regards the detention of persons subject to criminal proceedings, there is a risk of different treatment between those who are resident in the trial state and those who are not: a non-resident risks being remanded in custody pending trial even where, in similar circumstances, a resident would not. In a common European area of justice without internal borders, it is necessary to take action to ensure that a person subject to criminal proceedings who is not resident in the trial state is not treated any differently from a person subject to criminal proceedings who is so resident.
- (6) The certificate, which should be forwarded together with the decision on supervision measures to the competent authority of the executing State, should specify the address where the person concerned will stay in the executing State, as well as any other relevant information which might facilitate the monitoring of the supervision measures in the executing State.

⁽¹⁾ Opinion not yet published in the Official Journal.

- (7) The competent authority in the executing State should inform the competent authority in the issuing State of the maximum length of time, if any, during which the supervision measures could be monitored in the executing State. In Member States in which the supervision measures have to be periodically renewed, this maximum length of time has to be understood as the total length of time after which it is legally not possible anymore to renew the supervision measures.
- (8) Any request by the competent authority in the executing State for confirmation of the necessity to prolong the monitoring of supervision measures should be without prejudice to the law of the issuing State, which applies to the decision on renewal, review and withdrawal of the decision on supervision measures. Such a request for confirmation should not oblige the competent authority in the issuing State to take a new decision to prolong the monitoring of supervision measures.
- (9) The competent authority in the issuing State should have jurisdiction to take all subsequent decisions relating to a decision on supervision measures, including ordering a provisional detention. Such provisional detention might, in particular, be ordered following a breach of the supervision measures or a failure to comply with a summons to attend any hearing or trial in the course of criminal proceedings.
- (10) In order to avoid unnecessary costs and difficulties in relation to the transfer of a person subject to criminal proceedings for the purposes of a hearing or a trial, Member States should be allowed to use telephone- and videoconferences.
- (11) Where appropriate, electronic monitoring could be used for monitoring supervision measures in accordance with national law and procedures.
- (12) This Framework Decision should make it possible that supervision measures imposed on the person concerned are monitored in the executing State, while ensuring the due course of justice and, in particular, that the person concerned will be available to stand trial. In case the person concerned does not return to the issuing State voluntarily, he or she may be surrendered to the issuing State in accordance with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States⁽¹⁾ (hereinafter referred to as the 'Framework Decision on the European Arrest Warrant').
- (13) While this Framework Decision covers all crimes and is not restricted to particular types or levels of crime, supervision measures should generally be applied in case of less serious offences. Therefore all the provisions of the Framework Decision on the European Arrest Warrant, except Article 2(1) thereof, should apply in the situation when the competent authority in the executing State has to decide on the surrender of the person concerned. As a consequence, also Article 5(2) and (3) of the Framework Decision on the European Arrest Warrant should apply in that situation.
- (14) Costs relating to the travel of the person concerned between the executing and issuing States in connection with the monitoring of supervision measures or for the purpose of attending any hearing are not regulated by this Framework Decision. The possibility, in particular for the issuing State, to bear all or part of such costs is a matter governed by national law.
- (15) Since the objective of this Framework Decision, namely the mutual recognition of decisions on supervision measures in the course of criminal proceedings, cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in that Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.
- (16) This Framework Decision respects fundamental rights and observes the principles recognised, in particular, by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union. Nothing in this Framework Decision should be interpreted as prohibiting refusal to recognise a decision on supervision measures if there are objective indications that it was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political convictions or sexual orientation or that this person might be disadvantaged for one of these reasons.
- (17) This Framework Decision should not prevent any Member State from applying its constitutional rules relating to entitlement to due process, freedom of association, freedom of the press, freedom of expression in other media and freedom of religion.
- (18) The provisions of this Framework Decision should be applied in conformity with the right of the Union's citizens to move and reside freely within the territory of the Member States, pursuant to Article 18 of the Treaty establishing the European Community.

⁽¹⁾ OJ L 190, 18.7.2002, p. 1.

(19) Personal data processed when implementing this Framework Decision should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters ⁽¹⁾ and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Subject matter

This Framework Decision lays down rules according to which one Member State recognises a decision on supervision measures issued in another Member State as an alternative to provisional detention, monitors the supervision measures imposed on a natural person and surrenders the person concerned to the issuing State in case of breach of these measures.

Article 2

Objectives

1. The objectives of this Framework Decision are:
 - (a) to ensure the due course of justice and, in particular, that the person concerned will be available to stand trial;
 - (b) to promote, where appropriate, the use, in the course of criminal proceedings, of non-custodial measures for persons who are not resident in the Member State where the proceedings are taking place;
 - (c) to improve the protection of victims and of the general public.
2. This Framework Decision does not confer any right on a person to the use, in the course of criminal proceedings, of a non-custodial measure as an alternative to custody. This is a matter governed by the law and procedures of the Member State where the criminal proceedings are taking place.

Article 3

Protection of law and order and the safeguarding of internal security

This Framework Decision is without prejudice to the exercise of the responsibilities incumbent upon Member States with regard to the protection of victims, the general public and the safeguarding of internal security, in accordance with Article 33 of the Treaty on European Union.

Article 4

Definitions

For the purposes of this Framework Decision:

- (a) 'decision on supervision measures' means an enforceable decision taken in the course of criminal proceedings by a competent authority of the issuing State in accordance with its national law and procedures and imposing on a natural person, as an alternative to provisional detention, one or more supervision measures;
- (b) 'supervision measures' means obligations and instructions imposed on a natural person, in accordance with the national law and procedures of the issuing State;
- (c) 'issuing State' means the Member State in which a decision on supervision measures has been issued;
- (d) 'executing State' means the Member State in which the supervision measures are monitored.

Article 5

Fundamental rights

This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 6

Designation of competent authorities

1. Each Member State shall inform the General Secretariat of the Council which judicial authority or authorities under its national law are competent to act according to this Framework Decision in the situation where that Member State is the issuing State or the executing State.
2. As an exception to paragraph 1 and without prejudice to paragraph 3, Member States may designate non-judicial authorities as the competent authorities for taking decisions under this Framework Decision, provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures.
3. Decisions referred to under Article 18(1)(c) shall be taken by a competent judicial authority.
4. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.

⁽¹⁾ OJ L 350, 30.12.2008, p. 60.

*Article 7***Recourse to a central authority**

1. Each Member State may designate a central authority or, where its legal system so provides, more than one central authority to assist its competent authorities.
2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of decisions on supervision measures, together with the certificates referred to in Article 10, as well as for all other official correspondence relating thereto. As a consequence, all communications, consultations, exchanges of information, enquiries and notifications between competent authorities may be dealt with, where appropriate, with the assistance of the central authority(ies) of the Member State concerned.
3. Member States wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

*Article 8***Types of supervision measures**

1. This Framework Decision shall apply to the following supervision measures:
 - (a) an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;
 - (b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
 - (c) an obligation to remain at a specified place, where applicable during specified times;
 - (d) an obligation containing limitations on leaving the territory of the executing State;
 - (e) an obligation to report at specified times to a specific authority;
 - (f) an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.
2. Each Member State shall notify the General Secretariat of the Council, when transposing this Framework Decision or at a

later stage, which supervision measures, apart from those referred to in paragraph 1, it is prepared to monitor. These measures may include in particular:

- (a) an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment;
- (b) an obligation not to drive a vehicle;
- (c) an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once;
- (d) an obligation to undergo therapeutic treatment or treatment for addiction;
- (e) an obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed.

3. The General Secretariat of the Council shall make the information received under this Article available to all Member States and to the Commission.

*Article 9***Criteria relating to the Member State to which the decision on supervision measures may be forwarded**

1. A decision on supervision measures may be forwarded to the competent authority of the Member State in which the person is lawfully and ordinarily residing, in cases where the person, having been informed about the measures concerned, consents to return to that State.
2. The competent authority in the issuing State may, upon request of the person, forward the decision on supervision measures to the competent authority of a Member State other than the Member State in which the person is lawfully and ordinarily residing, on condition that the latter authority has consented to such forwarding.
3. When implementing this Framework Decision, Member States shall determine under which conditions their competent authorities may consent to the forwarding of a decision on supervision measures in cases pursuant to paragraph 2.
4. Each Member State shall make a statement to the General Secretariat of the Council of the determination made under paragraph 3. Member States may modify such a statement at any time. The General Secretariat shall make the information received available to all Member States and to the Commission.

Article 10

Procedure for forwarding a decision on supervision measures together with the certificate

1. When, in application of Article 9(1) or (2), the competent authority of the issuing State forwards a decision on supervision measures to another Member State, it shall ensure that it is accompanied by a certificate, the standard form of which is set out in Annex I.

2. The decision on supervision measures or a certified copy of it, together with the certificate, shall be forwarded by the competent authority in the issuing State directly to the competent authority in the executing State by any means which leaves a written record under conditions allowing the executing State to establish their authenticity. The original of the decision on supervision measures, or a certified copy of it, and the original of the certificate, shall be sent to the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.

3. The certificate shall be signed, and its content certified as accurate, by the competent authority in the issuing State.

4. The certificate referred to in paragraph 1 of this Article shall include, apart from the measures referred to in Article 8(1), only such measures as notified by the executing State in accordance with Article 8(2).

5. The competent authority in the issuing State shall specify:

(a) where applicable, the length of time to which the decision on supervision measures applies and whether a renewal of this decision is possible;

and

(b) on an indicative basis, the provisional length of time for which the monitoring of the supervision measures is likely to be needed, taking into account all the circumstances of the case that are known when the decision on supervision measures is forwarded.

6. The competent authority in the issuing State shall forward the decision on supervision measures together with the certificate only to one executing State at any one time.

7. If the competent authority in the executing State is not known to the competent authority in the issuing State, the latter shall make all necessary inquiries, including via the contact points of the European Judicial Network set up by Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network⁽¹⁾, in order to obtain the information from the executing State.

8. When an authority in the executing State which receives a decision on supervision measures together with a certificate has no competence to recognise that decision, this authority shall, ex officio, forward the decision together with the certificate to the competent authority.

Article 11

Competence over the monitoring of the supervision measures

1. As long as the competent authority of the executing State has not recognised the decision on supervision measures forwarded to it and has not informed the competent authority of the issuing State of such recognition, the competent authority of the issuing State shall remain competent in relation to the monitoring of the supervision measures imposed.

2. If competence for monitoring the supervision measures has been transferred to the competent authority of the executing State, such competence shall revert back to the competent authority of the issuing State:

(a) where the person concerned has established his/her lawful and ordinary residence in a State other than the executing State;

(b) as soon as the competent authority in the issuing State has notified withdrawal of the certificate referred to in Article 10(1), pursuant to Article 13(3), to the competent authority of the executing State;

(c) where the competent authority in the issuing State has modified the supervision measures and the competent authority in the executing State, in application of Article 18(4)(b), has refused to monitor the modified supervision measures because they do not fall within the types of supervision measures referred to in Article 8(1) and/or within those notified by the executing State concerned in accordance with Article 8(2);

(d) when the period of time referred to in Article 20(2)(b) has elapsed;

(e) where the competent authority in the executing State has decided to stop monitoring the supervision measures and has informed the competent authority in the issuing State thereof, in application of Article 23.

3. In cases referred to in paragraph 2, the competent authorities of the issuing and executing States shall consult each other so as to avoid, as far as possible, any discontinuance in the monitoring of the supervision measures.

⁽¹⁾ OJ L 191, 7.7.1998, p. 4.

Article 12

Decision in the executing State

1. The competent authority in the executing State shall, as soon as possible and in any case within 20 working days of receipt of the decision on supervision measures and certificate, recognise the decision on supervision measures forwarded in accordance with Article 9 and following the procedure laid down in Article 10 and without delay take all necessary measures for monitoring the supervision measures, unless it decides to invoke one of the grounds for non-recognition referred to in Article 15.

2. If a legal remedy has been introduced against the decision referred to in paragraph 1, the time limit for recognition of the decision on supervision measures shall be extended by another 20 working days.

3. If it is not possible, in exceptional circumstances, for the competent authority in the executing State to comply with the time limits laid down in paragraphs 1 and 2, it shall immediately inform the competent authority in the issuing State, by any means of its choosing, giving reasons for the delay and indicating how long it expects to take to issue a final decision.

4. The competent authority may postpone the decision on recognition of the decision on supervision measures where the certificate provided for in Article 10 is incomplete or obviously does not correspond to the decision on supervision measures, until such reasonable time limit set for the certificate to be completed or corrected.

Article 13

Adaptation of the supervision measures

1. If the nature of the supervision measures is incompatible with the law of the executing State, the competent authority in that Member State may adapt them in line with the types of supervision measures which apply, under the law of the executing State, to equivalent offences. The adapted supervision measure shall correspond as far as possible to that imposed in the issuing State.

2. The adapted supervision measure shall not be more severe than the supervision measure which was originally imposed.

3. Following receipt of information referred to in Article 20(2)(b) or (f), the competent authority in the issuing State may decide to withdraw the certificate as long as monitoring in the executing State has not yet begun. In any case, such a decision shall be taken and communicated as soon as possible and within ten days of the receipt of the relevant notification at the latest.

Article 14

Double criminality

1. The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition of the decision on supervision measures:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests ⁽¹⁾,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,

⁽¹⁾ OJ C 316, 27.11.1995, p. 49.

- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

2. The Council may decide to add other categories of offences to the list in paragraph 1 at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union. The Council shall examine, in the light of the report submitted to it pursuant to Article 27 of this Framework Decision, whether the list should be extended or amended.

3. For offences other than those covered by paragraph 1, the executing State may make the recognition of the decision on supervision measures subject to the condition that the decision relates to acts which also constitute an offence under the law of the executing State, whatever the constituent elements or however it is described.

4. Member States may, for constitutional reasons, on the adoption of this Framework Decision, by a declaration notified to the General Secretariat of the Council, declare that they will not apply paragraph 1 in respect of some or all of the offences referred to in that paragraph. Any such declaration may be withdrawn at any time. Such declarations or withdrawals of declarations shall be published in the *Official Journal of the European Union*.

Article 15

Grounds for non-recognition

1. The competent authority in the executing State may refuse to recognise the decision on supervision measures if:

- (a) the certificate referred to in Article 10 is incomplete or obviously does not correspond to the decision on supervision measures and is not completed or corrected within a reasonable period set by the competent authority in the executing State;
- (b) the criteria laid down in Article 9(1), 9(2) or 10(4) are not met;
- (c) recognition of the decision on supervision measures would contravene the *ne bis in idem* principle;
- (d) the decision on supervision measures relates, in the cases referred to in Article 14(3) and, where the executing State has made a declaration under Article 14(4), in the cases referred to in Article 14(1), to an act which would not constitute an offence under the law of the executing State; in tax, customs and currency matters, however, execution of the decision may not be refused on the grounds that the law of the executing State does not prescribe any taxes of the same kind or does not contain any tax, customs or currency provisions of the same kind as the law of the issuing State;
- (e) the criminal prosecution is statute-barred under the law of the executing State and relates to an act which falls within the competence of the executing State under its national law;
- (f) there is immunity under the law of the executing State, which makes it impossible to monitor supervision measures;
- (g) under the law of the executing State, the person cannot, because of his age, be held criminally responsible for the act on which the decision on supervision measures is based;
- (h) it would, in case of breach of the supervision measures, have to refuse to surrender the person concerned in accordance with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States⁽¹⁾ (hereinafter referred to as the 'Framework Decision on the European Arrest Warrant').

⁽¹⁾ OJ L 190, 18.7.2002, p. 1.

2. In the cases referred to in paragraph 1(a), (b) and (c), before deciding not to recognise the decision on supervision measures, the competent authority in the executing State shall communicate, by appropriate means, with the competent authority in the issuing State and, as necessary, request the latter to supply without delay all additional information required.

3. Where the competent authority in the executing State is of the opinion that the recognition of a decision on supervision measures could be refused on the basis of paragraph 1 under (h), but it is nevertheless willing to recognise the decision on supervision measures and monitor the supervision measures contained therein, it shall inform the competent authority in the issuing State thereof providing the reasons for the possible refusal. In such a case, the competent authority in the issuing State may decide to withdraw the certificate in accordance with the second sentence of Article 13(3). If the competent authority in the issuing State does not withdraw the certificate, the competent authority in the executing State may recognise the decision on supervision measures and monitor the supervision measures contained therein, it being understood that the person concerned might not be surrendered on the basis of a European Arrest Warrant.

Article 16

Law governing supervision

The monitoring of supervision measures shall be governed by the law of the executing State.

Article 17

Continuation of the monitoring of supervision measures

Where the time period referred to in Article 20(2)(b) is due to expire and the supervision measures are still needed, the competent authority in the issuing State may request the competent authority in the executing State to extend the monitoring of the supervision measures, in view of the circumstances of the case at hand and the foreseeable consequences for the person if Article 11(2)(d) would apply. The competent authority in the issuing State shall indicate the period of time for which such an extension is likely to be needed.

The competent authority in the executing State shall decide on this request in accordance with its national law, indicating, where appropriate, the maximum duration of the extension. In these cases, Article 18(3) may apply.

Article 18

Competence to take all subsequent decisions and governing law

1. Without prejudice to Article 3, the competent authority in the issuing State shall have jurisdiction to take all subsequent

decisions relating to a decision on supervision measures. Such subsequent decisions include notably:

- (a) renewal, review and withdrawal of the decision on supervision measures;
- (b) modification of the supervision measures;
- (c) issuing an arrest warrant or any other enforceable judicial decision having the same effect.

2. The law of the issuing State shall apply to decisions taken pursuant to paragraph 1.

3. Where required by its national law, a competent authority in the executing State may decide to use the procedure of recognition set out in this Framework Decision in order to give effect to decisions referred to in paragraph 1(a) and (b) in its national legal system. Such a recognition shall not lead to a new examination of the grounds of non-recognition.

4. If the competent authority in the issuing State has modified the supervision measures in accordance with paragraph 1(b), the competent authority in the executing State may:

- (a) adapt these modified measures in application of Article 13, in case the nature of the modified supervision measures is incompatible with the law of the executing State;

or

- (b) refuse to monitor the modified supervision measures if these measures do not fall within the types of supervision measures referred to in Article 8(1) and/or within those notified by the executing State concerned in accordance with Article 8(2).

5. The jurisdiction of the competent authority in the issuing State pursuant to paragraph 1 is without prejudice to proceedings that may be initiated in the executing State against the person concerned in relation with criminal offences committed by him/her other than those on which the decision on supervision measures is based.

Article 19

Obligations of the authorities involved

1. At any time during the monitoring of the supervision measures, the competent authority in the executing State may invite the competent authority in the issuing State to provide information as to whether the monitoring of the measures is still needed in the circumstances of the particular case at hand. The competent authority in the issuing State shall, without delay, reply to such an invitation, where appropriate by taking a subsequent decision referred to in Article 18(1).

2. Before the expiry of the period referred to in Article 10(5), the competent authority in the issuing State shall specify, ex officio or at the request of the competent authority in the executing State, for which additional period, if any, it expects that the monitoring of the measures is still needed.

3. The competent authority in the executing State shall immediately notify the competent authority in the issuing State of any breach of a supervision measure, and any other finding which could result in taking any subsequent decision referred to in Article 18(1). Notice shall be given using the standard form set out in Annex II.

4. With a view to hearing the person concerned, the procedure and conditions contained in instruments of international and European Union law that provide for the possibility of using telephone- and videoconferences for hearing persons may be used *mutatis mutandis*, in particular where the legislation of the issuing State provides that a judicial hearing must be held before a decision referred to in Article 18(1) is taken.

5. The competent authority in the issuing State shall immediately inform the competent authority in the executing State of any decision referred to in Article 18(1) and of the fact that a legal remedy has been introduced against a decision on supervision measures.

6. If the certificate relating to the decision on supervision measures has been withdrawn, the competent authority of the executing State shall end the measures ordered as soon as it has been duly notified by the competent authority of the issuing State.

Article 20

Information from the executing State

1. The authority in the executing State which has received a decision on supervision measures, which it has no competence to recognise, together with a certificate, shall inform the competent authority in the issuing State to which authority it has forwarded this decision, together with the certificate, in accordance with Article 10(8).

2. The competent authority in the executing State shall, without delay, inform the competent authority in the issuing State by any means which leaves a written record:

- (a) of any change of residence of the person concerned;
- (b) of the maximum length of time during which the supervision measures can be monitored in the executing State, in case the law of the executing State provides such a maximum;

- (c) of the fact that it is in practice impossible to monitor the supervision measures for the reason that, after transmission of the decision on supervision measures and the certificate to the executing State, the person cannot be found in the territory of the executing State, in which case there shall be no obligation of the executing State to monitor the supervision measures;
- (d) of the fact that a legal remedy has been introduced against a decision to recognise a decision on supervision measures;
- (e) of the final decision to recognise the decision on supervision measures and take all necessary measures for the monitoring of the supervision measures;
- (f) of any decision to adapt the supervision measures in accordance with Article 13;
- (g) of any decision not to recognise the decision on supervision measures and to assume responsibility for monitoring of the supervision measures in accordance with Article 15, together with the reasons for the decision.

Article 21

Surrender of the person

1. If the competent authority of the issuing State has issued an arrest warrant or any other enforceable judicial decision having the same effect, the person shall be surrendered in accordance with the Framework Decision on the European Arrest Warrant.

2. In this context, Article 2(1) of the Framework Decision on the European Arrest Warrant may not be invoked by the competent authority of the executing State to refuse to surrender the person.

3. Each Member State may notify the General Secretariat of the Council, when transposing this Framework Decision or at a later stage, that it will also apply Article 2(1) of the Framework Decision on the European Arrest Warrant in deciding on the surrender of the person concerned to the issuing State.

4. The General Secretariat of the Council shall make the information received under paragraph 3 available to all Member States and to the Commission.

Article 22

Consultations

1. Unless impracticable, the competent authorities of the issuing State and of the executing State shall consult each other:

- (a) during the preparation, or, at least, before forwarding a decision on supervision measures together with the certificate referred to in Article 10;

(b) to facilitate the smooth and efficient monitoring of the supervision measures;

(c) where the person has committed a serious breach of the supervision measures imposed.

2. The competent authority in the issuing State shall take due account of any indications communicated by the competent authority of the executing State on the risk that the person concerned might pose to victims and to the general public.

3. In application of paragraph 1, the competent authorities of the issuing State and of the executing State shall exchange all useful information, including:

(a) information allowing verification of the identity and place of residence of the person concerned;

(b) relevant information extracted from criminal records in accordance with applicable legislative instruments.

Article 23

Unanswered notices

1. Where the competent authority in the executing State has transmitted several notices referred to in Article 19(3) in respect of the same person to the competent authority in the issuing State, without this latter authority having taken any subsequent decision referred to in Article 18(1), the competent authority in the executing State may invite the competent authority in the issuing State to take such a decision, giving it a reasonable time limit to do so.

2. If the competent authority in the issuing State does not act within the time limit indicated by the competent authority in the executing State, the latter authority may decide to stop monitoring the supervision measures. In such case, it shall inform the competent authority in the issuing State of its decision, and the competence for the monitoring of the supervision measures shall revert back to the competent authority in the issuing State in application of Article 11(2).

3. Where the law of the executing State requires a periodic confirmation of the necessity to prolong the monitoring of the supervision measures, the competent authority in the executing State may request the competent authority in the issuing State to provide such confirmation, giving it a reasonable time limit to reply to such a request. In case the competent authority in the issuing State does not answer within the time limit concerned, the competent authority in the executing State may send a new request to the competent authority in the issuing State, giving it a reasonable time limit to reply to such a request and indicating that it may decide to stop monitoring the supervision measures if no reply is received within that time limit. Where the competent authority in the executing State does not receive a reply to such a new request within the time limit set, it may act in accordance with paragraph 2.

Article 24

Languages

Certificates shall be translated into the official language or one of the official languages of the executing State. Any Member State may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Union.

Article 25

Costs

Costs resulting from the application of this Framework Decision shall be borne by the executing State, except for costs arising exclusively within the territory of the issuing State.

Article 26

Relation to other agreements and arrangements

1. In so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the mutual recognition of decisions on supervision measures, Member States may:

(a) continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision enters into force;

(b) conclude bilateral or multilateral agreements or arrangements after this Framework Decision has entered into force.

2. The agreements and arrangements referred to in paragraph 1 shall in no case affect relations with Member States which are not parties to them.

3. Member States shall, by 1 March 2010, notify the Commission and the Council of the existing agreements and arrangements referred to in paragraph 1(a) which they wish to continue applying.

4. Member States shall also notify the Commission and the Council of any new agreement or arrangement as referred to in paragraph 1(b), within three months of signing any such arrangement or agreement.

Article 27

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 1 December 2012.

2. By the same date Member States shall transmit to the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

Article 28

Report

1. By 1 December 2013 the Commission shall draw up a report on the basis of the information received from Member States under Article 27(2).

2. On the basis of this report, the Council shall assess:

(a) the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision; and

(b) the application of this Framework Decision.

3. The report shall be accompanied, if necessary, by legislative proposals.

Article 29

Entry into force

This Framework Decision shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 23 October 2009.

For the Council

The President

T. BILLSTRÖM

ANNEX I

CERTIFICATE

referred to in Article 10 of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ⁽¹⁾

(a) Issuing State:

Executing State:

(b) Authority which issued the decision on supervision measures:

Official name:

Please indicate whether any additional information concerning the decision on supervision measures is to be obtained from:

the authority specified above

the central authority; if you ticked this box, please provide the official name of this central authority:

another competent authority; if you ticked this box, please provide the official name of this authority:

Contact details of the issuing authority/central authority/other competent authority

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

⁽¹⁾ This certificate must be written in, or translated into, the official language or one of the official languages of the executing Member State, or any other official language of the Institutions of the European Union that is accepted by that State.

(c) Please indicate which authority is to be contacted if any additional information is to be obtained for the purposes of monitoring the supervision measures:

the authority referred to in point (b)

another authority; if you ticked this box, please provide the official name of this authority:

Contact details of the authority, if this information has not yet been provided under point (b)

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

(d) Information regarding the natural person in respect of whom the decision on supervision measures has been issued:

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Addresses/residences:

— in the issuing State:

— in the executing State:

— elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

— Type and number of the identity document(s) of the person (ID card, passport):

— Type and number of the residence permit of the person in the executing State:

- (e) Information regarding the Member State to which the decision on supervision measures, together with the certificate are being forwarded

The decision on supervision measures, together with the certificate are being forwarded to the executing State indicated in point (a) for the following reason:

the person concerned has his/her lawful and ordinary residence in the executing State and, having been informed about the measures concerned, consents to return to that State

the person concerned has requested to forward the decision on supervision measures to the Member State other than that in which the person is lawfully and ordinarily residing, for the following reason(s):

- (f) Indications regarding the decision on supervision measures:

The decision was issued on (date: DD-MM-YYYY):

The decision became enforceable on (date: DD-MM-YYYY):

If, at the time of transmission of this certificate, a legal remedy has been introduced against the decision on supervision measures, please tick this box

File reference of the decision (if available):

The person concerned was in provisional detention during the following period (where applicable):

1. The decision covers in total: alleged offences.

Summary of the facts and description of the circumstances in which the alleged offence(s) was (were) committed, including the time and place, and the nature of the involvement of the person concerned:

Nature and legal classification of the alleged offence(s) and applicable statutory provisions on the basis of which the decision was issued:

2. If the alleged offence(s) referred to in point 1 constitute(s) one or more of the following offences, as defined in the law of the issuing State which are punishable in the issuing State by a custodial sentence or measure involving deprivation of liberty of a maximum of at least three years, please confirm by ticking the relevant box(es):

participation in a criminal organisation

terrorism

trafficking in human beings

sexual exploitation of children and child pornography

- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions and explosives
- corruption
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests
- laundering of the proceeds of crime
- counterfeiting of currency, including the euro
- computer-related crime
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties
- facilitation of unauthorised entry and residence
- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking
- racism and xenophobia
- organised or armed robbery
- illicit trafficking in cultural goods, including antiques and works of art
- swindling
- racketeering and extortion
- counterfeiting and piracy of products
- forgery of administrative documents and trafficking therein
- forgery of means of payment
- illicit trafficking in hormonal substances and other growth promoters
- illicit trafficking in nuclear or radioactive materials
- trafficking in stolen vehicles
- rape
- arson
- crimes within the jurisdiction of the International Criminal Court
- unlawful seizure of aircraft/ships
- sabotage

3. To the extent that the alleged offence(s) identified under point 1 is (are) not covered by point 2 or if the decision, as well as the certificate are forwarded to a Member State, which has declared that it will verify the double criminality (Article 14(4) of the Framework Decision), please give a full description of the alleged offence(s) concerned:

(g) Indications regarding the duration and nature of the supervision measure(s)

1. Length of time to which the decision on supervision measures applies and whether a renewal of this decision is possible (where applicable):

2. Provisional length of time for which the monitoring of the supervision measures is likely to be needed, taking into account all the circumstances of the case that are known when the decision on supervision measures is forwarded (indicative information)

3. Nature of the supervision measure(s)(it is possible to tick multiple boxes):

an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;

an obligation not to enter certain localities, places or defined areas in the issuing or executing State;

an obligation to remain at a specified place, where applicable during specified times;

an obligation containing limitations on leaving the territory of the executing State;

an obligation to report at specified times to a specific authority;

an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed;

other measures that the executing State is prepared to supervise in accordance with a notification under Article 8(2) of the Framework Decision:

If you ticked the box regarding 'other measures', please specify which measure is concerned by ticking the appropriate box(es):

an obligation not to engage in specified activities in relation with the offence(s) allegedly committed, which may include involvement in a specified profession or field of employment;

an obligation not to drive a vehicle;

an obligation to deposit a certain sum of money or to give another type of guarantee, which may either be provided through a specified number of instalments or entirely at once;

an obligation to undergo therapeutic treatment or treatment for addiction;

an obligation to avoid contact with specific objects in relation with the offence(s) allegedly committed;

other measure (please specify):

4. Please provide a detailed description of the supervision measure(s) indicated under 3:

(h) Other circumstances relevant to the case, including specific reasons for the imposition of the supervision measure(s) (optional information):

The text of the decision is attached to the certificate.

Signature of the authority issuing the certificate and/or of its representative to confirm the accuracy of the content of the certificate:

Name:

Position (title/grade):

Date:

File reference (if any):

(Where appropriate) Official stamp:

ANNEX II

FORM

referred to in Article 19 of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention

REPORT OF A BREACH OF A SUPERVISION MEASURE AND/OR ANY OTHER FINDINGS WHICH COULD RESULT IN TAKING ANY SUBSEQUENT DECISION

(a) Details of the identity of the person subject to supervision:

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the decision on supervision measure(s):

Decision issued on:

File reference (if any):

Authority which issued the decision

Official name:

Address:

Certificate issued on:

Authority which issued the certificate:

File reference (if any):

(c) Details of the authority responsible for monitoring the supervision measure(s):

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel. (country code) (area code)

Fax (country code) (area code)

E-mail:

Languages that may be used for communication:

(d) Breach of supervision measure(s) and/or other findings which could result in taking any subsequent decision:

The person referred to in (a) is in breach of the following supervision measure(s):

- an obligation for the person to inform the competent authority in the executing State of any change of residence, in particular for the purpose of receiving a summons to attend a hearing or a trial in the course of criminal proceedings;
- an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
- an obligation to remain at a specified place, where applicable during specified times;
- an obligation containing limitations on leaving the territory of the executing State;
- an obligation to report at specified times to a specific authority;
- an obligation to avoid contact with specific persons in relation with the offence(s) allegedly committed.
- other measures (please specify):

Description of the breach(es) (place, date and specific circumstances):

— other findings which could result in taking any subsequent decision

Description of the findings:

(e) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

Tel. No: (country code) (area/city code)

Fax No: (country code) (area/city code)

E-mail:

Languages that may be used for communication:

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):

DECLARATION BY GERMANY

'The Federal Republic of Germany hereby gives notification, pursuant to Article 14(4) of the Council Framework Decision on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, that it will not apply Article 14(1) in respect of all of the offences referred to in that paragraph.'

This declaration will be published in the *Official Journal of the European Union*.

DECLARATION BY POLAND

'Pursuant to Article 14(4) of the EU Council Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, the Republic of Poland declares that it will not apply paragraph (1) of the aforementioned Article 14 in respect of all of the offences referred to in that paragraph.'

This declaration will be published in the *Official Journal of the European Union*.

DECLARATION BY HUNGARY

'Pursuant to Article 14(4) of the EU Council Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, the Republic of Hungary declares that it will not apply paragraph (1) of Article 14 of the above Framework Decision in respect of the offences referred to in that paragraph.'

This declaration will be published in the *Official Journal of the European Union*.

Referring to the 'constitutional reasons' mentioned in Article 14(4), Hungary provided the following explanation:

'Following the ratification of the Lisbon Treaty, Hungary amended its Constitution in order to comply with the obligations referred to therein, including the necessity not to apply the double criminality condition in criminal matters. This constitutional provision will enter into force at the same time as the Lisbon Treaty. Nevertheless, until the entry into force of the Treaty, double criminality remains an important constitutional issue and — as a constitutional principle enshrined by Article 57 of the Constitution — cannot be, shall not be disregarded. Therefore, Article 14(1) of the Framework Decision shall not be applied to any of the offences listed (or as formulated by the relevant article: shall not be applied "in respect of all of the offences").'

DECLARATION BY LITHUANIA

'Pursuant to Article 14(4) of the Council Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, the Republic of Lithuania declares that for constitutional reasons it will not apply Article 14(1) in respect of any of the offences referred to therein.'

This declaration will be published in the *Official Journal of the European Union*.

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COUNCIL FRAMEWORK DECISION 2008/947/JHA

of 27 November 2008

on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(1)(a) and (c) and Article 34(2)(b) thereof,

Having regard to the initiative of the Federal Republic of Germany and of the French Republic ⁽¹⁾,

Having regard to the Opinion of the European Parliament ⁽²⁾,

Whereas:

(1) The European Union has set itself the objective of developing an area of freedom, security and justice. This presupposes that there is an understanding of freedom, security and justice on the part of the Member States which is identical in its essential elements and based on the principles of freedom, democracy, respect for human rights and fundamental freedoms, as well as the rule of law.

(2) The aim of police and judicial cooperation in the European Union is to provide a high degree of security for all citizens. One of the cornerstones for this is the

principle of mutual recognition of judicial decisions, established in the conclusions of the European Council meeting in Tampere on 15 and 16 October 1999 and reaffirmed in the Hague Programme of 4 and 5 November 2004 for strengthening freedom, security and justice in the European Union ⁽³⁾. In the programme of measures of 29 November 2000 adopted for the purpose of implementing the principle of mutual recognition of decisions in criminal matters, the Council pronounced itself in favour of cooperation in the area of suspended sentences and parole.

(3) Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ⁽⁴⁾ concerns the mutual recognition and enforcement of custodial sentences or measures involving deprivation of liberty. Further common rules are required, in particular where a non-custodial sentence involving the supervision of probation measures or alternative sanctions has been imposed in respect of a person who does not have his lawful and ordinary residence in the State of conviction.

(4) The Council of Europe Convention of 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders has been ratified by only 12 Member States, with, in some cases, numerous reservations. The present Framework Decision provides for a more effective instrument because it is based on the principle of mutual recognition and all Member States participate.

⁽¹⁾ OJ C 147, 30.6.2007, p. 1.

⁽²⁾ Opinion of 25 October 2007 (not yet published in the Official Journal).

⁽³⁾ OJ C 53, 3.3.2005, p. 1.

⁽⁴⁾ OJ L 327, 5.12.2008, p. 27.

- (5) This Framework Decision respects fundamental rights and adheres to the principles recognised in Article 6 of the Treaty on European Union, which are also expressed in the Charter of Fundamental Rights of the European Union, especially in Chapter VI thereof. No provision of this Framework Decision should be interpreted as prohibiting refusal to recognise a judgment and/or supervise a probation measure or alternative sanction if there are objective reasons to believe that the probation measure or alternative sanction was imposed to punish a person because of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation or that this person might be disadvantaged for one of these reasons.
- (6) This Framework Decision should not prevent any Member State from applying its constitutional rules relating to entitlement to due process, freedom of association, freedom of the press, freedom of expression in other media and freedom of religion.
- (7) The provisions of this Framework Decision should be applied in conformity with the right of the Union's citizens to move and reside freely within the territory of the Member States, pursuant to Article 18 of the Treaty establishing the European Community.
- (8) The aim of mutual recognition and supervision of suspended sentences, conditional sentences, alternative sanctions and decisions on conditional release is to enhance the prospects of the sentenced person's being reintegrated into society, by enabling that person to preserve family, linguistic, cultural and other ties, but also to improve monitoring of compliance with probation measures and alternative sanctions, with a view to preventing recidivism, thus paying due regard to the protection of victims and the general public.
- (9) There are several types of probation measures and alternative sanctions which are common among the Member States and which all Member States are in principle willing to supervise. The supervision of these types of measures and sanctions should be obligatory, subject to certain exceptions provided for in this Framework Decision. Member States may declare that, in addition, they are willing to supervise other types of probation measures and/or other types of alternative sanctions.
- (10) The probation measures and alternative sanctions that are, in principle, obligatory to supervise include, *inter alia*, orders relating to behaviour (such as an obligation to stop the consumption of alcohol), residence (such as an obligation to change residence for reasons of domestic violence), education and training (such as an obligation to follow a 'safe-driving course'), leisure activities (such as an obligation to cease playing or attending a certain sport) and limitations on or modalities of carrying out a professional activity (such as an obligation to seek a professional activity in a different working environment; this obligation does not include the supervision of compliance with any professional disqualifications imposed on the person as part of the sanction).
- (11) Where appropriate, electronic monitoring could be used with a view to supervising probation measures or alternative sanctions, in accordance with national law and procedures.
- (12) The Member State where the person concerned is sentenced may forward a judgment and, where applicable, a probation decision to the Member State where the sentenced person is lawfully and ordinarily resident with a view to the recognition thereof and to the supervision of probation measures or alternative sanctions contained therein.
- (13) The decision on whether to forward the judgment and, where applicable, the probation decision to another Member State should be taken in each individual case by the competent authority of the issuing Member State, taking into account, *inter alia*, the declarations made in accordance with Articles 5(4), 10(4) and 14(3).
- (14) The judgment and, where applicable, the probation decision may also be forwarded to a Member State other than that where the sentenced person is residing, if the competent authority of that executing State, taking account of any conditions set out in the relevant declaration made by that State in accordance with this Framework Decision, consents to such forwarding. In particular, consent may be given, with a view to social rehabilitation, where the sentenced person, without losing his/her right of residence, intends to move to another Member State because he/she is granted an employment contract, if he/she is a family member of a lawful and ordinary resident person of that Member State, or if he/she intends to follow a study or training in that Member State, in accordance with Community law.
- (15) Member States should apply their own national law and procedures for the recognition of a judgment and, where applicable, a probation decision. In the case of a conditional sentence or alternative sanction where the

judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligations or instructions concerned, this could imply that having made the relevant declaration in accordance with this Framework Decision, Member States, when deciding to recognise, agree to supervise the probation measures or alternative sanctions concerned and to assume no other responsibility than just for taking the subsequent decisions consisting of the modification of obligations or instructions contained in the probation measure or alternative sanction, or modification of the duration of the probation period. Consequently, the recognition has, in such cases, no further effect than to enable the executing State to take those types of subsequent decisions.

- (16) A Member State may refuse to recognise a judgment and, where applicable, a probation decision, if the judgment concerned was issued against a person who has not been found guilty, such as in the case of a mentally ill person, and the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which the executing State cannot supervise in respect of such persons under its national law.
- (17) The ground for refusal relating to territoriality should be applied only in exceptional cases and with a view to cooperating to the greatest extent possible under the provisions of this Framework Decision, while taking into account of the objectives thereof. Any decision to apply this ground for refusal should be based on a case-by-case analysis and on consultations between the competent authorities of the issuing and executing States.
- (18) If the probation measures or alternative sanctions include community service, then the executing State should be entitled to refuse to recognise the judgment and, where applicable, the probation decision if the community service would normally be completed in less than six months.
- (19) The form of the certificate is drafted in such a way so that essential elements of the judgment and, where applicable, of the probation decision are comprised in the certificate, which should be translated into the official language or one of the official languages of the executing State. The certificate should assist the competent authorities in the executing State in taking decisions under this Framework Decision, including decisions on recognition and assumption of responsibility for supervision of probation measures and alternative sanctions, decisions on adaptation of probation measures and alternative sanctions, and subsequent decisions in case, notably, of non-compliance with a probation measure or alternative sanction.
- (20) In view of the principle of mutual recognition, on which this Framework Decision is based, issuing and executing Member States should promote direct contact between their competent authorities in the application of this Framework Decision.
- (21) All Member States should ensure that sentenced persons, in respect of whom decisions under this Framework Decision are taken, are subject to a set of legal rights and remedies in accordance with their national law, regardless of whether the competent authorities designated to take decisions under this Framework Decision are of a judicial or a non-judicial nature.
- (22) All subsequent decisions relating to a suspended sentence, a conditional sentence or an alternative sanction which result in the imposition of a custodial sentence or measure involving deprivation of liberty should be taken by a judicial authority.
- (23) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, personal data processed when implementing this Framework Decision should be protected in accordance with the principles laid down in that Convention.
- (24) Since the objectives of this Framework Decision, namely facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions in case of offenders who do not live in the State of conviction, cannot be sufficiently achieved by the Member States themselves in view of the cross-border nature of the situations involved and can therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community as applied by the second paragraph of Article 2 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in Article 5 of the Treaty establishing the European Community, this Framework Decision does not go beyond what is necessary in order to achieve those objectives,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Objectives and scope

1. This Framework Decision aims at facilitating the social rehabilitation of sentenced persons, improving the protection of victims and of the general public, and facilitating the application of suitable probation measures and alternative sanctions, in case of offenders who do not live in the State of conviction. With a view to achieving these objectives, this Framework Decision lays down rules according to which a Member State, other than the Member State in which the person concerned has been sentenced, recognises judgments and, where applicable, probation decisions and supervises probation measures imposed on the basis of a judgment, or alternative sanctions contained in such a judgment, and takes all other decisions relating to that judgment, unless otherwise provided for in this Framework Decision.

2. This Framework Decision shall apply only to:

- (a) the recognition of judgments and, where applicable, probation decisions;
- (b) the transfer of responsibility for the supervision of probation measures and alternative sanctions;
- (c) all other decisions related to those under (a) and (b);

as described and provided for in this Framework Decision.

3. This Framework Decision shall not apply to:

- (a) the execution of judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty which fall within the scope of Framework Decision 2008/909/JHA;
- (b) recognition and execution of financial penalties and confiscation orders which fall within the scope of Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties ⁽¹⁾ and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders ⁽²⁾.

4. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 2

Definitions

For the purposes of this Framework Decision:

1. 'judgment' shall mean a final decision or order of a court of the issuing State, establishing that a natural person has committed a criminal offence and imposing:

- (a) a custodial sentence or measure involving deprivation of liberty, if a conditional release has been granted on the basis of that judgment or by a subsequent probation decision;
- (b) a suspended sentence;
- (c) a conditional sentence;
- (d) an alternative sanction;

2. 'suspended sentence' shall mean a custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed by imposing one or more probation measures. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;

3. 'conditional sentence' shall mean a judgment in which the imposition of a sentence has been conditionally deferred by imposing one or more probation measures or in which one or more probation measures are imposed instead of a custodial sentence or measure involving deprivation of liberty. Such probation measures may be included in the judgment itself or determined in a separate probation decision taken by a competent authority;

4. 'alternative sanction' shall mean a sanction, other than a custodial sentence, a measure involving deprivation of liberty or a financial penalty, imposing an obligation or instruction;

5. 'probation decision' shall mean a judgment or a final decision of a competent authority of the issuing State taken on the basis of such judgment:

- (a) granting a conditional release; or
- (b) imposing probation measures;

⁽¹⁾ OJ L 76, 22.3.2005, p. 16.

⁽²⁾ OJ L 328, 24.11.2006, p. 59.

6. 'conditional release' shall mean a final decision of a competent authority or stemming from the national law on the early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served by imposing one or more probation measures;
7. 'probation measures' shall mean obligations and instructions imposed by a competent authority on a natural person, in accordance with the national law of the issuing State, in connection with a suspended sentence, a conditional sentence or a conditional release;
8. 'issuing State' shall mean the Member State in which a judgment is delivered;
9. 'executing State' shall mean the Member State in which the probation measures and alternative sanctions are supervised following a decision in accordance with Article 8.
- (b) an obligation not to enter certain localities, places or defined areas in the issuing or executing State;
- (c) an obligation containing limitations on leaving the territory of the executing State;
- (d) instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity;
- (e) an obligation to report at specified times to a specific authority;
- (f) an obligation to avoid contact with specific persons;
- (g) an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence;

Article 3

Designation of competent authorities

1. Each Member State shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent to act according to this Framework Decision in the situation where that Member State is the issuing State or the executing State.
2. Member States may designate non-judicial authorities as the competent authorities for taking decisions under this Framework Decision, provided that such authorities have competence for taking decisions of a similar nature under their national law and procedures.
3. If a decision under Article 14(1)(b) or (c) is taken by a competent authority other than a court, the Member States shall ensure that, upon request of the person concerned, such decision may be reviewed by a court or by another independent court-like body.
4. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.
- (h) an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation;
- (i) an obligation to carry out community service;
- (j) an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons;
- (k) an obligation to undergo therapeutic treatment or treatment for addiction.
2. Each Member State shall notify the General Secretariat of the Council, when implementing this Framework Decision, which probation measures and alternative sanctions, apart from those referred to in paragraph 1, it is prepared to supervise. The General Secretariat of the Council shall make the information received available to all Member States and to the Commission.

Article 4

Types of probation measures and alternative sanctions

1. This Framework Decision shall apply to the following probation measures or alternative sanctions:
- (a) an obligation for the sentenced person to inform a specific authority of any change of residence or working place;

Article 5

Criteria for forwarding a judgment and, where applicable, a probation decision

1. The competent authority of the issuing State may forward a judgment and, where applicable, a probation decision to the competent authority of the Member State in which the sentenced person is lawfully and ordinarily residing, in cases where the sentenced person has returned or wants to return to that State.

2. The competent authority of the issuing State may, upon request of the sentenced person, forward the judgment and, where applicable, the probation decision to a competent authority of a Member State other than the Member State in which the sentenced person is lawfully and ordinarily residing, on condition that this latter authority has consented to such forwarding.

3. When implementing this Framework Decision, Member States shall determine under which conditions their competent authorities may consent to the forwarding of a judgment and, where applicable, a probation decision under paragraph 2.

4. Each Member State shall make a declaration to the General Secretariat of the Council of the determination made under paragraph 3. Member States may modify such a declaration at any time. The General Secretariat shall make the information received available to all Member States and to the Commission.

Article 6

Procedure for forwarding a judgment and, where applicable, a probation decision

1. When, in application of Article 5(1) or (2), the competent authority of the issuing State forwards a judgment and, where applicable, a probation decision to another Member State, it shall ensure that it is accompanied by a certificate, the standard form for which is set out in Annex I.

2. The judgment and, where applicable, the probation decision, together with the certificate referred to in paragraph 1, shall be forwarded by the competent authority of the issuing State directly to the competent authority of the executing State by any means which leaves a written record under conditions allowing the executing State to establish their authenticity. The original of the judgment and, where applicable, the probation decision, or certified copies thereof, as well as the original of the certificate, shall be sent to the competent authority of the executing State if it so requires. All official communications shall also be made directly between the said competent authorities.

3. The certificate referred to in paragraph 1 shall be signed and its content certified as accurate by the competent authority of the issuing State.

4. Apart from the measures and sanctions referred to in Article 4(1), the certificate referred to in paragraph 1 of this

Article shall include only such measures or sanctions as notified by the executing State in accordance with Article 4(2).

5. The competent authority of the issuing State shall forward the judgment and, where applicable, the probation decision, together with the certificate referred to in paragraph 1 only to one executing State at any one time.

6. If the competent authority of the executing State is not known to the competent authority of the issuing State, the latter shall make all necessary inquiries, including via the contact points of the European Judicial Network created by Council Joint Action 98/428/JHA⁽¹⁾, in order to obtain the information from the executing State.

7. When an authority of the executing State which receives a judgment and, where applicable, a probation decision, together with the certificate referred to in paragraph 1, has no competence to recognise it and take the ensuing necessary measures for the supervision of the probation measure or alternative sanction, it shall, *ex officio*, forward it to the competent authority and shall without delay inform the competent authority of the issuing State accordingly by any means which leaves a written record.

Article 7

Consequences for the issuing State

1. Once the competent authority of the executing State has recognised the judgment and, where applicable, the probation decision forwarded to it and has informed the competent authority of the issuing State of such recognition, the issuing State shall no longer have competence in relation to the supervision of the probation measures or alternative sanctions imposed, nor to take subsequent measures referred to in Article 14(1).

2. The competence referred to in paragraph 1 shall revert to the issuing State:

(a) as soon as its competent authority has notified withdrawal of the certificate referred to in Article 6(1), pursuant to Article 9(4), to the competent authority of the executing State;

(b) in cases referred to in Article 14(3) in combination with 14(5); and

(c) in cases referred to in Article 20.

⁽¹⁾ OJ L 191, 7.7.1998, p. 4.

*Article 8***Decision of the executing State**

1. The competent authority of the executing State shall recognise the judgment and, where applicable, the probation decision forwarded in accordance with Article 5 and following the procedure laid down in Article 6 and shall without delay take all necessary measures for the supervision of the probation measures or alternative sanctions, unless it decides to invoke one of the grounds for refusing recognition and supervision referred to in Article 11.

2. The competent authority of the executing State may postpone the decision on recognition of the judgment and, where applicable, the probation decision in the situation where the certificate referred to in Article 6(1) is incomplete or obviously does not correspond to the judgment or, where applicable, the probation decision, until such reasonable deadline set for the certificate to be completed or corrected.

*Article 9***Adaptation of the probation measures or alternative sanctions**

1. If the nature or duration of the relevant probation measure or alternative sanction, or the duration of the probation period, are incompatible with the law of the executing State, the competent authority of that State may adapt them in line with the nature and duration of the probation measures and alternative sanctions, or duration of the probation period, which apply, under the law of the executing State, to equivalent offences. The adapted probation measure, alternative sanction or duration of the probation period shall correspond as far as possible to that imposed in the issuing State.

2. Where the probation measure, the alternative sanction or the probation period has been adapted because its duration exceeds the maximum duration provided for under the law of the executing State, the duration of the adapted probation measure, alternative sanction or probation period shall not be below the maximum duration provided for equivalent offences under the law of the executing State.

3. The adapted probation measure, alternative sanction or probation period shall not be more severe or longer than the probation measure, alternative sanction or probation period which was originally imposed.

4. Following receipt of the information referred to in Articles 16(2) or 18(5), the competent authority of the issuing State may decide to withdraw the certificate referred to in Article 6(1) provided that supervision in the executing State has not yet begun. In such cases, the decision shall be taken and communicated as soon as possible and within ten days of the receipt of the information.

*Article 10***Double criminality**

1. The following offences, if they are punishable in the issuing State by a custodial sentence or a measure involving deprivation of liberty for a maximum period of at least three years, and as they are defined by the law of the issuing State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to recognition of the judgment and, where applicable, the probation decision and to supervision of probation measures and alternative sanctions:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests ⁽¹⁾,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,

⁽¹⁾ OJ C 316, 27.11.1995, p. 49.

- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

2. The Council may decide to add other categories of offences to the list provided for in paragraph 1 of this Article at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union. The Council shall examine, in the light of the report submitted to it pursuant to Article 26(1) of this Framework Decision, whether the list should be extended or amended.

3. For offences other than those covered by paragraph 1, the executing State may make the recognition of the judgment and, where applicable, the probation decision and the supervision of probation measures and of alternative sanctions subject to the

condition that the judgment relates to acts which also constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

4. Each Member State may, on the adoption of this Framework Decision or later, by a declaration notified to the General Secretariat of the Council, declare that it will not apply paragraph 1. Any such declaration may be withdrawn at any time. Such declarations or withdrawals of declarations shall be published in the *Official Journal of the European Union*.

Article 11

Grounds for refusing recognition and supervision

1. The competent authority of the executing State may refuse to recognise the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures or alternative sanctions if:

- (a) the certificate referred to in Article 6(1) is incomplete or manifestly does not correspond to the judgment or to the probation decision and has not been completed or corrected within a reasonable period set by the competent authority of the executing State;
- (b) the criteria set forth in Articles 5(1), 5(2) or 6(4) are not met;
- (c) recognition of the judgment and assumption of responsibility for supervising probation measures or alternative sanctions would be contrary to the principle of *ne bis in idem*;
- (d) in a case referred to in Article 10(3) and, where the executing State has made a declaration under Article 10(4), in a case referred to in Article 10(1), the judgment relates to acts which would not constitute an offence under the law of the executing State. However, in relation to taxes or duties, customs and exchange, execution of the judgment or, where applicable, the probation decision may not be refused on the grounds that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes or duties, customs and exchange regulations as the law of the issuing State;
- (e) the enforcement of the sentence is statute-barred according to the law of the executing State and relates to an act which falls within its competence according to that law;
- (f) there is immunity under the law of the executing State, which makes it impossible to supervise probation measures or alternative sanctions;

- (g) under the law of the executing State, the sentenced person cannot, owing to his or her age, be held criminally liable for the acts in respect of which the judgment was issued;
- (h) the judgment was rendered *in absentia*, unless the certificate states that the person was summoned personally or informed via a representative competent according to the national law of the issuing State of the time and place of the proceedings which resulted in the judgment being rendered *in absentia*, or that the person has indicated to a competent authority that he or she does not contest the case;
- (i) the judgment or, where applicable, the probation decision provides for medical/therapeutic treatment which, notwithstanding Article 9, the executing State is unable to supervise in view of its legal or health-care system;
- (j) the probation measure or alternative sanction is of less than six months' duration; or
- (k) the judgment relates to criminal offences which under the law of the executing State are regarded as having been committed wholly or for a major or essential part within its territory, or in a place equivalent to its territory.

2. Any decision under paragraph 1(k) in relation to offences committed partly within the territory of the executing State, or in a place equivalent to its territory, shall be taken by the competent authority of the executing State only in exceptional circumstances and on a case-by case basis, having regard to the specific circumstances of the case, and in particular to whether a major or essential part of the conduct in question has taken place in the issuing State.

3. In the cases referred to in paragraph 1(a), (b), (c), (h), (i), (j) and (k), before deciding not to recognise the judgment or, where applicable, the probation decision and to assume responsibility for supervising probation measures and alternative sanctions, the competent authority of the executing State shall communicate, by appropriate means, with the competent authority of the issuing State and shall, as necessary, ask it to supply all additional information required without delay.

4. Where the competent authority of the executing State has decided to invoke a ground for refusal referred to in paragraph 1 of this Article, in particular the grounds referred to under paragraph 1(d) or (k), it may nevertheless, in agreement with the competent authority of the issuing State, decide to supervise the probation measures or alternative sanctions that are imposed in the judgment and, where applicable, the probation decision forwarded to it, without assuming the responsibility for taking any of the decisions referred to in Article 14(1)(a), (b) and (c).

Article 12

Time limit

1. The competent authority of the executing State shall decide as soon as possible, and within 60 days of receipt of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1), whether or not to recognise the judgment and, where applicable, the probation decision and assume responsibility for supervising the probation measures or alternative sanctions. It shall immediately inform the competent authority of the issuing State, by any means which leaves a written record, of its decision.

2. When in exceptional circumstances it is not possible for the competent authority of the executing State to comply with the time limit provided for in paragraph 1, it shall immediately inform the competent authority of the issuing State by any means, giving the reasons for the delay and indicating the estimated time needed for the final decision to be taken.

Article 13

Governing law

1. The supervision and application of probation measures and alternative sanctions shall be governed by the law of the executing State.

2. The competent authority of the executing State may supervise an obligation as referred to in Article 4(1)(h) by requiring the sentenced person to provide proof of compliance with an obligation to compensate for the prejudice caused by the offence.

Article 14

Jurisdiction to take all subsequent decisions and governing law

1. The competent authority of the executing State shall have jurisdiction to take all subsequent decisions relating to a suspended sentence, conditional release, conditional sentence and alternative sanction, in particular in case of non-compliance with a probation measure or alternative sanction or if the sentenced person commits a new criminal offence.

Such subsequent decisions include notably:

- (a) the modification of obligations or instructions contained in the probation measure or alternative sanction, or the modification of the duration of the probation period;

(b) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release; and

(c) the imposition of a custodial sentence or measure involving deprivation of liberty in case of an alternative sanction or conditional sentence.

2. The law of the executing State shall apply to decisions taken pursuant to paragraph 1 and to all subsequent consequences of the judgment including, where applicable, the enforcement and, if necessary, the adaptation of the custodial sentence or measure involving deprivation of liberty.

3. Each Member State may, at the time of adoption of this Framework Decision or at a later stage, declare that as an executing State it will refuse to assume the responsibility provided for in paragraph 1(b) and (c) in cases or categories of cases to be specified by that Member State, in particular:

(a) in cases relating to an alternative sanction, where the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligations or instructions concerned;

(b) in cases relating to a conditional sentence;

(c) in cases where the judgment relates to acts which do not constitute an offence under the law of the executing State, whatever its constituent elements or however it is described.

4. When a Member State makes use of any of the possibilities referred to in paragraph 3, the competent authority of the executing State shall transfer jurisdiction back to the competent authority of the issuing State in case of non-compliance with a probation measure or alternative sanction if the competent authority of the executing State is of the view that a subsequent decision as referred to in paragraph 1(b) or (c) needs to be taken.

5. In the cases referred to in paragraph 3 of this Article, the obligation to recognise the judgment and, where applicable, the probation decision, as well as the obligation to take without delay all necessary measures for the supervision of the probation measures or alternative sanctions, as referred to in Article 8(1), shall not be affected.

6. Declarations as mentioned in paragraph 3 shall be made by notification to the General Secretariat of the Council. Any such declaration may be withdrawn at any time. The

declarations and withdrawals mentioned in this Article shall be published in the *Official Journal of the European Union*.

Article 15

Consultations between competent authorities

Where and whenever it is felt appropriate, competent authorities of the issuing State and of the executing State may consult each other with a view to facilitating the smooth and efficient application of this Framework Decision.

Article 16

Obligations of the authorities involved where the executing State has jurisdiction for subsequent decisions

1. The competent authority of the executing State shall without delay inform the competent authority of the issuing State, by any means which leaves a written record, of all decisions on the:

(a) modification of the probation measure or alternative sanction;

(b) revocation of the suspension of the execution of the judgment or revocation of the decision on conditional release;

(c) enforcement of a custodial sentence or measure involving deprivation of liberty, because of non-compliance with a probation measure or alternative sanction;

(d) lapsing of the probation measure or alternative sanction.

2. If so requested by the competent authority of the issuing State, the competent authority of the executing State shall inform it of the maximum duration of deprivation of liberty that is foreseen in the national law of the executing State for the offence which gave rise to the judgment and that could be imposed on the sentenced person in case of breach of the probation measure or alternative sanction. This information shall be provided immediately after reception of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1).

3. The competent authority of the issuing State shall immediately inform the competent authority of the executing State, by any means which leaves a written record, of any circumstances or findings which, in its opinion, could entail one or more of the decisions referred to in paragraph 1(a), (b) or (c) being taken.

*Article 17***Obligations of the authorities involved where the issuing State has jurisdiction for subsequent decisions**

1. If the competent authority of the issuing State has jurisdiction for the subsequent decisions mentioned in Article 14(1) pursuant to the application of Article 14(3), the competent authority of the executing State shall immediately notify it of:

(a) any finding which is likely to result in revocation of the suspension of the execution of the judgment or revocation of the decision on conditional release;

(b) any finding which is likely to result in the imposition of a custodial sentence or measure involving deprivation of liberty;

(c) all further facts and circumstances which the competent authority of the issuing State requests to be provided and which are essential in order to allow it to take subsequent decisions in accordance with its national law.

2. When a Member State has made use of the possibility referred to in Article 11(4), the competent authority of that State shall inform the competent authority of the issuing State in case of non-compliance by the sentenced person with a probation measure or alternative sanction.

3. Notice of the findings mentioned in paragraph 1(a) and (b) and in paragraph 2 shall be given using the standard form set out in Annex II. Notice of the facts and circumstances mentioned in paragraph 1(c) shall be given by any means which leaves a written record, including, where possible, through the form set out in Annex II.

4. If, under the national law of the issuing State, the sentenced person must be given a judicial hearing before a decision is taken on the imposition of a sentence, this requirement may be met by following *mutatis mutandis* the procedure contained in instruments of international or European Union law that provide the possibility of using video links for hearing persons.

5. The competent authority of the issuing State shall without delay inform the competent authority of the executing State of all decisions on:

(a) the revocation of the suspension of the execution of the judgment or the revocation of the decision on conditional release;

(b) the enforcement of the custodial sentence or measure involving deprivation of liberty, where such measure is contained in the judgment;

(c) the imposition of a custodial sentence or measure involving deprivation of liberty, where such measure is not contained in the judgment;

(d) the lapsing of the probation measure or alternative sanction.

*Article 18***Information from the executing State in all cases**

The competent authority of the executing State shall without delay inform the competent authority of the issuing State, by any means which leaves a written record of:

1. the transmission of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1) to the competent authority responsible for its recognition and for taking the ensuing measures for the supervision of the probation measures or alternative sanctions in accordance with Article 6(7);

2. the fact that it is in practice impossible to supervise the probation measures or alternative sanctions for the reason that, after transmission of the judgment and, where applicable, the probation decision, together with the certificate referred to in Article 6(1) to the executing State, the sentenced person cannot be found in the territory of the executing State, in which case the executing State shall be under no obligation to supervise the probation measures or alternative sanctions;

3. the final decision to recognise the judgment and, where applicable, the probation decision and to assume responsibility for supervising the probation measures or alternative sanctions;

4. any decision not to recognise the judgment and, where applicable, the probation decision and to assume responsibility for supervising the probation measures or alternative sanctions in accordance with Article 11, together with the reasons for the decision;

5. any decision to adapt the probation measures or alternative sanctions in accordance with Article 9, together with the reasons for the decision;

6. any decision on amnesty or pardon which leads to not supervising the probation measures or alternative sanctions for the reasons referred to in Article 19(1), together, where applicable, with the reasons for the decision.

*Article 19***Amnesty, pardon, review of judgment**

1. An amnesty or pardon may be granted by the issuing State and also by the executing State.

2. Only the issuing State may decide on applications for review of the judgment which forms the basis for the probation measures or alternative sanctions to be supervised under this Framework Decision.

*Article 20***End of jurisdiction of the executing State**

1. If the sentenced person absconds or no longer has a lawful and ordinary residence in the executing State, the competent authority of the executing State may transfer the jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State.

2. If new criminal proceedings against the person concerned are taking place in the issuing State, the competent authority of the issuing State may request the competent authority of the executing State to transfer jurisdiction in respect of the supervision of the probation measures or alternative sanctions and in respect of all further decisions relating to the judgment back to the competent authority of the issuing State. In such a case, the competent authority of the executing State may transfer jurisdiction back to the competent authority of the issuing State.

3. When, in application of this Article, jurisdiction is transferred back to the issuing State, the competent authority of that State shall resume jurisdiction. For the further supervision of the probation measures or alternative sanctions, the competent authority of the issuing State shall take account of the duration and degree of compliance with the probation measures or alternative sanctions in the executing State, as well as of any decisions taken by the executing State in accordance with Article 16(1).

*Article 21***Languages**

The certificate referred to in Article 6(1) shall be translated into the official language or one of the official languages of the executing State. Any Member State may, on adoption of this Framework Decision or later, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the institutions of the European Union.

*Article 22***Costs**

Costs resulting from the application of this Framework Decision shall be borne by the executing State, except for costs arising exclusively within the territory of the issuing State.

*Article 23***Relationship with other agreements and arrangements**

1. This Framework Decision shall, in relations between the Member States, from 6 December 2011, replace the corresponding provisions of the Council of Europe Convention of 30 November 1964 on the Supervision of Conditionally Sentenced or Conditionally Released Offenders.

2. Member States may continue to apply bilateral or multi-lateral agreements or arrangements in force after 6 December 2008, in so far as they allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the supervision of probation measures and alternative sanctions.

3. Member States may conclude bilateral or multilateral agreements or arrangements after 6 December 2008, in so far as such agreements or arrangements allow the provisions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for the supervision of probation measures and alternative sanctions.

4. Member States shall, by 6 March 2009, notify the Council and the Commission of the existing agreements and arrangements referred to in paragraph 2 which they wish to continue applying. Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in paragraph 3, within three months of signing it.

*Article 24***Territorial application**

This Framework Decision shall apply to Gibraltar.

*Article 25***Implementation**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 6 December 2011.

2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision.

Article 26

Review

1. By 6 December 2014, the Commission shall draw up a report on the basis of the information received from Member States under Article 25(2).

2. On the basis of this report, the Council shall assess:

(a) the extent to which the Member States have taken the necessary measures in order to comply with this Framework Decision; and

(b) the application of this Framework Decision.

3. The report shall be accompanied, if necessary, by legislative proposals.

Article 27

Entry into force

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 27 November 2008.

For the Council

The President

M. ALLIOT-MARIE

ANNEX I

CERTIFICATE

referred to in Article 6 of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions ⁽¹⁾

(a) Issuing State:
Executing State:

(b) Court which issued the judgment imposing a suspended sentence, conditional sentence or alternative sanction
Official name:
Please indicate whether any additional information concerning the judgment is to be obtained from:
 the court specified above
 the central authority; if you ticked this box, please provide the official name of this central authority:
 another competent authority; if you ticked this box, please provide the official name of this authority:
Contact details of the court/central authority/other competent authority
Address:
Tel. (country code) (area/city code)
Fax (country code) (area/city code)
Details of the person(s) to be contacted
Surname:
Forename(s):
Position (title/grade):
Tel. (country code) (area/city code)
Fax (country code) (area/city code)
E-mail (if any):
Languages that may be used for communication:

(c) Authority which issued the probation decision (where applicable)
Official name:
Please indicate whether any additional information concerning the probation decision is to be obtained from:
 the authority specified above
 the central authority; if you ticked this box, please provide the official name of this central authority if this information has not yet been provided under point (b):
 another competent authority; if you ticked this box, please provide the official name of this authority:
Contact details of the authority, the central authority or other competent authority, if this information has not yet been provided under point (b)
Address:
Tel. (country code) (area/city code)
Fax (country code) (area/city code)
Details of the person(s) to be contacted
Surname:
Forename(s):
Position (title/grade):
Tel. (country code) (area/city code)
Fax (country code) (area/city code)
E-mail (if any):
Languages that may be used for communication:

⁽¹⁾ This certificate must be written in, or translated into, the official language or one of the official languages of the executing Member State, or any other official language of the institutions of the European Union that is accepted by that State.

(d) Competent authority for supervision of the probation measures or alternative sanctions

Authority which has competence in the issuing State for supervising the probation measures or alternative sanctions:

- the court/authority referred to in point (b)
- the authority referred to in point (c)
- another authority (please provide its official name):

Please indicate which authority is to be contacted if any additional information is to be obtained for the purposes of supervising the probation measures or alternative sanctions:

- the authority specified above
- the central authority; if you ticked this box, please provide the official name of this central authority if this information has not yet been provided under point (b) or (c):

Contact details of the authority, or of the central authority if this information has not yet been provided under point (b) or (c)

Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (if any):

Languages that may be used for communication:

(e) Information regarding the natural person in respect of whom the judgment and, where applicable, the probation decision has been issued

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Last known addresses/residences (if any):

— in the issuing State:

— in the executing State:

— elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

- Type and number of the identity document(s) of the sentenced person (ID card, passport):
- Type and number of the residence permit of the sentenced person in the executing State:

- (f) Information regarding the Member State to which the judgment and, where applicable, the probation decision, together with the certificate are being forwarded

The judgment and, where applicable, the probation decision, together with the certificate are being forwarded to the executing State indicated in point (a) for the following reason:

- the sentenced person has his/her lawful and ordinary residence in the executing State and has returned or wants to return to that State
- the sentenced person has moved or intends to move to the executing State for the following reason(s) (please tick the relevant box):
- the sentenced person has been granted an employment contract in the executing State;
- the sentenced person is a family member of a lawful and ordinary resident person of the executing State;
- the sentenced person intends to follow a study or training in the executing State;
- other reason (please specify):

- (g) Indications regarding the judgment and, where applicable, the probation decision

The judgment was issued on (date: DD-MM-YYYY):

Where applicable, the probation decision was issued on (date: DD-MM-YYYY):

The judgment became final on (date: DD-MM-YYYY):

Where applicable, the probation decision became final on (date: DD-MM-YYYY):

The execution of the judgment started on (if different from the date on which the judgment became final) (date: DD-MM-YYYY):

Where applicable, the execution of the probation decision started on (if different from the date on which the probation decision became final) (date: DD-MM-YYYY):

File reference of the judgment (if available):

Where applicable, file reference of the probation decision (if available):

1. The judgment covers in total: offences.

Summary of the facts and description of the circumstances in which the offence(s) was (were) committed, including the time and place, and the nature of the involvement of the sentenced person:

Nature and legal classification of the offence(s) and applicable statutory provisions on the basis of which the judgment was issued:

2. If the offence(s) referred to in point 1 constitute(s) one or more of the following offences, as defined in the law of the issuing State which are punishable in the issuing State by a custodial sentence or measure involving deprivation of liberty of a maximum of at least three years, please confirm by ticking the relevant box(es):

- participation in a criminal organisation
- terrorism
- trafficking in human beings
- sexual exploitation of children and child pornography
- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions and explosives
- corruption
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests
- laundering of the proceeds of crime
- counterfeiting of currency, including of the euro
- computer-related crime
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties

- facilitation of unauthorised entry and residence
- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking
- racism and xenophobia
- organised or armed robbery
- illicit trafficking in cultural goods, including antiques and works of art
- swindling
- racketeering and extortion
- counterfeiting and piracy of products
- forgery of administrative documents and trafficking therein
- forgery of means of payment
- illicit trafficking in hormonal substances and other growth promoters
- illicit trafficking in nuclear or radioactive materials
- trafficking in stolen vehicles
- rape
- arson
- crimes within the jurisdiction of the International Criminal Court
- unlawful seizure of aircraft/ships
- sabotage

3. To the extent that the offence(s) identified under point 1 is (are) not covered by point 2 or if the judgment and, where applicable, the probation decision, as well as the certificate are forwarded to a Member State, which has declared that it will verify the double criminality (Article 10(4) of the Framework Decision), please give a full description of the offence(s) concerned:

(h) Information regarding the status of the judgment

Please indicate whether the sentenced person appeared in person in the proceedings which resulted in the judgment:

- Yes, the person appeared.
- No, the person did not appear. It is confirmed that:
 - the person was summoned personally or informed via a representative competent according to the national law of the issuing State of the time and place of the proceedings which resulted in the judgment being rendered *in absentia*; or
 - the person has indicated to a competent authority that he or she does not contest the case.

(i) Indications regarding the nature of the sentence imposed by the judgment or, where applicable, the probation decision

1. This certificate is related to a:

- suspended sentence (= custodial sentence or measure involving deprivation of liberty, the execution of which is conditionally suspended, wholly or in part, when the sentence is passed)
- conditional sentence:
 - the imposition of a sentence has been conditionally deferred by imposing one or more probation measures
 - one or more probation measures have been imposed instead of a custodial sentence or measure involving deprivation of liberty
- alternative sanction:
 - the judgment contains a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned
 - the judgment does not contain a custodial sentence or measure involving deprivation of liberty to be enforced in case of non-compliance with the obligation(s) or instruction(s) concerned
- conditional release (= early release of a sentenced person after part of the custodial sentence or measure involving deprivation of liberty has been served)

2. Additional information

2.1. The sentenced person was in pre-trial detention during the following period:

2.2. The person was serving a custodial sentence or measure involving deprivation of liberty during the following period (to be filled in only in case of conditional release):

2.3. In case of a suspended sentence

- duration of the custodial period imposed that was conditionally suspended:
- duration of the period of suspension:

2.4. If known, length of deprivation of liberty to be served upon

- revocation of suspension of the execution of the judgment;
- revocation of the decision on conditional release; or
- breach of the alternative sanction (if the judgment contains a custodial sentence or measure involving deprivation of liberty to be enforced in case of such a breach):

- (j) Indications regarding the duration and nature of the probation measure(s) or alternative sanction(s)
1. Total duration of the supervision of the probation measure(s) or alternative sanction(s):
 2. Where applicable, duration of each individual obligation imposed as part of the probation measure(s) or alternative sanction(s):
 3. Duration of the total probation period (if different from the duration indicated under point 1):
 4. Nature of the probation measure(s) or alternative sanction(s) (it is possible to tick multiple boxes):
 - an obligation for the sentenced person to inform a specific authority of any change of residence or working place
 - an obligation not to enter certain localities, places or defined areas in the issuing or executing State
 - an obligation containing limitations on leaving the territory of the executing State
 - instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity
 - an obligation to report at specified times to a specific authority
 - an obligation to avoid contact with specific persons
 - an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence
 - an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation
 - an obligation to carry out community service
 - an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons
 - an obligation to undergo therapeutic treatment or treatment for addiction
 - other measures that the executing State is prepared to supervise in accordance with a notification under Article 4(2) of the Framework Decision
 5. Please provide a detailed description of the probation measure(s) or alternative sanction(s) indicated under 4:
 6. Please tick the following box if relevant probation reports are available:
 - If you ticked this box, please indicate in which language(s) these reports are drawn up ⁽¹⁾:

- (k) Other circumstances relevant to the case, including relevant information on previous convictions or specific reasons for the imposition of the probation measure(s) or alternative sanction(s) (optional information):
- The text of the judgment and, where applicable, the probation decision is attached to the certificate.
- Signature of the authority issuing the certificate and/or of its representative to confirm the accuracy of the content of the certificate:
- Name:
- Position (title/grade):
- Date:
- File reference (if any):
- (Where appropriate) Official stamp:

⁽¹⁾ The issuing State is not obliged to provide translations of these reports.

ANNEX II

FORM

referred to in Article 17 of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

REPORT OF A BREACH OF A PROBATION MEASURE OR ALTERNATIVE SANCTION, OR OF ANY OTHER FINDINGS

(a) Details of the identity of the person subject to supervision:

Surname:

Forename(s):

Maiden name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the judgment and, where applicable, the probation decision concerning the suspended sentence, conditional sentence, alternative sanction or conditional release:

Judgment issued on:

File reference (if any):

Where applicable, probation decision issued on:

File reference (if any):

Court which issued the judgment

Official name:

Address:

Where applicable, authority which issued the probation decision

Official name:

Address:

Certificate issued on:

Authority which issued the certificate:

File reference (if any):

(c) Details of the authority responsible for supervising the probation measure(s) or alternative sanction(s):

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel. (country code) (area code)

Fax (country code) (area code)

E-mail:

(d) Probation measure(s) or alternative sanction(s):

The person referred to in (a) is in breach of the following obligation(s) or instruction(s):

- an obligation for the sentenced person to inform a specific authority of any change of residence or working place
- an obligation not to enter certain localities, places or defined areas in the issuing or executing State
- an obligation containing limitations on leaving the territory of the executing State
- instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity
- an obligation to report at specified times to a specific authority
- an obligation to avoid contact with specific persons
- an obligation to avoid contact with specific objects, which have been used or are likely to be used by the sentenced person with a view to committing a criminal offence
- an obligation to compensate financially for the prejudice caused by the offence and/or an obligation to provide proof of compliance with such an obligation
- an obligation to carry out community service
- an obligation to cooperate with a probation officer or with a representative of a social service having responsibilities in respect of sentenced persons
- an obligation to undergo therapeutic treatment or treatment for addiction
- other measures:

(e) Description of the breach(es) (place, date and specific circumstances):

(f) Other findings (if any)

Description of the findings:

(g) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

Tel. (country code) (area/city code)

Fax (country code) (area/city code)

E-mail (if any):

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):



Strasbourg, 23 March 2017

**Recommendation CM/Rec (2017) 3
on the European Rules on community
sanctions and measures**

*(Adopted by the Committee of Ministers on 22 March 2017
at the 1282nd meeting of the Ministers' Deputies)*

Text of the Recommendation accompanied by its commentary

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 integrated penal policies 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, of reducing the harm that it causes and of enhancing justice, 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 imprisonment must therefore be used only as a 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 shall always be guided by respect for fundamental legal safeguards as enshrined in the European Convention on Human Rights (ETS No.5), and by the principles laid down in the European Rules on community sanctions and measures;

Recognising the relevance to the present Recommendation of the following Committee of Ministers Recommendations: No. R (92)17 concerning consistency in sentencing, No. R (97)12 on staff concerned with the implementation of sanctions and measures, No. R (99) 19 concerning mediation in penal matters, No. 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;

Bearing in mind 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 No. R (92)16 on the European Rules on community sanctions and measures

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 its accompanying commentary are translated into their national language(s) 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

Scope

Appendix

Scope and purpose

The present rules are intended to:

- a. establish a set of standards to help national legislators, deciding and implementing authorities and practitioners to provide a just and effective use of community sanctions and measures. This application must take into account the need to protect society and to 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. provide member states with guidance on the introduction and use of community sanctions and measures to take full advantage of their benefits and to protect the fundamental rights of all concerned. 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 therefore 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. Community sanctions and measures should only be applied where they are appropriate;
- 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 suspect or 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 suspects or offenders and for the community: suspects and offenders are in a position to continue to exercise choice and assume their social responsibilities, while the implementation of penal sanctions and measures within the community itself rather than through a process of isolation from it may well offer in the long term better protection for society. There are financial as well as social benefits to be gained by making less use of imprisonment, although the financial costs of implementing community sanctions and measures to the appropriate standard must not be under-estimated.

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 suspects and offenders with respect as responsible human beings. The simple fact of pursuing the aim of avoiding imprisonment does not, solely or in itself, justify recourse to any kind of sanction or measure or means of implementation.

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 as they are covered by the European Rules on juvenile offenders subject to sanctions or measures (Recommendation (2008)11 of the Committee of Ministers).

These Rules apply to persons who are subject to community sanctions and measures. Convicted offenders may have community sanctions or measures imposed on them. The term 'suspects' refers to persons who have not been convicted, but who may have measures imposed on them by judicial authority or other authority as laid down by law. However, sanctions and measures which are specifically concerned with juveniles are covered by the Committee of Ministers Recommendation Rec (2008)11 on the European Rules for juvenile offenders subject to sanctions or measures.

Definitions

For the purposes of this Recommendation:

The expression “**community sanctions and measures**” means sanctions and measures which maintain suspects or offenders in the community and involve some restrictions on their liberty through the imposition of conditions and/or obligations. The term designates any sanction imposed by a judicial or administrative authority, 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.

The expression “**deciding authorities**” means a judicial, administrative or other authority empowered by law to impose or revoke a community sanction or measure or to modify its conditions and obligations.

The expression “**implementing authorities**” means the body or bodies empowered to decide on, and with responsibility for, the practical implementation of a community sanction or measure. In many countries the implementing authority is the probation service.

Chapter I: Basic principles

1. Community sanctions and measures can provide just and effective supervision, guidance and assistance to suspects or offenders without resorting to deprivation of liberty. They can enhance the prospects of social inclusion on which desistance from crime usually depends.

This Rule affirms the positive value of community sanctions and measures. Community sanctions and measures can be variously coercive, prohibitive, intrusive and rehabilitative, with many sanctions and measures incorporating more than one of these elements, so constituting an appropriate response for crimes, but also providing control and support towards desistance.

Community sanctions involve some restriction of liberty, as do most forms of criminal imposition, but allow people to continue to live in the community and to fulfil the obligations that this entails, while they undergo a fitting punishment for the wrongs of their offences. Community sanctions can therefore be used to promote social inclusion, enabling people to retain most of their rights and to develop ways of living in which offending has no place. Such social inclusion enhances social justice and fair opportunities, especially chances to secure employment, to find accommodation and to enjoy personal relationships - all factors known to be associated with desistance from offending.

Community measures can include measures to avert pre-trial detention: arrangements can be devised to put in place sufficient safeguards against offending, absconding or interfering with the course of justice without remanding people into custody without prejudice to the rights and interests of victims. In many countries, large numbers of prisoners are held awaiting trial, often in the worst conditions. Some of them are subsequently acquitted and released following an experience that has inevitably been damaging; some are convicted but sentenced to a community sanction, so that their pre-trial detention comes to seem avoidable; even when a prison sentence follows conviction, pre-trial detention should be avoided so far as possible since the pains of imprisonment should in principle not come before conviction. Indeed pre-trial detention is a practice at odds with the fundamental right to be presumed innocent. Measures can also be used after a prison sentence at a time when supervision may make a decisive difference to the prospects of resettlement / re-entry.

Community sanctions and measures are often introduced to give courts a range of options to avoid imprisonment and in the hope that they will reduce the overall prison population. In fact, the relationship between imprisonment rates and the use of community sanctions and measures is complex and disputed. Even so, if community sanctions and measures are used wisely and proportionately, they can make a contribution to reducing prison numbers. In any case they should be valued not only for their potential to reduce the size of the prison population but for their positive contribution to justice and social inclusion.

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.

Examples of community sanctions and measures that are commonly in use include:

- *alternatives to pre-trial detention, such as requiring a suspect to reside at a specified address and / or to be supervised and assisted by an agency specified by a judicial authority;*
- *probation / community supervision as an independent sanction imposed without pronouncement of a*

sentence to imprisonment;

- *suspension of the enforcement of a sentence to imprisonment with imposed conditions;*
- *community service (i.e. unpaid work on behalf of the community);*
- *victim compensation /reparation;*
- *victim offender mediation;*
- *treatment orders for drug or alcohol misusing offenders and those suffering from a mental disturbance that is related to their criminal behaviour;*
- *restriction on freedom of movement;*
- *electronic monitoring administered in accordance with CM/Rec (2014) 4;*
- *conditional release from prison followed by post release supervision.*

This list is not intended to be exhaustive. It is also to be expected that new forms of community sanctions and measures will be developed over time that will also be covered by the present Rules.

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 of which they have been accused and shall take into account their individual circumstances.

Since community sanctions and measures are often developed in the hope that they will provide 'alternatives to custody' and thus contribute to reducing or at least limiting the growth of numbers in prison, their use must be encouraged. If imprisonment is to be a 'last resort', there must be sanctions and measures of earlier resort. Yet the well-established principle of proportionality is crucial here. While community sanctions and measures can appropriately be used for serious offences and not only for first offenders, it is important for policy makers and the judiciary to avoid 'net widening' - in other words, using community sanctions and measures where they might otherwise have imposed a lesser sanction like a financial penalty, a reprimand or a warning. If community sanctions and measures are used excessively for minor offenders, they will not only enlarge the system, occasioning both injustice and significant financial expense to the public purse, but will also come to be regarded as unsuitable for more serious offences, which will limit their capacity to reduce reliance on custodial detention. This Rule restates the importance of proportion, but also urges decision makers to take due account of the individual's circumstances to make sure that compliance is feasible and relevant in supporting desistance.

4. Community sanctions and measures shall be implemented in a manner that upholds human rights and enables and encourages suspects and 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.

This Rule states that implementation of community sanctions and measures should uphold the human rights of all concerned. It is expressed in very general terms and stipulates that the nature and manner of implementation of community sanctions and measures shall be in line with any internationally guaranteed rights. This general rule was formulated because the creation and application of community sanctions and measures often involves taking account of community safety and upholding the legal order in society, even when this may be contrary to the immediate interests or preferences of the individual. Yet this public interest must always respect the fundamental rights of suspects and offenders.

Technological developments (for example) may lead to new community sanctions and measures of a character that cannot readily be anticipated. Accordingly, the rule has been formulated in general terms in order to provide proper safeguards for the rights of the suspect or offender even in relation to contingencies which cannot yet be foreseen.

The Rule also refers to the responsibilities of suspects and offenders and requires implementation to have regard to enabling and encouraging them to accept their responsibilities as members of the community.

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

Medical and psychological treatment of people who are in a coercive situation has, historically, sometimes led to grave infringements of human rights - especially when interventions have been used experimentally. Such practices are considered unethical in European countries and are therefore forbidden. A suspect or an offender subject to a community sanction or measure is in a situation of restricted liberty backed up by the coercive force of law. This Rule accordingly asserts that treatment can only be given if it is in conformity with international ethical standards. This implies the need to bring national legislation and practice in line with such standards.

Internationally adopted ethical rules include the requirement that individuals should receive full information about the purpose, nature, methods and possible consequences of treatment. Their informed consent is essential. Consent by individuals who are subject to coercion is, however, a complex and sensitive matter. While consent may be necessary, it is not always sufficient to guarantee the ethical justifiability of an intervention. Chapter V of these Rules covers similar matters further.

6. 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. Account shall be taken of the diversity and of the distinct individual needs of suspects and offenders.

The purpose of this Rule is to ensure that community sanctions and measures are imposed and implemented justly and without unfair discrimination. Discrimination in the imposition or implementation of community sanctions and measures includes 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.

A distinction must be made between discrimination and differentiation. A prohibition on discrimination does not mean that everyone must be identically dealt with. Differentiation, unlike discrimination, is expected to relieve any unfair disadvantage or to achieve some betterment. People and their circumstances are not all the same and there are circumstances in which people must be treated differently from others, in order to respond to specific individual problems, to meet distinctive individual needs or to take account of special situations. In this way, substantial justice is advanced.

Unfair discrimination is sometimes unintended. Discrimination can be the result of unreflective implementation of routine procedures and can become 'institutionalised'. For example, policies and practices may be devised for men who are the majority of suspects and offenders in (probably) all countries and it must not be simply assumed that they are appropriate for women.

In some cases, people's circumstances (for example, homelessness) may militate against their unsuitability for a particular sanction or measure. An alternative should in such cases be actively sought to prevent individuals ending up in custody unnecessarily.

Full respect for this Rule entails periodic inspection of policy and practice to make sure that community sanctions and measures are being fairly implemented and monitoring systems adopted which might draw attention to unwitting discrimination.

7. Community sanctions and measures shall be made available to foreign national suspects and offenders and implemented fairly and in accordance with the principles of these Rules, with due regard to relevant differences in their circumstances.

There should be no discrimination in the imposition or implementation of community sanctions and measures on the basis of nationality. While this is just one example of the general principle of non-discrimination, it needs separate specification and due emphasis. There is considerable movement of people from all parts of the world across the continent of Europe and the prisons of almost all European countries hold prisoners of many different nationalities. Non-nationals should be considered eligible for community sanctions and measures and suitable provision should be made to make sure that they are treated well and fairly. In particular, there should be no provision in law or in practice that makes foreign nationals ineligible for community sanctions and measures.

Account must be taken of the distinctive circumstances of foreign nationals to make sure that they are treated equitably. For example, bail before trial should not be refused on the grounds of nationality. This may, for example, include a need to provide linguistic interpretation in some cases if the individual is not sufficiently competent in the national language. Resettlement needs following a term of imprisonment may be different, and there may be a need for probation agencies in different countries to liaise in particular cases. EU Council Framework Decision 2008/947/JHA of 27 November 2008 (on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of

probation measures and alternative sanctions) allows the transfer of community sanctions between countries so that people who have offended in one country may fulfil the sanction in another country (usually their country of normal residence) where this will promote their social rehabilitation. This Decision applies only to EU member states but all members of the Council of Europe should consider how they might liaise and cooperate with other countries to advance rehabilitation by transfer in appropriate cases.

8. The nature, content and methods of implementation of community sanctions and measures shall respect the principles of dignity and the privacy of suspects and offenders, their families and others.

This Rule requires that the privacy and dignity of suspects and offenders shall always be respected. In particular, harassment, by which is meant the vexing, troubling or worrying of suspects or offenders through unduly frequent controlling or checking activities, is prohibited by the rule. Similar considerations apply to jeopardising the suspect's or offender's sense of self respect, family and other intimate relationships, community links and the ability to function in the community. Community sanctions and measures, just because they leave suspects and offenders in society, may expose them to the risk of public opprobrium or social stigmatisation. The Rule requires that adequate safeguards be adopted to protect them from insult and improper curiosity or publicity.

The Rule is also a reminder that the implementation of community sanctions and measures can affect not only the individual, but also members of their family. One example of this is the need in certain circumstances to visit the home of a suspect or offender, which may well be the home of other people as well.

The right to respect for private and family life is guaranteed by Article 8 of the 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 they may entail conditions and obligations about the ordering of the suspect's and offender's lifestyle and that information be obtained about whether the person 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 and proportionate.

It should also be noted that endangering the rights listed in this Rule can undermine the suspect's or offender's co-operation in the implementation of the sanction or measure and detract from its legitimacy.

9. Whenever community sanctions and measures involve contact with victims, their rights shall be respected in accordance with internationally accepted ethical standards in this area.

This Rule requires agencies to protect the human rights of victims as they implement community sanctions and measures. Whenever implementation of the community sanction or measure or changes to its form or duration may have implications for victims, their interests should be taken into account and their rights always respected.

The general duties of states to victims of crime are set out in Recommendation Rec (2006) 8 of the Committee of Ministers to member states on assistance to crime victims and in many countries implementing agencies like probation make an important contribution to fulfilling those duties. In some jurisdictions, implementing agencies offer services directly to victims of crime. Elsewhere, they often work in co-operation with other organisations or individuals who offer support to the victim. Commonly, and especially in more serious cases, agencies contact victims and offer information about the individual - for example, when s/he is to be released from prison. Parole and other forms of early release supervision are included in the present Rules.

The EU Victim's Directive (Directive 2012/29/EU) is an authoritative statement on best practice which imposes obligations on member states of the EU and is a useful resource for all countries.

10 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.

A number of European countries recognise the value of reparation and restorative justice practices. These can take many different forms, although there are a number of common themes in such approaches. A United Nations Handbook explains 'Restorative justice approaches and programmes are based on several underlying assumptions: (a) that the response to crime should repair as much as possible the harm suffered by the victim; (b) that offenders should be brought to understand that their behaviour is not acceptable and

that it had some real consequences for the victim and community; (c) that offenders can and should accept responsibility for their action; (d) that victims should have an opportunity to express their needs and to participate in determining the best way for the offender to make reparation, and (e) that the community has a responsibility to contribute to this process.’ (Handbook of Restorative Justice programmes, Criminal Justice Handbook series, United Nations, 2006).

Restorative approaches include mediation - for example, mediation between victim and offender to explore how amends can be made and how those affected can manage the consequences of the crime. Mediation can also be used to prevent crime - for example by working to reduce neighbourhood disputes before they lead to crime. Recommendation Rec (99) 19 on mediation in penal matters sets out standards for mediation. Other restorative practices include family group conferences, sentencing circles and reparation panels. It is also possible to bring a restorative perspective to other more formal criminal justice practices - for example, courts, panels, parole boards can also incorporate a restorative perspective. The United Nations Economic and Social Council’s Resolution 2002/12 “Basic principles on the use of restorative justice programmes in criminal matters” gives authoritative guidance on these approaches.

This Rule insists that such practices are to be encouraged in suitable cases. Particular care must be taken to make sure that both the offender’s and the victim’s interest and rights are fully respected. The evaluation of these interventions must not, for example, be undertaken solely with regard to the offender’s reoffending, but must consider the benefits to the victim from such work. Certainly whenever an implementing authority arranges any meeting between the offender and the victim, every care must be taken to make sure that this does not become an occasion for further victimisation.

Restorative justice approaches call for distinctive skills and implementing agencies should ensure that staff are trained to undertake such work appropriately.

This Rule also has implications for the best known form of reparation to the community - community service. If this is to constitute meaningful reparation it must involve (and be seen to involve) work that has value to the community concerned.

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

Community sanctions and measures have a certain inherent afflictive character as a consequence of the restrictions imposed on personal liberty and the requirements of supervision. While the afflictive nature of community sanctions and measures is usually less serious and burdensome than the deprivations and hardships of custodial sanctions, this does not mean that it does not exist or can be ignored. This Rule insists that implementation methods must not aggravate the inherent degree of affliction beyond what is necessary in giving effect to the community sanction or measure. Not only would such aggravation be unjust; it can also be expected to create resistance and unwillingness to co-operate in any attempt to secure the individual’s law abiding adjustment in the community.

12. 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. This does not preclude the option of sending back to prison those offenders who have failed to meet their obligations under the terms of conditional release from imprisonment.

One of the main aims of community sanctions and measures is the attempt to avoid incarceration. This aim would be undermined if imprisonment were to constitute the necessary and only reaction to non-compliance. This Rule therefore prohibits provision in national law for an automatic recourse to imprisonment in such cases. Deciding authorities should use their own good judgement and not immediately conclude that the individual has failed to take advantage of the chance of a community sanction or measure and must therefore be sent to prison. This does not mean that imprisonment can never be a consequence of non-observance of the requirements. Depending on national law and on the circumstances, the deciding authority may allow the sanction or measure to continue, impose another community sanction or measure instead, order a financial penalty or, as a last resort, sentence to imprisonment.

The Rule also refers to people who have been released conditionally from prison. In some countries, they are regarded as still serving a prison sentence. If they violate the conditions of their release, therefore, they may be recalled to prison. Some failures to meet obligations are likely to result in automatic recall. In some cases, however, for example where the failure is minor, authorities should also be permitted to consider other options. (See also Rule 64 and Commentary).

13. National law shall provide for the regular inspection and independent monitoring of the work of the implementing authorities. Inspection and monitoring shall be carried out by qualified and experienced persons.

Since the imposition and implementation of community sanctions and measures are founded in law, there must be adequate systems of inspection and monitoring to ensure proper accountability. In this way, the authorities and the public can have confidence that community sanctions and measures are being used as they should be. This Rule also refers to independent monitoring, as, in addition to the routine supervision that managers should undertake as part of their duties and periodic inspection by government agencies, authorities must be open to question and scrutiny through independent inquiry. Independent monitoring by an Ombudsman or human rights organisations, are among the ways in which this may be achieved. These matters are considered more fully in Chapter VII of these Rules.

Chapter II: Legal framework

Legislation

14. The use, as well as the types, duration and modalities of implementation of community sanctions and measures shall be regulated by law.

It is a general principle applicable to all kinds of penal sanctions, including community sanctions and measures that they must be subject to the principle of legality. Various rules refer to "national law". National law refers to all forms of primary or delegated legislation, case law any other form of law regarded as such by the State concerned. This means that the authority to create and apply them must stem from law. This Rule says that the use, type, duration and modalities of implementation of community sanctions and measures shall be regulated by law. Within the parameters of law, it is for the deciding authority to determine the community sanction or measures in all individual cases.

15. 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.

This Rule draws out some of the implications of the legality principle laid down in Rule 14. Community sanctions and measures impose conditions and obligations and these must be based on clear legal provisions. Since the requirements of a community sanction or measure constitute instructions which the suspect or 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.

Conditions might include residence, requirements to report as instructed, restrictions on movement, obligations to participate in programmes or to avoid certain types of behaviour, etc.

The legality principle also applies to the consequences of non-compliance. Suspects and offenders must be made aware of the possible consequences of a failure to fulfil the obligations of the community sanction or measure, which in the most serious cases, may include arrest and detention. It is for national law to determine the criteria which shall regulate the powers to arrest or incarcerate the suspect or the offender under these conditions. This is considered further in Chapter VI of these Rules.

16. The authorities responsible for deciding on the imposition, modification and revocation of community sanctions and measures shall be laid down in law, as will their powers and responsibilities.

A further aspect of the principle of legality relates to the powers and duties of the deciding authorities which must be laid down in national law.

This Rule states the principle according to which competence to decide on the imposition, modification or revocation of a community sanction must be reserved for a deciding authority that is a court, judge, prosecutor or administrative authority only as laid down in law. The same is true where a pre-trial measure - a measure imposed before determination of guilt - is concerned.

The affirmation of a principle limiting such decisions to a deciding authority, which is in itself a guarantee of fundamental freedoms and rights, secures independence having regard to the doctrine of the separation of powers and impartiality. It constitutes a manifestation of the principles underlying the rule of law which are jointly accepted and shared by the member states of the Council of Europe.

17. 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, shall also be laid down in law.

The legality principle also applies to the implementation of community sanctions and measures, beginning with the requirement that the implementing authorities shall be specified in law. The law shall also define the responsibilities and the duties of these authorities.

The purpose of this Rule is to provide for a legal definition of the powers and duties of the implementing authority. This means that the methods of implementation are also subject to the principle of legality. 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. These matters are considered in more detail in Chapter IV of these Rules.

18. National law shall allow for reducing recourse to sentences involving deprivation of liberty by providing for non-custodial sanctions or measures as the appropriate response for certain offences.

Some countries adopt criminal codes that set out the sanctions and measures to be imposed for particular offences. This Rule encourages countries to stipulate community sanctions and measures as the usual, 'reference' or presumptive response for certain types of offence - rather than the terms of imprisonment that are often specified.

19. Any formal, including legal obstacles that prevent the use of community sanctions and measures with serious and repeat offenders or in relation to certain types of offence or any other statutory limitations should be reviewed and removed so far as appropriate.

Like Rule 18, this Rule recognises that criminal codes sometimes constrain the use of community sanctions and measures. In particular, law may limit their use to first offenders, younger offenders and / or relatively minor offenders. These Rules assert that community sanctions and measures can be used in a much wider range of cases than these. Accordingly, any such limiting legal provisions should be reviewed so that community sanctions and measures can be a lawful option for the deciding authority to consider in as many cases as possible. Unless such constraints are removed, the capacity of community sanctions and measures to contribute towards reducing the numbers of people sent to prison will be significantly diminished.

20. Rights to benefits in any existing social security system or any other civic right shall not be limited by the imposition or implementation of a community sanction or measure (apart from restrictions forming part of the sentence).

This Rule states that the implementation of a community sanction or measure must not prejudice an individual's entitlement to social security or welfare benefits, except where such rights are intentionally limited by the sentence of the court. Unemployment benefits, for example, may be contingent upon two conditions - that the person concerned is available for work and that no work can be found for that person. An unemployed offender doing work under a community service order, however, 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 fulfilling the obligations of a community sanction or measure.

More generally, the Rule recognises that civic rights should not be compromised by a community sanction or measure. It is recognised that some restriction of ordinary civic rights may form part of a sanction or measure. For example, a community sanction or measure might restrict the movement of the person concerned and / or impose supervisory conditions. As Rule 11 prescribes, however, there should be no further afflictive burden beyond what is necessary to give effect to the community sanction or measure and no prejudice to people's normal civic entitlement.

Imposition of community sanctions and measures

21. The duration of a community sanction or measure shall be fixed by the authority empowered to make the decision as prescribed by law.

The dimension of duration is an essential element of any community sanction or measure since it allows a quantitative relationship 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 person in society).

This Rule requires that the legality principle applies to 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 requirement is to be observed both by the deciding and implementing authorities. Hence, the implementing authority may not prolong any control of the offender beyond the point in time fixed by the decision to impose the community sanction or measure.

22. The nature and the duration of a community sanction or measure shall be in proportion to the seriousness of the offence and the harm done to victims, and shall take into account any risks assessed as well as the individual's needs and circumstances.

The determination of a community sanction or measure must take into account the seriousness of the offence, as assessed by the harm done to the victim and to society and accordingly the offender's culpability, as well as the attempt to advance the rehabilitation of the person and the protection of the legal order. Any such sanction or measure should therefore, both by its nature and duration, meet the requirements to stand in proportion to the offence committed and allow for individualisation, having regard to the suspect's or offender's personal situation that is to their personal characteristics, family, material and social circumstances, their needs as well as any previous criminal record. Within the parameters of proportionality, it is legitimate for the deciding authority to take into account the risks posed by the offender which ought to be systematically assessed.

23. Ordinarily a community sanction or measure shall be imposed with a fixed duration. Where, exceptionally, the law provides that the duration of the community sanction or measure may be extended there shall be regular review by the deciding authority to assess if such exceptional circumstances still apply and, if not, to terminate the community sanction or measure.

Earlier versions of these Rules have been concerned with the question of the extended duration of community sanctions and measures. The principle of proportionality entails that a community sanction or measure should be of a fixed and specified maximum duration. Prolonged periods of sanctions and measures run the risk of maintaining the offender in a state of dependency which is contrary to the purpose of developing the offender's autonomy in society. This Rule says that if the sanction or measure may be exceptionally extended, law shall provide for a process of regular and thorough review. In case the decision is taken by a deciding authority which is of non-judicial nature there shall be a possibility for a judicial review. See for example Recommendation (2014) 3 concerning dangerous offenders.

24. 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 staff of an organisation provided for by law.

It follows from Rule 22 that the deciding authority may seek to gain full and impartial information about the individual's personal circumstances. The seriousness of the offence will be set out by the prosecutor and may be challenged by the defence. But once this has been determined to the court's satisfaction and they are in a position to set the boundaries of the community sanction or measure within the limits of proportionality, the deciding authority may need additional information.

This Rule seeks to ensure that information provided to the deciding authority shall be reliable and of good quality. It requires, therefore, that such information be provided by a professional body or a body laid down in law. (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). This body shall undertake a full assessment of the individual's situation, giving attention to the offence related needs, the risks of reoffending and how these may best be reduced, the likelihood of compliance with any conditions or obligations, the individual's rights as a citizen and their social responsibilities. The findings of this process of assessment shall be submitted to the deciding authority to assist them in reaching their decision. The deciding authority may also need information on the feasibility of implementation, especially in relation to specific conditions. Staff should be appropriately trained, qualified and authorised by the competent organisations.

25. Suspects and offenders shall have the right to appeal to a judicial authority against a decision subjecting them to a community sanction or measure.

This Rule states that the individual must have a right to appeal to a higher authority at the time the decision is taken to impose the community sanction or measure. It should be possible to appeal against the imposition of a community sanction or measure and / or any particular requirement on grounds that may

include: that the sanction or measure is out of proportion to the seriousness of the original offence(s); that the deciding authority did not take account of one or more aspects of the individual's circumstances; or that the sanction or measure imposes conditions that cannot feasibly be met.

26. Deciding and implementing authorities should create channels of communication between them, which facilitate regular discussion of the practical aspects of imposing and implementing community sanctions and measures.

Chapter IX of these Rules emphasises the importance of explaining and indeed promoting the value of community sanctions and measures to policy makers and to the general public. This Rule urges a dialogue between deciding and implementing authorities. It is essential that deciding authorities have an adequate understanding of what is involved in the implementation of community sanctions and measures and including some of the practical challenges and opportunities. More than this, the implementing authority should welcome criticisms and suggestions about the manner in which they carry out the decisions of the deciding authority and be receptive to any concerns. Bluntly, if deciding authorities lack understanding or have insufficient confidence in the way in which their decisions are put into effect, they may reasonably be doubtful about using community sanctions and measures, especially in cases where the deciding authority regards its decision as on the borderline between a custodial or community option.

This Rule can also be understood to assert the value of mechanisms like progress reports in individual cases. Sometimes the deciding authority may see itself as taking a risk in avoiding custody and may be keen to monitor subsequent developments. Some countries encourage a degree of continuing oversight by a court - for example, in relation to drug use - whereby the court takes an opportunity to review progress periodically and to respond accordingly.

Chapter III: Community sanctions and measures: implementation and methods

General

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

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

However, the individual'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 suspects and offenders must, therefore, have the further development of this capacity for responsible choice and action as their fundamental aim. Helping suspects and 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 rightly been given greater recognition in recent years. Developing a greater sense of responsibility towards society on the part of the individual should therefore include recognition of those who have been wronged by the offence.

This Rule states that ways and means of implementing community sanctions and measures shall never be divorced from the attempt to improve the individual's situation in ways that enable them to desist from offending and to find ways of living in which crime has no place. This involves acceptance of responsibilities towards others - to families, associates, employers and colleagues and to the wider community. The manner in which the community sanction or measure is put into effect should support this aspiration. Such a requirement also implies avoiding methods of implementation which are likely to blunt individuals' sense of responsibility or worsen their capacity to lead a law abiding life. All methods of supervision shall serve these aims.

28. 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. Staff of the implementing authority and participating organisations and individuals drawn from the community shall be made aware of their duties in these respects.

Community sanctions and measures involve obligations that the individual must meet. There may be practical or psychological difficulties involved in meetings these obligations and this Rule states that the implementing authority should do everything possible to identify any such obstacles and to help the individual to overcome them. This should involve active assessment, encouraging suspects and offenders to anticipate any problems that may arise and supporting them in finding solutions. This is an essential aspect of facilitating compliance and cooperation (see Chapters V and VI).

Community sanctions and measures normally also entail rights - not only basic human rights, but also positive entitlement to advice and to support. Other Rules deal with the necessity of making the conditions and obligations plain to the individual concerned. It is no less important, if their rights are to be upheld, that they should be informed what these rights are and given assistance to secure them.

This Rule further requires that participating organisations and individuals drawn from the community, as well as professional staff, be informed about the rights accorded to suspects and offenders and be expected to protect and promote these rights.

29. The implementation of community sanctions or measures shall seek to secure the co-operation of suspects and offenders and to enable them to see the community sanction or measure as a just and reasonable reaction to the offence committed. They 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.

This Rule should also be read in the light of Chapter V where the importance of the individual's consent and cooperation is emphasised. The need to secure as far as possible willing response from the individual is an important principle for the successful use of community sanctions and measures. It is well established in research that people are much more likely to comply with requirements that they regard as fair and legitimate and where their rights and interests are respected. To that end the rule urges that people subject to sanctions or measures should 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 suspects and offenders as much as possible in decision making. They are treated as people who are able and willing to take responsibility and to develop their ability to do so. The learning process consists of examining the practical choices available in the light of their probable consequences. This examination can also disclose any resistance to collaboration in proposed courses of action. Identifying and dealing with such resistance is fundamental to on-going progress. By contrast, decisions taken without regard to the opinions of suspects or offenders run the risk of creating resistance to collaboration or of leaving some existing resistance unexpressed and therefore untouched.

Rule 29 does not, however, require that suspects and offenders 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. Nor does involving the individual in decision making entail that the preferences of the suspect or offender will be decisive, but there must be a sufficient opportunity for them to express their point of view and to feel that it has received due consideration.

30. Decisions about the implementation of a community sanction or measure shall be explained clearly to the suspects or offenders in a language they understand. Instructions given to them by the implementing authority shall be practical and precise.

Considerations of justice and practicality demand that suspects and offenders clearly understand from the beginning what is required of them by the particular community sanction or measure. Likely conditions and obligations may well have been discussed during the preparation of a pre-sentence report as an important preliminary 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 person 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 simple and clear language which is understood by the suspect or the offender. It can sometimes be helpful to write down what is required of them and what they are entitled to expect in return in the form of an agreement or 'case management plan' to ensure clarity.

In the course of implementation, a number of decisions will have to be taken and once a decision has been taken, it shall be explained clearly. This is a very basic principle of fairness: people must understand what is expected of them and what they may expect from the authority as well. Again, instructions about how formal obligations are to be carried out must be given in straightforward, practical and concise language and, where

the suspect or offender may not be fully competent in the national language, in the language the individual speaks. The implementing authority has a responsibility to make sure that the individual has understood, engaging the services of interpreters and translators if necessary. (It is recognised that this has resource implications, but it is plainly essential that people fully understand what is expected of them.). If instructions are vague or impractical, they are likely not only to be unfair but also operationally ineffective. Indeed, they might constitute a serious impediment to securing the individual's collaboration and thereby undermine the aims of rehabilitation.

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.

There may be occasions when there is significant disagreement between the suspect or offender and the supervisor. Chapters V and VIII deal with these matters more fully, but the general principle is that supervisors should do everything possible to resolve such disagreements, using their professional skills. If the suspect or offender believes that the decision has been unfair, then there must be recourse to a procedure to settle the matter.

31. The implementation of community sanctions and measures shall be based on the development of working relationships between the suspect or the offender, the supervisor and any participating organisations or individuals drawn from the community, focused on reducing re-offending and on social reintegration.

The European Probation Rules (CM/Rec (2010) 1) repeatedly affirm the value of a professional relationship in bringing about change, advancing rehabilitation and in supporting compliance. There is compelling evidence to show that sound professional relationships are effective in bringing about change in attitudes and behaviour. Indeed it seems that relationships are more influential than any single specific method or technique.

A professional relationship should be based on mutual trust and confidence; the rights and responsibilities of the suspect or offender and of the supervisor must be respected by both. Clarity about the professional role and its boundaries is essential. Research has shown that people are much more likely to comply with requirements where these are believed to be legitimate - that is, decisions have been arrived at through clear and fair procedures and with proper regard for the individual's views and interests.

This Rule also refers to participating organisations or individuals drawn from the community. Trust and clarity about roles here too are paramount and can only be achieved and sustained by clear communication among all involved. Where a number of people are making their contributions to the effective fulfilment of the community sanction or measure, all must know their respective contributions and those subject to sanctions or measures must be helped to understand what they may expect of these various individuals and agencies and what is expected of them as well. (See also Chapter IV).

32. 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.

This Rule draws attention to the importance of discretion and of principled professional judgement. Individuals and their circumstances differ and respecting Rule 6 (prohibiting discrimination) requires attention to these differences so that substantial justice can be achieved. It is recognised that it is often hard to know how to reconcile the demands of consistency and justice with those of individualisation.

The Rule recognises that implementation of a community sanction or measure calls for professional discretion and that the staff of the implementing authority must not be so bound by regulation that they are unable to respond to diversity. There must, on the other hand, be consistency so that people know what is expected of them and can be confident that they are being dealt with fairly. To observe this Rule calls for professional training so that staff make wise decisions, but also for clear lines of accountability so that their decisions are visible and can be seen to be fair.

33. Where an individual is found to be in need of particular personal, social or material assistance in relation to the implementation, fair and proper provision shall be made to enable them to meet their obligations.

It is well known that many suspects and offenders have marked personal, economic and social disadvantages, often associated with their offending and constituting obstacles to desistance. This Rule recognises that in some circumstances special provision must be made to enable people to comply with the community sanction or measure. For example, the keeping of appointments is not part of everybody's daily schedule and some suspects and offenders may need reminders about this to make sure they report as required. There may be difficulties in travelling to the office of the implementing authority or to the site where community service must be undertaken. Non-compliance is not always wilful but is often connected with personal characteristics and circumstances which may need attention if the community sanction or measure is to be appropriately implemented.

In particular, women may have responsibilities, especially childcare, that could make it more difficult for them to comply and the implementing authority has a duty to do all it can to support and facilitate compliance. This is one very important aspect of the Rule against discrimination (Rule 6) and implementing authorities must remain aware of the risks of unfairness and discuss this with individuals themselves.

This Rule also applies to the benefits of a community sanction or measure. It is a hallmark of community supervision that, as well as involving obligations, it can also bring benefits. The implementing authority should do all it can to enable suspects and offenders to enjoy these benefits and this is likely to involve attention to difficulties and working with the individual to anticipate and to solve problems.

34. Controlling activities shall only be undertaken to the extent that they are necessary for the proper implementation of the sanction or measure imposed. They shall be in proportion to the offence committed or alleged, shall take into consideration the individual circumstances of the suspect or the offender, including risk and needs factors and the rights and interests of the victim. Such activities shall be limited by the aims of the sanction or measure imposed.

Community sanctions and measures offer unique opportunities to enmesh suspects and 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 must be to develop the various forms of informal social control and reduce the formal controlling activities as far as possible. For this reason, the rule states the limits and purposes of these activities. Controlling activities shall stand in proportion to the particular sanction or measure being enforced and be limited by its aims.

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

The present Rule seeks 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. This Rule therefore requires these authorities to use methods which are consonant with professional knowledge grounded in the findings of research. Since this knowledge is constantly expanding it is necessary to take account of developments occurring in criminology, forensic psychology, social work and similar fields of study. This principle is further developed in Chapter IX of these Rules.

36. The direct costs of implementation of a community sanction or measure should not normally be borne by the suspect or the offender.

It is a general principle for the implementation of all sanctions that suspects and offenders are not required to pay any necessary costs and this principle applies to community sanctions and measures. Meeting the obligations of a community sanction or measure often entails expense. The implementing authority shall do all it can to minimise additional costs and inconvenience. Where significant expenses have been incurred by the offender in the course of compliance, the implementing authority should consider reimbursement in appropriate cases.

Some countries may take the view that, specifically, the (often substantial) cost of electronic monitoring should be paid by the suspect or offender. The Rules on electronic monitoring state that: 'Where suspects and offenders are contributing to the costs for the use of electronic monitoring, the amount of their contribution shall be proportionate to their financial situation and shall be regulated by law.' (Recommendation CM/Rec (2014) 4 of the Committee of Ministers to member States on electronic monitoring: Rule 11). When countries take their decisions on this matter, they should note Rule 11 of the present Rules (which say that implementation should not aggravate the afflictive character of community sanctions and measures).

This Rule accordingly states that the costs of implementing community sanctions and measures should not normally be borne by the suspect or offender. Where national law permits or requires such a financial contribution, the maximum amount should be set by law and the individual's capacity to pay should be income-tested and related to his or her domestic circumstances, and the impact that such costs may have on these. An inability to pay a contribution should not be considered a reason to deny a suspect or offender the opportunity to be given a community sanction or measure. It must never be forgotten that many (probably most) persons subject to community sanctions and measures have extremely limited means and unnecessary financial burdens may not only be unfair, but will probably make desistance more difficult.

Supervision and Community Service

37. Community sanctions and measures shall always work to support desistance from crime even where they involve high levels of surveillance or control.

Control, including surveillance, is a legitimate part of a community sanction or measure in many cases and can be necessary to ensure compliance and to protect the public. This Rule is a corollary of Rule 34, emphasising that methods of surveillance and control should not be included in a community sanction or measure for their own sake, but ought to be regarded and used as mechanisms to support the desistance which is the overarching aim of community sanctions and measures.

38. Programmes and interventions for rehabilitation shall be based on a variety of methods. The allocation of suspects or offenders to specific programmes and interventions shall be guided by explicit criteria.

Deciding authorities make judgements about the programmes and interventions that constitute the community sanction or measure in particular cases. Often the implementing authority will have further decisions to take about how exactly the requirements of the community sanction or measure are to be met. For example, a deciding authority may determine that an individual must perform a number of hours of community service, but commonly it is for the implementing authority to assign the specific tasks.

Countries differ in the ways in which authorities manage implementation. However these matters are decided, there must be criteria to inform the decisions. In deciding the appropriate programmes and interventions (and with due regard to the principle of proportionality that sets limits on the overall 'weight' of the community sanction or measure), criteria should include:

- any risks of harm to the public, to suspects or offenders themselves and / or to the staff responsible for the programme or intervention;*
- individuals' capacity to comply with and to respond to the intervention;*
- the personal or social factors which are linked to the likelihood of re offending ('criminogenic needs').*

These criteria should be made explicit when decisions are taken.

39. Tasks assigned to offenders doing community service shall be socially useful and meaningful and make use of and/or enhance the offender's skills as much as possible.

A central aim of community sanctions and measures is to facilitate the adjustment of the individual in society. Such sanctions and measures are, by their very nature, heavily dependent upon the co-operation of the individuals concerned. 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 individual's skills is both likely to improve the will to co-operate and to strengthen the sense of responsibility to the community. Community service also constitutes symbolic reparation and this principle also requires that the work should have purpose and wherever possible should be of genuine benefit to the community.

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

Community service must never be regarded as 'cheap labour'. The beneficiaries of the work are, first and foremost, members of the community against which the individual has offended, while it is also hoped that the offender too will gain from the experience. This rule prohibits community work by offenders which is undertaken for the purpose of making a profit. It should be noted that in some countries social enterprises are becoming increasingly involved in the administration of community sanctions and measures and in

carrying out their work these enterprises may generate a profit for the organisation and / or for society. This Rule does not discourage such ventures, but it does insist that the purpose of a community sanction or measure must never be to make a financial profit and that (for example) community service tasks should not be allocated with that end in mind.

41. 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.

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 people under national health and safety legislation.

Case records, data protection and confidentiality

42. 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 extent of the individual's compliance with the conditions or obligations of the sanction or measure.

During the implementation of a community sanction or measure account must be taken of various kinds of information concerning the individual which exist or emerge at different moments in time. The information will relate, for example, to the offence, to conditions and obligations imposed, to the personal and social situation of the individual and their fulfilment of the requirements of the community sanction or measure. Much of this information 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.

Case record information should be kept up to date. A further reason for updating the case record is stated in this Rule: it may be necessary on occasion to prepare a report about the degree of 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. The case record will also hold information about decisions taken so that staff may be held accountable for their practice through these means. 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 suspects or offenders have occasion to work with them or must take over their cases.

The management of personal data should be undertaken in accordance with national law. Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, directs EU members in these matters and may be used as guidance by other countries.

43. 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.

Information in the case record should be succinct, accurate and relevant to the community sanctions and measures imposed and their implementation. It is doubtful if an absolute criterion of relevance can be given. Clearly, however, information which infringes the rights of the suspect or offender or their family must not be written into the case record. On the other hand, information which has an obvious bearing on the individual'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, accurate and up to date. The information shall be impartial and as objective as possible. The use of subjective assessments is not thereby prohibited, but the rule implies that they should be used with care. The supervisor should be explicit about this when recording an opinion or judgement, as opposed to a fact, and should set out the basis for such judgements.

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

This Rule recognises a use, but also a right, in connection with case records. The supervisor can use records to inform and explain to the individual about the progress of implementation and any plans or decisions which have been or need to be made. Equally, individuals have a right to know what is being recorded about them. This consideration applies to any case record or report concerning the individual. Therefore, the contents of records or notes should be discussed with the individual and, where necessary, explained. A corollary of this is that records and reports should be written with little or no jargon and in plain language.

The Rule is not absolute (hence 'ordinarily'). Particular circumstances may arise which justify not revealing to an individual some particular aspect of the record or report. This would include information which infringes the rights of others, especially where making this information available to the suspect or offender may put others at risk of harm. It may also happen that the implementing authority has been given information in confidence (for example by a doctor with regard to a sensitive medical matter) and the confidential basis on which this information was shared must be respected.

45. The suspect or 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.

This Rule requires that individuals shall have access to their case record and be able to read what is written there about them. An authorised person acting on behalf of the suspect or offender has the same right. Often this person will be their legal representative, but the Rule does not require this to be so. Anyone enjoying the confidence of the suspect or offender may act on their behalf.

46. The suspect or 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.

The individual may contest what is written in the record. Part of the purpose of this requirement is to provide a check against inaccurate information being written into the case record. As with any other form of dispute, the contestation may or may not be justified. The substance of the contestation must, however, be written into the record, whether or not it leads to a formal complaint and regardless of the outcome of any complaint procedure.

The right to read and contest the record shall not involve an infringement of the rights of others.

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

The presumption is that information in the individual's case record is 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.

At the same time, since so much of the work associated with community sanctions and measures involves a number of agencies working together, some information exchange and communication are essential for rehabilitation and for public protection. Nothing in this Rule prohibits such liaison. It will be valuable for agencies to draw up inter agency agreements to try to specify the requirements and the limits of such information exchange. It is no less important that the individual concerned should be made aware of the information that has been exchanged and the reasons why it has been disclosed.

48. 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.

The purpose of this Rule is to prevent case records being kept and exercising an effect after the community sanction or measure has ended. 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 keeping them securely and about revealing their content to third parties.

49. The kind and amount of information about individuals given to agencies which provide community service 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.

Community sanctions and measures frequently mean that a variety of agencies and individuals become involved in providing community service work or forms of help to the suspect or the offender. This Rule deals with the question of the extent to which they may receive information about the individual. In general, the Rule provides for restrictive practice. The nature of the work or help provided may make it necessary to disclose information in fairness to the agency providing assistance and to ensure the safety and well-being of others. Undue risks may be run, for instance, if certain kinds of offenders are allowed to perform community service with children, older people or those who may be otherwise vulnerable. If, however, it is necessary to disclose sensitive information, this shall only be done with the knowledge of the individual. The offender should be asked to consent to this information exchange, after having been given a clear account of what information is to be disclosed and why this is necessary. If consent is not forthcoming, then, in the case of community service, another kind of placement should be arranged instead.

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.

Chapter IV: Community participation

50. 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 suspects or offenders, promote their social inclusion and to enhance community safety.

Every community has a vested interest in the successful re integration of suspects and 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 individuals. They are more likely to take responsible attitudes towards the community when they become aware of the community's interest in and concern for improvement in their personal and social situation. At the same time, the individual is provided with opportunities to take up or renew meaningful ties in the community and possibilities for contact and support.

It is possible that without such active engagement services will become insular and fail to achieve their full potential in narrowing the gap between suspects and offenders and the community. Suspicion, fear and misunderstanding may persist and further offending can be the result.

51. 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. Attempts shall be made to assist suspects and offenders in developing meaningful ties in the community, in broadening their opportunities for contact and support and to encourage the community to make a positive contribution to their social reintegration.

This Rule expands upon Rule 50 to encourage implementing authorities to be active and imaginative in community engagement. Rule 50 recognises the roles of formal agencies, while this Rule states that, in addition to receiving a range of services, suspects and offenders need to establish and develop all kinds of associations with their communities.

The involvement of members of the local community greatly facilitates access to an extensive range of human and material resources and social support systems. Suspects and offenders might be 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 social re integration.

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. Imaginative projects may include involving ordinary people as mentors or through outreach schemes; as volunteers (see Chapter VII of these Rules); engaging employers and social enterprises (in creating work placements, apprentice schemes and real jobs); exploring the potential to develop responses to wrongdoing that do not involve prosecution - for instance, restorative approaches; and linking community service to community problems, including crime and community safety.

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

Rule 40 has applied this principle to the particular case of community service. The labour of offenders undertaking community service is productive and could in principle generate profits, raising the question of the beneficiary of such profit. Rule 52 recognises that the way in which individuals and organisations are remunerated for their contribution to the implementation of community sanctions and measures is becoming an increasingly complex matter with the development of social enterprise agencies alongside NGOs and commercial companies. For example, arrangements are made in some countries to pay for drug misusing suspects or offenders to receive treatments in privately run therapeutic communities. This Rule reaffirms that while sometimes community involvement may generate profit, this must never be the purpose of community participation in a particular case and the interests of suspects or offenders should never be subordinated to a profit motive.

53. 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, safety and integrity of all participants.

Implementing authorities cannot themselves manage every need associated with desistance or social support. Nor is it their function to do so. They need, therefore, to rely on all the resources available to other community members - for instance in matters of employment, housing, health, etc. The different skills and perspectives of a range of organisations are an indispensable part of working with suspects and offenders in the community and promoting public safety. Co-ordinated and complementary inter agency and inter disciplinary work is necessary to meet the often complex needs of suspects and offenders and to manage risks. Implementing authorities, therefore, should work in partnership with other public or private organisations and local communities, in this way promoting social inclusion. Organisations which already have a duty to provide services may also need the advice of the implementing authority to help them make sure that their services are readily and fairly accessible to suspects and offenders.

At the same time, it is in the interest of the implementing authority, participating organisations and individuals drawn from the community and suspects and offenders themselves, that there should be no uncertainty in their inter relationships. Rule 53 elaborates on how this might be done.

This Rule also states that when the implementing authorities make referrals to other organisations and commission their services they must do all they can to ensure that the organisations concerned are responsible and reliable. The implementing authority has a duty to make sure that all the principles in these Rules are upheld by individuals and organisations implementing community sanctions and measures in partnership with the authority. It is 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 service provided always meets the standards laid down in the present rules. Where this is found not to be the case, the implementing authority shall take appropriate action, deciding what should be done taking into account the nature and degree of the shortcoming.

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

This Rule states that whenever the implementing authority commissions a service or refers a service user to a community participant, everyone must be aware of the requirement that the organisation or individual shall uphold the rights of suspects and offenders in all their dealings with them and respect the provisions of the present Rules.

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

Rule 50 introduced the matter of the relationship between agencies. This Rule develops the point by reaffirming the importance of clarity between the implementing authority, community participants and service users about their inter relationship. In particular, it is necessary that there should be clarity in respect of terms of the services to be provided, communication protocols, roles, responsibilities and lines of accountability, the range and nature of the duties to be undertaken, the human and material resources which

can be provided and, importantly, the nature and limits of the authority exercised. For this reason it is important that community participation should be based on a shared and sound understanding, which should be set out in a written agreement between the implementing authorities and community participants.

Chapter V: Consent, cooperation and enforcement

56. 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 suspect or the offender is likely to co-operate and comply with them.

Unlike the punishments of imprisonment and fines, which can be coercively enforced regardless of the will of the individuals concerned, ideally community sanctions and measures require the co-operation of the individual if they are to achieve their aims. If someone 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.

It should be noted, however, that while a blunt refusal to co-operate may lead a deciding authority not to impose the community sanction or measure it had in mind, it is not unusual for the person to have a degree of ambivalence about a community sanction or measure. 'I won't co-operate' can sometimes reflect a doubt about an ability to co-operate or a fear of being unable to change. Probation staff, for example, recognise that motivation is shifting and it is a large part of their professional skill to sustain and to develop it.

The deciding authority may benefit from professional advice before forming a decision about the likelihood of compliance and even where there is some doubt about the chances it will sometimes be worth giving the suspect or offender the opportunity - especially if a custodial sentence is the alternative. The pre-sentence inquiry is often an important way of ascertaining and informing the court about the kind of conditions that would be appropriate and whether the person is willing to co-operate. Careful pre sentence inquiries enable a court to take its decision on the basis of sound information and professional judgement.

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

In this rule 'consent' refers to any situation in which the individual 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. Not all countries have a legal requirement that consent must be expressed for all community sanctions and measures, but wherever this is a formal legal precondition, justice requires that the individual must do so in full knowledge of what they are consenting to. Suspects and offenders must know that they are being asked to give consent and this means that there must always be an explicit procedure, not a tacit or assumed consent.

58. Such consent shall never have the consequence of depriving suspects or offenders of any of their fundamental rights.

The giving of consent, even with the safeguards provided by other Rules, shall never have the consequence of depriving suspects or offenders of any of their fundamental rights. The European Committee for the Prevention of Torture has drawn attention to the difficulties of deciding about the authenticity of expressed consent in the context of a situation of coercion (especially in prison where, for instance, early release may depend on 'consenting' to some condition). These difficulties can arise for community sanctions and measures as well and this Rule asserts that consent must never be used as a pretext for depriving people of their fundamental rights.

59. The consent of a suspect shall be obtained before the imposition of any community measure to be applied before trial or instead of a decision on a sanction unless otherwise provided by law.

This Rule relates to pre-trial proceedings or measures used instead of a decision on a sanction. A suspect is in principle innocent and because of the presumption of innocence caution needs to be exercised before a community sanction or measure is imposed.

One example of such a measure would be a requirement for a homeless suspect to live in some approved premises and report regularly to a designated person instead of being detained in a prison pending trial. Such a solution nevertheless requires the person to accept responsibility for their behaviour in a way that would not be required if they were to be remanded in custody in prison. The consequences of failing to live in accordance with the measure can be serious for the individual who should therefore be asked to indicate their willingness to comply with the proposed community measure.

It must be emphasised that the consent of the individual 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.

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

This Rule is a specific application of Rule 22. Conditions and obligations should be imposed for a legitimate purpose. The deciding authority should consider those conditions that are judged to be necessary as a fitting punishment, to support desistance and to reduce risks, but must also take into account the individual's circumstances. It is no less important that the conditions fit together coherently: for example, a requirement to undertake community service could be imposed alongside a drug treatment requirement, but care would need to be taken to ensure that fulfilment of one condition did not prejudice the feasibility of compliance with the other. Again, an electronic monitoring requirement must not interfere with legitimate aspirations like seeking employment. The total 'package' of sanctions must be proportionate and feasible for the individual in their own particular circumstances.

61. In addition to formal documentation, suspects and 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.

This Rule deals with the application of the principle presented in Rule 30 - concerning information to the individual 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 suspect or offender about 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. At this stage, suspects and offenders need clear and reliable information about the significance and consequences of the community sanction or measure and are likely to be receptive to this. A good understanding of what is expected can have 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 suspect or offender. The fact that explanations are given orally does not exclude the possibility of giving them a written statement recalling the conditions and obligations that must be respected, and providing other generally useful information about the implementation of the sanction or measure.

Chapter VI: Non-compliance and revocation

62. At the start of the implementation of a community sanction or measure, suspects and 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.

Implementing authorities have a duty to give effect to the sanctions and measures ordered by deciding authorities. The nature of the sanction or measure must be fully explained to suspects and offenders: they must know what is expected of them - and, indeed, what they can expect from the authority. This Rule stipulates that the consequences of non-compliance must be carefully explained. These typically include the possibility of a return to court to be sentenced or, in the case of early release from custody, recall to prison.

The implementing authority must ensure that those under supervision are aware of these possible consequences, although supervisors should not rely solely on threat of further sanction to gain compliance. They should endeavour to demonstrate the value of co-operation and treat them in a manner that gains their consent. There are research findings that show that people are much more likely to co-operate when they feel they are being dealt with fairly. A sense of unfairness can lead to resentment and a refusal to co-operate. It is true that for some suspects and offenders in some circumstances, the consequences of non-compliance will be very serious and may lead to a custodial sentence. Suspects and offenders must be made aware of this, but this must not be put to them as the only reason why they should comply. An explanation of the advantages of co-operation and other motivational skills can be used in these circumstances. Any obstacles to compliance should be identified and discussed and strategies put in place to enable individuals to do what is required of them.

There are occasions when supervisors will offer advice to suspects and offenders - which they may or may not choose to accept. It is therefore important that staff should distinguish clearly between any legally required instructions they may give and any informal advice or guidance they may offer and make sure that this distinction is understood.

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

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 can manage such situations appropriately. This Rule is a corollary of the preceding Rule: just as suspects and offenders need to be clear about what is expected of them, so must 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 individuals.

Finally, the delicate matter of dealing with non-compliance or poor performance on the part of the suspect or 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 and the deciding authorities.

64. 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 suspect or 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 person concerned.

Non-compliance must always be taken seriously and professional judgement exercised within the standards set by national law. Whenever a suspect or offender fails to do what is required, the implementing authority should respond assertively and promptly. If someone fails to report as instructed, for example, the agency should get in contact with the individual as a matter of priority. Once contact has been made, the supervisor should inquire about the reasons for non-compliance: not all instances of non-compliance are a wilful disregard of the sanction or measure. Indeed there are many reasons why suspects or offenders may fail to comply, including confusion about what is required of them, a disorganised personal life (leading to missed appointments), and despair about the possibility of change. On the clear understanding that non-compliance is unacceptable, the supervisor shall discuss with the individual what shall be done to bring about compliance in the future. Non-compliance and the reasons for it must be recorded in the record.

In some circumstances, a failure to comply may be a sign of increasing levels of risk and, where this could lead to serious harm, the agency must give priority to responding to this non-compliance as a matter of urgency. This may involve arranging (for example) for the suspect or offender to appear in court as soon as possible or to be recalled to prison.

One of the principal aims of any community sanction or measure is to encourage and enable changes in people's lives. Some changes - notably obtaining regular employment - are likely to make a significant difference to the individual's future behaviour. At the same time, such changes can create challenges for compliance. For example, someone who is at work all day may find it difficult to report as instructed. Staff should be alert to these possibilities and must be willing to make application to the deciding authorities to amend the requirements of the community sanction or measure where this seems appropriate.

65. 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.

The term 'significant failure' can be compared and contrasted with that of a 'minor transgression' used in Rule 64. Although what constitutes a breach is normally laid down in law, since this may lead to revocation or modification of the sanction or measure, it is for the implementing authority to assess whether the failure shall be considered significant in this sense. A breach of conditions which is so serious that it can give rise to a reconsideration of the sanction or measure imposed should be regarded as a 'significant failure'. It is difficult and perhaps unnecessary to go much beyond this in defining the distinction, although agencies are likely to develop their own understandings and procedures so that staff are clear about what is expected of

them. The suspect or offender too needs to know when a level of non-compliance may lead to a formal report to the deciding authority and what may ensue from that. It will, however, often be useful for the supervisor to talk to the individual about their failure to comply in order to form a view about its significance and its implications for future compliance.

The serious nature of a significant failure to comply requires that the deciding authority be informed of it formally. Such information should be conveyed promptly since if the community sanction or measure has broken down, the instructions of the deciding authority are no longer being put into effect and this state of affairs needs to be managed expeditiously. Report to the deciding authority should be in written form, bearing in mind the importance of making precise facts available.

66. 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.

Any report asserting non-compliance with the requirements of the sanction or measure should be precise and clear. The report should relate both to the facts of the case and to 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 alleged and to decide on the possible modification or revocation of the sanction or measure.

67. 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.

This is a further requirement of due process of law. Just as the original imposition of the community sanction or measure was made by a legally established deciding authority (often a court), it is for this authority to rule on modifications and revocations. These decisions should be made after examination and consideration of the facts of the case.

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

This Rule should be considered in relation to Rule 12, which it complements. 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 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 imprisonment in all cases. Where the deciding authority seeks the advice of the implementing authority about the appropriate response to proven non-compliance, staff should be positive and imaginative in trying to suggest community sanctions and measures that might be more appropriate and with which compliance is more likely.

There is the further consideration of proportionality: if the deciding authority had formed the view originally that the offence did not necessitate a period of imprisonment, then this decision should not be lightly set aside when the decision is to taken to revoke and to deal again with the original offence. 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.

69. In deciding on the modification or partial or total revocation of a community sanction or measure, the deciding authority shall ensure that the suspect or 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 suspect or the offender shall be entitled to legal assistance.

This is a requirement of due process of law. The individual must have a fair opportunity to contest the allegation of non-compliance or to explain to the deciding authority how and why this occurred. Since the deciding authority typically has a range of powers available in response to non-compliance, the suspect or offender should have the opportunity to address the matter. Normally this should take place before the decision is taken. Sometimes, however, such a process might increase the risks of absconding and could endanger the public - for example, when an offender must be recalled to prison because of increases in the risks they pose. In such cases, the offender should be given the earliest opportunity after recall to examine the grounds and, if they so choose, to challenge the decision. The offender should have a right to legal advice throughout these proceedings.

70. 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. Where a breach of the sanction or the measure by an offender leads to a sentence of imprisonment, credit for any satisfactory compliance should be reflected in the length of the sentence.

The initiation of a procedure for revocation should be the occasion for an evaluation of the implementation of the sanction or measure. The positive aspects should be studied as well as the negative ones. 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 influence the decision on revocation.

71. 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 suspect or the offender. An application to modify conditions or obligations may be made by the suspect or the offender or by the implementing authority, or otherwise as laid down in law.

This Rule recognises that circumstances change and that one advantage of a community sanction or measure should be that it is sufficiently flexible to respond to such changes. On the application of the implementing authority or of the suspect or offender, or as otherwise prescribed by law, the deciding authority should be able to modify or revoke a community sanction or measure. Among the reasons for this might be:

- *the circumstances of the individual have materially altered since the community sanction or measure was made and, as a result, they will not be able to comply with any condition; or*
- *(where this was a requirement) the individual no longer consents to the order; or*
- *the rehabilitation and reintegration of the individual would be advanced by the making of a further decision; or*
- *the continuation of the sentence is no longer necessary in the interests of the community or the individual.*

72. In accordance with the law the deciding authority shall be able to terminate a sanction or measure before it is due to end when it is established that the suspect or 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 a sanction or measure on these grounds may be made by the suspect or the offender or by the implementing authority.

Many of the earlier Rules in this Chapter have addressed questions of non-compliance, but it can also happen that the person has made such progress that the deciding authority could profitably review the community sanction or measure. This could lead to modification of one or more conditions. Thus, for instance, an offender who gives proof of having compensated a victim should no longer be subject to a condition for compensation. Similarly, no one should be compelled to continue in treatment once it has been established that the drug dependence has been dealt with sufficiently 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.

This Rule deals with the possibility of terminating the sanction or measure altogether before the normal term of expiration. Two conditions have to be met here. 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. Complete latitude should be given in law to the deciding authority concerning the application of the second condition.

There can be real value in making a public statement to the individual that their progress has been noted, their obligations fulfilled and that this is formally acknowledged by ending the community sanction or measure and restoring the individual to their full civic rights.

Chapter VII: Organisation, staff, and resources

General

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

The proper implementation of community sanctions and measures is an extremely important and demanding responsibility. In many countries, the numbers of people subject to community sanctions and measures far exceeds the numbers in prison, yet often the distribution of the budget does not adequately reflect the volume and importance of community sanctions and measures. This Rule enjoins countries to provide a well-established and effective implementing authority, affirming its status and providing adequate resources.

74. Implementing authorities 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.

The general principle that this Rule asserts has been covered in Chapter IV, but needs to be restated in this context as well. If the implementing authority is to deal with other agencies in partnership, its distinctive skills and authority must be respected. If the purpose and value of the implementing authority are poorly understood, it will be much harder for its staff to work in mutually respectful partnership with other agencies within and beyond the criminal justice system.

75. 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 practical instructions and guidance.

In support of Rule 73, this Rule asserts that the standing of the implementing authority and public confidence in its work will be enhanced by clear and realistic statements of its purposes and a transparency about its policies and practices. Deciding authorities also need to know how community sanctions and measures are put into effect and policy statements and plans of the kind envisaged in this Rule are preconditions of gaining confidence and ensuring due accountability.

76. Implementing authorities shall establish internal systems of scrutiny so that they can monitor their performance and that of their members of staff.

Implementing authorities shall ensure that there are reliable systems in place to monitor and improve their own practice and to ensure that it meets the standards required. For example, records should be regularly and systematically scrutinised by line managers to provide management information, including monitoring of adherence to law and policy. They should also discuss performance with members of staff.

Staff

77. Implementing authorities should have staff of high professional quality, recruited, trained and employed in accordance with the principles laid down in the relevant Council of Europe texts related to staff concerned with the implementation of sanctions and measures.

If the implementing authority is to enjoy the standing and recognition proposed earlier in this Chapter, it must have staff of a calibre to merit such status. This has implications for the way in which staff are recruited and trained, as well as for their salaries and conditions of service. The relevant general principles are set out in Recommendation No. R (97) 12 on staff concerned with the implementation of sanctions and measures as well as in the European Prison Rules (Part V) and the European Probation Rules (Rules 21-30).

78. 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.

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

There should be systems in place to enable agencies to monitor the quality of their own practices and to check performance against the required professional standards. Staff should be encouraged to regard these processes as a device to improve the quality of service delivery and enable them to do their work as well as possible. Such reviews should focus not only on individual performance, but should also consider if staff are adequately resourced and supported in undertaking their work.

Since the effectiveness of implementation 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 and enhancing the quality of their practice.

79. 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.

Staff have obligations to their employing authority and the implementing authority reciprocally has obligations to its staff. The authority must ensure that staff are adequately trained, resourced and supported to do what is required of them. This Rule states that managers should establish and participate in arrangements where staff can express their views as a group, not least on the question of their conditions of service. Moreover, staff have a unique insight into the ways in which policies are being put into practice and to observe any shortcomings in policy. Since it is not always straightforward for individual members of staff to put this to their managers, liaison with a staff body is an important mechanism for organisational enhancement.

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

The general principle of non-discrimination asserted in Rule 6 applies with the same force to the recruitment, promotion opportunities, salaries and conditions of service of staff. The grounds of discrimination set out in the Rule 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 individuals, for example, ethnic minorities.

As with Rule 6, respect for this Rule entails periodic inspection of policy and practice to make sure that community sanctions and measures are being fairly implemented and monitoring systems should be adopted which might draw attention to unwitting discrimination.

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

Staff recruitment strategies should have regard to the diversity of the communities served by the implementing authorities and of those under their supervision. This can be a complex matter. For example, in many countries there are marked imbalances in the gender profile of the staff group and perhaps in their ethnicity too. Attempts to redress this (perhaps by seeking actively to recruit from groups that are found to be under-represented in the workforce) may not always fit easily with principles of equality of opportunity in employment. Even so, implementing authorities should always be aware of these considerations and do as much as possible to develop a workforce that broadly matches the profile of the community. Where there are large numbers of non-nationals originating from a particular country, the appointment of one or more members of staff who speak that national language might be considered. If the implementing authority shows itself to be aware of these matters, it will demonstrate at the same time a commitment to the rights and interests of those under supervision, greatly enhancing the legitimacy of its work in the eyes of service users and of the general public.

82. 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.

This Rule provides no absolute indication concerning the number of staff in relation to the number of suspects or offenders being dealt with or 'caseload'. 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. For that matter, the numbers of individuals on a supervisor's caseload is often quite uninformative: so much depends on the needs of these individuals,

the levels of risk they are believed to pose and how much of the service is being delivered by the supervising officer in person (as opposed to colleagues or indeed partner agencies).

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 agency's practices. These norms include a specification of the personal characteristics of staff - for example, personal integrity, commitment to the values of the agency, ability to work as a member of a team. Some of these qualities can be tested during the process of recruitment; other such qualities can be developed through training and experience.

83. The staff responsible for implementation shall have adequate training to enable them to have a sound understanding 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 developed through further training and performance reviews and appraisals.

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 their precise responsibilities in relation to suspects and offenders 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 their activities with that of relevant organisations in the community.

Before entering into service, staff should receive 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 gain knowledge - especially that derived from sociology, social work 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. It can be useful to think in terms of knowledge, skills and values as the components that constitute best practice. 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 training, notably financial resources, should be provided by governments.

Best performance requires not only the abilities of staff, but calls for the agency to provide an organisational context in which these abilities can be deployed. This includes not only training and supervision, but also sufficient resourcing, as well as opportunities for career development.

84. 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 of development is ensured, that the employees' awareness of official responsibility will be strengthened and that their status in relation to conditions of service matches that of other professional staff with comparable functions.

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 group 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 - with a different professional training. Professional staff should therefore have a status in relation to conditions of service similar to these other categories of staff with comparable responsibilities. If people choose to move from one agency of criminal justice to another (for example, a relatively new probation service may want to recruit staff from an established prison service) care must be taken to ensure that any such transfer does not adversely affect salaries and conditions of service like pension arrangements.

The Rule does not require that the professional staff be established as state civil servants. This is common, but not everywhere appropriate. In fact, there is a great diversity of both public and private organisation in member states of the staff responsible for implementing community sanctions and measures.

Use of volunteers

85. 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.

The Rules in this section apply to volunteers who work with and on behalf of implementing agencies and not to those who work with suspects and offenders independently or in other organisations. Volunteers can make an invaluable contribution to the work of an agency and to helping and supporting victims, suspects and offenders. The involvement of volunteers can be part of the contribution made by wider civil society in responding to crime, rather than handing over such work solely to professionals.

Volunteers are to be distinguished from the community participants referred to Chapter IV. Community participants remain at work in their own organisations and are usually salaried staff. They normally work with many clients in addition to those fulfilling the requirements of community sanctions and measures. Volunteers work with and on behalf of the implementing authority and are assigned particular roles within that organisation. Although they are formally associated with the authority in this way, just because they are not professionals and are unpaid, their contribution is different and can serve to make and strengthen bonds with the community. Like professionals, volunteers can help suspects and offenders change their lives, can serve as a positive role model, and help offenders understand the harm done by offending.

They can also work as mentors and can befriend suspects and offenders, offering a relationship that is valued all the more because it is less formal than the relationship with a supervising officer. Suspects and offenders often especially appreciate the time and commitment of people who are giving their support and advice without payment. Volunteers may assist professional staff in a range of practical tasks by agreement with the authority. Volunteers can also act as 'champions' of community sanctions and measures, helping society to better understand their aims and value.

86. Volunteers can make an important contribution to the implementation of community sanctions and measures but should not undertake work which should be carried out by professional staff.

Volunteers should not be asked to undertake work appropriate to the role and responsibilities of employed staff or solely as a means of conserving the resources of the authority. The organisation must make careful decisions about the appropriate role boundaries between its professional staff and volunteers, taking account not only of the skills and knowledge of the personnel involved but also of the appropriate level of responsibility.

87. 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.

Since volunteers are working on behalf of the implementing authority with suspects and offenders (and sometimes perhaps with victims too) to whom the authority owns a duty of care, there must be a process to test their personal suitability to work in this capacity. This must involve at least a personal interview with a member of staff and a criminal record check.

Having a previous criminal record should not necessarily prevent people from working in this role. The experience of ex-offenders can enable them to make a distinctive and invaluable contribution in their work with offenders and their appointment as volunteers demonstrates the agency's commitment to supporting desistance through successful social inclusion. Notably many countries have good experiences of such 'peer mentoring'. Even so, by no means everyone is suitable for this role and the implementing authority has a duty to use its judgement about whom to engage.

88. 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.

This Rule asserts that volunteers need ready access to professional staff who can offer them advice and support in their work. A professional supervisor should retain responsibility for the management of a case and assign tasks to the volunteer as appropriate. There are likely to be times when the volunteer will need authority and approval from the responsible supervisor as well as their guidance and support.

Volunteers, just like paid staff, have a duty to protect the public and are therefore bound by the same rules regarding confidentiality. Suspects, offenders themselves and other service users, as well as staff and volunteers, must understand the rights and responsibilities involved in these working relationships.

89. Volunteers shall be insured against accident, injury and public liability when carrying out the duties assigned to them by the implementing authority. It is this authority's duty to make sure that they are adequately insured. They shall be reimbursed for necessary expenditures incurred in the course of their work.

Like paid staff, volunteers need adequate insurance cover when they carry out their duties. This applies only when the implementing authority appoints volunteers directly. These arrangements must be distinguished from the position of employees of organisations working in partnership with the implementing authority.

Although they are not paid for their work, they may sometimes incur expenses (for example travel costs) for which they should be reimbursed.

Financial resources

90. 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.

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, community sanctions and measures nevertheless require a significant 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 sufficient correspondence between the financial means accorded and the needs of the implementing authority.

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.

91. 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.

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, and to designate the persons responsible in this matter as well as the ways and means of auditing the use of such funds.

Chapter VIII: Inspection, monitoring and complaints procedures

92. Implementing authorities shall be open to scrutiny and shall regularly submit general reports and feedback information regarding their work to the competent authorities. Implementing authorities shall also be subject to inspection and/or monitoring and shall co-operate fully with all such scrutiny. The findings of government inspections and of independent monitoring bodies shall be made public.

This Rule develops the idea of transparency and accountability. The work of the implementing authorities should be open to scrutiny - that is, to routine monitoring and inspections carried out within the framework of the criminal justice system or other competent authorities. The nature and ways of carrying out such 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 not only by the managers of the authority itself (Rule 76), but also by external persons - that is to say by 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.

Arrangements vary in different countries and accountability can function at national, regional and / or at a more local level. In any event, the competent authority should ensure that robust systems are in place which allow them to satisfy themselves that the agency is undertaking its work as it should.

In addition, independent monitoring is very important for ensuring high quality of professional standards of practice. In some countries this may be the responsibility of the Ombudsman, in others a national supervising committee, etc. No matter which form such bodies may take, this Rule requires them to be independent and well equipped to perform their monitoring tasks.

Agencies should use such inspection and monitoring systems as an opportunity to learn and to improve their practice. The inspecting body should also take the opportunity to learn more about the realities of implementation practice and to advocate as necessary on the agency's behalf for changes in policy or in levels of resourcing.

It is also important to provide regular information to the deciding authorities, who must have confidence in the implementing authorities' work. There should also be dialogue, so that the implementing authority can take account of the expectations of the deciding authority.

This Rule also states that this is not just a matter of being available for scrutiny, but involves an active account of the work being undertaken. This can be achieved by submitting reports and other forms of feedback. These ideas are further developed in Chapter IX of the Rules.

93. A fair, simple and impartial complaints procedure shall be available concerning a decision made by the implementing authority, or the failure to take such a decision or, in general, about the effect given to the sanction or measure.

The legal principles which uphold these Rules must take account of the way in which implementation is carried out. The right of the individual to make a complaint must therefore be upheld concerning decisions (or failures to take decisions) which affect the practical ways of implementing the community sanction or measure. Suspects, offenders and other service users should be made aware of their right to complain and how to go about it. The procedure should be clear and straightforward.

Implementing agencies must ensure that offenders fulfil obligations - some of which they may prefer to avoid. Supervision can make personal demands on suspects and offenders which they may sometimes resent or resist. Sometimes too staff have to take decisions which can lead to a court appearance or to a recall to prison. The nature of implementing community sanctions and measures, then, can lead to disagreement and dispute between staff and offenders and this is an aspect of the work that staff must learn to deal with. Sometimes disagreement can give rise to formal complaint.

Someone may request a change of supervisor or other person charged with a duty towards them. 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 a suspect or an offender is important for effective implementation, the implementing authority shall examine such requests seriously and responsibly, but will not always decide to grant the request.

There must be a clear procedure available for suspects, offenders and other service users who wish to complain. Many complaints can and should be resolved informally and at a low level, by explaining to the person why a decision was taken, but where the complainant remains unsatisfied, there should be an effective opportunity to put the complaint to someone at a higher level within the organisation and in some circumstances to an independent authority.

It is to be noted that complaints can often be avoided by the agency explaining its role clearly and holding its position with consistency and fairness. If people know what is expected of them and what they may expect in return, complaint is much less likely.

Those investigating complaints should be impartial and should avoid any assumptions that might prejudice the outcome of their inquiry.

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

A complaints procedure should meet certain requirements. In some cases, it will be sufficient for the line manager of the member of staff who is subject to the complaint to undertake the investigation. In other circumstances, depending on the level of seriousness of the allegation, someone at a higher level in the organisation should investigate. There is a role too for an independent authority (for example, an Ombudsman) to respond to complaints, but normally this process should be invoked only when other mechanisms have failed to bring a satisfactory resolution. This independent authority may also be in a position to hear any appeal against the findings of the initial investigation.

It must be possible for anyone to initiate a complaint without difficulty and for the complaint to be examined and decided on without undue delay. At the same time, the investigator must have at their disposal the information necessary for the decision, including any observations put forward by the complainant, by members of staff whose practices may be being called into question and / or others with relevant information to provide.

In some circumstances it is quite likely that a thorough investigation will take time. These processes should be undertaken efficiently, but not hastily. Where it appears that a certain amount of time will pass, the complainant should be kept informed and reasons given to explain what might otherwise appear to be undue delay. There should be procedures and explicit time-scales set for dealing with complaints.

It is often very important to try to find out what the complainant expects to result from their complaint. It may be, for example, that the individual is finding the demands of the community sanction or measure to be a heavier burden than anticipated, but that matter is unlikely to be resolved through a complaints process. Again, there is the delicate matter of when a suspect or offender is upset or angered by the challenges of the supervising officer. It is not always easy to know when a complaints procedure is the best response to this.

95. Those investigating the complaint shall obtain all necessary information to enable them to reach their decision. Careful consideration shall be given to the desirability of hearing the complainant in person, especially when such a wish has been expressed.

Investigation is likely to include considering the initial complaint, hearing further from the complainant as appropriate, talking to members of staff and perhaps scrutinising written records. Ordinarily, service users should be encouraged to put their complaints in writing - which need not be an elaborate representation - but where individuals lack the ability or the confidence to express their views in writing, they should be helped to do so and / or an oral complaint accepted.

The responsible authority should decide in each case whether or not it is necessary for the investigator of the complaint to interview the complainant in person. The complainant's request to be seen in person shall be considered carefully, but will not necessarily be decisive. Judgement shall be exercised.

96. The decision of those investigating the complaint and the reasons for the decision shall be communicated in writing to the complainant, to the implementing authority and to the relevant members of staff.

A complaint may or may not be found to be justified. It is also possible that a complaint is upheld to some degree. If a complaint is upheld, appropriate action needs to be taken and the complainant informed accordingly. If the complaint is found not to be justified, the complainant needs to be so informed and in all cases to feel fairly dealt with.

Staff as well as complainants need to see that the procedure is fair and impartial. Whether the complaint is found by the investigation to be misplaced, malicious or vexatious, or to be well founded, the agency should respond to the complainant accordingly. Staff members whose practice may have been called into question should also be informed of the outcome.

It is important to distinguish between complaints against members of staff and, on the other hand, dissatisfaction with the agency's policy. For example, an offender may wish to complain about a decision to recall them to prison, but, if the agency is satisfied that this decision was taken and implemented properly, it should be prepared to support its members of staff.

Any changes in policy or practice that will result from the investigation into the complaint should be explained to the complainant. The implementing authority should respond positively to complaints and use investigations as an opportunity to learn how to improve the quality of their service delivery.

Information regarding the number of complaints filed and processed in the course of the year should also be analysed regularly with a view to identifying and addressing shortcomings in policy or in practice.

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

The purpose of this Rule is to enable a complainant to exercise their right without hindrance. The individual is therefore to have the right to be assisted by a person of their choice in connection with any complaint concerning the implementation of a community sanction or measure. The complainant may choose the person to give advice or assistance even if there is a risk that this person may lack the specific qualifications or knowledge required. In some circumstances, the complainant may seek legal assistance.

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

98. 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.

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 suspects and offenders as well as the use of public financial resources cannot be effective in the absence of such descriptions and assessments. There is 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.

The findings of research should be used to inform and guide practice. Research should be rigorous and impartial and the participation of universities and other centres of research can ensure impartiality and give authority to such inquiries. The findings of research should also be made public as part of the attempt to develop public confidence. (Even when findings are disappointing, the agency's willingness to investigate and as necessary to modify its approach will add to its credibility).

Just as practice must be responsive to the findings of research, policy too should be informed in this way. Politicians in many countries are under considerable pressure to introduce effective measures to reduce crime. Policy initiatives should be supported by research, reason and argument and, while remaining sensitive to the legitimate expectations of the electorate, politicians should show leadership and try to avoid any temptation to propose simple 'solutions' to complex problems.

Attention in research should be paid not only to the extent to which community sanctions and measures achieve the objectives set for them, but to any unintended or unforeseen consequences.

An implication of this Rule is an encouragement of the international exchange of ideas and practices. Practices that have proved to be successful in one country may be a promising idea to introduce elsewhere, although such transfer must be undertaken with due regard to differences of context, especially law and culture. Countries can learn from one another's experience - not only from successes, but also from mistakes.

99. Criteria of effectiveness and performance should be laid down so as to make it possible to assess from various perspectives the benefits and disadvantages associated with programmes and interventions with the aim of maximising the quality of their results. Standards and performance indicators for the execution of programmes and interventions should be established.

Criteria of effectiveness and performance should be laid down so as to make it possible to assess from various perspectives the benefits, drawbacks and limitations associated with community sanctions and measures. These criteria could include:

- *reconviction rates (one significant measure of effectiveness)*
- *processes of desistance*
- *compliance (e.g. proportion of successful completion, number of breach actions registered)*
- *the profile and offending histories of those on whom community sanctions and measures have been imposed (to discover if community sanctions and measures are being assigned as law and policy expect)*
- *the impact of community sanctions and measures on rates of imprisonment (since community sanctions and measures aspire to reduce prison populations, though may fail or underachieve in this respect)*

- *the avoidance of discrimination in accordance with Rule 6*
- *the perceptions of staff working for the implementing authorities*
- *the views of deciding authorities*
- *the experiences of service users, including victims*
- *complaints procedure outcomes*
- *the financial costs of community sanctions and measures*

This list is not intended to be exhaustive. For example, public perceptions about community sanctions and measures and their credibility is a worthwhile topic of research. Proxy indicators can often be useful: for example, many suspects and offenders need to be helped to overcome alcohol or drug dependence and educational or vocational deficiencies. Community sanctions and measures offer opportunities for such help. It remains for research to demonstrate whether such help is actually offered and accepted and to suggest ways of improving the efficacy of helping methods.

In many cases, these effects should be assessed comparatively. For example, rather than measure rates of reconviction against some (probably unattainable) ideal, they should be carefully compared with the reconvictions of comparable offenders receiving imprisonment as well as other sanctions and measures.

100. 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 these Rules and be carefully monitored and evaluated.

New programmes, interventions and methods of implementation are to be welcomed. The requirements stipulated by this Rule are that they should be introduced first of all on a trial basis; that they should accord with these Rules and with international ethical standards; and that they should be carefully monitored and rigorously evaluated.

101. 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 advantages of community sanctions and measures. There should be a declared public relations policy.

It is quite common to find that, in a number of countries, the public has little understanding of community sanctions and measures or of the work of implementing authorities. Community sanctions and measures rarely attract public attention, for example, in the same way that prison does. This Rule urges the responsible authorities and the implementing authorities themselves to 'champion' community sanctions and measures - to work with the media to explain what community sanctions and measures attempt to do, what they achieve and why they are important. Authorities should be imaginative and creative in the way in which they set about this task in order to enhance public understanding and confidence.

This Rule therefore emphasises the importance of good communications in creating social conditions in which community 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.

102. Active efforts shall be made to make information available about the nature and content of community sanctions and measures, as well as the various ways in which they are implemented, so that the general public can understand them and perceive them as adequate and credible responses to criminal behaviour.

The general public have both a need and a right to know what community sanctions and measures are available, what conditions apply, what are the rights and responsibilities of suspects and offenders 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, Internet, social media, newspapers and magazines. Conferences, seminars and lectures can also be used to disseminate information and influence public opinion.

The information should emphasise that community sanctions and measures can provide sufficient punishment and control as well as help in support of desistance.

It is also important that the public sees implementing authorities as active, responsive and always keen to enhance the quality of their work.

103. Judicial and other deciding 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 of the strengths and limitations of community sanctions and measures.

It is the decisions of judicial and other deciding authorities that determine how community sanctions and measures are used within the parameters of the law. Unless they have a sound understanding of how community sanctions and measures are implemented and of what they can achieve, there is a risk that they will be used insufficiently or inappropriately. In such circumstances, community sanctions and measures are unlikely to fulfil their potential in any respect and perhaps especially in reducing the numbers of people in prison. This Rule envisages a dialogue between the implementing and deciding authorities. As well as receiving information, deciding authorities should be encouraged to express their opinions about the implementation of community sanctions and measures and how this could be enhanced in ways that would command their further confidence.

104. Implementing authorities shall enable and encourage suspects and offenders to inform them of their experience of being supervised so that policies and practices can be improved. Where these authorities work with victims, their views shall also be sought.

Research into community sanctions and measures has often been dominated by statistical analysis, especially recording of rates of reconviction. There are other perspectives, however, that might lead to a fuller and more rounded appraisal of the performance of implementing authorities. This Rule urges authorities to encourage service users to express their views of the services they have received and the manner in which they were supervised. Similarly, where the relevant agencies work with victims, their views shall be actively sought. In many cases, the views of individuals are routinely recorded in individual case files, but it is less common for these views to be collated systematically or drawn upon to inform practice of policy. In some countries, authorities have helped to create user councils to advise them and this and similar arrangements are to be encouraged.

Chapter X: Reviewing of the Rules

105. These Rules shall be reviewed regularly.

These Rules should be reviewed regularly and revised as appropriate. Changes in law, including judicial rulings, in the understanding of the best ways to support personal change and desistance and in technologies may mean that some Rules need revision. Importantly, all countries should contribute to this process by attending to the effects of implementation. Circumstances where Rules do not (or no longer) achieve their intended purposes or create difficulties of principle or practice in their implementation should be noted and drawn to the Council of Europe's attention at the time of any revision. Rules must be improved by careful reflection on the experience of trying to put them into practice.



European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders

Strasbourg, 30.XI.1964

Preamble

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity among its Members;

Being resolved to take concerted action to combat crime;

Considering that, to this end, they are in duty bound to ensure, in the territory of the other Contracting Parties, either the social rehabilitation of offenders given suspended sentences or released conditionally by their own courts, or the enforcement of the sentence when the prescribed conditions are not fulfilled,

Have agreed as follows:

Part I – Basic principles

Article 1

- 1 The Contracting Parties undertake to grant each other in the circumstances set out below the mutual assistance necessary for the social rehabilitation of the offenders referred to in Article 2. This assistance shall take the form of supervision designed to facilitate the good conduct and readaptation to social life of such offenders and to keep a watch on their behaviour with a view, should it become necessary, either to pronouncing sentence on them or to enforcing a sentence already pronounced.
- 2 The Contracting Parties shall, in the circumstances set out below and in accordance with the following provisions, enforce such detention order or other penalty involving deprivation of liberty as may have been passed on the offender, application of which has been suspended.

Article 2

- 1 For the purposes of this Convention, the term "offender" shall be taken to mean any person, who, in the territory of one of the Contracting Parties, has:
 - a been found guilty by a court and placed on probation without sentence having been pronounced;
 - b been given a suspended sentence involving deprivation of liberty, or a sentence of which the enforcement has been conditionally suspended, in whole or in part, either at the time of the sentence or subsequently.

- 2 In subsequent articles, the term "sentence" shall be deemed to include all judicial decisions taken in accordance with sub-paragraphs a and b of paragraph 1 above.

Article 3

The decisions referred to in Article 2 must be final and must have executive force.

Article 4

The offence on which any request under Article 5 is based shall be one punishable under the legislation of both the requesting and the requested State.

Article 5

- 1 The State which pronounced the sentence may request the State in whose territory the offender establishes his ordinary residence:
 - a to carry out supervision only, in accordance with Part II;
 - b to carry out supervision and if necessary to enforce the sentence, in accordance with Parts II and III;
 - c to assume entire responsibility for applying the sentence, in accordance with the provisions of Part IV.
- 2 The requested State shall act upon such a request, under the conditions laid down in this Convention.
- 3 If the requesting State has made one of the requests mentioned in paragraph 1 above, and the requested State deems it preferable, in any particular case, to adopt one of the other courses provided for in that paragraph, the requested State may refuse to accede to such a request, at the same time declaring its willingness to follow another course, which it shall indicate.

Article 6

Supervision, enforcement or complete application of the sentence, as defined in the preceding article, shall be carried out, at the request of the State in which sentence was pronounced, by the State in whose territory the offender establishes his ordinary residence.

Article 7

- 1 Supervision, enforcement or complete application shall be refused:
 - a if the request is regarded by the requested State as likely to prejudice its sovereignty, security, the fundamentals of its legal system, or other essential interests;
 - b if the request relates to a sentence for an offence which has been judged in final instance in the requested State;
 - c if the act for which sentence has been passed is considered by the requested State as either a political offence or an offence related to a political offence, or as a purely military offence;
 - d if the penalty imposed can no longer be exacted, because of the lapse of time, under the legislation of either the requesting or the requested State;

- e if the offender has benefited under an amnesty or a pardon in either the requesting or the requested State.
- 2 Supervision, enforcement or complete application may be refused:
- a if the competent authorities in the requested State have decided not to take proceedings, or to drop proceedings already begun, in respect of the same act;
 - b if the act for which sentence has been pronounced is also the subject of proceedings in the requested State;
 - c if the sentence to which the request relates was pronounced *in absentia*;
 - d to the extent that the requested State deems the sentence incompatible with the principles governing the application of its own penal law, in particular, if on account of his age the offender could not have been sentenced in the requested State.
- 3 In the case of fiscal offences, supervision or enforcement shall be carried out, in accordance with the provisions of this Convention, only if the Contracting Parties have so decided in respect of each such offence or category of offences.

Article 8

The requesting and requested State shall keep each other informed in so far as it is necessary of all circumstances likely to affect measures of supervision or enforcement in the territory of the requested State.

Article 9

The requested State shall inform the requesting State without delay what action is being taken on its request

In the case of total or partial refusal to comply, it shall communicate its reasons for such refusal.

Part II – Supervision

Article 10

The requesting State shall inform the requested State of the conditions imposed on the offender and of any supervisory measures with which he must comply during his period of probation.

Article 11

- 1 In complying with a request for supervision, the requested State shall, if necessary, adapt the prescribed supervisory measures in accordance with its own laws.
- 2 In no case may the supervisory measures applied by the requested State, as regards either their nature or their duration, be more severe than those prescribed by the requesting State.

Article 12

When the requested State agrees to undertake supervision, it shall proceed as follows:

- 1 It shall inform the requesting State without delay of the answer given to its request;

- 2 It shall contact the authorities or bodies responsible in its own territory for supervising and assisting offenders;
- 3 It shall inform the requesting State of all measures taken and their implementation.

Article 13

Should the offender become liable to revocation of the conditional suspension of his sentence referred to in Article 2 either because he has been prosecuted or sentenced for a new offence, or because he has failed to observe the prescribed conditions, the necessary information shall be supplied to the requesting State automatically and without delay by the requested State.

Article 14

When the period of supervision expires, the requested State shall, on application by the requesting State, transmit all necessary information to the latter.

Article 15

The requesting State shall alone be competent to judge, on the basis of the information and comments supplied by the requested State, whether or not the offender has satisfied the conditions imposed upon him, and, on the basis of such appraisal, to take any further steps provided for by its own legislation.

It shall inform the requested State of its decision.

Part III – Enforcement of sentences

Article 16

After revocation of the conditional suspension of the sentence by the requesting State, and on application by that State, the requested State shall be competent to enforce the said sentence.

Article 17

Enforcement in the requested State shall take place in accordance with the law of that State, after verification of the authenticity of the request for enforcement and its compatibility with the terms of this Convention.

Article 18

The requested State shall in due course transmit to the requesting State a document certifying that the sentence has been enforced.

Article 19

The requested State shall, if need be, substitute for the penalty imposed in the requesting State, the penalty or measure provided for by its own legislation for a similar offence. The nature of such penalty or measure shall correspond as closely as possible to that in the sentence to be enforced. It may not exceed the maximum penalty provided for by the legislation of the requested State, nor may it be longer or more rigorous than that imposed by the requesting State.

Article 20

The requesting State may no longer itself take any of the measures of enforcement requested, unless the requested State indicates that it is unwilling or unable to do so.

Article 21

The requested State shall be competent to grant the offender conditional release. The right of pardon may be exercised by either the requesting or the requested State.

Part IV – Relinquishment to the requested State

Article 22

The requesting State shall communicate to the requested State the sentence of which it requests complete application.

Article 23

- 1 The requested State shall adapt to its own penal legislation the penalty or measure prescribed as if the sentence had been pronounced for the same offence committed in its own territory.
- 2 The penalty imposed by the requested State may not be more severe than that pronounced in the requesting State.

Article 24

The requested State shall ensure complete application of the sentence thus adapted as if it were a sentence pronounced by its own courts.

Article 25

The acceptance by the requested State of a request in accordance with the present Part IV shall extinguish the right of the requesting State to enforce the sentence.

Part V – Common provisions

Article 26

- 1 All requests in accordance with Article 5 shall be transmitted in writing.

They shall indicate:

- a the issuing authority;
- b their purpose;
- c the identity of the offender and his place of residence in the requested State.

- 2 Requests for supervision shall be accompanied by the original or a certified transcript of the Court findings containing the reasons which justify the supervision and specifying the measures imposed on the offender. They should also certify the enforceable nature of the sentence and of the supervisory measures to be applied. So far as possible, they shall state the circumstances of the offence giving rise to the sentence of supervision, its time and place and legal destination and, where necessary, the length of the sentence to be enforced. They shall give full details of the nature and duration of the measures of supervision requested, and include a reference to the legal provisions applicable together with necessary information on the character of the offender and his behaviour in the requesting State before and after pronouncement of the supervisory order.
- 3 Requests for enforcement shall be accompanied by the original, or a certified transcript, of the decision to revoke conditional suspension of the pronouncement or enforcement of sentence and also of the decision imposing the sentence now to be enforced. The enforceable nature of both decisions shall be certified in the manner prescribed by the law of the State in which they were pronounced.

If the judgment to be enforced has replaced an earlier one and does not contain a recital of the facts of the case, a certified copy of the judgment containing such recital shall also be attached.

- 4 Requests for complete application of the sentence shall be accompanied by the documents mentioned in paragraph 2 above.

Article 27

- 1 Requests shall be sent by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State and the reply shall be sent through the same channels.
- 2 Any communications necessary under the terms of this Convention shall be exchanged either through the channels referred to in paragraph 1 of this article, or directly between the authorities of the Contracting Parties.
- 3 In case of emergency, the communications referred to in paragraph 2 of this article may be made through the International Criminal Police Organisation (Interpol).
- 4 Any Contracting Party may, by declaration addressed to the Secretary General of the Council of Europe, give notice of its intention to adopt new rules in regard to the communications referred to in paragraphs 1 and 2 of this article.

Article 28

If the requested State considers that the information supplied by the requesting State is inadequate to enable it to apply this Convention, it shall ask for the additional information required. It may fix a time-limit for receipt of such information.

Article 29

- 1 Subject to the provisions of paragraph 2 of this article, no translation of requests, or of the supporting documents, or of any other documents relating to the application of this Convention, shall be required.

- 2 Any Contracting Party may, when signing this Convention or depositing its instrument of ratification, acceptance or accession, by a declaration addressed to the Secretary General of the Council of Europe, reserve the right to require that requests and supporting documents should be accompanied by a translation into its own language, or into one of the official languages of the Council of Europe, or into such one of those languages as it shall indicate. The other Contracting Parties may claim reciprocity.
- 3 This article shall be without prejudice to any provision regarding translation of requests and supporting documents that may be contained in agreements or arrangements now in force or that may be concluded between two or more of the Contracting Parties.

Article 30

Documents transmitted in application of this Convention shall not require authentication.

Article 31

The requested State shall have powers to collect, at the request of the requesting State, the cost of prosecution and trial incurred in that State.

Should it collect such costs, it shall be obliged to refund to the requesting State experts' fees only.

Article 32

Supervision and enforcement costs incurred in the requested State shall not be refunded.

Part VI – Final provisions

Article 33

This Convention shall be without prejudice to police regulations relating to foreigners.

Article 34

- 1 This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
- 2 This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.
- 3 In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

Article 35

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede thereto.
- 2 Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

Article 36

- 1 Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any Contracting Party may, when depositing its instrument of ratification, acceptance or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
- 3 Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 39 of this Convention.

Article 37

- 1 This Convention shall not affect the undertakings given in any other existing or future international Convention, whether bilateral or multilateral, between two or more of the Contracting Parties, on extradition or any other form of mutual assistance in criminal matters.
- 2 The Contracting Parties may not conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, except in order to supplement its provisions or facilitate application of the principles embodied in it.
- 3 Should two or more Contracting Parties, however, have already established their relations in this matter on the basis of uniform legislation, or instituted a special system of their own, or should they in future do so, they shall be entitled to regulate those relations accordingly, notwithstanding the terms of this Convention.

Contracting Parties ceasing to apply the terms of this Convention to their mutual relations in this matter shall notify the Secretary General of the Council of Europe to that effect.

Article 38

- 1 Any Contracting Party may, at the time of signature or when depositing its instrument of ratification, acceptance or accession, declare that it avails itself of one or more of the reservations provided for in the annex to this Convention.
- 2 Any Contracting Party may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraph by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.
- 3 A Contracting Party which has made a reservation in respect of any provision of this Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.
- 4 Any Contracting Party may, on signing the present Convention, or on depositing its instrument of ratification, acceptance or accession, notify the Secretary General of the Council of Europe that it considers ratification, acceptance or accession as entailing an obligation, in international law, to introduce into municipal law measures to implement the said Convention.

Article 39

- 1 This Convention shall remain in force indefinitely.

- 2 Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 3 Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

Article 40

The Secretary General of the Council of Europe shall notify the member States of the Council, and any State that has acceded to this Convention of:

- a any signature;
- b any deposit of an instrument of ratification, acceptance or accession;
- c any date of entry into force of this Convention in accordance with Article 34;
- d any notification or declaration received in pursuance of the provisions of paragraph 4 of Article 27, of paragraph 2 of Article 29, of paragraph 3 of Article 37 and of paragraph 4 of Article 38;
- e any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 36;
- f any reservation made in pursuance of the provisions of paragraph 1 of Article 38;
- g the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 2 of Article 38;
- h any notification received in pursuance of the provisions of Article 39, and the date on which denunciation takes effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg this 30th day of November 1964, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

Annex

Any Contracting Party may declare that it reserves the right to make known:

- 1 that it does not accept the provisions of the Convention as related to the enforcement of sentences or their complete application;
- 2 that it accepts only part of these provisions;
- 3 that it does not accept the provisions of paragraph 2 of Article 37.

