

STREAM: Strategic Targeting of Recidivism through Evaluation And Monitoring (JUST/2011/JPEN/AG/2892)

Executive Summary

Final Report: Workstream 4

1. The report explores the impact of the Council of Europe Probation Rules on the policies and practices of probation in the EU member states. It explains how research was undertaken and set outs the findings from the inquiry, followed by an analysis and discussion of these findings. A section scopes the desirability and feasibility of developing a European Probation Centre of Excellence. The Report concludes with some Proposals.
2. The broad aim of the STREAM project was to support the development across Europe of effective probation practice. Yet effective practice requires a *context* and cannot be implemented unless the agency is well-organised, its staff properly trained and adequately resourced. The most complete specification of the requisite context is provided by the European Probation Rules.
3. The influence of instruments that originate at a governmental level above the nation-state is a matter of the highest importance both to the Council of Europe and to the EU. Much more needs to be known about those factors that influence the extent to which international regulation in the area of criminal justice and punishment are received and implemented in different countries.
4. The objectives of this Workstream were
 - i. To ascertain if the European Probation Rules (hereafter *EPR* or *the Rules*) have influenced probation policy and practice in member states
 - ii. To discover how EPR have been used (for example, to benchmark established systems; to develop new systems)
 - iii. To identify any difficulties that have hindered implementation
 - iv. To determine the strengths and the shortcomings of EPR in light of experiences of implementation
 - v. To use the findings of the research to improve implementation and effective organisational practice, providing recommendations to assist European wide probation agencies
 - vi. To scope the possibility of developing a 'centre of excellence' for European probation, most likely through a virtual network (interactive website), to ensure that the project is sustained and continues to develop.
5. Inquiry took the form of a series of conversations, usually on Skype, with knowledgeable respondents in different roles. Substantial information was gathered from all but two or three of the member states of the EU. Information

and opinion were also gained from a seminar held in Leicester, a workshop in The Hague and the Final Conference in Malta.

6. EPR were only adopted in 2010 and a review of the literature discovered that little has been written about them and their impact so far. Other literature, however, much of it written to illuminate international comparative studies, highlights the many historical, social, economic, cultural, legal and professional influences that shape penal practices. Implementation is always mediated by such factors and is therefore never simple or straightforward. There are many dimensions to an understanding of the reasons why countries and the many responsible personnel within them respond as they do to international guidance and regulation.
7. Respondents to the inquiry were asked ten main questions. The first six questions were general inquiries about the Rules as a whole and their ethos; the final four questions investigated compliance with specific rules.
 - i. *How well known are the European Probation Rules?* The EPR are most widely known amongst senior managers and some researchers, but not well known amongst the general staff. No more than a few countries have disseminated the Rules widely.
 - ii. *Are EPR a good way of establishing common standards across the EU?* Most of the respondents felt that common standards were necessary and that EPR were important in bringing this about. Despite considerable variations in practice across countries, the EPR do provide a common framework. This is increasingly important to give effect to the EU Framework Decisions. This view was expressed even by countries where the Rules had received little attention.
 - iii. *Have the Rules been used? How?* There are a number of countries in which the Rules have had a direct and demonstrable impact on law, policy and practice. Many of these countries had relatively new probation agencies and benefited from using the Rules to develop their service. More experienced agencies already practised in ways that reflect EPR principles, but were sometimes using EPR when planning innovation or change. Examples were found where the EPR had direct impact on: developing legislation; benchmarking policies and practice; forming the basis of national standards; providing a reference point for practice and professional staff; staff training ; the introduction of new practices such as restorative justice; negotiations for adequate (or additional) resources.
 - iv. *Which Rules have been most influential?* There was a wide range of responses about the different ways in which particular rules had made a difference. A significant number of countries said that the Rules on aspects of practice had been the most influential.
 - v. *What problems have been experienced in trying to implement EPR?* There was little consensus about this question. Those countries that had spoken enthusiastically about EPR tended to feel that there were no problems of implementation; those who had used them less or not at all referred to a general reluctance to take an interest in them. Some countries welcome guidance and even instruction from Brussels and Strasbourg. Other countries pay much less attention to what Europe tells them to do. In just two cases, it appears that EPR have not been translated or made available in the national language.

- vi. *Do Probation policies and practice reflect the values and beliefs of EPR?* The great majority of respondents felt that their own policies and practices reflected the values and beliefs of EPR. Some wanted to add that this was not because of the Rules, but had been long established in their probation traditions.
 - vii. *Rule 1: Relationships and social inclusion.* In many countries there was a strong identification with the principles of building positive relationships and developing social inclusion, although several respondents were keen to add that control was also an important and indeed a defining function of probation.
 - viii. *Rule 1: Help and support.* EPR makes strong statements about relationships, social, inclusion, help and support, while also recognising duties to 'punish' (in the sense of giving effect to the court's order), to control and to protect the public by reducing reoffending. Most countries identify with this, although not all could be confident that this was understood or supported by the public.
 - ix. *Rule 37: Work with other agencies.* There was widespread support expressed for Rule 37. In many places, this is well developed, although elsewhere it is a persistent challenge even if progress is being made. There needs to be a fuller appreciation of some of the disincentives to cooperation that stand in the way of achieving this aspiration. There should also be more emphasis, perhaps, on the importance of developing trust and understanding among those who need to make cooperation actually work and a recognition of the limitations of statute.
 - x. *Rule 93: Work with victims.* Probation agencies in many countries do not work directly with victims. However there were many examples where agencies liaise with victim organisations (often NGOs), make referrals, provide help-lines and respond to inquiries from victims. The value of restorative justice and specifically mediation is being increasingly recognised.
8. There seems little doubt that the European Probation Rules have had a valuable influence in many countries, having been used to help to shape legislation, organisation, policy and practice. They seem more likely to have been taken up by newer probation agencies – especially those in eastern Europe. Some established probation agencies who are considering reform and / or the introduction of new practices (for example, working with victims, restorative justice or electronic monitoring) have consulted the Rules as a resource to inform their deliberations.
 9. Other respondents said that the Rules had attracted little or no interest in their country. This was commonly because of indifference – or even hostility – towards European regulation. Yet expressions of this kind are not a reliable indication of compliance: many respondents who told us that their countries took little or no account of EPR were confident that they in fact comply quite well, although one or two recognised that, without a systematic benchmarking, it was hard to be sure of this and there was a risk of complacency.
 10. Implementation of EPR should involve the spirit as well as the letter. It cannot rest at the level of law and policy. It is easy to affirm some of EPR's principles – both a strength and a weakness of the Rules – but these principles must be

expressed in the practices of the agency. Gauging this level of compliance is extremely difficult.

11. Wide and strong support was found for the development of European Probation Centre of Excellence. While CEP already effectively performs many of the expected functions of a centre, there are some identifiable areas where the European probation community might accomplish more, notably:

- a) Identifying priority research needs
- b) Coordinating and sequencing research activities
- c) Sustaining work beyond the end of projects
- d) Explaining (and 'championing') probation to judges, criminal justice practitioners and to the general public.

A centre might in the first instance be developed by supporting CEP to undertake these tasks.

12. The main proposals suggested by the findings of this research are that, in order to promote EPR across the continent:

- I. reliable translations of the full text and commentary should be made readily available in the national languages of all member states
- II. every national probation agency should encourage its staff to study EPR and should make the text easily available to them, in recognition of the fact that substantive compliance with EPR involves their incorporation into practice
- III. EPR should be introduced into the training of all staff
- IV. policy makers and senior managers should periodically compare or benchmark their current statutory provision, policies and practices against the Rules – to assess their own practices, but also to contribute to an enhancement of EPR over time
- V. redoubled attempts should be made to explain the work and the guiding values of probation to judges, politicians and the general public
- VI. one way of achieving this might be to affirm the importance of probation's work with victims, in accordance with the relevant sections of EPR, and the potential of restorative justice and mediation to be developed as an effective means of working with victims and offenders
- VII. the EU and the probation community of Europe, working closely with CEP, should consider how to establish a European Probation Centre of Excellence to champion the EPR across Europe and to guide countries in implementation and in the enhancement of probation practice.